APPENDIX ONE:

THE D.C. REVITALIZATION ACT: HISTORY, PROVISIONS AND PROMISES

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When Congress granted home rule to the District of Columbia in 1973,[167] Rep. Charles C. Diggs, Jr., then chair of the House D.C. Committee, declared that Washington's residents had become "masters of their own fate."[168] Led by a democratically elected mayor and city-council, the District was not quite its own "master" but a semi-autonomous, unique, government entity with city and state functions and limited power over its own budget and laws.[169] However, a mere two decades later, the District's limited home rule was in crisis. As the District government's financial position reached its nadir in the mid-1990s, residents' frustration and anger mounted as the District was unable to deliver efficiently the most basic services to its citizens, and the city's congressional overseers began calling for a partial or even complete elimination of home rule.

After enjoying relative financial stability for most of the 1980s, the District began operating at a deficit in 1994, and by 1995 the accumulated deficit had ballooned to $722 million. To make matters worse, Wall Street dropped the District's bond ratings to "junk" levels, prompting Moody's to brand them risky and "speculative."[170] As a result, the city was unable to pay its vendors, to render basic services, or to obtain a simple line of credit. District residents, tired of dealing with ineffective and inefficient services, underachieving schools, and high crime rates, fled to the Maryland and Virginia suburbs in droves – 53,000 District residents, representing 22,000 households, left between 1990 and 1995. This flight contributed to the erosion of the District's tax base and exacerbated budget shortfalls.[171] It was a vicious cycle that was driving the city toward insolvency.

The growing economic crisis would soon come to the attention of the Clinton Administration and the newly elected Republican Congress. Despite their myriad differences on the wide range of national issues facing the country, the President and the Congress would have to come together to prevent the Nation's Capital from sliding into bankruptcy. Their analysis ultimately would examine both sides of the city's balance sheet: the federally imposed limitations on revenue and the District's own expenditures.

Because tackling the District's revenue limitations presented far too many political challenges for the Congress and the President to resolve,[172] the legislation that was adopted to stem the crisis, the National Capital Revitalization and Self-Government Improvement Act of 1997 (known as "The Revitalization Act"), addressed only the expenditure side of the District's budget. For example, the Act removed several costly state functions and relieved the District of its massive, federally created pension liability and disproportionate share of Medicaid payments, but did not touch limitations on revenue, such as the non-resident income tax ban, property tax exemptions or the federal height limitations on buildings. Despite the indisputable positive financial impact that the Revitalization Act continues to have on the District, even those who supported and championed the legislation recognized that it would never amount to a complete remedy for the District's structural financial challenges. It was (and remains today) an incomplete remedy because it alleviates only some of the expenditures that the District must bear uniquely as the national capital, but it ignores the crippling federally imposed limitations on local revenue. The architects of the Revitalization Act articulated, before and after its passage, their belief that the Act would have to be revisited and potentially strengthened at some point in the future.

The Control Board

By 1995, the District had reached a point beyond its own ability to stem the worsening economic crisis. The congressional leadership and D.C. oversight committees began to discuss a solution to the District's fiscal challenges. Following the 1994 elections, the Congress was controlled for the first time in 40 years by Republicans (a party which then and today holds less than 10% of the voter registrations in the District). Yet, despite the political differences between the Congress and the District, Speaker Gingrich (R-GA) and House D.C. Subcommittee Chair Davis (R-VA) dedicated themselves to working across the aisle to find a bi-partisan solution to the crisis. Two options gained traction in early 1995: first, place the city in federal receivership, not unlike the commissioner structure prior to home rule, a move favored by some of the newly elected congressional Republicans and almost no one in the District; or second, cede some control over the city's affairs to a control board created by the Federal Government, a course of action supported by Congresswoman Norton (D-DC), the District's non-voting representative to Congress. Norton knew that jurisdictions such as New York, Cleveland and Philadelphia had emerged from financial crisis with the assistance of state-created financial control boards, and that those jurisdictions had retained partial autonomy during the control periods and received full autonomy once the control period had ended. Norton and her colleague, Representative Davis, whom Speaker Gingrich had hand-picked to chair the D.C. Subcommittee, convinced Congress to choose the latter course, passing legislation in 1995 to establish the District of Columbia Financial Responsibility and Management Assistance Authority – or as it was and is commonly known: the "Control Board."[173]

From the outset, Congress expected a great deal from the Control Board. It was required to:

- ensure that the District efficiently and effectively deliver services to its residents,
- enhance the District's timely payments of its debts; increase the city's access to capital markets,
- assure the city's long-term economic vitality and operational efficiency, and
- repair and foster a better relationship between the District and the Federal Government.[174]

As if that mandate were not vast enough, the Control Board also was tasked with perhaps its most important role – shepherding the city through the process of balancing its budget. Congress gave the Control Board four years to balance the District's budget – a balance that was required to be maintained for four years before the Control Board could be dissolved.[175]

To ensure that these goals were achieved, Congress vested the Control Board with broad powers traditionally reserved for the city government – including the authority to approve or reject the city's annual budget, its financial plan, and any attempts to spend or borrow in the city's name, and to review all future and existing city contracts. All District spending was to be routed through the Control Board. The Board also was expected to approve the Mayor's appointments to key government positions, including the Chief Financial Officer (CFO), and had the authority to remove such appointees for cause. In extraordinary circumstances, and only after following a specific process identified in the legislation, the Control Board also could disapprove District laws passed by the Council.

Armed with those powers, the Control Board set out to remedy the District's fiscal crisis, and immediately took action to do so. In an attempt to calm vendors' discontent with the District's contracting processes, the Board reviewed and approved over 1,500 contracts. It removed the contracting authority from the Department of Human Services to ensure city agents undertook better contracting procedures and achieved savings for the District. The Board also:

- oversaw repairs to the District's emergency vehicles to improve the promptness and reliability of essential city emergency services;
- privatized city functions to cut costs; and
- exercised its financial oversight by rejecting Council-approved expenditures that would have further increased the accumulated deficit and would have – in the Board's eyes – been irresponsible.[176]

As time passed, the Board grew more assertive. It forced a member of Mayor Barry's cabinet to resign, rejected millions in contracts between the city and the Mayor's associates that it found questionable, and even regularly quashed legislation approved by the D.C. Council.[177] In one of its most controversial actions, the Board fired the public school superintendent, revoked most of the school board's powers, and appointed its own superintendent to lead the system.[178]

In their own effort to stem the crisis and to demonstrate fiscal responsibility, the Council and the Mayor also began taking steps to lift D.C. out of its financial deficit and to strengthen managerial controls. The Council passed legislation that reduced spending by cutting welfare benefits and youth programs, and, for his part, the Mayor pledged to reduce the number of workers on the city payroll to further ease the city's budgetary burdens.[179]

Despite these advances, wholesale remediation of the District's financial situation proved elusive. The inability of the Control Board to rehabilitate the city's finances and management was not for lack of effort. However, after 20 months of work, the Control Board – by its own admission – had managed only "marginal progress."[180] Perplexed by its inability to effect major change in the city's situation, the Control Board, along with other stakeholders, including Congress and D.C. Appleseed, began to discuss remedies for the root causes of D.C.'s fiscal problems.

Searching for Solutions

What the various stakeholders determined was that D.C.'s fiscal problems were more deeply rooted and structural than any short-term maladies that the Control Board and Council had determined to cure. Irresponsible spending and government mismanagement certainly contributed to the problem and precipitated the fiscal crisis. The District's long-term recovery, however, would depend upon an examination and re-structuring of the limitations on its revenue stream coupled with relief from its state-type and federal expenditure responsibilities. These twin constraints on the District's budget were the root causes of the District's long-term, structural deficit.

City Acting as a State

In its assessment of these structural challenges, the Control Board determined that the most basic threat to the District's long term financial viability was its status as a hybrid municipal entity. It lacked revenue support from a state government, but was forced by necessity to provide its residents the services normally funded by a state. As the Board noted, comparison between the District and any other similarly situated city in the United States revealed the disparity:

> Every other city in the United States is part of a broader governance structure that begins with a state and includes other cities and counties, as well as special districts and independent authori-

Photo by Michael Bonfigli

> ties. States distribute and share certain powers with their cities, counties, and special districts. The District, in contrast, is neither a state with the power to distribute its authority and functions to other governmental units, nor a city with the ability to rely upon a state to share or shift the burden of governance within a broader geographical area.[181]

It was what President Clinton called the "not quite" syndrome – the District was "not quite a State, not quite a city, not quite independent, not quite dependent."[182]

As a result of this hybrid status, the District was required to fund many state functions as if it possessed the broad taxing base of a state. Virtually no government service remained unaffected by this reality. For example, states generally assume the nonfederal share of Medicaid expenditures. New York City was the only city outside of D.C. that paid a portion of Medicaid costs, and that level was 25 percent. By contrast, the District was forced to pay 50 percent of its Medicaid costs – the largest burden borne by any city in the Nation. The District's high ratio of Medicaid recipients to tax payers (in D.C. the ratio was two taxpayers for every Medicaid recipient, whereas in Maryland and Virginia the ratio exceeded 4:1) only exacerbated the problem.[183] As a result, between fiscal years 1991 and 1995, the District's Medicaid expenditures for private providers alone had ballooned from $427 million to $744 million, and it was estimated the total would jump another $40 million by FY 1997.[184] As noted by the GAO in a 1996 report, were the District required to pay half of its nonfederal share of Medicare expenditures, "the impact on [its] financial condition would [have been] significant."[185]

Similarly, welfare programs, the nonfederal share of which was funded with state dollars in most cases, were funded without state-level assistance in the District.[186] Education, typically the province of the state both from a funding and a policy perspective, also was a responsibility that fell to the District. The District government was forced to educate the city's youth without nearly $300 million in operational funding it would have received were it part of a state.[187] Infrastructure needs also were the responsibility of the District government. Whereas most states footed the bill for road and bridge construction, maintenance and improvement, the District bore those responsibilities on its own. Further examples of this phenomenon were the financial burden D.C. faced in operating its courts, hospitals, prisons and university. From 1993-1995, the District government, for example, paid subsidies to the D.C. General Hospital and the University of the District of Columbia of $163 million and $184 million, respectively.[188] The District also was forced to maintain and operate a completely unified court system as well as a jail housing felons. All of these services, usually provided and funded by the states, were the responsibility of the District alone – a responsibility it had without having the corresponding statutory state taxing power needed to meet the responsibility.

In addition to its state-type service responsibilities, the District also had a unique problem in the management of its unfunded pension liability. When the District received home rule in 1974, the District government assumed the workforce from the Federal Government. With those employees came a $2 billion unfunded pension liability, which had been accumulated entirely by the Federal Government. By 1997, that $2 billion unfunded pension liability had grown to $5 billion, almost entirely as a function of interest[189] – approximately the same size as the city's entire budget at that time. It was estimated that by 2004 the liability would balloon further to $7 billion.[190]

Revenue Stream Limitations

Simultaneously providing city and state services to its residents, non-residents, and visitors presented the District with

“D.C. cannot tax nearly $2 of every $3 earned in the District.”

expenditure pressures unlike any other jurisdiction. Compounding this challenge, the District’s Home Rule Act[191] forced limitations on the District’s revenue stream. Ironically, many – if not all – of these revenue limitations imposed by Congress were a result of the District’s service as the seat of the Federal Government and its thousands of employees.

