DISTRICT OF COLUMBIA INTEREST RATE MODIFICATION

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 1992 and S. 2005

NOVEMBER 14, 1979

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DISTRICT OF COLUMBIA INTEREST RATE MODIFICATION

WEDNESDAY, NOVEMBER 14, 1979

U.S. SENATE,
SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY
AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:22 p.m., in room 2203, Dirksen Senate Office Building, Hon. Thomas F. Eagleton (chairman of the subcommittee) presiding.

Present: Senator Eagleton.

Staff present: Eli Nobleman, staff counsel, Committee on Governmental Affairs; Ira S. Shapiro, chief counsel and staff director of the subcommittee; Margaret P. Crenshaw, counsel; Glenn Smith, counsel; Emily Eiselman, professional staff member; Eileen Mayer, staff counsel; and Marion Morris, professional staff member.

OPENING STATEMENT OF SENATOR EAGLETON

Senator EAGLETON. The Subcommittee on Governmental Efficiency and the District of Columbia is in session this afternoon to take testimony on S. 1992 and S. 2005, bills which would waive the congressional review period for the Interest Rate Modification Act of 1979, a District of Columbia act passed by the City Council last Tuesday, November 6. S. 1999 would also modify the emergency act provision of the District's Home Rule Act.

I realize that this hearing was scheduled on short notice and that, for most of you, Monday was a holiday. That you were able to respond so quickly indicates both your concern about and the seriousness of the mortgage situation in the District.

For those who are unaware of the events of last week and the reasons for this hearing, let me provide a bit of background.

Under the District of Columbia Self-Government and Governmental Reorganization Act, better known as the Home Rule Act, the District of Columbia can enact permanent legislation which becomes law only after a period of congressional review—namely, 30 legislative days—and only after both Houses have not passed a concurrent resolution of disapproval. The Home Rule Act also recognizes, though, that in exceptional situations, the District of Columbia government must be permitted to act rapidly and have legislation take effect with no congressional layover.

Therefore, the Home Rule Act provides that two-thirds of the District Council can pass "emergency legislation" which takes effect without congressional review and which stays in effect for 90 days. The Home Rule Act is silent on whether the emergency legislation may be renewed.

The District government, however, has repeatedly renewed emergency legislation, and in the area of condominium conversion, this practice was challenged and struck down in an October 19 decision of District of Columbia Superior Court Judge George Revercomb.

Judge Revercomb held that the successive reenactment of emergency law—10 times, I might point out, in the condominium conversion case—exceeded the District's proper authority under the emergency legislation. In light of that decision, the Federal National Mortgage Association—known as Fannie Mae—questioned the legality of recent loan agreements made in the city, since many of the loan agreements were made under a 15-percent District usury ceiling passed twice as emergency legislation.

Consequently, we learned on Tuesday, November 6, that Fannie Mae would no longer buy loans in the District of Columbia if the loans were in excess of the permanent usury ceiling of 11 percent. That very day the District hurried to enact a 15-percent usury ceiling as permanent legislation, and, as required, the legislation was transmitted to Capitol Hill, where it now awaits the congressional review period. At the earliest, the review period would end near Christmas, a span of time which under the circumstances is not terribly tenable.

On Wednesday, November 7, following the Fannie Mae action, the Federal Home Loan Mortgage Corporation—otherwise known as Freddie Mac—also refused to buy loans in the District, and by Friday, November 9, with the two major lenders in the Washington market not buying loans, real estate transactions in the District came virtually to a halt. Individuals found they could not go to settlement; new residents found there was no financing available for a new home purchase; families leaving the District learned they could not sell their homes. Many of these individuals have conveyed their problems and concerns to the subcommittee.

Congress, of course, can rectify the situation by making an exception to the Home Rule Act of 1973 so that the congressional review period is waived, thereby allowing the 15-percent usury ceiling approved by the District last Tuesday to become permanent law immediately. Meeting in emergency session, the House District Committee approved such a waiver last Thursday, and the full House gave support for the waiver yesterday afternoon. Senator Mathias has introduced a waiver bill in the Senate, and I join with both my House colleagues and Senator Mathias and urge that the waiver be approved immediately.

I must emphasize, however, that the waiver of the home rule review procedure should not set a precedent. The Home Rule Act foresaw emergencies arising in the District of Columbia and gave the District of Columbia legislative authority to deal with them. The interest rate crisis would not have occurred, nor would it have been brought to the attention of Congress, if the emergency section of the Home Rule Act had consistently been implemented solely for emergencies.

For that reason I find it difficult to review the sequence of events without concluding that some basic change in the emergency provision of the Home Rule Act is needed. In the past year, for example, 69 percent of the legislation passed by the District was adopted by the emergency route. Only 31 percent was subject to congressional review. Thus, emergency legislation has become the rule rather than the exception.

My legislation, which is before you now and which I explained in detail in my floor statement, would change this. It would accommodate the legitimate needs of the District to move rapidly in an emergency without waiting for congressional review, but it would insure that emergency legislation will not stay in effect indefinitely or become a regular alternative to the ordinary legislative process.

Some of you will argue that it is imperative to raise the interest ceiling immediately and that consideration of an amendment to the emergency provision of the Home Rule Act complicates the task and risks delay. Well, I could agree with that. But delay is not inevitable if we confront the emergency issue squarely and try to solve the problem. The record of overreliance on the emergency provision is clear beyond question. It should also be clear that my proposal will substantially improve the situation, protecting the District's legitimate needs and the integrity of the legislative process.

Our first witness this afternoon is the Mayor of the District of Columbia, the Honorable Marion S. Barry. Welcome, Mr. Mayor, we are delighted to have you with us. You may proceed.

TESTIMONY OF MARION S. BARRY, JR., MAYOR, THE DISTRICT OF COLUMBIA; ACCOMPANIED BY BARBARA WASHINGTON, ASSISTANT CITY ADMINISTRATOR FOR INTERGOVERNMENTAL RELATIONS

Mayor BARRY. Mr. Chairman, I have with me Ms. Barbara Washington, who is Assistant City Administrator for Intergovernmental Relations for the District of Columbia government.

Mr. Chairman, I do not have a prepared statement. Originally, I was not going to appear on behalf of the District government to make a statement. But, recognizing the nature of this situation and the fact that you and I talked yesterday about the need to at least present a clear, concise view from the executive branch of government and to join in with the Council, I thought I would cancel some other appointments and come before you.

Mr. Chairman, I appreciate this opportunity to present the views of the District of Columbia government on S. 1992 and S. 1999 and also H.R. 5811, which was passed by the House yesterday.

Mr. Chairman, I would like to urge that these two issues be separated—that is, the question of the waiver and the 30-day layover period which confronted us on November 6 and the whole question of the emergency powers of the Council.

I think, Mr. Chairman, you and I would both agree that we ought to reluctantly tamper with the charter. I have asked on a number of occasions that persons not go into it because, once you open it up, it allows opportunties for persons who don't agree with our degree of self-government to get into it and create mischief.

Second, Mr. Chairman, we received this proposed legislation just yesterday. We are talking about serious consequences of what happens. I would urge you, Mr. Chairman, to go forward on the waiver part, to adopt the House bill this week, and hold additional hearings. I think the chairman of the House committee, Mr. Dellums, has agreed to hold hearings and to look at this whole question of the emergency powers.

Let me also say, Mr. Chairman, I think that the court suit that was filed by the Home Ownership Corp. before Judge Revercomb has been misinterpreted. I would like to enter into the record a letter I wrote to Mr. Oakley Hunter on November 9, 1979. He is president of the Federal National Mortgage Association. In discussion with Mr. Hunter, I indicated that I thought that Fannie Mae had acted precipitously in moving ahead to cutoff buying of secondary mortgages and that they had not been in touch with the D.C. Corporation Counsel or anybody in the District of Columbia government.

We have an opinion from the corporation counsel. Let me just indicate for the record that the *Home Ownership* case challenged the Council's authority under section 412(a) of the District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 788, D.C. Code, sec. 1–146.

The court indicated that that was a singular case before it. Also, Mr. Chairman, the court made it very, very clear that it declared unlawful this particular piece of legislation which had been enacted some 10 times by emergency. But the court suit was very clear that the court is only empowered to prospectively enjoin enforcement of an act unlawfully enacted by the council. Therefore, even imagining the worst set of facts, the second emergency is later declared invalid. Retroactive invalidation of all loans made pursuant thereto would be an improbable judicial outcome.

So, I think the record ought to be clear that Judge Revercomb did not declare that the Council had not had the authority to enact emergencies. He did not even say how many emergencies. He just said, in this particular case that 10 emergencies, he thought—which is 900 days—was excessive.

So, I think the record ought to be clear that it is our view—corporation counsel's view—that the Council has the full authority to enact a number of emergencies. The charter is silent in that area. So, I think we ought to wait and look at the whole question of emergencies. It is the foundation of this government's ability to act quickly, as you very well know. If we did not have the congressional review period, if we had complete autonomy from the Congress, complete autonomy from the President, we would not need this.

So, I would urge very strongly that you separate out those two.

Mr. Chairman, I would like to support the Senate's effort, your efforts, and Mr. Mathias' efforts to waive the 30-day period. We think that home ownership and buying of mortgages and purchasing homes and selling those homes is very important in our city. This will immediately relieve the situation.

I have indicated to the Federal Home Mortgage Association people that, in my view, there is no gap. Nevertheless, the Senate should act quickly to enact H.R. 5811. The present emergency, the second emergency, expires January 3, 1980.

I am not going to comment, Mr. Chairman, at all on your proposed bill. I think it would be premature to do so. I have not had a chance to look at it. Moreover, I have been advised by the Corporation Counsel that, since this litigation is proceeding, and the Corporation Counsel is the principal lawyer for the city, both the Council and the executive, and we support the Council and their right to enact even the 10 emergencies, that it would be inappropriate for me to go but so far in discussing it, or even discuss it at all.

So, my comments would be limited to two. One is urging you to separate out the two circumstances, even though they are interrelated. Second is to urge you to adopt the posture that you will go with H.R. 5811 and that, in the next week or two, we will come prepared to discuss the whole nature of the emergencies.

I hear the figure 69 percent used as a number. We don't know and have not had a chance to analyze what that really means.

Mr. Chairman, in some instances an emergency is an emergency at the time that it happens; after 90 days it is no longer an emergency, and therefore there is no need for permanent legislation. So, we need a chance to analyze all of that.

Finally, I would like to say that the executive branch joins in with the City Council in stating very clearly the legislative prerogatives and powers of the Council to enact a number of emergencies. The question of how many is something for us to decide. The lower court's ruling has been stayed. There is an en banc hearing on this matter before the District of Columbia Court of Appeals.

Being a former U.S. attorney and being a lawyer, you never know what courts are going to do. My Corporation Counsel informs me that she thinks that we have a good case. But, moreover, legislatively, I think we ought to wait on this one. I am committed to coming back on behalf of the executive to work with you and the House on finding a reasonable approach to this whole question of emergencies.

Thank you, Mr. Chairman.

Senator EAGLETON. Thank you, Mr. Mayor. I appreciate your testimony.

I appreciate the delicate situation you are in as Mayor with a case pending in court. Your own Corporation Counsel is litigating the matter before Judge Revercomb, and that will be taken on appeal. So, I will not question you at this time on the issue of successive emergencies and other matters that might impact upon the lawsuit. Although not in name, you are in a sense, by reason of your official position, a party litigant in the suit. So, you may be excused.

Mayor BARRY. Mr. Chairman, I would like to introduce into the record our letter of November 9 to Mr. Oakley Hunter, which contains the Corporation Counsel's opinion to me and also contains the motion for summary reversal.

Senator EAGLETON. That will be made part of the record.

[The letter follows:]

THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

MARION S. BARRY, JR.
MAYOR

November 9, 1979

Mr. Oakley Hunter
President
Federal National Mortgage Association
1133 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Hunter:

This letter is being written to you to respectfully request that the action taken by the Federal National Mortgage Association of November 2, 1979 respecting its decision to refuse the further purchase of conventional loan packages in the District be reconsidered and rescinded. In accordance with suggestions made during a meeting with Mr. James Murray, the Vice President and General Counsel, I am attaching hereto a legal memorandum of the Corporation Counsel for your consideration.

In view of the obvious disruptions and the confusion that has and will continue to result in this mortgage and other financial markets from the action taken by your Association, I urge that the action taken on November 2nd be rescinded immediately. As the Corporation Counsel has advised, it is believed by the City that the decision of Judge Revercomb respecting the condominium-rent control legislation will be reversed in the very near future. Unless your decision is cancelled, the District may not be able to quickly recover from what may be regarded as an erroneously imposed, and clearly prejudicial, "moratorium." Certainly, pending settlement closings cannot be indefinitely adjourned. Purchasers, who have placed substantial down payments, may be in jeopardy of losing such moneys because of failure to complete the sales transaction. Finally, a further conveyancing of housing in the District may come to a virtual standstill. Such inactivity in our local housing market could be particularly devastating to the District's economy.

