37 Box 8 - [JGR/*Chadha* re: District of Columbia] (1) - Roberts, John G.: Files SERIES I: Subject File

September 30, 1983

MEMORANDUM FOR JOHN ROBERTS

FROM: STEVEN ABRAMS

SUBJECT: Constitutionality of D.C. Self-Government Act under Chadha

You have requested my views on whether the District of Columbia Self-Government Act of 1973 ("D.C. Act"), P.L. 93-198, remains constitutional following the Supreme Court's decision in I.N.S. v. Chadha.

Chadha struck down the one-house veto contained in sec. 244(c)(2) of the Immigration and Naturalization Act. The question here is whether because a comparable legislative veto provision in the D.C. Act, at title VI, sec. 602, codified in D.C. Code sec. 1-233, is now also unconstitutional, the entire Act would fall. Specifically, the question presented is whether the legislative veto provision in the D.C. Act is severable from the remainder of the Act without affecting the constitutionality of the Act as a whole.

exertion due to Congress' powers over district?

Constitutionality of the Veto in the D.C. Act

This memorandum assumes that the legislative veto provision in the D.C. Act is in fact unconstitutional. The scope of the Court's decision in Chadha is unquestionably broad. By refusing to decide the case on narrow grounds, the Court made no effort

to distinguish the legislative veto by the manner in which it is exercised or the subject matter it covers. Accordingly, in his concurring opinion, Justice Powell remarked: "The Court's decision . . . apparently will invalidate every use of the legislative veto," at 1, and similarly, in dissent Justice White observed that Chadha "sounds the death knell for nearly 200 other statutory provisions in which Congress has reserved a legislative veto," Dissent at 1.

As to subject matter, it would make no difference that in the case of the D.C. Act, Congress is exercising a veto over local governmental, as opposed to administrative, decision-making. This is because the Court in Chadha invalidated the veto as an illegitimate short-circuiting of the prescribed lawmaking process of bicameral consideration and presentment to the President. So long as either of the steps are bypassed, which they are in the D.C. Act veto, the provision is presumably unconstitutional under Chadha.

Severability of the Veto from Rest of D.C. Act

Assuming the legislative veto in the D.C. Act is unconstitutional, the key is whether Congress would have enacted the measure anyway. To determine if the veto provision is severable, according to Chadha, one must embark on an "elusive inquiry," at 11, involving an examination of the following

questions:

1. Does the Act contain a severability provision?

2. Would Congress have granted the authority without the veto provision?

3. Is the law that remains after the veto is excised "fully operative as law"?

1. Severability Provision

The existence of a severability provision "creates a presumption" that a legislative veto could be removed without damaging the entire act. ¶ The status of severability in the D.C. Act is ambiguous. The Senate version contained a severability clause. See Senate Rpt. at 13. But the clause was deleted in conference without explanation.

Nonetheless, D.C. Code sec. 1-118 reads:

> If any provisions or section of this measure or the application thereof, shall in any circumstances be held invalid, such invalidity shall not affect the validity of the remainder of the provisions or applications.

While it is plain that this was not a part of the D.C. Act as passed, it is less certain how sec. 1-118 would affect the Act as a chapter in the D.C. Code, since in this form it becomes a "provision or section of the measure" to which the D.C. Code's severability provision applies.

Fortunately, the existence of a severability clause is not dispositive. Congressional intent has been held to be of overriding importance. See

Rehnquist dissent at 1-2, citing Carter and Jackson cases.

2. Congressional Intent to Grant Authority

The legislative history reveals that Congress would not have granted the District self-governing powers without sufficient checks on the District's authority pursuant to Congress' obligations under Art. I, sec. 8, cl. 17 of the Constitution. The House Report, for example, stated:

> The delegation of home rule to the residents of the District is given with the express reservation that the Congress may, at any time, revoke or modify the delegation in whole or in part . . . . Congress, under the terms of this bill, retains full residual and ultimate legislative jurisdiction over the District in conformity with the constitutional mandate.

House Rept. at 15.

Moreover, while Congress desired to relieve itself of the burden of legislating on essentially local matters for the District, it did so without relinquishing its authority over the District's affairs. Thus, the House Report listed as one of the bill's purposes:

> (T)o relieve the Congress of the burden of legislating on essentially local matters, but to provide a mechanism to prevent any excesses in the exercise of local governmental authority with respect to the Federal interest.

House Rept. at 2. Senator Mathias, the ranking Republican on the Senate District of Columbia Committee, similarly stated during floor debate:

> For those who might be concerned that the constitutional power of the Congress over the

> affairs of the District is lessened, let me point out that under the terms of this bill, the Congress retains full residual, ultimate, and exclusive jurisdiction of the District.
>
> . . .
>
> I had hoped that the final product would go further toward relieving the Congress of some of the burdens of having to pass on every detail of the District's affairs. (But this is an important first step.)

119 Cong. Rec. 42452 (Dec, 19, 1973). These remarks are in contrast to the situation in Chadha, where while Congress was likewise attempting to rid itself of responsibility for "irritating" private immigration bills, the majority opinion found that Congress would not have "continued to subject itself to the onerous burden of private relief bills." Chadha at 13.

One of the mechanisms to check potential local overreaching in the D.C. Act was the legislative veto. The Senate D.C. Committee stated:

> It is your committee's view that this (legislative) veto of Council actions will ensure to the Congress the continued ultimate control of the affairs of the District while relieving it of some of the burdens of having to pass every piece of legislation itself.

Senate Rept. at 6.

Although the legislative history cannot be conclusive, it appears that without the veto provision, passage of the bill would not have been assured. On this point, Representative Diggs, who managed the House bill and chaired the conference committee,

~~stated~~

revealingly stated:

> (O)n congressional veto, the Senate was very strong (in conference) . . . . I learned for the first time the real reason the Senate has been able to pass home rule in the past so expeditiously is because it was just felt in the other body that as long as there is a veto apparatus . . . then they were inclined to be generous about it (granting D.C. home rule powers). So the veto was retained in the bill despite some misgivings about it from the self-determination purists among us in this body and beyond.

119 Cong. Rec. 42036 (Dec. 17, 1973). This statement was confirmed to some degree by several Members who rose to support the bill and emphasized in their remarks the legislative veto provisions. See, e.g., 119 Cong. Rec. 33613 (Oct. 9, 1973) (remarks of Representative Cleveland); Id. at 33362-63 (remarks of Representative Natcher).

3. Fully Operative as Law

According to Chadha, "(a) provision is further presumed severable if what remains after severance is fully operative as a law . . . and workable administrative machinery." Chadha at 13.

Arguably, the D.C. Act could still adhere to Congress' purpose of retaining ultimate authority, while delegating some measure of home rule. There are other controls contained in the Act which serve to check the District's power--e.g., congressional retention of appropriations power and control over specific entities, such as the zoo. Further, there

is the broad statement reserving the right of Congress to legislate on any District matter at any time. The narrow provisions, however, only apply to particular circumstances, and the general statement, which would purportedly cover all other eventualities, is so broad that congressional control would be meaningless without the veto power.

