UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COUNCIL OF THE DISTRICT OF COLUMBIA, Plaintiff, v. 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, Defendants.	Case Number 1:14-cv-00655-EGS

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE* OF JACQUES B. DEPUY, DANIEL M. FREEMAN, JASON I. NEWMAN, AND LINDA L. SMITH IN SUPPORT OF DEFENDANTS VINCENT C. GRAY AND JEFFREY S. DEWITT

Jacques B. DePuy, Daniel M. Freeman, Jason I. Newman, and Linda L. Smith ("Movants") respectfully request leave of the Court to file the attached brief as *amici curiae* (attached hereto as **Ex. 1**) in support of Defendants Vincent C. Gray and Jeffrey S. DeWitt. Movants understand that Defendants have consented without any conditions to anyone who wants to file an amicus brief, and they have consented to the filing of this brief. Counsel for Plaintiff, however, has stated that it will not consent to this filing unless Defendants consent to their filing a third brief in this case, after the submission of the proposed amicus brief.[1] Movants

[1] Council has asked that we represent their position as follows: "Plaintiff consents, so long as we have the opportunity to respond, in light of the fact that the amicus brief was not submitted until after Plaintiff's reply." We note that this brief will be submitted on the date of Defendants' filing.

understand that Defendants have communicated to Plaintiff that while the parties are not free to modify the Court's order to allow Plaintiff to file a third brief, should any amicus present new and unanticipated arguments, Defendants would consider their position when and if Plaintiff seeks leave of Court to file a response to such arguments. Accordingly, this motion is required.

As discussed in the attached memorandum of points and authorities incorporated herein, Movants, as persons intimately involved with the process by which the Home Rule Act was passed in 1973, are uniquely positioned to have "information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Jin v. Ministry of State Security*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008) (quoting *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1064 (7th Cir. 1997)). Accordingly, the Court should grant this motion and allow Movants to file a brief as *amici curiae*.

By /s/ *Kenneth Letzler*

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Dated: May 8, 2014

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2014, a copy of the foregoing Motion for Leave to File a Brief as *Amici Curiae* of Jacques B. DePuy, Daniel M. Freeman, Jason I. Newman, and Linda L. Smith in Support of Defendants Vincent C. Gray and Jeffrey S. Dewitt, along with attachments; a Memorandum of Points and Authorities; and a Proposed Order were filed and served pursuant to the Court's electronic filing procedures using the Court's CM/ECF System.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COUNCIL OF THE DISTRICT OF COLUMBIA, Plaintiff, v. 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, Defendants.	Case Number 1:14-cv-00655-EGS

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE* OF JACQUES B. DEPUY, DANIEL M. FREEMAN, JASON I. NEWMAN, AND LINDA L. SMITH IN SUPPORT OF DEFENDANTS VINCENT C. GRAY AND JEFFREY S. DEWITT

Jacques B. DePuy, Daniel M. Freeman, Jason I. Newman, and Linda L. Smith ("Movants" or "Amici") respectfully submit this memorandum of points and authorities in support of their motion for leave to file a brief as *amici curiae*. As discussed below, Movants are uniquely positioned to provide "information and perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Jin v. Ministry of State Security*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008) (quoting *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1064 (7th Cir. 1997)).

The Council has told this Court in its Memorandum of Points and Authorities in Support of Motion for Summary Judgment or Remand (at 16) that "history" and "context" are

important to the decision of this matter. Amici are individuals who were personally involved in the passage of the Home Rule Act in 1973 as either staffers or counsel for an interested party. In addition, three of the four Amici authored law review articles on the Act shortly after its passage. Hence, they can provide insight into the history and context based on their participation in those events.

Movant Jacques B. DePuy served as Counsel to the Subcommittee on Government Operations of the House District of Columbia Committee from 1973 to 1974, when the Home Rule Act was passed. He is also co-author of the leading Law Review article on the Act, Jason I. Newman & Jacques B. DePuy, *Bringing Democracy to the Nation's Last Colony: The District of Columbia Self-Government Act*, 24 AM. U. L. REV. 537 (1975), which is cited multiple times in the Council's Memorandum and Reply Memorandum and is indicated by asterisk as an authority principally relied upon by Council. Additionally, Mr. DePuy is interested in the outcome of this case as a lawyer who has practiced law in the District of Columbia for many years.

Mr. DePuy has an additional, particular interest in this matter. He is referred to by name, and his remarks are quoted (in italics) in the Council's Reply Memorandum on page 15. However, as noted in the proffered brief, Amici submit that the quoted language is presented out of context in a way that has the potential to mislead the Court absent clarification. Mr. DePuy wishes to address that issue.

Movant Jason I. Newman was involved in the consideration of home rule for the District of Columbia in his capacity as counsel for the Self Determination Coalition, which supported home rule, and as a professor of law at the Georgetown University Law Center. He consulted actively with members of Congress and staff as to home rule legislation and helped

draft provisions of the Act. He is co-author with Mr. DePuy of the leading law review article on the Act, cited above.

Movant Daniel M. Freeman worked on the Home Rule Act as Assistant Counsel to the House Committee on the District of Columbia. He is now a professor at American University and is the author of "Home Rule and the Judiciary," Journal of the Bar Association of the District of Columbia.

Movant Linda L. Smith served as a Budget Analyst at the Office of Management and Budget and then moved to the Professional Staff of the House Committee on the District of Columbia, focusing on public finance, budgeting and borrowing. In this regard, Ms. Smith worked closely with Congressman Thomas Rees on the budget and borrowing provisions of the Home Rule Act. She subsequently served on the House Budget Committee, as Special Assistant to the Secretary of Transportation, and as Director of Administration for Budget and Public Finance of the Office of Management and Budget in the Carter and Reagan Administrations.

The Movants have clear recollection of the context in which the Home Rule Act was considered and passed, and a number of them have retained files from that time. Discussions with Amici and materials from contemporaneous files have enriched the proffered brief.

It is our understanding that, in contrast to the position taken by Plaintiff, Defendants have consented without condition to the filing of a series of amicus briefs in support of Plaintiff, including briefs addressing the history and context of the Act. In those briefs on behalf of Plaintiff, arguments are made about history and context that differ markedly from the Movants' knowledge of events and the evidence cited in the Movants' attached brief in support of that understanding. The Movants, unlike amici supporting the Council, participated in the

events in question and bring that understanding to their presentation. Indeed, Council's Reply submission quotes remarks from one of the Movants (Mr. DePuy) as supporting their position.

There is no prejudice to Plaintiff in accepting the attached brief. The Council has had many months to prepare its arguments on the Act and will be able to discuss and respond to the proposed brief, if it so chooses, during oral argument.

In sum, Amici's brief will help the Court by "assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the Court's attention to [pertinent matters that might otherwise] escape[] consideration." *Miller-Wohl Co., Inc. v. Comm'r of Labor & Indus., State of Montana*, 694 F.2d 203, 204 (9th Cir. 1982); *see also, e.g., Historic E. Pequots v. Salazar*, 934 F. Supp. 2d 272, 274 (D.D.C. 2013) (considering *amicus curiae* brief on motion to dismiss); *Dynalantic Corp. v. U.S. Dep't of Defense*, 885 F. Supp. 2d 237, 243 (D.D.C. 2012) (considering *amicus curiae* briefs on motion for summary judgment). For all of these reasons, Amici respectfully submit that consideration of the attached *amicus* brief will assist the Court in assessing the legal and factual issues presented in this case and will not prejudice Plaintiff.

Amici therefore ask that the Court grant leave to file the attached *amici curiae* brief.

By /s/ *Kenneth Letzler*

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Dated: May 8, 2014

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COUNCIL OF THE DISTRICT OF COLUMBIA, Plaintiff, v. 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, Defendants.	Case Number 1:14-cv-00655-EGS

[PROPOSED] ORDER

Upon consideration of the motion of Jacques B. DePuy, Daniel M. Freeman, Jason I. Newman, and Linda L. Smith for leave to file a brief as *amici curiae* in support of Defendants Vincent C. Gray and Jeffrey S. DeWitt and the record herein, it is hereby

ORDERED that the motion for leave to file is granted.

Signed this _____ day of May, 2014.

_____
Emmet G. Sullivan
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COUNCIL OF THE DISTRICT OF COLUMBIA, **Plaintiff,** **v.** **VINCENT C. GRAY** **and** **JEFFREY S. DeWITT,** **Defendants.**	**Case Number 1:14-cv-00655-EGS**

BRIEF OF AMICI CURIAE JACQUES B. DEPUY, DANIEL M. FREEMAN, JASON I. NEWMAN AND LINDA L. SMITH IN SUPPORT OF DEFENDANTS VINCENT C. GRAY AND JEFFREY S. DEWITT

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BRIEF OF AMICI CURIAE JACQUES B. DEPUY, DANIEL M. FREEMAN, JASON I. NEWMAN AND LINDA L. SMITH

I. INTEREST OF THE *AMICI CURIAE*

The Council has told this Court in its Memorandum of Points and Authorities in Support of Motion for Summary Judgment or Remand (at 16) that "history" and "context" are important to the Court's decision of this matter. *Amici Curiae* are uniquely situated to assist the Court on these issues.[1] When the Home Rule Act was passed in 1973, amicus Jacques B. DePuy served as Counsel to the Subcommittee on Government Operations of the House District of Columbia Committee. In that capacity, Mr. DePuy had a significant role in and responsibilities for the hearings in the House of Representatives on the Home Rule bill, the drafting of the Home Rule

[1] No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money to fund preparation or submission of this brief. No person, other than Amici and Amici's counsel, contributed money intended to fund preparation or submission of this brief.

bill in the Subcommittee and the full District of Columbia Committee, the development of political strategy in the Committee and on the House floor, and consideration of the House-passed Home Rule bill by a Senate-House conference committee. Additionally, he is co-author of the leading law review article on the Home Rule Act, Jason I. Newman & Jacques B. DePuy, *Bringing Democracy to the Nation's Last Colony: The District of Columbia Self-Government Act*, 24 AM. U. L. REV. 537 (1975) (hereinafter "Newman & DePuy"), which the Council repeatedly cites in its pleadings and which is indicated in its reply pleading as an authority principally relied upon. Indeed, Mr. DePuy is referred to by name and his remarks are quoted (in italics) in the Council's Consolidated Reply Memorandum on page 15. Mr. DePuy is further interested in the outcome of this case as a lawyer who has practiced law in the District of Columbia for almost forty years.

