

*Congress and the Governance  
of the Nation's Capital*

*The Conflict of Federal and Local Interests*

CHARLES WESLEY HARRIS

GEORGETOWN UNIVERSITY PRESS, WASHINGTON, D.C.

53. House Subcommittee on Fiscal Affairs and Health of the Committee on the District of Columbia, D.C. Statehood: *Hearings and Markups* on H.R. 51, 100th Cong., 1st sess., 110-11.

54. *Ibid.*, 112.

55. *Ibid.*

56. Donald C. Rowat, "Ways of Governing Federal Capitals," (paper presented at Colloquium on Capital Cities, Canada's Capital Tri-University Study Group, Ottawa, Canada, 6-8 December 1990), 4-5. Canada's Capital Tri-University Study Group is comprised of political scientists and other scholars from Carleton University, the University of Ottawa, and the University of Quebec in Hull.

57. Due to the occurrence of agitated demonstrations in the capital city, this was a very hot issue in Brazil when the constitution of 1988 was being drafted. Diogo Lordello de Mello, "Overview of the Different Political and Legislative Structures of Capitals and the Issues and Problems Relating to Them," paper presented at the Capitals of the World Conference, Ottawa, Canada, October 1987.

## Oversight Mechanisms

Before the District Home Rule Charter came into effect in 1975, the real legislative branch of the city was Congress, where the burden of local lawmaking fell to the House and Senate District Committees. For better or worse, these committees were constantly considering, enacting, and killing strictly municipal measures of varied significance.

With home rule in effect, oversight or the review of legislative action by the District Council is the most consistent activity of the House District Committee; it has little legislative function. Oversight mainly involves efforts by Congress to supervise the executive establishment that administers the laws it has enacted. Implemented through its committees, oversight activities fall into three areas: authorization, appropriation, and investigation. The objectives of oversight often vary from committee to committee and the process suffers from a lack of consensus on goals and procedures. The fiscal oversight of the District is part and parcel of the national budget arrangement and a regular oversight agenda is maintained in accordance with the appropriations process; but the District is not a federal agency, and there is some question as to whether there is an adequate agenda for a full authorizing committee.

During the 93d Congress (1973-74), which ended just prior to the effective date for home rule, the District Committee sent twenty-seven bills to the House floor for action. With home rule in effect during the 94th Congress (1975-76), only fifteen bills were sent to the floor. As shown in table 3.1, this reduced number of bills reported by the committee to the House floor has remained consistent in subsequent congresses. Considering their typical substance, it is not surprising that there was an even greater reduction in the number of resolutions reported to the floor by the committee after home rule became effective. For example, in the two congresses before home rule (92d and 93d), the District Committee had averaged over 200 resolutions per congress. With home rule in effect, the main resolutions considered by the com-

**TABLE 3.1** House Committee on the District of Columbia Bills Reported to the House and Senate

| Congress          | House Bills | Senate Bills | Total |
|-------------------|-------------|--------------|-------|
| 92d<br>(1971-72)  | 57          | 8            | 65    |
| 93d<br>(1973-74)  | 27          | 3            | 30    |
| 94th<br>(1975-76) | 15          | 0            | 15    |
| 95th<br>(1977-78) | 12          | 5            | 17    |
| 96th<br>(1979-80) | 14          | 2            | 16    |
| 99th<br>(1985-86) | 10          | 0            | 10    |
| 102d<br>(1991-92) | 14          | 0            | 14    |

Source: House Committee on the District of Columbia, Legislative Calendars (Final), 92d through 102d Congresses.

mittee dealt with challenges to District legislation, most of which were not reported to the floor.<sup>1</sup>

#### ADJUSTMENTS IN MECHANISMS: SENATE AND HOUSE

With the advent of home rule, the question of what to do with the District Committees in the House and Senate was frequently raised. It was expected that these two committees would have less and less to do with a jurisdiction beginning to practice a limited form of home rule.

Initially, the chairman of the House District Committee, Charles C. Diggs, Jr. (D-Mich.), had hopes of making the committee into a sort of "urban workshop," through which various problems of urban areas would be explored. The ranking Republican on the committee, Gilbert Gude (R-Md.), thought that the idea had merit, but he would take it one step further. In 1976 Gude introduced a resolution to replace the House District Committee with a committee on urban and District of Columbia affairs.<sup>2</sup> Gude's proposal received only a lukewarm reception from Chairman Diggs, who, by this time, preferred expanding the committee's jurisdiction to include responsibility for the territories of

the United States.<sup>3</sup> While neither of these proposals was implemented, there were still other recommendations to abolish the House District Committee during the early years of home rule.

Senator Charles McC. Mathias (R-Md.), while supporting the proposal by Representative Gude, recommended that the Senate District Committee expand its focus to include the entire national capital region. Mathias argued that since almost one-half of the federal employees in the Washington area were working at suburban locations, the federal interest in the nation's capital was not limited to the District of Columbia.

Effective with the 95th Congress in 1977, and without significant opposition either on Capitol Hill or from city leaders, the Senate District Committee was downgraded to a subcommittee of the Governmental Affairs Committee.<sup>4</sup> Thus the Senate District Committee, which for generations had been an influential leader in the colonial cabinet that ran the District's local affairs from Capitol Hill, died of natural causes at the age of 160 years.<sup>5</sup> In the heyday of congressional control over the District's legislative affairs, the Senate District Committee won a reputation as the more compassionate of the city's two foster parents. For example, decades before the House District Committee agreed even to let the city have its own elected school board, the Senate District Committee was voicing its approval of full self-government for the District.<sup>6</sup>

As the intermittent talk of abolishing the House District Committee continued, Representative Stewart B. McKinney (R-Conn.), ranking minority member of the District Committee and a strong supporter of full local authority, recommended in 1985 that this committee be abolished. McKinney asserted that the District government was now able to conduct its own affairs and did not need a congressional overseer. Home rule was by no means total, McKinney admitted, but the elected mayor and council did in fact formulate and execute policy for the District with what he termed as minimal congressional interference. The essence of the proposal was that the panel's responsibilities, including review of District legislation and administrative actions, would be downgraded and shifted to a subcommittee. The proposal drew an angry response from Representative Ronald Dellums (D-Calif.), chairman of the committee. Dellums said he was not concerned about a loss of position or power but felt that he and other committee members should have been consulted before McKinney went public with the proposal.<sup>7</sup> Mayor Marion Barry and Delegate Walter E. Fauntroy were

divided over the proposal, with the mayor favoring the swift dismantling of the District Committee and the delegate arguing that the committee should be retained until the District achieved statehood or resolved other thorny self-government issues.<sup>8</sup>

When the Home Rule Charter was approved in 1973, no one could have anticipated the frequency of congressional challenges to District of Columbia legislation. As long as Congress retains its present power to review District legislation, responsible execution of this power requires adequate support staff to stage hearings, conduct research, and prepare reports. These procedures are essential to responsible review by Congress. With only an authorizing subcommittee to deal with District affairs, the Senate has neither the time nor the staff for a full-fledged review of challenged legislation. This means deferring to the House or making a decision without adequate preparatory work. The home rule experience seems to strengthen the case for a full committee or adequate support staff in at least one of the chambers.

Because Congress retained final control over the District budget and issues thought to involve a federal interest, appropriate oversight mechanisms were necessary. How the congressional mechanisms are used depends not just on their availability but on the willingness of those in control to use them. Moreover, these mechanisms are not set in stone; Congress can revise the home rule controls in directions that give the District more or less autonomy.

#### ADJUSTMENTS IN PROCEDURES: THE CHADHA DECISION

The legal procedures for congressional oversight were unexpectedly called into question in 1983 after the Supreme Court, by a seven to two vote, struck down the legislative veto in the case of *Immigration and Naturalization Service v. Chadha*.<sup>9</sup> The District Home Rule Charter and the provision in it that allowed Congress to veto District legislation became an issue after this decision was rendered, which nullified the legislative-veto provisions contained in more than 200 laws.<sup>10</sup> Legislative-veto provisions allowed all or part of Congress to block executive action, with or without the president's approval. In ruling them unconstitutional, the Court not only altered the balance of power between Congress and the president, but also threw into doubt the constitutionality of provisions of the District Home Rule Act. A provision in the Charter allowed Congress to overturn District criminal laws by a majority vote of either house and civil laws by a

vote of both houses—in each case, without the approval of the president. For a period of time after the Supreme Court ruling was handed down, the city was not able to issue bonds because of the cloud over home rule authority.

Legislative experts were uncertain as to whether or not the ruling applied to the Home Rule Act, since the Constitution gives Congress specific and exclusive legislative authority over the District. Congressional leaders decided, however, that Congress should act to bring the process involving the District in line with the Supreme Court ruling, which required that veto action be executed through a statute enacted in the manner prescribed by the Constitution.

After months of deliberations between city officials and key members of Congress concerning the method of disapproving council acts, identical bills were introduced in the House and Senate that required a joint resolution either passed by a majority of both houses and signed by the president or passed by a two-thirds majority of both houses over the president's veto. But the matter reached an impasse due to the desire of the Reagan administration and a handful of Republican senators to keep tighter controls over the District's criminal laws to ensure, they argued, public safety and security.<sup>11</sup> The White House sought a requirement that every District-passed criminal bill would have to have the active, formal approval of the House, the Senate, and the president. The objections of the Reagan administration kept the Senate from considering the House-passed bill for much of 1984.

On the eve of the conference to resolve the differences between the House and Senate proposals, the administration dropped its objections and decided to support the House-passed legislation. This means that a formal veto of District legislation must be approved by both houses of Congress and signed by the president. A longer congressional review period was agreed upon for criminal laws—sixty days instead of thirty—to preserve a distinction between criminal and non-criminal legislation that was in the original Home Rule Charter. The bill also included provisions that would revalidate all laws that were passed under the Charter that had not been overturned by Congress. This was intended to take care of challenges to criminal convictions made under those laws.

District officials were relieved and reassured by the settlement. A Republican-controlled Senate, a Democratic-majority House, and the Reagan administration had thoroughly reviewed proposals to tighten federal control over certain local lawmaking powers, and had agreed

that they were not necessary. On the contrary, the process could be made more uniform and left more to local discretion without any damage to the federal interest.<sup>12</sup>

#### ANALYSIS OF OVERSIGHT MECHANISMS

There are in fact important differences among the potential controllers. Congressional oversight of the District of Columbia is concentrated in four bodies: in the House, the District of Columbia Committee and the Appropriations Subcommittee on the District of Columbia; and, in the Senate, the Governmental Affairs Subcommittee on General Services, Federalism and the District of Columbia and the Appropriations Subcommittee on the District of Columbia. The composition of these bodies provides some important insights into the objectives that their members are likely to pursue, the likelihood that their respective chambers will defer to the oversight bodies' wishes, and potential sources of federal-District conflict. Table 3.2 presents a breakdown of the membership of the four oversight bodies between the 93d(1973) and 102d(1992) Congresses. It shows that there are in fact several different membership patterns on these bodies, and that there has been substantial change in these patterns since the 1970s on the House side.

