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

DECLARATION OF V. DAVID ZVENYACH

I, V. David Zvenyach, based on my personal knowledge, declare as follows:

1. I am General Counsel for the Council of the District of Columbia.

2. I make the following statements based on my personal knowledge, and could and would competently testify thereto.

3. Attached to this Declaration as Exhibit A is a true and correct copy of the January 4, 2013, Letter from Irvin B. Nathan, Attorney General, District of Columbia, to Kenneth J. McGhie, General Counsel, District of Columbia Board of Elections.

4. Attached to this Declaration as Exhibit B is a true and correct copy of the April 8, 2014, Opinion Letter from Irvin B. Nathan, Attorney General, District of Columbia, to Vincent C. Gray, Mayor, District of Columbia.

5. Attached to this Declaration as Exhibit C is a true and correct copy of the April 11, 2014, Letter from Vincent C. Gray, Mayor, District of Columbia, to Phil Mendelson, Chairman, Council of the District of Columbia.

6. Attached to this Declaration as Exhibit D is a true and correct copy of the April 11, 2014, Letter from Jeffrey S. DeWitt, Chief Financial Officer, District of Columbia, to Phil Mendelson, Chairman, Council of the District of Columbia.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 24, 2014 in Washington, D.C.

By: _____
V. David Zvenyach

Exhibit A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

January 4, 2013

Via Hand Delivery and Email

Kenneth J. McGhie, Esq.
General Counsel
District of Columbia Board of Elections
441 4th Street, N.W., Suite 250
Washington, D.C. 20001

Dear Mr. McGhie:

Thank you for your letter providing the Notice of Public Hearing relating to the formulation of ballot language for the proposed Charter amendment, the "Local Budget Autonomy Emergency Amendment Act of 2012" (amendment), and inviting the Office of the Attorney General (OAG) to comment on the proposed amendment.

Since the amendment was introduced in the Council, the OAG, including experienced career lawyers, has evaluated its legal strengths and weaknesses, as well as its potential consequences. The amendment is as a matter of policy appealing in that it attempts to secure budget autonomy for the District, allowing the District government to control its expenditure of locally collected revenues, a goal that this Administration has pursued and continues to pursue in Congress, and that this office fully endorses. However, I respond to your notice not as a spokesman for the Administration, but as an independent Attorney General charged with the responsibility of attempting to ensure that the District adheres to the rule of law, including complying with the provisions of the Home Rule Act, passed by Congress, that serve as the equivalent of the District's state-level Constitution.

In that capacity, the OAG has serious reservations about the legality of the amendment, whether it would be sustained if challenged in court and, most pertinently, whether the Board has the authority to place this amendment on a ballot referendum in light of the clear prohibition under Section 303(d) of the District of Columbia Home Rule Act ("Home Rule Act"), approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Code § 1-203.03(d) (2012 Supp.). That provision of governing law provides in relevant part that "the [Charter] amending procedure … may not be used to enact any law or affect any law with respect to which the Council may not enact… under the limitations specified in §§ 1-206.01 to 1-206.03." (Emphasis added). The statute is phrased in clear, mandatory terms: a proposed amendment is precluded by law from

going on the ballot through the Charter-amending procedure of Section 303 if the proposed amendment would "enact any law or affect any law with respect to which the Council may not enact… under the limitations specified in" Sections 206.01-03. For reasons we detail below, it is precisely these limitations, reserving to Congress, among other things, the authority to change the laws governing the role played by Congress and the President in the District's budget that, in the considered judgment of this office, preclude using the charter amendment procedures, including the placement on a ballot for the electorate, for the proposed amendment. Likewise, it our view that under those express limitations, Congress or a court reviewing the merits of the legal issue would find the amendment to be outside the scope of the Charter amending process in section 303, and also contrary to other federal laws, those found in Title 31 of the U.S. Code.

I understand that the Board does not usually make such an analysis when the proposed amendment results from Council action. However, the very statutory provision that empowers the Board to participate in the Charter amending procedure, D.C. Code § 1-203.03, contains the express limits of subpart (d), and my lawyers and I think it clear that the Board has such authority under the law to engage in independent review as to whether subpart (d) permits use of the Charter-amending process.[1] For these reasons, I respectfully suggest that the Board of Elections has the legal obligation to make an independent assessment of whether it would be lawful under D.C. Code Section 203.03(d) for the Board to use the Charter-amending process for the amendment, and to act accordingly after that review to ensure compliance with Section 203.03(d).

