

# WASHINGTON, D.C. ADMISSION ACT

APRIL 16, 2021.—Ordered to be printed

Mrs. CAROLYN B. MALONEY of New York, from the Committee on Oversight and Reform, submitted the following

## R E P O R T

together with

## MINORITY VIEWS

[To accompany H.R. 51]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Reform, to whom was referred the bill (H.R. 51) to provide for the admission of the State of Washington, D.C. into the Union, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

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Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Washington, D.C. Admission Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—STATE OF WASHINGTON, D.C.**

**Subtitle A—Procedures for Admission**

Sec. 101. Admission into the Union.  
 Sec. 102. Election of Senators and Representative.  
 Sec. 103. Issuance of presidential proclamation.

**Subtitle B—Seat of Government of the United States**

Sec. 111. Territory and boundaries.  
 Sec. 112. Description of Capital.  
 Sec. 113. Retention of title to property.  
 Sec. 114. Effect of admission on current laws of seat of Government of United States.  
 Sec. 115. Capital National Guard.  
 Sec. 116. Termination of legal status of seat of Government of United States as municipal corporation.

**Subtitle C—General Provisions Relating to Laws of State**

Sec. 121. Effect of admission on current laws.  
 Sec. 122. Pending actions and proceedings.  
 Sec. 123. Limitation on authority to tax Federal property.  
 Sec. 124. United States nationality.

**TITLE II—INTERESTS OF FEDERAL GOVERNMENT**

**Subtitle A—Federal Property**

Sec. 201. Treatment of military lands.  
 Sec. 202. Waiver of claims to Federal property.

**Subtitle B—Federal Courts**

Sec. 211. Residency requirements for certain Federal officials.  
 Sec. 212. Renaming of Federal courts.  
 Sec. 213. Conforming amendments relating to Department of Justice.  
 Sec. 214. Treatment of pretrial services in United States District Court.

**Subtitle C—Federal Elections**

Sec. 221. Permitting individuals residing in Capital to vote in Federal elections in State of most recent domicile.  
 Sec. 222. Repeal of Office of District of Columbia Delegate.  
 Sec. 223. Repeal of law providing for participation of seat of government in election of President and Vice-President.  
 Sec. 224. Expedited procedures for consideration of constitutional amendment repealing 23rd Amendment.

**TITLE III—CONTINUATION OF CERTAIN AUTHORITIES AND RESPONSIBILITIES**

**Subtitle A—Employee Benefits**

Sec. 301. Federal benefit payments under certain retirement programs.  
 Sec. 302. Continuation of Federal civil service benefits for employees first employed prior to establishment of District of Columbia merit personnel system.  
 Sec. 303. Obligations of Federal Government under judges’ retirement program.

**Subtitle B—Agencies**

Sec. 311. Public Defender Service.  
 Sec. 312. Prosecutions.  
 Sec. 313. Service of United States Marshals.  
 Sec. 314. Designation of felons to facilities of Bureau of Prisons.  
 Sec. 315. Parole and supervision.  
 Sec. 316. Courts.

**Subtitle C—Other Programs and Authorities**

Sec. 321. Application of the College Access Act.  
 Sec. 322. Application of the Scholarships for Opportunity and Results Act.  
 Sec. 323. Medicaid Federal medical assistance percentage.  
 Sec. 324. Federal planning commissions.  
 Sec. 325. Role of Army Corps of Engineers in supplying water.  
 Sec. 326. Requirements to be located in District of Columbia.

**TITLE IV—GENERAL PROVISIONS**

Sec. 401. General definitions.

Sec. 402. Statehood Transition Commission.  
 Sec. 403. Certification of enactment by President.  
 Sec. 404. Severability.

## **TITLE I—STATE OF WASHINGTON, D.C.**

### **Subtitle A—Procedures for Admission**

#### **SEC. 101. ADMISSION INTO THE UNION.**

(a) **IN GENERAL.**—Subject to the provisions of this Act, upon the issuance of the proclamation required by section 103(a), the State of Washington, Douglass Commonwealth is declared to be a State of the United States of America, and is declared admitted into the Union on an equal footing with the other States in all respects whatever.

(b) **CONSTITUTION OF STATE.**—The State Constitution shall always be republican in form and shall not be repugnant to the Constitution of the United States or the principles of the Declaration of Independence.

(c) **NONSEVERABILITY.**—If any provision of this section, or the application thereof to any person or circumstance, is held to be invalid, the remaining provisions of this Act and any amendments made by this Act shall be treated as invalid.

#### **SEC. 102. ELECTION OF SENATORS AND REPRESENTATIVE.**

##### **(a) ISSUANCE OF PROCLAMATION.—**

(1) **IN GENERAL.**—Not more than 30 days after receiving certification of the enactment of this Act from the President pursuant to section 403, the Mayor shall issue a proclamation for the first elections for 2 Senators and one Representative in Congress from the State, subject to the provisions of this section.

(2) **SPECIAL RULE FOR ELECTIONS OF SENATORS.**—In the elections of Senators from the State pursuant to paragraph (1), the 2 Senate offices shall be separately identified and designated, and no person may be a candidate for both offices. No such identification or designation of either of the offices shall refer to or be taken to refer to the terms of such offices, or in any way impair the privilege of the Senate to determine the class to which each of the Senators shall be assigned.

##### **(b) RULES FOR CONDUCTING ELECTIONS.—**

(1) **IN GENERAL.**—The proclamation of the Mayor issued under subsection (a) shall provide for the holding of a primary election and a general election, and at such elections the officers required to be elected as provided in subsection (a) shall be chosen by the qualified voters of the District of Columbia in the manner required by the laws of the District of Columbia.

(2) **CERTIFICATION OF RESULTS.**—Election results shall be certified in the manner required by the laws of the District of Columbia, except that the Mayor shall also provide written certification of the results of such elections to the President.

(c) **ASSUMPTION OF DUTIES.**—Upon the admission of the State into the Union, the Senators and Representative elected at the elections described in subsection (a) shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of the other States in Congress.

##### **(d) EFFECT OF ADMISSION ON HOUSE OF REPRESENTATIVES MEMBERSHIP.—**

(1) **PERMANENT INCREASE IN NUMBER OF MEMBERS.**—Effective with respect to the Congress during which the State is admitted into the Union and each succeeding Congress, the House of Representatives shall be composed of 436 Members, including any Members representing the State.

(2) **INITIAL NUMBER OF REPRESENTATIVES FOR STATE.**—Until the taking effect of the first apportionment of Members occurring after the admission of the State into the Union, the State shall be entitled to one Representative in the House of Representatives upon its admission into the Union.

##### **(3) APPORTIONMENT OF MEMBERS RESULTING FROM ADMISSION OF STATE.—**

(A) **APPORTIONMENT.**—Section 22(a) of the Act entitled “An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress”, approved June 18, 1929 (2 U.S.C. 2a(a)), is amended by striking “the then existing number of Representatives” and inserting “436 Representatives”.

(B) **EFFECTIVE DATE.**—The amendment made by subparagraph (A) shall apply with respect to the first regular decennial census conducted after the admission of the State into the Union and each subsequent regular decennial census.

**SEC. 103. ISSUANCE OF PRESIDENTIAL PROCLAMATION.**

(a) **IN GENERAL.**—The President, upon the certification of the results of the elections of the officers required to be elected as provided in section 102(a), shall, not later than 90 days after receiving such certification pursuant to section 102(b)(2), issue a proclamation announcing the results of such elections as so ascertained.

(b) **ADMISSION OF STATE UPON ISSUANCE OF PROCLAMATION.**—Upon the issuance of the proclamation by the President under subsection (a), the State shall be declared admitted into the Union as provided in section 101(a).

## **Subtitle B—Seat of Government of the United States**

**SEC. 111. TERRITORY AND BOUNDARIES.**

(a) **IN GENERAL.**—Except as provided in subsection (b), the State shall consist of all of the territory of the District of Columbia as of the date of the enactment of this Act, subject to the results of the metes and bounds survey conducted under subsection (c).

(b) **EXCLUSION OF PORTION REMAINING AS SEAT OF GOVERNMENT OF UNITED STATES.**—The territory of the State shall not include the area described in section 112, which shall be known as the “Capital” and shall serve as the seat of the Government of the United States, as provided in clause 17 of section 8 of article I of the Constitution of the United States.

(c) **METES AND BOUNDS SURVEY.**—Not later than 180 days after the date of the enactment of this Act, the President (in consultation with the Chair of the National Capital Planning Commission) shall conduct a metes and bounds survey of the Capital, as described in section 112(b).

**SEC. 112. DESCRIPTION OF CAPITAL.**

(a) **IN GENERAL.**—Subject to subsection (c), upon the admission of the State into the Union, the Capital shall consist of the property described in subsection (b) and shall include the principal Federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the Federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building (as such terms are used in section 8501(a) of title 40, United States Code).

(b) **GENERAL DESCRIPTION.**—Upon the admission of the State into the Union, the boundaries of the Capital shall be as follows: Beginning at the intersection of the southern right-of-way of F Street NE and the eastern right-of-way of 2nd Street NE;

(1) thence south along said eastern right-of-way of 2nd Street NE to its intersection with the northeastern right-of-way of Maryland Avenue NE;

(2) thence southwest along said northeastern right-of-way of Maryland Avenue NE to its intersection with the northern right-of-way of Constitution Avenue NE;

(3) thence west along said northern right-of-way of Constitution Avenue NE to its intersection with the eastern right-of-way of 1st Street NE;

(4) thence south along said eastern right-of-way of 1st Street NE to its intersection with the southeastern right-of-way of Maryland Avenue NE;

(5) thence northeast along said southeastern right-of-way of Maryland Avenue NE to its intersection with the eastern right-of-way of 2nd Street SE;

(6) thence south along said eastern right-of-way of 2nd Street SE to the eastern right-of-way of 2nd Street SE;

(7) thence south along said eastern right-of-way of 2nd Street SE to its intersection with the northern property boundary of the property designated as Square 760 Lot 803;

(8) thence east along said northern property boundary of Square 760 Lot 803 to its intersection with the western right-of-way of 3rd Street SE;

(9) thence south along said western right-of-way of 3rd Street SE to its intersection with the northern right-of-way of Independence Avenue SE;

(10) thence west along said northern right-of-way of Independence Avenue SE to its intersection with the northwestern right-of-way of Pennsylvania Avenue SE;

(11) thence northwest along said northwestern right-of-way of Pennsylvania Avenue SE to its intersection with the eastern right-of-way of 2nd Street SE;

(12) thence south along said eastern right-of-way of 2nd Street SE to its intersection with the southern right-of-way of C Street SE;

(13) thence west along said southern right-of-way of C Street SE to its intersection with the eastern right-of-way of 1st Street SE;

(14) thence south along said eastern right-of-way of 1st Street SE to its intersection with the southern right-of-way of D Street SE;

(15) thence west along said southern right-of-way of D Street SE to its intersection with the eastern right-of-way of South Capitol Street;

(16) thence south along said eastern right-of-way of South Capitol Street to its intersection with the northwestern right-of-way of Canal Street SE;

(17) thence southeast along said northwestern right-of-way of Canal Street SE to its intersection with the southern right-of-way of E Street SE;

(18) thence east along said southern right-of-way of said E Street SE to its intersection with the western right-of-way of 1st Street SE;

(19) thence south along said western right-of-way of 1st Street SE to its intersection with the southernmost corner of the property designated as Square 736S Lot 801;

(20) thence west along a line extended due west from said corner of said property designated as Square 736S Lot 801 to its intersection with the southwestern right-of-way of New Jersey Avenue SE;

(21) thence southeast along said southwestern right-of-way of New Jersey Avenue SE to its intersection with the northwestern right-of-way of Virginia Avenue SE;

(22) thence northwest along said northwestern right-of-way of Virginia Avenue SE to its intersection with the western right-of-way of South Capitol Street;

(23) thence north along said western right-of-way of South Capitol Street to its intersection with the southern right-of-way of E Street SW;

(24) thence west along said southern right-of-way of E Street SW to its end;

(25) thence west along a line extending said southern right-of-way of E Street SW westward to its intersection with the eastern right-of-way of 2nd Street SW;

(26) thence north along said eastern right-of-way of 2nd Street SW to its intersection with the southwestern right-of-way of Virginia Avenue SW;

(27) thence northwest along said southwestern right-of-way of Virginia Avenue SW to its intersection with the western right-of-way of 3rd Street SW;

(28) thence north along said western right-of-way of 3rd Street SW to its intersection with the northern right-of-way of D Street SW;

(29) thence west along said northern right-of-way of D Street SW to its intersection with the eastern right-of-way of 4th Street SW;

(30) thence north along said eastern right-of-way of 4th Street SW to its intersection with the northern right-of-way of C Street SW;

(31) thence west along said northern right-of-way of C Street SW to its intersection with the eastern right-of-way of 6th Street SW;

(32) thence north along said eastern right-of-way of 6th Street SW to its intersection with the northern right-of-way of Independence Avenue SW;

(33) thence west along said northern right-of-way of Independence Avenue SW to its intersection with the western right-of-way of 12th Street SW;

(34) thence south along said western right-of-way of 12th Street SW to its intersection with the northern right-of-way of D Street SW;

(35) thence west along said northern right-of-way of D Street SW to its intersection with the eastern right-of-way of 14th Street SW;

(36) thence south along said eastern right-of-way of 14th Street SW to its intersection with the northeastern boundary of the Consolidated Rail Corporation railroad easement;

(37) thence southwest along said northeastern boundary of the Consolidated Rail Corporation railroad easement to its intersection with the eastern shore of the Potomac River;

(38) thence generally northwest along said eastern shore of the Potomac River to its intersection with a line extending westward the northern boundary of the property designated as Square 12 Lot 806;

(39) thence east along said line extending westward the northern boundary of the property designated as Square 12 Lot 806 to the northern property boundary of the property designated as Square 12 Lot 806, and continuing east along said northern boundary of said property designated as Square 12 Lot 806 to its northeast corner;

(40) thence east along a line extending east from said northeast corner of the property designated as Square 12 Lot 806 to its intersection with the western boundary of the property designated as Square 33 Lot 87;

(41) thence south along said western boundary of the property designated as Square 33 Lot 87 to its intersection with the northwest corner of the property designated as Square 33 Lot 88;

(42) thence counter-clockwise around the boundary of said property designated as Square 33 Lot 88 to its southeast corner, which is along the northern right-of-way of E Street NW;

(43) thence east along said northern right-of-way of E Street NW to its intersection with the western right-of-way of 18th Street NW;

(44) thence south along said western right-of-way of 18th Street NW to its intersection with the southwestern right-of-way of Virginia Avenue NW;

(45) thence southeast along said southwestern right-of-way of Virginia Avenue NW to its intersection with the northern right-of-way of Constitution Avenue NW;

(46) thence east along said northern right-of-way of Constitution Avenue NW to its intersection with the eastern right-of-way of 17th Street NW;

(47) thence north along said eastern right-of-way of 17th Street NW to its intersection with the southern right-of-way of H Street NW;

(48) thence east along said southern right-of-way of H Street NW to its intersection with the northwest corner of the property designated as Square 221 Lot 35;

(49) thence counter-clockwise around the boundary of said property designated as Square 221 Lot 35 to its southeast corner, which is along the boundary of the property designated as Square 221 Lot 37;

(50) thence counter-clockwise around the boundary of said property designated as Square 221 Lot 37 to its southwest corner, which it shares with the property designated as Square 221 Lot 818;

(51) thence south along the boundary of said property designated as Square 221 Lot 818 to its southwest corner, which it shares with the property designated as Square 221 Lot 40;

(52) thence south along the boundary of said property designated as Square 221 Lot 40 to its southwest corner;

(53) thence east along the southern border of said property designated as Square 221 Lot 40 to its intersection with the northwest corner of the property designated as Square 221 Lot 820;

(54) thence south along the western boundary of said property designated as Square 221 Lot 820 to its southwest corner, which it shares with the property designated as Square 221 Lot 39;

(55) thence south along the western boundary of said property designated as Square 221 Lot 39 to its southwest corner, which is along the northern right-of-way of Pennsylvania Avenue NW;

(56) thence east along said northern right-of-way of Pennsylvania Avenue NW to its intersection with the western right-of-way of 15th Street NW;

(57) thence south along said western right-of-way of 15th Street NW to its intersection with a line extending northwest from the southern right-of-way of the portion of Pennsylvania Avenue NW north of Pershing Square;

(58) thence southeast along said line extending the southern right-of-way of Pennsylvania Avenue NW to the southern right-of-way of Pennsylvania Avenue NW, and continuing southeast along said southern right-of-way of Pennsylvania Avenue NW to its intersection with the western right-of-way of 14th Street NW;

(59) thence south along said western right-of-way of 14th Street NW to its intersection with a line extending west from the southern right-of-way of D Street NW;

(60) thence east along said line extending west from the southern right-of-way of D Street NW to the southern right-of-way of D Street NW, and continuing east along said southern right-of-way of D Street NW to its intersection with the eastern right-of-way of 13½ Street NW;

(61) thence north along said eastern right-of-way of 13½ Street NW to its intersection with the southern right-of-way of Pennsylvania Avenue NW;

(62) thence east and southeast along said southern right-of-way of Pennsylvania Avenue NW to its intersection with the western right-of-way of 12th Street NW;

(63) thence south along said western right-of-way of 12th Street NW to its intersection with a line extending to the west the southern boundary of the property designated as Square 324 Lot 809;

(64) thence east along said line to the southwest corner of said property designated as Square 324 Lot 809, and continuing northeast along the southern boundary of said property designated as Square 324 Lot 809 to its eastern corner, which it shares with the property designated as Square 323 Lot 802;

(65) thence east along the southern boundary of said property designated as Square 323 Lot 802 to its southeast corner, which it shares with the property designated as Square 324 Lot 808;

(66) thence counter-clockwise around the boundary of said property designated as Square 324 Lot 808 to its northeastern corner, which is along the southern right-of-way of Pennsylvania Avenue NW;

(67) thence southeast along said southern right-of-way of Pennsylvania Avenue NW to its intersection with the eastern right-of-way of 4th Street NW;

(68) thence north along a line extending north from said eastern right-of-way of 4th Street NW to its intersection with the southern right-of-way of C Street NW;

(69) thence east along said southern right-of-way of C Street NW to its intersection with the eastern right-of-way of 3rd Street NW;

(70) thence north along said eastern right-of-way of 3rd Street NW to its intersection with the southern right-of-way of D Street NW;

(71) thence east along said southern right-of-way of D Street NW to its intersection with the western right-of-way of 1st Street NW;

(72) thence south along said western right-of-way of 1st Street NW to its intersection with the northern right-of-way of C Street NW;

(73) thence west along said northern right-of-way of C Street NW to its intersection with the western right-of-way of 2nd Street NW;

(74) thence south along said western right-of-way of 2nd Street NW to its intersection with the northern right-of-way of Constitution Avenue NW;

(75) thence east along said northern right-of-way of Constitution Avenue NW to its intersection with the northeastern right-of-way of Louisiana Avenue NW;

(76) thence northeast along said northeastern right-of-way of Louisiana Avenue NW to its intersection with the southwestern right-of-way of New Jersey Avenue NW;

(77) thence northwest along said southwestern right-of-way of New Jersey Avenue NW to its intersection with the northern right-of-way of D Street NW;

(78) thence east along said northern right-of-way of D Street NW to its intersection with the northeastern right-of-way of Louisiana Avenue NW;

(79) thence northeast along said northwestern right-of-way of Louisiana Avenue NW to its intersection with the western right-of-way of North Capitol Street;

(80) thence north along said western right-of-way of North Capitol Street to its intersection with the southwestern right-of-way of Massachusetts Avenue NW;

(81) thence southeast along said southwestern right-of-way of Massachusetts Avenue NW to the southwestern right-of-way of Massachusetts Avenue NE;

(82) thence southeast along said southwestern right-of-way of Massachusetts Avenue NE to the southern right-of-way of Columbus Circle NE;

(83) thence counter-clockwise along said southern right-of-way of Columbus Circle NE to its intersection with the southern right-of-way of F Street NE; and

(84) thence east along said southern right-of-way of F Street NE to the point of beginning.

(c) **EXCLUSION OF BUILDING SERVING AS STATE CAPITOL.**—Notwithstanding any other provision of this section, after the admission of the State into the Union, the Capital shall not be considered to include the building known as the “John A. Wilson Building”, as described and designated under section 601(a) of the Omnibus Spending Reduction Act of 1993 (sec. 10–1301(a), D.C. Official Code).

(d) **CLARIFICATION OF TREATMENT OF FRANCES PERKINS BUILDING.**—The entirety of the Frances Perkins Building, including any portion of the Building which is north of D Street Northwest, shall be included in the Capital.

#### **SEC. 113. RETENTION OF TITLE TO PROPERTY.**

(a) **RETENTION OF FEDERAL TITLE.**—The United States shall have and retain title to, or jurisdiction over, for purposes of administration and maintenance, all real and personal property with respect to which the United States holds title or jurisdiction for such purposes on the day before the date of the admission of the State into the Union.

(b) **RETENTION OF STATE TITLE.**—The State shall have and retain title to, or jurisdiction over, for purposes of administration and maintenance, all real and personal property with respect to which the District of Columbia holds title or jurisdiction for such purposes on the day before the date of the admission of the State into the Union.

#### **SEC. 114. EFFECT OF ADMISSION ON CURRENT LAWS OF SEAT OF GOVERNMENT OF UNITED STATES.**

Except as otherwise provided in this Act, the laws of the District of Columbia which are in effect on the day before the date of the admission of the State into the Union (without regard to whether such laws were enacted by Congress or by the District of Columbia) shall apply in the Capital in the same manner and to the same extent beginning on the date of the admission of the State into the Union, and shall be deemed laws of the United States which are applicable only in or to the Capital.

**SEC. 115. CAPITAL NATIONAL GUARD.**

(a) ESTABLISHMENT.—Title 32, United States Code, is amended as follows:

(1) DEFINITIONS.—In paragraphs (4), (6), and (19) of section 101, by striking “District of Columbia” each place it appears and inserting “Capital”.

(2) BRANCHES AND ORGANIZATIONS.—In section 103, by striking “District of Columbia” and inserting “Capital”.

(3) UNITS: LOCATION; ORGANIZATION; COMMAND.—In subsections (c) and (d) of section 104, by striking “District of Columbia” both places it appears and inserting “Capital”.

(4) AVAILABILITY OF APPROPRIATIONS.—In section 107(b), by striking “District of Columbia” and inserting “Capital”.

(5) MAINTENANCE OF OTHER TROOPS.—In subsections (a), (b), and (c) of section 109, by striking “District of Columbia” each place it appears and inserting “Capital”.

(6) DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES.—In section 112(h)—  
(A) by striking “District of Columbia,” both places it appears and inserting “Capital,”; and

(B) in paragraph (2), by striking “National Guard of the District of Columbia” and inserting “Capital National Guard”.

(7) ENLISTMENT OATH.—In section 304, by striking “District of Columbia” and inserting “Capital”.

(8) ADJUTANTS GENERAL.—In section 314, by striking “District of Columbia” each place it appears and inserting “Capital”.

(9) DETAIL OF REGULAR MEMBERS OF ARMY AND AIR FORCE TO DUTY WITH NATIONAL GUARD.—In section 315, by striking “District of Columbia” each place it appears and inserting “Capital”.

(10) DISCHARGE OF OFFICERS; TERMINATION OF APPOINTMENT.—In section 324(b), by striking “District of Columbia” and inserting “Capital”.

(11) RELIEF FROM NATIONAL GUARD DUTY WHEN ORDERED TO ACTIVE DUTY.—In subsections (a) and (b) of section 325, by striking “District of Columbia” each place it appears and inserting “Capital”.

(12) COURTS-MARTIAL OF NATIONAL GUARD NOT IN FEDERAL SERVICE: COMPOSITION, JURISDICTION, AND PROCEDURES; CONVENING AUTHORITY.—In sections 326 and 327, by striking “District of Columbia” each place it appears and inserting “Capital”.

(13) ACTIVE GUARD AND RESERVE DUTY: GOVERNOR’S AUTHORITY.—In section 328(a), by striking “District of Columbia” and inserting “Capital”.

(14) TRAINING GENERALLY.—In section 501(b), by striking “District of Columbia” and inserting “Capital”.

(15) PARTICIPATION IN FIELD EXERCISES.—In section 503(b), by striking “District of Columbia” and inserting “Capital”.

(16) NATIONAL GUARD SCHOOLS AND SMALL ARMS COMPETITIONS.—In section 504(b), by striking “District of Columbia” and inserting “Capital”.

(17) ARMY AND AIR FORCE SCHOOLS AND FIELD EXERCISES.—In section 505, by striking “National Guard of the District of Columbia” and inserting “Capital National Guard”.

(18) NATIONAL GUARD YOUTH CHALLENGE PROGRAM.—In subsections (c)(1), (g)(2), (j), (k), and (l)(1) of section 509, by striking “District of Columbia” each place it appears and inserting “Capital”.

(19) ISSUE OF SUPPLIES.—In section 702—

(A) in subsection (a), by striking “National Guard of the District of Columbia” and inserting “Capital National Guard”; and

(B) in subsections (b), (c), and (d), by striking “District of Columbia” each place it appears and inserting “Capital”.

(20) PURCHASES OF SUPPLIES FROM ARMY OR AIR FORCE.—In subsections (a) and (b) of section 703, by striking “District of Columbia” both places it appears and inserting “Capital”.

(21) ACCOUNTABILITY: RELIEF FROM UPON ORDER TO ACTIVE DUTY.—In section 704, by striking “District of Columbia” and inserting “Capital”.

(22) PROPERTY AND FISCAL OFFICERS.—In section 708—

(A) in subsection (a), by striking “National Guard of the District of Columbia” and inserting “Capital National Guard”; and

(B) in subsection (d), by striking “District of Columbia” and inserting “Capital”.

(23) ACCOUNTABILITY FOR PROPERTY ISSUED TO THE NATIONAL GUARD.—In subsections (c), (d), (e), and (f) of section 710, by striking “District of Columbia” each place it appears and inserting “Capital”.

(24) DISPOSITION OF OBSOLETE OR CONDEMNED PROPERTY.—In section 711, by striking “District of Columbia” and inserting “Capital”.



(25) DISPOSITION OF PROCEEDS OF CONDEMNED STORES ISSUED TO NATIONAL GUARD.—In paragraph (1) of section 712, by striking “District of Columbia” and inserting “Capital”.

(26) PROPERTY LOSS; PERSONAL INJURY OR DEATH.—In section 715(c), by striking “District of Columbia” and inserting “Capital”.

(b) CONFORMING AMENDMENTS.—

(1) CAPITAL DEFINED.—

(A) IN GENERAL.—Section 101 of title 32, United States Code, is amended by adding at the end the following new paragraph:

“(20) ‘Capital’ means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.”.

(B) WITH REGARDS TO HOMELAND DEFENSE ACTIVITIES.—Section 901 of title 32, United States Code, is amended—

(i) in paragraph (2), by striking “District of Columbia” and inserting “Capital”; and

(ii) by adding at the end the following new paragraph:

“(3) The term ‘Governor’ means, with respect to the Capital, the commanding general of the Capital National Guard.”.

(2) TITLE 10, UNITED STATES CODE.—Title 10, United States Code, is amended as follows:

(A) DEFINITIONS.—In section 101—

(i) in subsection (a), by adding at the end the following new paragraph:

“(19) The term ‘Capital’ means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.”;

(ii) in paragraphs (2) and (4) of subsection (c), by striking “District of Columbia” both places it appears and inserting “Capital”; and

(iii) in subsection (d)(5), by striking “District of Columbia” and inserting “Capital”.

(B) DISPOSITION ON DISCHARGE.—In section 771a(c), by striking “District of Columbia” and inserting “Capital”.

(C) TRICARE COVERAGE FOR CERTAIN MEMBERS OF THE NATIONAL GUARD AND DEPENDENTS DURING CERTAIN DISASTER RESPONSE DUTY.—In section 1076f—

(i) in subsections (a) and (c)(1), by striking “with respect to the District of Columbia, the mayor of the District of Columbia” both places it appears and inserting “with respect to the Capital, the commanding general of the Capital National Guard”; and

(ii) in subsection (c)(2), by striking “District of Columbia” and inserting “Capital”.

(D) PAYMENT OF CLAIMS: AVAILABILITY OF APPROPRIATIONS.—In paragraph (2)(B) of section 2732, by striking “District of Columbia” and inserting “Capital”.

(E) MEMBERS OF ARMY NATIONAL GUARD: DETAIL AS STUDENTS, OBSERVERS, AND INVESTIGATORS AT EDUCATIONAL INSTITUTIONS, INDUSTRIAL PLANTS, AND HOSPITALS.—In section 7401(c), by striking “District of Columbia” and inserting “Capital”.

(F) MEMBERS OF AIR NATIONAL GUARD: DETAIL AS STUDENTS, OBSERVERS, AND INVESTIGATORS AT EDUCATIONAL INSTITUTIONS, INDUSTRIAL PLANTS, AND HOSPITALS.—In section 9401(c), by striking “District of Columbia” and inserting “Capital”.

(G) READY RESERVE: FAILURE TO SATISFACTORILY PERFORM PRESCRIBED TRAINING.—In section 10148(b)—

(i) by striking “District of Columbia,” and inserting “Capital,”; and

(ii) by striking “District of Columbia National Guard” and inserting “Capital National Guard”.

(H) CHIEF OF THE NATIONAL GUARD BUREAU.—In section 10502(a)(1)—

(i) by striking “District of Columbia,” and inserting “Capital,”; and

(ii) by striking “District of Columbia National Guard” and inserting “Capital National Guard”.

(I) VICE CHIEF OF THE NATIONAL GUARD BUREAU.—In section 10505(a)(1)(A)—

(i) by striking “District of Columbia,” and inserting “Capital,”; and

(ii) by striking “District of Columbia National Guard” and inserting “Capital National Guard”.

(J) OTHER SENIOR NATIONAL GUARD BUREAU OFFICERS.—In subparagraphs (A) and (B) of section 10506(a)(1)—

- (i) by striking “District of Columbia,” both places it appears and inserting “Capital,”; and
- (ii) by striking “District of Columbia National Guard” both places it appears and inserting “Capital National Guard”.
- (K) NATIONAL GUARD BUREAU: GENERAL PROVISIONS.—In section 10508(b)(1), by striking “District of Columbia” and inserting “Capital”.
- (L) COMMISSIONED OFFICERS: ORIGINAL APPOINTMENT; LIMITATION.—In section 12204(b), by striking “District of Columbia” and inserting “Capital”.
- (M) RESERVE COMPONENTS GENERALLY.—In section 12301(b), by striking “District of Columbia National Guard” both places it appears and inserting “Capital National Guard”.
- (N) NATIONAL GUARD IN FEDERAL SERVICE: CALL.—In section 12406—
  - (i) by striking “District of Columbia,” and inserting “Capital,”; and
  - (ii) by striking “National Guard of the District of Columbia” and inserting “Capital National Guard”.
- (O) RESULT OF FAILURE TO COMPLY WITH STANDARDS AND QUALIFICATIONS.—In section 12642(c), by striking “District of Columbia” and inserting “Capital”.
- (P) LIMITATION ON RELOCATION OF NATIONAL GUARD UNITS.—In section 18238—
  - (i) by striking “District of Columbia,” and inserting “Capital,”; and
  - (ii) by striking “National Guard of the District of Columbia” and inserting “Capital National Guard”.

**SEC. 116. TERMINATION OF LEGAL STATUS OF SEAT OF GOVERNMENT OF UNITED STATES AS MUNICIPAL CORPORATION.**

Notwithstanding section 2 of the Revised Statutes relating to the District of Columbia (sec. 1–102, D.C. Official Code) or any other provision of law codified in subchapter I of chapter 1 of the District of Columbia Official Code, effective upon the date of the admission of the State into the Union, the Capital (or any portion thereof) shall not serve as a government and shall not be a body corporate for municipal purposes.

## **Subtitle C—General Provisions Relating to Laws of State**

**SEC. 121. EFFECT OF ADMISSION ON CURRENT LAWS.**

(a) **LEGISLATIVE POWER.**—The legislative power of the State shall extend to all rightful subjects of legislation in the State, consistent with the Constitution of the United States (including the restrictions and limitations imposed upon the States by article I, section 10) and subject to the provisions of this Act.

(b) **CONTINUATION OF AUTHORITY AND DUTIES OF MEMBERS OF EXECUTIVE, LEGISLATIVE, AND JUDICIAL OFFICES.**—Upon the admission of the State into the Union, members of executive, legislative, and judicial offices of the District of Columbia shall be deemed members of the respective executive, legislative, and judicial offices of the State, as provided by the State Constitution and the laws of the State.

(c) **TREATMENT OF FEDERAL LAWS.**—To the extent that any law of the United States applies to the States generally, the law shall have the same force and effect in the State as elsewhere in the United States, except as such law may otherwise provide.

(d) **NO EFFECT ON EXISTING CONTRACTS.**—Nothing in the admission of the State into the Union shall affect any obligation under any contract or agreement under which the District of Columbia or the United States is a party, as in effect on the day before the date of the admission of the State into the Union.

(e) **SUCCESSION IN INTERSTATE COMPACTS.**—The State shall be deemed to be the successor to the District of Columbia for purposes of any interstate compact which is in effect on the day before the date of the admission of the State into the Union.

(f) **CONTINUATION OF SERVICE OF FEDERAL MEMBERS ON BOARDS AND COMMISSIONS.**—Nothing in the admission of the State into the Union shall affect the authority of a representative of the Federal Government who, as of the day before the date of the admission of the State into the Union, is a member of a board or commission of the District of Columbia to serve as a member of such board or commission or as a member of a successor to such board or commission after the admission of the State into the Union, as may be provided by the State Constitution and the laws of the State.

(g) **SPECIAL RULE REGARDING ENFORCEMENT AUTHORITY OF UNITED STATES CAPITOL POLICE, UNITED STATES PARK POLICE, AND UNITED STATES SECRET SERVICE UNIFORMED DIVISION.**—The United States Capitol Police, the United States Park

Police, and the United States Secret Service Uniformed Division may not enforce any law of the State in the State, except to the extent authorized by the State. Nothing in this subsection may be construed to affect the authority of the United States Capitol Police, the United States Park Police, and the United States Secret Service Uniformed Division to enforce any law in the Capital.

**SEC. 122. PENDING ACTIONS AND PROCEEDINGS.**

(a) **STATE AS LEGAL SUCCESSOR TO DISTRICT OF COLUMBIA.**—The State shall be the legal successor to the District of Columbia in all matters.

(b) **NO EFFECT ON PENDING PROCEEDINGS.**—All existing writs, actions, suits, judicial and administrative proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, claims, demands, titles, and rights shall continue unaffected by the admission of the State into the Union with respect to the State or the United States, except as may be provided under this Act, as may be modified in accordance with the provisions of the State Constitution, and as may be modified by the laws of the State or the United States, as the case may be.

**SEC. 123. LIMITATION ON AUTHORITY TO TAX FEDERAL PROPERTY.**

The State may not impose any tax on any real or personal property owned or acquired by the United States, except to the extent that Congress may permit.

**SEC. 124. UNITED STATES NATIONALITY.**

No provision of this Act shall operate to confer United States nationality, to terminate nationality lawfully acquired, or to restore nationality terminated or lost under any law of the United States or under any treaty to which the United States is or was a party.

## **TITLE II—INTERESTS OF FEDERAL GOVERNMENT**

### **Subtitle A—Federal Property**

**SEC. 201. TREATMENT OF MILITARY LANDS.**

(a) **RESERVATION OF FEDERAL AUTHORITY.**—

(1) **IN GENERAL.**—Subject to paragraph (2) and subsection (b) and notwithstanding the admission of the State into the Union, authority is reserved in the United States for the exercise by Congress of the power of exclusive legislation in all cases whatsoever over such tracts or parcels of land located in the State that, on the day before the date of the admission of the State into the Union, are controlled or owned by the United States and held for defense or Coast Guard purposes.

(2) **LIMITATION ON AUTHORITY.**—The power of exclusive legislation described in paragraph (1) shall vest and remain in the United States only so long as the particular tract or parcel of land involved is controlled or owned by the United States and held for defense or Coast Guard purposes.

(b) **AUTHORITY OF STATE.**—

(1) **IN GENERAL.**—The reservation of authority in the United States under subsection (a) shall not operate to prevent such tracts or parcels of land from being a part of the State, or to prevent the State from exercising over or upon such lands, concurrently with the United States, any jurisdiction which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by Congress pursuant to such reservation of authority.

(2) **SERVICE OF PROCESS.**—The State shall have the right to serve civil or criminal process in such tracts or parcels of land in which the authority of the United States is reserved under subsection (a) in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in the State but outside of such lands.

**SEC. 202. WAIVER OF CLAIMS TO FEDERAL PROPERTY.**

(a) **IN GENERAL.**—As a compact with the United States, the State and its people disclaim all right and title to any real or personal property not granted or confirmed to the State by or under the authority of this Act, the right or title to which is held by the United States or subject to disposition by the United States.

(b) **EFFECT ON CLAIMS AGAINST UNITED STATES.**—

(1) IN GENERAL.—Nothing in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by applicable laws of the United States.

(2) RULE OF CONSTRUCTION.—Nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by Congress that any applicable law authorizes, establishes, recognizes, or confirms the validity or invalidity of any claim referred to in paragraph (1), and the determination of the applicability to or the effect of any law on any such claim shall be unaffected by anything in this Act.

## Subtitle B—Federal Courts

### SEC. 211. RESIDENCY REQUIREMENTS FOR CERTAIN FEDERAL OFFICIALS.

- (a) CIRCUIT JUDGES.—Section 44(c) of title 28, United States Code, is amended—
- (1) by striking “Except in the District of Columbia, each” and inserting “Each”; and
  - (2) by striking “within fifty miles of the District of Columbia” and inserting “within fifty miles of the Capital”.
- (b) DISTRICT JUDGES.—Section 134(b) of such title is amended in the first sentence by striking “the District of Columbia, the Southern District of New York, and” and inserting “the Southern District of New York and”.
- (c) UNITED STATES ATTORNEYS.—Section 545(a) of such title is amended by striking the first sentence and inserting “Each United States attorney shall reside in the district for which he or she is appointed, except that those officers of the Southern District of New York and the Eastern District of New York may reside within 20 miles thereof.”
- (d) UNITED STATES MARSHALS.—Section 561(e)(1) of such title is amended to read as follows:
- “(1) the marshal for the Southern District of New York may reside within 20 miles of the district; and”.
- (e) CLERKS OF DISTRICT COURTS.—Section 751(c) of such title is amended by striking “the District of Columbia and”.
- (f) EFFECTIVE DATE.—The amendments made by this section shall apply only to individuals appointed after the date of the admission of the State into the Union.

### SEC. 212. RENAMING OF FEDERAL COURTS.

- (a) RENAMING.—
- (1) CIRCUIT COURT.—Section 41 of title 28, United States Code, is amended—
    - (A) in the first column, by striking “District of Columbia” and inserting “Capital”; and
    - (B) in the second column, by striking “District of Columbia” and inserting “Capital; Washington, Douglass Commonwealth”.
  - (2) DISTRICT COURT.—Section 88 of such title is amended—
    - (A) in the heading, by striking “**District of Columbia**” and inserting “**Washington, Douglass Commonwealth and the Capital**”;
      - (B) by amending the first paragraph to read as follows:
 

“The State of Washington, Douglass Commonwealth and the Capital comprise one judicial district.”; and
      - (C) in the second paragraph, by striking “Washington” and inserting “the Capital”.
    - (3) CLERICAL AMENDMENT.—The item relating to section 88 in the table of sections for chapter 5 of such title is amended to read as follows:
 

“88. Washington, Douglass Commonwealth and the Capital.”.
- (b) CONFORMING AMENDMENTS RELATING TO COURT OF APPEALS.—Title 28, United States Code, is amended as follows:
- (1) APPOINTMENT OF JUDGES.—Section 44(a) of such title is amended in the first column by striking “District of Columbia” and inserting “Capital”.
  - (2) TERMS OF COURT.—Section 48(a) of such title is amended—
    - (A) in the first column, by striking “District of Columbia” and inserting “Capital”;
    - (B) in the second column, by striking “Washington” and inserting “Capital”; and
    - (C) in the second column, by striking “District of Columbia” and inserting “Capital”.
  - (3) APPOINTMENT OF INDEPENDENT COUNSELS BY CHIEF JUDGE OF CIRCUIT.—Section 49 of such title is amended by striking “District of Columbia” each place it appears and inserting “Capital”.

(4) CIRCUIT COURT JURISDICTION OVER CERTIFICATION OF DEATH PENALTY COUNSELS.—Section 2265(c)(2) of such title is amended by striking “the District of Columbia Circuit” and inserting “the Capital Circuit”.

(5) CIRCUIT COURT JURISDICTION OVER REVIEW OF FEDERAL AGENCY ORDERS.—Section 2343 of such title is amended by striking “the District of Columbia Circuit” and inserting “the Capital Circuit”.

(c) CONFORMING AMENDMENTS RELATING TO DISTRICT COURT.—Title 28, United States Code, is amended as follows:

(1) APPOINTMENT AND NUMBER OF DISTRICT COURT JUDGES.—Section 133(a) of such title is amended in the first column by striking “District of Columbia” and inserting “Washington, Douglass Commonwealth and the Capital”.

(2) DISTRICT COURT JURISDICTION OF TAX CASES BROUGHT AGAINST UNITED STATES.—Section 1346(e) of such title is amended by striking “the District of Columbia” and inserting “Washington, Douglass Commonwealth and the Capital”.

(3) DISTRICT COURT JURISDICTION OVER PROCEEDINGS FOR FORFEITURE OF FOREIGN PROPERTY.—Section 1355(b)(2) of such title is amended by striking “the District of Columbia” and inserting “Washington, Douglass Commonwealth and the Capital”.

(4) DISTRICT COURT JURISDICTION OVER CIVIL ACTIONS BROUGHT AGAINST A FOREIGN STATE.—Section 1391(f)(4) of such title is amended by striking “the District of Columbia” and inserting “Washington, Douglass Commonwealth and the Capital”.

(5) DISTRICT COURT JURISDICTION OVER ACTIONS BROUGHT BY CORPORATIONS AGAINST UNITED STATES.—Section 1402(a)(2) of such title is amended by striking “the District of Columbia” and inserting “Washington, Douglass Commonwealth and the Capital”.

(6) VENUE IN DISTRICT COURT OF CERTAIN ACTIONS BROUGHT BY EMPLOYEES OF EXECUTIVE OFFICE OF THE PRESIDENT.—Section 1413 of such title is amended by striking “the District of Columbia” and inserting “Washington, Douglass Commonwealth and the Capital”.

(7) VENUE IN DISTRICT COURT OF ACTION ENFORCING FOREIGN JUDGMENT.—Section 2467(c)(2)(B) of such title is amended by striking “the District of Columbia” and inserting “Washington, Douglass Commonwealth and the Capital”.

(d) CONFORMING AMENDMENTS RELATING TO OTHER COURTS.—Title 28, United States Code, is amended as follows:

(1) APPOINTMENT OF BANKRUPTCY JUDGES.—Section 152(a)(2) of such title is amended in the first column by striking “District of Columbia” and inserting “Washington, Douglass Commonwealth and the Capital”.

(2) LOCATION OF COURT OF FEDERAL CLAIMS.—Section 173 of such title is amended by striking “the District of Columbia” and inserting “the Capital”.

(3) DUTY STATION OF JUDGES OF COURT OF FEDERAL CLAIMS.—Section 175 of such title is amended by striking “the District of Columbia” each place it appears and inserting “the Capital”.

(4) DUTY STATION OF JUDGES FOR PURPOSES OF TRAVELING EXPENSES.—Section 456(b) of such title is amended to read as follows:

“(b) The official duty station of the Chief Justice of the United States, the Justices of the Supreme Court of the United States, and the judges of the United States Court of Appeals for the Federal Circuit shall be the Capital.”.

(5) COURT ACCOMMODATIONS FOR FEDERAL CIRCUIT AND COURT OF FEDERAL CLAIMS.—Section 462(d) of such title is amended by striking “the District of Columbia” and inserting “the Capital”.

(6) PLACES OF HOLDING COURT OF COURT OF FEDERAL CLAIMS.—Section 798(a) of such title is amended—

(A) by striking “Washington, District of Columbia” and inserting “the Capital”; and

(B) by striking “the District of Columbia” and inserting “the Capital”.

(e) OTHER CONFORMING AMENDMENTS.—

(1) SERVICE OF PROCESS ON FOREIGN PARTIES AT STATE DEPARTMENT OFFICE.—Section 1608(a)(4) of such title is amended by striking “Washington, District of Columbia” and inserting “the Capital”.

(2) SERVICE OF PROCESS IN PROPERTY CASES AT ATTORNEY GENERAL OFFICE.—Section 2410(b) of such title is amended by striking “Washington, District of Columbia” and inserting “the Capital”.

(f) DEFINITION.—Section 451 of title 28, United States Code, is amended by adding at the end the following new undesignated paragraph:

“The term ‘Capital’ means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.”.

(g) REFERENCES IN OTHER LAWS.—Any reference in any Federal law (other than a law amended by this section), rule, or regulation—

(1) to the United States Court of Appeals for the District of Columbia shall be deemed to refer to the United States Court of Appeals for the Capital;

(2) to the District of Columbia Circuit shall be deemed to refer to the Capital Circuit; and

(3) to the United States District Court for the District of Columbia shall be deemed to refer to the United States District Court for Washington, Douglass Commonwealth and the Capital.

(h) **EFFECTIVE DATE.**—This section and the amendments made by this section shall take effect upon the admission of the State into the Union.

**SEC. 213. CONFORMING AMENDMENTS RELATING TO DEPARTMENT OF JUSTICE.**

(a) **APPOINTMENT OF UNITED STATES TRUSTEES.**—Section 581(a)(4) of title 28, United States Code, is amended by striking “the District of Columbia” and inserting “the Capital and Washington, Douglass Commonwealth”.

(b) **INDEPENDENT COUNSELS.**—

(1) **APPOINTMENT OF ADDITIONAL PERSONNEL.**—Section 594(c) of such title is amended—

(A) by striking “the District of Columbia” the first place it appears and inserting “Washington, Douglass Commonwealth and the Capital”; and

(B) by striking “the District of Columbia” the second place it appears and inserting “Washington, Douglass Commonwealth”.

(2) **JUDICIAL REVIEW OF REMOVAL.**—Section 596(a)(3) of such title is amended by striking “the District of Columbia” and inserting “Washington, Douglass Commonwealth and the Capital”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect upon the admission of the State into the Union.

**SEC. 214. TREATMENT OF PRETRIAL SERVICES IN UNITED STATES DISTRICT COURT.**

Section 3152 of title 18, United States Code, is amended—

(1) in subsection (a), by striking “(other than the District of Columbia)” and inserting “(subject to subsection (d), other than the District of Columbia)”; and

(2) by adding at the end the following new subsection:

“(d) In the case of the judicial district of Washington, Douglass Commonwealth and the Capital—

“(1) upon the admission of the State of Washington, Douglass Commonwealth into the Union, the Washington, Douglass Commonwealth Pretrial Services Agency shall continue to provide pretrial services in the judicial district in the same manner and to the same extent as the District of Columbia Pretrial Services Agency provided such services in the judicial district of the District of Columbia as of the day before the date of the admission of the State into the Union; and

“(2) upon the receipt by the President of the certification from the State of Washington, Douglass Commonwealth under section 315(b)(4) of the Washington, D.C. Admission Act that the State has in effect laws providing for the State to provide pre-trial services, paragraph (1) shall no longer apply, and the Director shall provide for the establishment of pretrial services in the judicial district under this section.”.

## Subtitle C—Federal Elections

**SEC. 221. PERMITTING INDIVIDUALS RESIDING IN CAPITAL TO VOTE IN FEDERAL ELECTIONS IN STATE OF MOST RECENT DOMICILE.**

(a) **REQUIREMENT FOR STATES TO PERMIT INDIVIDUALS TO VOTE BY ABSENTEE BALLOT.**—

(1) **IN GENERAL.**—Each State shall—

(A) permit absent Capital voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office; and

(B) accept and process, with respect to any general, special, primary, or runoff election for Federal office, any otherwise valid voter registration application from an absent Capital voter, if the application is received by the appropriate State election official not less than 30 days before the election.

(2) **ABSENT CAPITAL VOTER DEFINED.**—In this section, the term “absent Capital voter” means, with respect to a State, a person who resides in the Capital and is qualified to vote in the State (or who would be qualified to vote in the State but for residing in the Capital), but only if the State is the last place in which the person was domiciled before residing in the Capital.

- (3) STATE DEFINED.—In this section, the term “State” means each of the several States, including the State.
- (b) RECOMMENDATIONS TO STATES TO MAXIMIZE ACCESS TO POLLS BY ABSENT CAPITAL VOTERS.—To afford maximum access to the polls by absent Capital voters, it is the sense of Congress that the States should—
  - (1) waive registration requirements for absent Capital voters who, by reason of residence in the Capital, do not have an opportunity to register;
  - (2) expedite processing of balloting materials with respect to such individuals; and
  - (3) assure that absentee ballots are mailed to such individuals at the earliest opportunity.
- (c) ENFORCEMENT.—The Attorney General may bring a civil action in the appropriate district court of the United States for such declaratory or injunctive relief as may be necessary to carry out this section.
- (d) EFFECT ON CERTAIN OTHER LAWS.—The exercise of any right under this section shall not affect, for purposes of a Federal tax, a State tax, or a local tax, the residence or domicile of a person exercising such right.
- (e) EFFECTIVE DATE.—This section shall take effect upon the date of the admission of the State into the Union, and shall apply with respect to elections for Federal office taking place on or after such date.

**SEC. 222. REPEAL OF OFFICE OF DISTRICT OF COLUMBIA DELEGATE.**

- (a) IN GENERAL.—Sections 202 and 204 of the District of Columbia Delegate Act (Public Law 91–405; sections 1–401 and 1–402, D.C. Official Code) are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted.
- (b) CONFORMING AMENDMENTS TO DISTRICT OF COLUMBIA ELECTIONS CODE OF 1955.—The District of Columbia Elections Code of 1955 is amended—
  - (1) in section 1 (sec. 1–1001.01, D.C. Official Code), by striking “the Delegate to the House of Representatives,”;
  - (2) in section 2 (sec. 1–1001.02, D.C. Official Code)—
    - (A) by striking paragraph (6),
    - (B) in paragraph (12), by striking “(except the Delegate to Congress for the District of Columbia),” and
    - (C) in paragraph (13), by striking “the Delegate to Congress for the District of Columbia,”;
  - (3) in section 8 (sec. 1–1001.08, D.C. Official Code)—
    - (A) by striking “Delegate,” in the heading, and
    - (B) by striking “Delegate,” each place it appears in subsections (d), (h)(1)(A), (h)(2), (i)(1), (j)(1), (j)(3), and (k)(3);
  - (4) in section 10 (sec. 1–1001.10, D.C. Official Code)—
    - (A) by striking subparagraph (A) of subsection (a)(3), and
    - (B) in subsection (d)—
      - (i) by striking “Delegate,” each place it appears in paragraph (1), and
      - (ii) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2);
  - (5) in section 11(a)(2) (sec. 1–1001.11(a)(2), D.C. Official Code), by striking “Delegate to the House of Representatives,”;
  - (6) in section 15(b) (sec. 1–1001.15(b), D.C. Official Code), by striking “Delegate,”; and
  - (7) in section 17(a) (sec. 1–1001.17(a), D.C. Official Code), by striking “except the Delegate to the Congress from the District of Columbia”.
- (c) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the admission of the State into the Union.

**SEC. 223. REPEAL OF LAW PROVIDING FOR PARTICIPATION OF SEAT OF GOVERNMENT IN ELECTION OF PRESIDENT AND VICE-PRESIDENT.**

- (a) IN GENERAL.—Chapter 1 of title 3, United States Code, is amended—
  - (1) by striking section 21; and
  - (2) in the table of sections, by striking the item relating to section 21.
- (b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect upon the date of the admission of the State into the Union, and shall apply to any election of the President and Vice-President taking place on or after such date.

**SEC. 224. EXPEDITED PROCEDURES FOR CONSIDERATION OF CONSTITUTIONAL AMENDMENT REPEALING 23RD AMENDMENT.**

- (a) JOINT RESOLUTION DESCRIBED.—In this section, the term “joint resolution” means a joint resolution—
  - (1) entitled “A joint resolution proposing an amendment to the Constitution of the United States to repeal the 23rd article of amendment”; and

- (2) the matter after the resolving clause of which consists solely of text to amend the Constitution of the United States to repeal the 23rd article of amendment to the Constitution.
- (b) EXPEDITED CONSIDERATION IN HOUSE OF REPRESENTATIVES.—
- (1) PLACEMENT ON CALENDAR.—Upon introduction in the House of Representatives, the joint resolution shall be placed immediately on the appropriate calendar.
- (2) PROCEEDING TO CONSIDERATION.—
- (A) IN GENERAL.—It shall be in order, not later than 30 legislative days after the date the joint resolution is introduced in the House of Representatives, to move to proceed to consider the joint resolution in the House of Representatives.
- (B) PROCEDURE.—For a motion to proceed to consider the joint resolution—
- (i) all points of order against the motion are waived;
  - (ii) such a motion shall not be in order after the House of Representatives has disposed of a motion to proceed on the joint resolution;
  - (iii) the previous question shall be considered as ordered on the motion to its adoption without intervening motion;
  - (iv) the motion shall not be debatable; and
  - (v) a motion to reconsider the vote by which the motion is disposed of shall not be in order.
- (3) CONSIDERATION.—When the House of Representatives proceeds to consideration of the joint resolution—
- (A) the joint resolution shall be considered as read;
  - (B) all points of order against the joint resolution and against its consideration are waived;
  - (C) the previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except 10 hours of debate equally divided and controlled by the proponent and an opponent;
  - (D) an amendment to the joint resolution shall not be in order; and
  - (E) a motion to reconsider the vote on passage of the joint resolution shall not be in order.
- (c) EXPEDITED CONSIDERATION IN SENATE.—
- (1) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.
- (2) PROCEEDING TO CONSIDERATION.—
- (A) IN GENERAL.—Notwithstanding rule XXII of the Standing Rules of the Senate, it is in order, not later than 30 legislative days after the date the joint resolution is introduced in the Senate (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution.
- (B) PROCEDURE.—For a motion to proceed to the consideration of the joint resolution—
- (i) all points of order against the motion are waived;
  - (ii) the motion is not debatable;
  - (iii) the motion is not subject to a motion to postpone;
  - (iv) a motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order; and
  - (v) if the motion is agreed to, the joint resolution shall remain the unfinished business until disposed of.
- (3) FLOOR CONSIDERATION.—
- (A) IN GENERAL.—If the Senate proceeds to consideration of the joint resolution—
- (i) all points of order against the joint resolution (and against consideration of the joint resolution) are waived;
  - (ii) consideration of the joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 30 hours, which shall be divided equally between the majority and minority leaders or their designees;
  - (iii) a motion further to limit debate is in order and not debatable;
  - (iv) an amendment to, a motion to postpone, or a motion to commit the joint resolution is not in order; and
  - (v) a motion to proceed to the consideration of other business is not in order.
- (B) VOTE ON PASSAGE.—In the Senate the vote on passage shall occur immediately following the conclusion of the consideration of the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.



