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H.R. 960, AND H.R. 1045, GREATER AUTONOMY FOR THE NATION'S CAPITOL

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

ON

H.R. 960

TO AMEND THE DISTRICT OF COLUMBIA HOME RULE ACT TO ELIMINATE CONGRESSIONAL REVIEW OF NEWLY-PASSED DISTRICT LAWS

AND ON

H.R. 1045

TO AMEND THE DISTRICT OF COLUMBIA HOME RULE ACT TO ELIMINATE ALL FEDERALLY-IMPOSED MANDATES OVER THE LOCAL BUDGET PROCESS AND FINANCIAL MANAGEMENT OF THE DISTRICT OF COLUMBIA AND THE BORROWING OF MONEY BY THE DISTRICT OF COLUMBIA

NOVEMBER 18, 2009

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CONTENTS

	Page
Hearing held on November 18, 2009	1
Text of H.R. 960	8
Text of H.R. 1045	14
Statement of:	
Fenty, Adrian M., Mayor, District of Columbia; Vincent Gray, chairman, District of Columbia City Council; Natwar Gandhi, chief financial officer, District of Columbia; Alice M. Rivlin, senior fellow of economic studies, Brookings Institution and director, Greater Washington Research; and Walter Smith, executive director, District of Columbia Appleseed Center for Law and Justice	33
Fenty, Adrian M.	33
Gandhi, Natwar	52
Gray, Vincent	38
Rivlin, Alice M.	67
Smith, Walter	73
Letters, statements, etc., submitted for the record by:	
Connolly, Hon. Gerald E., a Representative in Congress from the State of Virginia, prepared statement of	31
Fenty, Adrian M., Mayor, District of Columbia, prepared statement of	35
Gandhi, Natwar, chief financial officer, District of Columbia, prepared statement of	54
Gray, Vincent, chairman, District of Columbia City Council, prepared statement of	40
Lynch, Hon. Stephen F., a Representative in Congress from the State of Massachusetts:	
Prepared statement of	6
Prepared statement of Robert Brannum	2
Norton, Hon. Eleanor Holmes, a Delgate in Congress from the District of Columbia, prepared statement of	23
Rivlin, Alice M., senior fellow of economic studies, Brookings Institution and director, Greater Washington Research, prepared statement of	69
Smith, Walter, executive director, District of Columbia Appleseed Center for Law and Justice, prepared statement of	75

H.R. 960, AND H.R. 1045, GREATER AUTONOMY FOR THE NATION'S CAPITOL

WEDNESDAY, NOVEMBER 18, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Stephen F. Lynch (chairman of the subcommittee) presiding.

Present: Representatives Lynch, Norton, Kucinich, Clay, Connolly, Chaffetz, Bilbray, and Towns (ex-officio).

Staff present: William Miles, staff director; Aisha Elkheshin, clerk/legislative assistant; Dan Zeidman, deputy clerk/legislative assistant; Adam Fromm, minority chief clerk and Member liaison; Howard Denis, minority senior counsel; Mitchell Kominsky, minority counsel; and Alex Cooper, minority professional staff member.

Mr. LYNCH. Good morning. The Subcommittee on Federal Workforce, Postal Service, and the District of Columbia hearing will now come to order. I want to welcome Ranking Member Chaffetz; members of the subcommittee; our chairman, Ed Towns, the gentleman from New York; all the witnesses; and also those in attendance at today's hearing.

The purpose of today's hearing is to examine the merits and potential impact of H.R. 960, the District of Columbia Legislative Autonomy Act of 2009, and H.R. 1045, the District of Columbia Budget Autonomy Act of 2009, collectively. These measures introduced by Representative Eleanor Holmes Norton are intended to advance the concept of self governance in the District of Columbia.

The chairman, ranking member, and subcommittee members will each have 5 minutes to make opening statements and all Members will have 3 days to submit statements for the record.

Before I get started with my statement today, I would like to ask unanimous consent that the statement of Robert Brannum, chairman of the Fifth District Citizens' Advisory Council, be entered into the record. Hearing no objections, that is so ordered.

[The prepared statement of Mr. Brannum follows:]

16 November 2009

The Honorable Stephen F. Lynch, Chairman
Subcommittee on Federal Workforce, Postal Service and the District of Columbia
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Lynch:

The Honorable Eleanor Holmes Norton has introduced in the House of Representatives, H.R. 830, and H.R. 960. Both bills are designed to amend the District of Columbia Home Rule Act to eliminate Congressional review of newly passed District laws. These bills will be the subject of a subcommittee hearing on Thursday, 18 November 2009. It is my understanding the Honorable Adrian M. Fenty, Mayor of the District of Columbia, the Honorable Vincent C. Gray, Chairman of the Council of the District of Columbia, and Mr. Natwar Gandhi, Chief Financial Officer for the District of Columbia are scheduled to appear.

Chairman Lynch, I am not an elected or appointed senior District of Columbia government official. I am just a retired military veteran and resident of the District of Columbia. I write in strong support of H.R. 830 and H.R.960. I do not write you requesting a special privilege or new right of principle. I write you to ask for what all other Americans have when they cast local ballots and for the democratic idea, Americans are fighting and sacrificing for around the world – that is to have their votes and local decisions respected. I do not this matter can be challenged fiscally or constitutionally. It can be challenged as violating the principle of jurisdictional democracy and fairness.

As a retired military veteran and civic activist, I understand the purpose, the power, and the principle of the vote. On Election Day, I, other residents of the District of Columbia, and Americans go to the polls to cast our votes for persons to represent us at the local and national levels.

We in the District have the privilege to vote for one (1) delegate to the House of Representatives, one (1) mayor, thirteen (13) members of the Council of the District of Columbia, nine (9) members of the District of Columbia State Board of Education, and 286 District of Columbia Advisory Neighborhood Commissioners. In a symbolic jester for Congressional representations, we are also able cast a vote for two (2) "Shadow" senators and one (1) representative to the House of Representatives.

When I enter the voting booth, I exercise my right and privilege by voting for local candidates I feel best represent my fellow District citizens and me. Albeit within the words of the Constitution, I do not feel it appropriate for District elected officials to have all their legislative acts subject to Congressional review and Presidential signature. Why should I as a resident of the District of Columbia, rather than a resident of the 9th District of Massachusetts, or the 10th District of New York, or the 49th District of California, or the 3rd District of Utah continue to be subject to the whims of 535 members of Congress who do not represent my fellow District

residents or me? I doubt any member of Congress would support the intrusion of Congress in the determination of local expenditures, where retail stores are located, churches, and schools are built, roads constructed, and how local permits and licenses are issued in their hometowns.

It should and must end in the District of Columbia.

I respectfully urge you and your colleagues to support H.R. 830 and H.R. 960.

Respectfully,

Robert Vinson Brannum
158 Adams Street, NW
Washington, DC 20001

Chairman, *5th District Citizens' Advisory Council, Inc.* - *www.5dcac.org* *
President, *Bloomingdale Civic Association, Inc.* *

* *Listed for identification purposes only*

Mr. LYNCH. As mentioned earlier, the subcommittee convenes today's legislative hearing to examine H.R. 960, the District of Columbia Legislative Autonomy Act of 2009, and H.R. 1045, the District of Columbia Budget Autonomy Act of 2009. These are two bills in a series of legislative proposals introduced by Congresswoman Eleanor Holmes Norton to promote greater autonomy and self governance for the residents and elected officials of the District of Columbia.

Established by Article 1, Section 8, Clause 17 of the U.S. Constitution, the District of Columbia came to be our Nation's Capital in order to protect the institutions of national Government and to prevent the disproportionate influence of any particular State. In establishing the seat of the Federal Government, the Constitution granted Congress exclusive legislative control over the District of Columbia. However, since ratification of the "District Clause," Congress has employed various approaches to municipal governance in the Nation's Capital. Most notably, in 1973 Congress enacted the District of Columbia Self Government and Governmental Reorganization Act, also known as the Home Rule Act.

The Home Rule Act created the District's current governing structure, complete with a duly elected Mayor and City Council, thereby setting the Nation's Capital on the road toward self governance. While the Home Rule Act of 1973 represented a significant step forward for the city's municipality, the act also came with an array of checks and balances such as the requirement that Congress review all locally passed legislation as well as the District's annual budget before final enactment can occur.

Although the Home Rule Act attempted to strike a balance between Congress's constitutionally derived authority and the need to delegate aspects of this power to a local government, the fact of the matter is that certain provisions of the act have created a costly and sometimes unpredictable public policymaking process and an unaccommodating fiscal budget cycle for the city. It is for these reasons that my colleague Ms. Norton has introduced H.R. 960 and H.R. 1045 to do away with certain aspects of Congress's review authority as outlined in the provisions of the Home Rule Act.

Specifically, H.R. 960, the District of Columbia Legislative Autonomy Act of 2009, would eliminate the 30 and 60 day congressional review periods for criminal and civil laws passed by the District government. Along the same lines, H.R. 1045, the District of Columbia Budget Autonomy Act of 2009, would remove the statutory requirement that Congress annually approve the District's fiscal year budget, which is principally raised from local revenue sources.

While collectively H.R. 960 and H.R. 1045 will fundamentally reshape the way Congress is involved in the local legislative and budgetary matters of the Nation's Capital, nothing in either of the measures being discussed today can or will eliminate Congress's exclusive constitutional authority over the District of Columbia. In other words, Congress will retain the power to repeal or amend local laws through the routine passage of legislation and its right to annually review the myriad of Federal payments to the District of Columbia.

That said, the subcommittee is interested in exploring the pros and cons of these two proposals and pro-home rule measures, which is the main purpose of today's hearing.

The District is home to nearly 575,000 tax-paying American citizens, many of whom have served in our Nation's armed forces and have gone to the polls to elect their own city officials to carry out the business of local governance. Even in light of some of the city's ongoing policy challenges and its longstanding structural budget imbalance, the District of Columbia has made great strides over the past decade in its capacity to govern. That is why I believe today's discussion on revisiting Congress's approach to overseeing the legislative and budgetary matters of the Nation's Capital is certainly warranted.

Again, I would like to thank my colleagues, especially Eleanor Holmes Norton for her tireless work in this policy matter and for bringing the concerns of her district to the forefront of this committee's and this Congress's business. I welcome all those in attendance this afternoon. I look forward to hearing your testimony on these important legislative matters.

I welcome my colleague, Ranking Member Chaffetz, the gentleman from Utah, to offer 5 minutes for an opening statement.

[The prepared statement of Hon. Stephen F. Lynch and the texts of H.R. 960 and H.R. 1045 follow:]

STATEMENT OF CHAIRMAN STEPHEN F. LYNCH
AT THE SUBCOMMITTEE ON FEDERAL WORKFORCE,
POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

LEGISLATIVE HEARING
H.R. 960, the "District of Columbia Legislative Autonomy Act of 2009," and H.R. 1045, the "District of Columbia Budget Autonomy Act of 2009."
*
Room 2154 Rayburn House Office Building
10:00 a.m., Wednesday, November 18, 2009

As mentioned earlier, the Subcommittee convenes today's legislative hearing to examine H.R. 960, the "District of Columbia Legislative Autonomy Act of 2009," and H.R. 1045, the "District of Columbia Budget Autonomy Act of 2009," which are two bills in a series of legislative proposals introduced by Delegate Eleanor Holmes Norton to promote greater autonomy and self-governance for the residents and elected officials of the District of Columbia. Established by Article 1, Section 8, Clause 17 of the United States Constitution, the District of Columbia came to be our nation's capital in order to protect the institutions of the national government and to prevent the disproportionate influence of any particular State. In establishing the seat of the federal government, the Constitution granted Congress exclusive legislative control over the District of Columbia. However, since ratification of the "District Clause," Congress has employed various approaches to municipal governance in the Nation's capital. Most notably, in 1973 Congress enacted the District of Columbia Self Government and Governmental Reorganization Act, also known as the Home Rule Act. The Home Rule Act created the District's current governing structure, complete with a duly elected Mayor and City Council, thereby setting the Nation's Capital on the road toward self-governance.

While the Home Rule Act represented a significant step forward for the City's municipality, the Act also came with an array of checks and balances, such as the requirement that Congress review all locally passed legislation as well as the District's annual budget before final enactment can occur. Although the Home Rule Act attempted to strike a balance between Congress' constitutionally derived authority and the need to delegate aspects of this power to a local government, the fact of the matter is that certain provisions of the Act have created a costly and unpredictable public policy making process and an unaccommodating fiscal budget cycle for the City. It is for these reasons that my colleague, Ms. Norton, has introduced H.R. 960 and H.R. 1045 to do away with aspects of Congress' review authority as outlined in provisions of the Home Rule Act. Specially, H.R. 960, the District of Columbia Legislative Autonomy Act of 2009, would eliminate the 30 and 60 day congressional review periods for civil and criminal laws passed by the District government. Along the same

lines, H.R.1045, the District of Columbia Budget Autonomy Act of 2009, would remove the statutory requirement that Congress annually approval the District's fiscal year budget, which is principally raised from local revenue sources.

While collectively H.R. 960 and H.R. 1045 will fundamentally reshape the way Congress is involved in the local legislative and budgetary matters of the nation's capital, nothing in either of the measures being discussed today can or will eliminate Congress' exclusive constitutional authority over the District of Columbia. In other words, Congress will retain the power to repeal or amend local laws through the routine passage of legislation and its right to annually review the myriad of federal payments to the District of Columbia. That said, the Subcommittee is interested in exploring the pros and cons of these two pro-Home Rule measures, which is the main purpose of today's hearing.

The District is home to nearly 575,000 tax-paying American citizens, many of whom have served in our nation's Armed forces and have gone to polls to elect their own City officials to carry out the business of local governance. Even in light of some of the City's ongoing policy challenges and its long standing structural budget imbalance, the District of Columbia has made great strides over the past decade in its capacity to govern; which is why I believe today's discussion on revisiting Congress's approach to overseeing the legislative and budgetary matters of the Nation's capital is warranted.

Again, I'd like to thank my colleague, Congresswoman Eleanor Holmes Norton, for her tireless work in this policy area and welcome those in attendance this afternoon. I look forward to hearing your testimony on these important legislative initiatives.

###

I

111TH CONGRESS
1ST SESSION

H. R. 960

To amend the District of Columbia Home Rule Act to eliminate Congressional review of newly-passed District laws.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2009

Ms. NORTON introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To amend the District of Columbia Home Rule Act to eliminate Congressional review of newly-passed District laws.

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

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "District of Columbia Legislative Autonomy Act of 2009".

(b) REFERENCES IN ACT.—Except as may otherwise be provided, whenever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be

1 made to that section or other provision of the District of
2 Columbia Home Rule Act.

3 **SEC. 2. ELIMINATION OF CONGRESSIONAL REVIEW OF**
4 **NEWLY-PASSED DISTRICT LAWS.**

5 (a) IN GENERAL.—Section 602 (sec. 1–206.02, D.C.
6 Official Code) is amended by striking subsection (c).

7 (b) CONGRESSIONAL RESOLUTIONS OF DIS-
8 APPROVAL.—

9 (1) IN GENERAL.—The District of Columbia
10 Home Rule Act is amended by striking section 604
11 (sec. 1–206.04, D.C. Official Code).

12 (2) CLERICAL AMENDMENT.—The table of con-
13 tents is amended by striking the item relating to sec-
14 tion 604.

15 (3) EXERCISE OF RULEMAKING POWER.—This
16 subsection and the amendments made by this sub-
17 section are enacted by Congress—

18 (A) as an exercise of the rulemaking power
19 of the House of Representatives and the Sen-
20 ate, respectively, and as such they shall be con-
21 sidered as a part of the rules of each House, re-
22 spectively, or of that House to which they spe-
23 cifically apply, and such rules shall supersede
24 other rules only to the extent that they are in-
25 consistent therewith; and

(B) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(c) CONFORMING AMENDMENTS.—

(1) DISTRICT OF COLUMBIA HOME RULE ACT.—(A) Section 303 (sec. 1–203.03, D.C. Official Code) is amended—

(i) in subsection (a), by striking the second sentence; and

(ii) by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c).

(B) Section 404(e) (sec. 1–204.04(3), D.C. Official Code) is amended by striking "subject to the provisions of section 602(c)" each place it appears.

(C) Section 462 (sec. 1–204.62, D.C. Official Code) is amended—

(i) in subsection (a), by striking "(a) The Council" and inserting "The Council"; and

(ii) by striking subsections (b) and (c).

(D) Section 472(d) (sec. 1–204.72(d), D.C. Official Code) is amended to read as follows:

1 "(d) PAYMENTS NOT SUBJECT TO APPROPRIA-
2 TION.—The fourth sentence of section 446 shall not apply
3 to any amount obligated or expended by the District for
4 the payment of the principal of, interest on, or redemption
5 premium for any revenue anticipation note issued under
6 subsection (a).".

7 (E) Section 475(e) (sec. 1–204.75(e), D.C. Of-
8 ficial Code) is amended to read as follows:

9 "(e) PAYMENTS NOT SUBJECT TO APPROPRIA-
10 TION.—The fourth sentence of section 446 shall not apply
11 to any amount obligated or expended by the District for
12 the payment of the principal of, interest on, or redemption
13 premium for any revenue anticipation note issued under
14 this section.".

15 (2) OTHER LAWS.—(A) Section 2(b)(1) of
16 Amendment No. 1 (relating to initiative and ref-
17 erendum) to title IV (the District Charter) (sec. 1–
18 204.102(b)(1), D.C. Official Code) is amended by
19 striking "the appropriate custodian" and all that fol-
20 lows through "portion of such act to".

21 (B) Section 5 of Amendment No. 1 (relating to
22 initiative and referendum) to title IV (the District
23 Charter) (sec. 1–204.105, D.C. Official Code) is
24 amended by striking ", and such act" and all that
25 follows and inserting a period.

(C) Section 16 of the District of Columbia Election Code of 1955 (sec. 1–1001.16, D.C. Official Code)—

(i) in subsection (j)(2)—

(I) by striking "sections 404 and 602(e)" and inserting "section 404", and

(II) by striking the second sentence; and

(ii) in subsection (m)—

(I) in the first sentence, by striking "the appropriate custodian" and all that follows through "parts of such act to",

(II) by striking "is held. If, however, after" and inserting "is held unless, under", and

(III) by striking "section, the act which" and all that follows and inserting "section.".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to each act of the District of Columbia—

(1) passed by the Council of the District of Columbia and signed by the Mayor of the District of Columbia;

1 (2) vetoed by the Mayor and repassed by the
2 Council;
3 (3) passed by the Council and allowed to be-
4 come effective by the Mayor without the Mayor's sig-
5 nature; or
6 (4) in the case of initiated acts and acts subject
7 to referendum, ratified by a majority of the reg-
8 istered qualified electors voting on the initiative or
9 referendum,
10 on or after October 1, 2009.

○

I

111TH CONGRESS
1ST SESSION

H. R. 1045

To amend the District of Columbia Home Rule Act to eliminate all Federally-imposed mandates over the local budget process and financial management of the District of Columbia and the borrowing of money by the District of Columbia.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 2009

Ms. NORTON introduced the following bill; which was referred to the Committee on Oversight and Government Reform

---

A BILL

To amend the District of Columbia Home Rule Act to eliminate all Federally-imposed mandates over the local budget process and financial management of the District of Columbia and the borrowing of money by the District of Columbia.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia Budget Autonomy Act of 2009".

1 **SEC. 2. TERMINATION OF FEDERAL MANDATES OVER**
2 **LOCAL BUDGET PROCESS AND FINANCIAL**
3 **MANAGEMENT OF DISTRICT OF COLUMBIA.**

4 (a) TERMINATION OF MANDATES.—

5 (1) IN GENERAL.—Part D of title IV of the
6 District of Columbia Home Rule Act (sec. 1–204.41
7 et seq., D.C. Official Code) is amended by adding at
8 the end the following new subpart:

9 "Subpart 3—Termination of Federal Mandates

10 "TERMINATION OF FEDERAL MANDATES

11 "SEC. 458. (a) BUDGET AND FINANCIAL MANAGE-
12 MENT GOVERNED UNDER DISTRICT LAW.—Effective with
13 respect to fiscal year 2010 and each succeeding fiscal year
14 which is not a control year—

15 "(1) the provisions of subpart 1 (other than
16 section 451) and subpart 2 (other than section 455)
17 shall not apply; and

18 "(2) the process by which the District of Co-
19 lumbia develops and enacts the budget for the Dis-
20 trict government for a fiscal year, and the activities
21 carried out with respect to the financial management
22 of the District government for a fiscal year, shall be
23 established under such laws as may be enacted by
24 the District.

25 "(b) NO EFFECT ON EXISTING OBLIGATIONS.—
26 Nothing in this section may be construed to relieve the

1 District of Columbia of any contractual or other financial
2 obligations incurred by the District under a budget en-
3 acted for a fiscal year prior to fiscal year 2010.".

4 (2) CLERICAL AMENDMENT.—The table of con-
5 tents of such Act is amended by adding at the end
6 of the items relating to part D of title IV the fol-
7 lowing:

"Subpart 3—Termination of Federal Mandates

"Sec. 458. Termination of Federal mandates.".

