COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: December 4, 2012

SUBJECT: Report on Bill 19-993, "Local Budget Autonomy Act of 2012"

The Committee of the Whole, to which Bill 19-993, the "Local Budget Autonomy Act of 2012" was referred, reports favorably thereon and recommends approval by the Council.

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I. BACKGROUND AND NEED

Bill 19-993, the "Local Budget Autonomy Act of 2012," amends the District of Columbia Home Rule Act to provide for local budget autonomy. Specifically, the legislation would permit the Council to approve the District's annual budget in the same manner as it considers all other legislation: two readings and a 30-day Congressional review. The District's budget would no longer require adoption of an appropriation act by Congress. As Bill 19-993 amends the Home Rule Act, approval of the bill by voter referendum is required.

Increased local control over the District's budget would represent an important step toward full budget autonomy for the District of Columbia and the larger struggle for full voting

rights for District residents - rights which all other citizens of the United States have, and which citizens residing in the District lack. From a functional perspective, this limited autonomy would mean much more effective control over the District's financial management.

A. THE DISTRICT OF COLUMBIA'S BUDGET

The District of Columbia's Fiscal Year 2013 budget consists of $9.4 billion, $5.9 billion of which are locally raised through taxes and fees by the District. The remaining funds are made up mostly of payments to the District by the Federal government.[1]

Under the Home Rule Act of 1973, approval of the District's budget requires affirmative action by the United States Congress through an appropriation bill,[2] effectively ratifying the annual Budget Request Act legislation adopted by the Council. Such an appropriation bill must be passed by Congress before the end of the Federal government's fiscal year ending on September 30.[3] The Congressional budget process places pressure on the District to approve its budget earlier in the calendar year in order to include it in the Federal budget, which is generally formulated in the spring and summer.

Although most of the District's budget is made up of locally raised funds, the entire budget is subject to approval by Congress. Not only is this process unique to the District, it highlights the separate and unequal treatment of the District. The District must have its budget approved by a Congress in which it has no voting representation.

In the increasingly likely situation whereby the Federal government would not pass a Federal appropriations bill including the District's appropriation by the first of October, vast parts of the District government would have to shut down along with Federal government agencies, because the District's own locally raised funds would not have been appropriated by Congress.[4]

As a result, the District's current budget relationship largely mirrors that of a department of the Federal government, holding locally raised and locally spent funds hostage to the uncertainties of the Federal budget process, over which the District of Columbia has no control. However, unlike Federal government agencies, the District of Columbia's budget must balance its revenues to expenditures.[5]

This budget process is based on provisions of the Home Rule Act passed by Congress in a more uncertain time in the District's financial history. As the District began exercising

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[1] GOVERNMENT OF THE DISTRICT OF COLUMBIA, FISCAL YEAR 2013 PROPOSED BUDGET AND FINANCIAL PLAN: VOLUME 1 – EXECUTIVE SUMMARY (2012); Continuing Appropriations Resolution, 2013 § 128, Pub. L. No 112-715 (2012).
[2] D.C. Code § 1-204.46 (2006).
[3] Congressional Budget Act of 1974 § 50, Pub. L. No 93-344 (codified as amended at 31 U.S.C. § 1102 (1982)).
[4] CONGRESSIONAL RESEARCH SERVICE, DISTRICT OF COLUMBIA BUDGET AUTONOMY: AN ANALYSIS OF H.R. 733, 110TH CONGRESS, June 6, 2007.
[5] D.C. Code § 1-204.42 (2006).

increased self-governance after Home Rule, the size of its budgets grew. Those early budgets arguably required additional oversight by Congress. Unfortunately, by the 1990s, the District was facing budgetary challenges and potential bankruptcy.

Those conditions resulted in Congress enacting the District of Columbia Financial Responsibility and Management Assistance Act of 1995.[6] That Act created a five member panel, known as the District of Columbia Financial Responsibility and Management Assistance Authority, or more simply the Control Board, which could effectively override any decisions of the Mayor or Council. This also established the District's independent Office of the Chief Financial Officer.

Since 2001 when the Control board was suspended,[7] the District government has achieved balanced budgets and clean financial audits have become routine. Financial markets have recognized the District's laudable fiscal stewardship in the form of higher bond ratings and lower interest rates on borrowing.

The District has a proven record of financial management over the last decade. Since the end of the Control Board, Congress has not made any changes in the local funds section of the District's budget. Requiring affirmative action, which the Congress exercises so passively, creates an unnecessary delay in enactment of the District's budget and leaves room for extraneous amendments dealing with the District's operations or public policies.

We are approaching the 40th anniversary of the Home Rule Act, which laid the groundwork for the District's autonomy. This bill uses one of the tools given to the Council and the residents of the District contained in the Home Rule Act to further strengthen our local budget process and provide fiscal advantages to the District of Columbia.

B. ADVANTAGES OF INCREASED LOCAL BUDGET AUTONOMY

The Committee believes that one of the most compelling reasons for increased local budget autonomy is to allow for better local budgeting. The current time elapsed – upwards of four months between passage by the Council and appropriation by Congress – means that assumptions made by Chief Financial Officer (CFO), the Mayor, and the Council are out of date by the time the District's budget takes effect.

Adding almost a third of a year to the budget process requires that the budget crafted by the Mayor and Council be based on estimates created by the CFO in February, more than seven months before the start of the new fiscal year. The more time that elapses between formulation and execution, means the assumptions used to forecast revenue are less reliable. In June 2009, after the Council had passed its budget, but before it was signed by then-Mayor Fenty for

[6] District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. No. 104-8, 109 Stat. 142 (1995).
[7] Mayor Anthony Williams Transmittal Letter, DISTRICT OF COLUMBIA COMPREHENSIVE ANNUAL FINANCIAL REPORT (2000), http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ocfo_cover00.pdf.

transmittal to Congress, the CFO released a revenue estimate that projected a drop of a combined $340 million over FY 2010 and FY 2011. This forced the Mayor and Council to hastily revise the budget, which could have been avoided if the District had been able to adhere to a more rational budget process afforded by limited autonomy.

Budget autonomy also saves money for the District. According to Alice Rivlin, former chair of the Control Board who testified in support of the Local Budget Autonomy Act of 2012, the delay complicates hiring and procurement and requires the District to borrow additional funds and pay more interest. In addition, should Congress pass a continuing resolution, extending Federal appropriations at prior-year levels without permanently enacting the District's budget, local agencies would have to delay proposed changes resulting in savings until the matter had been settled by Congress.

The proposed legislation would also enable the District to adjust its fiscal year to align with that of other local and state jurisdictions. A July-June fiscal year would allow the District's educational institutions – D.C. Public Schools, the University of the District of Columbia, and the District's charter schools – to manage funds more effectively to align the fiscal year to the beginning of the school year in the same quarter. Educational institutions make up a large portion of the District's budget. Such a fiscal year would also better align the District's revenue cycle with income taxes in April and property taxes in September.

C. SUPPORT FOR BUDGET AUTONOMY

As was evident at the hearing by the Committee of the Whole on the Local Budget Autonomy Act of 2012 on November 9, 2012, the concept of budget autonomy is widely supported across party and institutional lines. In his testimony at the hearing, Former Congressman Tom Davis (VA-02) testified that Republicans in the House of Representatives with oversight over the District of Columbia favor budget autonomy, including Rep. Jo Ann Emerson, Rep. Darrell Issa, and Rep. Eric Cantor. In addition, Governor Bob McDonnell (R-VA), Chairman of the Republican Governors Association, supports autonomy. Congressman Davis, who formerly chaired the House Oversight and Government Reform Committee, which exercises oversight of the District, further testified that he is confident that advancing budget autonomy is not a "poke in the eye" of Congress, and would not remove their ultimate authority over the District.

Many different iterations of local budget autonomy have been introduced and hearings have held with legislation from both the House of Representatives and the Senate. The District of Columbia's non-voting representative in the House of Representatives, Del. Eleanor Holmes Norton (D-DC) has legislation that would afford the District sweeping autonomy through Congressionally initiated changes to the Home Rule Act.[8] Senators Joe Lieberman (ID-CT) and Susan Collins (R-ME) also introduced legislation that would remove the need for affirmative Congressional approval, replacing it with passive approval.[9] This is similar to the approach

[8] District of Columbia Budget Autonomy Act of 2011, H.R. 345, 112th Cong. (2011).
[9] District of Columbia Local Budget Autonomy Act of 2012, S. 2345, 112th Cong. (2012).

taken in the Local Budget Autonomy Act of 2012, which would propose to change the Home Rule Act through the referendum process.

The Committee heard from a wide range of civic leaders, advocacy groups, and residents in support of local budget autonomy. The District of Columbia's CFO also submitted testimony for the record in support. While several individuals testified to the need for increased rights for citizens residing in the District of Columbia via full statehood, many of those individuals nonetheless supported the concept of increased autonomy, although not necessarily via a charter amendment. Testimony from the hearing on the Local Budget Autonomy Act of 2012 is summarized below in Section V.

D. LEGAL AUTHORITY FOR THE LOCAL BUDGET AUTONOMY ACT OF 2012

The Local Budget Autonomy Act of 2012 would use provisions of the Home Rule Act created by Congress for residents of the District of Columbia to amend the charter portion of the Home Rule Act through a referendum. Enactment of Bill 19-993 would trigger a special election to consider an amendment to the District Charter to provide that the District need only submit its local budget to Congress for a 30-day review period as the District does for all other laws passed by the Council and sent to Congress. As with regular legislation sent to Congress for review, Congress retains its inherent Constitutional authority under the Congressional Supremacy Clause.

The Council of the District of Columbia's General Counsel testified that the Local Budget Autonomy Act of 2012 is legally sufficient for consideration by the Council, noting that use of the referendum process is a sound method of passing charter amendments. Further analysis of the legal authorities underlying Bill 19-993 can be found in the testimony submitted by several witnesses for the record.

II. LEGISLATIVE CHRONOLOGY

October 2, 2012	Bill 19-993, "Local Budget Autonomy Act of 2012" is introduced by Chairman Mendelson and referred to the Committee of the Whole.
October 12, 2012	Notice of Intent to act on Bill 19-993 is published in the *District of Columbia Register.*
October 19, 2012	Notice of a Public Hearing on Bill 19-993 is published in the *District of Columbia Register.*
November 9, 2012	The Committee of the Whole holds a public hearing on Bill 19-993.
December 4, 2012	The Committee of the Whole marks-up Bill 19-993.

III. POSITION OF THE EXECUTIVE

The Committee received no testimony or comments from the Executive.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no testimony or comments from any Advisory Neighborhood Commission.

V. SUMMARY OF TESTIMONY

The Committee of the Whole held a public hearing on Bill 19-993 on Friday, November 9, 2012. The testimony summarized below is from that hearing. A copy of the testimony is attached to this report.

Hon. Tom Davis (R-VA), Former Congressman, 11th District of Virginia, testified that he believes that budget autonomy for the District of Columbia has bipartisan support, including several Republicans in the House of Representatives and the Governor of Virginia. He stated that Federal government shutdowns in 1995 illustrate poor efficiency in the Federal appropriations process and that the District's budget should not be subject to Congressional action. He went on to say that Congress would still have its Constitutional supremacy clause over the District and that this bill would not be a "poke in the eye" of Congress, because Congress can override passage of any legislation passed by the Council. He further testified that he doubts Congress would try to overturn a charter amendment in any way. Finally, he recognized the benefits of autonomy for agency heads and directors in procurement and other budget activities and noted the District's excellent financial condition.

Jon Bouker, Chairman of the Board of Directors, DC VOTE, testified to the legal authority for Bill 19-993. He noted that Section 446 of the Home Rule Act currently prohibits the District from spending its revenues without approval by Congress, but that Section 303 of the Home Rule Act expressly authorizes the Council and District voters to amend the District's Charter, such as Section 446, except under limited circumstances expressly laid out in Sections 601 through 603, none of which expressly prohibit such an amendment. He went on to address legal opinions that Bill 19-993 would neither violate the Anti-Deficiency Act nor Section 603(a) of the Charter. Mr. Bouker also provided an opinion for the record regarding legal authority, which is attached to his testimony.

V. David Zvenyach, General Counsel, Council of the District of Columbia, testified that Bill 19-993 is legally sufficient for consideration by the Council. He outlined the past uses of the charter amendment process, including two amendments adopted in the District's 2012 general election. He expounded on the authority of Section 303 of the Home Rule Act's authorization of the Council to initiate a charter amendment, and its silence on foreclosing a future amendment of the budget process.

Walter Smith, Executive Director, DC Appleseed Center for Law and Justice, testified that he believes the Council is broadly authorized to change the Charter and that the proposed amendment would not violate the Anti-Deficiency Act just as supplemental appropriations passed by the Council without Congressional approval are not violations. He went on to say that he did not believe that any court would enjoin a resulting referendum from taking place, stating that the subject of a future event – the charter amendment vote – would not be ripe for review and that he is doubtful that any party would have standing to challenge the referendum.

Lori Alvino McGill, Partner, Latham & Watkins, LLP, testified as to the potential legal challenges to the law (such as a pre-enactment challenge to the referendum) and whether a plaintiff could obtain an injunction on a vote on the referendum. She also testified that the matter would not be ripe for challenge and few would have standing for an injunction. She went on to say that a court would likely find that an injunction would harm the District and the right to vote, and would not demonstrate an "imminent threat of irreparable harm," which is a key element to obtain an injunction. Her written testimony also contains further analysis and legal opinions on the substance of the bill.

Patrick Mara, Ward 1 Resident, testified in support of Bill 19-993, noting that the proposed charter amendment would allow more efficient funding of our schools and stated his belief that local elected officials should be able to make decisions regarding locally raised funds. Mr. Mara noted that he believes that his views closely mirror those of the District of Columbia Republican Committee.

Michael Brown, U.S. Senator (Shadow), District of Columbia, testified that he believes the referendum process is not the best way to get to budget autonomy, rather that the District should seek full statehood status for the District.

Shelley Broderick, Dean, University of the District of Columbia David A. Clarke School of Law, testified in favor of Bill 19-993, noting the difficulties in budgeting for an educational institution on the current fiscal year calendar and the danger of closing District schools should the Federal government experience a shutdown.

Anita Bonds, Chairperson, District of Columbia Democratic Committee, testified in support of the proposed charter amendment, and noted that the Democratic Committee is on record as supporting the Local Budget Autonomy Act of 2012.

Janice Davis, Statehood and Self Determination Co-Chair, District of Columbia Democratic Committee, reiterated that the Democratic State Committee has adopted support of the proposed amendment, and that passage through the charter amendment process rather than passage by Congress ensures that the District would get limited budget autonomy without superfluous riders affecting the District, which could be added by Congress.

James Bubar, Statehood and Self Determination Co-Chair, District of Columbia Democratic Committee, testified in support of budget autonomy, noting that with the threat of

fiscal problems at the national level, the District should not be held hostage to Congress's failure to act on an appropriations bill.

Maudine Cooper, President and CEO, Greater Washington Urban League, testified in support of Bill 19-993. She noted that autonomy was important for non-profits that receive payments from District agencies. Any delay in appropriations from the Federal government could lead to delays in the District government's ability to send payments to non-profits or service providers, delaying the start of programs.

Alice Rivlin, Former Chairperson, District of Columbia Financial Resources Management and Assistance Authority, testified in support of Bill 19-993 and budget autonomy for the District. She stated that stretching out the budget process causes difficulty in budget forecasting. She recognized that since the Control Board, the District has maintained an excellent financial condition and that Congressional control of the budget is an anachronism.

Nathan Saunders, President, Washington Teachers Union, testified to the importance of budget autonomy in order to align the school year with the budget to ensure that the District government remains operational in the event of a Federal closure.

Ann Loikow, DC Statehood – Yes We Can!, testified that budget autonomy would not achieve equality for the District of Columbia and that the District must be afforded full statehood.

Arthur Jackson, People Over Politics America, testified in support of budget autonomy for the District, and noted that communities in surrounding jurisdictions, with populations less than the District, enjoy budget autonomy at the local level.

Ed Lazere, Executive Director, DC Fiscal Policy Institute, testified in support of Bill 19-993, noting that the current lengthy affirmative Congressional approval process is not used to affect the District's budget, but rather to effect District laws unrelated to the budget.

Erin Matson, Action Vice President, National Organization for Women, testified in support of budget autonomy through Bill 19-993, noting her organization is also in support of statehood. Ms. Matson went on to reinforce concerns over Congressional appropriations riders, such as abortion funding in the District.

Winifred Carson-Smith, D.C. Federation of Democratic Women, testified in support of Bill 19-993, noting that the potential inclusion of yearly riders on Congressional appropriations was a dangerous prospect for women's health.

Wallace Gordon Dickson, DC Statehood – Yes We Can!, testified over his concerns of partial budget autonomy as an incremental approach, harming prospects for eventual statehood.

Elinor Hart, Ward 1 Resident, testified as to the need for budget autonomy, but not without full statehood for the District of Columbia.

David Schwartzman, DC Statehood Green Party, testified in support of budget autonomy only through full statehood for the District, indicating he believes that any referendum would amount to a temporary fix for budget autonomy.

Anise Jenkins, testified that she once asked the Council for a resolution supporting budget autonomy, but now believes that it is not a permanent solution to the issue. Without statehood, the District would always be at risk of losing its budget autonomy.

Charles Cassell FAIA, submitted testimony for the record noting the District's past popular vote affirming the desire for statehood, and asked that the Council not pursue legislation that would fall anything short of that end.

Barbara Lang, President and CEO, DC Chamber of Commerce, submitted testimony for the record supporting Bill 19-993, stating that local budget autonomy would put the District one step closer to full representation and voting rights.

Natwar M. Gandhi, Chief Financial Officer, District of Columbia Government, submitted testimony for the record supporting budget autonomy for the District, and acknowledging the District's excellent financial condition, our improvement since 1996, and the benefits of budget autonomy for the District's financial management. Specifically, he noted the faster and smoother enactment of local budgets, which would become possible, and the additional flexibility in enacting regular and supplemental budgets, which now require Congressional approval.

VI. IMPACT ON EXISTING LAW

Bill 19-993, if approved by voter referendum as required under Section 303 of the Home Rule Act (D.C. Official Code § 1-203.03), would amend the District of Columbia Home Rule Act to provide for local budget autonomy. Specifically, the language in Bill 19-993 would permit the Council to approve the District's annual budget in the same manner as it considers all other legislation, two readings and a 30-day Congressional review. Bill 19-993, if approved by referendum, would amend Section 446 of the Home Rule Act (D.C. Official Code § 1-204.46) to provide that the Council shall pass the annual budget by act, that the Federal portion of the annual budget to be submitted by the Mayor to the President for transmission to Congress, and that the local portion of the annual budget be submitted by the Chairman of the Council to the Speaker of the House of Representatives. It further provides that any supplements to the budget be adopted by Act of the Council.

VII. FISCAL IMPACT

The attached December 3, 2012 fiscal impact statement from the District's Chief Financial Officer states that Funds are sufficient in the FY 2013 through FY 2016 budget and

financial plan to implement the bill. According to the CFO, the District is already planning a special election in the spring of 2013, and the Council intends to include this measure on the same ballot. The Board of Elections indicated that the Board already has sufficient funds to hold the special election, so the additional referendum matter will create no additional impact.

VIII. SECTION-BY-SECTION ANALYSIS

Section 1 — States the short title of Bill 19-993.

Section 2 — Amends the District of Columbia Home Rule Act, subject to approval by voter referendum pursuant to Section 303.

Subsection (a) — Amends the table of contents to change the provisions that make reference to the budget being enacted by Congress to the Council being able to enact the local budget.

Subsection (b) — Amends all of the provisions in Section 404(f) that state that the budget shall be transmitted by the Chairman of the Council to the President of the United States to the state that the budget shall be incorporated in such act.

Subsection (c) — Amends Section 412 in order to establish that the budget will be treated like any other act by the Council.

Subsection (d) — Amends Section 441 to clearly authorize the Council to be able to change the fiscal year of the District.

Subsection (e) — Amends Section 446 to allow adoption of the District budget by an act of Council, which includes the standard 30-day Congressional review. It no longer requires active approval by Congress.

Subsection (f) — Amends Section 446B(a) to conform with amendments to the underlying budget process contained in the Home Rule Act as passed by Congress.

Subsection (g) — Amends Section 447 to make conforming amendments to allow the budgeting of personnel through act of Council through the standard 30-day period of review.

Subsection (h) — Amends Sections 467(d), 471(c), 472(d)(2), 475(e)(2), and 483(d), and subsections (f), (g)(3), (h)(3), and (i)(3) of section 490 to make conforming amendments.

Section 3 — Provides that the act shall not apply until fiscal year 2015 and each fiscal year thereafter.

Section 4 Adopts the Fiscal Impact Statement.

Section 5 Establishes the effective date by stating the standard 30-day Congressional review language.

IX. COMMITTEE ACTION

On December 4, 2012, the Committee of the Whole met to consider Bill 19-993, the "Local Budget Autonomy Act of 2012." The meeting was called to order at 10:53 a.m., and Bill 19-993 was item VI-G on the agenda. After ascertaining a quorum (Chairman Mendelson and Alexander, Barry, Bowser, Brown, Catania, Cheh, Evans, Graham, McDuffie, Orange, Wells) Chairman Mendelson moved the print with leave for staff to make technical changes. After an opportunity for discussion, the vote on the print was unanimous (Chairman Mendelson and Councilmembers Alexander, Barry, Bowser, Brown, Catania, Cheh, Evans, Graham, McDuffie, Orange, Wells). Chairman Mendelson then moved the report with leave for staff to make technical and editorial changes. After an opportunity for discussion, the vote on the report was unanimous (Chairman Mendelson and Councilmembers Alexander, Barry, Bowser, Brown, Catania, Cheh, Evans, Graham, McDuffie, Orange, Wells). The meeting adjourned at 4:08 p.m.

X. ATTACHMENTS

1. Bill 19-829 as introduced.
2. Written testimony and comments.
3. Fiscal Impact Statement
4. Committee Print for Bill 19-829.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Memorandum

To: Members of the Council

From: Nyasha Smith, Secretary to the Council

Date: October 4, 2012

Subject: Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Legislative Meeting on Tuesday, October 02, 2012. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Local Budget Autonomy Act of 2012", B19-0993

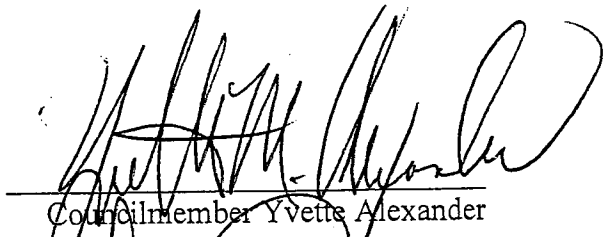
INTRODUCED BY: Chairman Mendelson and Councilmembers Barry, Brown, Cheh, Graham, Orange, Alexander, Bowser, Catania, Evans, McDuffie and Wells

The Chairman is referring this legislation to the Committee of the Whole.

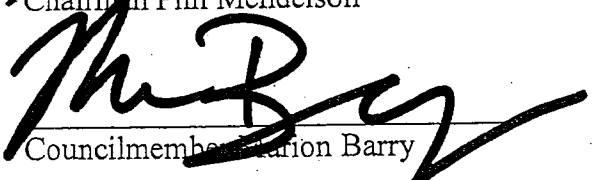
Attachment

cc: General Counsel
Budget Director
Legislative Services

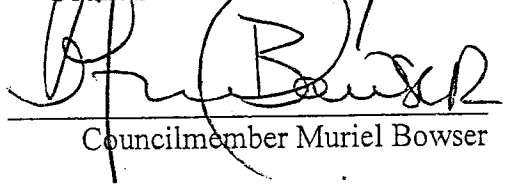
Chairman Phil Mendelson



Councilmember Yvette Alexander

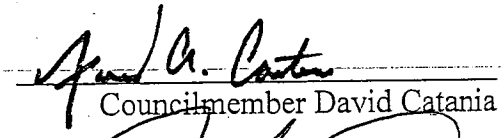


Councilmember Marion Barry



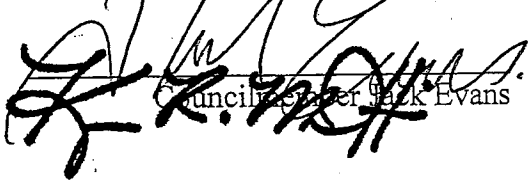
Councilmember Muriel Bowser

Councilmember Michael Brown

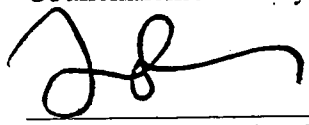


Councilmember David Catania

Councilmember Mary Cheh

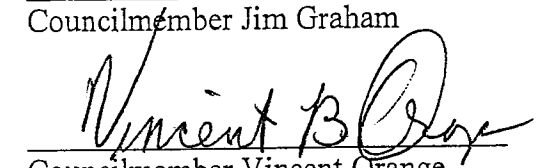


Councilmember Jack Evans

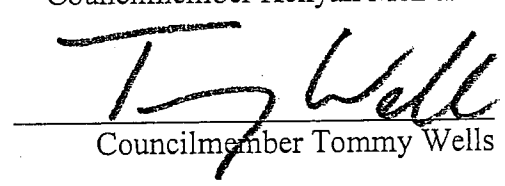


Councilmember Jim Graham

Councilmember Kenyan McDuffie



Councilmember Vincent Orange



Councilmember Tommy Wells

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson and Councilmembers Yvette Alexander, Marion Barry, Muriel Bowser, Michael Brown, David Catania, Mary Cheh, Jack Evans, Jim Graham, Kenyan McDuffie Vincent Orange and Tommy Wells introduced the following bill, which was referred to the Committee on _____.

To amend the District of Columbia Home Rule Act to provide for local budget autonomy.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Local Budget Autonomy Act of 2012".

Sec. 2. The District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 et seq.), is amended as follows:

(a) The table of contents is amended by striking the phrase "Sec. 446. Enactment of Appropriations by Congress" and inserting the phrase "Sec. 446. Enactment of local budget by Council" in its place.

(b) Section 404(f) (D.C. Official Code § 1-204.04(f)) is amended by striking the phrase "transmitted by the Chairman to the President of the United States" and inserting the phrase "incorporated in such Act" each time it appears.

(c) Section 412 (D.C. Official Code § 1-204.12) is amended by striking the phrase "(other than an act to which section 446 applies)" in its entirety.

(d) Section 441(b) (D.C. Official Code § 1-204.41(b) is amended to read as follows:

"(b) Authorization To Establish Fiscal Year by Act of Council - The District may change the fiscal year of the District by an Act of the Council. If a change occurs, such fiscal year shall also constitute the budget and accounting year.".

(e) Section 446 (D.C. Official Code § 1-204.46) is amended to read as follows:

"ENACTMENT OF LOCAL BUDGET BY DISTRICT OF COLUMBIA

"Sec. 446. (a) Adoption of Budgets and Supplements - The Council, within 70 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, and by a vote of a majority of the members present and voting, shall by Act adopt the annual budget for the District of Columbia government. The federal portion of the annual budget shall be submitted by the Mayor to the President for transmission to Congress. The local portion of the annual budget shall be submitted by the Chairman of the Council to the Speaker of the House of Representatives pursuant to the procedure set forth in section 602(c). Any supplements thereto shall also be adopted by Act of the Council after public hearing by a vote of a majority of the members present and voting.

"(b) Transmission to President During Control Years - In the case of a budget for a fiscal year which is a control year, the budget so adopted shall be submitted by the Mayor to the

President for transmission by the President to the Congress; except, that the Mayor shall not transmit any such budget, or amendments or supplements thereto, to the President until the completion of the budget procedures contained in this Act and the District of Columbia Financial Responsibility and Management Assistance Act of 1995.

"(c) Prohibiting Obligations and Expenditures Not Authorized Under Budget- Except as provided in section 445A(b), section 446B, section 467(d), section 471(c), section 472(d)(2), section 475(e)(2), section 483(d), and subsections (f), (g), (h)(3), and (i)(3) of section 490, no amount may be obligated or expended by any officer or employee of the District of Columbia government unless--

"(1) such amount has been approved by an Act of the Council (and then only in accordance with such authorization) and such Act has been transmitted by the Chairman to the Congress and has completed the review process under section 602(c)(3); or

"(2) in the case of an amount obligated or expended during a control year, such amount has been approved by an Act of Congress (and then only in accordance with such authorization).

"(d) Restrictions on Reprogramming of Amounts - After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council approves the request, but and only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.

"(e) Definition - In this part, the term "control year" has the meaning given such term in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995.".

(f) Section 446B(a) (D.C. Official Code § 1-204.46b(a)) is amended as follows:

(1) Strike the phrase "the fourth sentence of section 446" and insert the phrase "section 446(c)".

(2) Strike the phrase "approved by Act of Congress" in its entirety.

(g) Section 447 (D.C. Official Code § 1-204.47) is amended as follows:

(1) Strike the phrase "Act of Congress" and insert the phrase "act of the Council (or Act of Congress, in the case of a year which is a control year)" each time it appears.

(2) Strike the phrase "Acts of Congress" and insert the phrase "acts of the Council (or Acts of Congress, in the case of a year which is a control year)" each time it appears.

(h) Sections 467(d), 471(c), 472(d)(2), 475(e)(2), and 483(d), and subsections (f), (g)(3), (h)(3), and (i)(3) of section 490 of such Act are each amended by striking "The fourth sentence of section 446" and inserting "Section 446(c)"'.

Sec. 3. Applicability.

This act shall apply with respect to fiscal year 2015 and each fiscal year thereafter.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect as provided in section 303 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1-203.03).

TESTIMONY OF JON S. BOUKER
CHAIRMAN OF THE BOARD OF DIRECTORS
DC VOTE

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE

John A. Wilson Building Room 500
November 9, 2012

Bill 19-993, the "Local Budget Autonomy Act of 2012"

Good afternoon Chairman Mendelson and members of the Committee. I am Jon Bouker, Chairman of the Board of Directors of DC Vote. DC Vote is a nonprofit public interest organization that works to secure full democracy for the more than half a million residents of the District of Columbia. Thank you for giving me the opportunity to present testimony on Bill 19-993, the "Local Budget Autonomy Act of 2012." DC Vote strongly supports this bill because it would move District residents one step closer toward enjoying the same rights as all other American citizens.

