



COUNCIL OF THE DISTRICT OF COLUMBIA
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TESTIMONY OF CHAIRMAN PHIL MENDELSON
COUNCIL OF THE DISTRICT OF COLUMBIA

D.C. HOME RULE: EXAMINING THE INTENT OF CONGRESS IN THE
DISTRICT OF COLUMBIA HOME RULE ACT OF 1973

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS

MAY 12, 2016

Thank you Chairman Meadows, Ranking Member Connolly, and members of the Committee. I am Phil Mendelson, Chairman of the Council of the District of Columbia. I am pleased to testify before you today regarding the District of Columbia Home Rule Act and the Local Budget Autonomy Act. I would also like to thank the Delegate for the District of Columbia, Congresswoman Eleanor Holmes Norton, for her staunch representation of the District and leadership in relation to the subject of today's hearing.

As described in the Committee's invitation to appear today, the purpose of this hearing is to examine the congressional intent in the passage of the District of Columbia Home Rule Act of 1973, as well as to evaluate the potential outcomes related to enforcement of the Local Budget Autonomy Act.

Regarding the former, testifying along with me today is the Council of the District of Columbia's *pro bono* counsel, Mr. Brian Netter of Mayer Brown LLP. I defer to Mr. Netter to more specifically address the legal issues underlying the judicial decision regarding the intent. The Council, for its part, was guided on this matter by the statement of Congress as to its purpose in enacting the Home Rule Act. Section 102 of the Home Rule Act specifically provides such a "Statement of Purpose," providing that:

“[T]he intent of Congress is ... *to the greatest extent possible*, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.”¹

In the judicial decision upholding the District’s budget autonomy law, Superior Court Judge Brian Holeman resolved the issue of legislative intent with specific attention to this statement of purpose. Just as the adoption of the Home Rule Act was intended to loosen the strict control over purely municipal matters, it follows that the Local Budget Autonomy Act removes the bureaucratic burdens associated with purely local expenditures.

That said, I will focus the majority of my testimony toward addressing the second issue to be reviewed by this Committee: the potential outcomes associated with the operating under the Local Budget Autonomy Act.² My testimony will first describe some of the policy arguments supporting local autonomy over the local budget, and put in context some of the tangible benefits that result from this control. Second, I will highlight the fiscal strength of the District and our efforts to maintain a strong and stable local economy. Finally, I will briefly address the practical consequences of the Local Budget Autonomy Act on the budgetary process.

POLICY ARGUMENTS SUPPORTING LOCAL BUDGET AUTONOMY

As the Committee is well aware, the District has had the authority, since 1973, to raise its own revenues. Prior to implementation of the Local Budget Autonomy Act, however, all District spending was authorized by Congress through the federal appropriations process irrespective of the source of revenue connected to such spending.³ This includes money raised locally by the District. The consequences of this unique requirement has hampered the District in meeting service needs for our residents and visitors to the nation’s capital.

This cumbersome hurdle to spending—requiring federal approval for local spending—is further divorced from a justifiable purpose when one considers the makeup of the District’s budget. The District of Columbia’s Fiscal Year 2017 budget totals \$13.4 billion. Of this, the vast majority—\$10 billion—is locally raised through District taxes and

¹ Section 102 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. OFFICIAL CODE § 1-206.02(c)(1) (emphasis added). In addition to the text of the statute, the Superior Court decision relied on records of proceedings convened in Congress that indicate that the legislative purpose of the Home Rule Act is to “entrust[] the District with the management of its own affairs, while retaining the power to veto the District’s actions.” *Council of the District of Columbia v. DeWitt*, Case no. 2014 CA 2371 B, 21 (2016) (citing *District of Columbia Self-Government and Governmental Reorganization: Markup by H. Comm. On D.C. of H.R. 9056*, 93d Cong. 1st Sess. (July 18, 1973) (statement of Chairman Adams)).

² D.C. Law 19-231; 60 DCR 12135 (2013).

³ This also means that federal grants included in the District’s budget, which are already appropriated to the federal agency responsible for program administration and awarded to the District, must be “re-appropriated” by Congress during consideration of the District’s budget.

fees or derived from other local sources.⁴ This means local dollars account for 74.6 percent of the District's total budget. Most of the rest—\$3.3 billion—is federal formula spending that includes Medicaid and federal grants available to all jurisdictions and for which the federal government has no unique oversight responsibility. This latter portion accounts for 24.6 percent of the District's total budget. Overall, approximately 99.2 percent of the District's budget is derived from local revenue and federal grants not unique to the District. The remainder, less than 1 percent of the budget, comes from federal payments specifically requested for programs or projects unique to the District.⁵

This increased reliance on local revenues to fund the District's service delivery is a major shift from when Congress granted the District Home Rule. Indeed, even as late as 1991 the federal payment to the District constituted 40 to 50 percent of the District's total budget. However, a variety of factors has reduced that contribution dramatically. In part, the prudent fiscal leadership and financial management of the local government have ensured that we have a healthy revenue stream to allow local resources to pay for local services.

