IN THE 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.

No. 1:14-cv-00655-EGS

COUNCIL'S SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO DEFENDANTS' AMICI

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Pursuant to this Court's order dated May 9, 2014, the Council respectfully submits this Supplemental Memorandum responding to the amicus briefs filed by Jacques DePuy et al. ("DePuy") and by the Republican members of the House Bipartisan Legal Advisory Committee ("BLAG").

ARGUMENT

The DePuy Brief and the BLAG Brief offer variations on Defendants' themes. Defendants' Amici assume that because Congress was unprepared to grant budget autonomy in 1973, it intended to prohibit a budget autonomy Charter amendment in perpetuity. But nothing in the text of the Home Rule Act supports that assumption. And the interest that Amici claim needed to be protected—the majority's unwillingness to grant budget autonomy in 1973—was protected by the original Charter amendment process, which required both Chambers of Congress to approve any Charter amendment.

With regard to the Anti-Deficiency Act, BLAG makes an important clarification. It says that the application of the Anti-Deficiency Act to the District has nothing to do with the Appropriations Clause. BLAG Br. 2. Defendants make the same point in their Reply Brief. Defs.' Reply Br. 19. Thus, the parties now agree that there is no constitutional obstacle to the District spending its own money. The only remaining question, then, is whether there is "an amount available in an appropriation or fund for . . . expenditure" (31 U.S.C. § 1341(a)(1)(A)) now that Section 446 has been amended by the Budget Autonomy Act. If the Budget Autonomy Act validly amended Section 446—the central issue in this case—then the District is permitted to make local revenues available for expenditure. So Defendants' Anti-Deficiency Act claim rises or falls with their other arguments.

A. Defendants' Amici Fail To Undermine The Budget Autonomy Act.

Nothing in Amici's filings undermines the Budget Autonomy Act under the theories

advanced by Defendants—Section 603(a), the Anti-Deficiency Act, or Section 602(a)(3).

1. The Budget Autonomy Act is consistent with Section 603(a).

By its plain text, Section 603(a) does not prohibit the Budget Autonomy Act. Section 603(a) explains how to "constru[e]" the "change in existing law" made by the Home Rule Act. D.C. Code § 1–206.03(a). That formulation is a familiar one, and when Congress says "nothing in the Act shall be construed," it is providing the act with its "own rule of statutory construction." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 376 n.5 (1986); *accord, e.g.*, *Terry v. Reno*, 101 F.3d 1412, 1414 (D.C. Cir. 1996); *Assassination Archives & Research Ctr. v. Dep't of Justice*, 43 F.3d 1542, 1544 (D.C. Cir. 1995). Section 603(a) explains what Congress *did* do; not what the District *may* do. That much is evident by comparing Section 603(a) with other provisions, *e.g.*, Sections 602(a) ("The Council shall have no authority") and 603(c) ("The Council shall not approve").

When Congress wanted to limit the District's authority, it knew how to do so. Nonetheless, Defendants' Amici support Defendants' position that Section 603(a) ("nothing in this Act shall be construed") is no different from Section 602(a) ("The Council shall have no authority"). In support of that position, BLAG and DePuy offer a new theory: that Section 603(a) must be a prospective, substantive limitation on the Council's authority in light of Section 602(b) because they both say "[n]othing in this Act shall be construed." BLAG Br. 9 n.4; DePuy Br. 12–14; *see also* Defs.' Reply Br. 12–13. It takes nothing more than the effort to read the rest of the sentence to see why this new theory fails.

Section 602(b) provides that "[n]othing in this Act shall be construed as vesting in the District government any greater authority over" a list of federal entities, including the National Zoo, "than was vested in the [Mayor] prior to the effective date . . . of this Act." D.C. Code § 1–206.02(b). Section 602(b) therefore explains how to "constru[e]" whether the Home Rule Act

"vest[s] in the District government any greater authority" over certain agencies than was previously delegated to the District's appointed Commissioner-Mayor. Because Section 602(b) explains how to construe the District's "*authority*," it was accurate to summarize an earlier draft provision as ensuring that the Council was "prohibit[ed] . . . from exceeding its present authority" over the Zoo. *E.g.*, DePuy Br. 14 (quoting Dkt. No. 27–4, at 17).[1]

Applying the same method of statutory construction to Section 603(a) supports *our* position and not Defendants'. That is because Section 603(a) does not explain how to construe one of the limitations on the Council's "*authority*," it explains how to construe the "*change[s] in existing law*" made by the Act and codified in the amendable Charter. These are two very different things. Looked at another way, if Congress had intended to "borrow" the language in Section 602(b) and to apply it to forever prohibit budget autonomy, as Defendants' Amici contend, it would not have stropped at the word "construed."

