

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives

The Honorable Kevin McCarthy
House Minority Leader
U.S. House of Representatives

The Honorable Chuck Schumer
Senate Majority Leader
U.S. Senate

The Honorable Mitch McConnell
Senate Minority Leader
U.S. Senate

March 8, 2021

**RE: Oppose Proposal to Impose Permanent Fencing
Around the U.S. Capitol**

Dear Congressional Leaders:

The American Civil Liberties Union and the ACLU of the District of Columbia urge you to reject calls to install permanent fencing around the U.S. Capitol complex.¹ Permanent fencing around the most hallowed grounds in our country would only compound the damage to democracy inflicted by the agitators who stormed the Capitol, attempted to subvert our democracy, and wreaked havoc on January 6th, 2021. We must remain true to the values that embody America at its finest and maintain the space around the Capitol as a forum for the public to assemble.

The Capitol is an iconic symbol of democracy recognized around the world as the place where America's leaders elected from every corner of the country gather to legislate on behalf of the American people. The Capitol grounds are also quintessential public forums for free speech and protest where people exercise their constitutional right to petition their government and to speak their views on the issues important to them. The Capitol grounds are also special to American civic life in that they allow the public to express its views directly to lawmakers gathered together as a legislative body. It is essential that they remain so, even in the face of security demands to sacrifice what the openness of the Capitol fundamentally means for who we are and who we want to be as a country. We must not inflict further damage to the fabric of our nation or cave to calls to weaken our most cherished liberties.

The Capitol complex must remain an unambiguously proud emblem of the government of, by, and for the people that it was



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built to be² and which Congress aspires for it to be—one that welcomes the public and embraces open engagement with the citizenry. Conspicuously sealing off our nation’s seat of representative government, as if it were a military fortress suspicious and fearful of the public, would violate those fundamental values embodied by the Capitol. Such a move driven by fear and distrust would instead send the kind of message that heads of autocratic regimes send by cloistering themselves off in armored enclaves in militarized zones, hostile to the public’s presence both physically and figuratively.

In stark contrast, our nation’s capital city has a century-long and celebrated tradition of ordinary people marching, picketing, holding vigils, and engaging in other forms of public discourse in its public places—including the National Mall in front of the Capitol, as well as the Capitol complex itself and its parks. That storied history of marches to and on the Capitol includes the Million Man March, March For Life, Women’s March, and the March for Our Lives. Organized by people holding every possible viewpoint, these protests and demonstrations are emblematic of our First Amendment rights in this country.

That is why we opposed past proposals to restrict protest rights on the city’s public grounds³—and why we now oppose the proposals to install permanent fencing around the Capitol. We take this view not just as a national organization that has been championing civil liberties for more than a century, but for the ACLU of the District of Columbia, also as D.C. residents who recognize and understand the fear felt by so many as the Capitol was overrun on January 6. The permanent fencing will dramatically restrict the public’s access to public grounds with unique importance in the exercise of their rights to assemble and to petition the government, particularly for those engaging in spontaneous expression and protest in response to unfolding events.

The proposal to permanently surround the Capitol complex with foreboding military-style barriers raises other concerns as well. We are particularly concerned about the impact on the independent press’s ability to travel to and from the Capitol without excessive delays or burdens in order to report on the affairs of Congress,

¹ Alana Wise, *After Riot, Acting Capitol Police Chief Calls For Permanent Fencing Around Complex*, NPR, Jan. 28, 2021, <https://n.pr/36WUbfX>. For a map showing the fence installed immediately after the events on January 6, please see <https://www.popville.com/2021/01/a-map-of-the-capitol-fence/>.

² Anne Neal Petri, *Opinion: Listen to Frederick Law Olmsted on the Capitol Grounds*, Wash. Post, Feb. 5, 2021, <https://wapo.st/3cTF36T>; Mark Wilson, *Designers reimagine the U.S. Capitol as a brutalist fortress*, Fast Co., Jan. 11, 2021, <https://www.fastcompany.com/90592546/designers-reimagine-the-u-s-capitol-as-a-brutalist-fortress>.

³ For example, see this ACLU public comment letter to the National Park Service opposing the Trump administration’s proposal to dramatically limit the right to demonstrate near the White House and on the National Mall: <https://www.aclu.org/letter/aclu-public-comment-opposing-trump-administration-proposal-restrict-protest-rights-washington>.

especially in light of journalists' need to quickly respond to rapid developments on the Hill. That public access to the workings of Congress has already been significantly degraded due to the steady creep of security measures imposed over the years,⁴ including numerous security checkpoints guarded by heavily-armed officers. Under the permanent fencing proposals, press access will get even worse—at the expense of government transparency and accountability.

