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

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Good afternoon Chairman Davis and distinguished 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 citizens of the District of Columbia. Thank you for giving me the opportunity to testify today regarding H.R. 733, the "District of Columbia Budget Autonomy Act of 2007", and H.R. 1054, the "District of Columbia Legislative Autonomy Act of 2007". H.R. 1054.

In our view, these two bills (along with the DC Voting Rights Act recently passed by the House) represent another critical step toward the advancement of democracy and self-government for the residents of the nation's capital.

I would like to make three points about the two bills which are the subject of today's hearing, both of which constitute amendments to DC's Home Rule Act ("Home Rule Act"). The first point is that the bills are completely consistent with and advance the Framers' intent regarding government of the District of Columbia, that local matters would be decided by local government; the second point is that the bills are also consistent with and advance Congress' own stated purpose in the Home Rule Act, that "to the greatest extent possible" Congress should be relieved of decisionmaking on local

matters; and the third point is that now is the appropriate moment in the District's long journey toward self-government to adopt these critical measures.

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

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...."[1] 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.[2] 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

[1] U.S. CONST. art. I, § 8, cl. 17.
[2] Adams v. Clinton, 90 F. Supp. 2d 35, 50 n.25 (2000), *aff'd*, 531 U.S. 941 (2000).

about.[3] 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 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.[4] 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. 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.[5]

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

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[3] 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].

[4] JAMES MADISON, THE DEBATES IN THE FEDERAL CONVENTION OF 1787 WHICH FRAMED THE CONSTITUTION OF THE UNITED STATES OF AMERICA, 332 (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")

[5] Raven-Hansen, at 171.

government will be able to protect itself."[6] In Virginia, James Madison asked, "How could the general government be guarded from the undue influence of particular states, or from insults, without such exclusive power?"[7]

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."[8] 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 to the cession [of land from

[6] 3 JONATHAN ELLIOTT, ELLIOTT'S DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE CONSTITUTION 219-220 (1901) [hereinafter Elliott].
[7] Elliott, at 433.
[8] THE FEDERALIST NO. 43, at 209 (James Madison) (Terrence Ball, ed. 2003) [hereinafter Madison].

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...."[9]

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."[10] 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.[11]

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 "exclusive 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

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[9] Madison, at 210.
[10] District of Columbia v. John R. Thompson Co., 346 U.S. 100, at 109 (1953) (emphasis added).
[11] 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.").

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 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.[12] This view of the District Clause has been confirmed by numerous subsequent court opinions.[13]

II. 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."[14] This grant is limited, however, by the retention of "ultimate legislative authority over the nation's capital" to Congress.[15] The proposed amendments would remove requirements that place substantial burdens on Congress, as well as contributing to the expediency and efficiency of District government. However, they would not limit the ability of Congress to legislate for the District if necessary. The proposed amendments would leave untouched section 206.01 of the Home Rule Act, through which Congress has retained the power to override any decision made by the District Council:

> 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

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[12] *Thompson,* 346 U.S. at 109.
[13] *See* Gary v. U.S., 499 A.2d 815, (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).
[14] D.C. Code § 1-201.02(a) (2007).
[15] *Id.*

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 the District prior to or after enactment of this chapter and any act passed by the Council.[16]

III. The District Should be Granted the Greater Degree of Self-Government Proposed by the Amendments

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 our belief that the Framers intended that decisions regarding local matters in the District would be made by a local representative government and that the District should not have to "earn" the recognition of this right. However, we also acknowledge that others view the self-government of the District as depending upon demonstrated ability to govern well. In answer to this view, we feel that the recent record of the District makes this a particularly appropriate moment to extend greater powers of self-government to the District.

Less than a decade ago, four District agencies were in court-ordered receivership,[17] the District's bond rating was at junk status,[18] and District governance was being guided by the Financial Responsibility and Management Assistance Authority ("The Control Board"), put in place by Congress to deal with the "fiscal emergency in the District of

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[16] D.C. Code § 1-206.01 (2007).
[17] Stephen C. Fehr, *Control Board Cites D.C. Progress; Report Calls Financial Recovery Promising but Precarious*, Nov. 2, 1999, at B02.
[18] Keith L. Alexander, *Upgraded Bond Ratings Give City Best-Ever Fiscal Standing*, WASH. POST, May 19, 2007, at B04.

Columbia."[19] In the intervening years, the need for such close scrutiny of District decision-making has disappeared, the Control Board has been suspended, and District leadership has continued to improve the stability and performance of the District government. Since 2002, no District agency has been in receivership.[20] The District continues to experience major economic development, recently achieving some of the highest possible bond ratings from the three most influential credit rating agencies.[21] Employment numbers in the District increased by approximately 37,000 between mid-2001 and mid-2006, with 25,000 of those jobs in the private sector.[22] And the District has maintained a balanced budget for ten consecutive years.[23] This is a record few other jurisdictions can match.

It is therefore my hope that you will recognize this fact and support the proposed amendments, reducing the burden that mandatory reviews 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 at a moment when the House has also quite recently moved democracy forward in the District by passing a bill giving District residents a voting representative in this body.

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[19] District of Columbia Financial Responsibility and Management Assistance Act of 1995, 109 Stat. 97 (1995).
[20] Lori Montgomery & Karylyn Barker, *Mayor Fires Director of D.C. Agency For Disabled*, WASH. POST, June 7, 2006, at B01.
[21] Alexander, *supra* note 18.
[22] BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, QUARTERLY CENSUS OF EMPLOYMENT AND WAGES, *available at* http://www.bls.gov/cew/.
[23] David Nakamura, *Gandhi To Stay In District; City Financial Chief Declines Amtrak Job*, WASH. POST, April 17, 2007, at B01.