8 (b) ELIMINATION OF CONGRESSIONAL REVIEW PE-
9 RIOD FOR BUDGET ACTS.—Section 602(c) of such Act
10 (sec. 1–206.02(c), D.C. Official Code) is amended—

11 (1) in the second sentence of paragraph (1), by
12 striking "paragraph (2)" and inserting "paragraphs
13 (2) and (4)"; and

14 (2) by adding at the end the following new
15 paragraph:

16 "(4) In the case of any Act adopting the annual budg-
17 et for the District of Columbia government for fiscal year
18 2010 or any succeeding fiscal year which is not a control
19 year, such Act shall take effect upon the date prescribed
20 by such Act.".

21 **SEC. 3. TERMINATION OF FEDERAL MANDATES OVER BOR-**
22 **ROWING OF MONEY.**

23 (a) TERMINATION OF MANDATES.—

1 (1) IN GENERAL.—Part E of title IV of the
2 District of Columbia Home Rule Act (sec. 1–204.61
3 et seq., D.C. Official Code) is amended by adding at
4 the end the following new subpart:
5 "Subpart 6—Termination of Federal Mandates
6 "TERMINATION OF FEDERAL MANDATES
7 "SEC. 490A. (a) BORROWING GOVERNED UNDER
8 DISTRICT LAW.—Except as provided in subsection (b), ef-
9 fective with respect to fiscal year 2010 and each suc-
10 ceeding fiscal year which is not a control year—
11 "(1) the provisions of subparts 1 through 5
12 shall not apply; and
13 "(2) the process and rules by which the District
14 of Columbia issues bonds or otherwise borrows
15 money shall be established under such laws as may
16 be enacted by the District.
17 "(b) EXCEPTION FOR CERTAIN PROVISIONS.—Sub-
18 section (a) does not apply with respect to the following
19 sections:
20 "(1) Section 482 (relating to the full faith and
21 credit of the District).
22 "(2) Section 484 (relating to the nonapplica-
23 bility of the full faith and credit of the United
24 States).

"(3) Section 485 (relating to the tax treatment of bonds and notes).

"(4) Section 486 (relating to legal investment in bonds and notes).

"(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed—

"(1) to relieve the District of Columbia of any obligation incurred with respect to bonds or other forms of borrowing issued prior to fiscal year 2010; or

"(2) to waive the application to the District of Columbia of any other Federal law governing the borrowing of funds by States or units of local government, including the Internal Revenue Code of 1986.".

(2) CLERICAL AMENDMENT.—The table of contents of such Act is amended by adding at the end of the items relating to part E of title IV the following:

"Subpart 6—Termination of Federal Mandates

"Sec. 490A. Termination of Federal mandates.".

(b) REPEAL OF CAP ON AMOUNT OF DISTRICT BORROWING.—Section 603(b) of such Act (sec. 1–206.03(b), D.C. Official Code) is amended by adding at the end the following new paragraph:

1 "(4) Paragraphs (1) through (3) shall not apply with
2 respect to fiscal year 2010 or any succeeding fiscal year
3 which is not a control year.".

4 **SEC. 4. OTHER CONFORMING AMENDMENTS RELATING TO**
5 **CHANGES IN FEDERAL ROLE IN BUDGET**
6 **PROCESS.**

7 (a) FEDERAL AUTHORITY OVER BUDGET-MAKING
8 PROCESS.—Section 603(a) of the District of Columbia
9 Home Rule Act (sec. 1–206.03, D.C. Official Code) is
10 amended by inserting before the period at the end the fol-
11 lowing: "for a fiscal year which is a control year".

12 (b) RESTRICTIONS APPLICABLE DURING CONTROL
13 YEARS.—Section 603(d) of such Act (sec. 1–206.03(d),
14 D.C. Official Code) is amended to read as follows:

15 "(d) In the case of a fiscal year which is a control
16 year, the Council may not approve, and the Mayor may
17 not forward to the President, any budget which is not con-
18 sistent with the financial plan and budget established for
19 the fiscal year under subtitle A of title II of the District
20 of Columbia Financial Responsibility and Management
21 Assistance Act of 1995.".

22 (c) DEFINITION.—Section 603(f) of such Act (sec. 1–
23 206.03(f), D.C. Official Code) is amended to read as fol-
24 lows:

1 "(f) In this section, the term 'control year' has the
2 meaning given such term in section 305(4) of the District
3 of Columbia Financial Responsibility and Management
4 Assistance Act of 1995.".

5 (d) EFFECTIVE DATE.—The amendments made by
6 this section shall apply with respect to fiscal year 2010
7 and each succeeding fiscal year.

○

Mr. CHAFFETZ. Thank you, Mr. Chairman. Thank you all for being here.

Our U.S. Constitution says Congress is "to exercise exclusive legislation in all cases whatsoever over such District."

I yield back the balance of my time.

Mr. LYNCH. The chairman now recognizes the gentle lady from the District of Columbia, Eleanor Holmes Norton, for 5 minutes for an opening statement.

Ms. NORTON. I thank you, Mr. Chairman. I want to welcome my good friends from the District—Mayor Fenty, Council Chair Gray, and the other witnesses at the table who are most expert in the affairs of the District of Columbia, more so than I or any of us in Congress could possibly be. But particularly, Mr. Chairman, I want to thank you for affording us this hearing which helps us to reach the goal I have set out here in the Congress to have a hearing this year and for the second half of the 111th Congress to see the Congress take the historic step of bringing the District from its paternalistic oversight. That is a very kind way, Mr. Chairman, to put it, if I may say so.

This is an anachronism. I don't think any American would be proud of the fact that a jurisdiction that raises $6 billion on its own can't spend a dime until the Congress says it may or would be proud of what we put our Council through in order for laws to become final in the District of Columbia.

If you live in the Virgin Islands or Puerto Rico or Guam—I have good friends who are Delegates from those territories—you never hear the Congress of the United States attaching anything to your budget because they never see your budget. By the way, they don't pay Federal income taxes the way our residents do at a rate of second per capita in the United States.

Mr. Chairman, so that you will understand that this is not so radical a proposal, in the original Home Rule Act the Senate would indeed have given the District budget autonomy. In the compromises that always go on in this place, that was removed.

It has created huge operational problems and delays for the District of Columbia.

We, the Congress of the United States, have the power to wipe out every law that the District passes because we retain authority. The Home Rule Act is a delegated authority so we retain the authority to do whatever we want to the District. That really emphasizes why it is time for the Congress to help the District come into the 21st century.

Mr. Chairman, I do want to give recognition to my friends in the minority. During the 12 years when I was in the minority, I was able to negotiate two steps that make this a logical step.

One was the midyear budget autonomy bill. It will seem astonishing to most Americans that in the middle of the year the District had to come here to ask the Congress essentially if it could spend the money it collected the first half of the year. So the District had to be on the first supplemental, creating another delay for the District. When I was in the minority, that was given up and that bill was passed.

And when I was in the minority—and this is why I believe this is and will be a bipartisan bill—and pointed out the hardships on

the District of having our budget go 3 or 4 months past even our September 30th deadline, they agreed and have for at least half a dozen or perhaps 10 years. So the District budget has gotten out on the first continuing resolution.

But look at that. What is a continuing resolution? Continuing resolutions are for Government agencies. Therefore we continue to be treated as a Government agency.

It is huge problem for the District that our budget year is attuned to the Federal budget year whereas in your district and in Mr. Chaffetz's district the budget year is over by the summer. You can prepare for school. Our folks have to prepare for school, which is one of the great if not the overriding goal or issue in the District of Columbia, without its budget in hand. It has created terrible problems in the past when the budget was delayed.

The legislative autonomy is even more laughable. The budget autonomy it seems to me speaks for itself. Most people don't know what Chairman Gray and the Council go through in order to get a bill to be final.

I am going to let him describe a process that is not even used in the Congress anymore. That is to say, we do not indeed use resolutions of disapproval. You have never had one brought from my colleagues on the other side and certainly not from us. We don't issue a resolution of disapproval, vote on it here, and then go vote on it in the Senate. But we require the District to act as if we do. The District has to come here and wait for 30 legislative days or 60 legislative days if it is criminal matter. Well, we are not in for 5 legislative days many days, so the District's laws can go many months without being final. Yet we say to Mayor Fenty and Chairman Gray, you run that city and you make sure you run it efficiently because if you don't, you will hear from people up here saying you are not a very efficient city.

No jurisdiction in the United States is faced with such handicaps, particularly handicaps for which there is no reason today. If the reason is control, you retain the control.

You will hear finally the CFO, the chief financial officer, talk about the cost the real cost to the city—which is not a State, of having redundant oversight from the Congress of the United States.

Mr. Chairman, Chairman Towns, and my good friend Mr. Chaffetz have an opportunity, it seems to me, to do for the District what was done for the District in 1973—take the historic step of giving the District the last two important elements of home rule for the District of Columbia. I couldn't thank you enough for what you have done for us today.

[The prepared statement of Hon. Eleanor Holmes Norton follows:]

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES:
CHAIRWOMAN
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT
AVIATION
WATER RESOURCES AND ENVIRONMENT

Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEES:
FEDERAL WORKFORCE, POSTAL SERVICE, AND DISTRICT OF COLUMBIA
* COVERS DISTRICT OF COLUMBIA ISSUES

COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEES:
TRANSPORTATION SECURITY, AND INVESTMENT PROTECTION
EMERGENCY COMMUNICATION, PREPAREDNESS, AND RESPONSE

Statement of Eleanor Holmes Norton
Subcommittee on Federal Workforce, Postal Service and the District of Columbia
Hearing on Greater Autonomy for the Nation's Capital

November 18, 2009

The two bills before us define self-government in our country. They would permit the District of Columbia to enact a local budget and civil and criminal laws according to the democratic dictates of local residents and their local officials free from congressional or federal interference. The residents of all local jurisdictions of the 50 states and all four territories enjoy autonomy to enact their own local laws and to raise and spend their own local funds. No U.S. jurisdiction except the District of Columbia, the capital of the United States, is without total and complete self government today. Since being elected to Congress, I have continuously introduced the District of Columbia Budget Autonomy Act and the District of Columbia Legislative Autonomy Act to allow the District to exercise the two most basic functions of government enjoyed by all other Americans.

District of Columbia Budget Autonomy Act of 2009, H.R. 1045

The District of Columbia Budget Autonomy Act would eliminate federally-imposed mandates over the District's local budget process, financial management and borrowing authority, and would end the congressional and presidential approval process for the District's operating and capital budgets, which are financed from local revenues. We seek nothing less than the full budget autonomy that then-Senator Thomas Eagleton included in the original Home Rule Act and that all taxpaying jurisdictions deserve. Nothing is more demeaning than raising approximately $6 billion in local funds, and then waiting many months until Congress, which makes no contribution to local taxpayer-raised funds, enacts our local budget. The ability to enact a budget and spend its own taxpayer funds is central to a jurisdiction's ability to operate and manage a functioning government. For this reason, the budget process is particularly essential to the right to self government. Of course, Congress would always retain the ultimate authority over the District's budget as it does today. Even if this bill is passed, Congress nevertheless will retain jurisdiction and all authority over the District of Columbia under Article I, Section 8 of the Constitution. Therefore, since Congress could in any case change the District's budget and laws ant time, it is unnecessary and burdensome to both the city and Congress alike to require a lengthy repetition of the District's budget process here. The redundancy added by the congressional appropriations process is its most striking feature, considering that few if any changes in the District's budget are ever made by Congress.

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At the same time, I am grateful for the increasing recognition of the hardship and delays that the annual congressional appropriations process causes imposed on the city's budget. I ask only that Congress continue along a continuum it started when I was in the minority, when Congress began freeing the city from the congressional appropriations process with two important pre-cursors of today's bill -- mid-year budget autonomy and on-time passage at next year's budget levels. In 2006, I was able to get Congress to approve my Mid-Year Budget Autonomy bill, offering the District its first freedom from the federal appropriations process, the most important structural change for the city since passage of the Home Rule Act 34 years ago. I am grateful for this change granted by appropriators, allowing the District to spend its local funds annually without congressional approval, instead of returning mid-year to become a part of the federal supplemental appropriation in order to spend funds collected since the annual appropriations bill. Moreover, during the past few years, appropriators have responded to our concern about the hardships resulting from delays in enacting the D.C. budget. I appreciate the agreement that I reached that has allowed the D.C. local budget to be in the first continuing resolution, if necessary, permitting the city to spend its *local funds at next year's level*, rather than the old continuing resolution approach that meant passage only of the prior year's level. This approach ended the lengthy process that began with the enactment of the Home Rule Act, whereby enactment of the D.C. local budget was delayed until passage of other appropriations or even omnibus appropriations at the end of the session, or was held during floor fights about local policy and laws unrelated to the budget. Mid-year budget autonomy and on-time passage at next year's budget levels have already brought operational benefits to the city, without withdrawing congressional jurisdiction, and have demonstrated the benefits to the city and Congress alike of today's bill. The full budget autonomy in H.R. 1045 would accelerate operational efficiency and cost savings. Most important, a timely budget eliminates the uncertainty of the congressional process that in turn has affected the city's bond rating, burdening the local taxpayer additional and unnecessary interest expense.

Budget autonomy also would significantly increase the District's ability to make accurate forecasts, and will reduce the countless, serious operational problems that result when the city's budget is not enacted on time. Among the many examples, one particularly comes to mind that occurred frequently. The city increases the budget of the D.C. Public Schools (DCPS) annually, but DCPS has been forced to spend at the prior year's levels under a Continuing Resolution without the benefit of its urgently needed increase. As a result, among other things, textbooks and school supplies have had to be returned to publishers under contract provisions; school buses under the bus lease contract have been reduced, creating longer rides for disabled children; and tuition payments for special education students have gone unpaid for weeks and months.

Leaving its local budget to the District also would bring real benefits to Congress needs. The D.C. local budget sometimes has had to come to the floor repeatedly before passing because of riders restricting the District's ability to use its own local funds. Members then complain about the time and effort spent on D.C.'s appropriations, the smallest appropriation, which affects no other members. No budget autonomy bill can eliminate the possibility of attachments because there are countless ways to attach riders, but our bill would reduce the likelihood that riders will hold hostage the city's local budget and the congressional appropriations process itself.

Members of Congress were sent here to do the business of the nation. They have no reason to be interested in or to become knowledgeable about the many complicated provisions of the local budget of a single city. In good times and in bad, the House and Senate pass the District's local budget as is. H.R.1045 would take the Congress in the direction it is moving based on its own experience. Three decades of congressional interference in the vital right to self government will end with this H.R. 1045.

District of Columbia Legislative Autonomy Act of 2009, H.R. 960

The District of Columbia Legislative Autonomy Act of 2009 would end discriminatory and unnecessary congressional review of District of Columbia legislation. The legislative autonomy bill would eliminate the congressional review period before D.C. civil and criminal laws can take final effect 30 and 60 legislative days, respectively. I also have repeatedly introduced today's legislative autonomy bill not only because the congressional review period has long been obsolete, demeaning, and cumbersome, but also because Congress has only overturned one District law in 34 years, and therefore the required hold on D.C. legislation is impossible to justify. In practice, Congress has eliminated the review or layover period as a way to review District legislation, yet requires the District still to be bound by Section 602 of the Home Rule Act, absurdly continuing to abide by its awkward and debilitating rules. Our bill would do no more than align the law with congressional practices.

Because the congressional review period involves only days when Congress is in session, not ordinary calendar days, D.C. laws typically do not take final effect for three months or more. The statutorily required congressional layover for legislation forces the D.C. City Council to pass most legislation using a cumbersome and complicated process in which bills are passed on an emergency, temporary, and permanent basis to ensure that the operations of a large and rapidly changing city continue uninterrupted. Because of the complications and timeframe involved, some D.C. city council-passed bills do not become law at all. Two-thirds of bills passed by the Council are bills it already has passed. The D.C. Legislative Autonomy Act of 2009 would eliminate the need for the D.C. City Council to engage in a byzantine process that requires a two-thirds super-majority even for ordinary legislation to become effective pending congressional review.

Prior testimony before this subcommittee from the D.C. City Council General Counsel, Brian Flowers, D.C. Council, dramatically documented the problem. Flowers testified that the process feels like a "legislative circus, with many balls (or bills) in the air at the same time, and we don't know when they will come down." To keep the balls in the air, Flowers testified that "gap fillers, or more specifically [the Council must pass] Congressional review emergency acts, Congressional recess emergencies, Congressional adjournment emergencies, and legislative review emergencies," all of which require separate emergency declaration resolutions, and for the D.C. City Council time to pass these redundant acts. The general counsel and his staff are continually distracted from serious legislation to become masters of counting congressional days, or risk the lapsing of legislation as important as criminal statutes or as trivial as a word change. Flowers testified, "By way of illustration, a recent enactment of the Council that was designed to update terminology found in the D.C. Official Code required nine (9) months to undergo review by Congress to change the word "handicap" to "disability", because the language was contained

in a criminal code provision and Congress had adjoined sine die, necessitating that the Congressional review period begin anew with the 110th Congress." In another very practical and recent example, the long awaited reform of the D.C. Public Schools through school restructuring was delayed until June, leaving only 2 months before the opening of school.

Instead of the cumbersome congressional review period, which requires disapproval resolutions to overturn city laws, the Congress has preferred to use appropriations or riders for the very few instances in which District law has been nullified. The District strongly opposes all methods of overturning legitimate local legislation, but it is particularly unfair to require the D.C. City Council to engage in the tortuous process prescribed by the Home Rule Act that Congress itself has effectively discarded. My bill would eliminate the formal review system that has died of old age and disuse. Congress has walked away from layover review and should allow the city to do the same.

Today's bill, of course, does not prevent review of District laws by Congress. Under Article I, Section 8 of the Constitution, the House and the Senate could scrutinize every piece of legislation passed by the City Council, if desired, and could change or strike legislation under Congress' constitutional plenary authority over the District. However, since the Home Rule Act became effective in 1974, of the thousands of legislative acts that have been passed by the Council and signed into law by the Mayor, only three resolutions of disapproval of D.C. bills have been passed by Congress, two of these involved a distinct federal interest, and only one was signed by the president. Federal law to correct of a federal interest, of course, would be appropriate for any jurisdiction, but placing a hold on thousands of bills has proved unnecessary and brought untold costs in money, staff and wasted time to the District and Congress. Although 34 years of Home Rule Act history shows that congressional review is unnecessary, this bill would merely eliminate the automatic hold placed on local legislation and the need for the City Council to use a phantom process created for the convenience of Congress, which Congress has eliminated in all but law.

Congress often urges the District government to pursue efficiency and savings. It is time for Congress to do its part to promote greater efficiency both here and in the District by streamlining Congress' own redundant and discarded review processes. Eliminating the stranglehold on D.C. legislation would not only save scarce D.C. taxpayer revenue, eliminating delays that elevate form over substance, but would benefit the city's bond rating, which is affected by the shadow of congressional review of the District's legislation and budget because the bond markets requires certainty and finality. At the same time, Congress would give up none of its plenary power over the District because the Congress may intervene into any District matter at any time under the Constitution. The limited legislative autonomy granted in the legislative autonomy bill would allow the District to realize the greater measure of meaningful self-government and Home Rule it deserves and has more than earned in the 34 years since the Home Rule Act became effective. This goal can be achieved without prejudice to congressional authority.

Budget and legislative autonomy will mark the beginning of the end of a chapter in the city's Home Rule Act history, and H.R. 1045 and H.R. 960 would inaugurate a nice era of respect for self-government. Like the D.C. House Voting Rights Act of 2009, passage of budget

and legislative autonomy for the nation's capital would be another historic milestone for the 111th Congress.

Mr. LYNCH. I thank the gentle lady. I would like to go out of order just to allow the full chairman of the committee, the gentleman from Brooklyn, NY, Mr. Towns, 5 minutes for an opening statement. We thank him for his attendance here today.

Mr. TOWNS. Thank you very much, Congressman Lynch. I would like to thank Congressman Lynch and Congressman Chaffetz for holding this hearing on autonomy for the District of Columbia. I thank my good friend, Congresswoman Eleanor Holmes Norton, for her hard work on behalf of the District.

Let me again thank the witnesses for their attendance here today. I want to let you know that we really appreciate your being here. Welcome, Mayor Fenty. On behalf of the Committee on Oversight and Government Reform, I thank the Mayor for his attendance this morning. I want to thank Councilman Brown. I want to thank Councilman Gray and the other elected and appointed officials for coming.

I support home rule and self governance in the District. Over the years the District has achieved great independence. Of course, this has been done through the District's own advocacy. By the adoption of the Home Rule Act and the end of involvement by the Control Board in the District's finances among other measures, the District has steadily proved its ability to manage its own affairs. They even passed a balanced budget during an economic crisis that has greatly affected many State and local governments. I applaud the progress that has been made in the District and your efforts to implement the principle of home rule.

I look forward to working very closely with Congresswoman Norton; Chairman Lynch; the ranking member, Congressman Chaffetz; and of course you, too, Mayor Fenty to make certain that home rule is a reality. Now I know that it has been a long battle and a long struggle. But I think that we have to continue the fight and continue to push on.

