Congressional Research Service
Informing the legislative debate since 1914

District of Columbia: Issues in the 114th Congress

Updated July 7, 2015

Congressional Research Service
https://crsreports.congress.gov
R44099

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

In the coming weeks and months the 114th Congress will debate a number of funding, governance, and constitutional issues affecting the District of Columbia, including budget and legislative autonomy, voting representation in the national legislature, federal appropriations, and congressionally supported education initiatives. In addition, Congress may consider measures intended to void or otherwise modify acts and initiatives approved by District citizens and their elected representatives. The mechanisms available to Congress in carrying out its oversight of District affairs include resolutions of disapproval, riders on appropriation acts, and stand-alone legislative proposals.

The United States Constitution gives Congress exclusive authority over the legislative affairs of the District of Columbia. Congress has exercised its constitutional authority in a number of ways over the years, including granting District residents some level of self-rule. In 1973, Congress passed the District of Columbia Self-Government and Governmental Reorganization Act (Home Rule Act), granting the city's residents limited home rule. The act allowed for the popular election of a mayor and city council and authorized them to legislate and manage the city's affairs. It also established a budget and legislative review process allowing Congress to disapprove the implementation of any legislative measure passed by the city's elected leaders, including the city's annual budget.

The 114th Congress, as part of its oversight and legislative responsibilities, will consider a number of issues and legislative measures related to the District of Columbia. This report provides an overview of several District of Columbia-related issues and legislative proposals that Congress may review and act upon, including the following:

- granting the District legislative and budget autonomy;
- granting citizens of the District voting representation in Congress;
- marijuana decriminalization;
- gun regulation and Second Amendment issues;
- religious conscience clauses and reproductive health issues; and
- nondiscrimination exemptions for religious affiliated institutions and organizations.

In addition, for each of the items above the report identifies current legislative proposals, if any, and pertinent policy questions related to each issue. This report will be updated as events warrant.

Contents

Background 1
Congress's Constitutional Authority 1
Congressional Review and Oversight 3
Resolutions of Disapproval of Acts of the Council 3
The Use of Appropriation Riders to Nullify Legislative Acts of the District 5
Enactment of Authorizing Legislation to Initiate New Policies or Overturn Existing Law 6
Current Legislative Proposal (H.R. 730) 6
Legislative Autonomy 6
Policy Questions 7
Budget Autonomy 7
Current Legislative Proposal (H.R. 552) 12
Policy Questions 13
Voting Representation in Congress 13
Current Legislative Proposals (H.R. 317 and S. 1688) 14
Policy Questions 15
Marijuana Decriminalization 16
Current Legislative Proposals 17
Policy Questions 18
DC Gun Laws and Second Amendment Issues 18
Current Legislative Proposals (H.R. 1701/S. 874) 20
Policy Questions 21
Reproductive Health Non-Discrimination Amendment Act 21
Current Legislative Proposals (H.J.Res. 43) 22
Policy Questions 22
Human Rights Amendment Act 22
Current Legislative Proposals (H.J.Res. 44) 23
Policy Questions 24

Tables

Table 1. General Provisions Voiding District of Columbia Acts 5
Table 2. Date of Enactment of the DC Appropriations Act, FY1996-FY2015 7

Contacts

Author Information 24

In the coming weeks and months the 114th Congress will debate a number of funding, governance, and constitutional issues affecting the District of Columbia, including budget and legislative autonomy, voting representation in the national legislature, federal appropriations, and congressionally supported education initiatives. In addition, Congress may consider measures intended to void or otherwise modify acts and initiatives approved by District citizens and their elected representatives. The mechanisms available to Congress in carrying out its oversight of District affairs include resolutions of disapproval, riders on appropriation acts, and stand-alone legislative proposals. Acts passed by the District of Columbia Council or approved by District voters that may be subject to congressional scrutiny during the 114th Congress include

- a repeal of the *Armstrong Amendment*,[1] a provision in the District's Human Rights Act that exempted religiously affiliated educational institutions from the requirement to not discriminate based on sexual orientation;
- provisions of the newly passed District of Columbia Reproductive Health Non-Discrimination Amendment Act of 2014 (RHNDAA); the act, as passed by the Council, mandates that all employers in the District, religiously affiliated or otherwise, protect the "reproductive health rights" of their employees, even when the employer may have a religious or moral objection to services like abortion;
- a voter-approved initiative (Initiative 71) that decriminalizes possession and cultivation of small quantities of marijuana for personal use.

In addition, Congress may consider a number of Member-initiated measures and oversight activities related to governance of the District of Columbia, including issues linked to home rule, municipal policing powers, and gun rights.

This report discusses a number of District of Columbia issues and proposals that may be considered during the 114th Congress, including legislative and budget autonomy, marijuana decriminalization, gun regulation, and issues of religious freedom and nondiscrimination. Each topic covered in this report includes a discussion of current legislative proposals and relevant policy questions.

Background

Congress's Constitutional Authority

The United States Constitution gives Congress exclusive authority over the legislative affairs of the District of Columbia.[2] Congress has exercised its constitutional authority in a number of ways, including imposing height limitation on buildings in the District in 1910 with the passage of the Height of Buildings Act.[3] In 1973, Congress passed the District of Columbia Self-Government and Governmental Reorganization Act (Home Rule Act), granting the city's

[1] The District of Columbia's Appropriation Act for 1990, P.L. 101-168, included a provision, the Nation's Capital Religious Liberty and Academic Freedom Act (popularly known as the Armstrong Amendment), that granted a nondiscrimination exemption from the District's Human Rights Act to religiously-affiliated educational institutions that allowed such institutions, consistent with their religious beliefs, to deny individuals and organizations that promoted or condoned homosexuality recognition as a student organization or access to university facilities and resources.

[2] United States Constitution, Article I, Section 8, Clause 17.

[3] P.L. 61-196.

residents limited home rule.[4] The act allowed for the popular election of a mayor and city council and authorized them to legislate and manage the city's affairs. It also established a budget and legislative review process allowing Congress to disapprove the implementation of any legislative measure passed by the city's elected leaders and to review the city's annual budget.

Despite the passage of home rule legislation, Congress has continued to play an active role in District of Columbia governance. For example, in 1995 Congress passed legislation

1. encouraging the creation of charter schools;[5]
2. authorizing the takeover of the management of city services and finances from the elected government leaders to a five-member presidentially appointed financial control board; and
3. creating the independent Office of the Chief Financial Officer.[6]

In 1997, with the passage of the National Capital Revitalization and Self-Government Improvement Act,[7] Congress transferred a number of state-like functions from the District to the federal government in an effort to address a fiscal and management crisis confronting the city. The 1997 act transferred responsibility for funding prisons and courts and unfunded pension liabilities for the city's judges, police, firefighters, and teachers to the federal government. It also increased the share of the District's Medicaid cost borne by the federal government from 50% to 70%.

In addition, up until 2010, Congress included provisions in annual appropriations acts for the District of Columbia that prohibited or restricted the use of public (District and federal) funds to support the city's efforts to gain voting representation in Congress.[8] Another set of provisions additionally prohibited the District from providing any assistance to implement or fund particular initiatives and referenda approved by the city's voters or legislation passed by the city council.[9] Congress also has enacted legislation without the consent of District voters, including authorizing the establishment of public charter schools and school vouchers.

---

[4] P.L. 93-198. 87 Stat. 774.

[5] P.L. 104-134, 110 Stat. 1321–107.

[6] P.L. 104-8, 109 Stat. 97.

[7] P.L. 105-33, 111 Stat. 712.

[8] This provision was first included in the District of Columbia Appropriations Act for FY1980, P.L. 96-530. A second provision was first included in the District of Columbia Appropriations Act for FY1999, P.L. 105-277, that prohibited the District government from providing any assistance for any petition drive or civil action seeking to require Congress to provide voting representation in Congress for the citizens of the District of Columbia.

[9] The District of Columbia Appropriations Act for FY1999, P.L. 105-277 (112 Stat. 2681-150), included a provision that prohibited the city from counting the ballots of a 1998 voter-approved initiative that would have allowed the medical use of marijuana to assist persons suffering from debilitating health conditions and diseases, including cancer and HIV infection. Congress's power to prohibit the counting of a medical marijuana ballot initiative was challenged in a suit filed by the DC Chapter of the American Civil Liberties Union (ACLU). On September 17, 1999, District Court Judge Richard Roberts ruled that Congress, despite its legislative responsibility for the District under Article I, Section 8, of the Constitution, did not possess the power to stifle or prevent political speech, which included the ballot initiative (*Turner v. District of Columbia Board of Elections and Ethics, No. 98-2634 Civ. (D.D.C. Sept. 17, 1999; memorandum opinion).*This ruling allowed the city to tally the votes from the November 1998 ballot initiative. To prevent the implementation of the initiative, Congress had 30 days to pass a resolution of disapproval from the date the medical marijuana ballot initiative (Initiative 59) was certified by the Board of Elections and Ethics. Language prohibiting the implementation of the initiative was included in P.L. 106-113 (113 Stat. 1530), the District of Columbia Appropriations Act for FY2000. Opponents of the provision contend that such congressional actions undercut the concept of home rule.