Amicus Daniel M. Freeman worked on the Home Rule Act as Assistant Counsel to the House Committee on the District of Columbia. He is now a professor at American University and is the author of "Home Rule and the Judiciary," Journal of the Bar Association of the District of Columbia.

Amicus Jason I. Newman was involved in the consideration of home rule for the District of Columbia in his capacity as counsel for the Self Determination Coalition which supported home rule and as a professor of law at the Georgetown University Law Center. He consulted actively with members of Congress and staff as to home rule legislation and helped draft provisions of the Act. He is co-author of the leading law review article on the Home Rule Act, cited above, which is one of the authorities principally relied upon by the Council and is repeatedly cited in their papers.

Amicus Linda L. Smith served as a Budget Analyst at the Office of Management and Budget and then moved to the Professional Staff of the House Committee on the District of Columbia, focusing on public finance, budgeting and borrowing. In this regard, Ms. Smith worked closely with Congressman Thomas Rees on the budget and borrowing provisions of the Home Rule Act. She subsequently served on the House Budget Committee, as Special Assistant to the Secretary of Transportation, and Director of Administration for Budget and Public Finance of the Office of Management and Budget in the Carter and Reagan Administrations.

Amici agree with the parties that, as a matter of public policy and of the fundamental values of a democracy, it is the duly elected representatives of the citizens of the District of Columbia who should determine how D.C. tax-payer money is spent. The issue presented here, however, is not what is good public policy, but what existing law says. As discussed below, it is only Congress that can establish budget autonomy for the District, and Congress has not to date done so.

II. ARGUMENT

A. Summary of the Argument

Council's Memorandum in Support of Summary Judgment argues (at 16) that history and context support its position. Amici, who were all active participants in the passage of the Act and who include the authors of the leading law review article on the Act, address both history and context. Key to the context of this case is that the structure of the Home Rule Act creates a dichotomy between the Charter (Title IV of the Act) and the remaining provisions (all other Titles). The Charter was intended by Congress to "establish the means of governance of the

District . . . ." Section 301.[2] The provisions that were included in the Charter were to be put to a vote by District residents and, upon "its acceptance by a majority of the registered qualified electors of the District voting thereon in the charter referendum . . . ," *id.*, were to be subject to the charter amendment process. Those many other, and very significant, provisions not contained in the Charter -- most notably including those dealing with the (federal) National Capital Planning Commission (Section 203), the delegation of limited legislative power (Section 302), the charter amending procedure (Section 303), authorization of a federal payment (Title V of the Home Rule Act), retention of constitutional authority (Section 601), limitations on the Council (Section 602), the budget process and limitations on borrowing and spending (Section 603), the continuing applicability of existing statutes (Section 714), continuation of the D.C. court system (Section 718), an independent audit process (Section 736), and the emergency control of the police (Section 740) among others – were expressly excluded from the Charter. They are not subject to a vote by District residents and are not subject to the charter amendment process. The non-charter provisions are "off-limits" to the local government.

When Congress adopted the Home Rule Act, all the participants in the process understood that the Act was a compromise which did not provide the District with budget autonomy. In particular, there was to be no change in the existing line item congressional appropriation role, and in that regard there was no distinction between "local" and "Federal" (or other) revenues. Section 603(a) 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 preparation, review, submission, examination, authorization, and appropriation of the *total budget* of the

[2] Unless otherwise noted, all Section references are to the section of the Home Rule Act, the District of Columbia Self-Government and Governmental Re-Organization Act, Pub. Law No. 93-198, 87 Stat. 774 (1973), as initially enacted.

District of Columbia government." (emphasis added). This provision is not part of the Charter and cannot be changed by the Charter amendment process. While Council would have the Court essentially ignore this language by reading it as "a rule of construction, *not* limitation," the legislative history is to the contrary. (See pages 12-14 below). The language in question tracks that of a section of the bill originally reported out of the House District of Columbia Committee (the "Committee Bill"), which language is unequivocally described as a "prohibition," *i.e*., a provision of substantive effect.

B. The History

Article I, Section 8 of the Constitution provides that "The Congress shall have power . . . to 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." Beginning in 1801, Congress granted the District some degree of autonomy over local matters. In 1874, the governance of the District of Columbia was changed, and by 1878 "the right of suffrage was firmly laid to rest." Newman & DePuy at 545-47.

The assertion of federal control rested on a variety of grounds, but malfeasance of the local government in financial matters was clearly a factor. The debt of the District had ballooned from $3 million in 1871 to $20 million in 1875 and $25 million in 1877 (a level that amounted to more than 25% of the appraised value of property in the District.) *Id.* at 545-47 and notes 54, 55, 59 and 60. As a result, Congress returned to itself total control over District governance, and for a nearly a century residents in the District of Columbia had no say in choosing the government that regulated their activities.

C. The Context In Which The Home Rule Act Was Passed

In the years preceding the Home Rule Act, the context in which Congress managed the affairs of the District was one in which power flowed to, and the agenda of Congress was dominated by, members of Congress who had seniority and served as Committee chairmen[3]. It was also a setting in which coalitions across party lines -- southern Democrats plus Republicans on the one hand and moderate Republicans plus Democrats on the other -- could carry the day. During this period, "Northeastern liberals (with large labor-union and Jewish constituencies) and Midwestern conservatives coexisted in the Republican Party. Southern conservatives (with all-white electorates), Northern liberals and big-city machine hacks coalesced in the Democratic Party." Michael Barone, *Washington is Partisan -- Get Used to It*, THE WALL STREET JOURNAL, Oct. 18, 2013, at A13. Thus, Congressional votes and alliances could fall along ideological lines, which differed from party affiliation. Political scientist Howard Rosenthal observes, "in 2000, almost all close votes are party-line votes, with Democrats opposing Republicans, whereas in the 70s, you could have a lot of close votes with people on opposite sides of the issue being from both parties." Howard Rosenthal, *Trends in Polarization: Political Leaders Panel at the Polarization of American Politics: Myth or Reality?*, CONFERENCE HOSTED BY THE CENTER FOR THE STUDY OF DEMOCRATIC POLITICS (Dec. 3, 2004) (*available at* http://www.princeton.edu/csdp/events/Polarization2004/Panel2.pdf) (lasted visited May 7, 2014).

Concerns that a cross-party coalition led by a powerful Chairman might defeat home rule were very much part of the context in which the Home Rule Act was considered. For many years

[3] *See, e.g.*, Gerald Clarke, *Congress: The Heavy Hand of Seniority*, TIME, Dec. 14, 1970, at 34; Michael Moss, *Congressional Committee Update Who's New?*, ENVIRONMENT, April 1979, at 25. Today, the situation is different, as power and influence have gravitated significantly to the Speaker, Majority Leader and Minority Leader in the House and to the Majority and Minority Leader in the Senate.

leading up to the consideration of the Home Rule Act, the positions of Chairman of the House Committee on the District of Columbia and Chairman of the Subcommittee on District of Columbia Appropriations of the House Appropriations Committee were held respectively by Congressmen John L. McMillan of South Carolina and William H. Natcher of Kentucky. They had amassed power through seniority, by strong personal and political networks within the House, and by virtue of the fact that, while most members of Congress had little or no interest in District of Columbia affairs, Chairmen McMillan and Natcher spent the time on D.C. matters necessary to develop expertise and influence. While the Senate year after year introduced and passed bills that would provide home rule for the District, the subject was anathema to the Chairman of the House District of Columbia Committee and irrelevant to the Chairman of the Subcommittee on District of Columbia Appropriations.

Thus, it was only in 1973 when Michigan's Charles Diggs succeeded Mr. McMillan as Chairman, and most of Mr. McMillan's committee allies (three of whom were subcommittee chairmen) were defeated or resigned, that home rule legislation was given serious consideration by the House Committee on the District of Columbia and its staff. Mr. DePuy was intimately involved in those efforts as counsel to the subcommittee that was charged with drafting and shepherding a home rule bill.

The bill initially reported out of the House District of Columbia Committee included budget autonomy for the District. The House Committee Bill, however, attracted considerable resistance on a number of fronts, particularly from Appropriations Subcommittee Chairman Natcher, whose concerns focused on the bill's provisions affecting the budget and appropriations. As a result, amendments were proposed and submitted to the House Rules Committee even before the bill reached the House floor. Some of the amendments were

wholesale substitutes for the Committee proposal, including those proposed by Republicans Ancher Nelson of Minnesota, the ranking Minority Member of the House Committee, and Joel Broyhill of Virginia and Democrat Edith Green of Oregon. There was also a concern that President Nixon might veto any home rule bill, particularly given his emphasis on issues of crime, including in the District of Columbia.