The greatest change has occurred in the House District of Columbia Committee. Until 1972, the House District Committee was dominated by Southern conservatives. But in 1973 it acquired a black chairman, Charles C. Diggs, Jr., and since the 96th Congress (1979-80), Democratic membership has been concentrated among black legislators. From 45 percent in the 101st Congress (1989-90), the percentage of blacks on the committee fell to 36 percent during the first session of the 102d Congress (1991), when Representative William Gray (D-Pa.) resigned his seat in Congress to become president of the United Negro College Fund.<sup>13</sup> Moreover, contradicting the reputation of the District Committees as unpopular assignments which members switch out of as soon as possible, Democratic members on the House District Committee now tend to serve for a longer period of time—an average of 7.1 years at the beginning of the 102d Congress (1989-90), compared with only 2.9 years of experience at the beginning of the 95th Congress in 1977 (see table 3.3). Leadership has been even more stable, with only four chairmen since 1955, and the chairman at the end of the 102d Congress (1992), Representative Ronald V. Dellums, had been in the position for fourteen years. The change to a more stable, black-dominated

District Committee resulted in large part from a substantial downsizing of the committee (from twenty-four members in the 93d Congress to eleven in the 100th Congress, as shown in table 3.2) and increasing norms of self-selection for committee membership in the House, as opposed to involuntary assignment. In addition to the District of Columbia delegate and members from suburban Virginia and Maryland, the committee consistently has had a significant number of members from the western states in recent years, including five from California during the 102d Congress (1991-92).

Despite the changing demographic and turnover trends among the committee's Democratic members, one feature remains constant: with the exception of the chairman, the District's delegate, and the ranking minority member, it is a low-priority committee assignment for most members. For other members, the committee is a secondary choice, a stepchild, and members are usually either threatened or promised something to get them to serve on it. In their study of congressional committees, political scientists Steven S. Smith and Christopher J. Deering placed the District Committee along with three others (House Administration, Post Office and Civil Service, and Standards of Official Conduct) in the category of "undesired committees" in the House.<sup>15</sup> The committee is of little interest to most congressmen largely because the District is far removed from their own congressional districts and District residents are not voting constituents. When they direct their attention to the District, it is only for a fleeting moment. With the opening of the 95th Congress (1977-78), there were forty-eight new House Democrats, but none volunteered to serve on the District Committee, which had six vacancies on the twenty-member committee.<sup>16</sup> The Democratic caucus voted to change certain committee membership rules as a sweetener. Members were allowed to serve on the District Committee as well as two other standing committees so as not to block them from their priority assignments.<sup>17</sup>

Because most District Committee members of both parties are not very active, the committee's Democratic leadership has been able to count on (if only by proxy votes) a stable pro-District majority in recent years. In fact, since the advent of home rule more than twenty years ago, the District Committee has provided almost unbroken support for the city's position on issues. During most of the 1980s, the committee had a very pro-District ranking minority member in Representative Stewart B. McKinney of Connecticut.<sup>18</sup> The level of partisan conflict on the committee increased substantially after McKinney's death.

**TABLE 3.2** Membership of Congressional Committees with Oversight Responsibility for the District of Columbia.  
(percent of committee members)

| Congress  | 93d<br>(1973-74) | 94th<br>(1975-76) | 95th<br>(1977-78) | 96th<br>(1979-80) | 97th<br>(1981-82) | 98th<br>(1983-84) | 99th<br>(1985-1986) | 100th<br>(1987-88) | 101st<br>(1989-90) | 102d<br>(1991-92) |
|---|------------------|-------------------|-------------------|-------------------|-------------------|-------------------|---------------------|--------------------|--------------------|-------------------|
| <b>House District of Columbia Committee</b>   |                  |                   |                   |                   |                   |                   |                     |                    |                    |                   |
| Democrats   | 58               | 68                | 70                | 67                | 67                | 67                | 67                  | 64                 | 67                 | 64                |
| Black   | 17               | 14                | 20                | 33                | 42                | 42                | 42                  | 45                 | 45                 | 36                |
| White—MD/VA   | 0                | 9                 | 10                | 13                | 8                 | 8                 | 8                   | 0                  | 0                  | 0                 |
| White Northern  | 25               | 32                | 20                | 13                | 8                 | 8                 | 8                   | 9                  | 18                 | 45                |
| White Southern  | 17               | 14                | 20                | 6                 | 8                 | 8                 | 8                   | 9                  | 0                  | 0                 |
| Republican  | 42               | 32                | 30                | 33                | 33                | 33                | 33                  | 36                 | 36                 | 36                |
| Maryland/Virginia   | 8                | 9                 | 10                | 27                | 25                | 25                | 17                  | 18                 | 18                 | 9                 |
| Other   | 33               | 23                | 20                | 7                 | 8                 | 8                 | 17                  | 18                 | 18                 | 27                |
| Number  | (24)             | (22)              | (20)              | (15)              | (12)              | (12)              | (12)                | (11)               | (11)               | (11)              |
| <b>Senate Governmental Affairs Subcommittee on General Services, Federalism and the District of Columbia*</b> |                  |                   |                   |                   |                   |                   |                     |                    |                    |                   |
| Democrats   | 57               | 57                | 50                | 50                | 33                | 40                | 33                  | 60                 | 60                 | 60                |
| White—MD/VA   | 0                | 0                 | 0                 | 0                 | 0                 | 0                 | 0                   | 0                  | 0                  | 0                 |
| White Northern  | 57               | 57                | 25                | 50                | 33                | 20                | 33                  | 40                 | 40                 | 40                |
| White Southern  | 0                | 0                 | 25                | 0                 | 0                 | 20                | 0                   | 20                 | 20                 | 20                |
| Republicans   | 43               | 43                | 50                | 50                | 66                | 60                | 66                  | 40                 | 40                 | 40                |
| Maryland/Virginia   | 14               | 14                | 25                | 25                | 33                | 20                | 33                  | 0                  | 0                  | 0                 |
| Other   | 28               | 28                | 25                | 25                | 33                | 40                | 33                  | 40                 | 40                 | 40                |
| Number  | (7)              | (7)               | (4)               | (4)               | (3)               | (5)               | (3)                 | (5)                | (5)                | (5)               |
| <b>House Appropriations Subcommittee on the District of Columbia</b>  |                  |                   |                   |                   |                   |                   |                     |                    |                    |                   |
| Democrats   | 58               | 73                | 75                | 71                | 63                | 67                | 67                  | 67                 | 67                 | 67                |
| Blacks  | 8                | 9                 | 13                | 29                | 25                | 22                | 22                  | 22                 | 22                 | 22                |
| White—MD/VA   | 0                | 0                 | 0                 | 0                 | 11                | 11                | 11                  | 11                 | 11                 | 11                |
| White Northern  | 33               | 36                | 38                | 14                | 0                 | 11                | 11                  | 22                 | 22                 | 22                |
| White Southern  | 17               | 18                | 25                | 29                | 38                | 33                | 22                  | 11                 | 11                 | 11                |
| Republicans   | 42               | 27                | 25                | 29                | 38                | 33                | 33                  | 33                 | 33                 | 33                |
| Maryland/Virginia   | 0                | 0                 | 0                 | 0                 | 0                 | 0                 | 11                  | 0                  | 0                  | 0                 |
| Other   | 42               | 27                | 25                | 29                | 38                | 33                | 22                  | 33                 | 33                 | 33                |
| Number  | (12)             | (11)              | (8)               | (7)               | (8)               | (9)               | (9)                 | (9)                | (9)                | (9)               |
| <b>Senate Appropriations Subcommittee on the District of Columbia</b>   |                  |                   |                   |                   |                   |                   |                     |                    |                    |                   |
| Democrats   | 60               | 60                | 60                | 60                | 40                | 40                | 40                  | 60                 | 60                 | 60                |
| White—MD/VA   | 0                | 0                 | 0                 | 0                 | 0                 | 0                 | 0                   | 0                  | 0                  | 0                 |
| White Northern  | 40               | 0                 | 60                | 40                | 20                | 20                | 40                  | 60                 | 40                 | 40                |
| White Southern  | 20               | 60                | 0                 | 20                | 20                | 20                | 0                   | 0                  | 20                 | 20                |
| Republicans   | 40               | 40                | 40                | 40                | 60                | 60                | 60                  | 40                 | 40                 | 40                |
| Maryland/Virginia   | 20               | 20                | 20                | 20                | 0                 | 0                 | 0                   | 0                  | 0                  | 0                 |
| Other   | 20               | 20                | 20                | 20                | 60                | 60                | 60                  | 40                 | 40                 | 40                |
| Number  | (5)              | (5)               | (5)               | (5)               | (5)               | (5)               | (5)                 | (5)                | (5)                | (5)               |

\*Senate authorizing bodies: 93d and 94th Congresses—Senate District Committee  
95th and subsequent congresses—subcommittee of Governmental Affairs Committee

**TABLE 3.3** Experience of Members of Congressional Committees with Oversight Responsibility for District of Columbia.  
(prior years of service on body at beginning of the term of Congress)  
(number in parentheses is number of legislators in category)

