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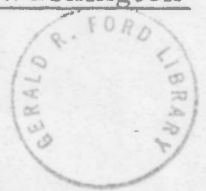
cc: Jim Cannon

Dist. of
Columbia

THE WHITE HOUSE
WASHINGTON

March 2, 1976

MEMORANDUM FOR: ✓ JUDY HOPE
ROGER ATKINS - 3133
FROM: WILLIAM NICHOLSON *wnw*
SUBJECT: Invitation to the President to participate in
the inauguration of METRO service in Washington
on March 27



I would appreciate your comments and recommendation on the attached invitation.

Thank you.

Recommendation: *Scheduling permitted, the President should participate*

COMMENTS: *On March 27, the first 4 1/2 miles of METRO will open, including underground and elevated portions. The President has been supportive and deserves credit for this happy event.*

Although the delays in the entire system, and the projected budget overruns raise questions (particularly in Congress these days) about the size of the completed METRO system, the event on the 27th should be a happy one -- a first step in this long awaited solution to some of D.C.'s serious transportation problems.

Roger Atkins and Sgt. Patricelli (Administrator of WMATA) concur in this recommendation.

Judith Hope

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

600 Fifth Street, N.W., Washington, D. C. 20001

(202) 537-1234

MAR 1

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JOHN J. DUNN
Assistant Controller

ARTHUR BRIDGE
Assistant Controller

February 27, 1976

The Honorable John O. Marsh, Jr.
Counsellor to the President
The White House
Washington, D.C. 20500

Dear Jack:

On the morning of March 27, 1976, Metro will reach its most significant milestone when we begin regular service of the National Capital Area's Rapid Rail System.

The Board of Directors wishes to extend an invitation to the President to participate in inauguration of the service. However, before doing so it seemed to me more appropriate that I should seek your advice as to the possibility and the steps to be taken by us. We would also be pleased if you, too, could take part.

Sincerely,

Warren Quenstedt



MAR 13 1976

D.C.

THE WHITE HOUSE
WASHINGTON
September 2, 1976

MEMORANDUM FOR JAMES CANNON
FROM: JUDY JOHNSTON *Judy*
SUBJECT: Enrolled Bill Reports

The following enrolled bill reports were due from OMB by cob Tuesday, September 1 and have not yet been received.

Quinn
?

H.R. 12261 - Act to extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District.

McConahay

H.R. 12455-Act to amend title XX of the Social Security Act so as to permit greater latitude by the States in establishing criteria respecting eligibility for social services, to facilitate and encourage the implementation by States of child day care services programs, etc.

Both of the above bills bear a last day for action of Tuesday, September 7.



f.

file

Date: September 2

Time: 500pm

FOR ACTION: Steve McConahey cc (for information): Jack Marsh
 Dawn Bennett Jim Connor
 Max Friedersdorf Ed Schmults
 Ken Lazarus
 Robert Hartmann (veto message attached)

FROM THE STAFF SECRETARY

DUE: Date:

Time:

September 3

100pm

SUBJECT:

H.R. 12261-DC Criminal Laws

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President



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

SEP 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12261 - District of Columbia
Criminal Laws
Sponsor - Rep. Diggs (D) Michigan

Last Day for Action

September 7, 1976 - Tuesday

Purpose

To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District by direct amendment of the D.C. Criminal Code or through changes in police regulations.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto message attached)
District of Columbia Government	Disapproval (Veto message attached)
Department of Justice	No objection

Discussion

The District of Columbia Home Rule Act, approved December 24, 1973, delegates to the Council of the District of Columbia the authority to make changes in the criminal laws of the District, but not until January 3, 1977. The Congress, in a related action, enacted the District of Columbia Law Revision Commission Act, approved August 21, 1974, which established the District of Columbia Law Revision Commission to examine the District's laws and to recommend,



in annual reports to the Congress, changes in them. The Commission--a D.C. Government body-- did not become operational until a year later and now expects its work on the revision of the criminal laws to be completed within the next two years.

The enrolled bill would extend for two additional years, until January 3, 1979, Congress' sole jurisdiction over the criminal laws of the District for the purpose of giving the Commission adequate time to complete its work and make its recommendations to the Congress. The bill also contains a provision intended to preclude the Council's amendment of police regulations in a manner which, effectively, alters the Criminal Code. The provision was added by amendment on the House floor by Representative Dent of Pennsylvania, and was apparently directed at the District of Columbia's Firearms Control Regulations Act, approved by the Mayor on July 23, 1976, which is presently being considered by Congress. Mr. Dent explained that he wanted to prohibit any criminal code changes by "... any subterfuge or any roundabout, off-the-street method by any departmental police regulation."

The Dent amendment was passed 262 to 92 and the amended bill was then approved by voice vote. Twenty-four hours later, the bill was passed by the Senate without debate on a voice vote.

In its report on the bill, the House D.C. Committee maintains that extension of the prohibition on the Council's changing the Criminal Code is necessary because completion of the comprehensive revision and recodification of the District's Criminal Code by the Congress was intended to be a prerequisite to the transfer of jurisdiction to the Council over the D.C. Criminal Code. The Committee report points out that the conference report on the Home Rule Act stated:

It is the intention of the conferees that their respective Committees will seek to revise the District of Columbia Criminal Code prior to the effective date of the transfer of authority referred to. (Emphasis added.)



The House D.C. Committee report further notes that the conferees on the Home Rule Act provided for a single House veto of Criminal Code changes that might be made by the Council once the jurisdiction was transferred from the Congress to the Council. The report states:

This reinforces the commitment of the Congress to maintain exclusive jurisdiction over amendments to the Criminal Code until the Law Revision Commission has completed its study and made its recommendations, and the Congress has acted on the totally revised Criminal Code.

The District of Columbia Government, in its attached views letter, agrees that a major revision of the D.C. Criminal Code is necessary and should not be undertaken without the benefit of the Law Revision Commission's recommendations. It points out, however, that empowering the D.C. Council to enact changes in the D.C. Criminal Code should not be delayed further, because there are a number of additions or revisions to the criminal laws which are urgently needed.

A number of such provisions have been proposed by the District to the Congress -- for example, proposals to prohibit the unauthorized use of credit cards, to include mobile homes within the scope of the crime of burglary, and to make it unlawful to obtain telecommunication services through misrepresentations. Moreover, the D.C. Government maintains that enactment of such changes would not interfere at all with the work of the Commission.

The effect of the Dent amendment in the enrolled bill is unclear. As noted earlier, it was apparently intended to prohibit the Firearms Control Regulations Act which would ban possession of handguns to anyone who does not, on the date of its enactment, possess a valid registration for a handgun. That measure will become effective unless Congress disapproves it within 30 legislative days, a period which will elapse sometime at the end of September. However, the Department of Justice advises, in its attached views letter, ~~that the enrolled bill, in and of itself, would not invalidate the gun control measure.~~

*with no power
to be made public*



Moreover, the effect of the bill is also uncertain in other respects. First, the amendment references articles regulated under Title 22 of the D.C. Criminal Code. However, it is not clear whether licensing of firearms would be affected by the amendment because under the District of Columbia Code, the licensing of firearms is carried out pursuant to authority found in Title I of the D.C. Code, a provision which predates home rule. Second, the amendment references "criminal offenses." In the District of Columbia it is not clear what constitutes a "criminal offense" since District of Columbia law, as interpreted by the courts, is not settled in regard to whether or not criminal sanctions imposed pursuant to police powers translate civil violations into criminal matters.

