SLATE

The Constitution Isn't the Obstacle to D.C. Statehood

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September 19, 2019

Why shouldn't American citizens who live in the District of Columbia have full voting rights? They pay federal taxes but lack representation in the Senate or House of Representatives. They are governed by federal laws passed by a Congress in which they have no vote. Many Washingtonians serve in the U.S. military. The district has 700,000 residents, more than Wyoming or Vermont. No other democracy disenfranchises residents of its own capital. Why does America?

On Thursday, the House Oversight Committee held a hearing to discuss H.R. 51, a bill that resolves this issue by granting statehood to D.C. It was led by Eleanor Holmes Norton, a Democrat and D.C.'s longtime voice in the House—though she is a "delegate," not a "representative," with no vote on the floor. Norton has introduced a statehood bill every session, but this year, it has a historic support: 219 Democrats have co-sponsored the measure. No Republicans have signed on, and every Republican representative who spoke on Thursday opposed statehood. Granting D.C. full representation, they said, simply goes against our founding principles. "The Constitution does not distinguish between the seat of the federal government and the district where the government is seated," Ohio Republican Rep. Jim Jordan said, "meaning that the Constitution would, in fact, need to be changed" to allow statehood.

These are bad arguments raised in bad faith for bad reasons. It is not the Constitution that stands in the way of D.C. statehood. It is a political party that would rather deny equal suffrage to 700,000 Americans than cede any modicum of power.

The district is 47 percent black and overwhelmingly Democratic. Washington has always had a large black population, and race underlies the fight over its future. The district did not gain its large black population by accident. New York Rep. Alexandria Ocasio-Cortez, a Democrat, reminded the committee that Congress abolished slavery in D.C. during the Civil War, spurring black Americans held in bondage to flock there, seeking freedom. "To uphold and deny the statehood of D.C. is to deny the impact of slavery in America," Ocasio-Cortez said. "It is a form of denial of our history."

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Congress long neglected the district's black residents, forcing them to live with poor sanitation, infrastructure, and education. They had no say in their own governance. Congress also used segregation and Jim Crow tactics to prevent black communities from gaining political power. Today, D.C. has some measure of home rule: An elected City Council can pass municipal laws, but Congress can block funding for these measures or overturn them entirely. It has used these powers to block needle exchanges, marijuana reform, abortion coverage, and benefits for same-

sex partners. Members of Congress often view D.C. residents and their representatives with scorn and distrust that seem rooted in a belief that a heavily black, mostly Democratic city cannot govern itself.

Holmes' bill would end this state of affairs by turning the vast majority of D.C. into the state of Washington, Douglass Commonwealth. The Constitution commands the creation of a "District" to serve as the "Seat of Government." Today, that's the entire city of D.C., but H.R. 51 would change that. The bill would shrink this federal district to a small enclave that encompasses the White House, Congress, the National Mall, and a number of federal buildings. All the remaining land within the district would become a state. Opponents insist that, because of its unique status, the district cannot be converted into a state without amending the Constitution. Norton believes this maneuver can be accomplished through simple legislation and does not require a constitutional amendment.

Many scholars—including an assistant attorney general under George W. Bush, Viet Dinh—agree that Norton's strategy is perfectly legal. So does the ACLU, which issued an analysis of H.R. 51, finding it to be constitutional. The theory goes like this: Yes, the Constitution mandates a federal district. But it decrees a maximum size (10 square miles), not a minimum one. The district has been shrunk before, and it can be shrunk again. Elsewhere, the Constitution grants Congress broad control over the district *and* authority to accept new states into the union through simple legislation. Taken together, these powers allow Congress to carve a state from D.C. and designate the remaining enclave as the federal district.

Norton ran through this basic framework, but she was countered at every turn by Jordan, the ranking member of the committee. Jordan began his opening statement with a tirade against D.C; he cited a corruption probe into the district's disgraced Democratic Council Member Jack Evans as well as past political scandals and financial struggles. These problems, Jordan claimed, prove that the district does not deserve statehood. (He ignored the fact that countless state governments, including his own Ohio, have faced their own scandals, and nobody suggests they should be stripped of their sovereignty.)