| Congress   | 95th<br>(1977-78) | 96th<br>(1979-80) | 97th<br>(1981-82) | 98th<br>(1983-84) | 99th<br>(1985-86) | 100th<br>(1987-88)   | 101st<br>(1989-90)   | 102d<br>(1991-92) |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|----------------------|----------------------|-------------------|
| <b>House District of Columbia Committee</b>  |                   |                   |                   |                   |                   |                      |                      |                   |
| Democrats  | 2.9(14)           | 4.4(10)           | 4.5(8)            | 6.5(8)            | 7.8(8)            | 10.3(7)              | 10.0(7)              | 7.1(7)            |
| Blacks   | 6.0(4)            | 6.0(4)            | 4.4(5)            | 6.4(5)            | 7.2(5)            | 9.2(5)               | 11.2(5)              | 9.0(4)            |
| White—MD/VA  | 2.0(2)            | 2.0(2)            | 2.0(1)            | 2.0(1)            | 4.0(1)            | —                    | —                    | —                 |
| White Northern   | 0.8(5)            | 2.0(2)            | 6.0(1)            | 8.0(1)            | 10.0(1)           | 12.0(1)              | 7.0(2)               | 4.6(3)            |
| White Southern   | 2.7(3)            | 6.0(1)            | 8.0(1)            | 10.0(1)           | 12.0(1)           | 14.0(1)              | —                    | —                 |
| Republicans  | 1.3(6)            | 2.8(5)            | 2.5(4)            | 4.5(4)            | 5.5(4)            | 3.5(4) <sup>a</sup>  | 5.0(4)               | 3.5(4)            |
| MD/VA  | 1.0(2)            | 4.0(1)            | 0.0(3)            | 2.0(3)            | 4.0(2)            | 6.0(2)               | 8.0(2)               | 8.0(1)            |
| Other  | 1.5(4)            | 2.5(4)            | 10.0(1)           | 12.0(1)           | 7.0(2)            | 1.0(2)               | 2.0(2)               | 2.0(3)            |
| All Members  | 2.0(20)           | 3.9(15)           | 4.0(12)           | 6.0(12)           | 7.0(12)           | 7.8(11)              | 9.4(11)              | 5.8(11)           |
| <b>Senate Governmental Affairs Subcommittee on General Services, Federalism and the District of Columbia</b> |                   |                   |                   |                   |                   |                      |                      |                   |
| Democrats  | 4.0               | 5.0(2)            | 12.0(1)           | 7.0(2)            | 16.0(1)           | 1.3(3) <sup>bc</sup> | 1.3(3) <sup>d</sup>  | 2.0(3)            |
| White—MD/VA  | —                 | —                 | —                 | —                 | —                 | —                    | —                    | —                 |
| White Northern   | 8.0(1)            | 5.0(1)            | 12.0(1)           | 14.0(1)           | 16.0(1)           | 1.0(2) <sup>b</sup>  | 0.0(2)               | 1.0(2)            |
| White Southern   | 0.0(1)            | —                 | —                 | —                 | —                 | 2.0(1) <sup>c</sup>  | 4.0(1) <sup>d</sup>  | 4.0(1)            |
| Republicans  | 4.0(2)            | 6.0(2)            | 6.0(1)            | 5.3(3)            | 10.0(1)           | 0.0(2)               | 3.0(2) <sup>e</sup>  | 1.0(2)            |
| MD/VA  | 8.0(1)            | 10.0(1)           | 12.0(1)           | 14.0(1)           | 16.0(1)           | —                    | —                    | —                 |
| Other  | 0.0(1)            | 2.0(1)            | 0.0(1)            | 1.0(1)            | 4.0(1)            | 0.0(2)               | 3.0(2) <sup>e</sup>  | 1.0(2)            |
| All Members  | 4.0(4)            | 5.5(4)            | 8.0(3)            | 6.0(5)            | 12.0(3)           | 0.8(5) <sup>bc</sup> | 2.0(5) <sup>de</sup> | 1.6(5)            |
| <b>House Appropriations Subcommittee on the District of Columbia</b>   |                   |                   |                   |                   |                   |                      |                      |                   |
| Democrats  | 6.3(6)            | 5.4(5)            | 7.6(5)            | 8.0(6)            | 9.3(6)            | 9.7(6)               | 9.6(6)               | 12.3(6)           |
| Black  | 0.0(1)            | 3.0(2)            | 5.0(2)            | 7.0(2)            | 9.0(2)            | 11.0(2)              | 10.0(2) <sup>f</sup> | 12.0(2)           |
| White—MD/VA  | —                 | —                 | —                 | —                 | 0.0(1)            | 2.0(1)               | 4.0(1)               | 6.0(1)            |
| White Northern   | 6.0(3)            | 8.0(1)            | —                 | 0.0(1)            | 2.0(1)            | 2.0(2)               | 1.0(2)               | 5.0(2)            |
| White Southern   | 10.0(2)           | 12.0(2)           | 9.3(3)            | 11.3(3)           | 18.0(2)           | 30.0(1)              | 32.0(1)              | 34.0(1)           |
| Republicans  | 2.0(2)            | 0.0(2)            | 0.0(3)            | 1.3(3)            | 2.7(3)            | 4.0(3)               | 2.6(3)               | 2.0(3)            |
| MD/VA  | —                 | —                 | —                 | —                 | 0.0(1)            | —                    | —                    | —                 |
| Other  | 2.0(2)            | 5.4(7)            | 0.0(3)            | 1.3(3)            | 4.0(2)            | 4.0(3)               | 2.6(3)               | 2.0(3)            |
| All Members  | 3.8(11)           | 5.4(7)            | 4.8(8)            | 6.0(9)            | 7.1(9)            | 7.8(9)               | 7.3(9)               | 8.9(9)            |
| <b>Senate Appropriations Subcommittee on the District of Columbia</b>  |                   |                   |                   |                   |                   |                      |                      |                   |
| Democrats  | 0.0(3)            | 0.7(3)            | 3.0(2)            | 5.0(2)            | 0.0(2)            | 1.3(3)               | 0.0(3)               | 2.0(3)            |
| White—MD/VA  | —                 | —                 | —                 | —                 | —                 | —                    | —                    | —                 |
| White Northern   | 0.0(3)            | 1.0(2)            | 4.0(1)            | 6.0(1)            | 0.0(2)            | 1.3(3)               | 0.0(2)               | 2.0(2)            |
| White Southern   | —                 | 0.0(1)            | 2.0(1)            | 4.0(1)            | —                 | —                    | 0.0(1)               | 2.0(1)            |
| Republicans  | 2.0(2)            | 3.0(2)            | 0.0(3)            | 0.7(3)            | 2.7(3)            | 0.0(2)               | 2.0(2) <sup>g</sup>  | 0.0(2)            |
| MD/VA  | 4.0(1)            | 6.0(1)            | —                 | —                 | —                 | —                    | —                    | —                 |
| Other  | 0.0(1)            | 0.0(1)            | 0.0(3)            | 0.7(3)            | 2.7(3)            | 0.0(2)               | 2.0(2) <sup>g</sup>  | 0.0(2)            |
| All Members  | 0.8(5)            | 1.6(5)            | 1.2(5)            | 2.4(5)            | 1.6(5)            | 0.8(5)               | 0.8(5) <sup>g</sup>  | 1.2(5)            |

a Figures for the House District Committee for the 100th Congress do not include years of service of Rep. Stewart McKinney, who died early in the first session.

b Includes one term of non-consecutive service by Senator Levin in the 96th Congress.

c Includes one term of non-consecutive service by Senator Sasser in the 95th Congress.

d Includes two terms of non-consecutive service by Senator Sasser in the 95th and 100th Congresses.

e Includes two terms of non-consecutive service by Senator Stevens in the 95th and 96th Congresses.

f Includes full term for Rep. Gray who resigned in the first session of the 102d Congress.

g Includes two terms of non-consecutive service by Senator Domenici in the 98th and 99th Congresses.

The next ranking minority member, Stan E. Parris (R-Va.), was a consistent critic of the District until his defeat in 1990. His congressional district housed the District's major correctional institution, the Lorton Reformatory, and much of his criticism focused on the District's management of this prison. In 1991, Representative Thomas Bliley, also from Virginia, became the ranking Republican member. Although the interests of his district and state may at times clash with those of the District, so far he has not been accused of District-bashing.

The House Appropriations Subcommittee on the District of Columbia, like the authorizing committee, has also had increasing black membership (and leadership) in recent years. Representative Julian C. Dixon of California has chaired the subcommittee since 1980, when he succeeded Representative Charles Wilson of Texas.<sup>19</sup> This membership trend has been weaker and later than on the District Committee because of the small number of black congressmen serving on the Appropriations Committee.<sup>20</sup> By 1983 blacks equaled the number of white Southerners among House Appropriations Subcommittee Democrats but, through the 102d Congress, their percentage of the total membership did not rise above 22 percent.

The rise of Dixon to the chairmanship of the subcommittee provides further evidence of members' views of service on District committees. Dixon had been a member of Congress for only fourteen months when he became chairman. First-term House members generally do not get the chance to chair subcommittees. But the House District appropriations chairmanship, while very important to the city, often went begging on Capitol Hill. Representative Louis Stokes, a black member of the House Appropriations Committee from Ohio, was next in line for the position but did not want it.<sup>21</sup>

Bolstered by the long years of service of Representatives William R. Natcher (D-Ky.) and, to a lesser extent, Louis Stokes (D-Ohio) and Julian Dixon (D-Calif.), the members of the House Appropriations Subcommittee have a creditable experience record. At the beginning of the 102d Congress, the average number of years experience for all nine members of the subcommittee was 8.9. The experience level for the Democratic members was very high, with an average of 12.3 years, while the Republicans were at the other end of the spectrum, with an average of 2.0 years.

In the Senate the pattern among both Democrats and Republicans on both District oversight bodies has been largely one of very high turnover and low interest. The Senate lacks the sizable corps of black

members to serve on the District oversight bodies out of a concern for minority issues. Indeed, there have been no blacks in the Senate during most of the current home rule period.<sup>22</sup>

In spite of these problems, there have been some positive moments and pleasant surprises for the District under the Senate oversight bodies. Senator Alfonso M. D'Amato (R-N.Y.) was promptly stuck with the chairmanship of the District Appropriations Subcommittee upon his arrival in the upper chamber in 1981. The local officials feared the worst: a self-described conservative Republican from Long Island who had campaigned on a strong law-and-order, antiabortion platform being given financial control over a large, mostly black, and Democratic city. But the senator and his subcommittee turned out to be more supportive of the city on budget matters, as well as significant issues of home rule, than anyone had expected. Within a week of taking over the subcommittee, the senator had established a good working relationship with District Mayor Marion Barry and evinced a deep interest in District affairs.

While establishing himself as a strong ally of the city on most budgetary and home rule issues, D'Amato's relationship with the District was not without problems. When the city's chief of police announced his plans to retire in early 1981, there was a long list of candidates vying for his position. Senator D'Amato sent a letter to Mayor Barry endorsing one of the names on the list. The letter immediately set off criticism around town because it touched on two sensitive nerves. The Senator endorsed the only white candidate for the job and his letter angered local residents who viewed his advice as an intrusion on their limited home rule powers. Upon leaving the subcommittee after two years, the Senator took pride in the fact that he had been a defender of home rule and had spent a lot of time trying "to get Congress not to nit-pick everything the District does."<sup>23</sup>

The senators from neighboring states do not involve themselves in District issues as much as the representatives from nearby jurisdictions. Since 1969 only one senator from Virginia or Maryland, Republican Charles McC. Mathias of Maryland, has taken sufficient interest in District issues to serve on the Senate's authorizing body. For some eighteen years each party had one resident expert serving on the authorizing body—Mathias for the Republicans and Thomas Eagleton of Missouri for the Democrats. The chairman of the authorizing body in the 103d Congress (1993–94), Senator James R. Sasser of Tennessee, has served in the position since 1987, a total of eight years. No other sena-

tors in the past two decades have served for more than six years and most have served less. This lack of senatorial interest, combined with the factor of less staff than the House to work on District issues, has been reflected in Senate deference to the lower chamber on most District legislative matters.

Turnover is even more prevalent on the Senate's District Appropriations Subcommittee. Only two senators in the past two decades have served as long as eight years on the subcommittee. The subcommittee has had ten chairmen since 1967, compared to only three since 1961 for its House counterpart. The average number of years of prior service for all members of the subcommittee at the beginning of the 102d Congress was at a low 1.2.