DePuy further argues (at 12) that Section 603(a) must be a limitation because the title of Section 603 is "Budget process; limitations on borrowing and spending." But that again helps us and not Defendants. The title's semicolon indicates that Section 603 speaks *both* to the "Budget process" *and* to "limitations on borrowing and spending." *See, e.g.*, *Elgin Nursing & Rehab. Ctr. v. DHHS*, 718 F.3d 488, 494 (5th Cir. 2013).

2. The Budget Autonomy Act is consistent with the Anti-Deficiency Act.

As we have elsewhere explained, the Budget Autonomy Act is consistent with the Anti-Deficiency Act because Congress moved the District's funds out of the U.S. Treasury and into the D.C. General Fund, and delegated to the District through the Charter amendment process the

[1] Although the legislative history is sparse, Section 602(b) appears to be explaining how to interpret the limitation in Section 602(a)(3), because without Section 602(b), it would be unclear whether, *e.g.*, the Zoo and the Washington Aqueduct were attributable to the "United States" or to the "District."

ability to change the process by which the District funds are spent.

BLAG acknowledges (at 1–2) that the requirements in Section 446 (before the Budget Autonomy Act was passed) were an exercise of Congress's District Clause authority, and not its Appropriations Clause authority. Thus, arguments related to budget laws concerning the Treasury—and to whether there has been an "appropriation" out of the Treasury—are beside the point. Given the acknowledgment that Congress satisfied its responsibilities under the Appropriations Clause, the only remaining question is whether Congress's delegation of authority to the District government included the power to amend the Charter provision specifying how local funds may be spent.

BLAG nevertheless contends (at 8 n.3) that no appropriation has occurred because *Congress* has not authorized expenditure of funds for a specified purpose. But if, as we contend, the *District* is now permitted to authorize expenditure of local funds, BLAG's concern is beside the point.[2] Regardless, BLAG argues (at 11–16) that because Congress has considered enacting

[2] In any event, BLAG cannot identify a single circumstance in which Congress's decision to move money out of the Treasury has failed to satisfy federal appropriations requirements. For the first time in their reply brief, Defendants contend (at 18) that GAO applies "the same test for determining whether Congress has made a permanent appropriation regardless of where Congress has located the fund," but the only authority they can find for that proposition illuminates why their entire theory is incorrect.

In *In re Monarch Water Systems, Inc.*, 64 Comp. Gen. 756 (Aug. 8, 1985), the Comptroller General addressed whether an expenditure of moneys outside the Treasury is subject to the Comptroller General's bid protest jurisdiction. Transactions that make use of appropriated funds are subject to the process, but moneys that Congress has deemed beyond the scope of the appropriations process—so-called nonappropriated funds—are not. To distinguish between appropriated funds and nonappropriated funds, the Comptroller General looked to see if Congress had used the typical language of appropriations to convey the money.

Defendants treat this as evidence that funds outside the Treasury must still be appropriated, but it actually shows just the opposite. If the Comptroller General had *failed* to find appropriations-style language, the upshot would have been that none of Congress's appropriations statutes applied at all because the money would have been considered nonappropriated. As we have explained, it does not matter whether the D.C. General Fund is

budget autonomy numerous times, it follows that *only* Congress can do so. But just because Congress *can* enact budget autonomy through positive legislation does not mean that the District *cannot* enact budget autonomy through the Charter amendment process. And just because Congress *has not* done so, does not mean the District *should not*. Budget autonomy is affected by gridlock and priorities in Congress. Rivlin Br. 8–10. By contrast, the District had a strong incentive to pursue budget autonomy because it bears the very real costs of waiting for Congress. The Home Rule Act was designed to relieve Congress of exactly this type of burden. Thus, while Congress has not enacted budget autonomy directly, it created an amendable Charter and an amendment process providing for congressional review. The introduction of bills that may have achieved similar results only serves to demonstrate how many people have sought budget autonomy over the years.