Though our financial health is sound, our financial management is hampered in many ways the federal appropriations process. With the enactment of Local Budget Autonomy Act, however, I am able to highlight cost savings and other efficiencies that the District will see as a result of the untethering of our local budget from the federal appropriations process. These benefits are discussed in the subsections below.

Local Budget Autonomy Saves Money

The federal budget process placed pressure on the District to approve its budget earlier in the calendar year in order to include it in the federal budget, which is generally formulated in the spring and summer. Assuming Congress adopted a federal budget before the close of the fiscal year on September 30th, there was a four-month lag between the District's approval of a local budget (end of May) and congressional approval of a federal budget (end of September).

However, enactment of a federal budget was often delayed well into the fiscal year while the federal government (and, likely, the District) operated under a Continuing Resolution. Indeed, only 3 times since 1990 has Congress appropriated on time—that is, adopted the District's fiscal year budget before the fiscal year began,

The impact of this on the local economy was substantial. Unable to operate under an approved budget results in hiring delays, lost revenues, and untimely procurements, all of which meant additional costs to the District. The resulting cash shortages forced the

⁴ For fiscal year 2017, the local portion of the District's budget consists of the following: \$7.3 billion derived primarily from income, property, and sales taxes; \$0.3 billion from Dedicated Taxes; \$1.3 million from Private Grants and Private Donations; \$0.6 billion from Special Purpose Revenue; and \$1.8 billion from Enterprise Funds.

⁵ The federal payment includes reimbursement for emergency planning and expenses related to events like the Presidential Inauguration.

local government to borrow, adding more unnecessary costs. Each year, the short-term borrowing costs alone forced the District to incur approximately \$3 million in additional interest expenses.⁶

Tied as it was to the federal appropriations process, the District also approached the end of each fiscal year unlike any other municipality or state in that, facing the absence of a federal appropriations act, it was forced to engage in extensive planning for a potential government shutdown. In the increasingly likely situation whereby the federal government would not adopt a federal appropriations bill, the District government—treated like a federal government agency—was not permitted to operate because the District’s own locally raised funds would not have been appropriated by Congress.⁷

At the front line of government service delivery, the District has to ensure that vital services, particularly those relevant to public safety and public health, continue uninterrupted while we plan to shutter those other, “non-essential” services. The planning process alone forces additional, but avoidable, costs on the District. While recently Congress began including a provision for the District to continue operating absent a budget or Continuing Resolution, this authorization had to be adopted anew each year, and was never guaranteed.

A more systemic impact on the local government’s finances is seen in the District’s bond ratings and interest costs. While the District’s disciplined financial management has enabled our credit ratings to rise from the low point of “junk bond” status in the mid-1990s to the current AA, Aa1, and AA from Standard and Poors, Fitch Ratings, and Moody’s respectively, the uncertainty over whether the District will have an approved budget has impacted the District’s bonds in two key ways. First, at the start of the fiscal year the uncertainty, though unconnected to the District, must be disclosed to potential buyers’ of the District’s municipal bonds. This has led to higher interest rates, which in turn means more of the District budget goes toward interest payments and less to other priorities. Further, in 2003 the District testified before this Committee that every time the District goes to Wall Street, the one item cited as detrimental to our achieving a higher bond rating is the uncertainty of the federal budget approval process.⁸

Finally, having a budget that requires congressional approval causes inefficiencies by encouraging managers to “use or lose” funding at the close of the fiscal year. Former Mayor Williams, testifying before this Committee in 2003, described the perverse incentive for managers to spend funds on things that are colorable or plausible, but not necessarily

⁶ *Budget Autonomy for the District of Columbia: Restoring Trust in Our Nation’s Capital, Hearing Before the H. Comm. on Government Reform, 108th Cong., Serial No. 108-36, at 48 (June 13, 2003) (statement of Dr. Natwar Gandhi, Chief Financial Officer, District of Columbia) (hereinafter Cong. Budget Autonomy Hearing).*

⁷ CONGRESSIONAL RESEARCH SERVICE, DISTRICT OF COLUMBIA BUDGET AUTONOMY: AN ANALYSIS OF H.R. 733, 110TH CONGRESS, June 6, 2007.