Opposition rested in part on the Constitution's provisions giving Congress jurisdiction over the District and, as House Minority Leader Gerald Ford put it, a belief that "the Nation's Capital belongs to every citizen of the United States, whether he lives in the District of Columbia or Michigan." Jack Kneece, *Ford Insists Hill Run D.C. Budget,* WASHINGTON STAR, Oct. 16, 1973, at B-2 (attached as Exhibit A). Second, and of perhaps greater importance, was the fact that giving budget autonomy to the District would strip the core power from Congressman Natcher's Appropriations Subcommittee. Proponents of the bill thus faced a possible coalition of moderate and conservative Democrats (Green, Natcher, and others) and Republicans. Moreover, the bill as reported by the House Rules Committee was to be considered under a rule that permitted debate and votes on a section by section basis. This rule "mean[t] home rule enemies could stall it [the bill] by debating each [of its 88] section[s]," Jack Kneece, *Diggs Ready to Deal on Home Rule Bill*, WASHINGTON STAR, Oct. 5, 1973, at B-1 (attached as Exhibit B), a situation that opened the door to obstructionism. 119 Cong. Rec. 33353 (Oct. 9, 1973) (remarks of Congressman Bolling).

In this setting there was considerable doubt that the House Committee Bill had enough votes to pass, and it was possible it would be met by a veto if it passed narrowly.[4] To enhance the chances that a home rule bill would secure passage in the House, Chairman Diggs -- after

[4] The Newman & DePuy article at page 559 n. 112 notes "the headway made by the opponents and a number of mistakes and occurrences which setback the proponents."

meeting with Appropriations Subcommittee Chairman Natcher and consulting with members of his own committee who supported home rule -- took an unusual step. He abandoned the original Committee Bill and offered new language in the form of a comprehensive substitute to the Committee-reported bill. The substitute was commonly referred to as the Diggs Compromise or as the Committee Substitute. As explained in a "Dear Colleague" letter to Members of Congress:

> The Committee substitute contains six important changes which were made after numerous conversations and sessions with Members of Congress and other interested parties. These changes clarify the intent of H.R. 9682 and accommodate major reservations expressed since the bill was reported out.
>
> Letter from Charles C. Diggs, *et al.* to Members of the House of Representatives *(reprinted in* 119 Cong. Rec. 33353 (Oct. 9, 1973)).

Importantly, the substitute neutralized any concern that Congressman Natcher would see the bill as one stripping his subcommittee of its core function (and hence reducing his power in Congress). That change was the first of six listed in the Dear Colleague letter:

"1. Budgetary process. Return to the Existing Line Item Congressional Appropriation Role." *Id.*

California Democratic Congressman Thomas Rees, a strong home rule supporter and chairman of the House Subcommittee on Revenue and Financial Affairs of the House District of Columbia Committee that drafted the vast majority of budgetary and financial provisions in the home rule bill, made clear in the floor debate that this concession was necessary to get a bill passed. He began his remarks as follows:

> I speak in favor of the form that is before us now. It is entitled 'Committee Print' and just came off of the presses today. I think that the committee print is a reasonable compromise, and especially in the area of what the relationship of the Committee on Appropriations and Congress will be to the District of Columbia. Really the relationship, if this legislation is passed, will be the same relationship that Congress now has with the District of Columbia budget, that no money can be spent by the District of Columbia. The

> appropriation is specifically authorized for that purpose by the Committee on Appropriations in the House and in the Senate.
>
> This was the major compromise over the weekend, so that we have no change at all on budgetary control when we are discussing who will run the budget of the District of Columbia. I cannot say I am overjoyed by this compromise . . . . But it was the wisdom in the various sessions we had over the weekend that it would be best that we not change this and that the appropriations process be exactly the same appropriations process that we have now.

119 Cong. Rec. 33390-91 (Oct. 9, 1973).

With these and other changes, the Committee Substitute was considered on the House floor along with the competing substitutes offered by Mr. Nelson and Ms. Green. After extensive debate and significant efforts by the Majority Whip to convince members of the Democratic majority to vote for the Diggs Compromise, the Nelson and Green substitutes were defeated (but not overwhelmingly) and the Committee Substitute was approved. As the *Washington Star* observed, "the compromises maneuvered by Diggs had won the full support of the single most influential member of the House District Committee, Representative William H. Natcher. Natcher's high price was ultimate congressional control over the city's budget -- and it was not the only price paid." Editorial, *Home Rule at Last*, WASHINGTON STAR, Oct. 11, 1973 at A-18 (attached as Exhibit C). *See also* Noah Wepman, *Reforming the Power of the Purse: A Look At the Fiscal and Budgetary Relationship Between The District Of Columbia and the U.S. Congress*, 9 POLICY PERSPECTIVES 30 n. 2 (May 2002) (*available at* http://www.policy-perspectives.org/article/view/4229) (last visited on May 7, 2014) (hereinafter, "Wepman"), stating that the Diggs Compromise "was essential to garner the support of Representative William Natcher (D-Ky), the chairman of the District of Columbia Appropriations Subcommittee. His support carried not only many members of the Appropriations Committee,

but also a large number of Southern congressmen and was essential to enacting home rule for the district."

Passage of the Committee Substitute triggered a conference with the Senate to resolve differences in the House and Senate bills. The Republican leadership made clear its view that congressional control of the D.C. budget should not be subject to negotiation in the conference process. As House Minority Leader Gerald Ford put it, "In my view, this particular provision of the bill is non-negotiable in the House-Senate conference." *Ford Insists Hill Run D.C. Budget* (Exhibit A). Indeed, the issue was not subject to serious discussion because, as Senator Mathias explained, the "House conferees made it quite clear, however, that their body wanted fiscal control to remain in the Congress." 119 Cong. Rec. 42452 (Dec. 19, 1973). Absent this provision, the home rule bill would likely be defeated when it was reported back to the House after the conference report. Thus, to his chagrin, Senator Mathias (a strong home rule supporter) would "continue to have responsibility for reviewing and passing judgment on just about every penny which the local government may wish to spend." *Id.* at 42453.

The fundamental change in approach to budgeting and appropriating made in the Diggs Compromise and adopted by the Congress can be seen by comparing the language of the Committee Bill and the language of the Home Rule Act as passed, based on the Diggs Compromise. For example, while § 446 in the Committee Bill empowered Council, subject to the limitations in § 603, to make appropriations for the District, § 446 of the Home Rule Act as passed states that the Council-approved budget shall be submitted by the Mayor to the President for transmission to Congress. This section states that "[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." Section 446. Nothing of that sort was in the Committee Bill.

The Diggs Compromise was also implemented by adding critically important new §§ 603 (a) and (e), which, under the heading "Budget process; limitations on borrowing and spending," read as follows:

> "(a) 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 . . . .
>
> (e) Nothing in this Act shall be construed as affecting the applicability to the District government of the provisions of . . . the so-called Anti-Deficiency Act . . . ."

Council essentially ignores the title of the section ("Budget process; *limitations* on borrowing and spending" (emphasis added)) and the fact that this language appears in a portion of the Act that cannot be altered by a Charter amendment. Instead, the Council italicizes the introductory language ('*Nothing in this Act shall be construed as . . . .*") and argues that the wording makes the provision "a rule of construction, *not* limitation." Memorandum at 30-33 (emphasis in the original). *See also* Council's Consolidated Reply Memorandum at 23-27. As shown in the table below, the language found in § 603 of the Diggs Substitute and italicized by Council was borrowed from § 602(b) of the Committee Bill, which imposes limitations on the Council's legislative powers. Section 602 of the Committee Bill, like § 603 of the Committee

Substitute, has a list of specific prohibitions and a more general provision that begins "nothing in this Act shall be construed as."

Comparison of Sections 602(b)[5] of the Committee Bill and 603(a) of the Home Rule Act

Committee Bill § 602 Limitations on the Council.	**Diggs Substitute § 603. Budget process; limitations on borrowing and spending.**
(b) Nothing in this chapter shall be construed as vesting in the District government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any Federal agency, than was vested in the Commissioner prior to the effective date of Title IV of this Act.	(a) Nothing in this chapter 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.

The identical language in §§ 602 and 603 should be interpreted together, particularly since it appears clear that, when Congress realized in October 1973 that it needed language implementing the Diggs Compromise's provisions on budgeting, it used in § 603 of the Committee Substitute familiar language borrowed from § 602 of the Committee Bill.

Given the procedural history of the Home Rule Act, no Section-by-Section analysis of the Committee Substitute or of the Conference bill was prepared, but there is such an analysis with regard to the Committee Bill, s*ee* H.R. REP. NO. 93-482, at 16 (1973), and the Section-by-Section analysis of Committee Bill § 602 is instructive. Section 602 of the Committee Bill parallels § 603 of the Diggs Substitute and the Home Rule Act. Each is entitled "limitations" and has text that uses two different formulations, one being specific prohibitions and the other beginning

[5] Section 602 of the Committee Bill is attached hereto as Exhibit D.

"Nothing in this Act shall be construed as." As shown in Exhibit E, the Section-by-Section analysis of § 602 of the Committee Bill shows that Congress meant both formulations -- the specific provisions and the more general "Nothing in this Act" language -- to function as prohibitions limiting Council action. The Report on Committee Bill § 602 says: "This section lists specific *prohibitions* against the District Council's legislative authority, which include *prohibitions* against" legislating on seven activities specifically described in § 602(a) (e.g., "taxation of United States or state properties"). *Id.* at 36 (emphasis added). The Section-by-Section analysis then addresses the "Nothing in this Act shall be construed" language in §602(b) and concludes that it too is a prohibition. "Subsection (b) *prohibits* the Council from exceeding its present authority over the National Zoological Park, the District National Guard, the Washington Aqueduct, the National Capital Planning Commission, or any other Federal agency." *Id.* at 37 (emphasis added). In other words, the language in § 602(b) stating that "nothing in this chapter shall be construed as" was intended as a substantive provision -- a prohibition -- not a statement of construction.

