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TESTIMONY OF CHAIRMAN PHIL MENDELSON
COUNCIL OF THE DISTRICT OF COLUMBIA

EQUALITY FOR THE DISTRICT OF COLUMBIA: DISCUSSING THE IMPLICATONS OF S. 132, THE NEW COLUMBIA ADMISSIONS ACT OF 2013

UNITED STATES SENATE HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS COMMITTEE

SEPTEMBER 15, 2014

Thank you Chairman Carper, Ranking Member Coburn, and members of the Committee. I am Phil Mendelson, Chairman of the Council of the District of Columbia. I am pleased to testify today in support of S. 132, the New Columbia Admissions Act of 2013. Full and fair representation for the over 646,000 citizens residing in the District of Columbia is only possible through achieving statehood, and so I urge this Committee, and this Congress, to move expeditiously on this measure.

I want to thank this Committee for its ongoing support for the District of Columbia. In particular, I want to thank Chairman Carper for introducing statehood legislation, and I want to thank Subcommittee Chairman Begich for introducing important legislative and budget autonomy legislation, S. 2245, the District of Columbia Paperwork Reduction Act of 2014, and S. 2246, the District of Columbia Budget Accountability Act of 2014. While our ultimate goal of statehood would accomplish the autonomy provided in these measures, until that happens, these bills would empower the

District to more effectively and efficiently manage our government operations. The Senate Financial Services and General Government Appropriations Subcommittee has included provisions similar to these bills in its recommendations for fiscal year 2015, and I urge support by all Members as this legislation comes before the full Senate.

I also want to thank this Committee for working with the District and our Congresswoman Eleanor Holmes Norton to update our Chief Financial Officer's compensation and make improvements to the Height Act.

While these measures are important to achieving the overarching goal of full rights of citizenship, each is an incremental approach. So that District residents can achieve full participation in our democracy, Congress must adopt the New Columbia Admissions Act.

THE DISTRICT OF COLUMBIA IS THRIVING

Despite the many limitations imposed on the District due to our unique status, and despite the economic downturn caused by the Great Recession and the resulting reduction in federal funds available to local jurisdictions, the District of Columbia is thriving. We are strong financially. We are growing by over 1,000 new residents a month and businesses are flocking to the District. This is a far cry from the image of the District that lingers in many people's minds from decades past. I believe that other jurisdictions can learn from our many successes over the last decades.

Since Congress granted the District of Columbia limited home rule in 1973,[1] the District has had many successes, but also many challenges. Perhaps our greatest challenge was the imposition of a Control Board in 1995, essentially stripping our local government of full control over our budget and management. The Control Board era

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[1] District of Columbia Home Rule Act, Pub. L. No. 93-198, 87 Stat. 774, D.C. OFFICIAL CODE § 1-201.01 *et seq.* (1973) [hereinafter Home Rule Act].

forced the District to confront its finances head-on, and to realign the relationship between the District and the federal government. By 2001, the District was back on solid financial footing and the Control Board was dissolved. Since that period the District has had a strong economic record.

For 17 consecutive years, the District has ended its fiscal year with a budgetary surplus. We have grown our fund balance even in the wake of the Great Recession and massive cuts in federal spending. Our balanced budgets have relied not on steep tax increases or deep spending cuts, but on responsible policies that have grown our economy while providing a broad safety net for District residents. As of last September 30th, the District had a General Fund balance of over $1.75 billion dollars.[2] Compared to the states, this would put us only behind Alaska and Texas in terms of real dollars.[3] Included within this General Fund balance are four reserve funds which, as of the beginning of the current fiscal year, totaled $791 million – close to the Government Finance Officers Association (GFOA) recommended amount of two-months' operating cash.

These factors have helped the District maintain the third highest possible bond rating with both Moody's and Fitch, and the fourth highest with S&P.[4] Our strong fiscal position allowed us to recently adopt a far-reaching income and business tax cut which will phase in over the next three to five years, beginning with fiscal year 2015. We continue to make capital investments in our infrastructure, while remaining below our locally-mandated 12% debt cap.[5] I am also pleased to say that our Fiscal Year 2015 budget[6] lays out a path for future capital investments relying less on financing and more on pay-as-you-go capital.

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[2] District of Columbia Chief Financial Officer, 2013 Comprehensive Annual Financial Report 31 (Jan. 30, 2014).
[3] National Association of State Budget Officers, The Fiscal Survey of States 13 (Fall 2013).
[4] District of Columbia Chief Financial Officer, 2013 Comprehensive Annual Financial Report 10 (Jan. 30, 2014).
[5] D.C. OFFICIAL CODE § 47-335.02(a) (2014). The congressionally adopted Home Rule Act allows for an 18% cap.
[6] *See* Government of the District of Columba, Fiscal Year 2015 Proposed Budget and Financial Plan (Aug. 7, 2014).