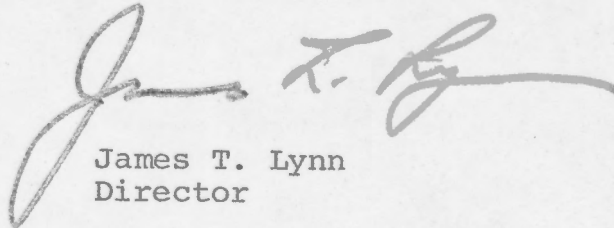
We agree with the District of Columbia recommendation that the bill be disapproved. It can be argued that a further extension of the limitation on the D.C. Council is consistent with the original intent of Congress that a thorough revision of the D.C. Criminal Code be completed before the D.C. Council is empowered to enact changes in the criminal law. However, we believe the basic issue presented by the bill is whether the two-year extension is necessary to protect the Federal interest in the District of Columbia and if it and the Dent amendment are consistent with the purpose of the Home Rule Act, namely the grant to the inhabitants of the District of Columbia of powers of local self-government.

In our view, the bill is not consistent with the right of self-government for the citizens of the District of Columbia under the Home Rule Act. Extending the limitation on the D.C. Council's authority to change the Criminal Code is unnecessary. Additions to the D.C. criminal laws are needed now to enable the District to meet the challenges of a changing society. Granting the power to the D.C. Council to legislate on local matters under the Code would not interfere with the work of the Law Revision Commission and the Council does not require the results of the Commission's study to weigh the need for such legislation. Further, this bill is not necessary to enable the Congress to protect the Federal interest in the District of Columbia. The



Home Rule Act gives the Congress clear authority to disapprove D.C. Government legislative acts. Finally, the Dent amendment, as noted above, is both an unnecessary erosion of the home rule concept and uncertain in its effect on other actions of the D.C. Government.

A proposed veto message is attached for your consideration.

A handwritten signature in dark ink, appearing to read "James T. Lynn". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

James T. Lynn
Director

Enclosures



TO THE HOUSE OF REPRESENTATIVES

I am returning, without my approval, H.R. 12261, a bill "To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District."

The purpose of the bill is to give the District of Columbia Law Revision Commission additional time, until January 3, 1979, within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission, which was established subsequent to the enactment of the District of Columbia Self-Government and Governmental Reorganization Act, has begun the task of reviewing the criminal laws of the District but will not be able to complete its work by January 3, 1977, when, under current law, the D.C. Council will be able to amend the District of Columbia Criminal Code.

I agree that no major revision of the District's criminal laws should be undertaken without the benefit of the Commission's recommendations. I do not agree, however, that it is either wise or necessary to delay further the time when the citizens of the District of Columbia, through their elected representatives, may exercise the right of self-government in an area that affects their daily lives.

The Congress should not prohibit changes in the District of Columbia's criminal laws which may be needed now to meet the problems of the community. A number of such changes have been proposed by the District and are pending before Congress. Granting the power to the District of Columbia Council to legislate on local matters such as these would not interfere with the work of the Commission. Furthermore, the Council does not require



the results of the Commission's study to weigh the need for such legislation. Nor is this bill necessary to enable the Congress to protect the Federal interest in the District of Columbia. The home rule law gives the Congress clear authority to disapprove District of Columbia legislative acts.

Finally, an amendment to H.R. 12261, added on the floor of the House with hasty and inadequate consideration, would prohibit the Council from taking any action "with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code" (relating to weapons), until January 3, 1979. This provision is objectionable on two grounds: first, like the bill as a whole, it is an unnecessary erosion of the home rule concept; second, it is ambiguous and its potential effect on other actions of the District of Columbia Government is unclear.

For these reasons, I am returning H.R. 12261 without my approval.

THE WHITE HOUSE

September , 1976





THE DISTRICT OF COLUMBIA

WALTER E. WASHINGTON
MAYOR

WASHINGTON, D. C. 20004

AUG 27 1976

Mr. James M. Frey
Assistant Director for Legislative
Reference
Office of Management and Budget
Executive Office Building
Washington, D. C. 20503

Dear Mr. Frey:

This is in reference to the facsimile of the enrolled enactment of Congress entitled:

H.R. 12261 - To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District

which you transmitted on August 25, 1976. The enrolled bill would amend section 602(a)(9) of the District of Columbia Self-Government and Governmental Reorganization Act (the "Self-Government Act") [D.C. Code, § 1-147(a)(9)] by extending for two years the prohibition against the Council of the District of Columbia taking any action "with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners)."

Section 602(a)(9) currently provides that the Council may exercise such authority on January 3, 1977; this bill would postpone the date on which the Council could

exercise this authority to January 3, 1979. Additionally, the bill, as amended during debate on the floor of the House of Representatives upon the adoption of the "Dent Amendment", prohibits the Council from taking any action "with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code" (relating to weapons), until January 3, 1979. The bill's provisions are totally inconsistent with the principal, stated purpose of the Self-Government Act, namely the "grant to the inhabitants of the District of Columbia of powers of local self-government", P.L. 93-198, § 102 (a), 87 Stat. 777; it therefore is unacceptable.

An essential aspect of the right of self-government is presently denied to the citizens of the District, as they still are denied the authority to enact criminal laws and those relating to judicial procedure and the treatment of prisoners. Notwithstanding that the proper subjects of such laws are of paramount concern to the inhabitants of this City, this bill seeks a further postponement of the citizen's authority to address these concerns, for another two years. It would deny to the citizens of the District the exercise of a right -- through its elected officials -- explicitly granted to them seventy years ago, when Congress provided:

The Council is hereby authorized and empowered to make ... all such usual and police regulations ... as the Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind. D.C. Code, § 1-227.

The original purpose of the bill, as stated by Chairman Diggs, its author, was to give the District of Columbia Law Revision Commission sufficient time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission, which was established subsequent to the enactment of the Self-Government Act by P.L. 93-379, 88 Stat. 480, has begun the task of reviewing the criminal laws of the District and has made significant



progress. The District agrees that no major revision of its criminal laws should be undertaken without the benefit of the Commission's recommendations, and so informed the House District Committee by letter of June 29, 1976. However, there are additions to the criminal laws which are needed to enable the District to meet the challenges of a changing society. A number of such provisions have been proposed by the District to the Congress -- for example, proposals to prohibit the unauthorized use of credit cards, to include mobile homes within the scope of the crime of burglary, and to make it unlawful to obtain telecommunication services through misrepresentation. Nonetheless, these proposals are still pending before the House District of Columbia Committee.

The enactment by the Council of provisions such as the foregoing would not interfere with the work of the Commission. And it cannot be said that the Council requires the result of the Commission's study to weigh the need for such legislation. Nor can it be said that in the absence of the provisions of the subject bill there would be no Congressional "oversight" of acts of the Council pertaining to the criminal laws: § 602(c)(2) of the Self-Government Act provides that such act of the Council shall take effect only if not disapproved within thirty days by either the House or the Senate.

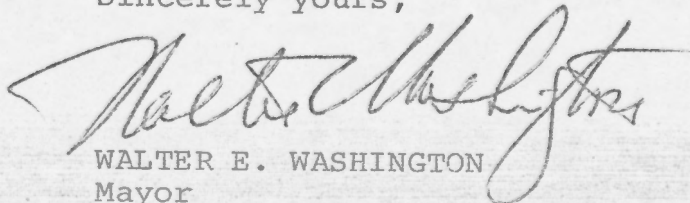
The discussion of the amendment on the floor demonstrates that it was premised on a fundamental misunderstanding of the Self-Government Act. Its stated purpose is to "prohibit ... Criminal Code changes by any subterfuge or any roundabout, off-the-street method by any departmental police regulation". Cong. Rec. H. 8798 (Aug. 23, 1976, daily ed.). These considerations aside, the impetus for the amendment -- the passage of the Council of the Firearms Control Regulations Act of 1975 -- was an exercise by the Council of explicit police power conferred on it by D.C. Code, § 1-277. Its legislation does no more than to amend similar police power



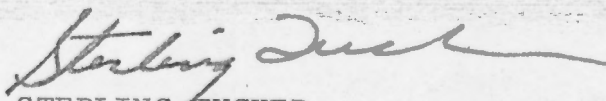
regulations adopted by the prior appointed Council, in 1969, under the same authority. Thus, the amendment seeks to strip the City's elected Council of an authority which Congress conferred long prior to its grant of home rule, and permitted an appointed Council to exercise.

