



D.C. Statehood Bill Prompts Questions Over Constitutionality

By Martin Austermuhle
September 15, 2014

Could D.C. become the nation's next state?

This afternoon, a Senate committee will [hold a hearing](#) on a bill that would [grant statehood](#) to the District of Columbia.

Proponents say that the hearing — the first of its type in 21 years — is a chance to air their grievances over what they say is a longstanding injustice: Ever since the nation's capital was founded, they say, its residents have been denied the democratic rights enjoyed by Americans living in the 50 states. But opponents counter that the bill isn't the right solution, largely because they claim it's an unconstitutional and partisan approach to granting D.C. statehood.

Below are some of the basics of the debate over the statehood bill. The hearing starts at 3 p.m.; we'll be [live-tweeting it](#).

What's D.C.'s current status?

The District of Columbia was created in 1791 by an act of Congress to serve as the nation's capital. At the time, Virginia and Maryland donated land to create a capital — the size of which was 100 square miles — which would be wholly controlled by the federal government to prevent it from falling victim to the power of any one state. Virginia's portion, which included Arlington County and Alexandria, was retroceded to the commonwealth in 1846, while the remaining 69 square miles remained under the control of the federal government.

While D.C. residents were granted the right to vote for president in 1961 and a locally elected mayor and legislature in 1973, the city remains a federal enclave controlled by Congress.

What does the bill do?

Under the provisions of the bill, the federally-controlled portion of the city would shrink to encompass only the U.S. Capitol, National Mall, White House, and Joint Base Anacostia

Bolling. The remaining portions would become the State of New Columbia, whose residents would then elect two senators and at least one representative to the House, though that number could increase based on the size of the city's population. The city would also gain legislative and budgetary autonomy, which means that city legislators would be able to pass laws and budgets without congressional approval.

What are the arguments in favor of the bill?

In 1991, Peter Raven-Hansen, a professor at The George Washington University School of Law, [argued](#) that shrinking the size of the federal enclave would allow Congress to declare D.C. a state and accept it into the union. He testified in favor of the bill in 1993, when it was approved by a House committee but subsequently voted down on the House floor.

In a law review article, Raven-Hansen wrote that while the Constitution set the maximum size of the nation's capital at "ten Miles square," it did not specify that it could not be smaller. "The very inclusion of this ceiling restriction suggests that the omission of any floor restriction is legally significant and deliberate," he wrote. He added that historical precedent exists for changing the capital's size: Virginia successfully took its land back, he noted.

Raven-Hansen also dismissed the constitutional prohibition against creating a new state out of an existing state, writing that when Maryland donated land for the creation of the nation's capital, it did so with no real expectation that it would ever get it back. He also argued that despite concerns raised by opponents that a new smaller federal enclave would be subject to the influence of the newly created State of New Columbia, the federal government now is significantly stronger than it was at the nation's birth.

The witnesses set to speak in favor of the bill are D.C. Mayor Vincent Gray, D.C. Council Chairman Phil Mendelson, D.C. Del. Eleanor Holmes Norton, Georgetown University law professor Viet D. Dinh, Brookings Institution scholar Alice M. Rivlin, Shadow Senator Michael Brown, Shadow Senator Paul Strauss, and Wade Henderson, president of the Leadership Conference on Civil and Human Rights.

What are the arguments against the bill?

In 1993, R. Hewitt Pate, then a scholar at the conservative-leaning Heritage Foundation, [wrote](#) that shrinking the federal enclave to create a new state for D.C. would be unconstitutional. The only way to grant D.C. statehood, he wrote, was to amend the Constitution.

According to Pate, a congressional path to D.C. statehood would create a constitutional conflict. Under the Constitution, Congress was given exclusive right to govern D.C., but by making D.C. a state, Congress would effectively be overruling that power by letting D.C. govern itself. "Making the District a full state, therefore, would be an abrogation of power that the Constitution explicitly assigns to Congress alone," he wrote.

Pate also disagreed with Raven-Hansen over the possibility of a smaller federal enclave — "there is no indication that the Constitution contemplates a District expandable and contractible at

Congress's whim," he argued — and the impact of having the enclave fully ensconced in the State of New Columbia.

"Dependence on the New Columbia for fire protection, police protection, and the like would raise any number of jurisdictional problems. Indeed, the federal government would become dependent on a state for the protection and hospitality extended to other countries' embassies. This is exactly the sort of unseemly dependence the Framers sought to avoid," he argued.

Speaking against the bill will be Roger Pilon, a legal scholar at the libertarian Cato Institute.

Will the bill pass?

Despite constitutional concerns, there are obvious partisan ones: 16 of the 17 co-sponsors of the bill are Democrats; the remaining co-sponsor is an Independent who caucuses with Democrats. Much the same is evident in the House version of the bill, which has picked up over 100 co-sponsors — all Democrats.

Additionally, the bill, which was introduced in Jan. 2013, is being debated only two months before the mid-term elections. Not only are Republicans expected to do well, but if the bill isn't voted on by the end of the session, it would have to be reintroduced next year.

Regardless of its chances, supporters still say the hearing is an important opportunity for the cause. Speaking on WAMU 88.5's [*The Politics Hour*](#) last Friday, Josh Burch, a D.C. resident who has pushed for the bill and the hearing, said that it will bring much-needed attention to the fight.

"Well, there's a few things that we're hoping for out of [the hearing]," he said. "The first is a public national airing of this discussion about how 646,000 American citizens who fulfill all obligations of citizenship, but are denied its most basic rights, still exists today, over 200 years have our country's founding. So I hope that this hearing raise awareness around the country."