Unless your decision is reversed immediately, I fear it will result in most serious consequences for the District. Already, your decision on a moratorium has had an undesired ripple effect locally. The Federal Home Loan Bank Board has imposed a similar constraint. As such, the secondary market is virtually closed to this City. Various local lending institutions have followed your lead. I stress the Opinion of the Corporation Counsel that any risk or exposure of FNMA, based on prevailing law, is minimal, and that even if Judge Revercomb's decision is affirmed on appeal, and should court action then be invoked regarding the usury legislation, the prevailing view is that such court action, would, if at all, reach to such legislation only on a prospective basis. As such, and from a purely business judgment, the continued investment of FNMA in the mortgage market in the District is certainly a prudent risk.

While the District of Columbia is seeking all avenues of relief, including Congressional action, you can act immediately to alleviate the current situation, and your consideration of, and assistance in, this matter is earnestly requested.

Sincerely,

Marion Barry, Jr.
Mayor

Senator EAGLETON. Thank you very much, Mr. Mayor.

Before calling the next witness, I wish to point out that I am not a party litigant in any sense to the suit, so I opine on the law. I will put into the record opinions by the previous corporation counsel of the District of Columbia, wherein the previous corporation counsel on several occasions pointed out his legal opinion to the City Council and to others to whom he addressed his opinion.

His opinion was that successive emergencies were in grave doubt. He stated that they would be subject to court challenge and that the Council was treading on very thin ice with successive emergencies.

Also, I will opine as an individual. I used to be attorney general of Missouri. This issue of emergency legislation has been litigated in almost every State of the union. Where it has been litigated, cases analogous to the case before Judge Revercomb have been consistently lost.

There is very little legal authority for successive or repetitive emergencies. Various legislative bodies have resorted to this technique, both on a local level and on a State level through the State legislature. Very consistently the appellate courts of the States have knocked out superficial, cosmetic, nominal emergencies.

It will be made part of the case, I am sure, on appeal to the appellate court of the District of Columbia, the whole record of the City Council with respect to emergencies. We have a computer printout or something analogous thereto that gives the statistics insofar as emergencies are concerned. I said in my opening statement that, in the last calendar year, 69 percent of all legislation passed by the District of Columbia was an emergency.

Let me just give you a little of the flavor of the emergencies—and I used the word "flavor" advisedly because the first category of legislation deals with ice cream vendors. Listen to the acts that have been declared to be emergency acts by the District of Columbia relating to ice cream vendors: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 emergency acts pertaining to ice cream vendors.

"Amends for 90 days regulation governing vending business in public places so as not to apply to vending of prepackaged frozen novelties, ice creams, and other frozen desserts using dry ice." Wow, what an emergency.

The next one: "Amends for 90 days council regulation 7439, operating of vending vehicle stands and equipments"—another emergency.

"Amends for 90 days council regulation 7439, licensing and roadway vending."

There is a whole series in 1977. Emergency Vendors' Regulation Amendment Act—emergency.

Emergency Vendors Regulation Amendment Extension—emergency.

Vendors' License Fees Emergency Act.

Emergency New Vendors Prepayment Extension Act.

And so on and so forth. So, there are 11 emergency acts just for ice cream vendors.

We have 39 emergency statutes dealing with the closing of public alleys—39 emergencies to close public alleys.

Now we've got the Post-Secondary Reorganization Act: "To exercise the powers of the abolished Board of Higher Education with respect to the licensing of public postsecondary educational institutions."

An Emergency Education Licensure Act of 1977: "To authorize the Board of Trustees of the University of the District of Columbia to continue to exercise on an emergency basis certain powers of the Board of Higher Education."

And then a whole series of educational institution licensure extension acts, all done on an emergency basis—and so on, and so on, and so on.

What the record will show before the appellate court is that the District of Columbia City Council has decided out of, I guess, a sense of convenience unto itself, that they will declare practically every statute or ordinance that comes before the Council to be something of an emergency nature, tack an emergency clause on to it, pass it by the requisite number of votes, and there it is. And the procedure finally came to its illogical end before Judge Revercomb with respect to the condo bill: 10 consecutive emergencies.

So, the city is beset, ladies and gentlemen, with two crises, one could say. One is the usury crisis. The current law is 11 percent. Money market rates being what they are, that 11-percent rate is obviously an immediate anachronism.

The second crisis—and one that has to be dealt with just as quickly—is that every ordinance of the District of Columbia that has been enacted pursuant to an emergency clause is in jeopardy. Every ordinance of the District of Columbia Council with an emergency clause is in jeopardy. There is no way of escaping that.

I will bet dollars to doughnuts that Judge Revercomb is affirmed unanimously on appeal—unanimously on appeal. And every law that has an emergency clause and was enacted pursuant to that procedure is in jeopardy. It is not just these innocuous ice cream vendors acts. I guess the Republic won't fall if some of this stuff is declared to be illegal; for example, the ice cream vendors. But the District of Columbia Council has passed other laws of significance that are in jeopardy.

To wait, then, for this case to go up to the appellate court to be unanimously and summarily reversed and then to have legal challenges to a whole existing body of law is asinine. So, we are going to move on it, and we are going to move now. We are going to try to solve both crises at the same time.

I will call our next witness, Mr. Arrington Dixon, the Chairman of the Council of the District of Columbia.

TESTIMONY OF ARRINGTON DIXON, CHAIRMAN, COUNCIL OF THE DISTRICT OF COLUMBIA, ACCOMPANIED BY JAMES CHRISTIAN, GENERAL COUNSEL; AND BRUCE FRENCH, LEGISLATIVE COUNSEL

Mr. DIXON. Mr. Chairman, I appreciate those introductory remarks.

I am joined today by two of the officers of the Council: the General Counsel to the Council, James Christian, who is to my left; and my Legislative Counsel to my right, Bruce French.

I appear before you this afternoon to urge the expeditious and favorable consideration of S. 1999. As you are aware, this legislation would permit the Interest Rate Modification Act of 1979, act 3–119, to take effect immediately. We in the District of Columbia are faced with a crisis situation in our financial market because lending institutions have been forced, due to a perceived cloud of legal uncertainties,

to cease making mortgage money available. Enactment of S. 1999 would eliminate this cloud of uncertainty. I would, therefore, strongly urge this subcommittee to report S. 1999 minus section 2. Though I can well understand your concerns with respect to the Council of the District of Columbia's exercise of its emergency powers, now is not the time nor the crisis which we face the appropriate opportunity to address those concerns.

Mr. Chairman, the reason we are here today is to provide relief for a crisis. Citizens of the District of Columbia are at the moment enduring hardships which S. 1999, if enacted expeditiously, would relieve. I would urge that other concerns not cause undue delay in that process.

The House of Representatives yesterday, recognizing the need for quick action, passed H.R. 5811, a measure which achieves the very purpose which S. 1999 could help achieve. Effective and timely relief which we seek could be lost if S. 1999 is not narrowly focused. Therefore, I would urge deferral to a future time the examination of the Council's emergency powers. And, I might add, consideration should be given at that time to possible elimination of the 30-day congressional review period now required for all permanent enactments of the District of Columbia.

There is no question in my mind that that requirement has helped, in fact created, the very situation which we are now addressing.

Senator EAGLETON. Why is that?

Mr. DIXON. Mr. Chairman, it is my opinion that many of the emergency pieces that are being considered——

Senator EAGLETON. What you are saying is that, in order not to have it come up for congressional review, the City Council, as a matter of routine custom and habit, concocted the regimen of attaching the emergency clause on to every conceivable piece of legislation to get around the clear mandate of the charter.

Mr. DIXON. Mr. Chairman, that was not my rationale. My rationale was that, oftentimes because of the delay, particularly during the previous Council sessions before the alteration of the review period, the extended time that legislation could lay over at the Federal level did in fact require that there be emergency actions repeatedly passed to, in fact——

Senator EAGLETON. Well, Congress was in session on March 10, 1975, when you enacted the first emergency ice cream vendor law. Now, what was the emergency that existed on March 10, 1975 with respect to prepackaged ice cream and other frozen desserts using dry ice?

Mr. DIXON. Mr. Chairman, as you probably know, the Council had just been organized and established in January of that year. Having been a member of a legislative body for so long, you understand it does take time to organize and——

Senator EAGLETON. All right. Then let's go to March 1977. By that time the Council had been organized for 2 calendar years. Act 2–10, Emergency Vendors Regulation Amendment Act. Congress was in session in March 1977. It stayed in session close on to the end of that calendar year. What was the emergency with respect to act 2–10?

Mr. DIXON. Mr. Chairman, I think that, with the exception of a few, it would take me at least sometime, as I suggested in my statement, to properly assess what did occur. That assessment, I believe,

in a deliberative manner might allow us to fashion the kind of modification to our emergency powers that would be good for the city as well as the——

Senator EAGLETON. What about the 39 emergency acts dealing with a number of public alleys?

Mr. DIXON. Mr. Chairman, again I suggest, particularly because of our posture in court and also because it would require, I think, an evaluation of what actually caused those emergencies to be enacted for us to give you a good response so we could fashion legislation to deal with the problem.

Senator EAGLETON. In your experience in political life in the District of Columbia, can you think of any situation where there was an emergency with respect to ice cream vendors in the District of Columbia?

Mr. DIXON. Mr. Chairman, I suggest that, again, I need to look at that. There are things at the local level that——

Senator EAGLETON. Just off the top of your head, by means of commonsense recollection, do you know of any ice cream vendor emergency since you have been in public life?

Mr. DIXON. Mr. Chairman——

Senator EAGLETON. Can you think of one? Were the ice cream vendors going to have a shootout at high noon somewhere? Were they going to burn down the Smithsonian Institution? What was the emergency about—any emergency you can think of about an ice cream vendor?

Mr. DIXON. Mr. Chairman, if you look back at the facts, I think you will find that Congress modified some regulations which, in fact, would allow vendors to serve tourists who come to the mall during the summer. We, in fact, may have been—again I suggest we might need to look at the facts because we are impacted by many things in this town. And that may have been one of the reasons why the council felt it needed to act in that manner, particularly as that related to trying to assist very, very marginal businesses such as vendors and to foster economic development in this town to try to relieve tax burdens and provide some additional tax sources.

Again, Mr. Chairman, I think on each one of them there may be good, or there may be questionable reasons, but the facts, if in fact they were looked at, I believe we might be able to at least fashion a meaningful alteration or meaningful review of the council's emergency powers.

We have been trying—and I would want to, if you would permit me—to submit for the record the District's pleadings that are before the D.C. Court of Appeals which deal with these issues in a substantive manner. If that would be permissible, I would like to have those included in this record for your review, the pleadings of the District government.

Senator EAGLETON. The pleadings will be made part of the record.

[The material referred to follows:]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

THE WASHINGTON HOME OWNERSHIP COUNCIL, INC.
Suite 400 South
1800 M Street, N. W.
Washington, D. C. 20036

Plaintiff,

v. Civil Action No. 10624-79

DISTRICT OF COLUMBIA
a municipal corporation
District Building
14th and F Streets, N. W.
Washington, D. C. 20004

Defendant.

MOTION OF DEFENDANT, DISTRICT OF COLUMBIA, FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to SCR-Civil Rule 56, defendant, District of Columbia, moves for summary judgment on the grounds that there is no genuine issue as to any material facts and defendant is entitled to judgment as a matter of law.

Defendant, District of Columbia, opposes plaintiff's motion for summary judgment since defendant is entitled to judgment as a matter of law.

JUDITH W. ROGERS
Corporation Counsel, D. C.

JOHN H. SUDA
Acting Deputy Corporation Counsel, D. C.

JAMES J. STANFORD (193805)
Assistant Corporation Counsel, D. C.
Attorneys for Defendant
District Building
Washington, D. C. 20004
727-6303

CERTIFICATF OF SERVICE

I hereby certify that a copy of the foregoing Motion of Defendant, District of Columbia, for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment, together with Memorandum of Polints and Authorities in Support thereof, Statement of Material Facts Not in Dispute and Order, hand-delivered to Stephen M. Sacks, Esquire, Attorney for Plaintiff, 1229 19th Street, N.W., Washington, D.C. 20036, this 24th day of September, 1979.

Assistant Corporation Counsel, D.C.
Attorney for Defendant
District Building
Washington, D.C. 20004

60-238 O - 80 - 2

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

THE WASHINGTON HOME OWNERSHIP COUNCIL, INC.

Plaintiff,

v. Civil Action No. 10624-79

DISTRICT OF COLUMBIA

Defendant.

STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Pursuant to SCR Civil Rule 12-I(k), defendant, District of Columbia, submits that there is no genuine issue as to the following material facts and that the following material facts are not in dispute:

1. This is an action for a declaratory judgment, injunctive and other relief to declare unlawful the following "emergency" acts passed by the Council of the District of Columbia pursuant to D.C. Code, §1-146(a) (Non-cum. Supp. VI, 1979):

Count I (Complaint)

a. Emergency Condominium and Cooperative Stabilization Act of 1979, Act 3-44, 25 D.C.R. 10363

b. Emergency Condominium and Cooperative Stabilization Act of 1979, Act 3-95, 26 D.C.R. 1014

Count II (Complaint)

c. Emergency Cooperative Regulation Act of 1976, Act 1-189, 23 D.C.R. 4941

d. Emergency Cooperative Regulation Act of 1977, Act 2-13, 23 D.C.R. 7683

e. Second Fmergency Cooperative Regulation Act of 1977, Act 2-47, 24 D.C.R. 207

f. Third Emergency Cooperative Regulation Act of 1977, Act 2-88, 24 D.C.R. 3177

g. Second Emergency Cooperative Regulation Act of 1978, Act 2-171, 24 D.C.R. 9265

h. Third Emergency Cooperative Regulation Act of 1978, Act 2-239, 25 D.C.R. 1480

i. Fourth Emergency Cooperative Regulation Act of 1978, Act 2-290, 25 D.C.R. 4332

j. First Emergency Cooperative Regulation Act of 1979, Act 3-2, 25 D.C.R. 7680

k. Second Emergency Cooperative Regulation Act of 1979, Act 3-37, 25 D.C.R. 9918

l. Third Emergency Cooperative Regulation Act of 1979, Act 3-79, 26 D.C.R. 642

Count III (Complaint)

m. Emergency Offer to Purchase Act of 1978, Act 2-273, 25 D.C.R. 2545

n. Emergency Multi-Family Rental Housing Purchase Act of 1978, Act 2-277, 25 D.C.R. 3419

o. Second Emergency Offer to Purchase Act of 1979, Act 2-315, 25 D.C.R. 6120

p. Emergency Multi-Family Rental Housing Purchase Act of 1979, Act 2-314, 25 D.C.R. 6118

q. Second Emergency Multi-Family Rental Housing Purchase Act of 1979, Act 3-15, 25 D.C.R. 8787

r. First Emergency Offer to Purchase Act of 1979, Act 3-16, 25 D.C.R. 8793

s. Third Emergency Multi-Family Rental Housing Purchase Act of 1979, Act 3-53, 25 D.C.R. 10880

t. Second Emergency Offer to Purchase Act of 1979, Act 3-54, 25 D.C.R. 10886

u. Fourth Emergency Multi-Family Rental Housing Purchase Act of 1979, Act 3-90, 26 D.C.R. 986

v. Latest Conforming Emergency Offer to Purchase Act of 1979, Act 3-96, 26 D.C.R. 1022

2. The Council passed each and every emergency act cited in paragraph numbered 1 above pursuant to D.C. Code §1-146(a) (Noncum. Supp. VI, 1979), and in accordance with the procedures set forth therein for the enactment of emergency acts.

3. Along with each and every emergency act cited in paragraph numbered 1 above, the Council adopted a resolution declaring the existence of an emergency and setting forth its reasons for such declaration.

4. Th Cooperative Regulation Act of 1979, Act 3-63, 26 D.C.R. 361, was enacted by the Council as a permanent act signed by the Mayor, and received by the House and Senate on July 18, 1979, to commence its 30 legislative day layover time pursuant to D.C. Code §1-147(c) Non-cum. Supp. 1979)

5. The Offer to Purchase Act of 1979, Act 3-75, 26 D.C.R. 664, was enacted by the Council as a permanent act, signed by the Mayor, and received by the Senate and House on August 7, 1979, to commence its 30 legislative day layover time pursuant to D.C. Code, §1-147(c) (Non-cum. Supp. VI, 1979).

6. The Multi-Family Rental Housing Purchase Act of 1979, Act 3-62, 26 D.C.R. 358, was enacted by the Council as a permanent act, signed by the Mayor, and received by the Senate and House on July 18, 1979, to commence its 30 legislative day layover time pursuant to D.C. Code §1-147(c), (Non-cum. Supp. VI, 1979).

JUDITH W. ROGERS
Corporation Counsel, D.C.

JOHN H. SUDA
Acting Deputy Corporation Counsel, D.C.

JAMES J. STANFORD
Assistant Corporation Counsel, D.C.
Attorneys for Defendant
District Building
Washington, D.C. 20004

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

THE WASHINGTON HOME OWNERSHIP COUNCIL, INC.	:	
Plaintiff,	:	
v.	:	Civil Action No. 10624-79
DISTRICT OF COLUMBIA	:	
Defendant.	:	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintitiff brought this action for a declaratory judgment, injuntive, and other relief to declare unlawful numerous emergency housing acts passed by the Council of the District of Columbia. This action is before the Court on the parties' cross-motions for summary judgment.

The issue before the Court is whether the enactment of of successive emergency acts cited in Counts I, II, and III of plaintiff's Complaint was a valid exercise of the legislative power of the District Government under the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198, 87 Stat. 774 (hereinafter, the "Home Rule Act"). As will be established, the District's enactment of these measures was proper.

I

The Home Rule Act vests the District Government with Broad Legislative Authority

In enacting the Home Rule Act, Congress granted the citizens of the District broad authority over their own destiny. The Act expressly provides that "the legislative power of the District shall extend to all rightful subjects of legislation within the District." § 302, D.C. Code, § 1-124 (Supp. V, 1978). The only express limitations on this authority are those enumerated in § 602(a) of the Act, D.C. Code, § 1-147(a) (Supp V., 1978). As the D.C. Court of Appeals noted in McIntosh v.

Washington, D.C. App., 395 A.2d 744, 753 (1978), in narrowly construing one of these specific limitations, "the core and primary purpose of the Home Rule Act . . . was to relieve Congress of the burden of legislating upon essentially local matters 'to the greatest extent possible, consistent with the constitutional mandate,'" citing § 102(a) of the Act, D.C. Code, § 1-121(a)(Supp. V, 1978).[1/] Therefore, any restrictions on this broad authority should be read narrowly and no limitations not expressly imposed by Congress should be inferred.

The Act provides two methods by which the District could exercise its broad legislative powers--permanent and emergency legislation. Although it requires permanent legislative measures to lay before Congress for a 30-day period before taking effect, § 602(c), D.C. Code, § 1-146(c)(Non.-cum. Supp. VI, 1979), it gives the District flexibility to respond to changing situations by permitting it to enact emergency measures that take effect immediately but which expire after 90 days. § 412(a), D.C. Code, § 1-146(a)(Non.-cum. Supp. VI, (1979)[2/] Although emergency measures do not undergo congressional

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1. Section 102(a) of the Act provides in pertinent part:

Subject to the retention by Congress of the ultimate legislative authority over the Nation's Capital granted by article I, section 8, of the Consitution, the intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; . . . grant to the inhabitants of the District of Columbia powers of local self-government . . . and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.

2. Section 412(a) of the Act, as amended, provides:

The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this Act or by the Council. The Council shall use acts for all legislative purposes. Each proposed act (other than an act to which section 47-224 applies) shall be read twice in substantially the same form, with at least thirteen days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council determines. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period not to exceed ninety days. Resolutions shallbe used to express simple determinations, decisions, or directions of the Council of a special or temporary character.

review, the Act assures the careful use of this authority by requiring strict procedural safeguards that are not required of permanent legislation.

On its face, § 412(a) vests the Council with broad powers to legislate in emergency situations. The only limits which Congress imposed on this emergency legislative power were (1) that two-thirds of the Council must determine the existence of emergency circumstances and (2) that the effectiveness of each act be limited to ninety days. Congress placed no other limitations on the Council's exercise of its emergency legislative powers.

It is significant that before the Council may even consider whether to enact an emergency measure, two-thirds of its total membership must adopt a resolution declaring the existence of emergency circumstances. § 412(a). The extraordinary majority required as a condition precedent to the Council's exercise of its emergency legislative authority is even more stringent than the extraordinary majority required to override the Mayor's veto, since the latter action only requires two-thirds of the members of the Council present and voting, whereas the former requires two-thirds of the entire membership of the Council. Compare § 404(e), D.C. Code, § 1-144(e)(Non. cum-Supp. VI, 1979), with § 412(a).

It is extremely important that the Act places no substantive restrictions on Council's discretion to determine the existence of emergency circumstances. It conspicuously omits any narrowing definition of the term "emergency." This is in striking contrast to the limitations placed on the emergency legislative authority of the pre-home rule, appointive, District of Columbia Council, established under Reorganization Plan No. 3 of 1967. The former Council, unlike the present Council, was considered a regulatory, rule-making authority, and was subject to the restrictions imposed by the D.C. Administrative Procedure Act on exective agencies. Section 6(c) of that Act provides in pertinent part as follows:

> . . . [If] in an emergency, as determined by the Commissioner or Council or an independent agency the adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals the Commissioner or Council or such independent agency may adopt such rules as may be necessary in the circumstances, and such rule may become effective immediately. [Emphasis added.]

D.C. Code, § 1-1505 (c)(1973). This restriction was thus embodied in the rules of the former Council. See 2 D.C.R.R. § 2.6(b). The present Council, in contrast, is not an administrative body, but it possesses far broader power, being vested with "the legislative power of the District." § 404(a), D.C. Code, § 1-144(a)(Supp. V, 1978), analogous to the power of a State legislature. In addition, the Council received all of the powers possessed by the former Council. Id. Thus, the authority of the home rule Council to determine the existence of an emergency is completely vested in that body's discretion.

II

The Council's Declaration of an Fmergency is Conclusive

Each emergency act challanged by plaintiffs was preceded by a resolution, adopted by two-thirds of the total membership of the Council, setting forth the basis of the emergency. Under the Home Rule Act, the existence of emergency circumstances confronting the District is a determination based on the unique legislative fact-finding abilities of the Council. In view of the broad legislative authority of the Council under the Home Rule Act and the absence of any express limitations on its utilization of this device other than the safeguard of a two-thirds vote, we submit that this Court should not undertake an examination of the findings of the Council set forth in its emergency resolution. The Home Rule Act has expressly committed this function to the legislative branch of the District Government, and under the principle of separation of powers, the courts should not be put in position of second guessing the Council's determination.

The courts of other jurisdictions are divided on the question of whether the declaration of an emergency by a legislative body, State

or municipal, is conclusive or is subject to judicial scrutiny. See generally, 5 F. McQuillan, Municipal Corporations, §§ 15.40, 16.30; Anno., Conclusiveness of Declaration of Emergency in Ordinance, 35 A.L.R. 2d 586; Anno., Statutes: Conclusiveness of Legislative Declaration of Emergency, 110 A.L.R. 1435; 7 A.L.R. 519. Compare New Orleans Firefighter's Ass'n v. City of New Orleans, 204 S. 2d 690, 695 (La. 1967); Hatfield v. Meers, 402 S.W. 2d 35, 39 (Mo. 1966); State v. Holman, 355 S. 21d 946, 950 (Mo. 1962); Scaturochio v. Jersey City Incinerator Authority, 14 N.J. 72, 100 A. 2d 869 (1953); Mayor of Baltimore v. Hofrichter, 178 Md. 91, 11 A. 2d 375 (1940), with Biggs v. Maryland NCPPC, 369 Md. 352, 306 A. 2d 220 (1973); Jamoneau v. Harner, 16 N.J. 500, 109 A2d 640 (1954); Morris v. Goss, 147 Me. 89, 93 A. 2d 556 (1951). However, even those courts which assert the authority to examine the bases for the declaration of emergency have generally concluded that the legislative determination is to be accorded great deference. See Block v. Hirsh, 256 U.S. 135, 154-55 (1921)(congressional declaration justifying rent control in the District of Columbia); Greenberg v. Lee, 196 Ore. 157, 248 F. 2d 324 (1952); Mayor of Baltimore v. Hofrichter, supra. Any doubts as to the existence of an emergency are resolved in favor of the legislature's findings. See Davis v. Los Angeles County, 12 Cal. 2d. 412, 84 P. 2d 1034, 1040 (1938); Maudzius v. Lahr, 253 Mich 216, 234 N.W. 581, 585 (1931); State v. Martin, 29 Wash. 2d 799, 189 P. 2d 637, 639 (1948). In other words, courts which have subjected legislative determinations of emergency to factual scrutiny have placed a very heavy burden upon one seeking to challenge this finding.

We submit that, in the governmental structure established by the Home Rule Act, the determination by the Council of the existence of emergency circumstances is not subject to any requirements other that those expressly provided by that Act. No more can be required of the Council than it make a prior finding setting forth the basis of its determination approved by two-thirds of its membership. If Con-

gress had contemplated further restrictions, it would have plainly said so. It apparently believed that the stringent precondition of the adoption of an emergency resolution by an extraordinary majority of the Council and the 90 day limitation on an individual Act were sufficient safeguards on the District's utilization this device, rendering congressional review unnecessary. The Council's findings should not be subject to further inquiry.

Plaintiff has utterly failed to demonstrate that the resolutions underlying the challenged emergency acts have failed to set forth facially valid findings of emergency circumstances. Even were this court to hold that the Council's declaration of an emergency was not conclusively binding, plaintiff has failed to meet the heavy burden of showing that no emergency existed or could reasonably be thought by the Council to exist.

