SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

COUNCIL OF THE DISTRICT OF COLUMBIA, 1350 Pennsylvania Avenue NW Washington, D.C. 20004 Plaintiff, v. VINCENT C. GRAY, in his official capacity as Mayor of the District of Columbia, 1350 Pennsylvania Avenue NW Washington, D.C. 20004 and JEFFREY S. DeWITT, in his official capacity as Chief Financial Officer for the District of Columbia, 1350 Pennsylvania Avenue NW Washington, D.C. 20004 Defendants.	Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The Council of the District of Columbia ("Council") files this Complaint for declaratory and injunctive relief against Vincent C. Gray, in his official capacity as Mayor of the District of Columbia; and Jeffrey S. DeWitt, in his official capacity as Chief Financial Officer for the District of Columbia, and alleges as follows:

NATURE OF THIS ACTION

1. The residents of the District of Columbia will contribute more than $7 billion this year in taxes and fees to fund their local government.

2. In every other home-rule jurisdiction in the country, the locally elected officials who set the tax rates also authorize the expenditures of those locally raised funds.

3. But prior to this budget cycle, the budget process for local funds in the District of Columbia worked differently. The District lacked budget autonomy, which meant that local officials did not have the power to spend locally raised dollars; those funds could be spent only through an express authorization by Congress.

4. The Local Budget Autonomy Act of 2012 ("Budget Autonomy Act" or "the Act," D.C. Law 19-321, 60 DCR 1724 (Exhibit A)), changed that. Now, the Council is entitled to pass a budget designating local expenditures of local funds, and only passive review—as opposed to an affirmative act—by Congress is required for that budget to become law.

5. The Budget Autonomy Act was an amendment to the District of Columbia Charter, and pursuant to the process for amending the Charter, became binding law on July 25, 2013, after it was (a) approved by a unanimous Council, (b) signed by the Mayor, (c) ratified by a substantial majority (83%) of District voters, and (d) passively approved by Congress, which did not pass a joint resolution of disapproval.

6. As discussed in greater detail below, the District's Mayor and Chief Financial Officer ("CFO") play essential roles in preparing and implementing the District's budget.

7. On April 11, 2014, however, both the Mayor and the CFO advised the Council that they will not honor their obligations under the Budget Autonomy Act.

8. Defendants' position is based on a wrongful belief that the Budget Autonomy Act is invalid. There is no constitutional or statutory basis for their decision to disregard the Act.

9. Prompt judicial resolution of this controversy is essential to forestall injury to the Council and to the people of the District of Columbia.

10. The Council respectfully seeks a declaration that Budget Autonomy Act is valid and an injunction compelling the CFO to comply with the law.

JURISDICTION

11. This Court has subject matter jurisdiction over this civil action under D.C. Code § 11-921(a).

PARTIES

A. Plaintiff Council of the District of Columbia

12. Plaintiff Council of the District of Columbia is the legislative and policymaking body for the District of Columbia.

13. The Council consists of thirteen members, each elected to a four-year term. One member represents each of the District's eight wards, and five at-large members (including the Chairman) represent the entire District.

14. The Council has a statutory obligation to enact a balanced budget for each fiscal year. Under the Council's leadership, "the District has transformed itself from a city on the verge of bankruptcy to a thriving city reaching reassuring levels of financial security," producing "17 consecutive balanced budgets and 16 consecutive clean year-end financial audits," and finishing Fiscal Year 2012 with a $417 million budget surplus.[1] Financial markets have recognized the District's laudable fiscal stewardship in the form of higher bond ratings and lower interest rates on borrowing.[2]

[1] Letter from former Virginia Representative Thomas M. Davis III & former District Mayor Anthony A. Williams to Phil Mendelson, Chairman, Council of the District of Columbia 1 (Sept. 24, 2013) (Exhibit B).

[2] D.C. Council Committee of the Whole, Committee Report on Bill 19-993, *Local Budget Autonomy Act of 2012*, at 4 (Dec. 4, 2012), http://dcclims1.dccouncil.us/images/00001/20130418101959.pdf.

15. The Council can discharge its statutory obligations only if its duly enacted legislation is treated as binding law.

16. The Council voted unanimously to approve the Budget Autonomy Act, and succeeded in effecting an amendment to the Charter. The Council's legislative act, which would otherwise have taken effect, will be nullified and overridden by the promised acts and omissions of the CFO. The Council has no further legislative recourse to compel the CFO to comply with the duly enacted amendment to the Charter.

17. Accordingly, judicial intervention is required to resolve whether the CFO is required to implement the budget that the Council is required to enact.

18. To achieve clarity and to effectuate the will of the people, the Council authorized this litigation in its official capacity through the unanimous adoption of the Budget Autonomy Litigation Authorization Resolution of 2014 on March 4, 2014.

B. Defendant Vincent C. Gray, in his Official Capacity as Mayor of the District of Columbia

19. Defendant Vincent C. Gray is the Mayor of the District of Columbia.

20. As Mayor, Mr. Gray is the "the chief executive officer of the District government," and is "responsible for the proper execution of all laws relating to the District." D.C. Code § 1–204.22.

21. In particular, the Mayor is in "charge of the administration of the financial affairs of the District" except to the extent responsibilities have been assigned to the CFO. *Id.* § 1–204.48(a). Thus, he is "responsible for all financial transactions," has "custody of all public funds belonging to or under the control of the District," and is required to apportion "all appropriations and funds made available during the fiscal year for obligation." *Id.* § 1–

204.48(a)(1), (7), (9). He is also required to transmit the federal portion of the budget to the President for submission to Congress. *Id.* § 1–204.46(a).

22. On April 11, 2014, the Mayor sent a letter to Council Chairman Phil Mendelson advising that he would not enforce the Budget Autonomy Act. In particular, he informed the Council that he would:

> (a) "direct all subordinate agency District officials not to implement or take actions pursuant to the [Budget Autonomy Act]";
>
> (b) "veto any [fiscal year 2015] budget transmitted by the Council that is not inclusive of both the local and federal portions of the budget"; and
>
> (c) "transmit to the Congress and President the full District budget as it stands after the 56th day following transmission to [the Council] of the budget, whether or not the Council has taken a second vote."[3]

C. Defendant Jeffrey S. DeWitt, in his Official Capacity as Chief Financial Officer for the District of Columbia

23. Defendant Jeffrey S. DeWitt is the CFO for the District of Columbia.

24. As CFO, Mr. DeWitt has primary responsibility for enhancing the fiscal and financial stability, accountability and integrity of the Government of the District of Columbia.[4] As part of his statutory job duties, the CFO provides fiscal impact statements for Council legislation and provides the financial analyses that the Council requires to ensure that its budgets are balanced.

25. The CFO is specifically required by statute to prepare "under the direction of the Mayor . . . the budget for submission by the Mayor to the Council and to the public and upon

[3] Letter from Vincent C. Gray, Mayor, District of Columbia, to Phil Mendelson, Chairman, Council of the District of Columbia 3 (Apr. 11, 2014) ("Gray Letter") (Exhibit C).

[4] *See* About OCFO, http://cfo.dc.gov/node/198592.

final adoption to Congress and to the public." D.C. Code § 1–204.24d(26); *see also id.* § 1–204.24d(2) (charging the CFO with "preparing the 5-year financial plan based upon the adopted budget for submission with the District of Columbia budget . . . to Congress"); § 1–204.24d(25) (requiring the CFO to "[p]repar[e] fiscal impact statements . . . on legislation").