I. The Need for Local Budget Autonomy

As you know too well, it is unconscionable that in 2012, the District, alone among all cities in the United States, must wait for Congress to pass its budget to spend its own local money. This is the District's money, the money of the hard working men and women of the District of Columbia, which we pay in taxes and over which Congress should have no say.

But here in the District, year after year, Congress holds our budget hostage and uses our city as its petri dish to impose on us policies we have rejected. It violates the principles of federalism that our forbearers shed blood to protect, it makes a mockery of local control and it is fundamentally unjust.

The enactment of this bill will give the *people of the District* the opportunity to decide how and when local DC tax dollars should be spent. Under the legislation, the *people of the District* will decide in a referendum whether the District's budget finally should be untangled from the federal budget process.

In short, the Local Budget Autonomy Act will give District residents the opportunity to exercise that which is more precious to us than most – our vote – to win the rights enjoyed by every other American. As Congressman Jose Serrano so eloquently stated in his endorsement of this proposal, it is a perfect example of "democracy at its core."

Passage of this Act also will bolster Congresswoman Norton's work to pass a budget freedom bill in Congress. This two-track strategy – the Council approving a Charter referendum and Congresswoman Norton pushing for congressional action – will strengthen Congresswoman Norton's hand by arming her with tens of thousands of votes of DC residents who will cast their ballot in favor of local budget control.

II. The Legal Authority for the Local Budget Autonomy Act of 2012

Not surprisingly, questions have been raised about the legal basis of this innovative and novel legislation. But the Local Budget Autonomy Act stands on solid legal ground.

It is a fundamental principal of statutory interpretation that statutes are passed as a whole and therefore must be read together. The most natural reading of the relevant provisions of the Home Rule Act, when read together as a whole Act, leads to the conclusion that the District can amend its budget process through a referendum. Here is how the relevant provisions work:

- Section 446 of the Home Rule Act prohibits the District from spending its own revenues without congressional approval.

- Section 303 of the Home Rule Act expressly authorizes the Council and District voters to amend the District Charter. Section 303 excepts from amendment any "act, resolution, or rule under the limitations" on the Council's authority in Sections 601 through 603.
- The Local Budget Autonomy Act would amend Section 446, which is not on the list of limitations in Sections 601 through 603. Therefore, Section 303 does not prohibit the District from amending Section 446 – the Charter provision that sets out its budget process.
- Some may argue that another Home Rule Act provision – Section 603(a) – prevents the District from amending its budget process. But Section 603(a) is not framed as a "limitation" on the Council's authority, as is the case with some of the other provisions in Section 603. Instead, it is a rule of construction which clarifies that, at the time of passage in 1973, "[n]othing in the Act shall be construed" to change then-existing law regarding the District's budget process.
- There is no doubt that the law, as it stood at the time the Home Rule Act was passed, prohibited the District from obligating or spending local funds without an affirmative congressional enactment. But this is not the legal question raised by the Council's proposal. Rather, the question is whether the Home Rule Act prohibits the Council from changing this process now. Section 603(a) does not do so.
- Some may also argue that the Anti-Deficiency Act prohibits the District from amending Section 446. The Anti-Deficiency Act is a federal statute that prohibits District officials from spending funds that are not covered by an available fund or appropriation. But if the proposed referendum becomes law, the District would be able to obligate and spend local funds pursuant to a valid legislative appropriation. This would fully meet the plain meaning and intent of the Anti-Deficiency Act.

- If Congress wanted to exempt the District's local budget from the referendum process, Congress would have prevented the District from amending Section 446 – the Charter provision that sets out its budget process – in a straightforward way. Specifically, Congress would have included Section 446 on Section 303's list of provisions that may not be amended. Congress's decision not to leads to the conclusion that the District can amend Section 446 through a referendum.

III. Conclusion

The time has come for the District to gain control over its local budget. As you will hear from other witnesses today, there are many practical reasons for budget autonomy. The District has passed a balanced budget every year since 2001. Congress should take a lesson from the District in this regard. In addition, budget autonomy would improve District operations and management; this would save the District, and District taxpayers, money.

Aside from the practical reasons that justify budget autonomy, it is time for the residents of the District of Columbia to gain control over their budget because the current budget process is a violation of our Nation's core fundamental democratic principles.

It is not difficult to imagine the outrage if tomorrow Congress passed a law telling the residents of Chicago or New York or Los Angeles that they couldn't spend their own local money until Congress says so. There would be outrage. People would rise up in the streets. Congress would never get away with it. But here in the District, year after year, Congress does get away with it. The time has come for us to say enough.

Mr. Chairman, the Local Budget Autonomy Act will enhance democracy in our Nation's Capital by granting the District more control over its local affairs. And it will do so in the most democratic way possible – through a vote by the residents of the District. On behalf of DC Vote,

I again commend and thank you for your work on this critical issue. We look forward to working with you in the days, weeks, and months ahead to achieve greater budget autonomy for the District.

Arent Fox

Memorandum

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Date: November 7, 2011

To: D.C. Appleseed
D.C. Vote

From: Jon S. Bouker
Aaron Brand

Re: Whether the District of Columbia May Revise Its Local Budget Process Through a District Charter Referendum

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Recent events have drawn attention to the cumbersome and inefficient process that the District of Columbia must follow before it can implement its budget. Notably, the District was forced to prepare for a shut down this past spring – which included informing District residents that it would not be able to pick up their trash – when congressional leaders and the White House could not reach agreement on the Fiscal Year 2011 budget for the federal government. This memo examines one legal option available to District leaders who wish to improve this process.

Specifically, it examines how the District can use the District Charter referendum process set forth in the 1973 Home Rule Act to amend its budget process. Under the Home Rule Act, most legislation passed by the D.C. Council and signed by the Mayor automatically goes into effect if Congress does not overturn the law during a 30-day review period. The District's budget, however, is subject to a more complex process which requires that Congress affirmatively approve it as part of the congressional appropriations process. This is true for both the federal and local portions of the District's budget even though the local portion is derived entirely from local revenue.

This memorandum shows how the District can amend its Charter in a way that would allow the District to implement its local budget if Congress does not overturn it during the 30-day review period. Specifically, the District can pass a referendum amending section 446 of the Charter, which prohibits the District from obligating or expending *any* funds until such amount has been affirmatively approved by Act of Congress. The District could amend this provision to specify that this limitation is applicable only to the obligation or expenditure of *federal* funds.

Arent Fox

The benefits of amending the District's budget procedure in this way are explored in Part I of this memo. Part II discusses the District's authority to amend its Charter through referenda. Part III examines potential legal obstacles to the changes showing (a) how this process is available for the District to change the procedure for enacting its local budget, and (b) how the District could enact this change without violating the federal Anti-Deficiency Act. It also discusses how the District could amend section 441 of the Charter to change its fiscal year. The memo finishes with a discussion of some practical mechanics of implementing the changes contemplated in this memorandum.

I. The Benefits of Streamlining the District's Local Budget Process

The District would benefit in three major ways if it could implement its local budget as soon as the 30-day congressional review period expires. First, it would save the District money. The linkage of local tax dollars to the federal appropriations process adds an average of three months to the District's budget process.[1] These delays result in congressional continuing resolutions, which cause hiring delays, lost revenues, untimely procurements, and extensive additional staff time.[2] It also causes cash shortages for the District, forcing the District to borrow more money than it otherwise would.[3] As a result, the District incurs approximately $3 million in additional interest expenses each year.[4]

Second, the District would be able to rely on more accurate data to formulate its budget. The current lag time between the District's approval of its budget and the start of the fiscal year caused by the congressional appropriations process undermines the District's ability to accurately estimate its revenue and expenditure needs. As explained by D.C. Chief Financial Officer Dr. Natwar Gandhi during a recent hearing before a House of Representatives committee, "[t]he more time that elapses between the formulation of a budget and its execution,

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[1] *The District of Columbia's Fiscal Year 2012 Budget: Ensuring Fiscal Sustainability Before the Subcomm. On Health Care, D.C. Census & National Archives of the H. Comm. on Oversight and Government Reform,* (2011) [Hereinafter Subcommittee Hearing on District's Fiscal Year 2012 Budget] (statement of Hon. Vincent Gray, Mayor, District of Columbia).

[2] Financing the Nation's Capital, The Report of the Commission on Budget and Financial Priorities of the District of Columbia, Nov. 1990, at 2-12.

[3] *Id.*

[4] *Budget Autonomy for the District of Columbia: Restoring Trust in Our Nation's Capital Before the H. Comm. on Government Reform,* 108th Cong. 48 (2003) (statement of Dr. Natwar Gandhi, Chief Financial Officer, District of Columbia).

the more likely the operating assumptions underlying that budget will not hold true."[5] The change contemplated in this memorandum would significantly reduce this lag time thereby ensuring that the District can rely on more accurate data to formulate its budget.

Third, it would free the District from being inadvertently ensnared in federal budget battles and allow the District to remain open in the event of a federal government shutdown. For example, in April 2011, the District found itself in just such a predicament. It was forced to expend substantial resources to prepare for a shut down when congressional leaders and the White House could not reach agreement on a Fiscal Year 2011 budget for the federal government – a debate over purely federal issues. If the federal government had shut down (as it had previously), District residents would have been left without trash collection, access to public recreation facilities and libraries, and social services for needy families with children.[6]

In addition to these practical benefits, the District's recent fiscal track record demonstrates that the District is capable of managing its local budget without first subjecting it to the congressional appropriations process. While local and state jurisdictions across the country have struggled with fiscal crises in recent years, the District has produced balanced budgets every year since the District regained control of its fiscal affairs from the D.C. Control Board in 2001.[7] Since 2001, the District has also built up a large fund balance and cash reserves and improved its credit rating dramatically.[8]

Further, the majority of the District's budget, *about 98%*, is derived from local revenue and federal grants that are available to all jurisdictions – revenue sources for which Congress has

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[5] Subcommittee Hearing on District's Fiscal Year 2012 Budget (statement of Dr. Natwar Gandhi, Chief Financial Officer, District of Columbia). Indeed, just last month, the House of Representatives delayed consideration of the appropriations bill that contains the District's budget, the Financial Services and General Government Appropriations Bill. The bill was removed from the House's schedule due to a jurisdictional dispute between two congressional committees. It appears that the House will not consider the bill until September at the earliest. This makes it highly unlikely that the District will have a budget in place before the start of its fiscal year on October 1st.

[6] *Id.* (statement of Dr. Natwar Gandhi).

[7] In 1995, Congress appointed a five-member board to oversee District finances, the District of Columbia Financial Control Board. The Control Board suspended its activities in 2001 when the District achieved its fourth consecutive balanced budget.

[8] *Id.* (statement of Dr. Alice Rivlin, The Brookings Institution).

no unique oversight responsibility.[9] Specifically, revenue raised through local taxes, fees, fines, and user charges comprises approximately 71% of the District's Fiscal Year 2012 budget.[10] Another 27%[11] comes from Medicaid and federal grants, which are mostly formula based and available to all jurisdictions.[12] The remaining 2%[13] is derived from federal payments specifically requested for programs and projects unique to the District of Columbia.[14]

For these and other reasons, the past two presidents and congressional leaders from both parties have advocated separating the District's local budget from the congressional appropriations process.[15] Recently, Representative Darrell Issa (R-CA), Chairman of the House of Representatives committee tasked with oversight of the District, endorsed separation of the District's local budget from the congressional appropriations process.[16] According to Rep. Issa:

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[9] *Id.* (statement of Natwar Gandhi).

[10] $6.34 billion of the District's proposed $8.99 billion.

[11] $2.45 billion of the District's proposed $8.99 billion.

[12] *Id.*

[13] $174.3 million of the District's proposed $8.99 billion.

[14] *Id.*

[15] In his FY 2012 budget, President Obama stated: "Consistent with the principle of home rule, it is the Administration's view that the District's local budget should be authorized to take effect without a separate annual Federal appropriations bill." Office of Mgmt. & Budget, Executive Office of the President, Budget of the United States Government: Fiscal Year 2012 app. at 1212 (2011). Similarly, President George W. Bush wrote in 2005: "[T]he Administration continues to support enactment by the Congress of a law to allow the D.C. government's proposed local budget to take effect without a separate annual appropriations bill, subject to limitations imposed by the Congress by law." Office of Mgmt. & Budget, Executive Office of the President, Budget of the United States Government: Fiscal Year 2006 328 (2005).

[16] Specifically, during a May 2011 congressional hearing on the District's budget, Representative Issa announced his intent to propose bifurcating the local portion of the District's budget from the federal portion. Ben Pershing, *D.C. Officials Get Cordial Hearing on Hill*, Wash. Post, May 13, 2011, at B03. Under this proposal, Congress would vote on the local portion before it votes on the federal portion, which would allow the District to implement its local budget before Congress passes its District appropriations bill. *Id.* According to Rep. Issa, "by bifurcating them

Arent Fox

"I think there's a justification to let the [D]istrict do what a city does. A city plans its own budget, uses its own funds and typically goes to a state capital hoping to get more."[17] President Obama also recently reaffirmed his support for budget autonomy in a July 15, 2011 interview with a Washington, D.C. news reporter: "I've said before and I'll say it again . . . I'm fully supportive of making sure that the Washington, D.C. government has its own budget authority. I'm supportive of folks in D.C. being treated like people everywhere else in the country – in Maryland or Virginia."[18]

As explained below, the District does not have to wait for congressional action to streamline its budget approval process. The District can do so on its own through the Charter referendum process provided for in the 1973 Home Rule Act.

. . . we can do it early on in every Congress and do it separate from a sometimes-difficult [federal] budget process." *Id.* To date, Rep. Issa has not proposed any legislation in this regard.

[17] Ben Nuckols, *Issa Supports Giving DC More Freedom Over Funds,* Associated Press, May 12, 2011, *available at* http://news.yahoo.com/issa-supports-giving-dc-more-freedom-over-funds-200019481.html; *see also* Spencer S. Hsu, *D.C. Fiscal Autonomy Is Backed by Senate,* Wash. Post, Dec. 11, 2003, at B3 ("The elected leaders of the District of Columbia must be given the budget authority they need to provide the fundamental services that city residents rely upon." (statement of Sen. Susan Collins)); *Budget Autonomy for the District of Columbia: Restoring Trust in Our Nation's Capital: Hearing Before the H. Comm. on Government Reform*, 108th Cong. 2 (2003) (statement of Rep. Davis) ("[T]he city has certainly earned[] the right that other cities have to budget autonomy particularly over its own budget . . . .").

[18] *Vance Goes 1-on-1 With Obama*, NBC Washington, *http://www.nbcwashington.com/news/local/Vance-Goes-1-on-1-With Obama.*

Arent Fox

II. The Home Rule Act Gives the District Substantial Authority to Amend Its Charter Through Referenda

Congress enacted the Home Rule Act in 1973 to relieve itself of "the burden of legislating upon essentially local District matters."[19] The District Charter, which is set forth in Title IV of the Home Rule Act, establishes the structure, responsibilities, and authority of the District government.[20] It is analogous to a state's constitution.

Section 303 of the Home Rule Act details the procedure for amending the Charter.[21] Most Charter provisions may be amended through a referendum process set forth in that section. To amend the Charter through this process, the D.C. Council must first pass legislation proposing the amendment.[22] The measure is then placed on the ballot by the D.C. Board of Elections and Ethics.[23] If approved by voters, the measure is transmitted to Congress for a 35-day review period.[24] Congress may overturn the referendum through a joint resolution of disapproval passed by the House of Representatives and Senate, and signed by the President.[25] If Congress does not overturn it during this review period, the amendment goes into effect.

A subset of Charter provisions, though, may not be amended through this procedure. Section 303(a) lists three such provisions.[26] These are the Charter provisions creating the

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[19] The District of Columbia Self-Government and Government Reorganization Act, Pub. L. No. 93-198, 87 Stat. 777, § 102 (Dec. 24, 1973). This memorandum refers to the District of Columbia Self-Government and Government Reorganization Act as the Home Rule Act.

The Home Rule Act and Congress's amendments to this Act are codified in D.C. Code §§ 1-201.01 to 1-207.62 (2006). Home Rule Act provisions are referenced in the text of this memorandum. The corresponding D.C. Code citations are provided in the footnotes.

[20] D.C. Code §§ 1-204.01 to 1-204.115.

[21] D.C. Code § 1-203.03.

[22] *Id.* § 1-203.03(a).

[23] *Id.*

[24] *Id.* § 1-203.03(b).

[25] *Id.*

[26] D.C. Code § 1-203.03(a).

District Council,[27] the Office of the Mayor,[28] and the District's judiciary branch.[29] Section 303(d) additionally excepts from the referendum process any "act, resolution, or rule under the limitations" on the Council's authority set forth in sections 601 through 603 of the Home Rule Act.[30] The section 601, 602, and 603 "limitations" include, among other things, a prohibition on the imposition of any commuter tax,[31] a requirement that the District pass a balanced budget,[32] and restrictions on the District's authority to issue bonds.[33] As detailed below, these limitations include nothing that prevents the District from amending the process for enactment of its local budget.

III. The District May Use Its Referenda Authority to Amend Key Charter Provisions Related to the District's Budget

The District may use its referenda authority to enact two key changes to its budget process. First, the District can change the process for enactment of its local budget so that its local budget goes into effect after the congressional layover period (if not overridden). Second, the District can amend its Charter to change its fiscal year from an October-September schedule to a July-June schedule (as most states utilize).

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[27] Home Rule Act (HRA) § 401(a), D.C. Code § 1-204.01(a).

[28] HRA § 421(a), D.C. Code § 1-204.21(a).

[29] HRA §§ 431-434, D.C. Code §§ 1-204.31 to 1-204.34.

[30] Specifically, D.C. Code § 1-203.03(d) provides: "The amending procedure provided in this section may not be used to enact any law, or affect any law with respect to which the Council may enact any act, resolution, or rule under the limitations specified in §§ 1-206.01 to 1-206.03."

[31] HRA § 602(a)(5), D.C. Code § 1-206.02(a)(5).

[32] HRA §§ 603(c)-(d), D.C. Code §§ 1-206.03(c)-(d).

[33] HRA § 603(b), D.C. Code § 1-206.03(b).

A. The District May Change The Process for Enactment of its Local Budget so that it goes into Effect Once it Completes the Congressional Review Period

Under the Home Rule Act, most District legislation becomes effective automatically if Congress does not affirmatively disapprove the legislation during a 30-day review period.[34] The District's Charter establishes a different process for passage of the District's budget. Specifically, section 446 of the Charter provides, in relevant part:

> The Council, within 56 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. . . . Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to Congress. . . [N]o amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act.[35]

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[34] HRA § 602(c), D.C. Code § 1-206.02(c). The 30-day period excludes "Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die [for an indefinite period], a recess of more than 3 days, or an adjournment of more than 3 days." *Id.*

[35] HRA § 446, D.C. Code § 1-204.46, reads in its entirety:

> The Council, within 56 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by Council after public hearing. Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to Congress. Except as provided in §§ 1-204.45a(b), 1-204.46a, 1-204.46b, 1-204.67(d), 1-204.71(c), 1-204.72(d)(2), 1-204.75(e)(2), 1-204.83(d), and 1-204.90(f), (g), (h)(3), and (i)(3), no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any other provisions of this chapter, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this chapter. After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council approves the request, but only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.

Pursuant to section 446, the D.C. Council passes a budget request with separate sections detailing proposed expenditures using federal funds that the District will receive and proposed expenditures using the District's locally-raised revenue. The Mayor submits the District's budget request to the President, who submits it to Congress. The District's budget request then goes through the congressional appropriations process as though it is an appropriations request for a federal agency.

The District could amend section 446 of the Charter so that only the federal portion of the District's budget would be subject to the federal appropriations process. Specifically, it could amend the relevant portions of section 446 in the following way (modifications in bold):

> The Council, within 56 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. . . . ***The federal portion of such budget*** so adopted shall be submitted by the Mayor to the President for transmission by him to Congress. ***The local portion so adopted shall be submitted by the Chairman of the Council to the Speaker of the House of Representatives pursuant to the procedure set forth in D.C. Code § 1-206.02(c). . . .*** [N]o amount ***of federal funds*** may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act.

The District can amend section 446 in this way via a referendum under the authority given to it by Congress in section 303 of the Home Rule Act because none of the "limitations" on the Council's authority in sections 601, 602, or 603 of the Home Rule Act prevent the District from taking this action. In addition, the District can make this change without running afoul of the Anti-Deficiency Act.

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1. None of the Limitations on the District's Referenda Authority Prevent the District From Implementing Changes to the Process for Enactment of Its Local Budget

As noted above, section 303(d) provides that the referendum process is unavailable for any "act, resolution, or rule under the limitations" on the Council's authority set forth in sections 601 through 603 of the Home Rule Act. This restriction incorporates most of the provisions in sections 601 to 603 because most of those provisions impose limits on the Council's authority.

Section 601, for example, provides:

> Notwithstanding any other provision of this chapter, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this chapter, including legislation to amend or repeal any law in force in the District prior to or after enactment of this chapter and any act passed by the Council.[36]

This section reaffirms that, even though Congress delegated to the District some of its constitutional authority to legislate for the District, the District Council's power remains limited by Congress's ultimate authority to legislate on District matters.[37]

Section 602(a) provides that "[t]he Council shall have no authority to pass any act contrary to the provisions of this chapter" or to pass acts related to ten enumerated subjects, which include taxation of commuters, taxation of United States property, and height limits on District buildings.[38] Section 602(c) provides that, with certain exceptions, the "Chairman of the Council shall transmit" to Congress all legislation passed by the District, which is then subject to a 30-day review period by Congress.[39] These sections limit the Council's authority to legislate in

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[36] *Id.* § 1-206.01.

[37] *See* U.S. Const., Art. I, § 8 ("The Congress shall have Power . . . [t]o exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States . . . .").

[38] *Id.* § 1-206.02(a).

[39] *Id.* § 1-206.02(c).

certain areas and to implement any legislation without first giving Congress the opportunity to review and veto it.

Section 603(b) provides that "[n]o general obligation bonds . . . shall be issued during any fiscal year in an amount which would cause the amount of principle and interest required to be paid . . . to exceed 17% of the District revenues."[40] This section limits the Council's authority to issue bonds.

Section 603(c) provides that "the Council shall not approve any budget which would result in expenditures being made by the District government, during any fiscal year, in excess of all resources which the Mayor estimates will be available to the District for such fiscal year."[41] Section 603(d) provides that "the Mayor shall not forward to the President for submission to Congress a budget which is not balanced according to the provision of subsection (c) of this section."[42] These sections limit the Council's authority to pass a budget that is not balanced. Section 603(f) provides that, in a control year, "the Council may not approve, and the Mayor may not forward to the President, any budget which is not consistent with [a control year] financial plan and budget."[43] This section limits the Council's authority to act in a control year.

While these provisions may limit the District's ability to amend its Charter, none of these provisions relate to the District's budget process. Section 603(a) is the most relevant provision contained in sections 601 to 603 regarding the District's budget process. It provides:

> Nothing in this Act shall be construed as making any change in existing law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the President, the federal Office of Management and Budget, and the Comptroller General of the United States in the preparation, review, submission, examination, authorization, and appropriation of the total budget of the District of Columbia government.[44]

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[40] *Id.* § 1-206.03(b).

[41] *Id.* § 1-206.03(c).

[42] *Id.* § 1-206.03(d).

[43] *Id.* § 1-206.03(f). The procedures for the establishment and enforcement of a control year financial plan are set forth in D.C. Code §§ 47-392.01 to 47-392.09.

[44] The District of Columbia Self-Government and Government Reorganization Act, Pub. L. No. 93-198, 87 Stat. 777, § 102 (Dec. 24, 1973). As codified, this provision reads: "Nothing in this Chapter. . ." D.C. Code § 1-206.03(a).

One could argue that section 603(a)'s command that "this Act" will not be construed to change the pre-1973 "procedure and practice" under which the President and Congress controlled the District's budget facially prohibits any amendments to section 446 that would affect such a change. In addition, one could argue that sections 303(d) and 603(a) together prohibit the District from amending the Charter to change its local budget process by referendum. While these arguments must be considered, they do not withstand scrutiny.

a. The Text of the Home Rule Act Demonstrates that Section 603(a) Does Not Preclude the District From Amending its Local Budget Process

As for the first argument outlined above, section 603(a) would only nullify the effect of an amendment to section 446 if "this Act" that shall not be construed as making any change in existing law, regulation, or basic procedure and practice is the Home Rule Act as it may later be amended. This is certainly a possible reading of the language as Congress often uses the term "act" to refer broadly to legislation in its current or later-amended form. For two reasons, though, the better reading of section 603(a) is that "this Act" means only the legislation originally enacted.

First, section 603(a) uses the present tense and is most reasonably read to speak to the intended interpretation of "the Act" as then-written. If Congress intended to prohibit the District in the future from changing the local budget process, it presumably would have provided expressly in section 603(a) that the local budget process cannot be altered rather than taking the circuitous and illogical route of prescribing a rule of interpretation for future statutory language. For instance, Congress could have expressly prohibited future amendments by providing in section 603(a) that: "Nothing in this Act shall be construed *as permitting any change. . .*"[45]

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[45] The D.C. Court of Appeals considered a somewhat analogous situation in *District of Columbia v. Greater Washington Central Labor Council,* 442 A.2d 110 (D.C. 1982). In *Greater Washington*, the court held that the District could amend the workmen's compensation regime for private sector employees that had been in place before passage of the Home Rule Act. The court rejected the plaintiffs' argument that the District did not have the authority to do so because, under the Home Rule Act, Congress expressly provided for the transfer of the administration of public sector employment services to the District, but failed to do so for private sector employees. According to the court:

> The express transfer by Congress of certain public employment services from the United States Department of Labor to the District government, in the absence of a concurrent transfer of private employment workmen's compensation . . . does not reflect a congressional intent to prohibit the local government from legislating with respect to private workmen's compensation.

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Second, the Home Rule Act's definitional provisions counsel against reading section 603(a)'s reference to "the Act" to include later amendments effected through referenda. Section 103(7) of the Home Rule Act states: "The term 'Act' includes any legislation passed by the Council, except where the term 'Act' is used to refer to this Act or other Acts of Congress herein specified."[46] That provision suggests that references to "this Act" exclude later amendments passed by the Council, including amendments enacted through section 303(a), which are passed by the Council and ratified by a majority of District voters. For these reasons, section 603(a) is best read as a conclusive interpretive instruction about the original legislation, not as a limitation on the Council's authority to enact any change to the District's budget process.

The second potential argument, that section 303(d) and section 603(a) together prohibit the District from amending section 446 to change the local budget process, does not withstand scrutiny for similar reasons. Section 303(d) restricts the District from using the referendum process to amend the Charter in any way that conflicts with the provisions in sections 601 to 603 that impose limitations on the Council's authority. In other words, section 303(d) does not apply to all provisions in sections 601 to 603. Instead, section 303(d) applies to only those provisions in sections 601 to 603 that impose limitations on the Council's authority.

As outlined above, most of the provisions in sections 601 to 603 impose limitations on the Council's authority. Section 603(a), however, does not.[47] Instead, it is an interpretive direction which clarifies that "[n]othing in [the Home Rule Act] shall be construed" to change then-existing law regarding the District's budget process as it existed when Congress passed the Home Rule Act in 1973. It therefore does not fall within section 303(d)'s purview.

Again, Congress could have prevented the District from amending section 446 in a simple and straightforward way – it could have included section 446 on section 303(d)'s list of provisions that may not be amended. Or Congress could have used the same specific words of limitation that it used in the other provisions of sections 601 to 603. Congress's decision not to strongly suggests that Congress intended to allow the District to amend section 446 through the Charter referendum process.

Id. at 115. In other words, if Congress wanted to retain authority over the District's administration of private sector workmen's compensation issues, it could have spoken to the issue directly. In light of Congress' failure to do so, the court held that the District had the authority to legislate over this purely local matter. *Id.*

[46] *Id.* § 1-202.

[47] *Id.* § 1-206.03(a).

This textual analysis of sections 303, 446, and 603(a) is supported by the canon of statutory interpretation that, "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."[48] Applying this principle, Congress's decision to use express language prohibiting the Council from acting in certain section 601, 602, and 603 provisions, but omit such language in section 603(a) gives rise to a presumption that Congress did not intend to include section 603(a) within the group of provisions that restrict the District from amending other Charter provisions through a referendum.

The conclusion that section 603(a) does not fall within the purview of section 303(d) is further supported by three additional statutory interpretation principles. First, because a statute is passed as a whole, no single provision of a statute should be read in isolation. Rather, every section of a statute must be read in connection with every other part or section so that it produces a harmonious whole.[49] Thus, section 603(a) should not be read in isolation; instead it must be read in conjunction with sections 303(d) and 446. When read together, the only construction of section 603(a) that is compatible with section 303(d)'s exclusion of section 446 from the list of those provisions the District cannot amend through a Charter referendum is that section 603(a) does not limit the District's ability to amend its Charter.

Second, specific statutory exceptions to a general statutory rule must be strictly construed.[50] This principle is relevant to construction of sections 303 and 603(a). Section 303(a)

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[48] *Russello v. United States*, 464 U.S. 16, 23 (1983) (internal quotation marks omitted); *see also Abbott v. Abbott*, 130 S. Ct. 1983, 2003 (2010) (Stevens, J., dissenting) ("In interpreting statutory text, we ordinarily presume that the use of different words is purposeful and evinces an intention to convey a different meaning.").

[49] *See United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc.*, 484 U.S. 365, 371 (1988) ("Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme-because the same terminology is used elsewhere in a context that makes its meaning clear, . . . or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law. . . ." (internal citations omitted)).

[50] *See, e.g., Commissioner v. Clark*, 489 U.S. 726, 738-39 (1989) (statutory exceptions qualifying a general statement of policy are construed narrowly); *Nussle v. Willette*, 224 F.3d 95, 99 (2d Cir. 2000) (interpreting a statutory exception in the Prison Litigation Reform Act "in light of the interpretive principle that statutory exceptions are to be construed narrowly in order to preserve the primary operation of the general rule" (internal quotation marks and alterations omitted));

sets out a general rule that the District can amend its Charter through a referendum. This general rule is then limited by section 303(d), which carves out an exception for the "limitations" on the Council's authority in sections 601 through 603. Because section 603(a) does not expressly limit the Council's authority to act, a court would have to ignore this interpretive rule to find that section 603(a) is one of those "limitations."