#### TENURE ON OTHER COMMITTEES

Some turnover on committees is a normal result of attritional factors such as electoral defeat, retirement, and deaths. To gain some perspective on the turnover rate on other congressional committees, I ran statistics on the experience records of the members of one of the comparatively high demand committees in each house for the 102d Congress. The selection in the Senate was the Finance Committee which, along with the Appropriations Committee, is a traditional high demand body. At the beginning of the 102d Congress, the average number of years experience on the Finance Committee for its 20 members was 10.2. The turnover rate on the committee was higher among Democratic members than Republicans. The average number of years of service for Republicans was 11.8, compared with 8.9 for the Democratic members.

In the House, the Rules Committee was chosen for statistical calculations. Although the Rules Committee may have lost some of its attraction in recent years, it is still viewed as one of the "Big Three" in the House, along with Appropriations and Ways and Means, that enjoy premier status. The average number of years of prior service on the Rules Committee for its twelve members at the beginning of the 102d Congress was 9.0, with the Democratic average at 10.0 and the Republican average at 7.0.<sup>24</sup>

#### PARTNERSHIP/COOPTATION

The varying membership patterns and powers of the four congressional oversight bodies for the District suggest that they will vary both

in the interests they advance and in their ability to gain congressional approval for their views. If there is a partnership between the District government and the national legislature, the crux of this relationship is with the House District Committee. Yet they are partners with different purposes: the main purpose of the local government is to make and execute public policies, while that of the District Committee is to protect the federal interest. From the beginning of home rule through the 102d Congress (1991-92), the committee's record is probably second to none in the art of bottling up bills that the city does not want. As will be shown in Chapter 4, dealing with congressional challenges, the committee has successfully buried most of the veto proposals on District legislation introduced in Congress. The committee will presumably continue as a strong champion of District interests, but, because it is perceived as such, it may have trouble winning approval for its measures on the floor of the House. The abortive effort to repeal the legislation on the National Capital Service Area is a case in point.

In the Senate, contrasting with the situation in the House, members tend to side with the District committee leaders. The rejection of the bond issue and the call for an audit of city finances during the early years of home rule are examples of this trend.<sup>25</sup> The Senate's authoring body is likely to follow the lead of final House action rather than that of the House District Committee and to play a fairly passive role. The House District Appropriations Subcommittee will give the most consistent and detailed scrutiny to District affairs. Senate District Appropriations Subcommittee actions are likely to be intermittent and to change over time as the subcommittee chairmanship changes, reflecting that body's high turnover and its low priority for most members.

Generally, little of the federal intervention in city affairs is exercised by means of the authorizing committees; they are rarely successful channels for assertion of federal interests, whether they are genuine national interests or disguised parochial interests. Indeed, Democratic majorities on the House District Committee have for the most part been strong proponents of increased District autonomy during the home rule period. When Representative Dellums became chairman of the committee in 1979, he paid a call on new mayor Marion Barry, promising to be "an advocate, not an overseer, for District affairs."<sup>26</sup>

The role played by the House District Committee results in large measure from the identification of the committee's black leadership with the self-government objectives of the District's black majority. But this role has not been without costs for the committee. Like other com-

mittees that are seen as "captured" by the interests they oversee, the House District Committee has had difficulties in winning floor approval for its own agenda. Since the enactment of the Home Rule Act in 1973, the committee has been largely unsuccessful in its efforts to gain increased autonomy for the District of Columbia, such as through a statehood initiative or even local control over judicial appointments. The House District Committee has had more success in pursuing a negative agenda—blocking federal initiatives that challenge local autonomy. And even here it has sometimes lost out, as in the 1981 vote on changing the sex offender provisions of the District of Columbia criminal code.<sup>28</sup> There is, of course, a significant irony here: the pre-1973 House District Committee, dominated by Southern conservatives, also pursued a largely negative agenda in the opposite policy direction—prevention of home rule. On the Senate side, the authorizing subcommittee has been relatively inactive for a different reason: District affairs have been a low priority for senators, who serve on more committees than their House counterparts.

The success of the House District Committee in defending District interests has forced critics of the District government to find other channels to override District government decisions. The fact that the process became more difficult in the mid-1980s, after the Supreme Court ruling on legislative vetoes, has also discouraged the use of that mechanism. The appropriations process has taken up the slack as a channel of control. Specific provisions that do not arouse opposition from interest groups or threaten members' interests can be buried in big packages that are unlikely to be challenged on the floor.

Somewhat surprisingly for a policy arena that is supposed to be of low salience for most senators and representatives, neither the authorizing nor the appropriations committees have been able to control the agenda on District affairs. Actions initiated on the chamber floors have therefore been an important mechanism of federal influence, especially in the House of Representatives. Some of these floor challenges have been amendments to committee bills (for example, on abortion, gun control, and retention of the federal enclave), while the 1981 legislative veto barring changes in the criminal code took the form of a discharge petition.<sup>29</sup>

The frequency of floor activity becomes more understandable, however, when we consider that (1) norms of deference to specialists, especially the House District Committee, were weak; and (2) most of the challenges to specialized authority occurred on issues with a high

degree of symbolic resonance. Abortion, gay and lesbian rights, gun control, and public safety all provide blame-generating opportunities for conservatives to put their colleagues on the spot and to win at least local victories for their supporters' values. The greater frequency of floor challenges in the House can be attributed to three factors: (a) the more frequent electoral cycles in the House, which make representatives more subject to pressures to avoid controversial issues; (b) the fact that the House usually acts first on legislative matters, which allows controversies to arise and sometimes be resolved in the latter chamber before the Senate acts; (c) and lack of deference to the House District Committee.

### LOSING AT THE DISTRICT BUILDING

In the years since home rule has been in effect, the citizens of the District have strongly asserted their right to elect their own local officials. What is less apparent is that many District residents, including some ostensible supporters of home rule, also like the idea that Congress has some say in local affairs. They especially like having a friend in Congress when things are not going their way in the District Building. As one longtime District resident and actor on the political scene explains: "What you've got to understand is that Congress was a back door that suited people who had the key. . . . Now it suits people who don't have full faith in the people in the District Building. The Congress checks on them."<sup>31</sup> An example of this dual approach occurred when the gambling initiative won voter approval in 1980 and a group of local ministers and politicians, who had opposed it, went to Capitol Hill to get Congress to overturn the bill before it became law. They made the point that going to Congress is a part of the home rule process.

It happens that the District is a hybrid jurisdiction with both state and local functions among its limited powers. The above kind of "end run" could not happen at the state level because there is no higher legislative body with formal review and veto power over a state's actions before they become effective law. It is not that unique to the District when wearing its "city hat" because other local jurisdictions are subjected to various types of control by their state legislatures.<sup>32</sup>

### A WHIPPING BOY

Instead of implementing oversight based on consideration of the federal interest, many national legislators use the District as a handy tar-

get for making a point with the folks back home or some national interest group. Taking the common path of the appropriations process, the fight usually is over whether the citizens of the District should be allowed to spend their own money—not federal money—for their own purposes. No other jurisdiction is in the District's position, subject to the ulterior motives and whims of overseers without the opportunity to participate in their election to office. As District residents gain experience with home rule, increasingly they would rather live with a law that they do not like, but was enacted by their own representatives, than to have the power of self-government snatched away by national lawmakers who have no roots or direct responsibilities in the District.

Other large cities have large delegations in their state legislatures to look out for their political interests. Depending on the size of the city, its delegation may comprise a formidable bloc. Even the representatives of small cities can link up with their compatriots in the state legislature to protect their political interests. The lack of leverage in this regard is a unique fact of political life for the District.

#### THE THREAT OF ACTION

The impact of congressional oversight is not fully consumed in official vetoes, challenges, or policy directives issued through the appropriations process. The threat of congressional disapproval through a resolution, an appropriations bill, or public criticism is always present for District of Columbia lawmakers. In the District's situation, even a strong media reaction to its decisions and steps may trigger a congressional response. A comment by Senator Thomas F. Eagleton (D-Mo.), during his chairmanship of the authorizing body in the upper chamber, illustrates the extremity of this situation: "I don't want them to have to say every time they want to do something, 'Oh, we'd better call that son-of-a-bitch Tom Eagleton and see what he says.'" He emphasized the fact that this was the kind of thing that would compromise home rule.<sup>33</sup>

It all serves to underscore the District's still precarious form of limited home rule, under which local politicians must constantly look over their shoulders and assess the potential fallout from the congressional system before certain decisions or steps are taken. The political question either spoken or in the minds of local officials is, "Do we want to antagonize them now--on this particular question?"

Although the District's congressional members during the home rule period, Delegates Walter E. Fauntroy and Eleanor Holmes Norton, have earned the high respect of their colleagues for their struggles to represent and defend the District, the real congressional power over the city resides, as before home rule, in persons representing states far removed from the federal district. Whether it is the desire to work on minority issues, the racial dimension, or other factors, there are key home rule advocates on the authorizing and, to a lesser extent, the appropriations bodies who play a unique role in the oversight system. In recent Congresses (103d and before), there has been no mention of abolishing the House District Committee. In some respects, the committee functions as a buffer between Congress and the District government, and it seems that District leaders and supporters are comfortable with the existence and role of the committee. As of mid-1994, it does not appear likely that this committee will be phased out before the District achieves either statehood or true self-government.

#### STANDARDS OF EVALUATION

It remains a problem that the charter did not set forth criteria for Congress to apply in deciding how to exercise its appropriations and veto powers over the District. The House District Committee has attempted to deal with this by establishing criteria based on three grounds: constitutionality, accord with the District Home Rule Charter, and impact on the federal interest.<sup>34</sup> The objective is to focus congressional oversight on those aspects of local policy which are most fitting subjects for congressional concern. Of course, one could define the "federal interest" broadly enough to embrace every detail of District policy. But that is not what even a limited concept of local self-government means or contemplates.

In this chapter we have dealt with some of the unique aspects of congressional oversight of the District of Columbia government. We have described the House District Committee in a very close partnership with the local government, yet raised questions about the need for a full oversight committee after twenty years of home rule. It is meaningless to a self-governing jurisdiction to be monitored like an executive branch department. If congressional review of District legislation were reduced or eliminated, the oversight function in the House could be downgraded to a subcommittee. If a full committee was needed at

the outset to protect the federal interest, this is no longer the case, considering the other checks that are in place. Although it is not an issue of conflict between the two governments, the oversight mechanisms provide necessary background for the study of congressional challenges and vetoes, the subject matter of the next two chapters.