Congressional Review and Oversight[10]

Congress may exercise its authority over the legislative affairs of the District through one of three means:

- a resolution of disapproval nullifying an act of the District of Columbia Council as outlined in the District's Home Rule Act;
- the use of riders attached to the District's operating budget which must be approved as part of the appropriations process; and
- authorizing acts introduced as stand-alone measures or attached to other legislation.

Resolutions of Disapproval of Acts of the Council

The District of Columbia Self-Government and Governmental Reorganization Act,[11] as amended (also known as the "Home Rule Act"), includes provisions establishing a special parliamentary mechanism by which Congress can disapprove laws enacted by the District of Columbia.[12]

Under Section 602(c) of the Home Rule Act, as amended, with few exceptions, the chairman of the District of Columbia Council (Council) must transmit a copy of each act passed by the Council and signed by the mayor, as well as enactments stemming from ballot initiatives or referendum, to the Speaker of the House of Representatives and the President of the Senate. (This transmission may occur when the law is enacted or at a later point.) The law in question will take effect upon the expiration of a specified "layover" (congressional review) period following the date the law was transmitted to Congress unless it is first overturned by a joint resolution of disapproval. The act establishes special "fast track" procedures that the House and Senate might use to consider such a disapproval resolution.

The length of the congressional layover period for District of Columbia laws differs based on the type of law the District has enacted. Any law codified in Title 22 (Criminal Offenses and Penalties), 23 (Criminal Procedure), or 24 (Prisoners and Their Treatment) of the District of Columbia Code must lie over for 60 days before going into force. All other District laws become effective upon the expiration of a layover/congressional review period of 30 calendar days or upon the date prescribed by the act itself, whichever is later. In calculating this 30-calendar-day layover period, Saturdays, Sundays, federal holidays, and days on which neither the House nor the Senate is in session because of an adjournment sine die or pursuant to an adjournment resolution are excluded.

Under the Home Rule Act, any Member of the House or Senate may introduce a qualifying joint resolution disapproving a law of the District of Columbia at any time after the law has been submitted to Congress and before the expiration of the layover periods described above. There is no limit on the number of resolutions that may be introduced. All joint resolutions, when introduced, are referred to the Committee on Oversight and Government Reform in the House and the Committee on Homeland Security and Governmental Affairs in the Senate.

Once a joint disapproval resolution is referred, a committee may choose to mark it up but may not report amendments to it. For those joint resolutions aimed at District of Columbia laws codified

[10] This section was coauthored by Christopher Davis, Analyst on Congress and the Legislative Process; and Eugene Boyd, Analyst in Federalism and Economic Development Policy.

[11] P.L. 93-198; 87 Stat. 777; D.C. Code §1-201 *passim*.

[12] http://www.gpo.gov/fdsys/pkg/HMAN-113/pdf/HMAN-113-pg1134.pdf.

in the District of Columbia criminal code, a discharge mechanism is potentially available. For such acts, if a committee to which a disapproval resolution has been referred has not reported it within 20 calendar days after its introduction, a privileged motion to discharge the committee from the further consideration of it or any joint resolution aimed at the same District of Columbia law is in order. The motion to discharge is debatable for one hour, equally divided, and can be made only by an individual favoring the legislation. The motion is no longer available after the committee has reported a disapproval resolution with respect to the same District law. For enactments not affecting the District of Columbia criminal code, the committees would presumably have to report a joint resolution for it to reach the calendar.

In both the House and Senate, once a committee has reported or (within the limits described above) been discharged from further consideration of a joint resolution, a non-debatable motion to proceed to consider the measure is in order and may be made by any Member. This motion to proceed may be made even if a previous motion to the same effect has been defeated. The motion to proceed may not be amended, nor may a vote on it be reconsidered. A motion to postpone the motion to proceed is in order but is not debatable. Should the House or Senate agree to consider by simple majority vote, the joint resolution would be pending before the respective chamber and debatable for up to 10 hours, equally divided. A non-debatable motion to limit debate below 10 hours is in order. The joint disapproval resolution may not be amended or recommitted, and a vote thereon may not be reconsidered. All appeals from decisions of the chair made during consideration of the joint resolution are to be decided without debate. Passage of a joint resolution is by simple majority vote. It appears that passage and presentment of a joint resolution of disapproval to the President must occur before the expiration of the layover period in order to invalidate that District law.

Perhaps because the Home Rule Act mechanism was originally structured as a one- or two-house legislative veto, it does not include separate parliamentary procedures governing consideration of a joint resolution of approval or disapproval after its initial passage in its chamber of origin.[13]

Should a joint resolution of approval or disapproval pass the House and Senate but be vetoed by the President, any attempt to override that veto would take place under normal House and Senate procedures. In the Senate, vetoed measures are privileged for consideration (as they are in the House) but are fully debatable and thus potentially subject to a filibuster and the cloture process.

It is worth noting that the Home Rule Act disapproval procedure has been used infrequently, and should the House or Senate choose to consider a disapproval resolution under its terms, the chambers will likely have to interpret for themselves how some of its facets operate in current parliamentary practice, a decision each will no doubt make in close consultation with that chamber's Parliamentarian.

It bears further mention that the Home Rule Act disapproval procedure is one expedited parliamentary method that Congress might use to invalidate a proposed District law. It is not, however, the only way Congress might undertake such disapproval. In fact, although Congress has successfully used the special parliamentary disapproval mechanisms of the Home Rule Act on three occasions[14] since passage of the act in the early 1970s, it has far more frequently during this

[13] For discussion of the legislative veto see http://www.crs.gov/conan/default.aspx?doc=Article01.xml&mode=topic&s=7&c=1&t=1|4|1.

[14] Since the advent of home rule Congress has successfully passed resolutions of disapproval three times. They include (1) The Location of Chanceries Act of 1979, D.C. Act 3-120, Disapproval was effective December 20, 1979; (2) The District of Columbia Sexual Assault Reform Act of 1981, D.C. Act 4-69, Disapproval was effective October 1, 1981; and (3) The Schedule of Heights Amendment Act of 1990, Act 8-329, disapproval was effective on March 21, 1991.

period influenced the actions of the District of Columbia through the regular lawmaking process, including the appropriations process.[15]

The Use of Appropriation Riders to Nullify Legislative Acts of the District

The resolution of disapproval procedure outlined in the Home Rule Act is one method that Congress has used to nullify a proposed District of Columbia law. It is not the only method by which Congress may act to stop the implementation of a District of Columbia law. As noted above, Congress has used the procedure outlined in the Home Rule Act successfully only three times since the advent of home rule.[16] Far more frequently, during this period, Congress has used the appropriation process as a means of nullifying a District of Columbia act, including referendums and initiatives. The following table is a selected list of general provisions included in past District of Columbia appropriations acts that nullified or void legislative acts of the District of Columbia.

Table 1. General Provisions Voiding District of Columbia Acts

Appropriations Act	Subject	Summary of Provision	Final Status
District of Columbia Appropriations Act of 1990. §141 (Nation's Capital Religious Liberty and Academic Freedom Act) of P.L. 101-168.	Nation's Capital Religious Liberty and Academic Freedom Act	Amendment provided an exemption to the District's Human Rights Act for religious affiliated educational institutions allowing them to deny or restrict access to funds, facilities, or services of the institution based on a person's (student's) sexual orientation.	The District of Columbia Council passed the Human Rights Amendment Act of 2014, which eliminated the exemption for religious affiliated educational institutions.
District of Columbia Appropriations Act for FY1994, P.L. 103-127.	Domestic Partners Health Benefits Expansion Act	District of Columbia Appropriations Act for FY1994, P.L. 103-127, included a provision prohibiting the District government from implementing the Health Care Benefits Expansion Act (Domestic Partners Act)[a] which was approved by the city's elected leadership in 1992. The provision also prohibited the District from registering unmarried heterosexual and homosexual couples as domestic partners.	P.L. 107-96 included a provision (§118) lifting the congressional prohibition on the use of District funds to implement its Health Care Benefits Expansion Act. (See 115 Stat. 950.)
The District of Columbia Appropriations Act for FY1999, P.L. 105-277 (112 Stat. 2681-150).	Medical Marijuana Initiative 59	The act included a provision that prohibited the city from counting ballots of a 1998 voter-approved initiative allowing for the establishment and regulation of the medical use of marijuana.	The congressional prohibition on the counting of ballots was overturned by a court challenge that allowed for the counting of ballots. There are currently three medical marijuana dispensaries operating in the District.

[15] See, for example, CRS Report R41772, *District of Columbia: A Brief Review of Provisions in District of Columbia Appropriations Acts Restricting the Funding of Abortion Services*, by Eugene Boyd.

[16] Prior to the 1983 Supreme Court decision in *INS v Chadha* a resolution of disapproval passed by either the House or the Senate was sufficient to nullify any act passed by the District of Columbia Council. For a discussion of the implications of the Chadha decision on the District see CRS Report RS22132, *Legislative Vetoes After Chadha*, by Louis Fisher (available to congressional clients upon request), p. 2.