In using the same language for § 603(a) ("Nothing in this chapter shall be construed as") Congress meant to reach the same result. It was stating a prohibition, in this case one relating to the Council's budgeting authority.

The language (described above) that emerged from the House-Senate Conference needed to be approved by both houses of Congress. In seeking approval of the conference bill, Chairman Diggs described the reservation of budgetary power to Congress without qualification. In a Dear Colleague Letter of December 10, 1973, he said "The Conference Report accomplishes the following twelve objectives" with the first such objective being the reservation of Congress' right to "legislate for the District at any time on any subject." The second objective was to retain

in Congress "the authority to review and appropriate the entire District budget."[6] STAFF OF THE HOUSE COMM. ON THE DISTRICT OF COLUMBIA, 93d Cong., 4 LEGISLATIVE HISTORY OF THE DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT at 3041 (Comm. Print 1976) ("HOME RULE HISTORY"). In floor debate, Chairman Diggs again said that in the Conference Bill "[W]e have retained in the Congress the authority to review and appropriate the entire District budget . . . ." 119 Cong. Rec. 42037 (Dec. 17, 1973).

The Conference Report echoes that point. It says that the effect of the Diggs Compromise as adopted by the Conference Committee was to leave "Congressional appropriations and reprogramming procedures as presently existing. . . . The substitute maintains present law and procedures for Congressional reprogramming authorities and procedures. The court budget shall be handled by the Mayor, Council, and President in the same manner as the budget of the United States courts." H.R. REP. NO. 93-703, at 78 (1973).

Similarly, when the President signed the Act, he did so on the understanding that "final Congressional review of the District's appropriation process is retained under this measure." Presidential Statement on Signing the District of Columbia Self-Government and Governmental Reorganization Act, 9 WEEKLY COMP. PRES. DOC. 1483 (Dec. 24, 1973).

Thus, the Diggs Compromise, and in particular its emphasis on the "Return to the Existing Line Item Congressional Appropriation Role," succeeded in obtaining a significant measure of Home Rule for the District, although less than the original House Committee Bill envisioned. Without the compromise and the agreement of the Senate to accede to the House position on budgeting and appropriations matters, there is every reason to believe the home rule effort would have been defeated on the House floor.

[6] In referring to the entire District budget, Chairman Diggs made no distinction between "local" and Federal (or other) revenues.

Council argues that the Diggs Compromise involved only a "default" position, which could be changed at any time by Charter amendment. To the contrary, no one thought so at the time, and Council cites no evidence that Congress intended such a position.[7] First, the Dear Colleague letters quoted above did not describe the changes that way. If, as Council now claims, the Committee Substitute preserved the jurisdiction of the House (and Senate) Appropriations Subcommittee only as a temporary "default" position, subject to change by a Charter amendment, such a position would almost surely have failed to neutralize Chairman Natcher's opposition and most likely would have resulted in the defeat of the home rule bill.

Contemporary press reports likewise are clear on what the Diggs Compromise entailed: Congressional control over the District's budget. An October 5, 1973 story in the *Washington Star* quotes Chairman Diggs as saying he is "prepared to maintain the role of the House and Senate District appropriation subcommittees," a change that was characterized as "the major concession of retaining congressional line item oversight of the budget." *Diggs Ready to Deal on Home Rule Bill*, (Exhibit B). Similarly, an editorial at the time observed that the Diggs Compromise met "Natcher's high price [of] ultimate congressional control over the city's budget . . . ." *Home Rule at Last* (Exhibit C). A subsequent editorial repeated that view of the changes made by the Diggs Compromise, stating that the conference bill "falls short of what . . . home-rule advocates had sought" but that it "strikes a balance between the conflicting desires of Congress to give District residents a meaningful further measure of control over their own affairs while at the same time retaining strong measures of congressional oversight." Editorial, *Home Rule: One More Step to Go!*, WASHINGTON STAR, Dec. 2, 1973 at G-1 (attached as Exhibit F). Further, referring to the House-Senate conference process, the editorial noted that "the single

[7] There is no reference to a "default" concept in the congressional proceedings, and the use of this concept forty years later strikes Amici as foreign to the home rule effort.

most vital point of controversy was the House insistence that Congress retain -- much in the manner of the past -- the right to review and approve the annual District budget." *Id.* Similarly, an article on the then upcoming conference process reported that "The House and Senate District Appropriations subcommittees would review the budgets by line item under the House-passed version." Jack Kneece, *Senate to Seek Strong Home Rule Bill*, WASHINGTON STAR, Oct.12, 1973 at B-1 (attached as Exhibit G).

None of the members of the then appointed city council thought the Home Rule Act created a "default position" that an elected Council could remedy by proposing a charter amendment. *See* Harvey Kabaker, *Home Rule: Lack of Budget Authority Dismays Council*, WASHINGTON STAR, Oct. 14, 1973, at B-2 (attached as Exhibit H). Indeed, Representative Diggs was accused in a sermon of "selling his soul" by agreeing with Representative Natcher that "Congress should continue to have appropriations control over line items in the city's budget …." Cathe Wolhowe, *Diggs Is Accused of 'Power Ploy,'* WASHINGTON POST, Oct. 8, 1973, at C1 (attached as Exhibit I).

Lastly, there was never any mention of a "default" position on budget in the lengthy Newman & DePuy law review article on the Home Rule Act (which, including appendices, contains more than 200 pages). That is because it never occurred to the authors, including Mr. DePuy who was a key member of the House staff who drafted the bill and Mr. Newman, who played an important role in the home rule effort, that the budget provisions were merely a "default" that could be changed by Charter amendment. Subsequent writing on the subject is to the same effect. *See* Wepman at 23-24 ("Included in the home rule act was the Diggs Compromise, which, among other provisions, granted Congress line-item control over the city's budget. Congress continues to exercise this authority as part of its annual budget process. . . . For

all intents and purposes, the Congress treats Washington, D.C., as a federal agency whose budget is subject to comprehensive congressional oversight. The District must submit its budget to Congress (after it has been approved by the mayor and City Council) for review and approval as part of the federal budget process. Indeed, the District has its own congressional appropriations subcommittee. . . . Congress essentially re-appropriates the entire District budget back to the city as if it were all federal money."). While Wepman deplores this structure and proposes ways to improve it, nothing in the article suggests that change could come via Charter amendment.

D. Council Is Wrong About Amicus DePuy's June 13, 1973, Remarks

While this brief focuses on history and context, we wish to discuss briefly the assertion in Council's reply pleading at 15 - 16 that Amicus DePuy's 1973 views on Charter amendment (in his role as Subcommittee counsel) support their sweeping position on the breadth of Charter amendment powers. Presumably because of concern with page limitations, Council's Reply truncates the setting in which Mr. DePuy spoke in a way that permits the reader to conclude mistakenly (a) that Mr. DePuy was talking about the Home Rule Act as passed and (b) that the issue under discussion was whether the District could change its fiscal year, even if that put it in conflict with the federal fiscal year.

In fact, the question raised was what could be done "should the Federal Government change their fiscal year." 1 HOME RULE HISTORY at 522. One member of Congress suggested that the language before them (Committee Discussion Draft No. 2) should "say that the fiscal year of the District of Columbia shall be the same as the Federal fiscal year . . . ." *Id.* Another member suggested that "you could change it [the D.C. fiscal year] by charter." *Id.* Mr. DePuy said either approach would work. Importantly, this conclusion came in the context of an early Committee draft of the Home Rule bill that gave the District budget autonomy and that contained

nothing like the limitations on the District's power to budget or to amend the Charter that were subsequently proposed and enacted as part of the Diggs Compromise in § 603(a).

In summary, what Mr. DePuy said was that, in the context of a Committee draft bill that would give the District budget autonomy, the definition of the D.C. fiscal year could be changed by a Charter amendment so as to align the District and Federal processes more closely, thereby facilitating congressional consideration of D.C. budget issues. That remark bears not at all on what Charter amendments are proper under a statute that denies the District budget autonomy and which includes limitations on the Charter amendment process as it relates to that subject.

III. CONCLUSION

Council suggests in this litigation that the portion of the Diggs Compromise which preserved for Congress the line item budget review and approval role was not a major issue. It was, they say, merely a "default" setting that could subsequently be changed by Charter amendment. History and context, they say, support their position. Similarly, Amici Concerned D.C. Professionals assert at pages 9 - 10 that the "objective" of Congress in passing the Home Rule Act was "to vest in District residents the ability to expand and improve the extent of home rule it confers . . . by amending its Charter, allowing it to create a budget process that best serves the needs of the District . . . ."

To the contrary, as discussed above, history and context paint a very different picture. Home rule legislation faced difficult prospects in the House. Chairman Diggs and his fellow Committee members who supported home rule for the District and who had sought budget autonomy for the District concluded that significant, but not complete, home rule was better than none. That was the reason Chairman Diggs took the unusual step of withdrawing the Committee Bill and offering a substitute that made concessions significant enough to garner the support of

Appropriations Subcommittee Chairman Natcher. The most significant concession was that "line item congressional appropriation" by Chairman Natcher's subcommittee would be untouched.

All parties, and amici, believe it would be better public policy had this concession not been necessary. But the votes were not there to pass the Committee Bill. Courts must enforce the law as enacted, not as the court or the parties would like it to be. Congress had no intention to allow a change in the line item budget process when it passed the Home Rule Act, and it did not view what it had done in preserving line item budgeting as merely a "default" position. It expressed itself on the subject in language described in a House Report as embodying a "prohibition," not construction.

If the Diggs compromise had explicitly stated the "default" setting approach that Council now embraces, the Home Rule Act would likely have failed.

