

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



Statement of Brian L. Schwalb
Attorney General for the District of Columbia

Before the Committee on the Judiciary and Public Safety
Honorable Brooke Pinto, Chairwoman

Office of the Attorney General Performance Oversight Hearing
Wednesday, February 22, 2023
Virtual Hearing via Zoom

Good morning, and thank you, Chairwoman Pinto, Councilmembers, and District residents. I am Brian Schwalb, and I have the privilege of serving as the District of Columbia's second independent, elected Attorney General. I am acutely aware that District residents have placed great trust in me to advocate on their behalf and to use the law to make the District a safer, fairer, and more equitable place to live and work. And I am committed to doing everything in my power to honor that trust over the next four years.

Since taking office a little over seven weeks ago, I have been extremely impressed by the state of the office. It is full of dedicated, talented, hardworking, mission-driven professionals doing critically important work every day.

Chairwoman Pinto, as you well know from having served in OAG, one of the most striking things about OAG is the breadth of its legal work. OAG's nine legal divisions handle a wide range of civil, criminal, and regulatory matters. By way of example, these include: (i) prosecuting juvenile crimes and adult misdemeanors; (ii) assisting victims of domestic violence in obtaining and enforcing civil protection orders; (iii) assisting families and custodial parents in securing financial support for their children; (iv) representing the interests of children in abuse and neglect proceedings; (v) pursuing eminent domain, bankruptcy, tax, and contract actions on behalf of the District government; (vi) representing District agencies in personnel and collective bargaining matters; (vii) providing legal representation and counsel to the Mayor, agencies, and the Council; (viii) advocating for the public interest in land use, environmental, and public integrity matters; and (ix) enforcing laws designed to safeguard District residents, including housing laws, workers' rights laws, anti-discrimination laws and consumer-protection laws. OAG professionals also participate in dozens of task forces focused on issues ranging from child abuse and human trafficking to consumer protection and safe housing. And, where our legal work reveals the need to amend or enact new laws, our Legislative Affairs and Policy team and our Legal Counsel Division work closely with the Council and community stakeholders to do so.

From a dollars-and-cents perspective, OAG delivers an excellent return on investment. In FY2022 alone, OAG's estimated fiscal contribution to the District was nearly \$600 million—\$594.9 million to be more precise. That is more than four times OAG's annual budget for FY2022. One of the critical functions of OAG is saving taxpayer dollars when the District and its agencies are sued. In FY2022, our Civil Litigation, Commercial, and Personnel, Labor, and Employment Divisions, supported by our Office of Solicitor General, successfully avoided more than \$436 million in potential monetary damages by resolving—through motions practice, trial, appeal, and settlement—hundreds of lawsuits and administrative claims. Confronting a realistic monetary exposure of nearly \$443 million, OAG successfully resolved such claims for less than \$7 million.¹ Additionally, our Commercial Division, supported by our Office of Solicitor General, preserved more than \$93 million of collected tax revenue by successfully defending against tax appeals and other matters. In addition to saving hundreds of millions of dollars, our Civil Litigation Division collected roughly \$3 million in administrative penalties, our Child Support Division collected nearly \$50 million in support for District children, and our Public Advocacy Division collected more than \$12 million in penalties and restitution.

¹ The actual demands were significantly higher, numbering in the billions, but that amount included highly inflated demands that did not, in OAG's view, present a substantial threat of liability.

These dollar figures, of course, do not fully capture the value OAG delivered for the District last year and every year.

On the public safety front, OAG has devoted significant resources to tackling one of our most pressing public-safety threats: gun violence. OAG's Civil Litigation Division and Office of the Solicitor General have been working together to defend against lawsuits challenging the District's common-sense gun laws, including a prohibition on carrying firearms on public transportation and a prohibition on large capacity magazines. Since the Supreme Court's decision last year in *Bruen*, we are litigating an ever-growing number of Second Amendment cases. Additionally, OAG's Public Safety Division prosecutes juvenile and adult misdemeanor firearms offenses in every case in which we have sufficient evidence to do so. OAG's Public Advocacy Division filed and won a first-of-its-kind lawsuit against ghost gun manufacturer Polymer80, which was selling kits that enabled individuals to build untraceable ghost guns in their homes. As a result of that lawsuit, Polymer80 was ordered to pay more than \$4 million in penalties and to permanently refrain from selling its frames, receivers, and Buy, Build, Shoot kits to District consumers. Finally, with the help of the Council, OAG has continued to expand its Cure the Streets program, a community-based, violence-interruption program that employs a public-health approach to reducing gun violence by disrupting cycles of violence. Last year, the Cure program expanded from six to ten sites, all in neighborhoods that have historically seen the highest amounts of gun violence in our city.