Appropriations Act	Subject	Summary of Provision	Final Status
Consolidated and Further Continuing Appropriations Act, 2015, P.L. 113-235, Section 809.	Simple Possession of Small Quantities of Marijuana Decriminalization Amendment Act of 2013; Marijuana Decriminalization Initiative 71	Section 809 of the Consolidated and Further Continuing Appropriations Act prohibits the District from using *federal funds* to enact any law, rule, or regulation that would legalize or otherwise reduce penalties associated with the possession, use, or distribution of marijuana. The section also prohibits the use of District and federal funds to enact any law legalizing the possession, use, or distribution of marijuana for recreational purposes, thus preventing the District from regulating and taxing recreational marijuana.	No additional congressional action has been taken since the passage of the provision.

Source: CRS.

a. Under the District's Health Care Benefits Expansion Act an unmarried person who registers as a domestic partner of a District employee hired after 1987 may be added to the District employee's health care policy for an additional charge.

Enactment of Authorizing Legislation to Initiate New Policies or Overturn Existing Law

Congress also may exercise its constitutional authority over the affairs of the District of Columbia through the regular lawmaking process. For instance, the District of Columbia Financial Responsibility and Management Assistance Act, P.L. 104-8, and the National Capital Revitalization and Self-Government Act of 1997, Title XI of P.L. 105-33, are examples of Congress taking proactive measures to address the fiscal and management crisis facing the District. P.L. 104-8 created the financial control board and the Office of the Chief Financial Officer (CFO) and charged them with returning the District to financial solvency following a fiscal and management crisis that gripped the city during the 1990s. P.L. 105-33 continued congressional efforts to improve the District's finances by transferring a number of state-related functions to the federal government, including prisons, court operations, and offender servicers. The act also increased the federal contribution to Medicare from 50% to 70%. Congress has also enacted education reform legislation with minimal or no input from the citizens of the District of Columbia or their elected representatives. For instance, Congress passed both a public charter school initiative in 1995 and a private school voucher program in 2004 over the objections of the District's elected officials.

Current Legislative Proposal (H.R. 730)

Legislative Autonomy

On February 4, 2015, District of Columbia Delegate to Congress Eleanor Holmes Norton introduced the District of Columbia Paperwork Reduction Act, H.R. 730. The bill would amend the District's home rule charter by eliminating the current requirement that all legislation passed by the District of Columbia Council, including referendums and initiatives approved by District voters, be subject to a congressional review/layover period of 30 days or 60 days. The bill also would change the procedures for amending the District's home rule charter. It would eliminate the current requirement that provides for a 35-day charter review period for Congress and it would eliminate current rules of the House and Senate governing the discharge of a resolution of disapproval discussed previously in this report. The bill, if passed, would significantly reduce the role played by Congress in the District's legislative affairs.

Policy Questions

The Constitution grants to Congress power over the legislative affairs of the District. In 1973, Congress in exercising that power granted the citizens of the District limited home rule. However, Congress retained its constitutional power to review, modify, or enact laws governing the District of Columbia. In the name of home rule, when should Congress defer to local officials, in addressing issues unique to the District of Columbia? Should Congress take a more active role in carrying out its oversight responsibility? If Congress eliminates the congressional review period, what mechanism, if any, should it put in place in order to carry out its oversight responsibilities?

Budget Autonomy

Under the District's home rule charter, all District of Columbia spending must be reviewed and approved by Congress through the federal appropriations process, without regard for the source of revenue supporting such spending. District leaders often have complained that frequent delays in the appropriations process that lead to the approval of the District's annual budget well after the start of the District's fiscal year have become routine. These delays hinder the ability of District officials to manage the city's financial affairs and negatively affect the delivery of public services. During the past 18 years, as documented in **Table 2**, FY1997 was the only year for which the District of Columbia appropriations act was enacted before the start of the fiscal year on October 1. To mitigate the impact of congressional delays in the approval of the District's appropriation before the beginning of a fiscal year, Congress has routinely included language in continuing budget resolutions allowing the District to expend local funds on programs and activities included in its General Fund budget.

Table 2. Date of Enactment of the DC Appropriations Act, FY1996-FY2015

Fiscal Year	P.L. Number	Date of Enactment	Remarks
1996	104-134	April 26, 1996	Five general continuing resolutions and three laws targeted at DC preceded this final omnibus appropriations act.
1997	104-194	September 9, 1996	The District's initial budget request was rejected by the Financial Control Board. It was cut and revised before being submitted to the President and Congress. The Omnibus Consolidated Appropriations Act for FY1997, P.L. 104-208, also contained several provisions regarding DC public schools.
1998	105-100	November 19, 1997	During part of the complicated approval process, the DC bill was combined with two other appropriations bills. A controversial school scholarship proposal was split off as a separate bill. Between Oct. 1 and Nov. 19, the District was covered under successive continuing resolutions on appropriations.
1999	105-277	October 21, 1998	DC was one of eight regular appropriations bills included in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. From Oct. 1 through Oct. 21, DC was covered under five general continuing resolutions.
2000	106-113	November 29, 1999	The DC bill was included with four other appropriation measures in the Consolidated Appropriations Act, 2000. This was the third DC appropriations bill for FY2000 approved by Congress. Two previous bills were vetoed by President Clinton.

Fiscal Year	P.L. Number	Date of Enactment	Remarks
2001	106-522	November 22, 2000	Enactment of the DC appropriations bill was delayed nearly one month because it was first combined with another appropriation in a bill vetoed by President Clinton.
2002	107-96	December 21, 2001	Congressional approval of DC appropriations was delayed by efforts to resolve differences between the House and Senate over "general provisions" addressing social policy and to eliminate redundant or obsolete provisions.
2003	108-7	February 20, 2003	The 107th Congress did not complete action on DC's and 10 other appropriations bills for FY2003 before it adjourned at the end of 2002. Eight continuing resolutions froze spending by the District and federal agencies at the FY2002 level until the 108th Congress approved the Consolidated Appropriations Resolution, 2003, encompassing 11 appropriations acts.
2004	108-199	January 23, 2004	The Consolidated Appropriations Act, 2004, including the DC and six other appropriations acts, was not enacted until the second session of the 108th Congress. Five continuing resolutions were enacted to cover the District and affected federal agencies for the first four months of FY2004.
2005	108-335	October 18, 2004	The DC Appropriations Act was enacted on its own, just a few weeks after the start of the fiscal year.
2006	109-115	November 30, 2005	DC appropriations were included together with five other appropriations in a consolidated appropriations act enacted two months after the start of the fiscal year.
2007	110-5	February 15, 2007	The government operated under continuing appropriations resolutions for the entire fiscal year. On February 15, 2007, the President signed the Revised Continuing Appropriations Resolution, 2007, P.L. 110-5, which included a provision allowing the District of Columbia to expend local funds for programs and activities under the heading "District of Columbia Funds" for such programs and activities under Title V of H.R. 5576 (109th Congress), as passed by the House of Representatives, at the rate set forth under "District of Columbia Funds, Summary of Expenses" as included in the Fiscal Year 2007 Proposed Budget and Financial Plan submitted to Congress by the District of Columbia on June 5, 2006, as amended on January 16, 2007. P.L. 110-5 included provisions approving FY2015 special federal payments to the District.
2008	110-161	December 26, 2007	On September 29, 2007, the President signed a continuing budget resolution, P.L. 110-92, which included a provision allowing the District to spend local funds at a rate consistent with amounts identified in the District's FY2008 Proposed Budget and Financial Plan submitted to Congress by the District of Columbia on June 7, 2007, and amended on June 29, 2007. The Financial Services and General Government Appropriations Act, which included the D.C. Appropriations Act, was ultimately included in the Consolidated Appropriations Act of 2008, P.L. 110-161.
2009	111-8	March 11, 2009	On September 30, 2008, the President signed the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, P.L. 110-329. The act included a provision allowing the District of Columbia to expend local funds for programs and activities under the heading "District of Columbia Funds" at a rate consistent with amounts identified in the District's FY2009 Proposed Budget and

