



**Statement of Karl A. Racine  
Attorney General for the District of Columbia**

**Before the**

**Committee of the Whole  
The Honorable Phil Mendelson, Chairperson**

**Public Hearing**

**Bill 21-826, the Constitution for the State of New Columbia Approval  
Amendment Act of 2016**

**October 6, 2016  
6:30PM  
Room 500  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, District of Columbia**

Good evening Chairman Mendelson, Councilmembers, and staff. I am Karl A. Racine, and I have the privilege of serving as the Attorney General for the District of Columbia. I am pleased to appear before the Council this evening to wholeheartedly support Bill 21-826, the Constitution for the State of New Columbia Approval Amendment Act of 2016. As the Attorney General for the District of Columbia, I certify that this bill is legally sufficient for the Council's consideration. However, I must note that this bill is much more than just legally sufficient; indeed, it is both a moral and practical imperative that the residents of the District of Columbia achieve full statehood.

Since becoming the District's first elected Attorney General in January of 2015, I have seen first-hand how our current status as a territory without full representation in Congress can lead to the disregard and disrespect of our nearly 700,000 residents. It is instructive to note that the first major issue I had to face when entering office was a Congressional rider aimed at nullifying a referendum approved by the citizens of the District. In the same manner that District voters overwhelmingly supported creating an independent Attorney General, they also decided that recreational marijuana should be legal via Initiative 71. Subsequently, Congress successfully blocked our duly elected officials' ability to regulate marijuana, which is legal and regulated in at least four other states. To be clear, Congress was able to block the expressed will of the people of the District even though they are incapable of doing that in any other state. This wanton disregard of District residents is outrageous. While the District of Columbia is extremely fortunate to have the Honorable Eleanor Holmes Norton fighting our battles in Congress, it is

past time to give our Congresswoman, and the residents she represents, all the tools we need to ensure we move beyond what many consider to be “colonial” status.

With regard to the Bill, it contains all the provisions of the proposed Constitution that was prepared at the request of, and approved by, the New Columbia Statehood Commission (Commission).<sup>1</sup> The bill would recommend that Congress approve the proposed Constitution for the new state. As acknowledged in Section 3 of the bill, the proposed Constitution cannot take effect as the Constitution of the State of New Columbia until approved by the U.S. Congress, which would also need to pass legislation that would admit the District to the Union.

The proposed Constitution was carefully analyzed by a legal advisory group.<sup>2</sup> This advisory group also assessed all the changes made to that Constitution based upon input from members of that group, the general public, and Statehood Commission members. Several members of the legal advisory group and the Office of the Attorney General’s Legal Counsel Division independently researched a variety of legal issues to determine if any provision of the proposed Constitution would be inconsistent with the U.S. Constitution. We concluded that there were strong arguments that they would not. Moreover, several members of the lawyers’ group and the Office of the Attorney General independently researched a variety of legal issues, such as, whether any part of the U.S. Constitution, e.g., the District Clause or the 23rd

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<sup>1</sup> The Commission is comprised of 2 co-chairs, Mayor Muriel Bowser and Council Chairman Phil Mendelson, and 3 members, Senators Paul Strauss and Michael D. Brown and Representative Franklin Garcia.

<sup>2</sup> The group included District government lawyers representing the Mayor, the Council and the Office of Attorney General; professors at Georgetown University Law Center, George Washington University Law School and the University of the District of Columbia David A. Clarke School of Law; lawyers in private practice, including one former Corporation Counsel; and lawyers from public interest groups like D.C. Appleseed. I participated in one group meeting in May 2016.

Amendment, would need to be amended before New Columbia could be admitted as a state, or whether we would need the consent of the State of Maryland. We believe that there are strong arguments supporting the view that the U.S Constitution would not need to be changed before the District is admitted, although it might make sense to repeal the 23rd Amendment after admission. We also determined that Maryland's consent will not be required. These conclusions are consistent with past determinations of the Office of the Attorney General and with the opinion of many (but certainly not all) legal scholars.

