47 Box 9 - [JGR/*Chadha* re: District of Columbia] (11) - Roberts, John G.: Files SERIES I: Subject File

THE DAILY WASHINGTON
Law Reporter
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D.C. Courts Site

U.S. Court of Appeals for the D.C. Circuit

CIVIL RIGHTS

DISCRIMINATION

District Court did not err in finding that agency had not discriminated against woman due to her sex.

McKENNA v. WEINBERGER, ET AL., U.S. App.D.C. No. 83-1334, March 2, 1984. *Affirmed* per David L. Bazelon, J. (Abner J. Mikva and Harry T. Edwards, JJ. concur). *Patricia L. Broun* for appellant. *Christine R. Whittaker* with *J. Paul McGrath, Stanley S. Harris* and *Anthony J. Steinmeyer* for appellees. Trial Court—Oliver Gasch, J.

BAZELON, J.: Barbara F. McKenna resigned under threat of discharge from the Defense Intelligence Agency (DIA) in August, 1978. Ms. McKenna brought suit, claiming 1) that this action was motivated by sex discrimination in violation of Title VII of the Civil Rights Act; 2) that, alternatively, it was in retaliation for her complaints about discriminatory treatment, also in violation of Title VII; and 3) that in effecting her discharge, the agency failed to follow its own procedures in violation of §706 of the Administrative Procedure Act (APA). After a trial on the merits, the district court ruled in favor of the agency on the first two claims and held that the exclusive remedy provisions of Title VII precluded suit under the APA. We hold that the district court's findings on the discrimination and retaliation claims were not clearly erroneous and, consequently, affirm on those issues. In addition, we hold that, although a claim under the Administrative Procedure Act is not barred by Title VII, nothing in the record supports appellant's APA claim.

• • •

In the instant case, both plaintiff and defendant met their initial burdens. Plaintiff established that she was female, sought a permanent analyst position for which she was qualified, was rejected for that position, and afterward the position remained open and the agency sought persons of comparable qualifications. Defendants rebutted the prima facie case by offering evidence that the denial of Ms. McKenna's promotion was based on her abrasiveness and continuing difficulties in working with her fellow analysts.

Ms. McKenna then attempted to prove that the proffered justification was pretextual. She introduced testimony designed to prove that her purported inability to cooperate was the product of a few insignificant incidents. In addition, she presented evidence of the pervasive sexism in the office environment. Many of her complaints are not trivial, and, in the aggregate, could have supported a reasonable inference of sex discrimination.

The district court, however, drew the contrary inference, finding that Ms. McKenna herself was the source of the problem and the effective cause of her own dismissal. An appellate court's scope for review of such findings is narrow. "Findings

(Cont'd. on p. 804 - Discrimination)

D.C. Court of Appeals

HUSBAND AND WIFE

JOINT DEBTS

D.C. statute making both spouses liable for debts incurred by either for necessaries applies to account opened prior to statute.

LAWSON v. SEARS, ROEBUCK & COMPANY, D.C.App. No. 83-353, March 7, 1984., *Affirmed per curiam* (John W. Kern, III, John A. Terry and Judith W. Rogers, JJ. concur). *Porter Lawson, pro se. Joseph Sperling* for appellee. Trial Court—Paul F. McArdle, J.

PER CURIAM: Appellants Porter L. Lawson and Rosetta Lawson are husband and wife. In November 1967, appellant-husband opened a Revolving Charge Account with appellee Sears Roebuck & Company (Sears). Two credit cards were issued to him bearing his name alone. Although the account was opened in his name, items were admittedly charged to the account by *both* husband and wife. (Appellant-husband had placed appellant-wife's name on the application for the card as an authorized purchaser.) Purchases were made on the account until May 1980.

On May 21, 1981, after the account had become delinquent, Sears filed suit against both appellants. The trial court entered a summary judgment against appellant-husband on October 15, 1981 in the amount of $2,452.19, but denied the motion by Sears for such judgment as to appellant-wife and scheduled the case for trial.

Prior to trial, two Requests for Admissions were directed to appellant-wife and she answered, admitting that their purchases on the Sears account were for household items and that $2,452.19 was the correct amount of the debt. Appellee then moved for judgment on the pleadings which was granted on March 15, 1983.

Appellants now claim that the court erred in granting judgment against appellant-wife on the ground that the husband, having opened the account in 1967, is solely liable for the debt accrued at the time Sears filed suit.

D.C. Code §30-211 (1973), the applicable statute at the time the account was opened, rendered the husband liable for his wife's purchases of their household necessities. This statute was repealed in 1976 and replaced by D.C. Code §30-201 (1981) which states in pertinent part "that *both* spouses shall be liable on any debt, contract or engagement entered into by *either of them* during their marriage for necessaries for either of them or their dependent children." (Emphasis added.)

We reject appellants' contention that their respective liability is to be determined by the statute in effect at the date the husband opened the account with sears. Rather, we deem that the plain language of the statute, as enacted in 1976 and in effect at the time Sears filed the suit, imposes liability on *both* spouses for debts incurred by *either* of them during the marriage. Accordingly, the trial court's judgment on the pleadings in favor of Sears against appellant-wife must be and hereby is affirmed.

So ordered.

D.C. Superior Court

DISTRICT OF COLUMBIA

LEGISLATIVE VETO

D.C. Self Government Act is not invalidated by Supreme Court decision on legislative veto because of congressional power over District of Columbia.

UNITED STATES v. LANGLEY, Sup.Ct., D.C., Crim. No. F3666-82, March 30, 1984. *Opinion* per H. Carl Moultrie I, C.J. *Donald J. Allison* for U.S. *Douglas Wood* for defendant.

H. CARL MOULTRIE I, C.J.: This matter comes before the court upon defendant's motion, through counsel, to arrest judgment, and the government's opposition thereto. Defendant challenges the validity of the statutes under which he was indicted, tried, and convicted.

On September 7, 1983, defendant was indicted and charged with two counts of rape under D.C. Code §22-2801, one count of assault with intent to commit rape under D.C. Code §§22-2801, 22-503, and two counts of assault with intent to commit sodomy under D.C. Code §§22-3502, 22-503. On September 20, 1983, defendant was arraigned, and on February 9, 1984, following a jury trial, defendant was convicted of two counts of rape and one count of assault with intent to commit sodomy.

Defendant now argues that the statutes under which he was convicted were repealed by an act of the District of Columbia City Council on July 14, 1981.[1]

On July 14, 1981, the City Council passed by unanimous vote the District of Columbia Sexual Assault Reform Act of 1981. Bill No. 4-122. On July 21, 1981, this Bill was signed by the Mayor, and the Sexual Assault Reform Act, D.C. Act 4-69, was published in the D.C. Register for July 13, 1981, 23 D.C.R. 3409, with the codification of the Act noted in the margin.

The Act as passed by the Council and signed by the Mayor repealed the rape and sodomy provisions of D.C. Code §§22-2801, 22-3502. In place of the repealed provisions, the Act provided, in pertinent part, as follows:

> Sec. 3. Sexual Assault in the First Degree. Whoever compels a person to participate in or submit to a sexual act:
> (a) by actual physical force;
> (b) by threatening or placing the victim in reasonable fear that any person will be

(Cont'd. on p. 805 - Veto)

1. Defendant made a similar oral challenge to the indictment at the close of his case. That motion was denied by the court.

TABLE OF CASES

We must emphasize that our affirmance is predicated on the district court's finding that plaintiff's inability to get along with her co-workers was a function of her individual personality difficulties and was not related to her sex. Appellee suggested at argument that where cooperation in a work situation is essential, an employee's failure to cooperate is cause for termination, whatever the reason for that failure. This is not the law. Where a woman is frustrated in her attempts to work cooperatively by the sexist attitudes and actions of her male co-workers, she is a victim of discrimination. Her dismissal, even where the work environment has degenerated completely, would be in violation of Title VII. We are satisfied that this was not the situation in this case.

* * *

We are convinced that plaintiff did prove a prima facie case of retaliation. Ms. McKenna's complaints to Martinez and Romance were clearly protected activity. An adverse action followed. Given that a number of officers knew of the Geibel investigation and that the adverse action followed so closely, it is clear that there was enough evidence to establish the causal connection for the purpose of establishing a prima facie case. That Ms. McKenna's superiors did not know of her EEO complaint at the time of her dismissal does not preclude a causal connection. It was sufficient that they knew of an investigation authorized by a superior officer and related to sexist treatment.

Although the district court erred in finding that no prima facie case had been established, this error did not invalidate the court's ultimate finding of no retaliation. The district court conducted an analysis of pretext *as if* a prima facie case had been established. A full analysis of the ultimate issue therefore did not require proper resolution of the intermediate issue.

We also find that the district court's finding of no retaliation was not clearly erroneous. The record could support an inference that plaintiff's personality, not retaliation, was the likely cause of her dismissal. It is clear, moreover, that the process that ultimately led to her dismissal was already in motion at the time that Ms. McKenna's superiors learned of her complaints about her treatment. Hence, we decline to disturb the district court's holding on the issue of retaliatory dismissal.

C. *The Administrative Procedure Act Claim*

In addition to her sex discrimination and retaliation claims, Ms. McKenna also brings suit under the Administrative Procedure Act. She charges that the agency did not follow its own procedures in effecting her dismissal and in failing to provide her with the requisite career counseling. The district court held that Title VII precludes such suits under the APA. We find this conclusion to be in error.

The Supreme Court held in *Brown v. General Services Administration* that Title VII is the sole and exclusive remedy for employment discrimination by the federal government [425 U.S. 820 (1976).] Thus an aggrieved federal employee is precluded from bringing suit under other federal antidiscrimination statutes that apply more generally. This preclusive effect, however, is limited only to claims of illegal discrimination.