BLAG's secondary argument is that the Budget Autonomy Act is inconsistent with Section 816(a) of Division E of the Consolidated Appropriations Act of 2014. Section 816(a) conditionally appropriates local funds to the District for periods in Fiscal Year 2015 when there is a federal government shutdown. This rider was added to the 2014 appropriations bill in the aftermath of the 2013 shutdown of the federal government, which threatened continued operations of the District government. At the time, the rider was hailed as a victory for budget autonomy in the District, recognizing the costs of congressional inaction. The day before the measure passed the House, Del. Eleanor Holmes Norton issued a press release simultaneously lauding the bill's "historic and unprecedented District of Columbia shutdown-avoidance provision" and the fact that "no action was taken in the bill to overturn the budget autonomy

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treated as permanently appropriated or nonappropriated. In neither case is Congress required by the Appropriations Clause or its implementing statutes to make annual appropriations. *Monarch Water Systems* proves this point.

referendum approved by D.C. voters." Press Release, Norton Says Historic D.C. Shutdown-Avoidance Provision in Omnibus Continues Momentum for Budget Autonomy (Jan. 14, 2014) (Ex. A). The rider was not an attempt to overrule the Budget Autonomy Act, nor did it.

The text of Section 816 directly undermines BLAG's contrary conclusion. Although Section 816(a) conditionally appropriates funds, Section 816(e) provides that the section "shall not apply . . . if any other provision of law . . . makes funds available" and Section 816(f) provides that "[n]othing in this section shall be construed to [a]ffect obligations of the government of the District of Columbia mandated by other law."[3]

3. The Budget Autonomy Act is consistent with Section 602(a)(3).

Although BLAG and DePuy nominally associate themselves with Defendants' positions, neither stands behind Defendants' expansive theory that the Budget Autonomy Act improperly "concerns the functions . . . of the United States." D.C. Code § 1–206.02(a)(3). That is unsurprising as Defendants run away from authoritative decisions interpreting Section 602(a)(3) by local and federal courts. *See, e.g.*, *District of Columbia v. Greater Wash. Cent. Labor Council, AFL-CIO*, 442 A.2d 110, 116 (D.C. 1982); *CSX Transp., Inc. v. Williams*, 2005 WL

[3] Without taking a position, BLAG expresses skepticism (at 18 n.5) that "the appropriations aspect of this case" is ripe because Congress may decide, at some future date, to appropriate funds to the District. But "if a threatened injury is sufficiently 'imminent' to establish standing, the constitutional requirements of the ripeness doctrine will necessarily be satisfied." *Nat'l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1428 (D.C. Cir. 1996). As we have explained, the Council's injuries begin in 17 days, when the Mayor promises to usurp the Council's legislative powers by sending a draft budget to the President. The injuries continue from there. BLAG's position is that Congress might take steps to obviate the need for appropriations out of the D.C. General Fund for particular periods of time. But standing does not disappear whenever there is a "possibility that a coordinate branch might subsequently negate or undermine the Court's relief." *Banner v. United States*, 303 F. Supp. 2d 1, 9 (D.D.C. 2004), *aff'd*, 428 F.3d 303 (D.C. Cir. 2005); *see also Mead v. Holder*, 766 F. Supp. 2d 16, 24 (D.D.C. 2011) ("[V]agaries' of life are always present, in almost every case that involves a pre-enforcement challenge. . . . Indeed, it is easy to conjure up hypothetical events that could occur to moot a case or deprive any plaintiff of standing in the future.").

902130, at *22–23 (D.D.C. Apr. 18, 2005), *rev'd per curiam*, 406 F.3d 667 (D.C. Cir. 2005); *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 114–15 (D.D.C. 1986), *vacated per curiam as moot*, 1987 WL 1367570 (D.C. Cir. June 2, 1987).

Another possible reason for the silence of Defendants' Amici is that the Section 602(a)(3) was part of the bill reported out of House Committee on D.C. and the bill passed by the full Senate. Both of those bills also contained budget autonomy provisions, thereby demonstrating that those who drafted Section 602(a)(3) did not consider the process by which District funds are spent to be a "function of the United States." *See* H.R. 9682, 93d Cong. § 446 (as reported by H. Comm. on D.C., Sept. 11, 1973) ("Amounts appropriated by any act of the Council shall be available for expenditure"); *id.* § 602(a)(3) ("The Council shall have no authority to . . . [e]nact any act . . . which concerns the functions . . . of the United States") (Ex. B); S. 1435, 93d Cong. §§ 325(d)(4), 504 (as passed by Senate, July 12, 1973) (equivalent) (Ex. C).