Fiscal Year	P.L. Number	Date of Enactment	Remarks
			Financial Plan submitted to Congress by the District of Columbia on June 9, 2008.
2010	111-117	December 16, 2009	On October 1, 2009, the President signed the Continuing Appropriations Resolution for FY2010, P.L. 111-68. The act included a provision (Division B, §126) allowing the District of Columbia government to spend locally generated funds at a rate set forth in the budget approved by the District of Columbia on August 26, 2009.
2011	112-10	April 15, 2011	Provision was included in Department of Defense and Full-Year Continuing Appropriations Act, 2011, P.L. 112-10, allowing the District of Columbia to expend local funds for programs and activities under the heading "District of Columbia Funds" at a rate consistent with amounts identified in the District's FY2011 Budget Request Act (DC Act 18-448).
2012	112-74	December 23, 2011	On September 30, 2011, the President signed a Continuing Budget Resolution, P.L. 112-34, allowing the District of Columbia to expend local funds for programs and activities under the heading "District of Columbia Funds" at a rate consistent with amounts identified in the District's FY2012 Budget Request Act (DC Act 19-92).
2013	113-6	March 26, 2013	On September 28, 2012, because no regular FY2013 District of Columbia appropriations bill could be enacted before October 1, 2012, Congress included language in P.L. 112-175 allowing the District of Columbia to expend local funds for programs and activities under Title IV of H.R. 6020 (112th Congress), as reported by the House Committee on Appropriations, at the rate set forth under "District of Columbia Funds—Summary of Expenses" as included in the Fiscal Year 2013 Budget Request Act of 2012 (D.C. Act 19-381), as modified as of the date of the enactment of H.J.Res. 117/P.L. 112-175. The act authorized the District to expend local funds for certain programs and activities. On March 26, 2013, the President signed P.L. 113-6, which included special appropriations for the District of Columbia.
2014	113-76	January 17, 2014	On October 17, 2013, the President signed a continuing appropriations act for FY2014, P.L. 113-46, which provided funding authority through January 15, 2014, and included a provision releasing the District's General Fund Budget for FY2014 from further congressional review, allowing the District to expend locally raised revenues as outlined in its Fiscal Year 2014 Budget Request Act of 2013 (D.C. Act 20-0127). On January 17, 2014, the President signed the Consolidated Appropriations Act for FY2014, P.L. 113-76, which included provisions approving FY2014 special federal payments to the District and the District's FY2014 operating budget for the remainder of the fiscal year.
2015	113-235	December 16, 2014	On September 19, 2014, the President signed into law P.L. 113-164, a Continuing Budget Resolution for FY2015 (CR). The Continuing Resolution included a provision (§123) that allowed the District of Columbia to expend local funds under the heading "District of Columbia Funds" for programs and activities under Title IV of H.R. 5016 (113th Congress) as passed by the House of Representatives on July 16, 2014, at the rate set forth under "District of Columbia Funds–Summary of Expenses" as included in the Fiscal Year 2015 Budget Request Act of 2014 (D.C. Act 20-370.) On December 16, 2014, the President signed the Consolidated and Further Continuing Appropriations Act of FY2015, P.L. 113-235, which included provisions approving FY2015 special federal payments to the District.

Source: CRS.

In addition to the budget autonomy proposal introduced by the District's Delegate to Congress, District officials were engaged in a dispute over the legality of a voter-approved referendum that purports to have amended the District's home rule charter by eliminating charter provisions that mandate congressional review of acts by the District, including proposed charter amendments by referendums and initiatives.

The mayor's FY2016 budget request, which was modified and approved by the Council on May 27, 2015, includes provisions that would provide the District with some level of autonomy over locally raised revenues. Specifically, the budget request would

- allow the District to decouple its fiscal year from the federal fiscal year, permitting the District to establish when its local fiscal year would start;
- permit District officials to obligate and expend local funds upon enactment by the District of its local annual budget; and
- grant the District the authority to spend local funds if Congress does not enact a federal appropriation authorizing the expenditure of local funds before the start of the District's fiscal year.

In addition, the District Delegate to Congress has introduced legislation, H.R. 552, a bill that would grant the District budget autonomy over locally raised revenues by eliminating the requirement for congressional approval of the District's General Fund budget. This bill is one in a line of budget autonomy bills that have been introduced in successive Congresses starting in 1981 when then District of Columbia Delegate to Congress Walter Fauntroy introduced a budget autonomy measure.[17]

In addition to legislative proposals before Congress, in 2014 the District of Columbia Council was involved in a legal dispute with then-Mayor Vincent Gray and the Chief Financial Officer, Jeffrey DeWitt, regarding a budget autonomy amendment to the District's home rule charter. On December 19, 2012, the District of Columbia Council passed the Local Budget Autonomy Act of 2012, B19-993. The mayor signed the measure as A19-0632, on January 18, 2013. Subject to voter approval through the referendum process, the bill purportedly amended the District's home rule charter by eliminating the requirement for congressional approval of the District of Columbia budget as part of the federal appropriations process. Instead, the charter amendment would subject the District local budget (General Fund Budget) to a 30-day congressional review/layover period like all other laws passed by the District. Despite objections raised by the District's Attorney General in a letter,[18] dated January 4, 2013, the District of Board of Elections placed the proposed charter amendment on an April 23, 2013, ballot. District of Columbia voters approved the local budget autonomy charter amendment with 83% of the vote in support of the amendment.[19]

[17] The bill, H.R. 1254, as introduced in the 97th Congress would have amended the District's home rule charter by granting the District government autonomy over the expenditure of funds derived from locally generated revenues.

[18] See hand-delivered letter to the District of Columbia Board of Elections at http://oag.dc.gov/sites/default/files/dc/sites/oag/publication/attachments/to%20k.%20mcghie%20re%20budget%20autonomy%20act%201-4-13.pdf.pdf.

[19] Mike DeBonis, "D.C. Council Files a Lawsuit Against Mayor, CFO Over Budget Autonomy Measure," *Washington Post*, April 17, 2014, http://www.washingtonpost.com/local/dc-politics/dc-council-files-a-lawsuit-against-mayor-cfo-over-budget-autonomy-measure/2014/04/17/0cb80d64-c646-11e3-9f37-7ce307c56815_story.html.

Although supportive of budget autonomy, the mayor informed the Council, in an April 11, 2014, letter,[20] of his intent not to enforce the law based on the opinion of the District's Attorney General that the charter amendment was unlawful. According to the mayor, the opinion of the District's Attorney General is legally "binding on Executive branch of the District government absent a controlling court opinion to the contrary."[21] The essential legal objection to the proposed charter amendment is captured in this excerpt from the Attorney General's letter to the District's Board of Elections urging the Board of Elections not to place the referendum of the ballot:

> …, the OAG has serious reservations about the legality of the amendment, whether it would be sustained if challenged in court and most pertinently, whether the Board has the authority to place this amendment on a ballot referendum in light of the clear prohibition under Section 303(d) of the District of Columbia Home Rule Act ("Home Rule Act"), approved December 24, 1973, 87 Stat. 790, P.L. 93-198, D.C. Code §1-203.03(d) (2012 Supp.). *That provision of governing law provides in relevant part that "the [Charter] amending procedure may not be used to enact any law or affect any law with respect to which the Council may not enact under the limitations specified in §1-206.01 to §1-206.03*. (Emphasis added). The statute is phrased in clear mandatory terms: a proposed amendment is precluded by law from going on the ballot through the Charter-amending procedure of Section 303 if the proposed amendment would "enact any law or affect any law with respect to which the Council may not enact ... under the limitation specified in "Sections 206.01-03. For reasons we detail below it is precisely these limitations, reserving to Congress, among other things, the authority to change the laws governing the role played by Congress and the President in the District's budget that in the considered judgment of this office, preclude using the charter amendment procedures, including the placement on a ballot for the electorate for the proposed amendment. Likewise, it is our view that under those express limitations, Congress or a court reviewing the merits of the legal issue would find the amendment to be outside the scope of the Charter amending process in Section 303 and also contrary to other federal laws, those found in Title 31 of the U.S. Code.
>
> These objections were reiterated and expanded upon in an April 8, 2014 legal analysis by the Office of Attorney General. The GAO analysis articulated the following objections to the proposed charter amendment:
>
> **The Act is null and void because the Council exceeded its authority in enacting it and because it violates federal law**.
>
> The act violates the limitations of Section 602(a)(3) because it changes the functions of the United States and because it is not restricted in its application exclusively or to the District.
>
> The Act violates the limitations of Section 603(a) because it changes the longstanding roles and procedures of Congress, the President, and other federal entities in the formation of the District's total budget.
>
> The Act violates the limitations of Section 603(e) by using the ratification process to establish local budget autonomy.
>
> **The legal arguments advanced in support of the Act are unpersuasive.**[22]

A Government Accountability Office (GAO) legal analysis also raised the same objection and questioned the legal standing of the proposed charter amendment.[23]

---

[20] See http://dccouncil.us/files/performance_oversight/letter_from_mayor_to_chairman1.pdf.

[21] Ibid., p. 2.

[22] Letter from Irvin Nathan, District of Columbia Attorney General, to Vince Gray, Mayor of the District of Columbia, April 8, 2014, see Exhibit E at http://dccouncil.us/files/performance_oversight/Complaint1.pdf.

[23] U.S. Government Accountability Office, *District of Columbia—Local Budget Autonomy Amendment Act of 2012*, B-

On April 17, 2014, the District of Columbia Council filed a suit in the United States District Court for the District of Columbia to compel the mayor to execute the charter amendment changes. On May 19, 2014, Judge Emmet G. Sullivan of the United States District Court for the District of Columbia issued an opinion concluding that the Local Budget Autonomy Act was unlawful and that District officials were permanently enjoined from enforcing it.[24] The Council appealed the decision and on October 18, 2014, presented its case before a three-judge panel of the United States Court of Appeals for the District of Columbia. Before the panel issued a ruling, a new mayor was elected, Muriel Bowser, who reversed Mayor Gray's decision not to enforce the Budget Autonomy Act. On March 23, 2015, a *Suggestion of Mootness and Motion to Dismiss* was filed with United States Court of Appeals for the District of Columbia on behalf of the newly elected mayor.[25] The motion claimed that since there was no dispute or disagreement between the Council and the newly elected mayor, the judgment rendered by the District Court for the District of Columbia in April 2014 should be vacated, the appeal dismissed, and the case remanded to the D.C. Superior Court. On May 27, 2015, the United States Court of Appeals for the District of Columbia granted the motion for dismissal of the case and sent it back to the District of Columbia Superior Court. Despite all that has transpired, the issue of budget autonomy remains an open question.