Ms. McKenna's claim under the APA is *not* one of discrimination. Rather, she charges that the agency, whether its motive was legal or illegal, failed to conform to its own regulations. She does not claim that these procedural violations constitute employment discrimination. Her claim of arbitrary treatment is entirely independent of her discrimination claim.

Although we hold that Ms. McKenna has a legally sufficient cause of action, we find nothing in the record to support her claim. Section 8(f)(3) of DIA regulation 22-31 provides for two weeks' notice of termination to probationary employees *if feasible*. Section 8(h) provides that the termination action must be made effective two days prior to the anniversary date of employment. The agency complied with both of these regulations. The two week notice requirement was not mandatory. Given the late emergence of the problem and the need to act within the probationary period, the two weeks' notice was not feasible. In the circumstances of this case, the notice provided was adequate. The deadline for dismissal was also met. The anniversary date of employment was August 22, 1978. Termination had to be effected by August 20; Ms. McKenna resigned on August 18.

Ms. McKenna also complains that the agency failed to give her required career counseling and inadequately processed her EEO complaints. Nothing in the record supports these claims. Consequently, we dismiss as unproven Ms. McKenna's claim under the Administrative Procedure Act.

* * *

Appellant McKenna has failed to demonstrate that the district court's findings of no discrimination or retaliation were clearly erroneous. In addition, she has failed to prove her cause of action under the Administrative Procedure Act. The order of the district court is therefore affirmed.

So ordered.

VETO

(Cont'd. from p. 801)

subjected to death, kidnapping, or bodily injury . . .

commits an offense and upon conviction shall be imprisoned for a term not exceeding twenty (20) years.

Sec. 2. Definitions.

(7) "Sexual act" means conduct consisting of contact: (a) between the penis and the vulva, anus, or mouth . . . .

Under the District of Columbia Self-Government and Governmental Reorganization Act of 1973 (hereinafter Self-Government Act), specifically D.C. Code §1-233(c)(2), acts of the City Council with respect to any act codified in Title 22, 23, or 24, shall take effect at the end of a thirty-day period 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 only if during such thirty-day period one House of Congress does not adopt a resolution disapproving such act. On September 9, 1981, consistent with its authority under the Self-Government Act, the United States House of Representatives voted to veto the Sexual Assault Reform Act. H.R. Res. 208, 97th Cong., 1st sess. (1981). No action was taken by the Senate, and the resolution was not presented to the President.

On June 23, 1983, in *INS* v. *Chadha*, ___ U.S. ___, 103 S.Ct. 2764 (1983), the Supreme Court held unconstitutional a provision of the Immigration and Nationality Act which authorized a one-house veto of the Attorney General's decision to suspend deportation of certain aliens. The Court found that such action was legislative in nature and subject to the constitutional requirements of passage by both Houses of Congress and presentation to the President. *Id.* at ___, 103 S.Ct. at 2786-87.

In the instant case, defendant argues that the single-house veto of the Sexual Assault Reform Act was unconstitutional, and therefore the statutes under which he was indicted and convicted were effectively repealed by the City Council. This Court finds, however, that the Supreme Court's decision in *INS* v. *Chadha* does not apply to the District of Columbia Self-Government Act and that the one-house veto of the Sexual Assault Reform Act was constitutional.

The Supreme Court's decision in *Chadha* was based on the inconsistency between the legislative veto provision of the Immigration and Nationality Act and the principles of Separation of Powers which are reflected in Art. I and throughout the Constitution. Art. I provides:

> "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." Art. I, §1.
>
> "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; . . ." Art. I, §7, cl. 2.
>
> "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill." Art. I, §7, cl. 3.

Lawmaking is a power to be shared by both Houses and the President, and as the Supreme Court noted in *Chadha*, "legislation should not be enacted unless it has been carefully and fully considered by the Nation's elected officials." *Id.* at ___, 103 S.Ct. at 2783.

While the bicameral requirement and the Presentment Clauses were intended to provide checks on each branch of government, not every action taken by either House is subject to the requirements of Art. I. In *Chadha*, the court specifically listed the four exceptions, provided for in the Constitution, where one House may act alone with the unreviewable force of law:

(a) The House of Representatives alone was given the power to initiate impeachments. Art. I, §2, cl. 6.

(b) The Senate alone was given the power to conduct trial following impeachment on charges initiated by the House and to convict following trial. Art. I, §3, cl. 5;

(c) The Senate alone was given final unreviewable power to approve or to disapprove presidential appointments. Art. II, §2, cl. 2;

(d) The Senate alone was given unreviewable power to ratify treaties negotiated by the President. Art. II, §2, cl. 2.

Id. at ____, 103 S.Ct. at 2786. This list is not exhaustive; these are merely the exceptions specifically provided for in the Constitution. To read *Chadha* as invalidating every statute in which Congress has reserved a legislative veto would "sound the death knell for nearly 200 other statutory provisions." *See id.* at ____, 103 S.Ct. at 2792 (White, J., dissenting). The Supreme Court simply could not have intended to invalidate legislative veto provisions which do not conflict with the purposes of the bicameral requirement and Presentment Clauses of Art. I. The retained Congressional power with respect to local District of Columbia legislation is such a provision.

Congress, under Art. I, §8, cl. 17, may legislate for and grant self-government to the District of Columbia. *District of Columbia* v. *Thompson Co.*, 346 U.S. 100 (1953). "The power of Congress over the District of Columbia is not limited to national power, but includes all legislative powers of a state in dealing with its affairs." *Id.* at 108. Thus Congress may delegate full "legislative power" to the District of Columbia, "subject to constitutional limitations and to the power of Congress to revise, alter, or revoke the authority granted." *Id.* at 109.

In *Northern Pipeline Construction* v. *Marathon Pipe Line Co.*, the Supreme Court noted that the powers granted under Art. 1, §8, cl. 17 are "obviously different in kind from the other broad powers conferred on Congress: Congress' power over the District of Columbia encompasses the *full* authority of government, and thus, necessarily, the executive and judicial powers as well as the legislative." 458 U.S. 50, 102 S.Ct. 2858, 2874 (1982) (emphasis in the original). *See* Intervenor's motion, *United States v. Calvin MacIntosh,* Criminal Case No. F3666-82, at 6.

Congress is not required to establish a local government for the District of Columbia which embodies the separation of powers principles of the national government. *See* Intervenor's motion at 3. In *O'Donoghue* v. *United States,* the Supreme Court held that the judges of the District of Columbia's Supreme Court and Court of Appeals were constitutionally protected from having their salaries reduced by an Act of Congress. 289 U.S. 516 (1933). Because those courts had authority not only in the District, but also over all controversies arising under the Constitution and the statutes of the United States and having nationwide application, the judges presiding over them had to be appointed to serve during their good behavior in accordance with the requirements of Art. III. *Id.* In *O'Donoghue,* the Court emphasized the principles of Separation of Powers, that the acts of each department shall never be controlled by, or subjected to, the coercive influence of either of the other departments. *Id.* at 530-34. The principles of Separation of Powers would be violated if "the legislature, though restrained from changing the tenure of judicial offices, is at liberty to compel a resignation by reducing salaries to a copper." *Id.* at 534 (citation omitted).

However, where the system of the courts is made up of strictly local courts, the Supreme Court and the District of Columbia Court of Appeals, Congress has plenary Art. I power to provide for trying local criminal cases before judges who, in accordance with the District of Columbia Code, are not accorded life tenure. *Palmore* v. *United States,* 411 U.S. 387 (1973). Thus where the courts handle cases arising under the District of Columbia Code and relating to matters of strictly local concern, the principles of Separation of Powers have no application, and the citizens of the District are no more entitled to Art. III judges than the citizens of any of the fifty states who are tried for strictly local crimes. In *Palmore,* the Supreme Court made clear that Congress' power over the District of Columbia is plenary and that Congress "may exercise all the police and regulatory powers which a state legislature or municipal government would have in legislating for state or local purposes." *Id.* at 397. Congress may "legislate for the District of Columbia with respect to subjects that would exceed its power, or at least be very unusual, in the context of national legislation enacted under other powers delegated to it." *Id.* at 398. *See also Gibbons* v. *District of Columbia,* 116 U.S. 404, 408 (1886) (constitutional constraints on federal taxing power do not apply with respect to action concerning the District of Columbia; *Employees' Liability Cases,* 207 U.S. 463, 500 (1918) (constraints of Commerce Clause do not apply with respect to action concerning District of Columbia). *See* Intervenor's motion at 2-3.

The rationale behind the Presentment Clause is to "check whatever propensity a particular Congress might have to enact oppressive, improvident, or ill-considered measures." *INS* v. *Chadha,* ____ U.S. at ____, 103 S.Ct. at 2782. *See* Intervenor's motion at 6. The bicameral requirement is also constitutionally mandated to provide a check on each House of Congress. *Id.* at ____, 103 S.Ct. at 2783. However, where a body is exercising its plenary power over purely local matters "not affecting the relationship of the federal government to its citizens, nor any relationship between components of the federal government," *see* Intervenor's motion at 6, the principles of Separation of Powers and checks on authority have no application.

It is clear that Congress, by legislation presented to the President, may constitutionally establish a system of local governance that does not involve the President in the same way that must be done with respect to national matters. *See* Intervenor's motion at 4. Under the Self-Government Act, local legislation is enacted by adoption by the City Council and presentation to the Mayor and becomes effective after a period of thirty (30) legislating days unless Congress disapproves. D.C. Code §§1-227(e), 1-233(c). *See* Intervenor's motion at 4-5. Thus legislation becomes effective by nonaction and without presidential participation. It follows that Congress may also establish a system where the President need not oversee congressional action preventing local legislation from becoming effective. Moreover, the fact that one House may disapprove is not significant since "it is as though a bill passed in one house and failed in another." *See Buckley* v. *Valeo,* 424 U.S. 1, 285 n.30 (1976) (White, J., concurring in part and dissenting in part).