⁸ Cong. Budget Autonomy Hearing, *supra* note 6, at 54 (statement of Linda Cropp, Chairman, Council of the District of Columbia).

the smartest form of spending, rather than allow that funding to lapse.⁹ The uncertainties of the federal appropriations process make it difficult for the District to adequately plan to allow those managers to carry those funds forward instead of spending in an inefficient manner.

Removing the uncertainty over the local budget ensures that the District's budget is not being inefficiently spent on unnecessary borrowing costs or paying a premium for services that we would otherwise plan more efficiently to achieve.

Local Budget Autonomy Allows for More Accurate Data & Planning

As noted above, the federal appropriations process has previously required the District to formulate its budget four months before the start of the fiscal year. This means that the District's budget was formulated based on revenue estimates that were completed in February—seven months before the start of the fiscal year (and 20 months before the end of that fiscal year). This put the District at an extreme disadvantage in formulating its budget, and undermined the District's ability to accurately estimate its revenue and expenditure needs. Dr. Gandhi, in espousing the benefits of local budget autonomy, noted that “the more time that elapses between the formulation of a budget and its execution, the more likely the operating assumptions underlying that budget may change.”¹⁰

Similarly, allowing the District to direct the spending of its local revenue under local budget autonomy ensures greater flexibility to respond to changing financial conditions during a fiscal year. Under the prior system, for example, if additional revenues became available the District was forced to wait on the federal appropriations process in order to achieve authorization for spending those additional funds.¹¹ This produced the perverse result of preventing the District from spending what were available funds on necessary services for as long as 18 months while awaiting a new budget cycle. Such funds could have been spent on critical service needs, like increased hiring of police officers and firefighters,

⁹ Cong. Budget Autonomy Hearing, *supra* note 6, at 52 (statement of Anthony Williams, Mayor, District of Columbia).

¹⁰ *Bill 19-993, Local Budget Autonomy Act of 2012: Public Hearing Before the Council of the District of Columbia Committee of the Whole*, Nov. 9, 2012, at 6 (written statement of Natwar M Gandhi, Chief Financial Officer). Dr. Gandhi also noted that in 2009 the Council approved a budget based on the CFO's February revenue estimates, only to have the June revenue estimates for that year show a projected decrease of \$190 million for fiscal year 2009, and a projected loss of \$150 million in fiscal year 2010. Though adopted by the Council, the fiscal year 2010 budget had not yet been signed by the Mayor. As a result of this, the District government was forced to act swiftly to not only revise the current year budget but the budget for the upcoming fiscal year. This hasty revision to the budget could have been avoided if the District operated under a more rational budget process, and the budget revisions could have been accomplished more efficiently if the budget was developed more contemporaneously with current revenue estimates.

¹¹ In 2009, Congress provided the District with authority to increase its appropriations, but placed a cap on the increase of 6 percent of the overall budget. *See* section 817 of the Omnibus Appropriations Act, 2009, approved March 11, 2009 (123 Stat. 699; D.C. OFFICIAL CODE § 47-369.02).

but were instead held in abeyance until a federal appropriation granted authority to spend.¹²

In addition to alleviating the strictures preventing the District from responding quickly to service needs, the Local Budget Autonomy Act allows the District to modify its fiscal year to more closely conform to the revenue cycle. Information on income and real property tax revenues, which are key to overall revenue projections for the District, is not available until after April, well into the current budget cycle. Adjusting the fiscal year would allow the District to budget based on the most up-to-date data, producing a more efficient spending plan.

More specifically, moving from a September/October fiscal year to a June/July fiscal year would align the District with the most common practice among local government jurisdictions. The most immediate advantages of the June/July cycle is that it conforms to the school year. Our current fiscal year, which had been tied to the federal appropriations process, severs the first quarter of the school year from the annual budget. The consequence is that our D.C. Public Schools (DCPS) have their largest spending quarter—which includes all the school year start-up costs—in the same fiscal year as the previous school year (three quarters). This proves particularly problematic for the school system in terms of hiring and procuring for an upcoming fiscal year. It also hampers new initiatives for students, and even classroom resources, as the funding for these items are uncertain until appropriated at the federal level.