26. Moreover, the CFO is required by statute to "[c]ertify[] and approv[e] prior to payment of all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government, and determining the regularity, legality, and correctness of such bills, invoices, payrolls, claims, demands, or charges." *Id.* § 1–204.24d(16); *see also id.* § 1–204.24d(21) (requiring the CFO to "[a]dminister[] the centralized District government payroll and retirement systems").

27. On April 11, 2014, the CFO sent a letter to Council Chairman Phil Mendelson advising that he would not enforce the Budget Autonomy Act. In particular, he informed the Council that he would "not make or authorize any payment pursuant to a budget that was approved in conformance with the [Budget Autonomy Act]" and would "direct [Office of the CFO] employees not to certify contracts or make payments under this budget."[5]

FACTUAL ALLEGATIONS

A. The Early History of the Budget Process for the District of Columbia

28. The District Clause of the U.S. Constitution, Art. I, § 8, cl. 17, authorizes Congress to exercise legislative authority over a federal district serving as the seat of government.

29. In exercise of that authority, Congress established the District of Columbia in 1801. *See* District of Columbia Organic Act, ch. 15, 2 Stat. 103 (1801).

[5] Letter from Jeffrey S. DeWitt, CFO, District of Columbia, to Phil Mendelson, Chairman, Council of the District of Columbia 2 (Apr. 11, 2014) ("DeWitt Letter") (Exhibit D).

30. Budget autonomy for the District of Columbia dates back to 1802, the year in which the City of Washington was incorporated. At that time, the elected City Council had authority to lay and collect taxes and to spend tax revenues on matters of local concern.

31. The authority of the city government was gradually expanded until 1871, when Congress created a unified municipal government for the District of Columbia to replace previously separate governments for the City of Washington, the County of Washington, and Georgetown.

32. The unified municipal government, which consisted of appointed and elected officials, had authority to lay and collect taxes and to spend local tax revenues.

33. In 1874, that system of government was abolished by Congress, and local authority to legislate with respect to local matters ceased. The responsibility to lay taxes and to spend those tax revenues reverted to Congress.

B. The Budget Process Under the Home Rule Act, As Initially Enacted

34. Congress maintained legislative authority over the District until the 1973 enactment of the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, 87 Stat. 777 (1973), now known as the "Home Rule Act."[6]

35. Congress, in the Home Rule Act, created a new system of local government for the District of Columbia in which it delegated legislative authority regarding local matters to local elected officials "to the greatest extent possible." Home Rule Act § 102(a), D.C. Code § 1–201.02(a).

36. Congress also created, as part of the Home Rule Act, the District of Columbia Charter and a process for amending that Charter.

[6] Congress changed the title in 1997. *See* Pub. L. No. 105-33 § 11717(a), 111 Stat. 786 (1997).

37. Prior to the Home Rule Act, revenue collected from local sources was maintained in the U.S. Treasury. But the Home Rule Act moved locally raised revenues out of the U.S. Treasury, declaring that those funds "belong to the District government," and exempting revenue from local sources from the requirement that "an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable." 31 U.S.C. § 3302(b). Thus, following the Home Rule Act, those funds have been maintained in the General Fund of the District of Columbia and various Special Funds, outside the custody of the Treasury. These funds were originally under the custody of the Mayor and are now under the custody of the CFO. *See* District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. No. 104-8, 109 Stat. 142 (1995).

38. Pursuant to the Home Rule Act, most legislation would become law after it was (a) approved by a majority of the Council after two readings separated by at least thirteen days; (b) approved by the Mayor, or disapproved by the Mayor but approved by two-thirds of the Council within a 30-day period; and (c) passively approved by Congress, which had a 30-day period in which to pass a joint resolution disapproving of the legislation.

39. As originally enacted, the Charter authorized the Council to lay and collect taxes within the District pursuant to the usual process for local legislation, *i.e.*, after two readings and submission to Congress for passive review, but specified a different procedure for the District's budget. Specifically, the Charter permitted the Council only to *recommend* a budget that was (a) approved by a majority of the Council at a single reading no more than 56 days after receipt of the Mayor's proposal; (b) approved by the Mayor, or disapproved by the Mayor but approved by two-thirds of the Council within a 30-day period; and (c) transmitted to the President for submission to Congress. Congress was free to amend, adopt or ignore the proposed budget, on

an open-ended timeframe, with or without consulting with the District. No local funds could be expended absent affirmative action by Congress.

40. Under this process, the budget was treated unlike every other piece of District legislation and the District was treated unlike every other state and home-rule city in the country.

41. This system imposed substantial costs on the District.

42. Congress rarely finishes its appropriations process before the start of the fiscal year. Indeed, for the 25 fiscal years between 1990 and 2014, Congress has met the deadline on only three occasions. On the other 22 occasions, Congress has either enacted a continuing resolution (which means that the District must begin the fiscal year without knowing its total annual budget) or no budget at all (which triggers burdensome and costly government shutdown procedures).

43. Congress's affirmative role in the budgeting process introduced substantial uncertainty into the District's finances. According to testimony from the previous CFO for the District, "Bond rating agencies take the uncertainties of the Federal process into account in assessing the District's finances, and discount to a degree whatever ratings the District might otherwise receive. In the case of new or expanded programs approved and financed locally, no implementing action can be taken until the Federal appropriation bill is enacted. This delays program initiation and guarantees programs will not be executed as planned."[7]

[7] *Budget Autonomy for the District of Columbia: Restoring Trust in our Nation's Capital*: *Hearing Before the H. Comm. on Gov't Reform*, 108th Cong. 32 (2003) (statement of Natwar Gandhi, Chief Financial Officer of the District of Columbia).

44. According to testimony from the former Mayor of the District of Columbia, delays in federal appropriations have led to lower service-delivery levels for "school nurses, prescription drug benefits, police equipment and staffing."[8]

C. The Budget Autonomy Act Amends the District Charter to Establish Local Control over Expenditures of Locally-Raised Revenue and to Enhance the Efficiency of the Budget Process

45. For budgets enacted on or after January 1, 2014, the Budget Autonomy Act repealed and replaced the budget process provided in the original 1973 Charter.

46. Following the process to amend the Charter specified by Congress in the Home Rule Act, the Council unanimously adopted the Budget Autonomy Act, the Mayor signed it, the voters of the District of Columbia overwhelmingly ratified it, and Congress passively approved it by failing to pass a joint resolution within 35 legislative days.

47. The Budget Autonomy Act left in place the 1973 Home Rule Act's permanent appropriation of funds from the U.S. Treasury to the D.C. General Fund but modified the process by which money in the D.C. General Fund can be spent.

48. As amended, the process for expending local tax revenues has been revised to match the process for raising local tax revenues (or enacting any other non-emergency legislative bill).

49. Pursuant to the terms of the Budget Autonomy Act, the Mayor submits a proposed budget to the Council, with the assistance of the CFO. For the local portion, the Council then adopts a budget after two readings within 70 days of receipt of the Mayor's proposal. After the Mayor approves the Council's version (or the Mayor's veto is overridden), that budget is transmitted by the Council Chairman to Congress, with a certification from the CFO that the

[8] *Id.* at 10 (statement of Anthony Williams, Mayor of the District of Columbia).

District has adequate revenues to satisfy its budgetary expenditures. If Congress does not act within 30 days, the budget is enacted.

50. The Budget Autonomy Act did not alter the process by which federal dollars are expended in the District of Columbia.

51. The Act also authorized the Council to change the fiscal year of the District. Budget Autonomy Act § 2(d). In most cities and states, the fiscal year runs from July to June, so each school year can be planned for and addressed in a single budget cycle. The District's fiscal year, conversely, runs from October to September to correspond with the federal government's fiscal year. To date, the Council has not exercised its authority to change the District's fiscal year.