Furthermore, the power of either House to disapprove local legislation is not "legislation or . . . an order, resolution, or vote requiring the concurrence of both Houses." *Id.* at 285. In *Chadha,* the Court held that congressional action is subject to bicameral and presentment requirements when it contains "matter which is properly regarded as legislative in its character and effect." ____ U.S. at ____, 103 S.Ct. at 2789 [citing S. Rep. No. 1335, 54th Cong., 2d Sess., 8 (1897]. The Court concluded that the legislative

veto was an exercise of legislative power because it "had the purpose and effect of altering the legal rights, duties and relations of persons." *Id.* at ____, 103 S.Ct. at 2789. In *Chadha*, the one-house veto operated to overrule the Attorney General and mandate *Chadha's* deportation. The power of Congress over local legislation in the District, however, is merely a "negative power" and "does not create new rights, duties, or relations."[2] *See* Intervenor's motion at 5.

In *Chadha*, Justice White in his dissenting opinion quoted Justice Brandeis:

> "The Court has frequently called attention to the 'great gravity and delicacy' of its function in passing upon the validity of an act of Congress . . . . The Court will not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' *Liverpool, N.Y. & P.S.S. Co.* v. *Emigration Commissioners, supra* [113 U.S. 33, 5 S.Ct. 352, 28 L.Ed. 899]". *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 347, 56 S.Ct. 466, 483, 80 L.Ed. 688 (1936) (concurring opinion).

Id. at ____, 103 S.Ct. at 2796. (White, J., dissenting). This court cannot conclude that the Supreme Court's decision in *Chadha* is so broad as to invalidate the legislative veto provision of the Self-Government Act. The one-house veto of the Sexual Assault Reform Act was not unconstitutional, and therefore defendant was indicted and convicted under the proper statutes.

Accordingly, it is this 30th day of March, 1984, ORDERED that defendant's motion be and hereby is denied.

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2. In *Process Gas Consumers Group* v. *Consumers Energy Council of America*, ____ U.S. ____, 103 S.Ct. 3556 (1983), the Supreme Court affirmed the invalidation of legislative veto provisions which provided Congress with the power to merely disapprove agency rules. However, that case has no application here, where Congress has plenary power over local legislation which has no impact on any federal interest.

LEGAL NOTICES

FIRST INSERTION

BUDD, Joseph — Deceased

Superior Court of the District of Columbia
Probate Division
Administration No. 762-84 S.E.
Joseph Budd, deceased
Notice of Appointment, Notice to Creditors
and Notice to Unknown Heirs

James F. Turner, whose address is 1012 30th Street, S.E., Washington, D.C., was appointed Personal Representative of the estate of Joseph Budd, who died on October 18, 1983 without a Will. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., 500 Indiana Avenue, N.W., Washington, D.C. 20001, on or before May 25, 1984. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or to the Register of Wills with a copy to the undersigned, on or before May 25, 1984, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its publication shall so inform the Register of Wills, including name, address and relationship. JAMES F. TURNER. Name of Newspaper: Washington Law Reporter. TRUE TEST COPY. Henry L. Rucker, Register of Wills. [Seal.] Apr. 23.

GAUDREAULT, John M. — Deceased

Superior Court of the District of Columbia
Probate Division
Administration No. 706-84
John M. Gaudreault, deceased
Frederick C. LeComte, *Attorney*
821 15th Street, N.W.
Notice of Appointment, Notice to Creditors
and Notice to Unknown Heirs

Frederick C. LeComte, whose address is 821 15th Street, N.W., Washington, D.C. 20005, was appointed Personal Representative of the estate of John M. Gaudreault, who died on March 21, 1984 with a Will. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's Will) shall be filed with the Register of Wills, D.C., 500 Indiana Avenue, N.W., Washington, D.C. 20001, on or before Oct. 23, 1984. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or to the Register of Wills with a copy to the undersigned, on or before Oct. 23, 1984, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. FREDERICK C. LeCOMTE. First Published: Apr. 23, 1984. TRUE TEST COPY. Henry L. Rucker, Register of Wills. [Seal.] Apr. 23, 30, May 7.

REID, Annie Elizabeth

Andrew Moss, *Attorney*
4010 19th St., N.E., Washington, D.C. 20018

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA. CIVIL DIVISION. IN RE: Application of Annie Elizabeth Reid. Civil Action Number: CA3452-84. ORDER OF PUBLICATION—CHANGE OF NAME. Annie Elizabeth Reid, having filed a complaint for judgment changing Anna Elizabeth Murray name to Annie Elizabeth Middleton, and having applied to the Court for an order of publication of the notice required by law in such cases, it is by the Court, this 9th day of April, 1984, ORDERED that all persons concerned show cause, if any there be, on or before the 9th day of May, 1984, why the prayers of said complaint should not be granted: PROVIDED, That a copy of this order be published once a week for three consecutive weeks before said day in The Washington Law Reporter. /s/ RICHARD S. SALZMAN, Judge. [Seal.] A True Copy. Test: Apr. 9, 1984. THOMAS A. DUCKENFIELD, Clerk, Superior Court of the District of Columbia. By Joyce Brown, Deputy Clerk. Apr. 23, 30, May 7.

RUPPERT, Catherine Hoban

Catherine Hoban Ruppert, *Pro Se*
1230 Perry Street, N.E., Washington, D.C. 20017

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA. CIVIL DIVISION. IN RE: Application of Catherine Hoban Ruppert on behalf of self and minor James Hoban Ruppert. Civil Action Number: CA4314-84. ORDER OF PUBLICATION—CHANGE OF NAME. Catherine Hoban Ruppert, having filed a complaint for judgment changing Catherine Hoban Ruppert and James Hoban Ruppert names to Catherine Mary Hoban and James Matthew Hoban, and having applied to the Court for an order of publication of the notice required by law in such cases, it is by the Court, this 12th day of April, 1984, ORDERED that all persons concerned show cause, if any there be, on or before the 14th day of May, 1984, why the prayers of said complaint should not be granted: PROVIDED, That a copy of this order be published once a week for three consecutive weeks before said day in The Washington Law Reporter and a copy of this petition and order is mailed to Martin V. Ruppert by certified mail, return receipt requested, care of 700 Quincy St., N.E., Washington, D.C. /s/ RICHARD S. SALZMAN, Judge. [Seal.] A True Copy. Test: Apr. 12, 1984. THOMAS A. DUCKENFIELD, Clerk, Superior Court of the District of Columbia. By Eloise Atkinson, Deputy Clerk. Apr. 23, 30, May 7.

THAVAMONEY, Gurudevi

Gurudevi Thavamoney, *Pro Se*
1726 N Street, N.W., Washington, D.C. 20036

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA. CIVIL DIVISION. IN RE: Application of Gurudevi Thavamoney. Civil Action Number: CA4414-84. ORDER OF PUBLICATION—CHANGE OF NAME. Gurudevi Thavamoney, having filed a complaint for judgment changing her name to Nalini Gurudevi Thavamoney, and having applied to the Court for an order of publication of the notice required by law in such cases, it is by the Court, this 10th day of April, 1984, ORDERED that all persons concerned show cause, if any there be, on or before the 10th day of May, 1984, why the prayers of said complaint should not be granted: PROVIDED, That a copy of this order be published once a week for three consecutive weeks before said day in The Washington Law Reporter. /s/ RICHARD S. SALZMAN, Judge. [Seal.] A True Copy. Test: Apr. 10, 1984. THOMAS A. DUCKENFIELD, Clerk, Superior Court of the District of Columbia. By Joyce Brown, Deputy Clerk. Apr. 23, 30, May 7.

SECOND INSERTION

BAILEY, Shelley G.

Alan Steele-Nicholson, *Attorney*
Steptoe & Johnson
1250 Conn. Ave., N.W., Washington, D.C. 20036

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA. CIVIL DIVISION. IN RE: Application of Shelley G. Bailey, as Parent On Behalf of Kim Alan Nicholson, A Minor. Civil Action Number: CA3617-84. AMENDED ORDER OF PUBLICATION—CHANGE OF NAME. Shelley G. Bailey, As Parent, On Behalf of Kim Alan Nicholson, A minor, having filed a complaint for judgment changing Kim Alan Nicholson's name to Sean Livingston Van Rensselaer Steele-Nicholson, and having applied to the Court for an order of publication of the notice required by law in such cases, it is by the Court, this 3rd day of April, 1984, ORDERED that all persons concerned show cause, if any there be, on or before the 3rd day of May, 1984, why the prayers of said complaint should not be granted: PROVIDED, That a copy of this order be published once a week for three consecutive weeks before said day in The Washington Law Reporter. /s/ RICHARD S. SALZMAN, Judge. [Seal.] A True Copy. Test: Apr. 3, 1984. THOMAS A. DUCKENFIELD, Clerk, Superior Court of the District of Columbia. By Eloise Atkinson, Deputy Clerk. Apr. 16, 23, 30.

BOWLING, James Frank — Deceased

Superior Court of the District of Columbia
Probate Division
Administration No. 688-84
James Frank Bowling, deceased
John F. Wilson, Jr., *Attorney*
Kelly & Nicolaides
1010 16th St., N.W., 7th Floor
Washington, D.C. 20036
Notice of Appointment, Notice to Creditors
and Notice to Unknown Heirs

James Morton Duncan, III, whose address is 400 Second Street, Alexandria, VA 22314, was appointed Personal Representative of the estate of James F. Bowling, who died on March 22, 1984 with a Will. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's Will) shall be filed with the Register of Wills, D.C., 500 Indiana Avenue, N.W., Washington, D.C. 20001, on or before Oct. 16, 1984. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or to the Register of Wills with a copy to the undersigned, on or before Oct. 16, 1984, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. JAMES MORTON DUNCAN, III. First Published: Apr. 16, 1984. TRUE TEST COPY. Henry L. Rucker, Register of Wills. [Seal.] Apr. 16, 23, 30.

