



Testimony
Before the Subcommittee on
Government Operations, Committee on
Oversight and Government Reform,
House of Representatives

For Release on Delivery
Expected at 2:00 p.m. ET
Thursday, May 12, 2016

DISTRICT OF COLUMBIA

Local Budget Autonomy Amendment Act of 2012

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Accessible Version

Chairman Meadows, Ranking Member Connolly, and Members of the Subcommittee:

I am GAO's Managing Associate General Counsel responsible for GAO's appropriations law decisions and opinions. I am pleased to be here today to discuss our January 30, 2014 opinion concerning the effect of the District of Columbia's Local Budget Autonomy Amendment Act of 2012.¹ A copy of the opinion is attached as an appendix to this statement.

In the District of Columbia Home Rule Act, Congress established the District Government and delineated its budget process. The Budget Autonomy Act attempts to change the federal government's role in this budget process by removing Congress from the appropriation process of most District funds and by removing the President from the District's budget formulation process. In this opinion, we addressed the conflict between the Budget Autonomy Act and two other federal laws: the Antideficiency Act² and the Budget and Accounting Act, 1921.³ The Antideficiency Act bars officers and employees of the U.S. Government and of the Government of the District of Columbia from making or authorizing expenditures or obligations exceeding the amount available in an appropriation or fund. The Budget and Accounting Act requires the head of each agency, which for the purposes of this Act includes the District Government, to submit a budget request to the President for transmission to Congress.

At issue in the opinion was whether the Home Rule Act and the Antideficiency Act allow the District Government to authorize its officers and employees to obligate and expend funds in accordance with an act of the Council of the District of Columbia, rather than in accordance with appropriations enacted into federal law in exercise of Congress's constitutional prerogative to legislate for the seat of government and its constitutional power of the purse. Also at issue was whether the Home Rule Act and the Budget and Accounting Act permit the District Government to change the process through which the District submits its budget request to the President for transmission to Congress.

¹ B-324987, Jan. 30, 2014.

² 31 U.S.C. § 1341.

³ 31 U.S.C. § 1108.

We concluded that provisions of the Budget Autonomy Act that attempt to change the federal government's role in the District's budget process have no legal effect. The Home Rule Act, as well as the Antideficiency Act and the Budget and Accounting Act, serve and protect two important constitutional powers reserved to the Congress: (1) its power "to exercise exclusive Legislation in all Cases whatsoever" over the District, U.S. Const. art. I, § 8, cl. 17, and (2) Congress's constitutional power of the purse. We concluded, therefore, that without affirmative congressional action otherwise, the requirements of the Antideficiency Act continue to apply and District officers and employees may not obligate or expend funds except in accordance with appropriations enacted into federal law by Congress. The District Government also remains bound by the Budget and Accounting Act, which requires it to submit budget estimates to the President.

Our regular practice when rendering opinions is to contact relevant agencies and officials to obtain their legal views on the subject of the request.⁴ The Chairman of the Council of the District of Columbia, the Mayor of the District of Columbia, and the Attorney General of the District of Columbia all provided their views. The Council chairman asserted that Congress granted the District a permanent appropriation of the District's local funds. Because a permanent appropriation is available for obligation and expenditure without further congressional action, he concluded that the Budget Autonomy Act lawfully repealed provisions of the Home Rule Act that restricted the District's authority to obligate and expend this permanent appropriation.

We disagreed with the Council chairman's assertion that Congress has provided the District with a permanent appropriation. By law, the making of an appropriation must be expressly stated. An appropriation cannot be inferred or made by implication. The Council chairman asserted that the District Charter established a permanent appropriation because it provided that District monies "belong to the District government." However, this language is not the express statement of appropriation that is necessary under 31 U.S.C. § 1301(d).

⁴ GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP.

In the alternative, the Council chairman argued that the “purpose and text of the Antideficiency Act would be satisfied when the District Government”, rather than Congress, “enacts an annual appropriation pursuant to the Autonomy Act.” We disagreed. The Antideficiency Act clearly applies to the District, both by its very terms and by the terms of the Home Rule Act, and reflects Congress’ decision to expressly limit District spending to amounts Congress appropriates. Only acts of Congress, not acts by the Council or by officers or employees of the District Government or the federal government, make amounts available for obligation and expenditure.

The Council chairman also placed significance in the fact that Congress has not enacted into law a resolution disapproving of the Budget Autonomy Act. However, the Home Rule Act provided no authority to enact the Budget Autonomy Act. It is elementary that acts taken without legal authority are void at the outset. It is, therefore, of no legal significance that Congress did not enact a resolution disapproving of the Budget Autonomy Act. Even in the absence of such a resolution, the amendments of the Budget Autonomy Act have no force or effect.

The plain meaning of the Home Rule Act, coupled with the continuing force of the Antideficiency Act and of the Budget and Accounting Act, compelled us to reach the conclusions we drew in the opinion. Pursuant to its constitutional authority “to exercise exclusive Legislation in all Cases whatsoever” in the District, Congress has enacted these statutes and has explicitly provided for the continuing application of the Antideficiency Act and the Budget and Accounting Act to the District.

GAO does not take a view on the merits of Congress granting greater budget autonomy to the District. This is a matter within Congress’s discretion under its constitutional powers. Under the framework that the Constitution has established, only Congress has power to determine the nature of the District’s budget process. In the Home Rule Act, Congress clearly established that it continues to retain sole authority to appropriate amounts for the District. If Congress wishes to change the District’s budget process it may, of course, do so by enacting appropriate legislation.

Since we issued our January 2014 opinion, court rulings have also addressed the legality of the Budget Autonomy Act. In 2014, the U.S.

District Court for the District of Columbia ruled that “the Budget Autonomy Act does not comply with the requirements of the Anti-Deficiency Act” and that “the Budget Autonomy Act is unlawful.”⁵ However, in a three-sentence ruling that did not address the merits of the case, the U.S. Court of Appeals for the D.C. Circuit vacated this ruling and directed that the case be remanded to the Superior Court of the District of Columbia.⁶ On remand, the Superior Court ruled that the Budget Autonomy Act was lawful and within the authority that Congress delegated to the District in the District of Columbia Home Rule Act.⁷

In conclusion, the analysis and conclusions in our January 2014 opinion are consistent with Congress’s constitutional power to legislate over the District and with the laws that Congress has enacted pursuant to that authority.

Thank you, Mr. Chairman. This concludes my prepared statement. I would be happy to answer any questions that you or other members of the subcommittee may have.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact me at (202) 512-2853 or EmmanuelIPerezE@gao.gov. Contact points for our Office of Congressional Relations and Office of Public Affairs may be found on the last page of this statement. Julia C. Matta, Assistant General Counsel, and Omari Norman, Senior Attorney, made key contributions to this statement.

⁵ *Council of the District of Columbia v. Gray*, 42 F. Supp. 3d 134, 154-155 (May 19, 2014).

⁶ *Council of the District of Columbia v. Bowser*, 2015 U.S. App. LEXIS 8881 (D.C. Cir. May 27, 2015).

⁷ *Council of the District of Columbia v. DeWitt*, no. 2014-CA-2371-B, slip op. (D.C. Super. Ct. Mar. 18, 2016).