D. Defendants Will Not Comply With or Enforce the Act

52. On April 11, 2014, both Defendants sent letters to Council Chairman Phil Mendelson advising that they would refuse to enforce the Budget Autonomy Act.

53. Following the advice of the Attorney General for the District of Columbia,[9] the Mayor announced that he would treat the Act as a "legal nullity" and that he would:

> (a) "direct all subordinate agency District officials not to implement or take actions pursuant to the [Budget Autonomy Act]";
>
> (b) "veto any [fiscal year 2015] budget transmitted by the Council that is not inclusive of both the local and federal portions of the budget"; and
>
> (c) "transmit to the Congress and President the full District budget as it stands after the 56th day following transmission to [the

[9] Op. of the D.C. Att'y Gen., *Whether the Local Budget Autonomy Act of 2012 is Legally Valid* (Apr. 8, 2014) ("Op. D.C. Att'y Gen.") (Exhibit C).

> Council] of the budget, whether or not the Council has taken a second vote."[10]

54. Following the advice of his legal staff, the CFO announced that he would treat the Act as having "no legal validity" and that he would:

> (a) "not make or authorize any payment pursuant to a budget that was approved in conformance with the [Budget Autonomy Act]"; and
>
> (b) "direct [Office of the CFO] employees not to certify contracts or make payments under this budget." [11]

55. The CFO indicated that he would enforce the Budget Autonomy Act if a "court of competent jurisdiction sustains the Act's legal validity."[12]

56. As explained in the contemporaneously filed Motion for Preliminary Injunction, the legal reasoning underlying Defendants' refusal to enforce the Budget Autonomy Act is based on an unsound interpretation of binding law.

57. The Council's injury will be felt immediately, as the budget cycle for Fiscal Year 2015 is already underway. Moreover, the injury will be felt for each ensuing regular and supplemental budget cycle until the CFO is directed to comply with the Autonomy Act.

58. There is an urgent need to resolve the validity of the Budget Autonomy Act and to ensure that the CFO will perform his job duties consistent with the Act.

E. The Council Faces Imminent Injury From Defendants' Conduct

59. The announced actions of the Mayor and the CFO will individually and jointly cause injury to the Council and its interests. In particular:

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[10] Gray Letter, *supra* note 3, at 3 (Exhibit D).

[11] DeWitt Letter, *supra* note 5, at 2 (Exhibit D).

[12] *Id.*; *accord* Op. D.C. Att'y Gen., *supra* note 9, at 2 (concluding that the Budget Autonomy Act "should not be enforced or followed" "absent a binding judicial ruling to the contrary") (Exhibit C).

(a) The Mayor's promise to submit the Council's draft budget to the President on May 29 contravenes the Council's exclusive right to legislate for the District.

(b) Defendants' actions nullify the Council's legislative act in enacting the Budget Autonomy Act. The Council voted unanimously for the Act, there were sufficient votes to enact the Act. And the Council lacks a legislative remedy to guarantee enforcement of its legislation. Likewise, Defendants' actions will nullify the Council's legislative act in enacting the fiscal year 2015 budget pursuant to the Budget Autonomy Act. The Council is required by statute to enact such a budget but Defendants have already announced that they will treat it as a nullity once enacted. The Council lacks a legislative remedy to guarantee enforcement of its legislation.

(c) Defendants' announced refusal to recognize the Budget Autonomy Act will needlessly deprive the Council of information to which it is entitled in the formulation of its budget.

(d) Defendants' actions will impede the orderly administration of the District government. The uncertainty created by Defendants' announced refusal to comply with the Budget Autonomy Act will undermine the Council's ability to satisfy its statutory obligations. And the Council will incur unnecessary costs in preparing for the contingencies risked by Defendants' conduct.

(f) Defendants' refusal to enforce the District's fiscal year 2015 budget will deprive the Council of funding for its necessary governmental operations.

CLAIM I

DECLARATORY JUDGMENT

60. The Council incorporates by reference and re-alleges each and every allegation contained in paragraphs 1-59, as though fully set forth herein.

61. Defendants' refusal to comply with their duties under the Budget Autonomy Act is in violation of their responsibilities under the District Charter, as amended by the Autonomy Act.

62. Defendants' refusal to comply will cause the Council to sustain injury that is redressable by this Court.

63. The Council is entitled to a declaratory judgment, pursuant to D.C. Superior Court Rule 57 and 28 U.S.C. § 2201, that the Budget Autonomy Act is legally valid as the law of the land and that Defendants are required to treat the Act as binding law.

64. The Council is further entitled to an injunction compelling Defendants to comply with the Budget Autonomy Act.

PRAYER FOR RELIEF

WHEREFORE, the Council prays for judgment and relief as follows:

65. A declaration that the Budget Autonomy Act is valid and enforceable law, and that no District officer or employee may refuse to treat it as such.

66. A preliminary and permanent injunction, enjoining Defendants to fulfill their duties under the law in a timely fashion, such that the Council will be able to enact a budget for the District pursuant to the Budget Autonomy Act.

67. Such other and further relief as the Court deems just and proper.

Dated: April 17, 2014

Respectfully submitted,
BOIES, SCHILLER & FLEXNER LLP
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Exhibit A

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-321

"Local Budget Autonomy Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-993 on first and second readings December 4, 2012 and December 18, 2012 respectively. Following the signature of the Mayor on January 18, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 19-632 and was published in the February 15, 2013 edition of the D.C. Register (Vol. 60, page 1724). Act 19-632 was transmitted to Congress on May 8, 2013 for a 35-day review, in accordance with Section 303 of the Home Rule Act. The first day of the 35-day review period was May 9, 2013.

The Council of the District of Columbia hereby gives notice that the 35-day Congressional review period has ended, and Act 19-632 is now D.C. Law 19-321, effective July 25, 2013.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 35-day Congressional Review Period:

May 9,13,14,15,16,20,21,22,23

June 3,4,6,10,11,12,13,17,18,19,20,24,25,26,27

July 8,9,10,11,15,16,17,18,19,23,24

Codification
District of Columbi
Official Code
2001 Edition

Winter 2013

AN ACT

D.C. ACT 19-632

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 18, 2013

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 Amendment 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.

Amend § 1-204.04

(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" both times it appears and inserting the phrase "incorporated in the budget act and become law subject to the provisions of section 602(c)" in its place.

Amend § 1-204.12

(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)".

Amend § 1-204.41

(d) Section 441(a) (D.C. Official Code § 1-204.41(a)) is amended –by striking the phrase "budget and accounting year." and inserting the phrase "budget and accounting year. 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." in its place.

Amend § 1-204.46

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

"ENACTMENT OF LOCAL BUDGET BY COUNCIL.

"Sec. 446. (a) Adoption of Budgets and Supplements - The Council, within 70 calendar days, or as otherwise provided by law, 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 to the annual budget 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 to the budget, 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.".

Amend § 1-204.46b

(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)" in its place.

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

Amend § 1-204.47

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

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

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

(h) Sections 467(d), 471(c), 472(d)(2), 475(e)(2), and 483(d), and 490(f), (g)(3), (h)(3), and (i)(3) are amended by striking the phrase "The fourth sentence of section 446" and inserting the phrase "Section 446(c)" in its place.

Amend §§ 1-204.67, 1-204.71, 1-204.72, 1-204.75, 1-204.83, 1-204.90

Sec. 3. Applicability.

Section 2 shall apply as of January 1, 2014.