By further militarizing and restricting access to one of the District of Columbia's most cherished public grounds, the permanent fencing proposal will also take a unique toll on the city's residents who live and work there, as well as tourists who visit from across the country. As a basic governance matter, the fencing currently installed around the Capitol as a temporary measure is quite literally obstructing the D.C. government from enacting new laws, as physical paper copies of its newly enacted legislation must be delivered by hand to the U.S. Senate and U.S. House.⁵

Furthermore, Washingtonians already face the daily reality of so many of the public parks and public grounds throughout the city—financed by and operated on behalf of the public—excluding ordinary citizens. For many who call the nation's capital their home, security measures that create an atmosphere of living in an oppressive police state are another fact of daily life⁶—whether they are a pedestrian or jogger who stray too close to the Capitol, a biker or driver struggling to navigate around street closures, or a child barred from sledding on Capitol Hill in the name of security.⁷ The intense scrutiny by and harmful interactions with law enforcement will also be worse for D.C. residents and workers of color, who only recently had been subjected to the heightened trauma of militarized law enforcement and military troops' brutal crackdown of the city's vibrant Black Lives Matters protests.

These concerns are among the core reasons why numerous leaders across the political spectrum have denounced the permanent fencing proposal, including Rep. Eleanor Holmes Norton⁸ (D-D.C.), the signers of a recent letter led by Rep. Ted

⁴ Mark Strand & Tim Lang, Congressional Institute, *Protecting the Congress: A Look at Capitol Hill Security* (Sept. 27, 2013), <https://www.congressionalinstitute.org/2013/09/27/protecting-the-congress-a-look-at-capitol-hill-security/>.

⁵ Ashraf Khalil, Fence at Capitol blocks DC government from enacting new laws, Associated Press, Feb. 1, 2021, <https://apnews.com/article/donald-trump-legislation-local-governments-laws-michael-pence-93e2e0c82fe77390a7c3e694cf820c0e>.

⁶ Brian McEntee, *What Was the Point of Fortress D.C.?*, Slate, Jan. 9, 2021, <https://slate.com/business/2021/01/capitol-riot-fortress-dc.html>.

⁷ Yoni Appelbaum, Sledding as a Revolutionary Act, *The Atlantic*, Mar. 6, 2015, <https://www.theatlantic.com/politics/archive/2015/03/sledding-as-a-revolutionary-act/387028/>.

⁸ Rep. Eleanor Holmes Norton, Letter to Members of the Capitol Police Board, Jan. 29, 2021, <https://norton.house.gov/sites/norton.house.gov/files/2021.01.29%20Letter%20Re%20Permanent%20Fencing%20of%20U.S.%20Capitol%20Complex.pdf>.

Budd⁹ (R-N.C.), and D.C. Mayor Muriel Bowser.¹⁰ We urge you to publicly reject the scheme as well. It is vital for you and the rest of Congress to avoid the temptation to focus on showy but counterproductive or destructive “security theater” measures, which also risks the catastrophic planning failures of January 6 being swept under the rug. Congress must firmly insist that its most renowned symbol of its purpose in our democracy will continue living up to our nation’s shared values of openness, public service, and public participation.

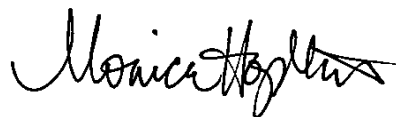
As the national debate unfolds about how best to deal with¹¹ the ramifications of that day and to hold those responsible accountable, we ask that you commit to upholding the Capitol complex as a beacon of democracy. It is what the American people—including the residents of the city that you share as elected representatives to Congress—deserve and expect.

Thank you for your consideration of our request. If you have any questions, please contact Monica Hopkins (mhopkins@acludc.org), Kate Oh (koh@aclu.org), and Kate Ruane (kruane@aclu.org).

Sincerely,



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National Political Director
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Monica Hopkins
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ACLU of the District of Columbia

CC: Jennifer A. Hemingway, U.S. Senate, Acting Sergeant at Arms and Doorkeeper
Timothy Blodgett, U.S. House of Representatives, Acting Sergeant at Arms
J. Brett Blanton, Architect of the Capitol
Yogananda Pittman, Acting Chief of Police
Rep. Rosa L. DeLauro, Chairman of the House Appropriations Committee
Rep. Kay Granger, Ranking Member of the House Appropriations Committee

⁹ Rep. Ted Budd, et. al, Letter In Opposition to Capitol Fence, Feb. 5, 2021, <https://budd.house.gov/news/documentsingle.aspx?DocumentID=1041>.

¹⁰ Daniella Diaz & Manu Raju, *Proposal to build permanent fence around the Capitol meets resistance*, CNN, Jan. 30, 2021, <https://cnn.it/3d90v8n>.

¹¹ Patrick Terpstra, *Experts Have Ideas For How To Secure The U.S. Capitol Without A Fence*, Newsy, Feb. 8, 2021, <https://www.newsy.com/stories/there-are-ways-to-protect-the-capitol-without-a-fence/>.