Appendix I: B-324987



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

United States Government Accountability Office
Washington, DC 20548

B-324987

January 30, 2014

The Honorable Ander Crenshaw
Chairman
Subcommittee on Financial Services
and General Government
Committee on Appropriations
House of Representatives

Subject: *District of Columbia—Local Budget Autonomy Amendment Act of 2012*

Dear Mr. Chairman:

This responds to your request for our opinion regarding the effect of the District of Columbia's Local Budget Autonomy Amendment Act of 2012 (Budget Autonomy Act). In the District of Columbia Home Rule Act, Congress established the District Government and delineated its budget process. Through the Budget Autonomy Act, the Council of the District of Columbia and District voters attempt to change the federal government's role in this budget process by removing Congress from the appropriation process of most District funds and by removing the President from the District's budget formulation process. In this opinion, we address the conflict between the Budget Autonomy Act and two other federal laws: the Antideficiency Act¹ and the Budget and Accounting Act, 1921.² The Antideficiency Act bars officers and employees of the U.S. Government and of the Government of the District of Columbia from making or authorizing expenditures or obligations exceeding the amount available in an appropriation or fund. The Budget and Accounting Act requires the head of each agency, which for the purposes of this Act includes the District Government, to submit a budget request to the President for transmission to Congress.

At issue here is whether the Home Rule Act and the Antideficiency Act allow the District Government to authorize its officers and employees to obligate and expend funds in accordance with an act of the Council of the District of Columbia, rather than in accordance with appropriations enacted into federal law in exercise of

¹ 31 U.S.C. § 1341.

² 31 U.S.C. § 1108.

Congress's constitutional prerogative to legislate for the seat of government and its constitutional power of the purse. Also at issue is whether the Home Rule Act and the Budget and Accounting Act permit the District Government to change the process through which the District submits its budget request to the President for transmission to Congress.

Our practice when rendering opinions is to contact relevant agencies and officials to obtain their legal views on the subject of the request.³ We contacted the Chairman of the Council of the District of Columbia, the Mayor of the District of Columbia, and the Attorney General of the District of Columbia; all provided us with their views.⁴

As explained below, we conclude that provisions of the Budget Autonomy Act that attempt to change the federal government's role in the District's budget process have no legal effect. The Home Rule Act, as well as the Antideficiency Act and the Budget and Accounting Act, serve and protect two important constitutional powers reserved to the Congress: (1) its power "to exercise exclusive Legislation in all Cases whatsoever" over the District, U.S. Const. art. I, § 8, cl. 17, and (2) Congress's constitutional power of the purse. We conclude, therefore, that without affirmative congressional action otherwise, the requirements of the Antideficiency Act continue to apply and District officers and employees may not obligate or expend funds except in accordance with appropriations enacted by Congress. The District Government also remains bound by the Budget and Accounting Act, which requires it to submit budget estimates to the President.

In this opinion we express no views on the merits of Congress granting greater budget autonomy to the District.

BACKGROUND

Congressional delegation of authority in the Home Rule Act

The Constitution vests Congress with the power "to exercise exclusive Legislation in all Cases whatsoever, over . . . the Seat of the Government of the United States."

³ GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/resources.html.

⁴ Letter from Chairman, Council of the District of Columbia, to Senior Attorney, GAO, Sept. 27, 2013 (Council Letter); Letter from Mayor, District of Columbia, to Assistant General Counsel, GAO, Sept. 11, 2013 (Mayor Letter); Letter from Attorney General, District of Columbia, to Assistant General Counsel, GAO, Sept. 10, 2013 (Attorney General Letter).

U.S. Const. art. I, § 8, cl. 17. The Supreme Court has held that this clause vests Congress with “plenary” authority to exercise, in the District of Columbia, “the police and regulatory powers which a state legislature or municipal government would have in legislating for state or local purposes.” *Palmore v. United States*, 411 U.S. 389, 397 (1973). Pursuant to this authority, in 1973, Congress enacted the District of Columbia Home Rule Act, which provides the residents of the District with limited, but substantial, powers of local self-government.⁵ Pub. L. No. 93-198, 87 Stat. 774 (Dec. 24, 1973), *codified as amended at* D.C. Code §§ 1-201.01–1-207.71 (2013). The Home Rule Act vests in an elected Council of the District of Columbia the District’s legislative power, and in an elected Mayor the District’s executive power. D.C. Code §§ 1-204.04, 1-204.22.

A portion of the Home Rule Act is designated as the “District Charter,” which prescribes the structure and duties of the three branches of the District Government. *Id.* §§ 1-204.01–1-204.115. Since the enactment of the Home Rule Act, the Charter has required the Mayor to submit an annual budget for the District Government to the Council. *Id.* § 1-204.42. A section of the Charter titled “Enactment of Appropriations by Congress” requires the Council, after receipt of the Mayor’s budget proposal, to adopt the District’s annual budget, which the Mayor must then submit to the President for transmission to the Congress. *Id.* § 1-204.42. This Charter section also provides that “no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act.” *Id.*

Budget Autonomy Act

In the Home Rule Act, Congress provided that the Charter may be amended by an act passed by the Council and ratified by District voters. *Id.* § 1-203.03. The Budget Autonomy Act, which is the subject of this opinion, was proposed as such a charter amendment.⁶ The Act attempts to amend sections of the District Charter pertaining

⁵ Upon enactment, the act was titled the District of Columbia Self-Government and Governmental Reorganization Act. Pub. L. No. 93-198, § 101. In 1997, Congress renamed the act to the District of Columbia Home Rule Act. Pub. L. No. 105-33, § 11717, 111 Stat. 251, 786 (Aug. 5, 1997).

⁶ The Council passed the Budget Autonomy Act on December 18, 2012; the Mayor signed the measure on January 18, 2013. See 60 D.C. Reg. 1724 (Feb. 15, 2013). District voters considered the Budget Autonomy Act in an election held on April 23, 2013. See District of Columbia Board of Elections, *Summary of Minutes, May 8, 2013 Regular Board Meeting*, available at www.dcboee.org/popup.asp?url=/pdf_files/Mins_May08_13.pdf (last visited Jan. 27, 2014). Under the Home Rule Act, the Chairman of the Council must submit charter amendments to Congress on the day the Board of Elections and Ethics certifies that
(continued...)

to the District's budget process. In particular, the Act renames the Charter section titled "Enactment of Appropriations by Congress," replacing this title with "Enactment of local budget by Council." D.C. Law 19-321, § 2(a), *amending* D.C. Code § 1-204.46. The Act further attempts to amend this section to provide separate treatment for the "federal portion" and the "local portion" of the District's budget.⁷ D.C. Law No. 19-321, § 2(e), *amending* D.C. Code § 1-204.46(a). The "federal portion" would continue to be submitted by the Mayor to the President for transmission to Congress. *Id.* In a key change from the original provisions of the Home Rule Act, the Budget Autonomy Act would require the Chairman of the Council, instead, to submit the "local portion" directly to the Speaker of the House of Representatives "under the procedure set forth in section 602(c) of the Home Rule Act."⁸ *Id.* Section 602(c) requires the Council to submit its enactments to the Congress. D.C. Code § 1-206.02. Acts so submitted become law about

(...continued)

such act was ratified by the requisite number of District voters. D.C. Code § 1-203.03(b). The Board of Elections and Ethics so certified the Budget Autonomy Act on May 8, 2013. Charter amendments become effective only upon (1) the expiration of a 35-day period (excluding weekends, holidays, and days in which either house of Congress is not in session) after the Chairman submits the amendment to Congress; or (2) the date specified in the charter amendment, whichever is later. *Id.* The Budget Autonomy Act set January 1, 2014 as its effective date. D.C. Law 19-321, § 3.