And with good reason. The expenditure of locally raised funds that belong to the District and are maintained in the D.C. General Fund cannot be a "function[] . . . of the United States." After all, from 1802 until 1871, the District *had* the authority to spend its own money. After 1871, Congress exercised control over the District's budget—under its District Clause authority—as part of its role as the District's local legislature. That does not turn expenditure of local funds into a function of the United States. *See, e.g., Dist. Props. Assocs. v. District of Columbia*, 743 F.2d 21, 27 (D.C. Cir. 1984) ("Congress acts as the local legislature for the District of Columbia" when it "enacts legislation applicable only to the District of Columbia and tailored to meet specifically local needs"); *see also, e.g., Wilentz v. Sovereign Camp, W.O.W.*, 306 U.S. 573, 581 (1939) ("collection of taxes for payment of the local school district bonds, are not state, but local functions").

B. Defendants' Amici Are Not Entitled To Deference.

Neither amicus brief is entitled to deference based on the identity of its signatories.

1. The DePuy Brief is not entitled to deference.

The DePuy brief was filed on behalf of former congressional staff who want to offer "insight into the history and context based on their participation in th[e] events" leading to the passage of the Home Rule Act. Dkt. No. 27–1, at 2. The personal thoughts offered in their brief are legally irrelevant, however. Even if DePuy had voted on the Home Rule Act 40 years ago, his personal take on the Act would not govern its interpretation today. The Supreme Court has dismissed so-called "subsequent legislative history" as "an unreliable guide to legislative intent." *Chapman v. United States*, 500 U.S. 453, 464 n.4 (1991); *accord, e.g.*, *Dunn v. CFTC*, 519 U.S. 465, 478–79 (1997). The D.C. Circuit has described "subsequent legislative history" as "oxymoronic," finding that even a post-enactment letter by a recent act's sponsor "can add nothing." *Walsh v. Brady*, 927 F.2d 1229, 1233 n.2 (D.C. Cir. 1991); *accord N. Broward Hosp. Dist. v. Shalala*, 172 F.3d 90, 98 (D.C. Cir. 1999). The reflections of former staff forty years hence surely do not add more than that.

Even without the passage of time, "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). Recollections forty years later can be even more confusing. Indeed, others involved in the passage of the Home Rule Act had markedly different recollections.

Walter Fauntroy was the District's delegate to Congress from 1971 to 1991. He was one of the driving forces behind securing home rule for the District and continued to advocate for District rights in the aftermath of the Home Rule Act. Based on his personal involvement in securing home rule for the District, Del. Fauntroy believes that the Charter "was never intended to be a static, unchanging document," and that, with respect to the Budget Autonomy Act itself,

"those of us who worked on and voted for the Bill expected and intended such a legislative initiative in time." Fauntroy Decl. ¶¶ 3, 10 (Ex. D).

Nelson Rimensnyder was a congressional researcher on District issues from 1970 to 1992, during which time he compiled the only existing comprehensive archive on the history of the D.C.-Federal relationship. Although he was aware of the whip counts in 1973, on his understanding, there is no "reason why the Charter amendment process could not be used to change" the local budget process. Letter from Nelson Rimensnyder to Phil Mendelson (May 7, 2014) (Ex. D).

Dale MacIver was an assistant counsel on the House D.C. Committee and worked on the drafting and adoption of the Home Rule Act. He explained that "[t]here was no intent of the Members of Congress during its deliberations, in which I was involved, to make Sec. 446 an exception from the procedures of Sec. 303." Letter from Dale MacIver (May 9, 2014) (Ex. F).

We submit these letters not to suggest that some recollections are controlling while others should be dismissed but rather to demonstrate the impossibility of making critical decisions based on belated memories. Nothing beyond the ordinary tools of statutory construction is required to determine and uphold the validity of the Home Rule Act.