Finally, "[t]he D.C. Council's interpretation of its responsibilities under the Home Rule Act is entitled to great deference" by a reviewing court.[51] This deference to the Council's interpretation of the Home Rule Act is analogous to the deference that a court affords an agency when interpreting ambiguity in the statute that the agency has been tasked with enforcing.[52] This rule of statutory interpretation, known as *Chevron* deference, requires a court to defer to an agency's *reasonable* interpretation of the statute in question.[53] If the District were to pass legislation authorizing the amendment suggested in this memorandum, the District would be on solid ground in arguing that it is reasonable to interpret section 603(a) as not precluding the District from amending section 446. Under the principles of *Chevron* deference, the District would thus have a strong argument that a reviewing court must defer to this interpretation.

b. The Home Rule Act's Legislative History Further Supports the Conclusion That the District Can Amend its Local Budget Process

The Home Rule Act's legislative history reinforces the conclusion that the District can pass a referendum amending section 446 to change the process for enactment of its local budget and its fiscal year. The Home Rule Act provisions related to the District's budget process and the District's ability to amend its Charter were the product of extensive congressional deliberation. The House and Senate passed competing versions of District self-government bills. The Senate version granted the District substantial autonomy over its fiscal affairs, including the ability to enact its own budget.[54] The House version included sections 446 and 603(a).[55] The

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United States v. Marzani, 71 F. Supp. 615, 620 (D.C. Cir. 1947) ("According to rules of construction, a proviso containing exceptions to a general policy is to be strictly construed.").

[51] *Tenley and Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 334 n.10 (D.C. 1988); *see also Decatur Liquors v. District of Columbia*, 384 F. Supp. 2d 58, 63 n.6 (D.D.C. 2005) (agreeing that deference is due to the Council in interpreting its responsibilities under the Home Rule Act).

[52] *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

[53] *Id.* at 844-45 (emphasis added).

[54] S. 1435, 93d Cong., 1st Sess. (1973).

House-Senate conference committee accepted the provisions in the House bill, which ultimately passed Congress.[56]

Similarly, the House's and Senate's bills differed on whether the District would have the authority to amend its Charter. The House's version gave the District the authority to amend its Charter through a referendum process.[57] The Senate's bill did not permit the District to amend the Charter at all.[58] The House-Senate conference committee accepted the House's provisions on this subject.[59]

Despite the fact that these provisions were the subject of extensive congressional debate, it does not appear that a single Member of Congress expressed any intent that sections 303(d) and 603(a) would prevent the District from using the Charter referendum process to amend section 446. While this is admittedly far from conclusive evidence that Congress intended to give the District the authority to amend its local budget process through the Charter referendum process, there are two inferences that can be drawn from this history. The first inference is that, while the House intended that Congress would retain control over the District's budget, the absence of congressional intent contradicting the plain text that section 446 does not fall within the list of provisions in section 303(d) that are off limits to a Charter amendment indicates that the House intended that the District would be able amend the budget process in the future. The second inference is that, after passing a home rule bill that granted the District budget autonomy, the Senate acceded to the House language retaining congressional control of the budget because it understood that the District had the authority to amend this process in the future.

In sum, the text of sections 303, 446, and 603(a) when read together, and in light of various canons of statutory interpretation and the Home Rule Act's legislative history, demonstrate the following about these sections. Section 603(a) is an interpretive direction about the Home Rule Act. It is not a limitation on the District's authority to amend its local budget process through future legislation. Accordingly, section 603(a) does not preclude the District from amending the budget process set forth in section 446. Section 303's incorporation of section 603 also does not preclude the District from amending section 446. Section 303(a) gives the District substantial authority to amend its Charter through referenda. Section 303(d) restricts

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[55] H.R. 9682, 93d Cong., 1st Sess. (1973).

[56] Pub. L. No. 93-198.

[57] H.R. 9682.

[58] S. 1435.

[59] Pub. L. No. 93-198.

this authority by prohibiting the District from amending its Charter in any way that is inconsistent with the "limitations" on the Council's authority set forth in sections 601 to 603. While section 603(a) relates to the District's budget and is one of the sections facially referenced in section 303(d), section 603(a) is not covered by section 303(d) because it is not a limitation on the Council's authority within the meaning of section 303(d).

2. The District Can Amend Section 446 Without Running Afoul of the Anti-Deficiency Act

The federal Anti-Deficiency Act prohibits officers and employees of the federal and District of Columbia governments from making or authorizing "an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation."[60] Congress expressly made this Act applicable to the District of Columbia in the Home Rule Act and in the 1982 re-codification of the Anti-Deficiency Act.

One could argue that the terms of this Act effectively preclude the District from amending section 446 of the Charter to give itself greater budget autonomy. More specifically, one could argue that the Charter Amendment would run afoul of the Anti-Deficiency Act requirement that there be "an appropriation or fund" from which the D.C. Council could spend local revenues pursuant to the local D.C. budget. As explained below, however, District officials and employees would not violate the Anti-Deficiency Act if they obligated and spent funds pursuant to a local budget that was adopted pursuant to the proposed Charter Amendment.

There are three reasons this is so. First, the District's expenditure and obligation of local funds pursuant to its local budget would fully meet the plain meaning and intent of the Anti-Deficiency Act. Second, Congress has indicated that the Anti-Deficiency Act effectively applies to the District through the Home Rule Act. The District could therefore comply with the Anti-Deficiency Act provided that it acts pursuant to the Charter as amended. Third, and most important, Congress enacted legislation in 2006 and 2009 making clear that the District has authority to expend revenues in certain circumstances where no specific "appropriation or fund" had been affirmatively enacted by Congress for those expenditures. Congress has thereby confirmed that the District's expenditure and obligation of its local revenue without a congressional appropriation does not violate the Anti-Deficiency Act.

Taken together, these three points demonstrate that the proposed section 446 Charter Amendment would not violate the Anti-Deficiency Act. We discuss each point in turn.

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[60] 31 U.S.C. § 1341. The Anti-Deficiency Act also provides criminal penalties for criminal penalties for "knowingly and willfully" violating its provisions. *Id.* § 1350.

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a. The Purpose of the Anti-Deficiency Act

The Anti-Deficiency Act's purpose is to ensure that government officials and employees obligate and expend public funds pursuant to appropriate legislative authorization.[61] The language of the Act does not designate specifically what that legislative authorization should be, or even which legislature must act in a given case. It says only that there must be an "appropriation or fund" to stand behind whatever obligation or expenditure is undertaken by the government officials in question. We therefore start with the proposition that this purpose would be fully served by the proposed amendment to section 446. As amended, section 446 would require that the D.C. Council appropriate funds and/or establish a fund comprised of local revenue for obligations or expenditures made pursuant to its approved local budget.

Of course, in nearly all cases other than those affecting the District of Columbia, one would expect the "appropriation or fund" required by the Anti-Deficiency Act to be a congressional appropriation or fund for federal agencies. But as explained below, Congress contemplated that the Anti-Deficiency Act would work differently in the case of the District of Columbia. In addition, Congress enacted legislation in 2006 and 2009 confirming that the District may obligate and expend excess revenue pursuant to its own "appropriation or fund" and may do so consistent with the Anti-Deficiency Act.

b. The Effect of the Home Rule Act on the Anti-Deficiency Act

The Anti-Deficiency Act in effect in 1973 when Congress passed the Home Rule Act provided: "No officer or employee of the United States shall make or authorize expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein."[62] Congress included the following interpretative direction in the Home Rule Act: "Nothing in [the Home Rule Act] shall be construed as affecting the applicability to the District government of the [Anti-Deficiency Act]."[63] It also added an additional restriction in

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[61] The Anti-Deficiency Act was enacted in 1870 to address the problem of "coercive deficiencies" that resulted when executive agencies contracting in advance of legislative appropriations. Kate Stith, *Congress' Power of the Purse*, 97 Yale L.J. 1343, 1374 (1988). The Anti-Deficiency Act addressed this problem by "stat[ing] a general requirement of legislative control over appropriations—that the Executive spend only in the amounts and only for the objects legislatively authorized." *Id.*

[62] Pub. L. No. 81-759, ch. 896, § 1211, 64 Stat. 595, 765 (Sept. 6, 1950).

[63] D.C. Code § 1-206.03(e).

section 446 that "no amount may be obligated or expended" by the District unless approved "by Act of Congress."

Sections 446 and 603(e) function in a similar manner as sections 446 and 603(a). Section 446 is the operable provision that prohibits the District from obligating or expending funds unless such funds are approved by an Act of Congress. Like section 603(a), section 603(e) is an interpretive direction that supplements section 446. Its purpose is to clarify that, at the time of passage, nothing could be construed to affect the applicability of the Anti-Deficiency Act. It did not determine how the Anti-Deficiency Act would apply to the District.

As explained in Part III.A.1 above, section 303 gives the District the ability to amend section 446 through a referendum. Section 303(d) excepts from the referendum process any "act, resolution, or rule under the *limitations*" on the Council's authority set forth in sections 601 through 603 of the Home Rule Act. Section 603(e) is not a "limitation" on the District's authority. This section, therefore, does not prevent the District from amending section 446 to change its process for enacting its local budget and do so in a way that is consistent with the Anti-Deficiency Act. Like the section 303-section 446-section 603(a) construction outlined in Part III.A.1, this construction of sections 303, 446, and 603(e) follows from a plain reading of the provisions and application of the same statutory interpretation principles.[64]

In 1982, the Anti-Deficiency Act for the first time expressly covered the District when it was re-codified by Congress along with other laws related to money and finance in Title 31 of the United States Code. According to the House Report that accompanied this legislation: "The purpose of the bill [was] to restate in comprehensive form, *without substantive change*, certain

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[64] These statutory interpretation principles include the principle that every section of a statute must be read in connection with every other part or section so that it produces a harmonious whole. *United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc.*, 484 U.S. 365, 371 (1988). Applying this principle, the only construction of section 603(e) that is compatible with the fact that section 303(d) does not list section 446 as provision that the District cannot amend through a Charter referendum is that section 603(e) does not limit the District's ability to amend its Charter.

The principle that specific statutory exceptions to a general statutory rule must be strictly construed is also applicable. *Commissioner v. Clark*, 489 U.S. 726, 738-39 (1989). Section 303(a) sets out a general rule that the District can amend its Charter through a referendum. This general rule is then limited by section 303(d), which carves out an exception for the "limitations" on the Council's authority set forth in sections 601 through 603. Because section 603(e) does not expressly "limit" the Council's authority, a court would have to ignore this anon of statutory interpretation to find that it limits the District's authority to amend section 446 via a referendum.

general and permanent laws related to money and finance. . . ."[65] Section 1341 of Title 31 "restated" the Anti-Deficiency Act in the following way: "An officer or employee of the United States Government or of the District of Columbia government may not . . . make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation."

The legislative history of the 1982 re-codification makes clear that the inclusion of the "District of Columbia government" in Title 31 was not meant "to be interpreted as construing the extent to which the District of Columbia Self-Government and Government Reorganizational Act (Pub. L. 93-198, 87 Stat. 774) [the Home Rule Act] supersedes the provisions codified in this title."[66] In other words, in making the Anti-Deficiency Act applicable to the District, Congress expressly recognized that that Act might apply differently in the District, owing to the terms of the Home Rule Act.

In fact, section 446 of the Home Rule Act provides the means for implementing the Act in the District and adds additional requirements that are not in the Anti-Deficiency Act itself. The Anti-Deficiency Act and section 446 both establish the general rule that obligations or expenditures not exceed the amount available in an appropriation or fund. Section 446, however, goes further as it also provides that the District (1) may only expend or obligate funds that have been approved by Act of Congress and (2) can only obligate or expend these funds according to that Act. The latter two requirements do not appear in the Anti-Deficiency Act.

The result is that while Congress intended the Anti-Deficiency Act to apply in the District, it intended that the Act effectively apply *through* the more stringent requirements of section 446.[67] But Congress also authorized the District to amend section 446, provided it do so in ways that did not undercut the less stringent requirements of the Anti-Deficiency Act.

That is what the contemplated Charter amendment would do. Through that Amendment, the District could reform its budget process and provide for the obligation and expenditure of local revenue to be fully backed by an "appropriation or fund" that is established by the District

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[65] H.R. Rep. No. 97-651, at 1 (1982) (emphasis added).

[66] H.R. Rep. No. 97-651, at 25 (1982).

[67] *See United States v. Stewart*, 311 U.S. 60, 64 (1940) ("acts in pari material are to be taken together, as if they were one law" (internal quotation marks omitted)); *see also Great Northern R. Co. v. United States*, 315 U.S. 262, 276-77 (1942) ("subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject" (internal quotation marks omitted)).

government itself. This result is fully consistent with the Anti-Deficiency Act, as confirmed by recent legislation adopted by the Congress in 2006 and 2009.

c. Congress's Confirming Legislation

In 2006 and 2009, Congress granted the District supplemental budget autonomy by authorizing the District to spend its excess local revenue without waiting for Congress to appropriate these funds.[68] In prior years, if the District raised excess revenue, it was required to submit a supplemental budget request to Congress and could not obligate or expend those excess funds until Congress enacted a supplemental appropriations bill. As Congresswoman Eleanor Holmes Norton stated, the District's new supplemental budget autonomy "has freed the District from the extra costs, onerous operation strains, and burdensome delays that the supplemental process causes, forcing D.C. to trot over to the Congress just to get permission to spend money that is already in the bank."[69]

Rather than appropriating the funds itself, Congress *authorized* the Council to "obligate and expend" excess revenue under certain circumstances in the 2006 and 2009 laws. Specifically, the 2006 law permitted "the amount appropriated as District of Columbia funds under budget approved by Act of Congress as provided in such section [to] be increased."[70] While Congress's reference to the "budget approved by Act of Congress" could be interpreted as incorporating an appropriation (as the budget includes appropriations), the 2009 law permitted "the amount appropriated as District of Columbia funds [to] be increased" without referencing

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[68] In 2006, Congress gave the District this authority in the 2005 District of Columbia Omnibus Authorization Act, Pub. L. No. 109-356, § 101(a), 120 Stat. 2019, 2020 (2006) (codified at D.C. Code § 1-204.46a). That authority expired at the end of Fiscal Year 2007. In 2009, Congress again gave the District this authority in the Financial Services and General Government Appropriations Act, Pub. L. No. 111-8, § 817, 123 Stat. 524, 699 (codified at D.C. Code § 47-369.02). There is no expiration date on this authority.

[69] Press Release, Congresswoman Eleanor Holmes Norton, *D.C. Freed From Federal Supplemental In Significant Budget Autonomy Breakthrough*, June 15, 2005, available at http://www.norton.house.gov/index.php?option=com_content&task=view&id=126&Itemid=79.

[70] 2005 District of Columbia Omnibus Authorization Act, Pub. L. No. 109-356, § 101(a), 120 Stat. 2019, 2020 (2006) (codified at D.C. Code § 1-204.46a). The legislation also states that the limitation in section 446 that District officers or employees may not "obligate[] or expend[] . . . [any amount] . . . unless such amount has been approved by Act of Congress . . ." does not apply when the District spends excess local revenue. D.C. Code § 1-204.46a. Congress did not include this language in the 2009 legislation.

the "budget approved by Act of Congress."[71] The 2009 law thus removed any doubt that Congress authorized the Council to spend its own local excess revenues without an express congressional appropriation.

Such an "authorization" is distinct from an appropriation because "[t]he mere authorization of an appropriation does not authorize expenditures on the faith thereof or the making of contracts obligating the money authorized to be appropriated."[72] "A law may be construed [as] an appropriation . . . only if the law *specifically states* that an appropriation is made or that such a contract may be made."[73] Because the 2006 and 2009 laws did not specifically "appropriate" funds, these laws merely "authorized" the expenditure of funds.[74]

This authorization-appropriation distinction is important because it means that Congress has twice given the District the authority to expend its own revenue without appropriating those revenues. And Congress did so without providing an exception to the Anti-Deficiency Act's "appropriation or fund" requirement or conforming the District's new budget authority to the Anti-Deficiency Act by, for example, designating the excess revenues as a "fund."[75] Indeed, the Anti-Deficiency Act did not even come up during the congressional debate on the 2006 and 2009 legislation.

The only way to harmonize the 2006 and 2009 legislation with the Anti-Deficiency Act is to read the legislation as authorizing *District* expenditures of local funds pursuant to a *District* appropriation or fund. Stated differently, unless the 2006 and 2009 legislation is to be rendered null and void by the Anti-Deficiency Act, Congress must have contemplated that the Act's

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[71] Financial Services and General Government Appropriations Act, Pub. L. No. 111-8, § 817(a), 123 Stat. 524, 699 (codified at D.C. Code § 47-369.02(a)).

[72] Office of Gen Counsel, U.S. Government Accountability Office, GAO-04-261SP, *Principles of Federal Appropriations Law* 2-40 (3d ed. Jan. 2004).

[73] 31 U.S.C. § 1301 (emphasis added).

[74] *See* H.R. Rep. No. 109-267, at 18 (2005) (noting that the 2006 act "would authorize the [District] to spend [a percentage] of unappropriated local funds"); 152 Cong. Rec. H6979 (daily ed. Sept. 25, 2006) (statement of Rep. Van Hollen) (2006 legislation "authorizes the District" to spend "unappropriated funds.").

[75] *See* 31 U.S.C. § 1341 (prohibiting District of Columbia officers or employees from making or authorizing "an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation").

"appropriation or fund" requirement could be met through a District-created "appropriation or fund."

This legislation demonstrates that the District can indeed obligate and spend its local revenue without a congressional appropriation, and do so without violating the Anti-Deficiency Act.[76] Like the 2006 and 2009 laws, the contemplated Charter amendment authorizes the Council to obligate and expend local revenue without a prior congressional appropriation. If the proposed amendment violates the Anti-Deficiency Act, these two laws also violate this Act. This outcome would ignore three basic interpretive canons: (1) Congress is presumed to have been aware of the Anti-Deficiency Act when it adopted these laws;[77] (2) since Congress knew how to require a *congressional* appropriation, as evidenced by that requirement appearing in section 446, a similar requirement should not be read into the Anti-Deficiency Act where it does not appear;[78] and (3) Congress cannot be presumed to have enacted nullities in 2006 and 2009.[79]

For these reasons, the contemplated amendment would not cause District officials and employees to violate the Anti-Deficiency Act. Rather, as was the case with the 2006 and 2009 legislation, that Act's purpose would continue to be served so long as District employees and officials remain prohibited from obligating or expending *local* funds without prior authorization

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[76] The Council exercised its supplemental budget authority only once. *See* Local Supplemental Appropriations Approval Procedures Establishment and Fiscal Year 2007 Allocation of Additional Revenue Congressional Emergency Act of 2006, A. 16-499, § 1043 ("If [] . . . local funds exceed the annual revenue estimates incorporated in the approved Fiscal Year 2007 Budget and Financial Plan, those additional revenues shall be allocated, to include the following: . . . .").

[77] *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) ("We assume that Congress is aware of existing law when it passes legislation.").

[78] *Cf. Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (internal quotation marks omitted)).

[79] *See Corley v. United States*, 556 U.S. 303, 454 (2009) ("[O]ne of the most basic interpretive canons[] is that '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . .'" (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004))).

from the *local* District government, which would be the case under the proposed Charter Amendment.[80]

And, of course, none of these local expenditures could occur until Congress reviews the proposed Charter Amendment and thereafter reviews the proposed local budget enacted pursuant to that Amendment.[81]

B. The District May Also Amend Its Charter to Change Its Fiscal Year

Section 441 of the Home Rule Act sets the District's fiscal year. Unlike most cities and states whose fiscal years run from July to June, the District's general government fiscal year runs from October to September to correspond with the federal government's fiscal year. The

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[80] To make clear that that is the District's understanding of the proposed Amendment, a provision to that effect could be added to the Amendment itself. The District could do so by adding the following language to Section 446: "The obligation or expenditure of non-federal funds by a District of Columbia officer or employee will not violate the Anti-Deficiency Act, 31 U.S.C. § 1341, provided that those funds have been duly appropriated by the District of Columbia government."

[81] The District could also arguably obligate or expend its locally raised funds without running afoul of the Anti-Deficiency Act by establishing a separate "fund" for these monies. *See* 31 U.S.C. § 1341 (prohibiting District of Columbia officers or employees from making or authorizing "an expenditure or obligation exceeding an amount available in an appropriation or *fund* for the expenditure or obligation" (emphasis added)). In fact, the Home Rule Act gives the Council the express authority to "establish such additional special funds as may be necessary for the efficient operation of the government of the District." D.C. Code § 1-204.50.

Further, the District could also make a compelling argument that, if Congress fails to disapprove the proposed Charter Amendment, this failure would amount to "tacit approval" of the District's position that the Anti-Deficiency Act does not limit the District from amending its local budget process. *See Techworld Dev. Corp. v. D.C. Pres. League*, 648 F. Supp. 106, 114 (D.D.C. 1986), *vacated on other grounds*, No. 86-5630, 1987 WL 1367570 (D.C. Cir. June 2, 1987) (noting that Congress expressed its "tacit approval" that the D.C. Council acted within its authority to close a street when it had passed legislation doing so and Congress did not object); *see also United States v. Rutherford*, 442 U.S. 544, 554 n.10 (1979) ("[O]nce an agency's statutory construction has been fully brought to the attention of the public and Congress, and the latter has not sought to alter the interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned." (internal quotation marks omitted)).

District's October to September fiscal year makes it impossible for the District to have a budget in place before the start of the school year, the second largest cost in the District's budget. This severely hinders the District's ability to plan and coordinate its budget.

The District can amend section 441 to change its fiscal year through a section 303 referendum. As discussed above, section 303(d) excepts "limitations" on the Council's authority set forth in section 601 to 603 from the Charter referendum process. The only section 601, 602, or 603 provision that would arguably restrict the District from amending section 441 to change its fiscal year is section 603(a) (*i.e.*, "Nothing in [the Home Rule Act] shall be construed . . ." to change the law regarding the District's budget as it existed when Congress passed the Home Rule Act in 1973). But, for the reasons discussed in Part III.A.1 above, section 603(a) does not fall within the purview of section 303(d). The District can thus amend section 441 so that its general government fiscal year is from July to June.

Arent Fox

IV. The District Could Enact the Contemplated Amendments By the End of 2012

This section details the mechanics of implementing the amendments contemplated in this memorandum. It first outlines the text of the potential amendments. It then explains the timeframe for enacting the amendments. Finally, it offers guidance on how the District can change its budget process to implement the amendments.

A. The Text of the Potential Amendments

If the District were to submit a referendum to District voters based on the guidance of this memorandum, the referendum would propose the following amendments to D.C. Code §§ 1-204.41 and 1-204.46 (Home Rule Act §§ 441 and 446):

§ 1-204.41. Fiscal year.

Current Language	Potential Amendment
(a) *In general.* – Except as provided in subsection (b) of this section, the fiscal year of the District shall, beginning on October 1, 1976, commence on the first day of October of each year and shall end on the 30th day of September of the succeeding calendar year. Such fiscal year shall also constitute the budget and accounting year. (b) *Exceptions.* – (1) *Armory Board.* – The fiscal year for the Armory Board shall begin on the first day of January and shall end on the thirty-first day of December of each calendar year. (2) *Schools.* – Effective with respect to fiscal year 2007 and each succeeding fiscal year, the fiscal year for the District of Columbia Public Schools (including public charter schools) and the University of the District of Columbia shall begin on the first day of July and end on the thirtieth day of June of each calendar year.	The fiscal year of the District shall, beginning on July 1, 2013, commence on the first day of July of each year and shall end on the thirtieth day of June of the succeeding calendar year. Such fiscal year shall also constitute the budget and accounting year. (b) *Exception.* – (1) *Armory Board.* – The fiscal year for the Armory Board shall begin on the first day of January and shall end on the thirty-first day of December of each calendar year.

Arent Fox

§ 1-204.46. Enactment of appropriations by Congress.

Current Language	Potential Amendment
The Council, within 56 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by Council after public hearing. Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to Congress. Except as provided in §§ 1-204.45a(b), 1-204.46a, 1-204.46b, 1-204.67(d), 1-204.71(c), 1-204.72(d)(2), 1-204.75(e)(2), 1-204.83(d), and 1-204.90(f), (g), (h)(3), and (i)(3), no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any other provisions of this chapter, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this chapter. After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council approves the request, but only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.	The Council, within 56 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by Council after public hearing. ***The federal portion of*** such budget so adopted shall be submitted by the Mayor to the President for transmission by him to Congress. ***The local portion so adopted shall be submitted by the Chairman of the Council to the Speaker of the House of Representatives pursuant to the procedure set forth in D.C. Code § 1-206.02(c).*** Except as provided in §§ 1-204.45a(b), 1-204.46a, 1-204.46b, 1-204.67(d), 1-204.71(c), 1-204.72(d)(2), 1-204.75(e)(2), 1-204.83(d), and 1-204.90(f), (g), (h)(3), and (i)(3), no amount ***of federal funds*** may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any other provisions of this chapter, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this chapter. After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council approves the request, but only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.

Arent Fox

B. The Timeframe for Passage of the Charter Amendments

If the Mayor and Council pass legislation authorizing a Charter amendment referendum in the fall of 2011, the District could hold a special election on April 3, 2012, the date of the District's primary election. If it passed on April 3rd, it would become law by the end of 2012 so long as: (1) Congress is in session for 35 days between April 3, 2012 and December 31, 2012; and (2) Congress does not overturn it during that 35-day legislative period.

The first step in passing a referendum is for the Council to pass legislation authorizing a referendum. While most legislation passed by the D.C. Council is transmitted directly to Congress, legislation authorizing a Charter amendment referendum is transmitted to the D.C. Board of Elections and Ethics (BOEE).[82] This chart summarizes the process from the point the Council submits a Charter amendment proposal to the BOEE:

Time	**Event**
5 calendar days from receipt of the act (maximum)	Publish a Notice of Public Hearing: The BOEE must submit for publication a "Notice of Public Hearing: Receipt and Intent to Formulate Proposed Ballot Language" to the *D.C. Register* within 5 days of receiving the act from the Council. The publication must include the proposed Charter amendment act in its entirety.[83]
20 calendar days from receipt of the act (maximum)	Conduct a Public Meeting on Title and Summary: The BOEE must conduct a public meeting to formulate a short title of no more than 20 words and an impartial summary statement of no more than 150 words to include on the ballot within 20 days of its receipt of the proposed Charter amendment act from the Council.[84]

[82] D.C. Mun. Regs. tit. 3, § 1801.2.

[83] *Id.* § 1801.6.

[84] *Id.* § 1803.2.

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Time	Event
5 working days from public meeting (maximum)	Submit to *D.C. Register* for Publication: The BOEE must submit the proposed Charter amendment act, short title, and summary statement to the *D.C. Register* within five working days of formulating the short title and summary statement. Notify the Mayor and the Council: The BOEE must notify the Mayor and the Chairman of the Council of the proposed short title and summary statement within the same five working days.[85]
10 calendar days from submission to *D.C. Register* (maximum)	Publish in the *D.C. Register*: The proposed Charter amendment must be published in the *D.C. Register* within ten days after its submission thereto.[86]
10 calendar days from publication (minimum)	Wait Ten Days for Elector Review: The BOEE must wait 10 days after publication in the *D.C. Register* for any objections and requests for a hearing to be submitted by qualified District electors to the proposed short title and summary statement.[87] If no hearing is requested within ten days, the short title and summary statement are considered final.[88]

[85] *Id.* §§ 1802.4-1802.5.

[86] *Id.*

[87] *Id.* § 1803.1

[88] *Id.* § 1803.2.

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Time	Event
Timing not specified	Certify at Public Meeting: Following the expiration of the ten day elector review period, the BOEE must hold a public meeting to certify the short title and summary statement and announce the election.[89]
30 calendar days from certification (maximum)	Publicize Act and Election: Within 30 days of the public certification meeting, the BOEE must publish the Charter amendment act, short title, summary statement, and a statement announcing the referendum in the *D.C. Register* and at least two generally circulated newspapers.[90]
54 calendar days (minimum)	Hold Election: The proposed Charter amendment may not appear on a ballot within 54 days of the certification of the Charter amendment language.[91]
35 calendar days[92]	If approved by District voters, the Charter Amendment is then transmitted to Congress for a 35 day review period. Congress may overturn the Amendment by passing a resolution of disapproval in both the House of Representative and the Senate, and signed by the President.

[89] *Id.* § 1804.1.

[90] *Id.* § 1804.3.

[91] *Id.* § 1805.1-.2

[92] Excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session. D.C. Code § 1-203.03(b).

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C. Changes to the District's Budget Process After Passage of the Amendments

The District's budget process begins when the Mayor submits his proposed budget, called the Budget Request Act, to the Council for review and adoption. The Budget Request Act is typically comprised of three parts.[93] The first part contains federal spending for the D.C. courts, pensions, and certain national security programs. The second part, which comprises approximately 68% of D.C.'s gross budget, funds local government agencies using locally-raised District revenue. The third part contains general provisions governing various aspects of District government operations. The Budget Request Act outlines funding at the agency level, but does not detail funding at the programmatic level. The Council does this through separate legislation, the Budget Support Act.

If the District passed the amendment contemplated in this memorandum, the Council could pass one bill, a "D.C. Local Budget Act," containing the provisions related to the local budget that are now passed as part of the Budget Request Act and the Budget Support Act. The federal portion could be passed as separate legislation, the "Federal Budget Request Act."

Once the Council passes the D.C. Local Budget Act and the Mayor signs it, the Chair of the Council would submit it to Congress for congressional review. If Congress does not overturn the D.C. Local Budget Act by the end of the 30-day review period, the D.C. Local Budget Act would become law (the Federal Budget Request Act would still go through the congressional appropriations process). The District could enact the local budget in April or May so that it would go into effect before the beginning of a fiscal year starting on July 1 (unless Congress overturns the Act during the normal layover period).

The following chart compares the legislative processes for (1) the Budget Request Act as it currently stands, (2) ordinary legislation that goes into effect after the 30-day congressional review period, and (3) the Amendment contemplated in this memorandum:

[93] *See, e.g.*, Budget Request Act for Fiscal Year 2010, A18-119, June 18, 2009.