Although the Court of Appeals has ruled on the dismissal of the appeal, there is still an unresolved dispute between the Council and the District's Chief Financial Officer (CFO), who was also a party to the initial case challenging the legality of the budget autonomy act approved by the Council and who is being represented by the District of Columbia Office of the Attorney General (OAG). In a joint statement on the budget autonomy decision, issued on May 27, 2015, the CFO and AG articulated the following position:

> The D.C. Circuit's decision in the Budget Autonomy Act case did not validate the legislation. In fact, the appellate court did not address the legality of the Budget Autonomy Act. Because the legality of the Act remains in doubt, the Office of the Chief Financial Officer and the Office of the Attorney General are exploring expedited legal options to obtain judicial clarity on this issue.[26]

Current Legislative Proposal (H.R. 552)

On January 13, 2015, Delegate Norton introduced the District of Columbia Budget Autonomy Act, H.R. 552. The bill, which was referred to the House Committee on Oversight and Government Reform, would amend the District of Columbia Home Rule Act by eliminating all requirements relating to congressional review and approval of the District's general fund budget, short-term borrowing, financial management, and accountability. The act also would grant the District the power to develop and institute its own budget process and rules governing the borrowing and financial management of District funds. No hearing or markup has been scheduled to consider the bill.

324987, January 30, 2014, pp. 5-8, http://www.gao.gov/products/D06683.

[24] *District of Columbia Council v. Vincent C. Gray, Mayor of the District of Columbia and Jeffrey DeWitt, Chief Financial Officer*, Civil Action No. 14.655 https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2014cv0655-44 (United States District Court for the District of Columbia 2014).

[25] *Council of the District of Columbia, Plaintiff-Appellant, v. Muriel Bowser, et al., Defendants-Appellees*, USCA 14-7067 (United States Court of Appeals for the District of Columbia 2015).

[26] District of Columbia Office of the Chief Financial Officer and District of Columbia Office of the Attorney General, "Statement of Chief Financial Officer Jeffrey DeWitt and Attorney General Karl A. Racine on Budget Autonomy Act Decision," press release, May 27, 2015, http://oag.dc.gov/release/statement-chief-financial-officer-jeffrey-dewitt-and-attorney-general-karl-racine-budget.

In addition to H.R. 552, the Appropriations Committee, during its markup of the District's appropriation act for FY2016, may include language in the appropriations bill addressing the issue. The committee could act to incorporate language in the general provisions of the bill that would grant or deny the District voting autonomy.

Policy Questions

The long-debated issue of limited budget autonomy for the District of Columbia may soon be decided by the courts or Congress. Although there is support for budget autonomy among majority and minority leadership in the House and Senate, as well as the Obama Administration, Congress has not provided a permanent fix to address the issue. Instead, during the last two appropriations cycles, Congress has included language in appropriation acts that approved the District's local budget before the beginning of the fiscal year.

Congress did not move to overturn the voter-approved referendum on budget autonomy during the 35-day congressional review after the measure was transmitted to Congress in 2013.[27] As it considers what actions to take during this session, Congress's deliberation may be complicated by a court decision regarding the validity of a citizen-approved referendum that amended the District's home rule charter. The case was recently remanded to the District's Superior Court.

Even though some Members of Congress may be sympathetic to the idea of budget autonomy and home rule, the issue of by what means can the status quo be changed is an important one. Should the District government continue to pursue a remedy through the courts or should Congress take action to settle the matter?

Voting Representation in Congress[28]

Voting representation in Congress for the citizens of the District of Columbia is an issue that dates back to the creation of the federal district in 1790, and its subsequent occupation as the seat of the national government in 1800.[29] Since the passage of the District of Columbia Delegate Act in 1971,[30] District residents have been able to elect a non-voting Delegate to the House of Representatives, but have unsuccessfully sought full voting representation in the national legislature.

At the heart of the debate on the question of voting representation for residents of the District of Columbia is the question of how constitutional dictates on the political status of the District are to be balanced with the principles of representative democracy. The U.S. Constitution confers upon Congress exclusive legislative control of the seat of the federal government. Conversely, among the principles on which the United States was founded is that of governance with the consent of the governed—that is, participation of the citizenry in the governing process. This principle is captured in the slogan "no taxation without representation," a rallying cry slogan for the nation in its war of independence that has been embraced by many citizens of the District of Columbia.

Strict readers of the Constitution see little merit and several hurdles to granting District residents voting representation in Congress. They point to constitutional provisions granting voting

[27] Council of the District of Columbia, "Notice D.C. Law 19-231 Local Budget Autonomy Amendment Act of 2012," press release, August 23, 2013, http://dcregs.dc.gov/Gateway/NoticeHome.aspx?noticeid=4525358.

[28] This section was authored by Eugene Boyd, Analyst in Federalism and Economic Development Policy.

[29] 1 Stat. 130.

[30] P.L. 91-405, 84 Stat. 848.

representation in the House and Senate only to states and granting Congress "Exclusive Legislation in all Cases whatsoever" over the District of Columbia. They further cite the founders' clear intention that the national interest should be paramount in the federal district, asserting that the principle remains valid today. Proponents of voting representation note that the United States is the only federal democratic republic that denies citizens of the national capital voting representation in the national legislature, while such citizens must meet all other requirements of citizenship including the payment of federal taxes and military service.[31]

During the last 37 years citizens of the District have renewed efforts to gain voting representation in the national legislature, petitioning both the Supreme Court and Congress. In a decision issued in 2000, the Supreme Court affirmed a lower court ruling on voting representation in Congress for District residents. On March 20, 2000, in *Adams v. Clinton* and *Alexander v. Daley*, the United States District Court for the District of Columbia ruled that the question of voting rights for the citizens of the District was a legislative issue that could only be addressed by Congress through the political process.[32] Since 1978 legislation has been introduced in Congress that would convey voting rights to the citizens of the District of Columbia. These proposals fall into four categories:

- bills that would retrocede the nonfederal portion of the District of Columbia back to Maryland,
- bills granting statehood to the nonfederal portion of the District of Columbia,
- bills, including a joint resolution proposing a constitutional amendment,[33] that would grant full voting representation in Congress for residents of the District of Columbia, and
- bills allowing city residents to vote for Maryland House and Senate candidates.

Over the past 10 years Congress's position on allowing the District to use public funds to lobby for voting representation has evolved. Congress has moved from strictly prohibiting the use of District and federal funds to lobby on behalf of statehood or voting representation before Congress or any state legislature, or to cover the cost of court challenges aimed at providing city residents with voting representation in Congress. Instead, since FY2010, Congress has modified the prohibitions to allow the use of District, but not federal funds, to advocate on behalf of voting representation in Congress and to cover the cost of court challenges to the status quo that currently denies District residents voting representation in Congress.

Current Legislative Proposals (H.R. 317 and S. 1688)

H.R. 317, the New Columbia Admissions Act, introduced by Delegate Norton of the District of Columbia on January 13, 2015, would establish the 51st state of New Columbia from portions of the current federal district. The unaffected portion of the District (the federal enclave) would remain the Nation's capital and under congressional control and would comprise the principal federal monuments, the White House, the Capitol Building, the U.S. Supreme Court, and the federal executive, legislative, and judicial office buildings located adjacent to the Mall and the

[31] Washington, D.C., and 10 Other National Capitals: Selected Aspects of Governmental Structure, a CRS Report Prepared as Directed in the Conference Report on the District of Columbia Appropriations Act for Fiscal Year 2002 (H.Rept. 107-321), March 29, 2002, by Eugene Boyd and Michael Fauntroy.

[32] *Adams v. Clinton* and *Alexander v. Daley*, D.C. D.C., Civil Action Nos. 98-1665 and 98-2187. Opinions filed March 20, 2000.

[33] In 1978, Congress approved H.J.Res. 554, a joint resolution to amend the Constitution to provide District of Columbia residents with full voting representation in Congress. The proposed constitutional amendments, which was sent to the states for ratification, failed to win approval of three-fourths of states (38 states) before the measure expired in 1985. It was ratified by 16 states before expiring.

Capitol. On June 25, 2015, Senator Carper introduced a similar measure, S. 1688, that would provide for the admission to the union of a new state, New Columbia. The state would be created from portions of the current federal district.