Beyond our gun-violence prosecution and prevention work, OAG has worked closely with our law enforcement partners and other stakeholders to address crime in our city. As you know, because DC lacks statehood, we have a bifurcated criminal-justice system. OAG's jurisdiction to prosecute crimes is limited, mostly to youthful offenders, i.e., kids who are 17 or younger. The unelected, presidentially-appointed U.S. Attorney prosecutes the vast majority of adult crimes committed in our city—last year, less than 10% of criminal arrests involved children. That has not, however, stopped OAG from taking a leadership role on task forces and other initiatives to address adult crime. For example, we have worked with the U.S. Attorney's Office to establish memoranda of understanding allowing OAG attorneys to prosecute felony financial elder abuse cases and public corruption cases—two critical areas that were being under-enforced due to resource constraints at the U.S. Attorney's Office. And, within our purview over juvenile crime, our Public Safety Division aggressively addresses the juvenile crime that does occur. It does so in two principal ways: by holding kids accountable when they commit crimes—that means charging or “papering” cases and prosecuting them—and by implementing evidence-informed approaches to reduce the likelihood that youthful offenders will re-offend. These approaches include the ACE diversion program and OAG's restorative-justice program, both of which have shown promise in reducing recidivism. This past year, with help from the Council, OAG nearly doubled the size of its restorative-justice program and began incorporating cognitive behavioral therapy as a key component. OAG is committed to being smart on crime, by tackling long-term challenges with long-term solutions, and by focusing resources on getting kids back on track. When we commit ourselves to reducing recidivism, we make DC safer and enhance public safety.

Beyond public safety, OAG has worked to defend District residents' fundamental freedoms. Last year, following the leak of the Supreme Court's draft decision in *Dobbs v. Jackson Women's Health Organization*, OAG quickly convened District agencies to prepare for the overruling of *Roe v. Wade*—a case that for nearly 50 years had protected the fundamental right to make reproductive health decisions free from government interference. Over the last ten months, OAG

has continued to lead the District's *Roe* Rapid Response group, which includes representatives from the Mayor's Office of Legal Counsel, DC Health, and other relevant agencies. The *Roe* Rapid Response group has been focused on: researching emerging legal issues related to the overturning of *Roe*; identifying legislative changes needed to facilitate access to abortion and contraceptive care and protect the online privacy of those seeking and providing abortion care; meeting with abortion providers and community non-profits to understand their needs and concerns; and providing information to the public about their rights. OAG has also continued to advocate in court for reproductive freedom; in FY2022 and FY2023-to-date, OAG has already joined 9 "friend of the court" briefs across the country arguing against draconian, extremely troubling restrictions that other states are trying to impose on access to abortion and contraceptive care.

Over the past year and a half, OAG has also aggressively deployed the District's consumer-protection, housing, workers' rights, anti-discrimination, and environmental laws to obtain significant victories on behalf of District residents. There is nowhere near sufficient time today to recount all of those victories. But to highlight a few, OAG recently resolved a lawsuit against the owners of an apartment complex in Ward 5 who were engaging in the illegal practice of constructive eviction—forcing tenants to live in terrible conditions in an effort to push them out to make way for market-rate development. As a result of the lawsuit, the owners have made significant repairs to the property and will pay the District \$1 million, the majority of which will be used to provide restitution to the tenants who had been forced to live in deplorable conditions. Importantly, the owners also agreed to sign an affordable housing covenant that runs with the land, ensuring that the property will remain rent-stabilized for the next 25 years regardless of ownership changes. This is just one example of how OAG, through an innovative settlement term, is using the law to help preserve affordable housing in the District. OAG also recently secured a settlement that requires three real-estate companies to pay \$10 million in penalties for illegally discriminating against the holders of housing vouchers, a major win in the District's efforts to protect tenants from source-of-income discrimination. And, in the last six months, OAG announced settlements with Drizly and Instacart requiring the companies to pay roughly \$6.5 million and \$2.5 million, respectively, for failing to ensure that tips went to workers and for failing to pay sales taxes.