- (C) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of this subsection or the rules of the Senate, as the case may be, to the procedure relating to the joint resolution shall be decided without debate.
- (d) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—
- (1) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of the joint resolution of that House, that House receives from the other House the joint resolution—
- (A) the joint resolution of the other House shall not be referred to a committee; and
- (B) with respect to the joint resolution of the House receiving the resolution—
- (i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; and
- (ii) the vote on passage shall be on the joint resolution of the other House.
- (2) TREATMENT OF JOINT RESOLUTION OF OTHER HOUSE.—If one House fails to introduce or consider the joint resolution under this section, the joint resolution of the other House shall be entitled to expedited floor procedures under this section.
- (3) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate receives the companion measure from the House of Representatives, the companion measure shall not be debatable.
- (e) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section is enacted by Congress—
- (1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of the joint resolution, and supersede other rules only to the extent that it is inconsistent with such rules; and
- (2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

## **TITLE III—CONTINUATION OF CERTAIN AUTHORITIES AND RESPONSIBILITIES**

### **Subtitle A—Employee Benefits**

#### **SEC. 301. FEDERAL BENEFIT PAYMENTS UNDER CERTAIN RETIREMENT PROGRAMS.**

(a) CONTINUATION OF ENTITLEMENT TO PAYMENTS.—Any individual who, as of the day before the date of the admission of the State into the Union, is entitled to a Federal benefit payment under the District of Columbia Retirement Protection Act of 1997 (subtitle A of title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997; sec. 1–801.01 et seq., D.C. Official Code) shall continue to be entitled to such a payment after the admission of the State into the Union, in the same manner, to the same extent, and subject to the same terms and conditions applicable under such Act.

(b) OBLIGATIONS OF FEDERAL GOVERNMENT.—

(1) IN GENERAL.—Any obligation of the Federal Government under the District of Columbia Retirement Protection Act of 1997 which exists with respect to any individual or with respect to the District of Columbia as of the day before the date of the admission of the State into the Union shall remain in effect with respect to such an individual and with respect to the State after the admission of the State into the Union, in the same manner, to the same extent, and subject to the same terms and conditions applicable under such Act.

(2) D.C. FEDERAL PENSION FUND.—Any obligation of the Federal Government under chapter 9 of the District of Columbia Retirement Protection Act of 1997 (sec. 1–817.01 et seq., D.C. Official Code) with respect to the D.C. Federal Pension Fund which exists as of the day before the date of the admission of the State into the Union shall remain in effect with respect to such Fund after the admission of the State into the Union, in the same manner, to the same extent, and subject to the same terms and conditions applicable under such chapter.

(c) OBLIGATIONS OF STATE.—Any obligation of the District of Columbia under the District of Columbia Retirement Protection Act of 1997 which exists with respect to

any individual or with respect to the Federal Government as of the day before the date of the admission of the State into the Union shall become an obligation of the State with respect to such an individual and with respect to the Federal Government after the admission of the State into the Union, in the same manner, to the same extent, and subject to the same terms and conditions applicable under such Act.

**SEC. 302. CONTINUATION OF FEDERAL CIVIL SERVICE BENEFITS FOR EMPLOYEES FIRST EMPLOYED PRIOR TO ESTABLISHMENT OF DISTRICT OF COLUMBIA MERIT PERSONNEL SYSTEM.**

(a) **OBLIGATIONS OF FEDERAL GOVERNMENT.**—Any obligation of the Federal Government under title 5, United States Code, which exists with respect to an individual described in subsection (c) or with respect to the District of Columbia as of the day before the date of the admission of the State into the Union shall remain in effect with respect to such individual and with respect to the State after the admission of the State into the Union, in the same manner, to the same extent, and subject to the same terms and conditions applicable under such title.

(b) **OBLIGATIONS OF STATE.**—Any obligation of the District of Columbia under title 5, United States Code, which exists with respect to an individual described in subsection (c) or with respect to the Federal Government as of the day before the date of the admission of the State into the Union shall become an obligation of the State with respect to such individual and with respect to the Federal Government after the admission of the State into the Union, in the same manner, to the same extent, and subject to the same terms and conditions applicable under such title.

(c) **INDIVIDUALS DESCRIBED.**—An individual described in this subsection is an individual who was first employed by the government of the District of Columbia before October 1, 1987.

**SEC. 303. OBLIGATIONS OF FEDERAL GOVERNMENT UNDER JUDGES' RETIREMENT PROGRAM.**

(a) **CONTINUATION OF OBLIGATIONS.**—

(1) **IN GENERAL.**—Any obligation of the Federal Government under subchapter III of chapter 15 of title 11, District of Columbia Official Code—

(A) which exists with respect to any individual and the District of Columbia as the result of service accrued prior to the date of the admission of the State into the Union shall remain in effect with respect to such an individual and with respect to the State after the admission of the State into the Union, in the same manner, to the same extent, and subject to the same terms and conditions applicable under such subchapter; and

(B) subject to paragraph (2), shall exist with respect to any individual and the State as the result of service accrued after the date of the admission of the State into the Union in the same manner, to the same extent, and subject to the same terms and conditions applicable under such subchapter as such obligation existed with respect to individuals and the District of Columbia as of the date of the admission of the State into the Union.

(2) **TREATMENT OF SERVICE ACCRUED AFTER TAKING EFFECT OF STATE RETIREMENT PROGRAM.**—Subparagraph (B) of paragraph (1) does not apply to service accrued on or after the termination date described in subsection (b).

(b) **TERMINATION DATE.**—The termination date described in this subsection is the date on which the State provides written certification to the President that the State has in effect laws requiring the State to appropriate and make available funds for the retirement of judges of the State.

## Subtitle B—Agencies

**SEC. 311. PUBLIC DEFENDER SERVICE.**

(a) **CONTINUATION OF OPERATIONS AND FUNDING.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2) and subsection (b), title III of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (sec. 2–1601 et seq., D.C. Official Code) shall apply with respect to the State and to the public defender service of the State after the date of the admission of the State into the Union in the same manner and to the same extent as such title applied with respect to the District of Columbia and the District of Columbia Public Defender Service as of the day before the date of the admission of the State into the Union.

(2) **RESPONSIBILITY FOR EMPLOYER CONTRIBUTION.**—For purposes of paragraph (2) of section 305(c) of such Act (sec. 2–1605(c)(2), D.C. Official Code), the Federal Government shall be treated as the employing agency with respect to the benefits provided under such section to an individual who is an employee of the

public defender service of the State and who, pursuant to section 305(c) of such Act (sec. 2-1605(c), D.C. Official Code), is treated as an employee of the Federal Government for purposes of receiving benefits under any chapter of subpart G of part III of title 5, United States Code.

(b) RENAMING OF SERVICE.—Effective upon the date of the admission of the State into the Union, the State may rename the public defender service of the State.

(c) CONTINUATION OF FEDERAL BENEFITS FOR EMPLOYEES.—

(1) IN GENERAL.—Any individual who is an employee of the public defender service of the State as of the day before the date described in subsection (d) and who, pursuant to section 305(c) of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (sec. 2-1605(c), D.C. Official Code), is treated as an employee of the Federal Government for purposes of receiving benefits under any chapter of subpart G of part III of title 5, United States Code, shall continue to be treated as an employee of the Federal Government for such purposes, notwithstanding the termination of the provisions of subsection (a) under subsection (d).

(2) RESPONSIBILITY FOR EMPLOYER CONTRIBUTION.—Beginning on the date described in subsection (d), the State shall be treated as the employing agency with respect to the benefits described in paragraph (1) which are provided to an individual who, for purposes of receiving such benefits, is continued to be treated as an employee of the Federal Government under such paragraph.

(d) TERMINATION.—Subsection (a) shall terminate upon the date on which the State provides written certification to the President that the State has in effect laws requiring the State to appropriate and make available funds for the operation of the office of the State which provides the services described in title III of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (sec. 2-1601 et seq., D.C. Official Code).

#### SEC. 312. PROSECUTIONS.

(a) ASSIGNMENT OF ASSISTANT UNITED STATES ATTORNEYS.—

(1) IN GENERAL.—In accordance with subchapter VI of chapter 33 of title 5, United States Code, the Attorney General, with the concurrence of the District of Columbia or the State (as the case may be), shall provide for the assignment of assistant United States attorneys to the State to carry out the functions described in subsection (b).

(2) ASSIGNMENTS MADE ON DETAIL WITHOUT REIMBURSEMENT BY STATE.—In accordance with section 3373 of title 5, United States Code—

(A) an assistant United States attorney who is assigned to the State under this section shall be deemed under subsection (a) of such section to be on detail to a regular work assignment in the Department of Justice; and

(B) the assignment of an assistant United States attorney to the State under this section shall be made without reimbursement by the State of the pay of the attorney or any related expenses.

(b) FUNCTIONS DESCRIBED.—The functions described in this subsection are criminal prosecutions conducted in the name of the State which would have been conducted in the name of the United States by the United States attorney for the District of Columbia or his or her assistants, as provided under section 23-101(c), District of Columbia Official Code, but for the admission of the State into the Union.

(c) MINIMUM NUMBER ASSIGNED.—The number of assistant United States attorneys who are assigned under this section may not be less than the number of assistant United States attorneys whose principal duties as of the day before the date of the admission of the State into the Union were to conduct criminal prosecutions in the name of the United States under section 23-101(c), District of Columbia Official Code.

(d) TERMINATION.—The obligation of the Attorney General to provide for the assignment of assistant United States attorneys under this section shall terminate upon written certification by the State to the President that the State has appointed attorneys of the State to carry out the functions described in subsection (b).

(e) CLARIFICATION REGARDING CLEMENCY AUTHORITY.—

(1) IN GENERAL.—Effective upon the admission of the State into the Union, the authority to grant clemency for offenses against the District of Columbia or the State shall be exercised by such person or persons, and under such terms and conditions, as provided by the State Constitution and the laws of the State, without regard to whether the prosecution for the offense was conducted by the District of Columbia, the State, or the United States.

(2) DEFINITION.—In this subsection, the term “clemency” means a pardon, relieve, or commutation of sentence, or a remission of a fine or other financial penalty.

**SEC. 313. SERVICE OF UNITED STATES MARSHALS.**

(a) **PROVISION OF SERVICES FOR COURTS OF STATE.**—The United States Marshals Service shall provide services with respect to the courts and court system of the State in the same manner and to the same extent as the Service provided services with respect to the courts and court system of the District of Columbia as of the day before the date of the admission of the State into the Union, except that the President shall not appoint a United States Marshal under section 561 of title 28, United States Code, for any court of the State.

(b) **TERMINATION.**—The obligation of the United States Marshals Service to provide services under this section shall terminate upon written certification by the State to the President that the State has appointed personnel of the State to provide such services.

**SEC. 314. DESIGNATION OF FELONS TO FACILITIES OF BUREAU OF PRISONS.**

(a) **CONTINUATION OF DESIGNATION.**—Chapter 1 of subtitle C of title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997 (sec. 24–101 et seq., D.C. Official Code) and the amendments made by such chapter—

(1) shall continue to apply with respect to individuals convicted of offenses under the laws of the District of Columbia prior to the date of the admission of the State into the Union; and

(2) shall apply with respect to individuals convicted of offenses under the laws of the State after the date of the admission of the State into the Union in the same manner and to the same extent as such chapter and amendments applied with respect to individuals convicted of offenses under the laws of the District of Columbia prior to the date of the admission of the State into the Union.

(b) **TERMINATION.**—The provisions of this section shall terminate upon written certification by the State to the President that the State has in effect laws for the housing of individuals described in subsection (a) in correctional facilities.

**SEC. 315. PAROLE AND SUPERVISION.**

(a) **UNITED STATES PAROLE COMMISSION.**—

(1) **PAROLE.**—The United States Parole Commission—

(A) shall continue to exercise the authority to grant, deny, and revoke parole, and to impose conditions upon an order of parole, in the case of any individual who is an imprisoned felon who is eligible for parole or reparole under the laws of the District of Columbia as of the day before the date of the admission of the State into the Union, as provided under section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (sec. 24–131, D.C. Official Code); and

(B) shall exercise the authority to grant, deny, and revoke parole, and to impose conditions upon an order of parole, in the case of any individual who is an imprisoned felon who is eligible for parole or reparole under the laws of the State in the same manner and to the same extent as the Commission exercised in the case of any individual described in subparagraph (A).

(2) **SUPERVISION OF RELEASED OFFENDERS.**—The United States Parole Commission—

(A) shall continue to exercise the authority over individuals who are released offenders of the District of Columbia as of the day before the date of the admission of the State into the Union, as provided under section 11233(c)(2) of the National Capital Revitalization and Self-Government Improvement Act of 1997 (sec. 24–133(c)(2), D.C. Official Code); and

(B) shall exercise authority over individuals who are released offenders of the State in the same manner and to the same extent as the Commission exercised authority over individuals described in subparagraph (A).

(3) **CONTINUATION OF FEDERAL BENEFITS FOR EMPLOYEES.**—

(A) **CONTINUATION.**—Any individual who is an employee of the United States Parole Commission as of the later of the day before the date described in subparagraph (A) of paragraph (4) or the day before the date described in subparagraph (B) of paragraph (4) and who, on or after such date, is an employee of the office of the State which exercises the authority described in either such subparagraph, shall continue to be treated as an employee of the Federal Government for purposes of receiving benefits under any chapter of subpart G of part III of title 5, United States Code, notwithstanding the termination of the provisions of this subsection under paragraph (4).

(B) **RESPONSIBILITY FOR EMPLOYER CONTRIBUTION.**—Beginning on the later of the date described in subparagraph (A) of paragraph (4) or the date described in subparagraph (B) of paragraph (4), the State shall be treated as the employing agency with respect to the benefits described in subparagraph (A) which are provided to an individual who, for purposes of receiving

such benefits, is continued to be treated as an employee of the Federal Government under such subparagraph.

(4) TERMINATION.—The provisions of this subsection shall terminate—

(A) in the case of paragraph (1), on the date on which the State provides written certification to the President that the State has in effect laws providing for the State to exercise the authority to grant, deny, and revoke parole, and to impose conditions upon an order of parole, in the case of any individual who is an imprisoned felon who is eligible for parole or reparole under the laws of the State; and

(B) in the case of paragraph (2), on the date on which the State provides written certification to the President that the State has in effect laws providing for the State to exercise authority over individuals who are released offenders of the State.

(b) COURT SERVICES AND OFFENDER SUPERVISION AGENCY.—

(1) RENAMING.—Effective upon the date of the admission of the State into the Union—

(A) the Court Services and Offender Supervision Agency for the District of Columbia shall be known and designated as the Court Services and Offender Supervision Agency for Washington, Douglass Commonwealth, and any reference in any law, rule, or regulation to the Court Services and Offender Supervision Agency for the District of Columbia shall be deemed to refer to the Court Services and Offender Supervision Agency for Washington, Douglass Commonwealth; and

(B) the District of Columbia Pretrial Services Agency shall be known and designated as the Washington, Douglass Commonwealth Pretrial Services Agency, and any reference in any law, rule or regulation to the District of Columbia Pretrial Services Agency shall be deemed to refer to the Washington, Douglass Commonwealth Pretrial Services Agency.

(2) IN GENERAL.—The Court Services and Offender Supervision Agency for Washington, Douglass Commonwealth, including the Washington, Douglass Commonwealth Pretrial Services Agency (as renamed under paragraph (1))—

(A) shall continue to provide pretrial services with respect to individuals who are charged with an offense in the District of Columbia, provide supervision for individuals who are offenders on probation, parole, and supervised release pursuant to the laws of the District of Columbia, and carry out sex offender registration functions with respect to individuals who are sex offenders in the District of Columbia, as of the day before the date of the admission of the State into the Union, as provided under section 11233 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (sec. 24–133, D.C. Official Code); and

(B) shall provide pretrial services with respect to individuals who are charged with an offense in the State, provide supervision for offenders on probation, parole, and supervised release pursuant to the laws of the State, and carry out sex offender registration functions in the State, in the same manner and to the same extent as the Agency provided such services and supervision and carried out such functions for individuals described in subparagraph (A).

(3) CONTINUATION OF FEDERAL BENEFITS FOR EMPLOYEES.—

(A) CONTINUATION.—Any individual who is an employee of the Court Services and Offender Supervision Agency for Washington, Douglass Commonwealth as of the day before the date described in paragraph (4), and who, on or after such date, is an employee of the office of the State which provides the services and carries out the functions described in paragraph (4), shall continue to be treated as an employee of the Federal Government for purposes of receiving benefits under any chapter of subpart G of part III of title 5, United States Code, notwithstanding the termination of the provisions of paragraph (2) under paragraph (4).

(B) RESPONSIBILITY FOR EMPLOYER CONTRIBUTION.—Beginning on the date described in paragraph (4), the State shall be treated as the employing agency with respect to the benefits described in subparagraph (A) which are provided to an individual who, for purposes of receiving such benefits, is continued to be treated as an employee of the Federal Government under such subparagraph.

(4) TERMINATION.—Paragraph (2) shall terminate on the date on which the State provides written certification to the President that the State has in effect laws providing for the State to provide pretrial services, supervise offenders on probation, parole, and supervised release, and carry out sex offender registration functions in the State.

**SEC. 316. COURTS.****(a) CONTINUATION OF OPERATIONS.—**

(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3) and subsection (b), title 11, District of Columbia Official Code, as in effect on the date before the date of the admission of the State into the Union, shall apply with respect to the State and the courts and court system of the State after the date of the admission of the State into the Union in the same manner and to the same extent as such title applied with respect to the District of Columbia and the courts and court system of the District of Columbia as of the day before the date of the admission of the State into the Union.

(2) **RESPONSIBILITY FOR EMPLOYER CONTRIBUTION.**—For purposes of paragraph (2) of section 11–1726(b) and paragraph (2) of section 11–1726(c), District of Columbia Official Code, the Federal Government shall be treated as the employing agency with respect to the benefits provided under such section to an individual who is an employee of the courts and court system of the State and who, pursuant to either such paragraph, is treated as an employee of the Federal Government for purposes of receiving benefits under any chapter of subpart G of part III of title 5, United States Code.

**(3) OTHER EXCEPTIONS.—**

(A) **SELECTION OF JUDGES.**—Effective upon the date of the admission of the State into the Union, the State shall select judges for any vacancy on the courts of the State.

(B) **RENAMING OF COURTS AND OTHER OFFICES.**—Effective upon the date of the admission of the State into the Union, the State may rename any of its courts and any of the other offices of its court system.

(C) **RULES OF CONSTRUCTION.**—Nothing in this paragraph shall be construed—

(i) to affect the service of any judge serving on a court of the District of Columbia on the day before the date of the admission of the State into the Union, or to require the State to select such a judge for a vacancy on a court of the State; or

(ii) to waive any of the requirements of chapter 15 of title 11, District of Columbia Official Code (other than section 11–1501(a) of such Code), including subchapter II of such chapter (relating to the District of Columbia Commission on Judicial Disabilities and Tenure), with respect to the appointment and service of judges of the courts of the State.

**(b) CONTINUATION OF FEDERAL BENEFITS FOR EMPLOYEES.—**

(1) **IN GENERAL.**—Any individual who is an employee of the courts or court system of the State as of the day before the date described in subsection (e) and who, pursuant to section 11–1726(b) or section 11–1726(c), District of Columbia Official Code, is treated as an employee of the Federal Government for purposes of receiving benefits under any chapter of subpart G of part III of title 5, United States Code, shall continue to be treated as an employee of the Federal Government for such purposes, notwithstanding the termination of the provisions of this section under subsection (e).

(2) **RESPONSIBILITY FOR EMPLOYER CONTRIBUTION.**—Beginning on the date described in subsection (e), the State shall be treated as the employing agency with respect to the benefits described in paragraph (1) which are provided to an individual who, for purposes of receiving such benefits, is continued to be treated as an employee of the Federal Government under such paragraph.

(c) **CONTINUATION OF FUNDING.**—Section 11241 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (section 11–1743 note, District of Columbia Official Code) shall apply with respect to the State and the courts and court system of the State after the date of the admission of the State into the Union in the same manner and to the same extent as such section applied with respect to the Joint Committee on Judicial Administration in the District of Columbia and the courts and court system of the District of Columbia as of the day before the date of the admission of the State into the Union.

**(d) TREATMENT OF COURT RECEIPTS.—**

(1) **DEPOSIT OF RECEIPTS INTO TREASURY.**—Except as provided in paragraph (2), all money received by the courts and court system of the State shall be deposited in the Treasury of the United States.

(2) **CRIME VICTIMS COMPENSATION FUND.**—Section 16 of the Victims of Violent Crime Compensation Act of 1996 (sec. 4–515, D.C. Official Code), relating to the Crime Victims Compensation Fund, shall apply with respect to the courts and court system of the State in the same manner and to the same extent as such section applied to the courts and court system of the District of Columbia as of the day before the date of the admission of the State into the Union.

(e) **TERMINATION.**—The provisions of this section, other than paragraph (3) of subsection (a) and except as provided under subsection (b), shall terminate on the date on which the State provides written certification to the President that the State has in effect laws requiring the State to appropriate and make available funds for the operation of the courts and court system of the State.

## **Subtitle C—Other Programs and Authorities**

### **SEC. 321. APPLICATION OF THE COLLEGE ACCESS ACT.**

(a) **CONTINUATION.**—The District of Columbia College Access Act of 1999 (Public Law 106–98; sec. 38–2701 et seq., D.C. Official Code) shall apply with respect to the State, and to the public institution of higher education designated by the State as the successor to the University of the District of Columbia, after the date of the admission of the State into the Union in the same manner and to the same extent as such Act applied with respect to the District of Columbia and the University of the District of Columbia as of the day before the date of the admission of the State into the Union.

(b) **TERMINATION.**—The provisions of this section, other than with respect to the public institution of higher education designated by the State as the successor to the University of the District of Columbia, shall terminate upon written certification by the State to the President that the State has in effect laws requiring the State to provide tuition assistance substantially similar to the assistance provided under the District of Columbia College Access Act of 1999.

### **SEC. 322. APPLICATION OF THE SCHOLARSHIPS FOR OPPORTUNITY AND RESULTS ACT.**

(a) **CONTINUATION.**—The Scholarships for Opportunity and Results Act (division C of Public Law 112–10; sec. 38–1853.01 et seq., D.C. Official Code) shall apply with respect to the State after the date of the admission of the State into the Union in the same manner and to the same extent as such Act applied with respect to the District of Columbia as of the day before the date of the admission of the State into the Union.

(b) **TERMINATION.**—The provisions of this section shall terminate upon written certification by the State to the President that the State has in effect laws requiring the State—

(1) to provide tuition assistance substantially similar to the assistance provided under the Scholarships for Opportunity and Results Act; and

(2) to provide supplemental funds to the public schools and public charter schools of the State in the amounts provided in the most recent fiscal year for public schools and public charter schools of the State or the District of Columbia (as the case may be) under such Act.

### **SEC. 323. MEDICAID FEDERAL MEDICAL ASSISTANCE PERCENTAGE.**

(a) **CONTINUATION.**—Notwithstanding section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), during the period beginning on the date of the admission of the State into the Union and ending on September 30 of the fiscal year during which the State submits the certification described in subsection (b), the Federal medical assistance percentage for the State under title XIX of such Act shall be the Federal medical assistance percentage for the District of Columbia under such title as of the day before the date of the admission of the State into the Union.

(b) **TERMINATION.**—The certification described in this subsection is a written certification by the State to the President that, during each of the first 5 fiscal years beginning after the date of the certification, the estimated revenues of the State will be sufficient to cover any reduction in revenues which may result from the termination of the provisions of this section.

### **SEC. 324. FEDERAL PLANNING COMMISSIONS.**

(a) **NATIONAL CAPITAL PLANNING COMMISSION.**—

(1) **CONTINUING APPLICATION.**—Subject to the amendments made by paragraphs (2) and (3), upon the admission of the State into the Union, chapter 87 of title 40, United States Code, shall apply as follows:

(A) Such chapter shall apply with respect to the Capital in the same manner and to the same extent as such chapter applied with respect to the District of Columbia as of the day before the date of the admission of the State into the Union.

(B) Such chapter shall apply with respect to the State in the same manner and to the same extent as such chapter applied with respect to the State of Maryland and the Commonwealth of Virginia as of the day before the date of the admission of the State into the Union.

(2) COMPOSITION OF NATIONAL CAPITAL PLANNING COMMISSION.—Section 8711(b) of title 40, United States Code, is amended—

(A) by amending subparagraph (B) of paragraph (1) to read as follows:

“(B) four citizens with experience in city or regional planning, who shall be appointed by the President.”; and

(B) by amending paragraph (2) to read as follows:

“(2) RESIDENCY REQUIREMENT.—Of the four citizen members, one shall be a resident of Virginia, one shall be a resident of Maryland, and one shall be a resident of Washington, Douglass Commonwealth.”.

(3) CONFORMING AMENDMENTS TO DEFINITIONS OF TERMS.—

(A) ENVIRONS.—Paragraph (1) of section 8702 of such title is amended by striking “the territory surrounding the District of Columbia” and inserting “the territory surrounding the National Capital”.

(B) NATIONAL CAPITAL.—Paragraph (2) of section 8702 of such title is amended to read as follows:

“(2) NATIONAL CAPITAL.—The term ‘National Capital’ means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act, and the territory the Federal Government owns in the environs.”.

(C) NATIONAL CAPITAL REGION.—Subparagraph (A) of paragraph (3) of section 8702 of such title is amended to read as follows:

“(A) the National Capital and the State of Washington, Douglass Commonwealth;”.

(b) COMMISSION OF FINE ARTS.—

(1) LIMITING APPLICATION TO THE CAPITAL.—Section 9102(a)(1) of title 40, United States Code, is amended by striking “the District of Columbia” and inserting “the Capital”.

(2) DEFINITION.—Section 9102 of such title is amended by adding at the end the following new subsection:

“(d) DEFINITION.—In this chapter, the term ‘Capital’ means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.”.

(3) CONFORMING AMENDMENT.—Section 9101(d) of such title is amended by striking “the District of Columbia” and inserting “the Capital”.

(c) COMMEMORATIVE WORKS ACT.—

(1) LIMITING APPLICATION TO CAPITAL.—Section 8902 of title 40, United States Code, is amended by adding at the end the following new subsection:

“(c) LIMITING APPLICATION TO CAPITAL.—This chapter applies only with respect to commemorative works in the Capital and its environs.”.

(2) DEFINITION.—Paragraph (2) of section 8902(a) of such title is amended to read as follows:

“(2) CAPITAL AND ITS ENVIRONS.—The term ‘Capital and its environs’ means—

“(A) the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act; and

“(B) those lands and properties administered by the National Park Service and the General Services Administration located in the Reserve, Area I, and Area II as depicted on the map entitled ‘Commemorative Areas Washington, DC and Environs’, numbered 869/86501 B, and dated June 24, 2003, that are located outside of the State of Washington, Douglass Commonwealth.”.

(3) TEMPORARY SITE DESIGNATION.—Section 8907(a) of such title is amended by striking “the District of Columbia” and inserting “the Capital and its environs”.

(4) GENERAL CONFORMING AMENDMENTS.—Chapter 89 of such title is amended by striking “the District of Columbia and its environs” each place it appears in the following sections and inserting “the Capital and its environs”:

(A) Section 8901(2) and 8901(4).

(B) Section 8902(a)(4).

(C) Section 8903(d).

(D) Section 8904(c).

(E) Section 8905(a).

(F) Section 8906(a).

(G) Section 8909(a) and 8909(b).

(5) ADDITIONAL CONFORMING AMENDMENT.—Section 8901(2) of such title is amended by striking “the urban fabric of the District of Columbia” and inserting “the urban fabric of the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act”.



(d) **EFFECTIVE DATE.**—This section and the amendments made by this section shall take effect on the date of the admission of the State into the Union.

**SEC. 325. ROLE OF ARMY CORPS OF ENGINEERS IN SUPPLYING WATER.**

(a) **CONTINUATION OF ROLE.**—Chapter 95 of title 40, United States Code, is amended by adding at the end the following new section:

**“§ 9508. Applicability to Capital and State of Washington, Douglass Commonwealth**

“(a) **IN GENERAL.**—Effective upon the admission of the State of Washington, Douglass Commonwealth into the Union, any reference in this chapter to the District of Columbia shall be deemed to refer to the Capital or the State of Washington, Douglass Commonwealth, as the case may be.

“(b) **DEFINITION.**—In this section, the term ‘Capital’ means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.”.

(b) **CLERICAL AMENDMENT.**—The table of sections of chapter 95 of such title is amended by adding at the end the following:

“9508. Applicability to Capital and State of Washington, Douglass Commonwealth.”.

**SEC. 326. REQUIREMENTS TO BE LOCATED IN DISTRICT OF COLUMBIA.**

The location of any person in the Capital or Washington, Douglass Commonwealth on the day after the date of the admission of the State into the Union shall be deemed to satisfy any requirement under any law in effect as of the day before the date of the admission of the State into the Union that the person be located in the District of Columbia, including the requirements of section 72 of title 4, United States Code (relating to offices of the seat of the Government of the United States), and title 36, United States Code (relating to patriotic and national organizations).

## **TITLE IV—GENERAL PROVISIONS**

**SEC. 401. GENERAL DEFINITIONS.**

In this Act, the following definitions shall apply:

- (1) The term “Capital” means the area serving as the seat of the Government of the United States, as described in section 112.
- (2) The term “Council” means the Council of the District of Columbia.
- (3) The term “Mayor” means the Mayor of the District of Columbia.
- (4) Except as otherwise provided, the term “State” means the State of Washington, Douglass Commonwealth.
- (5) The term “State Constitution” means the proposed Constitution of the State of Washington, D.C., as approved by the Council on October 18, 2016, pursuant to the Constitution and Boundaries for the State of Washington, D.C. Approval Resolution of 2016 (D.C. Resolution R21–621), ratified by District of Columbia voters in Advisory Referendum B approved on November 8, 2016, and certified by the District of Columbia Board of Elections on November 18, 2016.

**SEC. 402. STATEHOOD TRANSITION COMMISSION.**

(a) **ESTABLISHMENT.**—There is established the Statehood Transition Commission (hereafter in this section referred to as the “Commission”).

(b) **COMPOSITION.**—

(1) **IN GENERAL.**—The Commission shall be composed of 18 members as follows:

- (A) 3 members appointed by the President.
- (B) 2 members appointed by the Speaker of the House of Representatives.
- (C) 2 members appointed by the Minority Leader of the House of Representatives.
- (D) 2 members appointed by the Majority Leader of the Senate.
- (E) 2 members appointed by the Minority Leader of the Senate.
- (F) 3 members appointed by the Mayor.
- (G) 3 members appointed by the Council.
- (H) The Chief Financial Officer of the District of Columbia.

(2) **APPOINTMENT DATE.**—

(A) **IN GENERAL.**—The appointments of the members of the Commission shall be made not later than 90 days after the date of the enactment of this Act.

(B) **EFFECT OF LACK OF APPOINTMENT BY APPOINTMENT DATE.**—If one or more appointments under any of the subparagraphs of paragraph (1) is not made by the appointment date specified in subparagraph (A), the authority

to make such appointment or appointments shall expire, and the number of members of the Commission shall be reduced by the number equal to the number of appointments so not made.

(3) TERM OF SERVICE.—Each member shall be appointed for the life of the Commission.

(4) VACANCY.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(5) NO COMPENSATION.—Members shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(6) CHAIR AND VICE CHAIR.—The Chair and Vice Chair of the Commission shall be elected by the members of the Commission—

(A) with respect to the Chair, from among the members described in subparagraphs (A) through (E) of paragraph (1); and

(B) with respect to the Vice Chair, from among the members described in subparagraphs (F) and (G) of paragraph (1).

(c) STAFF.—

(1) DIRECTOR.—The Commission shall have a Director, who shall be appointed by the Chair.

(2) OTHER STAFF.—The Director may appoint and fix the pay of such additional personnel as the Director considers appropriate.

(3) NON-APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the rate payable for level V of the Executive Schedule under section 5316 of such title.

(4) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DUTIES.—The Commission shall advise the President, Congress, the Mayor (or, upon the admission of the State into the Union, the chief executive officer of the State), and the Council (or, upon the admission of the State into the Union, the legislature of the State) concerning an orderly transition to statehood for the District of Columbia or the State (as the case may be) and to a reduced geographical size of the seat of the Government of the United States, including with respect to property, funding, programs, projects, and activities.

(e) POWERS.—

(1) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this Act, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

(2) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Chair of the Commission, the head of that department or agency shall furnish that information to the Commission.

(3) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(4) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission the administrative support services necessary for the Commission to carry out its responsibilities under this Act.

(f) MEETINGS.—

(1) IN GENERAL.—The Commission shall meet at the call of the Chair.

(2) INITIAL MEETING.—The Commission shall hold its first meeting not later than the earlier of—

(A) 30 days after the date on which all members of the Commission have been appointed; or

(B) if the number of members of the Commission is reduced under subsection (b)(2)(B), 90 days after the date of the enactment of this Act.

(3) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) REPORTS.—The Commission shall submit such reports as the Commission considers appropriate or as may be requested by the President, Congress, or the District of Columbia (or, upon the admission of the State into the Union, the State).

(h) **TERMINATION.**—The Commission shall cease to exist 2 years after the date of the admission of the State into the Union.

**SEC. 403. CERTIFICATION OF ENACTMENT BY PRESIDENT.**

Not more than 60 days after the date of the enactment of this Act, the President shall provide written certification of such enactment to the Mayor.

**SEC. 404. SEVERABILITY.**

Except as provided in section 101(c), if any provision of this Act or amendment made by this Act, or the application thereof to any person or circumstance, is held to be invalid, the remaining provisions of this Act and any amendments made by this Act shall not be affected by the holding.

## SUMMARY AND PURPOSE OF LEGISLATION

The Washington, D.C. Admission Act would admit the State of Washington, Douglass Commonwealth into the Union and reduce the size of the federal district.

## BACKGROUND AND NEED FOR LEGISLATION

The Merriam-Webster dictionary defines democracy as “government by the people” and “a government in which the supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodically held free elections.”<sup>1</sup> By definition, the United States is a democracy, but its capital is not.

The United States considers itself a beacon of democracy, but it is the only democratic country that denies both voting representation in its national legislature and full local self-government to the residents of its capital.<sup>2</sup> The political status of District of Columbia residents not only violates democratic principles, but it also violates our own nation’s founding principles.

The principles of no taxation without representation and consent of the governed helped launch the American Revolution and are enshrined in the Declaration of Independence. As then-President Thomas Jefferson said, “[T]he elective franchise, if guarded as the ark of our safety, will peaceably dissipate all combinations to subvert a constitution dictated by the wisdom, [and] resting on the will of the people. [T]hat will is the only legitimate foundation of any government.”<sup>3</sup>

However, nearly 245 years after the Declaration of Independence, District residents are taxed by a national legislature that denies them voting representation in such legislature and governed by a national legislature that denies them consent on both the federal and District laws passed by such legislature.

The Supreme Court has held that the right to vote is a fundamental right and preservative of other rights. In *Wesberry v. Sanders*, the Court explained, “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights,

<sup>1</sup>Merriam-Webster, *Definition of “Democracy”* (online at [www.merriam-webster.com/dictionary/democracy](http://www.merriam-webster.com/dictionary/democracy)) (accessed Apr. 3, 2021).

<sup>2</sup>House Committee on the Judiciary, *District of Columbia House Voting Rights Act of 2009*, 111th Cong. (2009) (H. Rep. 111–22); George Washington Institute of Public Policy, *Capital Cities and their National Governments: Washington, D.C. in Comparative Perspective* (June 11, 2007) (online at [https://gwipp.gwu.edu/sites/g/files/zaxdzs2181/f/downloads/Working\\_Paper\\_030\\_CapitalCities.pdf](https://gwipp.gwu.edu/sites/g/files/zaxdzs2181/f/downloads/Working_Paper_030_CapitalCities.pdf)); Congressional Research Service, *Washington, D.C., and 10 Other National Capitals: Selected Aspects of Governmental Structure* (Mar. 29, 2002).

<sup>3</sup>Letter from Thomas Jefferson to Columbia, South Carolina, Citizens (Mar. 23, 1801) (online at <https://founders.archives.gov/documents/Jefferson/01-33-02-0350>).

even the most basic, are illusory if the right to vote is undermined.”<sup>4</sup> In *Yick Wo v. Hopkins*, the Court described “the political franchise of voting as a fundamental political right, because [it is] preservative of all rights.”<sup>5</sup> In *Reynolds v. Sims*, the Court said, “Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society” and “the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights.”<sup>6</sup>

Republicans used to acknowledge the importance of voting rights in a democracy. Then-President Ronald Reagan said, “For this nation to remain true to its principles, we cannot allow any American’s vote to be denied, diluted or defiled. The right to vote is the crown jewel of American liberties.”<sup>7</sup>

Republicans also used to acknowledge the importance of voting rights for District residents. Then-President Richard Nixon said, “It should offend the democratic senses of this nation” that District residents do not have voting representation in Congress.<sup>8</sup>

Since 1801, Congress has chosen to deny District residents, who have all of the obligations of citizenship, voting representation in Congress and full local self-government. Congress can choose differently. H.R. 51 would do so.

#### *Constitutional Authority*

The Constitution gives Congress the authority to admit the State of Washington, Douglass Commonwealth (the “State”) and to reduce the size of the federal district. This conclusion is based on the text of the Constitution. In contrast, those who believe Congress does not have such authority reach that conclusion based on implication only.

#### *Admissions Clause*

The Admissions Clause of the Constitution gives Congress the authority to admit new states—in pertinent part, the Clause says, “New States may be admitted by the Congress into this Union.”<sup>9</sup> Congress has admitted all 37 new states by simple legislation.<sup>10</sup> There has never been a successful federal court challenge to the admission of a state.<sup>11</sup> The Constitution imposes limitations on the authority of Congress to admit new states, but none would be violated by H.R. 51.

The Admissions Clause prohibits Congress from admitting a new state from an existing state without the consent of the existing state. In pertinent part, the Admissions Clause says, “[N]o new State shall be formed or erected within the Jurisdiction of any

<sup>4</sup> *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

<sup>5</sup> *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

<sup>6</sup> *Reynolds v. Sims*, 377 U.S. 533, 561–562 (1964).

<sup>7</sup> President Ronald Reagan, *Statement About Extension of the Voting Rights Act* (Nov. 6, 1981) (online at [www.reaganlibrary.gov/archives/speech/statement-about-extension-voting-rights-act](http://www.reaganlibrary.gov/archives/speech/statement-about-extension-voting-rights-act)).

<sup>8</sup> President Richard Nixon, *Special Message to the Congress on the District of Columbia* (Apr. 28, 1969) (online at [www.presidency.ucsb.edu/documents/special-message-the-congress-the-district-columbia](http://www.presidency.ucsb.edu/documents/special-message-the-congress-the-district-columbia)).

<sup>9</sup> U.S. Const. art. IV, § 3, cl. 1.

<sup>10</sup> Luis R. Davila-Colon, *Equal Citizenship, Self-Determination, and the U.S. Statehood Process: A Constitutional and Historical Analysis*, 13 Case W. Res. J. Int’l L. 315, 317 (1981) (online at <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1860&context=jil>).

<sup>11</sup> House Committee on Oversight and Reform, Testimony of Mainon A. Schwartz, *Hearing on H.R. 51: Making D.C. the 51st State*, 117th Cong. (Mar. 22, 2021) (online at <https://docs.house.gov/meetings/GO/GO00/20210322/111360/HHRG-117-GO00-Wstate-SchwartzM-20210322.pdf>).

other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.”<sup>12</sup> The admission of the State would not require the consent of a state, because the State would consist of land ceded by the federal government that is not within the jurisdiction of a state.

The federal district consists of land ceded by Maryland to the federal government to create the federal district. Maryland does not have any jurisdiction over the federal district. The Maryland statute that ceded the land “forever ceded and relinquished [the land] to the Congress and government of the United States, in full and absolute right, and exclusive jurisdiction.”<sup>13</sup> The Maryland statute does not contain a clause that reverts the land to Maryland if it is not used for the federal district. In addition, Maryland law disfavors implied reversionary interests.<sup>14</sup> Therefore, Maryland has no right to give or withhold consent to the admission of the State.

The admission of Ohio is analogous. Ohio was formed from land ceded by Connecticut to the United States. Connecticut’s consent was not required to admit Ohio.<sup>15</sup>

The Guarantee Clause of the Constitution guarantees each state “a Republican Form of Government.”<sup>16</sup> H.R. 51 would declare that the State constitution “always be republican in form.” The State constitution provides a representative government.<sup>17</sup>

The Supreme Court’s equal footing doctrine requires new states to be admitted on an equal footing with the other states. Congress may not impose conditions on a new state that it could not impose on an existing state.<sup>18</sup> H.R. 51 would declare the State “admitted into the Union on an equal footing with the other States in all respects whatever.” H.R. 51 would not impose conditions on the State that violate the equal footing doctrine.

#### *District Clause*

The District Clause of the Constitution gives Congress plenary authority over the federal district and establishes a maximum size of the federal district (100 square miles).<sup>19</sup> The text of the District Clause does not establish a minimum size or a location of the federal district. Therefore, Congress has the authority to reduce the size of the federal district, as it has previously done.

According to the Congressional Research Service (CRS):

That the Constitution provided Congress flexibility to choose not only the location, but also the size of the seat of government, suggests that the Founding Fathers intended to allow Congress to determine the appropriate size and place of the District of Columbia. The history of the

<sup>12</sup> U.S. Const. art. IV, § 3, cl. 1.

<sup>13</sup> 1791 Md. Acts ch. 45, § 2.

<sup>14</sup> Peter Raven-Hansen, *The Constitutionality of D.C. Statehood*, 60 Geo. Wash. L. Rev. 160, 180 (1991).

<sup>15</sup> Senate Homeland Security and Governmental Affairs Committee, Testimony of Viet Dinh, *Hearing on Equality for the District of Columbia: Discussing the Implications of S. 132, The New Columbia Admission Act of 2013*, 113th Cong. (Sept. 15, 2014) (online at [www.govinfo.gov/content/pkg/CHRG-113shrg92904/pdf/CHRG\\_113shrg92904.pdf](http://www.govinfo.gov/content/pkg/CHRG-113shrg92904/pdf/CHRG_113shrg92904.pdf)).

<sup>16</sup> U.S. Const. art. IV, § 4.

<sup>17</sup> 63 D.C. Reg. 46.

<sup>18</sup> Luis R. Davila-Colon, *Equal Citizenship, Self-Determination, and the U.S. Statehood Process: A Constitutional and Historical Analysis*, 13 Case W. Res. J. Int’l L. 315, 326-351 (1981) (online at <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1860&context=jil>).

<sup>19</sup> U.S. Const. art. I, § 8, cl. 17.

Constitutional Convention suggests that the Founding Fathers anticipated that Congress might need to change the District of Columbia's size or location after its establishment.<sup>20</sup>

Moreover, the Property and Federal Enclave clauses of the Constitution give Congress the authority to acquire and dispose of land, and Congress has "like Authority" over the federal district and federal enclaves.<sup>21</sup>

H.R. 51 would reduce the size of the federal district by approximately 66 square miles. Congress has previously changed the boundaries of the federal district. In 1791, the First Congress changed the southern boundary of the federal district.<sup>22</sup> The Supreme Court has held that an act of the First Congress "is contemporaneous and weighty evidence of [the Constitution's] true meaning."<sup>23</sup> In 1846, Congress reduced the size of the federal district by approximately 32 square miles.<sup>24</sup>

The Framers included the District Clause in the Constitution because they did not want the seat of the federal government to be dependent on a host state for services and protection and because they did not want a host state to have more power than the other states.<sup>25</sup>

Under H.R. 51, the federal district would not be within a state. However, the minority argues that the State would have more power than the other states because the State would surround the federal district. That is essentially the status quo. Today, Maryland and Virginia surround the federal district. The minority has not presented any evidence that Maryland and Virginia have more power than the other states because they surround the federal district.

Some argue that H.R. 51 would violate the District Clause because a two-square-mile federal district would be dependent on states for services and protection.<sup>26</sup> This claim not only ignores the text of the District Clause, which does not establish a minimum size of the federal district, but it also ignores the historical and current practice of the federal district.

The federal district has long been dependent on states for services and protection. The federal district consumes many services, such as electricity, food, and water, that are produced in states. States also consume services produced in other states.

The federal district also relies on states for protection. For example, during presidential inaugurations, law enforcement agencies and National Guards from across the country help protect the federal district.<sup>27</sup> During and after the attack on the U.S. Capitol on

<sup>20</sup> House Committee on Oversight and Reform, Testimony of Kenneth R. Thomas, *Hearing on H.R. 51: Making D.C. the 51st State*, 116th Cong. (Sept. 19, 2019) (online at <https://docs.house.gov/meetings/GO/GO00/20190919/109960/HHRG-116-GO00-Wstate-ThomasK-20190919.pdf>).

<sup>21</sup> U.S. Const. art. IV, § 3, cl. 2; U.S. Const. art. I, § 8, cl. 17.

<sup>22</sup> Act of March 3, 1791, ch. 17, 1 Stat. 214 (1791).

<sup>23</sup> *Wisconsin v. Pelican Insurance Company*, 127 U.S. 265, 297 (1888).

<sup>24</sup> Act of July 9, 1846, ch. 35, 9 Stat. 35 (1846).

<sup>25</sup> See James Madison, *The Federalist No. 43* (1788).

<sup>26</sup> E.g., House Committee on Oversight and Reform, Testimony of Roger Pilon, Ph.D., *Hearing on H.R. 51: Making D.C. the 51st State*, 116th Cong. (Sept. 19, 2019) (online at <https://docs.house.gov/meetings/GO/GO00/20190919/109960/HHRG-116-GO00-Wstate-PilonR-20190919.pdf>).

<sup>27</sup> *Authorities Mount Record Security Effort to Ensure Inaugural Safety*, CNN (Jan. 19, 2009) (online at [www.cnn.com/2009/POLITICS/01/19/inauguration.security/](http://www.cnn.com/2009/POLITICS/01/19/inauguration.security/)).

January 6, 2021, state governments helped protect the Capitol, and continue to do so today.<sup>28</sup> In fact, the District police department, which is funded by District residents, helped to repel the attack on the Capitol even though Congress denies District residents voting representation in Congress.<sup>29</sup>

The federal government's reliance on other governments for services and protection is not unique to the federal district. Federal facilities are located in every state and around the world. These facilities rely on state and foreign governments for services and protection. For example, the headquarters of the Department of Defense, the Central Intelligence Agency, and the National Security Agency are located outside of the federal district. Indeed, ninety-two percent of federal employees are located outside of the federal district and 85 percent are located outside of the national capital region.<sup>30</sup>

The federal government has the experience and capability to administer and protect the reduced federal district. For example, from 1874 to 1967, the federal government administered the federal district under a presidentially appointed government of three commissioners.<sup>31</sup>

Today, there are approximately 30 federal police departments in the District.<sup>32</sup> The three federal police departments that would protect the most important institutions in the reduced federal district—the Capitol, the White House, and the Supreme Court—collectively employ approximately 3,700 officers.<sup>33</sup> By comparison, the District police department has a similar number of officers.<sup>34</sup> In addition, H.R. 51 would provide a National Guard for the reduced federal district, which would be an exclusively federal entity, and the federal government has the authority to use military forces to protect federal property and functions.<sup>35</sup>

### 23rd Amendment

The 23rd Amendment to the Constitution allows the federal district to participate in the Electoral College as if it were a state, ex-

<sup>28</sup> *Virginia, Maryland Sending National Guard, Additional Police to DC Amid Chaos*, Fox 5 (Jan. 6, 2021) (online at [www.fox5dc.com/news/virginia-maryland-sending-national-guard-additional-police-to-dc-amid-chaos](http://www.fox5dc.com/news/virginia-maryland-sending-national-guard-additional-police-to-dc-amid-chaos)); U.S. Army, *More National Guard Troops Head to DC for Inaugural Support* (Jan. 14, 2021) (online at [www.army.mil/article/242405/more-national-guard-troops-head-to-dc-for-inaugural-support](http://www.army.mil/article/242405/more-national-guard-troops-head-to-dc-for-inaugural-support)).

<sup>29</sup> Senate Homeland Security and Government Affairs Committee, Testimony of Acting Metropolitan Police Department Chief of Police Robert J. Contee, III, *Hearing on Examining the January 6 Attack on the U.S. Capitol*, 117th Cong. (Feb. 23, 2021) (online at [www.hsgac.senate.gov/imo/media/doc/Testimony-Contee-2021-02-23.pdf](http://www.hsgac.senate.gov/imo/media/doc/Testimony-Contee-2021-02-23.pdf)).

<sup>30</sup> Office of Personnel Management, *Federal Civilian Employment* (Sept. 2017) (online at [www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/federal-civilian-employment/](http://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/federal-civilian-employment/)).

<sup>31</sup> House Committee on the District of Columbia, *Governance of the Nation's Capital: A Summary History of the Forms and Powers of Local Government for the District of Columbia, 1790 to 1973*, 101st Cong. (Nov. 1990).

<sup>32</sup> Metropolitan Police Department, *Cooperative Agreements* (online at <https://mpdc.dc.gov/page/cooperative-agreements>) (accessed Apr. 3, 2021).

<sup>33</sup> Department of Homeland Security, *U.S. Secret Service: Budget Overview: Fiscal Year 2020 Congressional Justification* (online at [www.dhs.gov/sites/default/files/publications/19\\_0318\\_MGMT\\_CBJ\\_Secret-Service\\_0.pdf](http://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ_Secret-Service_0.pdf)) (accessed Apr. 3, 2021); House Committee on Appropriations, Subcommittee on Legislative Branch, Testimony of United States Capitol Police Chief of Police Matthew R. Verderosa, *Hearing on United States Capitol Police Budget Request for FY 2020* (Mar. 12, 2019); Bureau of Justice Statistics, *Federal Law Enforcement Officers, 2016—Statistical Tables* (Oct. 2019) (online at [www.bjs.gov/content/pub/pdf/fleo16st.pdf](http://www.bjs.gov/content/pub/pdf/fleo16st.pdf)).

<sup>34</sup> Metropolitan Police Department, *Brief History of the MPDC* (online at <https://mpdc.dc.gov/page/brief-history-mpdc>) (accessed Apr. 3, 2021).

<sup>35</sup> Congressional Research Service, *The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law* (Nov. 6, 2018) (online at <https://fas.org/sgp/crs/natsec/R42659.pdf>).

cept it may not have more electors than the least populous state.<sup>36</sup> H.R. 51 would not violate the 23rd Amendment because the text of the 23rd Amendment does not establish a minimum size of the federal district.

In addition, some have argued that the 23rd Amendment would be nullified under H.R. 51, either because the bill would repeal the enabling statute for the amendment, or because the bill would lead to the unreasonable result of allowing the reduced federal district to participate in the Electoral College.<sup>37</sup> However, H.R. 51 would not violate the text of the 23rd Amendment.

In any event, upon the enactment of H.R. 51, Congress and the states would likely quickly repeal the 23rd Amendment to prevent the reduced federal district from participating in the Electoral College. Even if the 23rd Amendment were not repealed, Congress may have discretion in how it awards the electoral votes. The 23rd Amendment provides that the federal district “shall appoint” electors “in such manner as the Congress may direct.”<sup>38</sup> Some have argued, for example, that Congress could award the electoral votes to the winner of the national popular vote.<sup>39</sup>

#### *Political Question Doctrine*

H.R. 51 is clearly constitutional. However, there is a strong likelihood that a court would find that the political question doctrine precludes a ruling on the merits in a case challenging the constitutionality of H.R. 51. The Supreme Court has held that some questions are to be resolved by the political branches.<sup>40</sup>

According to former U.S. Assistant Attorney General Viet Dinh:

In many ways, Congress’s admission of new States is the paradigm of a political question that is not justiciable in courts. The Constitution commits the task exclusively to Congress under Article IV and it is difficult to imagine judicially manageable standards for assessing the legality of the admission.<sup>41</sup>

Similarly, CRS has asserted:

[B]oth the admission of new states and the power of exclusive legislation over the District of Columbia are textually committed to Congress in the Admissions and District Clauses, respectively. Thus, courts arguably could refuse to resolve a challenge to Douglass Commonwealth’s

<sup>36</sup> U.S. Const. amend. XXIII, § 1.

<sup>37</sup> *E.g.*, Peter Raven-Hansen, *The Constitutionality of D.C. Statehood*, 60 Geo. Wash. L. Rev. 160, 184 (1991); Philip G. Schrag, *The Future of District of Columbia Home Rule*, 39 Cath. U. L. Rev. 311, 348 (1990).

<sup>38</sup> U.S. Const. amend. XXIII.

<sup>39</sup> *E.g.*, William Roberts and Sam Berger, *It’s Past Time To Grant D.C. Statehood*, Center for American Progress (Aug. 19, 2020) (online at [www.americanprogress.org/issues/democracy/news/2020/08/19/489667/past-time-grant-d-c-statehood/](http://www.americanprogress.org/issues/democracy/news/2020/08/19/489667/past-time-grant-d-c-statehood/)).

<sup>40</sup> House Committee on Oversight and Reform, Testimony of Mainon A. Schwartz, *Hearing on H.R. 51: Making D.C. the 51st State*, 117th Cong. (Mar. 22, 2021) (online at <https://docs.house.gov/meetings/GO/GO00/20210322/111360/HHRG-117-GO00-Wstate-SchwartzM-20210322.pdf>).

<sup>41</sup> Senate Homeland Security and Governmental Affairs Committee, Testimony of Viet Dinh, *Hearing on Equality for the District of Columbia: Discussing the Implications of S. 132, The New Columbia Admission Act of 2013*, 113th Cong. (Sept. 15, 2014) (online at [www.govinfo.gov/content/pkg/CHRG-113shrg92904/pdf/CHRG\\_113shrg92904.pdf](http://www.govinfo.gov/content/pkg/CHRG-113shrg92904/pdf/CHRG_113shrg92904.pdf)).



statehood on the ground that it represents a political question textually committed to Congress.<sup>42</sup>

In fact, in a case challenging the constitutionality of a statute that retroceded a portion of the federal district to Virginia, the Supreme Court noted that, “In cases involving the action of the political departments of the government, the judiciary is bound by such action.”<sup>43</sup>

### *Prerequisites*

The Admissions Clause of the Constitution does not establish prerequisites for new states. However, Congress generally has considered three factors in evaluating new states: commitment to democracy; support for statehood; and resources and population.<sup>44</sup> The State would comply with each factor.

District residents have been petitioning for voting representation in Congress and local self-government for more than 200 years.<sup>45</sup> Most recently, on November 8, 2016, District residents approved a referendum advising the District to petition Congress for statehood by a vote of 244,134 to 40,779.<sup>46</sup>

The District pays more federal taxes than 21 states and more per capita than any state.<sup>47</sup> The District has a higher per capita personal income than any state.<sup>48</sup> The District has a larger gross domestic product than 17 states.<sup>49</sup> The District has a larger budget than 12 states.<sup>50</sup> The District’s general obligation bonds have the highest rating from Moody’s Investors Service.<sup>51</sup> The District’s rating is higher than the rating of 32 states.<sup>52</sup> Federal funds comprise a smaller percentage of District revenue than the percent-

<sup>42</sup> House Committee on Oversight and Reform, Testimony of Mainon A. Schwartz, *Hearing on H.R. 51: Making D.C. the 51st State*, 117th Cong. (Mar. 22, 2021) (online at <https://docs.house.gov/meetings/GO/GO00/20210322/111360/HHRG-117-GO00-Wstate-SchwartzM-20210322.pdf>).