Conclusion

There may be a question as to whether the D.C. Act is a "workable administrative mechanism" without the legislative veto provision. However, it would appear in any event not to be workable to the full extent envisioned by Congress when it passed the D.C. Act. More importantly, there is evidence that the body never would have passed the bill without the veto provision included.

Assuming, though, that the law can stand without the veto provision, Congress would have to discharge its oversight duty via its normal (and cumbersome) legislative process, reverting the concept of self-government back to square one.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO John Roberts
WH Counsel's Office

Take necessary action	☐
Approval or signature	☐
Comment	☐
Prepare reply	☐
Discuss with me	☐
For your information	☐
See remarks below	☐

FROM Jan Fox

DATE

REMARKS

FYI, attached is a copy of HR3932, DC Chadha, as it was reported out of Committee.

OMB FORM 4
Rev Aug 70

Union Calendar No. 239

98TH CONGRESS
1ST SESSION

H. R. 3932

[Report No. 98–393]

To amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 1983

Mr. FAUNTROY introduced the following bill; which was referred to the Committee on the District of Columbia

SEPTEMBER 28, 1983

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 303(b) of the District of Columbia Self-Government and Governmental Reorganization Act is amended to read as follows:

"(b) An amendment to the charter ratified by the registered qualified electors shall take effect upon the expiration of the thirty-five-calendar-day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) following the date such amendment was submitted to the Congress, or upon the date prescribed by such amendment, whichever is later, unless, during such thirty-five-day period, there has been enacted into law a joint resolution, in accordance with the procedures specified in section 604 of this Act, disapproving such amendment. In any case in which any such joint resolution disapproving such an amendment has, within such thirty-five-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such thirty-five-day period, shall be deemed to have repealed such amendment, as of the date such resolution becomes law.".

~~(b)(1) The second sentence of section 412(a) of such Act is amended to read as follows: "Except as provided in the last sentence of this subsection, the Council shall use acts for all legislative purposes.".~~

~~(2) The last sentence of section 412(a) of such Act is amended to read as follows: "Resolutions shall be used (1) to express simple determinations, decisions, or directions of the Council of a special or temporary character; and (2) to ap-~~

~~prove or disapprove, when specifically authorized by act, proposed actions designed to implement an act of the Council.".~~

~~(c)~~ *(b)* The second sentence of section 602(c)(1) of such Act is amended to read as follows: "Except as provided in paragraph (2), such act shall take effect upon the expiration of the 30-calendar-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate, or upon the date prescribed by such act, whichever is later, unless, during such 30-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such 30-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 30-day period, shall be deemed to have repealed such act, as of the date such resolution becomes law.".

~~(d)~~ *(c)* The third sentence of section 602(c)(1) of such Act is amended by deleting "concurrent" and inserting in lieu thereof "joint".

~~(c)~~ *(d)* The first sentence of section 602(c)(2) of such Act is amended by deleting "only if during such 30-day period one House of Congress does not adopt a resolution disapproving such act." and inserting in lieu thereof "unless, during such 30-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such 30-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 30-day period, shall be deemed to have repealed such act, as of the date such resolution becomes law.".

~~(f)~~ *(e)* The second sentence of section 602(c)(2) is amended to read as follows: "The provisions of section 604, relating to an expedited procedure for consideration of joint resolutions, shall apply to a joint resolution disapproving such act as specified in this paragraph.".

~~(g)~~ *(f)* Section 604(b) of such Act is amended by deleting "concurrent" and inserting in lieu thereof "joint".

~~(h)~~ *(g)* Subsections (b) and (c) of section 740 of such Act are amended by deleting in each subsection the words "resolution by either the Senate or the House of Representatives" and inserting in lieu thereof "joint resolution by the Congress".

~~(i)~~ *(h)* Section 740(d) of such Act is amended by deleting "concurrent" and inserting in lieu thereof "joint".

~~(j)~~ *(i)* The amendments made by this section shall not be applicable with respect to any law, which was passed by the Council of the District of Columbia prior to the date of the enactment of this Act, and such laws are hereby deemed valid, in accordance with the provisions thereof, notwithstanding such amendments.

SEC. 2. Part F of title VII of such Act is amended by adding at the end thereof the following new section:

"SEVERABILITY

"SEC. 762. If any particular provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.".

~~SEC. 3. Section 164(a)(3) of the District of Columbia Retirement Reform Act is repealed.~~

SEC. 3. Section 164(a)(3) of the District of Columbia Retirement Reform Act is amended to read as follows:

"(3)(A) The Congress may reject any filing under this section within thirty days of such filing by enacting a joint resolution stating that the Congress has determined—

"(i) that such filing is incomplete for purposes of this part; or

"(ii) that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to section 162(a)(3)(A) or section 162(a)(4)(B).

"(B) If the Congress rejects a filing under subparagraph (A) and if either a revised filing is not submitted within forty-five days after the enactment under subparagraph (A) rejecting the initial filing or such revised filing is rejected by the Congress by enactment of a joint resolution within thirty days after submission of the revised filing, then the Congress may, if it deems it in the best interests of the participants, take any one or more of the following actions:

"(i) Retain an independent qualified public accountant on behalf of the participants to perform an audit.

"(ii) Retain an enrolled actuary on behalf of the participants to prepare an actuarial statement.

The Board and the Mayor shall permit any accountant or actuary so retained to inspect whatever books and records of the Fund and the retirement program are necessary for performing such audit or preparing such statement.

"(C) If a revised filing is rejected under subparagraph (B) or if a filing required under this title is not made by the date specified, no funds appropriated for the Fund with respect to which such filing was required as part of the Federal

payment may be paid to the Fund until such time as an acceptable filing is made. For purposes of this subparagraph, a filing is unacceptable if, within thirty days of its submission, the Congress enacts a joint resolution disapproving such filing.".

Union Calendar No. 239

98TH CONGRESS
1ST SESSION

H. R. 3932

[Report No. 98–393]

A BILL

To amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes.

SEPTEMBER 28, 1983

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

PREPARED STATEMENT OF
STANLEY S. HARRIS,
UNITED STATES ATTORNEY FOR
THE DISTRICT OF COLUMBIA,
ON BILLS 5-16, 5-244, and 5-245
OCTOBER 3, 1983

This written statement is submitted to explain in some detail my reasons for testifying in opposition to the passage of Bill 5-16, the Parole Act of 1983; Bill 5-244, the Prison Overcrowding Emergency Powers Act of 1983; and Bill 5-245, the District of Columbia Sentencing Improvements Act of 1983.

