

July 5, 2022

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

The Honorable Adam Smith
Chairman
U.S. House Armed Services Committee

The Honorable Steny Hoyer
Majority Leader
U.S. House of Representatives

The Honorable James P. McGovern
Chairman
U.S. House Committee on Rules

Dear Speaker Pelosi, Majority Leader Hoyer, Chairman Smith, and Chairman McGovern:

The undersigned organizations, from across the political spectrum and focusing on an array of issues, urge you to include the District of Columbia National Guard Home Rule Act (H.R. 657) in this year's National Defense Authorization Act (NDAA).

This legislative provision, which was included in last year's NDAA but was not preserved in conference, will address critical flaws and loopholes in the existing laws governing the National Guard that were exposed by recent events, including the deployment of the National Guard in Washington, D.C., in June 2020 and during the January 6 insurrection. Given the serious threats that these gaps and weaknesses have already shown to pose to the integrity of the National Guard, as well as to Americans' safety and constitutional rights, we call on you to ensure that this reform is added to the FY2023 NDAA.

Updating the D.C. National Guard's Command and Control Structure

The defining feature of the National Guard is that its members generally operate under local control unless they have been temporarily called into federal service. This arrangement is one of the pillars of federalism that balances power between national and local governments in our constitutional system. Americans can rely on the protection and assistance of locally-controlled National Guard forces in all fifty states, as well as in Puerto Rico, Guam, and the U.S. Virgin Islands.

Only the D.C. National Guard serves under permanent presidential control. This is not because Congress decided the president is better positioned than the mayor to command the Guard, nor is it because D.C. is not a state. Rather, at the time Congress provided for presidential command of the D.C. militia in the late 19th century, D.C. had no local government. That changed fifty years ago, and so the reason for this unusual arrangement no longer exists.

Moreover, this outdated command structure has created two serious problems. The first was vividly illustrated on January 6, 2021. As rioters broke into the U.S. Capitol and threatened members of Congress, the D.C. mayor had to respond to this crisis with one hand tied behind her back. At her command, officers of the Metropolitan Police Department arrived on the scene within minutes, but she was not allowed to deploy D.C.'s own National Guard in the same

fashion. Instead, she had to request assistance from the Pentagon. In the absence of swift action from the then-president, this bureaucratic approval process took hours. Meanwhile, members of the D.C. Guard sat waiting to help on buses.

The second problem with permanent presidential control over the D.C. Guard is that it creates a glaring loophole in the Posse Comitatus Act, the law that bars federal military forces from participating in civilian law enforcement activities without an express statutory exception (such as the Insurrection Act). This rule embodies a longstanding American tradition and recognizes the inherent danger to liberty that comes with allowing the president to use soldiers as a domestic police force. But although the D.C. Guard is for all practical purposes a “federal militia,” the Department of Justice has long insisted that it can nonetheless operate in a non-federal militia status. Under this view, the president can use the D.C. Guard for domestic law enforcement free from the guardrails imposed by the Posse Comitatus Act. The Trump administration exploited this loophole in the summer of 2020, deploying the D.C. Guard against Black Lives Matter protesters in Lafayette Square without invoking the Insurrection Act or any other form of congressional authorization.

The solution to both these problems is the D.C. National Guard Home Rule Act. Very simply, this legislation will transfer control over the D.C. Guard from the president to the D.C. mayor when the D.C. Guard is operating in non-federal status.

It is equally important to understand what this provision will *not* do. As should be clear, local control over the National Guard is not a stepping-stone to statehood. The National Guards of Puerto Rico, Guam, and the U.S. Virgins Islands have all been under the control of their territorial governors for decades. Moreover, this provision will not amend the Insurrection Act or otherwise affect the president’s authority to federalize the D.C. Guard and deploy it when doing so is necessary and permitted by law, such as to suppress insurrections or enforce civil rights laws.

In short, the D.C. National Guard Home Rule Act addresses dangerous gaps in current law and helps to shore up long-standing and reasonable restrictions on the domestic use of military forces. We urge you to include it in the FY2023 NDAA.

Sincerely,

51 for 51

DC Vote

American Civil Liberties Union

Democratic Messaging Project

Brennan Center for Justice at NYU School of Law

The Digital Democracy Project

Broward for Progress

Government Accountability Project

Clean Elections Texas

Human Rights First

DC Democratic State Committee

League of Conservation Voters

League of Women Voters DC

Metropolitan Washington Council, AFL-CIO

Niskanen Center

NETWORK Lobby for Catholic Social
Justice

Oregonizers

Project on Government Oversight

Protect Democracy

Public Citizen

R Street Institute

SEIU

Stand Up America

Statehood4DC

Veterans for American Ideals

VoteVets

Win Without War

The Workers Circle