Jordan then pivoted to the Constitution. D.C. statehood, he declared, "is not what the Founding Fathers intended" because "the seat of the federal government" must not be located within another state. That's "what the Constitution says," so statehood can only come about through an amendment.

That's not actually what the Constitution says. It's a riff on Federalist 43, in which James Madison fretted that a capital within a state would be dependent upon that state for services—and, perhaps, unduly influenced by it. But Madison's justification of the federal district is not a constitutional rule. It is a policy concern, one with which Congress can agree or disagree. Constitutionalizing the argument just forecloses debate over a fundamentally political question.

Roger Pilon, a scholar at the libertarian Cato Institute, was even more cynical. He cited a Gallup poll showing that most Americans, including most Democrats, oppose D.C. statehood. He also noted that the bill stood little chance of passing the Senate, let alone being signed by the president: "I don't see this bill going anywhere." So why even debate it? Pilon also complained that the district would be our first "city-state," asserting that it "has none of the characteristics that Madison set forth that would describe the state." (I must have missed the "no city-states" clause of the Constitution.)

It got worse from there. Louisiana Republican Rep. Clay Higgins decided to respond to Kerwin E. Miller, a retired Navy Reserve commander and a third-generation D.C. native who testified that 30,000 district residents are veterans who deserve voting rights. "Our oath as veterans was to our Constitution," he scolded Higgins. "The debate before us today is strictly constitutional, as was our oath. And this is the tone this body should embrace."

Like many other Republicans, Higgins zeroed in on the 23rd Amendment, which gives the federal district three votes in the Electoral College. It is true that, under H.R. 51, these electoral votes would be assigned to the remaining federal enclave. Only a small number of people would live there, including the president and his family, and this tiny group would control three electoral votes.

Norton and her co-sponsors assume that the 23rd Amendment would be swiftly repealed if D.C. gained statehood. Republican representatives believe it prohibits statehood—though nothing in the amendment says the district must maintain a certain population. Perhaps Republicans glean this rule from the penumbras and emanations of the text; maybe they think it would be absurd to grant a small number of people outsize power in the Electoral College. (If that's the case, they should check out how the system works today.) But, once again, these grievances are really policy concerns about the collateral consequences of legislation, not true constitutional complaints. Republicans simply coat their distaste for D.C. statehood in the patina of legalese to make them sound impartial and compelling.

Yet Norton sounded like a constitutional law professor in comparison with Kentucky Republican Rep. Thomas Massie. Bringing up a map of the proposed enclave, Massie noted that "a lot of Capitol Hill staff would be parking outside the federal enclave. Doesn't it seem like there'd be some influence if the congressional staff had to appeal to the new state to park?" This must have been just what Madison envisioned: 700,000 Americans *must* be denied equal citizenship so that Hill staffers can park on federal property.

Democrats pointed out that D.C. was being forced to jump through legal hoops no state has had to face before. "The only way that we've admitted new states into the union is through Congress," Maryland Democratic Rep. Jamie Raskin reminded his colleagues. "There's never been a state admitted by constitutional amendment."

But perhaps the best moment of the day came when Virginia Democratic Rep. Gerry Connolly stated the obvious. "When they say it's not about race and partisanship," Connelly said, "you can be sure it's about race and partisanship." Pilon, the Cato scholar, looked offended.

"This is not about race," he said. "I request that you withdraw that charge."

"Never," Connelly proclaimed with evident satisfaction. "It is about race and partisanship."

It is, of course, about race and partisanship. Republicans do not want two additional Democrats in the Senate and one more in the House. And the political identity of the district cannot be fully disentangled from its racial composition.

Thursday's hearing confirmed that the best arguments against D.C. statehood are either pseudo-constitutional, conspiratorial, partisan, or racially coded. The disenfranchisement of 700,000 Americans is impossible to square with the guarantee of equal justice, and it's perverse to raise

constitutional objections that fly in the face of equality and suffrage. It isn't the Constitution that stands in the way of statehood. It's the Republican Party.