Discussion

The amendment, if it became law, would be a seachange in the District's budget process in two key ways. First, it would authorize a separate path for the appropriation of the District's local budget -- *i.e.*, revenues raised from District taxes, fees, and fines and those received under federal grant programs applicable nationally -- from the path for the federal portion -- *i.e.*, the federal payment to the District. The federal portion would continue to follow the path currently set forth in the District's Charter -- passed by Congress through its well-established authority to regulate District affairs under Article I of the U.S. Constitution -- that requires an affirmative appropriation by Congress and Presidential approval before any of it can be lawfully spent by the District Government. However, for the local portion, the rules would change. Rather than requiring an active, congressional appropriation and Presidential signature, the local portion would take effect after being passed by District lawmakers and then laying before Congress for *passive* review during the 30 legislative day period unless Congress passes, and the President approves, a Joint Resolution disapproving the act of the Council. Second, it would provide for a change in the dates of the fiscal year for the District of Columbia Government -- from its current schedule, October 1-September 30, which currently tracks the schedule of the federal budget, to run from July 1 through June 30 on its own track independent of the established federal schedule and process.

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[1] It may be that such review has not been necessary in the past because the Council-proposed amendments have not previously raised the clear specter of violating subsection (d).

Rather than waiting for Congress to make the requested (and in our view highly justified) relevant amendments to the Home Rule Act, the Council has attempted to rely on the Charter amendment process in section 303 in the Home Rule Act (D.C. Code § 1-203.03) to accomplish the goal of budget autonomy. Section 303(a) provides that, with important exceptions, that the Charter "may be amended by an act passed by the Council and ratified by a majority of the registered qualified electors of the District voting in the referendum held for such ratification." Such an amendment must be submitted to Congress for a 35-calendar-day period of passive review.

Although the Charter amendment process is available to make a variety of changes to the District Charter, Section 303 itself indicates that it cannot be used to exempt the expenditure of local funds from the federal appropriations process. As noted, Section 303(d), codified in D.C. Code § 1-203.03(d), specifically provides that the amendment procedure authorized under section 303(a) "may not be used to enact any law or affect any law with respect to which the Council may not enact any act, resolution, or rule under the limitations specified in sections 601, 602, and 603." These are the provisions codified in Sections 1-206.01 through 1-206.03.[2] Sections 602 and 603 of the Home Rule Act (D.C. Code §§ 1-206.02 and 1-206.03) contain three different, independent bases for concluding that the ratification procedure established under section 303(a) may not be used to amend sections 441 and 446 of the Home Rule Act (D.C. Code §§ 1-204.41 and 1-204.46) in the manner reflected in the amendment, and thus does not permit the amendment. Read together, these provisions demonstrate that Congress, in passing the Home Rule Act and allowing the District to make certain amendments to it, evidenced its intent that the District not be allowed to unilaterally deprive the Congress or the President of their established active roles in appropriating the funds for the District's budget.

First, Section 602(a)(3) of the Home Rule Act, codified at D.C. Code § 1-206(3), provides that the Council has no authority to "enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District." Removing the expenditure of local funds from the federal appropriations process would affect the functions of the United States by preventing Congress, with Presidential approval, from appropriating local District funds. It would also have an application beyond District matters by limiting the participation of the federal government in the District's budget process. In addition, changing the District's fiscal year would affect the functions of the United States and extend beyond the District's local affairs

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[2] There are some sections of the Charter identified in Section 303(a) of the HRA by section number that Congress provided separate and explicit restrictions on: 401(a) (addressing the establishment of the Council), 421(a) (addressing the Mayor), and Part C (addressing the Judiciary). Some have suggested that since portions of the Charter dealing with the budget -- sections 441 and 446 -- are not listed there, Congress must not have objected to their being amended through the referendum process. This approach is not persuasive and fails to recognize that Congress created a separate and specific set of prohibitions in Section 303(d), which governs the analysis here, as discussed.

by making it difficult, if not impossible, for Congress to review the District's finances during its regular budget cycle.

