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February 20, 2004

The Honorable Dennis Hastert
Speaker of the House
H-232 Capitol Building
Washington, DC 20515

Re: Comments of the D.C. Affairs Section of the D.C. Bar in
Support of the D.C. Budget Autonomy Act of 2003, H.R.2472

Dear Mr. Speaker:

On behalf of the D.C. Affairs Section of the District of Columbia Bar (the "Section"), we thank you for the time and attention you have afforded District of Columbia matters since you have become Speaker. We write now to bring to your attention a matter of critical importance, both to the Section and the District of Columbia because of the importance of Home Rule and fiscal responsibility.¹

We are specifically writing to ask you to support H.R. 2472, the District of Columbia Budget Autonomy Act of 2003, which was introduced by your colleague, Representative Tom Davis (R-VA). The legislation removes the District's budget from the federal appropriations process, directing that the city's budget take effect upon transmittal to Congress. A similar bill, S. 1267, passed the Senate by unanimous consent on December 9, 2003.² H.R. 2472 has been referred to the House Government Reform, Rules and Appropriations Committees, where the bill has yet to be passed. Given the multiple committee referral of H.R. 2472, we believe that an indication of your support

1 The views expressed herein represent only those of the District of Columbia Affairs Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

2 See Section's comments in support of the D.C. Budget Autonomy Act of 2003, S.1267 (Letter to the Honorable Richard J. Durbin, September 30, 2003, http://www.dcbbar.org/for_lawyers/sections/statements.cfm).

of the bill to your colleagues would help move District of Columbia budget autonomy through Committee, and, ultimately, to the House floor. President Bush has indicated his support for this legislation in previous budget submissions to Congress.

The Section serves all attorneys who live, work, or have interest in the District of Columbia, and Bar members who practice before or work with the D.C. Council and the Executive Branch or the court system. The Section monitors legislative, judicial, and related legal developments affecting the District of Columbia. Other key missions are to provide a forum for the membership to network with key government officials and business and community leaders and to offer relevant professional development. The Section has long supported budget autonomy.³

Despite the advent of limited Home Rule in the District of Columbia, Congress has continued direct control over the District's budget. Unlike other pieces of District legislation, which, under the Home Rule Charter, must go to Congress for a review period after which, if Congress has not acted, the bills become law, the District's budget must be affirmatively passed by Congress through its appropriations process.

The current process subjects decisions on how the District may spend its locally generated funds to those whom District residents have no say in electing and to events wholly unrelated to the District. This is fiscally irresponsible, and is a practically and procedurally cumbersome burden on the District. It requires the District to complete its budget preparation and planning process ahead of any other jurisdiction. As you know, the District is facing a similar problem this year and will have to manage under a continuing resolution.

The Section supports the legislation as an important step in rationalizing the management of District affairs and strengthening the local/federal partnership on behalf of the Nation's Capital. Federalizing the District's municipal budget process has undermined the shared federal and local effort to ensure good management of the Nation's Capital, absorbed federal resources needlessly, and is unnecessary to the furtherance of federal objectives for the city.

The following changes are highlighted:

Local Management Would Be Encouraged

The current budget process treats the District of Columbia as though it were a department of the federal government, subjecting the District budget -- local decisions on the spending of local tax dollars -- to the federal appropriations process.

³ See Section's comments in support of the budget autonomy portion of S. 2316, and its companion, H.R. 2995, the "District of Columbia Fiscal Integrity Act of 2001" (Letter to the Honorable Connie Morella and the Honorable Eleanor Holmes Norton, November 19, 2002, http://www.dcbbar.org/for_lawyers/sections/statements.cfm.)

More than three-fourths of the District's budget comes from locally raised tax dollars which fund several vital city services. The remaining one-fourth portion of the budget comes from federal funds for entitlement programs (e.g., Medicaid, TANF, school lunches) that all states receive from the federal government.

The current arrangement undermines the shared federal and local interest in effectively managing District affairs. Accommodating the federal process automatically adds six months to the District's budget cycle, diminishing the accuracy of revenue and expenditure projections on which the budget is based.

Most American cities finalize an annual budget months in advance of the start of the fiscal year. The present federalization of District budget process means that the District must wait weeks and even months after the October 1 fiscal year start date for an approved budget, making do in the meantime with continuing resolutions passed by Congress to permit the city to continue to operate.

Ironically, many of the delays imposed on the District have nothing to do with the District. The federalized process subjects the District budget to the vagaries of the national policy debate. During a recent budget show-down between Congress and the federal Executive, the District waited seven months for an approved budget. Again in 2001, with federal attention necessarily directed to September 11, the District budget sat in Congress's legislative queue for over two months past the start of the District's fiscal year. Last year, the District was forced to operate under a continuing resolution because of delays in the Congressional process. Again this year, the budget is unlikely to be approved until many months after the start of the fiscal year, which could compromise the city's ability to deliver public services.

Federal Resources Would Be Conserved

Federalization of the District's municipal budget process places substantial and unnecessary demands on federal resources. Once approved by the D.C. Council and Mayor, the District's budget must be transmitted to the President for transmittal to the Office of Management and Budget. After it is reviewed by the Office of Management and Budget, it is transmitted to Congress as a federal appropriations bill and reviewed and approved by the House Appropriations Subcommittee on the District, by the full House Committee on Appropriations, and by the full House. It is also reviewed and must be approved by the Senate Subcommittee on the District, by the full Senate Committee on Appropriations, and by the full Senate -- all before being submitted for approval to or veto by the President. Avoiding the full review by the federal Executive and both Houses of Congress conserves federal resources.

Federal Objectives For The Nation's Capital Would Be Preserved

Article I, Section 8 of the U.S. Constitution grants Congress the power to control all District legislation. Congress is free to address District issues of concern via legislative action. Resorting to the cumbersome appropriations process is unnecessary to its control of District policy decisions.