⁷ Neither the Budget Autonomy Act nor the Home Rule Act as amended contains definitions for the terms "local portion" and "federal portion." A memorandum provided to us by the Council in support of its position indicates that the "local portion" is derived from District of Columbia tax revenues. Letter from Chairman, Council of the District of Columbia, to Senior Attorney, GAO, Sept. 27, 2013, Appendix A, at 1. Our conclusions on the legal effect of the Budget Autonomy Act do not turn on the meaning of either of these terms.

⁸ There are some incongruities between the Budget Autonomy Act and the Home Rule Act. For example, the Budget Autonomy Act states that "local portion of the annual budget shall be submitted by the Chairman of the Council to the *Speaker of the House of Representatives* pursuant to the procedure set forth in section 602(c)." D.C. Law 19-321, § 2(e) (emphasis added). Section 602(c), however, requires the Chairman to submit particular acts not only to the Speaker but also to the President of the Senate. D.C. Code § 1-206.02(c). We need not resolve these incongruities for the purposes of this opinion.

30 business days after submission to Congress, unless a measure disapproving the legislation is enacted into law.⁹ *Id.* § 1-206.02(c).

In addition, the Budget Autonomy Act attempts to amend language in the District Charter which forbids District employees from obligating or expending funds except in accordance with an act of Congress. Under the amended language, District officers and employees would be forbidden from obligating or expending local funds unless the amount “has been approved by an act of the Council.” D.C. Law 19-321, § 2(e), *amending* D.C. Code § 1-204.46(c). Though the Council’s act must have been submitted to Congress under section 602(c), under the Budget Autonomy Act, no congressional action would be necessary before District officers and employees may permissibly obligate and expend local funds. *Id.*

Under the Home Rule Act and the Charter as originally enacted, only the enactment of an appropriation, which requires passage by both Houses of Congress and presentment to the President, makes District funds available for obligation or expenditure. Under the Budget Autonomy Act, merely an act of the Council would suffice to make local amounts available for obligation and expenditure, even in the absence of any congressional action.

The Antideficiency Act and the Budget and Accounting Act apply to the District

In furtherance of its constitutional powers, Congress has applied both the Antideficiency Act and the Budget and Accounting Act to the District Government. The Antideficiency Act itself makes clear that it applies to officers and employees not only of the United States Government but also to the District of Columbia Government. 31 U.S.C. § 1341. When the Home Rule Act was enacted in 1974, it confirmed the Antideficiency Act’s continuing application to the District by stating that nothing in the Home Rule Act affects the applicability of the Antideficiency Act to the District Government.¹⁰ D.C. Code § 1-206.03(e). This continuing application of the Antideficiency Act to the District “reflects Congress’ decision . . . to expressly limit District spending to amounts Congress appropriates.” B-262069, Aug. 1, 1995. In addition, the Budget and Accounting Act requires the head of each “agency” to submit a budget request to the President. 31 U.S.C. § 1108(b)(1). The Budget and

⁹ Section 602(c) applies to most acts of the Council. It does not, however, apply to charter amendments (which are enacted under a procedure set forth in section 303) or to “acts of the Council which are submitted to the President in accordance with [the Budget and Accounting Act]” or to other limited exceptions not applicable here. D.C. Code § 1-206.02(c).

¹⁰ Because this section of the Home Rule Act is not contained in the Charter, the Home Rule Act grants Council and District voters no authority to amend or repeal this provision.

Accounting Act explicitly defines the word “agency” to include the District Government. 31 U.S.C. § 1101(1).

Limitations upon the powers of the District Government

The Home Rule Act limits the District Government’s power in many respects. As discussed above, the Home Rule Act grants the Council and voters authority to amend the Charter. See D.C. Code § 1-203.03. However, the Home Rule Act grants the Council and voters no authority to amend provisions of the Home Rule Act outside of the Charter. Provisions not encompassed within the Charter include section 602(a)(3), which provides that the Council may not “enact any act to amend or repeal any Act of Congress . . . which is not restricted in its application exclusively in or to the District.” *Id.* § 1-206.02(a)(3).

The District of Columbia Court of Appeals has ruled on the scope of section 602(a)(3) of the Home Rule Act. The court considered whether criminal sentencing requirements enacted by a District voter initiative could supersede those contained in a federal law. *McConnell v. United States*, 537 A.2d 211 (D.C. 1988). The court noted that the federal sentencing requirements, in addition to applying to defendants convicted under District law, also applied to federal defendants in every jurisdiction in the United States. *Id.* at 214. The court held that because the requirements applied outside of the District, the Council and District voters had no authority to repeal the requirements. “The District of Columbia is not authorized to repeal legislation national in scope, notwithstanding that the repeal would affect enforcement of the legislation only within the District’s jurisdiction.” *Id.* at 215. See also *Brizill v. D.C. Board of Elections and Ethics*, 911 A.2d 1212 (D.C. 2006) (District Government could not amend or repeal a federal law which barred gambling devices in certain enumerated jurisdictions, including the District).

DISCUSSION

The issue before us presents a matter of statutory interpretation. Our analysis is rooted in the fundamental constitutional principle that Congress is empowered “to exercise exclusive Legislation in all Cases whatsoever” over the District. All legislative authority that the District government may legitimately assert must have been given to it by Congress. B-302230, Dec. 30, 2003. Congress created the District Government by enacting the Home Rule Act. Any act of the District Government must comport with the provisions of the Home Rule Act. In this opinion, we consider whether the Home Rule Act granted the District Government authority to enact certain provisions of the Budget Autonomy Act. In particular, we address the conflict between the Budget Autonomy Act and two other federal laws: the Antideficiency Act and the Budget and Accounting Act.

The District Government cannot amend or repeal the requirements of the Antideficiency Act or the Budget and Accounting Act

The Home Rule Act states that the Council may not “amend or repeal any Act of Congress . . . which is not restricted in its application exclusively in or to the District.”¹¹ D.C. Code § 1-206.02(a)(3). As the D.C. Court of Appeals has held, the District Government cannot amend statutes that have any application outside of the District, even if such an amendment would “affect enforcement of the legislation only within the District’s jurisdiction.” *McConnell*, 527 A.2d at 215. Both the Antideficiency Act and the Budget and Accounting Act have application outside of the District, and neither act is restricted in its application exclusively to the District. The language of the Antideficiency Act makes clear that it applies not only to officers and employees of the District of Columbia Government but also to *all* officers and employees of the United States Government. 31 U.S.C. § 1341(a)(1)(A) (“an officer or employee of the United States Government or of the District of Columbia Government may not” make an expenditure or obligation exceeding available amounts). The Budget and Accounting Act applies not only to the District Government but also to the head of each federal agency. 31 U.S.C. § 1108(b)(1). Because both of these statutes apply outside of the District and its government and are not restricted in application exclusively to the District, the Home Rule Act bars the District from amending or repealing either statute.