In conclusion, this bill would extend, for an additional two years, the period during which the people of the District may not enact, regardless of manifest need, any criminal laws, nor any police regulations with respect to any weapon mentioned in D.C. Code, § 22-3201, et seq. Its provisions are inconsistent with the spirit of the Self-Government Act and the principle of self-determination. It does not serve any Federal interest; rather it is addressed to a matter which is essentially local in nature. Therefore, the District Government strongly urges that H.R. 12261 be disapproved. A proposed message of disapproval is attached.

Sincerely yours,



WALTER E. WASHINGTON
Mayor



STERLING TUCKER
Chairman
Council of the District of Columbia

Attachment



PROPOSED MESSAGE OF DIAPPROVAL

I am returning, without my approval, H.R. 12261, a bill "To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District." This bill would extend for two years, or until January 3, 1979, the prohibition against the taking by the Council of the District of Columbia of any action with respect to any provisions of the laws codified in the District of Columbia Code relating to crimes, criminal procedure, and the treatment of prisoners. Additionally, the bill would prohibit the Council from taking any action "with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code" (relating to weapons), until January 3, 1979.

I view the provisions of this bill as totally inconsistent with the principal, stated purpose of the District of Columbia Self-Government and Governmental Reorganization Act, namely the "grant to the inhabitants of the District of Columbia powers of local self-government." I am therefore unable to accept these provisions.



An essential aspect of the right of self-government, which is fundamental to our system of democracy, is presently denied to the citizens of the District, as they still are without authority to enact criminal laws and those relating to judicial procedure and the treatment of prisoners. Notwithstanding that the proper subjects of such laws are of paramount concern to the inhabitants of the District, this bill seeks a further postponement of the citizen's authority to address these concerns, for another two years. It also would deny to the citizens of the District the exercise of a right -- through its elected officials -- explicitly granted to them seventy years ago, when Congress provided:

The Council is hereby authorized and empowered to make ... all such usual and police regulations ... as the Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind.

The original purpose of the bill was to give the District of Columbia Law Revision Commission sufficient time within which to make recommendations to the Congress



for the comprehensive revision of the District of Columbia Criminal Code. The Commission, which was established subsequent to the enactment of the Self-Government Act has begun the comprehensive task of reviewing the criminal laws of the District and has made significant progress. I agree that no major revision of the District's criminal laws should be undertaken without the benefit of the Commission's recommendations. However, there are additions to the criminal laws which are needed to enable the District to meet the challenges of a changing society. A number of such provisions have been proposed by the District to the Congress -- for example, proposals to prohibit the unauthorized use of credit cards, to include mobile homes within the scope of the crime of burglary, and to make it unlawful to obtain telecommunication services through misrepresentation.

The enactment by the Council of provisions such as the foregoing would not interfere with the work of the Commission. And it cannot be said that the Council requires the result of the Commission's study to weigh the need for such legislation. Nor can it be said that in the absence of the provisions of H.R. 12261 there would be no Congressional "oversight" of Section 602(c)

(2) of the Self-Government Act provides that such acts of the Council shall take effect only if not disapproved within thirty days by either the House or the Senate.

The impetus for the amendment relating to weapons-- the Firearms Control Regulations Act of 1975 -- was adopted by the Council in an exercise of the explicit police power granted it by D.C. Code, § 1-277, and for the purpose of amending similar regulations adopted by the prior appointed Council in 1969. Thus, the amendment seeks to strip the City's elected Council of an authority which Congress conferred in 1906 -- long prior to its grant of home rule.

This bill would extend, for an additional two years, the period during which the people of the District may not enact, regardless of manifest need, any criminal laws, nor any police regulations with respect to weapons. Its provisions are inconsistent with the spirit of the Self-Government Act and the principle of self-determination. It does not serve any Federal interest; rather it is addressed to a matter which is essentially local in nature.

For these reasons I am returning H.R. 12261 and asking the Congress to reconsider this bill.



Department of Justice
Washington, D.C. 20530

August 30, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

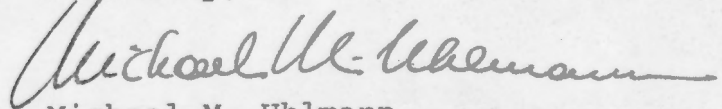
Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 12261, "To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District."

The legislation embodied in the enrolled bill involves issues of policy which are of primary interest to the Congress and the District of Columbia Government. However, as to the specific issue of what effect Executive approval of H.R. 12261 would have on the Council of the District of Columbia enactment, the "Firearms Control Regulations Act of 1975", (act 1-142), it is the opinion of the Department that H.R. 12261, in and of itself, would not render the above referred to measure invalid.

The Department of Justice has no objection to Executive approval of this legislation.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General



Justice

Tab A



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

SEP 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12261 - District of Columbia
Criminal Laws
Sponsor - Rep. Diggs (D) Michigan

Last Day for Action

September 7, 1976 - Tuesday

Purpose

To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District by direct amendment of the D.C. Criminal Code or through changes in police regulations.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto message attached)
District of Columbia Government	Disapproval (Veto message attached)
Department of Justice	No objection

Discussion

The District of Columbia Home Rule Act, approved December 24, 1973, delegates to the Council of the District of Columbia the authority to make changes in the criminal laws of the District, but not until January 3, 1977. The Congress, in a related action, enacted the District of Columbia Law Revision Commission Act, approved August 21, 1974, which established the District of Columbia Law Revision Commission to examine the District's laws and to recommend,



in annual reports to the Congress, changes in them. The Commission--a D.C. Government body-- did not become operational until a year later and now expects its work on the revision of the criminal laws to be completed within the next two years.

The enrolled bill would extend for two additional years, until January 3, 1979, Congress' sole jurisdiction over the criminal laws of the District for the purpose of giving the Commission adequate time to complete its work and make its recommendations to the Congress. The bill also contains a provision intended to preclude the Council's amendment of police regulations in a manner which, effectively, alters the Criminal Code. The provision was added by amendment on the House floor by Representative Dent of Pennsylvania, and was apparently directed at the District of Columbia's Firearms Control Regulations Act, approved by the Mayor on July 23, 1976, which is presently being considered by Congress. Mr. Dent explained that he wanted to prohibit any criminal code changes by "... any subterfuge or any roundabout, off-the-street method by any departmental police regulation."

The Dent amendment was passed 262 to 92 and the amended bill was then approved by voice vote. Twenty-four hours later, the bill was passed by the Senate without debate on a voice vote.

In its report on the bill, the House D.C. Committee maintains that extension of the prohibition on the Council's changing the Criminal Code is necessary because completion of the comprehensive revision and recodification of the District's Criminal Code by the Congress was intended to be a prerequisite to the transfer of jurisdiction to the Council over the D.C. Criminal Code. The Committee report points out that the conference report on the Home Rule Act stated:

It is the intention of the conferees that their respective Committees will seek to revise the District of Columbia Criminal Code prior to the effective date of the transfer of authority referred to. (Emphasis added.)



The House D.C. Committee report further notes that the conferees on the Home Rule Act provided for a single House veto of Criminal Code changes that might be made by the Council once the jurisdiction was transferred from the Congress to the Council. The report states:

This reinforces the commitment of the Congress to maintain exclusive jurisdiction over amendments to the Criminal Code until the Law Revision Commission has completed its study and made its recommendations, and the Congress has acted on the totally revised Criminal Code.

The District of Columbia Government, in its attached views letter, agrees that a major revision of the D.C. Criminal Code is necessary and should not be undertaken without the benefit of the Law Revision Commission's recommendations. It points out, however, that empowering the D.C. Council to enact changes in the D.C. Criminal Code should not be delayed further, because there are a number of additions or revisions to the criminal laws which are urgently needed.

A number of such provisions have been proposed by the District to the Congress -- for example, proposals to prohibit the unauthorized use of credit cards, to include mobile homes within the scope of the crime of burglary, and to make it unlawful to obtain telecommunication services through misrepresentations. Moreover, the D.C. Government maintains that enactment of such changes would not interfere at all with the work of the Commission.