Let me begin by stressing what I consider to be one of the key roles of the United States Attorney as the prosecutor of adult crimes in the District of Columbia. There is in our city an organization, financed by the taxpayers, called the Public Defender Service. It is a fine organization, performing a needed service. However, its name is somewhat misleading, for it does not represent the public. Rather, it represents a relatively small percentage of the criminal defendants in our city -- typically, as a matter of fact, recidivists. The public -- that is, the law-abiding citizens who must be protected against the criminal element in our midst and who all too often become victims of crime -- must be and is represented by the prosecutors of the United States Attorney's Office.

Perhaps the best way to make my initial point is to quote from an article on the editorial page of the Wall Street Journal which was written nearly a year ago about criminal trials. The author of that article, Vermont Royster, stated in relevant part as follows:

> What has happened to the law, I think, is a forgetfulness that there are two parties in every criminal trial. One is the accused, a real person easily visible. The other is "the state," a seemingly impersonal and institutional entity. An injustice to the individual is readily understood. Injustice to "the state" is not so readily recognized. To many, including lawyers, a "fair trial" has come to mean only fair to the accused; fairness to the other party is forgotten.
>
> Yet that entity "the state" is not only all of us but each of us. The person called the prosecutor is in fact a public defender. His task is to try to make our homes and streets safer by

> removing from society those who 12 ordinary citizens decide have been guilty of injury to one or more members of society.

My 182 Assistant United States Attorneys and I fully endorse those observations. So that, as my sons would say, is where I am coming from today. I am here with pre-eminent concern for the victims of crime -- past, present, and future.

I do not like saying what I feel obliged to say today. I would like to speak glowingly of law enforcement successes. I would like to say that our so-called correctional institutions have a meaningful number of people in them who are there needlessly and who are ready to become productive members of society. I cannot do so. The unfortunate but inescapable truth is that we have not too many in our prison facilities but too few.

In giving this testimony, it is our purpose to recite considerable statistical information which, while imperfect, does present a striking overview of what is happening in our criminal justice process. In doing so, I express appreciation to the Department of Corrections for making considerable information available to us for analysis.

I must advise you of my personal, and my Office's institutional, conviction that the problem that the District of Columbia currently is facing is not one of "prison overcrowding," but one of "prison undercapacity." The facts are that those who are incarcerated should be incarcerated, the citizens of this community justifiably desire that they remain incarcerated, and prison expansion is the only proper solution to the problem. This Council would not be acting responsibly if it legislated to achieve the premature release of repeat and dangerous offenders into the law-abiding community by passing the three Bills that are the subject of this hearing.

The appropriateness of characterizing the problem as one of "prison undercapacity" becomes clear when one takes a close look at those who are incarcerated and the reasons for their confinement. Dangerous and repeat offenders permeate our prison population. Statistics generated by the Department of Corrections confirm that fact. The average sentence being served by inmates committed to Lorton Reformatory in 1982 was substantial: that average was 2-3/4 years to 11-1/2

years. During the first quarter of 1983, the average sentence of those committed to Lorton jumped to from 4-1/2 years to just over 14 years. Further, in 1982, approximately 32% of the inmates were sentenced to consecutive terms of imprisonment, an additional 21% of the inmates were serving concurrent time on multiple counts, and approximately 16% of the inmates had detainers pending against them for other crimes charged in this or other jurisdictions. Data on the past criminal history of inmates unfortunately is not kept by the Department of Corrections, but experience dictates, and the above figures confirm, that virtually all of those incarcerated at Lorton are recidivists.

That the inmates at Lorton are dangerous is clear from the types of crimes for which they are incarcerated. In 1982, 45.6% of the newly-committed inmates were incarcerated for crimes against persons, and during the first quarter of 1983 that figure jumped to 52%. Armed robbers comprised 56.9% of those incarcerated for personal crimes in 1982; during the first three months of 1983 they comprised 67% of the same population. Persons convicted of drug abuse, burglars, thieves, and weapons offenders, in that order, accounted for an additional 46% of the total prison population. The remaining prisoners were incarcerated for other offenses, which include bail jumping and escape. When the intimate connection between drug and weapons offenses and other crimes is factored into these figures, the serious and violent nature of virtually all of the inmates cannot be disputed.

The above statistics represent defendants committed to Lorton for the first time for a particular offense. Convicts who were recommitted to Lorton for parole violations, halfway house and work release violations, and escapes, represented approximately 40% of inmate admissions. This fact serves to verify that those incarcerated should remain there as ordered by conscientious judges for the good of the community and for the safety of potential innocent victims.

I recognize that a number of offenders affected by the Bills before this Council currently are incarcerated at Occoquan, a small step admirably taken to help relieve overcrowding at Lorton. Although intended to house only misdemeanor convicts, Occoquan also holds convicted felons. In 1982, 83.3% of the Occoquan residents had been convicted of assault, grand theft, weapons, drug, and other serious offenses. Bail violators, parole violators, and fugitives accounted for an additional 2.5% of the population. Of those inmates at Occoquan, 75.4% previously had been committed to the Department of Corrections, and 35% were there on drug convictions. Thus,

it is only sensible to conclude that most of those at Occoquan are serious offenders. Moreover, experience reveals that all of the committed offenders are recidivists, for the alternatives of pretrial diversion, the Federal Youth Corrections Act, and probation literally without exception have been exhausted before a Court has determined that incarceration is the appropriate remedy to achieve the inescapable goals of deterrence and punishment.

The D.C. Jail also houses many sentenced offenders who would be affected by passage of the Bills before the Council. Sentenced felons comprise over 25%, and sentenced misdemeanants comprise only 11%, of the current population of the jail. Most of these are awaiting transfer to Occoquan or Lorton, and the available information reveals that many are serious -- and virtually all are repeat -- offenders. Further, the vast majority are drug abusers. A recent Washington Post article indicated that as many as 76% of the inmates at the D.C. Jail were drug abusers (during a time in which the City was not cracking down in any concentrated way on drug offenders).

One point cannot be overemphasized. When prison needs were projected two or three decades ago, not even the wildest pessimist could have predicted the extraordinary extent to which narcotics and narcotics-related offenses would swell both our incidence of criminal offenses and our prison populations. Today, the intimate connection between drug abuse and other serious criminal activity is well established. Recent studies have shown that large numbers of incarcerated offenders were under the influence of drugs when they committed their crimes, and that heroin addicts -- of which the District of Columbia has far more than its share -- commit six times as many crimes during periods of addiction as during periods of abstinence. Thus it is deplorable but not surprising that 80% of the offenders committed to the Lorton Youth Center admit to having abused drugs. This very serious problem should be addressed by the Council, but prematurely turning convicted abusers out on the streets is not a tolerable solution.