During the 113th Congress several bills were introduced in support of voting representation in Congress for residents of the District of Columbia:

- H.R. 299, District of Columbia Voting Rights Restoration Act, introduced by Representative Rohrabacher, is what best may be described as a semi-retrocession bill. It would have treated residents of the District, for purposes of voting rights only, as Maryland citizens. The bill would have allowed District residents to vote in Maryland, and to run for the Maryland Senate seats, but the city would remain an independent jurisdiction.
- H.R. 362, District of Columbia House Equal Representation Act of 2013, introduced by Delegate Norton. The bill would have treated the District of Columbia as a state for purposes of representation in the House of Representatives and in the Senate. It would have increased the membership of the House from 435 to 436 Members.
- H.R. 2681, the District of Columbia-Maryland Reunion Act introduced by Representative Gohmert, would have retroceded a portion of the District to Maryland and created a National Capital Service Area, which would have remained under congressional control. The National Capital Service Area would have comprised the principal federal monuments, the White House, the Capitol Building, the U.S. Supreme Court, and the federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol. The bill would have allowed for a temporary increase in the number of Representatives until the first reapportionment occurring after the effective date of the act with the District's Delegate serving as a member of the House of Representatives from the State of Maryland.

Policy Questions

The U.S. Supreme Court has ruled that a judicial response to the voting representation issue would be inappropriate and suggested that any remedy must be achieved through the legislative process. The lack of a judicial remedy requires proponents of voting rights to focus on Congress and the political process, although Congress has been reluctant to address this issue because of its broad political implications. A number of specific policy and constitutional questions would have to be addressed if Congress considered legislation granting District citizens voting representation in the national legislature. These include identifying a constitutionally acceptable means by which representation could be achieved (a constitutional amendment, statehood, retrocession, and the secondary effects of each option). Should residents of the District of Columbia, which is not a state, gain the same standing as states, including voting representation in both the House and the Senate, and would such an accommodation violate the Constitution? Would the granting of such representation necessitate a repeal of the 23rd Amendment, which grants District citizens the right to vote in national elections and conveys three votes in the Electoral College to District voters?

Marijuana Decriminalization[34]

While activities involving marijuana are strictly regulated as a matter of federal law,[35] over half of all states as well as the District of Columbia have enacted statutes that permit use of marijuana for medical and even recreational purposes.[36] In 1998, the District of Columbia voters approved Initiative 59, which allowed the use of medical marijuana to assist persons suffering from debilitating health conditions and diseases, including cancer and HIV infection. The certification and implementation of the initiative, however, were delayed over a decade by Congress due to the passage of the "Barr Amendment," which, in a series of DC appropriations acts,[37] prohibited the use of appropriated funds to conduct any ballot initiative that sought to legalize or otherwise reduce penalties.[38] In 2010, however, Congress did not include the language in the 2010 District of Columbia Appropriations Act,[39] allowing the law to go into effect. Subsequent appropriations acts have not included the Barr Amendment language either.

Prior to the middle of summer 2014, anyone in the District who knowingly or intentionally possessed marijuana *without* "a valid prescription or order of a practitioner" (under the District's medical marijuana program)[40] could have been arrested and prosecuted by local authorities and been subjected to penalties of up to 180 days in prison and/or a fine of up to $1,000. In spring 2014, the D.C. Council passed the "Marijuana Possession Decriminalization Amendment Act of 2014"[41] that decriminalized the possession of small amounts of marijuana by making such activity a civil violation subject to a civil fine of $25.[42] The act went into effect in July 2014.

On November 4, 2014, almost 65% of District of Columbia voters voted to approve Initiative 71, which makes it "lawful"[43] for adults 21 years of age or older to possess up to two ounces of marijuana, grow up to six marijuana plants within their home, or transfer up to one ounce of marijuana to another person (as long as no money, goods, or services are exchanged and the other person is at least 21 years of age).[44] Initiative 71 does not permit public consumption of marijuana, which remains a criminal offense under DC law. The initiative also does not establish a regulatory scheme for selling and taxing marijuana. The initiative went into effect on February 26, 2015.[45] Note that marijuana possession remains a federal offense regardless of the District's

[34] This section was authored by Brian T. Yeh, Legislative Attorney.

[35] Marijuana is listed as a Schedule I substance under the federal Controlled Substances Act, 21 U.S.C. §812(c). *See* CRS Report RL30722, *Drug Offenses: Maximum Fines and Terms of Imprisonment for Violation of the Federal Controlled Substances Act and Related Laws*, by Brian T. Yeh.

[36] For more information on marijuana, see CRS Report R43034, *State Legalization of Recreational Marijuana: Selected Legal Issues*, by Todd Garvey and Brian T. Yeh.

[37] Such as the District of Columbia Appropriations Act for FY2002, P.L. 107-96 (115 Stat. 953).

[38] D.C. Code §7-1671.01 (Editor's Notes). See *Turner v. District of Columbia Board of Elections and Ethics*, 77 F. Supp. 2d 25 (D.D.C. 1999).

[39] P.L. 111-117.

[40] D.C. Department of Health, *D.C. Medical Marijuana Program*, at http://doh.dc.gov/service/medical-marijuana-program.

[41] Text of the act is available at http://dcclims1.dccouncil.us/images/00001/20140313122630.pdf.

[42] Aaron C. Davis, "D.C. Council Votes to Eliminate Jail Time for Marijuana Possession," *Washington Post*, March 5, 2014.

[43] For a brief discussion of the interplay of state and federal laws regarding the legal status of marijuana, see CRS Legal Sidebar WSLG295, *Can a State Really "Legalize" Marijuana?*, by Todd Garvey.

[44] See legislative text of Initiative Measure 71, at http://dcmj.org/ballot-initiative/. Congress did not pass a joint resolution disapproving of the initiative prior to the end of the congressional review period.

[45] D.C. Executive Office of the Mayor, *Initiative 71 and D.C.'s Marijuana Laws: Questions and Answers*, at

actions regarding marijuana and thus anyone possessing the drug could be arrested by federal authorities for violations of the federal Controlled Substances Act; nevertheless, it is uncertain whether such actions would represent a high law enforcement priority.[46]

Current Legislative Proposals

Enacted into law on December 17, 2014, the "Consolidated and Further Continuing Appropriations Act, 2015" (hereinafter Consolidated Appropriations Act)[47] contains a provision relating to the decriminalization or legalization of marijuana in the District of Columbia. Section 809 of the Consolidated Appropriations Act has two subsections, one limiting the District's use of federal funds and one limiting the District's use of all appropriated funds. Subsection (a) provides that

> None of the federal funds contained in this Act may be used to enact or carry out any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act (21 U.S.C. 801 et seq.) or any tetrahydrocannabinols derivative.

Subsection (b) provides that

> None of the funds contained in this Act may be used to enact any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act (21 U.S.C. 801 et seq.) or any tetrahydrocannabinols derivative for recreational purposes.

Some Members of Congress believe that Section 809 nullifies Initiative 71 by preventing the District from moving forward with marijuana legalization.[48] They have asserted that certain actions taken by DC employees with respect to Initiative 71 constitute a "knowing and willful violation" of the appropriations restriction contained in Section 809 and could, as a result, subject them to criminal liability for violating the federal Anti-deficiency Act.[49] (Note that the U.S. Justice Department has prosecutorial discretion to enforce the criminal provisions of the Anti-deficiency Act and thus may choose to decline bringing such a case against DC employees.)

There is no apparent indication in the legislative history of the Consolidated Appropriations Act that it was the intent of Congress to prevent the implementation of Initiative 71. Floor statements from Representatives who opposed the language in question forwarded the view that the provision would not have the effect of overturning Initiative 71.[50] Relatedly, it was reported that by omitting the words "carry out" in 809(b) (a phrase that is included in subsection (a)), Congress meant to allow the District to "implement" Initiative 71 using "local funds," or funds raised by

---

http://mayor.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/I-71-QA.pdf.

[46] See U.S. Department of Justice, *Justice Department Announces Update to Marijuana Enforcement Policy,* August 29, 2013, at http://www.justice.gov/opa/pr/justice-department-announces-update-marijuana-enforcement-policy.

[47] P.L. 113-235.

[48] See Letter to Mayor Bowser from House Oversight and Government Reform Committee Chairman Jason Chaffetz, Feb. 24, 2015, available at http://apps.washingtonpost.com/g/documents/local/letter-to-dc-mayor-muriel-bowser-regarding-initiative-71/1427/ (arguing that "any steps taken by the District on Initiative 71, such as developing rules for law enforcement or the general public regarding Initiative 71, are violations of the current Continuing Resolution and the Anti-deficiency Act.").

[49] Ibid. For more information regarding the Anti-deficiency Act, see U.S. Government Accountability Office, *Anti-deficiency Act Background, at* http://www.gao.gov/legal/lawresources/antideficiencybackground.html.

[50] 160 *Congressional Record* H9077 (daily ed. December 11, 2014) (statement Rep. Serrano); Ibid. at H9285 (statement of Rep. Norton); ibid. at E1839 (daily ed. December 12, 2014) (Statement of Rep. Conyers).

local DC tax revenues.[51] Advocates of this interpretation concede, however, that the appropriations restriction would appear to prohibit the District from enacting any new laws that pertain to marijuana legalization, such as those that might regulate or tax the sale of small amounts of marijuana.[52]

Policy Questions

Unless and until there is further clarification from Congress (as expressed in legislation that has been enacted into law), the legal status of marijuana in the District appears unsettled.[53] While possession of small amounts of marijuana by adults appears to be permitted (as a matter of District law), the District of Columbia Council is apparently blocked by the Consolidated Appropriations Act from enacting any new laws that would facilitate such possession, including those that would establish a licensing system to regulate and tax commercial suppliers of marijuana and retail sellers of marijuana. This appropriation restriction is binding only for the period of time covered by law (fiscal year 2015). If the restriction is not repeated in the next appropriations act or enacted in other legislation, it would no longer be binding on the District.