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).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
January 18, 2013

Exhibit B

Federal City Council

A CATALYST
FOR PROGRESS
IN THE
NATION'S
CAPITAL

1156 15th Street, NW
Suite 600
Washington, DC 20005-2706
(202) 223-4560
Fax (202) 659-8621
www.federalcitycouncil.org

September 24, 2013

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue NW
Suite 504
Washington, D.C. 20004

Re: Law 19-321, the "Local Budget Autonomy Amendment Act of 2012"

Dear Chairman Mendelson:

At your request, we are providing our comments on the Local Budget Autonomy Amendment Act of 2012 ("Charter Amendment").

We are pleased to expound on the importance of this small, but significant step toward improving the financial health and governance of the District of Columbia. As you know, we have long advocated for greater local budget autonomy for the District through our respective leadership positions in the nation's capital. Mr. Davis was a Republican Representative from Virginia from 1995 to 2008 and chaired the House subcommittee and committee with jurisdiction over the District government for much of that time. Mr. Williams served as the District's Democratic Mayor from 1999 to 2007 and as the first Chief Financial Officer from 1995 to 1998, testifying before Congress numerous times on the District's finances.

Over the past 20 years, the District has transformed itself from a city on the verge of bankruptcy to a thriving city reaching reassuring levels of financial security and making rapid progress in service quality. At a time when state and local governments throughout the country are having difficulties, the District has produced 17 consecutive balanced budgets and 16 consecutive clean year-end financial audits. The city finished Fiscal Year 2012 with a $417 million budget surplus.

Recognizing the District's consistently strong fiscal record, we and others believe it appropriate for the city to have greater autonomy over its own local budget. This is why we strongly support the charter amendment. It is a small, but significant advancement that would remedy the serious problems that result from tying the District's local budget to the federal appropriations process.

For budgeting purposes, the District is treated as both a local government and a federal agency. Unlike every other state and city in the country, until the recent charter amendment the District could not spend its own money without an Act of Congress. While the federal government does fund certain local functions, such as the courts and pensions, the vast majority of the District's budget is composed of the local budget, which is derived from locally-raised taxes and fees and federal grants available to all jurisdictions.

Because the District's local budget was before the Congress each year, unfortunately that budget often would get tied up in political disagreements that are completely unrelated to the city. This is needlessly inefficient, lengthening the time it takes for the District to respond to changing public needs, costing the District money, and disrupting the delivery of services. This is not what Congress ever intended for the District, but it is the result of the longstanding budget process.

The charter amendment solves these problems by permitting the District to spend locally-raised revenue according to a budget that will become law in the same manner as all other District legislation. Under the charter amendment, starting in 2014, the District's local budget will become law 30 days after being passed by the Council and approved by the Mayor, unless during that time Congress passes a joint resolution to disapprove it that is subsequently signed by the President. This process will eliminate delays and allow District agencies to deliver city services efficiently, rather than waiting on the sidelines wondering when or if Congress will act. We emphasize that the charter amendment will give the District greater control only over funds collected from local taxes and fees and generally available federal grants. It would make no change to federal funds specially appropriated to the District for which Congress has unique oversight responsibility.

Based on our long experience of working with Congress on this issue, we are not surprised that it has not taken action to override the charter amendment. First, there is bipartisan agreement among Members that the District should have greater autonomy over its local budget. Moreover, the current and prior presidents have also endorsed local budget autonomy. Second, Congress retains its full authority to legislate for the District, consistent with the Constitution and the Home Rule Act. It can veto any local budget passed pursuant to the charter amendment within 30 days by joint resolution, signed by the President. It can also repeal or amend the budget process established by the charter amendment at any time.

As Mr. Davis testified to the D.C. Council's Committee of the Whole on November 9, 2012, the charter amendment is not a "poke in the eye" of Congress. It simply gives the District the tools it needs to continue the strides it has made toward improved financial stability and governance, and does so in a way that already enjoys bipartisan support in Congress.

Thank you for inviting us to comment, and please let us know if we can be of further assistance on this matter.

Sincerely,

Thomas M. Davis III
President, Federal City Council

Anthony A. Williams
Chief Executive Officer, Federal City Council

Exhibit C

VINCENT C. GRAY
MAYOR

April 11, 2014

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building, Suite 504
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Re: Enactment of the Fiscal Year 2015 District Budget

Dear Chairman Mendelson:

I write to urge the Council to act on the FY 2015 budget submitted on April 3, 2014 within the 56 days set forth in the original Home Rule Charter, to return the budget within that time, and not to base its actions or rely in any way in considering this budget on the Local Budget Autonomy Act of 2012 (the Act), which purported to amend the Charter. Failure to do so could have serious and destabilizing consequences for the District of Columbia government.

As you know, I believe deeply that Congress should grant the District budget autonomy and should do so as soon as possible. Indeed, this Administration worked successfully to convince President Obama to include such a proposal in his pending budget legislation, and we are doing all we can to convince Congress of the wisdom and fairness of this proposal.

At the same time, I must take seriously my responsibility as Mayor of this great city to ensure that the District government complies in all respects with the governing federal law, including in connection with its budget and finances. At my request, our D.C. Attorney General Irvin Nathan has issued the enclosed formal opinion concluding that the Act is null and void as it patently contravenes the Home Rule Act and provisions of Title 31 of the U.S. Code. As explained in the Attorney General's opinion, the Act if followed would interfere improperly with the Constitutional and federal statutory roles of the Congress and President of the United States as well as the Mayor in the budget and appropriations process for the District of Columbia, and compliance with it could cause officials and employees of the District government to be in violation of federal statutes that carry administrative as well as criminal penalties. His opinion is fully consistent with the written opinion issued by the U.S. Government Accountability Office ("GAO") on January 30, 2014. The GAO concluded: "Provisions of the [Act] that attempt to change the federal government's role in the District's budget process have no legal effect....The District Government remains bound by provisions of federal law which require it to submit

budget estimates to the President for transmission to the Congress for the enactment of appropriations... Because acts taken *ultra vires* are, *ab initio*, legally ineffective, portions of the [Act] that purport to change the federal government's role in the District's budget process are without legal force or effect." (pp. 11-12, emphasis added.) I am not willing either to violate federal appropriations laws or to subject our employees to the risks of prosecution or administrative sanctions that would flow from the Council's implementation of the illegal Act.

The Act, if implemented, would purport effectively to cut the President and Mayor out of our respective roles pursuant to the Home Rule Act in transmitting to Congress the entire budget for the District – both the federal *and* local dollars portion of the budget. The Act would also reduce the role of Congress in appropriating local revenue, which revenue approximates 70% of the D.C. budget. The Act would call for the local portion of the annual budget to be submitted by the Chairman of the Council to the Speaker of the House of Representatives for passive review. But the Home Rule Act expressly calls for the full District's budget – both local and federal dollars – to be transmitted by the *Mayor* to the *President* for transmission by him to the Congress and for Congress then to appropriate the full D.C. Budget. The Council cannot usurp the Mayor's long-established authority and responsibility to submit the full unified budget, nor can it unilaterally restructure the role in the budget process played by federal officials and Congress.

The Attorney General's legal opinion is binding on the Executive branch officials in the District government absent a controlling court opinion to the contrary. Because, as the opinion concludes, the Act is a legal nullity, the Act can have no effect on the formation of the District's budget. Further, monies voted on by the Council but not contained in a budget passed by both houses of Congress and signed by the President cannot be spent without exposing our employees to criminal or civil liability.

We must comply with federal law while we continue to push in Congress for budget autonomy, for which we now have support from the White House and within both houses of Congress. In support of this request to the Council, consider some of the following possible adverse consequences if the Council adheres to the Act, in the absence of a governing judicial ruling of its validity, and ignores the provisions of the binding and valid Home Rule Charter.