The legislative history of the Home Rule Act shows that consideration was made in 1973 to a proposal to grant budget autonomy to the District and that the proposal was rejected. The Senate version of the Home Rule Act would have granted considerable fiscal autonomy to the District by providing that the “adoption of any budget by act of the Council shall operate to appropriate and to make available for expenditure, for the purposes therein named, the several amounts stated therein as proposed expenditures.” S. 1435, 93rd Cong., § 504 (1973); S. Rep. No. 93-219, at 8 (1973). In contrast, House amendments to the Senate bill would have required the Council to submit a budget “to the President for transmission to the Congress, leaving Congressional appropriations and reprogramming procedures as presently existing.” H.R. Rep. No. 93-703, at 78 (1973). The conferees adopted the House provisions, “preserving the Congressional appropriations provisions of existing law” and using language that Congress ultimately enacted in the Home Rule Act. *Id.* As this review of the history demonstrates, Congress considered granting the Council authority to make funds available for obligation and expenditure. Under the Home Rule Act, however, pursuant to its constitutional authority to legislate for the District,

¹¹ Section 602(a)(3) of the Home Rule Act is a limitation upon the Council’s authority. Because all Charter amendments must first be passed by the Council, all Charter amendments must comport with the limitations of section 602(a)(3). *Hessey v. Board of Elections and Ethics*, 601 A.2d 3, 16 (D.C. 1991); D.C. Code § 1-206.02(a)(3).

Congress ultimately withheld from the District the authority to make funds available for obligation or expenditure, instead reserving this authority exclusively for Congress.

The Home Rule Act also provides that it makes no “change in existing law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the President, the federal Office of Management and Budget, and the Comptroller General of the United States in the preparation, review, submission, examination, authorization, and appropriation of the total budget of the District of Columbia government.” D.C. Code § 1-206.03(a). This section first states that it makes no change not only to existing “law” but also to “regulation” or to “basic procedure or practice” in the District’s budget process. It preserves the federal role in that process not merely by mentioning the federal government generally but instead by specifying not one, but four federal entities: Congress, the President, the Office of Management and Budget, and GAO. It states that these four entities would continue to play their respective roles in several precisely enumerated steps of that budget process: “preparation, review, submission, examination, authorization, and appropriation.” We can think of no more specific manner for Congress to specify in the Home Rule Act that Congress would retain a firm hand in the District’s budget process.

The Budget Autonomy Act arrogates to the Council of the District of Columbia authority over portions of the District’s budget process that Congress, in the Home Rule Act, clearly specified would remain firmly within congressional control. Only Congress may enact legislation authorizing the District Government to obligate and expend funds, contrary to the Budget Autonomy Act, which attempts to grant to the Council authority to authorize such obligations and expenditures. Under the Home Rule Act, the District must submit its budget request to the President for transmission to the Congress as part of the President’s budget request, which is submitted to Congress to await potential legislative action. Yet the Budget Autonomy Act attempts to authorize the Council to send its budget directly to the Speaker of the House and, further, states that the Council’s transmission becomes law not after congressional enactment but, rather, after congressional silence.

Because Congress established the District Government pursuant to its constitutional authority “to exercise exclusive Legislation in all Cases whatsoever” over the District, it is elementary that “all legislative authority that the District government may legitimately assert . . . must have been given to it by Congress.” B-302230, Dec. 30, 2003. However, portions of the Budget Autonomy Act stand in direct conflict with the Antideficiency Act and with the Budget and Accounting Act and, therefore, are not permissible under the Home Rule Act, which states that the District Government may not “amend or repeal any Act of Congress . . . which is not restricted in its application exclusively in or to the District.” As we pointed out in 2003, it “is well accepted in the law that *ultra vires* behavior is, *ab initio*, legally ineffective.” B-302230, at 11–12. Therefore, portions of the Budget Autonomy Act that purport to

change the federal government's role in the District's budget process are without legal force or effect.

Views of officials of the Government of the District of Columbia

As noted above, we contacted the Chairman of the Council of the District of Columbia, the Mayor of the District of Columbia, and the Attorney General of the District of Columbia for their views on the subject of this opinion; all provided us with their views. The Chairman of the Council states:

“We strongly believe that the Home Rule Act allows the Autonomy Act. The process for amending the Home Rule Act has been used before and is proper. The role of Congress is retained, both through legislative review and its plenary authority under the U.S. Constitution. Also, the new procedure meets the requirements of the Anti-Deficiency Act.”

Council Letter. The Chairman asserts that “[t]here is no dispute that the Antideficiency Act applies to District officers and employees.” Council Letter, Attachment A, at 6. We agree with this position. Our views diverge, however, where the Chairman asserts that the Antideficiency Act allows District officers and employees to obligate or expend funds “in strict accordance with a budget act duly enacted [by the Council] pursuant to the District's charter, as amended by the Autonomy Act.” *Id.* The Chairman asserts that Congress has granted to the District a permanent appropriation of the District's local funds. Council Letter, Attachment A, at 9–10. A permanent appropriation is available for obligation and expenditure without further congressional action. B-204078.2, May 6, 1988; GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 22–23. He concludes that the Budget Autonomy Act lawfully repealed provisions of the Home Rule Act that restricted the District's authority to obligate and expend this permanent appropriation. Council Letter, Attachment A, at 12.

We disagree with the Chairman's assertion that Congress has provided the District with a permanent appropriation. By law, the making of an appropriation must be expressly stated. 31 U.S.C. § 1301(d). An appropriation cannot be inferred or made by implication. 50 Comp. Gen. 863 (1971). The Chairman asserts that the District Charter established a permanent appropriation because it provided that District monies “belong to the District government.” Council Letter, Attachment A, at 9; D.C. Code § 1-204.50. However, this language is not the express statement of appropriation that is necessary under 31 U.S.C. § 1301(d).

The Chairman also cites decisions in which we concluded that Congress had provided agencies with a permanent appropriation. B-228777, Aug. 26, 1988; B-197118, Jan. 14, 1980. However, these decisions are not pertinent here. We

have concluded that only statutes that authorize both the deposit and the expenditure of a class of receipts make those funds available for the specified purpose without further congressional action. See, e.g., B-228777, B-197118. In this case, though the Home Rule Act requires the deposit of funds, it does not authorize their expenditure and, therefore, manifests no congressional intent to make these amounts available for obligation or expenditure without further congressional action. Indeed, section 446 of the Home Rule Act expressly provided that “no amount may be obligated or expended by any officer or employee of the District of Columbia Government unless such amount has been approved by Act of Congress, and then only according to such Act.” D.C. Code § 1-204.46. Congress could not have intended to provide a permanent appropriation to the District in the Home Rule Act where, in the very same act, it provided that funds would be available only with the approval of an act of Congress.

In the alternative, the Chairman argues:

“[T]he purpose and text of the Antideficiency Act would be satisfied when the District Government enacts an annual appropriation pursuant to the Autonomy Act. This is evident by the text of the Antideficiency Act, which provides that obligations and expenditures must be consistent with an appropriation, but does not specifically state that it must be a *congressional* appropriation.”

Council Letter, Attachment A, at 11–12. We disagree. The applicability of the Antideficiency Act to the District, both by its very terms and by the terms of the Home Rule Act, “reflects Congress’ decision . . . to expressly limit District spending to amounts *Congress* appropriates.” B-262069 (emphasis added). Only acts of Congress, not acts by the Council or by officers or employees of the District Government or the federal government, make amounts available for obligation and expenditure.

The Chairman also places significance in the fact that Congress has not enacted into law a resolution disapproving of the Budget Autonomy Act.¹² Council Letter,

¹² Specifically, the Chairman asserted that “now that the Autonomy Act has completed the process set forth in [Home Rule Act] section 303, including the Congressional review period, the Autonomy Act is law and was a legitimate exercise of the charter-amendment power.” Council Letter, Attachment A, at 5–6. A memorandum provided to us in support of the Council’s position states that “Congress had the opportunity to veto the Charter amendment . . . but declined to do so,” which suggests that “Congress determined that the District has the legal authority under the Anti-Deficiency Act to amend its Charter in the way it did.” Council Letter, Attachment B, at 5.