DC Gun Laws and Second Amendment Issues[54]

On June 26, 2008, the Supreme Court issued its decision in *District of Columbia v. Heller*, which reviewed the constitutionality of a District of Columbia law that essentially had banned handguns for 32 years, among other things.[55] Passed by the District of Columbia Council on June 26, 1976, the Firearms Control Regulations Act of 1975,[56] which became effective September 24, 1976, required that all firearms within the District be registered and all owners be licensed, but it prohibited the registration of handguns after September 24, 1976. In a 5-4 decision, the Supreme Court found the District's handgun ban to be unconstitutional because it violated an individual's right under the Second Amendment to possess a handgun in his home for lawful purposes such as self-defense.[57]

---

[51] See Aaron C. Davis, Ed O'Keefe, Spending Deal Blocks D.C. Pot Legalization, *Washington Post*, December 10, 2014, at http://www.washingtonpost.com/local/dc-politics/congressional-budget-deal-may-upend-marijuana-legalization-in-dc/2014/12/09/6dff94f6-7f2e-11e4-8882-03cf08410beb_story.html (explaining that "[b]y midday Tuesday, it appeared negotiators had found middle ground to legalize possession of marijuana but to allow no further action by D.C. officials to create a regulatory system for legal sales and taxation of the plant.").

[52] See House Members Issue Joint Statement on D.C. Pot Legalization, February 25, 2015, available at http://www.washingtonpost.com/local/house-members-issue-joint-statement-on-dc-pot-legalization/2015/02/25/61e2d1ea-bd38-11e4-8668-4e7ba8439ca6_story.html (explaining their opinion that "the Omnibus, which was signed in December, does not repeal or block the implementation of Initiative 71. Instead, it prohibits future action by the District to legalize marijuana.").

[53] See Aaron C. Davis, "In D.C., Fears of Chaos Grow as Legal Pot Nears," *Washington Post*, February 15, 2015 (stating that "[t]he District of Columbia could soon earn a new nickname: the Wild West of marijuana.... Residents and visitors old enough to drink a beer will be able to possess enough pot to roll 100 joints. They will be able to carry it, share it, smoke it and grow it. But it's entirely unclear how anyone will obtain it.").

[54] This section was coauthored by William Krouse, Specialist in Domestic Security and Crime Policy, and Vivian S. Chu, former Legislative Attorney.

[55] *District of Columbia v. Heller*, 554 U.S. 570 (2008).

[56] D.C. Law 1-85; D.C. Official Code, §7-2501.01, *et seq.*

[57] For further information, see CRS Report R44618, *Post-Heller Second Amendment Jurisprudence*, by Sarah S. Herman.

In a related development, on July 24, 2014, the United States District Court for the District of Columbia issued a decision in *Palmer v. District of Columbia*, which declared unconstitutional a District law that prohibited the carrying of firearms in public in either open or concealed manner.[58] On July 29, 2014, the District Court issued an order granting a 90-day stay of the decision to allow District of Columbia officials to implement measures to comply with the decision.

On October 7, 2014, the District of Columbia Council passed the License to Carry a Pistol Temporary[59] Amendment Act of 2014 (D.C. Act 20-462).[60] Then-mayor Vincent C. Gray signed the bill into law on October 31, 2014. The Metropolitan Police Department began accepting applications for concealed carry pistol licenses on October 23, 2014. This temporary measure, which was transmitted to Congress on January 23, 2015, to allow for the 30-day congressional review/layover, became effective March 7, 2015. Because the act is a temporary measure, it will expire on October 18, 2015, 225 days from the date it became effective (March 7, 2015).[61]

On January 6, 2015, the District of Columbia Council passed the License to Carry a Pistol Second Emergency Amendment Act of 2014 (D.C. Act 20-564). Mayor Muriel Bowser signed the bill into law on the same day. The measure, which took effect immediately, expired after 90 days on April 6, 2015. The act was a temporary emergency measure that addressed or clarified a number of concerns raised since the passage of the temporary measure, including

- clarifying due process provisions related to limiting or revoking a license to carry;
- clarifying amendment prohibiting consumption of alcohol while carrying a concealed weapon; and
- changes in rulemaking that give the mayor additional flexibility to get rules governing carrying concealed weapons in place.

These acts establish a "may issue" concealed carry permit system under which applicants must demonstrate to the DC police a good reason to fear injury to themselves or their property. Once an application is approved, an applicant is given 45 days to acquire 15 hours of firearms safety training. Such training is to include

- firearms nomenclature;
- basic principles of marksmanship;
- care, cleaning, maintenance, loading, unloading, and storage of firearms;
- two hours range training;
- situational awareness, conflict management, and use of deadly force;
- selection of pistols and ammunition for defensive purposes; and
- any applicable District and federal laws.

[58] D.C. Code §22-4504(a).

[59] A temporary bill is a proposed new law or an amendment to an existing law that is enacted only with an emergency and is designed to fill the gap between the expiration of an emergency act and the effective date of a permanent act. It requires congressional review like a permanent act, but expires after 225 days.

[60] Mike DeBonis, "D.C. Council Votes, Reluctantly, to Allow Public to Carry Concealed Weapons," *Washington Post*, September 23, 2014.

[61] On March 6, 2015, the DC Council also submitted permanent legislation of the License to Carry a Pistol Act to Congress for its review. The law became effective on June 16, 2015.

According to *WAMU Radio*, the District of Columbia police department had taken in 66 applications for concealed carry permits by late January 2015. Of those applications, the DC police department granted 8 and rejected 11 applications.[62] The District's new "may issue" provisions on carrying concealed were also challenged. On May 18, 2015, the District Court in *Wrenn v. District of Columbia* issued a preliminary injunction against the District that prohibits it from enforcing the requirement that applicants demonstrate they have a good reason or cause for needing a license to carry concealed as doing so would violate rights protected under the Second Amendment.[63] However, on June 29, 2015, this preliminary injunction was overturned by the U.S. Court of Appeals for the District of Columbia Circuit, therefore allowing DC to enforce this concealed carry provision pending a final ruling from the court.[64]

Current Legislative Proposals (H.R. 1701/S. 874)

Some Members of Congress find District of Columbia gun laws to be out of step with the spirit of both the *Heller* and *Palmer* decisions or otherwise objectionable, and have sponsored proposals to block the implementation of those District of Columbia laws.[65] Along these lines, Representative Jim Jordan and Senator Marco Rubio have introduced bills (H.R. 1701/S. 874) in the 114th Congress that would amend several provisions of District of Columbia law to

- limit the Council's authority to regulate firearms;
- repeal handgun registration requirements, except for sawed-off shotguns, machine guns, and short-barreled rifles;
- remove restrictions on ammunition possession;
- repeal requirements and general policy that DC residents keep firearms in their possession unloaded and disassembled, or bound by a trigger lock;
- repeal certain penalties for possessing and carrying unregistered firearms; and
- create a "shall-issue" permitting system for concealed carry of firearms.[66]

In the 113th Congress, Representative Thomas Massie successfully offered an amendment (H.Amdt. 1098) to the FY2015 Financial Services and General Government appropriations bill (H.R. 5016) that would have prohibited the use of any funding provided under this bill to enforce certain District of Columbia gun laws. The Massie amendment was adopted on a recorded vote:

---

[62] Martin Austermuhle, "In Lawsuit, Gun Owners Say New D.C. Concealed Carry Law is Unconstitutional," *American University Radio (WAMU 88.5)*, February 3, 2015. The disposition of the remaining 47 applications was not noted in the report.

[63] *Wrenn v. District of Columbia*, 2015 U.S. Dist. LEXIS 71383 (D.D.C. May 18, 2015).

[64] Spencer S. Hsu and Rachael Weiner, "Court Allows D.C. to Enforce Gun-Permit Law; Judge's Injunction Is Overturned," *Washington Post*, June 30, 2015, pp. B-1.

[65] In the 110th and 111th Congresses, Members of Congress offered amendments to DC voting rights legislation that would have overturned or revised certain provisions of the District's gun control laws. For further information, see CRS Report RL33830, *District of Columbia Voting Representation in Congress: An Analysis of Legislative Proposals*, by Eugene Boyd.

[66] As of the date of this report 41 states have "shall issue" concealed carry laws, meaning permits are issued to all eligible applicants. "Shall issue" states include Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Nine states have more restrictive "may issue" laws, meaning state and/or local authorities have discretion whether to issue permits. They include California, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, New Jersey, New York, and Rhode Island.

241-181 (Roll no. 425). The House passed H.R. 5016 with the Massie amendment (§922 of the engrossed bill) on July 16, 2014, but the amendment was not included in the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235).