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Budget Request Act (Current Process)	Non-Budget Legislation	Contemplated Amendment
Mayor introduces budget proposal to the Council.[94]	Councilmember introduces bill to the Council.[95]	Mayor introduces budget proposal to the Council, which contains two parts: D.C. Local Budget Act and Federal Budget Request Act.
Council adopts Budget Request Act after one reading.[96]	Council adopts bill by act after two readings.[97]	Council adopts D.C. Local Budget Act, which contains local budget, and Federal Budget Request Acts after one reading within 56 days of introduction.[98]

[94] *Id.* § 1-204.46.

[95] *Id.* § 1-204.04.

[96] *Id.* § 1-204.12(a).

[97] *Id.*

[98] If the District Council passed the Amendment proposed in this memorandum and submitted it to District voters, the District government may wish to consider additional technical amendments to the District Charter and D.C. Code.

For example, the District may wish to subject the Local Budget Act to two readings by the District Council. Unlike all other legislation which is subject to two readings by the District Council, the District's budget is only subject to one reading. *See* D.C. Code § 1-204.12(a) ("Each proposed act (other than an act to which § 1-204.46 applies) shall be read twice in substantially the same form, with at least 13 days intervening between each reading."). While the Amendment suggested in this memorandum would not change this procedure, the District may wish to consider subjecting its local budget to two readings to ensure greater scrutiny of the District's local budget.

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Budget Request Act (Current Process)	**Non-Budget Legislation**	**Contemplated Amendment**	
Mayor signs Budget Request Act and transmits it to the President.[99]	Mayor signs act and chairman transmits it to Congress for passive review.[100]	D.C. Local Budget Act Mayor signs Local Budget Act and chairman transmits it to Congress for passive review.	Federal Budget Request Act Mayor signs Budget Request Act and transmits it to the President.
President transmits D.C. Budget Request to Congress.[101]	N/A	D.C. Local Budget Act Congress has opportunity to pass resolution of disapproval during 30-day review period.	Federal Budget Request Act President transmits D.C. Budget Request to Congress.
Congress adopts the Budget Request Act as part of budget process.	N/A	D.C. Local Budget Act N/A	Federal Budget Request Act Congress considers Federal Budget Request Act as part of budget process.

[99] *Id.* § 1-204.46.

[100] *Id.* § 1-204.04(e).

[101] *Id.* § 1-204.46.

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Budget Request Act (Current Process)	Non-Budget Legislation	Contemplated Amendment	
President signs D.C. appropriations act and it becomes law.	If act survives passive review, it becomes law.[102]	D.C. Local Budget Act If Local Budget Act survives passive review, it becomes law.	Federal Budget Request Act President signs appropriations act and it becomes law.

V. Conclusion

As detailed in this memorandum, the 1973 Home Rule Act gives the District substantial authority to amend its Charter through referenda. The District could use this authority to improve its budget process in important ways. Specifically, the District could amend its Charter so that (1) its local budget becomes effective as soon as it goes through the 30-day congressional review period and (2) its fiscal year runs from July to June. These amendments would save the District money, improve its ability to accurately forecast budgets, and protect the District from becoming ensnared in federal budget battles.

[102] *Id.*

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Council of the District of Columbia, Committee of the Whole
Public Hearing on Bill 19-993, the "Local Budget Autonomy Act of 2012"
Testimony of V. David Zvenyach, General Counsel
November 9, 2012

Good afternoon, Mr. Chairman, and members of the Committee of the Whole. I am V. David Zvenyach, General Counsel for the Council of the District of Columbia. I am pleased to submit this testimony with respect to Bill 19-993, the "Local Budget Autonomy Act of 2012."

Background

The Local Budget Autonomy Act ("Autonomy Act") proposes to amend the District of Columbia Charter to allow the Council to (1) change the District's fiscal year by act; and (2) adopt the District's local budget by act, subject to the 30-day Congressional review period set forth in section 602(c) of the Home Rule Act.

The issue of budget autonomy is not new. The proposal in the Autonomy Act to amend the Charter is, however, a novel approach to addressing the issue. And, as you know, there are some who doubt the legality of the approach set forth in the Autonomy Act.

For the reasons that I have set forth in the attached memorandum, however, I am of the view that the Autonomy Act is legally sufficient for Council consideration. In the interest of time, I will briefly summarize the points, and I will defer discussion of the Antideficiency Act to a fellow panelist.

But before I proceed, it is important to clarify that the legislation does *not* propose eliminating or otherwise altering Congress's authority to set the District's local budget. Indeed, I am aware of no proposal—before the Council or before Congress—that would remove Congress's ultimate authority to appropriate District funds as Congress sees fit. Rather, the Autonomy Act proposes giving the District Government the ability to function when Congress takes *no* action with regard to the District's budget.

Use of the Charter-Amendment Process

To do so, the Autonomy Act would use the Charter amendment process set forth in section 303 of the Home Rule Act. That process has been used on 3 occasions, and earlier this week, the District voters ratified additional amendments to the Charter.

In Council Period 2, the Council passed the Initiative, Referendum, and Recall Charter Amendments Act of 1977. Under the Act, the Council partially delegated its legislative authority to District voters such that voters could initiate an act and suspend local legislation. The amendments also authorized District voters to recall elected officials. Since going into effect in 1978, District voters have proposed more than 140 initiatives, 10 of which have become law.

In 2000, the Council passed the School Governance Charter Amendment Act of 2000, which reduced the number of members of the Board of Education from 11 to 9, and which provided that only 5 of the 9 members be appointed. Before the Amendment, the Board of Education consisted of 11 elected members.

Ten years later, the Council passed the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, which added a new section 435 to the Charter establishing an elected Attorney General for the District of Columbia.

Earlier this week, District voters ratified three additional Charter amendments, concerning the ability of the Council to expel a member for gross misconduct and prohibiting a Councilmember or Mayor from continuing to serve if convicted of a felony while holding office.

Taken together, these Charter amendments reflect significant structural changes to the District's local governance, from the Council's delegation of authority to adopt and repeal local laws to the establishment of a new elected official.

Accordingly, while the Council's power under section 303 has been used sparingly, the power has been used to implement significant changes in the governance and structure of the District's local affairs.

Section 303

With respect to the language of section 303, there are several points that must be made.

First, section 303(a) authorizes the Council to amend any part of the Charter save for three explicit restrictions: 401(a), 421(a), and Part C. These restrictions concern the establishment of the Council, the Mayor, and the Judiciary, respectively.

It is significant, though not dispositive, that Congress did not make Part D off-limits with regard to the Charter-amendment process. By omitting Part D, Congress apparently did not intend to foreclose changes to the budget process. For example, I am of the view that the Council could amend section 441 to change the District's fiscal year. Or the Council could eliminate the line-item veto found in section 404(f). Both provisions relate to the budget

process, and in my view are plainly within the Council's power to change through the Charter amendment process.

Second, section 303(d) prevents the Council from enacting any law or affecting any law with respect to which the Council may not enact any act, resolution, or rule under the limitations specified in sections 601, 602, and 603.

Of those limitations, the most difficult hurdle is section 603(a), which is susceptible to two primary interpretations. It could be read as a bright-line prohibition of the ability of the Council to affect the budget process. Or it could be read as a declaration that Congress maintains ultimate authority with respect to the budget, and that the Home Rule Act as originally approved meant to leave the budget process intact. In my view, the latter reading is preferable and consistent with both the plain language and the overall purposes of the Home Rule Act.

One of Congress's main purposes in adopting the Home Rule Act was "to the greatest extent possible, consistent with the constitutional mandate [of Article I], relieve Congress of the burden of legislating upon essentially local District matters." In accordance with this purpose, courts have consistently construed the limitations in Title VI narrowly.

Moreover, the plain language of section 603(a) indicates that it was intended as a reservation of authority—not an explicit limitation on the Council. It is naturally read as a statement that the provisions of the Home Rule Act, as they relate to the budget process, were intended to restate current practice as it existed at the time the Home Rule Act was initially approved.

Conclusion

There can be no doubt that Congress intended to approve the entirety of the District's budget, and that the District has operated under that scheme for almost 40 years. The question before the Council is whether Congress intended to foreclose the District from legislating on an entirely local issue when Congress chooses to remain silent. In my view, to answer that question, we must look not only to the text of the Home Rule Act, but its stated purpose: to "relieve Congress of the burden of legislating upon essentially local District matters." In light of that purpose, and for the reasons set forth in the attached memorandum, the Autonomy Act is legally sufficient for Council consideration.

Thank you for allowing me to offer this testimony. I am available if you have any questions.

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TESTIMONY OF WALTER SMITH, EXECUTIVE DIRECTOR DC APPLSEED CENTER FOR LAW AND JUSTICE

COUNCIL OF THE DISTRICT OF COLUMBIA COMMITTEE OF THE WHOLE

John A. Wilson Building Room 500
November 9, 2012

Bill 19-993, the "Local Budget Autonomy Act of 2012"

Good afternoon Chairman Mendelson and members of the Committee. I am Walter Smith, Executive Director of the DC Appleseed Center for Law and Justice. DC Appleseed is a nonprofit public interest organization that addresses important issues facing residents of the National Capital Area. Thank you for giving me the opportunity to present testimony on Bill 19-993, the "Local Budget Autonomy Act of 2012," a bill DC Appleseed strongly supports.

INTRODUCTION

Earlier this year, Mayor Vincent Gray released his "One City Action Plan" outlining how to make the District a more prosperous, equitable, and sustainable city for all residents. As part of that plan, the Mayor envisioned a city "where every tax dollar is spent wisely on a government that works and where citizens' voices really count." The bill that is the subject of this hearing helps implement that vision. It would give the District budget autonomy—the ability of the city to spend the approximately $6 billion in revenue it raises on its own from D.C. residents, businesses, and visitors, without waiting for a congressional appropriation.

The bill would also make the citizens' voices count. Through this bill, D.C. voters will be able to pass and send to Congress a measure that would establish local budget autonomy and thereby advance democracy in the District.

In this testimony I want to make four points in support of the bill: (1) why a new local strategy such as this bill is needed; (2) the benefits of this bill in advancing the new strategy; (3) the legal authority for the bill; and (4) the unlikelihood that a legal challenge to the bill would succeed.

I. THE NEED FOR A NEW STRATEGY

The Local Budget Autonomy Act is a significant development in the efforts in which DC Appleseed and I have long been involved to advance self-determination for D.C residents. In 1998, as Deputy Attorney General for the city, I represented the Mayor and the Council in the lawsuit we brought in federal court arguing that the continued denial of voting representation in Congress is unconstitutional.

DC Appleseed and I also represented the Mayor and the Council in the suit we brought challenging the constitutionality of the congressional prohibition on the District's the ability to tax the income of nonresidents. I personally argued that case both before the U.S. District Court and before the a three-judge panel of the U.S. Court of Appeals, which included Judge, now Chief Justice, John Roberts.

While these lawsuits did not succeed in the courts, both of them brought considerable visibility to these issues both locally and nationally, and both helped spur and gain support for congressional legislation designed to address these inequities. DC Appleseed and I worked closely with Congresswoman Eleanor Holmes Norton,

Congressman Tom Davis, and others to shape the D.C. Voting Rights bill that passed both Houses of Congress. I testified in support of that bill on Capitol Hill, as did the pro bono attorneys I engaged to support us in that effort.

In addition to these efforts, DC Appleseed has also long been involved in the effort in Congress to pass a bill giving the District budget autonomy. I have worked closely with Congresswoman Norton in that effort and have twice testified in support of budget autonomy measures on the Hill (before the House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia on budget autonomy measures in 2007 and 2009).

I offer this background not to suggest that DC Appleseed has helped achieve significant advances for the city, but, rather, to make almost the opposite point—that I am concerned by the *lack* of such advances.

The truth is that the Mayor, the Council, Congresswoman Norton, many individuals, and many organizations such as DC Appleseed, DC Vote, and others have engaged in this effort for a very long time and have done admirable things that have helped to carry on the battle and to bring continuing visibility to the issue. Those efforts have focused on two strategies—winning recognition for our rights in the courts, and urging Congress to afford us our rights though legislation.

I believe both strategies were the right ones and both still need to be pursued. But I also believe we need to acknowledge that those strategies have not produced the results we had hoped for and that District residents are entitled to. That is why I believe now is

the right time to complement those strategies with an additional track. The bill before us this afternoon is exactly that.

We have seen from our experience that even though there is bi-partisan agreement that the District deserves budget autonomy, Congress so far has been unable to pass a bill that would be acceptable to the city. It was only this past September that Senator Joseph Lieberman had to withdraw his proposal for budget autonomy because it was clear that a clean bill would not pass.

In this difficult environment, the District must seek other ways forward on this issue. Fortunately, the Council has the ability to do so using the authority Congress delegated to the city in the Home Rule Act. That Act's stated purpose was "to relieve Congress of the burden of legislating upon local District matters" "to the greatest extent possible." The budget autonomy Charter amendment referendum is consistent with this purpose. Before addressing the legal authority for the referendum, I would first like to emphasize the benefits of pursuing the referendum as an additional strategy in the District's continuing efforts to advance democracy.

II. BENEFITS OF PURSUING THE PROPOSED REFERENDUM

As I mentioned, the difficulty of passing a clean budget autonomy bill in Congress has shown us that we need to explore the possibility of advancing a bill locally. The benefit of the Local Budget Autonomy Act is that it originates not from Capitol Hill, but from this Council and the people of the District. The Act has a number of advantages in this regard.

First, proceeding by referendum would allow this Council to take an important new role in advancing budget autonomy because, under the Home Rule Act, it is the Council that must set the referendum in motion.

Second, proceeding with a referendum would allow the people of the District of Columbia to become important actors in this battle because it is the residents themselves who would pass the referendum—which seems only fitting since it is, of course, the residents who are entitled to and will gain from the autonomy that would be the subject of the referendum.

Third, proceeding with the referendum would allow this Council and the people of the District to craft and pass a clean budget autonomy bill and to send to the Hill the bill that the residents of the District believe they are entitled to, rather than relying exclusively on the hope that Congress will pass such a bill itself.

Fourth, it is far from unprecedented for the people of the District to advance democracy by themselves. Their right to amend the Charter by referendum is clearly laid out in the Home Rule Act. Not even two years ago, in fact, the Council authorized a referendum on a Charter amendment to make the Attorney General an elected official. The people resoundingly voted in favor of enhancing self-government, with 76 percent of voters ratifying the amendment. That Charter amendment is now law and will be implemented in the 2014 elections. The proposed referendum would allow the people to take another such step forward.

Finally, if the referendum were passed by the people, it would automatically become law unless both Houses of Congress affirmatively disapprove it within 35

legislative days and the President then signs that disapproval. Obviously, there is a large advantage to the District in being able to use its power under the Home Rule Act to pass the Charter amendment it wants, knowing that the Charter amendment will become law unless both Houses and the President take affirmative steps to disapprove it.

III. LEGAL BASIS FOR THE REFERENDUM

As I just noted, it is not at all unprecedented for the District to amend the Charter by referendum. There is furthermore a strong legal argument that the city can use this process now to establish budget autonomy, and there are good reasons to conclude that no lawsuit could stop the referendum from taking place.

1. *The Act is Authorized by the Home Rule Act.*

To determine whether the Charter amendment is within the District's authority, we must first look to the Home Rule Charter, which is akin to a state constitution. The Charter gives the District broad authority to amend it by referendum. The only restriction is that the city may not use the referendum process to amend any "act, resolution, or rule under the *limitations*" on the Council's authority set forth in sections 601 to 603 of the Charter. Those sections enumerate a very specific list of limitations, including a prohibition on the imposition of a nonresident income tax, an express requirement that the District pass a balanced budget, and explicit restrictions on the District's authority to issue bonds. However, nowhere in the Act did Congress similarly prohibit the District from amending the Charter provision that currently sets out the District's budget process in section 446.

In fact, there is only one provision that is even relevant to the budget process in sections 601 to 603. It is Section 603(a). That section provides that "[n]othing in the [Home Rule Act] shall be construed as" changing existing law or basic procedures relating to the role of the federal government in the District's budget process. However, this provision is not worded as a "limitation" on the Council's authority. Instead, it appears intended to clarify that, at the time of the Home Rule Act's passage, Congress did not mean to change then-existing law regarding the District's budget process. But this is very different from providing that the Council could not *later* change that law through a Charter referendum. Because section 603(a) is not a "limitation" on the Council, it should not be read to prohibit the District from establishing budget autonomy by amending section 446.

2. *The Act is Consistent with the Anti-Deficiency Act.*

In addition to the Home Rule Act, there is another law that might be implicated by the local budget autonomy Charter amendment: the federal Anti-Deficiency Act. That Act prohibits federal and D.C. government employees from making or authorizing any "expenditures or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation." One might argue that local budget autonomy would violate the Act because there would be no "appropriation or fund" from which the District could spend local funds even if the referendum became law. However, for several reasons this is not correct.

First, the District's expenditure of local funds pursuant to its local budget would fully meet the meaning and intent of the Anti-Deficiency Act. That Act's purpose is to

ensure that government employees spend funds only pursuant to appropriate legislative authorization. The Act does not define how that legislative authorization must occur, or specify what legislature must provide that authorization. The Act requires only that there be an "appropriation or fund" behind any obligation or expenditure. This purpose is fully served by the budget autonomy Charter amendment. Any expenditure of local funds would be made pursuant to the local budget passed by the Council after two readings, and that budget would have to complete the 30-day congressional review process. Accordingly, it is not persuasive to suggest there would be no "appropriation or fund" from which local expenditures would be made. The whole point of the referendum is to allow the Council to establish such an "appropriation or fund," and that establishment cannot occur without congressional review. Moreover, it is worth noting that in section 450 of the Home Rule Act, Congress expressly authorized the Council to "establish such additional special funds as may be necessary for the efficient operation of the government of the District."

Second, the Anti-Deficiency Act applies to the District through the Home Rule Act. That Act states that "[n]othing in [the Home Rule Act] shall be construed as affecting the applicability to the District government of the [Anti-Deficiency Act.]" That provision is not a *limitation* on the Council that renders the local budget autonomy Charter amendment impermissible. Instead, it serves only to clarify that, at the time of the Home Rule Act's passage, nothing in that Act could be construed as affecting the continuing applicability of the Anti-Deficiency Act. But it does not dictate *how* the Anti-Deficiency Act applies to the District.

Third, Congress has recently confirmed that the District itself can satisfy the "appropriation" requirement of the Anti-Deficiency Act. In 2006 and 2009, Congress enacted legislation giving the District supplemental budget autonomy by allowing the District to spend excess local revenue without a congressional appropriation. In other years, the District has had to submit a supplemental budget request to Congress to appropriate excess revenue. Rather than appropriating the funds itself, Congress through these two acts authorized the Council to expend excess revenue without the need for an additional congressional appropriation. The only way to harmonize the 2006 and 2009 congressional acts with the Anti-Deficiency Act is to read those measures as authorizing D.C. expenditures pursuant to a D.C. appropriation. In fact, unless those two acts are to be rendered void by the Anti-Deficiency Act, Congress must have contemplated that a District appropriation by the D.C. Council—where reviewed by Congress—could in appropriate circumstances satisfy the Anti-Deficiency Act. That would be the case with regard to a local D.C. budget enacted pursuant to the proposed local budget autonomy Charter amendment.

For all these reasons, the local budget autonomy Charter amendment would not cause D.C. employees to violate either the letter or the spirit the Anti-Deficiency Act.

3. *A Court Would Not Enjoin the Referendum from Taking Place.*

While the District is on solid legal ground in enacting the local budget autonomy Charter amendment, we recognize that a lawsuit challenging the referendum might be brought. However, it is highly unlikely that a court would grant an injunction—the remedy a potential plaintiff would seek—to stop the referendum from going forward.

First, the issue would not be ripe for judicial review because any lawsuit would contest the lawfulness of a contingent future event—enactment of the Charter amendment—that may never occur.

Second, it is doubtful that any party would have standing to challenge the referendum. An individual Member of Congress could not sue because the Act would not subject any one Member for specially unfavorable treatment, or deprive any Member of something to which he or she is personally entitled. Moreover, no private citizen could sue because any harm claimed would amount to nothing more than a generalized grievance. In addition, neither House of Congress would have standing because merely allowing D.C. residents to vote would not cause an injury. Furthermore, a court would likely decline to intervene on Congress's behalf, given that Congress has full authority to disapprove the referendum legislatively.

Finally, even if a court determined that the case was ripe and that a party had standing, it would most likely refuse to enjoin the referendum. A court would have to find irreparable harm to a plaintiff to grant a preliminary injunction. Merely allowing D.C. residents to vote would not cause such harm.

CONCLUSION

I want to say in closing that DC Appleseed applauds the efforts of this Council, the Mayor, and Congresswoman Norton for their work with Congress to give the District budget autonomy. Those efforts should continue. But there are no easy ways forward in this fight for self-determination. That is why the Council is right to pursue this new, complementary strategy that originates locally and involves the people of the District.

Thank you Chairman Mendelson and the rest of the Council for your leadership in advancing this important measure.

TESTIMONY OF LORI ALVINO MCGILL
Partner, LATHAM & WATKINS LLP

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE

John A. Wilson Building Room 500
November 9, 2012

Bill 19-993, the "Local Budget Autonomy Act of 2012"

Good afternoon Chairman Mendelson and Members of the Committee. My name is Lori Alvino McGill, and I am a partner of the law firm of Latham & Watkins LLP. My firm has a longstanding relationship with DC Appleseed, and our work has included, among other things, advising on possible avenues to budget autonomy for the District of Columbia. I want to thank you for giving me the opportunity to present testimony on Bill 19-993, the Local Budget Autonomy Act of 2012. Others testifying here today have addressed the political and policy imperatives for this legislation, and the legal basis for enactment of the Bill. My testimony will focus on potential legal challenges to the law, namely, the prospect of a pre-enactment challenge to the referendum and whether a plaintiff could obtain an injunction that would prevent a vote on the measure.

INTRODUCTION

There is no statutory or common law mechanism by which a party could attack the Amendment prior to its enactment. Therefore, a party opposing the Amendment might seek to enjoin the Board of Elections and Ethics from placing

the initiative on the ballot, or by filing suit against the Council seeking declaratory and injunctive relief.

I have concluded that the answer is no, for two related reasons. A suit brought prior to the Act's enactment would not be ripe for review, and no one would have standing to bring the case. Furthermore, prior to a referendum there can be no demonstration of an "imminent threat of irreparable harm"—a key element necessary to obtain an injunction. Finally, it is likely that a court would find that an injunction would in fact harm the District by stifling the right to vote, and therefore would not be in the public interest – a key consideration where injunctive relief is sought. All of this is true regardless of whether the hypothetical suit were to be brought in federal district court or the Superior Court of the District of Columbia.

I will take each of these conclusions in turn, beginning with why I believe a court would find that a pre-referendum suit seeking an injunction is not justiciable.

I. RIPENESS

The doctrine of "ripeness" is designed to prevent the courts from adjudicating cases prematurely, entangling themselves in abstract disagreements over administrative policies. In this way it works to protect the decisions of administrative entities from judicial interference until they have been formalized

and their effects felt in a concrete way by the challenging parties.[1] Although its origin in the federal courts stems from Article III's requirement that there be an actual "case or controversy," the courts of the District have adopted these principles as prudential doctrines.[2] Courts considering ripeness examine whether the issue is "fit" for judicial review—*i.e.,* whether the question presented is purely legal, whether consideration would benefit from a more concrete setting, and whether the disputed action is sufficiently final—and whether withholding consideration would cause "hardship" to the parties.[3] A case is not ripe for adjudication if "it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all."[4]

A pre-referendum challenge, seeking to enjoin district voters from even voting on the Charter Amendment because it is allegedly unlawful, would be

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1 *See Nat'l Park Hospitality Ass'n v. Dept. of Interior*, 538 U.S. 803, 807-08 (2003) (citing *Abbot Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967)). "The ripeness doctrine reflects a judgment that the disadvantages of a premature review that may prove too abstract or unnecessary ordinarily outweigh the additional costs of—even repetitive—post-implementation litigation." *Ohio Forestry Assn. v. Sierra Club*, 523 U.S. 726, 733 (1998).

2 *See Metro. Baptist Church v. D.C. Dep't of Consumer & Regulatory Affairs*, 718 A.2d 119, 130 (D.C. 1998). The D.C. Court of Appeals has adopted a ripeness standard based on the one applied in federal courts, under which the court determines "(1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding court consideration." *Local 36 Int'l Ass'n of Firefighters v. Rubin*, 999 A.2d 891, 896 (D.C. 2010) (holding that a challenge to a background check policy announced by the D.C. fire chief was unripe because the challenged policy had not yet been implemented).

3 *Local 36 Int'l Ass'n of Firefighters v. Rubin*, 999 A.2d 891, 896 (D.C. 2010) (holding that a challenge to a background check policy announced by the D.C. fire chief was unripe because the challenged policy had not yet been implemented).

4 *Id.* at 897 (quoting *Atlantic States Legal Found., Inc. v. EPA*, 325 F.3d 281, 284 (D.C. Cir. 2003)).

facially unripe. It would be based on a challenge to the lawfulness of a contingent future event—the passage and enactment of the Charter Amendment—that may never occur at all. As such, the action would fail both the fitness and hardship prongs of the ripeness test—as the challenged action is "insufficiently final," and any hardship on behalf of the parties remains entirely speculative until voters approve the Amendment.

Some have raised concerns about the possibility of a pre-enactment challenge, pointing to two D.C. Court of Appeals decisions—*Hessey v. Burden*[5] and *Committee for Voluntary Prayer v. Wimberly*[6]—allowing pre-referendum review of ballot initiatives. After careful review of those decisions, I believe that they are readily distinguishable. For reasons associated with the specific procedural posture of those cases, neither decision included a stringent ripeness analysis, and neither is analogous to the circumstances here. The initiatives at issue in *Hessey* and *Wimberly* were governed by specific provisions of the D.C. Code that apply to laws placed on the ballot by D.C. electors, and do not apply to measures proposed by the D.C. Council. District law expressly provides that the Board of Elections and Ethics must review the initiative and apply enumerated criteria to determine whether a proposal concerns a "a proper subject" before

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5 615 A.2d 562, 572 (D.C. 1992).

6 704 A.2d 1199 (D.C. 1997).

placing it on the ballot.[7] This is important because under the law, the Board's "proper subject" determination is expressly subject to immediate review by the D.C. Superior Court.[8] A challenge brought in this scenario is therefore ripe for review as soon as the Board has made a "proper subject" determination.[9]

The special circumstances that permitted pre-enactment review in *Wimberly* and *Hessey* would not be present here. The proposed legislation is not a voter-placed "initiative" but instead would be placed on the ballot by the Board of Elections and Ethics at the direction of the Council Pursuant to D.C. Code § 1-203.03. In contrast to the mechanism by which the initiatives were proposed in *Wimberly* and *Hessey*, Section 203.03 does not require the Board to make a "proper subject" determination, and it does not provide any mechanism for pre-referendum review of an amendment that has been passed by the Council. Therefore, in reviewing a challenge to a referendum, a court would have to apply the ordinary principles governing ripeness, and for the reasons stated above, a suit seeking to enjoin the referendum would not be ripe.

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7 D.C. Code § 1-1001.16 (formerly D.C. Code § 1-1320 (b)).

8 *Id.*

9 For the same reason, a plaintiff filing suit pursuant to § 1-1001.16 need not show that it has standing or that it satisfies the usual standard for issuance of a preliminary injunction. *See Hessey*, 615 A.2d at 565, 568 (stating that a petitioner challenging the Board's action under that section files "a writ in the nature of mandamus to compel the Board to accept the proposed [initiative]" and that the section provides a "statutory grant of standing to the proponents of a Board-rejected initiative to seek judicial review of the Board's decision").

In both *Wimberly* and *Hessey*, the D.C. Court of Appeals continued to signal its agreement with the majority of courts that have addressed this issue, stating that pre-election constitutional review of proposed initiatives is "imprudent" and should be reserved for "truly extreme cases."[10] And while *Hessey* left open the possibility that a pre-election challenge might be ripe in a narrow class of cases in which a proposed initiative is "patently unconstitutional,"— as in, for example, an initiative proposing to establish an official religion in the District—that exception would not be triggered where, as here, there is at least a colorable argument that the Charter Amendment is a proper exercise of the District's legislative power under the Home Rule Act.

II. STANDING

Somewhat related to ripeness, anyone seeking to block the referendum would also run squarely into the requirement that parties must have standing to file suit.

Generally speaking, "standing" is the determination by a court whether the person bringing the suit is the proper party to do so, and whether he or she is entitled to have the court decide the case. A plaintiff has standing only if he or she alleges (1) an injury in fact; (2) a causal connection between the injury and the conduct complained of, which is fairly traceable to the challenged action of the

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[10] *Wimberly*, 704 A.2d at 1202 (quoting *Hessey*, 615 A.2d at 574)).

defendant, and (3) a likelihood that the injury will be redressed by a favorable decision of the court.[11]

Applying this test, it appears that no one would have standing to challenge the mere placement of the proposed Charter Amendment before the voters in a referendum. For instance, individual Members of Congress would not have standing to challenge the proposed Amendment —before or after its enactment— because the Supreme Court's decision in *Raines v. Byrd*[12] limits standing for members of Congress to instances where an individual member is singled out for specially unfavorable treatment, or deprived of something to which he/she is personally entitled, as opposed to something that runs with their seats.

It is also unlikely that individual citizens within or outside of the District could show that they would suffer from a concrete injury sufficient to give them standing to challenge either a referendum on the Amendment or the Amendment itself if it were enacted. Although a citizen might believe the Amendment exceeds the District's authority, the harm the citizen would suffer from the placement on the ballot is an injury that would affect all citizens equally; it would amount to

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[11] D.C. courts apply federal constitutional standing principles, including prudential limitations on the exercise of jurisdiction. *See Grayson v. AT&T Corp.*, 15 A.3d 219, 246 (D.C. 2011) (en banc) (citations omitted).