The effect of the Dent amendment in the enrolled bill is unclear. As noted earlier, it was apparently intended to prohibit the Firearms Control Regulations Act which would ban possession of handguns to anyone who does not, on the date of its enactment, possess a valid registration for a handgun. That measure will become effective unless Congress disapproves it within 30 legislative days, a period which will elapse sometime at the end of September. However, the Department of Justice advises, in its attached views letter, that the enrolled bill, in and of itself, would not invalidate the gun control measure.



Moreover, the effect of the bill is also uncertain in other respects. First, the amendment references articles regulated under Title 22 of the D.C. Criminal Code. However, it is not clear whether licensing of firearms would be affected by the amendment because under the District of Columbia Code, the licensing of firearms is carried out pursuant to authority found in Title I of the D.C. Code, a provision which predates home rule. Second, the amendment references "criminal offenses." In the District of Columbia it is not clear what constitutes a "criminal offense" since District of Columbia law, as interpreted by the courts, is not settled in regard to whether or not criminal sanctions imposed pursuant to police powers translate civil violations into criminal matters.

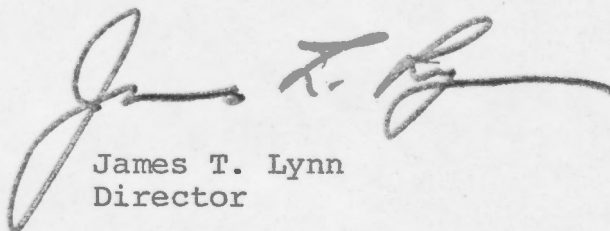
We agree with the District of Columbia recommendation that the bill be disapproved. It can be argued that a further extension of the limitation on the D.C. Council is consistent with the original intent of Congress that a thorough revision of the D.C. Criminal Code be completed before the D.C. Council is empowered to enact changes in the criminal law. However, we believe the basic issue presented by the bill is whether the two-year extension is necessary to protect the Federal interest in the District of Columbia and if it and the Dent amendment are consistent with the purpose of the Home Rule Act, namely the grant to the inhabitants of the District of Columbia of powers of local self-government.

In our view, the bill is not consistent with the right of self-government for the citizens of the District of Columbia under the Home Rule Act. Extending the limitation on the D.C. Council's authority to change the Criminal Code is unnecessary. Additions to the D.C. criminal laws are needed now to enable the District to meet the challenges of a changing society. Granting the power to the D.C. Council to legislate on local matters under the Code would not interfere with the work of the Law Revision Commission and the Council does not require the results of the Commission's study to weigh the need for such legislation. Further, this bill is not necessary to enable the Congress to protect the Federal interest in the District of Columbia. The



Home Rule Act gives the Congress clear authority to disapprove D.C. Government legislative acts. Finally, the Dent amendment, as noted above, is both an unnecessary erosion of the home rule concept and uncertain in its effect on other actions of the D.C. Government.

A proposed veto message is attached for your consideration.

A handwritten signature in dark ink, appearing to read "James T. Lynn". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke extending to the right.

James T. Lynn
Director

Enclosures





THE DISTRICT OF COLUMBIA

WALTER E. WASHINGTON
MAYOR

WASHINGTON, D. C. 20004

AUG 27 1976

Mr. James M. Frey
Assistant Director for Legislative
Reference
Office of Management and Budget
Executive Office Building
Washington, D. C. 20503

Dear Mr. Frey:

This is in reference to the facsimile of the enrolled enactment of Congress entitled:

H.R. 12261 - To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District

which you transmitted on August 25, 1976. The enrolled bill would amend section 602(a)(9) of the District of Columbia Self-Government and Governmental Reorganization Act (the "Self-Government Act") [D.C. Code, § 1-147(a)(9)] by extending for two years the prohibition against the Council of the District of Columbia taking any action "with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners)."

Section 602(a)(9) currently provides that the Council may exercise such authority on January 3, 1977; this bill would postpone the date on which the Council could



exercise this authority to January 3, 1979. Additionally, the bill, as amended during debate on the floor of the House of Representatives upon the adoption of the "Dent Amendment", prohibits the Council from taking any action "with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code" (relating to weapons), until January 3, 1979. The bill's provisions are totally inconsistent with the principal, stated purpose of the Self-Government Act, namely the "grant to the inhabitants of the District of Columbia of powers of local self-government", P.L. 93-198, § 102 (a), 87 Stat. 777; it therefore is unacceptable.

An essential aspect of the right of self-government is presently denied to the citizens of the District, as they still are denied the authority to enact criminal laws and those relating to judicial procedure and the treatment of prisoners. Notwithstanding that the proper subjects of such laws are of paramount concern to the inhabitants of this City, this bill seeks a further postponement of the citizen's authority to address these concerns, for another two years. It would deny to the citizens of the District the exercise of a right -- through its elected officials -- explicitly granted to them seventy years ago, when Congress provided:

The Council is hereby authorized and empowered to make ... all such usual and police regulations ... as the Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind. D.C. Code, § 1-227.

The original purpose of the bill, as stated by Chairman Diggs, its author, was to give the District of Columbia Law Revision Commission sufficient time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission, which was established subsequent to the enactment of the Self-Government Act by P.L. 93-379, 88 Stat. 480, has begun the task of reviewing the criminal laws of the District and has made significant



progress. The District agrees that no major revision of its criminal laws should be undertaken without the benefit of the Commission's recommendations, and so informed the House District Committee by letter of June 29, 1976. However, there are additions to the criminal laws which are needed to enable the District to meet the challenges of a changing society. A number of such provisions have been proposed by the District to the Congress -- for example, proposals to prohibit the unauthorized use of credit cards, to include mobile homes within the scope of the crime of burglary, and to make it unlawful to obtain telecommunication services through misrepresentation. Nonetheless, these proposals are still pending before the House District of Columbia Committee.

The enactment by the Council of provisions such as the foregoing would not interfere with the work of the Commission. And it cannot be said that the Council requires the result of the Commission's study to weigh the need for such legislation. Nor can it be said that in the absence of the provisions of the subject bill there would be no Congressional "oversight" of acts of the Council pertaining to the criminal laws: § 602(c)(2) of the Self-Government Act provides that such act of the Council shall take effect only if not disapproved within thirty days by either the House or the Senate.

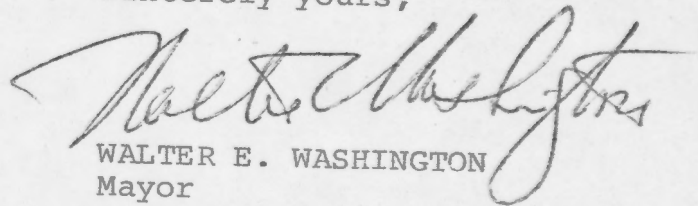
The discussion of the amendment on the floor demonstrates that it was premised on a fundamental misunderstanding of the Self-Government Act. Its stated purpose is to "prohibit ... Criminal Code changes by any subterfuge or any roundabout, off-the-street method by any departmental police regulation". Cong. Rec. H. 8798 (Aug. 23, 1976, daily ed.). These considerations aside, the impetus for the amendment -- the passage of the Council of the Firearms Control Regulations Act of 1975 -- was an exercise by the Council of explicit police power conferred on it by D.C. Code, § 1-277. Its legislation does no more than to amend similar police power



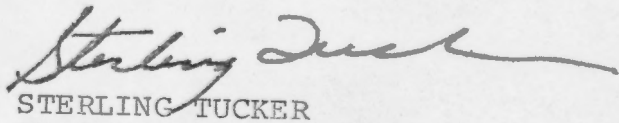
regulations adopted by the prior appointed Council, in 1969, under the same authority. Thus, the amendment seeks to strip the City's elected Council of an authority which Congress conferred long prior to its grant of home rule, and permitted an appointed Council to exercise.