Ban on Nonresident Tax. First, the Home Rule Act expressly prohibited the District from taxing nonresident income – a revenue source routinely utilized by many other comparable cities and also by states around the country. In Philadelphia, for example, those who work in the city but commute home to suburban enclaves are required to pay income taxes to the municipal authorities. By contrast, the District’s suburban commuters – because of the limitations imposed by Congress –come into the city each work day, add to the demands on many of the District’s public services, and pay no municipal income tax. As a result, The General Accounting Office (GAO) has estimated that D.C. cannot tax nearly $2 of every $3 earned in the District.[192]

Property Tax Exemption. D.C.’s revenue stream is limited further by virtue of the large federal presence in the city. About 42 percent of the assessed value of all land and improvements in the District is tax exempt.[193] This includes federal property, which constitutes roughly 23 percent of the total assessed land value of the District, as well as other properties which the Federal Government specifically immunized from D.C. property taxes, including foreign embassies and consulates, international organizations, and the headquarters of such national organizations as the American Legion and the Daughters of the American Revolution. Of course, the tenants who occupy the buildings sitting upon that nontaxable land nonetheless rely upon the city’s fire department and police force services.[194]

Building Height Limitation. Similarly, federal legislation limits the height of buildings in the District, stunting high rise development – and, by extension, growth of the tax base.[195] Of course, many District and federal officials support the so-called “Height Act” to maintain the unique character and beauty of the District.

Federal Compensation Falls Short

For a time, the Federal Government did provide the District with an annual payment, which was intended to serve as state-like support for the city and make up for the revenue limitations imposed on the District. The payments soon proved woefully inadequate because the size of the payment was not indexed for inflation and also was subject to annual appropriations. By 1997, the $660 million payment did not compensate fully the District for the additional responsibilities it carried as a result of the Federal Government’s presence, nor did it compensate for the loss of revenue caused by federally imposed restrictions on the District’s taxing authority. GAO has determined that D.C.’s ability to tax nonresident income and federally occupied or immunized property alone cost the city over $1 billion in revenue each year -$505 million more than the $660 million Federal Payment.[196] Further, because the Congress increased the Federal Payment only once in the 10 years preceding the passage of the Revitalization Act in 1997, the net present value decreased due to annual inflation. The District was, essentially, fighting the battle against insolvency with both hands tied behind its back – unable to cut expenditures because it would cause more residents to flee the city, and unable to raise revenue because of federal restrictions. Because the Federal Government had created the problem and alone had the authority to alleviate it, it became clear to all of the stakeholders analyzing the District's long term financial outlook that only the Federal Government could help the District remedy the so-called fiscal structural imbalance – the financial inequities in the unique relationship between the federal and District governments.

Towards a Revitalization Act

In December 1996, the Control Board released a Strategic Plan, which – it was hoped – would help spur a redefinition of the financial relationship between the District and the Federal Government. D.C.'s structural challenges became the centerpiece of the revitalization discussion and the basis of any future legislation. Accordingly, the Board's plan aimed to realign many of the state-type responsibilities imposed upon the District in an effort to ease its financial burdens.[197] Given that the Federal Government was the only entity that could reasonably and logically act as the District's "state," the Control Board looked to it to take on more responsibility in the financing and management of the District's state functions.

The theory behind the Control Board's analysis was simple: the Federal Payment appropriated annually to the District was simply not sufficient to address the District's many financial obligations. This, coupled with the District's restricted ability to create revenue through taxation and other means, meant that more federal assistance was needed to rehabilitate the District's financial status. The Control Board's plan, therefore, called on the Federal Government to pay for the District's entire Medicaid bill, close the gap on the District's pension shortfall, and assist in paying for many other city programs typically funded by states.[198] According to Control Board Vice-Chairman Stephen D. Harlan, the plan's aim was to restructure "a relationship that has been from the start one-sided and sometimes arbitrary . . . . Failure to reform this relationship is to condemn District citizens to perpetual second-class status . . . . Congress has been trying to figure out for 200 years how to govern this city. We don't have it right yet." The Control Board's plan became a precursor to a major, Administration-led effort to dramatically restructure the relationship between the District and the Federal Government in hopes of revitalizing the Nation's Capital.

The Players

Once it became apparent that a major overhaul of D.C.'s relationship with the Federal Government was needed, a core group of political players – local and federal – assembled to shepherd legislation through the Administration and Congress. Locally, Congresswoman Norton took the lead, serving as the bridge between the Federal Government and the District. Another indispensable partner was Rep. Davis, Chairman of the House D.C. Subcommittee. Representing Northern Virginia, Davis said often that D.C. was "the goose that laid the golden egg for this region."[199] His dual role as supporter of the revitalization movement and member of the Republican caucus would prove immensely important given the hesitancy among some members of his party to support any federal effort to help the District.

Additional congressional support for the proposed realignment of the District's relationship with the national government was somewhat mixed. Some members in the newly elected Republican majority viewed District revitalization chiefly as a "bail out" for a city, which – in their view – had brought its financial woes upon itself through local mismanagement. Among these vocal members, who a few years prior had swept into power on a platform of fiscal conservatism, there was great hostility towards any plan that would increase federal spending, including spending to help the

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–Control Board Vice Chairman Stephen Harlan

District. However, the majority of Republican members, led by the Republican leadership, were supportive. Davis noted that the issue was a top priority among the leadership of both Houses of Congress, including particularly House Speaker Gingrich.

Despite the strong political differences that existed between the predominantly Democratic, population of the District and his Republican "revolutionaries," Speaker Gingrich – a historian – asserted that, as the Nation's Capital, the District must be saved. In private meetings, he often said that the District would "not go down on my watch." Gingrich made his commitment clear when, during a forum at Eastern High School (shortly after being elected Speaker) he said that the "goal should not be to balance the city budget or make sure the debt rating is okay" but rather to "have the best capital city in the world and make that real."[200]

Complementing the strong support of the Republican Speaker was the Clinton Administration's wholesale support for federal assistance. President Clinton's approach to the District was unlike that of any of his predecessors since the advent of home rule. Early in his administration (and following a celebrated walk up Georgia Avenue to talk with District residents and business people)[201], the President ordered his cabinet to find ways to assist the District. The President said his view was that the Federal Government ought to share a "special relationship" with the residents and local government of the capital city.[202] The President also made it clear to his cabinet secretaries that their work on behalf of the District should become a personal obligation and that it should not be passed down the chain of command to lower ranking officials. To institutionalize this focus, the President created the Inter-agency District of Columbia Task Force. The director of the Task Force was charged with coordinating the cabinet's activities in support of the Nation's Capital. President Clinton felt so strongly that the Task Force was a successful model of how the Federal Government should deal with the District, that he issued an executive order on the last day of his presidency that formalized its structure.[203]

Therefore, it was no surprise that when discussion of a full-scale overhaul of the District's relationship with the Federal Government began, President Clinton relied directly on his cabinet to formulate the Administration's plan of attack.[204] Clinton tasked his Director of the Office of Management and Budget, Franklin Raines, to oversee the Administration's work on the effort. Born and raised in the District, Frank Raines was uniquely suited to represent the Administration in this effort because of his deep knowledge of the District's finances and his personal stake in the District's revitalization as a native Washingtonian.

What followed were dozens of meetings between members of the Clinton cabinet, the Control Board, congressional and local elected representatives, which culminated with the unveiling of The National Capital Revitalization and Self-Government Improvement Plan ("the Revitalization Plan").[205] In addition, the Inter-agency Task Force itself provided invaluable support to the District at the agency level, such as technical assistance and grants.

The Revitalization Plan

In January 1997, the Clinton Administration formally announced the Revitalization Plan. President Clinton "had two goals in mind – first, to revitalize Washington, D.C. as the Nation's Capital and second, to improve the prospects for home rule to succeed."[206] The four steps the Federal Government proposed to take were:

1. Shift away from the District some of the local, county, and state responsibilities the Federal Government gave the city in 1974, which, in the words of one Clinton

official, had “proven beyond the city’s resources to deal with.”[207]

2. Invest considerable resources to improve the city’s capital infrastructure.[208]
3. Establish a number of mechanisms to strengthen the District’s economic base.[209]
4. Provide the District with technical expertise and resources to the maximum extent possible to help the city government become more efficient and responsive.[210]

The specific elements of the Revitalization Plan are described in the following section:

Overtaking Major Financial and Managerial Responsibilities

Courts: The Revitalization Plan called for the city’s courts to remain self-managed given their successful track record, but the Federal Government would take financial responsibility. In total, the Federal Government was to provide the District with $129 million in the first year and $685 million over five years to fund the city’s courts and alleviate that drain on the District’s budget.[211]

Jails/Inmates: The Federal Justice Department was to “assume [both] financial and administrative responsibility for the District’s felony offenders, including substantial capital investment in providing appropriate prison facilities.”[212] This is a function usually managed and financed by the states. D.C.’s convicted felons would be sentenced under guidelines similar to federal sentencing guidelines and, eventually, would be eligible for transfer to any federal facility in the country.[213]

Medicaid: Further, the Revitalization Plan would increase the federal Medicaid payment to 70 percent of the total cost. Despite this reduction of Medicaid expenses, the District still would be one of only two cities required to pay Medicaid costs normally borne by states.[214] The Federal Department of Health and Human Services also would assist the District government in the management of its Medicaid program to ensure that Federal funds were not mismanaged.[215]

Pension Liability: Perhaps most importantly, the Revitalization Plan called for the Federal Government to assume the District’s $5 billion pension liability – a debt as large as the District’s entire budget at the time – for all active and retired District employees.[216]

Under the Plan, the Federal Government was to assume both financial and administrative responsibility for the District’s retirement programs for law enforcement officers and firefighters, teachers, and judges.[217] Federal assumption of the pension liability was contingent upon the District establishing replacement plans for its current and future employees.[218]

Financing the Accumulated Deficit: Although the Control Board’s strategic plan had failed to address the issue of D.C.’s accumulated deficit, the Administration Plan specifically addressed this problem by providing the District with the authority to borrow from the Federal treasury to finance $400 - $500 million in debt.[219] The term of the loan was envisioned at 15 years with options for refinancing upon improvement of the District’s credit situation.[220]

This part of the Revitalization Plan was critical to the immediate improvement of the District’s cash-flow problem. By placing the District on a sound financial basis, it would be able to pay vendors in a timely manner and attract vendors that could reliably perform services for District residents. Further, by financing the accumulated deficit, the District bond ratings, which had been rated at junk levels, would improve.[221]

Improving Infrastructure

Road and Bridge Maintenance: The Plan also established a National Capital Infrastructure Authority (NCIA) that would fund repairs to and construction of roads and mass transit facilities. The fund would initially be capitalized with $125 million in federal seed money from the Federal Highway Trust Fund. This money could be used to construct roads and bridges, serve as the local match for Federal-aid road and bridge projects, and capital expenditures for the Washington Metropolitan Area Transit Authority.[222] Further, the Plan allowed contributions to the NCIA from other sources, including voluntary payments in lieu of taxes from tax-exempt organizations.[223] Over time, it was estimated that $1.4 billion in federal funds would be invested to repair the District's roads and bridges.[224]

Strengthening the City's Economic Base

Economic Development Corporation: The Revitalization Plan contained an economic stimulus package for the District, providing tax incentives to spur downtown investment as well as development in poorer neighborhoods, and it would set up an "improvement fund" that local tax-exempt firms would be encouraged to support.[225] In addition, the Plan called for the creation of an Economic Development Corporation (EDC) "to revitalize the city's economy, with local planning and control that [would] leverage[] Federal and private resources."[226] The EDC was to be "a non-Federal, private-public corporation [to] provide the District with a focal point for its economic development activities, an entity whose sole purpose is to develop the economy of the Nation's Capital."[227]

Tax Incentives/Grants: Further supporting the economic aims of the plan were $300 million in grants and tax incentives to be provided to the District.[228] Of the $300 million provided by the Federal Government, $250 million would come in "federal tax incentives for jobs and capital to strengthen the [District's] economic base" and the other $50 million was to come in federal commitments to help capitalize the EDC.[229]

Tax Collection: In addition to other technical assistance being provided to the District by the Inter-Agency Task Force, the Internal Revenue Service would assume responsibility for collecting the city's annual income taxes at a savings to the District of $117 million.[230]

Concessions Made by the District

In return for the above-described assistance, the District was required to make some significant concessions, including losing the annual Federal Payment on which it relied for a significant amount of its total revenue and taking drastic steps to gets its financial house in order.