III

The Home Rule Act does Not Prohibit Successive Emergency Acts by the Council

Nothing in the Home Rule Act prohibits the District from enacting successive emergency acts. If upon the expiration of an existing emergency act, the Council determines that emergency circumstances still exist and adopts a new extraordinary resolution to that effect, it is perfectly proper to enact an emergency act similar to the one that has expired. Under plaintiff's theory, the District would be powerless to address emergency circumstances that existed for a period in excess of 90 days. Even the pre-home rule Council was not so limited. The Council's declarations of emergency circumstances have always been taken at public sessions, and the enactment of the first emergency act puts the public on notice of the possibility that further emergency actions might be required should the situation that gave rise to the first enactment continue to persist. In the face of this legislative scheme, which only imposes two restrictions on the Council's emergency legislative powers (two-thirds vote and 90 day limitation), any possibility of

another implied prohibition on successive emergency acts must be excluded under the doctrine of expressio unius est exclusio alterius. Congress simply did not include a prohibition on successive emergency acts in its set of limitations on the emergency legislative power of the Council.

The plain language of the Home Rule Act allows the use of successive emergency acts, each not exceeding 90 days. Plaintiff's contention that "Section 1-146 (a)"[3/] of the Home Rule Act establishes a "maximum time period clearly specified by Congress for the duration of the emergency legislation" (Pl. Mem. at 14, ¶3) finds no support in the language or legislative history of the Act. Section 412(a) of the Act simply places a maximum time period on the duration of one given emergency act.

Plaintiffs' reliance of SEC v. Sloan, 436 U.S. 103 (1978) is misplaced and misleading. In Sloan, the Court held that the Securities and Exchange Commission, a highly regulated agency, lacked the authority under § 12(k) of the Securities and Exchange Act of 1934 to issue a series of summary orders suspending the trading of a particular stock beyond the initial 10-day suspension period. The statutory provision in that case authorized the Commission to "summarily suspend trading in any security . . . for a period not exceeding ten days" if "in its opinion the public interest and the protection of investors so require." Id. at 112. As the Court noted (id.):

> The first and most salient point leading up to this conclusion is the language of the statute. Section 12(k) authorizes the Commission 'summarily to suspend trading in any security . . . for a period not exceeding ten days. . . .' 15 U.S.C. § 781(d)(1976) (emphasis added). The Commission would have us read the underscorded phrase as a limition only upon the duration of a single suspension order. So read, the Commission could indefinitely suspend trading in a security without any hearing or other procedural safeguards as long as it redetermined every 10 days that suspension was required by the public interest and for the protection of investors. While perhaps not an impossible reading of the statute, we are persuaded it is not the most natural or logical one. [Emphasis added.]

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3. Throughout its brief, plaintiff has mistakenly referred to the codifications of various provisions of the Home Rule Act in the D.C. Code as the sections of the Act itself. The proper reference is § 412(a).

However, unlike the statute in Sloan, § 412(a) of the Home Rule Act clearly limits only the duration of each act, as opposed to the duration of the remedy. It states that "such act shall be effective for a period of not to exceed ninety days." It does not state that the declared emergency or the legislative remedy shall be limited to ninety days. The Home Rule Act imposes a limit only on the duration of the emergency act--precisely the limitation that was lacking in Sloan and precisely what the Commission unsuccessfully attempted to have the Court read into the statute.

The Sloan case, so heavily relied upon by the plaintiff, is further distinguishable from the case at bar. A central concern of the Court in Sloan was the summary nature of the action which was taken without affording the company a hearing and the severe financial impact of such an order. Moreover, reading § 12(k) in pari materia with other provisions of the Security Exchange Act permitting the Commission's to extend other temporary suspensions beyond the initial 10 day summary suspension, the Court concluded that it was "difficult to read the silence in § 12(k) as an authorization for an extension of summary restrictions without a hearing as the Commission contends." Id. at 114.

In addition, the restriction on the Commission in Sloan that plaintiff relies on is clearly inapplicable to a legislative body, as the Council, with broad undefined authority. Unlike the Commission, the Council is not confined to specific regulatory functions but has broad legislative responsibility for the health, safety, and welfare of the citizens of an entire political entity. Nor does the Home Rule Act contain other provisions modifying the District's emergency legislative authority by implication in a manner analogous to the parallel provisions of the Security Exchange Act upon which the Court in Sloan relied.

In the absence of any express restriction in the Home Rule Act of the Council's repitition of emergency legislative action in the face of emergency circumstances enduring more than 90 days, this Court

should not infer one. Such a narrowing construction of the District's broad legislative powers is antithetical to the concept of home rule and would hamstring the ability of the District Government to respond to critical situations.

IV

The Legislative History of the Home Rule Act Shows that Congress Intended to Authorize the Enactment of Successive Emergency Acts

Contrary to plaintiff's contention, the legislative history does not support the theory that Congress intended to preclude the District from enacting successive emergency acts. The language providing this authority was added as an amendment to the initial House home rule bill in the 93d Congress, H.R. 9056, during the markup of that bill by the House District of Columbia Committee. See Staff of the House District of Columbia Committee, Home Rule for the District of Columbia 1973 - 1974, 93d Cong., 2d Sess. 1042-43 (Comm. Print. 1974) (hereinafter, "Home Rule History"). However, when this provision was added, the 30-day layover requirement for all permanent acts had not been included in the bill. That provision was added much later, just prior to conference action on the House and Senate bills, as a compromise to the opponents of the measure. See Home Rule History at 2084. At that point, the committee members justifiably thought that the Council could transform an emergency act into a permanent one simply by having a second reading on the measure. They did not contemplate the possibility that the 90 day limitation on an emergency act might expire before permanent legislation could take effect.

However, the legislative history of this provision does show that Congress considered the requirement that two-thirds of the membership of the Council adopt a resolution declaring an emergency prior to the Council's consideration of each emergency act was a sufficient safegard to prevent any abuse of this authority. The discussions in the markup session clearly show that Congressman Rees assumed that the Council would have the power to enact successive emergency acts.

The thrust of his concern was to impose an adequate safeguard on the use of this power. Mr. Rees' use of the phrase "chain hanky-panky" clearly establishes this intent. In response to a question concerning the type of vote needed to enact emergency legislation, Mr. Rees responded:

> . . . I think in the emergency situation, it would be best to have a two-third majority vote. I think there could be some chain hanky-panky.

Home Rule History at 1043. It is clear that Mr. Rees felt that this threat of "chain hanky-panky" (legislative abuses in enacting successive emergency acts) would be alleviated by requiring a two-thirds vote rather than a simple majority.

Subsequent legislative action by Congress amending the 30-day congressional review period in § 602(c) of the Act shows that Congress did not consider successive emergency enactments to be violative of this provision but, indeed, acknowledged that the frequently excessive duration of this period naturally resulted in the use of successive emergency acts. Pub. L. 95-526, § 1(2)(B), 92 Stat. 2023 (1978) shortened the 30-day review period and made it more predictable by amending the exclusion from this period of "any days during which either House is not in session" to read "any day in which neither House is in session because of an adjornment sine die, a recess of more than 3 days, or an adjournment of more than 3 days." See D.C. Code, § 1-147(c)(Non.-cum. Supp. VI, 1979). The reports on this Act recognized that the prior method of computation forced the Council to utilize successive emergency enactments:

> Perhaps the most difficult and burdensome aspect of section 602(c), the congressional review process, is the uncertainty of when an act passed by the Council will become law. At present, only those days when both Houses of Congress are in session are counted in the 30-day layover period. Because the House is often in recess on Mondays and Fridays, the effective review period averages 60 days following transmittal of a Council act to the Speaker of the House and to the President of the Senate. At its worst, as in the case of the Condominium Act of 1976 (D.C. Act 1-151), seven months elapsed before the act became law. This unpredictability has forced the District to enact an inordinate amount of temporary (90-day) "emergency" legislation that requires no congressional review and takes effect immediately. [Emphasis added.]

H.R. Rep. No. 95-1104, 95th Cong., 2d Sess. 2 (1978); S. Rep. No. 95-1291, 95th Cong., 2d Sess. 2 (1978).

Thus, the legislative history of the Home Rule Act and the subsequent congressional amendment of § 602(c) refutes plaintiff's contention that Congress intended to preclude the District from enacting successive emergency acts. As these reports make abundantly clear, Congress was aware of the use of successive emergency acts by the Council and, yet, with this knowledge and awareness, Congress did not prohibit the practice of enacting successive emergency acts. Rather, it merely reduced the length of the layover time as one way to cut down on the number of successive emergency acts that the Council would be forced to enact to avoid lapses in its laws and consequent confusion and chaos. The legislative history shows that as long as Congress maintains its review requirement for all permanent acts, the Council must have the ability to use its emergency legislative powers to respond to those emergency circumstances that it finds to exist and to maintain the continuity of this legislative response until permanent legislation is possible or appropriate.

V

The Council's Consistent Interpretation of Its Power to Enact Successive Emergency Acts Under the Home Rule Act is Entitled to Great Deference

It is a general rule of statutory construction that the practices and interpretations of administrative agencies may be considered in construing the powers granted to such bodies. 2A Sutherland, Statutory Construction, § 49.05. A consistent and longstanding interpretation by the agency of its own enabling legislation, while not controlling, is entitled to considerable weight. United States v. National Assn. of Security Dealers, 422 U.S. 694, 719 (1975); Saxbe v. Bustos, 419 U.S. 65 (1974); Investment Co. Institute v. Camp, 401 U.S. 617, 626-627 (1971); Udall v. Fallinan, 380 U.S. 1, 16 (1965). The test is whether the statutory construction is "sufficiently reasonable that it

should have been accepted by the reviewing courts." Train v. Natural Resources Defense Council, 421 U.S. 60, 75 (1975). Certainly if a mere regulatory or administrative agency's interpretation of its own enabling legislation is entitled to great weight, the Council's interpretation of its powers under the Home Rule Act is entitled to similar deference, especially in view of the broad grant of authority to the Council.

The numerous successive emergency acts in the housing field graphically demonstrate the Council's consistent interpretation of the emergency powers granted to it by the Home Rule Act.[4/] The Council has consistently interpreted the Act to authorize the enactment of successive emergency acts. Moreover, this consistent construction is "sufficiently reasonable" that it should be accepted by the reviewing courts as it has been accepted and ratified by the Congress.[5/]

To call these legislative responses unreasonable would unduly restrict the legislative power of the home rule District Government. There are several reasons which support the Council's interpretation of the Home Rule Act with respect to successive emergency acts: (1) it is consistent with the statuory mandate [see Parts I and III]; (2) it is consistent with the legislative history of the Home Rule Act [see Part IV]; (3) it is logical [infra]; and (4) it is consistent with the spirit of prior judicial pronouncements [infra].

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4. Examples of other areas in which the Council has passed successive emergency acts include: Usury laws: See First Emergency Interest Rate Extension Act of 1978, Act 2-224, 25 DCR 1428; Second Emergency Interest Rate Extension Act of 1978, Act 2-274, 25 DCR 3424; Third Emergency Interest Rate Extension Act of 1978, Act 2-317, 25 DCR 6213; First Emergency Interest Rate Increase Act of 1978, Act 2-225 25 DCR 1429; Second Emergency Interest Rate Increase Act of 1978, Act 2-275, 25 DCR 3415; Third Emergency Interest Rate Increase Act of 1978, Act 2-316, 25 DCR 6123; and Environmental law: See Emergency Air Quality Control Regulations Amendments Act of 1978, Act 2-244, 25 DCR 1497; Second Emergency Air Quality Control Regulations Amendment Act of 1978, Act 2-296, 25 DCR 5012; Air Quality Control Regulations Amendment Emergency Act of 1979, Act 303, 25 DCR 8025.

5. This memorandum reflects the views of the Corporation Counsel on the emergency legislative power of the Council and supersedes any prior inconsistent opinions of this Office.

It would be illogical and unduly restrictive to interpret the Home Rule Act in such a way as to prohibit the enactment of successive emergency acts. This is so because in some emergency situations, the only effective legislative remedy available to the District Government is the use of successive emergency acts. For example, it would be unreasonable if the Council could not (1) enact successive emergency acts to bridge the time gap created by the congressional layover period after the passage of a permanent act designed to remedy an emergency situation, or (2) address an emergency situation lasting longer than ninety days but which, due to its changing character, could not adequately be remedied in a permanent act, or (3) remedy temporarily an emergency situation so complex that ninety days would afford insufficent time in which to study and formulate a comprehensive, permanent solution.

In these or similar situations, it would be an illogical, unreasonable, unduly restrictive, and unresponsible interpretation of the Home Rule Act were the Council to conclude that it did not have the authority to enact successive emergency acts. It is axiomatic that a statute must not be construed to produce an absurd result, and this is especially so when, as here, a plain reading of § 412(a) and its legislative history is consistent with the Council's construction. See Lange v. United States, 143 U.S. App. D.C. 305, 307-308, 443 F.2d 720, 722-723 (1971).