<sup>43</sup> *Phillips v. Payne*, 92 U.S. 130, 132 (1875).

<sup>44</sup> Government Accountability Office, *Experiences of Past Territories Can Assist Puerto Rico Status Deliberations* (Mar. 7, 1980) (online at [www.gao.gov/assets/ggd-80/ggd-80-26.pdf](http://www.gao.gov/assets/ggd-80/ggd-80-26.pdf)).

<sup>45</sup> House Committee on the District of Columbia, *New Columbia Admission Act*, 102nd Cong. (1992) (H. Rept. 102–909).

<sup>46</sup> District of Columbia Board of Elections, *General Election 2016—Certified Results* (Nov. 8, 2016) (online at <https://electionresults.dcooe.org/election—results/2016-General-Election>).

<sup>47</sup> Internal Revenue Service, *Internal Revenue Service Data Book, 2019* (online at [www.irs.gov/pub/irs-pdf/p55b.pdf](http://www.irs.gov/pub/irs-pdf/p55b.pdf)) (accessed Apr. 3, 2021).

<sup>48</sup> Federal Reserve Bank of St. Louis, *Release Tables: Per Capita Personal Income by State, Annual* (online at <https://fred.stlouisfed.org/release/tables?rid=110&eid=257197>) (accessed Apr. 3, 2021).

<sup>49</sup> Bureau of Economic Analysis, *Gross Domestic Product by State, 4th Quarter 2020 and Annual 2020 (Preliminary)* (Mar. 26, 2021) (online at [www.bea.gov/sites/default/files/2021-03/qgdpstate0321.pdf](http://www.bea.gov/sites/default/files/2021-03/qgdpstate0321.pdf)).

<sup>50</sup> National Association of State Budget Officers, *2020 State Expenditure Report: Fiscal Years 2018–2020* (online at <https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/SER%20Archive/2020—State—Expenditure—Report—S.pdf>) (accessed Apr. 3, 2021).

<sup>51</sup> Government of the District of Columbia, *Comprehensive Annual Financial Report* (Jan. 28, 2021) (online at <https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/FY%202020%20DC%20CAFR—Full%20Report.pdf>).

<sup>52</sup> House Committee on Oversight and Reform, Testimony of Fitzroy Lee, *Hearing on H.R. 51: Making D.C. the 51st State*, 117th Cong. (Mar. 22, 2021) (online at <https://docs.house.gov/meetings/GO/GO00/20210322/111360/HHRG-117-GO00-Wstate-LeeF-20210322.pdf>).

age of total state revenue.<sup>53</sup> The District has a larger population than two states.<sup>54</sup>

#### TRANSITION ASSISTANCE

H.R. 51 would provide transition assistance to the State. Historically, Congress has provided transition assistance to new states to support public services and promote economic development.<sup>55</sup> According to the Government Accountability Office, “[E]ach State’s diverse characteristics contributed to the varying amount and types of assistance provided.”<sup>56</sup> The types of assistance have included: direct and indirect financial aid; services; land grants; partial exemption from federal taxes; and special statutory treatment.<sup>57</sup>

One statehood study concluded:

[F]inancial matters and the pressing needs and problems of many statehood aspiring peoples have been seriously considered by Congress, not to deny admission, but to determine the need for transitional measures so as to bolster the economic and social development of the new State at a pace comparable to the rest of the States.<sup>58</sup>

H.R. 51 also would establish a commission to advise on an orderly transition to statehood and a reduced federal district. Congress has provided transition assistance both upon and after admission of new states.<sup>59</sup>

#### RACE

Statehood for District residents is a matter of racial justice. Throughout history, race has played a central role in Congress denying District residents democratic rights.<sup>60</sup> African Americans are a plurality of the District’s population, and the State would have the largest percentage of African Americans of any state.<sup>61</sup>

<sup>53</sup> Anne Stauffer, Justin Theal and Brakeysha Samms, *Federal Funds Hover at a Third of State Revenue*, The Pew Charitable Trusts (Oct. 8, 2019) (online at [www.pewtrusts.org/en/research-and-analysis/articles/2019/10/08/federal-funds-hover-at-a-third-of-state-revenue](http://www.pewtrusts.org/en/research-and-analysis/articles/2019/10/08/federal-funds-hover-at-a-third-of-state-revenue)); Government of the District of Columbia, *Fiscal Year 2021 Approved Budget and Financial Plan* (Aug. 27, 2020) (online at [https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DC\\_OCFO\\_Budget\\_Vol\\_1-Bookmarked-9-1-092020.pdf](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DC_OCFO_Budget_Vol_1-Bookmarked-9-1-092020.pdf)).

<sup>54</sup> Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and the District of Columbia: April 1, 2010 to July 1, 2020* (online at [www.census.gov/programs-surveys/popest/technical-documentation/research/evaluation-estimates.html](http://www.census.gov/programs-surveys/popest/technical-documentation/research/evaluation-estimates.html)) (accessed Apr. 3, 2021).

<sup>55</sup> Grupo de Investigadores Puertorriqueños, *Breakthrough from Colonialism: An Interdisciplinary Study of Statehood* (1984).

<sup>56</sup> Government Accountability Office, *Experiences of Past Territories Can Assist Puerto Rico Status Deliberations* (Mar. 7, 1980) (online at [www.gao.gov/assets/ggd-80/ggd-80-26.pdf](http://www.gao.gov/assets/ggd-80/ggd-80-26.pdf)).

<sup>57</sup> Grupo de Investigadores Puertorriqueños, *Breakthrough from Colonialism: An Interdisciplinary Study of Statehood* (1984); Government Accountability Office, *Experiences of Past Territories Can Assist Puerto Rico Status Deliberations* (Mar. 7, 1980) (online at [www.gao.gov/assets/ggd-80/ggd-80-26.pdf](http://www.gao.gov/assets/ggd-80/ggd-80-26.pdf)).

<sup>58</sup> Grupo de Investigadores Puertorriqueños, *Breakthrough from Colonialism: An Interdisciplinary Study of Statehood* (1984).

<sup>59</sup> Government Accountability Office, *Experiences of Past Territories Can Assist Puerto Rico Status Deliberations* (Mar. 7, 1980) (online at [www.gao.gov/assets/ggd-80/ggd-80-26.pdf](http://www.gao.gov/assets/ggd-80/ggd-80-26.pdf)).

<sup>60</sup> George Derek Musgrove and Chris Myers Asch, *Democracy Deferred: Race, Politics, and D.C.’s Two-Century Struggle for Full Voting Rights*, Statehood Research DC (Mar. 2021) (online at [https://assets.website-files.com/5df7f915fcb12b538aa0494f/60541fb1af8047a0fde84ad7\\_Democracy%20Deferred.March.2021.pdf](https://assets.website-files.com/5df7f915fcb12b538aa0494f/60541fb1af8047a0fde84ad7_Democracy%20Deferred.March.2021.pdf)).

<sup>61</sup> Census Bureau, *Quick Facts, District of Columbia* (online at [www.census.gov/quickfacts/DC](http://www.census.gov/quickfacts/DC)) (accessed on Apr. 3, 2021); Renuka Rayasam, *The Southern State Where Black Voters Are Gaining in Numbers, But Not Power*, Politico (Jan. 2, 2021) (online at [www.politico.com/news/2021/01/02/mississippi-black-voters-452213](http://www.politico.com/news/2021/01/02/mississippi-black-voters-452213)).

## OPPOSITION

Some oppose H.R. 51 for a deeply disturbing reason: the State might elect Democrats to Congress.

Then-President Donald Trump said: “They want to do that so they pick up two automatic Democrat—you know, it is 100 percent Democrat, basically—so why would the Republicans ever do that? That will never happen unless we have some very, very stupid Republicans.”<sup>62</sup>

Senator Lindsey Graham has said:

At its core this is about trying to add two more Democratic votes in the U.S. Senate, effectively cancelling out the votes of a state like South Carolina with two Republican Senators. This effort must be defeated and I will fight against it with all my might.<sup>63</sup>

This rationale violates core democratic principles. Political rights are not conditioned on party affiliation. In a democracy, voters pick their elected officials. Elected officials do not pick their voters.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title; Table of contents*

(1)(a). Short Title—This section sets forth the short title of this bill as the “Washington, D.C. Admission Act.”

(1)(b). Table of Contents—This section sets forth the table of contents of this bill.

## TITLE I—STATE OF WASHINGTON, D.C.

## Subtitle A—Procedures for Admission

*Section 101. Admission into the Union*

101(a). In General—This section declares that the State of Washington, Douglass Commonwealth (State) is admitted on an equal footing, subject to the provisions of this bill.

101(b). Constitution of State—This section declares that the State constitution always be republican in form and not be repugnant to the U.S. Constitution or the Declaration of Independence.

101(c). Nonseverability—This section declares that, if any provision of Section 101 is held invalid, this bill is invalid.

*Section 102. Election of Senators and Representative*

102(a). Issuance of Proclamation—This section requires that the Mayor of the District of Columbia (District), after the enactment of this bill, issue a proclamation for the first elections for two Senators and one Representative. It also declares that, with respect to the Senate offices, no person may be a candidate for both offices, no term of office may be referred to, and the Senate determines the class of each of the Senators.

<sup>62</sup> Steven Nelson and Ebony Bowden, *Trump Says Washington, DC, Will Never Be a State—Because of All the Democrats*, New York Post (May 5, 2020) (online at [www.nypost.com/2020/05/05/trump-says-washington-dc-will-never-be-a-state-because-of-all-the-democrats/](http://www.nypost.com/2020/05/05/trump-says-washington-dc-will-never-be-a-state-because-of-all-the-democrats/)).

<sup>63</sup> Senator Lindsey Graham, *Graham Strongly Opposes DC Statehood* (June 29, 2020) (online at [www.lgraham.senate.gov/public/index.cfm/press-releases?ID=CF32124D\\_3FF3\\_4EAF\\_9498-D7C4CF5B3941](http://www.lgraham.senate.gov/public/index.cfm/press-releases?ID=CF32124D_3FF3_4EAF_9498-D7C4CF5B3941)).

102(b). Rules for Conducting Elections—This section requires primary and general elections for the first elections, officers chosen by qualified District voters, and certification of the results, including by the Mayor to the President.

102(c). Assumption of Duties—This section declares that, upon the admission of the State, the officers are entitled to seats in Congress and to the rights and privileges of other officers.

102(d). Effect of Admission on House of Representatives Membership—This section declares that, upon the admission of the State, the size of the House of Representatives is permanently increased to 436 Members. It also declares that the State is entitled to one Representative until the next apportionment.

*Section 103. Issuance of Presidential proclamation*

103(a). In General—This section requires that the President, after receiving certification of the election results, issue a proclamation announcing such results.

103(b). Admission of State Upon Issuance of Proclamation—This section declares that, upon such issuance, the State is admitted.

Subtitle B—Seat of Government of the United States

*Section 111. Territory and boundaries*

111(a). In General—This section declares that the State consists of all of the territory of the District, except a small portion.

111(b). Exclusion of Portion Remaining as Seat of Government of United States—This section declares that such excluded portion is the seat of the U.S. government and is known as the “Capital.”

111(c). Metes and Bounds Survey—This section requires that the President conduct a metes and bounds survey of the Capital.

*Section 112. Description of Capital*

112(a). In General—This section describes the property of the Capital.

112(b). General Description—This section sets forth the boundaries of the Capital.

112(c). Exclusion of Building Serving as State Capitol—This section declares that the John A. Wilson Building is excluded from the Capital.

112(d). Clarification of Treatment of Frances Perkins Building—This section declares that the Frances Perkins Building is included in the Capital.

*Section 113. Retention of title to property*

113(a). Retention of Federal Title—This section declares that the United States retains title to or jurisdiction over all property it holds before the admission of the State.

113(b). Retention of State Title—This section declares that the State retains title to or jurisdiction over all property the District holds before the admission of the State.

*Section 114. Effect of Admission on current laws of seat of government of United States*

This section declares that District laws apply in the Capital and are deemed federal laws in the Capital.

*Section 115. Capital National Guard*

115(a). Establishment—This section amends title 32 of the U.S. Code to rename the District National Guard as the Capital National Guard. The Capital National Guard is the National Guard for the Capital and is an exclusively federal entity.

115(b). Conforming Amendments—This section amends titles 10 and 32 of the U.S. Code to make conforming amendments.

*Section 116. Termination of legal status of seat of government of United States as municipal corporation*

This section declares that the Capital is neither a government nor a body corporate for municipal purposes.

Subtitle C—General Provisions Relating to Laws of State

*Section 121. Effect of admission on current laws*

121(a). Legislative Power—This section declares that State legislative power extends to all rightful subjects.

121(b). Continuation of Authority and Duties of Members of Executive, Legislative, and Judicial Offices—This section deems that members of District executive, legislative, and judicial offices are members of the respective State offices.

121(c). Treatment of Federal Laws—This section declares that federal laws that apply to states generally apply to the State.

121(d). No Effect on Existing Contracts—This section declares that the admission of the State does not affect District or U.S. contracts.

121(e). Succession in Interstate Compacts—This section deems that the State is the successor to the District for interstate compacts.

121(f). Continuation of Service of Federal Members on Boards and Commissions—This section declares that federal representatives on District boards and commissions may serve on the respective State boards and commissions, as permitted by the State.

121(g). Special Rule Regarding Enforcement Authority of United States Capitol Police, United States Park Police, and United States Secret Service Uniformed Division—This section declares that the U.S. Capitol Police, the U.S. Park Police, and the U.S. Secret Service Uniformed Division may not enforce State laws, except as authorized by the State.

*Section 122. Pending actions and proceedings*

122(a). State as Legal Successor to District of Columbia—This section declares that the State is the legal successor to the District.

122(b). No Effect on Pending Proceedings—This section declares that all legal proceedings and rights are unaffected by the admission of the State.

*Section 123. Limitation on authority to tax federal property*

This section prohibits the State from taxing federal property.

*Section 124. United States nationality*

This section declares that this bill does not affect nationality.

## TITLE II—INTERESTS OF FEDERAL GOVERNMENT

## Subtitle A—Federal Property

*Section 201. Treatment of military lands*

201(a). Reservation of Federal Authority—This section reserves in Congress exclusive legislation over federally controlled or owned land in the State that, before the admission of the State, was held for defense or Coast Guard purposes, so long as such land is held for such purposes.

201(b). Authority of State—This section declares that such reservation does not exclude such lands from the State or prevent the State from exercising, concurrently with the United States, jurisdiction over such lands that it otherwise would have and that is consistent with laws hereafter enacted by Congress pursuant to such reservation. It also declares that the State may serve process in such lands in matters arising in the State but outside of such lands.

*Section 202. Waiver of claims to federal property*

202(a). In General—This section declares that the State disclaims all right and title to federally controlled or owned property.

202(b). Effect on Claims Against United States—This section declares that this bill does not affect claims against the United States and that applicable federal law governs any such claim. It also clarifies that this bill does not constitute a finding by Congress of the validity of any such claim.

## Subtitle B—Federal Courts

*Section 211. Residency requirements for certain federal officials*

211(a). Circuit Judges—This section amends 28 U.S.C. § 44(c) to require that circuit judges of the judicial circuit comprising the Capital and the State reside in the circuit. It also requires that circuit judges of the federal judicial circuit reside within 50 miles of the Capital.

211(b). District Judges—This section amends section 134(b) of such title to require that district judges of the judicial district comprising the Capital and the State reside in the district.

211(c). United States Attorneys—This section amends section 545(a) of such title to require that the U.S. attorney of the judicial district comprising the Capital and the State reside in the district.

211(d). United States Marshals—This section amends section 561(e)(1) of such title to require that the U.S. marshal of the judicial district comprising the Capital and the State reside in the district.

211(e). Clerks of District Courts—This section amends section 751(c) of such title to require that the clerk of the judicial district comprising the Capital and the State reside in the district.

211(f). Effective Date—This section declares that the amendments made by Section 211 apply only to individuals appointed after the admission of the State.

*Section 212. Renaming of federal courts*

212(a). Renaming—This section amends 28 U.S.C. § 41 to rename the District judicial circuit as the Capital judicial circuit, which consists of the Capital and the State. It also amends section 88 of such title to rename the District judicial district as the Washington, Douglass Commonwealth and the Capital judicial district and to declare that the court of such district is held in the Capital.

212(b). Conforming Amendments Relating to Court of Appeals—This section amends various sections of such title to make conforming changes to the name of the judicial circuit. It also amends section 48(a) of such title to designate the Capital as the place for the Capital judicial circuit and the federal judicial circuit to hold regular sessions.

212(c). Conforming Amendments Relating to District Court—This section amends various sections of such title to make conforming changes to the name of the judicial district.

212(d). Conforming Amendments Relating to Other Courts—This section amends section 152(a)(2) of such title to make a conforming change to the name of the judicial district. It also amends section 173 of such title to make the principal office of the U.S. Court of Federal Claims the Capital. It also amends section 175 of such title to make the Capital the official duty station of the judges of the U.S. Court of Federal Claims and to require such judges to reside within 50 miles of the Capital. It also amends section 456(b) of such title to make the Capital the official duty station of the U.S. Chief Justice, the U.S. Supreme Court Justices, and the judges of the federal circuit. The judges of the Capital judicial circuit and of the Washington, Douglass Commonwealth and the Capital judicial district are treated in the same manner as other circuit and district court judges for purposes of duty station. It also amends section 462(d) of such title to make permanent accommodations for the federal circuit and for the U.S. Court of Federal Claims in the Capital. It also amends section 798(a) of such title to authorize the U.S. Court of Federal Claims to use facilities and hold court in the Capital and to use facilities of the federal courts and other federal facilities for trials and other proceedings outside of the Capital.

212(e). Other Conforming Amendments—This section amends section 1608(a)(4) of such title to make service of process made upon a foreign state available in certain circumstances through the U.S. Secretary of State in the Capital. It also amends section 2410(b) of such title to declare that, in actions in state courts affecting property on which the United States has or claims a lien, service of process upon the United States requires sending copies to the U.S. Attorney General in the Capital.

212(f). Definition—This section amends section 451 of such title to add the defined term Capital, as such term is used in this bill.

212(g). References in Other Laws—This section deems that references in federal law to the District judicial district and circuit refer to the Washington, Douglass Commonwealth and the Capital judicial district and the Capital circuit, respectively.

212(h). Effective Date—This section declares that Section 212 takes effect upon the admission of the State.

*Section 213. Conforming amendments relating to Department of Justice*

213(a). Appointment of United States Trustees—This section amends 28 U.S.C. § 581(a)(4) to make a conforming change to the name of the judicial district.

213(b). Independent Counsels—This section amends section 594(c) of such title to make a conforming change to the name of the U.S. attorney for the judicial district and to make the State the basis of a pay adjustment. It also amends section 596(a)(3) of such title to make a conforming change to the name of the judicial district.

213(c). Effective Date—This section declares that the amendments made by Section 213 take effect upon the admission of the State.

*Section 214. Treatment of pretrial services in United States district court*

This section amends 18 U.S.C. § 3152 to provide that the District Pretrial Services Agency provides pretrial services for the judicial district until the State certifies it has in effect laws providing for it to provide pretrial services in State court.

Subtitle C—Federal Elections

*Section 221. Permitting Individuals residing in Capital to vote in federal elections in State of most recent domicile*

221(a). Requirement for States to Permit Individuals to Vote by Absentee Ballot—This section requires States to permit absent Capital voters to use absentee registration procedures and to vote by absentee ballot in federal elections and to accept any otherwise valid voter registration application from such voter, if the application is received by the State not less than 30 days before such election. It also defines absent Capital voter as a resident of the Capital who is qualified to vote in the state, including the State (or who would be qualified to vote in the State but for residing in the Capital), but only if the State is the last place the Capital resident was domiciled before residing in the Capital.

221(b). Recommendations to States to Maximize Access to Polls by Absent Capital Voters—This section expresses the sense of Congress that States should afford maximum access to the polls by such voters.

221(c). Enforcement—This section declares that the U.S. Attorney General may seek relief in federal court to carry out Section 221.

221(d). Effect on Certain Other Laws—This section declares that registration or voting by such voter does not affect the residence or domicile of such voter for tax purposes.

221(e). Effective Date—This section declares that Section 221 applies to elections taking place on or after the admission of the State.

*Section 222. Repeal of Office of District of Columbia Delegate*

222(a). In General—This section repeals sections 202 and 204 of the District Delegate Act to abolish the office of Delegate to the House of Representatives from the District.



222(b). Conforming Amendments to District of Columbia Elections Code of 1955—This section amends the District Elections Code of 1955 to make conforming changes.

222(c). Effective Date—This section declares that the amendments made by Section 222 take effect upon the admission of the State.

*Section 223. Repeal of law providing for participation of seat of government in election of President and Vice President*

223(a). In General—This section amends chapter 1 of title 3 of the U.S. Code by repealing section 21, which defines the District as a state.

223(b). Effective Date—This section declares that the amendments made by Section 223 apply to elections taking place on or after the admission of the State.

*Section 224. Expedited Procedures for consideration of constitutional amendment repealing 23rd Amendment*

224(a). Joint Resolution Described—This section defines joint resolution as a joint resolution to repeal the 23rd Amendment.

224(b). Expedited Consideration in House of Representatives—This section provides for expedited consideration of the joint resolution in the House of Representatives.

224(c). Expedited Consideration in Senate—This section provides for expedited consideration of the joint resolution in the Senate.

224(d). Rules Relating to Senate and House of Representatives—This section describes the treatment by one chamber of the joint resolution received from the other chamber.

224(e). Rules of House of Representatives and Senate—This section declares that Section 224 is an exercise of the rulemaking power of the House of Representatives and Senate.

TITLE III—CONTINUATION OF CERTAIN AUTHORITIES AND RESPONSIBILITIES

Subtitle A—Employee Benefits

Section 301. Federal Benefit Payments Under Certain Retirement Programs. 301(a). Continuation of Entitlement to Payments—This section declares that any individual who, before the admission of the State, is entitled to a federal benefit payment under the District Retirement Protection Act of 1997 (Retirement Act) is entitled to such a payment after admission.

301(b). Obligations of Federal Government—This section declares that any obligation of the federal government under the Retirement Act to any individual or to the District before the admission of the State is a federal obligation to such an individual and to the State after admission. It also declares that any obligation of the federal government under the Retirement Act to the D.C. Federal Pension Fund before admission is a federal obligation after admission.

301(c). Obligations of State—This section declares that any obligation of the District under the Retirement Act to any individual or to the federal government before the admission of the State is a State obligation after admission.

*Section 302. Continuation of federal civil service benefits for employees first employed prior to establishment of district of columbia merit personnel system*

302(a). Obligations of Federal Government—This section declares that any obligation of the federal government under title 5 of the U.S. Code to an individual described in Section 302(c) or to the District before the admission of the State is a federal obligation to such individual and to the State after admission.

302(b). Obligations of State—This section declares that any obligation of the District under such title to an individual described in Section 302(c) or to the federal government before the admission of the State is a State obligation after admission.

302(c). Individuals Described—An individual described in Section 302 is an individual first employed by the District before October 1, 1987.

*Section 303. Obligations of federal government under judges' retirement program*

303(a). Continuation of Obligations—This section declares that any obligation of the federal government under subchapter III of chapter 15 of title 11 of the District Code to any individual and the District for service accrued before the admission of the State is a federal obligation to such an individual and to the State after admission. It also declares that the federal obligation under such subchapter exists to any individual and the State for service accrued after admission and before the date described in Section 303(b).

303(b). Termination Date—This section declares that the termination date is the date the State certifies that it has in effect laws requiring it to appropriate and make available funds for the retirement of its judges.

Subtitle B—Agencies

*Section 311. Public defender service*

311(a). Continuation of Operations and Funding—This section declares that title III of the District Court Reform and Criminal Procedure Act of 1970 (Court Act) applies to the State and its public defender service after the admission of the State as such title applied to the District and the District Public Defender Service before admission. It also declares that the federal government is treated as the employing agency for the benefits provided to a State public defender service employee who, pursuant to the Court Act, is treated as a federal employee for purposes of receiving benefits.

311(b). Renaming of Service—This section declares that, upon the admission of the State, the State may rename its public defender service.

311(c). Continuation of Federal Benefits for Employees—This section declares that any employee of the State public defender service before the date described in Section 311(d) who, pursuant to the Court Act, is treated as a federal employee for purposes of receiving benefits continues to be treated as such, notwithstanding the termination of the provisions of Section 311(a) under Section 311(d). It also declares that, beginning on the date described in

Section 311(d), the State is treated as the employing agency for the benefits provided to such employees.

311(d). Termination—This section declares that Section 311(a) terminates upon certification by the State that it has in effect laws requiring it to appropriate and make available funds for the operation of the State public defender service.

#### *Section 312. Prosecutions*

312(a). Assignment of Assistant United States Attorneys—This section requires that, in accordance with subchapter VI of chapter 33 of title 5 of the U.S. Code, the U.S. Attorney General, with the concurrence of the District or the State (as the case may be), assign assistant U.S. attorneys to the State to carry out the functions described in Section 312(b). It also declares that, in accordance with section 3373 of such title, such an attorney is deemed under subsection (a) of such section on detail to a regular work assignment in the Department of Justice and that the assignment is made without reimbursement by the State.

312(b). Functions Described—This section provides that the functions are criminal prosecutions conducted in the name of the State that would have been conducted in the name of the United States, as provided under section 23 101(c) of the District Code, but for the admission of the State.

312(c). Minimum Number Assigned—This section declares that the number of attorneys may not be less than the number who prosecuted in the name of the United States under such section before the admission of the State.

312(d). Termination—This section declares that the obligation to assign attorneys terminates upon certification by the State that it has appointed State attorneys for such prosecutions.

312(e). Clarification Regarding Clemency Authority—This section declares that, upon the admission of the State, the authority to grant clemency for offenses against the District or the State is exercised by the State.

#### *Section 313. Service of United States Marshals*

313(a). Provision of Services for Courts of State—This section requires that the U.S. Marshals Service provide the services to the State courts and court system that it provided to the District courts and court system before the admission of the State, except the President may not appoint a U.S. Marshal under 28 U.S.C. § 561 for any State court.

313(b). Termination—This section declares that the obligation to provide such services terminates upon certification by the State that it has appointed State personnel to provide such services.

#### *Section 314. Designation of felons to facilities of Bureau of Prisons*

314(a). Continuation of Designation—This section declares that chapter 1 of subtitle C of title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Revitalization Act) applies to individuals convicted of offenses under District law before the admission of the State. It also declares that such chapter applies to individuals convicted of offenses under State law after admission.

314(b). Termination—This section declares that Section 314 terminates upon certification by the State that it has in effect laws for housing such individuals in correctional facilities.

*Section 315. Parole and supervision.*

315(a). United States Parole Commission—This section requires that the U.S. Parole Commission (Parole Commission) exercise parole authority over felons imprisoned under District law before the admission of the State, as provided under section 11231 of the Revitalization Act, and to exercise the same authority over felons imprisoned under State law after admission. It also declares that such authority terminates upon certification by the State that it has in effect laws providing for it to exercise such authority. It also requires that the Parole Commission exercise supervision authority over District offenders released before admission, as provided under section 11233(c)(2) of the Revitalization Act, and to exercise the same authority over State offenders released after admission. It also declares that such authority terminates upon certification by the State that it has in effect laws providing for it to exercise such authority. It also declares that any Parole Commission employee as of the later of the day before the termination dates described above who, on or after such date, is an employee of the State office that exercises such authority continues to be treated as a federal employee for purposes of receiving benefits. It also declares that, beginning on the later of the termination dates described above, the State is treated as the employing agency for the benefits provided to such employees.

315(b). Court Services and Offender Supervision Agency—This section, upon the admission of the State, renames the District offender supervision agency and the District pretrial services agency as the Court Services and Offender Supervision Agency for Washington, Douglass Commonwealth and the Washington, Douglass Commonwealth Pretrial Services Agency, respectively. It also requires that these agencies provide such services for individuals convicted or charged under District and State law, as provided under section 11233 of the Revitalization Act. It also declares that these requirements terminate upon certification by the State that it has in effect laws providing for it to provide such services. It also declares that an employee of either agency before the termination date described above who, on or after such date, is an employee of the State office that provides such services continues to be treated as a federal employee for purposes of receiving benefits. It also declares that, beginning on the termination date described above, the State is treated as the employing agency for the benefits provided to such employees.

*Section 316. Courts*

316(a). Continuation of Operations—This section declares that title 11 of the D.C. Code, as in effect before the admission of the State, applies to the State courts and court system as such title applied to the District court and court system before admission. It also declares that the federal government is treated as the employing agency for benefits provided under such title to an employee of the State courts and court system who, pursuant to such title, is treated as a federal employee for purposes of receiving benefits. It

also declares that the State selects judges for any vacancy on the State courts, and clarifies that this authority does not affect the service of any sitting judge before admission or require the State to select such a judge for a vacancy or waive any of the requirements regarding the appointment and service of judges of the State courts. It also declares that the State may rename the State courts and court system.

316(b). Continuation of Federal Benefits for Employees—This section declares that any employee of the State courts or court system before the date described in Section 316(e) who, pursuant to such title, is treated as a federal employee for purposes of receiving benefits continues to be treated as such, notwithstanding the termination of the provisions of Section 316 under Section 316(e). It also declares that, beginning on the date described in Section 316(e), the State is treated as the employing agency for the benefits provided to such employees.

316(c). Continuation of Funding—This section declares that section 11241 of the Revitalization Act applies to the State courts and court system after the admission of the State as such section applied to the District court and court system before admission.

316(d). Treatment of Court Receipts—This section declares that all money received by the State courts and court system be deposited in the U.S. Treasury, except section 16 of the Victims of Violent Crime Compensation Act of 1996 applies to the State courts and court system as such section applied to the District court and court system before the admission of the State.

316(e). Termination—This section declares that Section 316 terminates upon certification by the State that it has in effect laws requiring it to appropriate and make available funds for the operation of the State court and court system, except with respect to the State's authority to select judges and rename the court and court system and as provided under Section 316(b).

#### Subtitle C—Other Programs and Authorities

##### *Section 321. Application of the College Access Act*

321(a). Continuation—This section declares that the District College Access Act of 1999 (College Access Act) applies to the State and the public institution of higher education designated by the State as the successor to the University of the District after the admission of the State as the College Access Act applied to the District and the University of the District before admission.

321(b). Termination—This section declares that Section 321, other than with respect to the successor university, terminates upon certification by the State that it has in effect laws requiring it to provide assistance substantially similar to the assistance provided under the College Access Act.

##### *Section 322. Application of the Scholarships for Opportunity and Results Act*

322(a). Continuation—This section declares that the Scholarships for Opportunity and Results Act (SOAR Act) applies to the State after the admission of the State as the SOAR Act applied to the District before admission.

322(b). Termination—This section declares that Section 322 terminates upon certification by the State that it has in effect laws requiring the State to provide tuition assistance substantially similar to the assistance provided under the SOAR Act and to provide supplemental funds to the State public schools and public charter schools in the amounts provided in the most recent fiscal year for public and public charter schools of the State or the District (as the case may be) under the SOAR Act.

*Section 323. Medicaid federal medical assistance percentage*

323(a). Continuation—This section declares that the federal medical assistance percentage for the State under title XIX of the Social Security Act is the federal medical assistance percentage for the District before the admission of the State.

323(b). Termination—This section declares that Section 323 terminates upon certification by the State that, during each of the first five fiscal years beginning after certification, estimated State revenues are sufficient to cover any reduction in revenues that may result from the termination of Section 323.

*Section 324. Federal planning commissions*

324(a). National Capital Planning Commission—This section declares that chapter 87 of title 40 of the U.S. Code applies to the Capital as such chapter applied to the District before the admission of the State and applies to the State as such chapter applied to Maryland and Virginia before admission. It also declares that the number of members appointed by the President to the National Capital Planning Commission is increased by one and that one such member is a State resident.

324(b). Commission of Fine Arts—This section amends section 9102(a)(1) of such title to limit the authority of the Commission of Fine Arts (CFA) to the Capital. It also amends section 9101(d) of such title to make a conforming change to the location of CFA meetings for reimbursement of travel expenses.

324(c). Commemorative Works Act—This section amends section 8902 of such title to declare that the Commemorative Works Act (CWA) applies only in the Capital and its environs. The CWA does not apply in the State. It also makes conforming changes to other sections of such title.

324(d). Effective Date—This section declares that Section 324 takes effect upon the admission of the State.

*Section 325. Role of Army Corps of Engineers in supplying water*

325(a). Continuation of Role—This section amends chapter 95 of title 40 of the U.S. Code to declare that any reference in such chapter to the District is deemed to refer to the Capital or the State, as the case may be.

325(b). Clerical Amendment—This section makes a conforming change in the table of sections of such chapter.

*Section 326. Requirements to be located in District of Columbia*

This section declares that the location of any person in the Capital or the State on the day after the admission of the State is deemed to satisfy any requirement under any law before admission that such person be located in the District.

## TITLE IV—GENERAL PROVISIONS

*Section 401. General definitions*

This section defines terms used throughout this bill.

*Section 402. Statehood Transition Commission*

402(a). Establishment—This section establishes the Statehood Transition Commission (Statehood Commission).

402(b). Composition—This section declares that the Statehood Commission is composed of 18 members. Seventeen of the members are appointed by the President, the bipartisan leadership of the House of Representatives and the Senate, and the District. One member is the District Chief Financial Officer. It also declares that the appointments are made not later than 90 days after the enactment of this bill, that the authority to make such appointments expires if not exercised by such date, and that the number of members is reduced by the number equal to the number of appointments so not made. It also declares that members serve for the life of the Statehood Commission, that vacancies be filled in the same manner as the original appointment, that members serve without pay but receive travel expenses, including per diem in lieu of subsistence, and that the members elect the chair and vice chair from among the members appointed by the federal government and the District, respectively.

402(c). Staff—This section declares that there is a director, who is appointed by the chair, that the director may appoint and fix the pay of additional staff, that the appointment and pay of the director and staff are exempt from certain civil service laws, and that the Statehood Commission may procure temporary and intermittent services of experts and consultants.

402(d). Duties—This section declares that the Statehood Commission advises the President, Congress, and the District or the State (as the case may be) concerning an orderly transition to statehood and to a reduced size of the federal district.

402(e). Powers—This section declares that the Statehood Commission may hold hearings, take testimony, receive evidence, obtain information from federal departments and agencies, use the U.S. mails in the same manner as federal departments and agencies, and receive administrative support services from the Administrator of General Services.

402(f). Meetings—This section declares that the Statehood Commission meets at the call of the chair and holds its first meeting not later than the earlier of 30 days after all members are appointed or, if the number of members is reduced, 90 days after the enactment of this bill. It also declares that a majority of the members constitutes a quorum, but a lesser number may hold hearings.

402(g). Reports—This section declares that reports are submitted as the Statehood Commission considers appropriate or as may be requested by the President, Congress, the District, or the State.

402(h). Termination—This section declares that the Statehood Commission ceases to exist two years after the admission of the State.

*Section 403. Certification of enactment by President*

This section requires that the President certify the enactment of this bill to the District Mayor.

*Section 404. Severability*

This section declares that, except as provided in Section 101(c), if any provision of this bill is held invalid, the remaining provisions are not affected.

## LEGISLATIVE HISTORY

On January 4, 2021, Congresswoman Eleanor Holmes Norton (D–DC) introduced H.R. 51, and the bill was referred to the Committee on Oversight and Reform, the Committee on Rules, the Committee on Armed Services, the Committee on the Judiciary, and the Committee on Energy and Commerce.

On March 22, 2021, the Committee held a hearing to examine H.R. 51. The Committee heard testimony from: Muriel Bowser, Mayor, District of Columbia; Phil Mendelson, Chairman, Council, District of Columbia; Dr. Fitzroy Lee, Interim Chief Financial Officer, District of Columbia; Mainon A. Schwartz, Legislative Attorney, Congressional Research Service; Wade Henderson, Interim President and Chief Executive Officer, The Leadership Conference on Civil and Human Rights; Harry Wingo, resident, District of Columbia; and Zack Smith, Legal Fellow, Edwin Meese III Center for Legal and Judicial Studies, The Heritage Foundation.

## COMMITTEE CONSIDERATION

On April 14, 2021, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported, as amended, by a roll call vote of 25–19.

## ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee’s consideration of H.R. 51:



## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

## ROLL CALL

Vote on: Rep Comer Amendment #1 to ANS offered by Chairwoman Maloney

Date: April 14, 2021

VOTE #: 1

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)	X		
MR. LYNCH (MA)		X		MR. GOSAR (AZ)	X		
MR. COOPER (TN)		X		MS. FOXX (NC)	X		
MR. CONNOLLY (VA)		X		MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. CLOUD (TX)	X		
MR. KHANNA (CA)		X		MR. GIBBS (OH)	X		
MR. MFUME (MD)				MR. HIGGINS (LA)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. NORMAN (SC)			
MS. TLAIB (MI)		X		MR. SESSIONS (TX)	X		
MS. PORTER (CA)		X		MR. KELLER (PA)	X		
MS. BUSH (MO)		X		MR. BIGGS (AZ)	X		
MR. DAVIS (IL)		X		MR. CLYDE (GA)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MS. MACE (SC)	X		
MR. WELCH (VT)		X		MR. FRANKLIN (FL)	X		
MR. JOHNSON (GA)		X		MR. LATURNER (KS)	X		
MR. SARBANES (MD)		X		MR. FALLON (TX)	X		
MS. SPEIER (CA)		X		MS. HERRELL (NM)	X		
MS. KELLY (IL)		X		MR. DONALDS (FL)	X		
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					
MR. QUIGLY (IL)		X					

Roll Call Totals: Ayes: 19 Nays: 24 Present:

Passed: \_\_\_\_\_ Failed: \_\_\_X\_\_\_\_\_

(REVISED 2-12-21)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

## ROLL CALL

Vote on: Rep Gosar Amendment (#1) to the ANS offered by Ms. Maloney

Date: April 14, 2021

VOTE #: 2

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MR. GOSAR (AZ)	X		
MR. COOPER (TN)		X		MS. FOXX (NC)	X		
MR. CONNOLLY (VA)		X		MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. CLOUD (TX)	X		
MR. KHANNA (CA)		X		MR. GIBBS (OH)	X		
MR. MFUME (MD)				MR. HIGGINS (LA)	X		
MS. OCASIO-CORTEZ (NY)				MR. NORMAN (SC)			
MS. TLAIB (MI)		X		MR. SESSIONS (TX)	X		
MS. PORTER (CA)		X		MR. KELLER (PA)	X		
MS. BUSH (MO)		X		MR. BIGGS (AZ)			
MR. DAVIS (IL)		X		MR. CLYDE (GA)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MS. MACE (SC)	X		
MR. WELCH (VT)		X		MR. FRANKLIN (FL)	X		
MR. JOHNSON (GA)		X		MR. LATURNER (KS)	X		
MR. SARBANES (MD)		X		MR. FALLON (TX)	X		
MS. SPEIER (CA)		X		MS. HERRELL (NM)	X		
MS. KELLY (IL)		X		MR. DONALDS (FL)	X		
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					
MR. QUIGLY (IL)		X					

Roll Call Totals: Ayes: 17 Nays: 23 Present:

Passed: \_\_\_\_\_ Failed: \_\_\_\_X\_\_\_\_

(REVISED 2-12-21)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

## ROLL CALL

Vote on: Rep Higgins Amendment #1 to ANS offered by Chairwoman Maloney

Date: April 14, 2021

VOTE #: 3

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MR. GOSAR (AZ)	X		
MR. COOPER (TN)		X		MS. FOXX (NC)	X		
MR. CONNOLLY (VA)		X		MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. CLOUD (TX)	X		
MR. KHANNA (CA)				MR. GIBBS (OH)	X		
MR. MFUME (MD)				MR. HIGGINS (LA)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. NORMAN (SC)			
MS. TLAIB (MI)		X		MR. SESSIONS (TX)	X		
MS. PORTER (CA)		X		MR. KELLER (PA)	X		
MS. BUSH (MO)		X		MR. BIGGS (AZ)			
MR. DAVIS (IL)		X		MR. CLYDE (GA)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MS. MACE (SC)	X		
MR. WELCH (VT)		X		MR. FRANKLIN (FL)	X		
MR. JOHNSON (GA)		X		MR. LATURNER (KS)	X		
MR. SARBANES (MD)		X		MR. FALLON (TX)	X		
MS. SPEIER (CA)		X		MS. HERRELL (NM)	X		
MS. KELLY (IL)		X		MR. DONALDS (FL)	X		
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					
MR. QUIGLY (IL)		X					

Roll Call Totals: Ayes: 19 Nays: 24 Present:

Passed: \_\_\_\_\_ Failed: \_\_\_X\_\_\_

(REVISED 2-12-21)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

## ROLL CALL

Vote on: Rep Hice Amendment #1 to ANS offered by Chairwoman Maloney

Date: April 14, 2021

VOTE #: 4

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MR. GOSAR (AZ)	X		
MR. COOPER (TN)		X		MS. FOXX (NC)	X		
MR. CONNOLLY (VA)		X		MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. CLOUD (TX)	X		
MR. KHANNA (CA)				MR. GIBBS (OH)	X		
MR. MFUME (MD)				MR. HIGGINS (LA)	X		
MS. OCASIO-CORTEZ (NY)				MR. NORMAN (SC)			
MS. TLAIB (MI)		X		MR. SESSIONS (TX)	X		
MS. PORTER (CA)		X		MR. KELLER (PA)	X		
MS. BUSH (MO)		X		MR. BIGGS (AZ)			
MR. DAVIS (IL)		X		MR. CLYDE (GA)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MS. MACE (SC)	X		
MR. WELCH (VT)		X		MR. FRANKLIN (FL)	X		
MR. JOHNSON (GA)		X		MR. LATURNER (KS)	X		
MR. SARBANES (MD)		X		MR. FALLON (TX)			
MS. SPEIER (CA)		X		MS. HERRELL (NM)	X		
MS. KELLY (IL)		X		MR. DONALDS (FL)	X		
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					
MR. QUIGLY (IL)		X					

Roll Call Totals: Ayes: 16 Nays: 22 Present:

Passed: \_\_\_\_\_ Failed: \_\_\_\_X\_\_\_\_

(REVISED 2-12-21)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

## ROLL CALL

Vote on: Rep Hice Amendment (#2) to the ANS offered by Ms.

Maloney Date: April 14, 2021

VOTE #: 5

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MR. GOSAR (AZ)	X		
MR. COOPER (TN)		X		MS. FOXX (NC)	X		
MR. CONNOLLY (VA)		X		MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. CLOUD (TX)	X		
MR. KHANNA (CA)		X		MR. GIBBS (OH)	X		
MR. MFUME (MD)				MR. HIGGINS (LA)	X		
MS. OCASIO-CORTEZ (NY)				MR. NORMAN (SC)			
MS. TLAIB (MI)		X		MR. SESSIONS (TX)	X		
MS. PORTER (CA)		X		MR. KELLER (PA)	X		
MS. BUSH (MO)		X		MR. BIGGS (AZ)			
MR. DAVIS (IL)		X		MR. CLYDE (GA)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MS. MACE (SC)	X		
MR. WELCH (VT)		X		MR. FRANKLIN (FL)	X		
MR. JOHNSON (GA)		X		MR. LATURNER (KS)	X		
MR. SARBANES (MD)		X		MR. FALLON (TX)	X		
MS. SPEIER (CA)		X		MS. HERRELL (NM)	X		
MS. KELLY (IL)		X		MR. DONALDS (FL)	X		
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					
MR. QUIGLY (IL)		X					

Roll Call Totals: Ayes: 17 Nays: 23 Present:

Passed: \_\_\_\_\_ Failed: \_\_\_\_X\_\_\_\_

(REVISED 2-12-21)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

## ROLL CALL

Vote on: Rep Foxx Amendment (#1) to the ANS offered by Ms. Maloney

Date: April 14, 2021

VOTE #: 6

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MR. GOSAR (AZ)	X		
MR. COOPER (TN)		X		MS. FOXX (NC)	X		
MR. CONNOLLY (VA)		X		MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. CLOUD (TX)	X		
MR. KHANNA (CA)		X		MR. GIBBS (OH)	X		
MR. MFUME (MD)				MR. HIGGINS (LA)	X		
MS. OCASIO-CORTEZ (NY)				MR. NORMAN (SC)			
MS. TLAIB (MI)		X		MR. SESSIONS (TX)	X		
MS. PORTER (CA)		X		MR. KELLER (PA)	X		
MS. BUSH (MO)		X		MR. BIGGS (AZ)			
MR. DAVIS (IL)		X		MR. CLYDE (GA)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MS. MACE (SC)	X		
MR. WELCH (VT)		X		MR. FRANKLIN (FL)	X		
MR. JOHNSON (GA)		X		MR. LATURNER (KS)	X		
MR. SARBANES (MD)		X		MR. FALLON (TX)	X		
MS. SPEIER (CA)		X		MS. HERRELL (NM)	X		
MS. KELLY (IL)		X		MR. DONALDS (FL)	X		
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					
MR. QUIGLY (IL)		X					

Roll Call Totals: Ayes: 17 Nays: 23 Present:

Passed: \_\_\_\_\_ Failed: \_\_\_\_X\_\_\_\_

(REVISED 2-12-21)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

## ROLL CALL

Vote on: Rep Cloud Amendment (#1) to the ANS offered by Ms. Maloney

Date: April 14, 2021

VOTE #: 7

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MR. GOSAR (AZ)	X		
MR. COOPER (TN)		X		MS. FOXX (NC)	X		
MR. CONNOLLY (VA)		X		MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. CLOUD (TX)	X		
MR. KHANNA (CA)		X		MR. GIBBS (OH)	X		
MR. MFUME (MD)				MR. HIGGINS (LA)	X		
MS. OCASIO-CORTEZ (NY)				MR. NORMAN (SC)			
MS. TLAIB (MI)				MR. SESSIONS (TX)	X		
MS. PORTER (CA)		X		MR. KELLER (PA)	X		
MS. BUSH (MO)		X		MR. BIGGS (AZ)	X		
MR. DAVIS (IL)		X		MR. CLYDE (GA)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MS. MACE (SC)	X		
MR. WELCH (VT)		X		MR. FRANKLIN (FL)	X		
MR. JOHNSON (GA)		X		MR. LATURNER (KS)	X		
MR. SARBANES (MD)		X		MR. FALLON (TX)	X		
MS. SPEIER (CA)		X		MS. HERRELL (NM)	X		
MS. KELLY (IL)		X		MR. DONALDS (FL)	X		
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					
MR. QUIGLY (IL)		X					

Roll Call Totals: Ayes: 18 Nays: 22 Present:

Passed: \_\_\_\_\_ Failed: \_\_\_\_\_X\_\_\_\_\_

(REVISED 2-12-21)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

## ROLL CALL

Vote on: Rep Keller Amendment (#1) to the ANS offered by Ms. Maloney

Date: April 14, 2021

VOTE #: 8

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MR. GOSAR (AZ)	X		
MR. COOPER (TN)		X		MS. FOXX (NC)	X		
MR. CONNOLLY (VA)		X		MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. CLOUD (TX)	X		
MR. KHANNA (CA)		X		MR. GIBBS (OH)	X		
MR. MFUME (MD)				MR. HIGGINS (LA)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. NORMAN (SC)			
MS. TLAIB (MI)		X		MR. SESSIONS (TX)	X		
MS. PORTER (CA)		X		MR. KELLER (PA)	X		
MS. BUSH (MO)		X		MR. BIGGS (AZ)	X		
MR. DAVIS (IL)		X		MR. CLYDE (GA)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MS. MACE (SC)	X		
MR. WELCH (VT)		X		MR. FRANKLIN (FL)	X		
MR. JOHNSON (GA)		X		MR. LATURNER (KS)	X		
MR. SARBANES (MD)		X		MR. FALLON (TX)	X		
MS. SPEIER (CA)		X		MS. HERRELL (NM)	X		
MS. KELLY (IL)		X		MR. DONALDS (FL)	X		
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					
MR. QUIGLY (IL)		X					

Roll Call Totals: Ayes: 18 Nays: 24 Present:

Passed: \_\_\_\_\_ Failed: \_\_\_\_\_X\_\_\_\_\_

(REVISED 2-12-21)



## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

## ROLL CALL

Vote on: Rep Keller Amendment (#2) to the ANS offered by Ms. Maloney

Date: April 14, 2021

VOTE #: 9

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MR. GOSAR (AZ)	X		
MR. COOPER (TN)		X		MS. FOXX (NC)	X		
MR. CONNOLLY (VA)		X		MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. CLOUD (TX)	X		
MR. KHANNA (CA)		X		MR. GIBBS (OH)	X		
MR. MFUME (MD)				MR. HIGGINS (LA)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. NORMAN (SC)			
MS. TLAIB (MI)		X		MR. SESSIONS (TX)	X		
MS. PORTER (CA)		X		MR. KELLER (PA)	X		
MS. BUSH (MO)		X		MR. BIGGS (AZ)	X		
MR. DAVIS (IL)		X		MR. CLYDE (GA)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MS. MACE (SC)	X		
MR. WELCH (VT)		X		MR. FRANKLIN (FL)	X		
MR. JOHNSON (GA)		X		MR. LATURNER (KS)	X		
MR. SARBANES (MD)		X		MR. FALLON (TX)	X		
MS. SPEIER (CA)		X		MS. HERRELL (NM)	X		
MS. KELLY (IL)		X		MR. DONALDS (FL)	X		
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					
MR. QUIGLY (IL)		X					

Roll Call Totals: Ayes: 18 Nays: 24 Present:

Passed: \_\_\_\_\_ Failed: \_\_\_\_X\_\_\_\_

(REVISED 2-12-21)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

## ROLL CALL

Vote on: Rep Sessions Amendment (#1) to the ANS offered by Ms. Maloney

Date: April 14, 2021

VOTE #: 10

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MR. GOSAR (AZ)	X		
MR. COOPER (TN)		X		MS. FOXX (NC)	X		
MR. CONNOLLY (VA)		X		MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)				MR. CLOUD (TX)	X		
MR. KHANNA (CA)		X		MR. GIBBS (OH)	X		
MR. MFUME (MD)				MR. HIGGINS (LA)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. NORMAN (SC)			
MS. TLAIB (MI)		X		MR. SESSIONS (TX)	X		
MS. PORTER (CA)		X		MR. KELLER (PA)	X		
MS. BUSH (MO)		X		MR. BIGGS (AZ)	X		
MR. DAVIS (IL)		X		MR. CLYDE (GA)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MS. MACE (SC)	X		
MR. WELCH (VT)		X		MR. FRANKLIN (FL)	X		
MR. JOHNSON (GA)		X		MR. LATURNER (KS)	X		
MR. SARBANES (MD)		X		MR. FALLON (TX)	X		
MS. SPEIER (CA)		X		MS. HERRELL (NM)	X		
MS. KELLY (IL)		X		MR. DONALDS (FL)	X		
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					
MR. QUIGLY (IL)		X					

Roll Call Totals: Ayes: 18 Nays: 23 Present:

Passed: \_\_\_\_\_ Failed: \_\_\_\_\_X\_\_\_\_\_

(REVISED 2-12-21)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

## ROLL CALL

Vote on: Rep Clyde Amendment (#1) to the ANS offered by Ms. Maloney

Date: April 14, 2021

VOTE #: 11

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MR. GOSAR (AZ)	X		
MR. COOPER (TN)		X		MS. FOXX (NC)	X		
MR. CONNOLLY (VA)		X		MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. CLOUD (TX)	X		
MR. KHANNA (CA)		X		MR. GIBBS (OH)	X		
MR. MFUME (MD)				MR. HIGGINS (LA)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. NORMAN (SC)			
MS. TLAIB (MI)		X		MR. SESSIONS (TX)	X		
MS. PORTER (CA)		X		MR. KELLER (PA)	X		
MS. BUSH (MO)		X		MR. BIGGS (AZ)	X		
MR. DAVIS (IL)		X		MR. CLYDE (GA)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MS. MACE (SC)	X		
MR. WELCH (VT)		X		MR. FRANKLIN (FL)	X		
MR. JOHNSON (GA)		X		MR. LATURNER (KS)	X		
MR. SARBANES (MD)		X		MR. FALLON (TX)	X		
MS. SPEIER (CA)		X		MS. HERRELL (NM)	X		
MS. KELLY (IL)		X		MR. DONALDS (FL)	X		
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					
MR. QUIGLY (IL)		X					

Roll Call Totals: Ayes: 18 Nays: 24 Present:

Passed: \_\_\_\_\_ Failed: \_\_\_\_X\_\_\_\_

(REVISED 2-12-21)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

## ROLL CALL

Vote on: Rep Biggs Amendment (#1) to the ANS offered by Ms. Maloney

Date: April 14, 2021

VOTE #: 12

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)		X		MR. COMER (KY) (Ranking Member)	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)	X		
MR. LYNCH (MA)		X		MR. GOSAR (AZ)	X		
MR. COOPER (TN)		X		MS. FOXX (NC)	X		
MR. CONNOLLY (VA)		X		MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. CLOUD (TX)	X		
MR. KHANNA (CA)		X		MR. GIBBS (OH)	X		
MR. MFUME (MD)				MR. HIGGINS (LA)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. NORMAN (SC)			
MS. TLAIB (MI)		X		MR. SESSIONS (TX)	X		
MS. PORTER (CA)		X		MR. KELLER (PA)	X		
MS. BUSH (MO)		X		MR. BIGGS (AZ)	X		
MR. DAVIS (IL)		X		MR. CLYDE (GA)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MS. MACE (SC)	X		
MR. WELCH (VT)		X		MR. FRANKLIN (FL)	X		
MR. JOHNSON (GA)		X		MR. LATURNER (KS)	X		
MR. SARBANES (MD)		X		MR. FALLON (TX)	X		
MS. SPEIER (CA)		X		MS. HERRELL (NM)	X		
MS. KELLY (IL)		X		MR. DONALDS (FL)	X		
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					
MR. QUIGLY (IL)		X					

Roll Call Totals: Ayes: 19 Nays: 24 Present:

Passed: \_\_\_\_\_ Failed: \_\_\_\_X\_\_\_\_

(REVISED 2-12-21)

## COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

## ROLL CALL

Vote on: H.R. 51, the Washington, D.C. Admission Act

Date: April 14, 2021

VOTE #: 13

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Chairwoman)	X			MR. COMER (KY) (Ranking Member)		X	
MS. NORTON (DC)	X			MR. JORDAN (OH)		X	
MR. LYNCH (MA)	X			MR. GOSAR (AZ)		X	
MR. COOPER (TN)	X			MS. FOXX (NC)		X	
MR. CONNOLLY (VA)	X			MR. HICE (GA)		X	
MR. KRISHNAMOORTHY (IL)	X			MR. GROTHMAN (WI)		X	
MR. RASKIN (MD)	X			MR. CLOUD (TX)		X	
MR. KHANNA (CA)	X			MR. GIBBS (OH)		X	
MR. MFUME (MD)	X			MR. HIGGINS (LA)		X	
MS. OCASIO-CORTEZ (NY)	X			MR. NORMAN (SC)			
MS. TLAIB (MI)	X			MR. SESSIONS (TX)		X	
MS. PORTER (CA)	X			MR. KELLER (PA)		X	
MS. BUSH (MO)	X			MR. BIGGS (AZ)		X	
MR. DAVIS (IL)	X			MR. CLYDE (GA)		X	
MS. WASSERMAN SCHULTZ (FL)	X			MS. MACE (SC)		X	
MR. WELCH (VT)	X			MR. FRANKLIN (FL)		X	
MR. JOHNSON (GA)	X			MR. LATURNER (KS)		X	
MR. SARBANES (MD)	X			MR. FALLON (TX)		X	
MS. SPEIER (CA)	X			MS. HERRELL (NM)		X	
MS. KELLY (IL)	X			MR. DONALDS (FL)		X	
MS. LAWRENCE (MI)	X						
MR. DESAULNIER (CA)	X						
MR. GOMEZ (CA)	X						
MS. PRESSLEY (MA)	X						
MR. QUIGLY (IL)	X						

Roll Call Totals: Ayes: 25 Nays: 19 Present:

Passed:   X  Failed:           

(REVISED 2-12-21)

## EXPLANATION OF AMENDMENTS

During Committee consideration of the bill, Representative Carolyn B. Maloney (D-NY), the Chairwoman of the Committee, offered an Amendment in the Nature of a Substitute to make a technical correction to the bill. The Maloney amendment was adopted by voice vote.