Federal Payment Repealed: In return for the proposed federal assistance, the Revitalization Plan called for the repeal of the District's annual Federal Payment, which – in the Administration's view – increasingly failed to meet the various purposes for which it had been created.[231] The Administration believed that the federal take over of so many of the District's state-like functions far exceeded the benefit provided by the Federal Payment and certainly made up for its elimination.[232]

From the outset, the Plan's supporters were aware that the repeal of the Federal Payment would be the most difficult component for the District to support, despite the fact that at that time the payment had been increased by the Congress only once in ten years and had, in essence, significantly declined in real terms given rising inflation.

Federal Oversight of District's Financial Affairs: Under the Revitalization Plan, Congress was to retain a large degree of control over the District government's affairs; the DC subcommittees, for example, would continue to oversee the District and

Photo by Michael Bonfigli

the Control Board would remain in place. Further, the congressional appropriations committees would continue to play a large role in setting the District's budget by determining the level of funding for those functions for which the Federal Government was directly responsible under the Plan (e.g., the criminal justice system).[233] However, the appropriations committees would not continue to appropriate every detail of the city's budget, including those funded with local dollars.[234]

For the Revitalization Plan to go forward, the District would be required to take "specific steps to improve its budget and management"[235] – specifically, balancing its budget on a schedule more expedited than that called for under the Control Board legislation.[236] This give and take dynamic, which was essential to securing support from Congressional Republicans, led to the Plan being dubbed the "grand swap."[237]

Notably, the Administration's proposal did not specifically require any further concentration of the city's management in the hands of Congress or the Control Board. Any mention of management reform was vague. Home rule, it seemed, would not be a casualty of the federal effort to revitalize Washington, D.C. But the city would be required to put its financial house in order. Support for the Administration's proposal was generally positive among local stakeholders. Congresswoman Norton hailed the Revitalization Plan as "the most promising and certainly the most innovative approach yet to emerge for relieving the District government of costs it can no longer shoulder." She was encouraged about the Plan's prospects for passage, since the proposal was mindful of "congressional insistence that its own costs not rise dramatically."[238] Control Board Chair Brimmer also complimented the Administration effort, calling it a "good deal for the District" that would result in a net gain for the city, notwithstanding the elimination of the Federal Payment.[239]

There were opponents of the Plan, however, including freshman Senator Lauch Faircloth (R – NC), Chair of the Senate Appropriations D.C. subcommittee. Sen. Faircloth called the Plan "an ill-conceived effort to bail out a poorly managed city" and mocked the effort, referring to it as the "great rip-off."[240]

Even some local leaders, most notably certain members of the D.C. Council, were skeptical of the Revitalization Plan. They wondered whether the city could survive without the Federal Payment and whether it was giving up too much autonomy in order to improve its financial situation.[241] Others questioned why it had not addressed education or community safety – concerns which Administration officials said were best left to local authorities. It was hoped that the relief from so many other responsibilities would give the District the "flexibility and more resources . . . to be able to deal directly with those areas" not taken over by the Federal Government.[242]

Because of these reservations, the Administration, Congresswoman Norton, and Congressman Davis had a significant task to obtain enactment of the Administration Proposal over the objections of significant detractors in Congress and the District government.

Towards Adoption

Once the Revitalization Plan was made public, a series of three sets of negotiations began: first, among District officials, the Administration, and Congresswoman Norton; second, between Norton and the Administration; and finally, involving the Administration and Norton negotiating in tandem with congressional Republicans.

The Memorandum of Understanding

In order to secure the support of the District for the President's proposal, Raines developed a memorandum of understanding

(MOU) outlining the basic principles of the Plan. By gaining local support for the MOU, the White House hoped to prevent city officials from criticizing the revitalization proposal as it moved through Congress.[243] Clinton officials also felt that if the District signed an MOU this would increase the possibility of success in Congress by demonstrating that D.C. officials were, indeed, making sacrifices to obtain much needed federal aid.[244] For strategic purposes, the memorandum contained the major components of the original proposal – broad mandates for federal assumption of the costs of the unfunded pension liability, courts, prisons, a greater share of Medicaid, and the elimination of the District's Federal Payment – but not all of the detail, which was left to be decided by congressional leaders.

Obtaining District approval was not a foregone conclusion. Many District officials and stakeholders were uneasy about voting to support the repeal of the annual Federal Payment, regardless of the federal benefits they would receive in return.[245] In addition, some Council members saw the Administration's proposal as an affront to home rule.[246]

To convince Mayor Barry and the Council that the Revitalization Plan was the District's only chance for fiscal recovery, Raines relied upon the support of Congresswoman Norton. Their argument was straightforward: given that the unfunded pension liability was approximately $5 billion, and the costs of each of the so-called "state functions" (courts, prisons, Medicaid, etc.) would continue to rise with inflation, it was of great benefit to the District for the Federal Government to assume those costs. Indeed, the savings to the District from the proposed deal would increase each year and were expected to surpass any benefit from retention of the annual Federal Payment – particularly since that payment did not increase with inflation.

Notwithstanding Raines' and Norton's advocacy, the Council's opposition to eliminating the Federal Payment was formidable. Indeed, the Council agreed to the MOU only after Administration officials agreed to include language noting the District's opposition to elimination of the Federal Payment.[247] The Council, led negotiations by Council Chair Pro Tempare, Charlene Drew Javis, insisted on adopting concurrently a resolution outlining its reservations with the Administration proposal, urging Congress to continue the Federal Payment to compensate the District for revenues lost due to federally imposed restrictions on its ability to tax.[248] Council member Jack Evans stated that "giving up the federal payment would weaken the city financially."[249] The Council resolution also called on Congress to assume a larger share of the District's Medicaid expenses, pay the costs associated with operating St. Elizabeth's Hospital, and provide funds to repair D.C. public schools.[250] Councilman Harry Thomas (D – Ward 5) best summarized the Council's final support for the MOU: "If we don't act now, we're going to lose everything."[251]

Within a week of D.C. Council ratification, OMB Director Raines, acting Council Chair Linda Cropp, and Mayor Barry had all signed the MOU to "strengthen Home Rule and to agree to work toward the revitalization of the District of Columbia."[252]

Negotiating with the Administration

As Mayor Barry and the Council were negotiating the terms of the MOU with the Administration, Norton began her negotiations with the Administration to create the draft bill. Because of the high level mandate from the President, her negotiations with the Administration on various aspects of the revitalization package occurred mostly with the cabinet secretaries and high-ranking deputies. In addition to Raines, who spearheaded the negotiation, various Clinton cabinet officials were tasked with specific parts of the revitalization discussion. For example, Norton negotiated the pension section of the bill directly with Treasury Secretary Robert Rubin and OMB Controller Edward DeSeve.

Selling the Revitalization Plan to Congress

As negotiations between the District and the Administration on the terms of an MOU progressed, congressional hearings on the Administration Plan began in earnest as some in Congress demanded to know why it should support a plan to pour millions of dollars of federal aid into the District. Even among its congressional supporters, the Plan was viewed as a "starting point" from which a widely-supported "bipartisan plan" would ultimately emerge.[253] Though the Administration had established the principles that would guide the District's revitalization, it was Congress that would be deciding on the final plan and its details – a process that all stakeholders expected would take "months of hard work, patience, delicate negotiations, and many more committee hearings."[254]

Thus, throughout the spring of 1997, the Administration's chief advocates for the plan, specifically Raines and DeSeve, testified before the four main congressional committees of jurisdiction,[255] highlighting the plan's two main strengths:

> First, its careful and principled conceptualization, based on the Federal interest in certain State functions and in eliminating congressionally created pension liability, and, second, its recognition that the plan must address two audiences at once: District residents, and a Congress whose major focus . . . is deficit reduction.[256]

By explaining the dire needs of the District, the unfair hand it had been dealt in the institution of home rule, and the reasons why federal support was absolutely critical, the Revitalization Plan's advocates hoped they could garner enough support to secure passage of the legislation from a skeptical Congress.[257]

The Final Revitalization Act

After multiple hearings and countless hours of behind the scenes negotiations, the final legislative package setting forth the plan for the District's revitalization emerged late in the summer of 1997. True to the original plan proposed by the Clinton Administration, the package relieved D.C. of some of its most burdensome state-like obligations in an effort to help it again achieve financial sustainability.

Provisions

The final package provided for the Federal Government to assume the District's $5 billion unfunded pension liability,[258] transferred financing of the District's courts to the Federal Government,[259] and authorized the District's CFO to enter into private contracts for the collection of taxes.[260] Further, the package transferred responsibility for the District's felons to the Federal Bureau of Prisons and mandated the closure of the Lorton Correctional Complex.[261] The package also endeavored to assist the District in reestablishing its creditworthiness by providing the city with access to the U.S. Treasury to liquidate its accumulated operating deficit[262] and by updating the bond provision of the Home Rule Act to "conform with changes in the municipal securities marketplace."[263]

As expected, though, the relief provided by these portions of the package did not come without a price. The package also eliminated the mandatory $660 million Federal Payment to the District, instead providing the District with $190 million for FY 1998 and "amount[s] as may be necessary" in subsequent years.[264] In addition, the package required the District to balance its budget by FY 1998 – one year earlier than was required by the legislation establishing the Control Board.[265]
Some of the original provisions in the Administration's proposal were not adopted

in the final legislation. For example, the legislation did not include the National Capital Infrastructure Authority (NCIA), which would have funded $1.4 billion in repairs to and construction of roads and mass transit facilities; nor did the bill include a provision allowing the IRS to assume responsibility for collecting the city's annual income taxes at a savings of $117 million. Another casualty of the negotiations was the economic development corporation proposed by Director Raines in the original package.

In addition, Congress adopted several provision not included in the Administration's Plan. For example, Senators Trent Lott (R-MS), Connie Mack (R-FL) and Sam Brownback (R-KS), with the support of Congresswoman Norton (D-DC), proposed District-only tax provisions in the Taxpayer Relief Act of 1997, which was passed on the same day as the Revitalization Act.[266] These provisions included a $5,000 homebuyer credit, a $3,000 wage credit for employers hiring District employees, capital gains exemption on certain assets, and tax free bonds.[267] The wage credit and the capital gains exemption were limited to District census tracts with higher concentrations of poverty.

The Faircloth Attachment

Though the loss of the Federal Payment was significant, some Members of Congress also wanted to limit greatly the powers of the D.C. Council and the Mayor – a move they believed was necessary to ensure proper implementation and success of federal aid provided under the Revitalization Act. The chief advocate of this position was Senator Lauch Faircloth, who initially had opposed the Revitalization legislation. He proposed eliminating mayoral control of District agencies and putting those agencies and functions under the Control Board[268] to oversee the District's finances and management.
Not surprisingly, District officials and home rule advocates strenuously opposed this proposal. Congresswoman Norton called it a potential reversion to days when appointed commissioners had authority over the District's agencies and Mayor Barry, who bitterly opposed Faircloth's bid to strip him of his mayoral powers, called the idea a "rape of democracy." Whether this "Faircloth Attachment," as it came to be known, would be included in the final package was uncertain through the final hours of congressional negotiation. Only on the final night of closed-door negotiations on the package (in which Norton was not included) was the decision made whether to include the provision in the final bill.