Second, the amendment would violate section 603(a) of the Home Rule Act (D.C. Official Code § 1-206.03(a)). This section states that:

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

We think it plain that this language is a "limitation" under Section 303(d). Some have argued that Section 603(a) is merely a rule of construction and not a limitation. However, this interpretation is contrary to a common-sense reading of these provisions as limitations on the District Government's authority under the Home Rule Act. The conclusion that Congress did not intend such a strict reading of the word "limitations" is supported by Congress's explicit reference in § 303(d) to "limitations" found in § 601, D.C. Code § 1-206.01, which contains in it no express limitation on the Council. Congress would not have done so if it meant in § 303(d) to refer only to provisions that are explicitly phrased as "thou shall not." Further, the HRA's legislative history shows that Congress intended to preserve the congressional appropriation process for the District's budget. For example, the Conference Report explained that the bill "required . . . that the Council after public hearings, approve a balanced budget and submit same to the President for transmission to the Congress, leaving Congressional appropriations and reprogramming procedures as presently existing. . . . .The Conference substitute . . . adopts essentially the House provisions, preserving the Congressional appropriations provisions of existing law.. . . ." H.R. Rep. No. 93-703, 93d Cong., 1st Sess. 78 (1973). Our lawyers have looked for and have uncovered no indication in the HRA's legislative history that any member of Congress *ever* contemplated that the Charter-amending procedures could be used to affect Congress's appropriation of the total budget of the District Government. This matters because changing the approval route for over half of the District budget is something significant enough that Congress would likely have mentioned it if this was authority it intended to confer.

This limitation in Section 603(a) would be violated by the amendment. The amendment's changes to sections 441 and 446 of the Home Rule Act would change the long-standing roles and procedures of the stated federal entities with respect to the District's "total budget."[3] Upon

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

enactment, rather than being subject to the federal appropriations process, the District would establish its own budget for local funds, to be appropriated according to a different fiscal year, subject only to passive Congressional review. This would constitute a major change in the District's budget process that appears to directly contradict the prohibition in section 603(a).

Third and finally, section 603(e) of the Home Rule Act (D.C. Official Code § 1-206.03(e)) also may prohibit the use of the ratification process to accomplish the amendment's objectives. Section 603(e) states that "[n]othing in this act shall be construed as affecting the applicability to the District government of the provisions of §§ 1341, 1342, and 1349 to 1351 and subchapter II of Chapter 15 of Title 31, United States Code." For reasons similar to the discussion for 603(a), we think it clear that this provision is a "limitation" for subsection (d) purposes. And, upon consideration, we conclude that these federal provisions, which comprise the relevant provisions of the federal Anti-Deficiency Act, prohibit government employees, under pain of federal criminal penalties, from, among other things, obligating or expending funds in excess or in advance of an appropriation by Congress. The federal Anti-Deficiency Act is the principal mechanism the federal government uses to ensure District and federal agency compliance with federal appropriations law. Congress' inclusion of this provision in the Home Rule Act, and in the list of subject matters that are excluded from the ratification process, reflects Congress's intent that District spending be subject to the federal budget process.

We note also that in addition to potentially violating the provisions of the Home Rule Act, as discussed above, the amendment may also be viewed as separately violating two provisions of Title 31 of the U.S. Code – (i) the anti-deficiency Act and (ii) the provisions in 31 U.S.C. § 1101, *et seq.* governing the budget approval process.

The federal Anti-Deficiency Act independently applies to the District by its own terms. *See* 31 U.S.C. § 1341. This section prohibits District government employees from obligating or expending funds that have not been congressionally appropriated.[4] Even if sections 441 and 446 of the Home Rule Act were amended to exclude local funds from the appropriations requirement, the federal Anti-Deficiency Act would still apply. Thus, a court could find that District employees are subject to federal prosecution or civil liability under the Anti-Deficiency Act for spending money in the course of their regular duties.

The amendment would also violate Subtitle II of Title 31 of the United States Code, 31 U.S.C. § 1101 *et seq*., which sets out the procedures for the approval of the budgets of all agencies, which, under 31 U.S.C. § 1101(1), includes the District government. Under 31 U.S.C. § 1108, each agency, including the District, must submit appropriations requests by the date established by the President, in order to allow these requests to be included in the President's annual budget

[4] It is not persuasive to argue that an appropriation by the Council would be sufficient to satisfy the federal Anti-Deficiency Act. Under federal law, the District is considered a federal agency for budget purposes, and federal appropriations law, including the federal appropriations process and the enforcement provisions contained in the Anti-Deficiency Act, apply to it. 31 U.S.C. § 1101(1).

submission to Congress. If the District were to fail to comply with these requirements, it is unlikely that the amendment would be found sufficient to justify these deviations from federal law.