The extent to which incarcerated persons already are being returned to society at an early date should be recognized. In 1982, the Board of Parole released 61% of all prisoners at their first hearing dates, and 73% of the remainder were released at their second hearing dates. As might be expected, in a recent study by the Board of Parole which was designed to evaluate the success or failure of prisoners released to parole supervision, the authors found

that 52% of parolees incurred new arrests during the two-year period following their release.*/ Eighty percent of those rearrested subsequently were convicted. Of additional interest is the further finding that of those who sustained convictions while on parole, more than one-half never had their parole revoked, and remained on the streets of this community pending their new convictions. Thus, an unacceptably high number of offenders who are on parole are continuing to victimize law-abiding citizens, and to add to their number by prematurely releasing others would only exacerbate the situation.

In light of all of the above, it is evident that our jail and prisons house dangerous and repeat offenders, many of whom maintain dangerous drug habits, and almost all of whom must remain incarcerated with their normal release dates if anything more than lip service is to be paid to ensuring community safety.

Next, it is important to emphasize that the citizens of this City, who comprise the Council's and my own constituency, want serious offenders to remain incarcerated. Their concerns were made clear by their overwhelming approval of the Mandatory Minimum Sentences Initiative which became law last June. They also have supported recent police efforts to apprehend repeat and serious offenders, and are participating in growing numbers in neighborhood crime watch programs. The Council would be showing disdain for these efforts if it enacted the proposed Bills.

Further, much public and private effort and money have been expended in order to identify, apprehend, and convict serious offenders. This investment of time and money should not be wasted by releasing those offenders prematurely. Such a result would be inconsistent with the popular view that violent and dangerous offenders should be incarcerated, as evidenced also by the strong support shown for the bail law amendments which were passed unanimously by this Council 15 months ago.

---

*/ Of those, 25% were rearrested between 1 to 4 months of parole, 56% were rearrested within 8 months of their parole, 79% were rearrested within a year, and only 21% lasted at least 13 months without being rearrested.

Given this expressed concern, it should be no surprise that the citizens would be willing to foot the bill to keep dangerous recidivists off the streets. As do you, we have frequent contacts with citizens and community leaders. It is our conclusion that they virtually unanimously support the appropriation of public funds to increase jail capacity. I would willingly join with the Council in posing the issue directly to the citizens of this City, and I would live (happily, I am confident) with the results. Moreover, such expenditures ultimately would be returned to the City many times over if the streets were made safer for businesses on which to operate and for individuals to enjoy.

Additionally, to release criminals prematurely is to buck the current local and national trend to treat crime victims, both actual and potential, with more compassion. The majority of released criminals currently victimize others shortly after their release; their premature release thus would create proportionately more victims. Not only is this result unacceptable to the reasonable person; it is contrary to the expressed intent of this Council in proposing and passing several victims rights bill, two of which are scheduled to be heard in two weeks, on October 17, 1983.

In sum, any measure which would result in the premature release of serious offenders would make a mockery of citizen efforts to improve the safety of their community, would be inconsistent with other actions taken by this Council, and would contradict common sense.

It is thus clear that the problem of prison undercapacity can be solved only by building or acquiring more prison space, and this is a solution that not only is attainable, but that is directly supported by the Congress of the United States, which only last week appropriated more than $20 million for added prison facilities. In the recent past, due to the growing crime rate, the criminal justice system has been supplied with additional judges, additional prosecutors, additional support personnel, and additional court facilities. Despite those facts, little additional prison space has been provided to house the additional criminals which inevitably have been caught, prosecuted, and incarcerated. This situation cries out for correction.

It should be noted that our jail is crowded with inmates who properly should be in a prison facility. Data developed by the Department of Corrections reveals that in 1982, an average of 482 inmates, or 25.1% of the total jail

population, were sentenced felons. An additional average of 212 prisoners, or 11.1% of the total jail population, were sentenced misdemeanants. These inmates should have been sent to a correctional, instead of to a detention, facility. If that had occurred, the jail (by its own figures) would have been underpopulated. We believe that this situation remains unchanged in 1983.

Further, it is significant to note that, contrary to the belief of some, the jail is not full of pretrial detainees. Jail authorities unfortunately do not keep precise statistics, but a substantial number of the unsentenced offenders actually have been convicted but remain in jail awaiting sentence. Therefore, the percentage of unsentenced offenders who are detained awaiting trial should be very small -- probably less than 10% of all defendants awaiting trial. Moreover, under the current bail laws, almost all of those are violent, dangerous, and/or repeat offenders.

Some have suggested that because recent crime statistics seem to indicate that reported crime has decreased slightly, no new measures need be taken to expand prison capacity. Initially, I would point out that the figures reflect only the reported crime rate, and it is commonly accepted that 50 to 70% of the crime in any large urban area goes unreported. Beginning, however, with the reported crime rate, the Metropolitan Police Department's own statistics reveal that in 1982 they "closed," by identifying the assailant, only 57.5% of the murders, 64.3% of the forcible rapes, 20.8% of the robberies, 65.6% of the aggravated assaults, and 13.2% of the burglaries which were committed and reported. These numbers do not reflect accurately the percentage of criminals actually caught, however, because the Police Department considers a case "closed" if only one of several perpetrators is identified, and in a significant number of cases, identification does not correlate with arrest. In sheer numbers, the Police Department reported that in 1982 it "closed" 127 out of 221 reported murders, 285 out of 443 reported rapes, 2,040 out of 9,799 reported robberies, 2,332 out of 3,553 aggravated assaults, and 2,071 out of 15,682 reported burglaries.

Of the 221 reported homicides, only 61 guilty judgments were entered, with 33 cases remaining open. Thus, in less than 30% of the reported homicides was the murderer ever held accountable for his actions. Further, of the 443 reported rape offenses, only 76 guilty findings were obtained. Of the frightening total of 9,799 reported robberies, only 706 defendants were held accountable. For the offense of aggravated assault, only 182 defendants were found guilty out of 3,553 reported cases, and for the offense of burglary, only

419 guilty judgments were entered out of a total of 15,682 reported cases. Moreover, it is unquestionably true that a large percentage of those convicted received probation, and that less than half of them went to jail. In short, of the total number of persons who commit crimes in this City, only 20 to 50% have their criminal activities reported, only 10 to 20% are identified, less than 5% are convicted, and less than 3% are incarcerated. Thus, it is clear that of the large number of serious offenders in this City, only an infinitesimal percentage actually are incarcerated for their crimes. To strive artificially through legislative fiat to reduce this number manifestly is absurd, for that percentage is, in my view, an irreducible minimum.

Also illustrative of the continuing serious nature of the crime problem in this City are the increases in the reported incidents of armed robbery, robbery, and drug offenses. Over the last five years the number of adults arrested for armed robbery increased from 721 in 1978 to 896 in 1981, with the 1982 statistics showing a slight decline to 805. The number of adult arrests for unarmed robberies increased steadily from 849 in 1978 to 1,097 in 1981, with the 1982 figures showing a slight decrease to 1,014. For felony drug offenses, the numbers have risen steadily from 169 arrests in 1978 to 2,353 in 1982. An additional 4,641 misdemeanor drug arrests were made in 1982.