[12] 521 U.S. 811, 821 (1997).

nothing more than a generalized—and non-cognizable—grievance.[13] If, pre-enactment, the citizen were to complain that holding a referendum to enact an invalid law wastes government funds, they would run afoul of established precedent that individuals lack standing to challenge government actions based on their status as taxpayers.[14] Even post-enactment, no citizen is likely to have standing to challenge the law. If the Amendment passes, voters within the District would enjoy fewer barriers to the enactment of the D.C. local budget adopted by their elected representatives. It is difficult to see how that could be viewed as an injury to District residents. Voters outside the District theoretically might argue they have been injured by the exclusion of their elected Congressional representatives from the D.C. local budget process. But such an injury would not give rise to standing either, because the Amendment would affect every voter's right equally, resulting once again in a generalized grievance.[15] Unlike other cases in which the Supreme Court has recognized a voter's standing to challenge government action, a voter could not show that on account of the Amendment her individual vote has been disregarded or discounted in relation to other votes.[16] The

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13 *See Little v. Fenty,* 689 F. Supp. 2d 163, 167-70 (D.D.C. 2010) (D.C. resident did not have standing to challenge District marriage equality law because the claim was merely a generalized grievance).

14 *See Frothingham v. Mellon*, 262 U.S. 447 (1923).

15 *Gladstone, Realtors v. Bellwood*, 441 U.S. 91, 120 (1979).

16 *See, e.g., Baker v. Carr*, 369 U.S. 186, 207-08 (1962) (malapportionment created cognizable industry by "placing [voters] in a position of constitutionally unjustifiable inequality vis-a-vis voters in irrationally favored counties"); *Wesberry v. Sanders*, 376 U.S. 1 (1964) (holding that

voter's hypothetical injury would, in fact, be one step more remote than the injury suffered by an individual Congress member, who, as I indicated, would not have standing to sue under *Raines*.

Finally, it is unlikely that a House of Congress itself would be found to have standing to challenge the Amendment prior to referendum. In order to demonstrate Article III standing to bring suit, a House of Congress (or members authorized by that House to sue on its behalf) would have to prove the usual three prerequisites: injury in fact, causation, and redressability. Merely allowing District residents to vote on the Charter Amendment would not cause a House of Congress any injury in fact.

III. OTHER BARRIERS TO INJUNCTIVE RELIEF

Finally, even if a court were to get past the ripeness and standing problems discussed, it is highly unlikely that a court would enjoin the referendum. Thus, at the very least, District voters would have the opportunity to vote on this important issue.

As I mentioned, there is no statutory or common law mechanism that would enable the Act's opponents to directly attack its legality before it is passed. A party seeking to challenge the Act at the pre-enactment stage would therefore seek to obtain a preliminary injunction enjoining the referendum. The Supreme Court

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citizens had standing to challenge "state congressional apportionment laws which debase a citizen's right to vote").

has noted that "a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion."[17] A court will not grant the party's request unless it can show each of the following: (1) a substantial likelihood that the movant will eventually prevail on the merits; (2) that the movant will suffer irreparable injury unless the injunction issues; (3) that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) that the injunction, if issued, would not be adverse to the public interest. This analysis would be the same regardless of whether the party files suit in a D.C. local court or a federal court.[18]

An opponent of the Act would face an uphill battle obtaining a preliminary injunction, for three reasons, even if the court concluded that the plaintiff was "likely to prevail" on the merits of the case.

First, parties seeking an injunction to change the status quo are held to a "substantially higher standard" than in the usual case.[19] In a case called *Jackson v. D.C. Board of Elections & Ethics,* the D.C. Superior Court applied this higher standard to reject a request for a preliminary injunction to stay the enactment of

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17 *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam).

18 *See Zirkle v. District of Columbia*, 830 A.2d 1250, 1255-56 (2003) (explaining that this "universally applied four-part test" originated in *Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

19 *Jackson v. D.C. Bd. of Elections & Ethics*, 2009 D.C. Super. LEXIS 9, at *14-15 (D.C. Super. Ct. 2009), *aff'd* 999 A.2d 89, 120 (D.C. 2010).

certain legislation, holding that such efforts "attempt[] to alter the status quo by changing the ordinary course of the legislative process."[20] Similarly, the court would likely perceive a pre-enactment challenge to the Amendment as an attempt to change the ordinary course of the legislative process. (I note parenthetically that it is not clear that *Jackson*'s holding would be persuasive in federal court, as it would be possible to view an injunction here as preserving the status quo, rather than changing it.)

Second, a party seeking to enjoin the referendum probably could not make the required showing that it would suffer an irreparable injury unless the injunction issues—either under the traditional preliminary injunction test or a heightened standard. This fact alone will be fatal to any attempt to enjoin the referendum because a showing of an irreparable injury is *required* before a preliminary injunction will issue. The threat of injury required to sustain an injunction must be more than merely conceivable, it must be "imminent and well-founded."[21] It also must be the case that the injury is "incapable of being redressed after a final hearing on the merits."[22] Any harm that would result from carrying out the Act could be addressed following its passage and would be insufficient to sustain an injunction. Thus, at the pre-enactment stage, the party seeking to enjoin the

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20 *Id.*

21 *Zirkle*, 830 A.2d at 1256.

22 *Id.*

referendum would have to show that the referendum *itself* will result in irreparable harm.

For example, in *Little v. Fenty*,[23] the U.S. District Court for the District of Columbia rejected a request for injunctive relief to prevent Council from taking second vote on same-sex marriage law. The court determined that even if the Council did pass the law, there were still numerous steps that would have to be taken before the law could go into effect, and therefore a mere vote on the law did not pose an imminent threat.

There is one notable counterexample of which I am aware, which is an older case out of the Eastern District of Wisconsin. In *Otey v. Milwaukee*,[24] the plaintiff challenged a proposed housing ordinance on the ground that the ordinance discriminated on the basis of race and denied the plaintiff equal protection of the laws. The court found the case ripe, on the ground that the ordinance was a patent violation of the Fourteenth Amendment. The court found a threat of irreparable harm, and ultimately concluded injunctive relief was warranted, because it believed that merely holding the referendum would cause substantial harm to the community due to the risk of racial unrest, rioting, and the national and

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23 Civil No. 09-2308 (CKK) (D.D.C. 2009).

24 281 F. Supp. 264 (E.D. Wis. 1968),

international reputational harm that could result from mere passage of the ordinance.[25]

This case is closer to *Little*, and far from *Otey*. Prior to the enactment of the Amendment, the only conceivable injury to citizens would be the expenditure of public funds on a referendum that might lead to the enactment of an invalid law. A court almost certainly would reject that alleged injury as too attenuated to form grounds for an injunction; otherwise litigants presumably also could, on the same theory, seek preliminary injunctions to prevent Congress from discussing and voting on any law that might eventually be deemed unconstitutional.

Finally, there is a strong argument that opponents would also fail the fourth prong of the preliminary injunction test because the injunction would be adverse to the public interest. A court is likely to take into account the harm caused to District voters that would arise from preventing them from voting on the measure.

CONCLUSION

I recognize that budget autonomy is a critical issue for the District. The Charter Amendment is a potential avenue toward increased home rule and self-determination that starts within the District itself. Regardless of whether the Act would ultimately be upheld by a court, there is very little risk of litigation preventing District residents from exercising their right to vote on the Amendment,

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[25] *Id.* at 277-79.

and thus speak with the power of a collective voice on this issue, which is obviously a priority for many District residents.

Thank you Chairman Mendelson and the rest of the Council for your consideration.

Testimony on Bill 19-993
"Local Budget Autonomy Act of 2012"
Committee of the Whole

John A. Wilson Building
1350 Pennsylvania Avenue, NW 5th Floor
Washington, DC 20004

Friday, November 9, 2012, 12:00 PM

Patrick Mara, Ward 1 Public Witness

Thank you for allowing me the opportunity to testify before you today on this historic action by the Council and the residents of the District of Columbia. I would like to thank Chairman Mendelson for holding this public hearing to listen to all sides.

Before I proceed, I wish to note while I am the elected representative from Ward 1 on the District of Columbia State Board of Education, a DC Vote Board Member, and an Executive Committee Member of the DC Republican Committee, the views I am about to express are my own.

Mr. Chairman and members of the committee, I am here today to voice my support for the Local Budget Autonomy Act of 2012. As everyone in this room knows, we are all third class citizens in the District of Columbia. For the last couple years in my remarks at Ward 1 High School Graduations, I express a paragraph or two of outrage that District residents are treated as lesser U.S. Citizens based on their zip codes. I then say, "You need to do something about it." The Budget Autonomy Act of 2012 is one of the District's opportunities to "do something about" our situation.

No matter the outcome of the vote or no matter what action may take place on Capitol Hill, the referendum will be a tremendous tool for the education of local residents and of Members of Congress. For the past several years, I have had the opportunity to speak with primarily Republican Members of Congress, Senators and their staffs about local issues ranging from Marriage equality, the DC Tuition Assistance Grant Program, Guns, Voting Rights and everyone's favorite, the Opportunity Scholarship Program. What I've come to realize is that there is a rather large knowledge gap on the Hill as it relates to our local issues. In speaking to groups throughout the District, our local elected officials and candidates – myself included – do a wonderful job of noting that we support increasing our status as U.S. citizens. Similar understanding of our plight does not seem to exist on Capitol Hill.

Sure, the Committees with District of Columbia oversight, the Authorizing and Appropriations Committees on both sides of the Hill, have very knowledgeable staff and members who do seem to understand our situation and who also want to do something to change it. However, outside of those committees and more senior members of Congress, few know what DC Budget Autonomy is. Budget autonomy to a more recent member of Congress, regardless of party affiliation, has become a 27 year old legislative assistant letting their boss know that the next vote is being score

carded by The National Right to Life Committee, Planned Parenthood, the NRA or some other national special interest organization. When it gets to this point, we lose every time.

While Congressional staff expressed concerns to me regarding the referendum, it will allow us to educate members of the public – in and out of the District – and Members of Congress and their staffs in a very significant way. Again, I believe this referendum will be a valuable tool to raise awareness in Congress and the public – both in and outside of DC.

I'm acutely aware of why this act is so important to District residents: It allows for better budget forecasts; it avoids being tangled up in any budget battles that can lead to government shutdowns; and it streamlines the budget process. On average would add three months to the District's budget process. Then there is the obvious: our locally elected officials should be able to spend locally generated tax dollars just like everywhere else in America.

These are all extremely important. Most significantly though, this act helps our schools. Our schools may be the second largest expense in the District's budget, but in my view, they are the most important expense in the budget. The Act isn't about everyone sitting in this room now, it's about the future. Our schools and our children need all the help they can get. While our publicly funded schools have been steadily improving over the last five years, we still have a long way to go. Budget autonomy will allow our schools to budget at the beginning of the school year as opposed to having to wait for the fiscal year start on October 1. This change is yet another one of the little things that will allow for better planning in our schools and more improvement down the road. Who in the United States would disagree with budgetary planning that benefits kids? I believe this effort is most about strongly supporting the children of the District of Columbia.

Again, I would like to thank Chairman Mendelson for holding this open public hearing and I urge the DC Council to pass the Local Budget Autonomy Act of 2012. Thank you.

Testimony of
Michael D. Brown
United States Senator
District of Columbia

Before
The Committee of the Whole
November 9, 2012

Let me start today by thanking Chairman Mendelson and the Committee for allowing me to testify on B19-993, the Local Budget Autonomy Act of 2012. While the District of Columbia is certainly unreasonably hampered by its inability to enact its own budget, I feel it is important to recognize that the use of a referendum to amend the District's Home Rule Charter in order to rectify this situation is, in my opinion, fraught with peril. As we all know, our city is significantly encumbered by the need to wait for Congressional action as part of the often delayed federal budget process. I think we all agree that after 40 years of Home Rule, the District should be able to unilaterally enact its local budget, like every other jurisdiction in America. In fact, there is currently a bill in the House of Representatives, H.R. 345, the District of Columbia Budget Autonomy Act of 2011 which would grant us the right to do just that. It is not budget autonomy itself, but rather the means that this bill attempts to employ to resolve the situation that I find problematic.

Firstly, as reported in the Washington Post by Wayne Witkowski, former deputy attorney general for the legal counsel division in the DC attorney general's office and Leonard Becker former general council to Mayor Williams, the right to even have a referendum under the Home Rule Act, is an extension of the authority granted Congress under Article 1, Section 2 of the Constitution. And to quote them "that which Congress has given, Congress can limit or even take away." If our experience has taught us anything, it is that the authority granted Congress under the "District Clause" of the Constitution is absolute.

In 1998 for example as you know, the District overwhelmingly passed a referendum on medical marijuana and Congress refused to let us use any money to even count the votes. As a result of what Congress saw as an attempt to circumvent there authority, they used their power to control our budget to delay the count for a year and ultimately this initiative for more than a decade.

In addition, Witkoski and Becker go on to say that the language of the Home Rule Act "leaves little doubt" that Congress intended to prevent the District from usurping its authority over our budget "including over the portion of the DC Budget based on local revenue" They also point out that this is further complicated by the Federal Anti-Deficiency act, "which requires that expenditures of the federal and DC governments not exceed the amounts as appropriated by Congress" They conclude from this, that the District runs the risk of being sued and ultimately "the risk of setting back our legitimate effort to achieve budget autonomy through an act of Congress" by many years.

In addition to the legal concerns with taking this approach, I believe there are some practical political concerns that need careful consideration. For example, the fact that the referendum is being considered for inclusion on the ballot in the special election which will be held in the spring of 2013 is troublesome. Experience suggests that such an election, after a year with a Presidential election , is likely to produce low voter turnout. This year, the DC primary and the special election in Ward 5 both resulted in approximately 17% of registered voters participating. If this is any indication of what can be expected for the special election, that would mean that approximately 85% of the electorate would not vote in this referendum. You can rest assured that the first thing our critics on Capitol Hill will point out is that this hardly constitutes a mandate, regardless of the outcome. In the end, my concern is that we will be spending more precious time and resources on perusing a strategy that will lead us nowhere. I worked with many others for passage of the DC Voting rights Act. We spent more than six years and millions of dollars on an effort that, in the end, produced little and failed to bring about any change in representation. If we vote on this in April, it is sent to Congress for approval, is rejected just before the summer recess and we have to regroup in the fall, we have wasted another

year of precious time.

In the 40 years since the Home Rule Act was passed, we have tried many strategies to expand our rights and give us more control our local affairs with little to show for it legislatively. While we peruse a resolution on Capitol Hill this referendum makes us look disorganized, fragments our efforts and becomes yet one more distraction from our real mission of achieving equal rights through statehood; and this in my opinion is where the real trouble lies.

District voters have already approved a referendum in favor of statehood. It is statehood and only statehood that make us equal and is irrevocable, anything less is less. Our attempts to improve our situation incrementally have not produced significant results and as we continue down this path we only waste more time and precious resources. On Tuesday, Puerto Rico took a major step towards statehood by voting on a two part referendum in favor of changing its Commonwealth status and choosing statehood for the first time ever. Although this is just the next step and there are still many obstacles for them to overcome in getting admitted to the union as the 51st state, they have taken a significant step in moving their statehood effort forward.

Currently, there is a statehood bill in the House of Representatives, H.R. 265. Our Delegate Eleanor Holmes Norton, has already publicly committed to reintroduce this legislation in the next Congress. We have worked hard over the past 18 months and currently have 28 co-sponsors. This is, in my opinion, is where we need to focus our effort and resources . We need to get a companion bill introduced in the Senate and we must start a campaign to build support for this legislation outside the District. This is where our most important interests are. While Puerto Rico moves its statehood movement forward, here in the District we continue to trifle with the trivialities of incrementalism. Half measure and partial solutions are no more than distractions. Its time for us to come together and fight for statehood. As Frederick Douglass said ' Power concedes nothing without a demand, it is time for us to make a demand for statehood and fight to finally bring equality to the 618,000 loyal Americans who have entrusted us to do so. -- Thank You.

TESTIMONY OF KATHERINE S. BRODERICK, DEAN

UNIVERSITY OF THE DISTRICT OF COLUMBIA
DAVID A. CLARKE SCHOOL OF LAW

"Local Budget Autonomy Act of 2012"

COMMITTEE OF THE WHOLE

THE HONORABLE PHIL MENDELSON, CHAIR,

Council of the District of Columbia

***

12:00 PM

November 9, 2012

John A. Wilson Building

Room 500

Good Afternoon Chairman Mendelson and congratulations on your election to serve as Chair of the D.C. Council! My name is Shelley Broderick and I serve as proud dean of the University of the District of Columbia David A. Clarke School of Law, your tax dollars at work! I am here today to speak in favor of the "Local Budget Autonomy Act of 2012." I do so for two compelling reasons. First, I have been a D.C. resident since 1969. My husband and I own a home, and we raised our daughter Isabella here. She is a proud Tiger, a 2012 graduate of Wilson High School, DCPS at its best.

I believe that residents of the District of Columbia, including my family, should have the same rights and responsibilities as do the residents of every other jurisdiction in the nation. Well, we have the same responsibilities. We pay huge taxes. But we do not have the same rights, including both voting rights in the U.S. Congress and the right to spend our own tax dollars in the manner we please - - the manner we ask our local elected officials to determine. It is just not right that Congress has the authority to delay, to add offensive riders and to otherwise change the District of Columbia's budget as it can in no other jurisdiction.

Second, the practical effects and benefits achieved with budget autonomy will be very significant. Let me be specific. As dean of the public law school here in

town, I work for the University which is a part of the D.C. Government. As such, UDC operates on the DC government's fiscal year which begins October 1st. This fiscal year doesn't work for Universities which commence fall semester every year in August. We need to know our budget in advance of the academic year for highering and procurement purposes. We do not. The fact is that we routinely experience major delays as the U.S. Congress goes months into the fiscal year operating on continuing resolutions. Critical Initiatives are stifled and delayed while regular operations are frustrated. In order to ensure balanced budgets, the D.C. government cuts off spending at some point every summer. We are sometimes left to start the academic year without the necessary supplies and materials needed to support the effective delivery of the academic program.

Most state and local governments employ a July 1- June 30th fiscal year precisely so that their school systems can have budget certainty at the start of the academic year. The District of Columbia should have budget autonomy so that it can make that call.

In closing, I want to give you one example of how the lack of budget autonomy works to the detriment of the District. Think back to April of 2010, when the country faced the shut down of the federal government. It was a chaos,

more so in the District than anywhere else, because the shut down of the federal government would necessitate the shutdown of the DC government. I do not have to remind this audience what that meant. Unlike anywhere else in the country, we would have had to close our public schools, and our University system. The US Military colleges, West Point, Annapolis and the others, received special dispensation. They were designated as "essential." UDC would have been closed. In the case of the law school, even our legal clinics would have been closed. Imagine, hundreds of low-income vulnerable clients, tenants, children with special education needs, seniors, immigrants, people with HIV or aids and so many more would have lost legal representation despite pending court dates and other potential harm. I personally petitioned the attorney general for a waiver and received it at the 11th hour. But this isn't right and it isn't fair. No other jurisdiction would put up with this we shouldn't either.

I will leave to others to parse through the legalities of this approach. I have talented good friends on both sides of the argument. For my part, I support autonomy for the District of Columbia and this approach can work. It is the right thing to do. I would be glad to answer any questions.

Testimony before the District of Columbia Council Committee of the Whole

Anita Bonds
Chairperson, District of Columbia Democratic Committee
Washington, DC
November 9, 2012

Good afternoon. Mr. Chairman, Councilmembers... I am Anita Bonds, Chairperson the District of Columbia Democratic Party accompanied today by fellow members Janice Davis and James Bubar who are co-chairs of the DC Party's Statehood and Self-determination Committee. Thank you for the opportunity to appear before you today in support of budget autonomy for the District.

I am equally pleased to appear as a member of a bi-partisan panel – with a representative of the DC Republican Party. On the matter of budget autonomy, both parties agree.

It is a desire that is fundamental to progressing the District's objectives for full democracy and Statehood closer to reality in our lifetime. Since District voters approved the Home Rule Charter in 1974 and even more so, as District population increases at the rate of 1000 or more new residents monthly, the outcry for greater self-determination and Statehood grows louder. Surely the halls of Congress ring for justice, equality and full democracy for the residents of the capital of the greatest country the world has ever known.

Thanks to each of you for your diligence, persistence of purpose, thoughtfulness and bravery by proposing to put before District voters the question of separating local revenues out of the federal budget acts and thus allowing locally raised funds to be available to the District irrespective of the timing when the annual federal budget is enacted.

Passage of the proposed ballot referendum by District voters will surely aid members of the District's communities, establishments and society in acquiring stronger voice and gaining greater dignity, confidence and drive in the fight for Statehood. Thank you again for all that you do.

At this time, let me turn to my Democratic colleagues for remarks – Committeewoman Davis, who is an able Party leader and also serves as the National President of the National Federation of Democratic Women, representing more than 40K women nationwide in 28 states, the District and Puerto Rico. Following Janice, will be James Bubar, another Party leader who also serves as Special Counsel to Party and is the Alternate National Committeeman.

Thanks again for the opportunity to put on record the local Democratic Party's position of support for budget autonomy for the District.

STATEMENT OF MAUDINE R. COOPER
PRESIDENT AND CEO
GREATER WASHINGTON URBAN LEAGUE
COUNCIL OF THE WHOLE
DC BUDGET AUTONOMY ACT OF 2012

NOVEMBER 9, 2012

Good afternoon Council Chairman Mendelson and members of the Council of the Whole. I am Maudine R. Cooper, President and CEO of the Greater Washington Urban League.

The Greater Washington Urban League is one of nearly one hundred affiliates of the National Urban League. For 75 years, the Greater Washington Urban League has been dedicated to empowering underserved communities through our programs in areas that include education, employment, and housing. Our mission is "to increase the economic and political empowerment of blacks and other minorities and to help all Americans share equally in the responsibilities and rewards of full citizenship." The League has worked, and continues to work, to move African-American and other minority groups from economic disadvantage to economic self-sufficiency. I am pleased to be here today and would like to thank the Council for their continuing dedication to an important first step toward DC Budget Autonomy.

Budget autonomy would advance the mission of the League both directly and indirectly. The residents that we serve rely on the health and stability of the local government for much of their support. We have the privilege of partnering with the DC government to deliver these services. Entrenchment by the partisan gridlock that often threatens to paralyze the federal government can have the same impact on us locally. We are facing a situation today, whereby the federal government that we rely on is divided and slow-moving.

Federal government decisions impact our mission and may have a negative effect on the communities that we serve. The groups that rely on our programs often rely on other federal and

local programs as well. The situation that we face is dangerous to our constituencies. To promote the welfare of its citizens is the primary function of every well-formed government. Under the current system, the local government's ability to meet these obligations is being obstructed.

Many of us have felt the pressure in the past when Congress did not approved the various federal budgets in a timely fashion. DC's budget was often a part of this process. As a result, many DC programs were not able to spend at the levels ultimately approved by Congress and the City Council. Programs scheduled to begin, newly authorized or continued from the previous year often start well into the new fiscal year. Expenditures were therefore at the previous year's level. We often attempted to run our government on the infamous continuous resolution. We have also had the unfortunate experience of sending letters to employee's creditors explaining the lateness of their payments.

Many will speak to the issues of interest payments and hiring delays that occur when new programs cannot start because of Congressional delays in approving the budget of the District of Columbia.

As residents of the District of Columbia, we should fully support the idea of local residents and the council having authority to oversee our own local budgets. The Local Budget Autonomy Act of 2012, would give residents a voice on our local budget. Since we are disenfranchised, having no vote in Congress, many believe this local budget autonomy act gives us some of the liberties and freedom that other United States citizens have over their local issues and local budgets. We strongly support this act due to the gridlock, we saw in Congress last year, when Congressional representatives could not agree on a budget. It showed how vulnerable local

residents of the District of Columbia were in not having a voice or time frame on dealing with local funds for local issues. This type of injustice is not acceptable and as local residents of the

District of Columbia we should not stand for it. We already know that several wards in the District are hard hit by the economic downturn, especially residents in wards 7 and 8.

Budget autonomy will make the budget process faster and will conserve resources that are being wasted under the current system. It would improve both the process and the results.

Some have already begun the discussion around the legality of the District's effort to have budgetary autonomy. We must use our backbones to stand up for the citizens of the District. Let the Courts tell us that we cannot do this; let the Congress tell us and prove to us that we cannot do this.

We have been fighting for the District and some degree of autonomy for a long time. But I once heard a well known and prominent politician say to a newly elected official, you need to know your budget and personnel. The rest will come to you. We need to know the budget!

Kudos to the members of the City Council. You are truly speaking for our citizens.

Budget Autonomy for the District of Columbia

Testimony of Alice M. Rivlin*

Before the Council of the District of Columbia

Committee of the Whole

Friday, November 9, 2012

Mr. Chairman and Members of the Committee:

I strongly support budget autonomy for the District of Columbia and am pleased to appear at this hearing on Bill 19-993, the local Budget Autonomy Act of 2012. I last testified on this subject in November, 2009, before the Subcommittee on Federal Workforce, Postal Service and the District of Columbia of the U.S. House of Representatives. At the time, it seemed possible, even likely that Congress would pass a federal statute giving DC the power to spend locally raised revenue in accordance with local legislative process. Like many others, I was disappointed when that effort proved unsuccessful. I admire the persistence of the DC Council for trying the alternate route of charter amendment to achieve budget autonomy for DC.

Budget autonomy would improve the functioning of DC government and benefit DC taxpayers. All but about two percent of the District's budget comes from local sources (taxes, fees and other revenues) or from federal programs, such as Medicaid, that are available to all jurisdictions. The District has a thorough process of deciding how it wants

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***Alice M. Rivlin is a Senior Fellow at the Brookings Institution and a Visiting Professor at Georgetown University. The views expressed in this statement are strictly her own and do not necessarily reflect those of staff members, officers, or trustees of the Brookings Institution or Georgetown University.**

well as the rating agencies. In this period the Congress has stopped meddling and hardly ever interfered with decisions made by DC officials about the allocation of locally raised revenue. While the vestigial process of congressional appropriation of locally raised funds has remained as a nuisance for local officials, an expense for local taxpayers, and a source of uncertainty when the federal government's own financial decisions are in disarray, it has rarely served as an instrument for congressional control of local policy. It is time to recognize that congressional appropriation of the District's own funds is an anachronism that should be ended.

Thank you, Mr. Chairman and members of the Committee.

The Washington Teachers' Union
Statement for the Record

Public Hearing on the District's Local Budget Autonomy Act

November 9, 2012

Submitted by:
Nathan A. Saunders
President

Good afternoon Chairman Mendelson and Councilmembers in attendance. My name is Nathan A. Saunders. I am the President of the Washington Teachers' Union ("WTU") and I am here to speak on behalf of more than 4000 members of the Washington Teachers' Union regarding the District's Local Budget Autonomy Act.

The Washington Teachers' Union stands in support of the Local Budget Autonomy Act for several reasons. The ability for the District to approve its own budget and manage its spending will be of significant benefit to District of Columbia public school teachers as well as the entire D.C. government.

First, the ability for the District to have an autonomous budget will free the District from being held captive to congressional and senatorial disagreements. When politicians on Pennsylvania Avenue fight and hold up District money, our teachers and other public service workers suffer. According to the District's Chief Financial Officer, the estimated costs of a federal shutdown could cost the District from $1 million to $6 million per week in lost revenue[1]. That is money the District of Columbia cannot afford to lose.

Although the District has been thought of as being insulated from the fiscal and economic and hardships faced by the rest of our nation, District residents have been hit hard be the economic downturn. The District of Columbia must be able to remain operational during a federal government shut down in order to prevent further harm to our city workers and residents. We must be able to ensure the uninterrupted education of our children, without furloughs or

[1] Federal shutdown: A game that carries real costs, Washington Post April 8, 2011; http://www.washingtonpost.com/opinions/a-federal-shutdown-a-game-that-carries-real-costs/2011/04/07/AFLAl20C_story.html

budgetary cuts to our public school system. The public school system has already suffered budgetary cuts which eliminated teachers, special education coordinators, school librarians, and other vital school personnel. We cannot continue to compromise the education of our children.

Second, the Act would streamline the budget process for the District. As it currently stands, the intertwining of federal appropriations to the local revenues of the District budget adds an average of three months to the District's budget process. This delay adds up to real dollars and cents for the District in hiring delays, lost revenues and up to $3 million in costly interest incurred as a result of unnecessary borrowing. This Act would allow the Council to enact a local budget which would allow the District to start using locally-raised revenue faster and more efficiently.

Finally, this Act is important not only because it allows the District government more control and autonomy of its money, but also because it provides another opportunity for the Council and District government leaders to establish a path to full democracy for the District. As a social studies teacher and a fervent advocate for democracy, I know the importance of a jurisdiction's ability to have a real say in what happens to its money. The Council and this city need to serve as an example for our children. We need to demonstrate what it means to be fiscally responsible. This Act benefits not only benefits the more than 4,000 public school teachers – but also the greater District of Columbia community.

As a leader and as a taxpayer, I believe it is imperative that the District of Columbia government has local control over the budget. This autonomy brings with it additional revenue, efficient

governance, and a greater sense of belonging and participation in the democratic process for which this country stands for.

Thank you for the opportunity to provide guidance to the Council. If I may be of further assistance, please do not hesitate to call on me.

Nathan A. Saunders

From: Ann Loikow <aloikow@verizon.net>
Subject: **Referendum on Budget Autonomy**
Date: November 9, 2012 1:15:39 AM EST

From: Ann Loikow
Date: October 2, 2012 7:43:16 PM EDT
To: The Honorable Mary Cheh, The Honorable Phil Mendelson, The Honorable David A. Catania, The Honorable Vincent B. Orange, The Honorable Marion Barry, The Honorable Michael A. Brown, The Honorable Jim Graham, The Honorable Muriel Bowser, The Honorable Yvette Alexander, The Honorable Jack Evans, The Honorable Kenyan McDuffie, The Honorable Tommy Wells
Cc: Michael D. Brown, Paul Strauss, Michael Panetta
Subject: Referendum on Budget Autonomy

Dear Chairman Mendelson and Members of the Council:

I just read in the Washington Post and Washington Times today that you were going to introduce a charter referendum bill to amend the charter to give the District government budget autonomy. What I can't understand is why the Council continues to act like a colonial legislature and nibble around the edges of the Congressional constraints that deny us the right to govern ourselves, and not demand what would really make the people of the District of Columbia full and equal citizens of these United States -- Statehood!