Remarkably, the DePuy brief is at odds even with the impressions of the Home Rule Act recorded by the signatories themselves in an article written soon after the Act was passed. For example, although DePuy now seeks to rely on his impressions of the legislative history—impressions that appear nowhere in his 211-page article—he previously doubted that public statements about the Act reflected its true scope, because "it was to the advantage of the proponents of self-government to de-emphasize the broad delegation contained in the bill in order to avoid further controversy." 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, 559 (1975). Indeed, although DePuy now minimizes the Home Rule Act's amendment power, his understanding of the Act in 1975 was very different: "The purpose of the charter was . . . to create a governmental framework which could be amended by local citizens as conditions and times changed." *Id.* at 576–77.[4]

2. The BLAG Brief is not entitled to deference.

Nor are BLAG's views entitled to special deference. It is well established that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *Wright v. West*, 505 U.S. 277, 295 n.9 (1992). Here, the BLAG Brief does not even speak for all of BLAG; it speaks only for 3 of Congress's 535 voting members, but even if it spoke for more, "it is the function of the courts and not the Legislature, much less a Committee of one House of the Legislature, to say what an enacted statute means." *Pierce v. Underwood*, 487 U.S. 552, 566–67 (1988). There was a way for Congress to express its view of the Budget Autonomy Act during the review period. It discharged the duty it created for itself by permitting the Budget Autonomy Act to become law.

CONCLUSION

The Court should enter summary judgment in favor of the Council or remand.

[4] DePuy also disputes the significance of an exchange in which Charter amendments to the fiscal year were specifically contemplated. DePuy Br. 18–19. He observes that the comments addressed an earlier version of the bill that provided budget autonomy to the District, but that misses the point. At the time, the Subcommittee was particularly focused on the District's sizable federal payment, and the relationship between the District and the annual appropriations process. If it was understood in that context that the fiscal year could be changed by amendment by virtue of its location in the Charter, that supports our conclusions that (1) Congress understood that what was placed in the Charter would be subject to amendment, and (2) the Charter could be amended to permit the Council to return the District's fiscal year to what it was in 1973. DePuy elsewhere supports the first point by underscoring that Congress took great care in deciding whether to place provisions outside or inside the Charter. *See id.* at 4.

Dated: May 12, 2014

Respectfully submitted,

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No. 1:14-cv-00655-EGS

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for the Council of the District of Columbia hereby certifies that on the 12th day of May 2014, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered counsel of record.

By: */s/ Brian D. Netter*

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Exhibit A

Norton Says Historic D.C. Shutdown-Avoidance Provision in Omnibus Continues Momentum for Budget Autonomy

Jan 14, 2014 Press Release

WASHINGTON, DC – Congresswoman Eleanor Holmes Norton (D-DC) today said that the fiscal year 2014 omnibus appropriations bill released yesterday evening contains a historic and unprecedented District of Columbia shutdown-avoidance provision, allowing the city to spend its local funds and remain open in the event of a federal government shutdown in fiscal year 2015. The provision, for the first time ever, guarantees that D.C. will avoid a local government shutdown for an entire fiscal year. The continuing resolution (CR) passed in October to reopen the federal government through January 15, 2014, contained a provision permitting D.C. to spend its local funds for the remainder of the fiscal year (through September 30, 2014) and thereby avoid a shutdown threat in fiscal year 2014.

"Between the provisions in the CR and the omnibus, both of which were historic firsts, our city can rest assured that our local government will not shutdown through fiscal year 2015 if the Congress becomes as dysfunctional as it did last year," said Norton. "This guaranteed stability is a victory for the D.C. economy and our residents, and a significant step forward in our fight for full home rule and budget autonomy. We have every reason now to be hopeful as we continue to build the momentum and move forward on all fronts for full budget autonomy."

In addition to the shutdown-avoidance provision, no action was taken in the bill to overturn the budget autonomy referendum approved by D.C. voters. In fiscal year 2014, the president, for the first time in an administration's budget, included a legislative provision for budget autonomy. The Senate Appropriations Committee then included the president's budget autonomy provision in its committee-passed fiscal year 2014 D.C. Appropriations bill. Last year, the House Oversight and Government Reform Committee passed Chairman Darrell Issa's (R-CA) bill that has major elements of budget autonomy. He and Norton are working to perfect final language. In addition, Republicans, in arguing for the a CR to keep D.C. open during the federal government shutdown, made strong arguments that the city should be able to spend its own money and not face shutdowns.