My son, who serves in the State Assembly in New York, says to me that sometimes people just catch on faster than others. There is a thing called individual differences. He says sometimes it takes people 2½ hours to watch 60 Minutes. It doesn't mean they can't watch it, it just takes them a lot longer. So we hope, as we continue to talk about the importance of home rule, that eventually the other Members of Congress will get it and understand how important it is to move this forward. Congresswoman Norton, keep pushing.

I yield back.

Mr. LYNCH. I thank the gentleman. The Chair now recognizes the gentleman from Maryland, Mr. Cummings, for 5 minutes.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I want to thank you and Mr. Chaffetz for holding this vitally important hearing to examine two pieces of legislation that would increase autonomy for the Federal tax-paying residents of the District of Columbia—H.R. 960, the District of Columbia Legislative Autonomy Act of 2009, and H.R. 1045, the District of Columbia Budget Autonomy Act of 2009.

I appreciate the opportunity to move forward on these pieces of legislation as part of Congresswoman Eleanor Holmes Norton's Free and Equal D.C. Legislative Initiative. I must say to Ms. Nor-

ton, I thank you for all that you do. You have constantly been on the battlefield on this issue and so many others. You had to convince some of us and then to bring others of us along to do the right thing. But you know that there are many who are on your side. We have just got to get a few more.

In the Constitution, the "District Clause" was crafted to help protect Federal interests without State cooperation and to prevent particular State influences on the Legislature where the Federal capital was located. Mr. Chairman, the time has changed. The residents of the District of Columbia deserve a government that operates for them as effectively and efficiently as possible. These two pieces of legislation would help achieve this goal.

H.R. 960, the District of Columbia Legislative Autonomy Act of 2009, would eliminate congressional review of newly passed District laws. Since the Home Rule Act established the local District government in 1973 by allowing constituents to elect a Mayor and City Council, Congress has rarely taken advantage of the review process to overturn passed legislation. In fact, only once has a resolution of disapproval been signed by the President. That was President Bush in 1991 when he signed the resolution related to restricting the height of buildings in the District. This process imposes an unnecessary burden on the U.S. Congress. I believe it is time we trusted the District of Columbia government to pass laws for its own citizens.

H.R. 1045 would allow the District to forego congressional review and approval of its operating capital budgets financed from local revenues. The District budget moves through the routine Federal appropriations process, which Congress regularly falls short of passing before the beginning of the fiscal year. In fact, only once since 1996 has Congress enacted the District's budget before the start of the District's fiscal year. Allowing the District to implement its local budget without mandatory congressional review will prevent delay in service funding and, more importantly, service delivery. Citizens of the District of Columbia pay taxes and the way those tax dollars are spent should be determined by their elected officials.

The people of the District of Columbia deserve and demand the full rights that they are due. I appreciate again Congresswoman Norton's tireless efforts to achieve this for them.

With that, Mr. Chairman, I look forward to hearing the testimony of the witnesses. I yield back.

Mr. LYNCH. I thank the gentleman. The Chair now recognizes the gentleman from Virginia, Mr. Connolly, for 5 minutes for an opening statement.

Mr. CONNOLLY. Thank you, Chairman Lynch. Thank you for holding this hearing. I want to thank Congresswoman Norton for her leadership on the District of Columbia. It is a pleasure to welcome this panel, especially my old friends Mayor Fenty and Chairman Gray with whom I worked for many years on the local regional issues here in the National Capital Region.

For the life of our Republic we have relied on the Federalist system to deliver services in a cost effective manner that protects individual civil rights and general welfare, except in Washington, DC. Our founders established a system of government that constrained

the power of the Federal Government and protected local and State prerogatives, except in Washington, DC. For the last two centuries, we have witnessed the creative evolution of the roles of local, State, and Federal Governments except in Washington, DC, where the City Council's attempts to govern in accordance with its residents' needs and desires has been constrained and thwarted all too frequently by political gamesmanship and obstruction by this Congress.

The District of Columbia faces many challenges. Unfortunately, the District's residents' capacity to hold local officials accountable in addressing these challenges is compromised because those local officials are constrained by congressional attempts either to manipulate laws in the District and/or congressional failure to approve District budgets in a timely manner. If the residents of the District are going to hold their elected officials accountable, Congress needs to get out of the way.

Congresswoman Norton has presented us with two bills that would restore a Federalist balance of power to local government in the District of Columbia. The District Legislative Autonomy Act and the District of Columbia Budget Autonomy Act are two notable and worthy pieces of legislation.

Some may be concerned these bills would result in things like tighter gun controls or protection for certain people with certain lifestyles. Whether they do or not I don't think is the business of this Congress. I believe that Congress needs to defend the underlying principle of local autonomy even if the District contemplates actions with which we individually or even collectively may disagree. It is not our business. It simply should not be the role of Congress to meddle with local decisionmaking. That is a principle I have always held. It is a principle that will guide me in my future policy and votes with respect to this local government.

I thank the Chair and yield back.

[The prepared statement of Hon. Gerald E. Connolly follows:]

Opening Statement of Congressman Gerald E. Connolly

Subcommittee on Federal Workforce, Post Office, and District of Columbia

"Greater Autonomy for the Nation's Capital"

November 18th, 2009

Thank you, Chairman Lynch for holding this important Subcommittee hearing, and thank you Congresswoman Norton for your leadership. It is a privilege to host Mayor Fenty and Chairman Gray at this hearing, since I have worked with these public servants for years on issues of importance to the National Capital Region.

For the life of our republic we have relied on a federalist system to deliver services in a cost-effective manner that protects individuals' civil rights and the general welfare--except in Washington, D.C. Our founding fathers established a system of government that constrained the power of the federal government and protected local and state prerogatives—except in Washington, D.C. For the last two centuries we have witnessed the creative evolution of the roles of local, state and federal governments—except in Washington, D.C., where the City Council's attempts to govern in accordance with its residents' needs have been thwarted too frequently by political gamesmanship and obstruction by Congress.

The District of Columbia faces many challenges today, from a dysfunctional public school system to entrenched residential segregation to elevated crime levels. Unfortunately, the District's residents' capacity to hold local officials accountable for these shortcomings is compromised because those local officials' ability to respond to these threats is constrained by Congressional attempts to either manipulate laws in the District and Congressional failure to approve District budgets in a timely manner. If the residents of the District are going to hold their elected officials accountable, Congress must get out of the way.

Congresswoman Norton has presented us with two bills that would restore a federalist balance of power to local government in the District: the District of Columbia Legislative Autonomy Act and the District of Columbia Budget Autonomy Act. Some may be concerned that these bills will result in tighter gun control laws and legal protections for homosexuals. I happen to agree with those objectives, but would defend the underlying principle of local autonomy even if the District was contemplating legislation which I might not support. It simply should not the role of Congress to meddle with local decision making.

I look forward to learning more at today's hearing, and thank Chairman Lynch, Congresswoman Norton, and the witnesses for their commitment to this important reform.

Mr. LYNCH. I thank the gentleman. Before we turn to the testimony of our witnesses, I would like to offer some brief introductions of our first panel.

The Honorable Adrian M. Fenty was elected to serve as the fifth Mayor of the District of Columbia in November 2006. As Mayor, Mr. Fenty has made high quality public education for all and efficient and accountable government his administration's policy priorities. A native Washingtonian, Mayor Fenty attended Oberlin College before earning a juris doctorate degree from Howard University Law School. After graduating from law school, Mayor Fenty went on to serve as a local ANC commissioner and later as the ward 4 council member from 2001 to 2007.

The Honorable Vincent C. Gray is the current chairman of the District of Columbia City Council. Also a native Washingtonian and a proud graduate of the District of Columbia public school system, Chairman Gray has developed a reputation as a champion of young people by helping them and their families gain access to critical social services. Prior to being elected to chair the city's legislative body, Chairman Gray represented the city's residents of ward 7 on the City Council. Chairman Gray is also well known for his service as the first executive director of the Covenant House in Washington, an organization dedicated to serving homeless and at risk youth.

Dr. Natwar Gandhi serves as the chief financial officer for the government of the District of Columbia. In his position, Dr. Gandhi is responsible for the city's finances, including its approximately $7 billion in annual operating and capital funds. Dr. Gandhi was appointed to this position in June 2000 and was reappointed by Mayor Fenty in January 2007. As the independent CFO, Dr. Gandhi manages more than 1,000 staff members in the Tax and Revenue Administration and in the Treasury, Comptroller, and Budget Offices of the District of Columbia.

Ms. Alice Rivlin served as the first Director of the Congressional Budget Office and as the Chair of the District of Columbia Control Board. Ms. Rivlin is an expert on urban issues as well as on fiscal, monetary, and social policy. Currently she directs the Greater Washington Research Project as a senior economic studies fellow for the Brookings Institution.

Mr. Water Smith is the executive director of the D.C. Appleseed Center, a nonprofit public interest organization that addresses issues facing the Nation's Capital. Prior to his position with D.C. Appleseed, Mr. Smith was a partner for 16 years with the city's largest law firm, Hogan and Hartson.

It is the committee's policy that all witnesses to appear before the committee and submit testimony shall be sworn. Can I ask you each to stand and raise your right hands?

[Witnesses sworn.]

Mr. LYNCH. Let the record show that all of the witnesses have answered in the affirmative.

Your entire written statements are entered into the record. I trust that you have been before this committee before but I just want to go over the ground rules. Those small boxes in front of you will indicate green, which means that you have time to submit your opening statement. When it turns to yellow, it means that you

should probably conclude your statement. Then the red light means you have exceeded your time limit.

So with that, Mayor Fenty, it is an honor to have you here before this committee. I welcome you. You are now recognized for 5 minutes for an opening statement.

STATEMENTS OF ADRIAN M. FENTY, MAYOR, DISTRICT OF COLUMBIA; VINCENT GRAY, CHAIRMAN, DISTRICT OF COLUMBIA CITY COUNCIL; NATWAR GANDHI, CHIEF FINANCIAL OFFICER, DISTRICT OF COLUMBIA; ALICE M. RIVLIN, SENIOR FELLOW OF ECONOMIC STUDIES, BROOKINGS INSTITUTION AND DIRECTOR, GREATER WASHINGTON RESEARCH; AND WALTER SMITH, EXECUTIVE DIRECTOR, DISTRICT OF COLUMBIA APPLESEED CENTER FOR LAW AND JUSTICE

STATEMENT OF ADRIAN M. FENTY

Mayor FENTY. Thank you very much, Chairman Lynch; Ranking Member Chaffetz; and distinguished subcommittee members including my own Congresswoman Norton, Chairman Towns, and others. It is my pleasure to be here today to speak to you about H.R. 1045, the District of Columbia Budget Autonomy Act of 2009, and H.R. 960, the District of Columbia Legislative Autonomy Act of 2009.

Both bills, if enacted, would represent an important step forward for the District of Columbia and its residents. To that end, I would like to take a moment to recognize the outstanding work of the District's Representative in the House, Congresswoman Eleanor Holmes Norton, who for years has championed the bills before this subcommittee today and many others designed to grant the District the autonomy it deserves.

These bills simply provide the District the same flexibility and autonomy afforded other jurisdictions around the country to ensure the efficient and effective delivery of services, a fundamental responsibility of good government.

In 1973, Congress granted the District limited home rule powers and empowered the citizens of the District to elect a Mayor and a City Council. At the same time, however, Congress retained the power to review and approve all District laws including the District's annual budget. This makes the District unique among jurisdictions that perform State level functions, as the District does, in that Congress approves not only Federal funding for the District but also the spending of our local funds, a practice that ultimately hinders good government.

The District government of today is not the District government of the 1990's which saw the creation of the congressionally mandated Control Board because of unsound financial practices. Thanks in part to the work of my predecessor, Mayor Anthony Williams, we have come a long way since then. We are not going back.

This year the District submitted to Congress its 14th consecutive balanced budget. We continue to exercise sound financial management practices, a fact validated by the A+ credit rating awarded to our bonds by the Nation's rating agencies. I am confident Dr. Gandhi will speak to the significance of that in a few minutes but I hope my point is clear. The District's fiscal house is in order. The

time has come to lessen the burdens imposed by congressional approval of the District's budget.

Current law subjects the District's budget to the Federal appropriations process which requires District agencies to plan their budgets almost a year in advance to allow for congressional approval. The approval process often causes unnecessary delays in service delivery and prevents the District from responding quickly to changing public needs.

As a primary deliverer of services, local governments can only be effective if they can respond to changing circumstances in a timely and responsive manner. Unfortunately, Congress fails to approve the District's budget on time virtually every year, resulting in a near 3 month delay on average, a period in which critical new investments cannot be made. The District also faces challenges over the course of the fiscal year as any midyear adjustments caused by changes in revenue must be reviewed by Congress.

Many of the issues I have raised regarding budget autonomy also apply to the issue of legislative autonomy. Article 1, Section 8 of the Constitution allows the House and Senate to examine every piece of legislation by the Council. Depending on the nature of the legislation, however, we must wait 30 or 60 legislative days for passive congressional approval before legislation becomes law. As I said in my testimony on this matter 2 years ago, this makes me the only chief executive of a city or State in this country for whom the act of signing legislation does not make the legislation final. It also means the Council of the District of Columbia passes hundreds of bills every year that must await congressional approval, the vast majority of which are of no interest to Congress whatsoever.

The limited legislative autonomy granted by the bill proposed by Congresswoman Norton would maximize the use of taxpayer dollars, reduce inefficiencies caused by a complicated legislative process required to comply with Federal law, and allow the District to realize a greater measure of self government. I urge this Congress to take swift action on these two pieces of important legislation.

Thank you for the opportunity to testify today. I am happy to answer any questions you may have.

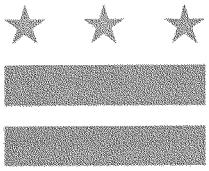
[The prepared statement of Mayor Fenty follows:]

H.R. 1045: THE DISTRICT OF COLUMBIA BUDGET AUTONOMY ACT OF 2009

H.R. 960: THE DISTRICT OF COLUMBIA LEGISLATIVE AUTONOMY ACT OF 2009

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND THE DISTRICT OF COLUMBIA

THE HONORABLE STEPHEN F. LYNCH, CHAIRMAN
THE HONORABLE JASON CHAFFETZ, RANKING MEMBER



TESTIMONY OF ADRIAN M. FENTY
MAYOR
DISTRICT OF COLUMBIA

WEDNESDAY, NOVEMBER 18, 2009

Introduction

Chairman Lynch, Ranking Member Chaffetz, and distinguished subcommittee members, it is my pleasure to be here today to speak to you about H.R. 1045, the District of Columbia Budget Autonomy Act of 2009 and H.R. 960, the District of Columbia Legislative Autonomy Act of 2009. Both bills, if enacted, would represent an important step forward for the District of Columbia and its residents. To that end, I would like to take a moment to recognize the outstanding work of the District's Representative in the House, Congresswoman Eleanor Holmes Norton, who for years has championed the bills before this subcommittee today and many others designed to grant the District the autonomy it deserves.

These bills simply provide the District the same flexibility and autonomy afforded other jurisdictions across the country, to ensure the efficient and effective delivery of services – a fundamental responsibility of good government.

Budget Autonomy

In 1973, Congress granted the District limited home rule powers and empowered the citizens of the District to elect a mayor and city council. At the same time, however, Congress retained the power to review and approve all District laws including the District's annual budget. This makes the District unique among jurisdictions that perform state-level functions, as the District does, in that Congress approves not only federal funding for the District but also the spending of our local funds – a practice that ultimately hinders good government.

The District Government of today is not the District Government of the 1990s, which saw the creation of the Congressionally-mandated Control Board because of unsound financial practices. Thanks in part to the work of my predecessor, Mayor Anthony Williams, we have come a long way since then and we are not going back. This year, the District submitted to Congress its 14th consecutive balanced budget and we continue to exercise sound financial management practices, a fact validated by the A+ credit rating awarded to our bonds by the nation's rating agencies. I am confident Dr. Gandhi will speak to the significance of that in a few minutes, but I hope my point is clear – the District's fiscal house is in order and the time has come to lessen the burdens imposed by Congressional approval of the District's budget.

Current law subjects the District's budget to the federal appropriations process which requires District agencies to plan their budgets almost a year in advance to allow for Congressional approval. The approval process often causes unnecessary delays in service delivery and prevents the District from responding quickly to changing public needs. As the primary deliverer of services, local governments can only be effective if

they can respond to changing circumstances in a timely and responsive manner. Unfortunately, Congress fails to approve the District's budget on time virtually every year, resulting in a near 3-month delay on average – a period in which critical new investments cannot be made. The District also faces challenges over the course of the fiscal year as any mid-year budget reallocations require an act of Congress. This inevitably disrupts service delivery.

For these reasons, we are asking for the ability to spend locally collected dollars without Congressional approval. This will mean better, more efficient government for the residents of the District and less work for the federal staff who must review our budget every year. I would also like to note that recent history shows that neither Congress nor the White House have made any changes to the actual allocation of local funds in the District budget. Therefore, a change in the current policy not only makes sense but it also comports with current Congressional practices.

Legislative Autonomy

Many of the issues I've raised regarding budget autonomy also apply to the issue of legislative autonomy. Article I, Section 8 of the Constitution allows the House and Senate to examine every piece of legislation passed by the D.C. Council. Depending on the nature of the legislation, we must wait 30 or 60 legislative days for passive Congressional approval before our legislation becomes law. As I said in my testimony on this matter two years ago, this makes me the only chief executive of a city or state in this country for whom the act of signing legislation does not make the legislation final.

It also means the Council of the District of Columbia passes, and I sign, hundreds of bills every year that must await Congressional approval – the vast majority of which are of no interest to Congress whatsoever.

The limited legislative autonomy granted by the bill proposed by Congresswoman Norton would maximize the use of taxpayer dollars, reduce inefficiencies caused by a complicated legislative process required to comply with federal law, and allow the District to realize a greater measure of self-government.

I urge this Congress to take swift action on these two pieces of important legislation.

Thank you for the opportunity to testify today. I'm happy to answer any questions you may have.

Mr. LYNCH. Thank you. Chairman Gray, you are now recognized for 5 minutes.

STATEMENT OF VINCENT GRAY

Mr. GRAY. Thank you very much, Chairman Lynch. Thank you to the ranking member, Mr. Chaffetz, and to the other Members who have joined us today. I am Vincent C. Gray, chairman of the Council of the District of Columbia.

I want to thank you again, Chairman Lynch, for holding this hearing on two important pieces of legislation—H.R. 1045, the District of Columbia Budget Autonomy Act of 2009, and H.R. 960, the District of Columbia Legislative Autonomy Act. I also want to thank my Congresswoman, Eleanor Holmes Norton, for introducing both of these bills on behalf of the District of Columbia.

These two bills, along with the District of Columbia House Voting Rights Act, would provide the first real advancement of home rule in the District since the congressional enactment of the limited Home Rule Act over 30 years ago.

The District must develop its budget in a timeframe that complies with the complicated and lengthy Federal appropriations process, as has been stated. The Federal appropriations process forces the District to develop its budget months in advance of the timeframe needed by the city. In fact, the District has had to adopt the Federal fiscal year of October 1st to September 30th when another fiscal year may be more appropriate to the city. The congressional appropriations schedule prevents the District from using more current revenue estimates and expenditure needs that would lead to a budget based on better and more complete data.

In the last several years, Congress has granted approval of the District's local budget by the beginning of the fiscal year without approving Federal appropriations. But that timely approval is not guaranteed for every year. The approval of H.R. 1045 would provide that guarantee by removing the approval of the District's local budget by the Congress. Under the proposed legislation, Congress would still maintain its constitutionally established oversight authority.

Half of our total budget is funded by local dollars generated within the District of Columbia. The local budget is funded by local District revenue, not Federal dollars. This reason alone justifies why the District should be allowed to approve its own budget.

I believe the District has earned the right to budget autonomy. We have come from under the authority of the Financial Control Board. We have maintained a strong financial position, including a fund balance of $1 billion. We have received clean audits for the last decade. Bond rating agencies have consistently increased our ratings. We have strong internal financial controls.

On the issue of legislative autonomy, after 35 years the process for enacting laws in the District needs to be revised. This process once again denies District residents the basic right granted to other U.S. citizens—the right to enact our own local laws. What is even more interesting is the fact that four territories have been allowed to enact their own laws without congressional review.

The current process involves a review period of 30 legislative days for civil laws and 60 legislative days for criminal laws. Be-

cause the actual legislative days depend on when Congress is in session and not on calendar days, enactment of many District laws is delayed well beyond the 30 or 60 days involved. This prevents the city from enacting laws that are important to addressing the continuous and often changing needs of the city in a timely manner. An example of this was the enactment by the Council of updated terminology found in the D.C. Official Code changing the word "handicap" to "disability." The congressional review for this change was 9 months.

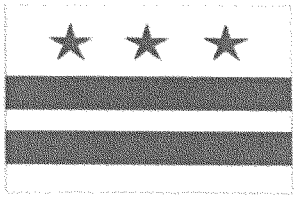
In order to address the needs of government, the Council must use a Byzantine process of passing laws on an emergency, temporary, and permanent basis. A bill passed on an emergency basis is enacted for only 90 calendar days. Because many pieces of legislation passed by the Council do not complete their congressional review during the emergency enactment period, the Council must also pass temporary laws that are in effect for 225 days following the end of the emergency enactment period. In addition, the Council must pass the permanent bill so that ultimately there is a final law that becomes part of the D.C. Code.