Ultimately, Faircloth had his way and the authority and autonomy of the District were sacrificed in order to secure congressional approval of the Revitalization Act. The "District of Columbia Management Reform Act of 1997" – as that part of the package was officially titled – required the Control Board to develop, in consultation with the private sector, "management reform plans" for each of nine city departments: the Department of Administrative Services, the Department of Consumer and Regulatory Affairs, the Department of Corrections, the Department of Employment Services, the Department of Fire and Emergency Medical Services, the Department of Housing and Community Development, the Department of Human Services, the Department of Public Works, and the Public Health Department.[269] More importantly, though, the Management Reform Act changed the way city department heads were appointed and removed from their positions. Department heads would be appointed by the Mayor only after consultation with the Control Board.[270] Mayoral appointments would become final only after ratification by a majority of the Control Board, and if the Mayor failed to appoint anyone within 30 days of the creation of a vacancy, the Control Board was given unchecked authority to fill the position.[271] Furthermore, the Control Board was given the ability to remove department heads at its discretion, while the Mayor could remove such persons only with the approval of the Control Board.[272]

Aftermath

The morning the final package was released, Congresswoman Norton held a press conference hailing it as a "big win for the District."[273] Unfortunately, all the details of the Revitalization Plan were unknown to her at the time. Specifically, Norton was not informed by her colleagues that the Faircloth Attachment – a blow to Home Rule – had indeed been included in the final legislation. When she learned of this, Norton called the attachment "too high a price to pay." Following an editorial in the Washington Post criticizing the Congresswoman for her apparent reversal on the bill, she took the extraordinary step of issuing an "Open Letter to My Constituents" explaining that she still thought the Revitalization Act was a "win for the District," even though the Faircloth Attachment was a "bitter pill to swallow."[274] Although tremendously unpopular among District residents, the Faircloth Attachment ultimately was not enough to undermine the months of hard work that had gone into constructing an aid package for the District.

A "Revitalized" City

The congressional leadership included the provisions of the Revitalization Act in the Balanced Budget Act of 1997 and passed that omnibus legislation in the House and the Senate on July 30 and 31, 1997, respectively. Neither the President nor the Control Board wasted any time implementing the Revitalization Act once it cleared Congress. The President signed the bill on August 5, 1997 and within hours the Control Board – amidst spirited protest of the Faircloth Attachment – announced its immediate implementation.[275]

For all the work that had gone into constructing the plan, its passage could not or did not ensure the revival of the District. As OMB Controller Edward DeSeve pointed out, "[t]he plan [was] not a panacea. The District's government and Financial Authority will have to continue to do the hard work necessary to create a City where streets are safe, where children enjoy the quality education they deserve, where every resident has the chance to make the most of his or her own life – and where the City's government spends within its means."[276] And so, the city government and the Control Board set out to use the tools provided to them in the Revitalization Act to address the city's needs.

On September 15, 1997, the D.C. City Council and Mayor returned to work with much of its power stripped away, forced to defer to the Control Board, appointed by the President and now newly empowered to make management reforms by directly controlling District agencies. District officials had to come to grips with this new reality in tending to the affairs of those citizens who had elected them to office.[277] After a nation-wide search, Dr. Brimmer appointed the District's first Chief Management Officer – essentially a Control Board appointed city manager – who would oversee the new department heads appointed pursuant to the Board's new authority.

When Dr. Brimmer retired as chair of the Control Board when his term expired, President Clinton selected Dr. Alice Rivlin on May 30, 1998 to replace him. Dr. Rivlin was Franklin Raines' predecessor as Director of the Office of Management and Budget. An economist, Rivlin authored a seminal 1990 paper entitled "Financing the Nation's Capital" that predicted the District's eventual financial decline. Rivlin made it clear upon her appointment that she viewed her job as returning to the District full authority over the agencies and cross-cutting functions that had been lost in the Revitalization Act. Rivlin believed that "[The Control Board] should act more and more like a board of directors, a policy board, and strengthen the administrative team in the city so that we

“According to the 2003 GAO Report on the District’s structural imbalance, notwithstanding the improvements effected by the Revitalization Act in 1997, the District still faces’ a more permanent imbalance between [its] revenue raising capacity and the cost of meeting its public service responsibilities.”

really have in place, and functioning, a city that can run itself well without a board."[278]

Shortly after the election of the new Mayor, former Chief Financial Officer Anthony Williams, on November 3, 1998, Rivlin voluntarily relinquished control of the agencies Congress assigned to the Board, thus restoring home rule.[279] Congress also followed suit, passing the District of Columbia Management Restoration Act of 1999, which repealed the Faircloth Attachment.[280]

The Promise to Revisit the City's Needs

Without the passage of the Revitalization Act in 1997, the District likely would not have fully recovered from fiscal insolvency. Although clearly not a complete remedy for the District's financial inequities, the Act nevertheless relieved the District of several large state functions that no other city had to bear, including courts, prisons and a greater share of Medicaid. The Act removed from the District's balance sheet $5 billion in unfunded pension liability, created solely by the Federal Government, which itself likely would have consigned the District to permanent financial crisis. The ongoing economic impact of the Revitalization Act on the District also is of great financial benefit to the City. Each year, the Act makes the Federal Government responsible for over $1 billion in state functions that the District no longer has to pay. This amount is in contrast to the old, static Federal Payment, which had remained at $660 million (with only one increase) for nearly a decade leading up to the passage of the Revitalization Act.

Although the benefits of the Revitalization Act were at the time of passage (and continue to be) substantial, several areas untouched by the Act contribute to the District's on-going structural imbalance. For example, the District is still forbidden by Congress in the Home Rule Act from enacting a non-resident income tax, denying it from taxing two-thirds of the income earned in the city.[281] Any attempt to repeal this provision would almost certainly result in the bipartisan opposition of members of the Virginia and Maryland congressional delegations. Indeed, when a non-resident income tax bill was introduced in 1998, Virginia senior Senator, John Warner made clear his contempt for the proposal, saying it would pass "over his dead body."[282] In addition, approximately 40 percent of the District's land remains off of the District's tax rolls, and the federal Building Height Act[283] prevents the District from compensating for this lack of revenue by seeking greater vertical development. Finally, although the Revitalization Act relieved the District of several state functions, many still remain. Only the District, without assistance from a state, must continue to pay for state education functions, a state hospital, and a disproportionate share of transit funding, despite the fact that approximately two-thirds of the users of the region's transit system do not reside in the District. Furthermore, the District must bear many other uncompensated costs, such as security, because it is the Nation's Capital.[284]

According to the 2003 GAO Report on the District's structural imbalance, notwithstanding the improvements effected by the Revitalization Act in 1997, the District still faces "a more permanent imbalance between [its] revenue raising capacity and the cost of meeting its public service responsibilities."[285] The GAO estimates the annual imbalance to be approximately $1 billion, when measured against the costs faced by an urban area such as the District.[286] This financial imbalance remains while at the same time District residents continue to endure a disproportionately high tax burden but are afforded a level of services below the national average.[287]

The principal authors of the Revitalization Act did not intend for it to be a complete remedy to the District's structural imbalance. The Act's findings recognized the burdens associated with being the national capital:

> (A) Congress has restricted the overall size of the District of Columbia's economy by limiting the height of buildings in the District and imposing other limitations relating to the Federal presence in the District.
>
> (B) Congress has imposed limitations on the District's ability to tax income earned in the District of Columbia.
>
> (C) The unique status of the District of Columbia as the seat of the government of the United States imposes unusual costs and requirements which are not imposed on other jurisdictions and many of which are not directly reimbursed by the Federal Government.
>
> (D) These factors play a significant role in causing the relative tax burden on District residents to be greater than the burden on residents in other jurisdictions in the Washington, D.C. metropolitan area and in other cities of comparable size.[288]

So, Congressman Davis and Congresswoman Norton specifically included a provision in the Act authorizing an unspecified amount for a "federal contribution" to the operations of the Nation's Capital:

> (2) FEDERAL CONTRIBUTION- There is authorized to be appropriated a Federal contribution towards the costs of the operation of the government of the Nation's capital–
>
> (A) for fiscal year 1998, $190,000,000; and
>
> (B) for each subsequent fiscal year, such amount as may be necessary for such contribution.
>
> In determining the amount appropriated pursuant to the authorization under this paragraph, Congress shall take into account the findings described in paragraph (1).[289]

This provision is an escape hatch of sorts, allowing for direct funding of the District by the Federal Government if necessary, despite the end of the Federal Payment. The provision has been used only once since the passage of the Revitalization Act, to authorize appropriation to the District in the amount of $190 million, in 1998. This was money OMB Director Raines indicated was "left over" from the budget authority he received for the Revitalization Act, because certain provisions, such as a greater share of federal highway funding, were not enacted. The "federal contribution provision" could be used today as a justification for a remedy for the structural imbalance. In fact, Congresswoman Norton has cited this provision in previous legislative proposals for a new Federal Payment to the District.[290]

In addition to the federal contribution provision in the Revitalization Act itself, the legislative history of the Act supports the notion that the Congress should revisit the financial relationship between the Federal Government and the District after a period of time to determine whether further federal assistance is necessary. Congresswoman Norton envisioned that the Revitalization Act would be revisited "to test its fiscal effectiveness and to ensure that the District won't be left with unintended cash shortfalls and other financial difficulties."[291] Director Raines acknowledged that the Federal Government "should remain flexible if Congress, in looking at [the issue], felt that the city still needed some cash to operate."[292] The provision for a federal contribution allows a mechanism to revisit the financial relationship with the District, should Congress choose to do so. Just as those who created the Revitalization Act understood that the Federal Payment did not meet the needs of the District in balancing its responsibilities as both the Nation's Capital and as an urban jurisdiction responsible for services to more the 500,000 residents, today we must re-examine the Revitalization Act and recognize that is not a complete remedy to the District's financial challenges.

Congresswoman Norton has continued to press for a more complete remedy to the structural imbalance during the last decade, introducing legislation that would further relieve the strain on the District caused by its inequitable financial relationship with the Federal Government. Her most recent efforts have included (1) legislation that would divert 2 percent of the federal income taxes paid by Maryland and Virginia residents to the District of Columbia,[293] and (2) legislation to create a new mandatory Federal Payment, which would be deposited into an account to support the District's crumbling infrastructure.[294] This second bill in particular has garnered unanimous support from the Members of Congress representing jurisdictions surrounding the District. Other ideas to remedy the District's structural imbalance have included increasing the federal share of Medicaid cost, increasing the number of state functions funded by the Federal Government, renegotiating the current Metro transit cost formula or providing a dedicated revenue stream and targeted amendments to the Revitalization Act such as recalculating the method by which the District is reimbursed for holding federal prisoners prior to commitment.

Whatever remedy is selected to alleviate the structural imbalance, it is clear that such a remedy should not mimic the failings of the Federal Payment that the District lost in the Revitalization Act. Accordingly, any remedy to the structural imbalance must contain the following attributes: (1) payments cannot be static, they must increase annually to at least meet inflation; (2) payments must be automatic, in effect an entitlement, and not contingent upon the uncertainly of timely annual congressional appropriations; and finally (3) investment must be large enough to at least approach the size of the imbalance documented in the 2003 GAO report. As an entitlement, not unlike social security or Medicare, the payment to the District should be included in the Administration's annual budget so that the Congress would not have to find an offset from existing priorities to fund the bill.