Moreover, the Council's interpretation of the Home Rule Act to permit successive emergency acts is reasonable in light of prior court decisions giving considerable latitude to the pre-home rule Council in the exercise of its police power. See Firemen's Insurance Co. of Washington, D.C. v. Washington, 157 U.S. App. D.C. 320, 483 F.2d 1323 (1973); Maryland and D.C. Rifle & Pistol Ass'n. v. Washington, 142 U.S. App. D.C. 375, 442 F.2d 123 (1971). These pre-home rule decisions interpreting the Council's police powers ae still valid in light of § 404(a) of the Home Rule Act, D.C. Code, § 1-144(a)(Supp. V, 1978), which transferred all functions of that Council, granted by Reorganiza-

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tion Plan No. 3 of 1967, to the new Council. Section 402(1) of the Reorganization Plan specifically vested the former Council with the power to make regulations under D.C. Code, § 1-226, which provided in pertinent part:

> The District of Columbia Council is hereby authorized and empowered to make . . . all such reasonable and usual police regulations . . . as the Council may deem necessary for the protection of lives, limbs, health, comfort, and quiet of all persons and the protection of all property within the District of Columbia.

These regulatory powers were broad and certainly included the power to regulate in the face of emergencies. Moreover, the pre-home rule Council had authority to enact successive regulations in the face of successive emergencies. It would be illogical to assume that this power to make police regulations was somehow limited when transferred to the new Council.

In Firemen's Insurance Co. of Washington, D.C., supra, the Court pointed out the compelling policy considerations which underpin the need for considerable latitude in the enactment of local regulatory measures, emphasizing that the police power of the Council "is not restricted or limited to present applications, but is a flexible and dynamic concept which changes and expands as a society becomes more complex." 157 U.S.App.D.C. at 325, 483 F.2d at 1328. Relying on Maryland and D.C. Rifle & Pistol Ass'n, supra, the court went on to observe:

> . . . In Pistol Ass'n, we were concerned with a potential conflict between Congress' comprehensive gun control program and the municipality's gun control regulations. The court observed that there was at least reasonable doubt as to whether Congress hass meant to preempt the field by its general legislation. Given the potentially greater responsiveness of local government to local problems and the recognition that Congress cannot realistically be expected to deal with every aspect of a local problem, the court determined that the municipality should be given the benefit of that reasonable doubt and upheld the local regulation. [Emphasis added.]

157 U.S.App.D.C. at 326, 483 F.2d at 1329.

When the enactment of successive emergency acts is viewed, as it must be, as an exercise of the Council of its delegated legislative and

police powers, the Council should be given every benefit of the doubt as to the legality of this practice. This is especially so when the Council is dealing in an area of legitimate local concern. Since the citizens of the District of Columbia can only seek relief from the home rule Council, that body, as contemplated by the Home Rule Act, was to have authority over all rightful subjects of legislation. §§ 302, 404(a), D.C. Code, §§ 1-124, 1-144(a) (Supp. V, 1978). The citizens of the District cannot seek legislative relief from lower county councils or municipal legislative bodies since the powers such bodies possess in other jurisdiction as well as powers possessed by State governments are all combined by the Home Rule Act in the Council. The conclusion that the Court should upheld the Council's use of successive emergency acts is especially compelling in view of the fact that the enabling legislation and its accompanying legislative history are consistent with this practice.

V I

Plaintiff's Case is Moot as to All Fmergency Acts which have Lapsed or Fxpired

In its complaint, plaintiff seeks declaratory and injunctive relief with respect to numerous emergency acts of the Council which have already lapsed by their own terms. We submit that this court should dismiss as moot plainitiff's challenges to these lapsed acts. It is well settled that courts will not decide questions the determination of which can lead to no practical relief. Securities and Exchange Commission v. Medical Committee for Human Rights, 404 U.S. 403 (1973); Benton v. Maryland, 395 U.S. 784 (1969). In Smith v. Worksman, D.C. Mun. App., 99 A. 2d 712, 713 (1953), the Court dismissed a complaint on the ground that no justiciable issue existed when the act in question had already expired. Accord, Nowinski v. Randall H. Hagner & Co., D.C. Mun. App., 100 A. 2d 452, 453 (1953).

The logic of this doctrine is especially compelling with regard to the emergency acts challenged in Counts I I and I I I of plaintiff's com-

plaint. These emergency acts have been succeeded by similar permanent acts of the Council that are nearing completion of the congressional review period. See Multi-family Rental Housing Act of 1979, Act 3-62, 26 DCR 358 (transmitted to Congress on July 18, 1979); Cooperative Regulation Act of 1979, Act 3-63, 26 DCR 361 (transmitted to Congress on July 18, 1979); and Offer to Purchase Act of 1979, Act 3-75, 26 DCR 664 (transmitted to Congress on August 7, 1979). It is expected that the first two acts will take effect on October 2, 1979 and that the last will take effect later in that month.

Nor does the case at bar fall within the exception to the mootness doctrine first enunciated in Southern Pacific Terminal v. ICC, 219 U.S. 498 (1911), and further clarified in Weinstein v. Bradford, 423 U.S. 147 (1975), that a case is not moot when "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." Id. at 147. Neither prong of this test is satisfied in the instant case. As to the first, a single emergency act would alone provide a 90 day period during which time the challenged action could have been litigated. As to the second, it is important to note that since permanent legislation has been passed by the Council which encompasses the emergency acts in Counts II and III of the Complaint, there is no reasonable expectation that the complaining party would be subjected to the same action again. Further, the subject matter in the emergency acts has been addressed in the permanent acts, thereby removing the necessity for further successive emergency acts in this area.

CONCLUSION

Therefore, we urge that plaintiff's motion for summary judgment be denied and that defendant's motion for summary judgment be granted.

Respectfully submitted,

JUDITH W. ROGERS
Corporation Counsel, D.C.

JOHN H. SUDA
Acting Deputy Corporation Counsel, D.C.

JAMES J. STANFORD
Assistant Corporation Counsel, D.C.

Attorneys for the Defendant
District Building
Washington, D.C. 20004
727-6248

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

THE WASHINGTON HOME OWNERSHIP COUNCIL, INC.

Plaintiff,

v. Civil Action No. 10624-79

DISTRICT OF COLUMBIA

Defendant.

ORDER

Upon consideration of the complaint filed herein; the motion of defendant, District of Columbia, for summary judgment and in opposition to plaintiff's motion for summary judgment; the memorandum of points and authorities filed in support thereof; plaintiff's motion for summary judgment; and the memorandum of points and authorities filed in support thereof, it is, by the Court, this _____ day of _____, 1979,

ORDERED: That the motion of defendant, District of Columbia, for summary judgment be, and the same is, hereby granted; and, it is,

FURTHER ORDERED: That the motion of plaintiff for summary judgment be, and the same is, hereby denied; and, it is,

FURTHER ORDERED: That judgment be, and the same is, hereby entered in favor of defendant, District of Columbia.

JUDGE

Mr. Christian
Am. 626

IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

DISTRICT OF COLUMBIA, et al.,	:	
Appellants,	:	
v.	:	No. 79-1053
THE WASHINGTON HOME OWNERSHIP COUNCIL, INC.,	:	
Appellee.	:	

OPPOSITION OF DISTRICT OF COLUMBIA
TO MOTION OF APPELLEE FOR
SUMMARY AFFIRMANCE

The District of Columbia opposes the motion of appellee for summary affirmance of the order of the court below entered on October 19, 1979, in the above-entitled cause. The ground for its opposition is:

In its motion for summary reversal, filed contemporaneously herewith, The District has demonstrated that the order of the court below is at variance with settled and controlling legal principles. This circumstance requires not only that the court's order be summarily reversed, but that appellee's motion for summary affirmance be denied as well.

JUDITH W. ROGERS,
Corporation Counsel, D. C.

RICHARD W. BARTON,
Deputy Corporation Counsel, D. C.
Appellate Division

DAVID P. SUTTON,
Assistant Corporation
Counsel, D. C.

JAMES J. STAMFORD,
Assistant Corporation
Counsel, D. C.

Attorneys for Appellant
District of Columbia,
District Building,
Washington, D. C. 20004
Telephone: 727-6252

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition of District of Columbia to Motion of Appellee for Summary Affirmance was personally served, this 2nd day of November 1979, on each of the following:

Stephen M. Sacks, Esquire
Thomas E. Silfen, Esquire
Linda G. Moore, Esquire
Arnold & Porter
1229 Nineteenth Street, Northwest
Washington, D. C. 20036

Attorneys for Appellee

Jerry D. Anker, Esquire
Leslie D. Michelson, Esquire
Wald, Harkrader & Ross
1300 Nineteenth Street, Northwest
Washington, D. C. 20036

and

Kerry Alan Scanlon, Esquire
Washington Lawyers' Committee
for Civil Rights Under Law
733 Fifteenth Street, Northwest
Washington, D. C. 20005

Attorneys for Appellants
Metropolitan Washington
Planning and Housing
Association, Inc., et al.

Jason I. Newman, Esquire
Harrison Institute for Public Law
605 G Street, Northwest
Suite 401
Washington, D. C. 20001

Of Counsel.

DAVID P. SUTTON,
Assistant Corporation
Counsel, D. C.

IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

DISTRICT OF COLUMBIA, et al.,	:	
Appellants,	:	
v.	:	No. 79-1053
THE WASHINGTON HOME OWNERSHIP COUNCIL, INC.,	:	
Appellee.	:	

MOTION OF DISTRICT OF COLUMBIA
FOR SUMMARY REVERSAL

For the reasons set forth below, the District of Columbia moves the Court to summarily reverse the order of the court below entered in the above-entitled cause.

Issue Presented for Review

Whether the D. C. Council correctly construed § 412(a) of the Home Rule Act as empowering it to reenact a 90-day emergency measure upon a determination by two-thirds of its members that an emergency exists.

Statement of the Case

In a three count complaint for declaratory and injunctive relief filed in the court below on August 20, 1979, appellee, the Washington Home Ownership Council, Inc., challenged the legislative power of the District of Columbia Council to enact successive emergency measures pursuant to § 412(a) of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, 87 Stat. 774 et seq. (hereinafter "the Home Rule Act"). The District of Columbia was named as defendant and, pursuant to Superior Court Rule 24, the Metropolitan Washington Planning and Housing Association, Inc., and various tenant associations, intervened as additional defendants. The case came on before the court on cross-motions for

summary judgment filed by the parties. By order entered October 19, 1979, the court granted appellee's motion for summary judgment and denied the motions of the District and the intervenors. The court filed an opinion in support of its order. In addition, the court enjoined the enforcement of the Emergency Condominium and Cooperative Conversion Stabilization Act of 1979, challenged in count 1 of the complaint, and declared invalid the emergency measures challenged in counts 2 and 3 of the complaint.[1]

The emergency enactment challenged in count 1 of the complaint, and which gave rise to the injunctive relief granted below, was enacted in order to continue in force a moratorium on condominium and cooperative conversions pending enactment of more comprehensive legislation.

The moratorium legislation was initially enacted at the Council's meeting of May 22, 1979. It was preceded by the adoption of a resolution (Emergency Condominium Cooperative Control Resolution of 1979, Resolution 3-126, 25 DCR 10370) which declared that "an emergency exists with regard to the conversion of rental housing accommodations to condominiums and cooperative housing accommodations." Section 2(a) of the resolution notes that:

> The number of apartments declared eligible for conversion to condominium or cooperative apartments by the District of Columbia has risen dramatically in the last year, threatening to squeeze out of the city low and middle-income people who cannot afford to buy apartments they now rent.

The resolution contains detailed factual findings demonstrating the severity of the problem: In 1978, 10,481 rental apartments were

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[1] In its opinion (at 9), the court observed that none of the emergency measures challenged in counts 2 and 3 are currently in effect, having been supplanted by permanent legislation (cf. op. at 3-8). The court nonetheless declined to declare these matters moot. As we demonstrate infra, this holding was erroneous.

declared eligible for condominium conversion -- nearly fifteen times the 1977 figure -- and 2,952 rental units were declared eligible for cooperative conversion -- nearly ten times the 1977 figure. Since January 1979, 1,299 rental units have been declared eligible for condominium conversion, and 6,800 additional units have applications outstanding; 982 units have been approved as eligible for cooperative conversion, and 94 additional units have applications for eligibility pending. In 1978, 2,642 units were registered for conversion to condominiums, and since January 1979, 1,448 units were so registered.

The resolution further notes that the rental units as to which the right to convert has been sought represent over 13% of the District's 1977 non-vacant rental housing stock. This rapidly and constantly increasing rate of conversion poses a threat that the city's rental housing "will cease to meet even minimally necessary demands." Thus, section 2(1) of the resolution concludes that:

> The preservation of the public peace, health, safety and general welfare necessitates an emergency act to impose temporary controls on the conversion of rental properties to condominium or cooperative status and thus to stabilize rental housing in the District of Columbia.