Insofar as the number of cases indicted may provide a more accurate forecast of the future prison population, the statistics for the key offenses of armed robbery and drug abuse are both informative and staggering. In 1978, 372 defendants were indicted for armed robbery, and 124 defendants were indicted for drug offenses. In 1982, 561 defendants were indicted for armed robbery, and 863 defendants were indicted for drug offenses.

It is therefore evident that any slight decrease in the amount of reported dangerous and violent crime in this City will have no long-term effect on the prison population, and should not be used as an excuse to ignore the problem of prison undercapacity. Similarly, discussions of alternative sentencing and diversion beg the issue. Alternative sentencing is a tool which currently is frequently used by judges in appropriate cases, and our Office already is exercising pretrial diversion for virtually every eligible defendant. Further, as stated above, most, if not all, of those sentenced to incarceration previously have been granted forms of diversion and probation. (Literally the only exception to the sequential diversion and probation route prior to incarceration is the first-degree murderer, who may have no prior record but who faces a mandatory sentence of 20 years to life.)

Focusing specifically on the three Bills before the Council today, I must urge the Council to defeat each one. The "Parole Act of 1983," Bill 5-16, introduced by Councilmember Ray, proposes to release exactly those violent and dangerous criminals who should remain incarcerated for a more substantial period of time by reducing the minimum period of detention to 10 years. Those inmates who are incarcerated for more than a minimum of 10 years are murderers, rapists, and armed offenders. This Bill would advance most of their release dates by at least four to five years, and, as statistics prove that the majority of those released will victimize others relatively soon after release, passage of the Bill would pose a clear and present danger to the community.

Moreover, I am obliged to point out that technically the Bill may not accomplish what it supposedly is intended to achieve. The preamble to the Bill states that it intends "to require that all prisoners become eligible for release on parole after having served ten years . . . " (emphasis added), but, in our view, it would not apply to first-degree murder convictions. 22 D.C. Code § 2404(b) states that "notwithstanding any other provision of law," a person convicted of first-degree murder must serve a minimum of 20 years. Additionally, it is questionable whether the Bill's terms would apply to prisoners serving consecutive sentences totaling more than 10 years. (We believe that they would not.) Of course, I am not advocating that this Bill be amended to include persons convicted of premeditated first-degree murder or to prisoners serving substantial consecutive sentences, but rather that it be defeated in its entirety.

Concerning the "Prison Overcrowding Emergency Power Act of 1983," Bill 5-244, also introduced by Councilmember Ray, I note that it would allow the Mayor, as a means of budget control, to release dangerous prisoners into the community. Reduced to its essence, this Bill would sacrifice the safety of the community on the altar of fiscal irresponsibility.

There are other problems inherent in the Bill which should cause it to fail of passage. The Bill provides for repeated acts of reducing sentences by 90 days, even for persons who have no chance of being released immediately as a result. For those prisoners who are not within 90 days of parole eligibility, who indeed may be eight to ten years away from parole eligibility, the existence of an undefined "emergency" would result in reducing their ultimate sentences for no good reason, and would not assist in solving the immediate problem of reducing prison congestion.

The third piece of legislation under consideration, the "District of Columbia Sentencing Improvements Act of 1983," Bill 5-245, introduced by Councilmember Rolark, is unwise and probably illegal. In extending the time for granting a motion to reduce sentence from 120 days to one year, following what ultimately could be a denial of a petition for a writ of certiorari to the Supreme Court years after conviction, this Bill would make a mockery of the time-honored concept of certainty in sentencing, and would undermine the very purpose of deterrence that underlies the act of sentencing. The Supreme Court has spoken clearly about the need for finality in all legal, and especially criminal, proceedings, most recently in deciding death penalty cases. If this Bill passes, defendants will be on notice that the criminal justice system in the District of Columbia may be manipulated to exact minimal punishment, and the deterrent effect of other actions taken by this Council will deteriorate.

Additionally, this Bill would tie up scarce judicial resources at late stages of criminal proceedings, and would detract from recent efforts to afford defendants not yet convicted more speedy trials. I doubt that the Council seriously desires this result.

Moreover, a motion to reduce sentence is not designed to be used as a tool to reduce the number of criminals incarcerated. The caselaw is clear that a motion to reduce sentence properly is to be filed only to allow a court to reconsider its sentencing decision in light of the factors present at the time of sentencing, and not in light of a prisoner's artificial conduct in the early stages of his incarceration. An offender's conduct in prison properly is a subject of consideration by the parole board, and not by the sentencing judge.

Finally, and decisively, this Bill erroneously assumes that the Council has the power to amend the Superior Court Rules which govern the filing of sentence reduction motions. Section 946 of Title 11 of the D.C. Code states that the Federal Rules of Criminal Procedure shall apply in Superior Court except as otherwise authorized by the District of Columbia Court of Appeals. The Home Rule Act provides that the Council of the District of Columbia may not alter Title 11. District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code, Title VI, § 602(a)(4). Therefore, any amendment to the Superior Court Rules requires action by the judges themselves, and any legislation by the Council on this matter would be inappropriate. Nonetheless, I note that the Federal Criminal Rule 35 has been amended to allow greater flexibility, and our courts now are studying the situation.

All three of these Bills thus are based upon the wrong premise -- that convicted serious offenders should be released prematurely for budgetary reasons -- rather than on the correct premise that convicted serious offenders, who at great expense to this City have been apprehended and prosecuted, should be treated and kept in a secure facility for as long as the sentencing judges found appropriate and necessary. Hard statistics prove that premature release results in creating untold numbers of new victims, and to accept this result would be to ignore the citizens' mandate to make their streets, homes, and businesses as safe as possible. It is time for the District of Columbia government to recognize both the realities of the situation and the will of its constituents, to bite the proverbial bullet, and to provide more facilities to solve the problem of prison undercapacity. As I have noted, that task was aided by the fact that just last week, the Congress of the United States appropriated more than $20 million for that purpose. Maximum effective use should be made of those funds, and the Council -- as should the Executive Branch -- should deal realistically with the existing problems.

It does not please me to bring to light the realities of our relative lack of law enforcement success in today's world, in which the cancer of narcotics and narcotics-related crime is eating away at the very fabric of our social institutions. I would serve this distinguished body poorly, however, were I to do otherwise. It is axiomatic that a large amount of crime today is committed by a disproportionately small number of chronic offenders. Once such offenders have been brought to justice, it defies reason to support their premature release for purely budgetary reasons. No one can be unaware of the dramatic increase in recent years of dead-bolt locks, alarm systems, and barred windows and doors. It is the law-abiding citizens of the Nation's Capital, rather than its criminal element, who deserve the full support of the Council.

10/7 E3 office D.C. Charlie

Administration w/re: to D.C. Home Rule

OMB: - in favor of Home Rule (can't f.r. of myself)
- need to move quickly

Past legislation: civil appointment, prosecutor + marshalls.