Now, more than 10 years after the passage of the Revitalization Act, and with the arrival of a new Administration in Washington, is a prudent time to revisit the fiscal challenges the District continues to face as a national capital. As Congresswoman Norton remarked upon the introduction of a bill to remedy the District's structural imbalance in 2005:

> Congress relieved the District of the costs of some but not all state functions and left the unique federal structural impediments described in the GAO report. Nevertheless, the District has made remarkable progress, maintaining balanced budgets and surpluses every year despite adverse national economic conditions and improving city services. The CFO has ominously warned, however, that looking to the out years, the structural imbalance endangers the city's financial future… It would be tragic for Congress to allow the progress that has been made to be retracted because of dangerous and escalating uncompensated federal burdens.[295]

ENDNOTES

167 The District of Columbia Home Rule Act, Pub.L. No. 93-198, 87 Stat. 774 (enacted December 24, 1973) ("Home Rule Act").

168 *A City in Transition, D.C., Where Home Rule Flew and Faltered,* Wash. Post, June 18, 1995, at A1.

169 *See* §§ 441-453 and § 404 of the Home Rule Act.

170 *Roller Coaster Ride to Who Knows Where; It was a Year of Comings and Goings,* Wash. Post, Dec. 28, 1995, at J1.

171 Steven A. Holmes & Michael Janofsky, *Trying to Fix Capital Where 'Everything is Broken',* N.Y. Times, July 25, 1999, at A1. *See also, White House Proposal for the District of Columbia Before the Subcomm. On Gov't Reform and Oversight of the House Committee*

on Government Reform and Oversight, 105th Cong. 5-6 (1997) ("Subcomm. Hearing") (opening statement of Connie Morella).

172 For example, both the Democratic and Republican Senators representing Maryland and Virginia would have strenuously opposed any effort to repeal the congressionally imposed ban on the District to enact a non-resident income tax.

173 *See* District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104-8 (1995).

174 *See id.* at § 2(b).

175 *Id.* at Title II.

176 U.S. Gen. Accounting Office, GAO-96-126, District Government; Information on Its Fiscal Condition and the Authority's First Year of Operations, July 9, 1996 (Statement of Gregory M. Holloway, Director, Governmentwide Audits, Accounting and Information Management Division) at 24.

177 *After'96 Effort to Shrink D.C. Government, a Mountain of Tasks Remains,* Wash. Post, Dec. 19, 1996, at B1.

178 *Id.*

179 *Id.*

180 *Id.*

181 Preface – Control Board Report

182 Subcomm. Hearing, *supra* note 176, at 7 (statement and testimony of Franklin D. Raines, Director Office of Management and Budget) ("Raines Testimony").

183 *See infra* note 181.

184 U.S. Gen. Accounting Office, GAO-96-133, District Government, Information on Its Fiscal Condition, July 19, 1996 (Statement of Gregory M. Holloway, Director, Governmentwide Audits, Accounting and Information Management Division) at 11.

185 *Id.*

186 *See infra* note 181.

187 *See infra* note 181.

188 *See infra* note 181.

189 DC Appleseed Center, The District of Columbia's Pension Dilemma–An Immediate and Lasting Solution (June 1996).

190 *Id.*

191 *See* Home Rule Act.

192 U.S. Gen. Accounting Office, GAO-96-126, District Government; Information on Its Fiscal Condition and the Authority's First Year of Operations, July 9, 1996 (Statement of Gregory M. Holloway, Director, Governmentwide Audits, Accounting and Information Management Division) at 9.

193 *Id.*

194 *Who's in Charge? Marion Barry and Newt Gingrich promised a revolution. They've delivered a city that still can't pay bills. The reasons are as old as Washington,* Part 1 of 2, The Washington Post Magazine, Dec. 18, 1995, at W12.

195 Building Height Amendment Act of 1910, 36 Stat. 452, as amended (codified as amended at D.C. Code Ann. § 5-405 (1994) (limiting the height of buildings to the width of the street onto which the building faces)).

196 GAO Report, *supra* note 192, at 10.

197 Preface – Control Board Report; see also David A. Vise & Peter Baker, *Clinton Wary of Increasing Funds for D.C., Barry Lauds Control Board as it Requests More Money,* Wash. Post., Dec. 13, 1996, at A1.

198 *Id.*

199 *See, e.g.,* Subcomm. Hearing, *supra* note 176, at 2 (opening statement of Davis) ("[Revitalization] is not only in the best interest of the District but also of the region and, indeed, the entire country. I strongly believe that the economic health and quality of government in the District is of vital concern to the suburbs.").

200 *Who's in Charge? Marion Barry and Newt Gingrich promised a revolution. They've delivered a city that still can't pay bills. The reasons are as old as Washington,* Part 1 of 2, The Washington Post Magazine, Dec. 18, 1995, at W12.

201 Felicity Berringer, The Transition; *Washington Greets Clinton with Open Arms,* N.Y. Times, Nov. 19, 1992.

202 Davis A. Vise & Peter Baker, *Clinton Wary of Increasing Funds for D.C., Barry Lauds Control Board as it Requests More Money,* Wash. Post, Dec. 13, 1996, at A1 (quoting Clinton as saying he wanted to make the District a "real priority" and work with Congress "to try to do more to help the District"); *see also Hillary Clinton Steps Up Effort to Help D.C.,* Wash. Post, Dec. 18, 1997, at A1 (discussing Hillary Clinton's commitment to the District).

203 Exec. Order No. 13,189, William Jefferson Clinton, January 15, 2001. However, President Clinton's successor, President Bush, has not activated the task force during his presidency.

204 In truth, President Clinton was–at first–skeptical about the Control Board's 1996 proposal to shift the responsibility for millions of dollars in District services to the federal government. Vise & Baker, *supra* note 80. After prompting from then-First Lady Hillary Clinton, however, the President and his Administration became supportive of the plan to increase federal support to the District. *Clinton Proposes US Run Many DC Services,* Wash. Post, Jan. 14, 1997, at A1; see also Hillary Clinton Steps Up Effort to Help D.C., Wash. Post, Dec. 18, 1997, at A1 ("The first lady had strongly urged the president to display more leadership on District matters.")

205 *Clinton Proposes U.S. Run Many DC Services,* Wash. Post, Jan. 14, 1997, at A1.

206 Raines Testimony at 7.

207 *Clinton Proposes U.S. Run Many DC Services,* Wash. Post, Jan. 14, 1997, at A1.

208 Raines Testimony at 9.

209 *Id.*

210 *Id.*

211 *Id.* at 8.

212 *Id.*

213 *Id.*

214 *Id.* at 9.

215 *Id.*

216 *Id.*

217 *Id.*

218 *Id.*

219 *Id.*

220 *Id.*

221 *Id.*

222 *Id.*

223 *Id.*

224 *Clinton Proposes U.S. Run Many DC Services,* Wash. Post, Jan. 14, 1997, at A1.

225 Raines Testimony.

226 *Id.*

227 *The President's National Capital Revitalization and Self-Government Improvement Plan: Hearing Before the Subcomm. on the District of Columbia,* 105th Cong. (April 30, 1997) (prepared testimony of Edward DeSeve, Controller, Office of Management and Budget) ("DeSeve Testimony").

228 James Wright, *Norton calls Clinton's Economic Plan for D.C. a 'Wonderful Start',* Washington Afro-American, March 15, 1997. The economic arm of the proposal was introduced publicly more than two months after the unveiling of the core provisions of the revitalization plan.

229 White House Briefing, Remarks of President Clinton (Mar. 11, 1997).

230 David A. Vise, *Clinton's Plan for D.C. Meets with Resistance, Key GOP Lawmakers Criticize Aid Proposal,* Wash. Post, Jan. 15, 1997, at A01.

231 Raines Testimony.

232 *Id.*

233 Raines Testimony.

234 *Id.*

235 *Id.*

236 *Clinton Proposes US Run Many DC Services,* Wash. Post, Jan. 14, 1997, at A1.

237 *Id.*

238 *Id.*

239 *Id.* In the months following the release of the Administration proposal, Brimmer became critical of the proposal, saying it failed to address enough of the city's needs. Nonetheless, Brimmer remained supportive of the plan. See Vincent S. Morris, *District Leaders Bristle at Idea of City Manager; New Federal Relationship OK'd,* Wash. Times, June 17, 1997, at A1.

240 David A. Vise, Clinton's *Plan for D.C. Meets with Resistance, Key GOP Lawmakers Criticize Aid Proposal,* Wash. Post, January 1, 1997, at A01.

241 *See, e.g., Town Meeting Tells Clinton: Fix Crime First,* Wash. Post, Feb. 13, 1997. Perhaps ironically, those who feared an encroachment on home rule under the President's plan would find the version passed by Congress to be near draconian in the way it removed power from the city council and the Mayor.

242 Raines Testimony. Similar concerns were voiced over the Plan's failure to address the running of St. Elizabeth's. Because the federal government did not have any experience running a mental institution, the Administration felt questions involving St. Elizabeth's were best left answered by District officials. *Id.*

243 David A. Vise, *White House Outlines Conditions for Increased Aid* to D.C., Wash. Post, April 12, 1997, at C01.

244 *Id.*

245 David A. Vise, D.C. Council Approves U.S. Aide Plan; Turnaround Doesn't End Dispute Over Annual Payment, Wash. Post, May 10, 1997, at B1.

246 *Id.*

247 *Id.*

248 *Id.*

249 David A. Vise, *D.C. Proposal Meets with Resistance,* wash. post, Jan 15, 1997, at A01.

250 *Id.*

251 *Id.*

252 Vincent S. Morris, *District Leaders Bristle at Idea of City Manager; New Federal Relationship OK'd,* Wash. Times, May 17, 1997, at A1 (quoting the MOU); David A. Vise, *White House Outlines Conditions for Increased Aid to D.C.,* Wash. Post, April 12, 1997, at C01.

253 Subcomm. Hearing, *supra* note 176 (Opening statement of Rep. Davis).

254 *Id.*

255 The congressional committees with jurisdiction over the revitalization plan were the Senate Committee on Government Affairs, Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia; the House Committee on Government Reform and Oversight, Subcommittee on the District of Columbia; and the D.C. subcommittees of the House and Senate Appropriations Committees.

256 Subcomm. Hearing, *supra* note 176 (Opening statement of Eleanor Holmes Norton).

257 Hearings were held throughout the spring of 1997. The Subcomm. on Gov't Reform and Oversight of the House Committee on Government Reform and Oversight held hearings on February 20. The Subcomm on Gov't Reform and Oversight held a joint hearing with the Subcomm. on the District of Columbia on March 13. The Subcomm. on the District of Columbia held hearings on March 25, April 25 and May 22. The Subcomm. on Oversight of Government Management, Restructuring, and the District of Columbia of the Senate Committee on Gov't Affairs held a hearing on May 13.

258 P.L. 105-32, Title VII ("Revitalization Act") §§ 11101-11002, as attached to Balanced Budget Act.

259 Revitalization Act §§ 11241-11242, as attached to Balanced Budget Act.

260 Revitalization Act § 11302, as attached to Balanced

Budget Act.