In conclusion, this bill would extend, for an additional two years, the period during which the people of the District may not enact, regardless of manifest need, any criminal laws, nor any police regulations with respect to any weapon mentioned in D.C. Code, § 22-3201, et seq. Its provisions are inconsistent with the spirit of the Self-Government Act and the principle of self-determination. It does not serve any Federal interest; rather it is addressed to a matter which is essentially local in nature. Therefore, the District Government strongly urges that H.R. 12261 be disapproved. A proposed message of disapproval is attached.

Sincerely yours,



WALTER E. WASHINGTON
Mayor



STERLING TUCKER
Chairman

Council of the District of Columbia

Attachment



file

ACTION

THE WHITE HOUSE
WASHINGTON

Last Day: September 7

September 3, 1976

MEMORANDUM FOR: THE PRESIDENT
FROM: JIM CANNON *J.C.*
SUBJECT: Enrolled Bill H.R. 12261 -
District of Columbia Criminal Laws

This is to present for your action H.R. 12261, a bill which would amend section 602(a) (9) of the District of Columbia Self-Government and Governmental Reorganization Act (the "Self-Government Act").

BACKGROUND

- The Self-Government Act provides that the City Council of the District of Columbia will have authority to revise the District's criminal laws beginning January 3, 1977. H.R. 12261 would extend Congress' sole jurisdiction over these criminal laws for two additional years so that the Council would not have authority to revise the laws until January 3, 1979.
- The purpose of H.R. 12261 is to give the District of Columbia Law Revision Commission until January 3, 1979 to make recommendations to the Congress for the comprehensive revision of the District's criminal laws. The Commission, which was established subsequent to the enactment of the Self-Government Act, has begun to review these laws but will not complete its work by January 3, 1977.
- H.R. 12261 also contains an amendment by Congressman Dent of Pennsylvania which was apparently intended to nullify the District of Columbia's Firearms Control Act. The Firearm's Control Act was enacted on July 23, 1976 by the District of Columbia to ban possession of unregistered handguns.



- However, in the opinion of the Justice Department the Dent Amendment does not nullify the Firearms Control Act. Nevertheless, many groups which oppose gun control maintain that H.R. 12261 invalidates the District's ban and therefore are strongly urging its approval.

ARGUMENTS FOR APPROVAL

1. H.R. 12261 is consistent with Congress' original intent that a thorough revision of the D.C. Criminal Code be completed before the Council is empowered to enact changes in the criminal law.
2. A major revision of the District's Criminal Code should not be undertaken without the benefit of the Law Revision Commission's recommendations.

ARGUMENTS FOR DISAPPROVAL

1. H.R. 12261 improperly restricts the right of self-government of the citizens of the District of Columbia under the Self-Government Act.
2. In the opinion of the Justice Department, the Dent Amendment would not invalidate the District's Firearms Control Act. H.R. 12261 is solely prospective in application and consequently irrelevant to the District's Control Act.
3. The District agrees that no major revision of its criminal laws should be undertaken without the benefit of the Law Revision Commission's recommendations. However, the Council should not be delayed further from enacting urgently needed changes in the D.C. Criminal Code.
4. If Congress disapproves of the Firearms Control Act, it has the power to employ a one-House veto of the Act. The exclusive method of disapproving an enactment of the District is by "concurrent resolution" within a period of 30 legislative days after final District action.
5. H.R. 12261 does not involve a substantial Federal interest in the District.



AGENCY RECOMMENDATIONS

Office of Management and Budget

Disapproval

Department of Justice

No Objection

COMMENTS

Lynn: "In our view, the bill is not consistent with the right of self-government for the citizens of the District of Columbia under the Home Rule Act. Extending the limitation on the D.C. Council's authority to change the Criminal Code is unnecessary. Additions to the D.C. criminal laws are needed now to enable the District to meet the challenges of a changing society. Granting the power to the D.C. Council to legislate on local matters under the Code would not interfere with the work of the Law Revision Commission and the Council does not require the results of the Commission's study to weigh the need for such legislation."

STAFF RECOMMENDATIONS

Counsel's Office:
Ken Lazarus
with Phil Buchen's
concurrence

"Approval of the measure would be fundamentally inconsistent with the President's announced position on his role with respect to the legislative powers of the District government."

Max Friedersdorf,
Assistant to the
President for
Legislative Affairs

"Recommend approval. Both Houses^s passed by voice vote and veto would likely be overridden. John Rhodes strongly recommends signing because Presidential veto would incite anti-gun control lobbyists to oppose President. Gun lobby perceive bill as very favorable to them because of Dent Amendment."

RECOMMENDATION

I recommend approval of H.R. 12261.

The Department of Justice, the White House Counsel's Office and the Congressional Research Service of the Library of



Congress state that the Dent Amendment would not negate the District of Columbia's Firearms Control Act.

My recommendation is based on the fact that Congress intended that the D.C. Criminal Code be completely revised before the City Council be given the authority to enact changes in the criminal law. Without this legislation, the D.C. City Council would be able to act in a piecemeal way without the benefit of the Law Revision Commission's recommendations.

Jim Lynn's memorandum, which includes a letter from Mayor Walter Washington and Sterling Tucker, together with a letter from Michael M. Uhlmann, Assistant Attorney General, is at Tab A.

DECISIONS

1. Sign H.R. 12261 at Tab B.

Issue signing statement at Tab C.

Approve _____ Disapprove _____

2. Disapproval H.R. 12261 and sign veto message at Tab D.

I am returning, without my approval, H.R. 12261, a bill "~~to~~ extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District". This bill would extend for two years, or until January 3, 1979, the prohibition against ^{any} ~~action~~ by the Council of the District of Columbia on ~~any~~ provisions of the present District laws relating to crimes, criminal procedure, and the treatment of prisoners.

The bill would give the District of Columbia Law Revision Commission additional time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission, which was established subsequent to the enactment of the District of Columbia Self-Government and Governmental Reorganization Act, has begun the task of reviewing the criminal laws of the District but will not be able to complete its work by January 3, 1977, when, under current law, the D.C. Council will be able to amend the District of Columbia Criminal Code.

I agree that no major revision of the District's criminal laws should be undertaken without the benefit of the Commission's recommendations. I do not agree, however, that it is either wise or necessary to delay ^{even} further the time when the citizens of the District of Columbia, through their elected representative may exercise the right of self-government in ^{this vital} ~~an~~ area ^{which} ~~that~~ ^{will affect} ~~affects~~ their daily lives.

from taking any action "with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code" (relating to weapons) until January 3, 1979.

Although some confusion has arisen regarding the intended force and effect of H.R. 12261, I am advised by the Department of Justice that the measure is ^{only} ~~solely~~ applicable in the future and is irrelevant to ~~its~~ ~~prospective~~ ~~in its application and is thus~~ ~~irrelevant~~ ~~to the~~ ~~enactment~~ ~~of~~ ~~the~~ ~~"Firearms Control Regulations Act of 1975"~~ ^{the} "Firearms Control Regulations Act of 1975" (act. 1-142), recently adopted by the District of Columbia.

Consistent with the right to self-government of District citizens, I have in the past supported fully the legislative powers of the District, subject only to

the constraints imposed by the Home Rule Act itself or some overriding Federal interest. This operating principle properly should apply regardless of the views of the Executive on the merits or shortcomings of individual legislative items. In the circumstances involving H.R. 12261, *I find no justification* ~~there is simply no basis to~~ ~~warrant~~ ^{for} interference with this principle of self-determination.

For these reasons, I am returning H.R. 12261 without my approval.

THE WHITE HOUSE
 September , 1976



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

SEP 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 12261 - District of Columbia
Criminal Laws
Sponsor - Rep. Diggs (D) Michigan

Last Day for Action

September 7, 1976 - Tuesday

Purpose

To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District by direct amendment of the D.C. Criminal Code or through changes in police regulations.