Attachment A, at 5–6. As discussed above, the Home Rule Act provided no authority to enact the Budget Autonomy Act. It is elementary that acts taken without legal authority are void at the outset. See B-302230, at 11–12; *McConnell*, 537 A.2d at 215 (District ballot initiative had no effect because it exceeded powers granted to the District in the Home Rule Act). It is, therefore, of no legal significance that Congress did not enact a resolution disapproving of the Budget Autonomy Act. See *id.* Even in the absence of such a resolution, the amendments of the Budget Autonomy Act have no force or effect.

The Mayor stated that “[a]lthough I strongly support budget autonomy for the District of Columbia and believe that the status quo is unacceptable, I continue to have legal concerns with the act and refer you to the Attorney General’s Response for details.” Mayor Letter. In his response to us, the Attorney General of the District of Columbia stated that he “fully support[s] the concept of budget autonomy for the District for the revenues that we raise from our citizens.” Attorney General Letter, Attachment, at 2. However, he also states that “any fair reading” of the Home Rule Act and of the District Charter contained therein demonstrates that the Home Rule Act does not provide the Council and the District voters authority to enact the Budget Autonomy Act. Attorney General Letter, Attachment, at 3–4. For the reasons we discussed in this opinion, we agree with the concerns the Mayor and the Attorney General of the District of Columbia have expressed.

CONCLUSION

Provisions of the Budget Autonomy Act that attempt to change the federal government’s role in the District’s budget process have no legal effect. District officers and employees continue to be bound by the Antideficiency Act, which bars them from obligating funds except in accordance with appropriations enacted by Congress. The District Government remains bound by provisions of federal law which require it to submit budget estimates to the President for transmission to the Congress for the enactment of appropriations.

The Constitution vests Congress with power “to exercise exclusive Legislation in all Cases whatsoever” over the District. Pursuant to this authority, Congress has enacted the Home Rule Act. While the Home Rule Act grants the District Government substantial powers of self-government, the District Government must also comport with the all of the act’s limitations. A key limitation in the Home Rule Act provides that the District Government may not amend or repeal any act of Congress which is not restricted in its application exclusively in or to the District. However, portions of the Budget Autonomy Act irreconcilably conflict with two laws that are not restricted in their application exclusively in or to the District: the Antideficiency Act and the Budget and Accounting Act. These conflicts render the Budget Autonomy Act impermissible under the Home Rule Act and, therefore, the District Government acted beyond the scope of its authority when it attempted to enact the Budget Autonomy Act. Because acts taken *ultra vires* are, *ab initio*, legally

ineffective, portions of the Budget Autonomy Act that purport to change the federal government's role in the District's budget process are without legal force or effect.

The plain meaning of the Home Rule Act, coupled with the continuing force of the Antideficiency Act and of the Budget and Accounting Act, compels us to reach the conclusions we draw in this opinion. In this opinion we express no views on the merit of greater budget autonomy for the District; it is a matter that rests with the Congress.¹³

We are providing copies of this opinion to the Chairman of the Council, the Mayor, and to the Attorney General of the District of Columbia. If you have any questions, please contact Edda Emmanuelli Perez, Managing Associate General Counsel, at (202) 512-2853, or Katherine S. Lenane, Assistant General Counsel for Appropriations Law, at (202) 512-2792.

Sincerely yours,



Susan A. Poling
General Counsel

¹³ Some members of Congress have proposed legislation that would affect some aspects of the budget process as it applies to the District Government. See, e.g., H.R. 2793, 113th Cong. (2013).

Appendix II: Accessible Data

Accessible Text

Text of Appendix I: B-324987

Page 1

United States Government Accountability Office

Washington, DC 20548

B-324987

January 30, 2014

The Honorable Ander Crenshaw

Chairman

Subcommittee on Financial Services and General Government

Committee on Appropriations

House of Representatives

Subject: District of Columbia—Local Budget Autonomy Amendment Act of 2012

Dear Mr. Chairman:

This responds to your request for our opinion regarding the effect of the District of Columbia's Local Budget Autonomy Amendment Act of 2012 (Budget Autonomy Act). In the District of Columbia Home Rule Act, Congress established the District Government and delineated its budget process. Through the Budget Autonomy Act, the Council of the District of Columbia and District voters attempt to change the federal government's role in this budget process by removing Congress from the appropriation process of most District funds and by removing the President from the District's budget formulation process. In this opinion, we address the conflict between the Budget Autonomy Act and two other federal laws: the

Antideficiency Act¹ and the Budget and Accounting Act, 1921.² The Antideficiency Act bars officers and employees of the U.S. Government and of the Government of the District of Columbia from making or authorizing expenditures or obligations exceeding the amount available in an appropriation or fund. The Budget and Accounting Act requires the head of each agency, which for the purposes of this Act includes the District Government, to submit a budget request to the President for transmission to Congress.

At issue here is whether the Home Rule Act and the Antideficiency Act allow the District Government to authorize its officers and employees to obligate and expend funds in accordance with an act of the Council of the District of Columbia, rather than in accordance with appropriations enacted into federal law in exercise of

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Congress's constitutional prerogative to legislate for the seat of government and its constitutional power of the purse. Also at issue is whether the Home Rule Act and the Budget and Accounting Act permit the District Government to change the process through which the District submits its budget request to the President for transmission to Congress.

Our practice when rendering opinions is to contact relevant agencies and officials to obtain their legal views on the subject of the request.³ We contacted the Chairman of the Council of the District of Columbia, the Mayor of the District of Columbia, and the Attorney General of the District of Columbia; all provided us with their views.⁴

As explained below, we conclude that provisions of the Budget Autonomy Act that attempt to change the federal government's role in the District's budget process have no legal effect. The Home Rule Act, as well as the

¹ 31 U.S.C. § 1341.

² 31 U.S.C. § 1108.

³ GAO, Procedures and Practices for Legal Decisions and Opinions, GAO-06- 1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/resources.html.

⁴ Letter from Chairman, Council of the District of Columbia, to Senior Attorney, GAO, Sept. 27, 2013 (Council Letter); Letter from Mayor, District of Columbia, to Assistant General Counsel, GAO, Sept. 11, 2013 (Mayor Letter); Letter from Attorney General, District of Columbia, to Assistant General Counsel, GAO, Sept. 10, 2013 (Attorney General Letter).

Antideficiency Act and the Budget and Accounting Act, serve and protect two important constitutional powers reserved to the Congress: (1) its power “to exercise exclusive Legislation in all Cases whatsoever” over the District, U.S. Const. art. I, § 8, cl. 17, and (2) Congress’s constitutional power of the purse. We conclude, therefore, that without affirmative congressional action otherwise, the requirements of the Antideficiency Act continue to apply and District officers and employees may not obligate or expend funds except in accordance with appropriations enacted by Congress. The District Government also remains bound by the Budget and Accounting Act, which requires it to submit budget estimates to the President.

In this opinion we express no views on the merits of Congress granting greater budget autonomy to the District.

BACKGROUND

Congressional delegation of authority in the Home Rule Act

The Constitution vests Congress with the power “to exercise exclusive Legislation in all Cases whatsoever, over . . . the Seat of the Government of the United States.”