261 Revitalization Act § 11201, as attached to Balanced Budget Act.

262 Revitalization Act §§ 11402-11405, as attached to Balanced Budget Act.

263 Revitalization Act § 11501 *et seq.,* as attached to Balanced Budget Act.

264 Revitalization Act § 11601, as attached to Balanced Budget Act.

265 Revitalization Act § 11602, as attached to Balanced Budget Act.

266 Revitalization Act.

267 *Id.*

268 By 1997, when negotiations over the revitalization act had begun in earnest, the Control Board had taken a much stronger hand in management of the city's finances than in its early years under Andrew Brimmer. The Control Board's most prominent attempt at management of city agencies was its intervention in the management of the District's public schools, an action opposed by the District's elected officials and a majority of its residents and largely considered a failure. *See, e.g., Editorial, So Much To Do, So Little Time,* Wash. Times, May 30, 1998, at C2.

269 Revitalization Act § 11102, as attached to Balanced Budget Act.

270 Revitalization Act § 11105, as attached to Balanced Budget Act.

271 *Id.*

272 *Id.*

273 Editorial, *A Big Win for the District,* Wash, Post, July 31, 1997, at A14.

274 Norton explained in other Op-Eds published at the time that she had "briefed the press on the good news before the dust had settled on the bad news. I knew that home rule had not come out whole, but, lacking the full details, I concentrated on the "big win." Eleanor Holmes Norton, *The Loss is Personal,* Wash. Post, August 27, 1997, at A19.

275 Control Board, Order of August 5, 1997. Also, cite to 8/6/97 Post Article discussing protests (Hamil Harris, A6).

276 DeSeve Testimony, supra note 227.

277 Alvin Peabody, *Former, Current D.C. Council Members Reflect on Loss of Influence,* Wash. Informer, August 13, 1997, at 13.

278 David A. Vise, Rivlin Vows to Work for D.C. Home Rule; Control Board Swearing-In Brings Praise, Wash. Post, June 20, 1998, at B01.

279 David A. Vise, *D.C. Mayor to Regain Powers on Jan. 2; Williams to Direct City's Daily Affairs,* Wash. Post, Dec. 21, 1998, at A1; *see also,* David A. Vise, *D.C. Board Cedes Power to Williams,* Wash. Post, Dec. 22, 1998, at A01.

280 Pub. L. 106-1, signed into law March 5, 1999.

281 Sections 602 and 602(5) of the Home Rule Act. ("The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to-- . . . (5) impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District."); Editorial, *The District's Tax Bill,* Baltimore Sun, May 19, 2006, at 14A.

282 *Pass Commuter Tax, but Not for Schools,* Wash. Bus. Journal, Jan. 16, 1998.

283 36 Stat. 542

284 For example, the District also suffers from a "relatively low sales tax capacity due, in part, to a disproportionate share of sales to the federal government and other tax exempt purchasers." GAO Report, 03-666, at 9.

285 *Id.* at 2.

286 *Id.* at 4, 8.

287 *Id.*

288 Revitalization Act

289 *Id.*

290 Congresswoman Norton has dubbed these proposals as the Free and Equal D.C. Series.

291 Subcomm. Hearing, *supra* note 176 (opening statement of Eleanor Holmes Norton).

292 Subcomm. Hearing, *supra* note 176 at 20-21.

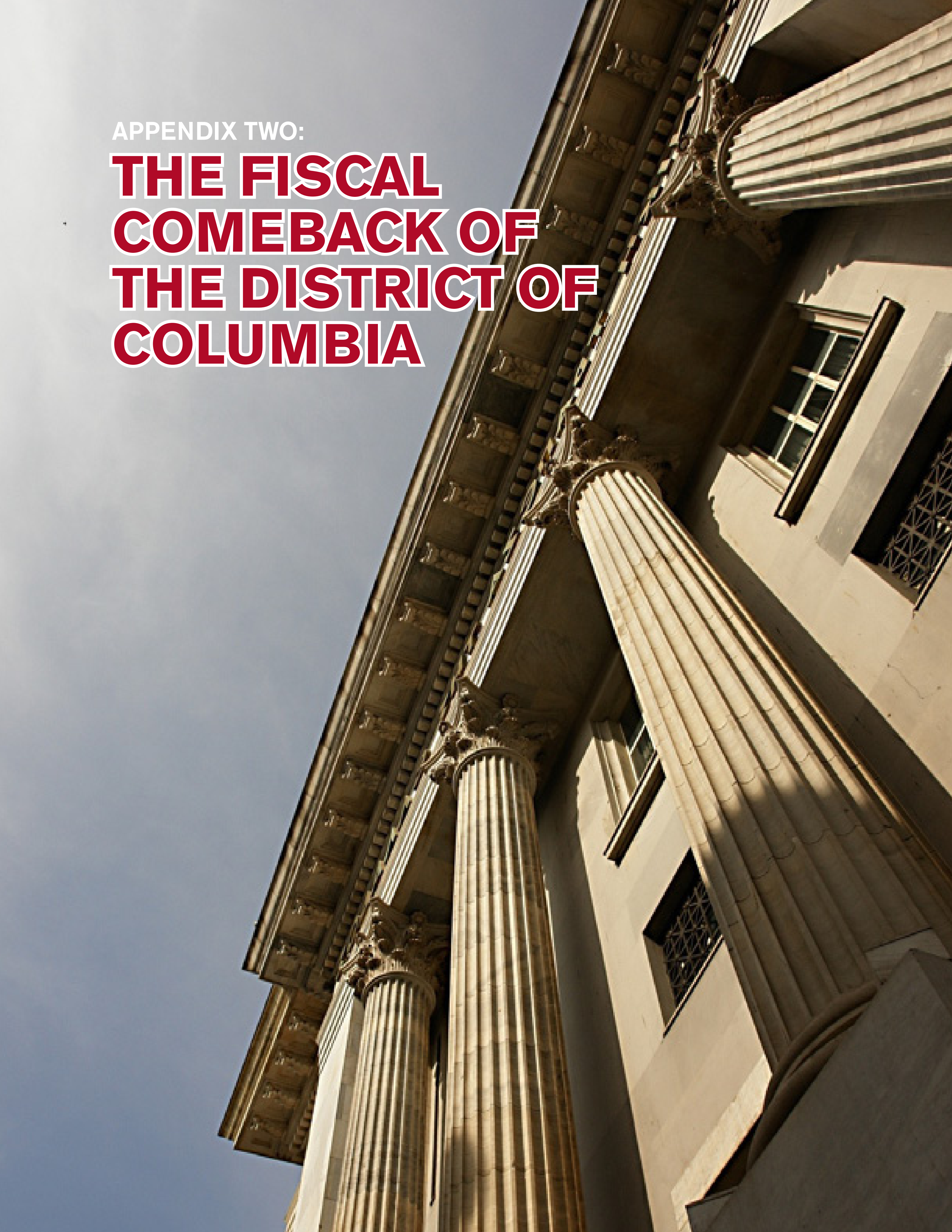
293 District of Columbia Fair Federal Compensation Act of 2002, H.R. 3923, 107th Cong. (2002).

294 District of Columbia Fair Federal Compensation Act of 2004, H.R. 4269, 108th Cong. (2004); District of Columbia Fair Federal Compensation Act of 2005, HR 1586, 109th Cong. (2005).

295 Statement of Congresswoman Eleanor Holmes Norton upon the introduction of the Fair Federal Compensation Act, April 12, 2005.

APPENDIX TWO:

THE FISCAL COMEBACK OF THE DISTRICT OF COLUMBIA



Dr. Julia Friedman,
The George Washington University

The District of Columbia's fiscal health has vastly improved from the ruins of 10 years ago. As the previous chapter described, the District's budget was in disarray in the early 1990s, hitting rock bottom in FY1994. On the revenue side of the budget, the tax system of accounts functioned so poorly that tax payments have been characterized (only partly tongue in cheek) as gifts from civic minded citizens and businesses. With millions of tax returns piled on the floors of the tax department, it was impossible to assess taxes accurately and enforce their collection, and there was very little accounting for non-tax revenues.[296]

On the expenditure side, the city government had little control over how and when the budget money actually went out the door due to outdated technology and inadequate personnel and administrative policies. Computer systems were generally two to three decades behind those of other cities and states. The city could not track information or effectively monitor and manage expenditures. Personnel had not been adequately trained for the job and managers too often failed in oversight of staff and funds. Policies and procedures embodying professional standards for each job were not in place. These problems contributed to the city's overspending. For example, the public hospital lost many tens of millions of dollars annually while the public schools equally overspent their annual allotments.

The single-most dramatic evidence of fiscal failure in the District came with the completed audit for FY1994 when the District showed a $335 million operating budget deficit. With appropriated actual operating expenditures of $3.34 billion, this deficit was more than 10 percent of the actual budget.[297] With no extraordinary means of generating revenue and no way of controlling spending, the city all but collapsed, heralding federal action. Congress quickly enacted the D.C. Fiscal Responsibility and Management Assistance Act of 1995, which created the "Control Board" that began operations on October 1, 1995–the starting day of FY1996.[298]

Since then, Washington has made dramatic financial progress, in large part due to the hard work of the government of the District of Columbia. The city government took a number of steps to get its financial house in order, including exerting control over operating expenditures, engaging in better budget preparation, and impressive planning for future expenditures; all of this led to sound revenue generation and improved and expanded service delivery. These economic improvements resulted in 11 years of balanced budgets, investment-grade credit ratings, and a larger economy. In short, the District has done its part to restore fiscal stability as expected and required by Congress in the Control Act. Washington's revenue limitations however, prevent it from providing all of the services needed by its population and businesses, and from building and maintaining the infrastructure expected in a city of the District's world prominence. The District government continues to face an inherent inability to finish this work in the absence of further commitments by the Federal Government.[299]

This chapter documents the District's fiscal comeback, and in particular the essential role that the D.C. government played in that recovery. It begins by reviewing the steps that the city government took to maintain

“The District’s local anti-deficiency law, enacted after the Control Period, prevents agency heads from overspending a current budget, and its violation could result in termination or even more severe actions.”

the financial stability established by the Control Board. These actions include instituting professional fiscal management and oversight procedures in the Office of the Chief Financial Officer (OCFO), restraining spending and managing expenditures in the operating budget, and improving revenue collection and capacity. The chapter then reports on indicators of Washington’s financial health, including an accumulated fund balance, cash balances, and bond ratings. It concludes that despite the extraordinary financial strides made, the District still lacks the resources it needs to provide the services and infrastructure worthy of a great capital city.

The District’s Part in its Fiscal Comeback

Financial Progress under the Office of the Chief Financial Officer

While the Control Board set the city’s financial recovery in motion, the government of the District of Columbia played a major part in its realization, starting in the OCFO.