Rep. Comer offered an amendment that would have delayed the effective date of the Act until the 23rd Amendment to the Constitution is repealed. The amendment was not adopted.

Rep. Gosar offered an amendment that would have stricken everything after the enacting clause and inserted the Gosar-Meadows “District of Columbia Home Rule Improvement Act,” which would have doubled the congressional review period for legislation passed by the D.C. Council from 30 days to 60 days, expanded the expedited parliamentary procedures for disapproving D.C. legislation, clarified that Congress can disapprove of individual provisions of D.C. legislation. The amendment was not adopted.

Rep. Higgins offered an amendment that would have terminated, within 180 days of admission to the Union, a provision allowing for the continuation of the designation of felons to facilities of the Bureau of Prisons, and required reimbursement to the federal government for associated costs for such designations after admission. The amendment was not adopted.

Rep. Hice offered two amendments.

The first would have stricken everything after the enacting clause and inserted the “District of Columbia Voting Rights Restoration Act of 2021,” which would make D.C. residents eligible to participate in elections for the House of Representatives and the Senate as Maryland residents starting in 2022. From January 3, 2023 to the next reapportionment after the 2030 Census, Maryland would be entitled to one temporary additional representative. The amendment was not adopted.

The second amendment offered by Rep. Hice would have required the Mayor to issue, within 30 days of enactment, a proclamation for the first elections for governor and members of the state legislature. The amendment was not adopted.

Rep. Foxx offered an amendment that would have terminated, within 180 days of admission to the Union, the continuation of the D.C. courts and court system in effect prior to statehood, and required that D.C. repay the federal government for expenses related to courts, including continuation of federal benefits for court employees. The amendment was not adopted.

Rep. Cloud offered an amendment that would have prohibited the President from issuing a proclamation announcing the election results and admitting the state to the Union until 90 days after the metes and bounds survey of the Capital (required by Section 111) is completed. The amendment also would have required the Capital to include any federal property contiguous to the boundaries of the Capital. The amendment was not adopted.

Rep. Keller offered two amendments. The first would have prohibited the President from issuing a proclamation announcing the election results and admitting the State to the Union until the Statehood Transition Commission completed a report to prevent subsidization by federal taxpayers of the new state and provided a

number of certifications, already required by the underlying bill. The amendment was not adopted.

The second amendment offered by Rep. Keller would have all obligations of the federal government under the District of Columbia Retirement Protection Act to be transferred to the state upon admission. The amendment was not adopted.

Rep. Sessions offered an amendment that would have barred the Act from taking effect until Congress enacted a law providing for participation of the Capital in the election of the President and Vice President, and eliminated the expedited procedures for consideration of a constitutional amendment to repeal the 23rd Amendment. The amendment was not adopted.

Rep. Clyde offered an amendment that would have barred the Act from taking effect without 60 affirmative votes in the Senate. The amendment was not adopted.

Rep. Biggs offered an amendment that would have inserted a Findings section into the bill determining that admission of the District of Columbia to the Union would create a constitutional crisis. The amendment was not adopted.

#### LIST OF RELATED COMMITTEE HEARINGS

The Committee held a hearing on H.R. 51 on March 22, 2021.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee finds that the political status of residents of the District of Columbia violates democratic principles, such that the Committee recommends the adoption of the bill (H.R. 51) to admit the State of Washington, Douglass Commonwealth.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of the bill is to grant equal political rights to residents of the District of Columbia by admitting the State of Washington, Douglass Commonwealth.

#### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of the bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services or accommodations. The bill admits the State of Washington, Douglass Commonwealth and reduces the size of the federal district. The bill does not relate to employment or access to public services or accommodations in the legislative branch.

#### DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 3(c)(5) of rule XIII of the House of Representatives, no provision of the bill establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report

from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

The bill does not direct the completion of any specific rule makings within the meaning of section 551 of title 5, United States Code.

#### FEDERAL ADVISORY COMMITTEE ACT STATEMENT

The bill establishes an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

#### UNFUNDED MANDATES REFORM ACT STATEMENT

Pursuant to section 423 of the *Congressional Budget Act of 1974*, the Committee has included a letter received from the Congressional Budget Office (CBO) below.

#### EARMARK IDENTIFICATION

The bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits, as defined in clause 9 of rule XXI of the House of Representatives.

#### COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Committee has included a cost estimate of the bill prepared by the Director of CBO under section 402 of the *Congressional Budget Act of 1974* below.

#### NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the House of Representatives, the cost estimate prepared by CBO and submitted pursuant to section 402 of the *Congressional Budget Act of 1974* is as follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 16, 2021.*

Hon. CAROLYN B. MALONEY,  
*Chairwoman, Committee on Oversight and Reform,  
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 51, the Washington, D.C. Admission Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PHILLIP L. SWAGEL  
*Director.*

Enclosure.



At a Glance			
<b>H.R. 51, Washington, D.C. Admission Act</b>			
<b>As ordered reported by the House Committee on Oversight and Reform on April 14, 2021</b>			
By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	2	3
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	2	3
Spending Subject to Appropriation (Outlays)	0	39	83
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

The bill would

- Admit Washington, D.C. as the 51st state of the United States as Washington, Douglass Commonwealth
- Provide the new state with same privileges and authority granted to all states, including two U.S. Senators and one Member of the House of Representatives

Estimated budgetary effects would mainly stem from

- Salaries, administrative, and office operation costs for two U.S. Senators

Areas of significant uncertainty include

- Quantifying future savings to the federal government if certain payments to the new state are lower than payments under current law to Washington, D.C.

Detailed estimate begins on the next page.

Bill summary: H.R. 51 would admit the city of Washington, D.C., as the 51st state with the name of the State of Washington, Douglass Commonwealth. The new state would comprise all of the land currently included within the city's boundaries other than federal land as outlined in the bill. That excluded property, primarily the area around the National Mall, would be named the Capital. The new state would be provided with two U.S. Senators and one Member of the House of Representatives. Finally, the bill would outline new responsibilities for the state and establish a process for transferring certain powers from the federal government to the new state.

Estimated federal cost: The estimated budgetary effect of H.R. 51 is shown in Table 1. The costs of the legislation fall within budget function 800 (general government).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 51

[illegible]

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 51—Continued

	By fiscal year, millions of dollars—												
	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021– 2026	2021– 2031
Increases in Spending Subject to Appropriation													
Estimated Author- ization .....	0	6	9	8	8	8	8	9	9	9	9	39	83
Estimated Outlays ..	0	6	9	8	8	8	8	9	9	9	9	39	83

Components may not sum to totals because of rounding; \* = between zero and \$500,000.

**Basis of estimate:** For this estimate, CBO assumes that the legislation will be enacted near the end of fiscal year 2021. Estimated outlays are based on historical spending patterns for the affected and similar activities.

**Direct spending:** Enacting H.R. 51 would provide the new state with two U.S. Senators and one Member of the House of Representatives and would permanently expand the size of the House of Representatives from 435 to 436 Members. The District of Columbia is currently represented by a nonvoting delegate, a position that H.R. 51 would eliminate. Because each Member of the Congress, including a nonvoting delegate, is currently paid \$174,000 annually, CBO estimates that there would be no additional cost for replacing D.C.'s delegate with a voting Member of the House of Representatives. Based on the current annual salary for Senators, adding two Senators would increase direct spending by \$3 million over the 2021–2031 period.

CBO does not expect that enacting H.R. 51 would significantly affect most of the federal assistance payments that people in the District of Columbia currently receive. Under most assistance programs, the city is treated as a state and CBO expects that its residents would continue to receive federal assistance in the same manner after enactment.

**Spending subject to appropriation:** Each Senator receives about \$4 million annually from appropriated funds for official and representational duties, including staffing costs. On that basis, CBO estimates additional staff for the new Senators would cost about \$38 million over the 2021–2026 period, assuming appropriation of the estimated amounts. On average, each Representative receives about \$1 million each year to cover official and representational duties. No additional cost for such activities is estimated because CBO expects that the staffing for the new Representative would be similar to that of the city's nonvoting delegate.

The bill also would establish an 18-member Statehood Transition Commission to advise the President, the Congress, and the government of the District of Columbia on the orderly transition to statehood. Members would serve without pay but would be reimbursed for travel expenses. The bill would authorize the commission to hold hearings, hire staff, and collect information from federal agencies. The commission would terminate within two years of the new state's admission to the Union. Based on the experience of similar commissions, CBO estimates the total cost would be a little more than \$1 million over the 2022–2023 period; that spending would be subject to the availability of appropriated funds.

Finally, CBO expects the federal government would update some references to the new state (for example on websites) immediately

but would make other changes (such as updating printed materials and its flags) over time. We estimate that the cost of those changes would be less than \$500,000 over the next few years and would be subject to the availability of appropriated funds.

H.R. 51 contains several provisions that would transfer federal financial responsibilities to Washington, Douglass Commonwealth, when the new state provides notification that the relevant laws have been enacted and when sufficient funds are available to cover those activities. For fiscal year 2021, the Congress appropriated almost \$750 million to provide the city with public defenders, courts, and education grants, in addition to mandatory pension costs of about \$520 million. CBO has no basis to determine if or when those costs currently borne by the federal government would be covered by the new state.

**Uncertainty:** The biggest area of uncertainty concerns when the new state would take financial responsibility for activities that the federal government currently funds. The discretionary savings could total hundreds of millions of dollars a year, but when that would happen is uncertain and would depend both on actions by the new state to fund those activities and on reductions in appropriated spending by the Congress.

**Pay-As-You-Go considerations:** The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in Table 2.

TABLE 2.—CBO'S ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF H.R. 51, THE WASHINGTON D.C. ADMISSION ACT, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON OVERSIGHT AND REFORM ON APRIL 14, 2021

	By fiscal year, millions of dollars—													
	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2021– 2026	2021– 2031	
	Net Increase in the Deficit													
Pay-As-You-Go Effect	0	0	0	0	0	0	0	0	0	0	0	2	3	

**Increase in long-term deficits:** CBO estimates that enacting H.R. 51 would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2031.

**Mandates:** CBO has not reviewed section 221 of H.R. 51 for intergovernmental or private-sector mandates. Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the application of that act any legislative provision that enforces constitutional rights of individuals. CBO has determined that section 221 falls within that exclusion because it would enforce constitutional rights related to voting.

The remaining provisions of H.R. 51 would not impose intergovernmental or private-sector mandates as defined in UMRA. The bill would establish the state of Washington, Douglass Commonwealth, and require it to, among other things, adopt a constitution and organize elections for federal office. CBO does not consider those requirements to be mandates under UMRA because the state and the new duties would be established simultaneously. Therefore, there

is no existing entity that would be obligated to comply with the new requirements.

Estimate prepared by: Federal Costs: Madeleine Fox and Matthew Pickford; Mandates: Andrew Laughlin.

Estimate reviewed by: Susan Willie, Chief, Natural and Physical Resources Cost Estimates Unit; Kathleen FitzGerald, Chief, Public and Private Mandates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis; Theresa Gullo, Director of Budget Analysis.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

#### ACT OF JUNE 18, 1929

AN ACT To provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress.

\* \* \* \* \*

SEC. 22. (a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seven-teenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of [the then existing number of Representatives] *436 Representatives* by the method known as the method of equal proportions, no State to receive less than one Member.

(b) Each State shall be entitled, in the Eighty-third Congress and in each Congress thereafter until the taking effect of a reapportionment under this section or subsequent statute, to the number of Representatives shown in the statement required by subsection (a) of this section no State to receive less than one Member. It shall be the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of such statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the Sergeant at Arms of the House of Representatives.

(c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representatives or Representatives shall be elected from the State at large and the other Representatives from the districts then

prescribed by the law of such State; (3) if there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

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## TITLE 32, UNITED STATES CODE

\* \* \* \* \*

### CHAPTER 1—ORGANIZATION

\* \* \* \* \*

#### § 101. Definitions

In addition to the definitions in sections 1–5 of title 1, the following definitions apply in this title:

(1) For purposes of other laws relating to the militia, the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States, the term “Territory” includes Guam and the Virgin Islands.

(2) “Armed forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(3) “National Guard” means the Army National Guard and the Air National Guard.

(4) “Army National Guard” means that part of the organized militia of the several States and Territories, Puerto Rico, and the [District of Columbia] *Capital*, active and inactive, that—

(A) is a land force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(5) “Army National Guard of the United States” means the reserve component of the Army all of whose members are members of the Army National Guard.

(6) “Air National Guard” means that part of the organized militia of the several States and Territories, Puerto Rico, and the [District of Columbia] *Capital*, active and inactive, that—

(A) is an air force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(7) “Air National Guard of the United States” means the reserve component of the Air Force all of whose members are members of the Air National Guard.

(8) “Officer” means commissioned or warrant officer.

(9) “Enlisted member” means a person enlisted in, or inducted, called, or conscripted into, an armed force in an enlisted grade.

(10) “Grade” means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(11) “Rank” means the order of precedence among members of the armed forces.

(12) “Active duty” means full-time duty in the active military service of the United States. It includes such Federal duty as full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. It does not include full-time National Guard duty.

(13) “Supplies” includes material, equipment, and stores of all kinds.

(14) “Shall” is used in an imperative sense.

(15) “May” is used in a permissive sense. The words “no person may \* \* \*” mean that no person is required, authorized, or permitted to do the act prescribed.

(16) “Includes” means “includes but is not limited to”.

(17) “Pay” includes basic pay, special pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

(18) “Spouse” means husband or wife, as the case may be.

(19) “Full-time National Guard duty” means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member’s status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the [District of Columbia] *Capital* under section 316, 502, 503, 504, or 505 of this title for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(20) “*Capital*” means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.

\* \* \* \* \*

### **§ 103. Branches and organizations**

The Army National Guard of each State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands includes such members of the staff corps corresponding to the staff corps of the Army as the Secretary of the Army may authorize.

### **§ 104. Units: location; organization; command**

(a) Each State, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands may fix the location of the units and headquarters of its National Guard.

(b) Except as otherwise specifically provided in this title, the organization of the Army National Guard and the composition of its units shall be the same as those prescribed for the Army, subject, in time of peace, to such general exceptions as the Secretary of the Army may authorize; and the organization of the Air National Guard and the composition of its units shall be the same as those prescribed for the Air Force, subject, in time of peace, to such general exceptions as the Secretary of the Air Force may authorize.

(c) To secure a force the units of which when combined will form complete higher tactical units, the President may designate the units of the National Guard, by branch of the Army or organization of the Air Force, to be maintained in each State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands. However, no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor.

(d) To maintain appropriate organization and to assist in training and instruction, the President may assign the National Guard to divisions, wings, and other tactical units, and may detail commissioned officers of the National Guard or of the Regular Army or the Regular Air Force, as the case may be, to command those units. However, the commanding officer of a unit organized wholly within a State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands may not be displaced under this subsection.

(e) To insure prompt mobilization of the National Guard in time of war or other emergency, the President may, in time of peace, detail a commissioned officer of the Regular Army to perform the duties of chief of staff for each fully organized division of the Army National Guard, and a commissioned officer of the Regular Air Force to perform the duties of the corresponding position for each fully organized wing of the Air National Guard.

(f) Unless the President consents—

(1) an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded; and

(2) the actual strength of such an organization in commissioned officers or enlisted members may not be reduced below the minimum strength prescribed by the President.

\* \* \* \* \*

## **§ 107. Availability of appropriations**

(a) Under such regulations as the Secretary concerned may prescribe, appropriations for the National Guard are available for—

(1) the necessary expenses of members of a regular or reserve component of the Army or the Air Force traveling on duty in connection with the National Guard;

(2) the necessary expenses of members of the Regular Army or the Regular Air Force on duty in the National Guard Bureau or with the Army Staff or the Air Staff, traveling to and from annual conventions of the Enlisted Association of the National Guard of the United States, the National Guard Association of the United States, or the Adjutants General Association;

(3) the transportation of supplies furnished to the National Guard as permanent equipment;

(4) the office rent and necessary office expenses of officers of a regular or reserve component of the Army or the Air Force on duty with the National Guard;

(5) the expenses of the National Guard Bureau, including clerical services;

(6) the promotion of rifle practice, including the acquisition, construction, maintenance, and equipment of shooting galleries and suitable target ranges;

(7) such incidental expenses of authorized encampments, maneuvers, and field instruction as the Secretary considers necessary; and

(8) other expenses of the National Guard authorized by law.

(b) The expenses of enlisted members of the Regular Army or the Regular Air Force on duty with the National Guard shall be paid from appropriations for the Army National Guard or the Air National Guard, as the case may be, but not from the allotment of a State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands. Payable expenses include allowances for subsistence and housing under sections 402 and 403 of title 37 and expenses for medicine and medical attendance.

(c) The pay and allowances for the Chief of the National Guard Bureau and officers of the Army National Guard of the United States or the Air National Guard of the United States called to active duty under section 12402 of title 10 shall be paid from appropriations for the pay of the Army National Guard or Air National Guard.

\* \* \* \* \*

### **§ 109. Maintenance of other troops**

(a) In time of peace, a State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands may maintain no troops other than those of its National Guard and defense forces authorized by subsection (c).

(b) Nothing in this title limits the right of a State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands to use its National Guard or its defense forces authorized by subsection (c) within its borders in time of peace, or prevents it from organizing and maintaining police or constabulary.

(c) In addition to its National Guard, if any, a State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands may, as provided by its laws, organize and maintain defense forces. A defense force established under this section may be used within the jurisdiction concerned, as its chief executive (or commanding general in the case of the [District of Columbia] *Capital*) considers necessary, but it may not be called, ordered, or drafted into the armed forces.

(d) A member of a defense force established under subsection (c) is not, because of that membership, exempt from service in the armed forces, nor is he entitled to pay, allowances, subsistence, transportation, or medical care or treatment, from funds of the United States.



(e) A person may not become a member of a defense force established under subsection (c) if he is a member of a reserve component of the armed forces.

\* \* \* \* \*

## **§ 112. Drug interdiction and counter-drug activities**

(a) **FUNDING ASSISTANCE.**—The Secretary of Defense may provide funds to the Governor of a State who submits to the Secretary a State drug interdiction and counter-drug activities plan satisfying the requirements of subsection (c). Such funds shall be used for the following:

(1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses, as authorized by State law, of personnel of the National Guard of that State used, while not in Federal service, for the purpose of drug interdiction and counter-drug activities.

(2) The operation and maintenance of the equipment and facilities of the National Guard of that State used for the purpose of drug interdiction and counter-drug activities.

(3) The procurement of services and equipment, and the leasing of equipment, for the National Guard of that State used for the purpose of drug interdiction and counter-drug activities. However, the use of such funds for the procurement of equipment may not exceed \$5,000 per item, unless approval for procurement of equipment in excess of that amount is granted in advance by the Secretary of Defense.

(b) **USE OF PERSONNEL PERFORMING FULL-TIME NATIONAL GUARD DUTY.**—(1) Under regulations prescribed by the Secretary of Defense, personnel of the National Guard of a State may, in accordance with the State drug interdiction and counter-drug activities plan referred to in subsection (c), be ordered to perform full-time National Guard duty under section 502(f) of this title for the purpose of carrying out drug interdiction and counter-drug activities.

(2)(A) A member of the National Guard serving on full-time National Guard duty under orders authorized under paragraph (1) shall participate in the training required under section 502(a) of this title in addition to the duty performed for the purpose authorized under that paragraph. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing duty for the purpose of carrying out drug interdiction and counter-drug activities. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.

(B) Appropriations available for the Department of Defense for drug interdiction and counter-drug activities may be used for paying costs associated with a member's participation in training described in subparagraph (A). The appropriation shall be reimbursed in full, out of appropriations available for paying those costs, for the amounts paid. Appropriations available for paying those costs shall be available for making the reimbursements.

(C) To ensure that the use of units and personnel of the National Guard of a State pursuant to a State drug interdiction and counter-drug activities plan does not degrade the training and readiness of such units and personnel, the following requirements shall apply in

determining the drug interdiction and counter-drug activities that units and personnel of the National Guard of a State may perform:

(i) The performance of the activities may not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

(ii) National Guard personnel will not degrade their military skills as a result of performing the activities.

(iii) The performance of the activities will not result in a significant increase in the cost of training.

(iv) In the case of drug interdiction and counter-drug activities performed by a unit organized to serve as a unit, the activities will support valid unit training requirements.

(3) A unit or member of the National Guard of a State may be used, pursuant to a State drug interdiction and counter-drug activities plan approved by the Secretary of Defense under this section, to provide services or other assistance (other than air transportation) to an organization eligible to receive services under section 508 of this title if—

(A) the State drug interdiction and counter-drug activities plan specifically recognizes the organization as being eligible to receive the services or assistance;

(B) in the case of services, the performance of the services meets the requirements of paragraphs (1) and (2) of subsection (a) of section 508 of this title; and

(C) the services or assistance is authorized under subsection (b) or (c) of such section or in the State drug interdiction and counter-drug activities plan.

(c) PLAN REQUIREMENTS.—A State drug interdiction and counter-drug activities plan shall—

(1) specify how personnel of the National Guard of that State are to be used in drug interdiction and counter-drug activities;

(2) certify that those operations are to be conducted at a time when the personnel involved are not in Federal service;

(3) certify that participation by National Guard personnel in those operations is service in addition to training required under section 502 of this title;

(4) certify that any engineer-type activities (as defined by the Secretary of Defense) under the plan will be performed only by units and members of the National Guard;

(5) include a certification by the Attorney General of the State (or, in the case of a State with no position of Attorney General, a civilian official of the State equivalent to a State attorney general) that the use of the National Guard of the State for the activities proposed under the plan is authorized by, and is consistent with, State law; and

(6) certify that the Governor of the State or a civilian law enforcement official of the State designated by the Governor has determined that any activities included in the plan that are carried out in conjunction with Federal law enforcement agencies serve a State law enforcement purpose.

(d) EXAMINATION OF PLAN.—(1) Before funds are provided to the Governor of a State under this section and before members of the National Guard of that State are ordered to full-time National Guard duty as authorized in subsection (b), the Secretary of De-

fense shall examine the adequacy of the plan submitted by the Governor under subsection (c). The plan as approved by the Secretary may provide for the use of personnel and equipment of the National Guard of that State to assist the Immigration and Naturalization Service in the transportation of aliens who have violated a Federal or State law prohibiting or regulating the possession, use, or distribution of a controlled substance.

(2) Except as provided in paragraph (3), the Secretary shall carry out paragraph (1) in consultation with the Director of National Drug Control Policy.

(3) Paragraph (2) shall not apply if—

(A) the Governor of a State submits a plan under subsection (c) that is substantially the same as a plan submitted for that State for a previous fiscal year; and

(B) pursuant to the plan submitted for a previous fiscal year, funds were provided to the State in accordance with subsection (a) or personnel of the National Guard of the State were ordered to perform full-time National Guard duty in accordance with subsection (b).

(e) END STRENGTH LIMITATION.—(1) Except as provided in paragraph (2), at the end of a fiscal year there may not be more than 4000 members of the National Guard—

(A) on full-time National Guard duty under section 502(f) of this title to perform drug interdiction or counter-drug activities pursuant to an order to duty; or

(B) on duty under State authority to perform drug interdiction or counter-drug activities pursuant to an order to duty with State pay and allowances being reimbursed with funds provided under subsection (a)(1).

(2) The Secretary of Defense may increase the end strength authorized under paragraph (1) by not more than 20 percent for any fiscal year if the Secretary determines that such an increase is necessary in the national security interests of the United States.

(f) ANNUAL REPORT.—The Secretary of Defense shall submit to Congress an annual report regarding assistance provided and activities carried out under this section during the preceding fiscal year. The report shall include the following:

(1) The number of members of the National Guard excluded under subsection (e) from the computation of end strengths.

(2) A description of the drug interdiction and counter-drug activities conducted under State drug interdiction and counter-drug activities plans referred to in subsection (c) with funds provided under this section.

(3) An accounting of the amount of funds provided to each State.

(4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform activities under the State drug interdiction and counter-drug activities plans.

(g) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform law enforcement functions authorized to be performed by the National Guard by the laws of the State concerned.

(h) DEFINITIONS.—For purposes of this section:

(1) The term “drug interdiction and counter-drug activities”, with respect to the National Guard of a State, means the use of National Guard personnel in drug interdiction and counter-drug law enforcement activities, including drug demand reduction activities, authorized by the law of the State and requested by the Governor of the State.

(2) The term “Governor of a State” means, in the case of the [District of Columbia,] *Capital*, the Commanding General of the [National Guard of the District of Columbia] *Capital National Guard*.

(3) The term “State” means each of the several States, the [District of Columbia,] *Capital*, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

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### CHAPTER 3—PERSONNEL

\* \* \* \* \*

#### § 304. Enlistment oath

Each person enlisting in the National Guard shall sign an enlistment contract and subscribe to the following oath:

“I do hereby acknowledge to have voluntarily enlisted this \_\_\_\_\_ day of \_\_\_\_\_, 19—, in the \_\_\_\_\_ National Guard of the State of \_\_\_\_\_ for a period of \_\_\_\_\_ year(s) under the conditions prescribed by law, unless sooner discharged by proper authority.

“I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and of the State of \_\_\_\_\_ against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of \_\_\_\_\_ and the orders of the officers appointed over me, according to law and regulations. So help me God.”

The oath may be taken before any officer of the National Guard of the State or Territory, or of Puerto Rico, or the [District of Columbia] *Capital*, as the case may be, or before any other person authorized by the law of the jurisdiction concerned to administer oaths of enlistment in the National Guard.

\* \* \* \* \*

#### § 314. Adjutants general

(a) There shall be an adjutant general in each State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands. He shall perform the duties prescribed by the laws of that jurisdiction.

(b) The President shall appoint the adjutant general of the [District of Columbia] *Capital* and prescribe his grade and qualifications.

(c) The President may detail as adjutant general of the [District of Columbia] *Capital* any retired commissioned officer of the Regular Army or the Regular Air Force recommended for that detail by the commanding general of the [District of Columbia] *Capital*

National Guard. An officer detailed under this subsection is entitled to the basic pay and allowances of his grade.

(d) The adjutant general of each State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands, and officers of the National Guard, shall make such returns and reports as the Secretary of the Army or the Secretary of the Air Force may prescribe, and shall make those returns and reports to the Secretary concerned or to any officer designated by him.

**§ 315. Detail of regular members of Army and Air Force to duty with National Guard**

(a) The Secretary of the Army shall detail commissioned officers of the Regular Army to duty with the Army National Guard of each State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands. The Secretary of the Air Force shall detail commissioned officers of the Regular Air Force to duty with the Air National Guard of each State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands. With the permission of the President, an officer so detailed may accept a commission in the Army National Guard or the Air National Guard, as the case may be, terminable in the President's discretion, without prejudicing his rank and without vacating his regular appointment.

(b) The Secretary of the Army may detail enlisted members of the Regular Army for duty with the Army National Guard of each State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands. The Secretary of the Air Force may detail enlisted members of the Regular Air Force for duty with the Air National Guard of each State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands.

\* \* \* \* \*

**§ 324. Discharge of officers; termination of appointment**

(a) An officer of the National Guard shall be discharged when—

- (1) he becomes 64 years of age; or
- (2) his Federal recognition is withdrawn.

The official who would be authorized to appoint him shall give him a discharge certificate.

(b) Subject to subsection (a), the appointment of an officer of the National Guard may be terminated or vacated as provided by the laws of the State of whose National Guard he is a member, or by the laws of the Commonwealth of Puerto Rico, or the [District of Columbia] *Capital*, Guam, or the Virgin Islands, of whose National Guard he is a member.

(c) Notwithstanding subsection (a)(1), an officer of the National Guard serving as a chaplain, medical officer, dental officer, nurse, veterinarian, Medical Service Corps officer, or biomedical sciences officer may be retained, with the officer's consent, until the date on which the officer becomes 68 years of age.

**§ 325. Relief from National Guard duty when ordered to active duty**

(a) RELIEF REQUIRED.—(1) Except as provided in paragraph (2), each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands or the [District of Columbia] *Capital*, as the case may be, from the effective date of his order to active duty until he is relieved from that duty.

(2) An officer of the Army National Guard of the United States or the Air National Guard of the United States is not relieved from duty in the National Guard of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands or the [District of Columbia] *Capital*, under paragraph (1) while serving on active duty if—

(A) the President authorizes such service in both duty statuses; and

(B) the Governor of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands, or the commanding general of the [District of Columbia] *Capital* National Guard, as the case may be, consents to such service in both duty statuses.

(b) ADVANCE AUTHORIZATION AND CONSENT.—The President and the Governor of a State or Territory, or of the Commonwealth of Puerto Rico, or the commanding general of the [District of Columbia] *Capital* National Guard, as applicable, may give the authorization or consent required by subsection (a)(2) with respect to an officer in advance for the purpose of establishing the succession of command of a unit.

(c) RETURN TO STATE STATUS.—So far as practicable, members, organizations, and units of the Army National Guard of the United States or the Air National Guard of the United States ordered to active duty shall be returned to their National Guard status upon relief from that duty.

**§ 326. Courts-martial of National Guard not in Federal service: composition, jurisdiction, and procedures**

In the National Guard not in Federal service, there are general, special, and summary courts-martial constituted like similar courts of the Army and the Air Force. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures, provided for those courts. Punishments shall be as provided by the laws of the respective States, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands.

**§ 327. Courts-martial of National Guard not in Federal service: convening authority**

(a) In the National Guard not in Federal service, general, special, and summary courts-martial may be convened as provided by the laws of the respective States, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands.

(b) In the National Guard not in Federal service—

(1) general courts-martial may be convened by the President;

(2) special courts-martial may be convened—

(A) by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where members of the National Guard are on duty; or

(B) by the commanding officer of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command; and

(3) summary courts-martial may be convened—

(A) by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where members of the National Guard are on duty; or

(B) by the commanding officer of a division, brigade, regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment.

(c) The convening authorities provided under subsection (b) are in addition to the convening authorities provided under subsection (a).

#### **§ 328. Active Guard and Reserve duty: Governor's authority**

(a) **AUTHORITY.**—The Governor of a State or the Commonwealth of Puerto Rico, Guam, or the Virgin Islands, or the commanding general of the [District of Columbia] *Capital* National Guard, as the case may be, with the consent of the Secretary concerned, may order a member of the National Guard to perform Active Guard and Reserve duty, as defined by section 101(d)(6) of title 10, pursuant to section 502(f) of this title.

(b) **DUTIES.**—A member of the National Guard performing duty under subsection (a) may perform the additional duties specified in section 502(f)(2) of this title to the extent that the performance of those duties does not interfere with the performance of the member's primary Active Guard and Reserve duties of organizing, administering, recruiting, instructing, and training the reserve components.

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### **CHAPTER 5—TRAINING**

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#### **§ 501. Training generally**

(a) The discipline, including training, of the Army National Guard shall conform to that of the Army. The discipline, including training, of the Air National Guard shall conform to that of the Air Force.

(b) The training of the National Guard shall be conducted by the several States, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands in conformity with this title.

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#### **§ 503. Participation in field exercises**

(a)(1) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force, as the case may be, may provide for the participation of the National Guard in encampments, maneuvers, outdoor target practice, or

other exercises for field or coast-defense instruction, independently of or in conjunction with the Army or the Air Force, or both.

(2) Paragraph (1) includes authority to provide for participation of the National Guard in conjunction with the Army or the Air Force, or both, in joint exercises for instruction to prepare the National Guard for response to civil emergencies and disasters.

(b) Amounts necessary for the pay, subsistence, transportation, and other proper expenses of any part of the National Guard of a State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands participating in an exercise under subsection (a) may be set aside from funds allocated to it from appropriations for field or coast-defense instruction.

(c) Members of the National Guard participating in an exercise under subsection (a) may, after being mustered, be paid for the period beginning with the date of leaving home and ending with the date of return, as determined in advance. If otherwise correct, such a payment passes to the credit of the disbursing officer.

#### **§ 504. National Guard schools and small arms competitions**

(a) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, members of the National Guard may—

- (1) attend schools conducted by the Army or the Air Force, as appropriate;
- (2) conduct or attend schools conducted by the National Guard; or
- (3) participate in small arms competitions.

(b) Activities authorized under subsection (a) for members of the National Guard of a State or territory, Puerto Rico, or the [District of Columbia] *Capital* may be held inside or outside its boundaries.

#### **§ 505. Army and Air Force schools and field exercises**

Under such regulations as the President may prescribe and upon the recommendation of the governor of any State, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands or of the commanding general of the [National Guard of the District of Columbia] *Capital National Guard*, the Secretary of the Army may authorize a limited number of members of its Army National Guard to—

- (1) attend any service school except the United States Military Academy, and to pursue a regular course of study at the school; or
- (2) be attached to an organization of the branch of the Army corresponding to the organization of the Army National Guard to which the member belongs, for routine practical instruction at or near an Army post during field training or other outdoor exercise.

Similarly, the Secretary of the Air Force may authorize a limited number of members of the Air National Guard to—

- (1) attend any service school except the United States Air Force Academy, and to pursue a regular course of study at the school; or
- (2) be attached to an organization of the Air Force corresponding to the organization of the Air National Guard to



which the member belongs, for routine practical instruction at an air base during field training or other outdoor exercise.

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**§ 509. National Guard Youth Challenge Program of opportunities for civilian youth**

(a) PROGRAM AUTHORITY AND PURPOSE.—The Secretary of Defense may use the National Guard to conduct a civilian youth opportunities program, to be known as the “National Guard Youth Challenge Program”, which shall consist of at least a 22-week residential program and a 12-month post-residential mentoring period. The Program shall seek to improve life skills and employment potential of participants by providing military-based training and supervised work experience, together with the core program components of assisting participants to receive a high school diploma or its equivalent, leadership development, promoting fellowship and community service, developing life coping skills and job skills, and improving physical fitness and health and hygiene.

(b) CONDUCT OF THE PROGRAM.—(1) The Secretary of Defense shall provide for the conduct of the Program in such States as the Secretary considers to be appropriate.

(2) The Secretary shall carry out the Program using—

(A) funds appropriated directly to the Secretary of Defense for the Program, except that the amount of funds appropriated directly to the Secretary and expended for the Program in fiscal year 2001 or 2002 may not exceed \$62,500,000; and

(B) nondefense funds made available or transferred to the Secretary of Defense by other Federal agencies to support the Program.

(3) Federal funds made available or transferred to the Secretary of Defense under paragraph (2)(B) by other Federal agencies to support the Program may be expended for the Program in excess of the fiscal year limitation specified in paragraph (2)(A).

(4) The Secretary of Defense shall remain the executive agent to carry out the Program regardless of the source of funds for the Program or any transfer of jurisdiction over the Program within the executive branch. As provided in subsection (a), the Secretary may use the National Guard to conduct the Program.

(c) PROGRAM AGREEMENTS.—(1) To carry out the Program in a State, the Secretary of Defense shall enter into an agreement with the Governor of the State or, in the case of the [District of Columbia] *Capital*, with the commanding general of the [District of Columbia] *Capital* National Guard, under which the Governor or the commanding general will establish, organize, and administer the Program in the State.

(2) The agreement may provide for the Secretary to provide funds to the State for civilian personnel costs attributable to the use of civilian employees of the National Guard in the conduct of the Program.

(d) MATCHING FUNDS REQUIRED.—(1) The amount of assistance provided by the Secretary of Defense to a State program of the Program for a fiscal year under this section may not exceed 75 percent of the costs of operating the State program during that fiscal year.

(2) The limitation in paragraph (1) may not be construed as a limitation on the amount of assistance that may be provided to a

State program of the Program for a fiscal year from sources other than the Department of Defense.

(e) PERSONS ELIGIBLE TO PARTICIPATE IN PROGRAM.—A school dropout from secondary school shall be eligible to participate in the Program. The Secretary of Defense shall prescribe the standards and procedures for selecting participants from among school dropouts.

(f) AUTHORIZED BENEFITS FOR PARTICIPANTS.—(1) To the extent provided in an agreement entered into in accordance with subsection (c) and subject to the approval of the Secretary of Defense, a person selected for training in the Program may receive the following benefits in connection with that training:

(A) Allowances for travel expenses, personal expenses, and other expenses.

(B) Quarters.

(C) Subsistence.

(D) Transportation.

(E) Equipment.

(F) Clothing.

(G) Recreational services and supplies.

(H) Other services.

(I) Subject to paragraph (2), a temporary stipend upon the successful completion of the training, as characterized in accordance with procedures provided in the agreement.

(2) In the case of a person selected for training in the Program who afterwards becomes a member of the Civilian Community Corps under subtitle E of title I of the National and Community Service Act of 1990 (42 U.S.C. 12611 et seq.), the person may not receive a temporary stipend under paragraph (1)(I) while the person is a member of that Corps. The person may receive the temporary stipend after completing service in the Corps unless the person elects to receive benefits provided under subsection (f) or (g) of section 158 of such Act (42 U.S.C. 12618).

(g) PROGRAM PERSONNEL.—(1) Personnel of the National Guard of a State in which the Program is conducted may serve on full-time National Guard duty for the purpose of providing command, administrative, training, or supporting services for the Program. For the performance of those services, any such personnel may be ordered to duty under section 502(f) of this title for not longer than the period of the Program.

(2) A Governor participating in the Program and the commanding general of the [District of Columbia] *Capital* National Guard (if the [District of Columbia] *Capital* National Guard is participating in the Program) may procure by contract the temporary full time services of such civilian personnel as may be necessary to augment National Guard personnel in carrying out the Program in that State.

(3) Civilian employees of the National Guard performing services for the Program and contractor personnel performing such services may be required, when appropriate to achieve the purposes of the Program, to be members of the National Guard and to wear the military uniform.

(h) EQUIPMENT AND FACILITIES.—(1) Equipment and facilities of the National Guard, including military property of the United

States issued to the National Guard, may be used in carrying out the Program.

(2) Equipment and facilities of the Department of Defense may be used by the National Guard for purposes of carrying out the Program.

(3) Activities under the Program shall be considered noncombat activities of the National Guard for purposes of section 710 of this title.

(i) STATUS OF PARTICIPANTS.—(1) A person receiving training under the Program shall be considered an employee of the United States for the purposes of the following provisions of law:

(A) Subchapter I of chapter 81 of title 5 (relating to compensation of Federal employees for work injuries).

(B) Section 1346(b) and chapter 171 of title 28 and any other provision of law relating to the liability of the United States for tortious conduct of employees of the United States.

(2) In the application of the provisions of law referred to in paragraph (1)(A) to a person referred to in paragraph (1)—

(A) the person shall not be considered to be in the performance of duty while the person is not at the assigned location of training or other activity or duty authorized in accordance with a Program agreement referred to in subsection (c), except when the person is traveling to or from that location or is on pass from that training or other activity or duty;

(B) the person's monthly rate of pay shall be deemed to be the minimum rate of pay provided for grade GS-2 of the General Schedule under section 5332 of title 5; and

(C) the entitlement of a person to receive compensation for a disability shall begin on the day following the date on which the person's participation in the Program is terminated.

(3) A person referred to in paragraph (1) may not be considered an employee of the United States for any purpose other than a purpose set forth in that paragraph.

(j) SUPPLEMENTAL RESOURCES.—To carry out the Program in a State, the Governor of the State or, in the case of the [District of Columbia] *Capital*, the commanding general of the [District of Columbia] *Capital* National Guard may supplement funds made available under the Program out of other resources (including gifts) available to the Governor or the commanding general. The Governor or the commanding general may accept, use, and dispose of gifts or donations of money, other property, or services for the Program.

(k) REPORT.—Within 90 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report on the design, conduct, and effectiveness of the Program during the preceding fiscal year. In preparing the report, the Secretary shall coordinate with the Governor of each State in which the Program is carried out and, if the Program is carried out in the [District of Columbia] *Capital*, with the commanding general of the [District of Columbia] *Capital* National Guard.

(l) DEFINITIONS.—In this section:

(1) The term "State" includes the Commonwealth of Puerto Rico, the territories, and the [District of Columbia] *Capital*.

(2) The term "school dropout" means an individual who is no longer attending any school and who has not received a sec-

ondary school diploma or a certificate from a program of equivalency for such a diploma.

(3) The term “Program” means the National Guard Youth Challenge Program carried out pursuant to this section.

(m) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out the Program. The regulations shall address at a minimum the following:

(1) The terms to be included in the Program agreements required by subsection (c).

(2) The qualifications for persons to participate in the Program, as required by subsection (e).

(3) The benefits authorized for Program participants, as required by subsection (f).

(4) The status of National Guard personnel assigned to duty in support of the Program under subsection (g).

(5) The conditions for the use of National Guard facilities and equipment to carry out the Program, as required by subsection (h).

(6) The status of Program participants, as described in subsection (i).

(7) The procedures to be used by the Secretary when communicating with States about the Program.

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## CHAPTER 7—SERVICE, SUPPLY, AND PROCUREMENT

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### § 702. Issue of supplies

(a) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force may buy or manufacture and, upon requisition of the governor of any State, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands or the commanding general of the [National Guard of the District of Columbia] *Capital National Guard*, issue to its Army National Guard and Air National Guard, respectively, the supplies necessary to uniform, arm, and equip that Army National Guard or Air National Guard for field duty.

(b) Whenever the Secretary concerned is satisfied that the Army National Guard or the Air National Guard, as the case may be, of any State or Territory, Puerto Rico, or the [District of Columbia] *Capital* is properly organized, armed, and equipped for field duty, funds allotted to that jurisdiction for its Army National Guard or Air National Guard may be used to buy any article issued by the Army or the Air Force, as the case may be.

(c) Under such regulations as the President may prescribe, the issue of new types of equipment, small arms, or field guns to the National Guard of any State or Territory, Puerto Rico, or the [District of Columbia] *Capital* shall be without charge against appropriations for the National Guard.

(d) No property may be issued to the National Guard of a State or Territory, Puerto Rico, or the [District of Columbia] *Capital*, unless that jurisdiction makes provision, satisfactory to the Secretary concerned, for its protection and care.

**§ 703. Purchases of supplies by States from Army or Air Force**

(a) Subject to the approval of the Secretary of the Army, any State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands may buy from the Department of the Army, for its National Guard or the officers thereof, supplies and military publications furnished to the Army, in addition to other supplies issued to its Army National Guard. On the same basis, it may buy similar property from the Department of the Air Force. A purchase under this subsection shall be for cash, at cost plus transportation.

(b) In time of actual or threatened war, the United States may requisition for military use any property bought under subsection (a). Credit for the return in kind of property so requisitioned shall be given to the State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands from which it is received.

(c) Proceeds of sales by the Department of the Army and the Department of the Air Force under this section shall be credited to the appropriations from which the property was purchased, shall not be covered into the Treasury, and may be used to replace property sold under this section.

**§ 704. Accountability: relief from upon order to active duty**

Upon ordering any part of the Army National Guard of the United States or the Air National Guard of the United States to active duty, the President may, upon such terms as he may prescribe, relieve the State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands, whichever is concerned, of accountability for property of the United States previously issued to it for the use of that part.

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**§ 708. Property and fiscal officers**

(a) The Governor of each State, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, and the commanding general of the [National Guard of the District of Columbia] *Capital National Guard*, shall, in consultation with the Chief of the National Guard Bureau, appoint, designate or detail, subject to the approval of the Secretary of the Army and the Secretary of the Air Force, a qualified commissioned officer of the National Guard of that jurisdiction who is also a commissioned officer of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be, to be the property and fiscal officer of that jurisdiction. If the officer is not on active duty, the President may order him to active duty, with his consent, to serve as a property and fiscal officer.

(b) Each property and fiscal officer shall—

(1) receipt and account for all funds and property of the United States in the possession of the National Guard for which he is property and fiscal officer; and

(2) make returns and reports concerning those funds and that property, as required by the Secretary concerned.

(c) When he ceases to hold that assignment, a property and fiscal officer resumes his status as an officer of the National Guard.

(d) The Secretaries shall prescribe a maximum grade, commensurate with the functions and responsibilities of the office, but not above colonel, for the property and fiscal officer of the United States for the National Guard of each State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands.

(e) The Secretary of the Army and the Secretary of the Air Force shall prescribe joint regulations necessary to carry out subsections (a)–(d).

(f) A property and fiscal officer may intrust money to an officer of the National Guard to make disbursements as his agent. Both the officer to whom money is intrusted, and the property and disbursing officer intrusting the money to him, are pecuniarily responsible for that money to the United States. The agent officer is subject, for misconduct as an agent, to the liabilities and penalties prescribed by law in like cases for the property and fiscal officer for whom he is acting.

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#### **§ 710. Accountability for property issued to the National Guard**

(a) All military property issued by the United States to the National Guard remains the property of the United States.

(b) The Secretary of the Army shall prescribe regulations for accounting for property issued by the United States to the Army National Guard and for the fixing of responsibility for that property. The Secretary of the Air Force shall prescribe regulations for accounting for property issued by the United States to the Air National Guard and for the fixing of responsibility for that property. So far as practicable, regulations prescribed under this section shall be uniform among the components of each service.

(c) Under regulations prescribed by the Secretary concerned under subsection (b), liability for the value of property issued by the United States to the National Guard that is lost, damaged, or destroyed may be charged (1) to a member of the Army National Guard or the Air National Guard when in similar circumstances a member of the Army or Air Force serving on active duty would be so charged, or (2) to a State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands when the property is lost, damaged, or destroyed incident to duty directed pursuant to the laws of, and in support of the authorities of, such jurisdiction. Liability charged to a member of the Army National Guard or the Air National Guard shall be paid out of pay due to the member for duties performed as a member of the National Guard, unless the Secretary concerned shall for good cause remit or cancel that liability. Liability charged to a State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands shall be paid from its funds or from any other non-Federal funds.

(d) If property surveyed under this section is found to be unserviceable or unsuitable, the Secretary concerned or his designated representative shall direct its disposition by sale or otherwise. The proceeds of the following under this subsection shall be deposited

in the Treasury under section 4(b)(22) of the Permanent Appropriation Repeal Act, 1934:

(1) A sale.

(2) A stoppage against a member of the National Guard.

(3) A collection from a person, or from a State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands, to reimburse the United States for the loss or destruction of, or damage to, the property.

(e) If a State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands, whichever is concerned, neglects or refuses to pay for the loss or destruction of, or damage to, property charged against it under subsection (c), the Secretary concerned may bar it from receiving any part of appropriations for the Army National Guard or the Air National Guard, as the case may be, until the payment is made.

(f)(1) Instead of the procedure prescribed by subsections (b), (c), and (d), property issued to the National Guard that becomes unserviceable through fair wear and tear in service may, under regulations to be prescribed by the Secretary concerned, be sold or otherwise disposed of after an inspection, and a finding of unserviceability because of that wear and tear, by a commissioned officer designated by the Secretary. The State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands, whichever is concerned, is relieved of accountability for that property.

(2) In designating an officer to conduct inspections and make findings for purposes of paragraph (1), the Secretary concerned shall designate—

(A) in the case of the Army National Guard, a commissioned officer of the Regular Army or a commissioned officer of the Army National Guard who is also a commissioned officer of the Army National Guard of the United States; and

(B) in the case of the Air National Guard, a commissioned officer of the Regular Air Force or a commissioned officer of the Air National Guard who is also a commissioned officer of the Air National Guard of the United States.

#### **§ 711. Disposition of obsolete or condemned property**

Each State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands shall, upon receiving new property issued to its National Guard to replace obsolete or condemned issues of property, return the replaced property to the Department of the Army or the Department of the Air Force, as the case may be, or otherwise dispose of it, as the Secretary concerned directs. No money credit may be allowed for property disposed of under this section.

#### **§ 712. Disposition of proceeds of condemned stores issued to National Guard**

The following shall be covered into the Treasury:

(1) The proceeds from sales of condemned stores issued to the National Guard of a State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands, and not charged against its allotment.

(2) The net proceeds from collections made from any person to reimburse the United States for the loss or destruction of, or damage to, property described in clause (1).

(3) Stoppage against members of the National Guard for the loss or destruction of, or damage to, property described in clause (1).

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**§ 715. Property loss; personal injury or death: activities under certain sections of this title**

(a) Under such regulations as the Secretary of the Army or Secretary of the Air Force may prescribe, he or, subject to appeal to him, the Judge Advocate General of the armed force under his jurisdiction, if designated by him, may settle and pay in an amount not more than \$100,000 a claim against the United States for—

(1) damage to, or loss of, real property, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property, including property bailed to the United States or the National Guard and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the National Guard; or

(3) personal injury or death; either caused by a member of the Army National Guard or the Air National Guard, as the case may be, while engaged in training or duty under section 316, 502, 503, 504, or 505 of this title or any other provision of law for which he is entitled to pay under section 206 of title 37, or for which he has waived that pay, and acting within the scope of his employment; or otherwise incident to noncombat activities of the Army National Guard or the Air National Guard, as the case may be, under one of those sections.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of title 10 or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or a person employed under section 709 of this title, whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee, or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and end of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.



(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States or of any State or the [District of Columbia] *Capital* or Puerto Rico.

(d) If the Secretary concerned considers that a claim in excess of \$100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant \$100,000 and report any meritorious amount in excess of \$100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed \$25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(g) Notwithstanding any other provision of law, the settlement of a claim under this section is final and conclusive.

(h) In this section, “settle” means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or disallowance.

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## CHAPTER 9—HOMELAND DEFENSE ACTIVITIES

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### § 901. Definitions

In this chapter:

(1) The term “homeland defense activity” means an activity undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States.

(2) The term “State” means each of the several States, the [District of Columbia] *Capital*, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(3) *The term “Governor” means, with respect to the Capital, the commanding general of the Capital National Guard.*

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## TITLE 10, UNITED STATES CODE

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## SUBTITLE A—GENERAL MILITARY LAW

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## PART I—ORGANIZATION AND GENERAL MILITARY POWERS

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### CHAPTER 1—DEFINITIONS

#### § 101. Definitions

- (a) IN GENERAL.—The following definitions apply in this title:
- (1) The term “United States”, in a geographic sense, means the States and the District of Columbia.
  - (3) The term “possessions” includes the Virgin Islands, Guam, American Samoa, and the Guano Islands, so long as they remain possessions, but does not include any Commonwealth.
  - (4) The term “armed forces” means the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.
  - (5) The term “uniformed services” means—
    - (A) the armed forces;
    - (B) the commissioned corps of the National Oceanic and Atmospheric Administration; and
    - (C) the commissioned corps of the Public Health Service.
  - (6) The term “department”, when used with respect to a military department, means the executive part of the department and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of the department. When used with respect to the Department of Defense, such term means the executive part of the department, including the executive parts of the military departments, and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Secretary of Defense, including those of the military departments.
  - (7) The term “executive part of the department” means the executive part of the Department of Defense, Department of the Army, Department of the Navy, or Department of the Air Force, as the case may be, at the seat of government.
  - (8) The term “military departments” means the Department of the Army, the Department of the Navy, and the Department of the Air Force.
  - (9) The term “Secretary concerned” means—
    - (A) the Secretary of the Army, with respect to matters concerning the Army;
    - (B) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Department of the Navy;
    - (C) the Secretary of the Air Force, with respect to matters concerning the Air Force and the Space Force; and
    - (D) the Secretary of Homeland Security, with respect to matters concerning the Coast Guard when it is not operating as a service in the Department of the Navy.
  - (10) The term “service acquisition executive” means the civilian official within a military department who is designated as the service acquisition executive for purposes of regulations

and procedures providing for a service acquisition executive for that military department.

(11) The term “Defense Agency” means an organizational entity of the Department of Defense—

(A) that is established by the Secretary of Defense under section 191 of this title (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) to perform a supply or service activity common to more than one military department (other than such an entity that is designated by the Secretary as a Department of Defense Field Activity); or

(B) that is designated by the Secretary of Defense as a Defense Agency.

(12) The term “Department of Defense Field Activity” means an organizational entity of the Department of Defense—

(A) that is established by the Secretary of Defense under section 191 of this title (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) to perform a supply or service activity common to more than one military department; and

(B) that is designated by the Secretary of Defense as a Department of Defense Field Activity.

(13) The term “contingency operation” means a military operation that—

(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 of this title, chapter 13 of this title, section 712 of title 14, or any other provision of law during a war or during a national emergency declared by the President or Congress.

(14) The term “supplies” includes material, equipment, and stores of all kinds.

(15) The term “pay” includes basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

(16) The term “congressional defense committees” means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(17) The term “base closure law” means the following:

(A) Section 2687 of this title.

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(C) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(18) The term “acquisition workforce” means the persons serving in acquisition positions within the Department of Defense, as designated pursuant to section 1721(a) of this title.

(19) *The term “Capital” means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.*

(b) PERSONNEL GENERALLY.—The following definitions relating to military personnel apply in this title:

(1) The term “officer” means a commissioned or warrant officer.

(2) The term “commissioned officer” includes a commissioned warrant officer.

(3) The term “warrant officer” means a person who holds a commission or warrant in a warrant officer grade.

(4) The term “general officer” means an officer of the Army, Air Force, or Marine Corps serving in or having the grade of general, lieutenant general, major general, or brigadier general.

(5) The term “flag officer” means an officer of the Navy or Coast Guard serving in or having the grade of admiral, vice admiral, rear admiral, or rear admiral (lower half).

(6) The term “enlisted member” means a person in an enlisted grade.

(7) The term “grade” means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(8) The term “rank” means the order of precedence among members of the armed forces.

(9) The term “rating” means the name (such as “boatswain’s mate”) prescribed for members of an armed force in an occupational field. The term “rate” means the name (such as “chief boatswain’s mate”) prescribed for members in the same rating or other category who are in the same grade (such as chief petty officer or seaman apprentice).