Other indicators of financial strength include funding for retirement accounts. Our Police, Fire, and Teachers retirement fund – a defined benefit plan – is second best in the nation, fully funded at over 100 percent. Our Other Post-Employment Benefits Fund is also second best in the nation, funded at over 80 percent and with a closed amortization period for the remaining unfunded liability.

Our city is growing, our tax base is growing, our financial reserves are healthy, our capital spending is disciplined, and our retirement funds are among the best. Few local governments, and even fewer states, can boast of such achievements, especially in the last decade.

How does this relate to statehood for the District? Residents of the District have long held that denying almost 650,000 citizens the right to full congressional representation and control over their local government is fundamentally unfair and not in keeping with the values and ideals of the United States of America. Instead, as you know, we cannot spend without congressional appropriation, and we cannot enact local laws without congressional review. We cannot fix inequities in criminal sentencing without the approval of the United States Attorney General, and we cannot update the limits on small claims or strengthen our Anti-SLAPP law because we cannot legislate judicial process.

The District's success, even in the face of administrative hurdles that no other jurisdiction must endure, demonstrates that, in addition to our being entitled to full and fair representation, the District government is fully capable of managing our affairs just like any state. To that end, we stand on our record of responsible government management.

THE CASE FOR STATEHOOD

In the 200 years since Congress rescinded voting rights from the last group of Washington residents who had previously voted in Maryland and Virginia, citizens residing in the District of Columbia have been denied the right of a vote in Congress. To add insult to injury, it is Congress that has plenary authority over all matters in the District, although no members of Congress are elected by District residents.[7]

In recent decades, numerous efforts have been made to correct this historical injustice. Some of these efforts were successful, and some were not. In 1960, the 23rd Amendment was adopted, granting the District the same number of presidential electors as the smallest state.[8] In 1970, the District of Columbia Delegate Act[9] was enacted to give the District a representative in the House of Representatives. But, as you know, that position is non-voting – the same status as U.S. territories. In 1973, Congress adopted the Home Rule Act, a major reform for District governance, but that act is silent as to congressional representation.[10] In 1978, the District's non-voting delegate in the House of Representatives, Walter Fauntroy, introduced a constitutional amendment that would have given the District two senators, a representative, and an unrestricted vote for President.[11] While Congress approved the amendment, three-quarters of the states did not ratify it.

More recently, this Committee, under the previous leadership of Senators Lieberman and Collins, reported bipartisan legislation[12] to add two additional seats in the House of Representatives, including a full voting Member for the District and one for Utah. This approach relied on Congress's authority to legislate on matters for the

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[7] District of Columbia Organic Act, 6th Congress, 2nd Sess., ch. 15, 2 Stat. 103.
[8] U.S. CONST. amend. XIII § 1.
[9] District of Columbia Delegate Act, Pub. L. No. 91-405, § 201, 84 Stat. 848 (1970).
[10] Home Rule Act *supra* note 1.
[11] H.R.J. Res 554, 95th Cong. (1978).
[12] District of Columbia House Voting Rights Act, S.1257, 110th Cong. (2007).

District, as well as the creation of congressional seats and adjustment in the number of representatives in the House of Representatives.[13] Unfortunately, a Senate vote to simply proceed to full debate on the measure fell short by three votes. That bill eventually passed the Senate in 2009, but with a poison pill amendment limiting the ability of the District to regulate guns within its own borders, so it was never considered in the House.

There have been other efforts aimed at restoring voting rights for District residents by retroceding all populated areas of the city back to the State of Maryland. The most recent iteration of this idea was introduced last year in the House.[14] Advocates of this method have argued that retroceding the District to Maryland is the most practical and constitutionally sound way to give District residents a vote in the Senate, and that it makes historical sense when compared to the previous retrocession of Arlington to Virginia.[15] This may be logical, but the proposal is unpopular with the residents of the District and Maryland – they don't want it. And so Congress can't force this on Maryland. Further, this approach would ignore the unique character of the District and its residents as a distinct jurisdiction.

There is another important element to statehood besides congressional representation, and most of these past attempts to secure voting rights for District residents would have left us deprived of that fundamental right: the right to self-governance. Independent governance reflecting the will of the people is fundamental to our system of democracy. Self-governance reflects community values and priorities. Self-governance is more sensitive to constituents. Self-governance is the essence of every town hall, city council, county board, and state legislature in the United States of America.