Agency Recommendations

Office of Management and Budget

Disapproval (Veto
message attached)

District of Columbia Government

Disapproval (Veto
message attached)

Department of Justice

No objection

Discussion

The District of Columbia Home Rule Act, approved December 24, 1973, delegates to the Council of the District of Columbia the authority to make changes in the criminal laws of the District, but not until January 3, 1977. The Congress, in a related action, enacted the District of Columbia Law Revision Commission Act, approved August 21, 1974, which established the District of Columbia Law Revision Commission to examine the District's laws and to recommend,

in annual reports to the Congress, changes in them. The Commission--a D.C. Government body-- did not become operational until a year later and now expects its work on the revision of the criminal laws to be completed within the next two years.

The enrolled bill would extend for two additional years, until January 3, 1979, Congress' sole jurisdiction over the criminal laws of the District for the purpose of giving the Commission adequate time to complete its work and make its recommendations to the Congress. The bill also contains a provision intended to preclude the Council's amendment of police regulations in a manner which, effectively, alters the Criminal Code. The provision was added by amendment on the House floor by Representative Dent of Pennsylvania, and was apparently directed at the District of Columbia's Firearms Control Regulations Act, approved by the Mayor on July 23, 1976, which is presently being considered by Congress. Mr. Dent explained that he wanted to prohibit any criminal code changes by "... any subterfuge or any roundabout, off-the-street method by any departmental police regulation."

The Dent amendment was passed 262 to 92 and the amended bill was then approved by voice vote. Twenty-four hours later, the bill was passed by the Senate without debate on a voice vote.

In its report on the bill, the House D.C. Committee maintains that extension of the prohibition on the Council's changing the Criminal Code is necessary because completion of the comprehensive revision and recodification of the District's Criminal Code by the Congress was intended to be a prerequisite to the transfer of jurisdiction to the Council over the D.C. Criminal Code. The Committee report points out that the conference report on the Home Rule Act stated:

It is the intention of the conferees that their respective Committees will seek to revise the District of Columbia Criminal Code prior to the effective date of the transfer of authority referred to. (Emphasis added.)

The House D.C. Committee report further notes that the conferees on the Home Rule Act provided for a single House veto of Criminal Code changes that might be made by the Council once the jurisdiction was transferred from the Congress to the Council. The report states:

This reinforces the commitment of the Congress to maintain exclusive jurisdiction over amendments to the Criminal Code until the Law Revision Commission has completed its study and made its recommendations, and the Congress has acted on the totally revised Criminal Code.

The District of Columbia Government, in its attached views letter, agrees that a major revision of the D.C. Criminal Code is necessary and should not be undertaken without the benefit of the Law Revision Commission's recommendations. It points out, however, that empowering the D.C. Council to enact changes in the D.C. Criminal Code should not be delayed further, because there are a number of additions or revisions to the criminal laws which are urgently needed.

A number of such provisions have been proposed by the District to the Congress -- for example, proposals to prohibit the unauthorized use of credit cards, to include mobile homes within the scope of the crime of burglary, and to make it unlawful to obtain telecommunication services through misrepresentations. Moreover, the D.C. Government maintains that enactment of such changes would not interfere at all with the work of the Commission.

The effect of the Dent amendment in the enrolled bill is unclear. As noted earlier, it was apparently intended to prohibit the Firearms Control Regulations Act which would ban possession of handguns to anyone who does not, on the date of its enactment, possess a valid registration for a handgun. That measure will become effective unless Congress disapproves it within 30 legislative days, a period which will elapse sometime at the end of September. However, the Department of Justice advises, in its attached views letter, that the enrolled bill, in and of itself, would not invalidate the gun control measure.



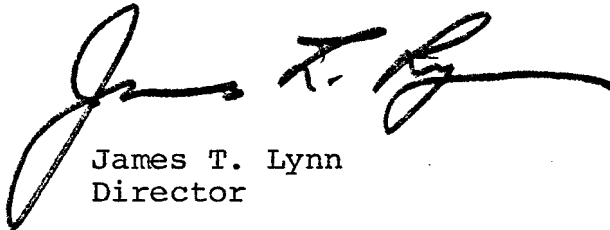
Moreover, the effect of the bill is also uncertain in other respects. First, the amendment references articles regulated under Title 22 of the D.C. Criminal Code. However, it is not clear whether licensing of firearms would be affected by the amendment because under the District of Columbia Code, the licensing of firearms is carried out pursuant to authority found in Title I of the D.C. Code, a provision which predates home rule. Second, the amendment references "criminal offenses." In the District of Columbia it is not clear what constitutes a "criminal offense" since District of Columbia law, as interpreted by the courts, is not settled in regard to whether or not criminal sanctions imposed pursuant to police powers translate civil violations into criminal matters.

We agree with the District of Columbia recommendation that the bill be disapproved. It can be argued that a further extension of the limitation on the D.C. Council is consistent with the original intent of Congress that a thorough revision of the D.C. Criminal Code be completed before the D.C. Council is empowered to enact changes in the criminal law. However, we believe the basic issue presented by the bill is whether the two-year extension is necessary to protect the Federal interest in the District of Columbia and if it and the Dent amendment are consistent with the purpose of the Home Rule Act, namely the grant to the inhabitants of the District of Columbia of powers of local self-government.

In our view, the bill is not consistent with the right of self-government for the citizens of the District of Columbia under the Home Rule Act. Extending the limitation on the D.C. Council's authority to change the Criminal Code is unnecessary. Additions to the D.C. criminal laws are needed now to enable the District to meet the challenges of a changing society. Granting the power to the D.C. Council to legislate on local matters under the Code would not interfere with the work of the Law Revision Commission and the Council does not require the results of the Commission's study to weigh the need for such legislation. Further, this bill is not necessary to enable the Congress to protect the Federal interest in the District of Columbia. The

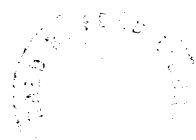
Home Rule Act gives the Congress clear authority to disapprove D.C. Government legislative acts. Finally, the Dent amendment, as noted above, is both an unnecessary erosion of the home rule concept and uncertain in its effect on other actions of the D.C. Government.

A proposed veto message is attached for your consideration.

A handwritten signature in black ink, appearing to read "James T. Lynn". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

James T. Lynn
Director

Enclosures





THE DISTRICT OF COLUMBIA

WALTER E. WASHINGTON
MAYOR

WASHINGTON, D. C. 20004

AUG 27 1976

Mr. James M. Frey
Assistant Director for Legislative
Reference
Office of Management and Budget
Executive Office Building
Washington, D. C. 20503

Dear Mr. Frey:

This is in reference to the facsimile of the enrolled enactment of Congress entitled:

H.R. 12261 - To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District

which you transmitted on August 25, 1976. The enrolled bill would amend section 602(a)(9) of the District of Columbia Self-Government and Governmental Reorganization Act (the "Self-Government Act") [D.C. Code, § 1-147(a)(9)] by extending for two years the prohibition against the Council of the District of Columbia taking any action "with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners)."

Section 602(a)(9) currently provides that the Council may exercise such authority on January 3, 1977; this bill would postpone the date on which the Council could

exercise this authority to January 3, 1979. Additionally, the bill, as amended during debate on the floor of the House of Representatives upon the adoption of the "Dent Amendment", prohibits the Council from taking any action "with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 of the District of Columbia Code" (relating to weapons), until January 3, 1979. The bill's provisions are totally inconsistent with the principal, stated purpose of the Self-Government Act, namely the "grant to the inhabitants of the District of Columbia of powers of local self-government", P.L. 93-198, § 102 (a), 87 Stat. 777; it therefore is unacceptable.

An essential aspect of the right of self-government is presently denied to the citizens of the District, as they still are denied the authority to enact criminal laws and those relating to judicial procedure and the treatment of prisoners. Notwithstanding that the proper subjects of such laws are of paramount concern to the inhabitants of this City, this bill seeks a further postponement of the citizen's authority to address these concerns, for another two years. It would deny to the citizens of the District the exercise of a right -- through its elected officials -- explicitly granted to them seventy years ago, when Congress provided:

The Council is hereby authorized and empowered to make ... all such usual and police regulations ... as the Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind. D.C. Code, § 1-227.