(10) The term “original”, with respect to the appointment of a member of the armed forces in a regular or reserve component, refers to that member’s most recent appointment in that component that is neither a promotion nor a demotion.

(11) The term “authorized strength” means the largest number of members authorized to be in an armed force, a component, a branch, a grade, or any other category of the armed forces.

(12) The term “regular”, with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office in a regular component of an armed force.

(13) The term “active-duty list” means a single list for the Army, Navy, Air Force, or Marine Corps (required to be maintained under section 620 of this title) which contains the names of all officers of that armed force, other than officers described in section 641 of this title, who are serving on active duty.

(14) The term “medical officer” means an officer of the Medical Corps of the Army, an officer of the Medical Corps of the Navy, or an officer in the Air Force designated as a medical officer.

(15) The term “dental officer” means an officer of the Dental Corps of the Army, an officer of the Dental Corps of the Navy, or an officer of the Air Force designated as a dental officer.

(16) The term “Active Guard and Reserve” means a member of a reserve component who is on active duty pursuant to section 12301(d) of this title or, if a member of the Army National Guard or Air National Guard, is on full-time National Guard duty pursuant to section 502(f) of title 32, and who is performing Active Guard and Reserve duty.

(c) RESERVE COMPONENTS.—The following definitions relating to the reserve components apply in this title:

(1) The term “National Guard” means the Army National Guard and the Air National Guard.

(2) The term “Army National Guard” means that part of the organized militia of the several States and Territories, Puerto Rico, and the [District of Columbia] *Capital*, active and inactive, that—

(A) is a land force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(3) The term “Army National Guard of the United States” means the reserve component of the Army all of whose members are members of the Army National Guard.

(4) The term “Air National Guard” means that part of the organized militia of the several States and Territories, Puerto Rico, and the [District of Columbia] *Capital*, active and inactive, that—

(A) is an air force;

(B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;

(C) is organized, armed, and equipped wholly or partly at Federal expense; and

(D) is federally recognized.

(5) The term “Air National Guard of the United States” means the reserve component of the Air Force all of whose members are members of the Air National Guard.

(6) The term “reserve”, with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office held as a Reserve of one of the armed forces.

(7) The term “reserve active-status list” means a single list for the Army, Navy, Air Force, or Marine Corps (required to be maintained under section 14002 of this title) that contains the names of all officers of that armed force except warrant officers (including commissioned warrant officers) who are in an active status in a reserve component of the Army, Navy, Air Force, or Marine Corps and are not on an active-duty list.

(d) DUTY STATUS.—The following definitions relating to duty status apply in this title:

(1) The term “active duty” means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as

a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(2) The term “active duty for a period of more than 30 days” means active duty under a call or order that does not specify a period of 30 days or less.

(3) The term “active service” means service on active duty or full-time National Guard duty.

(4) The term “active status” means the status of a member of a reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve.

(5) The term “full-time National Guard duty” means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member’s status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the [District of Columbia] *Capital* under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(6)(A) The term “active Guard and Reserve duty” means active duty performed by a member of a reserve component of the Army, Navy, Air Force, or Marine Corps, or full-time National Guard duty performed by a member of the National Guard pursuant to an order to full-time National Guard duty, for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing, or training the reserve components.

(B) Such term does not include the following:

(i) Duty performed as a member of the Reserve Forces Policy Board provided for under section 10301 of this title.

(ii) Duty performed as a property and fiscal officer under section 708 of title 32.

(iii) Duty performed for the purpose of interdiction and counter-drug activities for which funds have been provided under section 112 of title 32.

(iv) Duty performed as a general or flag officer.

(v) Service as a State director of the Selective Service System under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. 3809(b)(2)).

(7) The term “inactive-duty training” means—

(A) duty prescribed for Reserves by the Secretary concerned under section 206 of title 37 or any other provision of law; and

(B) special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

Such term includes those duties when performed by Reserves in their status as members of the National Guard.

(e) FACILITIES AND OPERATIONS.—The following definitions relating to facilities and operations apply in this title:

(1) RANGE.—The term “range”, when used in a geographic sense, means a designated land or water area that is set aside, managed, and used for range activities of the Department of Defense. Such term includes the following:

(A) Firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, electronic scoring sites, buffer zones with restricted access, and exclusionary areas.

(B) Airspace areas designated for military use in accordance with regulations and procedures prescribed by the Administrator of the Federal Aviation Administration.

(2) RANGE ACTIVITIES.—The term “range activities” means—

(A) research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and

(B) the training of members of the armed forces in the use and handling of military munitions, other ordnance, and weapons systems.

(3) OPERATIONAL RANGE.—The term “operational range” means a range that is under the jurisdiction, custody, or control of the Secretary of a military department and—

(A) that is used for range activities, or

(B) although not currently being used for range activities, that is still considered by the Secretary to be a range and has not been put to a new use that is incompatible with range activities.

(4) MILITARY MUNITIONS.—(A) The term “military munitions” means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard.

(B) Such term includes the following:

(i) Confined gaseous, liquid, and solid propellants.

(ii) Explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and chemical warfare agents.

(iii) Chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, and demolition charges.

(iv) Devices and components of any item specified in clauses (i) through (iii).

(C) Such term does not include the following:

(i) Wholly inert items.

(ii) Improvised explosive devices.

(iii) Nuclear weapons, nuclear devices, and nuclear components, other than nonnuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) have been completed.

(5) UNEXPLODED ORDNANCE.—The term “unexploded ordnance” means military munitions that—

(A) have been primed, fused, armed, or otherwise prepared for action;

(B) have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and

(C) remain unexploded, whether by malfunction, design, or any other cause.

(6) **ENERGY RESILIENCE.**—The term “energy resilience” means the ability to avoid, prepare for, minimize, adapt to, and recover from anticipated and unanticipated energy disruptions in order to ensure energy availability and reliability sufficient to provide for mission assurance and readiness, including mission essential operations related to readiness, and to execute or rapidly reestablish mission essential requirements.

(7) **ENERGY SECURITY.**—The term “energy security” means having assured access to reliable supplies of energy and the ability to protect and deliver sufficient energy to meet mission essential requirements.

(8) **MILITARY INSTALLATION RESILIENCE.**—The term “military installation resilience” means the capability of a military installation to avoid, prepare for, minimize the effect of, adapt to, and recover from extreme weather events, or from anticipated or unanticipated changes in environmental conditions, that do, or have the potential to, adversely affect the military installation or essential transportation, logistical, or other necessary resources outside of the military installation that are necessary in order to maintain, improve, or rapidly reestablish installation mission assurance and mission-essential functions.

(f) **RULES OF CONSTRUCTION.**—In this title—

(1) “shall” is used in an imperative sense;

(2) “may” is used in a permissive sense;

(3) “no person may \* \* \*” means that no person is required, authorized, or permitted to do the act prescribed;

(4) “includes” means “includes but is not limited to”; and

(5) “spouse” means husband or wife, as the case may be.

(g) **REFERENCE TO TITLE 1 DEFINITIONS.**—For other definitions applicable to this title, see sections 1 through 5 of title 1.

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## **PART II—PERSONNEL**

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### **CHAPTER 45—THE UNIFORM**

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#### **§ 771a. Disposition on discharge**

(a) Except as provided in subsections (b) and (c), when an enlisted member of an armed force is discharged, the exterior articles of uniform in his possession that were issued to him, other than those that he may wear from the place of discharge to his home under section 772(d) of this title, shall be retained for military use.



(b) When an enlisted member of an armed force is discharged for bad conduct, undesirability, unsuitability, inaptitude, or otherwise than honorably—

(1) the exterior articles of uniform in his possession shall be retained for military use;

(2) under such regulations as the Secretary concerned prescribes, a suit of civilian clothing and an overcoat when necessary, both to cost not more than \$30, may be issued to him; and

(3) if he would be otherwise without funds to meet his immediate needs, he may be paid an amount, fixed by the Secretary concerned, of not more than \$25.

(c) When an enlisted member of the Army National Guard or the Air National Guard who has been called into Federal service is released from that service, the exterior articles of uniform in his possession shall be accounted for as property issued to the Army National Guard or the Air National Guard, as the case may be, of the State or territory, Puerto Rico, or the [District of Columbia] *Capital* of whose Army National Guard or Air National Guard he is a member, as prescribed in section 708 of title 32.

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## CHAPTER 55—MEDICAL AND DENTAL CARE

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### § 1076f. TRICARE program: extension of coverage for certain members of the National Guard and dependents during certain disaster response duty

(a) EXTENDED COVERAGE.—During a period in which a member of the National Guard is performing disaster response duty, the member may be treated as being on active duty for a period of more than 30 days for purposes of the eligibility of the member and dependents of the member for health care benefits under the TRICARE program if such period immediately follows a period in which the member served on full-time National Guard duty under section 502(f) of title 32, including pursuant to chapter 9 of such title, unless the Governor of the State (or, [with respect to the District of Columbia, the mayor of the District of Columbia] *with respect to the Capital, the commanding general of the Capital National Guard*) determines that such extended eligibility is not in the best interest of the member or the State.

(b) CONTRIBUTION BY STATE.—(1) The Secretary shall charge a State for the costs of providing coverage under the TRICARE program to members of the National Guard of the State and the dependents of the members pursuant to subsection (a). Such charges shall be paid from the funds of the State or from any other non-Federal funds.

(2) Any amounts received by the Secretary under paragraph (1) shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section, including to carry out subsection (a) of this section.

(c) DEFINITIONS.—In this section:

(1) The term “disaster response duty” means duty performed by a member of the National Guard in State status pursuant to an emergency declaration by the Governor of the State (or, [with respect to the District of Columbia, the mayor of the District of Columbia] *with respect to the Capital, the commanding general of the Capital National Guard*) in response to a disaster or in preparation for an imminent disaster.

(2) The term “State” means each of the several States, the [District of Columbia] *Capital*, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

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## PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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### CHAPTER 163—MILITARY CLAIMS

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#### § 2732. Payment of claims: availability of appropriations

Appropriations available to the Department of Defense for operation and maintenance may be used for payment of claims authorized by law to be paid by the Department of Defense (except for civil functions), including—

(1) claims for damages arising under training contracts with carriers; and

(2) repayment of amounts determined by the Secretary concerned to have been erroneously collected—

(A) from military and civilian personnel of the Department of Defense; or

(B) from States or territories or the [District of Columbia] *Capital* (or members of the National Guard units thereof).

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## SUBTITLE B—ARMY

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## PART III—TRAINING

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### CHAPTER 751—TRAINING GENERALLY

#### § 7401. Members of Army: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals

(a) The Secretary of the Army may detail members of the Army as students at such technical, professional, and other civilian educational institutions, or as students, observers, or investigators at such industrial plants, hospitals, and other places, as are best suit-

ed to enable them to acquire knowledge or experience in the specialties in which it is considered necessary that they perfect themselves.

(b) An officer, other than one of the Regular Army on the active-duty list, who is detailed under subsection (a) shall be ordered to additional active duty immediately upon termination of the detail, for a period at least as long as the detail. However, if the detail is for 90 days or less, the officer may be ordered to that additional duty only with his consent and in the discretion of the Secretary.

(c) No Reserve of the Army may be detailed as a student, observer, or investigator, or ordered to active duty under this section, without his consent and, if a member of the Army National Guard of the United States, without the approval of the governor or other appropriate authority of the State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands of whose Army National Guard he is a member.

(d) The Secretary may require, as a condition of a detail under subsection (a), that an enlisted member accept a discharge and be reenlisted in his component for at least three years.

(e) The total length of details of an enlisted member of the Army under subsection (a) during one enlistment may not exceed 50 percent of that enlistment.

(f) At no time may more than 8 percent of the authorized strength in commissioned officers, 8 percent of the authorized strength in warrant officers, or 2 percent of the authorized strength in enlisted members, of the Regular Army, or more than 8 percent of the actual strength in commissioned officers, 8 percent of the actual strength in warrant officers, or 2 percent of the actual strength in enlisted members, of the total of reserve components of the Army, be detailed as students under subsection (a). For the purposes of this subsection, the actual strength of each category of Reserves includes both members on active duty and those not on active duty.

(g) Expenses incident to the detail of members under this section shall be paid from any funds appropriated for the Department of the Army.

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## **SUBTITLE D—AIR FORCE**

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## **PART III—TRAINING**

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### **CHAPTER 951—TRAINING GENERALLY**

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#### **§ 9401. Members of Air Force: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals**

(a) The Secretary of the Air Force may detail members of the Air Force as students at such technical, professional, and other civilian

educational institutions, or as students, observers, or investigators at such industrial plants, hospitals, and other places, as are best suited to enable them to acquire knowledge or experience in the specialties in which it is considered necessary that they perfect themselves.

(b) An officer, other than one of the Regular Air Force on the active-duty list, who is detailed under subsection (a) shall be ordered to additional active duty immediately upon termination of the detail, for a period at least as long as the detail. However, if the detail is for 90 days or less, the officer may be ordered to that additional duty only with his consent and in the discretion of the Secretary.

(c) No Reserve of the Air Force may be detailed as a student, observer, or investigator, or ordered to active duty under this section, without his consent and, if a member of the Air National Guard of the United States, without the approval of the governor or other appropriate authority of the State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, or the Virgin Islands of whose Air National Guard he is a member.

(d) The Secretary may require, as a condition of a detail under subsection (a), that an enlisted member accept a discharge and be reenlisted in his component for at least three years.

(e) The total length of details of an enlisted member of the Air Force under subsection (a) during one enlistment period may not exceed 50 percent of that enlistment.

(f) At no time may more than 8 percent of the authorized strength in commissioned officers, 8 percent of the authorized strength in warrant officers, or 2 percent of the authorized strength in enlisted members, of the Regular Air Force, or more than 8 percent of the actual strength in commissioned officers, 8 percent of the actual strength in warrant officers, or 2 percent of the actual strength in enlisted members, of the total of reserve components of the Air Force, be detailed as students under subsection (a). For the purposes of this subsection, the actual strength of each category of Reserves includes both members on active duty and those not on active duty.

(g) Expenses incident to the detail of members under this section shall be paid from any funds appropriated for the Department of the Air Force.

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## **SUBTITLE E—RESERVE COMPONENTS**

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### **PART I—ORGANIZATION AND ADMINISTRATION**

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#### **CHAPTER 1005—ELEMENTS OF RESERVE COMPONENTS**

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**§ 10148. Ready Reserve: failure to satisfactorily perform prescribed training**

(a) A member of the Ready Reserve covered by section 10147 of this title who fails in any year to perform satisfactorily the training duty prescribed in that section, as determined by the Secretary concerned under regulations prescribed by the Secretary of Defense, may be ordered without his consent to perform additional active duty for training for not more than 45 days. If the failure occurs during the last year of his required membership in the Ready Reserve, his membership is extended until he performs that additional active duty for training, but not for more than six months.

(b) A member of the Army National Guard of the United States or the Air National Guard of the United States who fails in any year to perform satisfactorily the training duty prescribed by or under law for members of the Army National Guard or the Air National Guard, as the case may be, as determined by the Secretary concerned, may, upon the request of the Governor of the State (or, in the case of the [District of Columbia,] *Capital*, the commanding general of the [District of Columbia National Guard] *Capital National Guard*) be ordered, without his consent, to perform additional active duty for training for not more than 45 days. A member ordered to active duty under this subsection shall be ordered to duty as a Reserve of the Army or as a Reserve of the Air Force, as the case may be.

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**CHAPTER 1011—NATIONAL GUARD BUREAU**

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**§ 10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade; succession**

(a) APPOINTMENT.—There is a Chief of the National Guard Bureau, who is responsible for the organization and operations of the National Guard Bureau. The Chief of the National Guard Bureau is appointed by the President, by and with the advice and consent of the Senate. Such appointment shall be made from officers of the Army National Guard of the United States or the Air National Guard of the United States who—

(1) are recommended for such appointment by their respective Governors or, in the case of the [District of Columbia,] *Capital*, the commanding general of the [District of Columbia National Guard] *Capital National Guard*;

(2) are recommended for such appointment by the Secretary of the Army or the Secretary of the Air Force;

(3) have had at least 10 years of federally recognized commissioned service in an active status in the National Guard;

(4) are in a grade above the grade of brigadier general;

(5) are determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience;

(6) are determined by the Secretary of Defense to have successfully completed such other assignments and experiences so

as to possess a detailed understanding of the status and capabilities of National Guard forces and the missions of the National Guard Bureau as set forth in section 10503 of this title;

(7) have a level of operational experience in a position of significant responsibility, professional military education, and demonstrated expertise in national defense and homeland defense matters that are commensurate with the advisory role of the Chief of the National Guard Bureau; and

(8) possess such other qualifications as the Secretary of Defense shall prescribe for purposes of this section.

(b) **TERM OF OFFICE.**—(1) An officer appointed as Chief of the National Guard Bureau serves at the pleasure of the President for a term of four years. An officer may be reappointed as Chief of the National Guard Bureau.

(2) Except as provided in section 14508(d) of this title, while holding the office of Chief of the National Guard Bureau, the Chief of the National Guard Bureau may not be removed from the reserve active-status list, or from an active status, under any provision of law that otherwise would require such removal due to completion of a specified number of years of service or a specified number of years of service in grade.

(c) **ADVISOR ON NATIONAL GUARD MATTERS.**—The Chief of the National Guard Bureau is—

(1) a principal advisor to the Secretary of Defense, through the Chairman of the Joint Chiefs of Staff, on matters involving non-federalized National Guard forces and on other matters as determined by the Secretary of Defense; and

(2) the principal advisor to the Secretary of the Army and the Chief of Staff of the Army, and to the Secretary of the Air Force and the Chief of Staff of the Air Force, on matters relating to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States.

(d) **MEMBER OF JOINT CHIEFS OF STAFF.**—As a member of the Joint Chiefs of Staff, the Chief of the National Guard Bureau has the specific responsibility of addressing matters involving non-Federalized National Guard forces in support of homeland defense and civil support missions.

(e) **GRADE AND EXCLUSION FROM GENERAL AND FLAG OFFICER AUTHORIZED STRENGTH.**—(1) The Chief of the National Guard Bureau shall be appointed to serve in the grade of general.

(2) The Secretary of Defense shall designate, pursuant to subsection (b) of section 526 of this title, the position of Chief of the National Guard Bureau as one of the general officer and flag officer positions to be excluded from the limitations in subsection (a) of such section.

(f) **SUCCESSION.**—(1) When there is a vacancy in the office of the Chief of the National Guard Bureau or in the absence or disability of the Chief, the Vice Chief of the National Guard Bureau acts as Chief and performs the duties of the Chief until a successor is appointed or the absence or disability ceases.

(2) When there is a vacancy in the offices of both the Chief and the Vice Chief of the National Guard Bureau or in the absence or disability of both the Chief and the Vice Chief of the National Guard Bureau, or when there is a vacancy in one such office and

in the absence or disability of the officer holding the other, the senior officer of the Army National Guard of the United States or the Air National Guard of the United States on duty with the National Guard Bureau shall perform the duties of the Chief until a successor to the Chief or Vice Chief is appointed or the absence or disability of the Chief or Vice Chief ceases, as the case may be.

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#### **§ 10505. Vice Chief of the National Guard Bureau**

(a) APPOINTMENT.—(1) There is a Vice Chief of the National Guard Bureau, appointed by the President, by and with the advice and consent of the Senate. The appointment shall be made from officers of the Army National Guard of the United States or the Air National Guard of the United States who—

(A) are recommended for such appointment by their respective Governors or, in the case of the [District of Columbia,] *Capital*, the commanding general of the [District of Columbia National Guard] *Capital National Guard*;

(B) are recommended by the Secretary of the Army, in the case of officers of the Army National Guard of the United States, or by the Secretary of the Air Force, in the case of officers of the Air National Guard of the United States, and by the Secretary of Defense;

(C) are determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience; and

(D) have had at least 10 years of federally recognized commissioned service in an active status in the National Guard.

(2) The Chief of the National Guard Bureau and the Vice Chief of the National Guard Bureau may not both be members of the Army or of the Air Force.

(3)(A) Except as provided in subparagraph (B), an officer appointed as Vice Chief of the National Guard Bureau serves for a term of four years, but may be removed from office at any time for cause.

(B) The term of the Vice Chief of the National Guard Bureau shall end upon the appointment of a Chief of the National Guard Bureau who is a member of the same armed force as the Vice Chief.

(4) The Secretary of Defense may waive the restrictions in paragraph (2) and the provisions of paragraph (3) for not more than 90 days to provide for the orderly transition of officers appointed to serve in the positions of Chief of the National Guard Bureau and the Vice Chief of the National Guard Bureau.

(b) DUTIES.—The Vice Chief of the National Guard Bureau performs such duties as may be prescribed by the Chief of the National Guard Bureau.

#### **§ 10506. Other senior National Guard Bureau officers**

(a) ADDITIONAL GENERAL OFFICERS.—(1) In addition to the Chief and Vice Chief of the National Guard Bureau, there shall be assigned to the National Guard Bureau—

(A) two officers selected by the Secretary of the Army (after consultation with the Chief of the National Guard Bureau) from officers of the Army National Guard of the United States who have been nominated by their respective Governors or, in the case of the [District of Columbia,] *Capital*, the commanding general of the [District of Columbia National Guard] *Capital National Guard*, the senior of whom shall be appointed in accordance with paragraph (3) and shall serve as Director, Army National Guard, with the other serving as Deputy Director, Army National Guard; and

(B) two officers selected by the Secretary of the Air Force (after consultation with the Chief of the National Guard Bureau) from officers of the Air National Guard of the United States who have been nominated by their respective Governors or, in the case of the [District of Columbia,] *Capital*, the commanding general of the [District of Columbia National Guard] *Capital National Guard*, the senior of whom shall be appointed in accordance with paragraph (3) and shall serve as Director, Air National Guard, with the other serving as Deputy Director, Air National Guard.

(2) The Director and Deputy Director, Army National Guard, and the Director and Deputy Director, Air National Guard, shall assist the Chief of the National Guard Bureau in carrying out the functions of the National Guard Bureau as they relate to their respective branches.

(3)(A) The President, by and with the advice and consent of the Senate, shall appoint the Director, Army National Guard, from general officers of the Army National Guard of the United States and shall appoint the Director, Air National Guard, from general officers of the Air National Guard of the United States.

(B) The Secretary of Defense may not recommend an officer to the President for appointment as Director, Army National Guard, or as Director, Air National Guard, unless the officer—

(i) is recommended by the Secretary of the military department concerned; and

(ii) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(C) An officer on active duty for service as the Director, Army National Guard, or the Director, Air National Guard, shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(D) The Director, Army National Guard, and the Director, Air National Guard, are appointed for a period of four years, but may be removed for cause at any time. An officer serving as either Director may be reappointed for one additional four-year period.

(b) OTHER OFFICERS.—There are in the National Guard Bureau a legal counsel, a comptroller, and an inspector general, each of whom shall be appointed by the Chief of the National Guard Bureau. They shall perform such duties as the Chief may prescribe.

\* \* \* \* \*



**§ 10508. National Guard Bureau: general provisions**

(a) **MANPOWER REQUIREMENTS OF NATIONAL GUARD BUREAU.**—The manpower requirements of the National Guard Bureau as a joint activity of the Department of Defense shall be determined in accordance with regulations prescribed by the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff.

(b) **PERSONNEL FOR FUNCTIONS OF NATIONAL GUARD BUREAU.**—

(1) **IN GENERAL.**—The Chief of the National Guard Bureau may program for, appoint, employ, administer, detail, and assign persons under sections 2102, 2103, 2105, and 3101 of title 5, subchapter IV of chapter 53 of title 5, or section 328 of title 32, within the National Guard Bureau and the National Guard of each State, the Commonwealth of Puerto Rico, the [District of Columbia] *Capital*, Guam, and the Virgin Islands to execute the functions of the National Guard Bureau and the missions of the National Guard, and missions as assigned by the Chief of the National Guard Bureau.

(2) **ADMINISTRATION THROUGH ADJUTANTS GENERAL.**—The Chief of the National Guard Bureau may designate the adjutants general referred to in section 314 of title 32 to appoint, employ, and administer the National Guard employees authorized by this subsection.

(3) **ADMINISTRATIVE ACTIONS.**—Notwithstanding the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4701 et seq.) and under regulations prescribed by the Chief of the National Guard Bureau, all personnel actions or conditions of employment, including adverse actions under title 5, pertaining to a person appointed, employed, or administered by an adjutant general under this subsection shall be accomplished by the adjutant general of the jurisdiction concerned. For purposes of any administrative complaint, grievance, claim, or action arising from, or relating to, such a personnel action or condition of employment:

(A) The adjutant general of the jurisdiction concerned shall be considered the head of the agency and the National Guard of the jurisdiction concerned shall be considered the employing agency of the individual and the sole defendant or respondent in any administrative action.

(B) The National Guard of the jurisdiction concerned shall defend any administrative complaint, grievance, claim, or action, and shall promptly implement all aspects of any final administrative order, judgment, or decision.

(C) In any civil action or proceeding brought in any court arising from an action under this section, the United States shall be the sole defendant or respondent.

(D) The Attorney General of the United States shall defend the United States in actions arising under this section described in subparagraph (C).

(E) Any settlement, judgment, or costs arising from an action described in subparagraph (A) or (C) shall be paid from appropriated funds allocated to the National Guard of the jurisdiction concerned.

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## PART II—PERSONNEL GENERALLY

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### CHAPTER 1205—APPOINTMENT OF RESERVE OFFICERS

\* \* \* \* \*

#### § 12204. Commissioned officers: original appointment; limitation

(a) No person may be appointed as a Reserve in a commissioned grade above major or lieutenant commander, unless—

(1) he was formerly a commissioned officer of an armed force;

or

(2) such an appointment is recommended by a board of officers convened by the Secretary concerned.

(b) This section does not apply to adjutants general and assistant adjutants general of the several States, Puerto Rico, and the [District of Columbia] *Capital*.

\* \* \* \* \*

### CHAPTER 1209—ACTIVE DUTY

\* \* \* \* \*

#### § 12301. Reserve components generally

(a) In time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty for the duration of the war or emergency and for six months thereafter. However a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available.

(b) At any time, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, in an active status in a reserve component under the jurisdiction of that Secretary to active duty for not more than 15 days a year. However, units and members of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor of the State (or, in the case of the [District of Columbia National Guard] *Capital National Guard*, the commanding general of the [District of Columbia National Guard] *Capital National Guard*).

(c) So far as practicable, during any expansion of the active armed forces that requires that units and members of the reserve components be ordered to active duty as provided in subsection (a), members of units organized and trained to serve as units who are

ordered to that duty without their consent shall be so ordered with their units. However, members of those units may be reassigned after being so ordered to active duty.

(d) At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor or other appropriate authority of the State concerned.

(e) The period of time allowed between the date when a Reserve ordered to active duty as provided in subsection (a) is alerted for that duty and the date when the Reserve is required to enter upon that duty shall be determined by the Secretary concerned based upon military requirements at that time.

(f) The consent of a Governor described in subsections (b) and (d) may not be withheld (in whole or in part) with regard to active duty outside the United States, its territories, and its possessions, because of any objection to the location, purpose, type, or schedule of such active duty.

(g)(1) A member of a reserve component may be ordered to active duty without his consent if the Secretary concerned determines that the member is in a captive status. A member ordered to active duty under this section may not be retained on active duty, without his consent, for more than 30 days after his captive status is terminated.

(2) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall apply uniformly among the armed forces under the jurisdiction of the Secretary. A determination for the purposes of this subsection that a member is in a captive status shall be made pursuant to such regulations.

(3) In this section, the term "captive status" means the status of a member of the armed forces who is in a missing status (as defined in section 551(2) of title 37) which occurs as the result of a hostile action and is related to the member's military status.

(h)(1) When authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a reserve component to active duty—

(A) to receive authorized medical care;

(B) to be medically evaluated for disability or other purposes;

or

(C) to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.

(2) A member ordered to active duty under this subsection may, with the member's consent, be retained on active duty, if the Secretary concerned considers it appropriate, for medical treatment for a condition associated with the study or evaluation, if that treatment of the member is otherwise authorized by law.

(3) A member of the Army National Guard of the United States or the Air National Guard of the United States may be ordered to active duty under this subsection only with the consent of the Governor or other appropriate authority of the State concerned.

\* \* \* \* \*

## CHAPTER 1211—NATIONAL GUARD MEMBERS IN FEDERAL SERVICE

\* \* \* \* \*

### § 12406. National Guard in Federal service: call

Whenever—

(1) the United States, or any of the Commonwealths or possessions, is invaded or is in danger of invasion by a foreign nation;

(2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

(3) the President is unable with the regular forces to execute the laws of the United States;

the President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States or, in the case of the [District of Columbia,] *Capital*, through the commanding general of the [National Guard of the District of Columbia] *Capital National Guard*.

\* \* \* \* \*

## CHAPTER 1219—STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

\* \* \* \* \*

### § 12642. Standards and qualifications: result of failure to comply with

(a) To be retained in an active status, a reserve commissioned officer must, in any applicable yearly period, attain the number of points under section 12732(a)(2) of this title prescribed by the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, and must conform to such other standards and qualifications as the Secretary concerned may prescribe. The Secretary may not prescribe a minimum of more than 50 points under this subsection.

(b) Subject to section 12645 of this title, a reserve commissioned officer who fails to attain the number of points, or to conform to the standards and qualifications, prescribed in subsection (a) shall—

(1) be transferred to the Retired Reserve if he is qualified and applies therefor;

(2) if he is not qualified or does not apply for transfer to the Retired Reserve, be transferred to an inactive status, if he is qualified therefor; or

(3) if he is not transferred to the Retired Reserve or an inactive status, be discharged from his reserve appointment.

(c) This section does not apply to commissioned warrant officers or to adjutants general or assistant adjutants general of States, Puerto Rico, and the [District of Columbia] *Capital*.

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## PART V—SERVICE, SUPPLY, AND PROCUREMENT

\* \* \* \* \*

### CHAPTER 1803—FACILITIES FOR RESERVE COMPONENTS

\* \* \* \* \*

#### § 18238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units

A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State or, in the case of the [District of Columbia,] *Capital*, the commanding general of the [National Guard of the District of Columbia] *Capital National Guard*.

\* \* \* \* \*

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## TITLE 28, UNITED STATES CODE

\* \* \* \* \*

## PART I—ORGANIZATION OF COURTS

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### CHAPTER 3—COURTS OF APPEALS

\* \* \* \* \*

#### § 41. Number and composition of circuits

The thirteen judicial circuits of the United States are constituted as follows:

Circuits	Composition
[District of Columbia] <i>Capital</i> . First	[District of Columbia] <i>Capital</i> ; <i>Washington, Douglass Commonwealth</i> . Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island.
Second	Connecticut, New York, Vermont.
Third	Delaware, New Jersey, Pennsylvania, Vir- gin
Fourth	Maryland, North Carolina, South Carolina, Virginia, West Virginia.
Fifth	District of the Canal Zone, Louisiana, Mis- sissippi, Texas.

Circuits	Composition
Sixth	Kentucky, Michigan, Ohio, Tennessee.
Seventh	Illinois, Indiana, Wisconsin.
Eighth	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.
Ninth	Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii.
Tenth	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming.
Eleventh	Alabama, Florida, Georgia.
Federal	All Federal judicial districts.

\*       \*       \*       \*       \*       \*       \*

**§ 44. Appointment, tenure, residence and salary of circuit judges**

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

Circuits	Composition
<b>■</b> District of Columbia <i>Capital.</i>	11
First	6
Second	13
Third	14
Fourth	15
Fifth	17
Sixth	16
Seventh	11
Eighth	11
Ninth	29
Tenth	12
Eleventh	12
Federal	12

(b) Circuit judges shall hold office during good behavior.

(c) **■** Except in the District of Columbia, each *Each* circuit judge shall be a resident of the circuit for which appointed at the time of his appointment and thereafter while in active service. While in active service, each circuit judge of the Federal judicial circuit appointed after the effective date of the Federal Courts Improvement

Act of 1982, and the chief judge of the Federal judicial circuit, whenever appointed, shall reside **【within fifty miles of the District of Columbia】** *within fifty miles of the Capital*. In each circuit (other than the Federal judicial circuit) there shall be at least one circuit judge in regular active service appointed from the residents of each state in that circuit.

(d) Each circuit judge shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), as adjusted by section 461 of this title.

\* \* \* \* \*

#### § 48. Terms of court

(a) The courts of appeals shall hold regular sessions at the places listed below, and at such other places within the respective circuit as each court may designate by rule.

Circuits	Composition
<b>【District of Columbia】</b> <i>Capital</i> .	<b>【Washington】</b> <i>Capital</i> .
First	Boston.
Second	New York.
Third	Philadelphia.
Fourth	Richmond, Asheville.
Fifth	New Orleans, Fort Worth, Jackson.
Sixth	Cincinnati.
Seventh	Chicago.
Eighth	St. Louis, Kansas City, Omaha, St. Paul.
Ninth	San Francisco, Los Angeles, Portland, Seattle.
Tenth	Denver, Wichita, Oklahoma City.
Eleventh	Atlanta, Jacksonville, Montgomery.
Federal	<b>【District of Columbia】</b> <i>Capital</i> , and in any other place listed above as the court by rule directs.

(b) Each court of appeals may hold special sessions at any place within its circuit as the nature of the business may require, and upon such notice as the court orders. The court may transact any business at a special session which it might transact at a regular session.

(c) Any court of appeals may pretermitt any regular session of court at any place for insufficient business or other good cause.

(d) The times and places of the sessions of the Court of Appeals for the Federal Circuit shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the court with as little inconvenience and expense to citizens as is practicable.

(e) Each court of appeals may hold special sessions at any place within the United States outside the circuit as the nature of the business may require and upon such notice as the court orders, upon a finding by either the chief judge of the court of appeals (or, if the chief judge is unavailable, the most senior available active judge of the court of appeals) or the judicial council of the circuit that, because of emergency conditions, no location within the circuit is reasonably available where such special sessions could be held. The court may transact any business at a special session outside the circuit which it might transact at a regular session.

(f) If a court of appeals issues an order exercising its authority under subsection (e), the court—

(1) through the Administrative Office of the United States Courts, shall—

(A) send notice of such order, including the reasons for the issuance of such order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and

(B) not later than 180 days after the expiration of such court order submit a brief report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives describing the impact of such order, including—

(i) the reasons for the issuance of such order;

(ii) the duration of such order;

(iii) the impact of such order on litigants; and

(iv) the costs to the judiciary resulting from such order; and

(2) shall provide reasonable notice to the United States Marshals Service before the commencement of any special session held pursuant to such order.

#### **§ 49. Assignment of judges to division to appoint independent counsels**

(a) Beginning with the two-year period commencing on the date of the enactment of this section, three judges or justices shall be assigned for each successive two-year period to a division of the United States Court of Appeals for the [District of Columbia] *Capital* to be the division of the court for the purpose of appointing independent counsels. The Clerk of the United States Court of Appeals for the [District of Columbia] *Capital* Circuit shall serve as the clerk of such division of the court and shall provide such services as are needed by such division of the court.

(b) Except as provided under subsection (f) of this section, assignment to such division of the court shall not be a bar to other judicial assignments during the term of such division.

(c) In assigning judges or justices to sit on such division of the court, priority shall be given to senior circuit judges and retired justices.

(d) The Chief Justice of the United States shall designate and assign three circuit court judges or justices, one of whom shall be a judge of the United States Court of Appeals for the [District of Columbia] *Capital*, to such division of the court. Not more than one judge or justice or senior or retired judge or justice may be named to such division from a particular court.



(e) Any vacancy in such division of the court shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to such division were made.

(f) Except as otherwise provided in chapter 40 of this title, no member of such division of the court who participated in a function conferred on the division under chapter 40 of this title involving an independent counsel shall be eligible to participate in any judicial proceeding concerning a matter which involves such independent counsel while such independent counsel is serving in that office or which involves the exercise of such independent counsel's official duties, regardless of whether such independent counsel is still serving in that office.

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## CHAPTER 5—DISTRICT COURTS

Sec.

81. Alabama.

\* \* \* \* \*

【88. District of Columbia.】

88. *Washington, Douglass Commonwealth and the Capital.*

\* \* \* \* \*

### § 88. **【District of Columbia】 *Washington, Douglass Commonwealth and the Capital***

【The District of Columbia constitutes one judicial district.】 *The State of Washington, Douglass Commonwealth and the Capital comprise on judicial district.*

Court shall be held at 【Washington】 *the Capital.*

\* \* \* \* \*

### § 133. **Appointment and number of district judges**

(a) The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts, as follows:

Districts	Judges
Alabama:	
Northern	7
Middle	3
Southern	3
Alaska	3
Arizona	12
Arkansas:	
Eastern	5
Western	3
California:	
Northern	14
Eastern	6

Districts	Judges
Central	27
Southern	13
Colorado	7
Connecticut	8
Delaware	4
【District of Columbia】 <i>Washington, Doug-</i> <i>lass Commonwealth and the Capital.</i>	15
Florida:	
Northern	4
Middle	15
Southern	17
Georgia:	
Northern	11
Middle	4
Southern	3
Hawaii	3
Idaho	2
Illinois:	
Northern	22
Central	4
Southern	4
Indiana:	
Northern	5
Southern	5
Iowa:	
Northern	2
Southern	3
Kansas	5
Kentucky:	
Eastern	5
Western	4
Eastern and Western	1
Louisiana:	
Eastern	12
Middle	3
Western	7
Maine	3
Maryland	10
Massachusetts	13
Michigan:	
Eastern	15
Western	4
Minnesota	7
Mississippi:	

Districts	Judges
Northern	3
Southern	6
Missouri:	
Eastern	6
Western	5
Eastern and Western	2
Montana	3
Nebraska	3
Nevada	7
New Hampshire	3
New Jersey	17
New Mexico	6
New York:	
Northern	5
Southern	28
Eastern	15
Western	4
North Carolina:	
Eastern	4
Middle	4
Western	4
North Dakota	2
Ohio:	
Northern	11
Southern	8
Oklahoma:	
Northern	3
Eastern	1
Western	6
Northern, Eastern, and Western	1
Oregon	6
Pennsylvania:	
Eastern	22
Middle	6
Western	10
Puerto Rico	7
Rhode Island	3
South Carolina	10
South Dakota	3
Tennessee:	
Eastern	5
Middle	4
Western	5
Texas:	

Districts	Judges
Northern	12
Southern	19
Eastern	7
Western	13
Utah	5
Vermont	2
Virginia:	
Eastern	11
Western	4
Washington:	
Eastern	4
Western	7
West Virginia:	
Northern	3
Southern	5
Wisconsin:	
Eastern	5
Western	2
Wyoming	3

(b)(1) In any case in which a judge of the United States (other than a senior judge) assumes the duties of a full-time office of Federal judicial administration, the President shall appoint, by and with the advice and consent of the Senate, an additional judge for the court on which such judge serves. If the judge who assumes the duties of such full-time office leaves that office and resumes the duties as an active judge of the court, then the President shall not appoint a judge to fill the first vacancy which occurs thereafter in that court.

(2) For purposes of paragraph (1), the term “office of Federal judicial administration” means a position as Director of the Federal Judicial Center, Director of the Administrative Office of the United States Courts, or Counselor to the Chief Justice.

#### **§ 134. Tenure and residence of district judges**

(a) The district judges shall hold office during good behavior.

(b) Each district judge, except in [the District of Columbia, the Southern District of New York, and] *the Southern District of New York and* the Eastern District of New York, shall reside in the district or one of the districts for which he is appointed. Each district judge of the Southern District of New York and the Eastern District of New York may reside within 20 miles of the district to which he or she is appointed.

(c) If the public interest and the nature of the business of a district court require that a district judge should maintain his abode at or near a particular place for holding court in the district or within a particular part of the district the judicial council of the circuit may so declare and may make an appropriate order. If the district judges of such a district are unable to agree as to which

of them shall maintain his abode at or near the place or within the area specified in such an order the judicial council of the circuit may decide which of them shall do so.

\* \* \* \* \*

## CHAPTER 6—BANKRUPTCY JUDGES

\* \* \* \* \*

### § 152. Appointment of bankruptcy judges

(a)(1) Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located. Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

Districts	Judges
Alabama:	
Northern	5
Middle	2
Southern	2
Alaska	2
Arizona	7
Arkansas:	
Eastern and Western	3
California:	
Northern	9
Eastern	6
Central	21
Southern	4
Colorado	5
Connecticut	3
Delaware	1
【District of Columbia】 <i>Washington, Douglass Commonwealth and the Capital.</i>	1
Florida:	
Northern	1
Middle	8

Districts	Judges
Southern	5
Georgia:	
Northern	8
Middle	3
Southern	2
Hawaii	1
Idaho	2
Illinois:	
Northern	10
Central	3
Southern	1
Indiana:	
Northern	3
Southern	4
Iowa:	
Northern	2
Southern	2
Kansas	4
Kentucky:	
Eastern	2
Western	3
Louisiana:	
Eastern	2
Middle	1
Western	3
Maine	2
Maryland	4
Massachusetts	5
Michigan:	
Eastern	4
Western	3
Minnesota	4
Mississippi:	
Northern	1
Southern	2
Missouri:	
Eastern	3
Western	3
Montana	1
Nebraska	2
Nevada	3
New Hampshire	1
New Jersey	8
New Mexico	2

Districts	Judges
New York:	
Northern	2
Southern	9
Eastern	6
Western	3
North Carolina:	
Eastern	2
Middle	2
Western	2
North Dakota	1
Ohio:	
Northern	8
Southern	7
Oklahoma:	
Northern	2
Eastern	1
Western	3
Oregon	5
Pennsylvania:	
Eastern	5
Middle	2
Western	4
Puerto Rico	2
Rhode Island	1
South Carolina	2
South Dakota	2
Tennessee:	
Eastern	3
Middle	3
Western	4
Texas:	
Northern	6
Eastern	2
Southern	6
Western	4
Utah	3
Vermont	1
Virginia:	
Eastern	5
Western	3
Washington:	
Eastern	2
Western	5
West Virginia:	

Districts	Judges
Northern	1
Southern	1
Wisconsin:	
Eastern	4
Western	2
Wyoming	1

(3) Whenever a majority of the judges of any court of appeals cannot agree upon the appointment of a bankruptcy judge, the chief judge of such court shall make such appointment.

(4) The judges of the district courts for the territories shall serve as the bankruptcy judges for such courts. The United States court of appeals for the circuit within which such a territorial district court is located may appoint bankruptcy judges under this chapter for such district if authorized to do so by the Congress of the United States under this section.

(b)(1) The Judicial Conference of the United States shall, from time to time, and after considering the recommendations submitted by the Director of the Administrative Office of the United States Courts after such Director has consulted with the judicial council of the circuit involved, determine the official duty stations of bankruptcy judges and places of holding court.

(2) The Judicial Conference shall, from time to time, submit recommendations to the Congress regarding the number of bankruptcy judges needed and the districts in which such judges are needed.

(3) Not later than December 31, 1994, and not later than the end of each 2-year period thereafter, the Judicial Conference of the United States shall conduct a comprehensive review of all judicial districts to assess the continuing need for the bankruptcy judges authorized by this section, and shall report to the Congress its findings and any recommendations for the elimination of any authorized position which can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death.

(c)(1) Each bankruptcy judge may hold court at such places within the judicial district, in addition to the official duty station of such judge, as the business of the court may require.

(2)(A) Bankruptcy judges may hold court at such places within the United States outside the judicial district as the nature of the business of the court may require, and upon such notice as the court orders, upon a finding by either the chief judge of the bankruptcy court (or, if the chief judge is unavailable, the most senior available bankruptcy judge) or by the judicial council of the circuit that, because of emergency conditions, no location within the district is reasonably available where the bankruptcy judges could hold court.

(B) Bankruptcy judges may transact any business at special sessions of court held outside the district pursuant to this paragraph that might be transacted at a regular session.

(C) If a bankruptcy court issues an order exercising its authority under subparagraph (A), the court—



(i) through the Administrative Office of the United States Courts, shall—

(I) send notice of such order, including the reasons for the issuance of such order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and

(II) not later than 180 days after the expiration of such court order submit a brief report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives describing the impact of such order, including—

(aa) the reasons for the issuance of such order;

(bb) the duration of such order;

(cc) the impact of such order on litigants; and

(dd) the costs to the judiciary resulting from such order; and

(ii) shall provide reasonable notice to the United States Marshals Service before the commencement of any special session held pursuant to such order.

(d) With the approval of the Judicial Conference and of each of the judicial councils involved, a bankruptcy judge may be designated to serve in any district adjacent to or near the district for which such bankruptcy judge was appointed.

(e) A bankruptcy judge may be removed during the term for which such bankruptcy judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability and only by the judicial council of the circuit in which the judge's official duty station is located. Removal may not occur unless a majority of all of the judges of such council concur in the order of removal. Before any order of removal may be entered, a full specification of charges shall be furnished to such bankruptcy judge who shall be accorded an opportunity to be heard on such charges.

\* \* \* \* \*

## CHAPTER 7—UNITED STATES COURT OF FEDERAL CLAIMS

\* \* \* \* \*

### § 173. Times and places of holding court

The principal office of the United States Court of Federal Claims shall be in [the District of Columbia] *the Capital*, but the Court of Federal Claims may hold court at such times and in such places as it may fix by rule of court. The times and places of the sessions of the Court of Federal Claims shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the Court of Federal Claims with as little inconvenience and expense to citizens as is practicable.

\* \* \* \* \*

### § 175. Official duty station; residence

(a) The official duty station of each judge of the United States Court of Federal Claims is [the District of Columbia] *the Capital*.

(b) After appointment and while in active service, each judge shall reside within fifty miles of [the District of Columbia] *the Capital*.

(c) Retired judges of the Court of Federal Claims are not subject to restrictions as to residence. The place where a retired judge maintains the actual abode in which such judge customarily lives shall be deemed to be the judge's official duty station for the purposes of section 456 of this title.

\* \* \* \* \*

## CHAPTER 21—GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

\* \* \* \* \*

### § 451. Definitions

As used in this title:

The term “court of the United States” includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, including the Court of International Trade and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.

The terms “district court” and “district court of the United States” mean the courts constituted by chapter 5 of this title.

The term “judge of the United States” includes judges of the courts of appeals, district courts, Court of International Trade and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.

The term “justice of the United States” includes the Chief Justice of the United States and the associate justices of the Supreme Court.

The terms “district” and “judicial district” means the districts enumerated in Chapter 5 of this title.

The term “department” means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.

The term “agency” includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.

*The term “Capital” means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.*

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### § 456. Traveling expenses of justices and judges; official duty stations

(a) The Director of the Administrative Office of the United States Courts shall pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official duty station for any continuous period of less than thirty calendar days (1) all necessary transpor-

tation expenses certified by the justice or judge; and (2) payments for subsistence expenses at rates or in amounts which the Director establishes, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States and after considering the rates or amounts set by the Administrator of General Services and the President pursuant to section 5702 of title 5. The Director of the Administrative Office of the United States Courts shall also pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business under an assignment authorized under chapter 13 of this title which exceeds in duration a continuous period of thirty calendar days, all necessary transportation expenses and actual and necessary expenses of subsistence actually incurred, notwithstanding the provisions of section 5702 of title 5, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States.

[(b) The official duty station of the Chief Justice of the United States, the Justices of the Supreme Court of the United States, and the judges of the United States Court of Appeals for the District of Columbia Circuit, the United States Court of Appeals for the Federal Circuit, and the United States District Court for the District of Columbia shall be the District of Columbia.]

*(b) The official duty station of the Chief Justice of the United States, the Justices of the Supreme Court of the United States, and the judges of the United States Court of Appeals for the Federal Circuit shall be the Capital.*

(c) The official duty station of the judges of the United States Court of International Trade shall be New York City.

(d) The official duty station of each district judge shall be that place where a district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(e) The official duty station of a circuit judge shall be that place where a circuit or district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, or that place where the Director provides chambers to the judge where he performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(f) The official duty station of a retired judge shall be established in accordance with section 374 of this title.

(g) Each circuit or district judge whose official duty station is not fixed expressly by this section shall notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and official duty station upon his appointment and from time to time thereafter as his official duty station may change.

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#### **§ 462. Court accommodations**

(a) Sessions of courts of the United States (except the Supreme Court) shall be held only at places where the Director of the Administrative Office of the United States Courts provides accom-

modations, or where suitable accommodations are furnished without cost to the judicial branch.

(b) The Director of the Administrative Office of the United States Courts shall provide accommodations, including chambers and courtrooms, only at places where regular sessions of court are authorized by law to be held, but only if the judicial council of the appropriate circuit has approved the accommodations as necessary.

(c) The limitations and restrictions contained in subsection (b) of this section shall not prevent the Director from furnishing chambers to circuit judges at places within the circuit other than where regular sessions of court are authorized by law to be held, when the judicial council of the circuit approves.

(d) The Director of the Administrative Office of the United States Courts shall provide permanent accommodations for the United States Court of Appeals for the Federal Circuit and for the United States Court of Federal Claims only at [the District of Columbia] *the Capital*. However, each such court may hold regular and special sessions at other places utilizing the accommodations which the Director provides to other courts.

(e) The Director of the Administrative Office of the United States Courts shall provide accommodations for probation officers, pretrial service officers, and Federal Public Defender Organizations at such places as may be approved by the judicial council of the appropriate circuit.

(f) Upon the request of the Director, the Administrator of General Services is authorized and directed to provide the accommodations the Director requests, and to close accommodations which the Director recommends for closure with the approval of the Judicial Conference of the United States.

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## PART II—DEPARTMENT OF JUSTICE

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### CHAPTER 35—UNITED STATES ATTORNEYS

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#### § 545. Residence

(a) [Each United States attorney shall reside in the district for which he is appointed, except that these officers of the District of Columbia, the Southern District of New York, and the Eastern District of New York may reside within 20 miles thereof.] *Each United States attorney shall reside in the district for which he or she is appointed, except that those officers of the Southern District of New York and the Eastern District of New York may reside within 20 miles thereof.* Each assistant United States attorney shall reside in the district for which he or she is appointed or within 25 miles thereof. The provisions of this subsection shall not apply to any United States attorney or assistant United States attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district. Pursuant to an order from the Attorney General or his designee, a United States attorney or an assistant United States attorney may be assigned

dual or additional responsibilities that exempt such officer from the residency requirement in this subsection for a specific period as established by the order and subject to renewal.

(b) The Attorney General may determine the official stations of United States attorneys and assistant United States attorneys within the districts for which they are appointed.

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## CHAPTER 37—UNITED STATES MARSHALS SERVICE

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### § 561. United States Marshals Service

(a) There is hereby established a United States Marshals Service as a bureau within the Department of Justice under the authority and direction of the Attorney General. There shall be at the head of the United States Marshals Service (hereafter in this chapter referred to as the “Service”) a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The Director of the United States Marshals Service (hereafter in this chapter referred to as the “Director”) shall, in addition to the powers and duties set forth in this chapter, exercise such other functions as may be delegated by the Attorney General.

(c) The President shall appoint, by and with the advice and consent of the Senate, a United States marshal for each judicial district of the United States and for the Superior Court of the District of Columbia, except that any marshal appointed for the Northern Mariana Islands may at the same time serve as marshal in another judicial district. Each United States marshal shall be an official of the Service and shall serve under the direction of the Director.

(d) Each marshal shall be appointed for a term of four years. A marshal shall, unless that marshal has resigned or been removed by the President, continue to perform the duties of that office after the end of that 4-year term until a successor is appointed and qualifies.

(e) The Director shall designate places within a judicial district for the official station and offices of each marshal. Each marshal shall reside within the district for which such marshal is appointed, except that—

【(1) the marshal for the District of Columbia, for the Superior Court of the District of Columbia, and for the Southern District of New York may reside within 20 miles of the district for which the marshal is appointed; and】

*(1) the marshal for the Southern District of New York may reside within 20 miles of the district; and*

(2) any marshal appointed for the Northern Mariana Islands who at the same time is serving as marshal in another district may reside in such other district.

(f) The Director is authorized to appoint and fix the compensation of such employees as are necessary to carry out the powers and duties of the Service and may designate such employees as law enforcement officers in accordance with such policies and procedures as the Director shall establish pursuant to the applicable provisions of title 5 and regulations issued thereunder.

(g) The Director shall supervise and direct the United States Marshals Service in the performance of its duties.

(h) The Director may administer oaths and may take affirmations of officials and employees of the Service, but shall not demand or accept any fee or compensation therefor.

(i) Each marshal appointed under this section should have—

(1) a minimum of 4 years of command-level law enforcement management duties, including personnel, budget, and accountable property issues, in a police department, sheriff's office or Federal law enforcement agency;

(2) experience in coordinating with other law enforcement agencies, particularly at the State and local level;

(3) college-level academic experience; and

(4) experience in or with county, State, and Federal court systems or experience with protection of court personnel, jurors, and witnesses.

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## CHAPTER 39—UNITED STATES TRUSTEES

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### § 581. United States trustees

(a) The Attorney General shall appoint one United States trustee for each of the following regions composed of Federal judicial districts (without regard to section 451):

(1) The judicial districts established for the States of Maine, Massachusetts, New Hampshire, and Rhode Island.

(2) The judicial districts established for the States of Connecticut, New York, and Vermont.

(3) The judicial districts established for the States of Delaware, New Jersey, and Pennsylvania.

(4) The judicial districts established for the States of Maryland, North Carolina, South Carolina, Virginia, and West Virginia and for [the District of Columbia] *the Capital and Washington, Douglass Commonwealth*.

(5) The judicial districts established for the States of Louisiana and Mississippi.

(6) The Northern District of Texas and the Eastern District of Texas.

(7) The Southern District of Texas and the Western District of Texas.

(8) The judicial districts established for the States of Kentucky and Tennessee.

(9) The judicial districts established for the States of Michigan and Ohio.

(10) The Central District of Illinois and the Southern District of Illinois; and the judicial districts established for the State of Indiana.

(11) The Northern District of Illinois; and the judicial districts established for the State of Wisconsin.

(12) The judicial districts established for the States of Minnesota, Iowa, North Dakota, and South Dakota.

(13) The judicial districts established for the States of Arkansas, Nebraska, and Missouri.

(14) The District of Arizona.

(15) The Southern District of California; and the judicial districts established for the State of Hawaii, and for Guam and the Commonwealth of the Northern Mariana Islands.

(16) The Central District of California.

(17) The Eastern District of California and the Northern District of California; and the judicial district established for the State of Nevada.

(18) The judicial districts established for the States of Alaska, Idaho (exclusive of Yellowstone National Park), Montana (exclusive of Yellowstone National Park), Oregon, and Washington.

(19) The judicial districts established for the States of Colorado, Utah, and Wyoming (including those portions of Yellowstone National Park situated in the States of Montana and Idaho).

(20) The judicial districts established for the States of Kansas, New Mexico, and Oklahoma.

(21) The judicial districts established for the States of Alabama, Florida, and Georgia and for the Commonwealth of Puerto Rico and the Virgin Islands of the United States.

(b) Each United States trustee shall be appointed for a term of five years. On the expiration of his term, a United States trustee shall continue to perform the duties of his office until his successor is appointed and qualifies.

(c) Each United States trustee is subject to removal by the Attorney General.