On the basis of these findings, the Council, following the procedures for enacting emergency legislation, passed the Emergency Condominium and Cooperative Stabilization Act of 1979, Act 3-44, 25 DCR 10363, which was approved by the Mayor on May 29, 1979. This Act, subject to certain exceptions, prohibited the conversion to condominiums or cooperatives of rental units that otherwise would be eligible for such conversion.[2]

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[2] To avoid inequitable hardship to developers, section 4(a) of this Act authorizes the Mayor to exempt from the prohibition on conversion, buildings (1) that were purchased prior to May 22, 1979, in contemplation of conversion; (2) as to which a proper notice of intent to convert was served on tenants before May 22, 1979; (3) as to which a majority of tenants consented to conversion; and (4) as to which a substantial financial investment in conversion had been made before May 22, 1979.

In addition, section 5 of the Act created an Emergency Condominium and Cooperative Conversion Commission (hereinafter "the Commission") charged with the responsibility

> * * * to recommend * * * permanent legislation * * * to deal with the problems of low-moderate income tenants in possession who would have difficulties in purchasing units upon conversion.

The Commission was directed to report its recommendations for permanent legislation within 60 days, and to consider a number of possible legislative solutions, including:

(1) a loan fund or mortgage guarantees to assist low-moderate income tenants in purchasing their units;

(2) a real estate tax abatement program to provide incentives for developers to maintain units as rental accommodations;

(3) a ceiling on the sales price of a percentage of the converted units to allow low-moderate income tenants to purchase them;

(4) specific modifications to existing legislation to remove incentives for conversion;

(5) a formula for keeping a certain percentage of private rental housing in all sections of the city; and

(6) provision of technical and financial assistance to tenants desiring to purchase their buildings.

It is thus clear from the Act itself that it was designed as a temporary stop-gap to give the Council the necessary time to study and develop permanent legislation. The purpose of the moratorium was self-evident, i.e., to preserve the status quo pending the enactment of permanent legislation.

The Commission established by the Act was unable to complete its task within the assigned 60 days. Accordingly, on July 31,

1979, continuing in its "holding pattern," the Council enacted another emergency measure extending the moratorium for an additional 90 days, and setting a new deadline for the Commission's report. (Emergency Condominium and Cooperative Conversion Stabilization Act of 1979, Act 3-95, 25 DCR 1014.) This Act was preceded by a similar resolution declaring the existence of an emergency. (Resolution 3-201, 26 DCR 1019.) Act 3-95 was approved by the Mayor on August 27, 1979.

The Commission has held public meetings and conducted a publicly-noticed hearing[3] at which, inter alia, testimony was presented on behalf of appellee. Thereafter, the Commission submitted its report, which further substantiates the Council's findings respecting the existence of a continuing emergency. The report was filed in the court below and describes in detail the seriousness of the problem involved and contains comprehensive recommendations for permanent remedial legislation. The Council is now considering this report.

On October 24, 1979, Councilmembers Wilson, Clarke and Shackleton introduced a permanent measure to stabilize the conversion of rental housing to condominium and cooperative housing in the District of Columbia (Bill 3-208, Exhibit A attached). The bill contains language substantially similar to the emergency measure as to which the court below granted injunctive relief and is designed to remain in effect for 120 days after enactment.

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[3] The notice appears at 26 DCR 105 (July 13, 1979).

Argument

The court below erroneously construed the Home Rule Act in concluding that the Act withholds from the D. C. Council the power to reenact a 90 day emergency measure upon a determination by two-thirds of its members that an emergency exists.

In enjoining enforcement of the Emergency Condominium and Cooperative Conversion Stabilization Act of 1979, the court below rested its ruling on the narrow premise that the extension, through reenactment by the D. C. Council of an emergency measure over a period in excess of 90 days, is prohibited by § 412(a) of the Home Rule Act, D. C. Code, § 1-146(a) (Supp. V, 1978), which provides in pertinent part that:

> If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days. (Emphasis added.)

It is important to note that the court (op. at 12) took no issue with the notion that the "emergency" which gave rise to the challenged measure continues to exists. Nonetheless, the court reasoned (op. at 14) that:

> By its terms, the Home Rule Act provides that an emergency act "shall be effective for a period of not to exceed ninety days." 1 D. C. Code § 146(a). It is clear to the Court that the statutory language is not susceptible of any reasonable interpretation other than that the Council may not, through its emergency power, continue in effect substantially the same substantive provisions of law for more than ninety days without a second reading of the act. This is what Congress anticipated. * * * (Emphasis added.)

The court additionally (op. at 13-16) concluded that its construction of § 412(a) was reinforced by the legislative history of the Home Rule Act, the Supreme Court's recent decision in SEC v. Sloan, 436 U. S. 103 (1978), and opinions of the Corporation Counsel. We submit that the court's holding, and appellee's relation position in its summary affirmance motion, cannot survive scrutiny. A fair analysis of statutory terms, legislative history, established rules of construction, and related decisional law will inexorably lead to the conclusion that a construction of § 412(a) which permits the reenactment by the Council of an emergency measure is an eminently reasonable construction which should be approved by this Court.

Nothing in the quoted statutory language of § 412(a) supports the view that the Council has been restricted to a single emergency enactment in dealing with a continuing emergency like that concededly present here. Reasonably construed, this language places only two limitations on the Council's power to enact emergency measures: (1) two-thirds of its members must determine the existence of an emergency necessitating the particular act which addresses it, and (2) the effectiveness of "such act" is limited to ninety days. The inclusion in § 412(a) of these limitations shows that Congress intended no other limitations. Richfield Oil Corp. v. State Board, 329 U. S. 69, 76 (1946). Such a proposition surely takes on added significance in construing the Home Rule Act. For, as this Court made clear in McIntosh v. Washington, 395 A. 2d 744, 753 (1978), limitations on the Council's legislative powers are to be narrowly construed in keeping with the Act's primary purpose of relieving "Congress of the burden of legislating upon essentially local matters 'to the greatest extent possible consistent with the constitutional mandate'." Nonetheless, the court below and appellee would read into § 412(a) a third limitation on acts of the Council addressing emergencies like that involved, i.e., a limitation which restricts

the Council to only one "such act." Yet, nowhere in § 412(a) is such a third limitation either spelled out or necessarily implied. Given the obvious importance of the matter, its impact on the totality of the Council's legislative powers under the Home Rule Act read as a whole, and the Council's ability to effectively exercise those powers in the manner intended by Congress (see discussion infra), such an alleged third limitation should not gratuitiously be read into § 412(a). "We are entitled to assume that in [enacting the Home Rule Act] Congress legislated with care, and that had Congress intended * * * [such a third limitation], it would have said so expressly and not left the matter to mere implication." See Palmore v. United States, 411 U. S. 389, 395 (1973).

Appellee, however, contends (summary affirmance memorandum at 18-19) that the Council's utilization of its legislative power to enact successive emergency acts of a similar nature circumvents the congressional review requirement applicable to permanent acts of the Council. See § 602(c), D. C. Code, § 1-147(c) (Nonicum. Supp. VI, 1979). This contention is without merit. Section 602(c) merely places a procedural restriction on the Council's exercise of its legislative authority by requiring permanent acts enacted by that body to lay before Congress for a 30-day review period before taking effect, during which time Congress may disapprove the act by the adoption of a concurrent resolution. Moreover, § 602(c) expressly excludes from its scope "any act which the Council determines according to section 412(a) should take effect immediately because of emergency circumstances." Apparently Congress, in enacting the Home Rule Act, determined that the requirement of a two-thirds vote of the entire membership of the Council, as a condition precedent to consideration of each emergency act, and the 90-day limitation on the effectiveness of each such act were procedural safeguards on the Council's legislative power equivalent to the 30-day congressional

review period required of permanent acts. In any event, as a further safeguard, Congress, in passing the Home Rule Act, reserved its constitutionally-granted right to "enact legislation for the District on any subject * * * including legislation to amend or repeal any * * * act passed by the Council." § 601, D. C. Code, § 1-126 (Supp. V, 1978).

Of course, Congress, as an expert legislative body, is surely aware, as the decisions hold, that an "emergency" in the "legislative sense" can fairly be defined as a threat to public safety, comfort or welfare necessitating immediate action in lieu of the normally applicable legislative procedures. As such, it is to be distinguished from a more commonplace type of emergency which arises from sudden or unforeseen circumstances. And, while it may be temporary in nature, it may also exist over an extended period of time. See United States v. Southern Railway Co., 364 F. 2d 86, 94 (5th Cir., 1966); United States v. Southern Railway Co., 380 F. 2d 49, 55-56, n. 17 (4th Cir., 1967); Daugherty v. United States, 141 F. Supp. 576, 581 (D. Ore., 1956) (three-judge court). Emergencies like that involved here obviously are destined to last for an extended duration and for that reason simply cannot adequately be dealt with in a single legislative act effective for no longer than 90 days.

Nonetheless, appellee and the court below would confine the Council to a single emergency measure. They conclude that Congress intended that result and no other. But, it defies reason to attribute to Congress such a lack of foresight and, necessarily, such a strained legislative intent. If the law were otherwise, the Council would be powerless even to deal with a continuing emergency by enacting an additional 90 day measure to bridge the time gap created by the congressional review period after the passage of a permanent act designed to remedy an ongoing problem which took its roots as an emergency. See D. C. Code, § 1-147(c) (Noncum. Supp. VI, 1979).

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In addition, all permanent legislation calculated to follow emergency acts simply does not lend itself to passage in 90 days. Some legislation, because of its complexity, multiple nuances, and far reaching implications, requires thoughtful and thorough study by both lawmakers and appointive commissions before finalization. Yet, to require a legislative rush to judgment within a 90 day period under these circumstances is to foster the very evil that both Congress and the District decry: arbitrary and precipitous local legislative action. In terms of complexity, the subject matter of the measure involved here is a case in point. The extensive report recently submitted by the Commission appointed by the Council to study numerous problems necessarily presented by condominium conversion renders this conclusion inescapable.

Furthermore, there may be easily inferred from the structure of the Home Rule Act itself a clear congressional awareness that there can be no realistic likelihood of enactment by the Council of permanent legislation within the 90 day emergency period envisioned by the Home Rule Act. Thus, § 404(c) of the Act, D. C. Code, § 1-144(c) (Supp. V, 1978), requires that the Council adopt reasonable rules of procedure including provisions for adequate notice of intended permanent legislative actions. Pursuant to this congressional mandate, the Council has adopted Rules of Organization and Procedure, Res. 3-53, 25 DCR 9343 (1979). Rule 709 requires a 15 day period for publication of the proposed enactment (25 DCR 9376). Moreover, if hearings are contemplated, Rule 902 requires an additional notice of "not less than fifteen (15) days prior to the date of the hearing" (25 DCR 9384). Following hearings and/or citizen imput, and deliberation by the appropriate Committee of the Council, a report is prepared and filed with the Council's Secretary. (See Rules 502(a), 506, 25 DCR 9362, 9367-9368.) The Secretary then schedules the proposed bill for review at a "work session" by the Committee of the

Whole (COW) which consists of the entire Council. Work sessions of this kind are held every other week, i.e., alternating with legislative sessions (Rule 404, 25 DCR 9354). Following COW review and approval, the proposed measure is scheduled for consideration at ensuing legislative sessions at which it must "be read twice in substantially the same form with at least thirteen days intervening between each reading" (§ 412(a), supra). If passed following the second reading, the act is transmitted to the Mayor, who in turn has "ten calendar days (excluding Saturdays, Sundays and holidays) after it is presented to him" to consider it with a view to approval or disapproval (§ 404(e)). If vetoed by the Mayor, the Council is given 30 days to override his veto by a vote of two-thirds of the members present and voting. Id. If the Mayor approves the measure, it is then transmitted to Congress where it must lie for a 30-day review period before taking effect. This layover period is far more lengthy than 30 calendar days because it excludes "Saturdays, Sundays, holidays and any day on which neither House is in session because of an adjournment sine die, a recess for more than 3 days, or an adjournment of more than 3 days." § 602(c), as amended, D. C. Code, § 1-147(c) (Noncum. Supp. VI, 1979). At times, this 30-day period may span many months; for example, if an act transmitted to Congress does not complete the 30-day period before an adjournment sine die, the act must begin the 30-day period anew after the reconvening of the next Congress. See 3 Op. C. C. D. C. 524 (1978). These circumstances do not take into consideration such matters as the length of hearings, the time required for careful legislative drafting, and the fact that publication in the D. C. Register of intended actions occurs but once weekly. But, even so, it is still unmistakably clear from the time constraints imposed by the Home Rule Act, as reasonably implemented by the Council's rules, that emergency measures, when coupled with permanent enactments, cannot realistically be deemed effective to

safeguard the public interest and preserve the status quo unless reenacted. Yet, if the Council lacks the power to enact a successive 90 day measure, there will necessarily be a hiatus during which the continuing emergency completely escapes legislative remedy.