If the Council follows its contemplated schedule and takes more than 56 days to consider the budget pursuant to the Act, evidenced by a currently scheduled second vote on the FY 15 Budget Request Act 70 days from the budget's submission (*i.e.*, two weeks after the 56 day statutory deadline), it will be in violation of the Home Rule Act. That violation will deprive my Office as well as the President and Congress of the ability to comply with applicable statutory responsibilities in the creation and enactment of the District's budget, a process set up four decades ago by Congress for the benefit of funding the District's operations and followed faithfully and scrupulously until this year. If that happens, I intend to the best of my ability to continue to comply with the Home Rule Act's budget requirements. Therefore, I intend to transmit to the Congress and President the full District budget as it stands after the 56th day following transmission to you of the budget, whether or not the Council has taken a second vote. A dispute as to whether or not this is the District's duly proposed budget could well lead either to the President's ignoring the elected officials of the District and transmitting his own budget for the District to the Congress (31 U.S.C. § 1108(b)(1)) or even to Congress' declining to pass any significant budget for the District in FY 2015.

Second, if the District fails to enact a valid Budget Request Act and submit it to Congress for inclusion in a continuing resolution or appropriations act, there is also a serious risk that the District will not be able to avail itself of the protection afforded by section 816 of the Consolidated Appropriations Act, 2014. This crucial appropriations authority advanced to the District the funds contained in the FY 2015 Budget Request Act for periods during which no federal continuing resolution or appropriations act for the District is in effect. However, a condition included by Congress, presumably for the District's financial benefit, is that the District have a validly enacted budget. We have come too far to jeopardize our ability to keep the District functioning if the federal government shuts down again. I urge the Council to be responsible and enact a valid budget for the protection of the District. If the Council does not, it will put the District's finances in a highly precarious position.

There is even the possibility that if the District government does not come together to enact a valid budget, in accordance with the Home Rule Charter as passed by Congress, the Control Board could be reactivated. (D.C. Official Code § 47-392.09.) If because of the absence of Congressional appropriations, the District cannot lawfully make local expenditures in FY 2015, the District could once again become subject to governance by the Control Board. Such action occurs by operation of law if the District fails to meet its payroll for any pay period, fails to make any required payments relating to pensions and benefits or fails to make payments required under an interstate compact. (D.C. Official Code §§ 47-391.07 (b); 47-392.09) That would be a disastrous outcome for Home Rule in the District and we should take steps to avoid it.

As you consider our urgent request, you should know of my intended actions in light of the Attorney General's opinion, and in consultation with the Chief Financial Officer. First, I will direct all subordinate agency District officials not to implement or take actions pursuant to the Act, which contravenes our Home Rule Charter and other federal law. Second, I will veto any FY 15 budget transmitted by the Council that is not inclusive of both the local and federal portions of the budget, as required under the Home Rule Act. Third, as noted, to achieve compliance to the extent I am able with the Home Rule Act, I will transmit to the Congress and President the full District budget as it stands after the 56th day following transmission to you of the budget, whether or not the Council has taken a second vote.

I would be pleased to meet with you and other appropriate Members of the Council to discuss these matters and to find solutions which will avoid the dire possible consequences of failing to reach agreement on the proper procedures for the FY 2015 budget process. As always, I appreciate a mutually respectful dialogue with you. Thank you for your prompt consideration of these matters.

Sincerely,

Vincent C. Gray
Mayor

Enclosure

cc: Jeffrey S. DeWitt, Chief Financial Officer
Irvin B. Nathan, Esq., Attorney General
The Honorable David A. Catania
The Honorable Vincent B. Orange, Sr.
The Honorable David Grosso
The Honorable Anita D. Bonds
The Honorable Jim Graham
The Honorable Jack Evans
The Honorable Mary M. Cheh
The Honorable Muriel Bowser
The Honorable Kenyan McDuffie
The Honorable Tommy Wells
The Honorable Yvette M. Alexander
The Honorable Marion Barry

Exhibit D

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER

Jeffrey S. DeWitt
Chief Financial Officer

April 11, 2014

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Subject: Local Budget Autonomy Act

Dear Chairman Mendelson:

On several occasions, you and I have discussed the legal validity of the Local Budget Autonomy Act of 2012 (Act), which was approved by the voters of the District of Columbia (District) in April, 2012. As you know, the Act would change the District Home Rule Act by extending the deadline by which the Council of the District of Columbia (Council) must approve the District's annual budget. It also authorizes the Council to submit the local portion of the District's budget directly to the U.S. Congress, instead of to the Mayor who, if the Home Rule Act was not changed, is required to send the budget to the President of the United States for his transmittal to Congress. Like you and many others, I support the principle of budget autonomy for the District. I am also committed to following the rule of law in carrying out my duties as the District's Chief Financial Officer.

The Council's legal staff deemed the Act legally sufficient, as did opinions from private counsel for DC Appleseed. In addition, two Board members of the D.C. Board of Elections found that the Act was "not patently illegal." Conversely, the District's Attorney General, in his January 7, 2013 statement before the District Board of Elections, concluded that the Act violated our governing law, and he reiterated his conclusion in his formal Opinion of the Attorney General dated April 8, 2014. The General Counsel to the U.S. Government Accountability Office came to the same conclusion. Given the importance of this matter and the variety of legal opinions, I asked lawyers for the Office of the Chief Financial Officer (OCFO) to review the Act. After their independent and exhaustive review of relevant federal and local statutes, case law, legislative history and the competing viewpoints, OCFO lawyers have concluded that there is no legal validity to the Act.

Accordingly, I urge the Council to weigh the risks to both the District and its employees if the Council approves the District's Fiscal Year (FY) 2015 budget under the Act's provisions amending the Home Rule Act's appropriations procedures. I am very concerned that any budget approved in this manner will not be legal unless Congress decides to approve it or a court of competent jurisdiction sustains the Act's legal validity. Absent such actions, I will not make or authorize any payment pursuant to a budget that was approved in conformance with the Act. I will also direct OCFO employees not to certify contracts or make payments under this budget given the potential civil and criminal penalties to which they, as individuals, would be subject under the federal Anti-Deficiency Act. In this regard, any contracts entered into in violation of the Anti-Deficiency Act would be void ab initio such that OAG may not be able to provide legal sufficiency for and the OCFO would not be able to make payment pursuant to these contracts. Finally, I must caution that the Council's failure to approve a District budget pursuant to pre-Act Home Rule Act provisions may cause the occurrence of one or more events (such as failure to meet District government payroll, or make pension benefit or interstate compact payments) that would trigger the re-emergence of the Control Board and result in loss of the precious, limited Home Rule currently provided to District residents.

Given the potential for these serious adverse consequences to the District and its officers and employees, I strongly advise you to take all necessary steps to avoid occurrence of the events described above. Specifically, until and unless Congress affirmatively grants budget autonomy or there is a binding judicial decision finding that the Act is valid, I ask that you and your fellow Councilmembers approve the District's FY 2015 budget pursuant to the Home Rule Act's original, pre-Act procedures while we work together with the Mayor to resolve this matter. As always, I am open to further discussion with you about this matter.

If you have any questions, please feel free to call me at (202) 727-2476.