A charter amendment, much like an act passed by Congress granting us budget autonomy, is just a *temporary* measure that Congress would still have the authority to amend or revoke at *any* time for *any* reason. Please don't delude yourselves to think that Congress wouldn't continue to insert itself into our budget. During the District of Columbia's first 74 years, there was considerable and varying degrees of local autonomy, but in 1874 we lost everything for almost a century. In the 1990's, Congress again took away many of our post home rule local powers and gave them to a Federal control board, the statutory power for which still exists. It could easily happen again. Mere budget autonomy would *not* make us full American citizens with the same rights as other Americans. Only statehood would do that. In addition, as D.C. Attorney General Irvin Nathan and George Washington University law professor Jonathan Turley have indicated, a charter referendum on budget autonomy, like so many of the "interim" measures pursued in recent decades, is of doubtful legality and could easily end up in court.

Why won't you, our elected officials, actively support *statehood*, the one measure that would give the people of the District their *full* right to govern themselves, *permanently and without qualification*? Statehood is the only solution to our lack of the right to self-government that the voters have ever endorsed. Why should we have a referendum on something that will just further cement our colonial status and still leave us without the fundamental human right to self-government? Over the past several decades, we have wasted so much time, money and effort on partial, but ultimately legally questionable and ineffective measures that would still leave us a colony of the rest of the United States.

I am amazed that the Council does not understand that one can only be free when you have ALL your rights and, most particularly, the right to self-government from which everything else flows. As Thomas Jefferson wrote in the Declaration of Independence: "WE hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness -- *That to secure these Rights, Government are instituted among Men, **deriving their just Powers from the Consent of the governed**....*" District voters have not given our "consent" to our colonial status. We have only consented to statehood, the one thing that would give us all our rights and put us on an equal footing with other Americans.

The bottom line is that people can only be completely free and independent, not a little. It is an all or nothing proposition. It is like pregnancy, you are either pregnant or you're not. You can't be half pregnant. Similarly, you can't be half free. If you just remove the shackle from one leg and leave the other, you are still enslaved. In our case, all the partial measures just mean that we are still colonists and not full American citizens. It is a trap to think we can be a "little free" and it is ok. We are either free people with the right to self-government in all its aspects or we are not. It is just that simple.

Sincerely,

Ann Loikow

The Case for D.C. Statehood

For over two centuries, the people of the District of Columbia have had no representation in their national legislature. However, voting representation in Congress and "taxation without representation" are merely symptoms of a larger problem, the lack of statehood. Statehood would give the District of Columbia state sovereignty from which flows full Federal representation and full voting rights in Congress. Virtually all constitutional scholars, of whatever political persuasion, agree that the simplest and most constitutional way to give people of D.C. the same rights as all other Americans is by making the residential and commercial parts of the District a state.

Article I, section 2, of the Constitution explicitly says that "(t)he House of Representatives shall be composed of Members chosen ... by the People of the several *States*, and the Electors in each *State* shall have the Qualifications requisite for Electors of the most numerous Branch of the *State* legislature." Article I, section 3, says that "(t)he Senate of the United States shall be composed of two Senators from each *State* ...." (Italics added)

Although there have been several "voting rights" bills introduced in the last decade to give District's nonvoting delegate a vote (a position every U.S. colony has, including Puerto Rico, Guam, American Samoa, the Virgin Islands and the Northern Mariana Islands), there are numerous legal opinions challenging the constitutionality of this, including one from the Justice Department. See http://www.justice.gov/olc/2007/dcvotingrights-act-2007.pdf, May 23, 2007 testimony of John P. Elwood, Deputy Assistant Attorney General, before the Subcommittee on the Constitution, Civil Rights, and Property Rights of the Senate Committee of the Judiciary on S. 1257, the District of Columbia House Voting Rights Act of 2007. Deputy Assistant Attorney General Elwood concluded his testimony saying:

> "The clear and carefully phrased provisions for State-based congressional representation constitute the very bedrock of our Constitution. These provisions have stood the test of time in providing a strong and stable basis for the preservation of constitutional democracy and the rule of law. If enacted, S. 1257 would undermine the integrity of those critical provisions and open the door to further deviations from the successful framework that is our constitutional heritage. If the District is to be accorded congressional representation without Statehood, it must be accomplished through a process that is consistent with our constitutional scheme, such as amendment as provided by Article V of the Constitution."

D.C. has already tried the constitutional amendment route to gaining full participation in the *Federal* government. In 1978, two-thirds of the House and Senate passed the Voting Rights Amendment introduced by D.C.'s nonvoting delegate, Walter Fauntroy. This constitutional amendment would have given the District full voting rights in both houses of Congress and a unrestricted vote for President (the 23rd amendment limits D.C., regardless of its population, to the same number of electoral votes as the least populous state, and there were then and are now states with fewer people). Unfortunately, three-fourths of the states did not ratify it before the amendment expired in September 1985.

In extensive testimony on H.R. 325, the the New Columbia Admission Act, a statehood bill introduced by D.C. Delegate Walter E. Fauntroy, on June 11, 1986, Rep. Peter W. Rodino, Jr., Chairman of the Committee on the Judiciary of the U.S. House of Representatives, discussed the the proposed 1978 Constitutional amendment (see http://dcstatehoodyeswecan.org):

> "The proposed amendment was, nonetheless, a modest measure in that *it would not have*

resulted in full self-determination for District residents. Under the proposal, the District would at last, have had its full complement of voting representation in both Houses, although *Congress would have continued exclusive control over the city,* subject to the limited "Home Rule" it currently enjoys." (Emphasis added)

The bottom line is that a campaign for "voting rights" is likely to end in a lawsuit and no vote in Congress.

The real problem is the District's lack of statehood, not "voting rights" in Congress. Anything other than statehood leaves the people of the District with fewer rights than other Americans, i.e., they still are colonists or "subjects" of other Americans as President William Henry Harrison said in his inaugural address in 1841:

> "Amongst the other duties of a delicate character which the President is called upon to perform is the supervision of the government of the Territories of the United States. ... It is in this District only where American citizens are to be found who under a settled policy are deprived of many important political privileges without any inspiring hope as to the future. ... We are told by the greatest of British orators and statesmen that at the commencement of the War of the Revolution the most stupid men in England spoke of "their American subjects." Are there, indeed, citizens of any of our States who have dreamed *of their subjects* in the District of Columbia? Such dreams can never be realized by any agency of mine. The people of the District of Columbia are not the subjects of the people of the States, but free American citizens. Being in the latter condition when the Constitution was formed, no words used in that instrument could have been intended to deprive them of that character. ...." http://www.bartleby.com/124/pres26.html

Remember there have been empires in history that let the colonists have representation in their national legislature. Sam Smith, a founder of the Statehood Party and one of D.C.'s most noted alternative journalists, always talked about Algeria. As a French colony, Algeria had a voting representative in the French national assembly, but it was still a colony. It took a war of independence for Algerians to truly have the right to self-government.

Without statehood, as Rep. Rodino pointed out, Congress would continue to "exercise exclusive Legislation in all Cases whatsoever," over the District. In effect, Congress is D.C.'s state legislature. Any right or power Congress gives the people of D.C., Congress can revoke at any time and it has, over and over, for 212 years. For almost a century, the people of D.C. had *no* right to vote on anything or for anyone. In the October 1986 briefing booklet on D.C. statehood, *If You Favor Freedom*, Rep. Rodino wrote that:

> "Over the years, Congress has organized a variety of governments for the District of Columbia, including the current 'Home Rule' Government. In fact, in 1871, Congress established a 'Territorial government' in the District, with a governor and bicameral legislature. That government, like many before and after it, was subsequently abolished by Congress."

Under Home Rule, to the extent authorized by Congress, the Mayor and D.C. Council exercise both state and local functions. States are the fundamental unit of government in the United States. It was the people of the original 13 colonies, which included the people living in what is now the District of Columbia, who created the original 13 states. As the Declaration of Independence describes it:

"WE hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness - That to secure these Rights, Governments are instituted among Men, *deriving their just Powers from the Consent of the Governed* ...." (Emphasis added)

The people of the District of Columbia have not given their consent to the Government than governs them. They have not elected any of the 535 people who rule their lives and who treat them as their subjects. Congress routinely disrespects D.C.'s nonvoting delegate and Mayor by not allowing them to testify on bills affecting *only* the District.

In contrast to statehood, which is a permanent status that can't be revoked, the D.C.'s current "Home Rule" government is a temporary limited delegation of authority that Congress can amend or revoke at any time for any or no reason at all. The total control Congress exercises means that no law the D.C. Council passes goes into effect until Congress either affirmatively approves it, like the budget, or decides not to object to it. However, Congress always reserves the power to amend or repeal any law applying to the District at any time, including the charter that created our "Home Rule" government in 1973.

All states enter the union on equal footing and subject to the same laws. If the District were to become a state, Congress could not pass special legislation for the state of New Columbia only. Now, though, Congress has both the powers of *both* a federal *and* a state legislature with regard to the District. Not being a state, the 10th amendment does not apply to D.C. so Article I's limits on the authority of Congress doesn't apply in the District.

In their daily lives, District residents suffer most from the lack of statehood and control over state level functions, not from a lack of Congressional representation. Many District residents have become infected and died from HIV-AIDS because for a decade Congress prohibited the District government from exercising the public health practices, such as needle exchange, that other U.S. jurisdictions used to stem the HIV-AIDS epidemic. As a result, the District has the highest level of HIV-AIDS infection in the nation. It is at epidemic levels as defined by the CDC and comparable to rates in southern Africa.

Only in the District has Congress ever prohibited a state or locality from counting the ballots in an election. The District government had to go to Federal District Court in 1998 to get the right to count the ballots on a 1998 medical marijuana initiative. Even after finding out that it passed overwhelmingly, only fourteen years later is it actually about to be implemented. For a number of years, Congress also prohibited the District government from using local tax funds for petition drives or civil actions for greater political rights. Thus, unlike many other territories that became states, we were unable to compensate or fund our shadow senators and representatives and their offices. Congress has also prohibited the use of both Federal and D.C. funds for abortions for poor D.C. women, rejected the Council's revisions to the District's sexual assault law and local land use law and, in the 1990's, the implementation or enforcement of a domestic partners act. In addition, it wasn't until 1940 that Congress finally passed a law allowing D.C. residents to have access to the Federal courts under diversity jurisdiction.

A recent effort to pass a law giving D.C. budget autonomy (i.e., not requiring Congress to affirmatively approve the budgeting and expenditure of locally raised tax funds) died because of Congressional riders to codify the District-funded abortion ban, revise the District's firearms regulations (which a Federal court had previously upheld), and prohibit the District government from requiring government

contractors to be union members. Similarly, an amendment removing the D.C. government's authority to regulate firearms at all killed attempts to pass a "voting rights" act a few years ago.

Congress must approve the District's annual budget. It treats the District budget as a federal agency budget and folds it into general government budget bills. This means that although the Mayor and Council promptly approve a balanced budget and transmit it in a timely manner to Congress, the District government faces a shutdown when Congress has not approved the Federal budget on time. Since Congress has routinely not approved all the Federal budget bills before the beginning of the fiscal year, this is an annual threat to the funding and operations of the District government and the local services it provides to its residents. What is particularly outrageous is that the national issues that prevent Congress from enacting a budget have nothing to do with the District of Columbia, but the people of the District pay the price in contingency planning expenses, shutdown costs, and higher interest rates on District bonds as bond rating agencies rightly see the District's budget process as overly long and uncertain because of the impossibility of predicting what Congress will do.

Even if we had a full Congressional delegation, the impact of the lack of statehood would not change much since we would only have two votes out of 102 in the Senate and one out of 536 in the House and Congress would still be our state legislature.

Retrocession is a legitimate way to achieve statehood, but is also another likely dead end. Statehood only requires Congress to pass a *single* law admitting the State of New Columbia to the union. Retrocession requires three laws, as both the State of Maryland and the D.C. Council must request it and Congress must agree. The District of Columbia and Maryland have been separated for over *two centuries*, longer than most nations of the world have existed in their current form. Both have developed separate identities and histories. In addition, adding a large urban area to Maryland would dramatically change the state's political balance. A retrocession bill was introduced in the Maryland legislature in the 1980's and died a quiet death for lack of support.

Finally, pushing for voting rights and budget autonomy and other partial measures misdiagnoses the problem and its solution. It also ignores the fact that **statehood is *only* path to self-government that District voters have ever approved.**

People can only be completely free and independent, not a little. It is an all or nothing proposition. It is like pregnancy, you are either pregnant or you're not. You can't be half pregnant. Similarly, you can't be half free. If you just remove the shackle from one leg and leave the other, you are still enslaved. In our case, all the partial measures just mean we are still colonists and not full American citizens. **Please don't get drawn into the trap of thinking one can be a "little free" and it is ok. You are either a free person with the right to self-government in all its aspects or you are not. It is just that simple.**

Ann Loikow
Washington, D.C.

Timeline - 212 Years of the District of Columbia's Efforts to Restore Self-Government

The residents of what is now the District of Columbia lost their full democratic rights to self-government and a government of, by and for the people over 200 years ago. Ever since then, they have been demanding that Congress restore the full rights of American citizenship

1788 The General Assembly of the State of Maryland authorizes the cession of territory for the seat of government of the United States, "acknowledged to be forever ceded and relinquished to the Congress and Government of the United States, and full and absolute right and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution... And provided also, That the jurisdiction of the laws of this State over the persons and property of individuals residing within the limits of the cession aforesaid shall not cease or determine until Congress shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the article of the Constitution before recited." The Maryland Assembly passes supplementary acts of cession in 1792 and 1793 regarding the validity of deeds and sale of property in the new capital.

1789 The General Assembly of the Commonwealth of Virginia authorizes the cession of territory for the permanent seat of the General Government as Congress might by law direct and that the same "was thereby forever ceded and relinquished to the Congress and Government of the United States, in full and absolute right, and exclusive jurisdiction...." Like Maryland, Virginia's act of cession provides that Virginia law shall continue to apply until Congress, "having accepted the said cession, shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the articles of the Constitution before recited" (District clause).

1790 Congress accepts the territory ceded by the State of Maryland and the Commonwealth of Virginia to form the Seat of Government of the United States and declares that on the first Monday in December 1800 the Seat of Government of the United States shall be transferred to such district and authorizes the President to appoint three commissioners to survey and purchase land and prepare it for the new government which is to take up residence on the first Monday in December 1800.

1791 President George Washington issues several presidential proclamations defining and fixing the boundaries of the new District.

1790-1800 Qualified residents of the new District of Columbia continue to vote in elections of federal officers conducted in Maryland and Virginia, including Representatives in Congress, even though Maryland and Virginia ceded the land to the Federal government and the District's boundaries had been drawn.

1800 The Seat of Government of the United States is transferred to the new District of Columbia.

1800 In December, during the debates over what would become the Organic Act of 1801, **Rep. John Smilie** (PA – Republican) declares: "Not a man in the District would be represented in the government, whereas every man who contributed to the support of a government ought to be represented in it; otherwise his natural rights were subverted and he was left not a citizen but a subject. This was one rights the bill deprived these people of, and he had always been taught to believe it was a very serious and important one. It was a right which this country, when under subjection to Great Britain, thought worth making a resolute struggle for, and evinced a determination to perish rather than not enjoy."

1801 A lame duck Federalist Congress passes the Organic Act of 1801 on Feb. 27, 1801 and divides the District into two counties, the county of Washington (Maryland cession) and the county of Alexandria (Virginia cession). The act creates a circuit court for the District of Columbia, authorizes the appointment of a U.S. Attorney, marshals, justices of the peace, and a register of wills for the District. It also provides that the act shall not "alter, impeach or impair the rights, granted by or derived from the acts of incorporation of Alexandria and Georgetown [incorporated cities in Virginia and Maryland prior to cession]. No longer in a state, D.C. residents lose their state and national representation (Senators were then elected by state legislatures) and their local self-determination to the extent they do not live in the two incorporated cities.

1801 A.B. Woodward publishes a pamphlet proclaiming: "This body of people is as much entitled to the enjoyment of the rights of citizenship as any other part of the people of the United States. There can exist no necessity for their disenfranchisement, no necessity for them to repose on the mere generosity of their countrymen to be protected from tyranny; to mere spontaneous attention for the regulation of their interests. They are entitled to a participation in the *general councils* on the principles equity and reciprocity."

1802 Congress abolishes the board of commissioners and incorporates the City of Washington (formerly in the County of

Washington) with a presidentially appointed mayor and a popularly elected council of 12 members with two chambers, one with seven members and the second with five members, the second chamber to be chosen by all the members elected. All acts of the council must be sent to the Mayor for his approval. Suffrage is limited to "free, white male inhabitants of full age, who have resided twelve months in the city and paid taxes therein the year preceding the election's being held."

1803 Because of the "unrepublican" condition of the District, Congress considers retrocession of the District back to Maryland. Discussing the resolution in February, **Rep. John Randolph, Jr.** (VA- Democratic-Republican) declared "I could wish, indeed, to see the people within this District restored to their rights. This species of government is an experiment how far freemen can be reconciled to live without rights; an experiment dangerous to the liberties of these states. But inasmuch as it had been already made, inasmuch as I was not accessory to it, and as at some future time its deleterious effects may be arrested, I am disposed to vote against the resolution."

1803 Rep. John Smilie (PA-Republican) countered: "Here, the citizens would be governed by laws, in the making of which they have no voice – by laws not made with their own consent, but by the United States for them – by men who have not the interest in the laws made that legislators ought always to possess – by men also not acquainted with the minute and local interests of the place, coming, as they did, from distances of 500 to 1,000 miles." He added "You may give them a charter, but of what avail will this be, when Congress may take it away at any moment? They would continue forever to be ultimately governed by a body over whom they had no control." After much debate, the resolutions on retrocession failed 66 to 26.

1804 Congress extends the 1802 charter 15 years and provides for the direct election of both houses of the Council, each with nine members.

1804-1805 Congress again considers retrocession of all parts of the District except the City of Washington (i.e., Alexandria, Alexandria County, Georgetown and Washington County). **Rep. Ebenezer Elmer** (NJ-Republican) argued that District residents are "as much the vassals of Congress as the troops that garrison your forts, and guard your arsenals. They are subjects, not merely because they are not represented in Congress, but also because they have no rights as freemen secured to them by the Constitution. They have natural rights as men, and moral agents; they may have some civil rights constructively secured to them by the Constitution; but have not one political right defined and guaranteed to them by that instrument, while they continue under the exclusive jurisdiction of Congress." After much debate, Congress again rejected retrocession.

1812 Congress amends the charter of the City of Washington to enlarge the council, now consisting of an elected board of aldermen (8 members) and an elected board of common council (12 members). The Mayor is to be elected by the two boards in a joint meeting. Congress also expands the corporation's taxing authority and authority to develop public institutions, although subject to the approval of the President (including the budget) since the Mayor will no longer be a Presidential appointee.

1812 Congress confers certain powers upon a levy court or board of commissioners for the County of Washington (part of Maryland cession not included in the city of Washington) primarily dealing with taxes for public improvements such as roads and bridges. The board has seven members designated by the President from existing magistrates in the county.

1820 Congress repeals the 1802 and 1804 acts and reorganizes the government of the City of Washington by providing for a popularly elected Mayor. Existing elected council continued.

1820 In ***Loughborough v. Blake*** (18 U.S. (5 Wheat) 317 (1820), the Supreme Court held that "the constitution does not consider [District citizens] want of a representative in Congress as exempting it from equal taxation." This means it IS constitutional to have taxation without representation!

1822 A **Committee of Twelve**, appointed "pursuant to a resolution of a meeting of the Inhabitants of the City of Washington," requests from Congress a republican form of government and the right to sue and to have federal representation "equal to citizens who live in States. ... The committee confess that they can discover but two modes in which the desired relief can be afforded, either by the establishment of a territorial government, suited to their present condition and population, and restoring them, in every part of the nation to the equal rights enjoyed by the citizens of the other portions of the United States, or by a retrocession to the states of Virginia and Maryland, of the respective parts of the District which were originally ceded by those states to form it." Washington City residents were not interested in retrocession, however.

1824 Led by Stevens Thomson Mason, George Mason's grandson, Alexandrians mount their first local retrocession

movement, but find limited support.

1825 On December 28, a **Committee of Thirteen** sends a ten-page Memorial to Congress "praying for an amelioration of their civil and political condition" and says that they should be treated at least as well as territories.

1832 Alexandrians, particularly merchants, feeling they were receiving less favorable treatment than District residents on the Maryland side of the Potomac, begin to more seriously push for retrocession. On January 24, elected officials of Alexandria City held an advisory referendum on retrocession that failed 419 against to 310 for it.

1835 The Common Council of Alexandria appointed a committee of Francis I. Smith, Robert Brockett, and Charles T. Stuart "attend to the interests of the Town before Congress." They presented an 11 page memorandum to the District Committee urging retrocession and saying "that we are a disfranchised people, deprived of all those political rights and privileges, so dear to an American citizen...."

1838 The Maryland Senate creates a select committee on the retrocession of Georgetown to Maryland. Although the committee recommended taking Georgetown back, a vote sponsored by the Board of Common Council of Georgetown revealed that only 139 of 549 Georgetown residents favored retrocession. Congress instructed the Committee on the District of Columbia to re-examine retrocession, but Committee reported on April 11 against it. Various bills were introduced in Congress from 1838-1841, especially after Congress refused to recharter District banks.

1841 In his inaugural address, **President William Henry Harrison** says "Amongest the other duties of a delicate character which the President is called upon to perform is the supervision of the government of the Territories of the United States. Those of them which are destined to become members of our great political family are compensated by their rapid progress from infancy to manhood for the partial and temporary deprivation of their political rights. It is in this District only where American citizens are to be found who under a settled policy are deprived of many important political privileges without any inspiring hope as to the future. ... **Are there, indeed, citizens of any of our States who have dreamed of their subjects in the District of Columbia?** ... The people of the District of Columbia are not the subjects of the people of the States, but free American citizens. Being in the latter condition when the Constitution was formed, no words used in that instrument could have been intended to deprive them of that character."

1846 Congress, **the Virginia Legislature and the City of Alexandria approve the retrocession of the county and town of Alexandria** (what is now Arlington County and the City of Alexandria) back to Virginia, decreasing the size of D.C. by a third. The referendum on retrocession passes 763 for to 222 against. Residents of Alexandria City approve the retrocession (734 for to 116 against), while residents of Alexandria County, disapprove it (29 for to 106 against).

1848 Congress reorganizes the government of the City of Washington, approving a new charter that allows voters to elect the Board of Assessors, the Register of Wills, the Collector, and the Surveyor. It abolishes the property qualifications for voting and extends voting rights to all white male voters who pay a one dollar yearly school tax.

1850 Congress ends the slave trade in D.C.

1862 On April 16th, **"Emancipation Day,"** nine months before the Emancipation Proclamation is issued, Congress abolishes slavery in D.C., compensating owners of the freed slaves, and establishes a school system for black residents.

1867 Congress grants the vote to every male person "without any distinction on account of color or race" who is not a pauper or under guardianship, is twenty-one or older, who has not been convicted of any infamous crime and has not voluntarily given "aid and comfort to the rebels in that late rebellion," and who has resided in the District for one year and three months in his ward. African Americans make up 33% of the District's population and wield considerable political power.

1868 D.C.'s Rosa Parks, Kate Brown, an African American employee of the U.S. Senate, took the train to Alexandria and took a seat in the car reserved for white "ladies." When she tried to return in the same car, she was told to leave the car and refused saying " I bought my ticket to go to Washington in this car, and I am going in it; before I leave this car I will suffer death." Railroad staff and security guards dragged her out of the car and so badly beat her that she ended up in the hospital. The Senate Committee on D.C. investigated the matter and she filed a lawsuit against the railroad. The case went to the Supreme Court, which ruled in her favor in 1873 and awarded her $1,500 in damages.

1871 Congress repeals the charters of the cities of Washington and Georgetown and creates the **Territory of the District of Columbia**. The Territory will have a Presidentially appointed Governor and Secretary to the District, subject to

Senate confirmation, a bicameral legislature with a Presidentially appointed upper house and Board of Public Works, both subject to Senate confirmation, and a popularly elected 22 seat House of Delegates, and **a nonvoting Delegate to the House of Representatives**. Norton P. Chipman is D.C.'s first nonvoting Delegate to the U.S. House of Representatives. Nevertheless, D.C. voters lose the right to elect their Governor and the upper house of their legislature.

1874 Congress removes all elected Territorial officials, including the nonvoting Delegate in Congress, temporarily replaces the Territorial government with three Presidentially appointed commissioners, and places an officer of the Army Corps of Engineers in charge, under the general supervision and direction of the commissioners, of public works in the District. The First and Second Comptroller of the Treasury are appointed to a board of audit to audit the Board of Public Works and the Territorial Government's financial affairs.

1878 Congress passes the Organic Act of 1878 which declares that the territory ceded by the State of Maryland to Congress for the permanent seat of government of the United States shall continue to be the District of Columbia and that it shall be organized as a municipal corporation of which the officers shall be three Presidentially appointed commissioners, one of whom shall be an officer of the Army Corps of Engineers. The board of the metropolitan police, the board of school trustees, the offices of the sinking-fund commissioners, and the board of health are abolished and their duties and powers transferred to the Commissioners. The Commissioners' proposed annual budget must be approved by the Secretary of the Treasury and by Congress. The federal payment is set at fifty percent of the budget Congress approves. Congress must also approve any public works contract over $1,000.

1879 The court in *Roach et al. vs. Van Riswick* decided that Congress has no capacity under the Constitution to delegate its delegated powers by bestowing general legislative authority upon the local government of the District of Columbia and declared the act of the District's legislative assembly upon which the suit was brought inoperative and void.

1880 According to the Census, the District had 177,638 people in 1880 and 203, 459 in 1885. The 1880 census figure for the District was more than Nevada (62,265), Delaware (146,654) and Oregon (174,767).

1888 In ***Callan v. Wilson*** (127 U.S. 540 (1888)), the **Supreme Court held that the right to trial by jury extends to District residents.**

1888 Conservative newspaperman Theodore Noyes of *The Washington Star* launches campaign for congressional representation and strongly opposes real democracy. Noyes writes, "National representation for the capital community is not in the slightest degree inconsistent with control of the capital by the nation through Congress." **Sen. Henry Blair of New Hampshire introduces the first resolution for a constitutional amendment for D.C. voting rights in Congress and in the Electoral College, which fails to pass.**

1888 According to a March 10, 1888 editorial in the Washington Star, District taxpayers "paid into the national treasury from the commencement of the excise tax law in 1862 $6,454,907.03, a larger amount than that derived from Alabama, Arkansas, Maine, Mississippi, Nevada, South Carolina or Vermont."

1899 A political scientist describes the Board of Trade—which supports congressional voting rights only—as providing D.C. with the ideal form of local government through a "representative aristocracy."

1902 A joint resolution is introduced in Congress to direct the Attorney General to bring suit over the constitutionality of the retrocession of Alexandria and Alexandria County to Virginia, but it died in committee.

1902 Senator Jacob Gallinger (R-NH), Chairman of the Senate's Committee on the District of Columbia, **introduces a resolution to amend the Constitution and a make a state of the District of Columbia.**

1915 President William Howard Taft writes in National Geographic about whether some of the ground lost to Virginia, particularly some acreage along the shoreline, can be retrieved for the District, but nothing comes of his proposal.

1919 Congress reduces the federal payment to forty percent. The Board of Trade and the Chamber of Commerce advocate congressional voting rights and oppose home rule.

1925 Congress abandons a fixed percentage federal payment and gives the commissioners authority to raise local taxes.

1929 Theodore W. Noyes, in a nationwide WMAL radio address in March, asked "Will not every red-blooded American

who hears me tonight respond hopefully and vigorously to the District's appeal for political equality? How long, O Americans, must we of Washington be compelled to say and to sing: 'My county, 'tis of thee Not land of liberty, For District folks; Where rights for which the fathers died Are now denied and crucified, Mock'd at as jokes'?"

1935 The California legislature passes a resolution recommending Congress amend the Constitution to grant D.C. representation in Congress.

1938 A **Citizens' Conference** of 271 local organizations financed a **plebiscite** with two questions — "[D]o you want to vote for President and for members of Congress from the District of Columbia?, and do you want to vote for officials of your own city government in the District?" The District Suffrage League set up voting places in 38 public schools, and on April 29th dressed up like Paul Revere and paraded in the streets to publicize the event. 95,538 people voted on April 30th, most supporting both measures.

1940 Congress grants District residents the same access to the federal courts as that available to residents of the states (diversity jurisdiction). The Supreme Court, in *National Mut. Ins. Co. v. Tidewater Transfer Co., Inc.*, 337 U.S. 582 (1949), upholds that act.

1943 Board of Trade appears before Senate Committee to support representation in Congress but opposes local self-government.

1952 President Truman transmits Reorganization Plan No. 5 of 1952 to Congress to streamline the District's government by transferring over 50 boards and commissions to the Commissioners. When transmitting the plan to Congress, he states "I strongly believe that the citizens of the District of Columbia are entitled to self-government. I have repeatedly recommended, and I again recommend, enactment of legislation to provide home rule for the District of Columbia. Local self-government is both the right and the responsibility of free men. **The denial of self-government does not befit the National Capital of the world's largest and most powerful democracy**. Not only is the lack of self-government an injustice to the people of the District of Columbia, but it imposes a needless burden on the Congress and it tends to controvert the principles for which this country stands before the world."

1960's Segregationist Rep. John McMillan favors a D.C. vote for president and vice president, says a struggle for home rule will cripple the campaign for the national vote. McMillan thinks the national vote should "satisfy" DC residents "at least for a while."

1961 The 23rd Amendment to the Constitution is ratified. It gives D.C. the same number of electors in the electoral college that it would be entitled to if it were a state, but no more than the least populous state. Following ratification of the 23rd amendment, **President John F. Kennedy** stated "The speed with which this Constitutional amendment was approved by the required number of States demonstrates the interest of the nation at large in providing to all American citizens the most valuable of human rights – the right to share in the election of those who govern us. ... It is equally import that residents of the District of Columbia have the right to select officials who govern the District. I am hopeful that the Congress, spurred by the adoption of the 23rd amendment, will act favorably on legislative proposals to be recommended by the Administration providing the District of Columbia the right of home rule."

