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Before

The Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia  
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Statement on District of Columbia District Attorney Act, H.R. 1296

Mr. Chairman, thank you for the invitation to testify before the Subcommittee on the subject of the establishment of a locally elected District Attorney for the District of Columbia. I am here today to provide a summary of the legislative history of the District of Columbia District Attorney Act, to briefly outline the positions of proponents and opponents of the legislation, and to describe how the proposed legislation, H.R. 1296, would realign the prosecution of local criminal and civil cases in the District of Columbia.

Article I, Section 8, Clause 17, of the Constitution gives Congress exclusive authority over the affairs of the District of Columbia. Using this power, the Congress passed the Self-Government and Government Reorganization Act of 1973, which granted the District limited home rule powers. The act allowed citizens to elect both legislative and executive branch officials. It did not allow for the election of a local prosecutor. The Act also outlined how elements of the Home Rule Charter might be changed. For instance, an amendment to the District's charter may be initiated and approved by the City Council and ratified by voters by way of referendum. In this case, Congress has a 35 day period to pass a joint resolution of disapproval to prevent its implementation. If Congress takes no action the charter amendment is approved.<sup>2</sup> Or, Congress may on its own amend the city's home rule charter.<sup>3</sup>

H.R. 1296, if approved by Congress, would amend the District of Columbia Home Rule Charter to establish the elected office of the District Attorney for the District of Columbia. The measure would transfer to the Office of the District Attorney prosecutorial authority for all local criminal laws as well as authority over the enforcement of civil laws of the District of Columbia and civil actions against the government of the District of Columbia. The measure would require that the person elected District Attorney:

- be a qualified voter who has been a resident of the District of Columbia for at least a year;
- hold no other public office;
- be a member of the District of Columbia Bar in good standing; and

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<sup>1</sup> The author gratefully acknowledges the assistance provided by Kenneth Thomas, Legislative Attorney, American Law Division and Jerry Mansfield of the Government and Finance Section of the Knowledge Services Group in compiling information included in this testimony.

<sup>2</sup> 87 Stat. 784 and D.C. Code §1-203.03.

<sup>3</sup> 87 Stat. 813 and D.C. Code §1-206.01

- be prohibited from the private practice of law while in office.

The elected District Attorney would serve a four-year term that would be conterminous with that of the Mayor. The legislation also provides for an initial mayoral appointment, by resolution, within 30 days of its enactment and allows for a 30 day review by the City Council. Failure of the City Council to disapprove the resolution within the 30 day period would constitute their approval of the appointment.

## Legislative History

The legislative history of the District of Columbia District Attorney Establishment Act dates back to June 2002 when the District of Columbia City Council unanimously approved the inclusion of *Advisory Referendum A* as a question on the November 5, 2002 ballot. On November 21, 2002, the Board of Elections and Ethics certified the results of the referendum. Its tabulations showed that 82% of the 109,435 votes cast approved of asking Congress to amend the Home Rule Act for the purpose of establishing an independently elected District of Columbia District Attorney.<sup>4</sup>

On January 7, 2003, the City Council approved D.C. Act 14-578. Much of the language in that legislation is similar to language later included in bills introduced in Congress by Representative Norton in the 108<sup>th</sup>, 109<sup>th</sup>, and 110<sup>th</sup> Congresses. The D.C. bill, introduced as B14-600, the Establishment of the Office of the Attorney General for the District of Columbia Charter Amendment Act of 2002, originally was a detailed blueprint of the organizational structure of the proposed Office of the Attorney General for the District of Columbia. It described the roles and responsibilities of the position of the District's Attorney General, as well as subordinate positions including Deputy Attorney General, Solicitor General, and district attorneys for criminal prosecution and civil proceedings. The bill would have authorized an organization not unlike the structure used by many state governments. In addition, the bill would have abolished the Office of the Corporation Counsel and transferred all of its personnel and property to the proposed Office of the Attorney General.

However, the bill as approved by the City Council was not as detailed or extensive. Rather than calling for the creation of an office with an arrangement similar to states, the D.C. statute, A14-578, focused only on the creation of an independent, elected Office of the District Attorney. In June 2003, Representative Norton introduced H.R. 2334, proposing a change in the city's charter for the purpose of establishing an elected Office of the District Attorney. No action was taken on the bill. In succeeding Congresses, Representative Norton reintroduced the legislation as H.R. 5800 (109<sup>th</sup> Congress), and H.R. 1296 (110<sup>th</sup> Congress).

On May 26, 2004, then Mayor Anthony Williams issued Mayor's Order 2004-92 that re-designated the Office of the Corporation Counsel of the District of Columbia as the Office of the Attorney General.<sup>5</sup> In February 2005, the City Council approved the Technical Amendments Act

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<sup>4</sup> The ballot results may be viewed at [[http://www.dcboee.org/information/elec\\_2002/htmldocs/initiative.shtml](http://www.dcboee.org/information/elec_2002/htmldocs/initiative.shtml)].

<sup>5</sup> Government of the District of Columbia, District of Columbia Register, *Re-designation of the Office of the Corporation Counsel as the Office of the Attorney General*, District of Columbia Register, vol. 51, no. 44, Jun. 11, 2004, pp. 6052-6053. The document may be viewed at [[http://www.amlegal.com/nxt/gateway.dll?f=templates\\$fn=default.htm\\$vid=dcr:free](http://www.amlegal.com/nxt/gateway.dll?f=templates$fn=default.htm$vid=dcr:free)]. For an

(continued...)

of 2004, amending various provisions in the D.C. Code to reflect the re-designation of the Office of the Corporation Counsel as the Office of the Attorney General.