Given these circumstances, the mischief that could result from the Council's inability to enact a new measure designed to cope with an ongoing emergency is readily apparent. Since the prospect of permanent legislation has been made known to those regulated by the expired emergency measure, they are now in a position to jeopardize the public interest by engaging in the very conduct at which that measure was aimed and to irretrievably disrupt the status quo beyond legislative repair. We submit that under any fair construction of the Home Rule Act, Congress simply did not intend to permit such a chaotic state of affairs and that appellee's contrary construction of the Council's emergency legislative powers leads to manifestly absurd consequences in violation of settled principles of statutory construction. See Lange v. United States, 143 U. S. App. D. C. 305, 307-308, 443 F. 2d 720, 722-723 (1971).

It is in light of this background that we turn to a discussion of SEC v. Sloan, 436 U. S. 103 (1978), which both appellee and the court below consider the controlling precedent. In Sloan, the Supreme Court construed a provision of the Securities Exchange Act of 1934, which authorized the SEC to "summarily suspend trading in any security for a period not exceeding ten days," if "in its opinion the public interest and the protection of investors so require" (436 U. S. at 105). The Court held that the provision did not authorize successive suspensions, but, in arriving at that result, the Court considered matters which are not present here and which, by contrast, illustrate that the Council's construction of its emergency powers is indeed a rational one. Thus, the language construed in Sloan was calculated to limit the duration of the statutory remedy.

As such, it is distinguishable from the language of § 412(a) which, in addressing a particular act of the Council, states that "such act shall be effective for a period not to exceed ninety days" (emphasis added). In spite of this clear difference in statutory language, the Court in Sloan recognized that its construction prohibiting successive suspensions was not the only possible construction (436 U. S. at 112). It declined to adopt the SEC's construction because, contrasting statutory provisions, authorizing longer temporary suspension action by the SEC, instead of being summary in nature required notice and an opportunity for hearing (436 U. S. at 112-114). The Court thus refused to countenance successive ten day summary suspensions because the Act as a whole could not be construed to permit such suspensions. As noted above, however, the Home Rule Act, considered as a harmonious whole, dictates an opposite result and is totally bereft of the type of contrasting provisions or "other sections of the statute" relied on by the Sloan Court (cf. 436 U. S. at 112). In addition, unlike the administrative agency involved in Sloan, the Council is not confined to specific regulatory functions. Instead, it is more akin to a state legislature with understandably broad responsibility for the health, safety and welfare of the citizens of the District of Columbia in a host of legislative areas. See District of Columbia v. Thompson Co., 346 U. S. 100, 108-109 (1953). All things considered, Sloan simply will not support the validity of appellee's construction of the applicable statute and, if anything, illustrates by contrast that the Council's construction is plainly a rational one.

Nothing in the legislative history of the Home Rule Act is at odds with a construction of § 412(a) which permits successive emergency measures. Indeed, that legislative history shows that Congress recognized that the Council would have authority to enact such measures. As appellee correctly notes, the provision granting the

Council's emergency powers was added to the then pending Home Rule bill during a markup session of the House District Committee. See Home Rule for the District of Columbia 1973-1974, 93rd Cong., 2nd Sess., Committee Print (hereinafter "Home Rule History"), at 1042-1043. A review of pertinent pronouncements discloses that the concern of Congress was not the enactment of successive emergency measures, but the built-in safeguard, that emergency measures (whether enacted once or as repeated links in a chain culminating in permanent legislation) be supported by a two-thirds majority vote of the entire Council, not merely by a simple majority vote of those present, which is required to enact permanent legislation. Thus, Congressman Rees, the proponent of such a two-thirds majority requirement, stated (Home Rule History at 1043) that:

> * * * I think that you might amend this to say "if the Council determines by a two-thirds vote that emergency circumstances make it necessary that an act be adopted at a single reading or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days." Usually by a ninety day period, you ascertain whether the act is necessary on a continuing basis and then follow the second and third reading rule and adopt the act which will be a permanent part of the municipal regulations.
>
> MR. WASHINGTON. Can the majority of the Council determine if an emegency exists?
>
> MR. REES. I think in the emergency situation, it would be best to have a two-thirds majority vote. I think there could be some chain hanky-panky. We think there is an emergency, they could say that, and we declare it an emergency. So I would offer an amendment to the amendment. I suggest to the gentleman from Maryland, the last sentence, if the Council by two-thirds vote that emergency circumstances make it necessary that an act be adopted at a single reading or that it take effect immediately upon enactment, and I think this would put the proper safeguard in there. Then if they want to extend the act past the ninety days, they could obviously follow the second reading rule. (Emphasis added.)

It is fairly inferable from these remarks that the Congressman's only concern was that emergency enactments be approved by two-thirds of the Council in order to avoid the "chain hanky-panky" or legislative abuses that might otherwise exist if a simple majority vote was required for the enactment of successive emergency acts. Put differently, while chain legislation consisting of successive emergency measures would be prohibited, unless unaccompanied by the two-thirds majority safeguard designed to eliminate "hanky-panky," "chain" legislation, when accompanied by such a safeguard, would not be prohibited. While the Congressman did note that "usually by a ninety day period, you ascertain whether the act is necessary on a continuing basis" or as "permanent" legislation following "the second reading" (id., emphasis added), he at no time voiced an intent to impose an across-the-board prohibition on successive emergency measures. Had he so intended, it is obvious that he could have expressed that intent in apt language.

It is important to bear in mind, in reviewing this legislative history, that the House bill which Congressman Rees was discussing (H. R. 9056) did not require that permanent legislation enacted by the Council would have to be submitted to Congress for a period of review prior to becoming effective. Under that bill, acts of the Council would take effect immediately upon the Mayor's signature. The provision for congressional review was added later in an amendment offered by Congressman Diggs. (See 119 Cong. Rec. 33669 (1973); Home Rule History at 2084-2085.) It is therefore not surprising that, at the time of the House markup session, Congressman Rees did not expect the Council to have a frequent need to reenact successive emergency legislation. Nevertheless, it seems clear that Congressman Rees did recognize that, on occasion, the Council might find it necessary to do so. His only concern was that such action be based on a finding by two-thirds of the Council that there were emergency

circumstances warranting it. In any event, the legislative history of the Home Rule Act is at best inconclusive on the matter of successive emergency enactments, for it contains no clear indication that such enactments are forbidden.

When the instant case is placed within this framework, other principles of statutory construction at once come into focus. Appellee is quick to recognize that the Council, in past years, has repeatedly enacted successive emergency measures pursuant to § 412(a). In so doing, it has obviously construed that enactment as authorizing such successive reenactments. And, it is well settled that a consistent and continuing interpretation of a statute by those charged with its administration constitutes an invaluable aid in determining its meaning.

Thus, in Udall v. Tallman, 380 U. S. 1, 16 (1965), the Supreme Court said:

> When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. "To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings.

Accord: Cook v. Griffith, 193 A. 2d 427, 428 (D. C. App., 1963).

In Philadelphia Television Broadcasting Co. v. F. C. C., 123 U. S. App. D. C. 289, 359 F. 2d 282 (1966), the Court made a like pronouncement (123 U. S. App. D. C. at 299), and went on to point out that the principle is even more applicable where there is an absence of clear and dispositive legislative history, stating (id. at 300):

> We think such deference to the agency's interpretation of its governing statute is reinforced where, as here, the legislative history is silent, or at best unhelpful, with respect to the point in question. * * *

As noted above, the antecedent (see discussion infra) legislative history of § 412(a) is at best inconclusive "with respect to the point in question," and, as such, reinforces the deference that must be accorded the Council's construction of its emergency legislative powers.

We need not end on this note, however, as far more cogent reasons underscore the validity of the Council's construction of its power to enact successive emergency measures. The decisions teach that, under some circumstances, Congress' failure to repeal or revise an administrative interpretation placed upon an enactment has been held to constitute persuasive evidence that the interpretation is the one intended by Congress. Zemel v. Rusk, 381 U. S. 1, 11 (1965). "Thus, in actual cases, courts have to analyze whether there is any reason to believe that the particular interpretation in question came to the attention of Congress so that it might reasonably be said that Congress, by failing to take any action with respect thereto approved the interpretation." Wilderness Society v. Morton, 156 U. S. App. D. C. 121, 145, 479 F. 2d 842, 896 (en banc, 1973). And, while mere congressional silence in the face of an administrative construction may not, in many circumstances, constitute ratification, it is clear that where Congress has reenacted or significantly amended a statute, without disapproving the agency's construction, Congress may appropriately be considered to have approved that construction as correct. See, e.g., United States v. Correll, 389 U. S. 299, 305-306 (1967); Costanzo v. Tillinghast, 287 U. S. 341, 345 (1932); Kay v. F. C. C., 143 U. S. App. D. C. 223, 231-232, 443 F. 2d 638, 646-647 (1970).

Very recently, Congress, in 1978, again had occasion to canvass the Council's legislative powers under the Home Rule Act when it amended that Act in a manner which shortened the legislative review period for Council enactments. See P. L. 95-526, 92 Stat. 2023, D. C. Code, § 1-147(c)(1) (Noncum. Supp. VI, 1979). Both the Mayor and the Chairman of the Council, in urging Congress to adopt this legislation, pointed out that the length and uncertainty of the congressional review period had caused the Council on a number of occasions to pass successive emergency measures while permanent legislation was awaiting congressional review. See Home Rule Act Amendments: Hearings and Markups Before the Subcommittee on Fiscal and Government Affairs of the House Committee on the District of Columbia, 95th Cong., 1st Sess. at 82 and 88. It is highly significant that both the Senate and House reports on this 1978 amendment of the Home Rule Act positively and approvingly address the power of the Council to enact successive emergency measures, stating:

> * * * At present, only those days when both Houses of Congress are in session are counted in the 30-day layover period. Because the House is often in recess on Mondays and Fridays, the effective review period averages 60 days following transmittal of a Council act to the Speaker of the House and to the President of the Senate. At its worst, as in the case of the Condominium Act of 1976 (District of Columbia Act 1-151), 7 months elapsed before the act became law. This unpredictability has forced the District to enact an inordinate amount of temporary (90-day) "emergency legislation" that requires no congressional review and takes effect immediately. (Emphasis added.)

H. Rep. No. 95-1104, 95th Cong., 2nd Sess. 2 (1978); S. Rep. No. 95-1291, 95th Cong., 2nd Sess. 2 (1978).

These pronouncements reinforce the obvious. If Congress, with full awareness of the Council's unambiguously stated construction

of its emergency legislative powers under the Home Rule Act, believed that such a construction was erroneous, it surely would have said so and enacted corrective legislation. We submit that the failure of Congress to take such action is persuasive evidence that the Council's construction is the one intended by Congress. What was said in Kay v. F. C. C., supra, 143 U. S. App. D. C. at 231-232, 443 F. 2d at 646-647, is equally apposite here:

> Congress, of course, is not required to act each time a statute is interpreted erroneously and legislative silence in the face of such interpretation is not necessarily equivalent to legislative approval. However, a consistent administrative interpretation of a statute, shown clearly to have been brought to the attention of Congress and not changed by it, is almost conclusive evidence that the interpretation has congressional approval. (Footnotes omitted; emphasis added.)

In an attempt to avoid the impact of these telling pronouncements, appellee (memorandum at 26) once again relies on SEC v. Sloan, supra, pointing out that in that case the subsequent legislative action was insufficient to constitute the requisite congressional approval of the administrative construction. But, as the most cursory perusal of Sloan will demonstrate, appellee's reliance on that decision is again totally misplaced.[4] In the first place, the Supreme Court was not satisfied that the Commission's construction of its emergency power had the requisite "widespread congressional awareness" for it was "extremely hesitant to presume general congressional awareness of the Commission's construction based only upon a few isolated

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[4] Likewise misplaced is appellee's reliance on opinions of the Corporation Counsel which fail to take into consideration the recent congressional pronouncements approving the Council's construction of § 412(a). Totally aside from that circumstance, the suggestion of appellee that the Corporation Counsel is somehow estopped to reconsider a previously expressed legal view point and assert a different one based on subsequent analysis is glaringly untenable.

statements in the thousands of pages of legislative documents" (436 U. S. at 121). That is hardly true here since the reports of both houses are quite brief and each addresses the administrative construction in language leaving no room for doubt. More importantly, the Sloan Court refused to presume the correctness of the administrative construction from subsequent congressional action because the invocation of such a presumption would have resulted in a construction of the statute which was at odds with both the language of the particular provision addressing the Commission's emergency powers and "the pattern of the statute taken as a whole" (436 U. S. at 121). As we have previously demonstrated, the exact opposite is true here.

If anything, Sloan exemplifies the obvious proposition that statutory construction is not an exact science, but necessarily depends upon a synthesis of various rules. Applying that thesis here, it becomes readily apparent that a consideration of (1) the plain statutory terms, (2) the pattern of the statute as a whole, (3) its legislative history, (4) its consistent contemporaneous construction, (5) the subsequent legislative awareness and approval of that construction, and (6) the patently absurd consequences that would flow from appellee's proffered construction cogently combine in a manner which underscores the validity of the Council's construction of its emergency legislative powers and justifies endorsement of that construction by this Court.