In short, over the last year and a half, OAG has continued to deliver results—quantitative and qualitative—for DC and its residents. And I am excited to build on that record of excellence because I know there is much more we can and must do as the independent OAG to provide exceptional legal services, protect the District's legal interests, and advance the public interest.

Based on input from thousands of residents gathered over the course of my campaign and then transition, there are four core priorities that will guide OAG's work during my tenure. The first is enhancing public safety by focusing on the development of healthy, independent, hopeful kids. Hopeful kids are safer kids, to themselves and those around them. Our city's collective future demands that we raise healthy, independent, hopeful kids. Right now, public safety is top of mind for many District residents. It is top of mind for me and my team, too. Everyone in the District, no matter where they live, deserves to feel safe in their neighborhood. When people don't feel safe, we can't get to the other critical issues we as a community need to address—affordable housing, re-invigorating the downtown business district, narrowing the wealth and income gaps. As I mentioned earlier, OAG's criminal jurisdiction is largely limited to juvenile crime, and juvenile crime represents a small fraction of crime in our city. But any crime involving a young person—whether they are a victim or an offender—is one too many. Under my leadership, OAG will continue to do everything we can to ensure kids are doing the right thing. As part of this, we will

continue to hold young people accountable when they commit crimes. We will continue to prosecute carjacking and gun offenses whenever we have sufficient admissible evidence to do so. And we will also step up our efforts to stop crime before it happens by making sure all kids have the support, structure, and safe places they need to be successful—to be able to make mistakes and learn from them without losing their liberty or their lives. Research shows that young people who have access to safe and stable housing, positive afterschool activities, mentors, and meaningful economic opportunities are less likely to commit crime and more likely to lead healthy, hopeful lives. As we move forward over the coming months and years, I will focus on how we can best leverage the resources across all of OAG’s divisions to better support kids and their families.

My second priority is using the law to narrow and ultimately eliminate equity gaps in our city. The District enjoys abundant resources, but too often those resources—and the opportunities those resources create—are not shared equally. We continue to confront staggering income and wealth gaps that divide along racial lines. I am committed to using the law to root out these inequities. I will aggressively go after bad actors that engage in discriminatory practices, including practices that make it more expensive to build a business or own property East of the River, and practices that make it more difficult to access healthcare and healthy food in certain neighborhoods. We will continue to go after landlords who seek to displace long-time residents to make bigger profits; employers who cheat workers out of their hard-earned wages; unscrupulous companies that seek to profit by preying on our seniors and consumers; and procurement and contracting practices that unfairly benefit some to the detriment of others.

The third focus area is fighting for fundamental democratic values. This includes defending District residents’ right to be free from racism, bigotry, and hate; right to make reproductive health decisions without government interference; right to love whomever we choose. This also includes forcefully advocating for DC statehood and home rule. The U.S. House of Representatives’ recent vote to disapprove the Revised Criminal Code Act and the Local Resident Voting Rights Amendment Act has once again underscored that until DC is granted the full rights of statehood, we will continue to be used as a pawn by national politicians engaging in a divisive national discourse. As DC’s chief legal officer, I will fight to defend our democratically enacted laws and our fundamental right to control our local affairs.

The fourth and final focus area for me is continuing to build institutional excellence at OAG. This includes recruiting, training, and retaining top, diverse talent; using high-quality research and data to drive our work and measure our success; and streamlining processes to make our work more efficient and effective. This also includes enhancing the way OAG engages with community. Great lawyers listen to their clients, and I am committed to ensuring that OAG is in a constant two-way conversation with the community. Our clients are not only District government and agencies. We are the people’s lawyers, entrusted to defend the public interest. To do our job, we must be in constant communication with District residents to understand their concerns and ensure that their concerns inform our work. I am incredibly thankful to have had the opportunity today to hear from a number of community members about the issues they hope to see OAG tackle in the coming months. It is nice to hear kind words, but we also want to hear when we can do things better. My team and I are committed to regularly seeking input from residents, especially young people, about the issues they are confronting. We have already hit the ground running, attending numerous community events, and organizing a series of listening tours set to begin next week. I hope that folks will join us for those events and continue to engage with our office.

In closing, I am grateful and excited for the opportunity to build upon OAG's great work. Together, I and my colleagues will work every day to make OAG the best law firm in the country. After all, the District and its residents deserve nothing less.

I am here with my team. We welcome any questions the Committee may have. Thank you.