CHAPMAN, Loretta N. — Deceased

Superior Court of the District of Columbia
Probate Division
Administration No. 703-84
Loretta N. Chapman, deceased
Robert E. Lynch, Jr., *Attorney*
4802 Leland Street
Chevy Chase, Maryland 20815
Notice of Appointment, Notice to Creditors
and Notice to Unknown Heirs

Sue Ann Slyman, whose address is 4504 Cheltenham Drive, Bethesda, Maryland 20814, was appointed Personal Representative of the estate of Loretta N. Chapman, who died on March 8, 1984 with a Will. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's Will) shall be filed with the Register of Wills, D.C., 500 Indiana Avenue, N.W., Washington,

To John

Date 4/23 Time 12:15

WHILE YOU WERE OUT

M Jan Tor

of

Phone

Area Code Number Extension

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

Message Justice ltr. sent 3/12/84.

✓

Operator

AMPAD EFFICIENCY®

23-020

THE WHITE HOUSE

WASHINGTON

February 13, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Amendments Proposed by the District Government to H.R. 3932 Regarding D.C. Chadha

OMB has asked for our views by February 17 on a draft Justice report on a proposal by the D.C. Government concerning the D.C. Chadha problem. The D.C. proposal is an old one, set forth in a November 17 letter from Mayor Barry to Senator Mathias. The proposal would amend the Self-Government and Governmental Reorganization Act by adding two provisions: a section retroactively validating any law passed by the D.C. Council, and a severability clause.

The Mayor maintains that this is a "compromise" that would solve the District's bond problem without deciding the Chadha issue. In fact, however, the severability clause would effectively decide the Chadha issue in the District's favor. There is little doubt that the legislative veto in the Self-Government and Governmental Reorganization Act is unconstitutional. When the severability clause is added, a court considering the Act would simply strike down the legislative veto, leaving intact the provisions authorizing the D.C. Council to enact laws. The end result would be that Congress could only block D.C. Council actions by passing a law disapproving the action -- precisely what the District has wanted all along.

The draft Justice report notes this effect, and opposes the proposal. The report reiterates our support, expressed in McConnell's November 15, 1983 letter, for a two-track approach to the D.C. Chadha problem, generally providing only an opportunity for Congressional disapproval of D.C. Council actions, except in the criminal area, where affirmative approval would be required. The report also notes the flaws in the retroactive validation provision, which would have the unintended effect of validating D.C. Council actions struck down by courts or, as in the case of the sexual crimes statute, blocked by an exercise of the legislative veto. (Or, more accurately, presumably blocked. The issue of the effect of the past exercise of an unconstitutional legislative veto is currently before the courts.)

I have no objections. Our office agreed with Justice some time ago to oppose the Mayor's "compromise;" this letter is simply the formal statement of that position.

Attachment

THE WHITE HOUSE

WASHINGTON

February 13, 1984

1) I found that DC was not copied this time —

2) RAH: I thought you said the Mayor would be pleased!

J.

MEMORANDUM FOR FRED F. FIELDING

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Attachment

THE WHITE HOUSE

WASHINGTON

February 13, 1984

MEMORANDUM FOR JANET M. FOX
LEGISLATIVE ANALYST
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Amendments Proposed by the District Government to H.R. 3932 Regarding D.C. Chadha

Counsel's Office has reviewed the above-referenced draft report, and finds no objection to it from a legal perspective.

FFF:JGR:aea 2/13/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 13, 1984

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FFF:JGR:aea 2/13/84
cc: FFFielding/JGRoberts/Subj/Chron

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO Anna Dixon/Jim Jordan	Take necessary action	☐
Roger Adkins	Approval or signature	☐
Charlie Kolb	Comment	☐
Connie Horner	Prepare reply	☐
Mike Horowitz John Roberts	Discuss with me	☐
	For your information	☐
	See remarks below	☐
FROM Jan Fox Jan Fox	DATE 2/9/84	

REMARKS

Attached for your review is a draft report Justice would like cleared on amendments proposed by the District Government to H.R. 3932, re D.C. "Chadha". The D.C. proposed amendments are intended to enable the District to issue municipal bonds.

Justice has asked that its letter not be circulated to the District for clearance.

Please get me your comments on the Justice letter by February 17.

Attachment

OMB FORM 4
Rev Aug 70

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 8 83: 17

6 FEB 1984

Honorable David A. Stockman
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

Enclosed are copies of a proposed communication to be transmitted to the Congress relative to: H.R. 3932, to amend the D.C. Self Government Act. Please advise this office as to the relationship of the proposed communication to the Program of the President.

Consistent with this Department's memorandum of January 17, 1984 to Deputy Director Wright, we believe that circulation of this proposed communication should be limited to Executive Branch agencies accountable to the President. We would appreciate being advised if circulation beyond these agencies is contemplated.

Sincerely

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

cc: Honorable Joseph W. Wright, Jr.

To Coordinate Clearance contact: John E. Logan, OLA, 633-2078

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on the proposal to amend the District of Columbia Self-Government and Governmental Reorganization Act (the "Act") set forth in a letter to the Honorable Charles McC. Mathias, United States Senate, from the Honorable Marion Barry, Jr., Mayor, District of Columbia (November 17, 1983). For the reasons set forth below, the Department of Justice opposes enactment of this proposal.

The proposal submitted by the District of Columbia would provide as follows:

"Sec. 1. Any law which was passed by the Council of the District of Columbia prior to the date of the enactment of this Act is hereby deemed valid, in accordance with the provisions thereof.

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 provisions of this Act, including any provisions of this Act with respect to adoption of resolutions by one or both Houses of Congress disapproving acts of the Council, or the application thereof to any person or circumstances, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby."

As stated in the Mayor's letter of November 17, 1983, the proposal is directed toward enabling the District of Columbia to issue municipal bonds. As a result of the Supreme Court's decision in Immigration and Naturalization Service v. Chadha, 103 S.Ct. 2764 (1983), which declared the so-called "legislative veto" device

unconstitutional, questions have been raised over the ability of the District of Columbia to obtain revenues through the bond market, since the Act contains several legislative vetoes. 1/ We take no position as to whether the proposal would in fact resolve those questions. Rather, our objections to the proposal evolve from other legal consequences which may ensue from its enactment.

Section 1 of the proposal, by affirming all previous actions of the D.C. Council, does not take into account those actions of the D.C. Council which never became effective, or which were invalidated after becoming effective, whether because they were subject to Congressional action, court challenge or otherwise. While we do not object to the general intent underlying section 1 -- to dispel any cloud Chadha may have cast over laws that previously took effect following passage by the D.C. Council -- we believe that this intent would be better served by a provision that affirmed only those laws which in fact came into effect and are currently valid. Section 1 does not account for laws which passed the D.C. Council but have been repealed, modified or amended, were temporary in nature or subject to a sunset provision and have lapsed, or have been judicially determined invalid.

1/ The Act contains four provisions which may be characterized as legislative vetoes. These are:

(1) Section 303(b) provides that "an amendment to the charter . . . shall take effect only if . . . both Houses of Congress adopt a concurrent resolution . . . approving such amendment."

(2) Section 602(c)(1) provides that with respect to acts effective immediately due to emergency circumstances and acts proposing amendments to Title IV of this Act "no such act shall take effect until the end of the 30-day period . . . and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act."

(3) Section 602(c)(2) provides that any Act affecting Titles 22, 23, or 24 of the District of Columbia Code "shall take effect . . . only if . . . one House of Congress does not adopt a resolution disapproving such act."

(4) Section 740(a) provides that either the House or the Senate may adopt a resolution terminating emergency presidential authority over the Metropolitan Police Department."

Section 2 of the proposal, if enacted, could have an impact extending far beyond merely inserting a severability provision into the text of the Act. If a court were to rely on section 2 to hold that the legislative veto provisions of the Act are severable, 2/ the result will be to sustain, with one exception, 3/ the actions of the D.C. Council in all matters subsequent to the passage of this proposal without the need to secure an enactment of a law by the Congress. In practical terms, the intent of the proposal runs contrary to our position on H.R. 3932, another bill to amend the Act upon which we have previously reported. See Letter to Honorable William V. Roth, Jr., Chairman, Committee on Governmental Affairs, United States Senate, from Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs (November 15, 1983). In that report, we expressed general support for H.R. 3932, which would correct the constitutionally invalid portions of the Act by requiring D.C. Council actions to be subject to disapproval by enactment of a joint resolution.

In the narrow area of criminal law, criminal procedure and prisoners, however, we urged that actions of the D.C. Council should take effect only upon enactment of a joint resolution of approval by the Congress. Section 2, by declaring that a provision of the Act is severable in the event it is determined invalid, would allow the remaining provisions to stand alone. If, for example, the invalid congressional review provisions were found to be severable from the remaining provisions of the Act, D.C. Council actions would become law without any subsequent Congressional examination. For the reasons set forth in our letter of November 15, 1983, we do not believe this to be an appropriate post-Chadha compromise, particularly in the area of criminal law,

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2/ We note that the severability of a particular provision from a statute does not necessarily turn on the presence or absence within that statute of a severability clause. See United States v. Jackson, 390 U.S. 570, 585 n.27 (1968). While this letter is not intended to reflect on the severability of the legislative veto devices in the Act, we would expect a court to rest its ultimate inquiry into the question of severability on whether Congress would have enacted the remainder of the statute without the unconstitutional provision. See Consumer Energy Council of America v. FERC, 673 F.2d 425, 442 (D.C. Cir. 1982) aff'd mem., 103 S.Ct. 3556 (1983). We therefore would not expect the mere presence or absence of a severability clause passed subsequent to the Act to be determinative of the severability question.