Policy Questions

To what extent should Congress, in order to ensure Second Amendment protections for District residents, intrude on the District's prerogative to regulate the possession of firearms?

Reproductive Health Non-Discrimination Amendment Act[67]

On May 6, 2014, District of Columbia Councilman David Grasso introduced the Reproductive Health Non-Discrimination Amendment Act of 2014 (B20-790) (RHNDAA). The measure, which was approved by the District of Columbia Council on December 17, 2014, was transmitted to the mayor, Muriel Bowser, for her signature on January 8, 2015. The bill, which was signed by the mayor on January 23, 2015, as D.C. Act 20-593, would

- amend the District of Columbia Human Rights Act of 1977 to protect individuals from discrimination by an employer or employment agency based on an employer's or employment agency's personal beliefs regarding the use or access to a particular drug, device, or medical service, including an individual's or a dependent's reproductive health decisions, including the decision to use or access a particular drug, device, or medical service; and
- define reproductive health decisions to include any decision by an employee, his or her dependent, or the employee's spouse related to the use or intended use of a particular drug, device, or medical service, including the use or intended use of contraception or fertility control or the planned or intended initiation or termination of a pregnancy.

Once signed by the mayor the act was transmitted to Congress on March 6, 2015, to begin a 30-day congressional review/layover period, whose end date was May 2, 2015. During this time Congress did not pass a resolution of disapproval that would have effectively rendered the act's provisions repealed and unenforceable.

As passed by the District of Columbia Council and signed by the mayor, the act would amend the District's Human Rights Act to include protection of employees, their spouses, and dependents against discrimination based on the employee's reproductive health decisions. As noted in the committee report accompanying the bill, the act defines reproductive health

> to include a decision by the employee or the employee's dependent related to a particular drug, medical device, or medical service, including contraceptive or fertility control, or the planned or intended initiation or termination of a pregnancy.… By protecting the reproductive health care decisions of employees or their dependents, B20-790 will ensure that an employer's personal beliefs do not trump a woman's health or access to health care that she may chose as best for her. Bill 20-790 makes clear that an employee's standing in

[67] This section was authored by Eugene Boyd, Analyst in Federalism and Economic Development Policy.

> the workplace should be based on performance not based on personal, private health care decisions.[68]

Much of the controversy surrounding this act centers on whether the act is a reaction to the Supreme Court ruling in the *Burwell v. Hobby Lobby* decision and its interpretation of the Religious Freedom Restoration Act of 1993. In that decision, the Court ruled that a closely held corporation/employer may act to limit or deny employees access to types of reproductive health choices and services, if such services or choices run counter to the religious belief/tenets of the employer. Opponents of the measure believe the act runs counter to the First Amendment religious freedom protections and the federal Religious Freedom Restoration Act of 1993. For instance, the Archdiocese of Washington has argued that the RHNDAA "prevents religious institutions, other faith-based employers, and pro-life advocacy organizations from making employment decisions consistent with their institutional mission and deeply held moral and religious beliefs about human life and sexuality."[69]

Current Legislative Proposals (H.J.Res. 43)

The act, which was transmitted to Congress on March 6, 2015, was subject to the 30-day congressional review/layover period that ended on May 2, 2015. The House Committee on Government Oversight and Reform approved a resolution of disapproval, H.J.Res. 43, on April 21, 2015, by a vote of 20 to 16. The committee vote was along party lines. Republican members of the committee voiced concern that the bill would require religiously affiliated institutions and pro-life organizations to support abortion services or other family planning practices that run counter to their religious beliefs or their pro-life positions. On April 30, 2015, the House approved H.J.Res. 43 by a vote of 228 to 192. However, passage by the House left insufficient time for Senate consideration. The bill was received in the Senate on May 4, 2015, two days after the expiration of the 30-day congressional review period. The bill also faced a certain veto by President Obama. Congress may still thwart the continued implementation of the act through the appropriations process. It is conceivable that a general provision may be included in the District's FY2016 appropriation, which faces approval by Congress, which would nullify or modify the language of the RHNDAA.

Policy Questions

Does the RHNDAA violate constitutional protections of freedom of religion and association guaranteed under the First Amendment and statutory prohibitions under the Religious Freedom Restoration Act of 1993?

Human Rights Amendment Act[70]

On May 21, 2014, District of Columbia Councilman Tommy Wells introduced the Human Rights Amendment Act of 2014, B20-803. The measure, which was approved by the District of Columbia Council on December 2, 2014, was signed by the mayor on January 25, 2015, as D.C.

---

[68] District of Columbia Council, Committee on Judiciary and Public Safety, *Reproductive Health Non-discrimination Amendment Act of 2014*, October 15, 2014 (Washington: GPO, 2014), p. 4, http://lims.dccouncil.us/Download/31673/B20-0790-CommitteeReport1.pdf.

[69] Archdiocese of Washington, *FAQ; Reproductive Health Non-Discrimination Amendment Act*, Washington, DC, March 6, 2015, p. 1, http://www.adw.org/wp-content/uploads/2015/03/RHNDA-FAQ-FINAL.pdf.

[70] This section was authored by Eugene Boyd, Analyst in Federalism and Economic Development Policy.

Act 20-605. The act removes a nondiscrimination exemption from the District's Human Rights Act for religious and religiously affiliated education institutions that was first included by Congress in 1989.

In 1989, Congress, when passing the District of Columbia's Appropriation Act for 1990, P.L. 101-168, included a provision, the Nation's Capital Religious Liberty and Academic Freedom Act (popularly known as the Armstrong Amendment),[71] that granted a nondiscrimination exemption to religiously affiliated educational institutions that allowed such institutions, consistent with their religious beliefs, the power to deny individuals and organizations that promoted or condone homosexuality recognition as a student organization or access to university facilities and resources. Senator Armstrong introduced the amendment on behalf of Georgetown University two years after a 1987 ruling by the District of Columbia Appeals Court that found that the university, in refusing to recognize a gay student organization, violated the District's Human Rights Act.[72] Supporters of the Armstrong amendment argued that religious and religiously affiliated educational institutions should not be compelled to comply with an act that runs counter to their religious teachings.

While supporters of the District's Human Rights Amendment Act of 2014 (HRAA) contend that the act removes the last vestiges of government-sanctioned discrimination based on sexual orientation, religious-based organizations and others advocating against the District's Human Rights Amendment Act of 2014 (HRAA), including the Archdiocese of Washington and the Heritage Foundation, argued that the HRAA eliminates an important protection in the exercise of religious liberty. By rescinding the Nation's Capital Religious Liberty and Academic Freedom Act, District officials acted to eliminate a religious consciousness exemption first incorporated in the D.C. Code by Congress in 1989. The elimination of this exemption removes protections afforded to religiously affiliated educational institutions in the exercise of their religious beliefs regarding human sexuality by "promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief."[73]

Current Legislative Proposals (H.J.Res. 44)

The HRAA, which was transmitted to Congress on March 6, 2015, was subject to the 30-day congressional review/layover period that ended on May 2, 2015. A joint resolution of disapproval was introduced in the Senate on March 18, 2015, and referred to the Senate Committee on Homeland Security and Governmental Affairs. An identical resolution, H.J.Res. 44, was introduced and referred to the House Committee on Government Oversight and Reform on April 14, 2015. However, neither committee advanced or considered the measure within the 30-day congressional review period mandated under the District's home rule act. Congress may still move to overturn the act through the appropriations process by incorporating language in the general provision section that would nullify or modify the language of the HMAA.

[71] 103 Stat. 1284.

[72] *Gay Rights Coalition of Georgetown University Law Center, et al., Appellants, and District of Columbia, Intervenor-Appellant, v. Georgetown University, et al., Appellees* 536 A.2d 1 (1987) (District of Columbia Court of Appeals decided November 20, 1987).

[73] Ryan T. Anderson and Sarah Torre, *Congress Should Protect Religious Freedom in the District of Columbia*, The Heritage Foundation, Issue Brief #4364, Washington, DC, March 9, 2015, pp. 1-3, http://www.heritage.org/research/reports/2015/03/congress-should-protect-religious-freedom-in-the-district-of-columbia.

Policy Questions

Is the District of Columbia's recent passage of the Human Rights Amendment Act, which removes non-discrimination protections for religious affiliated institutions, a violation of the constitutional guarantee of equal protection? Does the act run counter to the Supreme Court's decision in *Burwell v. Hobby Lobby Stores*[74] and the Religious Freedom Restoration Act?

Author Information

Eugene Boyd, Coordinator
Analyst in Federalism and Economic Development Policy

Brian T. Yeh
Legislative Attorney

Christopher M. Davis
Analyst on Congress and the Legislative Process

William J. Krouse
Specialist in Domestic Security and Crime Policy

Acknowledgments

Former Legislative Attorney Vivian S. Chu contributed to this report.

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

[74] Burwell v. Hobby Lobby Stores, S. Ct. (United States Supreme Court 2014). For a discussion of the case see CRS Legal Sidebar WSLG1252, *Disapproving D.C.'s Law on Nondiscrimination and Reproductive Health Decisions*, by Cynthia Brown and Jon O. Shimabukuro.