Sincerely,

Jeffrey S. DeWitt

Jeffrey S. DeWitt
Chief Financial Officer

cc: Mayor Vincent C. Gray
All Councilmembers
Irvin B. Nathan

Exhibit E

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL

April 8, 2014

OPINION OF THE ATTORNEY GENERAL

SUBJECT: Whether the Local Budget Autonomy Act of 2012 is Legally Valid

The Honorable Vincent C. Gray
Mayor of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Mayor Gray:

This opinion is issued pursuant to Reorganization Order 50 of 1953, as amended[1] and addresses your request for the legal advice of this office about the validity of the Local Budget Autonomy Act of 2012 ("Act"), effective July 25, 2013, D.C. Law 19-321, 60 DCR 1724, passed by the Council of the District of Columbia and ratified by District of Columbia voters last year.

The Act is appealing as a matter of policy in that it attempts to secure budget autonomy for the District, allowing the District government to control its expenditure of locally collected revenues, a policy goal that I wholeheartedly endorse, and a goal that this Administration, members of the Council, and supportive members of Congress have pursued and continue to pursue in Congress.

However, based on the analysis by career professionals in this Office and my review of relevant legal authorities, I have reluctantly concluded that the Act is a nullity, with no legal force or effect and that adhering to it could put officials and employees of the District government in

[1] Reorganization Order 50, Part II, effective June 26, 1953, as amended. Pursuant to Reorganization Order 50, Opinions of the Attorney General operate as the "guiding statement of the law" in the District's Executive branch. *U.S. Parole Comm'n v. Noble*, 693 A.2d 1084, 1099 (D.C. 1997). As an opinion of the Attorney General, it must be followed by all District officers and employees in the performance of their official duties" until overruled by a controlling court decision," or as to local matters not controlled by the United States Constitution or federal law by a specific action of the Mayor or by an Act of the Council within their respective authority. See Reorganization Order 50, Part II.

legal jeopardy and risk adverse consequences from the Congress. Although we arrived at this conclusion independently, I note that this legal conclusion was also reached by the arm of Congress charged with interpreting such issues -- the Government Accountability Office -- whose extensive analysis is set forth in GAO Decision B-324987 (January 30, 2014).

Because this Act has no legal force or effect, it would be illegal for the District to establish or implement a budget that is based on the Act and that ignores the continuing need for congressional appropriation of local funds in the District's budget process. Moreover, it would be unlawful for District officers or employees to make or authorize expenditures that Congress has not approved. Doing so could expose these individuals to administrative and/or criminal penalties under the federal Anti-Deficiency Act. For the reasons detailed below, the Act is not valid, and, absent a binding judicial ruling to the contrary, it should not be enforced or followed by any official of this government.

I. The Act is null and void because the Council exceeded its authority in enacting it and because it violates federal law.

The Act purports to amend section 446 of the Home Rule Act (D.C. Official Code § 1-204.46)[2] to exempt the District's budget process for local funds from the congressional appropriations requirements established under Article I, section 9, clause 7 of the United States Constitution.[3] Section 446 of the Home Rule Act applies these appropriations requirements to the District by setting out the process the District must follow to obtain Congressional approval of its budget and by stating that, with limited exceptions, "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 an Act of Congress and then only according to such Act." The Act also purports to amend section 441 of the Home Rule Act[4] to allow the Council to change the District's fiscal year.

In the absence of congressional legislation establishing budget autonomy for the District, the Council attempted to make these changes using a local Charter amendment process Congress authorized in section 303 in the Home Rule Act (D.C. Official Code § 1-203.03). Section 303 sets out a procedure that relies on Council action and voter ratification to approve changes to the District Charter.[5] Section 303(a) provides that, with limited but pertinent exceptions, the Charter "may be amended by an act passed by the Council and ratified by a majority of the registered qualified electors of the District voting in the referendum held for such ratification." Such an amendment must be submitted to Congress for a 35-calendar-day period of passive review.

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[2] District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 798, Pub. L. 93-198, D.C. Official Code § 1-204.46 (2012 Repl.) ("Home Rule Act").

[3] This clause provides that "[n]o Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law...."

[4] D.C. Official Code § 1-204.41 (2012 Repl.).

[5] The Charter is contained in title IV of the Home Rule Act.

The Council's use of the section 303 Charter amendment process to take the District's local funds budget out of federal control was ineffective because it violated several statutory restrictions on this process. Section 303(d) provides that section 303(a)'s amendment procedure "may not be used to enact any law or affect 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." The Act violates three different limitations that are specified in Sections 602 and 603 of the Home Rule Act (D.C. Official Code §§ 1-206.02 and 1-206.03). Each of these three limitations independently renders the Act invalid.

A. The Act violates the limitations of Section 602(a)(3) because it changes the functions of the United States and because it is not restricted in its application exclusively in or to the District.

Section 602(a)(3) of the Home Rule Act provides that the Council has no authority to "enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District." The Act violates both the "functions or property of the United States" and the "restricted in its application exclusively in or to the District" provisions of this Home Rule Act limitation.

Removing the expenditure of local funds from the federal appropriations process would affect a sea change in the "functions . . . of the United States" in the formation of the District's budget, in several ways. It would no longer give Congress, with Presidential approval, the sole right to appropriate local District funds. It would alter the functions of the federal Office of Management and Budget and the U.S. Comptroller General in the District's budget process, converting their review from active to passive with respect to the local budget. In addition, by allowing a change in the District's fiscal year, it would make it difficult, if not impossible, for Congress to review the District's finances during its regular budget cycle. This result would affect the functions of the United States and extend beyond the District's local affairs.

Further, the Act would effectively amend at least two federal laws that are not restricted in their application exclusively in or to the District. First, the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349 to 1351 and subchapter II of Chapter 15, prohibits federal and District government employees, under threat of federal criminal and administrative penalties, from, among other things, obligating or expending funds in excess or in advance of an appropriation.[6] The federal Anti-Deficiency Act is the principal mechanism the federal government uses to ensure that the District and the federal agencies comply with federal appropriations law. Removing the District's local funds budget from the federal appropriations process would effectively amend this law by exempting District transactions involving local funds from its scope.

[6] The federal Anti-Deficiency Act applies to the District by its own terms and through section 603(e) of the Home Rule Act (D.C. Official Code 1-603.03(e)), which states that "[n]othing in this act shall be construed as affecting the applicability to the District government of the provisions of §§ 1341, 1342, and 1349 to 1351 and subchapter II of Chapter 15 of Title 31, United States Code."

Second, the Act would exclude the District's local funds budget from the Budget and Accounting Act, 31 U.S.C. § 1108, which requires the Mayor and the federal agencies to submit their annual budget proposals to the President. In *McConnell v. United States,* 537 A.2d 211 (D.C. 1988), the District of Columbia Court of Appeals held that section 602(a)(3) prevents District voters from narrowing the applicability of national legislation to exclude the District. *See also Brizill v. D.C. Board of Elections and Ethics*, 911 A.2d 1212 (D.C. 2006) (District Government could not amend or repeal a federal law which barred gambling devices in certain enumerated jurisdictions, including the District). The Act's attempt partially to remove the District from the applicability of these two federal laws was therefore ineffective.

B. The Act violates the limitations of Section 603(a) because it changes the long-standing roles and procedures of Congress, the President, and other federal entities in the formation of the District's total budget.

The Act violates section 603(a) of the Home Rule Act (D.C. Official Code § 1-206.03(a)), which states that:

> 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.

There is no question that the Act's amendment of sections 441 and 446 of the Home Rule Act would change the long-standing roles and procedures of the stated federal entities with respect to the District's "total budget."[7] Rather than being subject to the federal appropriations process, the District would establish its own budget for local funds, to be authorized according to a potentially different fiscal year, subject only to passive Congressional review. This would constitute a significant change in District's budget process that would directly contradict the prohibition in section 603(a). This latter provision, through section 303(d), expressly precludes the use of the Charter amending process to accomplish this result.