3/ The Act precludes the D.C. Council from amending Title 11 of the D.C. Code (relating to organization and jurisdiction of the District of Columbia courts). See Section 602(a)(4) of the Act.

criminal procedure, and prisoners. Instead, we believe that the proper balance of lawmaking authority would be maintained if a joint resolution of approval were required in order for D.C. Council amendments to Titles 22, 23 and 24 of the D.C. Code to take effect.

In summary, we oppose the enactment of the recent proposal submitted by the District of Columbia. It does not take into account actions of the D.C. Council which did not become effective, are no longer effective, or have been held invalid. It also ignores the undesirable consequences that would likely result from simply inserting a severability clause into the text of the Act.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's position.

Sincerely,

ROBERT A. McCONNELL
Assistant Attorney General.

Office of Legislative Affairs

Office of the Assistant Attorney General — Washington, D.C. 20530

17 JAN

M E M O R A N D U M

TO: Joseph R. Wright, Jr.
Deputy Director
Office of Management and Budget

FROM: Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

SUBJECT: District of Columbia Government and the Legislative Clearance Process.

There are several comments which we feel should be made with respect to your memorandum of December 3.

First, with respect to the case in point, it should be noted that OMB inaccurately advised the District of Columbia and the Congress that the Administration supported H.R. 3932. This is the reason that this Department agreed that the D.C. Government should be told as soon as possible of the new Administration position. In the closing days of the first session, the legislation was on a "fast track", and the bill's proponents were ready to take the House-passed bill to the Senate floor with or without a letter of support from the Administration. This is also the reason why the Department agreed to take the call from an angry Mayor Barry, who said that he was misled with respect to the Administration's position on the bill.

Second, we disagree with your recommendation that the D.C. Government continue to participate in the OMB clearance process on legislation involving the relationship between the federal government and the District. The District government is not part of this Administration. Its officials were elected by the citizens of the District of Columbia and are not accountable to the President. Of course, the Executive Branch should be sensitive to the concerns of the District of Columbia and should consult with its government whenever appropriate. However, within the Administration, we ought to be able to communicate freely and candidly during the

deliberative process. Because Administration options should not be foreclosed by outside pressures brought to bear in an on-going decision-making process, we recommend that the Administration discontinue the practice of allowing the District of Columbia Government to participate in Administration decision making.

The Washington Times

DATE: 4-26-84

PAGE: 8A

D.C. Chadha

District officials spurn compromise on home rule

By Rupert Welch
THE WASHINGTON TIMES

Congress could comply with a Supreme Court decision that some say undermines home rule and still maintain some control of the District's criminal code under a compromise offered yesterday by the U.S. attorney for the District.

U.S. Attorney Joseph diGenova admitted that his proposal had not been warmly received either by Mayor Marion Barry or the City Council, but he held out the hope that a resolution to the dilemma still might be worked out.

In the high court ruling, known as the Chadha decision, the Supreme Court ruled that legislative vetoes are unconstitutional. The District's Home Rule Act contains a legislative veto provision, so its legality has been called into question.

The Chadha decision involved a suit filed by animmigrant who appealed efforts by Los Angeles immigration officials to deport him.

Attorneys for Jagdish Rai Chadha of Los Angeles challenged the legislative veto, indirectly. This is a 50-year-old device that allows one or both houses of Congress or even a committee to block an action of the president or an administrative agency.

The high court ruled in INS vs. Chadha that it was unconstitutional.

The Senate Governmental Affairs D.C. subcommittee yesterday held hearings on the situation, which has impaired the city's ability to enter the bond market.

Mayor Barry and Council Chairman David Clarke were among the witnesses.

"The administration is prepared to compromise," Mr. diGenova said. Under his proposal, civil laws passed by the council would become law unless Congress passes a joint resolution of disapproval. "This would replace the two-house veto" formerly called for in the case of civil laws, he said.

In the case of criminal laws passed by the council, if the attorney general certifies to the speaker of the House and the president pro tem of the Senate that it opposes a certain statute, a joint resolution of approval, signed by the president, would be needed to validate the law.

"While we heartily endorse the use of a joint resolution of disapproval mechanism for the bulk of the amendments to the D.C. Code, we believe . . . that amendments to titles 22, 23, and 24 [criminal laws] should continue to receive separate treatment.," Mr. diGenova said.

Among the reasons he cited were that criminal laws in the city are prosecuted by the Justice Department, the courts are federal, prisoners are transported by U.S. marshals and many prisoners are eventually housed by the U.S. Bureau of Prisons.

In addition, because the city is the national capital it is inextricably entwined with the federal government, he said.

Sen. Thomas F. Eagleton, D-Mo., asked Mr. diGenova why he wanted to "freeze" the D.C. Code.

"I think this [proposal] is a step backward on home rule. I don't think it can be seen in any other light," said Eagleton.

"I think the administration has an excuse in Chadha to grab back jurisdiction that was handed over to [the District] in 1974 and 1978."

Mr. diGenova said that was not the administration's intent.

Mayor Barry asked the panel, headed by Sen. Charles McC. Mathias, R-Md., to "consider the legal and financial problems created for the District by the court decision and the impasses we find ourselves in."

He said the city government was of the view that Chadha did not apply to the District, but that some kind of legislative clarification was needed.

The mayor said he had met with Justice officials to try to work out a compromise and that he had offered two proposals that were turned down.

A so-called "quick-fix" proposal would have ratified all previous District laws and added a severability to the Home Rule Act.

"It was designed to allow the District to enter the bond market," while leaving the criminal issue for later, he said.

"In the second compromise proposal, I offered to extend the period of review for criminal legislation to 60 days and provide for expedited consideration of resolutions of disapproval," Mayor Barry added.

"The District is being forced to make a Sophie's choice: we are being told by some in the Reagan administration that we must choose between self governance and financial collapse. We are being told that unless we are willing to grant the federal government a direct hand in shaping our criminal legislation, they will force us into bankruptcy," Mayor Barry said.

21

The Washington Post

D.C. Chadha

DATE: 5-10-84

PAGE: A1

D.C. Convictions Thrown Into Question

Parts of Criminal Code Ruled Invalid

By Judith Valente
Washington Post Staff Writer

A D.C. Superior Court judge ruled yesterday that the City Council has no authority to enact criminal laws, in a decision that could throw into question thousands of convictions obtained under laws the council has enacted in the decade since the District won limited home rule.

Acting in the case of a man appealing his conviction on sexual assault charges, Judge Donald S. Smith declared that an entire section of the city's home rule charter is invalid. That section of the charter permits the council to enact criminal laws and allows either house of Congress to reject any of those laws by what amounts to a legislative veto.

Smith held that the District is affected by last year's Supreme Court decision barring such one-house vetoes.

Smith's decision departs sharply from earlier rulings by two other Superior Court judges who held that the District is exempt from the Supreme Court's ruling because of its unique status under the Constitution as a federal enclave.

U.S. Attorney Joseph E. diGenova said the matter ultimately will have to be decided in the D.C. Court of Appeals, the city's highest court. One of the earlier Superior Court decisions on the home rule question is currently under review by the appeals court.

"The fact that one judge ruled in this fashion, in and of itself, is not devastating. There are 43 other judges at the Superior Court level," said City Council Chairman David A. Clarke. "A determination by the Court of Appeals will be the important judgment."

D.C. Corporation Counsel Inez Smith Reid said, however, that "at issue now is the status of several of our criminal statutes." She said Smith's ruling, if upheld, would effectively invalidate dozens of criminal laws now on the books involving drugs, property destruction, firearms violations and various forms of theft and fraud.

The city's mandatory minimum sentencing law, setting specific punishments for certain violent or drug-related crimes, would also be invalidated, she said.

DiGenova said that if Smith's ruling is upheld, thousands of criminal convictions could be overturned. He said that although the precise impact of such a ruling is "uncertain at this time," prosecutors could conceivably find themselves in a position of having to retry many of those cases, throwing the already jammed court system into further confusion.

He said that under one statute alone, a 1982 measure dealing with theft and white-collar crime, more than 1,700 convictions could be called into question.

Mayor Marion Barry and other city officials expressed hope yesterday that the D.C. appeals court would decide the matter quickly and put to rest the legal questions surrounding the issue of home rule, which surfaced last year following the Supreme Court's decision on legislative vetoes.

Smith's ruling came in the case of Sylvester Cole, 20, who was convicted last year of aiding and abetting in a sexual assualt. Public defenders representing Cole had argued that his conviction was improper because he had not been prosecuted under the Sexual Assault Reform Act, a statute the City Council passed in 1981 but Congress overruled with a one-house veto.

Cole's attorneys argued that last year's Supreme Court ruling invalidated Congress' legislative veto, and that therefore the Reform Act is legally on the books in the District. Cole, along with many other defendants, was convicted under sexual assault statutes that existed before the City Council approved the Reform Act.

Smith agreed with the public defender that the Supreme Court ruling invalidates Congress' legislative veto. But Smith also ruled that "the City Council never had the authority to enact the Sexual Assault Reform Act and, therefore, the defendant was prosecuted under the proper statute."

Smith's ruling, in effect, gave the District government what it wanted by upholding Cole's conviction, but took away far more by stating that the council has no authority over criminal laws.

Smith wrote that Congress, when debating passage of the home rule charter, expressed grave concerns about giving D.C. lawmakers control of the criminal code. Congress would not have given the city even limited authority over the criminal code if not for the one-house-veto provision, he wrote. Therefore, he concluded, the City Council has no valid authority in that area.

D.C. laws that do not deal with the criminal code can be overturned only if both houses of Congress vote to do so. Those laws are not affected by Smith's ruling.