Published: January 14, 2014

Exhibit B

H.R. 9682 AS INTRODUCED AND AS REPORTED

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,

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DISTRICT OF COLUMBIA COURTS' BUDGET

SEC. 445. The District of Columbia courts shall prepare and annually submit to the Mayor annual estimates of the expenditures and appropriation necessary for the maintenance and operations of the District of Columbia court system. All such estimates shall be forwarded by the Mayor to the Council for its action pursuant to section 446 without revision but subject to his recommendations.

ENACTMENT OF APPROPRIATIONS

SEC. 446. Subject to limitations in section 603, the Council, after public hearing, shall by act make appropriations for each fiscal year and may make supplemental appropriations during any fiscal year as may be necessary. Amounts appropriated by any act of the Council shall be available for expenditure according to the provisions of such act, except such amounts may be expended only during the fiscal year for which they were appropriated unless otherwise specified in such appropriation act. No amounts may be expended unless appropriated by act of the Council.

CONSISTENCY OF BUDGET, ACCOUNTING, AND PERSONNEL SYSTEMS

SEC. 447. The Mayor shall implement appropriate procedures to insure that budget, accounting, and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis. No em-

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.

Exhibit C

93D CONGRESS
1ST SESSION

S. 1435

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 1973

Referred to the Committee on the District of Columbia

AN ACT

To provide an elected Mayor and City Council for 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, That, subject to the retention by Congress of the ultimate legislative authority over the Nation's Capital which is granted by the Constitution, it is the intent of Congress to restore to the inhabitants of the District of Columbia the powers of local self-government which are a basic privilege of all American citizens; to reaffirm through such action the confidence of the American people in the strengthened validity of principles of local self-government by the elective

POWERS OF AND LIMITATIONS UPON DISTRICT COUNCIL

SEC. 325. (a) The legislative power granted to the District by this Act shall be vested in the District Council.

(b) 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 of Columbia, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the District Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after the enactment of this Act and any act passed by the Council.

(c) Except as provided in subsection (d) of this section, the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this Act, subject to all the restrictions and limitations imposed upon States by the tenth section of the first article of the Constitution of the United States.

(d) The Council shall have no authority to pass any act contrary to the provisions of this Act, or—

(1) (A) impose any tax on property of the United States or any of the several States, or upon 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 under section 4 of the Act of July 16, 1947 (61 Stat. 332));

(B) impose any tax, assessment, permit, fee, or other charge whatsoever upon any individual not a resident of the District in connection with the utilization by such individual of highways, roads, or parking facilities (including on-street and off-street parking) within the District of Columbia, which is not imposed upon, or which is in excess of the amount imposed upon, a resident of the District;

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

(3) authorize the issuance of bonds except in compliance with the provisions of title VI;

(4) 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;

(5) pass any act inconsistent with or contrary to the Act of June 6, 1924 (43 Stat. 463), as amended, or the Act of May 29, 1930 (46 Stat. 482), as amended, and the Council shall not pass an act inconsistent with or contrary to any provision of any Act

Act of the Congress or any act of the Council, as are necessary to carry out his functions and duties.

TITLE V—THE DISTRICT BUDGET

PART 1—BUDGET

FISCAL YEAR

SEC. 501. The fiscal year of the District of Columbia shall begin on the 1st day of July and shall end on the 30th day of June of the succeeding calendar year. Such fiscal year shall also constitute the budget and accounting year.

BUDGETARY DETAILS FIXED BY MAYOR

SEC. 502. (a) The Mayor shall prepare and submit not later than March 15, to the District Council, in such form and manner as the Mayor shall determine, the annual budget of the District and the budget message and may, from time to time, submit supplemental budget requests.

(b) The Mayor shall, in consultation with the Council, take whatever action may be necessary to achieve, insofar as is possible (1) consistency in accounting and budget classifications, (2) synchronization between accounting and budget classifications and organizational structure, and (3) support of the budget justifications by information on performance and program costs as shown by the accounts.

ADOPTION OF BUDGET

SEC. 503. A budget for each fiscal year shall be adopted by the Council, by act, not later than April 15 of the fiscal

year preceding the fiscal year during which such budget is applicable, except that the Council may, by resolution, extend the period for the adoption of such budget. In no event, however, shall any such extension extend beyond June 1 of that preceding fiscal year, unless such extension is authorized by an act passed by the Council which provides for funding expenditures for the next following fiscal year at the same rate as for such preceding fiscal year.