In fact, in most of the years between 1997 and 2008, emergency and temporary bills have amounted to over two-thirds of the bills enacted by the Council. We have appended to our testimony a graphic example of that which hopefully you will take a look at. But just within the last Council period that ended in 2008, we had over 600 laws that were passed in the District of Columbia; 465 of those laws were emergency and temporary laws in order to be able to deal with the very difficult process that we face as a result of the current provision under which we operate.

Now is the time to grant the District the right to self determination, budget autonomy, legislative autonomy, and the right to voting representation. I ask you, Chairman Lynch, and the other members of the subcommittee to grant the District government the self determination that all other governments in our country enjoy and to move our residents toward more full citizenship in this Nation.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Gray follows:]



TESTIMONY OF

VINCENT GRAY

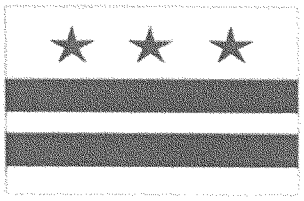
CHAIRMAN

COUNCIL OF THE DISTRICT OF COLUMBIA

BEFORE

THE SUBCOMMITTEE
ON
FEDERAL WORKFORCE, POSTAL SERVICE
AND THE
DISTRICT OF COLUMBIA

NOVEMBER 18, 2009



Introduction

I want to thank you Chairman Lynch for holding this hearing on two important pieces of legislation, H.R.1045, the "District of Columbia Budget Autonomy Act of 2009" and H.R. 960, the "District of Columbia Legislative Autonomy Act of 2009." I also want to thank Congresswoman Eleanor Holmes Norton for introducing both of these bills on behalf of the District of Columbia. These two bills, along with the "District of Columbia House Voting Rights Act of 2009" currently pending in the House, would provide the first real advancement of home rule in the District since the congressional enactment of the limited Home Rule Act over 30 years ago. I will divide my testimony between the discussion of budget autonomy and legislative autonomy.

Budget Autonomy

The District must develop its budget in a timeframe that complies with the complicated and lengthy federal appropriations process. The federal appropriations process forces the District to develop its budget months in advance of the timeframe needed by the city. In fact, the District has had to adopt the federal fiscal year of October 1 - September 30, when another fiscal year may be more appropriate for the city. The congressional appropriations schedule prevents the District from using more current revenue estimates and expenditure needs that would lead to a budget based on better and more complete data. Because an affirmative congressional approval is required the District's appropriation is often caught up in national policy disputes that typically

delay our local budget enactment and that do not have anything to do with the District. These disputes are often costly to the city and delay new initiatives, prevent organizational reforms and create uncertainty about the implementation of important and necessary programs. Complying with the federal appropriations process disrupts service delivery in several troublesome ways:

1. It lengthens the time period between identifying a service need and implementing a solution.
2. Service improvements are further hindered by federal delays in the budget approval process. The average congressional delay since 1996 has been almost three months.
3. Mid-year budget reallocations require an act of Congress, and disrupt service delivery.
4. Delays negatively affect marketability of District bonds.
5. Program managers must 'use or lose" funding at the end of each fiscal year.

In the over 30 years since the enactment of Home Rule the District has made many changes and reforms, and improved its financial operations. The city has even overcome its financial difficulties of the late 90's. It was able to remove the Financial Control Board earlier than originally planned and has built reserves well exceeding most other cities in this country. The District has presented balanced budgets for the last 11 years and received a clean audit for all of those years. These facts along with the fiscal management provided by the city's Chief Financial Officer has earned the District elevations in its bond ratings:

A1 – Moody's, A+ - Standard and Poor's and A+ - Fitch, thus indicating the city's strong financial position. In spite of these accomplishments the District is still subject to the same budget oversight process of 30 years ago.

Over the past several years Congress has not changed the District's allocation of local funds in its budget. In fact, in the last several years Congress has granted approval of the District's local budget by the beginning of the fiscal year without approving federal appropriations. But that timely approval is not guaranteed for every year. The approval of H.R. 1045 would, however, provide that guarantee by removing the approval of the District's local budget by the Congress. Under the proposed legislation Congress would still maintain its oversight authority as provided for in the Constitution.

I would like to provide some examples of how the District suffers from the delays in the appropriation process that make timely modifications to our local budget impossible:

- In FY 2004: The District needed to reallocate funds to support the movement of children from foster care to adoption. This transfer of funding could not be completed for months until a supplemental appropriation bill moved through Congress.
- In FY 2005: The District had to wait for a supplemental appropriation to add additional authority to carry out critically important lead services program activities in the District of Columbia. The lead services program directly involved roughly 24,000 residences. An increase in appropriation authority was required to conduct water filter

replacement and cartridge distribution, and to provide community public education, risk communication and health advice.

- In FY 2007: The District enacted the Community Access to Health Care Omnibus Amendment Act of 2006, which would fund both operating and capital expenditures to improve health care in the District. The District had to wait for congressional action through an amendment to the Continuing Resolution to adjust the District's budget to fund the healthcare initiatives detailed in the Act.

Granting the District budget autonomy would provide the following benefits:

- Allow for better budgeting by not having to start the process four months earlier than would be required if the District managed its own budget.
- Provide increased financial flexibility that would allow the city to react quickly to changes in program and financial conditions.
- It would remove the uncertainties of the current budget process that the bond rating agencies take into account when assessing the District's finances, thus providing the city with an opportunity to save money.

No local government can operate effectively without the ability to respond quickly to changing public needs. As the primary deliverer of services, local governments must be able to respond quickly to varying circumstances by changing programs and services in a timely and responsive manner. All other

state governments in our nation have this flexibility. They control their own programs and budget allocations without approval by Congress. I think all would agree the best group to determine budget allocations to services and programs is the government entity closest to the provision of those services. The local government entity can better assess the needs of its jurisdiction and how to allocate the costs to programs and services provided by the city. I believe that is one reason Congress has not found the need to second guess the District by trying to change its local budget allocations.

It is a fact that half of our total budget is funded by local dollars. For FY 2010 the total budget is $10.1 billion, of which $5.2 billion is the local budget. The local budget is funded by locally earned revenue, not federal dollars. This reason alone gives justification for why the District should be allowed to determine and approve its own budget. The programs and services provided by the city through its local budget also benefit the federal government. The federal appropriation is generally the smaller portion of our total budget. It supports certain programs and services that benefit the operation of the city and the federal government. It also, supports programs that the federal government is interested in having the city implement. It would therefore be appropriate to allow the District to determine how its locally raised revenue should be allocated for the operation of the city without congressional approval, like every other city in this country, and continue Congress' analysis and approval of the expenditure of federal dollars related to the federal appropriation to the District.

I believe the District has clearly demonstrated that we have earned the right to budget autonomy. We have come out from under the authority of the Financial Control Board, we have maintained a strong financial position with substantial cash reserves, we have received clean audits for the last 10 years, the bond agencies have continually increased our ratings and we have established internal financial controls that maintain balanced budgets.

Legislative Autonomy

Legislative Autonomy is another concept whose time has come. The District of Columbia has operated under the current legislative process since the implementation of Home Rule in 1974. Most things in life should be periodically reviewed and updated. After thirty-five years the process for enacting laws in the District needs to be revised. This process, once again, denies the citizens of the United States who happen to reside in the District of Columbia the basic right granted to all other U.S. citizens, the right to enact their own local laws. What is even more insulting is the fact that the four territories are allowed to enact their own laws without congressional review.

The current process involves a review period of thirty legislative days for civil laws and sixty legislative days for criminal laws. Because the actual legislative days depend on when Congress is in session and not calendar days, the enactment of many District laws are delayed beyond the thirty or sixty days. This prevents the city from enacting laws in a timely manner that are important to addressing the continuous and often changing needs of the city. This creates

procedural and operational problems for the District Government as well. An example of this was the enactment by the Council of an update in terminology found in the D.C. Official Code which changed the word "handicap" to "disability." The congressional review for this change was nine months because the language was contained in a criminal code provision and Congress had adjourned sine die, necessitating that the congressional review period begin anew with the 110th Congress. That situation is not atypical, it generally happens every two years, and to a lesser degree during the August recess.

In order to address the needs of government, the Council must utilize a Byzantine process of passing laws on an emergency, temporary and permanent basis. A bill passed on an emergency basis is enacted for only 90 calendar days (three months). Because many pieces of legislation passed by the Council do not complete their congressional review during the emergency enactment period, the Council must also pass temporary laws that are in effect for 225 days following the end of the emergency enactment period. In addition, the Council must pass the permanent bill so that ultimately there is a final law that becomes part of the D.C. Code. For example, in order to prevent a lapse in certain criminal laws the Council had to pass emergency, temporary and permanent bills to maintain the impact of the existing law. So, in many cases the Council must pass three pieces of legislation, often referred to as gap fillers, to enact one law. In fact, in most of the years between 1997 – 2008 emergency and temporary legislation have amounted to over 50% of the bills enacted by the Council (See

Exhibit 1 attached). I am sure you will agree this complicated and cumbersome process is unnecessary, time consuming and should be eliminated.

This process is also costly to the city. The delay in enactment may cause the city not to receive funding in a timely manner. The inability to implement a law at the time of passage by the Council may increase implementation costs. Costs may also increase when the city gears up to implement a law on an emergency and/or temporary basis while awaiting the end of the review period for the permanent law. Another cost is the amount of staff effort and time spent in the Council, the Mayor's office and the Congress. In addition, to preparing the duplicative legislative measures, Council staff must spend time manually counting the actual legislative days. It must be done manually because all congressional adjournments, work periods and recess days cannot always be predicted in advance. Instead of spending time and effort on this time consuming and cumbersome process both the local government and the federal government can better use their funds, time and staff for the work they are charged to perform on behalf of their respective constituencies.

The role of the Council is to identify and address the needs of the city that require legislative action. Once the necessary research and evaluation of the legislation is complete the Council votes to approve the law. Once the Council has made its determination and the Mayor has signed it, the District is prevented from implementing the needed law while it resides in Congress for several months until the required review period has expired. In the years since the enactment of the Home Rule Act there have been only three resolutions of

disapproval by the Congress. Two of these resolutions involved a distinct federal interest. The Congress has over the years changed its approach to reviewing laws passed by the Council. Instead of seeking a resolution of disapproval or drafting a bill that requires processing in the House and the Senate, members have used the more efficient processes of placing provisions in appropriations bills or attachments to other bills. So, in effect the Congress has eliminated the review period and the need for the current process.

Congresswoman Norton's legislative autonomy bill would eliminate a formal review system, thus ending a time consuming and inefficient process for both the District Government and the Congress. Enacting legislative autonomy for the District would relieve the Congress of the time and efforts associated with processing the review of the city's laws and allow it to focus time and attention on federal issues for which the Congress is responsible. Congress does not loose its oversight authority because Article I, Section 8, of the Constitution gives Congress permanent, plenary authority over the District. The Congress will still be able to enact legislation addressing issues for the District or add amendments or provisions to other pieces of legislation on issues related to the District.

Conclusion

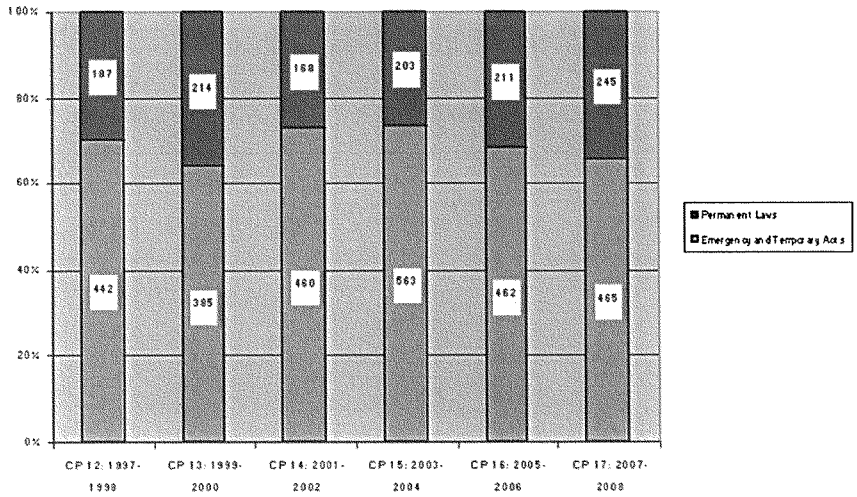
The fundamental right of a representative democracy is self-determination. Indeed to be governed by the consent of the governed is the founding principle of the United States.

Now is the time to grant the District its right to self-determination – budget autonomy, legislative autonomy and the supreme right of voting representation. I ask you Chairman Lynch and the other members of this subcommittee to grant the District Government the self-determination that all other governments in our country have and give its residents the opportunity to achieve the full citizenship, provided for in our Constitution.

As the Home Rule Act has been amended, bills with a negative fiscal impact cannot be implemented. Measures that violate the Constitution, federal law, or the Home Rule Act cannot be approved, and the Congress retains the authority to repeal or amend any law passed by the Council for any reason, at any time. Therefore, the oversight and constitutional authority of the Congress remains in place even with a grant of budget and legislative autonomy.

I look forward to working with you on these two pieces of legislation. I am available to answer any questions you may have.

Exhibit 1: Percentage of Emergency and Temporary Acts versus Permanent Laws: 1997 - 2008



Mr. LYNCH. I thank you, sir. Dr. Gandhi, you are now recognized for 5 minutes for an opening statement.

STATEMENT OF NATWAR GANDHI

Mr. GANDHI. Thank you, Mr. Chairman. Good morning, Mr. Chairman, Chairman Towns, Ranking Member Chaffetz, our own Congresswoman Norton, and members of the committee. As you pointed out, I am Natwar Gandhi, chief financial officer for the District.

I am here to testify today and wholeheartedly endorse expanding the authority of the District to manage its own financial affairs. Not only do I believe that the District's elected leadership has demonstrated its ability to adhere to principles of fiscal responsibility, I also believe that greater budget autonomy would provide the citizens of the District as well as visitors with the highest quality of public services in a timely manner.

The chart that appears before you, Mr. Chairman, is a history of the remarkable fiscal comeback achieved by the District over the past dozen years. Our fiscal low point occurred in 1996 when the General Fund balance hit a negative $518 million. Through the efforts of the elected leaders and the Control Board, we were able repeatedly to balance the District's fiscal operations and the Control Board was deactivated in 2001. Between 1996 and 2001, there was a $1 billion increase in the fund balance. But the real test for the District was the challenge of sustaining fiscal stability in the post-Control period. As you can see at the end of 2005, the General Fund balance rose another $1 billion to $1.6 billion, a turnaround of more than $2 billion.

This improvement was reflected in the credit ratings assigned to the District by the major bond rating agencies. Our bond ratings, which were junk bonds in the mid-1990's, were upgraded to the current A+ category by all three rating agencies simultaneously. Indeed, the turnaround by the District was faster than any major city that experienced severe fiscal distress including Philadelphia, Cleveland, Detroit, and New York.

In addition, our income tax bonds—issued for the first time in March of this year—were assigned a rating of AAA, the highest possible rating by Standard and Poor's, and AA by Moody's and Fitch. I should note that the initial offering of $800 million in income tax bonds has been nominated the "deal of the year" by Bond Buyer magazine. This is a remarkable achievement for a city that was in dire financial straits only a dozen years ago.

Let me note here that the District and nearly every other State and local government in the Nation have been profoundly affected by financial problems because of the depth and duration of this recession. What will distinguish the District when we look back at this period is our absolute commitment to balancing our budget. Mayor Fenty, Chairman Gray, and the Council reacted quickly each time there was a revenue re-estimate to close the budget gaps that were created by lower forecasts.

I would now talk about budget autonomy. Under the current law, all District spending is authorized by the Congress through the Federal appropriation process irrespective of the sources of the revenue.

In the District's 2010 proposed gross budget of $8.8 billion, about $6 billion or 68 percent comes from revenues raised through local sources. Only $188 million in Federal payments were specifically requested from Federal sources. The balance is comprised of formula-based Federal grants which are available to all jurisdictions nationwide.

I would argue that only Federal payments that are specifically and uniquely earmarked for the District should be appropriated by the Congress.

If the District Council were able to set its own schedule to enact the budget, the Mayor and the legislature could always rely upon revenue estimates based on more current data. Currently, the budgets are based in large part on revenue estimates completed in February, some 7 months before the start of the new fiscal year in October and a total of 20 months before the end of the fiscal year. The District does not get actual data on how accurate these revenue estimates are and whether budget expenditures are fully covered until after the end of the fiscal year, almost 2 years later than the budget estimates that were provided at the beginning.

In summary, the District's leadership has the will and the necessary resources to make informed decisions and the District has a proven record of functioning in a fiscally responsible manner.

Mr. Chairman, this concludes my remarks. I will be delighted to answer any questions you may have.

[The prepared statement of Mr. Gandhi follows:]

HEARING ON H.R. 960,

"DISTRICT OF COLUMBIA LEGISLATIVE AUTONOMY ACT OF 2009"

AND H.R. 1045,

"DISTRICT OF COLUMBIA BUDGET AUTONOMY ACT OF 2009"

Before the
U.S. House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Federal Workforce, Postal Service, and the
District of Columbia
The Honorable Stephen F. Lynch, Chairman

November 18, 2009, 10:00 a.m.
Room 2154, Rayburn Building

Natwar M. Gandhi
Chief Financial Officer
Government of the District of Columbia

Good morning, Mr. Chairman and members of the Committee. My name is Natwar M. Gandhi, and I am the Chief Financial Officer for the Government of the District of Columbia. I am here today to testify before this Subcommittee on the issue of budget autonomy for the District of Columbia.

Before I begin, I must note that little has changed since I addressed this body two years ago on the same topic. As I noted then, I wholeheartedly endorse expanding the authority of the District to manage its own financial affairs. Not only do I believe that the District's leadership has demonstrated its ability to adhere to principles of fiscal responsibility, I also believe that greater budget autonomy would provide the citizens of the District as well as visitors with the highest quality of public services in a timely manner.

Today, I will give a short history of the fiscal affairs of the District of Columbia and I will comment on where we stand today with regard to the pressures caused by the national recession. I will address the specific reasons why I believe that greater budget autonomy is warranted for the District.

Fiscal Recovery Since 1996

The chart that appears as Attachment A to my remarks and that appears here before you is a history of the remarkable fiscal comeback achieved by the District over the past dozen years. It is a great testimony to the financially responsible budgeting and fiscal prudence exercised by the District's elected leadership. Our fiscal low point occurred in FY 1996, when the General Fund balance hit a negative $518 million. Through the efforts of Mayor Williams, the District Council and the Congressionally mandated Control Board, we were able repeatedly

to balance the District's fiscal operations, and the Control Board was de-activated in 2001. Between FY 1996 and the end of FY 2001 there was a $1.1 billion increase in the fund balance, to a positive $562 million by the end of FY 2001.

But the real test for the District was the challenge of sustaining fiscal stability in the post-control period. As you can see, at the end of FY 2005, the General Fund balance rose another $1 billion – to $1.6 billion total, a turnaround of more than $2 billion since FY 1996 when the fund balance was a negative $518 million. This improvement was reflected in the credit ratings assigned to the District by the major bond rating agencies. Our general obligation bond ratings, which were "junk bond" status in the mid – 1990s, were upgraded every year through FY 2005 and again in FY 2007 to the current "A1" and "A+" ratings today. Indeed, the turnaround by the District was faster than any major city that experienced severe fiscal distress, including Philadelphia, Cleveland, Detroit and New York.

In addition, our Income Tax Secured Revenue Bonds, issued for the first time in March of this year, were assigned a rating of triple-A, the highest possible rating, by Standard & Poor's and double-A by Moody's Investors Service and Fitch Ratings, above the general obligation bond rating and the highest ratings ever assigned by those agencies. I should also note that the initial offering of the District's $801 million of Income Tax Bonds has been nominated for "Deal of the Year" by the *Bond Buyer*, the newspaper that covers the municipal bond industry. This is a remarkable achievement for a city that was in dire financial straits only a dozen years ago.

Since that time, the District's elected leadership has chosen to use some of that fund balance to provide for much needed one-time expenditures, such as

supplements to our contribution to the Other Post-Employment Benefits (OPEB) Trust and pay-as-you-go capital expenditures (PAYGO). As a result, at the close of Fiscal Year 2008 the District's General Fund balance stood at about $1.2 billion.

A great deal of the increase in fund balance was driven by the growth in local revenues, specifically by real estate, income and sales taxes resulting from the strong regional economy. Table 1 below compares tax revenues, General Fund balance and reserve funds in FY 1996 and in FY 2008, and reflects the revenue growth (an increase of 111 % in current dollars and 54% in inflation adjusted "real dollar" terms). However, prudent fiscal leadership and responsible financial management provided by both Mayor Williams and Mayor Fenty and the Council contributed substantially to the increased General Fund balance.