T- 22, 23, 24 - already did as has one-home vote, other area two.

THE WHITE HOUSE

WASHINGTON

October 20, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Status of H.R. 3932

You have asked for a status report on H.R. 3932, the bill to revise the D.C. Council legislation in the wake of the Chadha decision. You will recall that the bill would require a joint resolution of disapproval before Congress could block laws passed by the D.C. Council. The bill has passed the House and is pending in the Senate.

On October 7 a meeting was held in the Deputy Attorney General's Conference Room, attended by the Deputy, Assistant Attorneys General Olson and McConnell, Principal Deputy U.S. Attorney for D.C. Joseph DiGenova, and myself. The attendees were receptive to DiGenova's proposal that the Department of Justice support an exception reversing the approach of H.R. 3932 in the criminal area; i.e., that no D.C. Council law affecting Titles 22, 23, and 24 of the D.C. Code would go into effect unless it was approved by a duly enacted joint resolution of Congress.

DiGenova was to prepare a position statement by last week but has not yet done so; I am told by Justice's Office of Legislative Affairs that they now hope to have a statement ready for OMB clearance by the end of this week. I have advised OMB that Justice was developing an alternative to H.R. 3932 to be presented to the Senate, so the memorandum of October 4 I prepared for your signature is OBE. We will want to assist Justice in obtaining prompt clearance of their statement when it is ready, and can make our views formally known at that time.

Attachment

THE WHITE HOUSE

WASHINGTON

October 4, 1983

MEMORANDUM FOR FRED F. FIELDING

THRU: RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: H.R. 3932 Regarding Application of Chadha Legislative Veto Provisions to the District of Columbia Council Acts

By memorandum received in our office on October 3 James Murr of OMB asked for our views by October 6 on H.R. 3932, as reported by the House District Committee. This bill would alter the provisions of the D.C. Self-Government and Governmental Reorganization Act to comply with the Chadha decision, essentially changing "concurrent resolution" to "joint resolution." Stan Harris reacted with understandable horror at the prospect of giving such a free hand to the D.C. Council, particularly in criminal matters, and has asked our office (through Richard Hauser) and the Justice Department to see if there were some different approach that could be taken.

While Justice was considering this matter - and had advised OMB that it was not ready with a position - OMB went ahead and advised the House that the Administration had no objection to the bill. We had not yet commented since our views had been requested by October 6. (The extent of OMB's effort to obtain our views consisted of one phone call from Janet Fox to Mr. Hauser.) A vote in the House on the bill is scheduled for today. We advised OMB to pull back the "no objection" position, which they did, so the Administration has no position on the bill.

Ted Olson is meeting with Harris to review Harris' arguments that Chadha may not be fully applicable to D.C. legislation. Even if these arguments fail, we can still point out policy concerns, and suggest alternatives to the bill. For example, at least in certain areas, it may be better to require affirmative Congressional approval of D.C. laws rather than an opportunity for disapproval by joint resolution. Everyone seems confident the bill will pass the House, so any concerns we might decide to voice would be directed to the Senate.

We were poorly served by OMB in this case, and the attached draft memorandum to Murr is appropriately curt.

This just in - H.R. 3932 passed the House this afternoon.

Attachment

THE WHITE HOUSE

WASHINGTON

October 4, 1983

MEMORANDUM FOR JAMES C. MURR
ASSISTANT DIRECTOR FOR LEGISLATIVE REFERENCE
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 3932 Regarding Application of Chadha Legislative Veto Provisions to the District of Columbia Council Acts

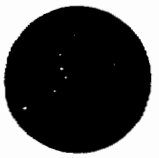
By memorandum dated September 30 you asked for our views on the above-referenced bill by October 6. On October 4 we discovered that, without hearing from our office and in the face of concerns expressed by the Department of Justice, OMB had advised the Hill that the Administration had no objection to this bill. It is our understanding that we have now receded from this position, and have formally taken no position on the bill.

The Department of Justice is reviewing whether legislation of this sort is in fact required by the Supreme Court's decision in INS v. Chadha. Assuming that some corrective legislation is necessary, it is not immediately apparent that H.R. 3932 represents the best approach. There are federal interests in the District that may not be adequately protected if legislation is required to block action by the D.C. Council. It may be worth considering a requirement of affirmative approval by Congress, not across the board but in certain sensitive areas.

In any event, the matter should be thoroughly reviewed by the Department of Justice and other affected agencies prior to announcement of an Administration position. We trust that an opportunity for such review will be provided.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET



☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: James C. MURR

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: HR. 3932 re application of Chadha legislative veto provisions to the District of Columbia Council of Acts

ROUTE TO:	ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUHOLL	ORIGINATOR	83/10/03			1 1
	Referral Note:				
CUATTB	D	83/10/03		S	83/10/06
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 30, 1983

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Justice

District of Columbia

SUBJECT: H. R. 3932 as reported by the House District Committee, relating to application of Chadha legislative veto provisions to the District of Columbia Council Acts. Early House floor action is expected.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than October 6, 1983.

Questions should be referred to Janet Fox (395-4874), the legislative analyst in this office, or to Anna Dixon (395-3100).

James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: John Cooney Fred Fielding

7576

I

98TH CONGRESS
1ST SESSION

H. R. 3932

— as reported 9/28/83 by House District Cte.

To amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 1983

Mr. FAUNTROY introduced the following bill; which was referred to the Committee on the District of Columbia

---

A BILL

To amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 303(b) of the District of Columbia Self-Government and Governmental Reorganization Act is amended to read as follows:

"(b) An amendment to the charter ratified by the registered qualified electors shall take effect upon the expiration of the thirty-five-calendar-day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) following the date such amendment

was submitted to the Congress, or upon the date prescribed by such amendment, whichever is later, unless, during such thirty-five-day period, there has been enacted into law a joint resolution, in accordance with the procedures specified in section 604 of this Act, disapproving such amendment. In any case in which any such joint resolution disapproving such an amendment has, within such thirty-five-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such thirty-five-day period, shall be deemed to have repealed such amendment, as of the date such resolution becomes law.".

(b)(1) The second sentence of section 412(a) of such Act is amended to read as follows: "Except as provided in the last sentence of this subsection, the Council shall use acts for all legislative purposes.".

(2) The last sentence of section 412(a) of such Act is amended to read as follows: "Resolutions shall be used (1) to express simple determinations, decisions, or directions of the Council of a special or temporary character; and (2) to approve or disapprove, when specifically authorized by act, proposed actions designed to implement an act of the Council.".

(c) The second sentence of section 602(c)(1) of such Act is amended to read as follows: "Except as provided in paragraph (2), such act shall take effect upon the expiration of the

30-calendar-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate, or upon the date prescribed by such act, whichever is later, unless, during such 30-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such 30-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 30-day period, shall be deemed to have repealed such act, as of the date such resolution becomes law.".