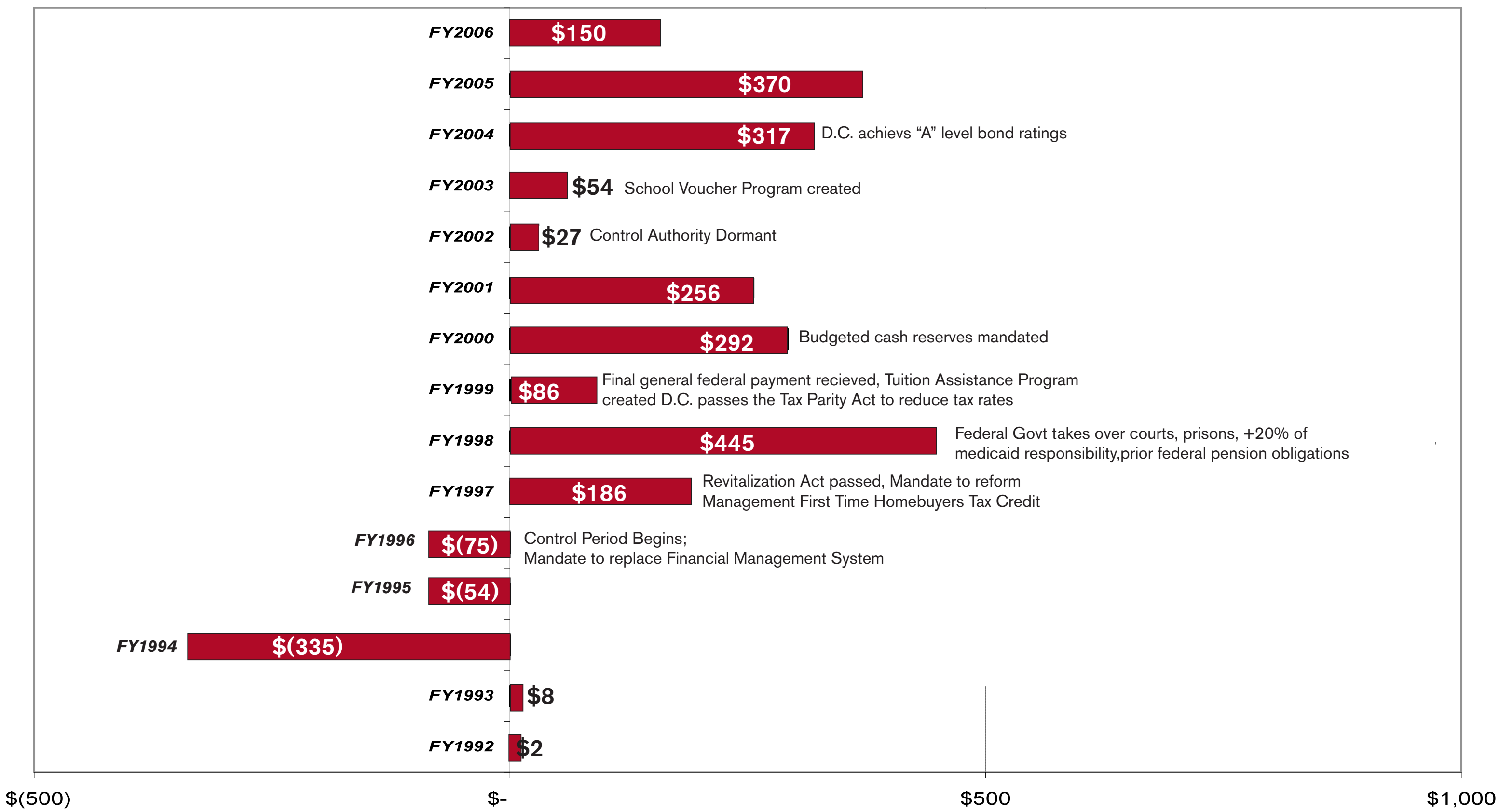
The legislation that created the Control Board also removed the OCFO from the Mayor’s office and made it an independent agency–a status that it still holds. The D.C. Office’s degree of independence is without precedence among state and local governments. All lead staff and personnel, as well as fiscal personnel in other city departments, are appointed by and serve at the pleasure of the CFO.

The OCFO has broad oversight and direct supervision of the financial and budgetary functions of the District government. Indeed, it performs all of the city’s financial activities, including budget and cash management, accounting, revenue estimation and collection, and borrowing. No other city department can carry out these functions. The OCFO’s independence provides strong re-assurance that these functions are administered with the requisite professionalism and transparency while insulating financial decisions from political influence.

In 1995, the Control Board appointed Anthony Williams to serve as the CFO. After the city posted overspent budgets in FY1995 and FY1996, Williams pledged that he would control spending to balance the FY1997 budget or he and his chief managers would resign. Accordingly, Williams moved aggressively to improve fiscal management and cut expenditures quickly. These actions, combined with unexpected revenue growth, put the District on the path toward financial recovery with a $186 million surplus in FY1997.

Elected Mayor in 1998, Williams appointed Natwar Gandhi as CFO in 2000 and together with the D.C. Council they shepherded the District toward fiscal solvency. By FY2001, the city had balanced five consecutive budgets (each with a surplus), restored its access to capital markets and improved bond rating, and

District of Columbia, Year-end Operating Budget Balance, $M, FY1992-FY20006
Significant Federal Actions



repaid all advances made by the U.S. Treasury during the early Control Period years.[300] This financial progress enabled the Control Board to dissolve a year earlier than scheduled.

Since regaining Home Rule autonomy, the city has balanced its operating budget every year, replacing the deficit it once accumulated with annual budget surpluses, as shown in the table below. As a result of on-going annual surpluses, the District now has a sizeable balance in the General Fund of $1.494 billion at the end of FY2007. The General Fund balance is the cumulative sum of all annual surpluses and deficits beginning with Home Rule.

Fiscal Discipline to Prevent Overspending

Over the past decade, the District's spending has been strictly disciplined. The District's local anti-deficiency law, enacted after the Control Period, prevents agency heads from overspending a current budget, and its violation could result in termination or even more severe actions. The District's lawmakers have clearly affirmed the intent to stay within spending authorities.

Indeed, the city only achieved its impressive string of eleven balanced budgets because it was willing to make some very difficult decisions in order to maintain its fiscal health. Perhaps one of the most painful decisions came in FY2000, when the city chose to close D.C. General Hospital, the city's only full-service public hospital. Many residents used D.C. General for primary and routine care, as well as for emergency and hospital care. Yet with the hospital's expenditures exceeding budgeted revenues by as much as $90 million a year, there was no way to keep the hospital open without risking the District's newly-found financial stability.

The city continued to make hard choices in order to balance the budget for the next

Photo by Michael Bonfigli

several years due to unexpected events that negatively impacted revenues. As FY2001 came to a close in September, Washington was doubly impacted by the national recession and the September 11th terrorist attacks. In the aftermath of the latter, tourists and business travelers stayed away from Washington, driven off in part by fears of Anthrax and planes in the federal no-fly zone, which resulted in a loss in revenues from the hospitality industry. Almost immediately, a second impact further discouraged travelers as two snipers began a random shooting spree, killing a number of local residents for unknown reasons. The final blow against revenue followed in a few months when the sudden drop in the financial markets produced double-digit decrease in tax revenues: D.C. taxpayers with investment and other non-wage incomes both owed less and were due refunds because they over-estimated their tax payment. Had the city gone through with its planned expenditures, these revenue crises would have created shortfalls of more than $100 million in FY2002 and nearly $325 in FY2003. Instead, the District closed the gaps and balanced its budget by cutting expenditures in all categories except for public works.

The District's lawmakers are also disciplined about spending when they consider future programs. In order to create a new program, lawmakers must identify funding for it. Any proposal for a new program must be accompanied by a fiscal impact statement that attests to the availability or absence of funds for that program. Prepared mostly by the OCFO, fiscal impact statements are intended to be impartial and professional assessments of programmatic revenues and costs. The CFO must also certify that funds are available before expenditures can be mandated.

One way to see the resolve of the District government in budget control is to review the pattern of expenditures over time. The table below reports the audited level of operational expenditures by the District across selected

Total Expenditures by Selected Major Category of Service, local funds, $M

TOTAL EXPENDITURES *(from local funds only)*	FY1997 *local only*	FY2001 *local only*	FY2002 *local only*	FY2004 *local only*	FY2007 *local only*
Government Direction and Support	94.4	178.1	248.0	215.0	334.9
Economic Development and Regulation	60.4	54.5	56.1	61.7	205.9
Public Safety and Justice	988.3	634.7	628.5	727.7	912.3
Public Education	630.1	920.8	894.3	968.8	1226.1
Public School AY Advance		41.7	31.9	53.2	
Human Support Services	930.4	780.8	736.5	1099.1	1472.4
Write-off Mental Health Receivables					6.8
Public Works	230.8	287.4	297.4	303.5	353.6
Receiverships		324.7	337.0		
Control Authority	3.2				
Total of above categories:	**2937.6**	**3222.7**	**3229.7**	**3429.0**	**4512.0**
Compound Growth Rate since last year of control period			0.2%	2.1%	5.8%

Sources: Table A-5, CAFRs of FY1997, FY2001, FY2004, FY2007.

“The District had to wait roughly half a decade after the Control Period for expenditures to offset the rate of inflation and, finally, begin to make real headway on delayed expenditure needs in the identified categories.”

major expenditure categories in FY1997-2007. Expenditures are reported only for local funds. The columns for FY1997 and FY2001 represent years under the (Control) Authority. The remaining years show the District operating after the Control Period.

The impacts of the Revitalization Act in shifting prison expenditures to the Federal Government and increasing the federal Medicaid reimbursement are clear. Between FY1997 and FY2001 local expenditures on Public Safety and Justice dropped about $350 million and expenditures on human support services are down about $150 million. Recall that the general Federal Payment of $660 million annually also was removed by the FY1997 Act.

For these selected categories combined, local expenditures were virtually unchanged between FY2001 and FY2002.[301] The annual growth equivalent had not quite returned to the rate of inflation even by FY2004. The District had to wait roughly half a decade after the Control Period for expenditures to offset the rate of inflation and, finally, begin to make real headway on delayed expenditure needs in the identified categories.

As in the national economy, the financial markets, and state and local governments everywhere, the District enjoyed financial recovery between FY2003 and FY2007. By FY2005, the District could purchase roughly as much as in FY2001 in the selected categories, after adjusting for inflation. In subsequent years, growth in expenditure was strong and the District had an opportunity to catch-up with some real deferred needs in both capital and operating services. Successful programs in schools, health and human services, housing, public safety, and other areas require continuity – the needs of people are not resolved in a single fiscal year – and the District was able to get started.

Inevitably, long-term growth likely has peaked, although the audited financial statement for FY2008 is not yet available to confirm this. The District's future capacity to address deferred needs is further reduced. The District's revenues, particularly the individual income tax revenues, are subject to swings in the financial markets with roughly a year's delay. Because revenues constrain expenditures, spending in the selected categories is very likely to have grown more slowly after the impact of the housing "bubble" in 2007 and the crisis in financial institutions in 2008. Peak-to-peak, between 2000 and 2007 the financial markets as measured by the S&P 500 Index changed very little[302]. This means that baseline growths in the District's revenues are very likely to be more limited than in the few "glory years" of FY2004 -2007.

Tools to Manage Expenditures

In addition to restraining spending, the District government also took control of its expenditures by creating and implementing three budget management tools: performance-based budgeting, the Agency Management Program, and service-level budgeting.

In FY2001, the D.C. Council passed a law requiring performance-based budgeting (PBB). PBB links expenditures to the programs and activities that they fund by providing information on a program's estimated costs, activities, and performance measures. By linking expenditures to these performance indicators, PBB allows budget managers to assess if the city is spending public dollars on programs that are achieving their desired goals. PBB also illustrates how a program is spending the funds allocated to it, which enables policy makers to evaluate if a program's level of funding is adequate to support the goals it is expected to achieve. To illustrate, if the initial goal is to serve people with the HIV virus, then the PBB process could say how much budget actually is spent and if the outcome is achieved.[303] Not all goals can be achieved. Not all goals

“The District’s revenues…are subject to swings in the financial markets. This means that baseline growths in the District’s revenues are very likely to be more limited than in the few “glory years” of FY2004 -2007.”

can be achieved within budget. At its best, PBB also would deliver this information.

The District first implemented PBB in FY2003 among seven major agencies–the Department of Public Works, Transportation, Motor Vehicles, Fire and Emergency Medical Services, Human Services, and the Office of the Chief Financial Officer. In FY2004, the city implemented PBB for 25 more agencies, with 24 more added in FY2005. PBB was implemented for the remaining agencies in subsequent years with all city agencies now using Performance-Based Budgeting.