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[13] S. REP. NO. 110-123, at 3 (2007).
[14] District of Columbia-Maryland Reunion Act, H.R. 2681, 113th Cong. (2013).
[15] *See Legislative Hearing on H.R. 5388, the District of Columbia Fair and Equal House Voting Rights Act of 2006* (testimony for the record of Lawrence H. Mirel for the Committee for the Capital City) (Sept. 20, 2006).

The only option to gain full voting representation and full self-governance, as enjoyed by residents of the other 50 states, is statehood for the District.

The idea behind the New Columbia Admissions Act of 2013 was first proposed in 1971.[16] It would carve out the geographic federal core of the city to remain a federal enclave, while establishing the remainder of the city as the state of New Columbia. Full statehood is the most practical way to fully restore the rights of those who now live in the Nation's capital.

This approach is a well-tested method of gaining representation, having already been employed 37 times. Congress granted statehood to several territories that were in existence for less than ten years. On the other hand, the last three states admitted to the Union – Hawaii, Alaska, and Arizona – were territories for 61, 47, and 49 years, respectively, before being granted statehood. However, the District has been around for 214 years. We had these rights way back then. It's time we had them again.

While I staunchly advocate for District statehood, I recognize that there are hurdles standing in the way. Unfortunately, many of these hurdles are simply a matter of national politics and efforts by political parties jockeying for majorities in Congress. The hurdles are not confined to Capitol Hill. Many state legislatures don't see the advantage of a constitutional amendment that might affect their states' influence in the House or Senate, and many of their state legislatures also don't understand that the United States citizens of the District of Columbia raise their own taxes and pay for their own services but are not equal to the United States citizens in any of the 50 states.

Even during the 2007 effort to gain seats in the House of Representatives for the District and for Utah, then-Chairman Lieberman acknowledged that "frankly and directly [the legislation] overcome[s] concerns of the partisan impact of giving a House seat to the

[16] *City and State: D.C. State Bill*, Washington Post, July 7, 1971, at C4.

District because it tends to vote Democratic…"[17] Fundamental fairness and voting rights should trump politics – at least in this country.

It is also important that we acknowledge that education of the public is another hurdle standing in our way. According to a January 2005 poll paid for by D.C. Vote and conducted by an independent research firm, over 80 percent of American adults were not aware that the District does not have equal constitutional rights or representation in Congress. However, over 80 percent of respondents supported voting rights for the District.[18] The idea of tax-paying citizens without full representation in the United States Congress is a concept so foreign and against everything we are taught in school about the basic democratic values of our country, that many don't believe it, or are forced to square this injustice using misconceptions about the District.

The District of Columbia is unique in many ways, but no unique qualities should support disenfranchisement of its citizens.

While decidedly small, population is not, and should not, be a requirement for full participation in the Union. In any event, the District's population is greater than two existing states: Vermont and Wyoming. Furthermore, at the growth rate we have seen in recent years – 7.4 percent – I would expect the District to continue to move up the list.

Some have argued that large, current federal payments to the District are another disqualification for statehood. In truth, however, the vast majority of the federal dollars that the District receives consists of Medicaid and other federal program subsidies received by all the states. We used to receive a federal payment in addition to the standard federal program allocations, but that was eliminated over 15 years ago.

[17] 153 Cong. Rec. S11626 (daily ed. Sept. 18, 2007) (statement of Senator Lieberman).
[18] DC Vote, U.S. Public Opinion on DC Voting Rights (Jan. 2005).

Some say that the vast amount of land owned or controlled by the federal government within the District is another disqualification for statehood. There is, to be sure, a substantial amount of federal land in the monumental core of the District – much of which the New Columbia Admissions Act would leave as a federal area. However, the sixty-plus other square miles of the District are not unlike other states. Currently, compared against the states, the District has the second lowest total actual number of acres under federal control and has the 13th lowest federal acres as a percentage of total land, ranking behind a few notable states including Alaska, Montana, Arizona, and Wyoming.[19] Under the provisions of the New Columbia Admissions Act, much of the federal acreage in our borders would be retained as a federal enclave, leaving New Columbia with even less land under federal control.

