

**Testimony of Tom Davis before the Subcommittee on Emergency Management,
Intergovernmental Relations, and the District of Columbia
January 30, 2014**

Chairman Begich, Senator Paul, Thank you for allowing me the opportunity to share my view on the impact of a Federal Government shutdown on the District of Columbia Budget and Operations.

As a point of reference, I chaired the House District of Columbia Subcommittee and the House Government Reform Committee during a period from 1995-2008. From that perch I was Chief sponsor of several pieces of legislation ranging from The Financial Responsibility Management Assistance Authority (FRMAA), also known as the Control Board, to the D.C. College Access Act, to School Vouchers, to parts of their Revitalization Act, to METRO Reauthorization. Prior to my service in the House, I was President of the Washington Metropolitan Council of Governments (COG) as well as Chairman of the Fairfax County Board of Supervisors, the Chief Elected Officer in Fairfax County.

The city today is far different from the city I oversaw as Subcommittee Chair in 1995, when a Control Board was placed over city operations, as a result of a decade of fiscal mismanagement and economic meltdown. The city's Bonds were Junk Bonds and the city was virtually bankrupt.

The city today is growing at a rate of over 1,000 people per month. Its tax base is expanding. Its crime rate has fallen dramatically and its Budget is running in the Black. I like to think that we did some good, as Republicans and Democrats, working together, establishing an independent Chief Financial Officer, an enhanced Inspector General, relieving the city from its unfunded pension liability, and restructuring the city Government to help the city back to health.

The voters of the city and its leadership also deserve some credit for making good decisions along the way. The need for Congressional micro-management is no longer present, as the city has shown itself to be a responsible steward of its own destiny. Moreover, the Spector of a dormant Control Board hangs over the city should it fail to balance its budget in any one year, and the Constitutional power of Congress to intervene at any time remains.

The overriding issue should be, "at what time and under what circumstances should Congress exercise its authority to intervene in District issues and governance." To that, I would like to offer my perspective.

To begin with, it is difficult to substantiate why the city's own Budget, raised through local taxes from local citizens, should be frozen or delayed just because Congress has not been able to pass the Appropriations for the Federal Government in a timely manner. Although this is a relatively rare occurrence, happening twice in 1995 and once last year, a federal shutdown wreaks havoc on the city's Budget and Operations, jeopardizing not

only city services but the operations of the Federal Government. Even when all employees are deemed essential, as the Mayor claimed last year, they cannot all get paid until the gridlock is resolved.

No other city in the world operates in this manner and with these restrictions. Why should our Capitol City, the Beacon light for the free world, endure this injustice? The answer of course, is that it should not. City taxpayers should be able to keep their city running with city tax dollars regardless of the Budget deadlocks on Capitol Hill.

A little history is in order. On June 21, 1783, a group of Revolutionary War Veterans marched on the Continental Congress then assembled in Philadelphia to demand payment felt due from the war. The Veterans were an angry lot and took over Freedom Hall and found the local Pennsylvania militia was sympathetic to their cause and offered no protection to the Congress. The Continental Congress was chased across the river to New Jersey. This occurred under the Articles of Confederation, and when the new Constitution was written, Madison and others present at the time believed that the Congress should not be at the mercy of an individual state or city for protection, but needed its own dedicated territory which the Congress itself would control, for its own protection. The District Clause was inserted in the Constitution stating at Article I, Section 8, Clause 17. "Congress shall have power to exercise exclusive legislation in all cases, whatsoever, over such District."

The actual site of Washington, D.C., was selected by a compromise on the Southern favored site on the Potomac, in return for Southern support for a Northern priority, assumption of Revolutionary war debt by the National Government.

Congress proceeded to divide the city into two counties, Washington (ceded by Maryland) and Alexandria (conveyed by Virginia). There is no recorded contemporary consideration of the Convention or the ratifying Conventions to the question of how the city was to be governed. James Madison, in the Federalist Papers did assume the inhabitants "will have had their voice in the election of the government which is to exercise authority over them from their own suffrages will of course be allowed them."

Aware that not every issue pertaining to governance of the Federal City had been considered, Congress reserved for itself the ultimate authority to deal with the City's governance and over two hundred years various methods have been implemented to deal with issues that arose. I doubt that anyone envisioned the diverse city of over a half million people that has evolved or the myriad of complex issues in local governance that have emerged over that period of time. But the framers, in their wisdom, gave the flexibility to Congress to make the appropriate adjustments along the way.

When the city's home rule was restored in the 1970s, after nearly a Century of appointed leadership, Congress reserved for itself a layover provision of 30 legislative days to disapprove any ordinances passed by the City Council. These disapprovals were rarely exercised, and on only a few occasions did the Congress put any limitation on City actions independent of the layover period (Usually as a rider to an Appropriation Bill). Usually these were prohibitions on City spending for local priorities that were not in

keeping with National priorities at the time, ranging from medical insurance for domestic partners of City employees, to abortion to medical marijuana and needle exchange programs.

Over the past 20 years, with the exception of a handful of hot-button social issues, Congress has intervened only when action or inaction by the City Government interfered with ongoing working of the Federal Government, such as, a Bridge closing. Congress has not exercised its veto over a Council ordinance over that time and the City has operated relatively effectively.

It is hard to believe that our founders would have envisioned the inaction of Congress not passing a Budget, thereby shutting down the operations of the Municipal government that was supposed to protect it. Yet, that has been the unintended consequence of government shutdowns. And, while it may be another decade before we face the issue again, it is an appropriate time for Congress to address the issue in a proactive manner.

In doing so, Congress gives up NOTHING. The District Clause of the Constitution reserves the power of Congress to step in at any time. But, the change will allow continuity in City government that is not only more efficient but predictable. It also holds city elected officials responsible for bad results instead of just blaming the Congress. There is no reason to link the operation of local government with local money, to the dysfunction of the Congressional Budget process.

One of the sticking points in drafting consensus legislation around this issue pertains to Appropriation riders that are added to current Appropriations Bills. For example, if the Appropriations Bill from the previous year contains a prohibition on Abortion funding, and a current Bill is not enacted, would that prohibition expire, or would it be carried on subject to passing a new Appropriations Bill? This is a controversy that carries significant political ramifications.

I would suggest that the previous year's prohibitions be continued until the ensuing years Appropriation Bill is enacted, but that is a matter for current Legislators to resolve.

I know, as a Congress, you can do better. This Hearing is an important step in this process.