



ALAN WILSON
ATTORNEY GENERAL

April 13, 2021

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

The Honorable Nancy Pelosi
Speaker of the House
United States House of Representatives
Washington, D.C. 20515

The Honorable Chuck Schumer
Majority Leader
United State Senate
Washington, D.C. 20510

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Minority Leader
United State Senate
Washington, D.C. 20510

Dear Mr. President and Congressional Leaders,

As the chief legal officers of our states, we write to you regarding our serious concerns about recent reports indicating this Congress's and the Biden Administration's interest in passing the unconstitutional "Washington, D.C. Admission Act" (H.R.51 and S.51). If this Congress passes and President Biden signs this Act into law, we will use every legal tool at our disposal to defend the United States Constitution and the rights of our States from this unlawful effort to provide statehood to the District of Columbia.

While Article IV, section 3 of the Constitution provides that "[n]ew States may be admitted by the Congress into this Union[,]" the Constitution's provision of exclusive authority over the District of Columbia to the United States Congress cannot be wiped away simply by ordinary legislation. Rather, the only lawful way to provide statehood to the District of Columbia is to amend the Constitution.

The District of Columbia's creation traces to Article I, section 8, clause 17 of the Constitution, which says that Congress shall have the power:

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States....

Congress can no more abdicate its Article I authority over the District of Columbia to a new state via simple legislation—composed of the same territory, of course—than it can abdicate its authority over taxation. The reference to the maximum size of the District simply described how large it could be at its initial creation and does not provide authority for Congress to unilaterally alter the size of the District through simple legislation, much less create an entirely new state.

Accordingly, not only does Congress lack the authority to create an entirely new state out of the District, but it also does not have the authority to reduce the size of the District to the equivalent of a few federal buildings and surrounding parks.¹ Article I, section 8, clause 17 does not simply state that Congress has exclusive authority over the “*Seat of Government,*” but “*over such District as may . . . become the Seat of Government of the United States [.]*” U.S. Const. art. I, § 8, cl. 17 (emphasis added). Indeed, if it were so easy, there would have been no need for the Twenty-third Amendment to the Constitution, which provides for the electors of President and Vice-President to “[t]he District constituting the seat of Government of the United States.”

While we could write more about our concerns with the unconstitutionality of the Washington, D.C. Admission Act,² we assure you that we will challenge any attempt to provide the District of Columbia with the actual benefits of statehood if Congress passes it and the President attempts to sign it into law.

But beyond the Washington, D.C. Admission Act’s blatant unconstitutionality—and setting aside the practical problems that would come with statehood and the interaction with the federal government on things like utilities and the provision of basic services—it is bad policy. Its enactment would be antithetical to our representative democratic republic, and it would constitute an unprecedented aggrandizement of an elite ruling class with unparalleled power and federal access compared to the existing fifty states in the Union.

It was no accident that our Founding Fathers set aside an exclusive federal district to serve as the location for the seat of government, nor was it accidental that they did not provide for it to be converted into a state. They explicitly considered and rejected this idea. There are myriad reasons why they chose the structure that they did. Among them, as James Madison noted in Federalist 43, is the “indispensable necessity of complete authority at the seat of government.” He further noted:

¹ Admittedly, the County of Alexandria was retroceded back to the Commonwealth of Virginia in 1846. But that retrocession was not meaningfully challenged at the time, and the transferring of territory to an *existing state* does not provide a constitutional foundation for creating an *entirely new state* through simple legislation.

² For example, it does not address the potential conflict with the requirements that “no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.” U.S. Const. art. IV, § 3. Maryland may have ceded some of its territory for the creation of a new federal District, but it is not clear that Maryland ceded its territory with the intention of that territory someday becoming a state of its own.

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

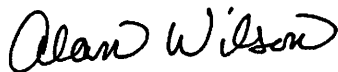
The Federalist No. 43 (J. Madison). Those reasons are still true today and perhaps even more so now than at the Nation's founding.

The Washington, D.C. Admission Act rejects more than two centuries of history by changing the title District of Columbia—its name, of course, derived from Christopher Columbus—to the “State of Washington, Douglass Commonwealth.” Providing statehood would create a state that would not be one among equals, but rather, a super-state that would have primacy over all others. Furthermore, for over two centuries, the District's residents have all willingly lived there with an understanding of its unique nature.

The Act mandates that residents of the new State of Washington, Douglass Commonwealth who might be qualified to vote in another State must be permitted to vote absentee in the elections of those other States, and it dictates the time during which those other States must accept voter registration applications. It also directs other States to treat residents of the State of Washington, Douglass Commonwealth in a manner superior to residents of their own State, including by waiving voter registration requirements for them, expediting the processing of their voting materials, and mailing absentee ballots to them at the earliest opportunity. In other words, residents of the new State of Washington, Douglass Commonwealth become the most privileged residents of any State in the Union—yet another example of their status as an elite ruling class. We reject all these troublesome results of providing statehood to the District of Columbia.

In short, the Washington, D.C. Admission Act is unconstitutional, represents unsound policy, and, if allowed to take effect, would create a super-state with unrivaled power. If the bills are enacted and provide statehood to the District of Columbia, we will challenge the Act in court.

Sincerely,



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Attorney General for South Carolina



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Attorney General for South Dakota



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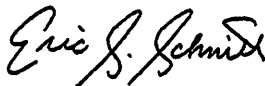
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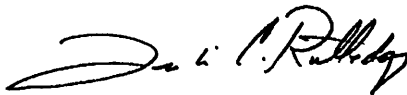
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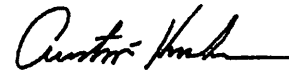
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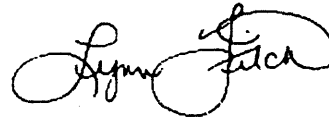
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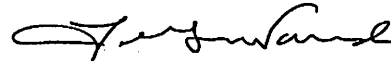
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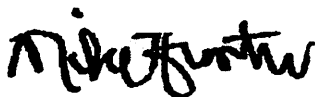
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