The original purpose of the bill, as stated by Chairman Diggs, its author, was to give the District of Columbia Law Revision Commission sufficient time within which to make recommendations to the Congress for the comprehensive revision of the District of Columbia Criminal Code. The Commission, which was established subsequent to the enactment of the Self-Government Act by P.L. 93-379, 88 Stat. 480, has begun the task of reviewing the criminal laws of the District and has made significant

progress. The District agrees that no major revision of its criminal laws should be undertaken without the benefit of the Commission's recommendations, and so informed the House District Committee by letter of June 29, 1976. However, there are additions to the criminal laws which are needed to enable the District to meet the challenges of a changing society. A number of such provisions have been proposed by the District to the Congress -- for example, proposals to prohibit the unauthorized use of credit cards, to include mobile homes within the scope of the crime of burglary, and to make it unlawful to obtain telecommunication services through misrepresentation. Nonetheless, these proposals are still pending before the House District of Columbia Committee.

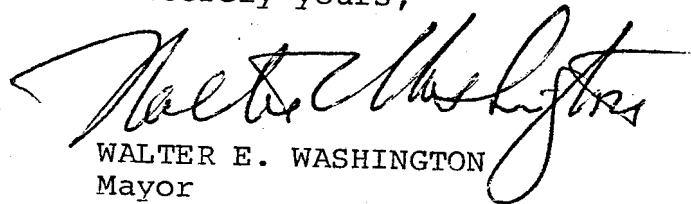
The enactment by the Council of provisions such as the foregoing would not interfere with the work of the Commission. And it cannot be said that the Council requires the result of the Commission's study to weigh the need for such legislation. Nor can it be said that in the absence of the provisions of the subject bill there would be no Congressional "oversight" of acts of the Council pertaining to the criminal laws: § 602(c)(2) of the Self-Government Act provides that such act of the Council shall take effect only if not disapproved within thirty days by either the House or the Senate.

The discussion of the amendment on the floor demonstrates that it was premised on a fundamental misunderstanding of the Self-Government Act. Its stated purpose is to "prohibit ... Criminal Code changes by any subterfuge or any roundabout, off-the-street method by any departmental police regulation". Cong. Rec. H. 8798 (Aug. 23, 1976, daily ed.). These considerations aside, the impetus for the amendment -- the passage of the Council of the Firearms Control Regulations Act of 1975 -- was an exercise by the Council of explicit police power conferred on it by D.C. Code, § 1-277. Its legislation does no more than to amend similar police power


regulations adopted by the prior appointed Council, in 1969, under the same authority. Thus, the amendment seeks to strip the City's elected Council of an authority which Congress conferred long prior to its grant of home rule, and permitted an appointed Council to exercise.

In conclusion, this bill would extend, for an additional two years, the period during which the people of the District may not enact, regardless of manifest need, any criminal laws, nor any police regulations with respect to any weapon mentioned in D.C. Code, § 22-3201, et seq. Its provisions are inconsistent with the spirit of the Self-Government Act and the principle of self-determination. It does not serve any Federal interest; rather it is addressed to a matter which is essentially local in nature. Therefore, the District Government strongly urges that H.R. 12261 be disapproved. A proposed message of disapproval is attached.

Sincerely yours,



WALTER E. WASHINGTON
Mayor



STERLING TUCKER
Chairman
Council of the District of Columbia

Attachment

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WASHINGTON

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ACTION

THE WHITE HOUSE
WASHINGTON

Last Day: September 7

September 3, 1976

MEMORANDUM FOR: THE PRESIDENT
FROM: JIM CANNON
SUBJECT: Enrolled Bill H.R. 12261 -
District of Columbia Criminal Laws

This is to present for your action H.R. 12261, a bill which would amend section 602(a) (9) of the District of Columbia Self-Government and Governmental Reorganization Act (the "Self-Government Act").

BACKGROUND

- o The Self-Government Act provides that the City Council of the District of Columbia will have authority to revise the District's criminal laws beginning January 3, 1977. H.R. 12261 would extend Congress' sole jurisdiction over these criminal laws for two additional years so that the Council would not have authority to revise the laws until January 3, 1979.
- o The purpose of H.R. 12261 is to give the District of Columbia Law Revision Commission until January 3, 1979 to make recommendations to the Congress for the comprehensive revision of the District's criminal laws. The Commission, which was established subsequent to the enactment of the Self-Government Act, has begun to review these laws but will not complete its work by January 3, 1977.
- o H.R. 12261 also contains an amendment by Congressman Dent of Pennsylvania which was apparently intended to nullify the District of Columbia's Firearms Control Act. The Firearm's Control Act was enacted on July 23, 1976 by the District of Columbia to ban possession of unregistered handguns.



- o However, in the opinion of the Justice Department the Dent Amendment does not nullify the Firearms Control Act. Nevertheless, many groups which oppose gun control maintain that H.R. 12261 invalidates the District's ban and therefore are strongly urging its approval.

ARGUMENTS FOR APPROVAL

1. H.R. 12261 is consistent with Congress' original intent that a thorough revision of the D.C. Criminal Code be completed before the Council is empowered to enact changes in the criminal law.
2. A major revision of the District's Criminal Code should not be undertaken without the benefit of the Law Revision Commission's recommendations.

ARGUMENTS FOR DISAPPROVAL

1. H.R. 12261 improperly restricts the right of self-government of the citizens of the District of Columbia under the Self-Government Act.
2. In the opinion of the Justice Department, the Dent Amendment would not invalidate the District's Firearms Control Act. H.R. 12261 is solely prospective in application and consequently irrelevant to the District's Control Act.
3. The District agrees that no major revision of its criminal laws should be undertaken without the benefit of the Law Revision Commission's recommendations. However, the Council should not be delayed further from enacting urgently needed changes in the D.C. Criminal Code.
4. If Congress disapproves of the Firearms Control Act, it has the power to employ a one-House veto of the Act. The exclusive method of disapproving an enactment of the District is by "concurrent resolution" within a period of 30 legislative days after final District action.
5. H.R. 12261 does not involve a substantial Federal interest in the District.



AGENCY RECOMMENDATIONS

Office of Management and Budget	Disapproval
Department of Justice	No objection

COMMENTS

Lynn: "In our view, the bill is not consistent with the right of self-government for the citizens of the District of Columbia under the Home Rule Act. Extending the limitation on the D.C. Council's authority to change the Criminal Code is unnecessary. Additions to the D.C. criminal laws are needed now to enable the District to meet the challenges of a changing society. Granting the power to the D.C. Council to legislate on local matters under the Code would not interfere with the work of the Law Revision Commission and the Council does not require the results of the Commission's study to weigh the need for such legislation.

STAFF RECOMMENDATIONS

Counsel's Office:
Ken Lazarus
with Phil Buchen's
concurrence

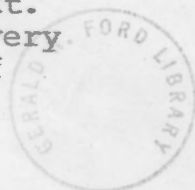
"Approval of the measure would be fundamentally inconsistent with the President's announced position on his role with respect to the legislative powers of the District government."

Max Friedersdorf,
Assistant to the
President for
Legislative Affairs

"Recommend approval. Both House passed by voice vote and veto would likely be overridden. John Rhodes strongly recommends signing because Presidential veto would incite anti-gun control lobbyists to oppose President. Gun lobby perceive bill as very favorable to them because of Dent Amendment."

RECOMMENDATION

I recommend ~~the~~ approval of H.R. 12261 because it would deny to the citizens of the District the right of self-government as established under the Self-Government Act. You have earlier expressed the view that actions of the District Government ought to prevail unless violative of the Self-Government Act or harmful to a substantial Federal interest in the District.



While I recognize the strong support for this bill from those who oppose gun control, their support is misplaced since, in the opinion of the Justice Department, this bill would not invalidate the District's Firearm Control Act. The issue is complex and probably will be difficult to communicate but I do not believe these difficulties should justify a departure from your position in support of home rule.

