

**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

**STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OR REMAND**

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Pursuant to Federal Rule of Civil Procedure 56(c) and Local Civil Rule 7(h)(1), Plaintiff Council of the District of Columbia respectfully submits the following Statement of Undisputed Material Facts in support of its Motion for Summary Judgment or Remand:

1. Local tax and fee revenue comprise the vast majority of the District's annual budget. *See* Mayor's Proposed Fiscal Year 2012 Budget and Financial Plan, Hearing Before the Subcomm. on Health Care, D.C., Census, and the Nat'l Archives of the H. Comm. on Oversight and Gov't Reform, 112th Cong. 3 (2011) (statement of Natwar M. Gandhi, CFO) ("In the District's FY 2012 proposed general operating funds budget of \$8.99 billion, about \$6.34 billion, or 71 percent, comes from revenues raised through local taxes, fees, fines, and user charges. Another \$2.45 billion or 27 percent comes from Medicaid and federal grants, which are mostly formula based and available to all jurisdictions. Only \$174.3 million or approximately two percent are from federal payments specifically requested in the President's FY 2012 Budget from federal revenues for programs and projects unique to the District of Columbia."), http://oversight.house.gov/wp-content/uploads/2012/01/5-12-11_Gandhi_DC_Budget_Testimony.pdf.

2. This year, the residents of the District of Columbia will contribute more than \$7 billion in tax and fees to fund their local government. *See* Fiscal Year 2015 Proposed Budget & Financial Plan, Hearing Before the Committee of the Whole, Council of D.C. (Apr. 7, 2014) (statement of Jeffrey S. DeWitt, CFO) ("Total General Fund revenue in FY 2015 is \$7.49 billion."), http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/release_content/attachments/Testimony%20--%20FY%202015%20Proposed%20Budget%20and%20Financial%20Plan%20040714.pdf.

3. Under the Home Rule Act's default budget process, the District submitted its

local budget Congress for affirmative approval but Congress routinely failed to enact an annual appropriations act by the start of the fiscal year. In the 25 budget cycles between 1990 and 2014, Congress met the October 1 deadline on only three occasions. In the other 22 cycles, the District has either begun the year without knowing its full budget or has been forced to initiate shutdown procedures. *See* FY 2012 and FY 2013 Spending and Performance of the Office of Budget and Planning, Hearing Before the Comm. of the Whole, Council of D.C. (2013) (attachment to testimony of Gordon McDonald, Deputy CFO), http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/release_content/attachments/Testimony%20--%20FY%202012%20and%202013%20Spending%20Performance%20for%20OBP%20031413.pdf.

4. Former CFO Natwar M. Ghandi explained the problem: “The more time that elapses between the formulation of a budget and its execution, the more likely the operating assumptions underlying that budget will not hold true.” *See* Mayor’s Proposed Fiscal Year 2012 Budget and Financial Plan, *supra*, at 5.

5. Further, he stated: “Bond rating agencies take the uncertainties of the Federal process into account in assessing the District’s finances, and discount to a degree whatever ratings the District might otherwise receive.” Budget Autonomy for the District of Columbia: Restoring Trust in our Nation’s Capital, Hearing Before the H. Comm. on Gov’t Reform, 108th Cong. 32 (2003).

6. And, according to former Mayor Anthony Williams, the delay between the beginning and end of the budget process led to lower service delivery levels for a variety of local services, including “school nurses, prescription drug benefits, police equipment, and staffing.” *Id.* at 10.

7. On December 18, 2012, the Council unanimously adopted the Budget Autonomy

Act. *See* 60 D.C. Reg. 1724 (Feb. 15, 2013).

8. On January 18, 2013, Mayor Vincent C. Gray signed the Budget Autonomy Act. *See id.*

9. Following the process for amending the Charter, the Act was then submitted to the D.C. Board of Elections and Ethics for inclusion on the April 2013 ballot. In response to a Notice of Public Hearing on the ballot language, Attorney General Irvin Nathan expressed his “serious reservations about the legality of the amendment” and suggested that the Board should exclude the referendum from the ballot. Letter from Irvin B. Nathan, Att’y Gen. for D.C., to Kenneth J. McGhie, Gen. Counsel, D.C. Board of Elections & Ethics, at 1 (Jan. 4, 2013) (Zvenyach Decl. Ex. A).

10. After holding a public hearing and evaluating the legal arguments, the Board found “no basis on which to reject” the ballot question. *In re Local Budget Autonomy Emergency Amendment Act of 2012*, No. 13–01, at 5 (D.C. Bd. Elections & Ethics Jan. 9, 2013).

11. On April 23, 2013, the voters of the District of Columbia ratified the Act by a margin of 83%–12%. *See* D.C. Board of Elections and Ethics, Certified Results, Special Election 2013 (May 10, 2013), https://www.dcboee.org/election_info/election_results/2013/April-23-Special-Election.

12. Congress took no action to disapprove of the amendment to the Charter. Accordingly, the Budget Autonomy Act became law on July 25, 2013. *See* 60 D.C. Reg. 12135 (Aug. 23, 2013).

13. On April 8, 2014, Attorney General Irvin Nathan issued a formal opinion advising the Mayor to “decline to implement” the Budget Autonomy Act and to “advise Executive Branch officials and employees not to do so absent a binding judicial decision to the contrary.” Opinion

of the D.C. Attorney General, Whether the Local Budget Autonomy Act of 2012 is Legally Valid 2 (Apr. 8, 2014) (Zvenyach Decl. Ex. B).

14. On April 11, 2014, Defendant Vincent C. Gray, the Mayor of the District of Columbia, sent a letter to Council Chairman Phil Mendelson advising that he would not enforce the Budget Autonomy Act. In particular, the Mayor informed the Council that he would:

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

Letter from Vincent C. Gray, Mayor, District of Columbia, to Phil Mendelson, Chairman, Council of the District of Columbia 3 (Apr. 11, 2014) (Zvenyach Decl. Ex. C).

15. Also on April 11, 2014, Defendant Jeffrey S. DeWitt, the CFO for the District of Columbia, sent a letter to Council Chairman Phil Mendelson advising that he would also not enforce the Budget Autonomy Act. In particular, he informed the Council that he would

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

Letter from Jeffrey S. DeWitt, CFO, District of Columbia, to Phil Mendelson, Chairman, Council of the District of Columbia 2 (Apr. 11, 2014) (Zvenyach Decl. Ex. D).

Dated: April 25, 2014

Respectfully submitted,

BOIES, SCHILLER & FLEXNER LLP
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By: /s/ Karen L. Dunn (with permission)

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