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Thank you for allowing the Committee of 100 on the Federal City the opportunity to submit this testimony on Bill 17-911, "the Public Participation in Historic District Designation Act." Formed in 1922 to sustain and to safeguard the fundamental values that give Washington its historic distinction and natural beauty, the Committee of 100 celebrates the city's unique role as both the home of the District's citizens and the capital of our nation. Our advocacy, research, and public education efforts are guided by the values inherited from the L'Enfant Plan and McMillan Commission, while responding to the special challenges of 21st century development. In July 2008, the Trustees of the Committee of 100 voted to oppose any amendment to D.C. Law 2-144, the Historic Landmark and Historic District Preservation Act of 1978, that would require a vote by affected property owners as a requirement for designation of an historic district.

The stated purpose of Bill 17-911 is "to provide increased public participation in the designation of historic districts." However, Bill 17-911 would not accomplish this purpose. Instead, this bill would allow a majority of property owners within proposed historic districts to prevent the designation of historic districts. In doing so, this bill would undermine the legitimacy, fairness, and integrity of D.C.'s nationally-acclaimed historic preservation law and undercut its ability to protect and preserve our historic heritage for the benefit of present and future generations. The Committee of 100 therefore strongly opposes this bill.

**Bill 17-911 is unnecessary.** This bill will not provide any additional "public participation" opportunities in the historic district designation process. There are already extensive mechanisms in existing law that provide for broad notice and that allow for meaningful public participation, welcoming input into historic district designation decisions at each stage of the lengthy review process. Multiple notices of the filing of the designation application, of the scheduled hearing before the Historic Preservation Review Board ("HPRB"), and of the designation are published in the D.C. Register, and notice of the designation hearing is published in the newspaper and through required posted notices. Individuals may also request mailed notifications of designation proceedings. *See* 10 DCMR §§ 209, 212. Numerous community meetings are held prior to submitting any historic district nomination in order to develop community consensus and support. The HPRB's designation proceedings always include an opportunity for public testimony, both oral and written. Public opinion is also factored into designation decisions through the participation of Advisory Neighborhood Commissions, whose views must be accorded "great weight" by the HPRB.

There is no evidence that any member of the public has ever been deprived of the opportunity to participate in designation decisions, or indeed, that a historic district has been designated by the HPRB over the objections of a majority of property owners. Allowing property

owners to veto proposed historic district designations does not provide for any additional, meaningful notice or participation opportunities. In fact, Bill 17-911 could have the opposite result: property owners may be less willing to attend public meetings or hearings, where questions can be answered, misinformation rebutted, and concerns addressed, in favor of the easier, but less informed path of simply blocking the designation altogether.

**Bill 17-911 is not "democratic."** The ostensible goal of Bill 17-911 – to make historic district designations more "democratic" – is misplaced. The determination of whether a property is historic is no different from the delineation of wetlands or the designation of critical habitat for endangered species: these determinations should be based solely on objective, expert assessments of their intrinsic characteristics and values, not the wishes of the property owner. The District's historic preservation law was enacted by the elected officials of the District of Columbia to further the public health, safety, and welfare for the betterment of all citizens. The application of governmental police power regulations, enacted for the broader public good, should never be determined by "majority vote" of affected property owners.

**Bill 17-911 is unfair**. The establishment and regulation of historic districts results in a fair and equitable distribution of benefits and burden of governmental action, which promote the overall public welfare and enhance the quality of life for all. *Penn Central Transp. Co. v. New York*, 438 U.S. 103 (1978). The District has approximately 24 designated historic districts and neighborhood clusters, containing more than 23,000 properties across the city, all of which are subject to regulation under DC Law 2-144. Developers and property owners rely on and expect the certainty that designation standards will be uniformly and fairly applied across the city to eligible historic districts. It would seriously weaken the legitimacy of historic preservation regulation throughout the city to change the rules to allow some neighborhoods but not others to be exempted from the law.

Bill 17-911 would also deprive non-objecting owners of historic properties within a potential historic district of the benefit of historic preservation rehabilitation tax credits and tax deductions for qualified historic preservation easements under Sections 170(h) and 48(g) of the Internal Revenue Code. In order to be eligible for these benefits, a property must be a designated landmark or within a listed historic district. It is not fair to permit objecting property owners to deprive everyone in the proposed historic district of these potentially valuable tax benefits.

- **Bill 17-911 would seriously weaken DC Law 2-144.**

A core, best-practice feature of historic preservation ordinance is that designation decisions be made by an independent board or commission comprised of qualified professionals, based on their expert judgment that the property or district meets clearly articulated standards for evaluating historic or architectural significance. Allowing owner "objections" to preclude historic designation undermines this core principle and would subvert the declared public policy established in the Preservation Act that "the protection, enhancement, perpetuation of properties of historical, cultural, and esthetic merit are in the interests of the health, prosperity, and welfare of the people of the District of Columbia. D.C. Code § 5-1101(a). If this bill is enacted, the D.C.

Council would abdicate these declared purposes and undermine these principles by giving private citizens, for personal or parochial reasons, or on this basis of misinformation or no information, the ability to veto the designation of eligible historic districts. No other major city includes owner consent or owner objection as part of its historic preservation ordinance.

- **Bill 17-911 is unconstitutional.** By granting property owners the unfettered power to block historic district nominations, Bill 17-911 would in effect delegate the authority to designate or not designate historic properties from the HPRB, an administrative body of experts, to property owners, in violation of the Due Process Clause. The Supreme Court has struck down similar owner objection law in the zoning context, reasoning that "[t]he statute and ordinance, while conferring the power on some property holders to virtually control and dispose of the property rights of others, creates no standard by which the power thus given is to be exercised; in other words, the property holders who desire and have the authority . . . may do so solely for their own interest, or even capriciously." *Eubanks v. City of Richmond*, 226 U.S. 137, 144-5 (1912). There are numerous cases striking down on constitutional grounds similar attempts to allow owners to opt out of, or veto, zoning classifications. *See* Julia H. Miller, "Owner Consent Provisions in Historic Preservation Ordinances, Are They Legal?" 10 PRESERVATION LAW REPORTER 1019 (1991).

As the U.S. Supreme Court has recognized, there is no legal distinction between the establishment and regulation of historic districts and zoning; both result in a fair and equitable distribution of benefits and burdens of governmental action, which promote the overall public welfare and enhance the quality of life for all. *Penn Central Transp. Co. v. New York*, 438 U.S. 103 (1978). Indeed, restrictive zoning classifications limiting the density and height of structures, such as exist throughout Ward 3's residential areas, place far greater restrictions on the ability of owners to exploit their property. In the analogous situation of zoning ordinances, virtually no jurisdiction allows an individual property owner to opt out of or veto a zoning classification, recognizing that such a provision would render the system ineffective.

- **Bill 17-911 could result in other undesirable and harmful consequences.** Bill 17-911 would invite unnecessary and burdensome litigation. Unsuccessful opponents will allege inadequate notice or improper vote-counting, and historic district supporters will are that the absence of notarized statements renders majority opposition votes unreliable. Resources will be spent on polarizing legal battles rather than on educating neighbors about how to comply with, and benefit from, historic district designations.

Bill 17-911 could also jeopardize D.C.'s continued ability to receive funding by the National Park Service under the National Historic Preservation Act. In order to receive funding, a state must be a Certified State Government whose preservation commission functions as a qualified State Review Board. Bill 17-911 would result in designation decisions that are made by property owners, who do not possess the requisite professional qualifications, rather than the HPRB.

For these reasons, the Committee of 100 strongly opposes the enactment of Bill 17-911.