Smith sentenced Cole yesterday to between six and 20 years in prison. Public defender Francis Carter said his office plans to appeal Smith's ruling.

The appeals court already has before it another case centering on the Sexual Assault Reform Act and posing home rule questions.

In that case, U.S. vs. Wade Langley, the public defender made the same argument—that Langley's conviction was improper because he was not prosecuted under the Sexual Assault Reform Act.

Superior Court Chief Judge Carl Moultrie I upheld Langley's conviction, ruling that the Supreme Court decision invalidating legislative vetoes did not apply to the District and therefore did not upset Congress' veto of the Sexual Assault Reform Act.

"Both Judge Smith and Judge Moultrie upheld the prosecution in each of those cases, but they did so for different reasons," diGenova said.

DiGenova said an appeals court ruling upholding one or the other judge should effectively close the book on the controversy over the council's authority in criminal law matters.

Corporation Counsel Reid said she has formally asked the appeals court to expedite its review of the matter.

THE WHITE HOUSE

WASHINGTON

May 15, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Proposed Treasury Report on D.C. Chadha

OMB has asked for our views by noon today on a proposed Treasury report on the D.C. Chadha issue. You will recall that Treasury wanted to testify during the hearings before Senator Mathias's subcommittee on this issue, but that the testimony was pulled and a Treasury representative was made available at the hearings solely to answer technical questions. The reason for this was the view, shared by our office and Justice, that Treasury's only interest was that the issue be resolved, in order that the district could issue bonds, while the issue before the subcommittee was how the issue was to be resolved. Treasury thinks the instant report is necessary to clarify the answers to technical questions asked at the hearing.

The proposed report discusses the District's short- and long-term borrowing arrangements with Treasury, and the fact that the D.C. Chadha issue is the only obstacle to the District's successful entry into the bond market. On page 3, the report discusses the District's bond counsel opinion, and Treasury's "understanding" that resolution of the Chadha problem would require either a Supreme Court ruling or the adition of a severability clause to the Home Rule Act. This language must be changed. The Chadha cloud can be removed in other ways, for example, by passing the Administration's proposed bill or, for that matter, the District's proposed bill. Focusing on an "understanding" of what bond counsel requires that does not include the Administration's proposal obviously undermines the chances of enacting that proposal. Bond counsel did not include the Administration proposal as a means of removing the Chadha cloud simply because it was not before it. I recommend deleting the last two sentences of the second paragraph on page 3, and the entire third paragraph. I have no other objections.

Attachment

THE WHITE HOUSE

WASHINGTON

May 15, 1984

MEMORANDUM FOR JANET M. FOX
LEGISLATIVE ANALYST
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Treasury Report on D.C. Chadha

Counsel's Office has reviewed the above-referenced proposed report. We recommend deleting the last two sentences of the second paragraph on page 3, and the entire third paragraph on the same page. This language suggests that the only two ways to remove the Chadha cloud is through a Supreme Court decision or the addition of a severability clause to the Home Rule Act. This is of course untrue. Another way to remove the cloud would be to enact the Administration's proposed legislation. Nor is it correct to contend that the offending language is an accurate reflection of the view of bond counsel. I am not aware that bond counsel has considered and rejected the Administration proposal as a means of resolving the Chadha problem. Treasury's "understanding" that bond counsel insists upon either a Supreme Court ruling or the addition of a severability clause makes the mistake of assuming that these two ways of resolving the problem are the only ways of resolving the problem. Reiterating such an "understanding" has the effect of undermining the Administration's proposed bill, which of course does much more than simply add a severability clause to the Home Rule Act.

FFF:JGR:aea 5/15/84
cc: FFFielding/JGRoberts/Subj/Chron

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WASHINGTON

May 15, 1984

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FFF:JGR:aea 5/15/84
cc: FFFielding/JGRoberts/Subj/Chron

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

SPECIAL

May 14, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Justice

SUBJECT: Treasury revised draft report on D.C. Chadha as it relates to the District's finances

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

NOON TUESDAY, MAY 15, 1984

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

James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: Roger Adkins
John Roberts
John Cooney
Mike Horowitz
Chris Evangel

DRAFT: ML 5/11/84

Treasury

Revised Draft

Dear Mr. Chairman:

This letter addresses certain specific questions asked of Allan Schott, Assistant General Counsel (Domestic Finance), during the hearing of your Subcommittee on Governmental Efficiency and the District of Columbia on April 25, 1984. It also provides a more complete discussion of certain issues raised during the hearing relating to the financing situation of the District of Columbia vis-a-vis the Federal government in light of the decision of the Supreme Court in Immigration and Naturalization Service v. Chadha. In particular, the letter addresses the District's current financial relationship with the Treasury Department, the effects of Chadha on the District's prospects for borrowing in the market, and the situation that is likely to prevail until the Chadha issue is definitively resolved.

Treasury's interest in this matter lies in the obstacle Chadha, as it is interpreted by the District's bond counsel, has placed in the way of the District's efforts to meet all of its credit requirements in the market, thereby ending its financing dependence on the Treasury.

The District's authority to borrow short-term from the Treasury is based on 53 Stat. 1118 (47 D.C. Code 3401). This authority, which predates the Home Rule Act by 37 years, has no expiration date. The essential language of this provision is:

> The Secretary of the Treasury . . . is authorized and directed to advance, on the requisition of the Mayor of the District of Columbia, . . . such sums as may be necessary . . . to meet the general expenses of said District. . . .

The policy of this Administration with respect to short-term loans to the District pursuant to this authorization is that advances will be made only if the District is unable to obtain financing from sources other than the Treasury on reasonable terms.

Last January, Treasury rejected a request by the Mayor for advances on the ground that a number of financial institutions had indicated a willingness to meet the District's seasonal-financing requirements if arrangements could be concluded that would protect them from the risk of an adverse court decision growing out of Chadha. We agreed to provide this protection, and the District's first issuance of revenue-anticipation notes (RAN's) to a bank took place on February 1, 1984. A detailed discussion of this development appears later in this letter.

This will continue to be the policy of the Administration on short-term borrowing by the District in the future. Further advances will not be granted unless credit is unavailable from other sources on reasonable terms. In the event that the Chadha issue is not resolved to the satisfaction of the District's bond counsel before the next time short-term financing is required, Treasury will be prepared to enter into the sort of arrangement that was concluded last January to ensure that the lender is not exposed to the risk of an invalidity determination growing out of Chadha.

The District's current authority to borrow long-term from the Treasury for capital purposes is based on Title IV of the Omnibus Budget Reconciliation Act of 1981. The District pays interest on this borrowing at Treasury's long-term rates, which are significantly higher than the tax-exempt rates at which the District is eligible to borrow directly in the market.

The authorization for long-term borrowing by the District from the Treasury expires on September 30, 1984. No new authority has been requested. The Administration's position is that the District will be able to meet all of its long-term borrowing requirements in the marketplace beginning in FY 1985.

The District borrowed $145 million from Treasury in fiscal year 1983 under the long-term authority. The authorization for FY 1984 is $155 million, but only $115 million has been appropriated (P.L. 98-125, signed October 13, 1983), none of which has yet been drawn upon by the District. The District's FY 1984 budget provides for $150 million of new capital outlays. The lower appropriation reflects agreement between the Administration and the District in the development of the FY 1984 budget request that the City would be able to do at least $35 million of long-term financing in the market this year as the prelude to doing all of its long-term borrowing in the market in FY 1985. Accordingly, the appropriation of $115 million is characterized in the President's budget as "transitional borrowing authority."

The principal amount of the District's long-term borrowings from Treasury currently outstanding is $1,768 million. A table displaying the interest rate on the outstanding principal of each of the District's long-term borrowings and an amortization schedule for the entire amount accompanies this statement.

Since 1974, the Home Rule Act has authorized the District to meet its short- and long-term credit requirements in the market. The Act also provided, in recognition that the District would not be able to borrow in the market immediately, interim authority for continued borrowing for capital projects from the Treasury. For several years after home rule, however, a number of serious fiscal problems well known to your Subcommittee made it necessary for the District to continue its traditional reliance on Treasury for financing. Thus the interim borrowing authority was extended several times, most recently in 1981.

By this time a year ago, the District's progress in resolving these problems--notably including several years of balanced operating budgets under generally accepted accounting principles --made a serious effort to enter the market practicable. The District had engaged bond counsel, financial advisors, and underwriters. Preparations were under way for the District's first public offering of revenue-anticipation notes (RAN's) to meet the City's seasonal-financing requirements in FY 1984. Plans were also being developed for the District's first long-term issuance in the bond market at some point during the current fiscal year.

Then, in June 1983, the Supreme Court issued its decision in the Chadha case. After analysis of the decision, the District's bond counsel concluded that,

> Although we are of the opinion that if the Congressional veto provisions of the Home Rule Act were held invalid, such provisions would be held to be severable from the remaining provisions of the Home Rule Act in a properly presented case, the matter is not free from doubt and a court could hold the Home Rule Act invalid, in whole or in part. Such a holding could also invalidate the Act, the Notes and the Escrow Agreement and other governmental actions taken pursuant to the Home Rule Act. (Emphasis added.)

The District's bond counsel further indicated that it would be unable to render an unqualified opinion on the authority of the City to issue debt obligations until the doubt created by the Supreme Court's decision is resolved by the courts or the Congress. This effectively means, of course, that the District will be unable to issue its obligations in the market until the Chadha issue is resolved or, pending resolution, the lender is protected from the Chadha risk. It is important to recognize that the only relevant consideration is that this opinion of bond counsel exists. It is immaterial whether Treasury's attorneys or those of any other agency of the Federal government agree or disagree with the opinion.

It is our understanding that the District's bond counsel believes that resolution of the Chadha problem will require either (1) a ruling of the Supreme Court specifically affirming the inapplicability of the Chadha decision to the Home Rule Act or the applicability of its observations on severability to that Act, or (2) the enactment of legislation by the Congress that would add a severability clause to the Home Rule Act.