Table 1
Comparison of Key Financial Measures
($ in thousands)

	FY 1996	FY 2008
Tax Revenues *	$2,422,144	$5,106,963
Operating Surplus/(Deficit)	($33,688)	$191,370
General Fund Balance	($518,249)	$1,244,722
Reserves Available for Operations **	($332,357)	$416,963
Operating Reserves as % of Expenditures	--	6.7%

** Net of Dedicated taxes.*
*** Includes Congressionally-mandated Emergency and Contingency Reserves plus unreserved undesignated General Fund balance.*

It is too early to state what the FY 2009 closing fund balance will be, because we are in the midst of the year end procedures that will produce final numbers for the fiscal year. What I can say is that there were significant budget challenges caused by estimated revenue reductions of nearly $600 million between June 2008 and June 2009, a result of the pressures of the national recession. Mayor Fenty and the

Council reacted quickly each time there was a re-estimate of our revenues in FY 2009 to close the budget gaps that were created by the lower forecasts. Because of this drop in revenue, almost certainly there will be a further drop in the fund balance, but not to the point where the financial viability of the District is endangered. Indeed, the District is obligated to keep Emergency and Contingency Funds of 6 percent of the budget on hand to pay for events such as natural disasters or needs not foreseen at the time of budget formulation.

Let me note here that the District and nearly every other state and local government in the nation have been profoundly affected financially by the depth and duration of the recession. What will distinguish the District when we look back at this period is our absolute commitment to balancing our budget. For the current fiscal year, FY 2010, Mayor Fenty proposed and the District Council, under the leadership of Chairman Gray, adopted the District budget using the same conservative budgeting principles and sound financial practices that the District has followed since the end of the Control period. As pointed out earlier, the measure of this success is reflected in the District's bond ratings.

Budget Autonomy

I would now like to speak about why I believe, from a financial management perspective, the District should have discretion with respect to the allocation of funds raised from local sources.

Under current law, all District of Columbia spending is authorized by the Congress through the federal appropriations process, irrespective of the source of revenue underwriting such spending. In the District's FY 2010 proposed gross budget of $8.8 billion, about $6.0 billion, or 68 percent, comes from revenues raised through

local taxes, fees, fines, and user charges. Only $188 million in federal payments were specifically requested in the FY 2010 President's Budget from federal revenues for programs and projects unique to the District of Columbia. The balance is comprised of formula-based federal grants which are available to all jurisdictions nationwide.

I would argue that only the federal payments that are specifically and uniquely earmarked for District programs or federal initiatives should be appropriated by the Congress. In the case of local funds, the Congress has rarely altered an allocation made by the District. Federal grants to the District have already been appropriated to the federal agency responsible for program administration and awarded to the District. Having already been appropriated to a federal transferring agency, these federal grants should not need to be "re-appropriated" to the District.

Were the Congress to modify current law in the direction of reducing its role in the District's appropriation process, a range of possibilities would still remain to exercise oversight over the District's budget and operations. These might include periodic audits, after-the-fact review of the District's locally enacted budget, or review of the District's locally enacted budget by the appropriate oversight group in the Congress. Federal payments directly appropriated to the District would remain within the federal appropriations process.

Benefits to the District

Faster and smoother enactment of budgets. Because the District currently receives all its authority to spend funds only through the federal appropriations process, the District cannot enact the budget approved by its elected representatives until Congress passes and the President signs the District's appropriations bill. This

situation guarantees a four-month lag between local approval and federal enactment. However, federal appropriations bills are often delayed beyond this period, as is the case with the current FY 2010 fiscal year. There are adverse consequences for the District since it is tied to the federal appropriations cycle. In the case of new or expanded programs approved and financed locally or with federal grants, no action can be taken during the fiscal year until Congress passes its appropriations act, or includes language in the Continuing Resolution to permit the District to spend these funds at the approved level. For years, the CR's have included just this language, thereby removing the unnecessary and unfortunate delays in programs that had previously existed. This extra effort with the language in the CR is very much appreciated, but it is never certain. With budget autonomy, it would not be necessary.

Also, 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. Thus another critical aspect of faster budget enactment would be that budgets could be based on more current revenue estimates. This became apparent this summer when my office issued a new revenue estimate June 22, after the Council had approved the budget, but before Mayor Fenty had returned it to Council with a single line-item veto.

The June estimate showed a drop of $190 million of revenue in FY 2009, and a projected drop of $150 million in FY 2010, forcing the Mayor and Council to go back to the drawing board. To their great credit, both Mayor Fenty and Council moved swiftly to revise the budget to reflect the lower revenues, but this was far from an optimal way of doing business.

If the District Council were able to set its own schedule to enact a budget, the Mayor and legislators could always rely on revenue estimates based on more current data. Currently, budgets are based in large part on revenue estimates completed in February, some seven months before the start of the new fiscal year in October and a total of 20 months before the end of that fiscal year. The District does not get actual data on how accurate these revenue estimates are, and whether budgeted expenditures are fully covered, until after the end of that fiscal year, almost 2 years after the original revenue estimates were made.

Maximum Local Financial Flexibility. Providing the District with the authority to direct the spending of its locally raised revenue would substantially increase the District's ability to react to changing program and financial conditions during a fiscal year. Under current law, the District must follow the federal supplemental appropriation process to appropriate additional revenues that become available during the course of the fiscal year or to make any significant realignment in resources among its appropriations. All program plans premised on supplemental appropriations are held in abeyance while Congress considers the request.

It should be noted that since the early part of the decade, Congress has provided increasing degrees of budget flexibility to the District. Currently, if our revenues exceed projections, the District is allowed to increase our appropriations ceiling. Specifically, if local tax base revenues increase, spending of that revenue source may be increased up to 6 percent. Similarly, if dedicated revenues or O-type revenues increase, spending in that category may be increased up to 25 percent. However, this authority still requires a 15-day Congressional review

period during which the monies cannot be spent. Also, the authority is not permanent but is derived from a general provision in an annual appropriations bill that must be continually renewed.

As you can see from these examples, because of the lack of permanent budget autonomy, the District cannot always react as swiftly or effectively as possible to meet the needs of residents and visitors. To the best of my knowledge, no other municipality in the nation functions under such restrictions.

Mechanisms and Safeguards for Assuring Financial Integrity

The District of Columbia Financial Responsibility and Management Assistance Act of 1995 (the Act), coupled with the continuation of an independent Office of the Chief Financial Officer, provides the framework for assuring financial integrity without the need for imposing the federal appropriation process on local fund budgets. The Act details specific benchmarks for financial management within the District and provides for the reinstitution of a control board and other constraints if the District fails to meet these major financial obligations. These financial benchmarks remain in effect under the proposed Budget Autonomy legislation.

Further, in October 2006, Congress enacted the 2005 District of Columbia Omnibus Authorization Act, which re-established, within the District's Home Rule Act, a permanent Office of the Chief Financial Officer. The Office of the Chief Financial Officer provides an independent assessment of key financial data – annual comprehensive financial reports, revenue estimates, fiscal impact statements, and all other consequential financial data. The Chief Financial Officer's duties are not changed by the proposed Budget Autonomy legislation. I believe that the existence of an independent Chief Financial Officer, chartered by

the Congress to oversee the fiscal stability of the District, along with the prudent financial leadership demonstrated by our elected officials, is sufficient to ensure fiscal discipline without the added complexity of putting local spending plans through the federal appropriations process.

Fiscal Condition and Financial Improvements

There is no question that the District has the financial infrastructure to permit it to manage its local funds effectively. We have a strong accounting system linked to our budget oversight processes. Monthly closings and cash reconciliation are in place. Financial managers have a clear understanding of expectations. The improved financial reporting infrastructure has enabled the OCFO to supply elected leaders with sound fiscal analysis. Clean audit opinions by the District's independent auditors have become routine. Moreover, since the deactivation of the Congressionally created control board in 2001, the District's elected leaders have achieved an exemplary record of fiscal prudence. Financial markets have recognized it in the form of higher bond ratings and lower interest rates on our borrowing.

In summary, the District's leadership has the will and the necessary resources to make informed decisions and the District has a proven record of functioning in a fiscally responsible manner. Based on this commendable record, our elected leadership deserves a greater degree of confidence in the form of budget autonomy.

High Needs and Restricted Tax Base

The District, as the urban center of a large metropolitan area, houses a disproportionately large share of very poor and needy citizens. The District's overall poverty rate of 17 percent and child poverty rate of 26 percent are among

the highest in the nation and more than three times the comparable rates across neighboring counties.[1] Unlike other urban jurisdictions that provide services to a large share of the region's poor, the District cannot divert resources from wealthier suburban areas to serve its urban poor

Higher costs of service delivery further threaten the District's fiscal health. Labor costs for public services in the District are 123 percent of the national levels, and capital costs (primarily buildings) are 1.54 times the national average. Because of this combination of a needy population and high service costs, our expenditure needs are very high. If the District were to offer a basket of public services similar to what is offered across all states and localities in the nation, for each of its residents, it would have had to spend 132 percent more than what other states and localities spend on average.[2]

In this environment of continuing expenditure needs, the challenge posed by reduced revenues is substantial. Now, here is where the U.S. Congress plays an important role. Kindly permit me to briefly note two areas that merit continuous attention. Both go to the unfunded mandates that restrict the District's own taxing power. [3]

- The prohibition on taxing the income earned by non-residents, including those who commute into the city on a daily basis. That 66 percent of the income is earned by non-residents makes the simple point.
- The District has an especially high concentration of non-taxable real property, much of it off the tax rolls due to the presence of the federal

[1] Census Bureau, American Community Survey, 2008.
[2] District of Columbia, Office of Revenue Analysis, 2008.

establishment. The value of property held by the federal government is 30 percent of non-residential property values.

Because of the inability to tap these resources, our residents must shoulder a disproportionate share of the costs of public services, while the benefits generated by the city's taxpayers are shared by a much larger community. Our 14th consecutively balanced budget attests to the fact that we have not allowed these deficiencies to become an excuse for fiscal irresponsibility. The looming danger, given the economic conditions in the nation combined with the District's high expenditure needs is that, should our revenue growth slow down, District services could be severely impaired.

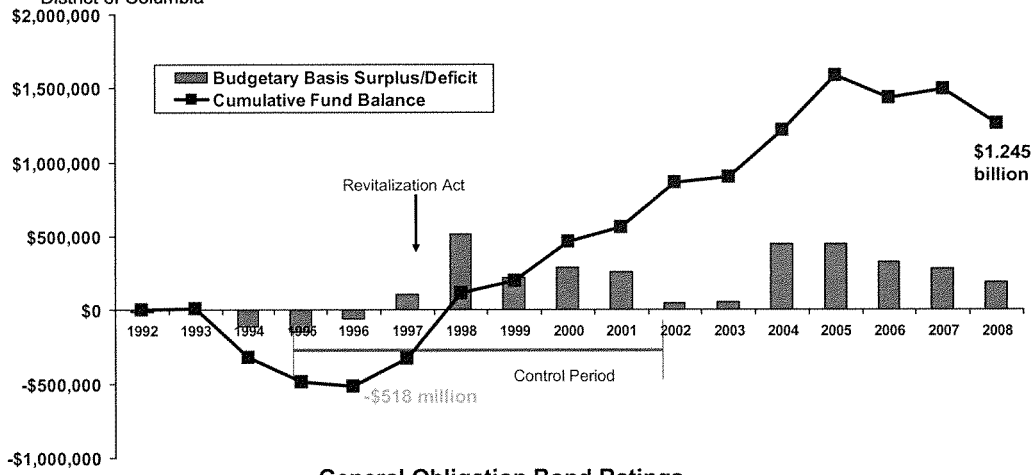
Mr. Chairman, this concludes my remarks. I would be pleased to answer any questions you might have.

# # #

[3] In 2003, the General Accounting Office (now Government Accountability Office) calculated this preemption to be between $470 million and $1.1 billion annually. (GAO, District of Columbia Structural Imbalance and Management Issues, May 2003.)

District of Columbia

Surplus and Bond Rating History



General Obligation Bond Ratings

S&P:	A-	A-	A-	BBB-	B	B	BB	BBB	BBB	BBB+	BBB+	A-	A	A+	A+	A+	A+
Moody's:	Baa	Baa	Baa	Ba	Ba	Ba2	Ba1	Ba1	Baa3	Baa3	Baa1	Baa1	A2	A2	A2	A1	A1
Fitch:		A-	BBB+	BB	BB	BB	BB+	BB+	BBB	BBB	BBB+	A-	A-	A	A	A+	A+

2009 Income Tax Secured Revenue Bonds: S&P: AAA Moody's: Aa2 Fitch: AA

ATTACHMENT A

Mr. LYNCH. Thank you, sir. Ms. Rivlin, you are now recognized for 5 minutes for an opening statement.

STATEMENT OF ALICE M. RIVLIN

Ms. RIVLIN. Thank you, Mr. Chairman and members of the committee. Thank you for holding this hearing.

I am happy to be here to discuss greater autonomy for the District of Columbia. I strongly support both the bills before you but I will confine my remarks to budget autonomy.

I believe that greater autonomy for the District of Columbia is a test of the seriousness of Congress's commitment to democracy. The United States is justifiably proud of our democratic tradition. We send our finest young men and women to faraway places to fight and die for democratic ideals. Our national leaders advocate democracy around the world. But right here at home, Congress apparently doubts that the citizens of the District of Columbia can be trusted to elect leaders who will make wise decisions about local policy and even about how to spend our own locally collected tax revenue. When Congress passed the Home Rule Act in 1973, it retained ultimate control over D.C. legislation, budgeting, and borrowing.

At that time, congressional skepticism was understandable. The citizens of the District had been ruled like colonial subjects for a long time and had no experience with electoral politics or self government. And the inexperience showed when the city faced fiscal crisis in 1995. And I believe that the Congress, working with the Clinton administration, took the necessary and appropriate action when it created the D.C. Financial Resources Management and Assistance Authority—that was its real name—better known as the Control Board. That same legislation created an independent office of the chief financial officer, a much needed contribution to strengthening fiscal oversight in the District. As the CFO has said, Control Board actions, supported by the City Council combined with an improving economy, turned the District's budget outlook from dismal to positive in a very short time.

Young democracies learn from their mistakes and the District of Columbia government has amply demonstrated in recent years that it learned from the experience of the 1990's and is able to manage its own resources responsibly. It has balanced its budget every year since the control period ended and earned clean audits, albeit with some expressions of concern from the auditors from time to time. It has built up a large fund balance and significant cash reserve. Growing Wall Street respect for the District's financial management has been reflected in increasingly favorable ratings for its general obligation bonds and a AAA rating for its recent income tax-backed bond issue, as the CFO has noted.

Now is the time for Congress to show its commitment to democratic government by trusting the citizens of the District of Columbia through their elected officials to handle their own fiscal affairs without interference or delay from Congress. In fact, in recent years Congress has interfered far less than it used to in the District's budget and tried to accommodate the District's needs by keeping District appropriations from getting caught in lengthy disputes over Federal spending bills that drag on long after the budg-

et year has begun. This confidence is reassuring but it should be reflected in law.

If H.R. 1045, the District of Columbia Budget Autonomy Act of 2009, were enacted, District officials could design their own process for coming to budget decisions. Once a budget reflecting spending out of its own revenues was passed by the Council and signed by the Mayor, it could not be altered by Congress or delayed by the congressional appropriations process. Budget autonomy for the District is a win-win for the District and the Federal Government as well a demonstration of national confidence in the democratic process.

Thank you, Mr. Chairman and members of the committee.

[The prepared statement of Ms. Rivlin follows:]

"The Case for Fiscal Autonomy in the District of Columbia"

Statement of Alice M. Rivlin*
Hearing on Greater Autonomy for the Nation's Capital
Subcommittee on Federal Workforce, Postal Service and the District of Columbia
U.S. House of Representatives
Wednesday, November 18, 2009

Mr. Chairman and members of the committee:

I am happy to be here to discuss greater autonomy for the District of Columbia. I support both of the bills before you, but will focus most of my remarks on H.R. 1045, "The District of Columbia Budget Autonomy Act of 2009."

I believe that greater autonomy for the District of Columbia is a test of the seriousness of Congress' commitment to democracy. The United States is justifiably proud of our democratic tradition. We send our finest young men and women to far away places to fight and die for democratic ideals. Our national leaders advocate democracy around the World. We preach that democratically-elected governments are more responsive to public needs, that they require greater accountability for public funds, are more transparent and less corrupt, and that they are more likely to foster economic efficiency and peaceful resolution of disputes. We use our public resources to teach others how to hold elections and make democratically-elected governments function, even in places with no tradition of political freedom or public engagement comparable to our own.

***Alice M. Rivlin is a Senior Fellow at the Brookings Institution and a Visiting Professor at Georgetown University. The views expressed in this statement are strictly her own and do not necessarily reflect those of staff members, officers, or trustees of the Brookings Institution or Georgetown University.**

But right here at home, Congress apparently doubts that the citizens of the District of Columbia can be trusted to elect leaders who will make wise decisions about local policy, even about how to spend their own locally-collected tax revenues. The Home Rule Act of 1973 grudgingly allowed the District to elect a Mayor and City Council, but retained ultimate control over D.C. legislation, budgeting, and borrowing. At the time, Congressional skepticism was understandable. The citizens of the District had been ruled like colonial subjects for a long time, and had no experience with electoral politics or self-government. Home Rule was viewed as an experiment, and when the District came close to bankruptcy in 1995 many viewed the experiment as a failure—never mind that New York, Cleveland, Philadelphia, and many other cities also had similar fiscal crises. So the federal government once more took charge.

I believe that Congress, working with the Clinton Administration, took necessary and appropriate action when it created the D.C Financial Resources Management and Assistance Authority (better known as the "Control Board") in 1995. That legislation temporarily transferred fiscal authority to an unelected board in a serious crisis, but provided for the transfer of power back to elected leadership once the District had demonstrated its ability to handle its financial affairs responsibly by balancing its budget and obtaining clean audits for several successive years. The same legislation created an independent Office of the Chief Financial Officer (OCFO)—a much needed contribution to strengthening fiscal oversight in the District. Control Board actions, supported by the City Council and combined with an improving economy, turned the District's budget outlook from dismal to positive in a remarkably short time. The District of Columbia Revitalization Act of 1997 also helped put the District's finances on a more solid basis by transferring to the federal government some of the state-like spending responsibilities of the District and relieving it of the unfunded pension liability left over from the "colonial" period. By the time I took over as the second chair of the "Control Board" in 1998, the city was on the way back to fiscal health. The Board then worked closely with the Mayor,

the Council, and the OCFO to transition the city back to elected leadership, and went out of business on September 30, 2001.

Young democracies learn from their mistakes, and the District of Columbia Government has amply demonstrated in recent years that it learned from the experience of the 1990's and is able to manage its own resources responsibly. It has balanced its budget every year since the control period ended and earned clean audits (albeit with some expressions of concern from the auditors about specific weaknesses). It has built up a large fund balance and significant cash reserves. Growing Wall Street respect for the District's financial management has been reflected in increasingly favorable ratings for its general obligation bonds and a triple A rating for a recent income-tax backed bond issue. The executive and the legislative branches have often had different priorities, but they have worked out their differences and made budget decisions on time. The District weathered the recession at the beginning of this decade, making the necessary adjustments when slower economic growth cut into revenues. It appears to be adjusting to the more severe current recession as well.

Now is the time for the Congress to show its commitment to democratic government by trusting the citizens of the District of Columbia, through their elected officials, to handle their own fiscal affairs without interference or delay from Congress. In fact, in recent years Congress has interfered far less than it used to in District budgets and tried to accommodate the District's needs by keeping District appropriations from getting caught in lengthy disputes over other federal spending bills that drag on long after the budget year has begun. This confidence is reassuring but should be reflected in law.

If H.R. 1045, "The District of Columbia Budget Autonomy Act of 2009," were enacted, District officials could design their own process for coming to budget decisions. Once a budget reflecting spending out of its own source revenues was passed by the Council and signed by the Mayor, it could not be altered by Congress

or delayed by the Congressional appropriations cycle. The District would be able to choose its own fiscal year. Like most States it would likely choose a fiscal year starting on the first of July to shorten the period of budget debate and make sure educational institutions received their funding well before the school year started. Such a vote of confidence in democracy and in the citizens of the District would free the Congress from the task of second guessing the District's government on local spending issues. Enacting this legislation would not affect Congressional responsibilities for the District under the Constitution, nor would it repeal the legislation that would revive the "Control Board" in the event of a future financial meltdown in the District.

Budget autonomy for the District is a win-win for the District and the federal government, as well as a demonstration of national confidence in the democratic process.

Thank you, Mr. Chairman and members of the Committee.

Mr. LYNCH. Thank you. Mr. Smith, welcome. You are now recognized for 5 minutes.

STATEMENT OF WALTER SMITH

Mr. SMITH. Good morning. Thank you, Mr. Chairman. It is an honor for me to appear before this distinguished panel. It is also an honor for me to be a member of this distinguished panel this morning. I am from D.C. Appleseed. We are a nonprofit organization that tries to address the issues facing citizens of the District, and one of the issues that has always faced citizens of the District was striving toward getting the same kind of full democracy that other citizens of this country have. These two bills are an important step in achieving that greater democracy.

The bill that I want to talk about is the legislative autonomy bill. It seems to me that bill is the right thing to do for three reasons. First of all, it is a fair and sensible thing to do and it is a practical thing to do. Second, it is completely consistent with what the Congress did in the Home Rule Act. And third, it is completely consistent with the District Clause authority that the Congress has and will retain if this bill is passed.