Currently, the Attorney General for the District of Columbia is the chief law official for the District of Columbia. He has authority to conduct all law business of the District not otherwise designated, including the authority to conduct all civil suits instituted by and against the government. He or she is also authorized to furnish opinions in writing to the Mayor.<sup>6</sup>

The Attorney General's authority over criminal matters is commensurate with the authorities which were granted to his predecessor office, the Office of the Corporation Counsel.<sup>7</sup> For instance, like his predecessor, the District's Attorney General has authority to prosecute violations of most ordinances, regulations or penal statutes where the maximum punishment is a fine only, or imprisonment not exceeding one year. He is also responsible for prosecuting violations relating to disorderly conduct and lewd, indecent, or obscene acts.

Currently, other criminal prosecutions are conducted in the name of the United States by the Office of the United States Attorney for the District of Columbia.<sup>8</sup> Under H.R. 1296, the "District of Columbia District Attorney Establishment Act of 2007,"<sup>9</sup> however, the newly-created District Attorney for the District of Columbia would prosecute all of the criminal laws of the District of Columbia, including violations committed by both adult and juvenile offenders.<sup>10</sup>

## Arguments Offered for and Against an Elected District Attorney

Supporters of a locally elected prosecutor maintain that the legislation —

- is consistent with the goal of expanding home rule and self-governance,
- would create an independent prosecutor directly answerable to the voters of the District of Columbia,
- is consistent with the practice of most local governments, and
- could lead to improvements in law enforcement.

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<sup>5</sup> (...continued)

overview of the duties of the District of Columbia Attorney General, formerly the District of Columbia Corporation Counsel, see [<http://occ.dc.gov/occ/cwp/view,a,3,Q,530960,occNav,31705>].  
asp].

<sup>6</sup> D.C. Code § 1-301.111.

<sup>7</sup> See, e.g., D.C. Code § 23-101 (conduct of prosecutions). Mayor's Order 2004-92 redesignated the Corporation Counsel of the District of Columbia as the Attorney General for the District of Columbia. See D.C. Code § 1-301.111 *note*.

<sup>8</sup> *Id.* at § 23-101(d).

<sup>9</sup> 110<sup>th</sup> Cong., 1<sup>st</sup> Sess.

<sup>10</sup> H.R. 1296, § 2. Under § 3 of the bill, an indictment or information brought in the name of the United States in the District Court for the District of Columbia may include charges of offenses prosecutable by the District Attorney for the District of Columbia if the District Attorney consents to the inclusion of such charges.

In addition, supporters point to the fact that local prosecutors are overwhelmingly elected to office. According to a 2002 survey by the International City/County Managers Association (ICMA), 93% of 876 counties that responded reported that local county prosecutors are elected. (See attached Table 1.)

Opponents of measures to establish the elected position of district attorney have contended that creating such an office could result in significant costs as prosecutions currently handled by the U.S. Attorney may shift to the District Attorney's office. They note that a 2002 fiscal impact report by the Office of the Chief Financial Officer estimated that the costs, in 2003, of implementing the proposed legislation would be \$57 million.<sup>11</sup> The estimate assumed that portions of the caseload of the U.S. Attorney's Office would be wholly transitioned to local authority.

## Realignment of Responsibilities

H.R. 1296 leaves several unanswered questions open for discussion. Most of them would be left for local officials to resolve, but federal involvement or federal assistance may be needed under certain conditions. For instance, the following issues may require federal consideration.

**Staffing of the new office.** Given its legislative mandate, how would the new office of the District Attorney be staffed? Would some of the attorneys now in the office of the District's Attorney General be transferred? What will be the future responsibilities of the attorneys in the Office of the U.S. Attorney who are handling D.C. cases?

**Role of the Attorney General.** The bill does not call for the abolition of the Office of the Attorney General of the District of Columbia. Although it would transfer some, but not all, of the duties and responsibilities of the Attorney General to the District Attorney, it may leave many still within its authority. Would the Attorney General's Office continue to provide legal opinions and support to the Mayor and executive branch agencies?

**Funding.** Currently, Congress provides an annual appropriation for the operation of the local court system and criminal justice related activities. Although the bill does not assume federal financial support for the office, some observers may contend that such support would be consistent with the federal government supporting other elements of the District's criminal justice system. Conversely, it may be argued that the U.S. Attorney's involvement in the prosecution of local crimes represents a savings to the District residents, much like federal support for court operations and defender services.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions.

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<sup>11</sup> The fiscal impact statement may viewed at [[http://app.cfo.dc.gov/services/fiscal\\_impact/pdf/fall02/B%2014-600%20District%20District%20Attorney.pdf](http://app.cfo.dc.gov/services/fiscal_impact/pdf/fall02/B%2014-600%20District%20District%20Attorney.pdf)].

**Table 1. Survey Question from ICMA: Are the following department heads Appointed or Elected; Prosecutor?**

Classification	Total	Appointed		Elected	
	No.	No.	% of total	No.	% of total
	876	63	7.2%	813	92.8%
Population group					
Over 1,000,000	8	1	12.5%	7	87.5%
500,000-1,000,000	16	2	12.5%	14	87.5%
250,000-499,999	28	1	3.6%	27	96.4%
100,000-249,999	102	4	3.9%	98	96.1%
50,000-99,999	121	8	6.6%	113	93.4%
25,000-49,999	172	15	8.7%	157	91.3%
10,000-24,999	225	17	7.6%	208	92.4%
5,000-9,999	124	8	6.5%	116	93.5%
2,500-4,999	49	4	8.2%	45	91.8%
Under 2,500	31	3	9.7%	28	90.3%
Geographic region					
Northeast	31	7	22.6%	24	77.4%
North Central	336	21	6.3%	315	93.8%
South	338	22	6.5%	316	93.5%
West	171	13	7.6%	158	92.4%

Source: International City/County Managers Association Survey 2002