1964 D.C. voters vote for President for the first time since the creation of the District in 1800, but only get "three fourths" of a vote since D.C. is limited to three electoral votes regardless of its population, which at the time would have merited two seats in the House.

1967 Thinking he might reduce tensions in D.C. and prevent riots like those occurring in other U.S. cities, **President Lyndon Johnson** transmits Reorganization Plan No. 3 of 1967 to Congress. It creates a Presidentially appointed Council of nine members and a Presidentially appointed Commissioner and Assistant Commissioner of the District of Columbia (Mayor and Deputy Mayor equivalents), eliminating the office held by an officer of the Corps of Engineers. President Johnson notes that the commissioner form of government was designed for a city of 150,000 people and that "(t)oday Washington has a population of 800,000. ... The proposed reorganization is in no way a substitute for home rule. As I stated in my Message on the Nation's Capital, the plan 'will give the District a better organized and more efficient government... but only home rule will provide the District with a democratic government - of, by and for its citizens.' I remain convinced more strongly than ever the Home Rule is still the truest course. **We must continue to work toward that day - when the citizens of the District will have the right to frame their own laws, manage their own affairs, and choose their own leaders. Only then can we redeem that historic pledge to give the District of Columbia full membership in the American Union.**" He appoints Walter Washington "Mayor" and Thomas Fletcher "Deputy Mayor" and John Hechinger as Council Chairman.

1968 Congress authorizes D.C. to have an elected school board. D.C. citizens vote for school board members, their first vote for any local body since the territorial government was dissolved in 1874.

1970 Congress passes a law authorizing a nonvoting delegate in House of Representatives for D.C. (the first since 1874). D.C. alternative journalist Sam Smith publishes "A Case for Statehood" in the June edition of the D.C. Gazette. The D.C. Statehood Party is formed with Julius Hobson its first candidate for nonvoting Delegate.

1971 D.C. voters elect Walter Fauntroy as their second nonvoting Delegate to House of Representatives. Rep. Ron Dellums (D-CA) introduces a D.C. statehood bill.

1973 Congress passes the **D.C. Self-Government and Governmental Reorganization Act (Home Rule Act)** providing for an elected Mayor, 13 member Council and Advisory Neighborhood Commissions and delegating certain powers to the new government, subject to Congressional oversight and veto. The new government is prohibited from taxing Federal property and nonresident income and from changing the Federal building height limitation, altering the court system or changing the criminal code until 1977. Congress retains a legislative veto over Council actions and must approve the District's budget. All District judges are Presidential appointees. A "floating" federal payment is retained. Planning and zoning are to be governed by a mixture of District and Federal agencies.

1974 D.C. voters elect Walter Washington as their first elected Mayor since 1870 and their first elected Council, headed by Chairman Sterling Tucker, since 1874.

1978 Congress amends the Home Rule Act to add recall, initiative and referendum provisions and makes a number of changes address the problems of delay and federal intrusions into purely local decisions.

1978 Congress passes a **Constitutional amendment** to give D.C. full Congressional voting rights (two Senators and Representatives) and full representation in the Electoral College. The states have seven years to ratify it.

1979 An initiative to hold a Statehood Constitutional Convention is filed. Congress rejects the Council's bill on the location of chanceries, an example of the Federal interference in local land use decisions.

1980 D.C. voters overwhelmingly approve the initiative to hold a Statehood Constitutional Convention.

1981 D.C. voters elect 45 delegates to the Statehood Constitutional Convention. Congress rejects the Council's revision to the D.C. sexual assault law.

1982 The convention, of which D.C. statehood activist Charles Cassell is elected President, completes its work in three months. In November, **D.C. voters approve a statehood constitution for the State of New Columbia** and authorize the electing of two "Shadow" Senators and a Representative to promote statehood (this provision is not implemented until 1990).

1983 A petition for statehood, including the 1982 constitution ratified by the voters, is sent to Congress, where no action is taken on it.

1985 The 1978 constitutional voting rights amendment dies after only 16 states ratify it. **D.C. Delegate Walter Fauntroy** introduces H.R. 325, the **New Columbia Admission Act** and **Sen. Edward Kennedy** (D-MA) introduces S.293, a companion bill. Subcommittee hearings are held in the House but no other action is taken on either bill.

1987 The D.C. Council revises the Constitution for the State of New Columbia and transmits it to both Houses of Congress. After the House District of Columbia Committee approves a statehood bill, Committee Chair, **Rep. Ron Dellums** (D-CA), says **"There should be no colonies in a democracy, and the District of Columbia continues to be a colony."** Unfortunately, the bill never reaches the House floor.

1988 For the first time, the **Democratic Party's platform supports statehood** for the District of Columbia.

1989 D.C. Delegate Walter **Fauntroy re-introduces the New Columbia Admission Act** as H.R. 51, which is cosponsored by 61 House members. **Sen. Edward Kennedy (D-MA) introduces S. 2647**, a companion bill, which has five cosponsors. No action is taken on either bill.

1990 D.C. residents elect their first statehood senators and representative. The positions were first authorized in 1982 when the statehood constitution was approved. Eleanor Holmes Norton is elected as the District of Columbia's third nonvoting delegate, succeeding Walter Fauntroy.

1991 D.C. Delegate Eleanor Holmes Norton introduces H.R. 2482, the New Columbia Admission Act. The House District of Columbia Committee's Subcommittee on the Judiciary and Education holds hearings and reports bill to full committee. **Sen. Edward Kennedy (D-MA) reintroduces the New Columbia Admission Act as S. 2023** with 17 cosponsors, but no action is taken on the bill.

1992 The House District of Columbia Committee amends and reports a clean bill (H.R. 4718; House Report 102-909), but no further action is taken.

1992 The House of Representatives, with a new Democratic majority, grants a limited vote in the Committee of the Whole to the D.C. Delegate.

1992 The Democratic Party's platform says that "we need fair political representation for all sectors of our country—including the District of Columbia, which deserves and must get **statehood** status."

1993 D.C. Delegate Eleanor Holmes **Norton re-introduces H.R. 51** with 81 cosponsors. The House District Committee favorably reports the bill out of committee; but in **first full House vote on statehood ever**, it fails (153 to 277).

1993 **Sen. Edward Kennedy** (D-MA) **introduces** a companion bill, **S. 898**, with 17 cosponsors, but no action is taken on it. **Sen. Paul Simon** (D-IL) notes on the bill's introduction that: " As Chairman of the Constitution Subcommittee, I ... am persuaded that a constitutional amendment is not required. ... For the approximately three-quarters of a million people who are District residents, statehood is along time in coming and critically needed today. ... The legislation we introduce today will adopt that Constitution [that District voters approved in 1982] and grant statehood to the District. District residents have spoken out for statehood for many years and it is time for their status to evolve to full statehood. The people of the District of Columbia ... serve bravely in our Armed Forces but cannot vote for the men and women in the House and Senate who make the war declaration. ...District residents pay taxes and have no Federal representation. Taxation without representation was wrong in 1775 and it is wrong today. District residents face the anomalous situation of being host to Congress and having no say in Congress. **We ought not to have second-class citizenship in this Nation. Accepting the District of Columbia as a State will once and for all end that inequity for these American citizens."**

1995 D.C. Delegate Eleanor Holmes **Norton reintroduces H.R. 51** with one cosponsor, but no action is taken on the bill.

1995 The D.C. Delegate's vote in the House Committee of the Whole is revoked. Congress authorizes the President to appoint the District of Columbia Financial Responsibility and Management Assistance Authority (Control Board), which replaces the elected school board with an appointed board. The law also creates the Office of Chief Financial Officer for the District of Columbia.

1996 The Democratic Party's platform says that "we believe all Americans have a right to fair political representation -- including the citizens of the District of Columbia who deserve full self-governance, political representation, and statehood."

1997 Congress strengthens the Control Board by giving it total control over D.C.'s courts, prisons and pension liabilities (much of that $5 billion in unfunded liabilities is from the pre-Home Rule era), increased control over Medicaid and removes nine D.C. agencies from the Mayor's authority. The Federal Payment provisions are repealed. Locally elected officials can regain authority after four consecutive balanced budgets.

1998 D.C. voters vote on a medical marijuana initiative (**Initiative 59**), but the **Barr Amendment prohibits spending money to even count the ballots**. U.S. District Court Judge Richard Roberts rules in 1999 that ballots can be counted (69% of the voters favored the initiative), but Congressional riders prohibit implementing the initiative.

1998 Twenty D.C. citizens (*Adams v. Clinton*) sue the President, the Clerk and Sergeant At Arms of the U.S. House of Representatives, and the Control Board seeking declaratory judgments and injunctions to redress their deprivation of their democratic right (1) to equal protection or "the right to stand on an equal footing with all other citizens of the United States," (2) to enjoy republican forms of government, (3) to be apportioned into congressional districts and be represented by duly elected representatives and Senators in Congress, and (4) to participate through duly elected

representatives in a state government insulated from Congressional interference in matters properly with the exclusive competence of state governments under the 10th Amendment.

1998 Another lawsuit, ***Alexander v. Daley,*** is filed by 57 District residents and the District government against the Secretary of Commerce, the Clerk and Sergeant of Arms of the U.S. House of Representatives, and the Secretary and Sergeant of Arms of the U.S. Senate alleging violations of their equal protection and due process rights and privileges of citizenship and seeking voting representation in both houses of Congress.

1998 Maryland **Governor Parris N. Glendening publicly opposes retrocession** of the District of Columbia to Maryland.

1999 President Bill Clinton vetoes H.R. 2587, the "District of Columbia Appropriations Act, 2000" because it contains numerous riders that "are unwarranted intrusions into local citizens' decisions about local matters." Specifically, the bill prohibits (1) the use of Federal AND District funds for petition drives or civil actions for voting representation in Congress; (2) limits access to representation in special education cases; (3) prohibits the use of Federal AND District funds for abortions except where the mother's life was in danger or in cases of rape or incest; (4) prohibits the use of Federal AND District funds to implement or enforce a Domestic Partners Act; (5) prohibits the use of Federal AND District funds for a needle exchange program and District funding of any entity, public OR private that has a needle exchange program, even if funded privately; (6) prohibits the D.C. Council from legislating regarding controlled substances in a manner that any state could do; and (7) limits the salary that could be paid to D.C. Council Members.

2000 A three judge panel of the **U.S. District Court for the District of Columbia**, in the consolidated lawsuit of *Adams v. Clinton* and *Alexander v. Daley*, finds it has authority to only rule on the issue of apportionment and representation in the House and **holds that inhabitants of the District are not unconstitutionally deprived of their right to vote for voting representation in the House**. The court remands the issues of voting representation in the Senate and *Adams'* challenge to the existence of the Control Board to the single District Judge with whom the cases were originally filed, and that judge dismisses both claims. *Adams'* claim regarding the right to an elected state government insulated from Congressional interference is not directly addressed. In his dissent, Judge Louis Oberdorfer finds the people of the District of Columbia are entitled to elect members of the U.S. House.

2000 A D.C. Superior Court jury finds statehood activists **Anise Jenkins** and **Karen Szulgit not guilty of "Disruption of Congress"** when they spoke out on July 29, 1999 in the House of Representatives against passage of the Barr Amendment that prohibited the implementation of D.C. Initiative 59. Ben Armfield was acquitted of a similar charge earlier in the year. Ms. Szulgit reflected on their 7-month ordeal saying: "Freedom isn't free. I look forward to the day when we stand together -- all the D.C. democracy advocates, our locally elected officials, and every member of Congress -- and finally address the unfinished business of the civil rights movement."

2000 On the 40th anniversary of the founding of SNCC, the Unemployment and Poverty Action Committee (UPAC), of which **James Foreman** is president, petitions Congress to "grant immediate Statehood to the majority part of the District of Columbia."

2000 The Democratic Party's platform says that "(t)he citizens of the District of Columbia are entitled to autonomy in the conduct of their civic affairs, full political representation as Americans who are fully taxed, and **statehood.**"

2001 The D.C. Democracy 7 are acquitted. They were arrested on July 26, 2000 for "Disruption of Congress" in the House of Representatives Visitors' Gallery for allegedly chanting "D.C. Votes No! Free D.C.!" during a Congressional vote on the D.C. Appropriations Bill. Their first trial ended in a hung jury and mistrial.

2001 The Control Board officially suspends its operations and transfers home rule authority back to the elected Mayor and Council (although upon certain conditions occurring, the Control Board can be reactivated in the future).

2001 The **Inter-American Commission on Human Rights of the Organization of American States** (OAS) rules on a 1993 charge brought by the Statehood Solidarity Committee and finds that the denial to D.C. citizens of equal political participation in their national legislature and the right to equality before the law is a violation of their human rights.

2002 At the **Second World Social Forum** in Porto Alegre, Brazil, the **D.C. Statehood Green Party presents a petition calling for statehood**, democracy, and full rights under the U.S. Constitution for residents of the District of Columbia.

2004 The Inter-American Commission on Human Rights issues a report finding that the United States Government violates District residents' rights by denying them participation in their federal legislature.

2004 The demand for D.C. statehood is dropped from the Democratic Party platform at the suggestion of D.C. Delegate Eleanor Holmes Norton, vice-chair of the DNC Platform Committee.

2005 The Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE) passes a resolution calling on Congress to support equal voting rights legislation for D.C. residents.

2005 The **U.S. Court of Appeals** for the District of Columbia holds in ***Banner v. United States*** that **in prohibiting a commuter tax on nonresidents working in the District Congress was merely exercising the power that "the legislature of a State *might* exercise within the State" and did not violate the equal protection** or the uniformity clause of the Constitution.

2006 The **U.N. Human Rights Committee** finds that D.C.'s lack of voting representation in Congress violated the International Covenant on Civil and Political Rights, a treaty ratified by more than 160 countries, including the United States.

2007 The Organization for Security and Cooperation in Europe's Office of Democratic Institutions and Human Rights finds D.C.'s lack of equal congressional voting rights inconsistent with United States' human rights commitments under the OSCE Charter.

2008 D.C. statehood continues to be missing from the Democratic Party platform.

2009 Congress considers granting D.C. a vote in the House of Representatives. The Senate passes the bill with an extraneous gun rights amendment added by Sen. Ensign (R-NV) that strips the D.C. government of much of its authority to regulate guns. Nevertheless, Congress does not take any action on the Firearms Registration Act of 2008, which the D.C. Council passed in order to bring local gun laws into compliance with the Supreme Court decision in Heller. The House leadership pulls the bill. Despite having a Democratically controlled House and Senate, an amendment that would prohibit the District from providing money to any needle exchange program that operates within 1,000 feet of virtually any location where children gather is added to the House version of its 2010 appropriation bill (though finally deleted from the final bill).

2009 The D.C. Council creates a new **Special Committee on Statehood and Self-Determination** chaired by Council Member Michael A. Brown. The Committee begins an extensive series of hearings on statehood and its ramifications. Led by Council Chair Vincent Gray, nine members of the D.C. Council attend the 2009 Legislative Summit of the National Conference of State Legislatures in Philadelphia and promote statehood.

2010 On March 26, U.S. Federal District Court Judge Richard M. Urbina upheld the gun laws that the District of Columbia Council passed to comply with the landmark 2008 Heller Supreme Court ruling that struck down the city's decades-old ban on handgun possession.

2010 On April 20, the Democratic leadership of the House of Representatives pulls the D.C. Voting Rights Act (with the Ensign Amendment) before a scheduled vote on the floor, effectively killing it for this session of Congress after District residents and some Council Members object to loss of local legislative authority over firearms.

2010 On April 29, Sen. Jon Tester (D-Mont.) and Sen. John McCain (R-Ariz.) introduce a standalone bill to make it easier to buy guns and ammunition in the District and to repeal local registration and firearm storage requirements.

2011 On January 2, **Mayor Vincent Gray endorses D.C. statehood in his inaugural address** saying "in many ways, Washington is the greatest symbol of our nation's democracy. Yet, we as Washingtonians continue to be the only people in our nation that remain shut out of that democracy. ... That is why we cannot rest until we achieve true self-determination and become our nation's 51st state." He ends his speech with "(t)his is our city. ... we won't stand for disenfranchisement because we aspire to be the best democracy in the world. President Abraham Lincoln once said 'allow all the governed an equal voice in the government and that, and only that, is self-government.' My friends, it is then and only then, that we can proclaim this nation's promise of justice for all finally has arrived in the District of Columbia."

2011 On January 4, at the first legislative session of the newly elected Council, all Council Members co-introduce a resolution endorsing D.C. statehood and urging D.C.'s Delegate Eleanor Holmes Norton to introduce a statehood bill.

2011 On January 5, the House of Representatives, now controlled by the Republican Party, strips D.C. Delegate Eleanor Holmes Norton of her vote in the Committee of the Whole.

2011 On January 12, **D.C. Delegate Eleanor Holmes Norton introduces** 3 bills, the first of which is **H.R. 265**, the New Columbia Admission Act. Over the course of the year, 15 cosponsors are added.

2011 On January 18, Chief Justice John Roberts of the U.S. Supreme Court denies a request for a stay in a challenge to the D.C. Board of Elections and Ethics' decision that a referendum to repeal the District of Columbia's Religious Freedom and Civil Marriage Equality Amendment Act of 2009 would violate the D.C. Human Rights Act and thus can't be the subject of a referendum. Since Congress had its 30 day period of review and chose not to act on the law, he finds that the Court is unlikely to grant certiorari.

2011 On March 1, the **D.C. Council unanimously approves the "Sense of the Council on Calling on Congress to Admit the District of Columbia as the 51st State** of Union Resolution of 2011."

2011 On March 30, on the **50th anniversary of the 23rd amendment** to the Constitution, **Mayor Gray** notes that **"No other U.S. jurisdiction is barred from spending its own taxpayer-raised funds as it sees fit**. However, the House has passed a continuing resolution that includes harmful anti-home-rule amendments that ban the District from using local funds on needle-exchange programs to prevent the spread of HIV/AIDS and for abortions for needy women. The school voucher programs also would be re-established against the will of the city -- a move that is unnecessary, as our traditional public schools are improving and charter schools are providing citywide choice. We hope the Senate will counter these regressive and draconian measures and allow the city to govern itself."

2011 On April 11, **41 D.C. residents** (dubbed the "D.C. 41 for 51"), including Mayor Vincent Gray and six members of the D.C. Council, **are arrested for sitting down in the street outside the Hart Senate Office Building** in an act of civil disobedience to protest Congressional riders on the District budget bill would prohibit the District from using its own funding to pay for abortions and require the District to invest in a school voucher program it does not want.

2011 On April 15 and May 4, **14 more D.C. residents**, including D.C. Senator Michael D. Brown and Council Member Mary Cheh, are **arrested** in similar demonstrations. The May 4 demonstration follows a House of Representatives vote to permanently ban the use of D.C. tax money to pay for abortions of low-income women.

2011 On June 16, a House Appropriations Subcommittee approves the **2012 D.C. budget** and included **a rider that would prohibit the District government from using its own funds to pay for abortion services for poor women**. Earlier in the year, much to the dismay and outrage of District residents and officials, President Obama agreed to this provision in a short term spending deal to get the larger Federal budget bill for the Treasury and other agencies passed.

2011 On June 25, **twelve more D.C. residents**, including Trayon White, the Ward 8 representative on the D.C. State Board of Education, Dr. Dennis Wiley and his wife Christina of the Covenant Baptist United Church of Christ, and former youth mayor Markus Batchelor, **are arrested for sitting down in front of the White House to protest D.C.'s lack of rights** and demanding that "President Obama, stand up for D.C." This brings to 73 the number of people arrested in 2011 for protesting the District's lack of voting rights, Congressional riders on the D.C. budget, and the need for D.C. statehood.

2011 In July, House consideration of the District of Columbia's budget is postponed indefinitely because of a jurisdictional fight over issues related to the implementation of the Affordable Care Act ("Obamacare").

2011 On November 10, the National Park Service reopens the restored District of Columbia World War I Memorial on the Mall. D.C. Delegate Eleanor Holmes Norton speaks out in opposition to efforts to make a memorial District residents paid for to honor the 29,000 D.C. residents who served, and 499 D.C. residents who died, in World War I a national World War I memorial. President Hoover dedicated the memorial on Armistice Day 1931 to the music of D.C.'s own John Phillip Sousa who conducted the Marine Band. The D.C. Council and the Association of Oldest Inhabitants of the District of Columbia have forcefully opposed the federalization of our local memorial.

2011 Congress passes the fiscal year **2012 omnibus spending bill**, including the D.C. budget, and removes all riders except, for the second year in a row, a **rider prohibiting the District government from using its local taxes monies to pay for abortion services for poor District women**. This is something Congress can only do to D.C. and not to its own constituents in the 50 states.

2012 On January 7, D.C.'s own, Glenn Leonard, Joe Coleman, and Joe Blunt, former lead singers with the Temptations, Platters, and Drifters respectively, joined by Ayanna Gregory and the Godfather of Go-Go, Chuck Brown, introduce *Stand Up for D.C.*, a new anthem for the D.C. statehood movement, at a statehood fundraiser sponsored by the ACLU-NCA.

2012 Over the course of the year, 13 more House members cosponsor H.R. 265.

2012 On January 28, the Convention of the **Episcopal Diocese of Washington approves a resolution endorsing statehood** for the District of Columbia and forwarded the resolution to the General Convention of the Episcopal Church, U.S.A. that will be held in July 2012 in Indianapolis.

2012 In February, D.C. Delegate Eleanor Holmes Norton convinces the Justice Department and Senate Judiciary Committee to remove a D.C. only provision from a bill that would have made it a federal crime to steal money or property of the District of Columbia, but not of any other state or local government.

2012 On February 28, the **Prince George's County Council (Maryland), on its own initiative** because, as Vice Chairman Eric Olson says, "it is the right thing to do," **approves a resolution supporting admitting the District of Columbia as the 51st state.**

2012 On April 18, 2012, **six George Washington University students** who are members of the DC Statehood Student Association **are arrested** by the Capitol Police for a nonviolent sit-down for D.C. statehood.

2012 On May 17, **Rep. Trent Franks** (R-AZ), chair of the House Judiciary Subcommittee on the Constitution, **refuses to let D.C.'s Delegate Eleanor Holmes Norton speak on a** bill that would ban abortions in D.C. once a fetus is 20 weeks past fertilization, even though the bill **would only affect her constituents**. Sen. Mike Lee (R-UT) introduced a companion bill. On May 23, District residents flood Rep. Frank's congressional office with calls on a mock "D.C. Constituent Service Day." Last year, Rep. Franks also refused to let Delegate Norton testify on a bill to completely ban the use of local D.C. funds for abortions for poor women.

2012 On May 17, the House or Representatives passes an amendment to H.R. 4310, the National Defense Authorization Act for Fiscal Year 2013, introduced by Rep. Phil Gingrey (R-GA). The amendment expresses the sense of Congress that active duty military personnel, who either live in or are stationed in Washington, D.C., should be exempt from existing D.C. gun control laws. D.C.'s Delegate Eleanor Holmes Norton noted no Federal law exempts active duty military personnel in their personnel capacity from otherwise applicable Federal, State or local firearms laws and asked why, if this is such a good idea, he isn't proposing to apply it in all 50 states. Contrary to Rep. Gingrey's assertions, she noted that a Federal district court and a Federal appeals court have upheld the District's gun control laws as they were revised after the Supreme Court's Heller decision.

2012 On July 31, two-thirds of the House Representatives fail to approve a motion to suspend the rules to vote on H.R. 3803, the District of Columbia Pain-Capable Unborn Child Protection Act, introduced by Rep. Trent Franks (R-AZ), and the bill dies. D.C. Delegate Eleanor Holmes Norton declares: "The folks behind this bill care nothing about the District of Columbia. They have picked on the District to get a phony federal imprimatur on a bill that targets *Roe v. Wade*. Bills based on pain or principle would not target only one city that has no vote on a bill that involves only the residents of that city. Women have pulled the cover from a bill with a D.C. label, because they know an attack on their reproductive health when they see it."

2012 July 7, the **General Convention of the Episcopal Church USA approves resolution Co33 endorsing Statehood for the District of Columbia**.

2012 September 4-5, 2012, **the Democratic Party omits D.C. statehood from the platform for the third time** despite last minute appeals from D.C.'s Mayor and the chair of the D.C. Democratic State Committee. Nevertheless, D.C. statehood activists lobby Democratic delegates, volunteers and the public to contact their Congressional delegations and urge them to support D.C. statehood.

"We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness - that to secure these rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed...." Preamble, Declaration of Independence, July 4, 1776

Testimony of Arthur H Jackson Jr

Subject: COW Local Budget Autonomy Act of 2012

Chairman of People Over Politics America, a grassroots based organization training citizens in community and public service advocacy.

Friday Nov.9, 2012 District of Columbia Committee of The Whole

Thank you Honorable Chairman , Members of the Council, Former Mayors Marion Barry and Anthony Williams and other residents of the District of Columbia and advocates of Equal Democratic Rights for the people of the District of Columbia from Maryland and Virginia.

As Chairman of People Over Politics America, and one whom has been honored to serve as Elected Ward 8 Democratic State Committeeman, Appointed Montgomery County Cable Television Commissioner and Elected at age 18, our Nations First 18 ,year old Councilman in The Historic Town of Fairmount Heights, Maryland, I am extremely familiar with the District of Columbia Government and it's relationship with Congress vs the ability of residents of Maryland to have complete budget autonomy.

For example The Historic Communities of Fairmount Heights, Seat Pleasant and Takoma Park, have more control over their budget and taxation than our Nation's Capital, The District of Columbia, eventho Towns like Fairmount Heights and Seat Pleasant, has a population the size of two Advisory Neighborhoods in the District of Columbia

Presently, under the existing law the District cannot implement the budget without the consent of Congress, and this led allowed members of Congress to add riders to benefit their interest, and sometimes these riders on contrary to the wishes and desires of a majority of the residents and taxpayer of The District of Columbia.

Passage of The Local Budget Autonomy Act of 2012, will allow the people of the District of Columbia who pay federal taxes, and have no voice in the US Senate and a Non Voting Delegate in the US House, to take it's first step toward full equal democratic rights.

Local Budget Autonomy, would allow the Mayor and Council to enact locally funded portion of the DC budget at the beginning of a new fiscal year without explicit approved of Congress.

Why shouldn't the 500,000 plus American citizens and taxpayers of the District of Columbia enjoy the same democratic rights as residents of New York, Maryland, Virginia , California and other states, where there is state and local budget autonomy without the approved of Congress.

As a Former Elected and Appointed Official in Maryland , I call upon the Mayors and Councils in surrounding Municipalities to urge a Regional support for full budget autonomy for the people of the District of Columbia.

This legislation is years late, and the time has arrived for Congress to finally do the right thing and allow the elected Mayor and Council of The District of Columbia, to have greater power and control over locally funded portions of their budget, to decide how to provide funds for schools, public safety, recreation, economic development and basic daily operations of The District of Columbia Government.

And I call upon my good friend , President Barack in support not only Local Budget Autonomy for the District of Columbia, but during his final four years to support full democratic representation for the people of the District of Columbia, increase federal aid for the District Government and ensure equal rights for the men and women residents of the District of Columbia, who are allowed to fight for democracy in the Middle East, but must come home to a District Government, which presently cannot implement it's own budget without the affirmation of The United States Congress.

In conclusion, as Chairman of People Over Politics America, we are proud and honor to appear before the District of Columbia, in all its wisdom and support a United City and Region in support of The Local Budget Autonomy Act of 2012, The Hour is late, and time as come to take this first step towards democratic equity through implementing full budget autonomy for the District of Columbia. Present enjoyed by all other Americans.

Sincerely

Arthur H Jackson Jr, M.B.A.

Acting Chairman of People Over Politics America. Former Elected Ward 8 Democratic State Committeeman , Former Appointed Montgomery County Cable Compliance Commissioner and Former Councilman, The Historic Town of Fairmount Heights Md. More than thirty years experience in Federal, State, County and Municipal Governments. Served on the District of Columbia Transition Committee on Finance and Revenue

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TESTIMONY OF ED LAZERE, EXECUTIVE DIRECTOR
At the Public Hearing on
Bill 19-993, the Local Budget Autonomy Act of 2012
District of Columbia Committee of the Whole
November 9, 2012

Chairman Mendelson and other members of the committee, thank you for the opportunity to testify today. My name is Ed Lazere, and I am the executive director of the DC Fiscal Policy Institute. DCFPI engages in research and public education on the fiscal and economic health of the District of Columbia, with a particular emphasis on policies that affect low- and moderate-income residents.

I am here today to offer my strong support for this bill, which would establish a referendum amending the District's Home Rule Charter to allow the District to spend its local revenue without waiting for a formal congressional appropriation. The DC Fiscal Policy Institute believes that the District of Columbia — its leaders and residents — should have as much autonomy over our local budget as possible. The referendum, if adopted would in several way increase local control and certainty over the annual budget.

One of the worst aspects of federal oversight of the District of Columbia is the way Congress deals with DC's budget. Our programs and services are funded almost entirely with locally raised taxes or with federal funds that all states and cities receive. The Mayor and DC Council spend months each year developing a spending plan. Yet it is Congress that gives the ultimate stamp of approval because DC's budget is wrapped up in the federal appropriation. The process requires the District to prepare a budget tied to a congressional time table, rather than our own, and then requires the city to wait for Congress to approve it, which may or may not occur by October 1 each year.

This treatment is unique even in the context of congressional oversight of the District. In general, the District is allowed to pass any law it wants at any time, and that law goes into effect after a 30-day review period if Congress does not act to modify or stop it.

The referendum, introduced by all 12 DC Council members, would allow the DC budget to be treated like any other legislation — it could be introduced whenever the Council felt was appropriate and would then have a 30-day congressional review period. The budget would go into effect after the review period if Congress does not act on it. This would be a tremendous step toward budget autonomy.

My concern with the current budget process is not that Congress makes too many changes to the DC budget. In fact, it typically makes no modifications to the spending plans adopted by the Mayor and DC Council each year, although Congress sometimes says where the city *cannot* spend funds, such as publicly-funded abortions. The limited oversight reflects a respect for DC's ability to

manage its own affairs and is a sign that Congress does not really want to get into the details of city spending.

