I'm pleased to announce that as of September 6, 1996, Dr. Ellis and the city of Bristol have achieved this goal and more. In all, the citizens of Bristol have planted 1,003,402 trees since 1989, and I am so proud of their efforts.

Reforestation projects like this are important in helping to preserve our precious natural resources. In addition, planting over 1 million trees would not be possible without the help of true Tennessee volunteers.

Mr. Speaker, they call Tennessee the volunteer State, and in part, it is because of efforts like these. Once again, let me commend Dr. Donald H. Ellis, the Bristol Tennessee Tree City USA Board, and the city of Bristol for a job well done.

OPPOSING THE INCLUSION OF H.R. 1855, THE ELIZABETH MORGAN BILL, IN H.R. 3675, THE DEPARTMENT OF TRANSPORTATION APPROPRIATIONS BILL

HON. ELEANOR HOLMES NORTON

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 18, 1996

Ms. NORTON. Mr. Speaker, I want to associate myself with the remarks of Members who have opposed on constitutional law and international treaty grounds the attachment to the Transportation appropriations bill of H.R. 1855, a bill which strips the District of Columbia courts of jurisdiction over the child custody case Morgan versus Foretich. In addition, I must oppose the bill on home rule grounds.

This matter now comes on the floor encased in a conference report which cannot be amended. The Chair of the full Government Reform Committee and the Chair of the D.C. Subcommittee have obtained a waiver of the relevant point of order. They have thus cleared the way for a matter that I believe to be deeply unconstitutional and that badly transgresses all principles of self-government to come to the floor.

In 1987, Elizabeth Morgan was held in jail for 2 years because she would not reveal the whereabouts of a child she said she believed had been sexually abused. In substantially less time than she had served, release of such a person is usually allowed or required. I was not a Member of Congress at that time. Apparently, largely because of the length of the incarceration, an act of Congress freed Ms. Morgan. No one is incarcerated; nor does the present matter have anything else in common with that situation, as is clear from remarks of Members from both parties, the majority of whom have spoken against this unprecedented trespass into the unique and exclusive realm of the judiciary.

I believe that what has transpired here today, in any case, is a complete nullity that guarantees the continuation of an inflammatory domestic dispute that has made a mockery of the legal concept of the best interests of the child. The constitutional doubt surrounding this matter is so large that it does not merit unworthy precedent set in the House today.

The adoption of this bill also puts the Congress on a collision course with international law. The New Zealand court that has jurisdiction over the child holds the child's passport and has ruled that she may not leave New Zealand. David Howman, a barrister, the guardian appointed by the family court in New Zealand, has written the counsel to the D.C. Subcommittee that, ''I am directed by His Honour Judge Mahony that the enclosed statement is to be made available to you for the purpose of * * * fully and properly informing the Congressional Subcommittee dealing with bill H.R. 1855 of the position relating to Hillary/Ellen.'' The court says:

The Court has held [the child's] passport since 1990 when the question of her care and residence first came before the Court. There is also a condition on the custody order issued in 1990 that she not be taken from New Zealand without order of the Court. If and when it is appropriate for an application to be made to this Court for removal of that condition or return of the passport the application will be considered at that time.

Thus, if the Congress of the United States permits the child to return through H.R. 1855, it is almost certainly in violation of the Hague Convention as it relates to child custody.

The insult to the District, its residents, and its independent judiciary is no less serious. The home rule trespass is all the more serious because of the absolute and unfailing necessity for an independent judiciary at every level of Government. No principle of the Constitution was considered more fundamental by the framers. Imagine the chill this bill sends to the sitting judiciary in the Nation's capital. Now, not only the city council and the executive agencies of the District, but also the judiciary is fair game for imposition of a Member's views regarding his pet issues. No member would even think of attempting to intrude into the legitimate and exclusive jurisdiction of the courts in any other jurisdiction of the United States or the territories.

I am attaching the letter of the court appointed guardian and the statements of the New Zealand family court. I am also attaching a Legal Times article detailing further my position on this matter.

DAVID HOWMAN, BARRISTER,
WELLINGTON, NEW ZEALAND,
September 18, 1996.

MR. HOWARD A. DENIS,
Counsel, House of Representatives, Committee on Government Reform and Oversight, Washington, DC.

DEAR MR. DENIS: I was appointed by the Family Court in New Zealand to assist that Court in proceedings involving Hillary/Ellen Morgan. Principal Family Court Judge P.D. Mahony made that appointment late last year.