What makes it such a practical thing to do is that the Congress has not used this layover authority once in almost 20 years. It has only used it three times since the Home Rule Act was passed. Congress has found other means and methods to review actions by the D.C. Council. And yet, as Chairman Gray pointed out, the Council has to continue to bombard you and members of your staff with pieces of legislation, the majority of which are designed to address the fact that they have to have emergency bills and temporary bills to be a gap-filler.

In fact, the numbers are actually staggering. Since Home Rule, 4,400 pieces of legislation have been passed. They are sent to 11 different places upon the Hill, which means almost 48,000 pieces are coming up here. As Mr. Cummings pointed out, this avalanche of documents is unnecessarily burdensome to the Congress. Presumably Members of Congress and their staff are looking at these pieces as they come up to no effect at all.

As the Home Rule Act itself said when passed, the purpose of the Home Rule Act was to grant to the inhabitants of the District of Columbia powers of local self government and to relieve Congress of the burden of legislating upon essentially local District matters. This bill advances that very important purpose of the Home Rule Act.

The other important point to make is that even if you remove the layover provision, you retain the full authority and responsibility under the District Clause to review and revise any legislation as you choose, as the Home Rule Act otherwise points out. But it is important to remember, and I urge upon you what the Framers had in mind when they first adopted the District Clause: It was to protect the Federal Government's interest in the national capital. The purpose was not to entrust to the national legislature the burden and the responsibility of legislating upon local matters.

I would just urge upon you, if you ever want to read what the Framers had in mind, it is contained in Federalist No. 43, which James Madison wrote. Let me just quote what I think is the most

important part of that Federalist No. 43 for purposes of the legislative autonomy bill before you today. He said, "Residents of the District," this has to do with ceding land for purposes of founding the Nation's Capital. He said residents of the Nation's Capital, "will find sufficient inducements of interest to become willing partners of the session, because a municipal legislature for local purposes, derived from their own sufferages, will, of course, be allowed them."

Mr. Madison was recognizing that the District Clause was designed to protect Federal interests, not to take away from the citizens who lived in what would become the Nation's Capital the right to have their own self government and to decide local issues for their own municipal legislature.

So I applaud Ms. Norton and the supporters of this bill because this bill takes a step—a practical, fair step—toward achieving what James Madison was talking about so long ago.

[The prepared statement of Mr. Smith follows:]

DC APPLESEED
C E N T E R

1111 Fourteenth Street, NW
Suite 510
Washington, DC 20005

Phone 202.289.8007
Fax 202.289.8009
www.dcappleseed.org

TESTIMONY OF WALTER SMITH, EXECUTIVE DIRECTOR
DC APPLSEED CENTER FOR LAW AND JUSTICE

U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

Rayburn House Office Building Room 2154
November 18, 2009

"Greater Autonomy for the Nation's Capital"

Good morning Chairman Lynch and members of the Subcommittee. I am Walter Smith, Executive Director of the DC Appleseed Center for Law and Justice. DC Appleseed is a nonprofit public interest organization that addresses important issues facing residents of the National Capital Area. It is an honor to have the opportunity to present testimony on H.R. 960, the "District of Columbia Budget Autonomy Act of 2009," and H.R. 1045, the "District of Columbia Legislative Autonomy Act of 2009."

These two bills, along with the DC Voting Rights Act now pending in Congress, represent a critical step toward the advancement of democracy and self-government for the residents of the Nation's Capital. While my testimony will focus primarily on legislative autonomy, the constitutional and legislative principles involved apply to both bills. I will leave it to my distinguished colleagues to discuss the budget autonomy proposal in more detail.

There are two main points I would like to make about the bills which are the subject of today's hearing. First, these bills, both of which constitute amendments to D.C.'s Home Rule Act, are consistent with and advance a key provision of that Act – to relieve Congress of the burden of day to day decision making on purely local matters "to

the greatest extent possible." It accomplishes this purpose in the legislative autonomy bill by eliminating a cumbersome, wasteful, and now outdated review process which intrudes on congressional resources and unnecessarily delays the implementation of local laws. Second, the proposals before you today are consistent with and advance the intent of the Framers of the Constitution regarding the government of the District of Columbia – that purely local matters should be decided by the local District government.

I. The Proposed Amendments Are in Accord With Congress' Stated Intent in Passing the District of Columbia Home Rule Act.

The stated purpose of the Home Rule Act is to "grant to the inhabitants of the District of Columbia powers of local self-government...and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters."[1] This grant is limited, however, by the retention of "ultimate legislative authority over the nation's capital" to Congress.[2]

To that end, when it passed the Home Rule Act in 1973, Congress included several provisions to ensure its continued authority over the District. One provision, Section 601, will remain unchanged by these proposed amendments. In that section, Congress expressly retained the power to override any decision made by the locally-elected Council of the District of Columbia:

> Notwithstanding any other provision of this chapter, 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 chapter, including legislation to amend or repeal any law in force in

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[1] The District of Columbia Home Rule Act, Sec.102, approved December 24, 1973 (87 Stat. 774), *now codified at* D.C. Code § 1-201.02(a) (2007).
[2] *Id.*

> the District prior to or after enactment of this chapter and any act passed by the Council.[3]

The bill does, however, reform a second provision of the Home Rule Act which contains an outdated procedural mechanism for reviewing legislation enacted by the Council of the District of Columbia. Section 602 requires a 30- or 60-day lay-over and review period for local legislation before it can take effect.[4] Congress also created a procedure under Section 602 whereby local legislation may be overturned during this layover through resolutions of disapproval, which must be approved by majorities in both the House of Representatives and the Senate, and signed by the President. Although the lay-over period appears to have been intended as an added safeguard for Congressional prerogatives, in practice it has proven to be unnecessarily burdensome and an inefficient oversight tool. In fact, it has been nearly 20 years since Congress last employed Section 602 to nullify local legislation, and has done so a total of only three times during the entire 35 years of Home Rule.[5]

In practice, Congress now exercises its legislative authority over the District, not through the lay-over and review period of Section 602, but through the ordinary legislative process. That authority, which is expressly provided for in the Home Rule Act

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[3] Home Rule Act, Sec. 601, *now codified at* D.C. Code § 1-206.01 (2007).

[4] *Id.*, Sec. 602, *now codified at* D.C. Code § 1-206.02(c)(1-2).

[5] Congress has utilized its authority under Section 602(c) of the Home Rule Act to nullify the following acts of the Council of the District of Columbia:

(1) The Location of Chanceries Act of 1979, D.C. Act 3-120, adopted on final reading by the Council October 9, 1979, signed by the Mayor November 9, 1979 (26 DCR 2188). Disapproval was effective December 20, 1979.

(2) The District of Columbia Sexual Assault Reform Act of 1981, D.C. Act 4-69, adopted on final reading by the Council July 14, 1981, signed by the Mayor July 2, 1981 (28 DCR 3409). Disapproval was effective October 1, 1981.

(3) The Schedule of Heights Amendment Act of 1990, Act 8-329, adopted on final reading by the Council December 18, 1990, signed by the Mayor December 27, 1990 (38 DCR 369). The disapproval was effective on March 21, 1991.

and is constitutionally based, will not be diminished with this Amendment. In fact, this authority will be made more efficient and more consistent with the goal of relieving Congress of the burden of excess, day-to-day oversight of purely local matters. Here is why.

Every act approved by the DC Council is transmitted to at least 11 different officials and committees in Congress, including the Speaker of the House, President of the Senate, the chairs and ranking members of appropriate committees and subcommittees, as well as to DC's Delegate to Congress, Eleanor Holmes Norton.[6] During the most recent Council period (2007-2008), a total of 394 legislative acts were passed, yielding over 4,300 transmittals to Congress.[7] From January of 1975, when the Council first exercised its legislative authority under the Home Rule Act, through June of 2009, the Council has transmitted for Congressional review approximately 4,400 (4,367) acts, resulting in over separate 48,000 transmittals to Congress.[8]

While the Home Rule Act was intended to relieve the Congress of the day-to-day burdens of local governance in the District, Section 602 instead adds to that burden. The lay-over period obliges congressional staffers to review tens of thousands local ordinances passed by the DC Council. In practice, these transmittals are no longer used by Congress to exercise its review authority. As mentioned earlier, Congress has used the Section 602 procedure only three times to overturn local laws, and has not done so in nearly 20 years.[9]

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[6] Brian K. Flowers, General Counsel, Council of the District of Columbia, testimony before the DC Council Special Committee on Statehood and Self-determination, June 1, 2009 at 12.
[7] *Id.*, Exhibit 2.
[8] *Id.*, at 10-11.
[9] See *supra* note 5.

Eliminating the lay-over procedures would not only be less burdensome to Congress, but it would also contribute to the expediency and efficiency of District government. The 30 or 60 day lay-over periods are not calendar days, but legislative days when at least one chamber of Congress is in session.[10] It generally takes approximately 3 months until a law passed by the DC Council can take effect.[11] Often, the wait is much longer. When the Congress adjourns sine die, all District acts that have not completed review must be resubmitted in the next Congress, and the count begins anew. As a result, the lay-over period in practice needlessly delays the effectiveness of District laws.

Moreover, while permanent legislation is pending congressional review, the Council will often pass emergency legislation, which remains in effect for 90 days; or temporary legislation, which is effective for 225 days. The Council frequently passes multiple measures help fill the gap when Congress is in recess or adjourned. In fact, according to the General Counsel for the Council of the District of Columbia, "between 50 and 65 percent of the legislative measures (act and resolutions) the Council adopts could be eliminated if there (were) no Congressional review requirement."[12] It appears that neither the Home Rule Act nor the District Clause of the Constitution were intended to produced such an unreasonable result. It is time, therefore, to eliminate this wasteful procedure.

II. The Proposed Amendments to the District of Columbia Home Rule Act Are in Accord With the Intent of the Framers of the Constitution

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[10] D.C. Code § 1-206.02(c)(1).
[11] See Flowers, *supra* note 6, at 7.
[12] *Id.*, at 5.

Eliminating this procedure is not only consistent with the Home Rule Act; it is also consistent with the Framers' intent. The District Clause of the Constitution establishes an independent district for the seat of federal government and states that "Congress shall have power...to exercise exclusive Legislation in all Cases whatsoever, over such District...as may...become the Seat of the Government of the United States..."[13] The Framers proposed a district over which it would have "exclusive" legislative authority out of a concern for the ability of the federal government to protect federal interests without having to depend upon the power or cooperation of a host state. Significantly, however, in reserving this "exclusive" authority to Congress, the Framers did *not* intend to bar Congress from delegating its authority over *local matters* to a municipal government. In fact, they anticipated such a delegation, expected it to be accomplished by Congress, and the courts have fully supported the ability of Congress to do so.

To understand this key point, it is important to explain the genesis of the Capital's creation and the development of the District Clause. Both sprang from an incident that occurred during the meeting of the Continental Congress in Philadelphia in 1783.[14] A group of disgruntled veterans, seeking back pay for service in the Revolutionary War, gathered in front of the building where Congress was meeting. The Members of Congress felt threatened by the group, which spoke "offensive words" and waved their muskets about.[15] The Pennsylvania state government refused to intervene, forcing Congress to flee to New Jersey. This incident was fresh on the minds of the delegates to

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[13] U.S. CONST. art. I, § 8, cl.17.
[14] *Adams v. Clinton*, 90 F. Supp. 2d 35, 50 n.25 (2000), *aff'd*, 531 U.S. 941 (2000).
[15] Peter Raven-Hansen, *Congressional Representation for the District of Columbia: A Constitutional Analysis*, 12 Harv. J. on Legis. 167, 169 (1974 – 1975) [hereinafter Raven-Hansen].

the Constitutional Convention four years later, when the establishment of an independent capital district for the seat of federal government was proposed.

As a result, the discussion in the Constitutional Convention regarding the establishment and location of the federal capital revolved around the ability to protect the federal government and to bar any possibility of favoritism resulting from the location of the federal capital within a particular state.[16] The delegates wanted exclusive federal control over the capital in order to avoid any difficulties of enforcement that might arise as the result of concurrent jurisdiction with the states. As a result, a clause establishing an independent federal district granting exclusive legislative power to Congress was introduced and passed with little debate, becoming the District Clause of the Constitution.[17]

In the debates preceding ratification by each of the states, committee members clarified the intent of Congress in approving the Clause. In North Carolina, in answer to a question about the extent of congressional powers over the district, Representative Iredell reminded listeners of the incident in Philadelphia, "Do we not all remember that, in the year 1783, a band of soldiers went and insulted Congress? ... It is to be hoped that such a disgraceful scene will never happen again; but that, for the future, the national government will be able to protect itself."[18] In Virginia, James Madison asked, "How

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[16] JAMES MADISON, THE DEBATES IN THE FEDERAL CONVENTION OF 1787 WHICH FRAMED THE CONSTITUTION OF THE UNITED STATES OF AMERICA, (Gaillard Hund & James Brown Scott, eds. 1920) (statement of Col. James Mason of Virginia) (stressing the importance of independence from state interference in order to avoid jurisdictional disputes and the addition of "a provincial tincture to ... national deliberations").
[17] Raven-Hansen, at 171.
[18] JONATHON ELLIOT, ELLIOT'S DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE CONSTITUTION 219-220 (1901) [hereinafter Elliott].

could the general government be guarded from the undue influence of particular states, or from insults, without such exclusive power?"[19]

Madison later wrote in his Federalist No. 43, in regard to this grant of exclusive power, that "[w]ithout it, not only the public authority might be insulted and its proceedings interrupted with impunity; but a dependence of the members of the general government on the State comprehending the seat of the government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonorable to the government and dissatisfactory to the other members of the Confederacy."[20] Thus, the overwhelming concern of the Framers of the District Clause, in granting the power to "exercise exclusive Legislation" to Congress, was to protect federal interests at the seat of government, *not to task Congress with the micromanagement of local affairs.* In fact, there is no evidence that the Framers intended to limit the ability of Congress to delegate local decision-making authority over matters of local concern.

Moreover, although the Framers were primarily concerned with the relationship of the capital District to outside interests in shaping the District Clause, they expressly recognized the need for the delegation of authority over local matters to local residents. In his Federalist No. 43, Madison recognized that residents of the District "will find sufficient inducements of interest to become willing parties of the cession [of land from the states to the District]...[because, among other reasons], a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them...."[21]

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[19] Elliot, at 433.
[20] THE FEDERALIST NO. 43, at 209 (James Madison) (Terrence Ball, ed. 2003) [hereinafter Madison].
[21] Madison, at 210.

Furthermore, the courts have endorsed the power of Congress to delegate authority to the District government and have specifically interpreted the language used by the Framers as supporting this delegatory power. In *District of Columbia v. Thompson*, 346 U.S. 100 (1953), a case concerning the validity of District anti-discrimination statutes, the Supreme Court held that "there is no constitutional barrier to the delegation by Congress to the District of Columbia of *full legislative power*, subject of course to constitutional limitations to which all lawmaking is subservient and subject also to the power of Congress at any time to revise, alter, or revoke the authority granted."[22] The D.C. Circuit Court held in *La Forest v. Board of Comm'rs of D.C.*, 92 F. 2d 547 (D.C. Cir. 1937), that the extent to which Congress chooses to delegate authority to the District is a matter for Congress to determine.[23]

In addition, courts have confirmed the Framers' intent as earlier explained, *rather than creating a limitation on the authority of Congress to delegate,* the constitutional requirement of "executive Legislation" simply meant to prevent concurrent authority over the District by ceding states. In overruling a lower court's finding that the use of the word "exclusive" in the District clause prevented delegation of general legislative authority by Congress, the Supreme Court held in *Thompson* that "it is clear from the history of the provision that the word 'exclusive' was employed to eliminate any

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[22] *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, at 109 (1953)(emphasis added).
[23] *La Forest v. Board of Comm'rs of Dist. of Columbia*, 92 F.2d 547, 550 (D.C. Cir. 1937) ("Congress as to the District of Columbia has express power to exercise exclusive legislation in all cases whatsoever, thus possessing the combined powers of a general and a state government in all cases where legislation is possible. When and how it shall delegate or distribute authority to make detailed regulations under the police power are questions which Congress may determine for itself."); *See also Maryland & District of Columbia Rifle & Pistol Ass'n v. Washington*, 442 F.2d 123 (D.C. Cir. 1971) (holding, at 130, that "Congressional enactments prevail over local regulations in conflict with them, of course, and Congress may at any time withdraw authority previously delegated to the District, and any regulations dependent on the delegation then lapse. But, just as clearly, Congress may indulge the District in the exercise of regulatory powers, enabling it to provide for its needs as deemed necessary or desirable.").

possibility that the legislative power of Congress over the District was to be concurrent with that of the ceding states" and that such delegation was therefore constitutional.[24] This view of the District Clause has been confirmed by numerous subsequent court opinions.[25]

III. Conclusion

In light of the intent of the Framers of the District Clause and of Congress in passing the Home Rule Act, and also in light of the recent record of District government, this is an appropriate moment to extend greater self-government to the District of Columbia.

It is therefore my hope that you will recognize this fact and support the proposed amendments, reducing the burden that mandatory review places on both Congress and the District leadership. This decision to extend greater flexibility in self-government would bring the residents of the District of Columbia closer to the ideal imagined by the Framers of the Constitution and by the members of Congress who created the Home Rule Act. Finally, it seems especially appropriate to take these steps toward local democracy at a moment when the Congress is moving toward passing a bill giving District residents a voting representative in this body.

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[24] *Thompson*, 346 U.S. at 109.

[25] See *Gary v. U.S.*, 499 A.2d 815 (D.D.C. 1985) (eliminating the One House of Congress veto provision of the Home Rule Act); U.S. v. Sato, 704 F. Supp. 816, (N.D. Ill.1989) (supporting the right of Congress to tax outside the District); *Synar v. U.S.* 626 F. Supp. 1375, (D.D.C. 1986) (supporting the constitutionality of the delegation of Congressional Authority under the Balanced Budget and Emergency Deficit Control Act of 1985).

Mr. LYNCH. Thank you. I now recognize myself for 5 minutes.

Mayor Fenty, Chairman Gray, I think you have all touched on one common point, and especially having Dr. Ghandi and his remarks. You spoke of the remaining safeguards and the various mechanisms that the District has in place to ensure proper financial management and integrity in the budget process. However, I do want to point out that even absent the current protocol for congressional review, many of the financial benchmarks that Dr. Ghandi and others have referred to derive directly from the District of Columbia Financial Responsibility and Management Assistance Act of 1995, such as the reinstitution of a control board. And there are other constraints in the event the city might fail to meet its financial obligations.

While I raise that concern, I acknowledge, as the Mayor has pointed out, that 14 consecutive budgets have been balanced and there is a substantial and admirable record of fiscal responsibility. But I just want to be reassured here that, at least in my reading of Ms. Holmes Norton's legislation, those checks and balances would remain in place, those would continue to be adhered to. I just want to make sure that we are on the same page. Is that your understanding?

Mayor FENTY. Yes, Mr. Chairman. And I think it is important to note that the people of the District of Columbia really enthusiastically support the independent CFO, as we also enthusiastically support something else created by the Control Board which are the fiscal impact statements. No bill passed by the Council of the District of Columbia can move forward even for my signature unless the CFO has authorized that the dollars are there to go along with the bill. So there are a lot of local safeguards that will still remain in addition to the Federal safeguards that Mr. Smith just talked about.

Mr. LYNCH. All right.

Mr. GRAY. Mr. Chairman. Chairman Lynch, that is the understanding of the Council as well. And I think if you look at the controls that exist, those that we have added, it is really, I think, a picture of how a municipality ought to be run in this instance. For example, just to echo what the Mayor said and to build on that, the Council no longer permits a bill even to be reported out of a committee until we have a fiscal impact statement from the CFO indicating that we have the financial wherewithal to be able to effectively implement that legislation. There was a time when the Council permitted a bill to get to second reading before the fiscal impact statement had to be available. But we have eliminated that. And those are the kind of controls that we continue to put in place because we heartily respect the past and use that as an opportunity to continue to build on our controls.

We, too, strongly support the independent CFO and work very closely with them. I think that was never more evident within the last year than when we had four instances where there were revenue estimates that were lower than the previous one and we all worked effectively together to create a balanced budget for the District of Columbia, properly in the neighborhood of $600 or $700 million revenue estimates. But again, at the end of the day, we had a balanced budget as a result of that.

Mr. LYNCH. Thank you, Mr. Gray.

Mr. GHANDI. If I may comment on that, Mr. Chairman? I think both the Mayor and the chairman have pointed out so well that the institutions of the chief financial officer, the independent CFO, have been very well placed now in the conduct of the government. It has been institutionalized. Also the various features of the CFO—the independence, the 5-year balanced budget, making sure that for reoccurring expenditure you have reoccurring source—all of that has been properly implemented by the CFO. And a budget will not be forwarded to the Congress or even to the Mayor and Council unless it is properly balanced and certified so by the chief financial officer.

I think the test of the whole office and CFO is in the practice. In my 10 years as a CFO, most of those years post-Control Board, I have been extremely gratified by the respect that the Mayor and the chairman and the Council have shown to the office of the CFO.

Mr. LYNCH. Thank you. My time has expired. I now yield 5 minutes to the ranking member, Mr. Chaffetz of Utah.