Respectfully submitted,

/s/ *Kenneth Letzler*

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EXHIBIT A

Ford Insists Hill Run D.C. Budget

By Jack Kneece
Star-News Staff Writer

Vice president-designate Gerald R. Ford says congressional control of the D.C. budget should stay in a House-passed home rule bill and not be subject to negotiation in a House-Senate conference.

"In my view, this particular provision of the bill is non-negotiable in the House-Senate conference," said Ford in a statement issued yesterday.

A spokesman for Senate District Committee Chairman Thomas F. Eagleton, D-Mo., said the senator would prefer to await the conference to discuss the matter, rather than get into a public dispute with Ford. (Ford, if confirmed as vice president, will be presiding officer of the Senate.)

"I am firmly convinced that if Congress is to be true to its constitutional mandate regarding the Nation's Capital, the Congress must retain control over the District budget," Ford said.

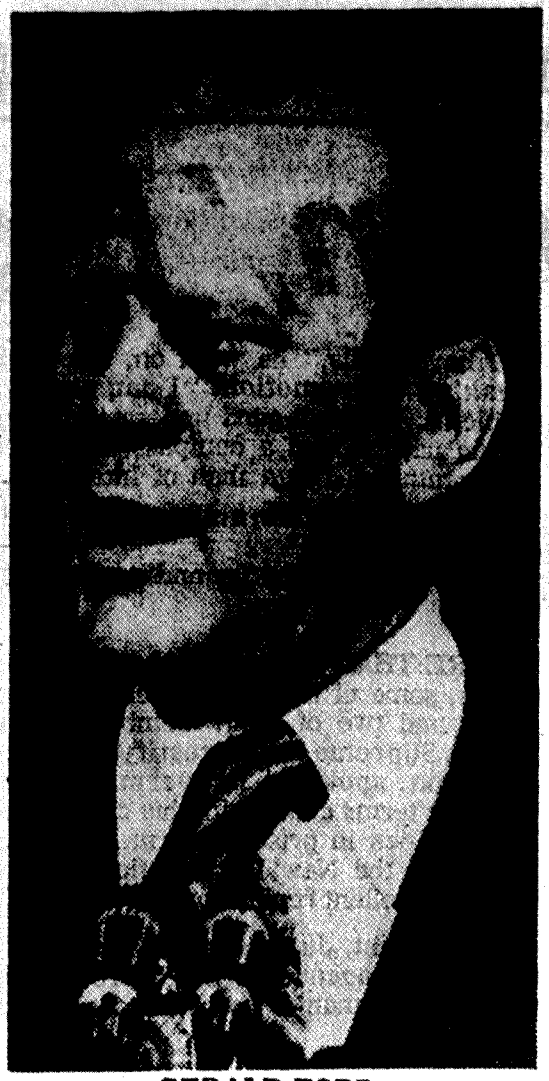
'A Senate-passed home rule bill provides more fiscal autonomy for the District, including a provision to allow the City Council, rather than Congress, to review the city budget.

FORD ELABORATED his position:

"In the last dozen years, the federal payment to thee District has jumped from $25 million to $187.5 million.

"In the last dozen years, we have built 3,228 new classrooms in the District at a cost of $303.3 million. Our per capita expenditure for education in the Nation's Capital for fiscal 1974 is $1,358 — one of the highest in the country."

Ford, who as vice president and chief Nixon lobbyist could be a formidable foe to further liberalization of home rule, quoted from the portion of the Constitution that says Congress shall "exercise exclusive legislation in all cases whatsoever" over the District.



GERALD FORD

EXHIBIT B

SAVING A DREAM

Diggs Ready to Deal on Home Rule Bill

By Jack Kneece
Star-News Staff Writer

The chairman of the House District Committee says he is prepared to continue detailed congressional oversight and control over the D.C. budget as a means of "reaching an accommodation" with home rule foes.

The committtee home rule bill would give such line item oversight of the budget to an elected City Council.

But the chairman, Rep. Charles C. Diggs, D-Mich., said he is "prepared to maintain the role of the House and Senate District appropriation subcommittees" with certain minor modifications of the present appropriations process.

DIGGS ALSO revealed yesterday he is ready to make changes in the committee bill governing the system of appointing judges to D.C. Superior Court and the process by which Congress approves or disapproves legislaation enacted by an elected City Council.

Diggs stressed that he is "trying to be reasonable in an effort to save the fundamental thrust of the committee bill." He did not use the word compromise.

Although he said he is prepared to make the major concession of retaining congressional line item oversight of the budget, Diggs said he plans to work out something with the chairman of the House D.C. appropriations subcommittee, Rep. William K. Natcher, D-Ky., to alter the existing system.

Specifically, he said line item oversight before the House subcommittee now involves every D.C. agency, with agency heads and their subordinates often spending several days waiting in Capitol hallways to testify.

"**MEANWHILE,** with all the trekking back and forth and the waiting, everything stops in the agency," Diggs said.

As for the judges, Diggs said he still intends that the mayor appoint them to 15-year terms, as provided in the committee's bill. He said the President — who now appoints Superior Court judges — already has enough of a role in the choice under terms of the committee bill because the President appoints three members of a nine-member nominating commission.

Diggs said the principal area of accommodation would be in allowing for the advice and consent of the Senate of mayoral nominees to the bench.

The veto provision of the committee bill would allow any act of an elected council to become law immediately, leaving the burden for a veto on Congress. Although Diggs was not specific on this point, there are indications a compromise would stay the effectiveness of council-enacted legislation until approval by Congress. But Diggs would only say this veto area is "adjustable."

DIGGS INDICATED that he is still undecided or not ready to yield on changing the federal payment provision of the committee bill. There have been indications, however, he also may yield on this provision.

The federal payment section, as now written in the committee bill, would establish a D.C. federal payment trust fund with a four-year authorization for lump sum annual federal payments in amounts predetermined through the congressional appropriations process.

The mayor would be required to submit for council approval a recommended federal payment level based on the costs and benefits to the District resulting from its role as the U.S. capital.

Payments would be requested a year in advance. After council approval, recommendations would go to the Office of Management and Budget for action and transmission to Congress in the president's budget.

See HOME RULE, B-4

B
Washington Star-News
Metro Life
OBITUARIES
COMICS — ACTION LINE

WASHINGTON, D. C., FRIDAY, OCTOBER 5, 1973

HOME RULE

Continued From B-1

THIS PROVISION would implement a Nelsen Commission recommendation for a predictable federal payment but retain congressional power to review the request and determine the total amount of the payment.

This provision—thought [redacted] more palatable than a fixed formula based [redacted] revenues as written into the Senate's home rule bill — has encountered stiff criticism. Diggs may yet be forced to change it to the Senate version.

Meanwhile, the House Rules Committee, after an unusual three days of testimony, yesterday granted an open rule to four home-rule bills. This means the bills will be fair game for floor amendments. They also will be read by section rather than title — as requested by Diggs — making them vulnerable to a lengthy debate on each section.

THERE ARE 88 sections in the 132-page committee bill and this means home rule enemies could stall it by debating each section. Although filibuster is prohibited in the House, opponents often use the tactic of debating separate sections as a delaying tactic.

Rep. Earl F. Landgrebe, R-Ind., promised yesterday: "We'll filibuster it to death."

Diggs said it appears the bill will take up much of the time of Congress in day-long sessions Wednesday, Thursday and possibly even Friday.

Diggs also said any dilatory tactic might work to the advantage of the bill.

After the rules panel denied Diggs' request to cut time required by reading the bill by title by an 8-6 vote, Rep. Richard Bolling, D-Mo., said, "This is the most destructive thing we could have done to the bill."

EXHIBIT C

Home Rule—At Last

After the long fight was over last night, Representative Charles Diggs put just the right face on the result. If it was not "all we had dreamed about," he said, the home rule bill passed by the House—ending a century-long impasse—certainly represented a worthwhile, historic breakthrough for the cause of more self-determination in the District of Columbia.

Assuming, as we do, a conference agreement with the Senate, what District residents gained was the right for the first time to elect a mayor and 13 city council members who will exercise significantly greater powers of local autonomy in a substantially reorganized city government. Those who complain that more was not gained are blind to two realities: First, that this was an immense legislative achievement, for which the city is indebted chiefly to District Committee Chairman Diggs; second, that the intricate federal-local relationships of this hybrid city cannot be totally separated, nor should they be, and that further delegations of local authority also inevitably will be linked with federal restraints to preserve that political marriage.

Early in yesterday's debate, Speaker Carl Albert predicted that the temper of the House favored enactment of a bill, and the final 343-to-74 vote proved him right. But the real turning point had come 24 hours before with the disclosure that the compromises maneuvered by Diggs had won the full support of the single most influential member of the House District Committee, Representative William H. Natcher.

Natcher's high price was ultimate congressional control over the city's budget—and it was not the only price paid. Before it ended, opponents of the original Diggs bill had won nonpartisan rather than partisan District elections, a continuation of judicial appointments by the President rather than the mayor and a series of federal "oversight" restraints against the city council's legislative actions—the most notable being a 30-day delay in the effective date of the actions to provide a chance for review by Congress. Those concessions, in our view, were reasonable.

For no rational purpose we can decipher, the House voted to create a federal enclave—a "National Capital Service Area" encompassing federal buildings and the downtown monuments—to be administered by an entirely superfluous new layer of bureaucracy in the White House. That provision deserves to die in conference.

Indeed, that forthcoming House-Senate conference should command the attention of us all, and the sooner the better. There are vast differences between the two bills, some of which will be hard to reconcile. In the House version, particularly, we want to take a longer, harder look at the precise impact of some provisions which obviously were not fully understood by many members in the maze of this week's debate.

For all that, though, the ingredients of compromise are there for a conference agreement that can give all District residents an immeasurably greater participation in the level of government that most directly affects them. It is an exhilarating prospect. And that, for the moment, is enough.