Congress has the tools for influencing District policy without burdening the budget process.

The Uncertainty Of The Current System Would Be Avoided

The District cannot be sure of its budget until after both Houses of Congress and the Federal Executive have reviewed the budget. Avoiding such review allows the District to be better able to plan how it spends its own locally generated tax revenue.

The District Would Be Treated Like Other Jurisdictions

The legislation's changes would allow the District to adopt its own budget like other jurisdictions. The District of Columbia is not an agency or department of the federal government. Yet, it is treated like a federal agency by its inclusion in the lengthy, cumbersome, and uncertain federal appropriations process. Congressional delays in passing the District's budget not only lead to employee furloughs, but affect the delivery of daily vital services to the District's nearly 600,000 residents such as police and fire protection, trash collection, snow removal, government subsidized child care, and other important social services.

In the past decade, the District's budget was timely passed only once. That budget, for FY 1997, was signed by the President on September 5, 1996, weeks before the start of the October 1 fiscal year. However, the FY 1997 budget was the exception, rather than the rule. The approval of other budgets have been delayed anywhere from one to six months.

Twice in the past decade the District had to endure the trauma of a government shutdown due exclusively to its entanglement in the appropriations for federal agencies. While the FY 1996 budget was being debated, a continuing resolution expired at midnight on November 13, 1995. To avoid violating the Anti-Deficiency Act, the District government prepared to shutdown by furloughing employees at agencies that were not exempt under the Anti-Deficiency Act, and by ceasing to operate vital government services. Although the government resumed normal operations on November 20, 1995, it could hardly be called "normal." The threat of another government shutdown loomed large over the District for the next five months, until April 26, 1996, when the FY1996 budget was finally passed.

During the government shutdown, in addition to the furlough of employees, such vital city services as trash collection, snow removal, rodent abatement, government subsidized child care, and other services ceased. Although federal employees were also furloughed during this time period, the impact on every District resident was more far-reaching than its workforce.

A similar shutdown occurred in December 1995. The Fiscal Year 1996 budget was finally adopted on April 26, 1996, nearly six months into the fiscal year.

The Legislation Does Not Violate the U.S. Constitution Or The Home Rule Act

The legislation is consistent with the U.S. Constitution, and allows the District of Columbia

to manage its own affairs consistent with the Home Rule Act.

The U.S. Constitution permits Congress to exercise control over the District's finances but does not require it. The Constitution's District of Columbia Clause, Article I, Section 8, states that "The Congress shall have Power ... To exercise exclusive Legislation in all Cases whatsoever, over such District," thus reserving power over all District activity to the Congress, but not requiring Congress to exercise such power.

Direct Congressional control over District spending began only in the late 19th century in reaction to the excesses of the newly established Commissioners. Congress passed the Organic Act of 1878 to restrict the Commissioners "in the exercise of [their] duties, powers, and authority, ... [from making any] contract, [or] incur[ing] any obligation other than such contracts and obligations as are hereinafter provided for and shall be approved by Congress."

Although the 1974 Home Rule Act continued Congressional appropriation controls imposed less than 100 years before, it also began a financial separation of District funds from the Federal Treasury. For the first three-quarters of the 20th century, Congress not only appropriated District funds, but the U.S. Treasury acted as the District's banker. The Home Rule Act removed local District funds from the U.S. Treasury by establishing a "General Fund of the District of Columbia" separate from the U.S. Treasury. It provided that "All money received by any agency, officer, or employee of the District in its or his official capacity shall belong to the District government and shall be paid promptly to the Mayor for deposit in the appropriate fund." (§450) Beginning in 1978, the District placed its deposits in private banks.

The Constitution's appropriations clause, Article 1, Section 9, states that "No Money shall be drawn from the [United States] Treasury, but in Consequence of Appropriations made by Law," necessitating that federal funds be appropriated by Congress. However, the Constitution does not require Congressional appropriation of funds which are not held in the U.S. Treasury.

Pursuant to the Home Rule Act, District funds over which the budget autonomy proposal would apply are already held outside the U.S. Treasury in the name of the District of Columbia in private banks, and, therefore, do not constitutionally require congressional appropriation to be expended by District officials.

Local appropriation without Congressional action would neither violate the Constitution's appropriation clause nor the District of Columbia clause. The funds which would be locally appropriated are not "drawn from the [U.S.] Treasury," and, thus, are not required to be appropriated by Congress.

If the appropriation authority exercised when the District was founded was resumed, the District of Columbia clause would not be violated since Congress would still maintain the "power" granted in the Constitution to regulate expenditures by specific legislation or to reimpose appropriation requirements, just as it did in 1878.

Conclusion

For all of the above reasons, the Section supports the "District of Columbia Budget Autonomy Act of 2003."

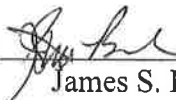
Acknowledgments

The following members of the District of Columbia Affairs Subcommittee participated in drafting these comments: Steering Committee Member Charlotte Brookins-Hudson, Steering Committee Co-Chair James S. Bubar, University of District of Columbia David A. Clarke School of Law Dean Katherine S. Broderick, Steering Committee Co-Chair Bell Clement, former Steering Committee Co-Chair Lily M. Garcia, former District of Columbia Council Member Betty Ann Kane, former District of Columbia Council Member James E. Nathanson, former Steering Committee Co-Chair Thorn L. Pozen, Community Outreach Coordinator William Tayler, former Steering Committee Co-Chair and former District of Columbia Auditor Matthew S. Watson, and Legislative Committee Co-Chair, Jon Bouker.

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Respectfully submitted,

The District of Columbia Affairs Section
of the District of Columbia Bar

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