United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Government Operations

D.C. Home Rule: Examining the Intent of Congress in the District of Columbia Home Rule Act of 1973

Testimony of Brian D. Netter

May 12, 2016

Thank you, Chairman Meadows, Ranking Member Connolly, and Members of the Subcommittee. My name is Brian Netter, and I am a partner in the Washington, D.C., office of the law firm Mayer Brown LLP. Along with my co-counsel, Karen Dunn, of Boies, Schiller & Flexner LLP, I was retained on a *pro bono* basis by the Council of the District of Columbia to independently assess whether the Local Budget Autonomy Act of 2012[1] complies with federal law, including the Home Rule Act of 1973.[2]

I was not then and am not now an advocate for any policy outcome. Questions about why budget autonomy is desirable for the District and for Congress are better directed to Council Chairman Phil Mendelson. My team's objective was to determine whether the Budget Autonomy Act is consistent with federal law.

When we began investigating the legal issues presented by the Budget Autonomy Act, many political actors had already taken positions on the validity of the Act. But, so far as we were aware, none had undertaken the sort of no-stones-unturned investigation and analysis warranted by the circumstances. We therefore undertook an exhaustive investigation that began with the 4,000-page set of published committee prints compiling the legislative history from the 1973 proceedings. We ultimately contacted each of the living Members of Congress and Senators who served on the relevant committees and subcommittees in 1973 and consulted the personal archives of key Members and Senators who have died.

The Home Rule Act represented a bipartisan success of the civil-rights era. Overcoming longstanding resistance that had been blamed on racist attitudes toward the Nation's capital, Congress came together to create for the

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[1] D.C. Law 19-321, 60 D.C. Reg. 1724.
[2] Pub. L. No. 93-198, 87 Stat. 774.

District of Columbia a government by the people, of the people, and for the people.

The centerpiece of the Home Rule Act was the District Charter. The Ninety-Third Congress envisioned the District's Charter as akin to a state constitution. It was important for District citizens to embrace the document as their own, so Congress designed the Charter to take effect only upon ratification by District voters. So that the District's government could evolve, Congress created a procedure through which the District could propose amendments to its Charter.

In crafting the Home Rule Act, Congress recognized its constitutional role vis-à-vis the District by maintaining supervisory authority. As the Members of this Subcommittee are aware, every piece of legislation that is passed by the Council and signed by the Mayor is transmitted to Congress for its review. Under the Home Rule Act as originally enacted, ordinary legislation would become law automatically after 30 legislative days unless both Houses of Congress passed a concurrent resolution disapproving the legislation.

Congress designed a very different process for amendments to the Charter. In 1973, Congress authorized the District only to *propose* amendments to its Charter. Those amendments would become law only if both Chambers of Congress affirmatively approved the proposal through a concurring resolution. Because Congress retained for itself the ultimate decisionmaking authority, the limitations on the District's authority to propose amendments were few and narrow.

In 1983, the Supreme Court invalidated legislative vetoes in *INS v. Chadha*.[3] That decision required Congress to modify the procedure for ordinary District legislation and for amendments to the District Charter. Congress decided to make amendments proposed by the District presumptively valid, unless Congress enacted and the President signed a joint resolution of disapproval. In so doing, Congress left in place the narrow limitations on the District's Charter amendment authority.

We investigated each of the supposed limitations on the District's authority that opponents of the Budget Autonomy Act used to question its legitimacy. In particular, we reviewed reports prepared by the U.S. Government Accountability Office and by the Office of the Attorney General for the District of Columbia. But we found the concerns in those reports to be

[3] 462 U.S. 919.

legally unfounded. We were, therefore, confronted with a disagreement about the validity of the District's budget process.

In our system of laws, when there is a dispute about the interpretation or validity of a statute, it is "the province and duty of the judicial department to say what the law is."[4] And so we filed a lawsuit in the appropriate forum—the Superior Court for the District of Columbia—so that the issue could be resolved as our Constitution contemplates. The case was removed to federal court and subsequently remanded back to Superior Court for resolution on the merits.

This was a high-profile case that received attention from thoughtful commentators. The Superior Court had before it briefs from the three parties—the Council, the Mayor, and the Chief Financial Officer—as well as friend-of-the-court submissions from eleven different groups offering their views. Those groups included scholars on federal budget law, legislative interpretation, and local government law, and legislators and staffers who participated in the drafting of the Home Rule Act.

On March 18, 2016, the Superior Court for the District of Columbia issued an opinion upholding the Budget Autonomy Act and offering a detailed explanation of why the opponents of the legislation were incorrect. The Superior Court permanently enjoined "all members of the Council of the District of Columbia, Mayor Muriel E. Bowser, Chief Financial Officer Jeffrey S. DeWitt, their successors in office, and all officers, agents, servants, employees, and all persons in active concert or participation with the Government of the District of Columbia" to enforce all provisions of the Budget Autonomy Act. The time to appeal has now expired.

What this means is that budget autonomy is, indisputably, the law of the District of Columbia. Congress retains its plenary authority over District affairs and will have the same review period over the District's budget as it has over all other legislation originating from the D.C. Council. But in circumstances in which Congress fails to act, the default rule is now that the D.C. government will not be paralyzed and will instead be permitted to operate.

I thank the Subcommittee for the opportunity to discuss these important matters and would be pleased to answer any questions.

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[4] *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803).

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: **Brian D. Netter**

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2012. Include the source and amount of each grant or contract.

I have not received any federal grants or contracts since October 1, 2012.

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

I am testifying on behalf of the District of Columbia Council, with which I have an attorney-client relationship concerning the topic of my testimony.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2012, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

Not applicable, per House Rule XI, Clause 2(g)(5).

I certify that the above information is true and correct.
Signature:

Date: **5/9/2016**

Biographical Summary

Brian D. Netter
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Education

B.S.E., *summa cum laude*, Industrial & Operations Engineering,
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M.S.E., Industrial & Operations Engineering,
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J.D., Yale Law School, New Haven, Connecticut

Legal Employment

2007–2010 & 2011–present	Mayer Brown LLP Partner, Supreme Court & Appellate Litigation
2010–2011	Supreme Court of the United States Law Clerk to Hon. Stephen G. Breyer
2006–2007	U.S. Court of Appeals for the D.C. Circuit Law Clerk to Hon. Judith W. Rogers

Publications

Using Group Statistics To Sentence Individual Criminals: An Ethical and Statistical Critique of the Virginia Risk Assessment Program, 97 J. CRIM. L. & CRIMINOLOGY 699 (2007)

A Quantitative Look at the Two-Suspect Scenario, 115 YALE L.J. 1167 (2006)

Avoiding the Shameful Backlash: Social Repercussions for the Increased Use of Alternative Sanctions, 96 J. CRIM. L. & CRIMINOLOGY 187 (2005)

Anisogamy, Expenditure of Reproductive Effort, and the Optimality of Having Two Sexes, 53 OPERATIONS RES. 560 (2005) (with Marina A. Epelman, Stephen Pollock, & Bobbi S. Low)

Admissions

Admitted to practice law in the District of Columbia and the State of Illinois