EXHIBIT D

Union Calendar No. 217

93D CONGRESS
1ST SESSION

H. R. 9682

[Report No. 93–482]

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 1973

Mr. DIGGS (for himself, Mr. ADAMS, Mr. FRASER, Mr. DELLUMS, Mr. REES, Mr. FAUNTROY, Mr. HOWARD, Mr. MANN, Mr. MAZZOLI, Mr. ASPIN, Mr. RANGEL, Mr. BRECKINRIDGE, Mr. STARK, Mr. GUDE, Mr. SMITH of New York, and Mr. MCKINNEY) introduced the following bill; which was referred to the Committee on the District of Columbia

SEPTEMBER 11, 1973

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To reorganize the governmental structure of the District of Columbia, to provide a charter for local government in the District of Columbia subject to acceptance by a majority of the registered qualified electors in the District of Columbia, to delegate certain legislative powers to the local government, to implement certain recommendations of the Commission on the Organization of the Government of the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TABLE OF CONTENTS

AUTHORIZATION OF APPROPRIATIONS

SEC. 503. For the fiscal year ending June 30, 1976, and for each of the three fiscal years immediately thereafter, there is authorized to be appropriated to the trust fund a lump-sum unallocated Federal payment for each fiscal year (not including those payments reimbursing the District for water, sewer, and other special services) in such an amount as the Congress may from time to time appropriate.

TITLE VI—RESERVATION OF CONGRESSIONAL AUTHORITY

RETENTION OF CONSTITUTIONAL AUTHORITY

SEC. 601. Notwithstanding any other provision of this Act, 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 Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council.

LIMITATIONS ON THE COUNCIL

SEC. 602. (a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to—

(1) impose any tax on property of the United States or any of the several States;

(2) lend the public credit for support of any private undertaking;

(3) 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;

(4) enact any act, resolution, or rule with respect to any provision of title 11 of the District of Columbia Code (relating to organization and jurisdiction of the District of Columbia courts);

(5) impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District (the terms "individual" and "resident" to be understood for the purposes of this paragraph as they are defined in section 4 of the Act of July 16, 1947);

(6) enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5 of the Act of June 1, 1910 (D.C. Code, sec.

5–405), and in effect on the date of enactment of this Act;

(7) enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts.

(b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any Federal agency, than was vested in the Commissioner prior to the effective date of title IV of this Act.

LIMITATIONS ON BORROWING AND SPENDING

SEC. 603. (a) No general obligation bonds shall be issued during any fiscal year in an amount which, including all authorized but unissued general obligation bonds, would cause the amount of principal and interest required to be paid in any fiscal year on the aggregate amounts of all outstanding general obligation bonds to exceed 14 per centum of the District revenues (less court fees and revenue derived from the sale of general obligation bonds) which the Mayor determines, and the District of Columbia Auditor certifies, were credited to the District during the immediately preced-

EXHIBIT E

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 93-482

DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT

REPORT

BY THE

COMMITTEE ON THE DISTRICT OF COLUMBIA

TOGETHER WITH DISSENTING VIEWS

[To accompany H.R. 9682]

SEPTEMBER 11, 1973.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1973

SECTION-BY-SECTION ANALYSIS

TITLE I—SHORT TITLE PURPOSES, AND DEFINITIONS

This title contains a statement of purposes and definitions of the principal terms used in the bill.

TITLE II—GOVERNMENTAL REORGANIZATION

As heretofore stated, Title II of H.R. 9682 would carry out a number of the important recommendations of the Nelsen Commission.

The interest of the Federal establishment in proper city planning is amply protected, as indicated, by the provisions in Title II which authorize the National Capital Planning Commission to review all local plans and to overrule such plans as may have a negative impact on the Federal establishment. As is hereinafter specifically set forth, Section 203 provides an effective procedural arrangement whereby the interests of the local and Federal governments are to be reconciled whenever disputes occur as to local planning and development issues.

SEC. 201. REDEVELOPMENT LAND AGENCY

RLA is established as an instrumentality of the District of Columbia Government, composed of five members, as at present, appointed by the Commissioner and confirmed by the Council for five-year staggered terms. While RLA's corporate status and Board of Directors are retained, this section also gives the Commissioner power to dissolve the corporation, eliminate the Board of Directors, or take any other action as deemed necessary and appropriate with respect to the powers and duties of the Agency as a corporate body of perpetual duration.

This section also provides that the agency's present Board of Directors shall be terminated on July 1, 1974, and that the terms of the members appointed under the new provisions would begin on the same date. It is clearly not the intention of the Committee to create a new corporation, but rather to constitute a new Board effective July 1, 1974.

SEC. 202. NATIONAL CAPITAL HOUSING AUTHORITY

This section transfers the present Federal agency (NCHA) to the local government. It would permit the Commissioner, with the approval of the Council, to reorganize the agency, and subsection (b) transfers all functions, powers, and duties of the President under the District of Columbia Alley Dwelling Act of 1934 to the Commissioner.

Subsection 202(b) provides a statutory basis for the transfer of the

The vacancy created by such recall will be filled in the same manner as other vacancies.

TITLE V—FEDERAL PAYMENT

SEC. 501. FEDERAL PAYMENT TRUST FUND

Section 501 of the bill establishes in the United States Treasury a Federal payment Trust Fund administered by the Secretary of the Treasury who reports annually to Congress on the status of this fund. Congress may act to appropriate a Federal payment at any time during the fiscal year. The appropriated funds do not go directly to the city government, but rather are deposited in the trust fund for release by the Secretary of the Treasury at the beginning of such fiscal year. This is the same administrative procedure as used for Revenue Sharing funds.

SEC. 502. DUTIES OF MAYOR, COUNCIL, AND OMB

The Mayor, in section 502, is responsible for preparing a request for an annual Federal payment and such supplemental requests as he deems necessary. In making these requests, he may take into consideration intercity expenditure and revenue comparisons, and among other elements, nine factors for assessing the cost and benefits to the District because of its role as the Nation's Capital. It is the intent of this Committee that these factors should be used to the extent feasible, but they are not the exclusive criteria for determining the amount of the Federal payment sought. The Mayor shall submit his such request to the Council, which may approve, disapprove, or modify the amount. The request is then forwarded to the President (OMB) for his review, revision and submission to Congress. This procedure is carried out in line with the provisions of the Budget and Accounting Act of 1921, as amended, and parallels that followed for all Federal fund requests.

SEC. 503. AUTHORIZATION OF APPROPRIATIONS

Section 503 would authorize the appropriation of a lump sum unallocated Federal payment for fiscal years 1976, 1977, 1978, and 1979.

TITLE VI—RESERVATION OF CONGRESSIONAL AUTHORITY

SEC. 601. RETENTION OF CONSTITUTIONAL AUTHORITY

Congress, in section 601, retains its constitutional authority to legislate and to amend or repeal any law or any act passed by the Council.

SEC. 602. LIMITATIONS ON THE COUNCIL

This section lists specific prohibitions against the District Council's legislative authority, which include prohibitions against:

(1) taxation of United States or state properties;

(2) lending the public credit for any private undertaking;

(3) enactment of any Act which amends or repeals an Act of Congress, which concerns the functions or property of the United States, and which is not restricted entirely to the affairs of the District of Columbia;

(4) enactment of any act, resolution or rule which concerns the organization and jurisdiction of the District of Columbia courts;

(5) imposition of a personal income tax upon non-residents of the District;

(6) enactment of any act, resolution or rule that exceeds height limitations contained in section 5 of the Act of June 1, 1910, D.C. Code, Sec. 5–405 (concerns specific height limitations in the District of Columbia);

(7) enactment of any or regulation related to the United States District Court for the District of Columbia, or any other United States court in the District.

Subsection (b) prohibits the Council from exceeding its present authority over the National Zoological Park, the District National Guard, the Washington Aqueduct, the National Capital Planning Commission, or any other Federal agency.

SEC. 603. LIMITATIONS ON BORROWING AND SPENDING

This section establishes three limitations on the District's authority to spend and borrow monies. First, in section 603(a), the city cannot issue a new, long-term general obligation bond if in any year the amount of principal and interest that must be paid on this and the bonds already issued will exceed the 14% limitation. This single limitation on general obligation indebtedness replaces a series of complicated borrowing limitations currently governing the city, which are previously described. The purpose of this limitation is to insure that the city does not borrow beyond its reasonable capacity to repay its debts. The Committee has been advised that the 14% limitation is sufficient to meet the projected capital improvement plans of the District of Columbia, and is consistent with borrowing revenue ratios in comparable metropolitan areas.

In addition, section 603(a) clarifies that the outstanding indebtedness of the Redevelopment Land Agency and the National Capital Housing Authority at the time of their transfer into the city government shall not be included in calculating the 14% limitation.

Section 603(b) states that the 14 percent limitation mentioned in subsection (a) shall be calculated specifically according to the formula set forth in that subsection.

Section 603(c) establishes a general requirement that the city operate with a balanced budget, that is, the City Council cannot approve expenditures above the Mayor's best estimate of financial resources available for that year. In the event that Congress has not enacted the city budget, for the purpose of retaining a balanced budget, the Mayor shall consider the Federal payment amount to be the Federal payment appropriated for the past year; or if one House has acted, that amount; or if both Houses have acted to appropriate different

EXHIBIT F

Washington Star-News

JOHN H. KAUFFMANN, President NEWBOLD NOYES, Editor

WASHINGTON, D. C., SUNDAY, DECEMBER 2, 1973

Home Rule: One More Step to Go!