(d) The third sentence of section 602(c)(1) of such Act is amended by deleting "concurrent" and inserting in lieu thereof "joint".

(e) The first sentence of section 602(c)(2) of such Act is amended by deleting "only if during such 30-day period one House of Congress does not adopt a resolution disapproving such act." and inserting in lieu thereof "unless, during such 30-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such

joint resolution disapproving such an act has, within such 30-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 30-day period, shall be deemed to have repealed such act, as of the date such resolution becomes law.".

(f) The second sentence of section 602(c)(2) is amended to read as follows: "The provisions of section 604, relating to an expedited procedure for consideration of joint resolutions, shall apply to a joint resolution disapproving such act as specified in this paragraph.".

(g) Section 604(b) of such Act is amended by deleting "concurrent" and inserting in lieu thereof "joint".

(h) Subsections (b) and (c) of section 740 of such Act are amended by deleting in each subsection the words "resolution by either the Senate or the House of Representatives" and inserting in lieu thereof "joint resolution by the Congress".

(i) Section 740(d) of such Act is amended by deleting "concurrent" and inserting in lieu thereof "joint".

(j) The amendments made by this section shall not be applicable with respect to any law, which was passed by the Council of the District of Columbia prior to the date of the enactment of this Act, and such laws are hereby deemed valid, in accordance with the provisions thereof, notwithstanding such amendments.

SEC. 2. Part F of title VII of such Act is amended by adding at the end thereof the following new section:

"SEVERABILITY

"SEC. 762. If any particular provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.".

SEC. 3. Section ~~164(a)(3)~~ of the District of Columbia Retirement Reform Act is repealed.

O for markup, H. District
to applied "joint resolution"
provisions to this Retirement
Board agent

To John

Date 10/24 Time 12:25

WHILE YOU WERE OUT

M Jan Tosi

of OMB

Phone 4874

Area Code Number Extension

TELEPHONED	X	PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		URGENT	
RETURNED YOUR CALL			

Message Loran will mtg OMB tomorrow

Operator

AMPAD EFFICIENCY®

23-020

THE WHITE HOUSE

WASHINGTON

October 20, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Status of H.R. 3932

You have asked for a status report on H.R. 3932, the bill to revise the D.C. Council legislation in the wake of the Chadha decision. You will recall that the bill would require a joint resolution of disapproval before Congress could block laws passed by the D.C. Council. The bill has passed the House and is pending in the Senate.

On October 7 a meeting was held in the Deputy Attorney General's Conference Room, attended by the Deputy, Assistant Attorneys General Olson and McConnell, Principal Deputy U.S. Attorney for D.C. Joseph DiGenova, and myself. The attendees were receptive to DiGenova's proposal that the Department of Justice support an exception reversing the approach of H.R. 3932 in the criminal area; i.e., that no D.C. Council law affecting Titles 22, 23, and 24 of the D.C. Code would go into effect unless it was approved by a duly enacted joint resolution of Congress.

DiGenova was to prepare a position statement by last week but has not yet done so; I am told by Justice's Office of Legislative Affairs that they now hope to have a statement ready for OMB clearance by the end of this week. I have advised OMB that Justice was developing an alternative to H.R. 3932 to be presented to the Senate, so the memorandum of October 4 I prepared for your signature is OBE. We will want to assist Justice in obtaining prompt clearance of their statement when it is ready, and can make our views formally known at that time.

Attachment

THE WHITE HOUSE

WASHINGTON

October 4, 1983

JR -
what is current status, pls
10/14

MEMORANDUM FOR FRED F. FIELDING

THRU: RICHARD A. HAUSER RAH

FROM: JOHN G. ROBERTS JGR

SUBJECT: H.R. 3932 Regarding Application of Chadha Legislative Veto Provisions to the District of Columbia Council Acts

By memorandum received in our office on October 3 James Murr of OMB asked for our views by October 6 on H.R. 3932, as reported by the House District Committee. This bill would alter the provisions of the D.C. Self-Government and Governmental Reorganization Act to comply with the Chadha decision, essentially changing "concurrent resolution" to "joint resolution." Stan Harris reacted with understandable horror at the prospect of giving such a free hand to the D.C. Council, particularly in criminal matters, and has asked our office (through Richard Hauser) and the Justice Department to see if there were some different approach that could be taken.

While Justice was considering this matter - and had advised OMB that it was not ready with a position - OMB went ahead and advised the House that the Administration had no objection to the bill. We had not yet commented since our views had been requested by October 6. (The extent of OMB's effort to obtain our views consisted of one phone call from Janet Fox to Mr. Hauser.) A vote in the House on the bill is scheduled for today. We advised OMB to pull back the "no objection" position, which they did, so the Administration has no position on the bill.

Ted Olson is meeting with Harris to review Harris' arguments that Chadha may not be fully applicable to D.C. legislation. Even if these arguments fail, we can still point out policy concerns, and suggest alternatives to the bill. For example, at least in certain areas, it may be better to require affirmative Congressional approval of D.C. laws rather than an opportunity for disapproval by joint resolution. Everyone seems confident the bill will pass the House, so any concerns we might decide to voice would be directed to the Senate.

We were poorly served by OMB in this case, and the attached draft memorandum to Murr is appropriately curt.

This just in - H.R. 3932 passed the House this afternoon.

Attachment

THE WHITE HOUSE

WASHINGTON

October 4, 1983

MEMORANDUM FOR JAMES C. MURR
ASSISTANT DIRECTOR FOR LEGISLATIVE REFERENCE
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 3932 Regarding Application of Chadha Legislative Veto Provisions to the District of Columbia Council Acts

By memorandum dated September 30 you asked for our views on the above-referenced bill by October 6. On October 4 we discovered that, without hearing from our office and in the face of concerns expressed by the Department of Justice, OMB had advised the Hill that the Administration had no objection to this bill. It is our understanding that we have now receded from this position, and have formally taken no position on the bill.

The Department of Justice is reviewing whether legislation of this sort is in fact required by the Supreme Court's decision in INS v. Chadha. Assuming that some corrective legislation is necessary, it is not immediately apparent that H.R. 3932 represents the best approach. There are federal interests in the District that may not be adequately protected if legislation is required to block action by the D.C. Council. It may be worth considering a requirement of affirmative approval by Congress, not across the board but in certain sensitive areas.

In any event, the matter should be thoroughly reviewed by the Department of Justice and other affected agencies prior to announcement of an Administration position. We trust that an opportunity for such review will be provided.

THE WHITE HOUSE

WASHINGTON

October 4, 1983

MEMORANDUM FOR JAMES C. MURR
ASSISTANT DIRECTOR FOR LEGISLATIVE REFERENCE
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 3932 Regarding Application of Chadha Legislative Veto Provisions to the District of Columbia Council Acts

By memorandum dated September 30 you asked for our views on the above-referenced bill by October 6. On October 4 we discovered that, without hearing from our office and in the face of concerns expressed by the Department of Justice, OMB had advised the Hill that the Administration had no objection to this bill. It is our understanding that we have now receded from this position, and have formally taken no position on the bill.