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## CHAPTER 40—INDEPENDENT COUNSEL

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### § 594. Authority and duties of an independent counsel

(a) **AUTHORITIES.**—Notwithstanding any other provision of law, an independent counsel appointed under this chapter shall have, with respect to all matters in such independent counsel's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

(1) conducting proceedings before grand juries and other investigations;

(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such independent counsel considers necessary;

(3) appealing any decision of a court in any case or proceeding in which such independent counsel participates in an official capacity;

(4) reviewing all documentary evidence available from any source;

(5) determining whether to contest the assertion of any testimonial privilege;

(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General;

(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case, in the name of the United States; and

(10) consulting with the United States attorney for the district in which any violation of law with respect to which the independent counsel is appointed was alleged to have occurred.

(b) COMPENSATION.—

(1) IN GENERAL.—An independent counsel appointed under this chapter shall receive compensation at the per diem rate equal to the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

(2) TRAVEL EXPENSES.—Except as provided in paragraph (3), an independent counsel and persons appointed under subsection (c) shall be entitled to the payment of travel expenses as provided by subchapter I of chapter 57 of title 5, United States Code, including travel, per diem, and subsistence expenses in accordance with section 5703 of title 5.

(3) TRAVEL TO PRIMARY OFFICE.—

(A) IN GENERAL.—After 1 year of service under this chapter, an independent counsel and persons appointed under subsection (c) shall not be entitled to the payment of travel, per diem, or subsistence expenses under subchapter I of chapter 57 of title 5, United States Code, for the purpose of commuting to or from the city in which the primary office of the independent counsel or person is located. The 1-year period may be extended for successive 6-month periods if the independent counsel and the division of the court certify that the payment is in the public interest to carry out the purposes of this chapter.

(B) RELEVANT FACTORS.—In making any certification under this paragraph with respect to travel and subsistence expenses of an independent counsel or person appointed under subsection (c), the independent counsel and the division of the court shall consider, among other relevant factors—



(i) the cost to the Government of reimbursing such travel and subsistence expenses;

(ii) the period of time for which the independent counsel anticipates that the activities of the independent counsel or person, as the case may be, will continue;

(iii) the personal and financial burdens on the independent counsel or person, as the case may be, of relocating so that such travel and subsistence expenses would not be incurred; and

(iv) the burdens associated with appointing a new independent counsel, or appointing another person under subsection (c), to replace the individual involved who is unable or unwilling to so relocate.

(c) ADDITIONAL PERSONNEL.—For the purposes of carrying out the duties of an office of independent counsel, such independent counsel may appoint, fix the compensation, and assign the duties of such employees as such independent counsel considers necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. Such employees shall be compensated at levels not to exceed those payable for comparable positions in the Office of United States Attorney for [the District of Columbia] *Washington, Douglass Commonwealth and the Capital* under sections 548 and 550, but in no event shall any such employee be compensated at a rate greater than the rate of basic pay payable for level ES-4 of the Senior Executive Service Schedule under section 5382 of title 5, as adjusted for [the District of Columbia] *Washington, Douglass Commonwealth* under section 5304 of that title regardless of the locality in which an employee is employed.

(d) ASSISTANCE OF DEPARTMENT OF JUSTICE.—

(1) IN CARRYING OUT FUNCTIONS.—An independent counsel may request assistance from the Department of Justice in carrying out the functions of the independent counsel, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent counsel's duties. At the request of an independent counsel, prosecutors, administrative personnel, and other employees of the Department of Justice may be detailed to the staff of the independent counsel.

(2) PAYMENT OF AND REPORTS ON EXPENDITURES OF INDEPENDENT COUNSEL.—The Department of Justice shall pay all costs relating to the establishment and operation of any office of independent counsel. The Attorney General shall submit to the Congress, not later than 30 days after the end of each fiscal year, a report on amounts paid during that fiscal year for expenses of investigations and prosecutions by independent counsel. Each such report shall include a statement of all payments made for activities of independent counsel but may not reveal the identity or prosecutorial jurisdiction of any independent counsel which has not been disclosed under section 593(b)(4).

(e) REFERRAL OF OTHER MATTERS TO AN INDEPENDENT COUNSEL.—An independent counsel may ask the Attorney General or the division of the court to refer to the independent counsel matters related to the independent counsel's prosecutorial jurisdiction, and the Attorney General or the division of the court, as the case may be, may refer such matters. If the Attorney General refers a matter to an independent counsel on the Attorney General's own initiative, the independent counsel may accept such referral if the matter relates to the independent counsel's prosecutorial jurisdiction. If the Attorney General refers any matter to the independent counsel pursuant to the independent counsel's request, or if the independent counsel accepts a referral made by the Attorney General on the Attorney General's own initiative, the independent counsel shall so notify the division of the court.

(f) COMPLIANCE WITH POLICIES OF THE DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—An independent counsel shall, except to the extent that to do so would be inconsistent with the purposes of this chapter, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws. To determine these policies and policies under subsection (I)(1)(B), the independent counsel shall, except to the extent that doing so would be inconsistent with the purposes of this chapter, consult with the Department of Justice.

(2) NATIONAL SECURITY.—An independent counsel shall comply with guidelines and procedures used by the Department in the handling and use of classified material.

(g) DISMISSAL OF MATTERS.—The independent counsel shall have full authority to dismiss matters within the independent counsel's prosecutorial jurisdiction without conducting an investigation or at any subsequent time before prosecution, if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

(h) REPORTS BY INDEPENDENT COUNSEL.—

(1) REQUIRED REPORTS.—An independent counsel shall—

(A) file with the division of the court, with respect to the 6-month period beginning on the date of his or her appointment, and with respect to each 6-month period thereafter until the office of that independent counsel terminates, a report which identifies and explains major expenses, and summarizes all other expenses, incurred by that office during the 6-month period with respect to which the report is filed, and estimates future expenses of that office; and

(B) before the termination of the independent counsel's office under section 596(b), file a final report with the division of the court, setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought.

(2) DISCLOSURE OF INFORMATION IN REPORTS.—The division of the court may release to the Congress, the public, or any appropriate person, such portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make such orders as are appro-

appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report.

(3) PUBLICATION OF REPORTS.—At the request of an independent counsel, the Director of the Government Publishing Office shall cause to be printed any report previously released to the public under paragraph (2). The independent counsel shall certify the number of copies necessary for the public, and the Director of the Government Publishing Office shall place the cost of the required number to the debit of such independent counsel. Additional copies shall be made available to the public through the depository library program and Superintendent of Documents sales program pursuant to sections 1702 and 1903 of title 44.

(i) INDEPENDENCE FROM DEPARTMENT OF JUSTICE.—Each independent counsel appointed under this chapter, and the persons appointed by that independent counsel under subsection (c), are separate from and independent of the Department of Justice for purposes of sections 202 through 209 of title 18.

(j) STANDARDS OF CONDUCT APPLICABLE TO INDEPENDENT COUNSEL, PERSONS SERVING IN THE OFFICE OF AN INDEPENDENT COUNSEL, AND THEIR LAW FIRMS.—

(1) RESTRICTIONS ON EMPLOYMENT WHILE INDEPENDENT COUNSEL AND APPOINTEES ARE SERVING.—(A) During the period in which an independent counsel is serving under this chapter—

(i) such independent counsel, and  
(ii) any person associated with a firm with which such independent counsel is associated,  
may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(B) During the period in which any person appointed by an independent counsel under subsection (c) is serving in the office of independent counsel, such person may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(2) POST EMPLOYMENT RESTRICTIONS ON INDEPENDENT COUNSEL AND APPOINTEES.—(A) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 3 years following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter if that individual was the subject of an investigation or prosecution under this chapter that was conducted by that independent counsel.

(B) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 1 year following the termination of the service under this chapter

of that independent counsel or appointed person, as the case may be, represent any person in any matter involving any investigation or prosecution under this chapter.

(3) ONE-YEAR BAN ON REPRESENTATION BY MEMBERS OF FIRMS OF INDEPENDENT COUNSEL.—Any person who is associated with a firm with which an independent counsel is associated or becomes associated after termination of the service of that independent counsel under this chapter may not, for 1 year following such termination, represent any person in any matter involving any investigation or prosecution under this chapter.

(4) DEFINITIONS.—For purposes of this subsection—

(A) the term “firm” means a law firm whether organized as a partnership or corporation; and

(B) a person is “associated” with a firm if that person is an officer, director, partner, or other member or employee of that firm.

(5) ENFORCEMENT.—The Attorney General and the Director of the Office of Government Ethics have authority to enforce compliance with this subsection.

(k) CUSTODY OF RECORDS OF AN INDEPENDENT COUNSEL.—

(1) TRANSFER OF RECORDS.—Upon termination of the office of an independent counsel, that independent counsel shall transfer to the Archivist of the United States all records which have been created or received by that office. Before this transfer, the independent counsel shall clearly identify which of these records are subject to rule 6(e) of the Federal Rules of Criminal Procedure as grand jury materials and which of these records have been classified as national security information. Any records which were compiled by an independent counsel and, upon termination of the independent counsel’s office, were stored with the division of the court or elsewhere before the enactment of the Independent Counsel Reauthorization Act of 1987, shall also be transferred to the Archivist of the United States by the division of the court or the person in possession of such records.

(2) MAINTENANCE, USE, AND DISPOSAL OF RECORDS.—Records transferred to the Archivist under this chapter shall be maintained, used, and disposed of in accordance with chapters 21, 29, and 33 of title 44.

(3) ACCESS TO RECORDS.—

(A) IN GENERAL.—Subject to paragraph (4), access to the records transferred to the Archivist under this chapter shall be governed by section 552 of title 5.

(B) ACCESS BY DEPARTMENT OF JUSTICE.—The Archivist shall, upon written application by the Attorney General, disclose any such records to the Department of Justice for purposes of an ongoing law enforcement investigation or court proceeding, except that, in the case of grand jury materials, such records shall be so disclosed only by order of the court of jurisdiction under rule 6(e) of the Federal Rules of Criminal Procedure.

(C) EXCEPTION.—Notwithstanding any restriction on access imposed by law, the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work

shall be permitted access to the records transferred to the Archivist under this chapter.

(4) RECORDS PROVIDED BY CONGRESS.—Records of an investigation conducted by a committee of the House of Representatives or the Senate which are provided to an independent counsel to assist in an investigation or prosecution conducted by that independent counsel—

(A) shall be maintained as a separate body of records within the records of the independent counsel; and

(B) shall, after the records have been transferred to the Archivist under this chapter, be made available, except as provided in paragraph (3)(B) and (C), in accordance with the rules governing release of the records of the House of Congress that provided the records to the independent counsel.

Subparagraph (B) shall not apply to those records which have been surrendered pursuant to grand jury or court proceedings.

(I) COST CONTROLS AND ADMINISTRATIVE SUPPORT.—

(1) COST CONTROLS.—

(A) IN GENERAL.—An independent counsel shall—

(i) conduct all activities with due regard for expense;

(ii) authorize only reasonable and lawful expenditures; and

(iii) promptly, upon taking office, assign to a specific employee the duty of certifying that expenditures of the independent counsel are reasonable and made in accordance with law.

(B) LIABILITY FOR INVALID CERTIFICATION.—An employee making a certification under subparagraph (A)(iii) shall be liable for an invalid certification to the same extent as a certifying official certifying a voucher is liable under section 3528 of title 31.

(C) DEPARTMENT OF JUSTICE POLICIES.—An independent counsel shall comply with the established policies of the Department of Justice respecting expenditures of funds, except to the extent that compliance would be inconsistent with the purposes of this chapter.

(2) ADMINISTRATIVE SUPPORT.—The Director of the Administrative Office of the United States Courts shall provide administrative support and guidance to each independent counsel. No officer or employee of the Administrative Office of the United States Courts shall disclose information related to an independent counsel's expenditures, personnel, or administrative acts or arrangements without the authorization of the independent counsel.

(3) OFFICE SPACE.—The Administrator of General Services, in consultation with the Director of the Administrative Office of the United States Courts, shall promptly provide appropriate office space for each independent counsel. Such office space shall be within a Federal building unless the Administrator of General Services determines that other arrangements would cost less. Until such office space is provided, the Administrative Office of the United States Courts shall provide newly appointed independent counsels immediately upon appoint-

ment with appropriate, temporary office space, equipment, and supplies.

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**§ 596. Removal of an independent counsel; termination of office**

(a) REMOVAL; REPORT ON REMOVAL.—

(1) GROUNDS FOR REMOVAL.—An independent counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical or mental disability (if not prohibited by law protecting persons from discrimination on the basis of such a disability), or any other condition that substantially impairs the performance of such independent counsel's duties.

(2) REPORT TO DIVISION OF THE COURT AND CONGRESS.—If an independent counsel is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report. The division of the court may release any or all of such report in accordance with section 594(h)(2).

(3) JUDICIAL REVIEW OF REMOVAL.—An independent counsel removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for [the District of Columbia] *Washington, Douglass Commonwealth and the Capital*. A member of the division of the court may not hear or determine any such civil action or any appeal of a decision in any such civil action. The independent counsel may be reinstated or granted other appropriate relief by order of the court.

(b) TERMINATION OF OFFICE.—

(1) TERMINATION BY ACTION OF INDEPENDENT COUNSEL.—An office of independent counsel shall terminate when—

(A) the independent counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions; and

(B) the independent counsel files a final report in compliance with section 594(h)(1)(B).

(2) TERMINATION BY DIVISION OF THE COURT.—The division of the court, either on its own motion or upon the request of the Attorney General, may terminate an office of independent counsel at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel

under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of such termination, the independent counsel shall file the final report required by section 594(h)(1)(B). If the Attorney General has not made a request under this paragraph, the division of the court shall determine on its own motion whether termination is appropriate under this paragraph no later than 2 years after the appointment of an independent counsel, at the end of the succeeding 2-year period, and thereafter at the end of each succeeding 1-year period.

(c) AUDITS.—(1) On or before June 30 of each year, an independent counsel shall prepare a statement of expenditures for the 6 months that ended on the immediately preceding March 31. On or before December 31 of each year, an independent counsel shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding September 30. An independent counsel whose office is terminated prior to the end of the fiscal year shall prepare a statement of expenditures on or before the date that is 90 days after the date on which the office is terminated.

(2) The Comptroller General shall—

(A) conduct a financial review of a mid-year statement and a financial audit of a year-end statement and statement on termination; and

(B) report the results to the Committee on the Judiciary, Committee on Governmental Affairs, and Committee on Appropriations of the Senate and the Committee on the Judiciary, Committee on Government Operations, and Committee on Appropriations of the House of Representatives not later than 90 days following the submission of each such statement.

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## PART III—COURT OFFICERS AND EMPLOYEES

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### CHAPTER 49—DISTRICT COURTS

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#### § 751. Clerks

(a) Each district court may appoint a clerk who shall be subject to removal by the court.

(b) The clerk may appoint, with the approval of the court, necessary deputies, clerical assistants and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies, clerical assistants and employees shall be subject to removal by the clerk with the approval of the court.

(c) The clerk of each district court shall reside in the district for which he is appointed, except that the clerk of the district court for [the District of Columbia and] the Southern District of New York may reside within twenty miles thereof. The district court may des-

ignat places within the district for the offices of the clerk and his deputies, and their official stations.

(d) A clerk of a district court or his deputy or assistant shall not receive any compensation or emoluments through any office or position to which he is appointed by the court, other than that received as such clerk, deputy or assistant, whether from the United States or from private litigants.

This subsection shall not apply to clerks or deputy clerks appointed as United States magistrate judges pursuant to section 631 of this title.

(e) The clerk of each district court shall pay into the Treasury all fees, costs and other moneys collected by him, except naturalization fees listed in section 742 of Title 8 and uncollected fees not required by Act of Congress to be prepaid.

He shall make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

(f) When the Court of International Trade is sitting in a judicial district, other than the Southern District or Eastern District of New York, the clerk of the district court of such judicial district or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of such district court, shall act in the district as clerk of the Court of International Trade, as prescribed by the rules and orders of the Court of International Trade for all purposes relating to the civil action then pending before such court.

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## CHAPTER 51—UNITED STATES COURT OF FEDERAL CLAIMS

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### § 798. Places of holding court; appointment of special masters

(a) The United States Court of Federal Claims is authorized to use facilities and hold court in [Washington, District of Columbia] *the Capital*, and throughout the United States (including its territories and possessions) as necessary for compliance with sections 173 and 2503(c) of this title. The facilities of the Federal courts, as well as other comparable facilities administered by the General Services Administration, shall be made available for trials and other proceedings outside of [the District of Columbia] *the Capital*.

(b) Upon application of a party or upon the judge's own initiative, and upon a showing that the interests of economy, efficiency, and justice will be served, the chief judge of the Court of Federal Claims may issue an order authorizing a judge of the court to conduct proceedings, including evidentiary hearings and trials, in a foreign country whose laws do not prohibit such proceedings, except that an interlocutory appeal may be taken from such an order pursuant to section 1292(d)(2) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal.

(c) The chief judge of the Court of Federal Claims may appoint special masters to assist the court in carrying out its functions.



Any special masters so appointed shall carry out their responsibilities and be compensated in accordance with procedures set forth in the rules of the court.

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## **PART IV—JURISDICTION AND VENUE**

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### **CHAPTER 85—DISTRICT COURTS; JURISDICTION**

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#### **§ 1346. United States as defendant**

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(2) Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 7104(b)(1) and 7107(a)(1) of title 41. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(b)(1) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(2) No person convicted of a felony who is incarcerated while awaiting sentencing or while serving a sentence may bring a civil action against the United States or an agency, officer, or employee of the Government, for mental or emotional injury suffered while

in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of title 18).

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for [the District of Columbia] *Washington, Douglass Commonwealth and the Capital*) or section 7429 of the Internal Revenue Code of 1986.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

(g) Subject to the provisions of chapter 179, the district courts of the United States shall have exclusive jurisdiction over any civil action commenced under section 453(2) of title 3, by a covered employee under chapter 5 of such title.

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#### **§ 1355. Fine, penalty or forfeiture**

(a) The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

(b)(1) A forfeiture action or proceeding may be brought in—

(A) the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or

(B) any other district where venue for the forfeiture action or proceeding is specifically provided for in section 1395 of this title or any other statute.

(2) Whenever property subject to forfeiture under the laws of the United States is located in a foreign country, or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought as provided in paragraph (1), or in the United States District court for [the District of Columbia] *Washington, Douglass Commonwealth and the Capital*.

(c) In any case in which a final order disposing of property in a civil forfeiture action or proceeding is appealed, removal of the property by the prevailing party shall not deprive the court of jurisdiction. Upon motion of the appealing party, the district court or the court of appeals shall issue any order necessary to preserve the right of the appealing party to the full value of the property at issue, including a stay of the judgment of the district court pending appeal or requiring the prevailing party to post an appeal bond.

(d) Any court with jurisdiction over a forfeiture action pursuant to subsection (b) may issue and cause to be served in any other dis-

trict such process as may be required to bring before the court the property that is the subject of the forfeiture action.

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## CHAPTER 87—DISTRICT COURTS; VENUE

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### § 1391. Venue generally

(a) **APPLICABILITY OF SECTION.**—Except as otherwise provided by law—

(1) this section shall govern the venue of all civil actions brought in district courts of the United States; and

(2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.

(b) **VENUE IN GENERAL.**—A civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

(c) **RESIDENCY.**—For all venue purposes—

(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;

(2) an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business; and

(3) a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.

(d) **RESIDENCY OF CORPORATIONS IN STATES WITH MULTIPLE DISTRICTS.**—For purposes of venue under this chapter, in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

(e) **ACTIONS WHERE DEFENDANT IS OFFICER OR EMPLOYEE OF THE UNITED STATES.**—

(1) IN GENERAL.—A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

(2) SERVICE.—The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

(f) CIVIL ACTIONS AGAINST A FOREIGN STATE.—A civil action against a foreign state as defined in section 1603(a) of this title may be brought—

(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

(4) in the United States District Court for [the District of Columbia] *Washington, Douglass Commonwealth and the Capital* if the action is brought against a foreign state or political subdivision thereof.

(g) MULTIPARTY, MULTIFORUM LITIGATION.—A civil action in which jurisdiction of the district court is based upon section 1369 of this title may be brought in any district in which any defendant resides or in which a substantial part of the accident giving rise to the action took place.

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#### **§ 1402. United States as defendant**

(a) Any civil action in a district court against the United States under subsection (a) of section 1346 of this title may be prosecuted only:

(1) Except as provided in paragraph (2), in the judicial district where the plaintiff resides;

(2) In the case of a civil action by a corporation under paragraph (1) of subsection (a) of section 1346, in the judicial district in which is located the principal place of business or principal office or agency of the corporation; or if it has no principal place of business or

principal office or agency in any judicial district (A) in the judicial district in which is located the office to which was made the return of the tax in respect of which the claim is made, or (B) if no return was made, in the judicial district in which lies [the District of Columbia] *Washington, Douglass Commonwealth and the Capital*. Notwithstanding the foregoing provisions of this paragraph a district court, for the convenience of the parties and witnesses, in the interest of justice, may transfer any such action to any other district or division.

(b) Any civil action on a tort claim against the United States under subsection (b) of section 1346 of this title may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred.

(c) Any civil action against the United States under subsection (e) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action.

(d) Any civil action under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States shall be brought in the district court of the district where the property is located or, if located in different districts, in any of such districts.

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### **§ 1413. Venue of cases under chapter 5 of title 3**

Notwithstanding the preceding provisions of this chapter, a civil action under section 1346(g) may be brought in the United States district court for the district in which the employee is employed or in the United States District Court for [the District of Columbia] *Washington, Douglass Commonwealth and the Capital*.

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## **CHAPTER 97—JURISDICTIONAL IMMUNITIES OF FOREIGN STATES**

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### **§ 1608. Service; time to answer; default**

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in [Washington, District of Columbia] *the Capital*, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a “notice of suit” shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made—

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evi-

dence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

## PART VI—PARTICULAR PROCEEDINGS

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### CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

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#### § 2265. Certification and judicial review

##### (a) CERTIFICATION.—

(1) IN GENERAL.—If requested by an appropriate State official, the Attorney General of the United States shall determine—

(A) whether the State has established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent prisoners who have been sentenced to death;

(B) the date on which the mechanism described in subparagraph (A) was established; and

(C) whether the State provides standards of competency for the appointment of counsel in proceedings described in subparagraph (A).

(2) EFFECTIVE DATE.—The date the mechanism described in paragraph (1)(A) was established shall be the effective date of the certification under this subsection.

(3) ONLY EXPRESS REQUIREMENTS.—There are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.

(b) REGULATIONS.—The Attorney General shall promulgate regulations to implement the certification procedure under subsection (a).

##### (c) REVIEW OF CERTIFICATION.—

(1) IN GENERAL.—The determination by the Attorney General regarding whether to certify a State under this section is subject to review exclusively as provided under chapter 158 of this title.

(2) VENUE.—The Court of Appeals for [the District of Columbia Circuit] *the Capital Circuit* shall have exclusive jurisdiction over matters under paragraph (1), subject to review by the Supreme Court under section 2350 of this title.

(3) STANDARD OF REVIEW.—The determination by the Attorney General regarding whether to certify a State under this section shall be subject to de novo review.

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### CHAPTER 158—ORDERS OF FEDERAL AGENCIES; REVIEW

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### § 2343. Venue

The venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for [the District of Columbia Circuit] *the Capital Circuit*.

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## CHAPTER 161—UNITED STATES AS PARTY GENERALLY

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### § 2410. Actions affecting property on which United States has lien

(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—

- (1) to quiet title to,
- (2) to foreclose a mortgage or other lien upon,
- (3) to partition,
- (4) to condemn, or
- (5) of interpleader or in the nature of interpleader with respect to,

real or personal property on which the United States has or claims a mortgage or other lien.

(b) The complaint or pleading shall set forth with particularity the nature of the interest or lien of the United States. In actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at [Washington, District of Columbia] *the Capital*. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds



divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue laws the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of section 505 of the Housing Act of 1950, as amended (12 U.S.C. 1701k), and subsection (d) of section 3720 of title 38 of the United States Code, the right to redeem does not arise, there shall be no right of redemption. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States which has charge of the administration of the laws in respect to which the claim of the United States arises. In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.

(d) In any case in which the United States redeems real property under this section or section 7425 of the Internal Revenue Code of 1986, the amount to be paid for such property shall be the sum of—

(1) the actual amount paid by the purchaser at such sale (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale),

(2) interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and

(3) the amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection with such property, over (B) the income from such property plus (to the extent such property is used by the purchaser) a reasonable rental value of such property.

(e) Whenever any person has a lien upon any real or personal property, duly recorded in the jurisdiction in which the property is located, and a junior lien, other than a tax lien, in favor of the United States attaches to such property, such person may make a written request to the officer charged with the administration of the laws in respect of which the lien of the United States arises, to have the same extinguished. If after appropriate investigation, it appears to such officer that the proceeds from the sale of the property would be insufficient to wholly or partly satisfy the lien of the United States, or that the claim of the United States has been satisfied or by lapse of time or otherwise has become unenforceable, such officer may issue a certificate releasing the property from such lien.

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## CHAPTER 163—FINES, PENALTIES AND FORFEITURES

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**§ 2467. Enforcement of foreign judgment**

(a) DEFINITIONS.—In this section—

(1) the term “foreign nation” means a country that has become a party to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (referred to in this section as the “United Nations Convention”) or a foreign jurisdiction with which the United States has a treaty or other formal international agreement in effect providing for mutual forfeiture assistance; and

(2) the term “forfeiture or confiscation judgment” means a final order of a foreign nation compelling a person or entity—

(A) to pay a sum of money representing the proceeds of an offense described in Article 3, Paragraph 1, of the United Nations Convention, any violation of foreign law that would constitute a violation or an offense for which property could be forfeited under Federal law if the offense were committed in the United States, or any foreign offense described in section 1956(c)(7)(B) of title 18, or property the value of which corresponds to such proceeds; or

(B) to forfeit property involved in or traceable to the commission of such offense.

(b) REVIEW BY ATTORNEY GENERAL.—

(1) IN GENERAL.—A foreign nation seeking to have a forfeiture or confiscation judgment registered and enforced by a district court of the United States under this section shall first submit a request to the Attorney General or the designee of the Attorney General, which request shall include—

(A) a summary of the facts of the case and a description of the proceedings that resulted in the forfeiture or confiscation judgment;

(B) certified copy of the forfeiture or confiscation judgment;

(C) an affidavit or sworn declaration establishing that the foreign nation took steps, in accordance with the principles of due process, to give notice of the proceedings to all persons with an interest in the property in sufficient time to enable such persons to defend against the charges and that the judgment rendered is in force and is not subject to appeal; and

(D) such additional information and evidence as may be required by the Attorney General or the designee of the Attorney General.

(2) CERTIFICATION OF REQUEST.—The Attorney General or the designee of the Attorney General shall determine whether, in the interest of justice, to certify the request, and such decision shall be final and not subject to either judicial review or review under subchapter II of chapter 5, or chapter 7, of title 5 (commonly known as the “Administrative Procedure Act”).

(c) JURISDICTION AND VENUE.—

(1) IN GENERAL.—If the Attorney General or the designee of the Attorney General certifies a request under subsection (b), the United States may file an application on behalf of a foreign nation in district court of the United States seeking to enforce the foreign forfeiture or confiscation judgment as if the judgment had been entered by a court in the United States.

(2) PROCEEDINGS.—In a proceeding filed under paragraph (1)—

(A) the United States shall be the applicant and the defendant or another person or entity affected by the forfeiture or confiscation judgment shall be the respondent;

(B) venue shall lie in the district court for [the District of Columbia] *Washington, Douglass Commonwealth and the Capital* or in any other district in which the defendant or the property that may be the basis for satisfaction of a judgment under this section may be found; and

(C) the district court shall have personal jurisdiction over a defendant residing outside of the United States if the defendant is served with process in accordance with rule 4 of the Federal Rules of Civil Procedure.

(d) ENTRY AND ENFORCEMENT OF JUDGMENT.—

(1) IN GENERAL.—The district court shall enter such orders as may be necessary to enforce the judgment on behalf of the foreign nation unless the court finds that—

(A) the judgment was rendered under a system that provides tribunals or procedures incompatible with the requirements of due process of law;

(B) the foreign court lacked personal jurisdiction over the defendant;

(C) the foreign court lacked jurisdiction over the subject matter;

(D) the foreign nation did not take steps, in accordance with the principles of due process, to give notice of the proceedings to a person with an interest in the property of the proceedings in sufficient time to enable him or her to defend; or

(E) the judgment was obtained by fraud.

(2) PROCESS.—Process to enforce a judgment under this section shall be in accordance with rule 69(a) of the Federal Rules of Civil Procedure.

(3) PRESERVATION OF PROPERTY.—

(A) RESTRAINING ORDERS.—

(i) IN GENERAL.—To preserve the availability of property subject to civil or criminal forfeiture under foreign law, the Government may apply for, and the court may issue, a restraining order at any time before or after the initiation of forfeiture proceedings by a foreign nation.

(ii) PROCEDURES.—

(I) IN GENERAL.—A restraining order under this subparagraph shall be issued in a manner consistent with subparagraphs (A), (C), and (E) of paragraph (1) and the procedural due process protections for a restraining order under section 983(j) of title 18.

(II) APPLICATION.—For purposes of applying such section 983(j)—

(aa) references in such section 983(j) to civil forfeiture or the filing of a complaint shall be deemed to refer to the applicable foreign criminal or forfeiture proceedings; and

(bb) the reference in paragraph (1)(B)(i) of such section 983(j) to the United States shall be deemed to refer to the foreign nation.

(B) EVIDENCE.—The court, in issuing a restraining order under subparagraph (A)—

(i) may rely on information set forth in an affidavit describing the nature of the proceeding or investigation underway in the foreign country, and setting forth a reasonable basis to believe that the property to be restrained will be named in a judgment of forfeiture at the conclusion of such proceeding; or

(ii) may register and enforce a restraining order that has been issued by a court of competent jurisdiction in the foreign country and certified by the Attorney General pursuant to subsection (b)(2).

(C) LIMIT ON GROUNDS FOR OBJECTION.—No person may object to a restraining order under subparagraph (A) on any ground that is the subject of parallel litigation involving the same property that is pending in a foreign court.

(e) FINALITY OF FOREIGN FINDINGS.—In entering orders to enforce the judgment, the court shall be bound by the findings of fact to the extent that they are stated in the foreign forfeiture or confiscation judgment.

(f) CURRENCY CONVERSION.—The rate of exchange in effect at the time the suit to enforce is filed by the foreign nation shall be used in calculating the amount stated in any forfeiture or confiscation judgment requiring the payment of a sum of money submitted for registration.

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## TITLE 18, UNITED STATES CODE

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## PART II—CRIMINAL PROCEDURE

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### CHAPTER 207—RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS

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#### § 3152. Establishment of pretrial services

(a) On and after the date of the enactment of the Pretrial Services Act of 1982, the Director of the Administrative Office of the United States Courts (hereinafter in this chapter referred to as the “Director”) shall, under the supervision and direction of the Judicial Conference of the United States, provide directly, or by contract or otherwise (to such extent and in such amounts as are provided in appropriation Acts), for the establishment of pretrial services in each judicial district **[(other than the District of Columbia)]** *(subject to subsection (d), other than the District of Columbia)*. Pretrial services established under this section shall be supervised by a chief probation officer appointed under section 3654 of this title

or by a chief pretrial services officer selected under subsection (c) of this section.

(b) Beginning eighteen months after the date of the enactment of the Pretrial Services Act of 1982, if an appropriate United States district court and the circuit judicial council jointly recommend the establishment under this subsection of pretrial services in a particular district, pretrial services shall be established under the general authority of the Administrative Office of the United States Courts.

(c) The pretrial services established under subsection (b) of this section shall be supervised by a chief pretrial services officer appointed by the district court. The chief pretrial services officer appointed under this subsection shall be an individual other than one serving under authority of section 3602 of this title.

(d) *In the case of the judicial district of Washington, Douglass Commonwealth and the Capital—*

*(1) upon the admission of the State of Washington, Douglass Commonwealth into the Union, the Washington, Douglass Commonwealth Pretrial Services Agency shall continue to provide pretrial services in the judicial district in the same manner and to the same extent as the District of Columbia Pretrial Services Agency provided such services in the judicial district of the District of Columbia as of the day before the date of the admission of the State into the Union; and*

*(2) upon the receipt by the President of the certification from the State of Washington, Douglass Commonwealth under section 315(b)(4) of the Washington, D.C. Admission Act that the State has in effect laws providing for the State to provide pretrial services, paragraph (1) shall no longer apply, and the Director shall provide for the establishment of pretrial services in the judicial district under this section.*

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## DISTRICT OF COLUMBIA DELEGATE ACT

### TITLE II—DISTRICT OF COLUMBIA DELEGATE TO THE HOUSE OF REPRESENTATIVES

#### SHORT TITLE

SEC. 201. This title may be cited as the “District of Columbia Delegate Act”.

#### [DELEGATE TO THE HOUSE OF REPRESENTATIVES]

[SEC. 202. (a) The people of the District of Columbia shall be represented in the House of Representatives by a Delegate, to be known as the “Delegate to the House of Representatives from the District of Columbia”, who shall be elected by the voters of the District of Columbia in accordance with the District of Columbia Election Act. The Delegate shall have a seat in the House of Representatives, with the right of debate, but not of voting, shall have all the privileges granted a Representative by section 6 of Article I of the Constitution, and shall be subject to the same restrictions and regulations as are imposed by law or rules on Representatives. The Delegate shall be elected to serve during each Congress.

[(b) No individual may hold the office of Delegate to the House of Representatives from the District of Columbia unless on the date of his election—

[(1) he is a qualified elector (as that term is defined in section 2(2) of the District of Columbia Election Act) of the District of Columbia;

[(2) he is at least twenty-five years of age;

[(3) he holds no other paid public office; and

[(4) he has resided in the District of Columbia continuously since the beginning of the three-year period ending on such date.

He shall forfeit his office upon failure to maintain the qualifications required by this subsection.]

\* \* \* \* \*

**[OTHER PROVISIONS AND AMENDMENTS RELATING TO THE ESTABLISHMENT OF A DELEGATE TO THE HOUSE OF REPRESENTATIVES FROM THE DISTRICT OF COLUMBIA**

**[SEC. 204.**

[(b) Section 2106 of title 5 of the United States Code is amended by inserting “a Delegate from the District of Columbia,” immediately after “House of Representatives,”.

[(c) Sections 4342(a)(5), 6954(a)(5), and 9342(a)(5) of title 10 of the United States Code are each amended by striking out “by the Commissioner of that District” and inserting in lieu thereof “by the Delegate to the House of Representatives from the District of Columbia”.

[(d)(1) Section 201(a) of title 18 of the United States Code is amended by inserting “the Delegate from the District of Columbia,” immediately after “Member of Congress,”.

[(2) Sections 203(a)(1) and 204 of title 18 of the United States Code are each amended by inserting “Delegate from the District of Columbia, Delegate Elect from the District of Columbia,” immediately after “Member of Congress Elect,”.

[(3) Section 203(b) of title 18 of the United States Code is amended by inserting “Delegate,” immediately after “Member,”.

[(4) The last undesignated paragraph of section 591 of title 18 of the United States Code is amended by inserting “the District of Columbia and” immediately after “includes”.

[(5) Section 594 of title 18 of the United States Code is amended (1) by striking out “or” immediately after “Senate,” and (2) by striking out “Delegates or Commissioners from the Territories and possessions” and inserting in lieu thereof “Delegate from the District of Columbia, or Resident Commissioner”.

[(6) Section 595 of title 18 of the United States Code is amended by striking out “or Delegate or Resident Commissioner from any Territory or Possession” and inserting in lieu thereof “Delegate from the District of Columbia, or Resident Commissioner”.

[(e) Section 11(c) of the Voting Rights Act of 1965 (42 U.S.C. 1973i(c)) is amended by striking out “or Delegates or Commissioners from the territories or possessions” and inserting in lieu thereof “Delegate from the District of Columbia”.

[(f) The second sentence in the second paragraph of section 7 of the District of Columbia Alcoholic Beverage Control Act (D.C. Code,

sec. 25–107) is amended by striking out “the presidential election” and inserting in lieu thereof “any election”.】

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## DISTRICT OF COLUMBIA ELECTIONS CODE OF 1955

### ELECTION OF ELECTORS

SEC. 1. In the District of Columbia electors of President and Vice President of the United States, 【the Delegate to the House of Representatives,】 the members of the State Board of Education, the members of the Council of the District of Columbia, the Attorney General for the District of Columbia, the Mayor and the following officials of political parties in the District of Columbia shall be elected as provided in this subchapter:

- (1) National committeemen and national committeewomen;
- (2) Delegates to conventions and conferences of political parties including delegates to nominate candidates for the Presidency and Vice Presidency of the United States;
- (3) Alternates to the officials referred to in paragraphs (1) and (2) of this section, where permitted by political party rules; and
- (4) Such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election at large or by ward in the District of Columbia.

### DEFINITIONS

SEC. 2. For the purposes of this subchapter:

- (1) The term “District” means the District of Columbia.
- (2) The term “qualified elector” means a person who:
  - (A) Is at least 17 years of age and who will be 18 years of age on or before the next general election;
  - (B) Is a citizen of the United States;
  - (C) Has maintained a residence in the District for at least 30 days preceding the next election and does not claim voting residence or right to vote in any state or territory;
  - (D) Is not incarcerated for a crime that is a felony in the District; and
  - (E) Has not been found by a court of law to be legally incompetent to vote.
- (3) The term “Board” means the District of Columbia Board of Elections provided for by section 3.
- (4) The term “ward” means an election ward established by the Council.
- (5) The term “State Board of Education” means the State Board of Education established by § 38-2651.
- 【(6) The term “Delegate” means the Delegate to the House of Representatives from the District of Columbia.】
- (7) The term “felony” includes any crime committed in the District of Columbia referred to in §§ 1-1001.14, 1-1162.32, and 1-1163.35.

(8) The term “Council” or “Council of the District of Columbia” means the Council of the District of Columbia established pursuant to the District of Columbia Home Rule Act.

(9) The term “Mayor” means the Office of Mayor of the District of Columbia established pursuant to the District of Columbia Home Rule Act.

(9A) The term “Attorney General” or “Attorney General for the District of Columbia” means the Attorney General for the District of Columbia provided for by part D-i of subchapter I of Chapter 3 and Sec.1-204.35.

(10) The term “initiative” means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.

(11) The term “referendum” means the process by which the registered qualified electors of the District of Columbia may suspend acts, or some part or parts of acts, of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operating budget) until such acts or part or parts of acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection.

(12) The term “recall” means the process by which the registered qualified electors of the District of Columbia may call for the holding of an election to remove or retain an elected official of the District of Columbia [(except the Delegate to Congress for the District of Columbia)] prior to the expiration of his or her term.

(13) The term “elected official” means the Mayor, the Chairman and members of the Council, the Attorney General, members of the State Board of Education, [the Delegate to Congress for the District of Columbia,] United States Senator and Representative, and advisory neighborhood commissioners of the District of Columbia.

(14) The term “printed” shall include any document produced by letterpress, offset press, photo reproduction, multilith, or other mass reproduction means.

(15) The term “proposer” means one or more of the registered qualified electors of the District of Columbia, including any entity, the primary purpose of which is the success or defeat of a political party or principle, or any question submitted to vote at a public election by means of an initiative, referendum or recall as authorized in amendments numbered 1 and 2 to Title IV of the Home Rule Act (§§ 1-204.101 to 1-204.115). Such entities shall be treated as a political committee as defined in § 1-1161.01(44) for purposes of this subchapter.

(16)(A) The term “residence,” for purposes of voting, means the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which the person’s habitation is fixed and to which a person, whenever he or she is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of the absence.



(B) In determining what is a principal or primary place of abode of a person the following circumstances relating to the person may be taken into account:

- (i) Business pursuits;
- (ii) Employment;
- (iii) Income sources;
- (iv) Residence for income or other tax purposes;
- (v) Residence of parents, spouse, and children;
- (vi) Leaseholds;
- (vii) Situs of personal and real property; and
- (viii) Motor vehicle registration.

(C) A qualified elector who has left his or her home and gone into another state or territory for a temporary purpose only shall not be considered to have lost his or her residence in the District.

(D) If a qualified elector moves to another state or territory with the intention of making it his or her permanent home, he or she shall notify the Board, in writing, and shall be considered to have lost residence in the District.

(E) No person shall be deemed to have gained or lost a residence by reason of absence while employed in the service of the District or the United States governments, while a student at any institution of learning, while kept at any institution at public expense, or while absent from the District with the intent to have the District remain his or her residence. If a person is absent from the District, but intends to maintain residence in the District for voting purposes, he or she shall not register to vote in any other state or territory during his or her absence.

(17) The term “voter registration agency” means an office designated under section 7(d)(1) and the National Voter Registration Act of 1993 to perform voter registration activities.

(18) The term “application distribution agency” means an agency designated under section 7(d)(14) in whose office or offices mail voter registration applications are made available for general distribution to the public.

(19) The term “duly registered voter” means a registered voter who resides at the address listed on the Board’s records.

(20) The term “registered qualified elector” means a registered voter who resides at the address listed on the Board’s records.

(21) The term “qualified registered elector” means a registered voter who resides at the address listed on the Board’s records.

(22) The term “voting system” means:

(A) The combination of mechanical, electromechanical, or electronic equipment, including the software, firmware, and documentation required to program, control, and support the equipment used to:

- (i) Define ballots;
- (ii) Cast and count votes;
- (iii) Report or display elections results; and
- (iv) Maintain and produce a permanent record; and

(B) The practices and documentation used to:

- (i) Identify system components and versions of components;
  - (ii) Test the system during its development and maintenance;
  - (iii) Maintain records of system errors and defects;
  - (iv) Determine necessary system changes after the initial qualification of the system; and
  - (v) Provide voters with notices, instructions, forms, paper ballots, or other materials.
- (23) The term “Help America Vote Act of 2002” means the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1666; 42 U.S.C. Sec.15301 et seq.).
- (24) The term “gender identity or expression” shall have the same meaning as provided in Sec.2-1401.02(12A).
- (25) “Election observers” means persons who witness the administration of elections, including individuals representing nonpartisan domestic and international organizations, including voting rights organizations, civil rights organizations, and civic organizations.
- (26) “Qualified petition circulator” means an individual who is 18 years of age or older and either:
- (A) A District resident; or
  - (B) A resident of another jurisdiction who has registered with the Board as a petition circulator and consented to being subject to the subpoena power of the Board and the jurisdiction of the Superior Court of the District of Columbia for the enforcement of subpoenas without respect to the individual’s place of residence.
- (27) The term “digital voter service system” means a website or mobile application that allows an individual to do the following:
- (A) Apply to become a registered voter;
  - (B) Change the individual’s name, address, or party affiliation in the individual’s existing voter registration record; and
  - (C) Request an absentee ballot.
- (28) The term “DMV” means the Department of Motor Vehicles.
- (29) “Mobile application” means specialized software, designed for a mobile device, in which electronic signatures are collected on an electronic petition.
- (30) “Mobile device” means a handheld, portable, wireless computing device, including a tablet computer or mobile phone.

\* \* \* \* \*

QUALIFICATIONS OF CANDIDATES AND ELECTORS; NOMINATION AND ELECTION OF [DELEGATE,] CHAIRMAN OF THE COUNCIL, MEMBERS OF COUNCIL, MAYOR, ATTORNEY GENERAL, AND MEMBERS OF STATE BOARD OF EDUCATION; PETITION REQUIREMENTS; ARRANGEMENT OF BALLOT

SEC. 8. (a)(1) Each candidate for election to the office of national committeeman or alternate, or national committeewoman or alternate, and for election as a member or official designated for election at large under paragraph (4) of section 1, shall be a qualified

elector registered under section 7 who has been nominated for such office, or for election as such member or official, by a nominating petition:

(A) Signed by not less than 500, or 1%, whichever is less, of the qualified electors registered under such section 7, who are of the same political party as the candidate; and

(B) Filed with the Board not later than the 90th day before the date of the election held for such office, member, or official.

(2) In the case of a nominating petition for a candidate for election as a member or official designated for election from a ward under paragraph (4) of section 1, such petition shall be prepared and filed in the same manner as a petition prepared and filed by a candidate under paragraph (1) of this subsection and signed by 100, or 1%, whichever is less, of the qualified electors residing in such ward, registered under section 7, who are of the same political party as the candidate.

(b)(1)(A) No person shall hold elected office pursuant to this section unless he or she has been a bona fide resident of the District of Columbia continuously since the beginning of the 90-day period ending on the date of the next election, and is a qualified elector registered under section 7.

(D) Any candidate for the position of Attorney General shall also meet the qualifications required by Sec.1-301.83 before the day on which the election for Attorney General is to be held.

(2) Only qualified petition circulators may circulate nominating petitions in support of candidates for elected office pursuant to this subchapter. The Board shall consider invalid the signatures on any petition sheet that was circulated by a person who, at the time of circulation, was not a qualified petition circulator.

(3) All signatures on a petition shall be made by the person whose signature it purports to be and not by any other person. Each petition shall contain an affidavit, made under penalty of perjury, in a form to be determined by the Board and signed by the circulator of that petition which shall state that the circulator is a qualified petition circulator and has:

(A) Personally circulated the petition;

(B) Personally witnessed each person sign the petition; and

(C) Inquired from each signer whether he or she is a registered voter in the same party as the candidate and, where applicable, whether the signer is registered in and a resident of the ward from which the candidate seeks election.

(4) Any circulator who knowingly and willfully violates any provisions of this section, or any regulations promulgated pursuant to this section, shall upon conviction be subject to a fine of not more than \$10,000, or imprisonment for not more than 6 months, or both. Each occurrence of a violation of this section shall constitute a separate offense. Violations of this section shall be prosecuted in the name of the District of Columbia by the Corporation Counsel of the District of Columbia.

(c)(1) In such election of officials referred to in paragraph (1) of section 1, and in each election of officials designated for election at large pursuant to paragraph (4) of section 1, the Board shall arrange the ballot of each party to enable the registered voters of such party to vote separately or by slate for each official duly qualified and nominated for election to such office.

(2) In each election of officials designated, pursuant to paragraph (4) of section 1, for election from a ward, the Board shall arrange the ballot of each party to enable the registered voters of such party, residing in such ward, to vote separately or by slate for each official duly qualified and nominated from such ward for election to such office from such ward.

(d) Each political party which had in the next preceding election year at least 7,500 votes cast in the general election for a candidate of the party to the office of **[Delegate,]** Chairman of the Council, member of the Council, Mayor, or Attorney General, shall be entitled to elect candidates for presidential electors, provided that the party has met all deadlines set out in this subchapter or by regulation for the submission of a party plan for the election. The executive committee of the organization recognized by the national committee of each such party as the official organization of that party in the District of Columbia shall nominate by appropriate means the presidential electors for that party. Nominations shall be made by message to the Board on or before September 1st next preceding a presidential election.

(e) The names of the candidates of each political party for President and Vice President shall be placed on the ballot under the title and device, if any, of that party as designated by the duly authorized committee of the organization recognized by the national committee of that party as the official organization of that party in the District. The form of the ballot shall be determined by that Board. The position on the ballot of names of candidates for President and Vice President shall be determined by lot. The names of persons nominated as candidates for electors of President and Vice President shall not appear on the ballot.

(f) A political party which does not qualify under subsection (d) of this section may have the names of its candidates for President and Vice President of the United States printed on the general election ballot provided a petition nominating the appropriate number of candidates for presidential electors signed by at least 1 per centum of registered qualified electors of the District of Columbia, as shown by the records of the Board as of the 144th day before the date of the presidential election, is presented to the Board on or before the 90th day before the date of the presidential election.

(g) No person may be elected to the office of elector of President and Vice President pursuant to this subchapter unless: (1) He or she is a registered voter in the District; and (2) He or she has been a bona fide resident of the District for a period of 3 years immediately preceding the date of the presidential election. Each person elected as elector of President and Vice President shall, in the presence of the Board, take an oath or solemnly affirm that he or she will vote for the candidates of the party he or she has been nominated to represent, and it shall be his or her duty to vote in such manner in the electoral college.

(h)(1)(A) The **[Delegate,]** Chairman of the Council, the 4 at-large members of the Council, Mayor, and Attorney General shall be elected by the registered qualified electors of the District of Columbia in a general election. Each candidate for the office of **[Delegate,]** Chairman of the Council, the at-large members of the Council, Mayor, and Attorney General in any general election shall, except as otherwise provided in subsection (j) of this section and sec-

tion 10(d), have been elected by the registered qualified electors of the District as such candidate by the next preceding primary election.

(B)(i) A member of the office of Council (other than the Chairman and any member elected at large) shall be elected in a general election by the registered qualified electors of the respective ward of the District from which the individual seeking such office was elected as a candidate for such office as provided in sub-subparagraph (ii) of this subparagraph.

(ii) Each candidate for the office of member of the Council (other than Chairman and at-large members) shall, except as otherwise provided in subsection (j) of this section and section 10(d), have been elected as such a candidate, by the registered qualified electors of the ward of the District from which such individual was nominated, at the next preceding primary election to fill such office within that ward.

(2) The nomination and election of any individual to the office of **[Delegate,]** Chairman of the Council, member of the Council, Mayor, and Attorney General shall be governed by the provisions of this subchapter. No political party shall be qualified to hold a primary election to select candidates for election to any such office in a general election unless, in the next preceding election year, at least 7,500 votes were cast in the general election for a candidate of such party for any such office or for its candidates for electors of President and Vice President.

(i)(1) Each individual in a primary election for candidate for the office of **[Delegate,]** Chairman of the Council, at-large member of the Council, Mayor, or Attorney General shall be nominated for any such office by a petition:

(A) Filed with the Board not later than 90 days before the date of such primary election; and

(B) Signed by at least 2,000 registered qualified electors of the same political party as the nominee, or by 1 per centum of the duly registered members of such political party, whichever is less, as shown by the records of the Board as of the 144th day before the date of such election.

(2) Each individual in a primary election for candidate for the office of member of the Council (other than Chairman and at-large members) shall be nominated for such office by a petition filed with the Board not later than 90 days before the date of such primary election, and signed by at least 250 persons, or by 1 per centum of persons (whichever is less, in the ward from which such individual seeks election) who are duly registered in such ward under section 7 and who are of the same political party as the nominee.

(3) For the purpose of computing nominating petition signature requirements, the Board shall by noon on the 144th day preceding the election post and make available the exact number of qualified registered electors in the District by party, ward, and precinct, as provided in this subsection. The Board shall make available for public inspection, in the office of the Board, the entire list of registered electors upon which such count was based. Such list shall be retained by the Board until the period for circulating, filing, and challenging petitions has ended.

(4) A nominating petition for a candidate in a primary election for any such office may not be circulated for signature before the

144th day preceding the date of such election and may not be filed with the Board before the 115th day preceding such date. The Board may prescribe rules with respect to the preparation and presentation of nominating petitions. The Board shall arrange the ballot of each political party in each such primary election as to enable a voter of such party to vote for nominated candidates of that party.

(j)(1) A duly qualified candidate for the office of [Delegate,] Chairman of the Council, member of the Council, Mayor, or Attorney General, may, subject to the provisions of this subsection, be nominated directly as such a candidate for election for such office (including any such election to be held to fill a vacancy). Such person shall be nominated by petition: (A) Filed with the Board not less than 90 days before the date of such general election; and (B) In the case of a person who is a candidate for the office of member of the Council (other than the Chairman or an at-large member), signed by 500 voters who are duly registered under section 7 in the ward from which the candidate seeks election; and in the case of a person who is a candidate for the office of [Delegate,] Chairman of the Council, at-large member of the Council, Mayor, or Attorney General, signed by duly registered voters equal in number to 11/2 per centum of the total number of registered voters in the District, as shown by the records of the Board as of 144 days before the date of such election, or by 3,000 persons duly registered under section 7, whichever is less. No signatures on such a petition may be counted which have been made on such petition more than 144 days before the date of such election.

(2) Nominations under this subsection for candidates for election in a general election to any office referred to in paragraph (1) of this subsection shall be of no force and effect with respect to any person whose name has appeared on the ballot of a primary election for that office held within 8 months before the date of such general election.

(3) No person shall be nominated directly as a candidate in any general election for the office of [Delegate,] Chairman of the Council, member of the Council, Mayor, Attorney General, United States Senator, or United States Representative who is registered to vote as affiliated with a party qualified to conduct a primary election.

(j-1) Notwithstanding any other provision of law, and pursuant to the June 4, 2014 Order of the District of Columbia Court of Appeals in *Zukerberg v. D.C. Board of Elections and Ethics, et al.*, No. 14-CV-222, the Board shall conduct the 2014 election of the Attorney General consistent with the procedural requirements for a special election under this subchapter, and shall have the election of the Attorney General coincide with the November 4, 2014, general election.

(k)(1) In each general election for the office of member of the Council (other than the office of the Chairman or an at-large member), the Board shall arrange the ballots in each ward to enable a voter registered in that ward to vote for any 1 candidate who:

- (A) Has been duly elected by any political party in the next preceding primary election for such office from such ward;
- (B) Has been duly nominated to fill a vacancy in such office in such ward pursuant to section 10(d); or

- (C) Has been nominated directly as a candidate for such office in such ward under subsection (j) of this section.
- (2) In each general election for the office of Chairman and member of the Council at large, the Board shall arrange the ballots to enable a registered qualified elector to vote for as many candidates for election as members at large as there are members at large to be elected in such election, including the Chairman. Such candidates shall be only those persons who:
  - (A) Have been duly elected by any political party in the next preceding primary election for such office;
  - (B) Have been duly nominated to fill vacancies in such office pursuant to section 10(d); or
  - (C) Have been nominated directly as a candidate under subsection (j) of this section.
- (3) In each general election for the office of [Delegate,] Mayor, and Attorney General, the Board shall arrange the ballots to enable a registered qualified elector to vote for any 1 of the candidates for any such office who:
  - (A) Has been duly elected by any political party in the next preceding primary election for such office;
  - (B) Has been duly nominated to fill a vacancy in such office pursuant to section 10(d), or, in the case of the Attorney General, pursuant to Sec.1-204.35(b); or
  - (C) Has been nominated directly as a candidate under subsection (j) of this section.
- (1)(1) Designation of offices of local party committees to be filled by election pursuant to paragraph (4) of section 1 shall be effected, in accordance with the provision of this subsection, by written communication signed by the chairman of such committee and filed with the Board not later than 180 days before the date of such election.
- (2) The notification shall specify separately:
  - (A) A comprehensive plan for the scheduled election;
  - (B) The titles of the offices and the total number of members to be elected at large, if any;
  - (C) The title of the offices and the total number of members to be elected by ward, if any; and
  - (D) The procedures to be followed in nominating and electing these members.
- (m) The election of the members of the State Board of Education shall be conducted on a nonpartisan basis and in accordance with this subchapter.
- (n) Each candidate in a general or special election for member of the State Board of Education shall be nominated for such office by a nominating petition: (A) Filed with the Board not later than the 90th calendar day before the date of such general or special election; and (B) signed by at least 200 qualified electors who are duly registered under section 7, who reside in the school district or ward from which the candidate seeks election, or in the case of a candidate running at large, signed by at least 1,000 of the qualified electors in the District of Columbia registered under such section 7. A nominating petition for a candidate in a general or special election for member of the State Board of Education may not be circulated for signatures before the 144th day preceding the date of such election and may not be filed with the Board before the

115th day preceding such date. In a general or special election for members of the State Board of Education, the Board shall arrange the ballot for each school district or ward to enable a voter registered in that school district or ward to vote for any 1 candidate duly nominated to be elected to such office from such school district or ward, and to vote for as many candidates duly nominated for election at large to such office as there are State Board of Education members to be elected at large in such election.