## NOTES

1. The highest number of challenges in a single Congress is twelve (94th Congress). See chapter 4 for a full discussion of congressional challenges to District legislation. House Committee on the District of Columbia, *Legislative Calendars*, (Final), 92d through 96th Congresses, 1971-80.
2. *Washington Post*, 10 August 1976, A-16.
3. The U.S. territories included Puerto Rico, the Virgin Islands, Guam, American Samoa, the Panama Canal Zone, and numerous islands in the South Seas. Emphasizing his interest in the territories and his former service on the Interior and Insular Affairs Committee, Diggs argued that this concept made sense in light of the District's territorial status. *Ibid.*, 29 September 1976, C-1.
4. This plan permitted the chairman of the Senate District Committee, Thomas F. Eagleton (D-Mo.), and its ranking minority member, Charles McC. Mathias, Jr. (R-Md.), to transfer to the new subcommittee of the Governmental Affairs Committee—expanded from 14 to 20 members. *Ibid.*, 25 January 1975, C-2.
5. Created on 18 December 1816, the Senate Committee on District of Columbia was the twelfth oldest standing committee in the upper house. Senate, Committee on the District of Columbia, *The Senate Committee System*, 94th Cong., 2d sess., July 1976, Committee Print, 11.
6. *The Washington Post*, 10 February 1977, A-14.
7. McKinney presented his proposal to the House Administration Committee without consulting with the chairman or members of the House District Committee. *Ibid.*, 1 March 1985, C-3.
8. In 1985 the District Committee had a staff of approximately thirty nine persons and a budget in the range of \$1.7 million. *Congressional Directory*, 99th Cong., (1985-86):315; *Washington Post*, 1 March 1985, C-3; 4 March 1985, A-10.
9. *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983).
10. *Congressional Quarterly Almanac*, 39 (1983): 565; 29 (1973): 734.
11. *Washington Post*, 17 September 1984, A-1.
12. *Ibid.*, 18 October 1984, A-20.
13. Gray announced his departure plans on 20 June 1991, with the effective date of his resignation being 11 September 1991. As majority whip of the House, Gray was the highest-ranking black member in the Congress.
14. Representative John McMillan became chairman of the House District Committee in 1945. He was relegated to ranking minority member in the

80th (1947-49) and 83d (1953-55) Congresses, then served continuously as chairman from 1955 to 1973 when Representative Charles C. Diggs, Jr. (D-Mich.) became chairman. Representative Ronald V. Dellums (D-Calif.) replaced Diggs as chairman in 1979 after the latter, in November 1978, requested to be relieved of the post following his conviction and sentence to a federal prison for illegal diversion of staff pay. At the beginning of the 103d Congress (1993), Representative Fortney (Pete) Stark (D-Calif.) became chairman, replacing Dellums, who left the position to chair the Committee on Armed Services. *Washington Post*, 22 November 1978, C-8; 27 January 1979, B-4.

15. Steven S. Smith and Christopher J. Deering, *Committees in Congress* (Washington, D.C.: Congressional Quarterly Press, 1984), 90, 118-19.

16. The District Committee's membership was reduced from its previous authorized total of 25 to 19 at the beginning of the 95th Congress (1977). It was not the only committee, however, that had a recruiting problem with the opening of the 95th Congress. The House leadership also had to use some "friendly persuasion" to fill vacancies on the Judiciary, International Affairs, and Agriculture Committees. *Washington Post*, 27 January 1977, B-2.

17. *Ibid.*, 27 January 1977, B-2.

18. McKinney was regarded as so favorable to District interests that the District's nonvoting delegate to Congress, Walter Fauntroy, referred to him as "my vote on the floor." *Washington Star*, 30 May 1978, B-1.

19. Representative Dixon became chairman of the subcommittee in March 1980 when Representative Charles Wilson (D-Texas) gave up the position for a seat on the more prestigious Defense Appropriations Subcommittee. *Washington Post*, 5 March 1980, A-1.

20. During the 102d Congress, only two of the fifty-nine members of the House Appropriations Committee were black. Both of them served on the District of Columbia Subcommittee.

21. *Ibid.*

22. After the defeat of Senator Edward Brooke (D-Mass.) in 1978 (95th Congress), there was no black member until Senator Carol Mosely Braun (D-Ill.) took her seat in the 103d Congress (1993).

23. Saying that he was elected to be something other than a "full-time overseer" of the District, the Senator commented on the large amount of time devoted to District affairs. *Washington Post*, 26 December 1982, D-6.

24. Computation of years of service on respective committee as reported in *Congressional Quarterly Almanac* for relevant years.

25. *Washington Post*, 6 January 1975, B-1.

26. *Ibid.*, 17 January 1979, B-1.

27. Other committees with close ties to their clientele, for example, Agriculture, at least have resources that can be used in building logrolling coalitions. The District Committee has little to offer other members in exchange for support on the floor. R. Kent Weaver and Charles W. Harris, "Who's in Charge Here? Congress and the Nation's Capital," *The Bookings Review* 7, no. 3 (Summer 1989): 33n.

28. See p. 112 ff.

29. *Ibid.*

30. On 14 December 1992 the offices of the mayor and many other city agencies were moved from the District Building (1350 Pennsylvania Avenue, Northwest) to a new eleven-story office building at One Judiciary Square (441 Fourth Street, Northwest).

The District Council chose to remain in the District Building. *Washington Post*, 17 December 1992, J-2.

31. *Washington Post*, 4 September 1980, A-17.

32. In addition to great influence on the financing of local governments, the states have preeminent leverage on how local governments are organized—the rules and laws which apply to local governments—and how land is to be used. For a detailed discussion of this subject, see Patricia S. Florestano and Vincent L. Marando, *The States and the Metropolis* (New York: Marcel Dekker, 1981), 12–13.

33. *Washington Post*, 6 January 1975, B-1.

34. On at least one occasion Senator Mathias suggested that Congress ought to evaluate city legislation by applying these criteria. Ironically, these standards led the senator to urge a veto of the franchise tax extension (District of Columbia Revenue Act of 1975), on the grounds that it was really a tax on nonresident income and as such was a violation of the charter. *Ibid.*, 8 October 1975, A-10.

## Congressional Challenges

Home rule had been in effect for several years before the first District legislation was vetoed by Congress, but congressional challenges of District legislation began in 1975, the first year of home rule, and have been a continuing activity in the relationship between Congress and the District government. This chapter briefly summarizes the more serious challenges, determined largely on the basis of the consideration given by Congress to the respective challenge as indicated through the staging of hearings. All of the subjects challenged receive some comment.

Probably in every act of the Council of the District of Columbia on which there is sufficient difference and controversy between the council and Congress to generate a disapproval resolution by the latter body, there may be some arguable degree of federal interest. Most of the failed challenges, however, involved primarily local policy matters rather than true federal interests. As will be shown later in this chapter, more often than not the prime motivating factor behind the effort to veto the District legislation originated from the parochial interests of neighboring states, moral issues that could be exploited by single-issue interest groups on a national level, and local lobbying groups and leaders who were unsuccessful at the council level. In some of the latter cases, Congress has allowed itself to be used as an appeal body by dissident groups unwilling to accept the policy decision at the local level. If we place a conservative label on the sponsors of most of the disapproval resolutions, it should not be surprising that most of them were Republicans (see tables 4.1 and 4.2).

The Democratic-controlled 94th Congress (1975–76) convened in January 1975, as did the new home rule government for the District of Columbia. The 94th Congress produced more challenges to District of Columbia Council action than any Congress since home rule has been in effect. A total of twelve disapproval resolutions were introduced in Congress on five different subjects. For example, the District of Columbia gun control law generated seven disapproval resolutions, all in the

an increased height for Metropolitan Square. District Council, memorandum from Clarke to the members of the council.

It would be the first time in which a nonfederal building was allowed to exceed the limitations contained in the 1910 act. *Congressional Record*, 102d Cong., 1st sess., 6 March 1991, daily ed., H1439-40.

104. They maintained that the District was not getting additional housing in the project; the units planned for this site represented exactly what PADC required in the first place. District Council, period 8, 47th Legislative Meeting, 4 December 1990, 190-91.

105. Both the District of Columbia Preservation League and the Committee of 100 on the Federal City presented testimony against the height amendment when it was being considered by the council. District of Columbia Preservation League, Testimony Before the Committee of the Whole, District Council, on Bill 8-616, Schedule of Heights Amendment Act, 18 September 1990; District Council, memorandum from Clarke to the members of the council.

106. The cosponsors of S. J. Res. 84 were Senators John Glenn (D-Ohio), John Heinz (R-Pa.), Daniel P. Moynihan (D-N.Y.), William V. Roth, Jr. (R-Del.), and Jim Sasser (D-Tenn.).

107. D.C. Code 5-405 (a) through (h).

108. *Congressional Record*, 102d Cong., 1st sess., 6 March 1991, daily ed., H1435.

109. *Ibid.*

110. *Ibid.*, H1445.

111. The new officials were Mayor Sharon Pratt Dixon, Council Chairman John Wilson, and Delegate Eleanor Holmes Norton. *Washington Times*, 7 March 1991, B-3.

## Appropriations

Politics is largely a contest over whose preferences will prevail in the determination of public policy. The budget records the outcome of this struggle. In a democracy, the budget is supposed to represent the will of the citizens who provide revenues for programs and services. But this is hardly the case with the District of Columbia budget, where the real battles are removed from the elected representatives of the local citizens.

The conflicts of interest between the federal and District governments have found primary expression in the congressional appropriations process. This chapter examines the nature of these conflicts, their underlying causes, the means by which they are resolved, and the outcomes of these disputes. After a brief explanation of the emergence of home rule and the institutional framework of the District budget, the chapter proceeds with a discussion of the ways in which congressional budget mechanisms have been used to influence District policies and decisions, including two condensed case studies of attempts to enact major public policies through the appropriations process.

### HOW HOME RULE BUDGET POWERS CAME TO BE

The budget authority for the District is contained in the District of Columbia Self Government and Governmental Reorganization Act, better known as the Home Rule Charter.<sup>1</sup> The charter provisions left the District budget in the hands of Congress, thus setting the stage for decision-making that is characterized by the mingling of local policy issues and congressional politics and parochial interests.

During the crafting of home rule legislation in 1973, a strong home rule bill was reported out of the House District Committee.<sup>2</sup> This bill would have transferred line-item budget control, as well as the authority to levy taxes and issue bonds, from Congress to the local government. But, when it appeared that this bill would be difficult to pass,

home rule advocates in the House worked out a compromise at the last minute which left budget authority with Congress. It boiled down to a matter of making concessions on the budget issue to prevent passage of a gutted substitute measure by opponents of home rule. The agreement demonstrated the power and influence of the House Appropriations Committee and its senior members. The member who would have been most affected by a change in local control of the budget was Representative William H. Natcher (D-Ky.), the powerful chairman of the District of Columbia Appropriations Subcommittee. Although the appropriation of the federal payment to the District would have remained with his subcommittee, his power would have been greatly diminished. In fact, this change would have diminished the power of the entire Appropriations Committee and its members. Faced with this critical situation, key home rule advocates in Congress agreed to leave budget control with Congress in return for Natcher's support.<sup>3</sup> His support carried not only many members of the Appropriations Committee but a large number of Southern congressmen and various other members who did not want to undercut the power of the Appropriations Committee and, moreover, did not really trust elected District officials to spend wisely the money of their constituents.<sup>4</sup>

The Senate proposed and passed a much stronger bill than the House. It not only granted budget autonomy, but also gave the local government power to issue general obligation bonds without the approval of Congress, established a formula-based federal payment, and delegated other powers not included in the House bill. The only District of Columbia budget responsibility that Congress would have retained was appropriation of the federal payment.