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U.S. Const. art. I, § 8, cl. 17. The Supreme Court has held that this clause vests Congress with “plenary” authority to exercise, in the District of Columbia, “the police and regulatory powers which a state legislature or municipal government would have in legislating for state or local purposes.” *Palmore v. United States*, 411 U.S. 389, 397 (1973). Pursuant to this authority, in 1973, Congress enacted the District of Columbia Home Rule Act, which provides the residents of the District with limited, but substantial, powers of local self-government.⁵ Pub. L. No. 93-198, 87 Stat. 774 (Dec. 24, 1973), codified as amended at D.C. Code §§ 1-201.01–1-207.71 (2013). The Home Rule Act vests in an elected Council of the District of Columbia the District’s legislative power, and in an elected Mayor the District’s executive power. D.C. Code §§ 1-204.04, 1-204.22.

⁵ Upon enactment, the act was titled the District of Columbia Self-Government and Governmental Reorganization Act. Pub. L. No. 93-198, § 101. In 1997, Congress renamed the act to the District of Columbia Home Rule Act. Pub. L. No. 105-33, § 11717, 111 Stat. 251, 786 (Aug. 5, 1997).

A portion of the Home Rule Act is designated as the “District Charter,” which prescribes the structure and duties of the three branches of the District Government. Id. §§ 1-204.01–1-204.115. Since the enactment of the Home Rule Act, the Charter has required the Mayor to submit an annual budget for the District Government to the Council. Id. § 1-204.42. A section of the Charter titled “Enactment of Appropriations by Congress” requires the Council, after receipt of the Mayor’s budget proposal, to adopt the District’s annual budget, which the Mayor must then submit to the President for transmission to the Congress. Id. § 1-204.42. This Charter section also provides that “no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act.” Id.

Budget Autonomy Act

In the Home Rule Act, Congress provided that the Charter may be amended by an act passed by the Council and ratified by District voters. Id. § 1-203.03. The Budget Autonomy Act, which is the subject of this opinion, was proposed as such a charter amendment.⁶ The Act attempts to amend sections of the District Charter pertaining

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to the District’s budget process. In particular, the Act renames the Charter section titled “Enactment of Appropriations by Congress,” replacing this title with “Enactment of local budget by Council.” D.C. Law 19-321, § 2(a), amending D.C. Code § 1-204.46. The Act further attempts to amend this section to provide separate treatment for the “federal portion” and the

⁶ The Council passed the Budget Autonomy Act on December 18, 2012; the Mayor signed the measure on January 18, 2013. See 60 D.C. Reg. 1724 (Feb. 15, 2013). District voters considered the Budget Autonomy Act in an election held on April 23, 2013. See District of Columbia Board of Elections, Summary of Minutes, May 8, 2013 Regular Board Meeting, available at www.dcboee.org/popup.asp?url=/pdf_files/Mins_May08_13.pdf (last visited Jan. 27, 2014). Under the Home Rule Act, the Chairman of the Council must submit charter amendments to Congress on the day the Board of Elections and Ethics certifies that such act was ratified by the requisite number of District voters. D.C. Code § 1-203.03(b). The Board of Elections and Ethics so certified the Budget Autonomy Act on May 8, 2013. Charter amendments become effective only upon (1) the expiration of a 35-day period (excluding weekends, holidays, and days in which either house of Congress is not in session) after the Chairman submits the amendment to Congress; or (2) the date specified in the charter amendment, whichever is later. Id. The Budget Autonomy Act set January 1, 2014 as its effective date. D.C. Law 19-321, § 3.

“local portion” of the District’s budget.⁷ D.C. Law No. 19-321, § 2(e), amending D.C. Code § 1-204.46(a). The “federal portion” would continue to be submitted by the Mayor to the President for transmission to Congress. *Id.* In a key change from the original provisions of the Home Rule Act, the Budget Autonomy Act would require the Chairman of the Council, instead, to submit the “local portion” directly to the Speaker of the House of Representatives “under the procedure set forth in section 602(c) of the Home Rule Act.”⁸ *Id.* Section 602(c) requires the Council to submit its enactments to the Congress. D.C. Code § 1-206.02. Acts so submitted become law about

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30 business days after submission to Congress, unless a measure disapproving the legislation is enacted into law.⁹ *Id.* § 1-206.02(c).

In addition, the Budget Autonomy Act attempts to amend language in the District Charter which forbids District employees from obligating or expending funds except in accordance with an act of Congress. Under the amended language, District officers and employees would be forbidden from obligating or expending local funds unless the amount “has been approved by an act of the Council.” D.C. Law 19-321, § 2(e), amending D.C. Code § 1-204.46(c). Though the Council’s act must have been submitted to Congress under section 602(c), under the Budget Autonomy Act, no congressional action would be necessary before

⁷ Neither the Budget Autonomy Act nor the Home Rule Act as amended contains definitions for the terms “local portion” and “federal portion.” A memorandum provided to us by the Council in support of its position indicates that the “local portion” is derived from District of Columbia tax revenues. Letter from Chairman, Council of the District of Columbia, to Senior Attorney, GAO, Sept. 27, 2013, Appendix A, at 1. Our conclusions on the legal effect of the Budget Autonomy Act do not turn on the meaning of either of these terms.

⁸ There are some incongruities between the Budget Autonomy Act and the Home Rule Act. For example, the Budget Autonomy Act states that “local portion of the annual budget shall be submitted by the Chairman of the Council to the Speaker of the House of Representatives pursuant to the procedure set forth in section 602(c).” D.C. Law 19-321, § 2(e) (emphasis added). Section 602(c), however, requires the Chairman to submit particular acts not only to the Speaker but also to the President of the Senate. D.C. Code § 1-206.02(c). We need not resolve these incongruities for the purposes of this opinion.

⁹ Section 602(c) applies to most acts of the Council. It does not, however, apply to charter amendments (which are enacted under a procedure set forth in section 303) or to “acts of the Council which are submitted to the President in accordance with [the Budget and Accounting Act]” or to other limited exceptions not applicable here. D.C. Code § 1-206.02(c).

District officers and employees may permissibly obligate and expend local funds. *Id.*

Under the Home Rule Act and the Charter as originally enacted, only the enactment of an appropriation, which requires passage by both Houses of Congress and presentment to the President, makes District funds available for obligation or expenditure. Under the Budget Autonomy Act, merely an act of the Council would suffice to make local amounts available for obligation and expenditure, even in the absence of any congressional action.

The Antideficiency Act and the Budget and Accounting Act apply to the District

In furtherance of its constitutional powers, Congress has applied both the Antideficiency Act and the Budget and Accounting Act to the District Government. The Antideficiency Act itself makes clear that it applies to officers and employees not only of the United States Government but also to the District of Columbia Government. 31 U.S.C. § 1341. When the Home Rule Act was enacted in 1974, it confirmed the Antideficiency Act's continuing application to the District by stating that nothing in the Home Rule Act affects the applicability of the Antideficiency Act to the District Government.¹⁰ D.C. Code § 1-206.03(e). This continuing application of the Antideficiency Act to the District "reflects Congress' decision . . . to expressly limit District spending to amounts Congress appropriates." B-262069, Aug. 1, 1995. In addition, the Budget and Accounting Act requires the head of each "agency" to submit a budget request to the President. 31 U.S.C. § 1108(b)(1). The Budget and

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Accounting Act explicitly defines the word "agency" to include the District Government. 31 U.S.C. § 1101(1).

Limitations upon the powers of the District Government

The Home Rule Act limits the District Government's power in many respects. As discussed above, the Home Rule Act grants the Council and voters authority to amend the Charter. See D.C. Code § 1-203.03.