To address state revenue forgone due to non-taxable federal lands, the Department of the Interior administers a Payments in Lieu of Taxes (PILT) program to compensate for state services that may be provided on federal lands under the control of the Department of the Interior, such as fire protection. This program is applicable to all of the states. In Fiscal Year 2014, under the PILT formula, the District received only $18,159 of the $436,904,919 paid out nationally.[20] Compare this to $28 million for Alaska, $34 million for Arizona, $28 million to Montana, or $27 million for Wyoming. Many of our other non-taxable areas fall under the General Services Administration, other federal agencies, or are subject to State Department diplomatic tax exclusions.[21]

The federal government also makes non-PILT payments to states in which it owns substantial land. In 2013, 34 states received federal mineral royalties totaling $1.9 billion, with Wyoming receiving the most at $932 million, followed by New Mexico at

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[19] Congressional Research Service, Federal Land Ownership: Overview and Data, 4-5 (Feb. 8, 2012).
[20] Department of the Interior, Payments in Lieu of Taxes by State, Fiscal Year 2014 (Sept. 2, 2014, 2:45 PM), http://www.doi.gov/pilt/state-payments.cfm?fiscal_yr=2014.
[21] Department of State, Diplomatic Note 06-01, 12-18 (Apr. 12, 2006).

$478 million.[22] While the federal government owns the land on which the minerals are produced, it disburses revenues to fulfill a variety of state needs including infrastructure improvements and schools that support state residents.

The federal government is generous to the states. The fact that the District receives federal dollars – including for Medicaid, federal highway, homeland security, etc. – is not unusual and should not be used against us in our quest for statehood.

CONCLUSION

Full statehood is the only practical way that our citizens can participate in a fully democratic government. It is the only way to ensure that our local government will never be subject to a shutdown because of quibbling over purely federal matters, and our local services not suspended because of partisan disagreements. It is the only way to give our residents locally elected representatives to enact purely local laws that would not be subject to national debates over divisive social issues. It is the only way to create a justice system that is representative of, and sensitive to, our community values. Statehood is the only way to give residents a full, guaranteed, and irrevocable voice in the Congress of the United States – the same voice enjoyed by our peers across the country.

Statehood is the most practical solution to right the historical wrong of denying voting rights to citizens of the District and to guarantee the right to local self-governance. The District of Columbia has a proven track record of prudent fiscal management spanning two decades. The State of New Columbia would enter the Union as a 51st state with an economy envied by other jurisdictions. Politics must be set aside and all of the excuses used to justify denial of our inalienable rights must be shelved. Our limited home-rule power delegated by Congress is appreciated, but too tenuous and too often a

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[22] Office of Natural Resources Revenue, Statistical Information, Disbursements for Fiscal Year 2013 (Sept. 2, 2014, 2:45 PM), http://statistics.onrr.gov/ReportTool.aspx.

bargaining chip in political battles. Limited home-rule cannot make up for all of the other rights withheld by Congress that we could have only through statehood.

Statehood legislation was last seriously considered by Congress after the House Committee on the District of Columbia reported the bill to the full House for consideration. The accompanying committee report[23] contained dissenting views as to why statehood should not move forward, and included some of the same arguments opponents use today. In addition to the constitutional concerns raised then and now – which I believe can be overcome – the report stated the following with regard to the conditions necessary to grant statehood:

> "By precedent and tradition, three main requirements have been considered by the Congress in evaluating statehood admission petitions. The requirements, as restated by the Senate Interior Committee Report accompanying the Alaska admission act, are as follows:
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> "(1) That the inhabitants of the proposed new State are imbued with and are sympathetic toward the principles of democracy as exemplified in the American form of government.
>
> "(2) That a majority of the electorate wish statehood.
>
> "(3) That the proposed new State has sufficient population and resources to support State government and to provide its share of the cost of the Federal government.
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> "The third of these requirements is particularly important to our form of federalism as it demands that new States demonstrate that they can provide for their own self-government, independent of any other State as well as the federal government, and that the new State will provide its

[23] H.R. REP. NO. 102-99 (1992).

equitable share of the cost of the federal government at the time of admission and in the future."[24]

At the time, those who opposed statehood for the District argued that the large federal payment, federal pension contributions, declining population, and lack of economic diversity stood in the path to our satisfying the third criteria. However, the District has turned around on all of these fronts. For the reasons I outlined earlier in this testimony, we have satisfied the traditional three main requirements, and it is time for Congress to reconsider our demand for statehood.

One final point: throughout the world, there are very few national capitals – and none in the free world – where the citizens do not enjoy a vote in the national legislature. We, the District of Columbia, are unique in this regard. It is a distinction we do not want, and a stain on our federal system.

The Council appreciates the Committee's consideration of the New Columbia Admissions Act of 2013, and urges that it be brought before the Committee for markup and before the Senate and House for a vote. I also appreciate the Committee's past support for the District and look forward to continuing to work together in the future, I hope with a newly-elected Senator of our own on the Committee from the State of New Columbia.

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[24] *Id* at Minority Views.