We further understand that the District has been advised by its bond counsel that the recent Superior Court rulings, which hold that the Chadha decision does not affect the Home Rule Act, do not resolve the issue. Bond counsel remains unwilling to issue an unqualified opinion on the ground that the next challenge to the Home Rule Act based on Chadha cannot be presumed to be decided by the courts in the District's favor.

On December 6, 1983, Mayor Barry wrote to Secretary Regan requesting advances, pursuant to 47 D.C. Code 3401, totaling $150 million in FY 1984. The Mayor indicated that the advances would be necessary because the District would be unable to implement its plans to sell RAN's in the market as long as the Chadha problem remained unresolved.

The District was advised that, before further advances could be considered, it would be necessary for Treasury to be satisfied that the City would be unable to obtain the financing from other sources on reasonable terms. The District was asked to provide (1) documentation of its efforts to identify private sources of financing, and (2) the evaluations of its financial advisors and senior bond counsel of the prospects for success in arranging such financing.

The requested information was provided by the District on December 22. The response included letters from bond counsel, the City's financial advisors and underwriters, and three commercial banks. The letters indicated that the District had excellent prospects of securing seasonal financing in the market were it not for the Chadha problem, but that no lender would be prepared to do business with the District if it were exposed to the risk of an invalidity determination by a court growing out of Chadha.

In light of this information, Treasury determined that credit would not be available to the District in the market if the lender were subject to the risk of a Chadha-based invalidity determination. Accordingly, Treasury suggested to District officials that discussions be initiated to determine whether a mutually acceptable arrangement could be concluded under which Treasury would insulate a lender from the Chadha risk.

The ultimate result of these discussions was an exchange of letters between the Secretary and the Mayor establishing an agreement protecting the commercial bank selected by the District for the private placement of the RAN's against the risk of an invalidity determination based on Chadha. The Secretary agreed to exercise his authority to advance--on behalf of the District--directly to the bank such amount as might be necessary to liquidate the City's obligations if a court ruling growing out of Chadha were to preclude the District from meeting its commitments under the terms of the notes.

With this arrangement in place, $150 million of District RAN's --carrying a tax-exempt interest rate of 6.6 percent and repayable on September 27, 1984--was privately placed on February 1, 1984. The arrangement was clearly understood not to constitute a Federal guarantee of the note issue. The institution with which the notes were placed assumed the full credit risks associated with the transaction. The arrangement was also regarded by both parties as a one-time expedient, entered into as a

bridge to carry the District across the period of uncertainty until the courts or the Congress would dispel the Chadha cloud once and for all.

The District is not expected to require short-term financing again before February 1985. Apart from the $35 million shortfall in long-term financing in FY 1984, which should be manageable without serious impairment of the City's capital program if the funds cannot be obtained in the market, the District is likely to be able to manage without new long-term financing before next spring, judging from the historical pattern of such borrowings from the Treasury.

The District will be unable to borrow in the market until bond counsel is satisfied that the Chadha issue is settled, or that the lender is effectively insulated from the Chadha risk by an arrangement such as that Treasury entered into last January. In the absence of such assurance by bond counsel, Treasury is convinced that no financial institution will make credit available to the District on reasonable terms.

It is also Treasury's view that, as soon as the Chadha issue is resolved, the District will have no trouble meeting all of its credit requirements in the market. The District's basic fiscal health is sound, and its borrowing prospects are very favorable.

Please let me know if you have any questions or if I can provide further information.

Sincerely,

Thomas J. Healey
Assistant Secretary
(Domestic Finance)

The Honorable
Charles McC. Mathias, Jr.
Chairman, Subcommittee on Governmental
Efficiency and the District of Columbia
United States Senate
Washington, D.C. 20510

Enclosures

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS

SUBCOMMITTEE ON
GOVERNMENTAL EFFICIENCY AND THE DISTRICT
OF COLUMBIA

WASHINGTON, D.C. 20510

May 4, 1984

Mr. Alan Schott
Assistant General Counsel
(Domestic Finance)
Main Treasury Building
15th Street & Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Mr. Schott:

Testimony on the Home Rule Act Amendment given by you before the Subcommittee is enclosed. Please indicate any corrections thereon, and return within 4 to 5 days after receipt so that your remarks, as revised, may appear in the final volume.

Changes in diction or expression, or in the interest of clarity, or to correct any errors in transcribing are permitted. Changes in substance are not permitted. Exceptions to this procedure may only be made with the express written permission of the Chairman. Please do not retype. Write legibly in a contrasting color, and return original transcript.

Please return to me, Room SH-442, at the above address.

Sincerely,

Sandi Muschette

Ms. Sandi Muschette
Chief Clerk

Enclosure
CM:sm

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U.S. Senate — April 25, 1984

Subcommittee on Governmental Efficiency and the District of Columbia of the Committee on Governmental Affairs — Washington, D.C.

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WITNESSES:

#08UNITED STATES DEPARTMENT OF THE TREASURY

#09STATEMENT OF ALAN SCHOTT, ASSISTANT GENERAL COUNSEL FOR DOMESTIC FINANCE

Senator Mathias. Mr. Schott, I understand that you do not have a statement; is that correct?

Mr. Schott. That is correct, Mr. Chairman.

I would be pleased to answer any questions that you may have regarding the district's financial situation as it relates to the Department of the Treasury.

Senator Mathias. Let me ask you a few questions starting with your view of the financial situation of the city at this time.

Mr. Schott. Do you have anything specific, Mr. Chairman, or --

Senator Mathias. -- well, I want to give you the broadest latitute.

Mr. Schott. I think that the district's bond counsel opinion speaks for itself and that is that the district will have, be unable to go to the market unless the CHADHA issue is resolved, and that will require action by this committee and by the Congress for that resolution, unless --

Senator Mathias. -- and the President's signature.

Mr. Schott. That is correct, Sir. Unless you want to wait for the courts to do this, but I think that is not the preferable route because of the time that it would take for

this to wend its way through the courts and for the Supreme Court to act on it.

Senator Mathias. Would you want to speculate on how the courts might come out if you, if we did follow the litigation route?

Mr. Schott. I don't know what good that would do, but I would be pleased to do so.

I think that the --

Senator Mathias. -- Well, you have just said that we are in trouble. You have just said that we have a problem, and I think we need to look at all the alternatives.

Mr. Schott. To answer that, then, I think that ultimately the Supreme Court would find that the Home Rule Act would stand, that debt issuances by the district would be valid and the district's authority to issue and incur that debt would be valid obligations of the District of Columbia.

However, the time that it would take to get that resolution would pose great difficulty for the district.

Senator Mathias. In other words, you think the CHADHA problem involved, embedded in the Home Rule Act would be declared severable?

Mr. Schott. Yes, Sir.

Senator Mathias. Well, now, to be a little more specific, you say you concur with bond counsel that there is an existing problem. How does that affect the status of

long-term borrowing authority?

Mr. Schott. The Home Rule Act took away the district's authority to borrow longterm from the Treasury Department, however, in the Budget Reconciliation Act of 1981, there was temporarily authority granted to the district to borrow from the Treasury on a long-term basis for capital needs. That authority, however, expires on September 30 of this year, and no new authority has been requested, therefore, as of September 30 of this year, there will be no new authority for the district to borrow longterm from the Treasury and the Treasury would have no other basis upon which to lend to the district.

Senator Mathias. Do you find a different problem with regard to short-term borrowing?

Mr. Schott. That is correct, Mr. Chairman.

The district's ability to borrow short-term is in a different section which was not amended by the Home Rule Act and that provides that the district may borrow as necessary from the Treasury Department for short-term needs.

Senator Mathias. Now given what you have said and given the fact that it is clear that the district cannot obtain certain funds independent of the Treasury until the CHADHA problems are resolved one way or another, either by legislation or by litigation, is the Treasury prepared to keep the windows open, both longterm and shorterm? That is the

$64 question: Are the windows going to stay open? That is the question that is going to determine whether we have a crisis or whether we don't.

Mr. Schott. Mr. Chairman, the district's authority, as I stated before, to borrow on a short-term basis is not affected by the Home Rule Act. However, the long-term authority has been terminated with the exception of the Budget Reconciliation Act of 1981 which provided a three-year window period during which the district could continue to borrow.

On a long-term basis, the Treasury simply has no authority or other ability to lend longterm to the District of Columbia.

On the short-term basis, however, the Treasury continues to have authority to make short-term loans on an as-needed basis, and that is dependent upon the ability of the district to obtain funds elsewhere.

Senator Mathias. My question to you is not only are you willing to keep the long-term window open but the short-term window open as well. Will that be the Treasury's policy?

Mr. Schott. The Treasury has not formulated a final position on this, primarily because we fully intended that the CHADHA would be resolved by Congress.

Senator Mathias. Well, may I suggest to you that the

Treasury better formulate a policy on this because, while I fully intend that this committee will do its duty under the Constitution, which I have just read, and exercise its authority and its responsibility under the Constitution, there are a lot of urgent things that the Congress ought to do that do not get done as soon as I think they ought to be done.

The Treasury better come face to face with the fact that it may have a problem on its hands of an urgent nature, and that is why I am sorry the President didn't send one of his White House assistants down here so that the White House could be fully informed on the possibilities that lie ahead.

I hope that you will take that message back to the Treasury Department that they had better face up to the fact that we are working on the problem but that we are a long way from solving it. The first of September is barreling down the road.

Mr. Schott. Yes, Sir; I will be glad to do that.

Senator Mathias. Senator Eagleton?

Senator Eagleton. Thank you, Mr. Chairman. I apologize for being a bit late. I don't want to replow old ground. I will try not to duplicate your line of inquiry.