Jim Lynn's memorandum, which includes a letter from Mayor Walter Washington and Sterling Tucker, together with a letter from Michale M. Uhlmann, Assistant Attorney General, is at Tab A. A memorandum of disapproval is attached at Tab B. The enrolled bill is attached at Tab C.

DECISION

1. _____ Approve H.R. 12261.
2. _____ Disapprove and issue memorandum of disapproval.



THE WHITE HOUSE

WASHINGTON

October 20, 1976

MEMORANDUM FOR: THE PRESIDENT
FROM: JIM CANNON *Jim Cannon*
SUBJECT: D.C. Commuter Tax

Chairman Jack Herrity of Fairfax County has written to you asking for a position on a commuter tax for Maryland and Virginia residents working in the District of Columbia (Attachment A). He has made the same request of Governor Carter.

BACKGROUND

A commuter tax has been discussed frequently by the D. C. government and certain members of Congress as a way to help the District financially. At this point the Congress had not acted on such a proposal. It has been strongly opposed by local suburban Congressmen.

In July, you did make a statement in an informal meeting with the Maryland convention delegation (Attachment B). In that statement you indicated that under current circumstances you would not favor such a bill and would veto it. This was later recorded by the press (Attachment C).

At this time no formal analysis has been made of this tax by the Administration. We have tried to remain as neutral as possible regarding matters in the District of Columbia. In addition, we have not received a specific proposal to review. Given the background, we have prepared the attached letter to Herrity for your signature (Attachment D).

RECOMMENDATION

OMB (O'Neill), Buchen (Lazarus), Marsh, Friedersdorf and I recommend that you sign the letter to Chairman Herrity.



Dear Chairman Herrity:

Thank you for your letter of September 10, 1976 regarding the question of a commuter tax for suburban residents working in the District of Columbia. This issue has been discussed fairly extensively by local officials as well as certain members of the Congress. However, at this point a final proposal has not been formulated and, therefore, it is impossible to respond to your question in terms of a specific piece of legislation.

My Administration has not proposed such a measure and will not do so in the future. Moreover, I have indicated that under current conditions, and given the proposals as they now stand, I would not support a commuter tax.

I hope that this letter clarifies my stand.

Sincerely,

Mr. John F. Herrity
Chairman
Board of Supervisors
County of Fairfax
Fairfax, Virginia 22030

cc: S McConahey/M Friedersdorf/ P Buchen/ P O'Neill
J Marsh



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THE WHITE HOUSE
WASHINGTON

Handwritten initials and date:
10/21

October 20, 1976

MEMORANDUM FOR:

PHIL BUCHEN
JACK MARSH
MAX FRIEDERSDORF
PAUL O'NEILL

FROM:

JIM CANNON *Jim Cannon*

SUBJECT:

D.C. Commuter Tax

Chairman Jack Herrity of Fairfax County has written to the President asking for a position on a commuter tax for Maryland and Virginia residents working in the District of Columbia (Attachment A). He has made the same request of Governor Carter.

A commuter tax has been discussed frequently by the D.C. government and certain members of Congress as a way to help the District financially. At this point the Congress had not acted on such a proposal. It has been strongly opposed by local suburban Congressmen.

In July, the President did make a statement in an informal meeting with the Maryland convention delegation (Attachment B). In that statement he indicated that under current circumstances he would not favor such a bill and would veto it. This was later recorded by the press (Attachment C).

At this time no formal analysis has been made of this tax by the Administration. We have tried to remain as neutral as possible regarding matters in the District of Columbia. In addition, we have not received a specific proposal to review. But, given the recent inquiries referring to the President's statement, it seems advisable for us to clarify our position.



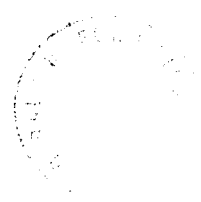
Attached for your review and comment is a draft letter for the President to send Chairman Herrity if the President's opposition is formalized (Attachment D).

I would appreciate your comments by 10:00 a.m. on Thursday, October 21.

- Oppose tax
- Remain neutral
- Support tax

Attachments

A.





COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
BOARD OF SUPERVISORS
FAIRFAX, VIRGINIA 22030

BOARD OF SUPERVISORS
JOHN F. HERRITY
Chairman

JOHN F. HERRITY
CHAIRMAN
4100 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030
TELEPHONE 691-2321

JOSEPH ALEXANDER
WARREN I. CIKINS
ALAN H. MAGAZINE
AUDREY MOORE
MRS. MARTHA V. PENNINGTON
JAMES M. SCOTT
JOHN P. SHACCHIS
MARIE B. TRAVESKY

September 10, 1976

Handwritten signature

The Honorable
Gerald R. Ford
President of the United States
The White House
Washington, D. C.

Dear Mr. President:

The citizens of Fairfax County who work in the District of Columbia are deeply concerned over proposals which have been made by officials of the District of Columbia Government to assess a tax against their income - the so called commuter tax.

Under Section 602 of the District of Columbia Self Government Act of 1973 (Public Law 93-198), such a tax could not be imposed without Congressional legislation and the opportunity for a Presidential veto.

Accordingly, I would appreciate hearing from you as to your position on commuter tax legislation for the District of Columbia Government. More specifically, I would like to know if you intend to vigorously oppose or actively support this commuter tax.

Thank you for your time and consideration.

Sincerely,

Handwritten signature of John F. Herrity

John F. Herrity, Chairman
Board of Supervisors

cc: Fairfax County Democratic Committee
Fairfax County Republican Committee

B.

Remarks of the President to the Maryland Delegation - July 26, 1974

"The Democratic platform suggests that the people that run the Federal City have a right to tax Marylanders and who in Northern Virginia who commute to the city and I think we have an obligation to speak out on an issue. Now there's five counties in Maryland where most of the population resides and two of those border the District and we would hope and I'd be delighted if you would speak out on that issue, taxation without representation does go on in other cities but those cities aren't the Federal City. I'd appreciate your comments."

President -- "I have never recommended it as President. I have listened to the arguments on both sides. I think the fact that I have not proposed it is indicative of my own personal feelings in this regard. Does that take care of it?"

"No sir, I'd like to know if you're for or against it?"

"Well, I think if I had to make the decision right now and a piece of legislation before me, I'd veto it."



c.

President Ford Tells P.G. Delegates

By Michael Kiernan

Washington Star Staff Writer

A Prince Georges County delegate to the Republican National

party Chairman David Forward and Prince Georges County delegate Gerard Holcomb, who originally

the incomes of suburbanites who work in the District.

He Would Veto a Commuter Tax

Virginia or Maryland suburbanites anything extra in taxes, since they could deduct the taxes dollar for dollar from their state income taxes.

officials, who noted that the President has made it a practice not to intervene in controversial local issues involving the city's 18-month-old home

to the 14 D.C. Republican delegates, all of whom are pledged to Ford.

MCKINNEY, also a Ford delegate from Connecticut, said he was still

came as a surprise to some D.C. officials against a commuter tax "an affront"

See COMMUTE; B-4



The Washington Star

Metro

- Obituaries
- Television
- Finance

SECTION B x

TUESDAY, JULY 27, 1976

DRAFT letter to Chairman Herrity of Fairfax County regarding
the D.C. Commuter Tax bill.

Dear Chairman Herrity:

Thank you for your letter of September 10, 1976 regarding the question of a commuter tax for suburban residents working in the District of Columbia. This issue has been discussed fairly extensively by local officials as well as certain members of the Congress. However, at this point a final proposal has not developed and, therefore, it is impossible to respond to your question in terms of a specific piece of legislation.

My Administration has not proposed such a measure and will not do so in the future.

Moreover, I have indicated that under current conditions, and given the proposals as they now stand, I would not support a commuter tax. I hope that this letter clarifies my stand regarding the commuter tax at this stage of development.

Sincerely,

GRF

Mr. John F. Herrity
Chairman
Board of Supervisors
County of Fairfax
Fairfax, Virginia 22030

cc: Steve McConahey