Nevertheless, the current system for congressional approval of the budget still creates problems. First, the Council is able to vote on the budget only once, while most bills in DC have two votes, offering a chance to review and improve upon initial votes. Also, the DC budget has to be approved in May, even though the fiscal year starts in October, meaning that a lot can change between the time the budget is adopted and implemented. Both of these rules stem from the need to give Congress time to review the approved budget. Beyond that, every time Congress and the President face challenges to approving the federal budget, there is always the risk that DC's budget will get held up unnecessarily, too.

The referendum maintains a healthy federal role in DC's budget, and in fact establishes the same role that Congress has in every other piece of DC legislation. The referendum's approach, focused on passive approval by Congress, also is a better reflection of the actual level of congressional involvement in the city's budget in recent years.

Budget autonomy would bring greater certainty to DC budget planning and other benefits as well. It would allow, for example, DC to start its fiscal year in July, closer to the time the budget is adopted, and let the budget for each school year to fall into one fiscal year rather than two. And it would allow two votes on the budget, rather than one, which would allow policymakers and the public more opportunity to refine the budget in a way that best meets the city's priorities.

Thank you for the opportunity to testify.

National Organization for Women

Pass the District of Columbia Budget Autonomy Referendum (Bill 19-993)

Testimony to the District of Columbia Council
Submitted by Erin Matson, NOW Action Vice President
November 9, 2012

To the members of the District of Columbia Council -- My name is Erin Matson and I am Action Vice President of the National Organization for Women, which represents hundreds of thousands of members and contributing supporters with chapters in each state and the District of Columbia.

As the largest organization of grassroots feminist activists, and the second oldest civil rights organization in the United States, the National Organization for Women supports and urges passage of the District of Columbia Budget Autonomy Referendum (Bill 19-993). Members at our national conference have a long track record of passing resolutions in support of statehood, voting rights and full enfranchisement for residents in the District of Columbia. The National Organization for Women has affirmed and proudly re-affirmed DC statehood as a priority issue since 1978. Our local chapter is named, pointedly, 51st State NOW. It is not uncommon for NOW members to use the anniversary of the 19th amendment to the U.S. Constitution, which prohibited denying the vote on the basis of sex, as an occasion not for celebration, but to protest the continuing lack of enfranchisement in the District of Columbia. I have done it myself with picket signs outside the White House. Putting the question of budget autonomy into the hands of local elected leaders, and the people of DC, is an important and critical step on the District's road to self-determination.

Currently, the District of Columbia's budget is subject to frequent and reoccurring attacks from members of Congress who display dangerously obsessive interest in restricting women's fundamental right to abortion. This vendetta extends so far that this year the National Right to Life Committee's "top legislative priority" was a federal bill criminalizing abortion at 20 weeks only in DC, suggesting jail-time for doctors. At a hearing for this bill our own non-voting Delegate Eleanor Holmes Norton was denied the opportunity to speak on behalf of her constituents. Those who support these extreme measures use DC as grounds for social experiments, to see what they can get away with, and set federal precedents.

The District's budget is one of the primary forums for this abuse. On April 11, 2011, 41 people, including members of this Council, Mayor Gray, and leadership from NOW's ally organization DC Vote, were arrested during a civil disobedience demonstration in protest of the DC local abortion funding ban attached to the 2011 Continuing Resolution. This rider resurfaces regularly depending on the political composition of federal officeholders, who mistakenly believe that the Hyde Amendment barring federal funding for abortion somehow extends to barring local funding for abortion in the District of Columbia. The Hyde Amendment is a threat to public health and one of the purest expressions of discrimination against women in public policy today. Today one in three states have taken steps to mitigate this injustice by ensuring that local state revenues cover abortion care under state Medicaid funds. Congress does not attempt to change those state budgets.

Abortion riders to the District budget pack a double-dose of discrimination against women living in the District: against us as women, frequently as women of color, and against us as disenfranchised residents without the right to vote in and vote out those who ultimately direct the use of our tax dollars. Ultimately these issues – the misguided obsession with restricting abortion and reproductive rights, as well as the disrespect for voters in the District of Columbia – all come down to outdated traditions of not trusting those with less power to make decisions about their own lives.

Federal disputes are common and part of the political process. Too frequently they end with a so-called bargain targeting women's health in the District of Columbia. This is both unfair and ridiculous. Thank you to the members of the District of Columbia Council for your efforts to move women and men in DC closer to the full democracy we deserve.

Testimony before the City Council at Public Hearing on Budget Autonomy Legislation
November 9, 2012 – John Wilson Building, Hon. Phil Mendelson, presiding:

Ladies and Gentlemen of the City Council, I am Wallace Gordon Dickson, Ward ONE Democrat and member of the DC Statehood – Yes We Can! Campaign.

I come before you today to express my continuing concern and frustration with the members of the DC City Council, the leaders of our city who set our priorities for governing, continue to spend their precious time, energy, and public funds on "fringe" issues while ignoring the primary cause of our problems for the past 200 odd years – our status as the last Colony – a city of taxpaying citizens with no voice in their federal government.

Incrementalism we call it. I don't want my inherent rights to participate in my government incrementally! I consider it insulting to offer me these crumbs, when all I want is full constitutional rights as a taxpaying citizen of these United States! I want statehood now!

We need to find focus and get on the same page in our cause for Statehood for the District of Columbia!

We should be focused on demanding that Congress grant us statehood, which is permanent, and unrevocable, and not constantly diverting our energies, public attention, public money, and public resources away from that primary goal – DC Statehood!

Look where you've brought us so far. After 20 years of spending time and millions upon millions of tax dollars on ONE Vote in the House of Representatives (probably unconstitutional), and we have attained zero, nada, nothing for our efforts!

Now you guys are proposing we spend more time and money on "budget autonomy" -- another peripheral issue, which, as a state, we would have automatically -- for another how many years with nothing to show for our efforts and expenditures of precious public funds!

The DC Statehood – Yes We Can! campaign recommends you stop diverting city resources from what should be our main cause – demanding Congress grant us D.C. Statehood!

These fringe issues simply distract and divert attention from that ultimate goal. They fragment our focus. To be straightforward and honest with you, I believe you have given up on statehood, or you would be demanding it of Congress, not begging for little crumbs that are a waste of our time and money, and basically an insult to your constituents who have expressed their support for DC statehood.

Your constituents have not voted for autonomous budget-making, or one vote in the lower house of Congress.

As a tail gunner in the US Air Force during the Korean conflict of the early 1950s, I find myself often wondering what veterans think and feel about this situation when they return home, from Iraq or Afghanistan, if they are so lucky to do so in one piece.

After risking their lives to defend democracy abroad, they return to find no democracy at home! They cannot enjoy the rights for which they havce been fighting for foreign peoples to enjoy! How do we, the greatest democratic nation in the history of the world justify this situation?

I think the goal of statehood is not only vitally important, but that it should be "front burner" for all of us, and it should merit our focused attention. We should all be on the same page at the same time. We should not be distracting the public's attention to peripheral issues such as the city council has been doing for many years. We should get back on the statehood bus, so the rest of us will not continue to be relegated to the back of the bus for another generation or two.

You are our leaders. We depend on you to guide us through the thickets and quagmires of political strategy.

But we do not want crumbs.

We do not want distractions.

We do not want you to beg Congress to give us less than what we actually deserve!

We want you to demand DC Statehood NOW! Get with the program!

Bill 19-993, Local Budget Autonomy Act of 2012

Testimony presented before the DC Council Committee of the Whole
on November 9, 2012
by Elinor Hart

Good afternoon. My name is Elinor Hart. I am of course in favor of Budget Autonomy for the District of Columbia. However, I believe the shortest route to Budget Autonomy, full voting representation in Congress, and all the other rights that Americans in the 50 states enjoy is to vigorously pursue Statehood for the residential and commercial areas of DC.

To make New Columbia the 51st state in the United States of America, three developments must occur. (1) We have to build stronger support for Statehood among DC residents. (2) We have to build greater support for Statehood among the people who have voting representation in Congress; those of us who advocated for Statehood at the Democratic National Convention in September were thrilled to find that there is already significant support among Democrats throughout the 50 states. (3) We have to make sure that every member of Congress is well aware that the residents of the District of Columbia want all the rights that the people in their states and Congressional Districts have.

I believe the Budget Autonomy referendum interferes with the critical effort to make Congress realize that we want the same rights as Americans living in the 50 states. Congress now has a very confused perception of what DC residents want, and it is very comfortable in this ignorance and confusion. We perpetuate this ignorance and confusion every time we push for pieces of first class citizenship, such as a vote in the House of Representatives or Budget Autonomy. Every time we pursue one of these ad hoc incremental efforts, we undercut our efforts to make Congress understand that we want all the rights of American citizenship.

For most of the 38 years since DC got limited Home Rule, we have pursued a variety of incremental approaches to first class citizenship. And in those 38 years we have had no success in expanding our rights. I don't understand why those who advocate an incremental approach think it will be any more successful in the next 38 years.

I think the best thing to do with the Local Budget autonomy Act is to table it until the legal questions can be resolved and Members of Congress know that we know that they know that we want all the rights that their constituents have.

There are, however, things the DC government should do to hasten the day when we will have our full rights.

(1) Resubmit our Statehood Petition to Congress. This should be coordinated With Eleanor Holmes Norton's reintroduction of the New Columbia Admission Act in the 113th Congress.
(2) Use the upcoming Presidential Inauguration to advocate for Statehood
(3) Commit financial resources to achieving Statehood.

Thank you for the opportunity to testify.

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November 9, 2012

Council Members of the
District of Columbia

My name is Charles I. Cassell. I am a native Washingtonian and have been active in D.C. public activities for the past forty years.

Among these activities I have served as an elected member of the D.C. Board of Education, as one of the two Advisors to the National Trust for Historic Preservation, as an officer of the D.C. Preservation League, as a Director of the National Coalition to Save Our Mall, and as Chairman of the D.C. Historic Preservation Review Board.

I consider that the most significant position that I have held was *Chairman of the elected D.C. Statehood Constitutional Convention,* created by *your predecessors* on this D.C. Council in 1981. This legislation was in response to developing impatience on the part of D.C. constituents with the inferior status that we endure as American citizens, having all of the responsibilities of citizens in the fifty States, but with no voting representation in the legislative body of the nation. The purpose of the D.C. Statehood Constitutional Convention was to write a constitution for this beleaguered capitol city of the United States which would elevate us from a colonial fiefdom, to democratic equality with our fellow American citizens in the other fifty states of the nation.

You will recall that in the following general election, November, 1982, this treasured document was submitted to the electorate in D.C. You will recall also, that in that election, the voters affirmed that they wanted Statehood and the release from "no voting representation in our U.S. Congress."

Such action would remove our nation from the shameful status as the only nation in the "free world" that denies representation for the citizens of its capitol city in the nation's legislative body.

Therefore, may I urgently request that this body *not* seek, from our overlords, for whom we cannot vote, budget autonomy, for which they would have the authority to take away at will. You may recall that in 1874, our Congressional overlords did withdraw from us a measure of limited independence.

I suggest that, since our esteemed Mayor has continually supported Statehood for his city, the D.C. Council join with the Mayor and our non-voting delegate to the U.S. Congress in urgently appealing to the re-elected President of the United States and selected progressive members of the U.S. Senate for legislation converting this voteless city into "New Columbia," the fifty first state in a truly democratic nation.

BARBARA B. LANG
President & CEO

DC Chamber of Commerce
delivering the capital

Thursday, November 08, 2012

The Honorable Phil Mendelson
Committee of the Whole
1350 Pennsylvania Avenue NW
Suite 500
Washington, DC 20004

Dear Chairman Mendelson,

The purpose of this letter is to demonstrate our support for Bill 19-993, the Local Budget Autonomy Act of 2012. We appreciate the effort of the Council in moving forward with this legislation. We look forward to budget autonomy being the District's next successful referendum.

We urge the Council to act expeditiously in approving this legislation and we ask the Mayor to sign Bill 19-993 as soon it is transmitted to his office. We understand that the once the Local Budget Autonomy Act becomes law, the District's Board of Elections will create the referendum language and schedule the date that this important measure will be voted on by District residents. We are confident that this referendum will be approved by our voters, and once that happens, we will be one step closer to fulfilling the District's destiny of being treated like any other jurisdiction in the United States and we will march onward toward getting our Delegate full voting rights in Congress so we can proudly say we have "taxation with representation".

Bill 19-993 is just one step in our end goal. We deserve to be able to approve the budgets that we create and we administer. Congress should not be involved in our local budget. As we understand Bill 19-993, this legislation will still allow Congressional approval of the federal portions of the District's budget. But, for the first time, the District will be responsible for its own local budget. While the District's local budget would go through the standard Congressional review period that all other District laws face the District would no longer be subject to the Congressional delay and partisanship of an approved appropriation. Imagine what could be accomplished if we did not have to float bonds to cover costs during the first quarter of each year. This certainly would help lower taxes on residents and businesses and improving the economic structure of our city. Even better, our own money that we raise will be free from riders, placed by members of Congress with personal causes that cannot be instituted in their own home constituencies.

Again, we fully support Bil 19-993 and encourage its speedy passage.

Sincerely,

Barbara B. Lang
President & CEO

PUBLIC HEARING

ON

BILL 19-993

LOCAL BUDGET AUTONOMY ACT OF 2012

Before the
Committee of the Whole
Council of the District of Columbia

The Honorable Phil Mendelson, Chairman

November 9, 2012
John A. Wilson Building
Council Chambers

Natwar M. Gandhi
Chief Financial Officer
Government of the District of Columbia

Greetings, Chairman Mendelson and members of the Committee. My name is Natwar M. Gandhi, and I am the Chief Financial Officer of the District of Columbia. I would like to submit my testimony for the record in support of Bill 19-993, the Local Budget Autonomy Act of 2012.

I wholeheartedly endorse expanding the authority of the District to manage its own financial affairs. Not only do I believe that the District's leadership has demonstrated its ability to adhere to principles of fiscal responsibility, I also believe that greater budget autonomy would provide residents of the District, as well as visitors and other stakeholders, with a greater quality of services in a timely manner.

I would like to provide the Committee with a short history of the fiscal affairs of the District of Columbia, and my views on where we stand today with regard to the pressures caused by the national economy. I will also address the specific reasons why I believe that greater budget autonomy is warranted for the District.

Fiscal Recovery Since 1996

The chart on the following page is a history of the remarkable fiscal recovery achieved by the District over the past fifteen years. It is a great testament to the financially responsible budgeting and fiscal prudence exercised by the District's elected leadership. Our fiscal low point occurred in FY 1996, when the General Fund balance was a negative $518 million. Through the collective leadership of Mayors Williams, Fenty, and Gray, and the Council, we have been able to repeatedly balance the District's fiscal operations. Between FY 1996 and the end

of FY 2001 there was a $1.1 billion increase in the fund balance, to a positive $562 million by the end of FY 2001.

As you can see, at the end of FY 2005, the General Fund balance rose another $1 billion – to $1.6 billion total, a turnaround of more than $2 billion since FY 1996 when the fund balance was a negative $518 million. This improvement was reflected in the credit ratings assigned to the District by the major bond rating agencies. Our general obligation bond ratings, which were "junk bond" status in the mid–1990s, were upgraded every year through FY 2005 and again in FY 2007 to the current A+, AA-, Aa2 from Standard and Poors, Fitch Ratings, and Moody's Investor Services, respectively. Indeed, the turnaround by the District was faster than any major city that experienced severe fiscal distress, including Philadelphia, Cleveland, Detroit and New York.

In addition, our Income Tax Secured Revenue Bonds, issued for the first time in March of 2009, were assigned a rating of triple-A, the highest possible rating, by Standard and Poors, Aa1 by Moody's Investor Services, AA+ by Fitch Ratings, above the general obligation bond rating and the highest ratings ever assigned by those agencies. This is a remarkable achievement for a city that was in dire financial straits just fifteen years ago.

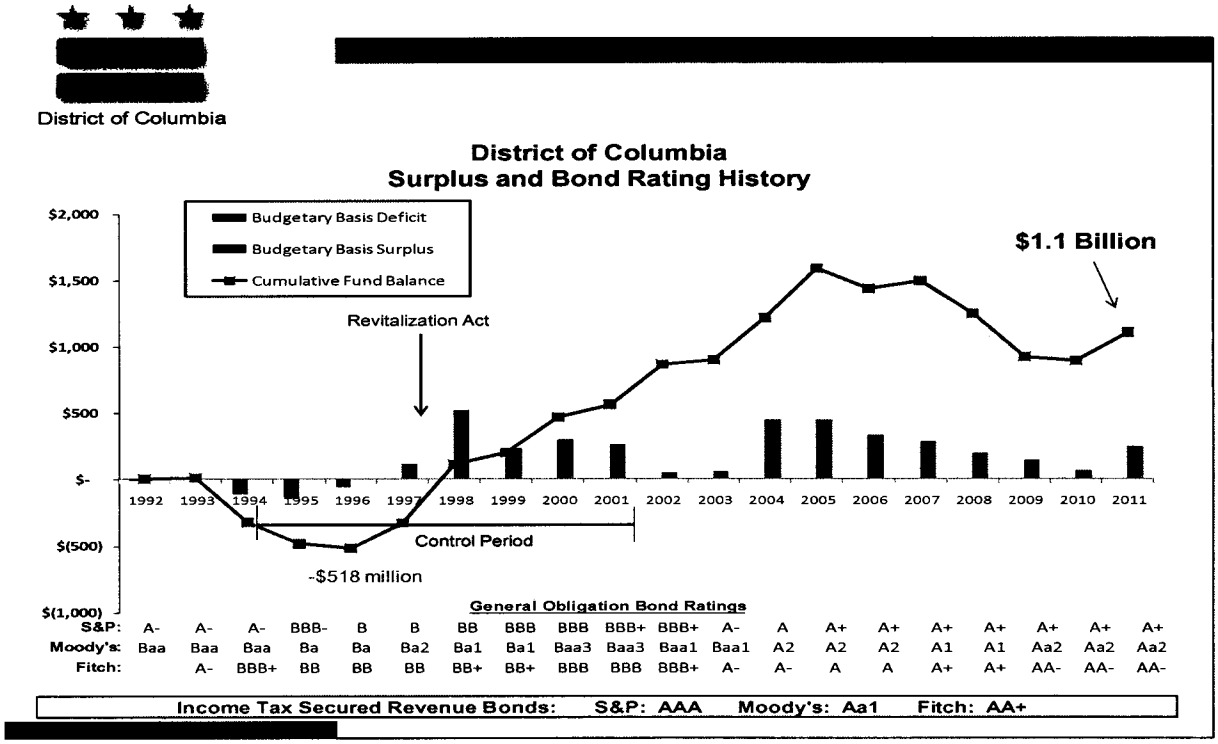

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Table 1 below compares tax revenues, General Fund balance and reserve funds in FY 1996 and in FY 2011, and reflects the revenue growth (an increase of 115 % in current dollars and 50 percent in inflation adjusted "real dollar" terms). The prudent fiscal leadership and responsible financial management provided collectively by the Executive and Legislative branches contributed substantially to the increased General Fund balance, and that pattern continues today.

Table 1
Comparison of Key Financial Measures
($ in thousands)

	FY 1996	FY 2011
Tax Revenues	$2,422,144	$5,203,168
Operating Surplus/(Deficit)	($33,688)	$ 239,695
General Fund Balance	($518,249)	$ 1,104,894
Reserves *	($332,357)	$ 532,765
Operating Reserves as % of Expenditures	--	8.8%

** Includes Congressionally- mandated Emergency and Contingency Reserves plus unreserved undesignated General Fund balance ($339 million emergency & contingency cash reserve,$42 million fiscal stabilization reserve, $152 million cash flow reserve). Numbers may not total due to rounding.*

While it is too early to state what the FY 2012 closing fund balance total will be because we are in the midst of the year-end closing process, given the District's performance during Fiscal Year 2012, I fully expect to close the year with all agencies in balance with a surplus.

Fiscal Condition and Financial Improvements

There is no question that the District has the financial infrastructure to permit it to manage its local funds effectively. We have a strong accounting system linked to our budget oversight processes. Monthly closings and cash reconciliation are in place. Financial managers have a clear understanding of expectations. The improved financial reporting infrastructure has enabled the OCFO to supply elected leaders with sound fiscal analysis. Clean audit opinions by the District's independent auditors have become routine. Moreover, since the dormancy of the Congressionally-created control board in 2001, the District's elected leaders have achieved an exemplary record of fiscal prudence. Financial markets have recognized it in the form of higher bond ratings and lower interest rates on our borrowing.

The District's leadership has the will and the necessary resources to make informed decisions and the District has a proven record of functioning in a fiscally responsible manner.

Budget Autonomy

I would now like to address why I believe, from a financial management perspective, the District should have discretion with respect to the allocation of funds raised from local sources.

Under current law, all District of Columbia spending is authorized by the Congress through the federal appropriations process, irrespective of the source of revenue underwriting such spending. In the District's FY 2013 gross budget of $9.4 billion, about $6.0 billion, or 63 percent, comes from purely local revenues. Only $153 million in federal payments were specifically requested in the FY 2013 President's Budget from federal revenues for programs and projects unique to the District of Columbia. The balance is comprised of formula-based federal grants which are available to all jurisdictions nationwide.

Only the federal payments that are specifically and uniquely earmarked for District programs or federal initiatives should be appropriated by the Congress. In the case of local funds, the Congress has rarely altered an allocation made by the District. Federal grants to the District have already been appropriated to the federal agency responsible for program administration and awarded to the District. Having already been appropriated to a federal transferring agency, these federal grants should not be "re-appropriated" to the District.

Were the Congress to approve the proposed legislation and reduce its role in the District's appropriation process, a range of possibilities would still allow it to exercise oversight over the District's budget and operations. These include periodic audits, after-the-fact review of the District's locally enacted budget, or review of the District's locally enacted budget by the appropriate oversight group in the Congress. Federal payments directly appropriated to the District would remain within the federal appropriations process.

Benefits to the District

Faster and Smoother Enactment of Budgets. Because the District currently receives all of its authority to spend funds only through the federal appropriations process, the District cannot enact the budget approved by its elected representatives until Congress passes and the President signs the District's appropriations bill. This situation guarantees a four-month lag between local approval and federal enactment. However, federal appropriations bills are often delayed beyond this period. When this occurs, there are adverse consequences for the District. In the case of new or expanded programs approved and financed locally or with federal grants, no action can be taken during the fiscal year until Congress passes its appropriations act, or includes language in the Continuing Resolution to permit the District to spend these funds at the approved level. For years, the CRs have included just this language, thereby removing the unnecessary and unfortunate delays in programs that had previously existed. This extra effort with the language in the CR, though much appreciated, is never certain. With budget autonomy, it would not be necessary.

Also, the more time that elapses between the formulation of a budget and its execution, the more likely the operating assumptions underlying that budget may change. Thus another critical aspect of faster budget enactment would be that budgets could be based on more current revenue estimates. Such was the case during the summer of 2009 when my office issued a new revenue estimate June 22, after the Council had approved the budget, but before Mayor Fenty had returned it to Council with a single line-item veto.

The June estimate showed a drop of $190 million of revenue in FY 2009, and a projected drop of $150 million in FY 2010, forcing the Mayor and Council to go

back to the drawing board. To their great credit, both moved swiftly to revise the budget to reflect the lower revenues, but this was far from an optimal way of doing business.

If the District Council were able to set its own schedule to enact a budget, the Mayor and legislators could always rely on revenue estimates based on more current data. Currently, budgets are based in large part on revenue estimates completed in February, some seven months before the start of the new fiscal year in October and a total of 20 months before the end of that fiscal year.

Maximum Local Financial Flexibility. Providing the District with the authority to direct the spending of its locally raised revenue would substantially increase the District's ability to react to changing program and financial conditions during a fiscal year. Under current law, the District must follow the federal supplemental appropriation process to appropriate additional revenues that become available during the course of the fiscal year or to make any significant realignment in resources among its appropriations. All program plans premised on supplemental appropriations are delayed until the 30-day Congressional lay over period expires.

It should be noted that since the early part of the decade, Congress has provided increasing degrees of budget flexibility to the District. Under current law, if revenues exceed projections, the District is allowed to increase its appropriations ceiling without federal interference. Specifically, if local tax base revenues increase, spending of that revenue source may be increased up to 6 percent. Similarly, if dedicated revenues or O-type revenues increase, spending in that category may be increased up to 25 percent. However, even this authority still requires a 15-day Congressional review period during which the monies cannot be

spent. Also, the authority is not permanent but is derived from a general provision in an annual appropriations bill that must be continually renewed.

Budget autonomy would substantially increase the District's overall efficiency and flexibility. Because of the current lack of permanent budget autonomy, the District cannot always react as swiftly or effectively as possible to meet the needs of its residents, commuters and visitors. No other municipality in the nation functions under such restrictions. Indeed, it is to the credit of the leadership exhibited by our Mayors and the Council, working together under these limitations, that the District has attained and enjoys its sterling reputation in the nation's financial and investment markets.

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Government of the District of Columbia
Office of the Chief Financial Officer

Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: **The Honorable Phil Mendelson**
Chairman, Council of the District of Columbia

FROM: **Natwar M. Gandhi**
Chief Financial Officer

DATE: **December 3, 2012**

SUBJECT: **Fiscal Impact Statement – "Local Budget Autonomy Act of 2012"**

REFERENCE: **Bill 19-993 – Draft Committee Print shared with the Office of Revenue Analysis on November 29, 2012**

Conclusion

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill.

Background

The bill amends the District's Home Rule charter[1] to change portions of the appropriations process. First, the bill will authorize the District Council to appropriate District funds (including grants) without the requirement for subsequent Congressional appropriation. Second, it will authorize the District to set the parameters of its own fiscal year.

The bill sets forth the appropriations process for District's own resources. It also clarifies that the federally funded portions of the budget must be submitted by the Mayor to the President for Congressional approval. It also specifies that the Congress will retain control over the local budget in control years.

The bill will be applicable commencing with the FY 2015 budget and thereafter.

Financial Plan Impact

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill.

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[1] The District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *et seq.*)

Pursuant to the Home Rule Charter, the provisions of the bill can only be adopted after it passes a local referendum, which is followed by a 35-day (with days counted as specified in the Charter) review period in the Congress. The District is already planning a special election in the spring of 2013, and the Council intends to include this measure on the ballot during the same election. The Board of Elections indicated that the Board already has sufficient funds to hold the special election, and the addition of the referendum measure on the ballot will not create an additional impact.

Committee Print
Committee of the Whole
December 4, 2012

A BILL

19-993

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Home Rule Act to provide for local budget autonomy.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Local Budget Autonomy Act of 2012".

Sec. 2. The District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *et seq.*), is amended as follows:

(a) The table of contents is amended by striking the phrase "Sec. 446. Enactment of Appropriations by Congress" and inserting the phrase "Sec. 446. Enactment of local budget by Council" in its place.

(b) Section 404(f) (D.C. Official Code § 1-204.04(f)) is amended by striking the phrase "transmitted by the Chairman to the President of the United States" and inserting the phrase "incorporated in such Act" each time it appears.

(c) Section 412 (D.C. Official Code § 1-204.12) is amended by striking the phrase "(other than an act to which section 446 applies)" in its entirety.

(d) Section 441(b) (D.C. Official Code § 1-204.41(b) is amended to read as follows:

"(b) Authorization To Establish Fiscal Year by Act of Council - The District may change the fiscal year of the District by an Act of the Council. If a change occurs, such fiscal year shall also constitute the budget and accounting year.".

(e) Section 446 (D.C. Official Code § 1-204.46) is amended to read as follows:

"ENACTMENT OF LOCAL BUDGET BY DISTRICT OF COLUMBIA

"Sec. 446. (a) Adoption of Budgets and Supplements - The Council, within 70 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, and by a vote of a majority of the members present and voting, shall by Act adopt the annual budget for the District of Columbia government. The federal portion of the annual budget shall be submitted by the Mayor to the President for transmission to Congress. The local portion of the annual budget shall be submitted by the Chairman of the Council to the Speaker of the House of Representatives pursuant to the procedure set forth in section 602(c). Any supplements thereto shall also be adopted by Act of the Council after public hearing by a vote of a majority of the members present and voting.

"(b) Transmission to President During Control Years - In the case of a budget for a fiscal year which is a control year, the budget so adopted shall be submitted by the Mayor to the President for transmission by the President to the Congress; except, that the Mayor shall not transmit any such budget, or amendments or supplements thereto, to the President until the completion of the budget procedures contained in this Act and the District of Columbia Financial Responsibility and Management Assistance Act of 1995.

"(c) Prohibiting Obligations and Expenditures Not Authorized Under Budget- Except as provided in section 445A(b), section 446B, section 467(d), section 471(c), section 472(d)(2), section 475(e)(2), section 483(d), and subsections (f), (g), (h)(3), and (i)(3) of section 490, no amount may be obligated or expended by any officer or employee of the District of Columbia government unless--

"(1) such amount has been approved by an Act of the Council (and then only in accordance with such authorization) and such Act has been transmitted by the Chairman to the Congress and has completed the review process under section 602(c)(3); or

"(2) in the case of an amount obligated or expended during a control year, such amount has been approved by an Act of Congress (and then only in accordance with such authorization).

"(d) Restrictions on Reprogramming of Amounts - After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council approves the request, but and only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.

"(e) Definition - In this part, the term "control year" has the meaning given such term in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995.".

(f) Section 446B(a) (D.C. Official Code § 1-204.46b(a)) is amended as follows:

(1) Strike the phrase "the fourth sentence of section 446" and insert the phrase "section 446(c)".

(2) Strike the phrase "approved by Act of Congress" in its entirety.

(g) Section 447 (D.C. Official Code § 1-204.47) is amended as follows:

(1) Strike the phrase "Act of Congress" and insert the phrase "act of the Council (or Act of Congress, in the case of a year which is a control year)" each time it appears.

(2) Strike the phrase "Acts of Congress" and insert the phrase "acts of the Council (or Acts of Congress, in the case of a year which is a control year)" each time it appears.

(h) Sections 467(d), 471(c), 472(d)(2), 475(e)(2), and 483(d), and subsections (f), (g)(3), (h)(3), and (i)(3) of section 490 of such Act are each amended by striking "The fourth sentence of section 446" and inserting "Section 446(c)"'.

Sec. 3. Applicability.

This act shall apply with respect to fiscal year 2015 and each fiscal year thereafter.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect as provided in section 303 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1-203.03).