(o)(1) The Board is authorized to accept any nominating petition for a candidate for any office as bona fide with respect to the qualifications of the signatures thereto if the original or facsimile thereof has been posted in a suitable public place for a 10-day period beginning on the third day after the filing deadline for nominating petitions for the office. Any registered qualified elector may within the 10-day period challenge the validity of any petition by written statement signed by the challenger and filed with the Board and specifying concisely the alleged defects in the petition. A copy of the challenge shall be sent by the Board promptly to the person designated for the purpose in the nominating petition. In a special election to fill a vacancy in an Advisory Neighborhood Commission single-member district, the period prescribed in this paragraph for posting and challenge shall be 5 days, excluding weekends and holidays.

(2) The Board shall receive evidence in support of and in opposition to the challenge and shall determine the validity of the challenged nominating petition not more than 20 days after the challenge has been filed. Within 3 days after announcement of the determination of the Board with respect to the validity of the nominating petition, either the challenger or any person named in the challenged petition as a nominee may apply to the District of Columbia Court of Appeals for a review of the reasonableness of such determination. The Court shall expedite consideration of the matter and the decision of such Court shall be final and not appealable.

(3) For the purpose of verifying a signature on any petition filed pursuant to this section, the Board shall first determine if the address on the petition is the same as the address shown of the signer's voter registration record. If the address is different than the address which appears on the signer's registration record, the address shall be deemed valid if:

(A) The signer's current address is within the single member district for an Advisory Neighborhood Commission election, within the school district for a school board election, within the ward for a ward-wide election, or within the District of Columbia for an at-large election; and

(B) The signer files a change of address form with the Board during the first 10 days of the period designated for resolving challenges to petitions.

(p) In any election, the order in which the names of the candidates for office appear on the ballot shall be determined by lot, upon a date or dates and under regulations prescribed by the Board.

(q) Any petition required to be filed under this subchapter by a particular date must be filed no later than 5:00 p.m. on such date.



(r)(1) In any primary, general, or special election held in the District of Columbia to nominate or elect candidates to public office, a voter may cast a write-in vote for a candidate other than those who have qualified to appear on the ballot.

(2) To be eligible to receive the nomination of a political party for public office, a write-in candidate shall be a duly registered member of the party nominated and shall meet all the other qualifications required for election to the office and shall declare his or her candidacy not later than 4:45 p.m. on the day following the date of the election on a form or forms prescribed by the Board.

(3) To be eligible for election to public office, a write-in candidate shall be a duly registered elector and shall meet all of the other qualifications required for election to the office and shall declare his or her candidacy not later than 4:45 p.m. on the third day immediately following the date of the election in which he or she was a candidate on a form or forms prescribed by the Board.

(4) In party office elections, write-in voting provisions may also be subject to the party rules.

(s) The Board shall submit to the Mayor and Council a feasibility study of mail-ballot voting procedures, within 6 months after October 21, 2000. The study shall outline the advantages and disadvantages of mail-ballot procedures and recommend whether mail-ballot procedures should be implemented in District of Columbia elections. The study shall include an analysis of the following issues and topics that the Board deems appropriate:

- (1) Administration and logistics;
- (2) Ballot integrity and electoral fairness;
- (3) Voter turnout;
- (4) Cost;
- (5) Applicability to special elections and regularly scheduled elections; and
- (6) The experiences of other jurisdictions that have used mail-ballot procedures.

\* \* \* \* \*

DATES FOR HOLDING ELECTIONS; VOTES CAST FOR PRESIDENT AND VICE PRESIDENT COUNTED AS VOTES FOR PRESIDENTIAL ELECTORS; VOTING HOURS; TIE VOTES; FILLING VACANCY WHERE ELECTED OFFICIAL DIES, RESIGNS, OR BECOMES UNABLE TO SERVE

SEC. 10. (a)(1) The elections of the officials referred to in section 1(1), (2), (3), or (4) shall be held, at the request of the party, during a primary election already scheduled for other purposes on the date requested; provided, that it does not interfere or conflict with applicable national party rules. The primary under section 5(b) shall be held on the 1st Tuesday in June of each presidential election year.

(2) The electors of President and Vice President of the United States shall be elected on the Tuesday next after the 1st Monday in November in every 4th year succeeding every election of a President and Vice President of the United States. Each vote cast for a candidate for President or Vice President whose name appears on the general election ballot shall be counted as a vote cast for the candidates for presidential electors of the party supporting such presidential and vice presidential candidate. Candidates receiving the highest number of votes in such election shall be declared the

winners, except that in the case of a tie it shall be resolved in the same manner as is provided in subsection (c) of this section.

(3) [(A) Except as otherwise provided in the case of special elections under this subchapter or § 206(a) of the District of Columbia Delegate Act, primary elections of each political party for the office of Delegate to the House of Representatives shall be held on the 1st Tuesday in June in a presidential election year and on the 3rd Tuesday in June of each even-numbered non-presidential election year, and general elections for such office shall be held on the Tuesday next after the 1st Monday in November of each even-numbered year.]

(B) Except as otherwise provided in the case of special elections under this subchapter primary elections of each political party for the office of member of the Council shall be held on the 1st Tuesday in June in a presidential election year and on the 3rd Tuesday in June of each even-numbered non-presidential election year, and general election for such offices shall be held on the 1st Tuesday after the 1st Monday in November in 1974 and every 2nd year thereafter.

(C) Except as otherwise provided in the case of a special election under this subchapter or by Sec.1-204.35(b), primary elections of each political party for the office of Chairman of the Council, Mayor and Attorney General shall be held on the 3rd Tuesday in June of 2018 and every 4th year thereafter, and the general election for such office shall be held on the 1st Tuesday after the 1st Monday in November in 1974 and every 4th year thereafter.

(4) With respect to special elections required or authorized by this subchapter or by Sec.1-204.35(b), the Board may establish the dates on which such special elections are to be held and prescribe such other terms and conditions as may, in the Board's opinion, be necessary or appropriate for the conduct of such elections in a manner comparable to that prescribed for other elections held pursuant to this subchapter.

(5) General elections of members of the State Board of Education shall be held on the 1st Tuesday after the 1st Monday in November of each odd-numbered calendar year through 1987, and thereafter in each even-numbered calendar year, on the same day and month.

(b)(1) All elections prescribed by this subchapter shall be conducted by the Board in conformity with the provisions of this subchapter. In all elections held pursuant to this subchapter, the polls shall be open from 7:00 a.m. to 8:00 p.m., except in instances when the time established for closing the polls is extended pursuant to a federal or District court order or any other order. The Board may, upon request of the precinct captain or upon its own initiative, if an emergency exists by reason of mechanical failure of a voting machine, an unanticipated shortage of ballots, excessive wait times, bomb threats, or similar unforeseen event warrants it, extend the polling hours for that precinct until the emergency situation has been resolved. Candidates who receive the highest number of votes, other than candidates for election as political party officials or delegates to national conventions nominating candidates for President and Vice President of the United States, shall be declared winners. If after the date of an election and prior to the certification of the election results, the qualified candidate who has received the highest number of votes dies, withdraws, or is found to be ineligible to

hold the office, or in the event no candidate qualifies for election, the Board shall declare no winner, and the office shall become vacant as of the date of the beginning of the term of office for which the election was held. With respect to a primary election, the position of candidate shall be vacant until filled pursuant to subsection (d) of this section.

(2)(A) No person shall canvass, electioneer, circulate petitions, post any campaign material or engage in any activity that interferes with the orderly conduct of the election within a polling place or within a 50-foot distance from the entrance and exit of a polling place. The Board, by regulation, shall establish procedures for determination and clear marking of the 50-foot distance.

(B) A person who violates the provisions of this paragraph shall, upon conviction, be fined not less than \$50 or more than \$500 or imprisoned for not more than 30 days, or both.

(c) In the case of a tie vote, the resolution of which will affect the outcome of any election, the candidates receiving the tie vote shall cast lots before the Board at 12:00 noon on a date to be set by the Board. This date shall be set no sooner than 2 days following determination by the Board of the results of the election which resulted in a tie. The candidate to whom the lot shall fall shall be declared the winner. If the candidate or candidates fail to appear by 12:00 noon on said day, the Board shall cast lots for him or her or them. For purpose of casting lots, any candidate may appear in person, or by proxy appointed in writing.

(d)(1) In the event that any official, other than [Delegate,] member of the Council, Mayor, Attorney General, member of the State Board of Education, or winner of a primary election for the office of [Delegate,] member of the Council, Mayor, or Attorney General, elected pursuant to this subchapter dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this subchapter to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of the term shall be chosen pursuant to the rules of the duly authorized party committee, except that the successor shall have the qualifications required by this subchapter for the office.

[(2)(A) In the event that a vacancy occurs in the office of Delegate before May 1 of the last year of the Delegate's term of office, the Board shall hold a special election to fill the unexpired term. The special election shall be held on the Tuesday occurring at least 70 days and not more than 174 days after the date on which the vacancy occurs which the Board determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person elected to fill the vacancy in the office of Delegate shall take office the day on which the Board certifies his or her election.]

[(B) In the event that a vacancy occurs in the office of Delegate on or after May 1 of the last year of the Delegate's term of office, the Mayor shall appoint a successor to complete the remainder of the term of office.]

[(3)] (2) In the event of a vacancy in the office of United States Representative or United States Senator elected pursuant to Sec.1-123 and that vacancy cannot be filled pursuant to paragraph (1) of this subsection, the Mayor shall appoint, with the advice and con-

sent of the Council, a successor to complete the remainder of the term of office.

(e)(1) In the event of a vacancy of an elected member of the State Board of Education, the Board of Elections shall hold a special election to fill the unexpired term of the vacant office. The special election shall be held on the Tuesday occurring at least 70 days and not more than 174 days after the date on which the vacancy occurs which the Board determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person elected as a member to fill a vacancy on the State Board of Education shall take office the day on which the Board of Elections certifies his or her election.

(f) Notwithstanding the provisions of subsection (e) of this section, if a vacancy of an elected member of the State Board of Education occurs on or after February 1st of the last year of the term of the vacant office, a special election shall not be held and the State Board of Education may appoint a person to fill such vacancy until the unexpired term ends. Any person appointed under this subsection shall have the same qualifications for holding such office as were required of his or her immediate predecessor.

(g) A vacancy among the appointed Board members shall be filled within 45 days of its occurrence. The Mayor shall submit a nominee to the Council for confirmation within 30 days of the vacancy. Any Board member appointed to fill a vacancy shall serve until the end of the original term.

#### RECOUNT; JUDICIAL REVIEW OF ELECTION

SEC. 11. (a)(1) The Board shall recount the votes cast in one or more voting precincts, if, within 7 days after the Board certifies the results of an election for an office, a candidate for that office petitions the Board in writing and specifies the precincts in which the recount shall be conducted. Before beginning the recount, the Board shall prepare an estimate of the costs and inform the petitioner of the anticipated number of hours needed to complete the recount and the cost per hour. The costs of the recount shall not include any payments associated for salaried election officials. If the petitioner chooses to proceed with the recount, the petitioner shall deposit the amount of \$50 per precinct included in the recount. If the result of the election is changed as a result of the recount, the deposit shall be refunded. If the result is not changed, the Board shall determine the actual cost of the recount. The petitioner shall be liable for the actual cost of the recount and the Board may collect that cost from the deposit made with the petition.

(2) If in any election for President and Vice President of the United States, [Delegate to the House of Representatives,] Chairman of the Council, member of the Council, Mayor, Attorney General, or member of the State Board of Education, the results certified by the Board show a margin of victory for a candidate that is less than one percent of the total votes cast for the office, the Board shall conduct a recount. The cost of a recount conducted pursuant to this paragraph shall not be charged to any candidate.

(3) In the case of an initiative or referendum measure placed on the ballot pursuant to section 16, or a recall measure placed on the ballot pursuant to section 17, the Board shall conduct a recount if the difference between the number of votes for and against the initiative, referendum, or recall measure is less than one percent of the total votes cast.

(4) The Board shall issue regulations prescribing the procedures for the Board to:

(A) Provide notice of a recount to candidates for an office subject to a recount;

(B) Conduct a recount and certify the official result of an election, initiative, referendum, or recall measure which is the subject of the recount; and

(C) Ensure that each candidate for an office subject to a recount may designate watchers to be present while the recount is conducted, or in the case of an initiative, referendum, or recall measure, ensure that members of the public may be present while the recount is conducted.

(b)(1) Within 7 days after the Board certifies the results of an election, any person who voted in the election may petition the District of Columbia Court of Appeals to review the election. The Court's authority to review the results of an election shall include initiative, referendum, and recall measures as well as elections for a particular office.

(2) In response to such a petition, the Court may set aside the results certified and declare the true results of the election, or void the election in whole or in part. To determine the true results of an election, the Court may order a recount or take other appropriate action, whether or not a recount has been conducted or requested pursuant to subsection (a) of this section. The Court shall void an election only if it:

(A) Determines that the candidate certified as the winner of the election does not meet the qualifications required for office; or

(B) Finds that there was any act or omission, including fraud, misconduct, or mistake serious enough to vitiate the election as a fair expression of the will of the registered qualified electors voting in the election.

(3) If the Court voids an election, it may order a special election, which shall be conducted in such a manner, and at such time, as the Board may prescribe.

(4) The decision of the Court in any case brought pursuant to this subsection shall be final and may not be appealed.

(5) The Court shall have the authority to require the losing party to reimburse the prevailing party for reasonable attorneys' fees and other costs associated with the case, but shall not exercise this authority if it finds that the reimbursement would impose an undue financial hardship on the losing party.

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CANDIDACY FOR MORE THAN 1 OFFICE PROHIBITED; MULTIPLE NOMINATIONS; CANDIDACY OF OFFICEHOLDER FOR ANOTHER OFFICE RESTRICTED

SEC. 15. (a) No person shall be a candidate for more than one office on the State Board of Education, the Council, Mayor, or Attorney General in any election for the members of the State Board of Education, the Council, Mayor, or Attorney General, and no person shall be a candidate for more than one office on the Council, Mayor, or Attorney General in any primary election. If a person is nominated for more than 1 such office, he or she shall, within 3 days after the Board has sent him notice that he or she has been so nominated, designate in writing the office for which he or she wishes to run, in which case he or she will be deemed to have withdrawn all other nominations. In the event that such person fails within such 3-day period to file such a designation with the Board, all such nominations of such person shall be deemed withdrawn.

(b) Notwithstanding the provisions of subsection (a) of this section, a person holding the office of [Delegate,] Chairman or member of the Council, Mayor, Attorney General, or member of the State Board of Education shall, while holding such office, be eligible as a candidate for any other of such offices in any primary or general election. In the event that said person is elected in a general election to the office for which he or she is a candidate, that person shall, within 24 hours of the date that the Board certifies said person's election, pursuant to subsection (a)(11) of section 5, either resign from the office that person currently holds or shall decline to accept the office for which he or she was a candidate. In the event that said person elects to resign, said resignation shall be effective not later than 24 hours before the date upon which that person would assume the office to which he or she has been elected.

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RECALL PROCESS

SEC. 17. (a) The provisions of this section shall govern the recall of all elected officers of the District of Columbia [except the Delegate to the Congress from the District of Columbia].

(b)(1) Any registered qualified elector or electors desiring to initiate the recall of an elected officer shall file a notice of intention to recall that officer with the Board, which contains the following information:

- (A) The name and title of the elected officer sought to be recalled;
- (B) A statement not to exceed 200 words in length, giving the reasons for the proposed recall;
- (C) The name and address of the proposer of the recall; and
- (D) An affidavit that each proposer is:
  - (i) A registered qualified elector in the election ward of the elected officer whose recall is sought, if that officer was elected to represent a ward;
  - (ii) A registered qualified elector in the District of Columbia, if the officer whose recall is sought was elected at-large; or

(iii) A registered qualified elector in the single-member district of an Advisory Neighborhood Commissioner whose recall is sought.

(2) A separate notice of intention shall be filed for each officer sought to be recalled.

(c)(1) No recall proceedings shall be initiated for an elected officer during the 1st 365 days nor during the last 365 days of his term of office.

(2) The recall process for an elected officer may not be initiated within 365 days after a recall election has been determined in his or her favor.

(3) In the case of an Advisory Neighborhood Commissioner, no recall proceedings shall be initiated during the first 6 months or the last 6 months of the Commissioner's term of office, nor within 6 months after a recall election has been decided in favor of the Commissioner.

(d)(1) The Board shall serve, in person or by certified mail, the notice of intention to recall to the elected officer sought to be recalled within 5 calendar days.

(2) The elected officer sought to be recalled may file with the Board, within 10 calendar days after the filing of the notice of intention to recall, a response of not more than 200 words, to the statement of the proposer of recall. If an answer is filed, the Board shall serve immediately a copy of that response to the proposer named in the notice of intention to recall.

(3) The statement contained in the notice of intention to recall and the elected officer's response are intended solely for the information of the voters. No insufficiency in form or substance of such statement shall affect the validity of the election proceedings.

(e) Upon filing with the Board the notice of intention of recall and the elected officer's response, the Board shall prepare and provide to the proponent an original petition form which the proposer shall formally adopt as his or her own form. The proponent shall print from the original blank petition sheets on white paper of good writing quality of the same size as the original or shall utilize the mobile application made available under section 5(a)(19). Each recall petition sheet shall be double sided and consist of numbered lines for 20 names and signatures with residence address (street numbers), and, where applicable, the ward numbers. Each petition sheet shall have printed on it, and each mobile application shall electronically display, the following information:

(1) A warning statement that declares that only duly registered electors of the District of Columbia may sign the petition;

(2) The name of the elected officer sought to be recalled and the office which he or she holds;

(3) A statement that requests that the Board hold a recall election in a manner prescribed in §§ 1-204.111 to 1-204.115;

(4) The name and address of the proposer or proposers of the recall; and

(5) The statement of grounds for the recall and the response of the officer sought to be recalled, if any. If the officer sought to be recalled has not responded, the petition shall so state.

(f) Each petition sheet or sheets for recall shall have attached to it, at the time of submission to the Board, a statement made under

penalties of perjury, in a form determined by the Board signed by the circulator of that petition which contains the following:

- (1) The printed name of the circulator;
  - (2) The residence address of the circulator giving the street and number;
  - (3) That the circulator of the petition form was in the presence of each person when the appended signature was written;
  - (4) That according to the best information available to the circulator, each signature is the genuine signature of the person whose name it purports to be;
  - (5) That the circulator of the recall petition was a qualified petition circulator at the time of circulation; and
  - (6) The dates between which all the signatures to the petition were obtained.
- (g) The proposer of a recall shall have 180 days or, in the case of a proposed recall of an Advisory Neighborhood Commissioner, 60 days, beginning on the date when the proponent of the recall formally adopts the original petition form as his or her own form pursuant to subsection (e) of this section, to circulate the recall petition and file the petition with the Board.
- (h)(1) A recall petition for an elected officer from a ward shall include the valid signatures of 10 percent of the registered qualified electors of the ward from which the officer was elected. The 10 percent shall be computed from the total number of the qualified registered electors from such ward according to the latest official count of the registered qualified electors made by the Board 30 days prior to the date of initial submission to the Board of the notice of intention to recall.
- (2) A recall petition for an at-large elected official shall contain the signatures of registered qualified electors in number equal to 10 percent of the registered qualified electors in the District of Columbia: Provided, that the total signatures submitted include 10 percent of the registered electors in each of 5 or more of the 8 wards. The 10 percent shall be computed from the total number of registered qualified electors from the District of Columbia according to the same procedures established in paragraph (1) of this subsection.
- (3) A recall petition for an elected officer from a single-member district shall include the valid signatures of 10% of the registered qualified electors of the single-member district from which the officer was elected, except when the elected officer has missed all regularly scheduled meetings of the Advisory Neighborhood Commission of which the single-member district is a part for at least a three-month period, in which case the recall petition must only include the valid signatures of 5% of the registered qualified electors of the single-member district from which the officer was elected. The 5% or 10% shall be computed from the total number of registered qualified electors from the single-member district in accordance with the same procedures established in paragraph (1) of this subsection.
- (i) Upon the submission of a recall petition by the proposer to the Board, the Board shall refuse to accept the petition upon any of the following grounds:
- (1) Except in the case of a recall petition for an Advisory Neighborhood Commissioner, the financial disclosure state-



ment of the proposer has not been filed pursuant to §§ 1-1163.07 and 1-1163.09;

(2) The petition is not the proper form established in subsection (e) of this section;

(3) The restrictions for initiating the recall process established in subsection (c) of this section were not observed;

(4) The time limitation established in subsection (g) of this section within which the recall petition may be circulated and submitted to the Board has expired;

(5) The petition clearly bears on its face an insufficient number of signatures to qualify for the ballot; or

(6) The petition was circulated by persons who were not qualified petition circulators at the time of circulation.

(j)(1) If the Board refuses to accept the recall petition when submitted to it, the proposer submitting such petition to the Board may appeal, within 10 days after the Board's refusal, to the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept such recall petition. The Superior Court of the District of Columbia shall expedite the consideration of the matter. If the Superior Court of the District of Columbia determines that the petition is legal in form and apparently meets the requirements established under this section, it shall issue an order requiring the Board to accept the petition as of the date of submission.

(2) Should the Superior Court of the District of Columbia hold in favor of the proposer, it may award court costs and reasonable attorney's fees to the proposer.

(k)(1) After the acceptance of a recall petition, the Board shall certify, within 30 calendar days after such petition has been filed, whether or not the number of valid signatures on the recall petition meets the qualifying percentage and ward distribution requirements established in subsection (h) of this section and whether or not the necessary number of signatures of registered qualified electors of the District of Columbia, properly distributed by wards, appears on the petition. This certification may be made by a bona fide random and statistical sampling method. In a case in which an officer elected from a ward is sought to be recalled, if a person who signs a recall petition for that elected officer is found not to be a registered qualified elector in the ward indicated on the petition, that name and signature shall not be counted toward determining whether or not the recall measure qualifies. In a case in which an officer elected at-large is sought to be recalled, if a person who signs a recall petition for that elected officer is found to be a registered qualified elector in a ward other than what was indicated on the petition sheet, such person shall be counted from the correct ward in determining whether or not a recall measure for an at-large elected officer qualifies. In a case in which an Advisory Neighborhood Commissioner is sought to be recalled, if a person who signs a petition to recall that Advisory Neighborhood Commissioner is found not to be a registered qualified elector in the single-member district indicated on the petition, the person's name and signature shall not be counted toward determining whether or not the recall measure qualifies. If the Board finds that the same person has signed a petition for the same recall measure more than once, it shall count only 1 signature of such person. Two persons

representing the petitioner(s) seeking the recall and 2 persons representing the elected officer sought to be recalled may be present to observe during the counting and validating procedure.

(2) The Board shall post, within 3 calendar days after the acceptance of a recall petition, whether in the normal course or at the direction of a court, by making available for public inspection in the office of the Board, the petition for the recall measure or facsimile. Any registered qualified elector, during a 10-day period (including Saturdays, Sundays, and holidays, except that with respect to a petition to recall a member of an Advisory Neighborhood Commission SMD, the 10-day period shall not include Saturdays, Sundays, and holidays), beginning on the day the recall petition was posted by the Board, may challenge the validity of such petition by a written statement duly signed by the challenger and filed with the Board, specifying concisely the alleged defects in the petition. The provisions of section 8(o)(2) shall be applicable to a challenge and the Board may establish any necessary rules and regulations consistent that concerns the process of the challenge.

(3) For the purpose of verifying a signature on any petition filed pursuant to this section, the Board shall first determine that the address on the petition is the same as the residence shown on the signer's voter registration record. If the address is different, the signature shall not be counted as valid unless the Board's records show that the person was registered to vote from the address listed on the petition at the time the person signed the petition.

(1) After determining that the number and validity of signatures in the recall petition meet the requirements established in this section, the Board shall certify the sufficiency of such recall petition and shall fix the date of a special election to determine whether the elected officer who is the subject of the recall shall be removed from his or her office. The Board shall conduct an election for this purpose within 114 days after the date the petition to recall has been certified as to its sufficiency. If a previously scheduled general, primary, or special election will occur between 54 and 114 days after the date the petition to recall has been certified as to its sufficiency, the Board may present the recall measure at that election. In the case of a proposed recall of an officer elected to represent a particular ward, the recall election shall be conducted only in that ward. In the case of a proposed recall of an Advisory Neighborhood Commissioner, the recall election shall be conducted in one of the following manners unless conducted in accordance with a previously scheduled general, primary, or special election pursuant to this subsection:

(1)(A) In the single-member district represented by the Advisory Neighborhood Commissioner at the voting precinct containing the majority of the registered qualified electors; or

(B) If the voting precinct is unavailable, at an appropriate alternative site within the single-member district;

(2) By postal ballot by mailing by 1st class mail no later than 7 days prior to the date of the election an official ballot issued by the Board. The ballots shall be mailed to each qualified registered elector in the single-member district at the address at which the elector is registered, except for those persons who have made arrangements with the Board for absentee voting pursuant to section 9(b)(2). The Board shall, pursuant to sec-

tion 5(a)(14), issue rules to implement the provisions of this paragraph. The ballots shall be printed with prepaid 1st class postage and shall be postmarked no later than midnight of the day of the election.

(3) A special election called to consider the recall of an Advisory Neighborhood Commissioner shall not be considered an election for the purposes of section 16(p).

(m) The Board shall place the recall measure on the ballot in substantially the following form:

FOR the recall of (insert the name of the elected officer and the office held)

AGAINST the recall of (insert the name of the elected officer and the office held)

(n) Based on the results of the special election held to decide the outcome of the recall measure, the elected officer sought to be recalled shall be removed from that office: Provided, that a majority of the qualified electors voting in the recall election vote to remove him or her. The vacancy, as created by the removal, shall be filled in the same manner as other vacancies, as provided in §§ 1-204.01(b)(3) and (d), 1-204.21(c)(2), 1-309.06(d), and 1-1001.10.

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### **TITLE 3, UNITED STATES CODE**

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#### **CHAPTER 1—PRESIDENTIAL ELECTIONS AND VACANCIES**

Sec.

1. Time of appointing electors.

\* \* \* \* \*

**[21. Definitions.]**

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#### **[§ 21. Definitions**

**[As used in this chapter the term—**

**[(a) “State” includes the District of Columbia.**

**[(b) “executives of each State” includes the Board of Commissioners of the District of Columbia.]**

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### **TITLE 40, UNITED STATES CODE**

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#### **SUBTITLE II—PUBLIC BUILDINGS AND WORKS**

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## PART D—PUBLIC BUILDINGS, GROUNDS, AND PARKS IN THE DISTRICT OF COLUMBIA

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### CHAPTER 87—PHYSICAL DEVELOPMENT OF NATIONAL CAPITAL REGION

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#### SUBCHAPTER I—GENERAL

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#### § 8702. Definitions

In this chapter—

(1) ENVIRONS.—The term “environs” means [the territory surrounding the District of Columbia] *the territory surrounding the National Capital* included in the National Capital region.

[(2) NATIONAL CAPITAL.—The term “National Capital” means the District of Columbia and territory the Federal Government owns in the environs.]

(2) NATIONAL CAPITAL.—*The term “National Capital” means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act, and the territory the Federal Government owns in the environs.*

(3) NATIONAL CAPITAL REGION.—The term “National Capital region” means—

[(A) the District of Columbia;]

(A) *the National Capital and the State of Washington, Douglass Commonwealth;*

(B) Montgomery and Prince Georges Counties in Maryland;

(C) Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and

(D) all cities in Maryland or Virginia in the geographic area bounded by the outer boundaries of the combined area of the counties listed in subparagraphs (B) and (C).

(4) PLANNING AGENCY.—The term “planning agency” means any city, county, bi-county, part-county, or regional planning agency authorized under state and local laws to make and adopt comprehensive plans.

#### SUBCHAPTER II—PLANNING AGENCIES

#### § 8711. National Capital Planning Commission

(a) ESTABLISHMENT AND PURPOSE.—The National Capital Planning Commission is the central federal planning agency for the Federal Government in the National Capital, created to preserve the important historical and natural features of the National Capital, except for the United States Capitol Buildings and Grounds (as defined and described in sections 5101 and 5102 of this title), any extension of, or additions to, those Buildings and Grounds, and

buildings and grounds under the care of the Architect of the Capitol.

(b) COMPOSITION.—

(1) MEMBERSHIP.—The National Capital Planning Commission is composed of—

(A) ex officio, the Secretary of the Interior, the Secretary of Defense, the Administrator of General Services, the Mayor of the District of Columbia, the Chairman of the Council of the District of Columbia, the chairman of the Committee on Governmental Affairs of the Senate, and the chairman of the Committee on Government Reform of the House of Representatives, or an alternate any of those individuals designates; and

[(B) five citizens with experience in city or regional planning, three of whom shall be appointed by the President and two of whom shall be appointed by the Mayor.]

*(B) four citizens with experience in city or regional planning, who shall be appointed by the President.*

[(2) RESIDENCY REQUIREMENT.—The citizen members appointed by the Mayor shall be residents of the District of Columbia. Of the three appointed by the President, at least one shall be a resident of Virginia and at least one shall be a resident of Maryland.]

*(2) RESIDENCY REQUIREMENT.—Of the four citizen members, one shall be a resident of Virginia, one shall be a resident of Maryland, and one shall be a resident of Washington, Douglass Commonwealth.*

(3) TERMS.—An individual appointed by the President serves for six years. An individual appointed by the Mayor serves for four years. An individual appointed to fill a vacancy shall be appointed only for the unexpired term of the individual being replaced.

(4) PAY AND EXPENSES.—Citizen members are entitled to \$100 a day when performing duties vested in the Commission and to reimbursement for necessary expenses incurred in performing those duties.

(c) CHAIRMAN AND OFFICERS.—The President shall designate the Chairman of the National Capital Planning Commission. The Commission may elect from among its members other officers as it considers desirable.

(d) PERSONNEL.—The National Capital Planning Commission may employ a Director, an executive officer, and other technical and administrative personnel as it considers necessary. Without regard to section 6101(b) to (d) of title 41 and section 3109, chapters 33 and 51, and subchapter III of chapter 53, of title 5, the Commission may employ, by contract or otherwise, the temporary or intermittent (not more than one year) services of city planners, architects, engineers, appraisers, and other experts or organizations of experts, as may be necessary to carry out its functions. The Commission shall fix the rate of compensation so as not to exceed the rate usual for similar services.

(e) PRINCIPAL DUTIES.—The principal duties of the National Capital Planning Commission include—

(1) preparing, adopting, and amending a comprehensive plan for the federal activities in the National Capital and making

related recommendations to the appropriate developmental agencies; and

(2) serving as the central planning agency for the Government within the National Capital region and reviewing the development programs of the developmental agencies to advise as to consistency with the comprehensive plan.

(f) TRANSFER OF OTHER FUNCTIONS, POWERS, AND DUTIES.—The National Capital Planning Commission shall carry out all other functions, powers, and duties of the National Capital Park and Planning Commission, including those formerly vested in the Highway Commission established by the Act of March 2, 1893 (ch. 197, 27 Stat. 532), and those formerly vested in the National Capital Park Commission by the Act of June 6, 1924 (ch. 270, 43 Stat. 463).

(g) ESTIMATE.—The National Capital Planning Commission shall submit to the Office of Management and Budget before December 16 of each year its estimate of the total amount to be appropriated for expenditure under this chapter (except sections 8732–8736) during the next fiscal year.

(h) FEES.—The National Capital Planning Commission may charge fees to cover the full cost of Geographic Information System products and services the Commission supplies. The fees shall be credited to the applicable appropriation account as an offsetting collection and remain available until expended.

\* \* \* \* \*

## CHAPTER 89—NATIONAL CAPITAL MEMORIALS AND COMMEMORATIVE WORKS

\* \* \* \* \*

### § 8901. Purposes

The purposes of this chapter are—

(1) to preserve the integrity of the comprehensive design of the L'Enfant and McMillan plans for the Nation's Capital;

(2) to ensure the continued public use and enjoyment of open space in [the District of Columbia and its environs] *the Capital and its environs*, and to encourage the location of commemorative works within [the urban fabric of the District of Columbia] *the urban fabric of the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act*;

(3) to preserve, protect and maintain the limited amount of open space available to residents of, and visitors to, the Nation's Capital; and

(4) to ensure that future commemorative works in areas administered by the National Park Service and the Administrator of General Services in [the District of Columbia and its environs] *the Capital and its environs*—

(A) are appropriately designed, constructed, and located; and

(B) reflect a consensus of the lasting national significance of the subjects involved.

### § 8902. Definitions and nonapplication

(a) DEFINITIONS.—In this chapter:

(1) **COMMEMORATIVE WORK.**—The term “commemorative work” means any statue, monument, sculpture, memorial, plaque, inscription, or other structure or landscape feature, including a garden or memorial grove, designed to perpetuate in a permanent manner the memory of an individual, group, event or other significant element of American history, except that the term does not include any such item which is located within the interior of a structure or a structure which is primarily used for other purposes.

[(2) **THE DISTRICT OF COLUMBIA AND ITS ENVIRONS.**—The term “the District of Columbia and its environs ” means those lands and properties administered by the National Park Service and the General Services Administration located in the Reserve, Area I, and Area II as depicted on the map entitled “Commemorative Areas Washington, DC and Environs”, numbered 869/86501 B, and dated June 24, 2003.]

(2) **CAPITAL AND ITS ENVIRONS.**—*The term “Capital and its environs” means—*

*(A) the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act; and*

*(B) those lands and properties administered by the National Park Service and the General Services Administration located in the Reserve, Area I, and Area II as depicted on the map entitled “Commemorative Areas Washington, DC and Environs”, numbered 869/86501 B, and dated June 24, 2003, that are located outside of the State of Washington, Douglass Commonwealth.*

(3) **RESERVE.**—The term “Reserve” means the great cross-axis of the Mall, which generally extends from the United States Capitol to the Lincoln Memorial, and from the White House to the Jefferson Memorial, as depicted on the map referenced in paragraph (2).

(4) **SPONSOR.**—The term “sponsor” means a public agency, or an individual, group or organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, and which is authorized by Congress to establish a commemorative work in [the District of Columbia and its environs] *the Capital and its environs.*

(b) **NONAPPLICATION.**—This chapter does not apply to commemorative works authorized by a law enacted before January 3, 1985.

(c) **LIMITING APPLICATION TO CAPITAL.**—*This chapter applies only with respect to commemorative works in the Capital and its environs.*

### **§ 8903. Congressional authorization of commemorative works**

(a) **IN GENERAL.**—Commemorative works—

(1) may be established on federal lands referred to in section 8901(4) of this title only as specifically authorized by law; and

(2) are subject to applicable provisions of this chapter.

(b) **MILITARY COMMEMORATIVE WORKS.**—A military commemorative work may be authorized only to commemorate a war or similar major military conflict or a branch of the armed forces. A com-

memorative work solely commemorating a limited military engagement or a unit of an armed force may not be authorized. Commemorative works to a war or similar major military conflict may not be authorized until at least 10 years after the officially designated end of such war or conflict.

(c) **WORKS COMMEMORATING EVENTS, INDIVIDUALS, OR GROUPS.**—A commemorative work commemorating an event, individual, or group of individuals, except a military commemorative work as described in subsection (b), may not be authorized until after the 25th anniversary of the event, death of the individual, or death of the last surviving member of the group.

(d) **CONSULTATION WITH NATIONAL CAPITAL MEMORIAL ADVISORY COMMISSION.**—In considering legislation authorizing commemorative works in [the District of Columbia and its environs] *the Capital and its environs*, the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate shall solicit the views of the National Capital Memorial Advisory Commission.

(e) **EXPIRATION OF LEGISLATIVE AUTHORITY.**—Any legislative authority for a commemorative work shall expire at the end of the seven-year period beginning on the date of the enactment of such authority, or at the end of the seven-year period beginning on the date of the enactment of legislative authority to locate the commemorative work within Area I, if such additional authority has been granted, unless—

(1) the Secretary of the Interior or the Administrator of General Services (as appropriate) has issued a construction permit for the commemorative work during that period; or

(2) the Secretary or the Administrator (as appropriate), in consultation with the National Capital Memorial Advisory Commission, has made a determination that—

(A) final design approvals have been obtained from the National Capital Planning Commission and the Commission of Fine Arts; and

(B) 75 percent of the amount estimated to be required to complete the commemorative work has been raised.

If these two conditions have been met, the Secretary or the Administrator (as appropriate) may extend the seven-year legislative authority for a period not to exceed three additional years. Upon expiration of the legislative authority, any previous site and design approvals shall also expire.

#### **§ 8904. National Capital Memorial Advisory Commission**

(a) **ESTABLISHMENT AND COMPOSITION.**—There is established the National Capital Memorial Advisory Commission, which shall be composed of—

- (1) the Director of the National Park Service;
- (2) the Architect of the Capitol;
- (3) the Chairman of the American Battle Monuments Commission;
- (4) the Chairman of the Commission of Fine Arts;
- (5) the Chairman of the National Capital Planning Commission;
- (6) the Mayor of the District of Columbia;



- (7) the Commissioner of the Public Buildings Service of the General Services Administration; and
- (8) the Secretary of Defense.

(b) CHAIRMAN.—The Director is the Chairman of the National Capital Memorial Advisory Commission.

(c) ADVISORY ROLE.—The National Capital Memorial Advisory Commission shall advise the Secretary of the Interior and the Administrator of General Services (as appropriate) on policy and procedures for establishment of, and proposals to establish, commemorative works in [the District of Columbia and its environs] *the Capital and its environs* and on other matters concerning commemorative works in the Nation's Capital as the Commission considers appropriate.

(d) MEETINGS.—The National Capital Memorial Advisory Commission shall meet at least twice annually.

#### **§ 8905. Site and design approval**

(a) CONSULTATION ON, AND SUBMISSION OF, PROPOSALS.—A sponsor authorized by law to establish a commemorative work in [the District of Columbia and its environs] *the Capital and its environs* may request a permit for construction of the commemorative work only after the following requirements are met:

(1) CONSULTATION.—The sponsor must consult with the National Capital Memorial Advisory Commission regarding the selection of alternative sites and design concepts for the commemorative work.

(2) SUBMITTAL.—Following consultation in accordance with clause (1), the Secretary of the Interior or the Administrator of General Services, as appropriate, must submit, on behalf of the sponsor, site and design proposals to the Commission of Fine Arts and the National Capital Planning Commission for their approval.

(b) DECISION CRITERIA.—In considering site and design proposals, the Commission of Fine Arts, National Capital Planning Commission, and the Secretary or Administrator (as appropriate) shall be guided by, but not limited by, the following criteria:

(1) SURROUNDINGS.—To the maximum extent possible, a commemorative work shall be located in surroundings that are relevant to the subject of the work.

(2) LOCATION.—A commemorative work shall be located so that—

(A) it does not interfere with, or encroach on, an existing commemorative work; and

(B) to the maximum extent practicable, it protects open space, existing public use, and cultural and natural resources.

(3) MATERIAL.—A commemorative work shall be constructed of durable material suitable to the outdoor environment.

(4) LANDSCAPE FEATURES.—Landscape features of commemorative works shall be compatible with the climate.

(5) MUSEUMS.—No commemorative work primarily designed as a museum may be located on lands under the jurisdiction of the Secretary in Area I or in East Potomac Park as depicted on the map referenced in section 8902(2).

(6) SITE-SPECIFIC GUIDELINES.—The National Capital Planning Commission and the Commission of Fine Arts may develop such criteria or guidelines specific to each site that are mutually agreed upon to ensure that the design of the commemorative work carries out the purposes of this chapter.

(c) DONOR CONTRIBUTIONS.—

(1) ACKNOWLEDGMENT OF DONOR CONTRIBUTION.—Except as otherwise provided in this subsection, the Secretary of the Interior or Administrator of General Services, as applicable, may permit a sponsor to acknowledge donor contributions at the commemorative work.

(2) REQUIREMENTS.—An acknowledgment under paragraph (1) shall—

(A) be displayed—

(i) inside an ancillary structure associated with the commemorative work; or

(ii) as part of a manmade landscape feature at the commemorative work; and

(B) conform to applicable National Park Service or General Services Administration guidelines for donor recognition, as applicable.

(3) LIMITATIONS.—An acknowledgment under paragraph (1) shall—

(A) be limited to an appropriate statement or credit recognizing the contribution;

(B) be displayed in a form in accordance with National Park Service and General Services Administration guidelines;

(C) be displayed for a period of up to 10 years, with the display period to be commensurate with the level of the contribution, as determined in accordance with the plan and guidelines described in subparagraph (B);

(D) be freestanding; and

(E) not be affixed to—

(i) any landscape feature at the commemorative work; or

(ii) any object in a museum collection.

(4) COST.—The sponsor shall bear all expenses related to the display of donor acknowledgments under paragraph (1).

(5) APPLICABILITY.—This subsection shall apply to any commemorative work dedicated after January 1, 2010.

**§ 8906. Criteria for issuance of construction permit**

(a) CRITERIA FOR ISSUING PERMIT.—Before issuing a permit for the construction of a commemorative work in [the District of Columbia and its environs] *the Capital and its environs*, the Secretary of the Interior or Administrator of General Services, as appropriate, shall determine that—

(1) the site and design have been approved by the Secretary or Administrator, the National Capital Planning Commission and the Commission of Fine Arts;

(2) knowledgeable individuals qualified in the field of preservation and maintenance have been consulted to determine structural soundness and durability of the commemorative

work and to ensure that the commemorative work meets high professional standards;

(3) the sponsor authorized to construct the commemorative work has submitted contract documents for construction of the commemorative work to the Secretary or Administrator; and

(4) the sponsor authorized to construct the commemorative work has available sufficient amounts to complete construction of the project.

(b) DONATION FOR PERPETUAL MAINTENANCE AND PRESERVATION.—

(1) In addition to the criteria described above in subsection (a), no construction permit shall be issued unless the sponsor authorized to construct the commemorative work has donated an amount equal to 10 percent of the total estimated cost of construction to offset the costs of perpetual maintenance and preservation of the commemorative work. All such amounts shall be available for those purposes pursuant to the provisions of this subsection. The provisions of this subsection shall not apply in instances when the commemorative work is constructed by a Department or agency of the Federal Government and less than 50 percent of the funding for such work is provided by private sources.

(2) Notwithstanding any other provision of law, money on deposit in the Treasury on the date of enactment of the Commemorative Works Clarification and Revision Act of 2003 provided by a sponsor for maintenance pursuant to this subsection shall be credited to a separate account in the Treasury.

(3) Money provided by a sponsor pursuant to the provisions of this subsection after the date of enactment of the Commemorative Works Clarification and Revision Act of 2003 shall be credited to a separate account with the National Park Foundation.

(4) Upon request of the Secretary or Administrator (as appropriate), the Secretary of the Treasury or the National Park Foundation shall make all or a portion of such moneys available to the Secretary or the Administrator (as appropriate) for the maintenance of a commemorative work. Under no circumstances may the Secretary or Administrator request funds from a separate account exceeding the total money in the account established under paragraph (2) or (3). The Secretary and the Administrator shall maintain an inventory of funds available for such purposes. Funds provided under this paragraph shall be available without further appropriation and shall remain available until expended.

(c) SUSPENSION FOR MISREPRESENTATION IN FUNDRAISING.—The Secretary of the Interior or Administrator may suspend any activity under this chapter that relates to the establishment of a commemorative work if the Secretary or Administrator determines that fundraising efforts relating to the work have misrepresented an affiliation with the work or the Federal Government.

(d) ANNUAL REPORT.—The person authorized to construct a commemorative work under this chapter must submit to the Secretary of the Interior or Administrator an annual report of operations, including financial statements audited by an independent certified public accountant. The person shall pay for the report.

### § 8907. Temporary site designation

(a) CRITERION FOR DESIGNATION.—If the Secretary of the Interior, in consultation with the National Capital Memorial Commission, determines that a site where commemorative works may be displayed on a temporary basis is necessary to aid in the preservation of the limited amount of open space available to residents of, and visitors to, the Nation's Capital, a site may be designated on land the Secretary administers in [the District of Columbia] *the Capital and its environs*.

(b) PLAN.—A designation may be made under subsection (a) only if, at least 120 days before the designation, the Secretary, in consultation with the Commission, prepares and submits to Congress a plan for the site. The plan shall include specifications for the location, construction, and administration of the site and criteria for displaying commemorative works at the site.

(c) RISK AND AGREEMENT TO INDEMNIFY.—A commemorative work displayed at the site shall be installed, maintained, and removed at the sole expense and risk of the person authorized to display the work. The person shall agree to indemnify the United States for any liability arising from the display of the commemorative work under this section.

\* \* \* \* \*

### § 8909. Administrative

(a) MAINTENANCE OF DOCUMENTATION OF DESIGN AND CONSTRUCTION.—Complete documentation of design and construction of each commemorative work located in [the District of Columbia and its environs] *the Capital and its environs* shall be provided to the Secretary of the Interior or Administrator of General Services, as appropriate, and shall be permanently maintained in the manner provided by law.

(b) RESPONSIBILITY FOR MAINTENANCE OF COMPLETED WORK.—On completion of any commemorative work in [the District of Columbia and its environs] *the Capital and its environs*, the Secretary or Administrator, as appropriate, shall assume responsibility for maintaining the work.

(c) REGULATIONS OR STANDARDS.—The Secretary and Administrator shall prescribe appropriate regulations or standards to carry out this chapter.

\* \* \* \* \*

## CHAPTER 91—COMMISSION OF FINE ARTS

\* \* \* \* \*

### § 9101. Establishment, composition, and vacancies

(a) ESTABLISHMENT.—There is a Commission of Fine Arts.

(b) COMPOSITION.—The Commission is composed of seven well-qualified judges of the fine arts, appointed by the President, who serve for four years each or until their successors are appointed and qualified.

(c) VACANCIES.—The President shall fill vacancies on the Commission.

(d) **EXPENSES.**—Members of the Commission shall be paid actual expenses in traveling to and from ~~the District of Columbia~~ *the Capital* to attend Commission meetings and while attending those meetings.

#### **§ 9102. Duties**

(a) **IN GENERAL.**—The Commission of Fine Arts shall advise on—

(1) the location of statues, fountains, and monuments in the public squares, streets, and parks in ~~the District of Columbia~~ *the Capital*;

(2) the selection of models for statues, fountains, and monuments erected under the authority of the Federal Government;

(3) the selection of artists to carry out clause (2); and

(4) questions of art generally when required to do so by the President or a committee of Congress.

(b) **DUTY TO REQUEST ADVICE.**—The officers required to decide the questions described in subsection (a)(1)–(3) shall request the Commission to provide the advice.

(c) **NONAPPLICATION.**—This section does not apply to the Capitol Building and the Library of Congress buildings.

(d) **DEFINITION.**—*In this chapter, the term “Capital” means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.*

\* \* \* \* \*

### **CHAPTER 95—WASHINGTON AQUEDUCT AND OTHER PUBLIC WORKS IN THE DISTRICT OF COLUMBIA**

Sec.

9501. Chief of Engineers.

\* \* \* \* \*

9508. *Applicability to Capital and State of Washington, Douglass Commonwealth.*

\* \* \* \* \*

#### **§ 9508. *Applicability to Capital and State of Washington, Douglass Commonwealth***

(a) **IN GENERAL.**—*Effective upon the admission of the State of Washington, Douglass Commonwealth into the Union, any reference in this chapter to the District of Columbia shall be deemed to refer to the Capital or the State of Washington, Douglass Commonwealth, as the case may be.*

(b) **DEFINITION.**—*In this section, the term “Capital” means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.*

\* \* \* \* \*

## COMMITTEE CORRESPONDENCE

FRANK PALLONE, JR., NEW JERSEY  
CHAIRMAN

CATHY McMORRIS RODGERS, WASHINGTON  
RANKING MEMBER

ONE HUNDRED SEVENTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

April 14, 2021

The Honorable Carolyn B. Maloney  
Chairwoman  
Committee on Oversight and Reform  
2157 Rayburn House Office Building  
Washington, DC 20515

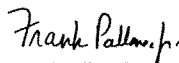
Dear Chairwoman Maloney:

I write concerning H.R. 51, the "Washington, D.C. Admission Act," which was additionally referred to the Committee on Energy and Commerce. There are certain provisions in the legislation which concern the Medicaid federal medical assistance percentage for a newly admitted state and fall within the Rule X jurisdiction of the Committee on Energy and Commerce.

In recognition of the desire to expedite consideration of H.R. 51, the Committee agrees to waive formal consideration of the bill as to such provisions. The Committee takes this action with the mutual understanding that we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that the Committee will be appropriately consulted and involved as this bill or similar legislation moves forward so that we may address any remaining issues within our jurisdiction. I request that you urge the Speaker to name Members of the Committee to any conference committee which is named to consider such provision. Such participation will be critical to allow the Committee to continue to work on the policy involving the Medicaid federal medical assistance percentage for a newly admitted state.

Finally, I would appreciate the inclusion of this letter into the *Congressional Record* during floor consideration of H.R. 51.

Sincerely,

  
Frank Pallone Jr.  
Chairman

The Honorable Carolyn B. Maloney  
April 14, 2021  
Page 2

cc. The Honorable Nancy Pelosi, Speaker  
The Honorable Steny Hoyer, Majority Leader  
The Honorable Cathy McMorris Rodgers, Ranking Member, Committee on Energy and  
Commerce  
The Honorable James Comer, Ranking Member, Committee on Oversight and Reform  
The Honorable Jason Smith, Parliamentarian

CAROLYN B. MALONEY  
CHAIRWOMAN

ONE HUNDRED SIXTEENTH CONGRESS

JIM JORDAN, OHIO  
RANKING MINORITY MEMBER

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND REFORM  
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WASHINGTON, DC 20515-6143

MAJORITY (203) 225-5051  
MINORITY (202) 225-5074  
<http://oversight.house.gov>

April 16, 2021

The Honorable Frank Pallone  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515


Dear Mr. Chairman:

Thank you for your letter regarding H.R. 51, the Washington D.C. Admission Act. As you know, the bill was referred primarily to the Committee on Oversight and Government Reform, with an additional referral to the Committee on Energy and Commerce, due to provisions in the legislation which concern the Medicaid federal medical assistance percentage for a newly admitted state.

I thank you for allowing the Committee on Energy and Commerce to be discharged from further consideration of the bill to expedite floor consideration. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Energy and Commerce represented on the conference committee.

I would be pleased to include this letter and your correspondence in the *Congressional Record* during floor consideration to memorialize our understanding.

Sincerely,

  
Carolyn B. Maloney  
Chairwoman

cc: The Honorable Nancy Pelosi, Speaker  
U.S. House of Representatives

The Honorable James Comer, Ranking Member  
Committee on Oversight and Reform



The Honorable Frank Pallon  
Page 2

The Honorable Greg Walden, Ranking Member  
Committee on House Energy and Commerce

CAROLYN B. MALONEY, NEW YORK  
CHAIRWOMAN

ONE HUNDRED SEVENTEENTH CONGRESS

JAMES COMER, KENTUCKY  
RANKING MINORITY MEMBER

**Congress of the United States**  
**House of Representatives**

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<https://oversight.house.gov>

April 16, 2021

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515


Dear Mr. Chairman:

Thank you for your letter regarding H.R. 51, the Washington, D.C. Admission Act. As you know, the bill was referred primarily to the Committee on Oversight and Government Reform, with an additional referral to the Committee on the Judiciary.

I thank you for allowing the Committee on the Judiciary to be discharged from further consideration of the bill to expedite floor consideration. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on the Judiciary represented on the conference committee.

I would be pleased to include this letter and your correspondence in the *Congressional Record* during floor consideration to memorialize our understanding.

Sincerely,

  
Carolyn B. Maloney  
Chairwoman

cc: The Honorable Nancy Pelosi, Speaker  
U.S. House of Representatives

The Honorable James Comer, Ranking Member  
Committee on Oversight and Reform

The Honorable Jim Jordan, Ranking Member  
Committee on the Judiciary

CAROLYN B. MALONEY, NEW YORK  
CHAIRWOMAN

ONE HUNDRED SEVENTEENTH CONGRESS

JAMES COMER, KENTUCKY  
RANKING MINORITY MEMBER

## Congress of the United States

### House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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MINORITY: (202) 225-5074  
<https://oversight.house.gov>

April 16, 2021

The Honorable Frank Pallone  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515


Dear Mr. Chairman:

Thank you for your letter regarding H.R. 51, the Washington, D.C. Admission Act. As you know, the bill was referred primarily to the Committee on Oversight and Government Reform, with an additional referral to the Committee on Energy and Commerce, due to provisions in the legislation which concern the Medicaid federal medical assistance percentage for a newly admitted state.

I thank you for allowing the Committee on Energy and Commerce to be discharged from further consideration of the bill to expedite floor consideration. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Energy and Commerce represented on the conference committee.

I would be pleased to include this letter and your correspondence in the *Congressional Record* during floor consideration to memorialize our understanding.

Sincerely,

  
Carolyn B. Maloney  
Chairwoman

cc: The Honorable Nancy Pelosi, Speaker  
U.S. House of Representatives

The Honorable James Comer, Ranking Member  
Committee on Oversight and Reform

The Honorable Greg Walden, Ranking Member  
Committee on House Energy and Commerce

PAT FALLON  
4TH DISTRICT, TEXAS

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-4304

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**Committee on Armed Services**  
Military Personnel  
Cyber, Innovative Technologies and  
Information Systems  
**Committee on Oversight and Reform**  
Environment

April 14, 2021

The Honorable Carolyn B. Maloney  
Chairwoman  
Committee on Oversight and Reform  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairwoman Maloney:

At the Committee on Oversight and Reform hearing held today, while I was on the Zoom video,  
apparently my audio was muted. I would like to be shown on the record voting "Yes" on the  
HICE Amendment #1 to H.R. 51.

Respectfully submitted,



Pat Fallon, Member  
House of Representatives  
4<sup>th</sup> District of Texas

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100 West Houston Street  
1<sup>st</sup> Floor  
Sherman, TX 75090

## MINORITY VIEWS

In H.R. 51, the Majority disregards the intentional design of the Union in a pure pursuit of partisan political power.

Prior Views and writings on D.C. Statehood proposals by both Democratic and Republican Congresses, attorneys general, and scholars have focused on the practical and fiscal barriers to statehood in addition to the constitutional arguments. It is clear the Majority is no longer willing to entertain good faith questions and concerns raised by the Minority about the value of responsible federal spending and the ultimate readiness of the District to bear the financial responsibility of statehood. Therefore, the constitutional considerations of the Majority's reckless pursuit of statehood for a lavished and elevated District must remain the Minority's primary focus in voicing dissent on behalf of the national interests.