C. The Act violates the limitations of Section 603(e) by using the ratification process to establish local budget autonomy.

Section 603(e) of the Home Rule Act (D.C. Official Code § 1-206.03(e)) prohibits the use of the ratification process to establish local budget autonomy. As noted above, section 603(e) states that nothing in the Home Rule Act shall be construed as affecting the applicability of the federal Anti-Deficiency Act to the District government. The Act directly violates this requirement by purporting to authorize District officials and employees to spend local funds, without a

[7] The "total budget" includes amounts derived from local taxes and fees and federal grants and payments. The Home Rule Act defines "budget" to mean "the entire request for appropriations and loan or spending authority for all activities of all agencies of the District financed from all existing or proposed resources and shall include both operating and capital expenditures." Home Rule Act, § 103(15) (D.C. Official Code § 1-201.03(15) (2012 Repl.)).

congressional appropriation, based on the Council's approval of budget legislation. It is difficult to imagine an amendment to the Charter that would more directly contradict section 603(e) of the Home Rule Act. The Act removes local District funds from the requirements of the federal Anti-Deficiency Act, thereby violating the Home Rule Act itself, and the Anti-Deficiency Act's direct statement that its requirements apply to the District.

Even if the Council's use of the ratification process to adopt the Act were not expressly prohibited by three separate provisions of the Home Rule Act, it would still be defective under the federal laws discussed above. The federal Anti-Deficiency Act continues to apply to District government expenditures, and District employees would act at their peril if they authorized or spent funds made available only through the Council's local budget. The Mayor would still be bound under the Budget and Accounting Act to provide the District's total budget to the President for submission to Congress. The Mayor's failure to do so would place the District out of compliance with this federal requirement. Further, the fact that these federal statutes independently apply to the District further supports the conclusion that Congress intended its control over the District's budget, as expressed in the Home Rule Act, to remain intact.

As noted, the U.S. Government Accountability Office ("GAO") agrees that the Act is without legal force or effect. In a detailed, authoritative opinion dated January 30, 2014, GAO concludes that the Act violates the federal Anti-Deficiency Act and the Budget and Accounting Act, both of which require that the District's budget be federally appropriated.[8] GAO also agrees that, because these federal statutes apply beyond the District, section 602(a)(3) of the Home Rule Act prohibits the District from using the Charter amending process in section 303 of the Home Rule Act to change them. GAO notes that, in enacting the Home Rule Act, Congress rejected a Senate proposal to allow the Council to adopt the District budget, in favor of the current version, which maintains the then-existing system of requiring a federal appropriation.[9] Describing this

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[8] This opinion was requested by the Hon. Ander Crenshaw, Chairman, Subcommittee on Financial Services and General Government, Committee on Appropriations, U.S. House of Representatives. It concludes that the "portions of the [Act] that purport to change the federal government's role in the District's budget process are without legal force or effect." GAO Decision B-324987 (January 30, 2014).

[9] H.R. Rep. No. 93-703 confirms that Congress intended to leave all congressional appropriation procedures in place:

> The Senate bill provided that the Mayor submit a budget to the Council in such form as he might determine, that the Council might adopt a line-item budget, and that the Mayor might transfer funds from one account to another with Council approval.
>
> The House Amendment required the Mayor to prepare a balanced budget for submission to the Council and to the Congress, to consist of 7 specified documents; and that the Council after public hearings, approve a balanced budget and submit same to the President for transmission to the Congress, *leaving Congressional appropriations and reprogramming procedures as presently existing.*
>
> The Conference substitute (sections 442-451, 603, 723, 743) adopts essentially the House provisions, *preserving the Congressional appropriations provisions of existing law.* Amendments are included to clarify procedural requirements as to the submission of the budget to the Council by the Mayor; the time for the Council to review the budget; the authority of the Mayor for line-item veto of budget proposals, with two-thirds of the Council required to override; and transmittal of the budget to the President for review and submission to the Congress . . . .

language, GAO noted that it "[could] think of no more specific manner for Congress to specify in the Home Rule Act that Congress would retain a firm hand in the District's budget process." GAO therefore concluded, correctly in my view, that because the Act was *ultra vires*, it was void *ab initio* and of no legal force or effect.

II. The legal arguments advanced in support of the Act are unpersuasive.

Despite the Act's patent illegality under the Home Rule Act and other federal laws, several arguments have been advanced in its support. These arguments, put forward by lawyers for either the Council or for political activists in support of the Act, draw on the language of section 303(d) of the Home Rule Act, which prohibits use of the Charter amending process for laws prohibited "under the limitations specified in sections 601, 602, and 603." They assert that section 603(a) of the Home Rule Act does not prohibit use of the Charter amending process to change the District's budget process because it is not phrased as a limitation on the Council's authority. Claiming that section 603(a) merely provides direction on how the original version of the Home Rule Act should be interpreted, they maintain that this language does not "limit" the District's future ability to amend the Charter's budget requirements without obtaining federal legislation. This is no more than a play on words that ignores both the obvious intent of Congress and the likely reaction of a court called upon to interpret the congressional language.

In addition, it has been argued that the Act violates neither the federal Anti-Deficiency Act itself, nor section 603(e) of the Home Rule Act, which requires its continuing application to the District. These arguments claim that the federal Anti-Deficiency Act applies to the District only through section 446 of the Home Rule Act, which places District spending under the control of Congress. Further, they claim that like section 603(a) of the Home Rule Act, section 603(e) is an interpretive direction on how the original Home Rule Act should be construed, rather than a limitation on the District's authority to amend it. Still further, these arguments assert that, because the Act takes the District's local funds budget out from under active congressional control, the Act implicitly modifies the federal Anti-Deficiency Act's requirement that *Congress* must appropriate funds to support District approved obligations and expenditures. Finally, these arguments maintain that Congress, in authorizing the District to spend excess revenue not included in the appropriated budget, confirmed that the District may expend unappropriated local funds without reference to the federal Anti-Deficiency Act.[10] From this, it is argued that the

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H.R. Rep. No. 93-703, 93d Cong., 1st Sess. 78 (1973) (emphasis added), *reprinted in* Staff of the House Comm. on the District of Columbia, 93d Cong., 1st Sess., Legislative History of the District of Columbia Self-Government and Governmental Reorganization Act at 3016 (Comm. Print 1974).

[10] The permanent version of this legislation is codified at D.C. Official Code § 47-369.02 (2013 Supp.), which states, in relevant part, that :

> (a) Beginning in fiscal year 2009 and each fiscal year thereafter, consistent with revenue collections, the amount appropriated as District of Columbia Funds may be increased –
>
> (1) by an aggregate amount of not more than 25 percent, in the case of amounts proposed to be allocated as "Other-Type Funds" in the annual Proposed Budget and Financial Plan submitted to Congress by the District of Columbia; and
>
> (2) by an aggregate amount of not more than 6 percent, in the case of any other amounts proposed to be allocated in such Proposed Budget and Financial Plan.

District's compliance with Council allocations, in the absence of a federal appropriation, would not constitute an Anti-Deficiency Act violation.