¹⁰ Because this section of the Home Rule Act is not contained in the Charter, the Home Rule Act grants Council and District voters no authority to amend or repeal this provision.

However, the Home Rule Act grants the Council and voters no authority to amend provisions of the Home Rule Act outside of the Charter. Provisions not encompassed within the Charter include section 602(a)(3), which provides that the Council may not “enact any act to amend or repeal any Act of Congress . . . which is not restricted in its application exclusively in or to the District.” Id. § 1-206.02(a)(3).

The District of Columbia Court of Appeals has ruled on the scope of section 602(a)(3) of the Home Rule Act. The court considered whether criminal sentencing requirements enacted by a District voter initiative could supersede those contained in a federal law. *McConnell v. United States*, 537 A.2d 211 (D.C. 1988). The court noted that the federal sentencing requirements, in addition to applying to defendants convicted under District law, also applied to federal defendants in every jurisdiction in the United States. Id. at 214. The court held that because the requirements applied outside of the District, the Council and District voters had no authority to repeal the requirements. “The District of Columbia is not authorized to repeal legislation national in scope, notwithstanding that the repeal would affect enforcement of the legislation only within the District’s jurisdiction.” Id. at 215. See also *Brizill v. D.C. Board of Elections and Ethics*, 911 A.2d 1212 (D.C. 2006) (District Government could not amend or repeal a federal law which barred gambling devices in certain enumerated jurisdictions, including the District).

DISCUSSION

The issue before us presents a matter of statutory interpretation. Our analysis is rooted in the fundamental constitutional principle that Congress is empowered “to exercise exclusive Legislation in all Cases whatsoever” over the District. All legislative authority that the District government may legitimately assert must have been given to it by Congress. B-302230, Dec. 30, 2003. Congress created the District Government by enacting the Home Rule Act. Any act of the District Government must comport with the provisions of the Home Rule Act. In this opinion, we consider whether the Home Rule Act granted the District Government authority to enact certain provisions of the Budget Autonomy Act. In particular, we address the conflict between the Budget Autonomy Act and two other federal laws: the Antideficiency Act and the Budget and Accounting Act.

The Home Rule Act states that the Council may not “amend or repeal any Act of Congress . . . which is not restricted in its application exclusively in or to the District.”¹¹ D.C. Code § 1-206.02(a)(3). As the D.C. Court of Appeals has held, the District Government cannot amend statutes that have any application outside of the District, even if such an amendment would “affect enforcement of the legislation only within the District’s jurisdiction.” *McConnell*, 527 A.2d at 215. Both the Antideficiency Act and the Budget and Accounting Act have application outside of the District, and neither act is restricted in its application exclusively to the District. The language of the Antideficiency Act makes clear that it applies not only to officers and employees of the District of Columbia Government but also to all officers and employees of the United States Government. 31 U.S.C. § 1341(a)(1)(A) (“an officer or employee of the United States Government or of the District of Columbia Government may not” make an expenditure or obligation exceeding available amounts). The Budget and Accounting Act applies not only to the District Government but also to the head of each federal agency. 31 U.S.C. § 1108(b)(1). Because both of these statutes apply outside of the District and its government and are not restricted in application exclusively to the District, the Home Rule Act bars the District from amending or repealing either statute.

The legislative history of the Home Rule Act shows that consideration was made in 1973 to a proposal to grant budget autonomy to the District and that the proposal was rejected. The Senate version of the Home Rule Act would have granted considerable fiscal autonomy to the District by providing that the “adoption of any budget by act of the Council shall operate to appropriate and to make available for expenditure, for the purposes therein named, the several amounts stated therein as proposed expenditures.” S. 1435, 93rd Cong., § 504 (1973); S. Rep. No. 93-219, at 8 (1973). In contrast, House amendments to the Senate bill would have required the Council to submit a budget “to the President for transmission to the Congress, leaving Congressional appropriations and reprogramming procedures as presently existing.” H.R. Rep. No. 93-703, at 78 (1973). The conferees adopted the House provisions, “preserving the Congressional appropriations provisions of existing law” and using language that Congress ultimately enacted in the Home Rule Act. *Id.* As

¹¹ Section 602(a)(3) of the Home Rule Act is a limitation upon the Council’s authority. Because all Charter amendments must first be passed by the Council, all Charter amendments must comport with the limitations of section 602(a)(3). *Hessey v. Board of Elections and Ethics*, 601 A.2d 3, 16 (D.C. 1991); D.C. Code § 1-206.02(a)(3).

this review of the history demonstrates, Congress considered granting the Council authority to make funds available for obligation and expenditure. Under the Home Rule Act, however, pursuant to its constitutional authority to legislate for the District,

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Congress ultimately withheld from the District the authority to make funds available for obligation or expenditure, instead reserving this authority exclusively for Congress.

The Home Rule Act also provides that it makes no “change in existing law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the President, the federal Office of Management and Budget, and the Comptroller General of the United States in the preparation, review, submission, examination, authorization, and appropriation of the total budget of the District of Columbia government.” D.C. Code § 1-206.03(a). This section first states that it makes no change not only to existing “law” but also to “regulation” or to “basic procedure or practice” in the District’s budget process. It preserves the federal role in that process not merely by mentioning the federal government generally but instead by specifying not one, but four federal entities: Congress, the President, the Office of Management and Budget, and GAO. It states that these four entities would continue to play their respective roles in several precisely enumerated steps of that budget process: “preparation, review, submission, examination, authorization, and appropriation.” We can think of no more specific manner for Congress to specify in the Home Rule Act that Congress would retain a firm hand in the District’s budget process.

The Budget Autonomy Act arrogates to the Council of the District of Columbia authority over portions of the District’s budget process that Congress, in the Home Rule Act, clearly specified would remain firmly within congressional control. Only Congress may enact legislation authorizing the District Government to obligate and expend funds, contrary to the Budget Autonomy Act, which attempts to grant to the Council authority to authorize such obligations and expenditures. Under the Home Rule Act, the District must submit its budget request to the President for transmission to the Congress as part of the President’s budget request, which is submitted to Congress to await potential legislative action. Yet the Budget Autonomy Act attempts to authorize the Council to send its budget directly to the Speaker of the House and, further, states that the Council’s transmission becomes law not after congressional enactment but, rather, after congressional silence.

Because Congress established the District Government pursuant to its constitutional authority “to exercise exclusive Legislation in all Cases whatsoever” over the District, it is elementary that “all legislative authority that the District government may legitimately assert . . . must have been given to it by Congress.” B-302230, Dec. 30, 2003. However, portions of the Budget Autonomy Act stand in direct conflict with the Antideficiency Act and with the Budget and Accounting Act and, therefore, are not permissible under the Home Rule Act, which states that the District Government may not “amend or repeal any Act of Congress . . . which is not restricted in its application exclusively in or to the District.” As we pointed out in 2003, it “is well accepted in the law that ultra vires behavior is, ab initio, legally ineffective.” B-302230, at 11–12. Therefore, portions of the Budget Autonomy Act that purport to

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change the federal government’s role in the District’s budget process are without legal force or effect.

Views of officials of the Government of the District of Columbia

As noted above, we contacted the Chairman of the Council of the District of Columbia, the Mayor of the District of Columbia, and the Attorney General of the District of Columbia for their views on the subject of this opinion; all provided us with their views. The Chairman of the Council states:

“We strongly believe that the Home Rule Act allows the Autonomy Act. The process for amending the Home Rule Act has been used before and is proper. The role of Congress is retained, both through legislative review and its plenary authority under the U.S. Constitution. Also, the new procedure meets the requirements of the Anti-Deficiency Act.”