BUDGET ESTABLISHES APPROPRIATIONS

SEC. 504. The adoption of any budget by act of the Council shall operate to appropriate and to make available for expenditure, for the purposes therein named, the several amounts stated therein as proposed expenditures, subject to the provisions of section 505.

FINANCIAL DUTIES OF THE MAYOR

SEC. 505. The Mayor, through his duly designated subordinates, shall have charge of the administration of the financial affairs of the District and to that end he shall—

(1) supervise and be responsible for all financial transactions to insure adequate control of revenues and resources and to insure that appropriations are not exceeded;

(2) maintain systems of accounting and internal control designed to provide—

Exhibit D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DECLARATION OF CONGRESSMAN WALTER E. FAUNTROY (RETIRED)

I served as the Delegate to Congress for the District of Columbia from the 92nd through the 101st Congress, 1971 to 1991. During that 20 year period, in addition to other responsibilities, I served for the entire time on the House District of Columbia Committee and rose to the level of Chair of four different Subcommittees on that Committee: Fiscal Affairs and Health; Government Affairs and Budget; Government Operations; and Judiciary. Prior to my election to Congress, I served as Vice-Chair of the appointed D.C. Council. Once elected to Congress, I introduced a Bill to grant Home Rule to the people of Washington, D.C. I was a Member of the House District of Columbia Committee and an active participant when the District of Columbia Self-Government and Governmental Reorganization Act, Public Law Number 93-198, 87 Stat. 774, D.C. Code Section 1-221 (1973) ("The Home Rule Act") passed the Congress and became law with President Richard Nixon's signature on Christmas Eve, 1973. I attended the Hearings on the Bill in the House and Senate, participated in the crafting of the

Bill's language and mark-up in the House, voted in Subcommittee and Full Committee proceedings and witnessed the same in the Senate. As the Delegate from the District of Columbia, I was directly and intimately involved in the discussions and negotiations leading up to the House-Senate Conference and the floor votes in both the United States House of Representatives and the United States Senate.

From my perch, I am well aware of the thinking of the Members and Senators, and the exchanges that took place as well as the compromises that were made as the legislation moved through the Congress. As a consequence, I can address the history and context of the Home Rule Act and state:

1. In 1972, I personally led the effort to defeat the then Chair of the House District of Columbia Committee, John L. McMillan a Democrat from South Carolina who had long stood in the way of local self-government.

2. The defeat of Congressman McMillan led to the ascension of Charles Diggs, Jr., a Democrat from Michigan to be Chair of the Committee. Congressman Diggs was a Home Rule proponent.

3. The Charter in the Home Rule Act, envisioned to be regarded like a State Constitution, was never intended to be a static, unchanging document. Indeed, House Report Number 482 which accompanied the Bill, it is stated that, "It is undoubtedly intended by Section 302 to expand the legislative authority given the District to that of a state and limit it only by the provisions of Article I, Section 10, of the Constitution."

4. While the Charter can be changed, the role of Congress under Article I, Section 8, Clause 17, cannot, without amending the United States Constitution.

5. Thus, Congress retains the power to legislate with respect to the District of

Columbia or reject legislation that might be enacted by the Local Government.

6. With the ultimate authority to exercise exclusive legislative authority over the District of Columbia, it is obviously redundant for Congress to limit forever any legislative powers that may be given to the D.C. Council and Mayor, including budgetary powers.

7. The stated purpose, found at § 102(A) of the Home Rule Act is, in part, "to the greatest extent possible . . . relieve Congress of the burden of legislating upon essentially local District matters." The overall design of the Act was to remove Congress from governing with respect to the District of Columbia, a design consistent with the D.C. Council's Budget Autonomy Act.

8. Indeed, some restrictions on the legislative power of the Local Government were in time removed. Section 602(a)(9) which restricted the D.C. Council from enacting laws related to criminal procedure, crimes and the treatment of prisoners was lifted. And, when the Home Rule Act was passed, the Charter required an affirmative act of Congress to be amended. In time, in 1984 to be exact, that too changed to now only require an affirmative rejection or disapproval by Congress to prevent the change.