What is the outstanding balance of long-term borrowing?

Mr. Schott. $1,768,000,000, Senator.

Senator Eagleton. Again, what are the terms of the borrowing -- interest balance, amortization schedule, payment

schedule and the like?

Mr. Schott. I don't have that information with me, Senator. I would be pleased to submit it for the record, if you wish.

Senator Eagleton. Fine.

Senator Mathias. Without objection, the record will remain open to receive that information.

[Material to be supplied follows:]

********** INSERT **********

Senator Eagleton. You are aware of the D.C. Code, Section 47-3401 which authorizes the Mayor and the District to request ""any money in the Treasury as may be necessary from time to time to meet the general expenses of said District.''

How does your policy mesh with that law which was codified in 1937 and was based on a predecessor statute passed as far back as 1922?

Mr. Schott. I am sorry, Sir; what do you mean -- our policy?

Senator Eagleton. Well, the policy of closing the window.

I will read from the statute again, the excerpt from it, 47-3401: authorizes the Mayor of the District to request ""any money in the Treasury as may be necessary from time to time to meet the general expenses of said District.'' As I

say, the law goes back as far as 1922.

Mr. Schott. Yes.

Senator Eagleton. Having closed the window, how do you square that with this excerpt from the statute that I just read?

Mr. Schott. First, Senator, I should point out -- I don't believe that the Treasury has closed that window.

Senator Eagleton. If you do close it at sometime in the predictable or foreseable future?

Mr. Schott. I am not aware of any intention to close it. The statute provides that this short-term advances are available as necessary. That has been interpreted to mean that money is not available elsewhere to the district. This is what brought about the Sidley & Austin bond counsel that said that they could not give an unqualified opinion in light of the CHADHA decision.

Senator Eagleton. Correct.

Mr. Schott. The district was able to go to a private lender with an arrangement provided for by the Treasury wherein the Treasury Department agreed to pay directly to that lender any funds that were owed by the district in the event that the district was, as a result of a CHADHA decision, precluded from doing so.

Now, this case --

Senator Eagleton. -- if in the future the district

seeks to go to a private lender and a private lender says, ""No, this CHADHA nightmare just boggles our minds and as much as we would like to do business with you, we are going to decline, based on the CHADHA dilemma."' Then would the Treasury window be open?

Mr. Schott. In essence, Senator, that is what happened in December and January, December of 1983 and January of 1984. Private lenders were quite willing to accept the credit risk associated with making loans to the district. They were, however, not willing to accept the risk that an invalidity determination would be issued against the district, that is, that the district had no authority to enter into these obligations.

Based on that one reservation, bond counsel was able to issue an opinion that the bonds would be valid but for the CHADHA decision. Treasury backed up the district by agreeing -- in a series of letters between the Mayor and the Secretary of the Treasury agreeing to make payment on behalf of the district under the authority of Section 3401 in the event the district was precluded from doing so as a result of a CHADHA decision.

Senator Eagleton. Will the lenders, in your opinion -- you study these things -- be willing to do that again?

Mr. Schott. I see no reason why not.

Senator Eagleton. And if they won't and say that one

time is enough and that they are too nervous, too apprehensive and too many questions relating to CHADHA, then the Treasury window would be open; is that right?

Mr. Schott. I can't speak for the Secretary, but I believe that Treasury would then consider making direct advances.

Senator Eagleton. This last question is just for the record.

We have all been very supportive of the district's financial independence and have all hoped that the city could cut loose from the Treasury. Congress, after all, authorized $38 million a few years back for the temporary commission on financial oversight of the District of Columbia. I happen to have chaired those hearings between 1976 and 1981. They totally revamped and modernized the city's financial structure. The city, as a result, has turned in four years of clean audits and, as I understand it, was expecting a high bond rating.

So, let me ask this. It is not the city's fault, is it, that the Supreme Court ruled as it did in CHADHA?

Mr. Schott. That is correct, Senator.

Senator Eagleton. The city has committed no sin, nothing for which it should be punished. It happens to fall under the CHADHA decision; isn't that correct?

Mr. Schott. That is correct.

Senator Eagleton. So, I got in on the tag-end of a question from Senator Mathias to you, and perhaps I didn't hear it correctly, but I got the implication in that previous Mathias question that the Administration is seeking to justify the closing of the city's borrowing from the Treasury so long as the CHADHA problem remains.

Did I misinterpret that exchange between you and Senator Mathias? I hope I did.

Mr. Schott. I believe you did, Senator.

Senator Eagleton. If in fact you will not ultimately close the window, why is it you are requiring the city to go to a private lender at a higher rate and with greater administrative costs in so doing?

Mr. Schott. Are you talking about long-term lending or short-term lending, Senator?

Senator Eagleton. I guess it will be a mixture of both; won't it?

Mr. Schott. Alright, then I will answer, but, first of all, the long-term borrowing authority that the district has requires that interest be paid at Treasury's long-term rates. If the district were to go to market, it would be able to offer its obligations at a tax-exempt rate, which would be a much lesser interest rate than Treasury is required to impose upon its borrowings, like the district.

On a short-term basis, its borrowings would, for the

reason, be cheaper than rates the Treasury would be required to pay.

And I should point out that in going to a private lender, the Treasury has imposed no fees or charges or interest These would be incurred only if the Treasury would be required to make payment on behalf of the district.

Senator Eagleton. That is not exactly the way I have been told it.

Is Mr. Hill here? Mr. Chairman, may I ask Mr. Hill a question?

Senator Mathias. Certainly.

Senator Eagleton. Mr. Hill, identify yourself for the record, please.

Mr. Hill. I am Alfonse Hill, Deputy Mayor for Finance for the District of Columbia.

Senator Eagleton. You have heard my question to the witness and his answer thereto.

Does that answer square with what you think are the facts in this matter insofar as where you can get the cheapest money?

Mr. Hill. Not completely, Senator.

I believe his assessment of the long-term borrowing is much more accurate. I think we can go to the market and get long-term money at a cheaper rate than we can at the Treasury.

Senator Eagleton. Correct.

Mr. Hill. The circumstances on the short-term money, historically, we have borrowed up to $140 million from the Treasury, and that has always been at no interest, at no cost to the district in accordance with the section of the charter which, I believe, the Chairman read earlier, yourself, read. We have never paid any interest for that money. It is within the very recent past that the Treasury has stated that their position is that there will be fees assessed on those funds, and it is also the Treasury's position that they have taken that -- their interpretation of that section of the statute requires a credit-elsewhere test, in essence, which makes us like a small business administration loan. We have to go out to the banks and attempt to borrow and have them say, ""No'' to us, and then we should take this evidence to the Treasury to demonstrate to them that we cannot borrow the money anyplace else.

In the fact of that kind of borrowing, Treasury is saying, ""We will now stand behind your credit.'' Treasury is still not loaning us the money or providing the money. They are telling us, ""We will make an accommodation with a financial institution.''

I will say to this body that that is most cumbersome way for us to do any kind of financial planning for the District of Columbia. We have to go almost to the brink of

collapse before we are able to demonstrate that we need the money. Financial planning is very, very difficult for us under those kinds of circumstances. We need to know what the game rules are in borrowing money and in financing the District of Columbia, and at times it is not certain and with the CHADHA cloud I think it is today one set of parameters and tomorrow another. This is what is frightening to me in terms of trying to contain and manage a two-billion-dollar entity.

So, I think his assessment onthe long-term borrowing is accurate. The assessments on the short-term borrowing, Senator, I am not too sure what the Treasury's position is going to be this fall when we need short-term borrowing.

Will they stand behind us in terms of borrowing from the bank? Will they provide the money? If CHADHA is not cleared up, I am not too sure.

Senator Eagleton. Mr. Schott, will you?

Mr. Schott. I am not in a position to speak for the Secretary --

Senator Mathias. -- that is the very question that I have asked Mr. Schott to take back to the department.

Mr. Schott. And, I have agreed to do that.

Senator Mathias. I have urged his associates in the department to address this problem very seriously.

Mr. Schott. I would point out to the committee that

the long-term question is a serious one because Treasury simply has no authority to make long-term loans beyond September 30 of this year when statutory authority to do so expires.

With respect to the short-term lending, Mr. Hill correctly points out that Treasury-in interpreting Section 3401 has applied a credit-elsewhere test, but in so doing we look at the terms of the statute, and in particular those sums as may be necessary from time to time.

Fiscal Year 1983 was the first year that the district's financial house was in order in order to go to market, and they had done all the necessary steps to do so. They had hired the financial advisors, underwriters, bond counsel and were perfectly prepared to do so, and as you, Senator, pointed out, but for the CHADHA decision, which was not their fault, they would have done so. They would have gone to the private market and made the borrowings necessary for their short-term needs.

However, given the fact when you look at the statute and the determination is ""as necessary'' -- ""if credit is not available elsewhere.'' Having looked at that, we imposed that requirement on the district in examining their situation this year; nonetheless, made the backup for the district in order for them to get the loan from the First National Bank of Chicago.

Senator Mathias. Thank you very much, Mr. Schott.

Mr. Schott. Thank you.

Senator Mathias. Our final witness for the day is the United States Attorney for the District of Columbia, Mr. Joseph DiGenova.

It is -- I take it as a personal pleasure for the Chair to welcome Mr. DiGenova back to Capitol Hill, back to his old haunts, and I think it is valuable that he is here because he has intimate knowledge of the operation of the Congress, and he now carries serious responsibilities in the Executive Branch of government, so he has some comprehensive view of the nature of this problem.

But I must say to you, Joe, that you carry a heavy load here today because all of the might, majesty, dominion, and power of the Federal Government is resting on your shoulders. We have not had direct expression from the White House. We appreciate Mr. Schott's testimony, but he said, very frankly, that the Treasury has no policy, so it is all up to you.