PBB also allows the District to track common administrative expenses across city agencies through an effort called the Agency Management Program (AMP). The city began using the AMP in 2004 to track spending in 13 categories of activities including personnel, training, property management, information technology, financial services, and labor-management relations. The process intends to provide consistency in budgeting and performance reporting. It also helps budget managers identify costs such as expenditures for on-board personnel across the government.

In FY2005, the D.C. Council mandated yet another level of budget control by requiring service-level budgeting for 20 specific services. Service-level budgeting is intended to provide even greater transparency about agency budgets by providing information on the cost and effectiveness of specific service-level activities. The city implemented 12 service-level budgets in FY2008 for services including the Investigative Field Operations service of the MPD and the Fire/Rescue Operations of FEMS.[304]

In short, these tools–performance-based budgeting, the Agency Management Program, and service-level budgeting–help policy makers monitor and manage expenditures more effectively. Using District funds more efficiently has contributed greatly to the District’s current strong financial health.

Improved Revenue Collection, Capacity, and Estimation

In addition to strictly managing expenditures, the District’s growth in revenue generation since FY1997 is a striking success. Total tax revenue grew by 92 percent and gross revenues increased almost 53 percent from FY1997 to FY2007.[305] The District took three important steps to make this possible: (1) D.C. made improvements to its current revenue collection capacity; (2) it improved its overall financial health and, thus, its capacity to generate revenue – especially through the real estate market; and (3) it developed cautious estimates of future revenues.

Improved revenue collection contributed to the District’s dramatic growth. Income tax collections, for example, are now fully linked with federal tax filings, allowing the tax department to cross-check with taxpayer information provided federally. Business tax filers are inter-linked and the tax administration can easily follow franchise tax, sales tax remissions, personal property tax, and other taxes for any single business – without opening a single paper return. Multiple improvements in tax administration and tax collection also encouraged taxpayers to be more forthcoming with complete tax information and disclosure, producing improved voluntary compliance and much greater efficiency in the administrative cost of collection taxes.

Better tax administration and high voluntary compliance, however, were not the only factors positively affecting the District's revenue generation. The hard work the District put into balancing budgets, building a general fund surplus, and gaining access to credit markets also helped expand its revenue capacity. Indeed, the government's improved financial condition was central to restoring confidence in the District as a place to invest in real estate–the bedrock of any economy.

Real property turnover and rising real property prices were crucial to the District's economic recovery. In FY1991, property sales dropped 40 percent below the FY1990 level. They remained stagnant for several years as the District sunk deeper into fiscal crisis. Sales only exceeded this stagnated "floor" in FY1998 once the city government began to show signs of fiscal stability.[306] The city's improved economic climate, combined with good national economic circumstances, renewed interest in buying real estate in the District, both commercial property and residential. Indeed, from FY1997 to FY2007, the District experienced a very strong 17 percent annualized growth rate in revenue from the transfer tax, which is assessed when a real estate deed is recorded in a new owner's name.

In addition to improving revenue collection and expanding revenue capacity, the District has enhanced its revenue estimation procedures. Cautious revenue estimates have been the key to the city's budgeting success. Because the District's budget must be approved by Congress, there is a long lead-time between when the estimates are made (usually in February for budget preparation) and when the audit of actual budget performance is completed (two years later in January). A number of unexpected events could impact the city's revenue flow over a two-year time period, as did the 2001 terrorist attacks and the drop in the financial markets discussed earlier in the chapter.

If the District's estimates of anticipated revenues exceed the revenues that it actually generates two years later, the city will face a major funding shortfall. Cautious revenue estimates produced by the OCFO help protect the city from this type of fiscal crisis.

Revenue estimates are subject to political pressures and most jurisdictions have some kind of political "buy-in" process to achieve general support for the estimate. This support comes at the high price of potential failure to balance the budget. To its great credit, the District has not politicized the estimates, allowing the revenue estimating function to be entirely professional.

Measuring Success in Financial Recovery

The District government's work over the last decade allowed it to make great strides. The financial turnaround can be measured by three additional indicators of financial well being: the general fund balance, cash reserve mandates, and bond ratings.

The General Fund Balance

A comfortable General Fund Balance is an indicator of financial success and security. It is an accounting storehouse of funds committed to future purposes and of funds whose use is not yet restricted. There are

Historic Bond Ratings for D.C.

Year	Moody's	Standard's & Poor's	Fitch
May 2007 – Present	A1	A+	A+
April 2004 – May 2007	A2	A+/ A	A-/ A
June 2003 – April 2004	Baa1	A-	A-
March 2001 – June 2003	Baa1	BBB+	BBB+
June 1999 – March 2001	Baa3	BBB/BBB+	BBB
March 1998 – June 1999	Ba1	BB/BBB	BB+
April 1995 – March 1998	Ba/ Ba2	B	BB
Dec. 1994 – April 1995	Baa	A-	BBB+
November 1984 – Dec. 1994	Baa	A/A-	No rating/ A-

several reserved "savings accounts" within the city's FY2007 General Fund Balance of $1.494 billion. The reserved amounts total $1.135 billion and include, among other items, $309 million in cash to cover emergency and contingency expenditures, $327 million in escrow for debt service payments, and $35 million designated for post employment benefits. An additional $359 million in the General Fund Balance is unreserved, although some of that total is already claimed for designated purposes such as supplemental expenditures and other post employment benefits. About $81 million of the total is both unreserved and not designated for identified future expenditures.

Cash Reserve Mandates

The Federal Appropriations Act of 2000 amended the District of Columbia Financial Responsibility and Management Assistance Authority of 1995 to require a general cash reserve of $150 million with specific restrictions for its use. The District's emergency and contingency reserves of $309 million are a result of this federal design for the District during this financial recovery period. It also required that the District have an annual positive fund balance of at least four percent of the projected expenditures for the forthcoming year. As of 2004, the federal law required DC to budget and carry two cash reserves: the Emergency Reserve at two percent of the expenditures through 2009 and Contingency Reserve at four percent of annual expenditures through 2009. The District, each year, has met this requirement.

Bond Ratings

Bond ratings issued by rating agencies are a central indicator of a city's financial well being. The ratings quantify the risk associated with lending long term capital to a municipality. They are based on criteria that evaluate the government's economic standing and capacity to deliver services.

The District's bond ratings have improved dramatically since the beginning of the Control Period. The improvements are significant as an indicator of the District's financial recovery, and the higher quality ratings allow the District access to long term capital bonds at more favorable interest rates. The chart above shows the change in the District's bond rating since 1984.

The "A" category ratings indicate that the District has strong attributes as a borrower, and the attachment of "+" suggests that loan quality is approaching "High", according to

Photo by Michael Bonfigli

"But fiscal recovery, even fiscal excellence, is not the same as excellent, or even adequate, government services. It is a necessary but not a sufficient condition."

rating agency standards. The lowest ratings in 1995-1998 implied that D.C. bonds were predominantly "Speculative" investments.

Rating agencies base bond ratings on a number of things. Most important is the inherent credit quality of the loan, which signals if the borrower has the funds to pay it back. Other considerations for jurisdictions include the quality of the infrastructure, programs and systems used to manage the city/state, the long-term outlook for the economy and its linkage to the success of the local government, and the commitment of local leaders and managers to fiscal health. Improvements in all these areas benefited the city's bond ratings.

Even with the strong improvement in ratings, the District's credit position is below that of cities like Baltimore, New York, San Antonio, and Chicago. Rating agencies are aware of the budgetary pressures and constraints that surround the District. Current ratings are a signal achievement for the District and higher ratings are possible. Still, the District has a long way to go to move to the highest ranks of regard from potential credit holders.

Conclusion

From FY1996 to FY2001, the District and the Federal Government have partnered in a very effective, consistent, and on-going financial recovery process. Beginning in FY2002, the city has accomplished this same financial success without on-going federal management. The last ten years produced remarkable results and helped to secure the fiscal health of the District.

The economy rebounded and tax revenues grew by 92 percent between FY1997 and FY2007, a clear indicator of the benefits of better government. This, coupled with the benefits of the 1997 Revitalization Act, allowed moderate growth in expenditures as the government recovered its sure footing. Nothing but praise can or should be written about the fundamental accomplishments shared by all who worked for this outcome.

But fiscal recovery, even fiscal excellence, is not the same as excellent, or even adequate, government services. It is a necessary but not a sufficient condition. Along with the fiscal recovery, we have learned of financial challenges that result from the revenue constraints the Federal Government places on the District as the Nation's Capital, as explained in Alice M. Rivlin's chapter. As DeRenzis and Garrison described, the District cannot finance, produce, and maintain the physical infrastructure needed to support a great city and national capital.[307] This is a problem for the long term. Starting from far behind, with deferred maintenance never going away, it is hard to imagine ever catching up. Just as importantly, Washington has not yet been able to serve many of its residents well enough to sustain a turn-around in their economic well-being. These ten years have seen growth in the wealth of a small number of residents – very good news as these are the generators of revenue and revenue growth. However, they also have seen a reduction in D.C.'s middle class and stubbornly high poverty rates. The city has had to defer investment in its human services in order to maintain fiscal stability.

To be both a world class city and fiscally stable, the District needs to be able to support more services, on both the capital and operating sides of the budget. Providing more services will require, an adequate tax base, which is not created by even the rapid growth of the last decade. The tax base needs to cover substantially all incomes earned in the city, as well as substantially all real property located in the city, as is the case for state and local governments throughout the country. If this is not possible, then an equivalent alternative in the form of federal support is needed.

If D.C. is to be a world class city, then much more is needed. An adequate city educates children adequately, transports people adequately and provides housing and health care adequately. A world class city provides these services in a manner to be emulated, world-over. As Chapter Two by DeRenzis and Garrison[308] described, the makings of D.C. as a world class city, achieving this national goal requires a much greater reach.

ENDNOTES

296 This story is often told by Natwar M. Gandhi who began his tenure as head of the tax agency in January 1997.

297 FY1997 CAFR, Table A-4, p. 41.

298 District of Columbia Financial Responsibility and Management Assistance Act, Pub. L. 104-8 (1995).

299 U.S. Gen. Accounting Office, GAO-03-666, District of Columbia Structural Imbalance and Management Issues (2003) ("GAO Report") (proving this for FY2000, demonstrating an operating budget shortfall of roughly $0.5 to $1.1 billion dollars a year.

300 The Authority is dormant rather than extinct. A Control Period is automatically reinstated if the District defaults on loans or bond, or fails to make required cash payments relating to pensions, payroll, or benefits.

301 Because expenditures by the receiverships overlapped with components of economic development, public safety and justice, and human support services, it is not possible to describe growth rates in the specific categories of the data in the table.

302 T. Rowe Price Report, Issue 100, Summer 2008, at 9.

303 Please note that these goals are not stated in the District's budget process although similar goals are in the budgets. These examples are provided to clarify the purpose of PBB.

304 The information about PBB is taken from Chapter 2, Strategic Budgeting, of the FY2008 Proposed Budget and Financial Plan, Volume 1, Executive Summary. The twelve service-level budgets are named on page 2-5.

305 As reported in Table A-5, FY2007 CAFR and Table A-4, FY1997 CAFR. The growth of Gross Revenues was smaller because there was a federal general purpose payment of $645 million in FY1997 that did not repeat in later years. The growth in tax revenues translates to an annualized rate of about 6.7%, well above inflation and nominal growth in other areas of the economy.

306 The total value of sales is as shown by transfer tax revenue.

307 *See supra* Chp. 2.

308 *See supra* Chp. 2.

Photo by Michael Bonfigli

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