With different versions of home rule passed by the House and Senate, a conference panel was necessary. The conference version of the bill adopted the House budget provisions so that all District government expenditures, including those funded by local revenues, would have to be appropriated by Congress. The relevant provision in the Home Rule Charter states:

No amount may be obligated or expended by . . . the District of Columbia government unless . . . approved by Act of Congress, and then only according to such Act.<sup>5</sup>

This means that the District budget has to make the same rounds through the executive branch, via the Office of Management and Bud-

get (OMB), as all other federal agency budgets and must be submitted to Congress by the president. Congress also retains a number of additional levers of influence over the District government, including unrestricted power to legislate on all District matters and to veto all legislation enacted by the District government.<sup>6</sup>

Many members predicted that the city would enjoy a kind of *de facto* budgetary autonomy. Representative Joel T. Broyhill (R-Va.), an opponent of home rule for the District, said that he did not think that the appropriations committees would change much, if anything, in city budgets.

I think that the people of the District can make the point that self-government means they control the budget and it's tough to go against that because it would be like opposing the flag and America.<sup>7</sup>

According to Broyhill, that was the very point behind congressional approval of home rule and, "It's tough to have to explain why you oppose self-government."

The fact that full budget autonomy was not conveyed, however, has made a major difference in the political life of the District. Although there is little or no indication that Congress planned that the budget would be an instrument for regular intervention in District of Columbia affairs, leverage tends to be used when it is available.<sup>8</sup> Certainly the budget process that was adopted has not allowed the *de facto* autonomy referred to by Broyhill.

#### THE HANDLING OF THE DISTRICT BUDGET

The mayor is required to submit an annual budget to the District Council, which must hold public hearings on the proposed budget and adopt, by act, an annual budget for the District. Extensive hearings are conducted at the local level and estimates are reviewed, modified, and approved by the mayor and staff, the various council committees, and the full council. The budget is then reviewed by OMB and submitted by the president to Congress.

As a matter of practice, OMB and the president usually do not get involved in the District of Columbia operational budget except in a very general way. When transmitting the budget to Congress, the president may direct attention to certain issues which bear on operating

funds. For example, when the fiscal year 1990 budget was submitted, President George Bush encouraged Congress "to continue the abortion funding policy," established in fiscal year 1989, "which prohibits the use of both federal and local funds for abortions."<sup>10</sup> OMB does scrutinize the basis upon which the District prepares the federal payment estimates, with the stated objective of recommending a payment that is both "complementary and compatible" with the operational budget. During 1991, the first year of Mayor Sharon Pratt Kelly's administration, Congress authorized a formula-based federal payment for the District for fiscal years 1993 through 1995. It was to be equal to 24 percent of the local revenues collected two years prior to the respective budget year as reviewed by the comptroller general of the United States.<sup>10</sup>

Congress has the authority to conduct a comprehensive line-item review of the District's appropriated budget. In spite of the rigorous review of the District budget at the local level, the process essentially starts all over again when it reaches Congress. Public hearings are held to ascertain the views of local citizens and groups who wish to be heard. In recent years, however, only larger agencies and/or agencies with major policy issues have presented testimony. This congressional review encompasses the revenues the city anticipates collecting, the expenditures it wants to make, and the appropriate size of the federal payment. Congress may cut or increase any amount and add or delete any item.

The thoroughness of the congressional review of the District's budget during the early years of home rule is brought out in the following statement by Senator Patrick J. Leahy (D-Vt.) during his chairmanship of the District of Columbia Appropriations Subcommittee (1977-1981): "The final . . . review of the [District of Columbia] budget is both awesome and complete . . . any line item can be changed . . . and Congress can in fact dictate policy by either approving or denying specific program requests."<sup>11</sup> Yet many members of Congress are troubled by their role in the District budget process. In floor debate on the District budget in 1979, Representative Stewart B. McKinney (R-Conn.) asked his colleagues, ". . . aside from the federal payment, what right should the Congress have to a line-item review over a budget in which the citizens most directly involved have no legitimate vote?"<sup>12</sup>

The chairmen and members of the appropriations subcommittees along with their staffs play a key role in the review process. Because the subcommittees devote a great deal of time and attention to the re-

view of the budgets under their jurisdiction, there is a tendency for the full appropriations committees and the respective chambers as a whole to respect their recommendations and to go along with them in the final analysis. Of course, there are exceptions to this practice, as will be shown in the next section. During floor debate on the fiscal year 1989 District budget, the recommendations of the subcommittee and also the conference committee, concerning the funding of abortions, were successfully challenged.

One of the problems in the handling of the District budget is that the chairmanship of the Senate subcommittee has changed fairly often (see table 6.1). Of course, this turnover can work for and against District interests. For example, Senator Leahy was fairly rigid in his scrutiny of the District budget and relations between him and District officials were often strained. For years the senator posed a virtual single-member barrier to the District's plans to build a convention cen-

TABLE 6.1 Chairmen of the District of Columbia Appropriations Subcommittees 1975-94

| Congress           | House                       | Senate                      |
|--------------------|-----------------------------|-----------------------------|
| 94th<br>(1975-76)  | William H. Natcher (D-Ky.)  | Lawton Chiles (D-Fla.)      |
| 95th<br>(1977-78)  | William H. Natcher (D-Ky.)  | Patrick J. Leahy (D-Vt.)    |
| 96th<br>(1979-80)  | Charles N. Wilson (D-Texas) | Patrick J. Leahy (D-Vt.)    |
| 97th<br>(1981-82)  | Julian C. Dixon (D-Calif.)  | Alfonse M. D'Amato (R-N.Y.) |
| 98th<br>(1983-84)  | Julian C. Dixon (D-Calif.)  | Arlen Specter (R-Pa.)       |
| 99th<br>(1985-86)  | Julian C. Dixon (D-Calif.)  | Arlen Specter (R-Pa.)       |
| 100th<br>(1987-88) | Julian C. Dixon (D-Calif.)  | Tom Harkin (D-Iowa)         |
| 101st<br>(1989-90) | Julian C. Dixon (D-Calif.)  | Brock Adams (D-Wash.)       |
| 102nd<br>(1991-92) | Julian C. Dixon (D-Calif.)  | Brock Adams (D-Wash.)       |
| 103rd<br>(1993-94) | Julian C. Dixon (D-Calif.)  | Herbert Kohl (D-Wis.)       |

ter.<sup>13</sup> The District was probably quite willing to take its chances with any replacement for Leahy.

District officials generally felt that they had a difficult time in the short period that Representative Charles H. Wilson (D-Texas) chaired the House District of Columbia Appropriations Subcommittee, not so much in terms of his defense on the House floor, but rather in terms of what was brought to the floor. When Wilson was leaving the chairmanship of the subcommittee, Mayor Marion Barry said that he did not understand the city's problems, adding, "Charles Wilson was too tough and too rough and not quite together on what our problems were."<sup>14</sup> Representative Julian Dixon (D-Calif.), current chairman of the House District of Columbia Appropriations Subcommittee, has established good rapport with city officials and is considered an ally of the District. He has chaired the subcommittee for over thirteen years and has stated that his objective is to bring to the floor a bill that protects the federal interest, while at the same time preserving the integrity of home rule.<sup>15</sup>

There are three possible mechanisms for federal influence on the District budget through the appropriations process: (1) the amount of the federal payment, (2) control of line items, and (3) general provisions and legislative language. The greatest influence on the District budget has been exercised through general provisions and legislative language.

#### DISTRICT APPROPRIATED FUNDS AND THE FEDERAL PAYMENT

Generally, over 80 percent of congressional appropriations for the District are derived from local revenues—taxation, fees, and charges.<sup>16</sup> The main portion of federal funds is appropriated in the form of the federal payment. Other federally appropriated funds are contributions to the District pension system for firefighters, police officers, teachers, judges, and coverage of water and sewer services furnished to federal facilities by the District. The federal payment is not a gift or subsidy to the city but rather compensation for federal and foreign tax-exempt land in the District and for services rendered by the city to those interests. The payment was intended as a means for the national government to carry a fair share of the fiscal burden that it creates in the District, a unique jurisdiction with city, county, and state functions.

The federal payment has been the source of considerable controversy since the capital was established in the District in 1800. Congress

has undertaken comprehensive, formal reviews of the payment at least seven times in the past one hundred years, and it thus far has reached one consensus: the extraordinary federal presence imposes costs on the District for which the federal government acknowledges a financial obligation.<sup>17</sup>

In the history of the capital city, the federal payment has been as low as 8.5 percent and as high as 50 percent of the local budget.<sup>18</sup> For approximately ninety years (1835–1925) the payment level was set according to a formula which ranged from 40 percent to 50 percent of the District budget. In 1925, however, the formula approach was abandoned in favor of a "lump sum" concept, with the payment set each year based on negotiations between the District and Congress. This negotiated approach remained essentially unchanged from 1925 to 1991. During this time the federal share of the District budget ranged from less than 9 percent to about 30 percent of actual appropriations.<sup>19</sup>

Although the advent of home rule brought two new features to the federal payment process—the authorization of payment levels in advance (through fiscal year 1980), and a formal justification format—the amount of the payment since home rule has provided less than one quarter of the funds needed to finance the city's programs (see table 6.2). In fact, the payment has represented a fluctuating but declining share, from 26.7 percent in 1975 to 13.9 percent in 1990. Between 1981 and 1985 the federal payment authorization was increased annually, going from \$300 million in 1981 to \$425 million in 1985. Between fiscal year 1985 and fiscal year 1990 there was hardly any increase in the federal payment, which averaged \$428.9 million per year during this period. In fiscal year 1990 President Bush proposed a payment of \$430.5 million for the District in his budget, which was approved by Congress. During fiscal year 1991 Congress and President Bush provided an additional \$103.6 million supplemental appropriation for a total federal payment of \$534.1 million.<sup>20</sup>

In 1991 legislation was enacted for a formula-based federal payment authorization for the District. This formula tied the level of the federal payment to the general fund local revenues collected by the District government and provided the District with a predictable estimate of the payment it would receive to support its annual budget. For fiscal years 1993, 1994, and 1995, the authorized level of the federal payment was set at 24 percent of the "general revenue local collections" of two years prior to the respective budget year.<sup>21</sup> Problems arose during the Bush administration, however, with regard to implementing this for-