It is doubtful that the full impact of last Tuesday's House-Senate conference agreement on D.C. home rule has registered as yet with most Washingtonians. After so many years of false starts and frustrating skirmishes, the desire for new powers of home rule has seemed almost doomed to perpetual disappointment. And last week's agreement, to be sure, still requires the formal endorsement of both houses of Congress.

Yet, barring some unexpected setback, there is every indication that this time it's for real — that the conference report will win approval when it hits the House floor December 12 and that the Senate will concur shortly thereafter, quite likely winding up the whole business before Christmas.

Those votes would set in motion the machinery to permit—as early as next year—the election of a mayor, a city council chairman and 12 other council members (four elected at-large and eight from wards), who would head a reorganized government invested with substantial new legislative and administrative powers. To a citizenry now able to elect only a local school board and a nonvoting House delegate, the prospect of all that increased political activity and citizen participation in government is exhilarating. It implies too, however, an awesome degree of voter responsibility in selecting the [illegible] leaders—not merely to provide sound local government but to enhance the city's chances of gaining further degrees of self-determination in the future.

For if the conference report represents, as Senate District Committee Chairman Thomas Eagleton asserts, a "reasonable, rational and productive achievement," it falls short of what he and many other home-rule advocates had sought. In essence, the new bill strikes a balance between the conflicting desires of Congress to give District residents a meaningful further measure of control over their own affairs while at the same time retaining strong measures of congressional oversight.

There is no cause whatever to lament those dual goals, despite the hand-wringing and rhetoric engaged in by some of our local political hopefuls. The delicate local-federal relationships involved in running this city can never be totally severed. No one should try. What is involved here, in order for the city to flourish, is a partnership in terms of both moral and financial commitments.

Striking this balance, furthermore, was no easy task. The home-rule conferees had confronted a tough chore in reconciling the sharply divergent provisions of the House and Senate bills. In our view, although we would have preferred a different result in a couple of instances, they did a good job. In numerous compromises, shortcomings in both bills were improved. On the whole, the House gained from the Senate many more concessions than it yielded—and from the outset that was predictable. Some of these compromises represent the essential price of securing House enactment of the substantial, desirable local gains that are involved. But it is fair to note, too, that the House had engaged this year in a far deeper probe of the intricacies of home rule than the Senate.

The single most vital point of controversy was the House insistence that Congress retain much in the manner of the past—the right to review and approve the annual District budget. Inherent in that process, however, is a congressional commitment to provide each year a federal payment that will be sufficient, in conjunction with city revenues, to finance a realistic, responsible budget. While this arrangement assumes a certain amount of good faith on all sides, we think it provides an acceptable, workable approach.

The retention of congressional budgetary review has tended to obscure, furthermore, the gains that would accrue to the city government in the new budgetary process. Foremost is the authority to assess new taxes, and to determine all tax rates. That power, coupled with borrowing authority and the assurance of an equitable federal payment, would enable the District for the first time to develop a balanced budget on the basis of orderly planning. And so long as it is a responsible budget, we have every expectation that it would encounter no serious trouble in winning congressional approval.

As noted above, there are a couple of instances in which we wish the conferees had decided differently.

In the choice of local officials, we think it would have been better to authorize nonpartisan rather than partisan elections. While party primaries may add an extra dimension of interest to the political scene, we suspect that the over-all caliber of candidates would be just as high under a nonpartisan system, that relations with Congress might be made somewhat easier, and that a good deal of confusion arising from Hatch Act restrictions on potential candidates might have been avoided. We do not share the fear of some critics, however, that partisan elections seriously threaten a "spoils system" of local government, nor do we view this as a fatal flaw in the bill. Indeed, the conferees' insistence that no single party may field candidates for more than three of the five city council seats to be filled by city-wide votes is certainly a commendable idea.

Our second reservation concerns a provision that is merely silly: the decision to hire a $38,000-a-year federal official whose sole function presumably would be to assure that adequate public services are provided by the city in a predominantly federal "National Capital Service Area" extending from Capitol Hill to the Lincoln Memorial. There is neither a necessity nor a justification to identify any such *federal* enclave. The Nation's Capital is not merely the vicinity of the great Mall, it is the entire city of Washington, and any suggestion to the contrary is a disservice to both federal and local interests.

Still and all, these are minor concerns in contrast to the positive features of the bill. Apart from elected officials and a full measure of general legislative authority, the city would achieve a charter analogous in many respects to a state constitution, a capability for more effective city planning, direct control over its housing and urban renewal agencies and an improved judicial system. For its part, Congress' oversight prerogatives are assured by both the absolute right of legislative veto and its all-important control of the purse-strings. The city's judges, as at present, would be named by the President, but from nominees proposed by a responsible panel of experts.

It is no secret that some members of Congress, particularly in the House, remain dubious as to how all this might work out. But the grants of local autonomy in the current legislation could hardly be more tightly constrained. And it would be a cruel hoax if the House, when it considers the bill next week, were to deny District residents for a moment longer the opportunity to demonstrate their capacity for responsible self-government once and for all.

"... about wrapping it up by Christmas?"

Ziegler Strikes Again

Presidential press secretary Ronald Ziegler's performance the other day, when he lashed out at nearly everything in sight, indicates either that President Nixon fears his "Operation Candor" is failing or that bumbling has become a way of life in the White House handling of Watergate.

In the course of a single press briefing, Zielger attacked the staff of the special Watergate prosecutor's office, ridiculed a suggestion by special prosecutor Leon Jaworski concerning the safekeeping of Watergate tapes, and suggested that the White House's own legal staff comes up short.

When Mr. Nixon is trying to restore public confidence in his administration and trying to get critics to lower their voices over Watergate, what ecutor himself is a bad development from Mr. Nixon's standpoint. It undercuts the White House promise to cooperate fully with Jaworski and it can only lead to further suspicion that the President is more interested in cover-up than in full disclosure.

For Ziegler to imply that the President's own Watergate lawyers are not up to par and that some of them are likely to be replaced suggests a certain amount of disorder, indecision and bungling behind the scenes at the White House.

We aren't sure whether Ziegler's outburst was prompted by Mr. Nixon or whether the press secretary took it upon himself. In either event it was a mistake in public relations.

EXHIBIT G

A Generally Quiet Protest
... Page B-2

Metro Life

B

Washington Star-News

OBITUARIES

WASHINGTON, D. C., FRIDAY, OCTOBER 12, 1973

Metrobus Ride For 25 Cents?
... Page B-4

VERSIONS DIFFER WIDELY

Senate to Seek Strong Home Rule Bill

By Jack Kneece
Star-News Staff Writer

The Senate conferees will insist on a strong home rule measure exemplifying the best features of House-passed and Senate approved bills, says Sen. Charles McC. Mathias, R-Md.

Mathias said yesterday he had met with Sen. Thomas F. Eagleton, D-Mo., chairman of the Senate District Committee, "and we decided to work for the strongest bill we can get in conference."

Although Mathias said he did not want to comment on any single provision of the bill passed by the House 343-74, he smiled when asked if Senate conferees would insist on removing a provision for a nonvoting Senate delegate from the District.

ALTHOUGH the Senate leadership has not appointed conferees to work out differences between the two bills, Mathias said he is certain that he and Eagleton will be among them.

Meanwhile, congressional sources say there will be an effort on the House side to persuade Senate conferees to accede to most of the House version with minor exceptions.

Sources said the Senate, long partial to home rule legislation, could be expected to go along with most of the House bill.

There are many differences between the two bills, but the House bill is more thorough than the Senate version and the Senate is expected to go along with many House provisions.

The Senate bill would establish an 11-member city council and provide for an elected mayor—all on a partisan basis.

THE HOUSE version would set up a 13-member council and an elected mayor on a nonpartisan basis.

Both bills would require election of a council member from each of the city's eight wards, but the House version would provide for five at-large members while the Senate version would provide for three.

The Senate bill gives far more fiscal autonomy to an elected government. The city council would be the reviewing body for the budget under the Senate bill, which also would provide for an automatic federal payment based on a fixed formula.

The House and Senate District Appropriations subcommittees would review the budgets by line item under the House-passed version.

See HOME RULE, B-4

HOME RULE

Continued from B-1

UNDER the Senate bill, the federal payment would increase from approximately $200 million to $264 million by fiscal year 1978 in uniform increments based on a projection of the annual growth rate of the city's tax base.

The House version sets a $250 million limit on the amount authorized for fiscal year 1975 and "each fiscal year thereafter," although that would be subject to congressional change.

Both bills would provide for an independent audit of D.C. fiscal management.

The House bill would provide more authority over zoning and planning than the Senate bill. It also would provide for city takeover of two controversial agencies, the Redevelopment Land Agency and the National Capital Housing Authority.

THE MOST obvious difference in the two pieces of legislation is in the sheer size of the House bill — 129 pages compared to a thin Senate bill of a few pages.

Both bills would allow a substantial amount of autonomy to the city council in setting tax rates but both bills also provide for a congressional veto by resolution of any act passed by the council.

As the home rule measure rolled toward final action in Congress, speculation was rising about candidates to be presented to a newly created District electorate.

"People are already worrying about who's going to run for what," City Council Vice Chairman Sterling Tucker observed to some 150 persons gathered at the District Building to celebrate House passage of a bill Wednesday night.

No comment was forthcoming from either Mayor Walter E. Washington or D.C. Del. Walter E. Fauntroy on whether they would bid for the mayor's post.

SUPPORTERS of Washington feel certain he will run for the elective office, but the mayor has rebuffed all attempts by the press to draw him out about his possible candidacy.

One source close to the mayor said, "He's just not going to say anything about this now. He feels it's too premature to talk about getting into a campaign before Congress passes a home rule bill."

Fauntroy said that "I have given no thought" to the question of running for mayor. "It is much too early to be even speculating about that."