To be clear, the District's track record with financial independence should not inspire confidence in its readiness for statehood. The Majority has continually dismissed the Minority's very valid concerns in claiming that the District is prepared to shoulder the price tag it has incurred from its unique position of privilege and responsibility as the nation's capital and seat of government. In short, the District is not ready for these burdens. This is most evidenced by H.R. 51's multiple provisions directly acknowledging the very real costs for essential services that will ultimately, but not definitively, be transferred from the federal taxpayer to the new state at some unspecified future date.<sup>1</sup> Additionally, the last time

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<sup>1</sup>No state has entered the Union completely self-sufficient, unencumbered, and without need for support from the federal government. No state has been expected to. It is disingenuous and outright careless, however, to use the history of nascent states' need for support from the United States government as a justification for providing little to no explanation for how the District anticipates it will *ever* achieve any measure of self-reliance. The District is, fundamentally, a mid-sized city (ranked 20th among U.S. cities in terms of population at the time of writing), and, because of its historical role as a protectorate of the United States Congress, it is intentionally (and without fault laid upon it) without some of the ordinary features every other state possesses, such as a prison or an airport. To be sure, these features are not *prerequisites to statehood*, as the Majority has charged the Minority with asserting, but indications of just how unsuitable statehood is for a city that is limited in its natural resources and constitutionally limited to how far it can physically expand.

For example, the District has no prison within its borders, and District prisoners are placed into the custody of the Federal Bureau of Prisons upon their incarceration. According to estimates, between 6,000 and 8,000 District residents are incarcerated in federal prisons, and the federal government pays for that expense, which the Federal Register estimates to be between \$34,704.12 and \$36,299.25 per prisoner per year, based on FY 2016 and FY 2017 data. H.R. 51 provides vague terms about the proposed new state *eventually* taking responsibility for the price or custody of its incarcerated residents, but proponents provide no data or study to show when that will be. During the business meeting held on April 14, 2021, Rep. Higgins of Louisiana offered an amendment to set a timeframe for the District to define when the federal government could anticipate ceasing its duty to maintain these incarcerated District residents, but that amendment was rejected along party-lines, and Del. Norton responded that no other state's entrance into the Union was predicated upon providing such timeframes. But no other state has entered the union when all its prisoners were being funded by the federal government. The same exercise was repeated for issues regarding the District's pension liabilities (offered by Rep. Keller) and its entire judicial system (offered by Rep. Foxx). These payments by the federal government amount to hundreds of millions of dollars per year, incomparable to any aid provided

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the District had budget autonomy Congress had to step in and rescue it from fiscal ruin, keeping the city under Congress' watchful eye and propelling it on the economic trajectory it enjoys today.<sup>2</sup> With statehood, these protections would disappear, sending the District once again into a financial abyss.

The Majority has shown little interest in alternatives to their proposal, while the Minority, on the other hand, is willing to engage in discussions about the merits of various proposals or conduct a good faith review of voting rights for the District and all U.S. territories. Ultimately it is not the Minority's responsibility to provide a sound and complete alternative policy proposal to the Majority's unconstitutional and unworkable H.R. 51.

The Minority finds the Constitution prohibits statehood for the District through simple legislation for three reasons.

First, Congress does not possess the power to divest the District's territory by invocation of its legislative power over the District, the grant to the early Congresses of the now-exhausted power to secure a district to serve as the "seat of Government," or by relying on the unconstitutional cession of territory to Virginia in the 19th century.

Second, H.R. 51's shrinking of the federal district to an absurdly small size encompassing only a small portion of the existing District violates the contractual understanding of Maryland's cession of land to the United States in 1789 in order to support a strong and vibrant national capital. Further, the size of the federal district spurns the Founders' vision of an independent, secure, and grand federal city to house the nation's capital.

Third, the 23rd Amendment, ratified by the states in 1961, is a response to the issue of District participation in federal elections, and the terms and assumptions of the amendment cannot be undone through simple legislation.

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to a previous new state, and they are a direct result of the District not having been designed or developed to ever become a state.

But setting aside the limitations the District has based on its physical size, the various programs and privileges to which District residents are entitled are inextricable from the District's constitutional position. To expect the District to make up the billions of annual dollars that it receives from Congress would be unreasonable, but to expect the American taxpayer to continue to fund entitlements no other state enjoys would also be unreasonable and a violation of the Equal Footing Doctrine upon admission.

For example, the District's residents can attend public universities around the country and pay severely discounted tuition under the D.C. Tuition Assistance Grant program. Under H.R. 51, this will *eventually* be assumed by the new State of Washington, Douglass Commonwealth, but it is unclear how the District's current income model could account for an expense no other state in the Union has. During the business meeting held on April 14, Rep. Keller introduced an amendment that would require a bipartisan commission to evaluate the actual costs for which the new state would be responsible upon admission, assuming (as H.R. 51 apparently does) the new state will not make severe, draconian cuts to the benefits its citizens enjoy. The Majority rejected the evaluation unanimously.

This is only a small sampling of how the District is not, and cannot, be prepared to shoulder the price of statehood. In some ways, it is a result of the physical limitation placed on it by the Constitution not to exceed 100 square miles. In other ways, it is a result of the District's status as the domain of the United States Congress and the federal programs that permeate the city because of its status as the seat of government. In yet other ways, it is a result of the District's own government's historical habit of promising more to its residents than it can afford and turning to Congress, like no state can, to sort out its recklessness, as it did with the passage of the National Capital Revitalization and Self-Government Improvement Act of 1997. H.R. 51 does not address these problems that are inherently unique to the District, and to use as a defense the aid provided to young states upon their respective admissions is a defense that rings hollow.

<sup>2</sup>See, e.g., District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. No. 104-8, 109 Stat. 142 (1995), and National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33, 111 Stat. 712 (1997).

Each of these three reasons should be enough for the House to understand that the only way to achieve the policy goals of H.R. 51 is for Congress and the states to engage in the constitutional amendment process as the Founders intended for such monumental changes to the design of the Union.

The District of Columbia is the result of the same deliberation that produced the Constitution and the Bill of Rights. A fundamental restructuring of the capital of a nation of states demands the use of the constitutional amendment process which, absent a convention, requires measured Congressional deliberation as well as the input and consent of the states. With H.R. 51, the Majority pursues a reckless strategy of garnering further structural political power in Congress and risks the likely repercussions of their actions: the national capital thrown into disarray and a constitutional crisis.

The Minority hopes the constitutional barriers to statehood outlined in these views will serve a more deliberative legislative body or judicial court in its considerations of H.R. 51's merits. As a policy proposal, H.R. 51 should be viewed as an affront to our Nation's Framers, the Constitution, and the endurance of the Union.

I. CONGRESS AND THE STATES ARE REQUIRED TO ENGAGE IN THE CONSTITUTIONAL AMENDMENT PROCESS IF THEY SEEK TO PROVIDE AUTHORITY TO CONGRESS IT DOES NOT POSSESS

H.R. 51 assumes Congress can reduce the size of the District constituting the seat of the federal government from its current size of 68.34 square miles to an "enclave" of less than three square miles consisting of essentially the National Mall, the White House, the Supreme Court, and the Capitol.<sup>3</sup> The remainder of Washington, District of Columbia would be converted to the state of Washington, Douglass Commonwealth.<sup>4</sup>

The Constitution grants Congress the power:

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other Needful Buildings[.]<sup>5</sup>

The Article deals with two matters: (1) the procurement and governance of the "District . . . as may . . . become the Seat of the Government of the United States," and (2) the exercise of authority over the District's physical framework. The Supreme Court has held that, for those things acquired in the second category, Con-

<sup>3</sup> Washington, D.C. Admission Act, H.R. 51, 117th Cong. (2021).

<sup>4</sup> There are currently four states in the Union that are officially "commonwealths": Kentucky, Massachusetts, Pennsylvania, and Virginia. The terminology does not itself differentiate the subject from a state and it "does not describe or provide for any specific political status or relationship." *U.S. Department of State Foreign Affairs Manual Volume 7—Consular Affairs*, U.S. Department of State (Jan. 3, 2013).

<sup>5</sup> U.S. Const. art. I, §. 8, cl. 17.

gress may dispense with them through retrocession or sale.<sup>6</sup> However, the nature of the District itself is different. In *Phillips v. Payne*, the plaintiff argued the relevant distinction between the two categories is the role the federal government played.<sup>7</sup> Under the second category, Congress’s interest is rooted in its position as a purchaser of property, and therefore the interest ends simultaneously with the United States’ ownership interest; under the first category, the United States did not and does not own most of the land in the District but, instead, exercises legislative power over land held by property owners. In the second case, then, the United States stands as proprietor; in the first case, the United States acts in a mere government capacity.<sup>8</sup>

The distinction matters because while Congress can certainly dispense with various infrastructure (generally understood to be “personnel, buildings, and equipment”),<sup>9</sup> some powers granted by the Constitution are not revocable. The Majority contends that because Congress is granted “exclusive Legislation in all Cases whatsoever” over the District *and* Congress is granted the power to “Accept[]” territory through the “cession of particular States,” this combination of authorities allows it to diminish the District that has “become the Seat of Government of the United States” to a constitutionally untenable degree.<sup>10</sup> But a grant of authority to govern and a grant of authority to procure territory cannot be combined to create an authority to divest. These are two separate and distinct constitutional authorities. Furthermore, Congress’s cession of land to Virginia in the 19th century does not help the Majority’s case because later Congressional actions and court disapproval deemed it *de facto* unconstitutional. A court addressing a similar cession today would confirm the obvious: While early Congresses had the authority to fulfill the Constitution’s requirement to establish a District to serve as the seat of government, Congress’s power to exercise “exclusive Legislation” over the District does not extend to its destruction.

*a. Statement of Congress’s limited power to attain but not divest*

Congress is clearly empowered by the Constitution to acquire territory to form the District constituting the federal seat of government.<sup>11</sup> Early Congresses dutifully exercised this power to secure territory for the formation of the federal district through the procurement of the current District’s territory. Upon incrementally fulfilling the Constitution’s requirement to acquire the federal district’s lands—which included respective grants from Virginia,<sup>12</sup>

<sup>6</sup> *S.R.A. Inc. v. Minnesota*, 327 U.S. 558, 562–64 (1946).

<sup>7</sup> Brief of Pl., *Phillips v. Payne*, 92 U.S. 105 (1875).

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

<sup>9</sup> “Infrastructure,” Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/infrastructure> (last accessed April 15, 2021).

<sup>10</sup> Business Meeting on “H.R. 51: Making D.C. the 51st State”: Before the H. Comm. on Oversight & Reform, 117th Cong. (2021) [hereinafter “H.R. 51 Business Meeting”] (statement of Rep. Jamie Raskin): “And then it says that Congress shall exercise exclusive legislation in all cases whatsoever, so it is up to Congress to decide, and, you know, we have demonstrated Congress has altered the boundaries of the District of Columbia before for other purposes, some more dubious undoubtedly in the pre-Civil War politics of the 1840s.”

<sup>11</sup> U.S. Const. art. I, § 8, cl. 17.

<sup>12</sup> *An Act Concerning the Territory of Columbia and the City of Washington*, Md. Act., 1791.



then 19 individual proprietors along the Potomac,<sup>13</sup> and finally Maryland<sup>14</sup>—Congress had acquired to the maximum possible degree the extent of the territory necessary to comprise a 10 mile square federal district. It could not constitutionally acquire more territory, and it could not return the territory because of its permanence referenced in both grantor and grantees' inheritances. The exercise of this constitutional authority was complete. In sum,

The power of Congress over the subject-matter was exhausted. Or, if it was not exhausted, it could not again be exercised, because no power remained to transfer the District as originally created and accepted or any portion of it to any State . . . The Congress, an agent of limited authority, was expressly authorized to receive cessions from States of a limited amount of territory to be held as a permanent seat of government, but it was not authorized, expressly or impliedly, to give any part of such cessions away to anyone.<sup>15</sup>

This rich history of the acquisition of the District's territory is illuminating. After the dissolution of the Continental Congress in October 1788, the First Congress assembled in New York on March 4, 1789.<sup>16</sup> Offers were made by Virginia, Maryland, New Jersey, and Pennsylvania for tracts of land to constitute the seat of government.<sup>17</sup> On September 3rd Rep. Benjamin Goodhue of Massachusetts stated during debate that "the eastern and northern Members had made up their minds on the subject, and were of opinion that on the eastern banks of the Susquehanna Congress should fix its permanent residence."<sup>18</sup> On September 7th, Rep. Richard Henry Lee moved to amend Goodhue's resolution by substituting the "north bank of the River Potomac, in the State of Maryland," for the "east bank of the river Susquehanna, in the State of Pennsylvania."<sup>19</sup>

The First Congress's exercise of the power to acquire a district to house the federal seat of government was not due to gaining an advantage in one house of Congress or even passing important legislation; the federal government *needed* a stationary capital, and the Constitution provided the means necessary to establish one through Article I, Section 8, Clause 17. The Residence Act became law on July 16, 1790, and allowed for a District "not exceeding ten miles square" to be established "on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue" and that Congress "accepted for the permanent seat of the government of the United States."<sup>20</sup> The Act directed the President to appoint and direct three commissioners who would "survey and by proper metes and bounds define the limit a district

<sup>13</sup> March 30, 1791 Agreement of Conveyance between 19 proprietors and President Washington.

<sup>14</sup> *An Act for the Cession of Ten Miles Square, or any Less Quantity of Territory Within This State, to the United States, in Congress Assembled, for the Permanent Seat of Government*, 13 Va. Stat. at Large (1789).

<sup>15</sup> Letter from Hannis Taylor to Sen. Thomas H. Carter at 4 (Jan. 17, 1910) [hereinafter "Taylor letter"].

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 3.

<sup>20</sup> 1 Stat. 130.

of territory . . . [which] shall be deemed the district accepted by this act, for the permanent seat of the government of the United States.”<sup>21</sup> Therefore, on March 30, 1791, President George Washington established by proclamation the boundaries of the District, and so the permanent seat of the nation’s government.<sup>22</sup>

It is widely understood the Constitution grants Congress powers that are exercisable through legislation but irreversible by subsequent legislation. For instance, Congress is empowered by the provisions of Article IV, Section 3 to admit new states. However, there is no stated or assumed Constitutional Congressional power for the expulsion of a state. Once admitted into the Union, the bond between the state and the Union is “indissoluble.”<sup>23</sup> As held in *White*, the admission is “final,” and “There [is] no place for reconsideration, or revocation, except through revolution, or through consent of the States.” There is no provision in the Constitution prohibiting Congress from ejecting a state from the Union; there is no provision in the Constitution prohibiting Congress from diminishing the district constituting the seat of government. However, the permanence of the national capital is as ironclad as the Union, and while both were tested in the 19th Century through cession and secession, respectively, the Constitution’s silence on permanence does not imply impermanence.

#### *b. Previous Cession of District Territory*

The Majority has on occasion pointed to the cession<sup>24</sup> of District territory to Virginia in 1846 (which accounts for the District’s current westward boundaries stopping along the Potomac River).<sup>25</sup> However, the cession to Virginia should not bolster the argument that Congress is empowered to further shrink the already small District to a shred of the originally intended territory and convert the remaining land into a state on equal footing with the other fifty

<sup>21</sup> *Id.*

<sup>22</sup> Proclamation by the President, 30 March 1791. (“Beginning at Jones Point, being the upper cape of Hunting Creek, in Virginia, and at an angle in the outset of 45 degrees west of the north, and running in a direct line 10 miles for the first line; then beginning again at the same Jones Point, and running another direct line at a right angle with the first across the Potomac 10 miles for the second line; then from the terminations of the said first and second lines running two other direct lines of 10 miles each, the one crossing the Eastern Branch aforesaid and the other the Potomac, and meeting each other in a point.

Southwestern side, 10 miles 230.6 feet.

Northeastern side, 10 miles 263.1 feet.

Southeastern side, 10 miles 70.6 feet.

Northwestern side, 10 miles 63 feet.”) [hereinafter Washington Proclamation]

<sup>23</sup> *Texas v. White*, 7 Wall. 700, 726 (1868).

<sup>24</sup> The term “cession” (and its derivations) is used in these Views instead of what is often called a “retrocession.” It is the opinion of the Majority that the term “retrocession” implies that Virginia had a continuing interest in the land at issue between the time of its cession to Congress of what then became Alexandria Country, District of Columbia and Congress’s subsequent cession to Virginia of the same land by an act of Congress on July 9, 1846, which would eventually become most of Arlington County, VA and the independent city of Alexandria, VA. In this use, “retrocession,” then implies that the natural conveyance of a territory upon relinquishment is to the original conveyor. However, this is not supported by historical or legal precedent in property or contract law. Because of the terms of the Virginia cession in 1789, it is clear that the grant of territory was in fee simple, and Virginia had no better claim to the territory to it than another state (its contiguity meaning little upon examination of noncontiguous arrangements of states such as the former York County, Massachusetts or Michigan’s Upper Peninsula). Congress’s action, then, in 1846 was a simple (and unconstitutional) gift (necessarily without consideration) of federal land to Virginia.

<sup>25</sup> H.R. 51 Business Meeting at 25: “They saw no problem with altering the boundaries of the District of Columbia, nor was there any problem in 1846 when a third of the District was yielded back, retroceded to Virginia.” (statement of Rep. Raskin).

states in the Union.<sup>26</sup> The 1846 Virginia cession of land did not undergo a legal challenge until after the issue was excluded from judicial intervention due to timeliness.<sup>27</sup> To be clear, the Supreme Court has never ruled on the merits of the cession of land to Virginia in 1846, but it would fall squarely under the Court's original jurisdiction to address today a similar attempt at cession to Maryland (under the pretense of retrocession) or for purposes of forming a new state and reducing the size of the federal district (as attempted by H.R. 51).

As a practical matter, the difference between how the Virginia-granted land and Maryland-granted land was used by the early District helps explain how the 1846 Virginia cession was justified. The Residence Act was amended on March 3, 1791 to allow for the incorporation of the town of Alexandria on the Virginia side of the Potomac.<sup>28</sup> To protect George Washington's personal holdings in and around Alexandria—including Mount Vernon's location seven miles downstream—the amendment provided that “nothing herein contained, shall authorize the erection of the public buildings otherwise than on the Maryland side of the river Potomac.”<sup>29</sup> This had a significant effect and the Virginia-granted land became uncultivated and ignored. Later the District plan delivered in 1791 by Major Pierre Charles L'Enfant to George Washington completely left out the over-thirty square miles of territory constituting the District's southwestern quadrant.<sup>30</sup>

The Residence Act's restrictions resulted in neglect of the Virginia-side District territory and therefore motivated the 1846 return of land originally granted by Virginia to the United States in 1789. Indeed, the Act ceding the land to Virginia recognized the foregone state of the Virginia-side territory: “Whereas, no more territory ought to be held under the exclusive legislation given to Congress over the District which is the seat of the General Government than may be necessary and proper for the purposes of such a seat; and whereas, experience hath shown that the portion of the District of Columbia ceded to the United States by the State of Virginia has not been, nor is ever likely to be necessary for that purpose[.],” Congress deemed the grant back to Virginia to be justified.<sup>31</sup>

However, the implication of the Act's precatory language is that the District on the Maryland-side of the Potomac was in fact “necessary for th[e] purpose” of serving as the seat of government. Proponents of ceding land to create a new state do not try to argue that the land they would make a state is not being used by and for the purposes of supporting the federal government. And, as Attorney General Robert F. Kennedy said,

The constitutional considerations applicable to a reduction in the size of the District by about one-third, through retrocession of a portion of the District which was not and was not expected to be an integral part of the Federal

<sup>26</sup> *Id.* at 131: “Some people would say that the District itself is a speck on the map today.” (statement of Rep. Raskin).

<sup>27</sup> *Phillips v. Payne*, 92 U.S. 130, 134 (1875).

<sup>28</sup> 1 Stat. 214.

<sup>29</sup> *Id.*

<sup>30</sup> See, e.g., *View of the City of Washington in 1792*, Library of Congress (early 1800s).

<sup>31</sup> 9 Stat. 35.

City, are very different from the considerations applicable to a retrocession of 96 percent of the area and substantially the entire population of the present Federal City.<sup>32</sup>

The legislative history clearly shows that the 1846 Virginia cession and reduction of District territory by the Twenty-Ninth Congress has been held as a mistake by later Congresses.

In 1803, twelve years after the District was established, considerable debate was devoted to the idea of “retroceding” territory to Maryland and Virginia.<sup>33</sup> The legislative proposal was rejected 66–26.<sup>34</sup> In 1846, the Senate Committee on the District of Columbia recommended against passage of the bill enabling the cession, finding it flatly unconstitutional.<sup>35</sup> Against these objections, Congress allowed the grant to go forward, and Virginia was returned the land it had bequeathed to the United States in 1789.<sup>36</sup> President Abraham Lincoln proposed restoring Alexandria to the District in 1861, but Congress was bogged down by the Civil War and Lincoln’s untimely death shortly after the war did not allow him to pursue this endeavor.<sup>37</sup>

In 1867, the House of Representatives approved by a vote of 111–28 a bill repealing the 1846 “retrocession” on the stated grounds that it was unconstitutional.<sup>38</sup> The bill did not proceed in the Senate, “presumably because it was felt that decision as to the constitutionality of the retrocession to Virginia was properly a matter for the Courts.”<sup>39</sup> Though in *Phillips v. Payne* the court declined to rule on the merits of the grant due to staleness and reliance interests, it was the opinion of Congress and the Court itself that the issue of Virginia cession is not immune from becoming a “case or controversy” subject to review by the judicial branch.<sup>40</sup>

### *c. Justiciability of District Statehood*

The Constitution does not address the admission of the district serving as the seat of government into the Union.<sup>41</sup> Therefore, H.R. 51 does not attempt to admit a state into the Union through any process squarely in the domain of Congress. The judicial branch has not ruled on an admission of a state that both fundamentally changes the constitutional framework with the treatment of the federal district and also implicitly establishes a new authority of

<sup>32</sup> Legal Memorandum of United States Att’y Gen. Robert F. Kennedy on District of Columbia Retrocession and Related Statehood Proposals, 350 (1963) [hereinafter Kennedy Memo].

<sup>33</sup> 12 Annals of Congress, pp. 486–491, 493–507.

<sup>34</sup> *Id.*

<sup>35</sup> 15 Congressional Globe, pp. 985–86 (1846).

<sup>36</sup> 9 Stat. 35.

<sup>37</sup> Abraham Lincoln, *First Annual Message* (Dec. 3, 1861) (“... the extension of this District across the Potomac River at the time of establishing the capital here was eminently wise, and consequently the relinquishment of that portion of it which lies within the State of Virginia was unwise and dangerous. I submit for your consideration the expediency of regaining that part of the District and the restoration of the original boundaries thereof through negotiations with the State of Virginia.”).

<sup>38</sup> 77 Congressional Globe, pp. 26, 32 (1867).

<sup>39</sup> *Id.*

<sup>40</sup> U.S. Const. art. III, § 2.

<sup>41</sup> The Constitution’s guidance on admission is the limited language in Article IV: “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 Congress.” U.S. Const. art. IV, § 3. However, to assert that Congress’ power of admission is otherwise absolute is a flawed argument. Congress could not admit a sovereign nation, for example, even though it has no “[l]egislature of the State[.]”

Congress to diminish the federal capital. The Majority has casually dismissed these serious constitutional issues raised by the Minority in legislative debate as “political questions.”<sup>42</sup>

The court has affirmed that it is “the province and duty of the judicial department to say what the law is.”<sup>43</sup> Exceptions to this judicial duty exist under the political question doctrine. Pursuant to that doctrine, the court lacks authority to decide a dispute because there is a “textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.”<sup>44</sup> The case of statehood for the federal district triggers neither of these factors.

*United States v. Texas* is instructive.<sup>45</sup> In that case, the court drew a distinction between boundary disputes between independent nations and boundary disputes between the U.S. government and a state or between two states.<sup>46</sup> The former case constituted a political question that was not susceptible to judicial determination, while the latter cases represented a case that was justiciable.<sup>47</sup> The court stated:

We can not assume that the framers of the Constitution, while extending the judicial power of the United States to controversies between two or more States of the Union, and between a State of the Union and foreign states, intended to exempt a State altogether from suit by the General Government. They could not have overlooked the possibility that controversies capable of judicial solution might arise between the United States and some of the States, and that the permanence of the Union might be endangered if to some tribunal was not entrusted the power to determine them according to the recognized principles of law.<sup>48</sup>

While the Majority is correct that the Constitution grants Congress the power to admit states, the fundamental change in the constitutional framework attempted by H.R. 51 does indeed endanger “the permanence of the Union” by threatening, for example, the stability of presidential elections, as described in Section III. And while the Majority is again correct that Congress exercises sole legislative control of the District, it cannot act under the cover of legislative power over the District—as derived from Article I, Section 8, Clause 17—when such action inherently affects the constitutional order. If that were *not* the case, there would have been no need to go through the arduous process of constitutional amendment to grant the District representation in presidential elections in 1961.

<sup>42</sup> H.R. 51 Business Meeting at 24: “We should all be clear that the admission of new States is in the very mainstream of American political and constitutional development. It is both a fundamental imperative for democratic rights and equality, and it is also a political question, and it has always been a political question in American history. And the Supreme Court has been clear that it is a political question in the legal sense, too. It is totally up to Congress.” (statement of Rep. Raskin).

<sup>43</sup> *Marbury v. Madison*, 5 U.S. 137 (1803).

<sup>44</sup> *Baker v. Carr*, 369 U.S. 186, 217 (1962).

<sup>45</sup> *United States v. Texas*, 143 U.S. 621 (1892).

<sup>46</sup> *Id.* at 639.

<sup>47</sup> *Id.* at 638–39.

<sup>48</sup> *Id.* at 645.

II. CONGRESS AND THE STATES ARE REQUIRED TO ENGAGE IN THE  
CONSTITUTIONAL AMENDMENT PROCESS IF THEY SEEK TO ALTER  
THE ORIGINAL MEANING OF THE CONSTITUTION

Proponents of H.R. 51 discount the symbolic and historical significance of a national capital that was intentionally created to serve as the central point in the Constitution's federation of states as a Union, and not as a mere center of trade, commerce, or accumulation of a nation's wealth. The District was designed to support a newly designed Republic in stark contrast to the ruling model of the European capitals—products of historical accumulations of commercial or aristocratic power—with which the Founders were intimately familiar and had just fought a hard earned revolution explicitly rejecting. As articulated by Rep. Alexander White of Virginia:

[M]odern policy has obliged the people of European countries, (I refer particularly to Great Britain,) to fix the seat of Government near the centre of trade. It is the commercial importance of the city of London which makes it the seat of Government; and what is the consequence? London and Westminster, though they united send only six members to Parliament, have a greater influence on the measures of Government than the whole empire besides. This is a situation in which we never wish to see this country placed.<sup>49</sup>

But the grandiosity, importance, and size of those capitals was not to be foregone on account of the District's physical embodiment of the Founding Era's embrace of Enlightenment ideals. By enlisting the genius of Pierre Charles L'Enfant, the city was envisioned as a grand physical ode to match the liberation the American people had fought for in 1776 and later organized in 1789. By starting fresh, the District would be designed to highlight and accommodate the Republic:

"[T]he whole city was planned with a view to the reciprocal relations that should be maintained among public buildings. Vistas and axes; sites for monuments and museums, parks and pleasure gardens; fountains and canals—in a word, all that goes to make a city a magnificent and consistent work of art were regarded as essential."<sup>50</sup>

H.R. 51 does away with this heritage and plan. Instead of a thriving city with a unique function in the American system of government, the heart of the city is extracted, and the remaining lands are converted into a state smaller than some state parks. The Founders' intentions, as laid forth in the plan in the Constitution, for a District that is both permanent and significant cannot be legislated away so easily.

<sup>49</sup> 2 Annals of Cong. 1661 (1790).

<sup>50</sup> Caemmerer, Washington, The National Capital 25 (1932) (S. Doc. No. 442, 71st Cong., 3d Sess. (1931)).

*a. Permanence of the District in Early Congressional Records and Documents*

Simply, the creation of the federal district was an exercise in contract law. In exchange for a promise to create a permanent seat of government, the United States induced Virginia, Maryland, and private proprietors to grant land along the Potomac. "Thus it was that four parties entered into a quadrilateral contract which passed, upon its execution, under the protection of section 10 of Article I of the Constitution, which provides that no State shall 'pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.'" <sup>51</sup>

In December 1789, Virginia passed an act allowing for the territory to be:

a tract of country, not exceeding ten miles square, or any lesser quantity to be located within the limits of this State and in any part thereof as Congress may by law direct, shall be and the same is *forever ceded and relinquished to the Congress and Government of the United States*, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside thereon, *pursuant to the tenor and effect of the eighth section of the first article of the Constitution of the Government of the United States.* <sup>52</sup>

On the same day as President Washington's proclamation of the District's boundaries, <sup>53</sup> 19 local proprietors executed an agreement with the President that exchanged their land along the Potomac for payment by the public. <sup>54</sup> In trust deeds executed in June of 1791, the 19 proprietors conveyed the lands with the explicit purpose of being "for a federal city, with such streets, squares, parcels, and lots as the President of the United States for the time being shall approve . . . appointed by virtue of the act of Congress entitled 'An act for establishing the temporary and permanent seat of the Government of the United States,' and their successors, for the use of the United States forever." <sup>55</sup>

Maryland took action as early as December 23, 1788 to express the good intentions of the legislature, <sup>56</sup> but no further action was taken until 1791 when it then made clear that the grant is enacted "according to the act of Congress for establishing the temporary and permanent seat of the Government of the United States." <sup>57</sup>

In summary, the two states and the private conglomerate of proprietors exchanged land for the promise that the grants would be

<sup>51</sup>Taylor letter, *supra* note 15, at 7.

<sup>52</sup>*An Act for the Cession of Ten Miles Square, or any Less Quantity of Territory Within This State, to the United States, in Congress Assembled, for the Permanent Seat of the General Government*, 13 Va. Stat. at Large (emphasis added).

<sup>53</sup>Washington Proclamation, *supra* note 22.

<sup>54</sup>Taylor letter at 8 (emphasis added).

<sup>55</sup>*Id.*

<sup>56</sup>*An Act to cede to Congress a district of 10 miles square in this State (Maryland) for the seat of the Government of the United States*, 1789. ("Be it enacted by the general assembly of Maryland, That the Representatives of this State in the House of Representatives of the Congress of the United States, appointed to assemble at New York on the first Wednesday of March next, be, and they are hereby, authorized and required, on behalf of this State, to cede to the Congress of the United States any district in this State not exceeding 10 miles square, which the Congress may fix upon and accept for the seat of government of the United States.").

<sup>57</sup>*An Act Concerning the Territory of Columbia and the City of Washington*, Md. Act, 1791.

used for a perpetual capital of the federal government.<sup>58</sup> Contracts, then, were formed between the United States and Maryland, the 19 proprietors, and Virginia.<sup>59</sup> To breach the contracts would require return of the grants to Maryland and H.R. 51 would necessarily require consent from the Maryland legislature to change the terms of the contract. As Hannis Taylor writes: “Congress was powerless to force any State to make a cession . . . The means, and the only means, Congress saw fit to employ to accomplish a vitally important end was the promise, made in the act of July 16, 1790, that the seat of government to be located on the cessions should be ‘permanent.’”<sup>60</sup>

The historical record of the District’s formation is clearly aligned with the Constitution and the Founders’ intention for the District to be permanent. The drafters of the Residence Act of 1790 did not include the reference to permanence lightly or accidentally. When Rep. James Madison of Virginia moved to strike the word “permanent” from the Act, he was voted down. “[T]hus we have a legislative interpretation, practically contemporaneous, to the effect that the Constitution intended to confer upon Congress to make the seat of government permanent.”<sup>61</sup> The Founders, the states, and the documents that account for those parties’ transactions make their intentions for the permanence of the District foundational.

H.R. 51 proponents view the District as malleable and do not account for how the Founders intended the District to exist. While one Member has reminded the Minority that the Constitution “sets a ceiling but not a floor” for the size of the District, this displays a fundamental misunderstanding for the original intention of including such a “ceiling” in the Constitution at all: to guide the first Congress in establishing a permanent federal District.<sup>62</sup>

#### *b. The Founders’ Vision of the District*

The district constituting the seat of government of the United States was of a singular fascination to the Founders. From its loca-

<sup>58</sup>In addition, the 19 proprietors, by the terms of their agreement, recognized the additional, related consideration “of the great benefits we expect to derive from having the federal city laid off upon our lands.” Original agreement between the 19 proprietors and President Washington (March 30, 1791). Similarly, the argument has been made by Mr. Hannis Taylor that since Congress breached the contract with Virginia and revoked its consideration, it in turn breached the contract with Maryland. The Minority does not hold the agreements as a single contract but separate (and subject to individual breach). But partial payment has long been settled law, and best explained by Sir Edward Coke: “Payment of a lesser sum on the day in satisfaction of a greater, cannot be any satisfaction for the whole, because it appears to the Judges that by no possibility, a lesser sum can be a satisfaction to the plaintiff for a greater sum: but the gift of a horse, hawk, or robe, etc. in satisfaction is good. For it shall be intended that a horse, hawk, or robe, might be more beneficial to the plaintiff than the money.” *Pinnel’s Case* (1602) 5 Co. Rep. 117a.

<sup>59</sup>See, e.g., *Trustees of Dartmouth Coll. v. Woodward*, 17 U.S. 518 (1819) (“What is a contract? It may be defined to be a transaction between two or more persons, in which each party comes under an obligation to the other and each reciprocally acquires a right to whatever is promised by the other . . . [I]t is well obvious that every feoffment, gift, grant, agreement, promise, &c., may be included, because in all there is a mutual consent of the minds of the parties concerned in them, upon an agreement between them respecting some property or right that is the object of the stipulation . . . [T]he ingredients requisite for form a contract are, parties, consent, and an obligation to be created or dissolved; these must all concur, because the regular effect of all contracts is, on one side, to acquire, and on the other, to part with, some property or rights, or to abridge or to restrain natural liberty, by binding the parties to do, or restraining them from doing, something which before they might have done or omitted.”) (Internal citations removed.).

<sup>60</sup>Hannis letter at 6.

<sup>61</sup>*Id.*

<sup>62</sup>H.R. 51 Business Meeting at 132: “It sets a ceiling but not a floor.” (statement of Rep. Raskin).



tion to its size to its architectural character, the notion that the status of the District today is somehow an oversight of the Founders is not a serious argument.

In terms of size, the Continental Congress first proposed to establish a capital no less than three miles square and no more than six miles square.<sup>63</sup> Ultimately, the Founders' plans for the district that would hold the seat of government led them to expand the Constitution's limit for the district to 10 miles square.<sup>64</sup>

The District is not fundamentally flawed or operating in a way contrary to the Founders' intentions. But it also is not and cannot be a candidate for statehood. It was never designed to be. As Attorney General Edwin Meese stated:

The states of the American Union are more than merely geographic entities: Each is what has been termed "a proper Madisonian society"—a society composed of a "diversity of interests and financial independence." It is this diversity which guards the liberty of the individual and the rights of minorities. As Madison wrote, "the security for civil rights...consists in the multiplicity of interests...The degree of security...will depend on the number of interests...and this may be presumed to depend on the extent of country and number of people comprehended under the same government."

The District of Columbia lacks this essential political requisite for statehood. It has only one significant "industry", government. As a result, the District has one monolithic interest group, those who work for, provide services to, or otherwise deal with, the federal government. The national government was, historically, the city's only reason for being.<sup>65</sup>

Nonetheless, the capital city was not envisioned to be small. In fact, Pierre Charles L'Enfant envisioned a city along the Potomac that would have a population equal to Paris at the time, a city of about 800,000 people in 1800, which is slightly larger than the District's population today.<sup>66</sup>

The location and nature of the federal district was one of the most contentious issues the Founders debated. How the nation's seat of government would function as a city apart from the states is a question that was deliberately, not accidentally, settled by the Founders. They were aware a large urban area would eventually surround the seat of government and, necessarily, residents of that urban area would lack residency in any state. As a demonstration of their forethought, the Founders even seriously contemplated the option of converting an existing city into the federal district. New England and other non-Southern states were in favor at various

<sup>63</sup> XXV Journals of the Continental Congress 603 (Sept. 22, 1783).

<sup>64</sup> The less than three square miles which H.R. 51 would retain as the district constituting the seat of government for a nation of nearly 350 million people contrasts markedly with the initial proposal of an area of from 9 to 36 square miles, revised to 100 square miles, for a nation which then had less than 4 million persons.

<sup>65</sup> U.S. Dept. of Justice, *Report to the Attorney General: The Question of Statehood for the District of Columbia* (Apr. 3, 1987). [hereinafter Meese Memo]

<sup>66</sup> Caemmerer, Washington, *The National Capital* 29 (1932) (S. Doc. No. 332, 71st Cong., 2d sess. (1931)).

times of either Philadelphia or New York becoming the nation's capital.<sup>67</sup>

The Founders understood the Constitution to deny congressional representation to the District. Indeed, at the New York Constitutional Convention, Alexander Hamilton offered an amendment to the proposed constitution that would have allowed District residents to secure representation in Congress once they grew to a reasonable size.<sup>68</sup> On July 22, 1788, Hamilton asked that the District Clause be amended to mandate that "When the Number of Persons in the District of Territory to be laid out for the Seat of the Government of the United States, shall according to the Rule for the Apportionment of Representatives and direct Taxes Amount to [blank, a figure Hamilton sought to insert later] such District shall cease to be parcel of the State granting the Same, and Provision shall be made by Congress for their having a District Representation in that Body."<sup>69</sup> But that amendment to the Constitution was rejected. Consequently, it is clear the Framers considered and rejected granting congressional representation to the District in the Constitution.

The creation of a community separated from the states created independence from the other states. If this deliberate arrangement were now revisited with the District being morphed *into* a state, the necessary balance of power among the states would be threatened. This would also elevate the District above the other states. As Attorney General Meese said:

If the District of Columbia were admitted to statehood, it would not be one state among many. Because it is the national capital, the District would be *primus inter pares*, first among equals. The "State of Columbia . . . could come perilously close to being the state whose sole business is to govern, to control all the other states. It would be the imperial state; it would be 'Rome on the Potomac.'"<sup>70</sup>

The creation of a state from the ruins of the District would certainly lead to unintended constitutional entanglement. Every foreign embassy would be outside the limits of the newly configured federal district, leading nations to negotiate basic services with a state instead of the United States government, in direct conflict with the Constitution's requirement that such affairs be handled by the federal government.<sup>71</sup> The state surrounding the federal district would control all three branches' water and electricity supply, their waste disposal, and other basic services. The seat of government would have no territory to maintain proper defensive positions (in direct conflict with Article I, Section 8's requirement that Congress obtain such fortifications for the protection of the district).<sup>72</sup>

<sup>67</sup> Kenneth Bowling, *The Creation of Washington, D.C.: The Idea and Location of The American Capital* 206 (1991).

<sup>68</sup> 5 The Papers of Alexander Hamilton 189 (Harold C. Syrett & Jacob E. Cooke eds., 1962).

<sup>69</sup> *Id.*

<sup>70</sup> Meese Memo.

<sup>71</sup> See U.S. Const. art. I § 10 cl. 3.

<sup>72</sup> " . . . for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings," U.S. Const. art. I § 8 cl. 17.

III. CONGRESS AND THE STATES ARE REQUIRED TO ENGAGE IN THE  
CONSTITUTIONAL AMENDMENT PROCESS IF THEY SEEK TO REPEAL A  
PREVIOUS CONSTITUTIONAL AMENDMENT

“It cannot be presumed, that any clause in the Constitution is intended to be without effect.”

—Marbury v. Madison<sup>73</sup>

“[T]he Constitution does not permit Congress to take action which would reduce the 23d amendment to an absurdity.”

—Attorney General Robert F. Kennedy<sup>74</sup>

“There would be nothing unconstitutional about three electors in the residual District of Columbia, it would just be ridiculous. It would be absurd.”

—Rep. Jamie Raskin<sup>75</sup>

The debate about the citizens of Washington D.C.’s participation in national elections is not new. Not only has the question been raised before, it has already been addressed through constitutional amendment. The relevant provision in the Constitution states:

Sec. 1—

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

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Sec. 2—

The Congress shall have power to enforce this article by appropriate legislation.<sup>76</sup>

The 23rd Amendment was proposed by Congress in 1960 through the requisite 2/3 votes in both houses. It was ratified by the requisite 3/4 states in the Union in 1961. The Amendment was motivated by the arguments that are made today in support of proposals such as H.R. 51. The House Committee on the Judiciary, at the time controlled by a Democratic majority, reported to the House:

District citizens have all the obligations of citizenship, including the payment of Federal taxes, of local taxes, and service in our Armed Forces. Yet, they cannot now vote in national elections because the Constitution has restricted that privilege to citizens who reside in States. *The*

<sup>73</sup> *Marbury v. Madison*, 5 U.S. 137, 174 (1803).

<sup>74</sup> Kennedy Memo, *supra* note 32.

<sup>75</sup> H.R. 51 Business Meeting at 114 (statement of Rep. Raskin).

<sup>76</sup> U.S. Const. amend. XXIII.

*resultant constitutional anomaly of imposing all the obligations of citizenship without the most fundamental of its privileges, will be removed by this proposed constitutional amendment.*<sup>77</sup>

The 23rd Amendment embodies the procedural value of adhering to the constitutional amendment process: recognize a perceived flaw in the original text of the Constitution, deliberate and compromise to reach a necessarily bipartisan consensus in Congress, garner support for the amendment among the American people, and ratify it through state legislatures. The bar is intentionally high: an amendment, like the rest of the Constitution, *is intended* to be an obstruction to repeal by a future whim of Congress. Attorney General Kennedy said:

Congress does not lightly invoke the process of constitutional amendment. Accordingly, when the resolution proposing the 23d amendment was under consideration, Congress considered carefully the availability of any alternative means of achieving its objecting of giving the residents of Washington, D.C. an equitable voice in the election of the President and Vice President. The legislative history shows clearly that Congress considered the feasibility and legality of legislation either admitting the District of Columbia as a new State, or retroceding it to Maryland. Both alternatives were explicitly considered and rejected in the report of the House Committee on the Judiciary[.]<sup>78</sup>

Two generations after the passage of the 23rd Amendment, the Majority seeks to change the terms that were struck between Congress and the states regarding the District's role in federal elections. H.R. 51 attempts to legislate around the barriers that foreclose statehood, but it is impossible to either legislate a constitutional amendment away or intentionally create a constitutional conundrum as a threat to force passage of an amendment in the future.

During the business meeting meant to propose amendments to H.R. 51, the Minority offered several amendments to help mitigate the damage H.R. 51 will do to federal elections without an outright repeal of the 23rd Amendment. Each of these good faith amendments was rejected by the Majority along a party-line vote.<sup>79</sup>

The issue of District residents' voting rights was settled in 1961 with their inclusion in presidential elections. The issue of whether District residents should have representation in Congress was pro-

<sup>77</sup> Report on the Twenty-Third Amendment, H. Comm. on the Judiciary (Jun. 9, 1960) (emphasis added). [hereinafter 1960 Judiciary Report]

<sup>78</sup> Kennedy Memo, *supra* note 32.

<sup>79</sup> These amendments included: 1) Requiring repeal of the 23rd Amendment prior to enactment (Rep. Comer); 2) Requiring the new state to assume responsibility for its federally-funded judicial branch (Rep. Foxx); 3) the D.C. Home Rule Improvement Act Amendment (Rep. Gosar); 4) Requiring the new state to assume responsibility for its federally-funded prisoners (Rep. Higgins); 5) Allowing D.C. residents to vote in Maryland for purposes of federal legislative elections (Rep. Hice); 6) Requiring the election of officials in the new state (Rep. Hice); 7) Redrawing the new state's boundaries to exclude federal properties (Rep. Cloud); 8) Requiring the new state to assume responsibility for federally-funded pension liabilities (Rep. Keller); 9) Including congressional findings that statehood is impossible without a constitutional amendment (Rep. Biggs); 10) Requiring disposition of the Federal District's Electoral College votes prior to enactment (Rep. Sessions); and 11) Protecting minority rights in the Senate (Rep. Clyde).

posed by Congress in 1978 after the District of Columbia Voting Rights Amendment passed both houses of Congress. It was overwhelmingly rejected by the states, evidenced by its garnering only 16 of the 38 requisite states for ratification.

Given the relative ease of passage for the 23rd Amendment granting District residents the right to participate in presidential elections and later the readily rejected proposal to allow District residents to participate in Congress directly, it is clear that the American people have spoken resoundingly on the matter. However, this has not slowed the Majority's advancement of H.R. 51, an unconstitutional bill on its face when paired with the 23rd Amendment.

*a. Two Actions to Address the 23rd Amendment in H.R. 51*

Upon passage of H.R. 51, the district that serves as the seat of the United States government would shrink to encompass the National Mall, the White House, the Supreme Court, and the Capitol; the remainder of the former-District of Columbia would be converted into Washington, Douglass Commonwealth. However, the 23rd Amendment would still exist, and the "District constituting the Seat of Government of the United States" would continue to be entitled to three electoral college votes,<sup>80</sup> while Washington, Douglass Commonwealth would be entitled to three electoral college votes by virtue of its statehood. H.R. 51 attempts to remedy the inoperability of three electors through two mechanisms: passing legislation directly to repeal<sup>81</sup> the District's participation in presidential elections,<sup>82</sup> and by creating "expedited procedures for consideration of [a] constitutional amendment repealing [the] 23rd amendment."<sup>83</sup>

*1. Legislative Remedy*

The 23rd Amendment states that Congress "may direct" how the District "shall appoint" "electors of President and Vice President."<sup>84</sup> The Constitution, therefore, directs the District to appoint electors. Attorney General Kennedy identified three alternative "absurdities" that will result from Congress enacting a bill analogous to H.R. 51, depending on how Congress chooses to direct how the District shall appoint its electors.

<sup>80</sup>The District would become what in England was called a "rotten" or "pocket" borough for purposes of parliamentary representation and an issue with which the Founders would have been very familiar. The implications of the existence of such districts in the American system of government is troubling, to say the least. "[T]he Framers viewed the British parliament as 'corrupt.' But parliament was not corrupt in a *quid pro quo* sense. It was not corrupt because members engaged in bribery . . . That wasn't the Framers' point. Parliament was corrupt because it had allowed an improper dependence to develop with parliament. Rotten boroughs made members dependent upon the Crown when parliament was meant to be dependent upon the people." *Patrick v. Alaska*, Sup. Ct. Case No. S 17649 (Jan. 20, 2021). "The existence of 'pocket' and 'rotten' boroughs—parliamentary constituencies respectively either controlled by some dominant government interest or that contain few, easily influenced voters—made it easier for ministries to manage elections. The national electorate contracted, so that an estimated ten thousand voters in a nation of eight million determined who served in the Commons." *Patrick v. Alaska*, Sup. Ct. Case No. S 17649 (Expert Report of Jack Rakove, Ph.D.). Pocket boroughs were outlawed by Parliament after the passage of the Reform Act of 1832.

<sup>81</sup>H.R. 51 § Sec. 223, 117th Cong.

<sup>82</sup>3 U.S.C., Ch. 1, § 21.

<sup>83</sup>H.R. 51 § Sec. 224, 117th Cong.

<sup>84</sup>U.S. Const. amend. XXIII.

First, the electors could be chosen, as Public Law 87-389 provides, by vote of the qualified residents of the geographic area designed in H.R. 5564 as retained by the United States. This would give to a handful of residents the same voting power, in a presidential election, as each of six States, a result which neither the Congress which proposed the 23rd amendment nor the States which ratified it can possibly have intended.

Second, Congress could provide some alternative means of appointing the electors. For example, they might be designated by the incumbent President, or the Speaker of the House of Representatives or by majority vote of one or both Houses of Congress. In effect, this would place three electoral votes at the disposition of whichever political party happened to be in power in Congress prior to a presidential election. It would be hard to imagine a result more opposed to our basic political traditions. And such a result would be inconsistent with the stated purpose of the amendment, which was, in the words of the House report, "To provide the citizens of the District of Columbia with appropriate rights of voting in national elections for President and Vice President of the United States." House Report 86th Congress, 2d session, page 1.

Third, Congress could fail to provide any means of appointing the three electors, thus causing the 23d amendment to become a dead letter before it was ever used. This would do violence to the terms of the amendment. That amendment does not leave it up to Congress to determine whether or not the District of Columbia shall cast three electoral votes in a particular presidential election. It contains a clear direction that the District "shall appoint" the appropriate number of electors, and gives Congress discretion only as to the mechanics by which the appointment is made.<sup>85</sup>

The Majority, it would appear by the language of H.R. 51, has opted for the worst of the absurdities. H.R. 51 simply repeals reference to the District of Columbia in Section 21 of Chapter 1 of Title 3 of the United States Code and thus removes any direction for how to handle the electoral votes.<sup>86</sup> But, as Attorney General Kennedy made clear, that is in direct conflict with the 23rd Amendment, which directs Congress to account for the electoral college votes. The Majority has contended that because of the 23rd Amendment's "Enforcement Clause,"<sup>87</sup> the 23rd Amendment "will be deactivated."<sup>88</sup> This argument is inaccurate. Congress cannot use legislation to "enforce" an amendment out of existence.<sup>89</sup>

<sup>85</sup> Kennedy memo, *supra* note 32.

<sup>86</sup> The full text of this section is: "As used in this chapter the term—(a) 'State' includes the District of Columbia [; and] (b) 'executives of each State' includes the Board of Commissioners of the District of Columbia."

<sup>87</sup> *I.e.*, Section 2 of the 23rd Amendment.

<sup>88</sup> H.R. 51 Business Meeting at 134: "The 23rd Amendment will be deactivated through Congress' powers under the Enforcement Clause immediately, so there's no danger those electors will ever be cast." (statement of Rep. Raskin)

<sup>89</sup> See, e.g., *City of Boerne v. Flores*, 521 U.S. 507, 508 (1997) ("Legislation that alters the Free Exercise Clause's meaning cannot be said to be enforcing the Clause. Congress does not enforce a constitutional right by changing what the right is.")

During the H.R. 51 Business Meeting, a Member in the Minority offered an amendment to at the very least account for the electoral college votes, but it was rejected along a party-line vote.<sup>90</sup>

*b. Need for a New Amendment*

The only way to repeal or alter the 23rd Amendment is through the ratification of another amendment. For evidence look no further than America's dissatisfaction with the Prohibition experiment and the need for the 21st Amendment to be ratified in order to remove the unpopular 18th Amendment.

Additionally, the authors of H.R. 51 explicitly acknowledge the need to repeal the 23rd Amendment by including a provision in the bill creating "expedited procedures" in Congress for repeal.<sup>91</sup> However, no expedited procedure can guarantee the necessary votes required to propose a constitutional amendment, let alone guarantee the states' ratification thereof.

The Majority has promised that "No one would oppose [the amendment to repeal the 23rd Amendment], and then there would immediately be expedited activation of repeal across the country. And as the representative [sic] of the District of Columbia says, it will just sail through every State legislature because who would oppose it?"<sup>92</sup> This is reckless lawmaking with the Majority endorsing a scenario in which their legislation would directly contravene the 23rd Amendment in both policy and legality.<sup>93</sup>

At the H.R. 51 business meeting, Ranking Member Comer offered an amendment that would have simply required that the 23rd Amendment to the Constitution be repealed prior to H.R. 51's going into effect. This would avoid granting the Seat of Government an extra three electoral votes for President and Vice-President, which could be distributed by a Democrat-controlled Congress to its own partisan advantage. However, this common-sense amendment was defeated on a party-line vote.<sup>94</sup>

<sup>90</sup> Amendment offered by Rep. Sessions requiring disposition of the Federal District's Electoral College votes prior to enactment.

<sup>91</sup> H.R. 51 § 224, 117th. Cong.

<sup>92</sup> H.R. 51 Business Meeting at 34 (statement of Rep. Raskin).

<sup>93</sup> Elections for President and Vice President have hinged on closer margins than three electoral votes. The 1796 election between Adams (71 electoral votes) and Jefferson (68), the 1800 election between Jefferson (73) and Burr (73), and the 1876 election between Hayes (185) and Tilden (184) had equal or slimmer margins than the electoral college votes to be "deactivated" by the Majority's legislation.

<sup>94</sup> At that business meeting, responding to Mr. Comer's amendment, Rep. Raskin said as follows: "To say that this would be the only state held hostage to state legislatures' approving repeal of a constitutional amendment is absurd. That's obviously a recipe for keeping statehood from never happening because then all states have to do in order to exercise a kind of veto over statehood adopted by Congress—and it is up to Congress to decide—is not to act on this constitutional amendment."

This is a key admission, one that it is in fact Congress that is doing the hostage-holding here, insofar as this Congress support H.R. 51. Rep. Raskin is admitting flatly that, while the Constitution states specifically that the District of Columbia is not a state, Democrats supporting H.R. 51 must ignore the requirement that a provision of the Constitution can only be amended through a constitutional amendment because the American people would not support D.C. Statehood through a constitutional amendment.

In other words, Rep. Raskin admits that it is in fact the Democrat-controlled Congress that is holding the states and American people hostage by requiring that H.R. 51 become the law first, thereby creating an unfair double electoral vote bonus, which the American people would then have to correct by repealing the 23rd Amendment, but all the while the American people would be denied the right to amend the Constitution to allow D.C. Statehood in the first place. But the states' and American people's role in the constitutional amendment process should be respected, not bypassed.

Finally, and most directly, one of the Majority's most common claims in support of H.R. 51's design was again repeated by the Chairwoman in her opening remarks for the bill's markup in which she stated that "No State—no State—has been admitted by a constitutional amendment nor needed existing States to take any action for admission."<sup>95</sup> This is, of course, true. However, also true is the fact that no other state admitted into the Union has been the constitutionally-required seat of the government of the United States, the capital for all other states in the Union.

The Democratic-controlled House Committee on the Judiciary made clear in 1960 that, even with the support of a constitutional amendment, creating a state out of the District of Columbia was bad policy and antithetical to the Founders' intentions for a capital separate from the states. The Committee said:

It was suggested that, instead of a constitutional amendment to secure voting rights, the District be made either into a separate State or its land retroceded to the State of Maryland. Apart from the serious constitutional question which would be involved in the first part of this argument, any attempted divestiture by the Congress of its exclusive authority over the District of Columbia by *invocation of its powers to create new States would do violence to the basic constitutional principle* which was adopted by the framers of the Constitution in 1787 when they made provision for carving out the 'seat of Government' from the States and set it aside as a permanent Federal district.<sup>96</sup>

Sadly, the Majority today does not share the same reluctance against violating the most basic constitutional principles.<sup>97</sup>

#### CONCLUSION

The Majority's stated policy goal of assuring greater representation in Congress for the residents of the District may be admirable but achieving this through D.C. statehood is only attainable through constitutional amendment. The House of Representatives' consideration of H.R. 51 should be viewed as an affront to the Constitution's design and the nation's interests in a strong, enduring Union.

JAMES COMER,  
*Ranking Member, Committee  
on Oversight and Reform.*



<sup>95</sup> H.R. 51 Business Meeting at 31 (statement of Chair. Maloney).

<sup>96</sup> 1960 Judiciary Report, *supra* note 77 (emphasis added).

<sup>97</sup> H.R. 51 Business Meeting at 13–14: "Congress has both the constitutional authority and the moral obligation to pass H.R. 51. The Constitution gives Congress the authority to admit new states, which it has done 37 times, and to reduce the size of the Federal District, which it did by 30 percent in 1846." (statement of Del. Norton).