Mr. CHAFFETZ. Thank you, Mr. Chairman. Thank you all for being here. I appreciate it. Our hope and interest is in what is in the best interest of the District of Columbia and in the United States of America. I happen to believe that a good collaborative effort is one that our Framers had envisioned. And that as you make the case that the city is working so well and is financially prudent and has good budget stopgaps in place and checks and balances, I can only wish the Federal Government would have some of that same discipline before it goes off and puts more and more literally trillions of dollars on our kids' future on just the credit card. So I wish we had some of the financial controls of discipline that are obviously implemented at the city.

Mr. Chairman, let me ask you first, you said in your testimony, "The District has clearly demonstrated that we have earned the right to budget autonomy." You obviously are making the case that everything is going so well. At the same time you also say that "all other State governments in our Nation have this flexibility." My concern is that the District of Columbia is not a State. It is not a State and it is dealt with differently. I guess I take issue with that characterization of other States. And perhaps it was just a typo, but for those of us that are concerned about that, I truly am concerned about that.

If things are going so well, what sort of grade would you give the Mayor?

Mr. GRAY. Well the legislation is not about the Mayor's performance but obviously we work well with the Mayor. Over the last 3 years we have worked well to try to create a balanced budget and I think the evidence is in the audits, the evidence is in the fund balance that you see portrayed over there, it is evident in how this jurisdiction has been run.

Mr. CHAFFETZ. I appreciate it. I have such little time. I appreciate it. I guess what I was hoping to hear, and I did hear, is the spirit of cooperation.

Mr. GRAY. Exactly right. Cooperation.

Mr. CHAFFETZ. That same sort of cooperation I think can happen between the city and the Congress. One of the statistics that jumps

out along the way is how infrequently the Congress actually does inject itself into some very volatile issues. But I do think it is that sort of check and balance within the constitutional framework that is important to us going forward.

Mayor, if I can go to you because, again, my time is so short? I want to talk for just a moment if I could about the Opportunity Scholarship Program. Do you support the reauthorization of the Opportunity Scholarship Program in the District of Columbia, including entry for new students?

Mayor FENTY. As contained in the three sector approach which has been a part of the submission from the President in both the past administration and the current, yes.

Mr. CHAFFETZ. And I need to jump quickly. Taking that same kind of concept of autonomy, one of the issues that has come up is about the same sex marriage law. As you are here supporting greater autonomy for the District of Columbia, would you extend that principle to the local voters in the form of referendum on same sex marriage law as has been done in 31 States?

Mayor FENTY. The short answer is no. The longer answer is I believe the people of the District of Columbia have elected a fabulous Council of the District of Columbia who has all the tools necessary to make the type of decisions on what laws should and should not be passed.

Mr. CHAFFETZ. Chairman, did you want to address that?

Mr. GRAY. My answer is no as well, Congressman Chaffetz. We were elected to represent the people. I think the Council of the District of Columbia has done that extremely well. We tackle very difficult issues every day. When you look at school governance, that certainly was an issue.

Mr. CHAFFETZ. I want to stick to this issue.

Mr. GRAY. Well, I am trying to give you an example of how we have decided issues as a Council that I think are analogous. I think school governance, building a——

Mr. CHAFFETZ. My time is so short. I am disappointed that the people are not given an opportunity to vote on this issue. And if there is confidence in the Council and others that this would pass, then allow the vote. But I think we have seen in 31 States, again different than the District of Columbia, it has passed 31 times in a row in opposition of the same-sex marriage.

Last question. The administration is pushing to take over, at least there is a suggestion that it should take over the safety components dealing with mass transit, specifically like the Metro and whatnot. What is your reaction to that? Should that be something of greater autonomy to the city? And I recognize it goes into other States and whatnot. But is the administration moving in the right direction?

Mr. GRAY. From what I understand, the administration is looking at it on a national level. I have not done the proper level of inquiry. Once we do, we would be glad to present you with the full views of the local government.

Mr. CHAFFETZ. Thank you, Mr. Chairman.

Mr. LYNCH. I thank the gentleman. The Chair now recognizes the gentle lady from the District of Columbia, Ms. Eleanor Holmes Norton for 5 minutes.

Ms. NORTON. Thank you, Mr. Chairman. Let me quickly ask Mr. Gandhi this. For years, I believe you said—you noted this, of course, this is a recession year—that the District had what I recall was the greatest surplus in the United States; was that the case? It is surplus, which, of course, it is now having to use because of the recession. But is it not the case that for many years the District surplus outranked that of any State in the Union or any city?

Mr. GANDHI. We were among the States, or I should say cities that have enjoyed substantial surpluses. Ms. Norton, I was in Chicago just 2 weeks ago meeting with the chief financial officers of other cities such as Chicago, Los Angeles, New Orleans, Denver, etc. Of all those places, our city has done extraordinarily well comparatively in terms of our ability to enjoy the surpluses.

Ms. NORTON. The notion that the District would and did pile surpluses, did not spend it, and has fared better than many cities during this recession is a source of pride to the city and a pride in the work that all of you have done.

Chairman Gray, I know this is a ballpark number but given how you have testified you have to jump through hoops just to get legislation into effect until we say it is OK or take no action, how much of your time, what ballpark figure of your time is spent on passing redundant laws or seeing that laws do not go out of effect while you are waiting for the Congress layover period to recede?

Mr. GRAY. Probably, Ms. Norton, in excess of 50 percent.

Ms. NORTON. In excess of?

Mr. GRAY. Of the time.

Ms. NORTON. Of 50 percent, did you say?

Mr. GRAY. Yes. As I indicated in my testimony, two-thirds of the laws that we have passed since 1997 in the Council have been laws that deal with emergencies and temporaries, all of which is an artifact of this system that we operate under. There is no question that some of those emergencies would have to be adopted in any event because of the exigent need. However, when you ferret out those that are associated with the process that we have to operate under here with the Congress, all the temporaries are associated with this process so it is probably looking at two-thirds of the legislation being in that category. Pulling out the legitimate emergencies that exist within the city, it is probably 50 percent of our legislative time.

Ms. NORTON. So here we have half the Council's time spent redundantly when—it is a big, complicated city—when it needs to get to the business, and it does so very well. But I think it makes the point about inefficiency.

My last question really goes to a point that is seldom mentioned but it is really a cardinal point in all of this. I mentioned it in passing, the June 30th fiscal year. I would like the comments of the panel on this. Perhaps I will use an example. Mayor Fenty has done something very important in the District of Columbia, with the cooperation of Chairman Gray who deserves a lot of credit for hurrying the whole Council to do what very few States and cities have done, to say Mayor Fenty, you are in charge of the schools of the District of Columbia. They have given him everything except the ability to make sure schools have the same efficient start time. Of course he started them on time as every other jurisdiction, our

neighbors in Virginia, for example, ready to go July 1st unless something untold happens.

I would like you to describe using the schools perhaps as an example, perhaps you have other examples—this is for anyone on the panel, Mr. Smith is a former corporation counsel which we now call Attorney General; Ms. Rivlin and Mr. Gandhi are equally familiar with this—but I would like to know what difference it would make, what this bill would mean, for example, if you could decide—of course you might decide whatever—but you could decide that instead of September 30th when school has already started as the beginning of your fiscal year, that, for example, like most States July 1st could be the beginning of your fiscal year. I would like you to describe what that would mean as far as all of you are concerned.

Mayor FENTY. Two quick things, Congresswoman. This year after the budget was passed, just because of the revenue forecast, the school system already was looking at less revenue of about $20 million going into the new school year. If the budget projections are closer to the time it is passed, you are not going to have that type of deficit. On a global perspective, we have already had, I think, two or three meetings with all of our cabinet heads—and it is only November—in preparation for the budget that will not be passed and ready until next October 1st. So we are almost meeting to prepare for next year's budget before the current year's budget is even passed.

Ms. NORTON. Chairman Gray.

Mr. GRAY. I think for the Council, I think for the public schools, public education is an excellent example because what we have now is a situation in which the planning for a particular school year spans 2 fiscal years. We have part of that budget that begins—the latter part, if you will—in the current year, for example, and spans the period from August until the end of September. Then we have the other part of the school year in the next fiscal year. It makes for very difficult planning. And the schools, again, are an excellent example. If we could change the fiscal year to July 1st, the entire school year would be included in one fiscal year.

Mr. GANDHI. If I might echo that comment? I would agree about the schools. Further, the fundamental problem that we face here is that we provide a revenue estimate to the Mayor and the Council in February. The budget is submitted to the Hill in June. The Congress does not act until October 1st in terms of its continuing resolution if there were no agreement. So there is a long delay between when we provide revenue estimates and when the budget is enacted. And the local government, we do not have a chance to adjust, to readjust our budgeting in light of changing financial conditions.

Ms. RIVLIN. I have very little to add to this except to stress that all agencies are inconvenienced by this long delay. But it is the schools, DCPS and the charter schools and the universities that have to get started without knowing exactly what the budget is going to be.

Mr. SMITH. The only thing I would add, Ms. Norton, is that having tried to run a District agency when I was at Corporation Council's Office, not knowing what you can do and how much you can

spend and when puts significant limitations on efficiency within the District.

Mr. LYNCH. OK, thank you. The gentle lady's time has expired. I yield myself just 30 seconds.

My own experience with budgeting is that your revenue projections drive your budget. What you are being forced to do is to come up with a budget prior to getting your revenue projections. You have a considerable amount of lag time here where over the course of time those projections that you do have can be completely destroyed by the passage of time. So there are a couple of things going on there that put you at a severe disadvantage. I understand that.

The Chair now recognizes the gentleman from—I am sorry, I did not see Mr. Bilbray come in. I recognize Mr. Bilbray, the gentleman from California, for 5 minutes. Welcome.

Mr. BILBRAY. If I want to be treated like this, I can go home Mr. Chairman.

First of all, let me clarify. Mr. Mayor and Mr. Chairman, I was a mayor in my 20's in a young, small little working class community on the border in California. I also served, like the gentleman from Virginia, as the chairman of a county of 3 million.

This is my chance to say something about this. I was absolutely appalled when I came here in the 1990's and saw what appeared to be the gross abuses of local control by the local community. Freeways were not allowed to go through because of Ward politics. Maybe it is because I am a Californian that I can't comprehend the ability of politics to stop a freeway dead in its tracks, not just once but twice. Though, I have seen it happen.

The other thing I have just got to tell you is, Mr. Smith, that this District was created for a special reason. This little area between the Anacostia and the Potomac called Turkey Buzzard Point was chosen to be a no man's land from political influences from the outside or from within, much like we do with our military reservations, too.

But I see the effect of the lack of appropriate control of the jurisdiction. I have staffers who resign and go home because they have been attacked, they have been threatened, or they have almost been murdered.

I am constantly reminded as a former local government official that the Constitution does give us the ability to authorize jurisdiction but not responsibility. The Constitution still lays that right in our lap. This is one of those things that Congress can't say is out of its jurisdiction. The big difference is that the same Constitution that gives States that jurisdiction—and the States are the ones that give cities their local control, not the Constitution. The Constitution does not take away that local control from other cities. It did in this one, in this city.

So there is an issue here of the appropriateness of authorizing jurisdiction and thinking we can walk away from the ultimate responsibility of young ladies being attacked, roads not being completed, the congestion, and everything else that is our responsibility.

I would just like to ask this down the line. Mr. Gandhi, you seem to appear to have done great things working with the local govern-

ment when it comes to the budget process. I want to give credit on that. After all of that trashing, I want to say you guys have come a long way in a lot of ways. I still don't understand why you put traffic lights in traffic circles. It violates every traffic engineering thing I have learned, but that is a different issue. Why would we walk away from a successful program? Are we so sure that we will never go back to where we were? Your success is something I think we should build on and not abandon.

Mr. GANDHI. Sir, I would give great credit to the Mayor, the chairman, and the Council. They are the elected leaders and they do the heavy lifting. Of course, there are institutions of an independent chief financial officer and all these good ideas have been built into that. But at the end of the day, it is the elected leaders who deserve a great deal of credit.

I think all we are talking about and all I am going to comment about is the budget autonomy. That will make things easier for them, for me, and for the District's citizens. So I think you want to keep that in proper perspective, sir.

Mr. BILBRAY. Mayor, I understand the culture of politics in Washington that you inherited. What I feel is the undue influence of public employees where basically government exists for employees and not for serving the public and everything else. I appreciate you have made some big changes there.

But the concept, as a Californian, of not allowing voters to vote specifically on vary controversial issues is something that as a Californian, I don't accept. We specifically allow overriding of legislative intent. How do I go back and say to my constituents that as the State legislature of the city, let us just say it that way, I deny them the constitutional rights that we have in California of direct oversight on these very controversial issues?

Mayor FENTY. Well, California is very unique when it comes to the referendum process. I think what you can say is that the people of the District of Columbia, just like the other 50 independent jurisdictions in this country, have a different set of laws. Our laws have been made for some time and they work a certain way.

If you look into our referendum and initiative processes, I think there is ample opportunity for citizens to actually take things to the ballot. There is also just as much opportunity for the Council of the District of Columbia to pass laws. I think it works. It is a very healthy balance in my opinion. That doesn't mean that what happens in California or in any other jurisdiction isn't healthy as well. It is up to the particular State.

Let me just say one other thing. This is a very narrow law, as Dr. Gandhi just said. What we think we have proposed in support of Congresswoman Norton's law is that all of the fiscal restraints, fiscal safeguards, both Federal and local will be protected. But by passing this law what you will allow is my administration and successive administrations to run the government better while maintaining all of the Federal and local fiscal restraints that currently exist.

Mr. BILBRAY. I appreciate that. Just in closing, I appreciate the fact that the District is defending a republican form of government as opposed to a democratic initiative process. That constitutionality was a big issue in California, the fact that the Constitution does

defend the republican form of government as opposed to democratic direct governance.

I yield back, Mr. Chairman.

Mr. LYNCH. I thank the gentleman. The Chair recognizes Mr. Connolly, the gentleman from Virginia, for 5 minutes.

Mr. CONNOLLY. I thank the chairman and I thank my colleague from Ohio for yielding.

By the way, I appreciate what my friend from California said but it is a very arguable point how well recall referendums and initiatives have worked in California. One wants to read a cogent critique of that. David Broder of the Washington Post wrote a book a few years ago that really lays out how special interest influences essentially coopted what was once seen as a reform at the turn of the 20th century. So there is another side to that.

Mr. Smith, you are an attorney. You are familiar with the provision in the U.S. Constitution granting Congress in Article 1, Section 8, Clause 17 exclusive legislation in all cases whatsoever pertaining to the District of Columbia?

Mr. SMITH. I am, yes.

Mr. CONNOLLY. When that provision was written in 1787, how many people lived in the District of Columbia?

Mr. SMITH. Very few.

Mr. CONNOLLY. In 1800 when the President of the United States, John Adams, was the first occupant to move into the White House, do you know how many people lived in the District of Columbia?

Mr. SMITH. It was still very few.

Mr. CONNOLLY. When the writers of the U.S. Constitution wrote this provision, is there any evidence that they envisioned the District of Columbia would eventually evolve into a vibrant metropolis with hundreds of thousands of residents?

Mr. SMITH. They were a prescient group but I doubt if they saw all of that, Mr. Congressman.

Mr. CONNOLLY. Anybody else on the panel want to take a stab at that one?

[No response.]

Mr. CONNOLLY. Given that fact, is there any other city you can think of, Chairman Gray, where Congress interprets this and exercises the kind of oversight and control we do in the District of Columbia? For example, is there any other city in the United States where we condition voting representation to the competence of the local government?

Mr. GRAY. I am not aware of any, Congressman.

Mr. CONNOLLY. Is there any city or county you can think of where we condition voting representation here in the U.S. Congress on the quality and performance of the school system?

Mr. GRAY. Not to my knowledge.

Mr. CONNOLLY. Is there any city or county you can think of in the United States that, again, where we condition voting representation here in the U.S. Congress based on how high or low the crime rate might be?

Mr. GRAY. Not to my knowledge.

Mr. CONNOLLY. Disfunctionality or functionality of various municipal agencies?

Mr. GRAY. No.

Mr. CONNOLLY. Ability to balance a budget?

Mr. GRAY. No.

Mr. CONNOLLY. Really? Now, I would be interested in your thoughts and yours, Mayor Fenty. What would be the logic of this Congress using this clause of the Constitution, which clearly was intended for a Federal enclave that met periodically during the year and then pretty much shut down? It was never envisioned that D.C. would become a city with hundreds of thousands of citizens and then be denied the franchise, at least not as I read the Constitution or the history of the writing of the Constitution. What is your view about the exercise of this provision, our oversight responsibilities, and our conditionality of voting representation in the Congress based on that?

Mr. GRAY. I think it is clear to us that we have 600,000 people who live in the District of Columbia who are disenfranchised. We have worked hard to try to get a vote for our Representative in this Congress, Ms. Norton. This issue around budget autonomy and legislative autonomy I think echo the point.

We pay Federal taxes just like everyone else. We pay $3.5 billion to $3.6 billion a year. Our sons and daughters and our family members go off to fight wars like everyone else. We do the same things that other citizens of the United States do, yet we do not enjoy the same rights, and that is the right of self determination. Frankly, being able to make decisions about our budget and being able to make decisions about our legislation, especially to move this city forward in a timely fashion, are part of full citizenship in this Nation.

Frankly, if we had not crafted an emergency and temporary legislative process, we would have had experiences in the District of Columbia that would have slowed down the ability to make decisions which probably would have been criticized by this Congress and others because of our inability to move. Yet it is the process that we have been required to operate under that would have delayed those decisions that needed to be made, decisions that we knew needed to be made, Mr. Connolly.

Mr. CONNOLLY. An inability, if I can interject, created or generated by Congress because of our dithering over our oversight responsibilities. Is that correct?

Mr. GRAY. You said it very well.

Mr. CONNOLLY. Mr. Chairman, my time is up. But as a courtesy, if you would not object, I want to give the Mayor the opportunity to comment similarly.

Mayor FENTY. Well again, just to sum up, Congressman, I think there are people who would take your view that the "no taxation without representation" clause of the Constitution is the one that needs to be paid more attention to and used to give us our full voting rights and representation. Those are issues for probably a broader debate on a different day.

Today, in focusing on the clause that gives Congress jurisdiction over the District of Columbia, it seems that the law that has been crafted by Congresswoman Norton both gives the local officials the ability to spend our dollars more wisely and efficiently but doesn't abridge that particular clause. So it seems like what you rarely get in legislatures, having served on one for 6 years, is a win-win.

Mr. CONNOLLY. I thank you, and I thank the Chair.

Mr. LYNCH. I thank the gentleman. The Chair now recognizes the gentleman from Ohio, Mr. Kucinich, for 5 minutes.

Mr. KUCINICH. Thank you very much, Mr. Chairman. I want to welcome the witnesses. I speak in support of my colleague, Ms. Holmes Norton, for her commitment to equality in the District of Columbia.

In some ways it seems like this discussion is almost surreal in that we could have a city in America that is still struggling for self determination while, as Ms. Rivlin stated in her testimony, we want to export democracy all over the world. Something about this really doesn't compute.

We understand what the Constitution says. Ms. Holmes Norton has come up with, I think, a reasonable approach that would modify the cumbersome congressional oversight review process. It is a very reasonable approach that you have taken, Ms. Holmes Norton. And I think that the Congress certainly should be supportive of that.

But when you look at it in a broader context, it is really ridiculous that the District of Columbia doesn't have true autonomy. Is someone afraid they are going to take over the United States of America? It almost seems like a riff on Leonard Wibberley's "A Mouse That Roared"—declare war on the United States and be pacified and wealthy beyond your wildest dreams. I don't think that is going to be what the District of Columbia is about as it moves toward greater autonomy.

We need to, as my colleague, Mr. Connolly, has suggested, look at the historical context here and look at the context of our Constitution. If there was ever a call for changing the Constitution and updating it, it is our relationship with the District of Columbia.

We show a capacity for evolution in this Nation. There was a time when people who didn't own property could not vote, a time when women couldn't vote, a time when people of color couldn't vote, and a time when people under 21 could not vote. America has seen this capacity for evolution. So we change the Constitution. Each time we understood. But because of the popular support for those changes, it was a little bit easier.

D.C. is here as an advocate on behalf of the people in the District. We need to help people all over America understand that this truly and should be a concern of all Americans. We shouldn't take out of our understanding the potential to change the Constitution in this regard.

And while Ms. Holmes Norton certainly has been peerless in her advocacy of equality for the District of Columbia, it is important for your colleagues, Ms. Holmes Norton, to be heard from and to support your efforts in the boldest way possible. Because this really is a fundamental question: Whether you have the right for self governance.

As a former mayor, I understand how important it is to be able to make decisions without having other people continue to try to re-cut your decisions. The essence of home rule in our city in Cleveland, home rule is modeled after the Federal plan of Government, with the mayor being the chief executive and three branches of government. The council in Cleveland is a co-equal branch of gov-

ernment, but the mayor is the chief executive. That is the way to make government work for people.

There is one correction I want to add to what Ms. Rivlin said. Cleveland's financial crisis in 1978 was a manufactured one where the banks tried to dictate to the city the sale of a municipal electric system as a precondition for the city getting credit. I mention that because that is a home rule issue, too, whether the city had the right to make its own decision to keep an electric system without banks saying you better get rid of that system or we are going to not give you credit.