EXHIBIT H

HOME RULE:

Lack of Budget Authority Dismays Council

By Harvey Kabaker
Star-News Staff Writer

Several members of the Presidentially-appointed D.C. City Council are reacting with dismay over the lack of budget authority for the proposed elected council in the House-passed home rule bill.

Some say that an elected councilman, who will owe his position to the people of the city, could be in a completely untenable position if Congress continues to hold the city's pursestrings.

A close associate of Council Chairman John A. Nevius said that he will advise Nevius not to run for the first elected council, because of the likely frustrations and possibly damaging consequences to further political ambitions.

FOR HIMSELF, Republican Nevius is saying only that he "will have to study the matter." He said a lot depends on the availability of financial support for an election campaign which could come as early as the Fall of 1974.

The Rev. Jerry A. Moore Jr., a Republican council veteran who also heads the area Metro rapid transit and bus agency, feels that "they gutted the bill."

Moore believes that "elected officials who are controlled by the Hill are worse off than the appointed ones who know exactly where the action lies."

He posed this situation. "You'll have some fellow coming down here to lobby with the city council for a new recreation center, and his councilman will tell him that there isn't anything he can do, because someone on the Hill has line-item control over the budget."

FOR VARIOUS reasons, none of the present council members will say with assurance that he might be running. Mrs. Marguerite Selden, a Democrat and one of the three most recent appointees of President Nixon, is the only one who is certain she will not be a candidate.

"I am not a politician," she said. "I took the appointment knowing that I would not want to run if home rule is passed. I told them at the White House, and I've said the same thing to others. I'll serve my term out, but won't run."

Dr. Henry S. Robinson Jr., a three-term Republican member, said that the proposed taxing power without final spending authority "puts the onus on the council. Every time we raise taxes, the citizens will raise hell with us." He added, "The whole ball game is control over your own budget."

But more than his colleagues, Robinson sounds like he wants to run. "I don't know whether it will be from the ward, or at large," he said. He is worried, he said, about nonpartisan elections, which he believes will be bad for Republicans.

IN CURRENT registration, Republicans are outnumbered by Democrats in a ratio of nearly 6 to 1, about 236,000 Democrats to about 40,000 Republicans. There are about 33,000 registered in no party, 600 in the Statehood Party and 600 miscellaneous registrations, such as the Socialist Workers and American Independent.

In the bill originally reported out of the House District Committee, no party could hold more than three of the five at-large seats, so Republicans would be guaranteed at least 2 out of 13. Robinson fears that in a citywide "nonpartisan" election, which the compromise bill specifies for the mayor and council, the Democratic Party could set up a nominally nonpartisan organization and dominate the field.

Therefore, Robinson thinks his dilemma would be whether to take his chances against the Democrats of Ward 5, and, incidentally, forego a chance for the council chairmanship, or to attempt a citywide campaign and become eligible for the potentially powerful and prestigious chair.

Mrs. Marjorie Parker, also a Republican, disagrees with Robinson. She thinks she would be helped because "if I were to run — and I'm not saying that I will — there might be a lot of people who would vote for me than if I were running on a strictly partisan basis."

SHE HINTED strongly that she would like to run — if the financial backing is available — as an at-large candidate, and hopes that "a woman" could be elected to chair the council. Though "disappointed" by the lack of budget authority, she said she believes that issue would not affect her decision on running.

Another Republican, Mrs. W. Antoinette Ford, agreed that budget power is "the bone of contention. Really, how can you be an effective elected council member if you can't even control your own purse strings?" Her decision on running is months away, she said.

Republican Rockwood H. Foster and Democrat Todson J. Meyers view the power limitation philosophically. "Authority, in many ways, is what you make of the opportunities before you. And power often amounts to persuasion," said Foster, a retired foreign service officer.

As for his own plans, Foster drily noted without bitterness that "it's a bit late for an overweight, white WASP from Northwest Washington to be running in an election here."

MEYERS BELIEVES that "no matter what the conditions Congress gives us, you need the best people you can find."

Acknowledging that the time that passes before the city may ultimately be given budget power will be "fraught with frustrations," Meyers said this simply emphasizes the need for elected officials who can "approach the city's problems with intelligence and determination."

He added that he hopes there will be "a kind of interrognum period," during which a successful elected government can win further major concessions from Congress. As in the case of Mrs. Ford, he said he will have to spend some time before deciding whether to run.

Tucker is known to have ambitions that go beyond the council, but he steadfastly refuses to reveal any plans. Like Mayor Walter E. Washington, he puts the passage of a final home rule bill and the campaign for home rule charter adoption in a citywide referendum ahead of any overt personal campaigning. He also has a delicate route to tred between the Democratic ranks of the mayor and Del. Walter E. Fauntroy.

AS CHAIRMAN of the umbrella Coalition for Self Determination, Tucker is solidly behind the compromise bill and dismisses the objections of its detractors.

"There's more in that bill than many of us realize," he said. "Our job now is to educate ourselves, to look for the conference bill, and to educate the public so they will vote for the charter."

Few, if any, conflicts will arise because of the residences of the present members. Meyers lives in Ward 1, the central city. None lives in Ward 2, which includes the area north of downtown, Southwest and part of Capitol Hill.

Nevius, Foster and Mrs. Parker are in Ward 3, west of Rock Creek. With Foster unlikely to run, any competition for Nevius would come from persons not now on the council, unless he decides to try an at-large candidacy.

Tucker and Moore both live in Ward 4, upper 16th Street NW. In Ward 5, Northeast, with Mrs. Selden not running, Robinson could be up against a non-incumbent.

NO PRESENT council member lives in Ward 6, Capitol Hill and part of Anacostia. Mrs. Ford lives in Ward 7, Far Northeast-Southeast, and none lives in Ward 8, Far Southeast-Southwest.

Among the council members' personal considerations would be whether they could afford to quit or cut back their present jobs for the full-time salary of $22,720 a year (plus $5,000 for the chairman.).

Mrs. Ford would have to resign a position at the Commerce Department and Mrs. Parker would have to leave her job at D.C. Teachers College, because the bill bars government employes from holding elective office.

Foster and Mrs. Selden are retired. Moore is a minister. Tucker is executive director of the Washington Urban League. Meyers has said that his "part-time" council position has cut deeply into a lucrative law practice. Robinson is a private physician.

EXHIBIT I

Diggs Is Accused Of 'Power Ploy'

By Cathe Wolhowe
Washington Post Staff Writer

The Rev. David H. Eaton, pastor of All Souls Unitarian Church, accused House District Committee Chairman Charles C. Diggs Jr. (D-Mich.) yesterday of selling his soul to retain power by agreeing that Congress should continue to hold complete budget authority over the D.C. government.

". . . Diggs does not seem to understand that he has sold something that is not for sale —our souls, our ability to control our own lives," Mr. Eaton said in his sermon yesterday, as a congregation of about 250 persons clapped loudly.

"He (Diggs) can sell his soul if he wants, but not ours," Mr. Eaton said.

The clergyman was referring to Diggs' revelation last week that he and Rep. William H. Natcher (D-Ky.) chairman of the House District Appropriations Subcommittee, had reached agreement on the budgetary provision of proposed D.C. home rule legislation that is due to come before the House Tuesday.

Diggs said he and Natcher agreed that Congress should continue to have appropriations control over line items in the city's budget rather than accepting a provision in the home rule bill, endorsed by Diggs' committee, that would limit congressional control over the budget.

"Chairman Diggs made his deal only to keep himself in power," Mr. Eaton said. "And he made it without consulting any other members of the (District) Committee."

Upon hearing of Mr. Eaton's remarks, Diggs said, "I am prepared to take my lumps from the home-rule, self-determination purists who, like Reverend Eaton, think anything short of statehood represents a deficient or imperfect product."

He added that he had made his agreement with Natcher because "we're not going to get anything through Congress like the purists want. This is a practical tactic."

Diggs said he did not consider his agreement a major change because "as long as the federal government is involved in financing the local government, it has the right to review and modify the entire matter."

Mr. Eaton said Diggs' agreement with Natcher takes "the guts out of the home rule bill, the ability to control what we spend, to determine what our spending priorities are."

He also said also that he was saddened by how the agreement was reached, adding that "Diggs actively acted against the wishes of our representative."

Del. Walter E. Fauntroy (D-D.C.) refused to comment on whether Diggs had reached agreement with Natcher without consulting him. He said he

See RULE, C5, Col. 1

CHARLES C. DIGGS JR.
. . . prepared to take lumps

DAVID H. EATON
. . . souls not for sale

Diggs' Home Rule Action Is Assailed

WILLIAM H. NATCHER
. . . said to agree

RULE, From C1

may comment after meeting today with other members of the District Committee.

Mr. Eaton told his congregation that the issue should not be considered "a merely political question, but a moral one — a matter of justice."

He added that the Board of Governors of the District of Columbia Bar had just written Diggs on this subject. The letter said the lawyers "considered suffrage for citizens of the District of Columbia so fundamental to American principles of law and justice as to transcend the ordinary and traditional political question.

"The issue of self-determination was the moral issue we fought over in 1776," Mr. Eaton said. "Just like Americans then had to go down to the harbor to get some action, maybe we are going to have to consider some different alternatives if this bill doesn't pass."

Although he said he was not advocating violence, he added, "I just can't keep going to meetings to ask for something that is my inherent right."

The home rule bill reported out by the House District Committee, similar to a measure already passed by the Senate, would have an elected mayor and city council and transfer to the local government some authority now held by Congress and the President.

A compromise measure sponsored by Rep. Ancher Nelsen (R-Minn.), ranking minority member of the District Committee, and Rep. Edith Green (D-Ore.), would have the council elected but the President would continue to appoint the mayor.