This scenario is also true with regard to the District's university. The University of the District of Columbia (UDC), unlike any other school system in the country, must wait upon federal appropriation for portions of both the current and upcoming school year. Perhaps more problematic is that our education system—including both DCPS and UDC—are subject to closure in the event of a government shutdown. In the case of the UDC, this even means that services the University supplies, such as legal clinics to serve vulnerable populations, must be closed until funding is approved.

Under the Local Budget Autonomy Act, the District can modify its fiscal year to address these issues, as well as improve cash flow management and reduce some budgeting risks as has been asserted by the District's former Chief Financial Officer.

Local Budget Autonomy Improves Service Delivery to Residents and Visitors of the District

In the judicial opinion confirming the validity of the Local Budget Autonomy Act, the court noted that the process previously followed resulted in District agencies struggling to maintain operations while waiting for appropriation legislation “leading to lower or no availability of public services and benefits such as police patrols, public school nurses, and prescription drug benefits.”¹³ In 2003, former Mayor Williams testified before this

¹² Further, even the most commonplace of transactions, such as requests to reprogram funds from one object class to another if in excess of \$1 million, require a congressional review period before the transfer is effectuated.

¹³ *Council of the District of Columbia v. DeWitt*, Case no. 2014 CA 2371 B, 11 (2016).

Committee on the need for greater flexibility and noted that “[a]s the front line of government service delivery, no local government can operate effectively without the ability to respond quickly to changing public needs.”¹⁴

With local budget autonomy the District can respond to changing circumstances and address immediate needs through changes to programs and services. As noted by the court, this can mean changes to the budget to hire additional police officers to address public safety needs, purchasing fire apparatus to keep residents safe, or hiring nurses to meet the health needs of our students. Absent this autonomy, there is a detrimental delay between identifying the service need and implementing a solution.

In addition to having to wait for the next federal appropriations for launching new initiatives, the District, prior to budget autonomy, was often hindered in making improvements to current services as a result of being tethered to the federal process. This has traditionally caused real hardship for schools, as noted above, causing new investments in programming and services to be jeopardized by the previous budget approval process. While the District was permitted some reallocation of funding in a fiscal year, a significant reallocation of resources required a supplemental appropriation bill moving through Congress. This had the effect of stalling urgent needs by months as delays mounted in the federal appropriations process.

As a local government, the District must meet the immediate needs of a thriving city. The flexibility to address the types of urgent service and programmatic needs of that city under local budget autonomy ensures that everything from trash collection to public safety response is delivered efficiently in terms of both time and resources.

This highlights another advantage to budget autonomy: ensuring that the service delivery—to residents, to visitors, and even to the federal government—is not disrupted due to federal budget battles which often have no relation to the District or its budget. As U.S. Representative Tom Davis noted in 2003, while Congress’s involvement in the District’s budget stems from a desire to ensure the financial well-being of nation’s capital, “the unfortunate reality is that the city’s local budget can get tied up in political stalemates over congressional appropriations that rarely have anything to do with the District’s budget.”¹⁵

FISCAL STRENGTH OF THE DISTRICT OF COLUMBIA

The advantages born out of local budget autonomy, as noted above, will only serve to improve the overall fiscal strength of the District. Since 2001 when the Control Board was suspended, the District government has routinely achieved balanced budgets and clean financial audits. Financial markets have recognized the District’s laudable fiscal stewardship in the form of higher bond ratings and lower interest rates on borrowing. The District has a proven record of financial management, as evidenced by Mayor Muriel Bowser’s proposed this past spring of the District’s twenty-first balanced budget.

¹⁴ Cong. Budget Autonomy Hearing, *supra* note 6, at 12 (written statement of Anthony Williams, Mayor, District of Columbia).

¹⁵ Cong. Budget Autonomy Hearing, *supra* note 6, at 2 (statement of U.S. Representative Tom Davis).

Since Congress granted the District of Columbia home rule in 1973, the District has had many successes, but also many challenges. Perhaps our greatest challenge was the imposition of a Control Board in 1995, essentially stripping our local government of full control over our budget and management. The Control Board era forced the District to confront its finances head on and to realign the relationship between the District and the federal government. By 2001, the District was back on solid financial footing and the Control Board was dissolved.

Since that period, the District has had a strong economic record. We have grown our fund balance even in the wake of the Great Recession and massive cuts in federal spending. Our balanced budgets have relied not on steep tax increases or deep spending cuts, but on responsible policies that have grown our economy while providing a broad safety net for District residents.