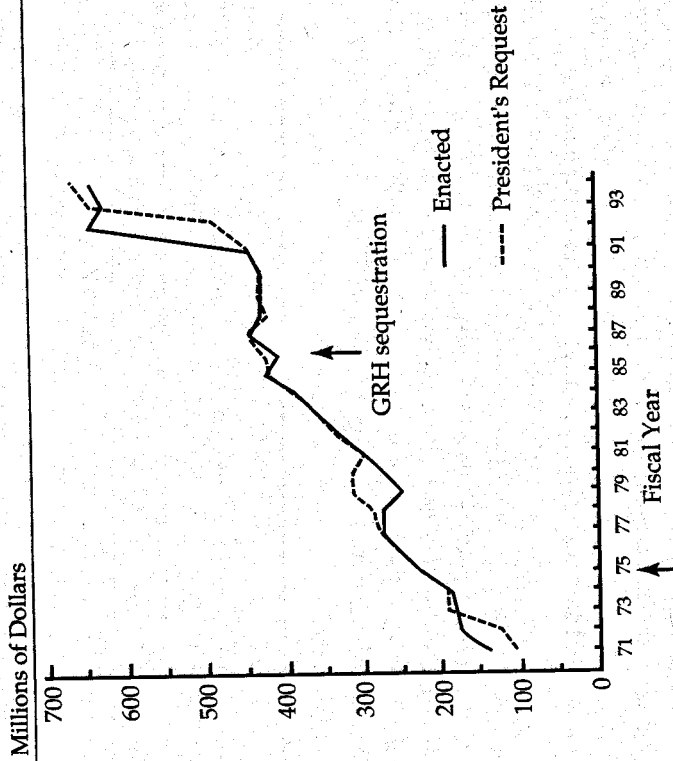
**TABLE 6.2** The Federal Payment in Relationship to the District of Columbia General Fund Fiscal Year 1975 - Fiscal Year 1993<sup>a</sup>  
(\$'000's)

| Fiscal Year | Total Appropriation | U.S. Share | %    | U.S. Share in 1987 Constant \$ <sup>b</sup> |
|-------------|---------------------|------------|------|---|
| 1975        | 845,617             | 226,200    | 26.7 | 475,410                                     |
| 1976        | 1,042,143           | 248,949    | 23.8 | 488,327                                     |
| 1977        | 1,130,506           | 276,650    | 24.5 | 500,905                                     |
| 1978        | 1,260,791           | 276,000    | 21.9 | 465,587                                     |
| 1979        | 1,335,746           | 250,000    | 18.7 | 388,138                                     |
| 1980        | 1,426,093           | 276,500    | 19.4 | 389,327                                     |
| 1981        | 1,457,887           | 300,000    | 20.6 | 383,779                                     |
| 1982        | 1,587,298           | 336,600    | 21.2 | 402,199                                     |
| 1983        | 1,792,104           | 361,000    | 20.1 | 411,349                                     |
| 1984        | 1,897,285           | 386,000    | 20.3 | 423,014                                     |
| 1985        | 2,076,246           | 425,000    | 20.5 | 449,640                                     |
| 1986        | 2,247,906           | 412,388    | 18.3 | 423,614                                     |
| 1987        | 2,461,113           | 444,500    | 18.1 | 444,500                                     |
| 1988        | 2,701,265           | 430,500    | 15.9 | 415,500                                     |
| 1989        | 2,862,130           | 430,500    | 15.0 | 398,132                                     |
| 1990        | 3,107,833           | 430,500    | 13.9 | 381,514                                     |
| 1991        | 3,204,698           | 530,500    | 16.6 | 449,652                                     |
| 1992        | 3,310,623           | 630,500    | 19.0 | 519,443                                     |
| 1993        | 3,574,111           | 624,824    | 17.5 | 499,899                                     |

<sup>a</sup>Excludes one-time special payments in the following years (\$'000's): 1979 (\$9,900), 1983 (\$2,300), 1984 (\$3,200), 1985 (\$25,100), 1990 (\$46,772), 1991 (\$814,440), 1992 (\$13,280), 1993 (\$33,315).

<sup>b</sup>Office of Management and Budget, *Budget Baselines, Historical Data and Alternatives for the Future*, Table 1.3—Summary of Receipts, Outlays, and Surpluses or Deficits (-) in Current Dollars, Constant (FY 1987) Dollars, and as Percentages of GDP: 1940-1993 (January 1993), 282.  
Senate, *District of Columbia Appropriations Bill, 1993*, 102d Cong., 2d sess., 1992, S. Rept. 102-333, 23-24.

mula. In the fiscal year 1993 District of Columbia budget request submitted to Congress, OMB froze the federal payment at the level of the previous year without mentioning the legislation that created the formula. Although District officials tried to fight this action, the ultimate payment received was only about \$625 million, which was roughly \$30 million less than the amount they had counted on getting, as calculated by the formula.<sup>2</sup> There is usually very little difference between the



**Figure 6.1** Federal Payment to District Government Fiscal Years 1971-94

amount for the federal payment that is requested by the president and the amount enacted by Congress; fiscal years 1992 through 1994 represented exceptions to this pattern (see figure 6.1).

### CONTROL OF LINE ITEMS

In order to evaluate the role of Congress in dealing with line items in the District budget, the District of Columbia appropriations bill and other documents for the entire home rule period were studied with special attention to selected years. Three fiscal years were selected for in-depth inventory: 1980, 1988, and 1992. Fiscal year 1980 was the first budget presented by the administration of Mayor Marion Barry; 1988 came late in his twelve-year term in office, when relations between the federal and District governments were at a low point. Fiscal year 1992 was the first budget presented by the administration of Mayor Sharon Pratt Kelly. Of these three fiscal years, only fiscal year 1980 showed a reduction in the District of Columbia estimates (see table 6.3).

TABLE 6.3 Increase/Decrease in Appropriations over District of Columbia Budget Estimates (in thousands of dollars)

|      | Federal Funds | District Funds | Total Appropriations |
|------|---------------|----------------|----------------------|
| 1980 | - 113,192     | - 115,412      | 1,915,834            |
| 1988 | + 42,930      | + 7,127        | 3,077,347            |
| 1992 | + 52,070      | + 15,905       | 3,895,772            |

In light of the comparatively heavy cuts in the District estimates for fiscal year 1980, we wanted to see what some of the line items looked like before and after congressional action. Representative items were chosen from the main budget categories: governmental direction and support, economic development and regulation, executive office, public safety and justice, and human support services.

The eleven items selected ranged from the fire department, under public safety and justice, to the Minority Business Opportunity Commission, a new agency under economic development and regulation (see table 6.4). The eight line items that appeared in the previous fiscal year budget showed an increase in funding for fiscal year 1980, and all eleven, except the National Guard, showed a cut in the requested amount. The largest cut in dollars was absorbed by the Department of Human Resources, which had \$20 million cut from a request of \$291.8 million, the largest percentage cut—56 percent—was made in the budget of the Minority Business Opportunity Commission. On balance, there was a greater tendency to cut the amounts for operational agencies in the executive branch and in "governmental direction and support" than in areas such as public safety and justice. The amount for the latter category, which includes the police and fire departments and the courts, was more likely to be increased; such was the case for fiscal year 1992, when \$75,000 was added to this line.

A review of the main budget categories for fiscal years 1988 and 1992 did not show reductions in District of Columbia estimates. And the full survey of the treatment of line items by Congress during the other home rule years generally showed minimal changes in the District of Columbia estimates. The amounts of federal funds appropriated were increased by \$42.9 million in fiscal year 1988 and \$52.1 million in fiscal year 1992.

TABLE 6.4 District of Columbia Appropriations for Fiscal Year 1980: Selected Line Items (\$000's)

| Item  | District of Columbia |               | Compared to |           |
|---|----------------------|---------------|-------------|-----------|
|   | Estimates            | Appropriation | FY 1979     | Estimates |
| Public Education System                         | 326,162              | 312,494       | +2,930      | -13,668   |
| Department of Human Resources                   | 291,814              | 271,830       | +4,781      | -19,984   |
| Fire Department                                 | 55,018               | 54,312        | +3,634      | -706      |
| Department of Corrections                       | 55,389               | 53,491        | +959        | -102      |
| Council of the District of Columbia             | 3,917                | 3,455         | +738        | -462      |
| Department of Housing and Community Development | 6,197                | 6,169         | +473        | -28       |
| Minority Business Opportunity Commission        | 175                  | 77            | —*          | -98       |
| Office of Secretariat                           | 1,305                | 1,252         | +548        | -53       |
| Office of Inspector General                     | 612                  | 560           | —*          | -52       |
| Office of Communications                        | 213                  | 191           | —*          | -22       |
| National Guard                                  | 359                  | 359           | +11         | —         |

\*New or reorganized office.

Sources: P.L. 96-93, *District of Columbia Appropriation Act, 1980*, 93 Statutes at Large 713, 96th Cong., 1st sess., 30 October 1979; House, Committee on Appropriations, *District of Columbia Appropriation Bill, 1980*, 96th Cong., 1st sess., 1979, H. Rept. 294; Senate, Committee on Appropriations, *District of Columbia Appropriations Bill, 1980*, 96th Cong., 1st sess., 1979, S. Rept. 257.

One factor that helps to explain the minimal changes in the District of Columbia budget estimates is that District officials have learned to play the budget game fairly well. During budget preparation, District budget staff members spend days on the Hill working with the staff members of the appropriations committees to develop a mutually acceptable document from the standpoint of format, justification, and numbers. The local officials have developed a sense of "what will go." Members of the mayor's budget staff feel that they have developed a good working relationship with the staffs of the appropriations committees but, with reference to the subcommittee members, they were quick to add, "You can't second-guess them. They will turn right around and go in the opposite direction from what you expected."<sup>72</sup>

The media also play a prominent role in the District budget process and agencies are sometimes affected by emergent problems and current events which cannot be predicted ahead of time but may radically alter budgetary prospects for some programs. For example, in approving the District's fiscal year 1988 budget, the Senate voted to put on hold the construction of a new \$50 million District of Columbia prison in the southeast section of the city while three alternative sites were examined. Extensive media coverage of "archaeological findings" on the initial 10.5-acre plot, along with coverage of complaints from residents near the site, was a factor in this sudden decision which caught District officials by surprise.<sup>24</sup>

#### LEGISLATIVE LANGUAGE

A third form of congressional intervention through the appropriations process is the introduction of legislative language in appropriations bills that forbids or requires the District government to undertake specific actions. In theory, legislating in an appropriations bill is prohibited by the rules of the House of Representatives, but this rule is often ignored and Congress has intervened in a variety of policy areas, including personnel, public safety, education, land use, and public works.<sup>25</sup> Although Congress is ostensibly protecting the federal interest in the nation's capital when it intervenes in local policy matters, examination of several examples of appropriations language fails to reveal any criteria for carrying out this responsibility, and tends to suggest more provincial motives behind much of the congressional intervention (see table 6.5).