The main defect in these arguments is that they badly misread section 303(a). Congress made its intent to maintain control over the District's finances clear in section 303 of the Home Rule Act, by expressly excluding changes to its role in appropriating District funds from the Charter amending process. Congress further expressed this intent by continuing to include the District in the Budget and Accounting Act and by making the federal Anti-Deficiency Act expressly applicable to District expenditures. As GAO notes in its opinion, under section 602(a)(3) of the Home Rule Act, the Council has no authority to enact legislation or amend its Charter in a manner that changes the applicability of a law that is not confined exclusively to the District. The arguments supporting the Act fail adequately to address this restriction. They blithely maintain that, in spite of the Home Rule Act and *McConnell*, *supra*, the District is entitled to a specially tailored application of two more generally applicable federal laws.[11] Notably, no legislative history has been cited to support this surprising result. The absence of such support, as well as the history of the District over the last 40 years since the enactment of the Home Rule Act, suggests that this is not the outcome Congress contemplated. Common sense reinforces the point: if Congress intended to delegate to the Council or voters of the District of Columbia the authority to unilaterally convert the role of the President and Congress in the formation of the District's budget, it can reasonably be expected that Congress would have given some indication of its intent to permit such a significant change in the federal role through local legislation. It did not give any such indication.[12] Nor did any Council or Mayor over the last 40 years believe the District government had such authority.

Further, arguments in favor of the Act miss the point when they observe that Congress authorized the District to spend excess revenues when it enacted D.C. Official Code § 47-369.02 (2012 Repl.). Rather than empowering the District to spend unappropriated local funds for all purposes notwithstanding the Anti-Deficiency Act, Congress authorized the expenditure of the specified revenues under certain expressly stated conditions. There is no question that Congress can approve federal and District spending that is at odds with federal appropriations requirements, and thus create an exception to the Anti-Deficiency Act. The Anti-Deficiency Act is merely another part of the federal law governing the budget process. In fact, Congress could clearly under its Article I authority amend both the Home Rule Act and the Anti-Deficiency Act to provide the District with full budget autonomy over local funds. Indeed, Congress may well eventually do so, as it has recently been requested to do by President Obama. Congress has not

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It then goes on to specify the conditions associated with their expenditure.

[11] GAO responds persuasively to this position by noting that "the applicability of the Antideficiency Act to the District, both by its very terms and by the terms of the Home Rule Act, 'reflects Congress' decision . . . to expressly limit District spending to amounts *Congress* appropriates." (emphasis in original) (quoting GAO Decision B-262069).

[12] *See In Re Crawley*, 978 A.2d 608, 617 (D.C. 2009) ("Judges, as well as detectives, may take into consideration that a watchdog did not bark in the night") (quoting *Harrison v. PPG Indust., Inc.*, 446 U.S. 578, 602 (1980) (Rehnquist, J., dissenting)).

done so *yet*, however, and the Council may not arrogate to itself authority over portions of the District's budget process that Congress, in the Home Rule Act, clearly specified would remain firmly within congressional control.

Congress' own actions with respect to the Act since its effective date are further evidence of Congress' view of the Act's invalidity and its intention not to allow the District to have budget autonomy. Although Congress did not enact a joint resolution disapproving the Act according to section 303(a) of the Home Rule Act, congressional inaction is importantly different from affirmative approval.[13] A more likely interpretation of this inaction is that Congress found it unnecessary to disapprove the Act because it was so obviously beyond the scope of the Council's and the voters' authority. After the Act sat for passive review by Congress, the Financial Services and General Government Subcommittee of the U.S. House of Representatives' Committee on Appropriations expressly found the law to be no more than a non-binding expression of District residents' "opinion" that does not change the District's responsibility to submit to the federal appropriations process. Fiscal Year 2014 Financial Services and General Government Committee Report, p. 38.

Congress has also made it perfectly clear that it views its fiscal relationship with the District as unchanged since January 1, 2014, the Act's applicability date. On January 15, 2014, Congress enacted the Consolidated Appropriations Act, 2014, Pub. L. 113-76, in which it appropriated the District's entire Fiscal Year 2014 budget, including local funds. As part of the General Provisions applicable to the District, Congress also enacted section 816, a District government shutdown avoidance provision that authorizes the District to use local funds, as stated in the District's FY 2015 Budget Request Act, in the event that Congress fails to enact an appropriations act or continuing resolution for the District.[14] In doing so, it expressed its will

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[13] *See, e.g., Springer v. Government of the Philippine Islands*, 277 U.S. 189, 209 (1928) ("The inference of an approval by Congress from its mere failure to act at best rests upon a weak foundation. And we think where the inference is sought to be applied, as here, to a case where the legislation is clearly void as in contravention of the Organic Act, it cannot reasonably be indulged. To justify the conclusion that Congress has consented to the violation of one of its own acts of such fundamental character will require something more than such inaction upon its part as really amounts to nothing more than a failure affirmatively to declare such violation by a formal act.").

[14] Section 816 reads as follows:

> Sec. 816. (a) During fiscal year 2015, during a period in which neither a District of Columbia continuing resolution or a regular District of Columbia appropriation bill is in effect, local funds are appropriated in the amount provided for any project or activity for which local funds are provided in the Fiscal Year 2015 Budget Request Act of 2014 as submitted to Congress (subject to any modifications enacted by the District of Columbia as of the beginning of the period during which this subsection is in effect) at the rate set forth by such Act.
>
> (b) Appropriations made by subsection (a) shall cease to be available--
>
> (1) during any period in which a District of Columbia continuing resolution for fiscal year 2015 is in effect; or
>
> (2) upon the enactment into law of the regular District of Columbia appropriation bill for fiscal year 2015.
>
> (c) An appropriation made by subsection (a) is provided under the authority and conditions as provided under this Act and shall be available to the extent and in the manner that would be provided by this Act.

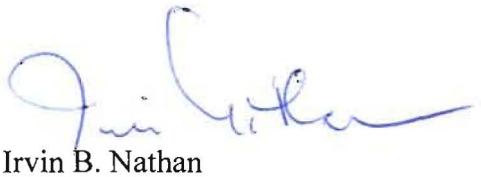
that both section 446 of the Home Rule Act (D.C. Official Code § 1-204.46) and the federal Anti-Deficiency Act shall continue to apply to local funds and require congressional appropriations. This legislation makes clear that Congress views the Act as having no legal force or effect. I share that legal conclusion, for the reasons explained above.

III. Conclusion

Given the Act's patent invalidity, I recommend that you decline to implement it and recommend that you advise Executive Branch officials and employees not to do so absent a binding judicial decision to the contrary. Implementation of the Act would violate multiple provisions of the Home Rule Act, the federal Anti-Deficiency Act, and the Budget and Accounting Act. It could also expose District employees to administrative and criminal penalties. Further, it would be in the District's interests for you to urge the Council to comply with the budget process defined in the version of the Home Rule Act that continues to be in effect – the one Congress enacted prior to the Act's applicability date – and to advise the Council that Executive Branch officials have no intention of abiding by the Act's void and ineffective provisions. Only Congress can provide autonomy to the District government for the processes of forming the District budget. As you and others have repeatedly urged, Congress should do so. When Congress does so through appropriate legislation, budget autonomy will be achieved. Until it has done so, the Council and the citizenry of the District have no authority to take this power from the Congress.

For the foregoing reasons, it is the opinion of this Office that the Local Budget Autonomy Act of 2012 is null and void and should not be implemented by District government officials or employees.

Sincerely,



Irvin B. Nathan
Attorney General
for the District of Columbia

(d) An appropriation made by subsection (a) shall cover all obligations or expenditures incurred for such project or activity during the portion of fiscal year 2015 for which this section applies to such project or activity.

(e) This section shall not apply to a project or activity during any period of fiscal year 2015 if any other provision of law (other than an authorization of appropriations)--

(1) makes an appropriation, makes funds available, or grants authority for such project or activity to continue for such period, or

(2) specifically provides that no appropriation shall be made, no funds shall be made available, or no authority shall be granted for such project or activity to continue for such period.

(f) Nothing in this section shall be construed to effect obligations of the government of the District of Columbia mandated by other law.