Council Letter. The Chairman asserts that “[t]here is no dispute that the Antideficiency Act applies to District officers and employees.” Council Letter, Attachment A, at 6. We agree with this position. Our views diverge, however, where the Chairman asserts that the Antideficiency Act allows District officers and employees to obligate or expend funds “in strict accordance with a budget act duly enacted [by the Council] pursuant to the District’s charter, as amended by the Autonomy Act.” *Id.* The Chairman asserts that Congress has granted to the District a permanent appropriation of the District’s local funds. Council Letter, Attachment A, at 9–10. A permanent appropriation is available for obligation and expenditure without further congressional action. B-204078.2, May 6, 1988; GAO, A Glossary of Terms Used in the Federal Budget Process,

GAO-05-734SP (Washington, D.C.: Sept. 2005), at 22–23. He concludes that the Budget Autonomy Act lawfully repealed provisions of the Home Rule Act that restricted the District’s authority to obligate and expend this permanent appropriation. Council Letter, Attachment A, at 12.

We disagree with the Chairman’s assertion that Congress has provided the District with a permanent appropriation. By law, the making of an appropriation must be expressly stated. 31 U.S.C. § 1301(d). An appropriation cannot be inferred or made by implication. 50 Comp. Gen. 863 (1971). The Chairman asserts that the District Charter established a permanent appropriation because it provided that District monies “belong to the District government.” Council Letter, Attachment A, at 9; D.C. Code § 1-204.50. However, this language is not the express statement of appropriation that is necessary under 31 U.S.C. § 1301(d).

The Chairman also cites decisions in which we concluded that Congress had provided agencies with a permanent appropriation. B-228777, Aug. 26, 1988; B-197118, Jan. 14, 1980. However, these decisions are not pertinent here. We

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have concluded that only statutes that authorize both the deposit and the expenditure of a class of receipts make those funds available for the specified purpose without further congressional action. See, e.g., B-228777, B-197118. In this case, though the Home Rule Act requires the deposit of funds, it does not authorize their expenditure and, therefore, manifests no congressional intent to make these amounts available for obligation or expenditure without further congressional action. Indeed, section 446 of the Home Rule Act expressly provided that “no amount may be obligated or expended by any officer or employee of the District of Columbia Government unless such amount has been approved by Act of Congress, and then only according to such Act.” D.C. Code § 1-204.46. Congress could not have intended to provide a permanent appropriation to the District in the Home Rule Act where, in the very same act, it provided that funds would be available only with the approval of an act of Congress.

In the alternative, the Chairman argues:

“[T]he purpose and text of the Antideficiency Act would be satisfied when the District Government enacts an annual appropriation pursuant to the Autonomy Act. This is evident by the text of the Antideficiency Act, which provides that obligations and expenditures must be consistent with an

appropriation, but does not specifically state that it must be a congressional appropriation.”

Council Letter, Attachment A, at 11–12. We disagree. The applicability of the Antideficiency Act to the District, both by its very terms and by the terms of the Home Rule Act, “reflects Congress’ decision . . . to expressly limit District spending to amounts Congress appropriates.” B-262069 (emphasis added). Only acts of Congress, not acts by the Council or by officers or employees of the District Government or the federal government, make amounts available for obligation and expenditure.

The Chairman also places significance in the fact that Congress has not enacted into law a resolution disapproving of the Budget Autonomy Act.¹² Council Letter,

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Attachment A, at 5–6. As discussed above, the Home Rule Act provided no authority to enact the Budget Autonomy Act. It is elementary that acts taken without legal authority are void at the outset. See B-302230, at 11–12; McConnell, 537 A.2d at 215 (District ballot initiative had no effect because it exceeded powers granted to the District in the Home Rule Act). It is, therefore, of no legal significance that Congress did not enact a resolution disapproving of the Budget Autonomy Act. See *id.* Even in the absence of such a resolution, the amendments of the Budget Autonomy Act have no force or effect.

The Mayor stated that “[a]lthough I strongly support budget autonomy for the District of Columbia and believe that the status quo is unacceptable, I continue to have legal concerns with the act and refer you to the Attorney General’s Response for details.” Mayor Letter. In his response to us, the Attorney General of the District of Columbia stated that he “fully support[s] the concept of budget autonomy for the District for the revenues that we raise from our citizens.” Attorney General Letter, Attachment, at 2. However, he also states that “any fair reading” of the Home Rule Act and

¹² Specifically, the Chairman asserted that “now that the Autonomy Act has completed the process set forth in [Home Rule Act] section 303, including the Congressional review period, the Autonomy Act is law and was a legitimate exercise of the charter-amendment power.” Council Letter, Attachment A, at 5–6. A memorandum provided to us in support of the Council’s position states that “Congress had the opportunity to veto the Charter amendment . . . but declined to do so,” which suggests that “Congress determined that the District has the legal authority under the Anti-Deficiency Act to amend its Charter in the way it did.” Council Letter, Attachment B, at 5.

of the District Charter contained therein demonstrates that the Home Rule Act does not provide the Council and the District voters authority to enact the Budget Autonomy Act. Attorney General Letter, Attachment, at 3–4. For the reasons we discussed in this opinion, we agree with the concerns the Mayor and the Attorney General of the District of Columbia have expressed.

CONCLUSION

Provisions of the Budget Autonomy Act that attempt to change the federal government’s role in the District’s budget process have no legal effect. District officers and employees continue to be bound by the Antideficiency Act, which bars them from obligating funds except in accordance with appropriations enacted by Congress. The District Government remains bound by provisions of federal law which require it to submit budget estimates to the President for transmission to the Congress for the enactment of appropriations.

The Constitution vests Congress with power “to exercise exclusive Legislation in all Cases whatsoever” over the District. Pursuant to this authority, Congress has enacted the Home Rule Act. While the Home Rule Act grants the District Government substantial powers of self-government, the District Government must also comport with the all of the act’s limitations. A key limitation in the Home Rule Act provides that the District Government may not amend or repeal any act of Congress which is not restricted in its application exclusively in or to the District. However, portions of the Budget Autonomy Act irreconcilably conflict with two laws that are not restricted in their application exclusively in or to the District: the Antideficiency Act and the Budget and Accounting Act. These conflicts render the Budget Autonomy Act impermissible under the Home Rule Act and, therefore, the District Government acted beyond the scope of its authority when it attempted to enact the Budget Autonomy Act. Because acts taken ultra vires are, ab initio, legally

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ineffective, portions of the Budget Autonomy Act that purport to change the federal government’s role in the District’s budget process are without legal force or effect.

The plain meaning of the Home Rule Act, coupled with the continuing force of the Antideficiency Act and of the Budget and Accounting Act,

compels us to reach the conclusions we draw in this opinion. In this opinion we express no views on the merit of greater budget autonomy for the District; it is a matter that rests with the Congress.¹³

We are providing copies of this opinion to the Chairman of the Council, the Mayor, and to the Attorney General of the District of Columbia. If you have any questions, please contact Edda Emmanuelli Perez, Managing Associate General Counsel, at (202) 512-2853, or Katherine S. Lenane, Assistant General Counsel for Appropriations Law, at (202) 512-2792.

Sincerely yours,

Susan A. Poling

General Counsel

¹³ Some members of Congress have proposed legislation that would affect some aspects of the budget process as it applies to the District Government. See, e.g., H.R. 2793, 113th Cong. (2013).

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