The Department of Justice is reviewing whether legislation of this sort is in fact required by the Supreme Court's decision in INS v. Chadha. Assuming that some corrective legislation is necessary, it is not immediately apparent that H.R. 3932 represents the best approach. There are federal interests in the District that may not be adequately protected if legislation is required to block action by the D.C. Council. It may be worth considering a requirement of affirmative approval by Congress, not across the board but in certain sensitive areas.

In any event, the matter should be thoroughly reviewed by the Department of Justice and other affected agencies prior to announcement of an Administration position. We trust that an opportunity for such review will be provided.

FFF:JGR:aea 10/4/83

cc: FFFielding
JGRoberts
Subj
Chron

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: James C. MURR

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: HR. 3932 re application of Chadha legislative veto provisions to the District of Columbia Council of Acts

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUHOLL	ORIGINATOR	83/10/03		_	1 1
	Referral Note:				
CIAT18	D	83/10/03		S	83/10/06
	Referral Note:				
	_	1 1		_	1 1
	Referral Note:				
	_	1 1		_	1 1
	Referral Note:				
	_	1 1		_	1 1
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

RECORDS MANAGEMENT ONLY

CLASSIFICATION SECTION

No. of Additional Correspondents:_____ Media: _____ Individual Codes: __.____ __.____ __.____

Prime Subject Code: ___ ____-___ Secondary Subject Codes: ___ ____-___ ___ ____-___

___ ____-___ ___ ____-___

___ ____-___ ___ ____-___

PRESIDENTIAL REPLY

Code	Date	Comment	Form

C ___ _____ Time: _____ P-_____

DSP _____ Time: _____ Media: _____

SIGNATURE CODES:

CPn - Presidential Correspondence
- **n - 0** - Unknown
- **n - 1** - Ronald Wilson Reagan
- **n - 2** - Ronald Reagan
- **n - 3** - Ron
- **n - 4** - Dutch
- **n - 5** - Ron Reagan
- **n - 6** - Ronald
- **n - 7** - Ronnie

CLn - First Lady's Correspondence
- **n - 0** - Unknown
- **n - 1** - Nancy Reagan
- **n - 2** - Nancy
- **n - 3** - Mrs. Ronald Reagan

CBn - Presidential & First Lady's Correspondence
- **n - 1** - Ronald Reagan - Nancy Reagan
- **n - 2** - Ron - Nancy

MEDIA CODES:

- **B** - Box/package
- **C** - Copy
- **D** - Official document
- **G** - Message
- **H** - Handcarried
- **L** - Letter
- **M** - Mailgram
- **O** - Memo
- **P** - Photo
- **R** - Report
- **S** - Sealed
- **T** - Telegram
- **V** - Telephone
- **X** - Miscellaneous
- **Y** - Study

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 30, 1983

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Justice

District of Columbia

SUBJECT: H. R. 3932 as reported by the House District Committee, relating to application of Chadha legislative veto provisions to the District of Columbia Council Acts. Early House floor action is expected.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than October 6, 1983.

Questions should be referred to Janet Fox (395-4874), the legislative analyst in this office, or to Anna Dixon (395-3100).

James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: John Cooney Fred Fielding

OCT -3 1983

7576

I

98TH CONGRESS
1ST SESSION

H. R. 3932

– as reported 9/28/83 by House District Cte.

To amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 1983

Mr. FAUNTROY introduced the following bill; which was referred to the Committee on the District of Columbia

---

A BILL

To amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 303(b) of the District of Columbia Self-Government and Governmental Reorganization Act is amended to read as follows:

"(b) An amendment to the charter ratified by the registered qualified electors shall take effect upon the expiration of the thirty-five-calendar-day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) following the date such amendment

was submitted to the Congress, or upon the date prescribed by such amendment, whichever is later, unless, during such thirty-five-day period, there has been enacted into law a joint resolution, in accordance with the procedures specified in section 604 of this Act, disapproving such amendment. In any case in which any such joint resolution disapproving such an amendment has, within such thirty-five-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such thirty-five-day period, shall be deemed to have repealed such amendment, as of the date such resolution becomes law.".

(b)(1) The second sentence of section 412(a) of such Act is amended to read as follows: "Except as provided in the last sentence of this subsection, the Council shall use acts for all legislative purposes.".

(2) The last sentence of section 412(a) of such Act is amended to read as follows: "Resolutions shall be used (1) to express simple determinations, decisions, or directions of the Council of a special or temporary character; and (2) to approve or disapprove, when specifically authorized by act, proposed actions designed to implement an act of the Council.".

(c) The second sentence of section 602(c)(1) of such Act is amended to read as follows: "Except as provided in paragraph (2), such act shall take effect upon the expiration of the

30-calendar-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate, or upon the date prescribed by such act, whichever is later, unless, during such 30-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such 30-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 30-day period, shall be deemed to have repealed such act, as of the date such resolution becomes law.".

(d) The third sentence of section 602(c)(1) of such Act is amended by deleting "concurrent" and inserting in lieu thereof "joint".

(e) The first sentence of section 602(c)(2) of such Act is amended by deleting "only if during such 30-day period one House of Congress does not adopt a resolution disapproving such act." and inserting in lieu thereof "unless, during such 30-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such

joint resolution disapproving such an act has, within such 30-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 30-day period, shall be deemed to have repealed such act, as of the date such resolution becomes law.".

(f) The second sentence of section 602(c)(2) is amended to read as follows: "The provisions of section 604, relating to an expedited procedure for consideration of joint resolutions, shall apply to a joint resolution disapproving such act as specified in this paragraph.".

(g) Section 604(b) of such Act is amended by deleting "concurrent" and inserting in lieu thereof "joint".

(h) Subsections (b) and (c) of section 740 of such Act are amended by deleting in each subsection the words "resolution by either the Senate or the House of Representatives" and inserting in lieu thereof "joint resolution by the Congress".

(i) Section 740(d) of such Act is amended by deleting "concurrent" and inserting in lieu thereof "joint".

(j) The amendments made by this section shall not be applicable with respect to any law, which was passed by the Council of the District of Columbia prior to the date of the enactment of this Act, and such laws are hereby deemed valid, in accordance with the provisions thereof, notwithstanding such amendments.

SEC. 2. Part F of title VII of such Act is amended by adding at the end thereof the following new section:

"SEVERABILITY

"SEC. 762. If any particular provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.".

SEC. 3. Section 164(a)(3) of the District of Columbia Retirement Reform Act is repealed.

O for markup, H. District
Cte applied "joint resolution"
provisions to this Retirement
Board rejected