Indeed, in 2015 the District invested its local dollars in a major tax relief package that reduced the effective tax rate for the majority of residents, and lowered business and sales taxes to make us more competitive regionally. As a result of this tax reform the District has received national and bipartisan recognition. The District has also maintained strong bond ratings. We also continue to make capital investments in our infrastructure, while remaining below our locally-mandated 12% debt cap.¹⁶ Other indicators of financial strength include funding for retirement accounts. Our Police, Fire, and Teachers retirement fund—a defined benefit plan—is among the best in the nation, fully funded at over 100 percent. Our Other Post-Employment Benefits Fund, which sets aside the costs of retired government employee health care, is the best in the nation, currently funded at over 100 percent.

Our city is growing, our tax base is growing, our financial reserves are healthy, our capital spending is disciplined, and our retirement funds are among the best in the nation. We are adding over 1,000 new residents a month and businesses are flocking to the District. Few local governments, and even fewer states, can boast of such achievements, especially in the last decade.

The District's success and strong record of responsible financial management, even in the face of administrative hurdles that no other jurisdiction must endure, demonstrates that the flexibility inherent in local budget autonomy is warranted.

PRACTICAL CONSEQUENCES OF LOCAL BUDGET AUTONOMY

As outlined above, the Local Budget Autonomy Act allows the local government to operate more efficiently and with greater flexibility to meet the programmatic and service needs of those residents and entities. Among other things, local budget autonomy saves the District money, allows us to better forecast our budgets, and ensures local services are not interrupted by federal budget battles. This is accomplished not through a divestment of

¹⁶ D.C. OFFICIAL CODE § 47-335.02(a) (2014). The congressionally adopted Home Rule Act allows for an 18% cap.

congressional authority, but an untangling of the District's local budget from the federal budget process.

During testimony received in consideration of the Local Budget Autonomy Act, and explored in depth during the subsequent litigation, it was noted that Congress maintains a range of options in continuing to exercise review over the District's budget. Further, Congress' exclusive jurisdiction—which the District is so often reminded of—is unaffected by local budget autonomy. Indeed, while the District will enact its local budget for the first time this year, approving the District's annual budget in the same manner as it considers all other legislation, the legislation will be sent to Congress for the standard 30-day review period. Also worth noting is that federal funds directly appropriated to the District remain with the federal appropriations process.

Despite the time-consuming budget process the District engaged in prior to local budget autonomy, since the Control Board era Congress has not made changes to the local funds portion of the District's appropriations (nor, it should be noted, has the White House). Instead of modifying the allocation of local funds in the District's budget, Congress has limited their changes to legislative provisions and direct federal appropriations—two things that remain available to Congress under local budget autonomy.

CONCLUSION

I appreciate the Committee providing me the opportunity to testify before you today regarding the District of Columbia Home Rule Act and the Local Budget Autonomy Act. As I stated at the outset, my testimony has focused on policy arguments surrounding the implementation of local budget autonomy for the District of Columbia. While the District's local budget previously been tethered to the federal appropriations process, this has produced increased costs and other inefficiencies without a tangible benefit.

Going forward, the District will maintain its proven record of financial management, and will continually strive to improve the fiscal strength of the District. With implementation of the Local Budget Autonomy Act we can now act more efficiently and with greater flexibility to meet the programmatic and service needs of residents and visitors to the District of Columbia.



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BIOGRAPHICAL SUMMARY OF CHAIRMAN PHIL MENDELSON COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson was first elected to the Council of the District of Columbia in November of 1998 as an At-Large Councilmember. He served the District in that role until June 2012 when, following the departure of the previous Council Chairman, Mendelson was selected by his colleagues to take over that role. In November 2012, District voters overwhelmingly elected Mendelson as Chairman of the Council. He was re-elected to this position in 2014.

As Chairman, Mendelson leads the Council on all legislative matters. He also presides over the Committee of the Whole, which has responsibility for the District's annual budget, the Council's relations with the federal government, Council appointments to various boards and commissions, as well as proposed changes to the District's Charter. The Committee of the Whole also has a robust oversight role within the Council, including oversight over entities and issues such as economic development, contracting and procurement, planning, and the various regional authorities. In addition to his work on the Council, Mendelson is active with the Metropolitan Washington Council of Governments (COG), and has served in various leadership positions with that organization.

Prior to becoming Chairman, Mendelson served eight years as Chair of the Council's Committee on the Judiciary. In this role he was responsible for oversight of the District's public safety agencies and for legislation relating to the criminal code. He also served, prior to his election as an At Large member of the Council, as an Advisory Neighborhood Commissioner. Mendelson came to the District from Cleveland, Ohio in 1970 to obtain a Bachelor's Degree in Political Science from American University.