For many years Congress maintained a ceiling on the number of employees that could be hired by the District government. This cap was raised or lowered for a respective fiscal year, and under the general cap there were often subceilings on the maximum number of permanent employees that could be hired by specified institutions such as the District of Columbia General Hospital and the public schools (fiscal years 1980-83). The ceiling on District employees originated out of concerns of Congress that the District government employed too many people for a city of its size. Congressional studies were conducted and statistics compiled comparing the District on a per capita basis with other jurisdictions of similar size. Although these studies attempted to allow for the lack of state, county, or special jurisdictions in the case of the District, local officials and some members of Congress challenged their validity.<sup>26</sup>

TABLE 6.5 Selected Riders and Budget Provisions: Excerpts from District of Columbia Appropriations Documents

#### Personnel

1. None of the funds in this Act shall be available to pay the salary of any employee whose name, title, grade, salary, past work experience, and salary history are not available for inspection by the House and Senate Committees on Appropriations, the House District of Columbia Committee and the Subcommittee on General Services, Federalism, and the District of Columbia of the Senate Committee on Governmental Affairs, and the D.C. Council.
  2. The City Administrator shall be paid, . . . a salary at a rate established by the Mayor, not to exceed the rate established for level IV of the Executive Schedule. . . .
  3. Appropriations in this Act shall not be available, . . . for the compensation of any person appointed to a permanent position in the District of Columbia government during any month in which the number of employees exceeds 39,262 (FY 1991-P.L. 101-518, 100th Cong. 2d sess., 1990).
  4. None of the funds appropriated in this Act may be used for the implementation of a personnel lottery with respect to the hiring of firefighters or police officers (FY 1991. Ibid).
- Human Support Services and Education*
5. None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.
  6. *Provided further*, That this appropriation shall not be available to subsidize the education of nonresidents . . . at UDC unless the Board . . . adopts . . . a tuition rate schedule . . . for nonresident students. . . .
  7. No funds made available pursuant to any provision of this Act shall be used to implement or enforce any system of registration of unmarried, cohabiting couples whether they are homosexual, lesbian, or heterosexual. . . .
- Public safety, Justice, Corrections*
8. The District of Columbia shall place on the ballot, without alteration, at a general, special, or primary election to be held within 90 days after the date of enactment of this Act, the following initiative: Mandatory Life Imprisonment or Death Penalty for Murder in the District of Columbia.
  9. None of the funds made available in this Act may be used by the District of Columbia to operate, after June 1, 1993, the juvenile detention facility known as the Cedar Knoll Facility.
  10. *Provided*, That the Metropolitan Police Department (MPD) shall maintain a force of not less than 4,889 officers and members.

TABLE 6.5 cont.

11. *Provided further*, That the Metropolitan Police Department shall provide quarterly reports to the Committees on Appropriations of the House and Senate on efforts to increase efficiency and improve the professionalism in the department.
12. . . . the conferees direct District officials to keep Engine Company No. 3 open for the 12 months of FY 1992 and to absorb the total operating costs . . . within the existing appropriation (FY 1992. 102d Cong., 1st sess., H. Rept. 102-181, 1991)

*Governmental Direction and Support*

13. None of the funds provided in this Act may be used . . . to provide for the salaries, expenses, or other costs associated with the offices of U.S. Senator or . . . Representative . . . .
14. No sole source contract with the D.C. government . . . may be renewed or extended without opening that contract to the competitive bidding process as set forth in section 303 of the District of Columbia Procurement Practices Act of 1985.
15. The Mayor shall not expend any moneys borrowed for capital projects for the operating expenses of the D.C. government.
16. The conferees direct District officials to consult with the House and Senate Committees on Appropriations prior to making any changes to the budget documents for the FY 1994 budget (FY 1993. 102d Cong., 2d sess., H. Rept. 102-906, 1992).

*Public Works*

17. *Provided*, That this appropriation shall not be available for collecting ashes or miscellaneous refuse from hotels and places of business.
18. Appropriations in this Act shall not be used for or in connection with . . . any regulation or order of the Public Service Commission requiring the installation of meters in taxicabs, . . . (FY 1986. 99th Cong., 1st sess., D.C. Appropriation Bill, 1986, H.R. 3067, committee print, 1985).

*Source: All items are from District of Columbia Appropriations Act, 1993 (P.L. 102-382, 102d Cong., 2d sess., 1992) unless a different year and source is indicated after the item.*

The personnel ceiling cap last appeared in the District of Columbia appropriations bill for fiscal year 1991. Elected on a campaign pledge to cut the size of the city's bureaucracy and faced with major budget deficits since taking office in 1991, Mayor Sharon Pratt Kelly, along with the District Council, has been forced to deal with hiring

freezes and layoff plans for government workers. The local budgetary situation and employment trends have rendered congressional action unnecessary in controlling further increases in the size of the District bureaucracy. For a similar reason, the usual budgetary limitation on the costs of overtime and temporary positions has not appeared in the District of Columbia appropriations act since fiscal year 1991.

In an effort to meet its affirmative action goals in 1981, the District sought to implement a personnel lottery system in the hiring of fire fighters and police officers. This action was blocked initially through congressional budget action (fiscal year 1982), and was banned in every appropriations act through fiscal year 1991.

Congress has repeatedly used appropriations bills to require the District to maintain a specific minimum number of uniformed police officers. For many years this number was 3,800 sworn officers, backed by the stipulation that no appropriated funds would be available if the officer ranks fell below this number. The fiscal year 1993 appropriations act states that the Metropolitan Police Department (MPD) "shall maintain a force of not less than 4,889 officers and members."<sup>27</sup>

Several examples indicate that Congress has used the appropriations process to move from oversight to micromanagement of District affairs. After heavy lobbying by the city's fire fighters' union, the fiscal year 1986 appropriations bill blocked the closing of Engine Company No. 3, the firehouse nearest the Capitol. Union leaders argued that increased terrorist threats made it necessary to keep the station open. Even after the threat of terrorist activities subsided, this prohibition of closing was renewed annually. For years, the District had asked permission to redeploy the men and close down the building, whose doors were barely large enough for the new fire trucks to squeeze through. Besides, a brand new station sat two blocks away. For fiscal year 1992 the Senate approved an increased appropriation of \$799,000 in federal funds to cover most of the estimated operating costs of keeping the station open. Initially the House did not approve such an increase. After citing congressional support for other cost-saving measures in the District appropriations act, District officials were "directed" to keep the station open and "to absorb the total operating costs including overtime pay within the existing appropriation."<sup>28</sup>

Finally, in the fiscal year 1994 appropriations, Congress agreed not to block the plans of the District to shut down the Capitol Hill fire station. Although House members traditionally had not been as devoted to the firehouse as senators, they had never before succeeded in

changing the Senate's position. The key lawmaker in the debate over the fate of Fire Station No. 3 was Senator Herbert H. Kohl (D-Wis.), the new chairman of the Senate District Appropriations Subcommittee in the 103d Congress (1993-94). His predecessors in the position had insisted on legislation to keep the station in business, whereas Kohl, after an evaluation, did not foresee any diminution in service if it closed.<sup>29</sup>

Another example of micromanagement is the requirement that the University of the District of Columbia (UDC) adopt an out-of-state tuition rate for nonresident students. It is required that this rate be at least equal to that of other area public universities, presumably to prevent UDC from poaching students.<sup>30</sup>

At times Congress has intervened in local policies to protect its own collective interest.<sup>31</sup> Until fiscal year 1986 the District was required to keep the taxicab zone fare system in effect, rather than shift to meters which would have resulted in higher fares. The ban on taxicab meters dates back to the 1930s and local lore has it that members wanted to be certain that the rides from their Capitol Hill offices to downtown restaurants were billed at the lowest, one-zone fare. Even after this restriction was removed from the District of Columbia appropriations act, other micromanagement clauses on taxicabs followed. The fiscal year 1992 House/Senate conference report "directed" the District Taxicab Commission to complete its comparative study of the zone and metered taxicab systems and to issue a report no later than 1 June 1992.<sup>32</sup> The commission met the above deadline but the Senate Appropriations Subcommittee, after reviewing the report, was unhappy with it. Its official assessment, as stated in the fiscal year 1993 Senate District of Columbia appropriations bill, characterized the study as "inappropriate and unresponsive." During fiscal year 1993, the commission was instructed to submit quarterly reports detailing the "type of data collected, summaries of commission meetings, and expected timetable for making a final decision on zones versus meters."<sup>33</sup>

Abortion is another issue that has been fought through the budget process. During the House debate on the fiscal year 1980 appropriations bill, Representative Robert K. Dornan (R-Calif.) sought to amend the bill so that no appropriated funds, federal or District, could be used to pay for abortions except to save the life of the mother. Representative Charles Wilson (D-Texas), chairman of the District of Columbia Appropriations Subcommittee, objected on a

point of order—that the amendment violated House rules because it was legislation on an appropriations matter. He argued that the amendment would impose additional duties on District officials to make new determinations and judgments not required by existing law as to the danger to the mother in each individual case. His point of order was sustained.<sup>34</sup>

When Dornan offered a revised amendment on the abortion issue that would not violate House rules, Wilson also disagreed with it on the grounds that it restricted the use of local revenues for programs which locally elected officials had decided to fund. He added that he did not believe that Congress should prohibit a local government from using its own funds for public policies which it had made a conscious decision to fund.<sup>35</sup>

The sponsor and supporters of the amendment argued that because District funds were commingled with federal money, Congress had a right and responsibility to act. A compromise was eventually reached which banned the use of federal, but not District, funds for abortion. The abortion controversy resurfaced with each annual appropriations measure until in fiscal year 1989, during President Ronald Reagan's final year in office, the District was prohibited from using its own funds for abortions. With either a veto or the threat of it, the latter prohibition was maintained throughout the administration of President George Bush (fiscal year 1990 through fiscal year 1993). With the election of President Bill Clinton, a Democrat who favors abortion rights, it was expected that Congress would relax its restrictions on abortion and no longer bar the use of District funds for this purpose. In spite of President Clinton's position on the issue, the House debate and vote on the city's appropriations bill was another battle in a long-running political war over abortion in the District. Ending a five-year ban on the use of any public money to pay for abortions for poor women in the District, the fiscal year 1994 appropriations bill allows the city to finance abortions with local tax money but not with federal revenue.<sup>36</sup>

#### MAJOR PUBLIC POLICY MAKING THROUGH THE BUDGET

Two selected cases illustrate the propensity of Congress to intervene in District policy making through restrictions on the use of funds. The effort to regulate the lottery by means of the appropriations process was successful, but a similar attempt to place limits on the Washington Convention Center was not. The arguments used in each case reveal