Conclusion

For the reasons discussed, we respectfully submit that the Board should make an independent legal assessment to determine whether it is lawful to permit the proposed amendment to be placed on the ballot under D.C. Code § 1-203.03(d), and to consider the detailed analysis we have provided showing why that provision of law bars the use of the Charter-amending procedure for the amendment transmitted to the Board by the Council.

In the alternative, if the Board decides to forego an independent legal analysis or otherwise concludes that it may lawfully place the amendment on the ballot, we suggest that to convey accurately the substance and effect of the proposed amendment to the voters, the summary statement must do more than simply state that, if the voters approve the amendment and it is not rejected by Congress, it will allow the District to appropriate its local budget and change the date of its fiscal year from October 1 – September 30 to July 1 – June 30. It should also convey that, because serious legal concerns have been raised about the validity of the amendment, its passage could result in Congressional action disapproving the amendment or in extended litigation and uncertainty about the validity of the District's budget, and could jeopardize the legal status of individual employees of the District government who expend locally raised government funds in accordance with the amendment but without Congressional authorization.

I hope these comments are useful to you and the Board's Commissioners. I intend to attend and testify at the Board's open hearing on the amendment scheduled for Monday, January 7, and my staff and I would be happy to discuss this matter further with you at your convenience.

Sincerely,

Irvin B. Nathan
Attorney General for the District of Columbia

cc: All Members of the Council of the District of Columbia

Exhibit B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL

April 8, 2014

OPINION OF THE ATTORNEY GENERAL

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

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

Dear Mayor Gray:

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

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

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

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

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

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

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

The Act purports to amend section 446 of the Home Rule Act (D.C. Official Code § 1-204.46)[2] to exempt the District's budget process for local funds from the congressional appropriations requirements established under Article I, section 9, clause 7 of the United States Constitution.[3] Section 446 of the Home Rule Act applies these appropriations requirements to the District by setting out the process the District must follow to obtain Congressional approval of its budget and by stating that, with limited exceptions, "no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by an Act of Congress and then only according to such Act." The Act also purports to amend section 441 of the Home Rule Act[4] to allow the Council to change the District's fiscal year.

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

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

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

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

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

The Council's use of the section 303 Charter amendment process to take the District's local funds budget out of federal control was ineffective because it violated several statutory restrictions on this process. Section 303(d) provides that section 303(a)'s amendment procedure "may not be used to enact any law or affect any law with respect to which the Council may not enact any act, resolution, or rule under the limitations specified in sections 601, 602, and 603." The Act violates three different limitations that are specified in Sections 602 and 603 of the Home Rule Act (D.C. Official Code §§ 1-206.02 and 1-206.03). Each of these three limitations independently renders the Act invalid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[14] Section 816 reads as follows:

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

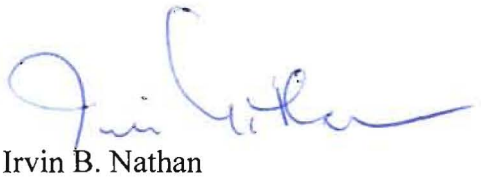
that both section 446 of the Home Rule Act (D.C. Official Code § 1-204.46) and the federal Anti-Deficiency Act shall continue to apply to local funds and require congressional appropriations. This legislation makes clear that Congress views the Act as having no legal force or effect. I share that legal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

III. Conclusion

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

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

Sincerely,



Irvin B. Nathan
Attorney General
for the District of Columbia

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

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

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

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

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

Exhibit C

VINCENT C. GRAY
MAYOR

April 11, 2014

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

Re: Enactment of the Fiscal Year 2015 District Budget

Dear Chairman Mendelson:

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Vincent C. Gray
Mayor

Enclosure

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

Exhibit D

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

Jeffrey S. DeWitt
Chief Financial Officer

April 11, 2014

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

Subject: Local Budget Autonomy Act

Dear Chairman Mendelson:

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

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

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

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

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

Sincerely,

Jeffrey S. DeWitt

Jeffrey S. DeWitt
Chief Financial Officer

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