9. In the early stages of the legislative process, language in the Home Rule Act provided for Budget Autonomy. That language however was removed as a compromise in deference to those who preferred a more gradual delegation of power to the new Local Government.

10. There is nothing in the Home Rule Act or in the Charter amending process that plainly, clearly and unambiguously prevents the D.C. Council from enacting the Budget Autonomy Act. It is my belief that, in time, those of us who worked on and voted for the Bill expected and intended such a legislative initiative in time. Now is the time.

11. During the period in which the Home Rule Act was passed, William Rehnquist as an Assistant Attorney General, later to become the Chief Justice of the United States Supreme Court, indicated that passage of the 23rd Amendment to the U.S. Constitution, allowing District residents to vote for President, was but a "first step" in the journey to recapture the full bundle of rights the people of Washington D.C. once held. An elected School Board, the Non-Voting Delegate Act and Home Rule marked the path contemplated by the Chief Justice. Budget Autonomy as passed by the D.C. Council is just another step in that divined path.

Friday, May 9 2014 _____/s/ Walter E. Fauntroy_____

Walter E. Fauntroy

Exhibit E

Nelson Rimensnyder
Washington, D.C.

May 7, 2014

Hon. Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Ave., NW
Washington, DC 20004

Dear Chairman Mendelson:

My name is Nelson Rimensnyder. I am writing to share my personal recollections of the Home Rule Act of 1973.

I came to Washington in 1970 to work for the Congressional Research Service. In that job, I came to know Representative Charles Diggs of Michigan and became CRS's resident expert on the District of Columbia. I ultimately became the Director of Research for the House D.C. Committee, where I compiled the only existing comprehensive archive on the history of the D.C.-Federal relationship. While I was at CRS, I worked on the Home Rule Act and was aware of the evolution of the various bills before President Nixon ultimately signed the law.

Based on my experience, the Home Rule Act was based on the idea that the District should be autonomous as much as possible. Part of that autonomy was the ability to amend the District Charter, just like states have the ability to amend their constitutions. In 1973, Congress wanted to control amendments to the District Charter, so it required both the House and the Senate to approve amendments before they became law.

Since the Home Rule Act was passed, history has shown that the District has achieved more and more power, all of which was consistent with the original plan for home rule. Congress relaxed one of its biggest controls over the District in 1984. In that year, Congress changed the process for amending the Charter. Support from both the House and the Senate is no longer needed. Unless both the House and the Senate disapprove, Charter amendments now become law.

I have followed the latest Charter amendment that grants budget autonomy to the District. I was there in 1973 and knew that there weren't enough votes to grant budget autonomy at the time. But I do not know any reason why the Charter amendment process could not be used to change that part of the Charter. After all, Congress designed the Charter to be amended.

Sincerely,

Nelson Rimensnyder

Nelson Rimensnyder

Exhibit F

May 9, 2014

My name is Dale MacIver.

I was an Assistant Counsel of the House Committtee on the District of Columbia working on the drafting and adoption of the Home Rule Act in 1973.

President Nixon, as early as 1969, stated "But there is no cause for delay: Self-government has remained an unfulfilled promise for far too long... I ask the Congress, and the American people, to join in this great enterprise..."

So Congress adopted and President Nixon signed The Home Rule Act, P.L. 93-198.

The restraints on the broad new legislative powers for the District of Columbia were very limited and very specific. Sec. 102 (a) of the act cites Article I, Sec. 8 of the US Constitution giving ultimate legisaltive authority over the District to Congress.

Sec. 602 lists a number of laws the Council cannot amend – such as Height of Buildings, Mental Health, Criminal law.

But as to amending the basic Charter – Title IV - Sec. 303 "Charter Amendment Procedure" lists three specific exceptions to the Council's ability to amend the Charter (Title IV). – They are "except sections 401 (a) ...[a Council elected by the people], section 421 ...[a mayor elected by the people] and Part C . The Judiciary..."

In the original Home Rule Act Congress still has the ability to check on charter amendments made under Sec. 303 – affirmative approval in a concurrent resolution by Congress.

Sec. 303 is clear in applying to all of Title IV – the Charter. Sec. 446 "Enactment of Appropriations by Congress" is part of Title IV. There was no intent of the Members of Congress during its deliberations, in which I was involved, to make Sec. 446 an exception from the procedures of Sec. 303.

Dale MacIver