Subsequently the Family Court conducted a hearing to consider matters relating to the child. I have been asked to communicate with you on behalf of the Court as a result of the Court's decision. This communication is for the purpose of fully and properly informing the Congressional Sub-committee dealing with Bill H.R. 1855 of the position relating to Hillary/Ellen. I am directed by His Honour Judge Mahony that the enclosed statement is to be made available to you for that purpose.

Please could you write to confirm receipt and to confirm that the statement will be made available to your Congressional Subcommittee accordingly.

Yours sincerely

DAVID HOWMAN,
Barrister.

MORGAN VERSUS FORETICH

1. The New Zealand Family Court recently considered an application concerning the child Hillary Foretich/Ellen Morgan in relation to Bill HR 1588. The Court had received this application in July 1995 for Ellen to give evidence live by video-link to the Congressional sub-committee from Christchurch, New Zealand. That application was declined in the interim and subsequently dismissed. There is no current or further application before the Court concerning Ellen and Bill HR 1588.

2. Whether or not that Bill is passed is not an issue for this Court and it is not the business of the Court to express any view about it.

3. The Court has made no ruling concerning Ellen's return to the United States.

The Court has held her passport since 1990 when the question of her care and residence first came before the Court. There is also a condition on the custody order issued in 1990 that she not be taken from New Zealand without order of the Court. If and when it is appropriate for an application to be made to this Court for removal of that condition or return of the passport the application will be considered at that time.

4. In all issues affecting children in relation to their care, the overriding duty of the New Zealand Family Court is to treat the welfare of the child as the first and paramount consideration. A primary consideration in this case is the protection of privacy of the child. Proceedings before the New Zealand Family Court are held in private and there are statutory restrictions on reporting of cases heard by the Court, again directed at protecting the privacy of children.

It is the wish of this Court that those who have an official interest in relation to one or other aspect of Ellen's case, exercise care and restraint in order to preserve her privacy.

[From the Legal Times, Mar. 14, 1996]

CUSTODY SAGA'S LATEST TWIST—BID TO AID MORGAN HITS HOME-RULE SNAG

(By Jonathan Groner)

Over the last 11 years, the Elizabeth Morgan custody case has touched on everything from feminism and fathers' rights to the reach of courts' contempt powers. Now, thanks to D.C. Delegate Eleanor Holmes Norton, there's a new, and unlikely wrinkle: D.C. home rule.

In January, four U.S. representatives—including three from the D.C. suburbs—introduced legislation seeking to quash the D.C. courts' jurisdiction over Morgan's protracted battle with her ex-husband for custody of their daughter. The bill would allow Morgan and her daughter Hilary, 13, to return to the United States from New Zealand, secure from any orders of the D.C. Superior Court.

But Delegate Norton's objections have begun to stall the bill, which had earlier seemed to be on the fast track to approval in both houses of Congress.

''I looked deeply at the bill,'' Norton says, alluding to what she views as its unqualified assault on the independence of the District's local courts. ''There is far more trouble in it than I had thought. What I learned is absolutely startling.''

The legislation is intended to help Morgan, 48, who spent 25 months in D.C. jail in the 1980s on contempt charges in the highly publicized case. Asserting that her ex-husband Eric Foretich, 53, had sexually abused the girl, she refused to permit his visitations and sent the child out of the country. Foretich denies the charges.

Morgan, who was then a D.C. plastic surgeon was released in 1989 by an act of Congress and in 1990 joined Hilary in New Zealand.

Elizabeth Morgan and her daughter, who now prefers to be called Ellen, have both declared recently that they would like to return to the United States and be reunited with the rest of their family.

Elizabeth Morgan's second husband, Paul Michel, is a judge here on the U.S. Court of Appeals for the Federal Circuit, and her father, William, 85, also lives in the area; he is hospitalized at present, suffering from heart disease. Her mother, Antonia Morgan, 81, lives with Elizabeth and Hilary in Auckland.

Moreover, Elizabeth Morgan, suffering from ulcerative colitis, recently underwent emergency removal of her colon and reportedly would like to benefit from U.S. medical care.

The Morgans' desire to return home drew the attention of Reps. Thomas Davis III (R–Va.), Frank Wolf (R–Va.), Constance Morella (R–Md.), and Susan Molinari (R–N.Y.), who are pressing the legislation.

Until recently, little vocal opposition had emerged to the bill. But Norton, who says she supported Morgan's release from jail and doesn't express a view on the truth of the sexual-abuse allegations, has recently begun to oppose the measure publicly and has moved to slow the bill's progress.