So the principle of home rule is joined to democratic theory. It is joined to the spirit and letter of our Constitution. Just because we haven't yet worked out that one provision doesn't mean that we can't find a way, with the wisdom of Ms. Holmes Norton, to adapt to where we are right now, give the District some additional flexibility, and then at the same time work with those of like mind who see that we really need to change the Constitution to make the District of Columbia a place that people can truly call their own through being able to have direct election of officials at every level.

So I thank you, Mayor Fenty, for the work that you do, and all members of the panel for their forthright presentation of the needs of the people of the District. Thank you.

Thank you, Mr. Chairman.

Mr. LYNCH. Thank you. Let me just ask, I don't know if everybody has more questions, but I have one.

There is a certain aspect of this that Congress has a Constitutional responsibility. We are not suggesting abdicating that responsibility. What we are suggesting here, I think, is that in many cases Congress delegates the authority that is given to us through the Constitution. The question here that we are grappling with, and with which Ms. Eleanor Holmes Norton has grappled most intently, is that the way in which we delegate that responsibility has a whole lot to do with how efficiently that authority is implemented.

We have done it in a way, I think, so far. It was improved upon back in 1973 with the Home Rule piece. But I think there are still some encumbrances on the city government in trying to do the job that we hope you would do. It is most clearly illustrated, I think, in the budget process where we ask you to comply with a budget requirement in a way that is virtually impossible. So I certainly understand the budgetary autonomy piece of this and how that could be worked out. I can envision a solution there.

The one reservation I have is over issues that are inherently driven by Congress's presence here in the capital. That is the security of the District because of what we bring. We made you a target on 9/11. But for the fact that Congress and the seat of national Government is here, you would not have been a target. So there is a heightened level of security that is necessary because Congress is present here. I think that we need to make sure that job gets done in a very businesslike and appropriate fashion. We have great reservations, I should say on behalf of Congress, about delegating that authority to the degree that we don't have immediate responsibility and control.

The other piece, obviously, is I think up to 40 percent of the real property in the District is controlled by the Federal Government as part of our ability to do our jobs that are Federal. Again, for that 40 percent of the property that is covered by the Federal Government, we need to have that same type of immediate impact through Congress's decisions.

Outside of those two very real and different and immediate needs, Mayor, how do you think we can work this out in terms of giving you that flexibility that you need but keeping close for Congress our ability to impact those things that are inherently Federal in conducting our day-to-day business?

Mayor FENTY. That is a great question, Mr. Chairman. From the way I read the legislation, I do not see how the laws that are already passed in the Council's normal course of business—and I think it has been put on the record that they go through at almost 100 percent approval by the U.S. Congress—would change anything about the relationship between the Federal Government and the local government, expressly when it doesn't change the District laws which give the Congress the power to come back in at any point and make a statement about a particular law or particular budget that we pass. It is really just about the operations and efficiency of government.

I would put on the record that 1 day we will have the bigger discussion about whether the District of Columbia gets full sovereignty and what you do with the more Federal parts of the government. But I don't think this legislation gets anywhere close to that since it merely just talks about the process and the time by which our laws become final.

I would say that both in the past administration and in the current one, whether it is an inauguration or whether it is the many and varied and myriad threats that do come upon the city that we all call home, there is unbelievable cooperation between our first responders and the Homeland Security agencies and Federal law enforcement where you all have the privilege of overseeing their budgets.

No matter what our structure, and certainly with the passage of this law, there has to be good management. The city is well prepared and I think the Federal Government is as well to continue that.

Mr. LYNCH. Thank you. Mr. Chairman, do you want to comment on that?

Mr. GRAY. Just to echo what has been a theme throughout this hearing, that is there is nothing about this legislation that changes Article 1, Section 8. That continues to vest in this Congress the authority to intervene where it may consider it appropriate to intervene. It simply gives us the ability to more flexibly and rapidly manage our affairs in the District of Columbia, especially around the passage of legislation and especially around the issue of budget.

In my testimony I cited an example, and I chose it in particular, that it took 9 months for the District of Columbia to be able to change the term "handicap" to "disability" in our laws because of the requirement for congressional review. I can't imagine that anybody in the Congress would, first of all, object to such a change because it is far more dignified, or even more importantly, want to

be involved in that kind of change at the local level in the District of Columbia.

I go back also, Mr. Chairman, to the reality that in 35 years we have had these disapproval resolutions used three times, the last time 19 years ago. I think that is a prima facie case for the ability of this city firstly, to manage itself, especially through difficult times; and second, the collaborative relationship that we have crafted with this Congress.

Mr. LYNCH. I thank you. The Chair now recognizes the gentleman from Utah, Mr. Chaffetz, for 5 minutes.

Mr. CHAFFETZ. Thank you. Again, I appreciate everybody and their dialog. I think this is a healthy part of the process. I would hate to think that you would like to come here less often. [Laughter.]

I do believe that the District of Columbia holds a special place in the hearts and minds of all the American people. There is only one capital of the United States of America. Our Constitution recognizes that.

I think the gentleman from Ohio, a good friend, brings up an important point. If there is a discussion or an effort to change the Constitution, perhaps that is a separate discussion. I happen to disagree with it. I think it is divinely inspired. I think it says literally what it means. But as he brought up at the end of his comments an effort to perhaps change the Constitution, maybe we ought to have that discussion. It is certainly his right and prerogative to bring that up. I would oppose that just at first blush.

But until it is changed, I have a hard time with the direction that these two pieces of legislation go. I have the greatest respect for what you do and how you do it and what the Representative brings to the table and her perspective. I have nothing but the utmost respect. But at the same time, those of us that believe wholeheartedly in the Constitution literally as it says, shouldn't be met with the vehemence that you sometimes get in standing tall on the Constitution.

I would also take exception to the characterization that the budget process is some impossible feat given that chart that you are so willingly able to put up there. In fact, as I look back over the history—and I am still studying it and continuing to understand it—it was actually an enactment of Congress that created the independent CFO position that helped change the direction and consequently created a positive result.

At the same time, there have been a host of challenges. There have been a number of things where maybe the changing of the word is something just innocuous and we don't need to deal with that. But I do believe that there is a role and responsibility for Congress to help make that determination because there have been very contentious subjects such as needle exchange, the second amendment issues, the Hyde amendment, budget scandals, and all sorts of things that have happened. You could argue that those would happen in other cities, too. But this is the unique provision set up by our Founders in our Constitution.

I don't know if you would like to address that. It is not a direct question but it is just an approach. Mayor, I will give you the first

stab at this. But that is where we are coming from, or at least where I am coming from.

I want to applaud you for the success you have had but I want to hold your feet to the fire for the things that aren't going well. And that system of checks and balances and accountability and having to come up here to the Hill is a very healthy process. Yes, it is different than every other city in the United States of America. That is OK. That is good. That is the way our framers set it up.

Mayor FENTY. Well, I think in any legislative debate there comes a point where you agree to disagree. I actually don't think we are at that point with this bill. I think if you are a Member of Congress and you have a particular personal position that is different than what has been voted out by the Council of the District of Columbia, after the passage of these two bills, it seems like you still have a vehicle to make your personal opinion known and to introduce some type of amendment.

I think what this bill speaks to is more the running of the government. I think the case has been put there just by the sheer numbers of bills that come through here that don't raise any concerns for you. Having those go through an additional 6 to 9 months, it does cost the District of Columbia time, energy, and resources. Could we manage our affairs otherwise? Sure. We are not going to say that we can't. But could we manage them better if the law were passed? I think we have put a good case before you that we could.

Mr. CHAFFETZ. Mr. Chairman, my time has expired. I appreciate those comments. I still think we have the very best form of government and I think that check and balance, as expensive as it may be in dollars and time, is a worthwhile process. With that, I yield back my overtime. Thank you, Mr. Chairman.

Mr. LYNCH. Thank the gentleman. I want to recognize the gentleman from Missouri, Mr. Clay, for 5 minutes.

Mr. CLAY. Thank you so much, Mr. Chairman.

Mrs. NORTON. Could I ask the gentleman to yield? Could I ask my good friend, the gentleman from Missouri, if he would yield for a moment. I am due in the Senate at 12.

Mr. CLAY. Oh, sure.

Mrs. NORTON. I don't want to ask a question. I just want to say for the record because of Mr. Chaffetz's concern that even with needle exchange, which has cost lives and serious illness in the District of Columbia, all the plenary power of the Congress would remain to interfere with or, in your view, correct what the District is doing. And the proof of that is this Congress has already delegated partial home rule, home rule on everything but budget and legislation finality. So just do what you already have done in 1973.

The only real concern, it seems to me, has been raised by the chairman. Is there any interference with the national Government's concern? That is a legitimate concern, Mr. Chairman. Of the three times in which the District laws have used the disapproval resolution, two of the three had to do with mistakes by the District. It had passed laws that interfered with the Federal presence.

The budget and legislative autonomy bills before us deal with local laws, having nothing whatsoever to do with national concerns. Even so, you could intervene to overturn any of those laws. The

only difference is the inconvenience of having us wait for months for our budget and months for our bills would no longer be there. You would have to move a bit more quickly.

The chairman mentioned property in the District of Columbia, the Federal property. This property remains the sole jurisdiction and under the sole control of the Government.

Finally, as a Member of the Homeland Security Committee, the chairman has raised an important point. What about the security of the Nation's Capital? For 10 years we have operated, almost 10 years now since 9/11, under a regime of partnership with the Federal Government to protect the security of the Nation's Capital. The truth is, Mr. Chairman, that they can't do it without our police force and without our resources. So they are joined at the hip when it comes to homeland security.

And let us remember Federal supremacy. Even the D.C. National Guard is not controlled by the Mayor, as in other States. The D.C. National Guard is under the direct control already, and always Federalized, of the Federal Government. So Congress has taken care of its own security. And should there be any problem, under its plenary authority it could simply take over the whole city for security reasons. So thank you for raising that, Mr. Chairman.

Mr. LYNCH. I thank the gentle lady. Mr. Mayor, I know you had a time constraint and I don't want to delay you any further. So if you need to scoot, you can. I thank you very much for your time.

Mr. CLAY. Mr. Chairman, I did have some questions.

Mr. LYNCH. No, no. It is just the Mayor had a conflict and I am just giving him the courtesy of departing if he has to. I now recognize the gentleman from California.

Mr. BILBRAY. I would just like to give the Mayor the chance to clarify because I don't think he wants to leave here leaving the impression of a statement he made. I think he misspoke and you don't want to read about it later. You made a reference to "no taxation without representation" being in the Constitution. Do you want to clarify that you did not mean that clause is in the Constitution?

Mayor FENTY. Well, as you are well aware, Congressman, our country was founded upon the principle that citizens of the country would not be taxed without having——

Mr. BILBRAY. Mr. Mayor, I just wanted you to clarify the record that you didn't mean the Constitution.

Mayor FENTY. Point well taken.

Mr. BILBRAY. You meant it was basically a——

Mayor FENTY. Point well-taken.

Mr. BILBRAY. OK. Thank you. I just wanted to make sure we get on that so you don't——

Mr. LYNCH. The gentleman is still recognized for 5 minutes.

Mr. BILBRAY. Thank you. I appreciate that.

Mr. Chairman, it is too bad my colleague from Fairfax isn't here because he was talking about what cities don't get to have self governance. Quantico is one of them because it is on a Federal reservation. For a Virginian to forget that there are cities that are actually encompassed in Federal jurisdictions that we sort of drive by every day and don't think about the fact the citizens of Quantico

don't elect a mayor, don't have direct representation because the Federal Government preempts it.

I have a question, Mayor, regarding the issue of the scholarship program in D.C. Let me tell you, this is near and dear, especially in a city like this. Should the program allow new students into the program at the present and the future as we have in the past?

Mayor FENTY. Yes. Our administration supports both the three sector approach and then we have a statement which has been crafted which would allow the continued operations of the program and the same numbers of people in the program. There are some people who would want less, some people who would want more. You could classify that as more kids into the program because they are new kids or you could just classify it as the same number of slots. We have supported the same number of slots.

Mr. BILBRAY. So in other words, you support maintaining this into the foreseeable future where if you don't allow new kids in, you are basically designing the demise of the option for the inner city?

Mayor FENTY. No. That would be one of the extremes. Our administration has adopted a position that is a little bit more in the middle which would support the same number of slots. That would allow new kids in to a certain degree but not any growth in the program.

The quick explanation is the Chancellor believes that within a short period of time, probably more in the 5 or 6 year range, we will have our school system at a level that it will be a much more solid option for all the kids in the city.

Mr. BILBRAY. Mr. Mayor, that is very delicate for me. I owned a place in D.C. and, sadly, my wife was emphatic that we leave the District because of the lack of educational opportunities here.

The other issue that is kind of interesting in this city is that I don't own a place here but I have a friend like Bob Filner where the District now has created a tax penalty for people that are required by Federal law not to be residents of D.C. but live here and work here. The District is taxing them basically because they are not residents, i.e, Members of Congress. We legally cannot be a resident, a voting resident in D.C. But Bob's tax is more than his partner's because he is a Congressman and not allowed to do that under Federal law. Has anybody even discussed that catch–22? I know it is small, but this is the kind of situation that exists in a Federal city—the Nation's Capital—that doesn't exist in other cities.

Mayor FENTY. If I have been briefed on that, I don't recall. I yield to Dr. Gandhi.

Let me just say in reference to the schools as I yield. As we both support the type of school reform that Chancellor Rhee has been pushing over the past 2 years, I do believe that the bill before us will allow her to move even faster by having a greater understanding of what her ability to spend dollars is.

Dr. Gandhi, I don't know if you have any information about the bill.

Mr. GANDHI. I do, Mr. Mayor. I think the Mayor spoke quite well on that.

Mr. BILBRAY. OK. I would just like to give him a choice rather than having to pack up and leave like a lot of people have done, sadly. And a lot of people who don't have the financial ability to pack up and leave like I did and give my children those options, those that are in D.C. that don't have that financial ability should be able to have the same opportunities that my children had even though their parents don't make the money that a Congressman makes. I appreciate your chance.

Mr. LYNCH. I thank the gentleman. I now recognize the distinguished gentleman from Missouri, Mr. Clay, for 5 minutes.

Mr. CLAY. Thank you, Mr. Chairman. Let me also point out to my friend from California that it was discovered that some of our colleagues who own residences in the District of Columbia were also taking homestead credits. So just to let him know that it cuts both ways.

Let me ask Dr. Gandhi about the bill. This bill removes many of the steps that the District currently goes through to outline spending and project the District's future fiscal responsibilities. In the absence of these additional steps, what safeguards will come into effect if the District begins to spend into deficit spending? What safeguards will be in place?

Mr. GANDHI. Sir, the institution of the independent chief financial officer will assure the Mayor, the Council Chair and the Council, the Congress, and the citizens that we will not have a budget that is not balanced. I am obligated to certify a balanced budget before it moves to the Congress. And if we are given budget autonomy, then we will make sure in our offices that the budget that is put forward by the Mayor to the Council is properly certified as balanced and that we will have not only a 1-year balanced budget but a 5-year balanced budget. So I think this requirement on the part of the independent chief financial officer in itself is enough to assure the Mayor and the Council, and of course the Congress, that the District will not have unbalanced budgets.

Mr. CLAY. In your testimony you cite the specific benchmarks, the act details to ensure astute financial management. Can you elaborate a little bit on those benchmarks? Is that the 5-year projected budget and the balanced budget? Are those the benchmarks?

Mr. GANDHI. We are by law and by practice requiring a 5-year plan. The reason for that is that we want to make sure that revenues and expenditures are not moved across the years so that we would balance in 1 year but not in the next year. At the end of the day, if there is a recurring expenditure there has to be a recurring source. So you balance the budget this year but also make sure that does not create an unbalanced budget next year.

Mr. CLAY. Thank you for that response.

Mr. Mayor and Mr. Gray, in 2007 at the start of the school Chancellor Michelle Rhee's tenure a warehouse was discovered with new, unopened textbooks that have yet to be distributed. How will the District's autonomy be structured to ensure that an instance like this does not occur again, costing the taxpayers in the District unnecessary funds?

Mayor FENTY. That is a great question, Congressman. There probably are a couple different things that having faster moving laws and faster moving budget will do to allow inspectors to review

where spending is going to allow us to get at waste. But I would say as the top manager for the city, that one is inexcusable given any set of laws. That is a management failure in not knowing where your dollars are being spent and wasted. I give the Chancellor a tremendous amount of credit in her first months for being able to find wasted resources like that and then direct them to the classroom.

Mr. CLAY. Thank you for your response. Mr. Gray, anything to add?

Mr. GRAY. Congressman Clay, I, too, think that what we are discussing today in terms of budget autonomy and legislative autonomy is less likely to address that. I think that is a management issue.

If you look at some of the additional controls that the District has put in place over, let us say, the last decade, we have an Inspector General now to whom complaints like this about the operation of services would go. We have an auditor who works with the D.C. Council who looks at complaints around the delivery of services. So when you look at the degree to which we have introduced new controls, those kind of management failings are more likely to be ferreted out now than perhaps they would have been 15 or 20 years ago or certainly 35 years ago when limited home rule was accorded to the District of Columbia.

Mr. CLAY. Thank you. I thank the panel for their response. I yield back.

Mr. LYNCH. I understand we are going to have votes on the floor momentarily. I think this panel has suffered enough. [Laughter.]

I appreciate the generosity of your time and also the quality of your testimony. I think you have helped us enormously in grappling with this issue. I trust this will be an ongoing dialog between this subcommittee and all of you on behalf of the District. I want to thank you for your willingness to come before this subcommittee and help us with our work.

Without objection, the subcommittee now stands adjourned.

[Whereupon, at 12 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

Committee on Oversight and Government Reform

Subcommittee on Federal Workforce, Postal Service, and the District of Columbia

"Greater Autonomy for the Nation's Capitol"

Questions for the Hearing Record from Stephen F. Lynch

Questions for Mayor Adrian Fenty:

1. In advocating for passage of H.R. 1045, Chief Financial Officer Gandhi's testimony discussed the various mechanisms and safeguards that the District has in place to ensure proper financial management and integrity in its budget process absent Congressional review and approval of the City's local budget. Some of the financial benchmarks Dr. Gandhi's statement mentions are derived directly from the District of Columbia Financial Responsibility and Management Assistance Act of 1995, such as the reinstitution of the control board and other constraints if the City fails to meet its financial obligations. What is your position on maintaining some of these provisions, especially considering the fact that H.R. 1045 would leave these requirements in place? Do you share the CFO's position on this issue?

I respect the opinion of Dr. Gandhi and agree with his view that the District of Columbia Financial Responsibility and Management Assistance Act of 1995, coupled with the continuation of an independent Chief Financial Officer, provides the framework for assuring financial integrity in the District of Columbia budget process. I believe Congresswoman Norton has crafted a bill that strikes a good balance for the residents of the District of Columbia and Congress and I fully support its passage.

2. What actions would you recommend Congress take, in light of the hundreds of appeals for help and intervention it receives on various subjects including the District's procurement and contracting system, the recent increase in workforce reductions, and problems associated with the DC Child and Family Services Agency? District residents know about Congress' oversight authority and, as a result, turn to Congress when they feel that they have nowhere else to go to voice their concerns. How do you believe Congress should intervene on behalf of these concerned citizens?

As Mayor of the District of Columbia I have every confidence in the ability of the District of Columbia government to address and resolve the critical issues facing the residents of the District.

3. Are there any technical comments you have regarding the specifics of both pieces of legislation? Additionally, in the event that the bills run into Congressional roadblocks next year,

are there any alternatives or compromises that you believe would help realize the goal of legislative autonomy in the District of Columbia?

I have no technical comments to add regarding the specifics of H.R. 960 and H.R. 1045. I believe the bills, as they are drafted, represent significant progress for the residents of the District of Columbia and I support their passage.

4. How does your administration deal with planning and spending for the public school system in light of the awkward October 1 to September 30 fiscal year calendar? Further, do you expect any spending improvements or changes to occur if H.R. 1045 becomes law?

On July 1 of each year, the District advances District of Columbia Public Schools and District of Columbia Charter Schools funding to align their budgets with the approved budget for the coming fiscal year. The advance effectively allows the public schools to start their fiscal year in July instead of October. If enacted, H.R. 1045 would provide the District with the flexibility it needs to establish a fiscal year and budget process that works best for public schools and the District.

5. Is passage of H.R. 960 and H.R. 1045 your administration's top legislative priority before the Congress? If not, what is the chief policy priority considering the wide range of issues which require interaction and policy coordination between the federal government and the District of Columbia including securing our nation's capital, HIV/AIDS funding, prisoner reimbursement, and the notion of taxation without representation?

H.R. 960 and H.R. 1045 are very important bills for the reasons I mentioned in my testimony. However, the piece of legislation currently pending before Congress that is most important to District residents is the District of Columbia House Voting Rights Act of 2009. Additionally, I would like to note the importance of H.R. 4207, the 2009 District of Columbia Omnibus Authorization Act. Passage of these bills before the conclusion of the 111th Congress would achieve significant and lasting change for the residents of the District of Columbia.

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