The proposed Constitution included in the bill was based on the 1982 and 1987 proposed Constitutions of the State of New Columbia as well as the District's Home Rule Act. While based on those documents, the proposed Constitution has been modified to reflect current political and legal developments and the fact that the new state would no longer be subject to the restrictions that apply to the District of Columbia. The Constitution contains a bill of rights, much like that established in the U.S. Constitution. In response to concerns expressed by the Solicitor General of the Office of the Attorney General and other members of the legal group, it also contains a provision making clear that courts interpreting the Constitution "are not bound by the interpretation given by federal courts to identical or similar language in the United States Constitution, but shall interpret this Constitution in light of its purposes and the laws, values, and traditions of the State of New Columbia." See Art VII, Sec. 2.c.

The proposed Constitution sets up a tripartite government much like that which now exists in the District. Power would be divided among three branches: a unicameral legislature

named the House of Delegates that would contain 21 members – 16 from each of the District’s existing wards, 4 at-large members, and a Speaker (Article I); an executive branch with chief executive power vested in a Governor (Article II); and a judicial branch that would consist of the Court of Appeals, the Superior Court and such other courts established by law (Article III).

Article I also provides for the existence of Advisory Neighborhood Commissions in the legislative branch. The executive branch would also include a Chief Financial Officer (Article II, Sec. 6); an independent elected Attorney General, some of whose essential powers and duties are expressly stated in the proposed Constitution (Article II, Sec. 5); and a Board of Education (Article II, Sec. 7). In addition, the proposed Constitution would establish a budget process for the new state (Article IV); procedures for borrowing and issuing bonds (Article V); and a process for citizens’ initiatives, referenda, and recalls (Article VI) and for amending the Constitution (Article VII). Article VIII contains provisions needed to ensure continuity of government during the transition to statehood.

With regard to the Attorney General language found in Article II, Section 5, it is important that the legislative record is clear regarding the office’s independence. While the Attorney General will be housed in the Executive Branch, the Attorney General will continue to be independent in the new state -- not subordinate to the Governor. So there is no doubt regarding the office’s independence and basic duties, I urge the Council to make explicitly clear in the accompanying committee report that the Attorney General is not a subordinate Executive agency head, and will continue to be responsible for all of New Columbia’s legal business as the

chief legal officer of the new state. Most importantly, the report should reflect that the Attorney General's primary mission is to uphold the public interest.

In the same vein, I echo the sentiments of public witnesses from the Committee of the Whole's hearing on this Bill that took place on September 27, 2016. At the hearing, not only did residents state the need for an independent Office of the Attorney General, they also stated the need to maintain independence for the Chief Financial Officer (CFO). Having an independent CFO is critical. The main reason why the District is now in a solid position to advocate for statehood is our strong fiscal health. We have been fortunate to have responsible elected leadership and an independent CFO to bolster our bond ratings and surpluses. The same structure should continue in statehood.

The Constitution for the State of New Columbia Approval Amendment Act of 2016 is a crucial step on the road toward statehood. But, in reality, we've been well on our way to building a healthy, robust, democratic state government for years now. Just look at the evidence. For more than 15 years now, we have balanced our budget – certainly something that positively distinguishes us from our Congressional overseers. In fact, thanks to the stewardship of the Mayor and Council, we repeatedly have annual surpluses and fully-funded pension programs, and our finances are the envy of virtually every other city and state in the nation! Moreover, we have bolstered the integrity of our government, strengthening our ethics laws and rooting out corruption.

If it weren't so offensive, I'd find it fascinating that people so frequently tell the District that we haven't earned the right to statehood. It should be a national embarrassment that the United States is the only nation in the world with a representative, democratic Constitution that denies voting representation in the national legislature to citizens of the capital. In our nation's capital exist the only United States citizens who pay federal taxes with no Congressional vote.

I am advised that this measure will appear as an advisory referendum on the November ballot. The advisory referendum would give District citizens the opportunity to indicate their support for statehood, a republican form of government, the proposed Constitution, and the proposed boundaries of the new state. I will work with my fellow elected leaders, residents, and advocacy groups like StatehoodYES! to ensure this measure passes. I then look forward to continuing that fight to Congress to ultimately admit New Columbia via an admission act.

The Office of the Attorney General appreciates the opportunity to testify on this important matter. I am joined by Janet Robins, Deputy Attorney General – Legal Counsel Division. We are pleased to answer any questions that the members of the Committee may have.