NO RESPECT FOR HOME RULE

Since the bill would impinge on the jurisdiction of the D.C. courts, the views of the District's only congressional representative are likely to be taken seriously by House leaders. And for Norton, the Morgan case has become both a constitutional and a home rule issue.

''The sponsors show no respect for the home rule powers of my jurisdiction,'' says Norton, referring to the idea of a congressional act to remove a case from D.C.'s local courts. ''The bill is two or three lawsuits waiting to happen.''

Norton cites another objection: that the bill may be unconstitutional because it is ''almost an open-and-shut bill of attainder.'' Bills of attainder, which are legislative measures that punish citizens without the safe-guards of trial and appeal, are banned by the U.S. Constitution.

Norton says the Morgan measure is a bill of attainder because it would legislatively ''wipe out the rights of another party.'' She was referring to Foretich, a McLean, Va., oral surgeon, who in Norton's view would be denied the benefits of a 1987 order from D.C. Superior Court Judge Herbert Dixon Jr. that awarded him visitation rights.

Elizabeth Morgan is under a terrible misapprehension if she thinks Congress is going to bring her back,'' Norton adds. ''It is just not going to happen.''

Norton says that she and several other representatives objected to the bill's being placed on the ''suspension calendar,'' a technique reserved for noncontroversial measures that are approved by the House without debate.

In deference to these objections, the office of Speaker Newt Gingrich (R–Ga.) removed the bill from the suspension calendar, and it remains pending in the House Government Reform and Oversight Subcommittee on the District of Columbia.

PRIVATE AGREEMENT SOUGHT

Norton says she is about to write an open letter to the members of the House, listing her objections to the bill and declaring that the best way to solve the long-simmering Morgan-Foretich dispute is not through legislation, but by compromise between the parties.

Foretich has proposed a consent decree under which he would drop his demand for custody or visitation with his daughter as long as Dixon's court retains jurisdiction. Morgan has rejected this overture, terming it a ruse.

The Morgan case, which in the 1980's became a cause célèbre for feminists and their opponents, is now becoming caught up in thorny issues involving D.C. politics and home rule, in which suburban D.C. Republican representatives—Davis represents the district where Morgan grew up—face off against the District's Democratic delegate.

Also coming to the fore is the obscure constitutional ban on bills of attainder.

''The authors of this bill themselves could not have made it more clear that this is a bill of attainder,'' says Jonathan Turley, a professor at George Washington University Law School who recently entered the case as a pro bono lawyer for Foretich. ''They created an extremely damning record. This bill will have a half-life of one day under judicial review.''

LAWSUIT THREATENED

Should the bill pass both houses of Congress and be signed by President Bill Clinton, Turley says, he will immediately file suit in U.S. District Court against it.

''Not only is it grossly unfair to the targeted individual,'' Turley says, ''but its potential for future abuse cannot be overstated.''

Turley contends in court papers that the bill amounts to a legislative punishment of Foretich, even though it does not explicitly brand him a criminal. Turley says the bill implies that Hilary would not find ''safety'' unless Foretich were barred from seeing her, and that ''the denial of a father's right to visitation or custody is punitive.'' Foretich declines comment.

But Howard Denis, counsel to the D.C. subcommittee, rejects Turley's arguments.

''Ultimately, it would be a matter for the courts to decide,'' says Denis. ''But I take the view that it is not a bill of attainder, because it does not impose punishment on any individual.

''We have done research showing that the bill will pass constitutional muster,'' Denis adds. ''But it's too soon to talk about the nuts and bolts of it.''

Morgan's lead attorney, Stephen Sachs of D.C.'s Wilmer, Cutler & Pickering, was traveling and unavailable for comment. Co-counsel Juanita Crowley, also a Wilmer, Cutler partner, did not return calls, nor did Judge Michel, Morgan's husband.

Morgan's partisans have said that they are not trying to punish Foretich, but to permit Morgan and her daughter to return on humanitarian grounds.

Judge Dixon's order, said Davis on the House floor, is an ''antiquated'' one that ''does not address the current circumstances of the welfare of a young teenage girl'' who wants to return to the United States and ''pursue her dreams.''

In a Jan. 25, 1996, letter to Rep. Wolf, Michel described what he saw during a four-week visit to Auckland in December and January: ''Contrary to what some people may assume, the difficulties of life in exile for all three of the women in my New Zealand family grow, not diminish, with each passing year. . . . In addition, Ellen's teenage years are not helped by being deprived of family life with her stepfather.''