We hasten to add that it by no means follows from the Council's construction of § 412(a) that a successively enacted emergency measure is immune from judicial review. Indeed, it is subject to the same objections that may be made to any permanent measure such as, for example, its constitutional sufficiency and its applicability to particular fact situations. But, it is noteworthy that the court below does not deal with the measure in question on grounds such as these. Nor does the court question the Council's declaration of a

genuine emergency or its good faith efforts in dealing with it. Instead, the court confines its ruling to a narrow legal ground involving a question of statutory construction and concludes only that § 412(a) of the Home Rule Act precludes the Council's enactment of successive emergency measures. As previously demonstrated, the court's resolution of that issue is plain error under established rules of statutory construction.

Appellee additionally urges that it was wrongfully denied an opportunity to participate in the legislative process in violation of § 404(c) of the Home Rule Act, D. C. Code, § 1-144(c) (Supp. V, 1978), which requires "adequate publication of intended action by the Council." As in the case of other provisions contained in § 404, subsection (c) relates to the Council's enactment of permanent legislation, not emergency legislation like that involved here. Compare §§ 404(d), (e) and (f). The matter of emergency legislation is separately dealt with in § 412(a), which, in turn, envisions an Act taking effect "immediately" upon a determination that the requisite "emergency" circumstances so require. The legislatively recognized need for "immediate" enactment of an emergency measure is totally antithetical to the notion that Congress intended to detrimentally delay its approval by imposing the type of advance notice constraints made applicable to permanent measures in § 404(c). Cf. Hobson v. District of Columbia, 304 A. 2d 637, 640, n. 2 (D. C. App., 1973). If, as appellee suggests, emergency measures were to be governed by the 15 day advance notice requirement made applicable to permanent measures by the Council's rules, the Council's emergency legislative powers would obviously be dealt a crippling blow. Moreover, the emergency measure to which the injunctive relief aspect of this case relates was the reenactment of a previously enacted measure. Both measures were published in the D. C. Register contemporane-

ously with the commencement of the respective emergencies found to exist (see 25 DCR 10363 and 26 DCR 1014). Such publication afforded appellee the opportunity to communicate to the Council its views concerning whether the measures should be renewed or translated into permanent legislation. And, as previously noted, testimony was presented on behalf of appellee at the hearing conducted by the Emergency Commission appointed by the Council. Nothing in either the Home Rule Act or the Constitution requires that appellee be afforded a more extensive opportunity for participation in the emergency legislative process. Cf. Bowles v. Willingham, 321 U. S. 503, 519 (1944).

Finally, the court's holding that the case is not moot as to the emergency measures challenged in counts 2 and 3 of the complaint is at variance with settled principles. As the court notes (op. at 9), these emergency measures have been replaced by permanent legislation. That circumstance plainly renders the case moot. See Kremmens v. Bartley, 431 U. S. 119, 127-129 (1977). Since the permanent legislation embraces the subject matter of these expired 90 day emergency measures, it is difficult to conceive how such measures are matters "capable of repetition, yet evading review." Cf. Southern Pacific Terminal Co. v. ICC, 219 U. S. 498, 515 (1911). They thus can give rise to no presently existing live controversy. Even aside from this factor, the court (op. at 9) erroneously concludes that a period of "ninety days is certainly not sufficient time for full litigation of the validity" of an emergency measure. Indeed, this very case suggests that the contrary is true. Unlike SEC v. Sloan, supra, on which the court relies, it does not involve a 10 day suspension which cannot be subjected to "effective judicial review" (cf. 436 U. S. at 103). Moreover, appellee makes no specific assertions spelling out adverse consequences that any of its members will sustain under the expired emergency measures challenged in counts 2 and 3. Unquestionably, then, the case is moot as to these matters.

Conclusion

Upon the foregoing, it is respectfully submitted that the order of the court below should be summarily reversed and the case remanded with directions to dismiss appellee's action.

JUDITH W. ROGERS,
Corporation Counsel, D. C.

RICHARD W. BARTON,
Deputy Corporation Counsel, D. C.
Appellate Division

DAVID P. SUTTON,
Assistant Corporation
Counsel, D. C.

JAMES J. STANFORD,
Assistant Corporation
Counsel, D. C.

Attorneys for Appellant
District of Columbia,
District Building,
Washington, D. C. 20004
Telephone: 727-6252

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Summary Reversal was personally served, this 2nd day of November 1979, on each of the following:

Stephen M. Sacks, Esquire
Thomas E. Silfen, Esquire
Linda G. Moore, Esquire
Arnold & Porter
1229 19th Street, N. W.
Washington, D. C. 20036

Attorneys for Appellee;

Jerry D. Anker, Esquire
Leslie D. Michelson, Esquire
Wald, Harkrader & Ross
1300 19th Street, N. W.
Washington, D. C. 20036;

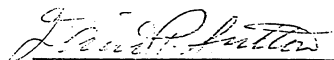
Kerry Alan Scanlon, Esquire
Washington Lawyers' Committee
for Civil Rights Under Law
733 15th Street, N. W.
Washington, D. C. 20005

Attorneys for Appellants
Metropolitan Washington
Planning and Housing
Association, Inc., et al.;

and

Jason I. Newman, Esquire
Harrison Institute for Public Law
605 G Street, N. W. Suite 401
Washington, D. C. 20001

Of Counsel.



DAVID P. SUTTON,
Assistant Corporation
Counsel, D. C.

DISTRICT OF COLUMBIA COURT OF APPEALS

DISTRICT OF COLUMBIA and METROPOLITAN WASHINGTON PLANNING AND HOUSING ASSOCIATION, INC., et al.,	Appellants,	
v.		No. 79-1053
THE WASHINGTON HOME OWNERSHIP COUNCIL, INC.,	Appellee.	

SUPPLEMENTAL AFFIDAVIT OF ROBERT L. MOORE

Robert L. Moore, being duly sworn, deposes and says:

1. I am the Director of the District of Columbia Department of Housing and Community Development (hereinafter DHCD). I have previously submitted an affidavit in this case, and I make this affidavit to supplement my previous one.

2. I have read the affidavit of G.V. Brenneman, Jr., submitted by the plaintiff-appellee. Although that affidavit is factually correct, it omits certain essential facts, and as a result tends to give a false picture of what the effect would be of Judge Revercomb's injunction in this case. In particular, Mr. Brenneman's affidavit creates the false impression that only high income persons would be displaced if condominium conversions were now to be permitted, and that no such conversions could occur in any event before this case is decided. The purpose of this affidavit is to clarify these matters for the Court.

3. It is true, as Mr. Brenneman states, that under the permanent laws of the District of Columbia (which are not affected by the decision in this case), a building or project can be converted to condominium at the present time, in the

absence of tenant consent, only if it is a "high rent housing accommodation" as defined in the law. However, Mr. Brenneman has failed to mention the actual rent levels which define the term "high rent housing accommodations," and thereby gives the impression that only very expensive luxury units can be converted. This is not the case at all. The term "high rent housing accommodations" is really a misnomer, since the rent levels necessary to meet this standard are actually quite low. Immediately prior to the enactment of the Emergency Condominium and Cooperative Stabilization Act of 1979, D.C. Act 3-44, approved May 29, 1979 (the first emergency moratorium act at issue in this case), the following minimum rent levels were sufficient to qualify a rental unit as a "high rent housing accommodation":

efficiency apartment	$221
one-bedroom apartment	$267
two-bedroom apartment	$314
three-bedroom apartment	$408

As of October 20, 1979, these minimum rent levels were slightly increased; however, any unit which obtained a Certificate of Eligibility under the old standards would still be eligible for conversion. The new standards, which will apply only to Certificates of Eligibility issued after October 20, 1979, are as follows:

efficiency apartment	$242
one-bedroom apartment	$292
two-bedroom apartment	$344
three-bedroom apartment	$447

These rent levels are based on those established by the United States Department of Housing and Urban Affairs (HUD) for purposes of determining eligibility for housing assistance payments under

section 8 of the U.S. Housing Act of 1937, 42 U.S.C. § 1437f. HUD regulations describe these rent levels as those "required to be paid in order to obtain . . . rental housing of modest (non-luxury) nature . . . ." 24 C.F.R. § 880.102. A substantial percentage of rental housing in the District of Columbia meets these standards.

4. Mr. Brenneman's affidavit also states that even if the injunction issued by Judge Revercomb is not stayed, the 110 buildings (referred to in my previous affidavit) for which Certificates of Eligibility have already been granted could not complete the process of conversion, including the displacement of tenants, for approximately 120 days. This is true, assuming that none of the owners of such buildings have yet given their tenants notice of intent to convert. However, if the injunction were not stayed, the owners of those buildings would be free to apply for registration as condominiums, and my office would be obliged to issue notice of any such application for registration within 5 days of receipt of the application. Once such a notice is issued, my office is required to complete the processing of the registration within 60 days, and that would occur even if this Court were to reverse Judge Revercomb's decision and uphold the emergency moratorium law. In other words, there is no way, under existing law, to stop the conversion process once a notice of application for registration is issued. Therefore, even if the process of conversion, including displacement of tenants, could not be completed for up to 120 days, there would be no way

to prevent such completion once the notice of application for registration is issued.

Robert L. Moore

Subscribed and sworn to before me this___day of October, 1979.

Notary Public

DISTRICT OF COLUMBIA COURT OF APPEALS

DISTRICT OF COLUMBIA and METROPOLITAN WASHINGTON PLANNING AND HOUSING ASSOCIATION, INC., et al., Appellants, v. THE WASHINGTON HOME OWNERSHIP COUNCIL, INC., Appellee.	)	No. 79-1053

APPELLANTS' REPLY TO APPELLEE'S MEMORANDUM IN OPPOSITION TO THE MOTION FOR STAY PENDING APPEAL

Appellee's opposition to appellants' motion for a stay is devoted mainly to arguing the merits of this case. Appellee suggests that the decision below is so clearly correct that no serious issue is presented, and that a stay would merely maintain an invalid law in effect. We submit, however, that this case does present a serious legal issue. The decision below, that the District of Columbia Council may never exercise its emergency legislative power to enact a particular emergency measure more than once, is wholly without precedent. The Council has, in the past, reenacted numerous emergency measures for successive 90-day periods without challenge. There is no express prohibition in the Home Rule Act against such reenactments, and the legislative history of that Act does not squarely address the question. Clearly, this case does present a serious issue, and one of tremendous public importance. The mere fact that one judge has decided that issue in favor of appellee does not settle the issue, nor render this appeal frivolous.

In any event, this Court will shortly have the opportunity to consider the merits of this case fully. Appellee has now filed a motion for summary affirmance, accompanied by a memorandum which is, in effect, its brief on the merits. Appellants plan to file motions for summary reversal by Friday, November 2, which will include a full presentation of appellants' arguments on the merits. We assume that the Court will then expedite the oral argument and decision, so that this case can promptly be concluded.

Until the merits of this appeal are decided, however, a stay is absolutely essential to preserve the status quo and prevent irreparable injury to thousands of rental housing tenants in the District of Columbia. As we have previously demonstrated, the denial of a stay would permit the conversion of thousands of rental housing units to condominiums, resulting in the dislocation of tenants and a permanent reduction in the available rental housing stock of this city.

Appellee argues that, even in the absence of a stay, no condominium conversions can be completed for at least 120 days, because of the statutory requirement that tenants be given notice of intent to convert at least 120 days before they are actually evicted. What appellee ignores, however, is that if the injunction issued by the court below is not stayed, owners of rental buildings which have already obtained Certificates of Eligibility will be able to apply for registration as condominiums, and that, once that occurs, there will be no way to stop the conversion process. It may be that no tenants will actually be evicted before this Court issues its decision, but the important point is that there would be no way to prevent those evictions from occurring once the notice of filing of registration has issued, even if this Court

were to reverse the judgment below. This is made clear in the supplemental affidavit of Robert L. Moore attached hereto, as well as in his original affidavit which was attached to appellants' motion for stay.

Appellee also suggests that only high income families will be affected by any conversions, because only "high rent housing accommodations" can be converted under District law. As the attached supplemental affidavit of Robert L. Moore makes clear, however, the term "high rent housing accommodations" is very misleading. In fact, the minimum rent levels required to qualify a building as a "high rent housing accommodation" are extremely low. Many low and moderate income families currently live in rental housing which is eligible for conversion under the so-called "high rent" standard.

Appellee does not challenge the fact that there are 110 buildings, containing approximately 10,000 units which have already obtained Certificates of Eligibility, and which could apply for registration as condominiums if the injunction were not stayed. Nor does appellee deny that, when such an application is filed, a notice of filing must be issued within five days, and once that occurs there would be no way, under existing law, to prevent the conversion of those buildings to condominiums, even if the decision below were later reversed and the injunction vacated. It is these undisputed facts which make a stay essential.

Finally, appellee does not claim that any substantial harm will result to it or its members if the stay remains in effect until this appeal is decided. As we have noted above, it appears that this case can be handled expeditiously, so that

the stay will not need to be of long duration. The sole effect of the stay will be to preserve the status quo for a relatively short period of time until this case is decided.

CONCLUSION

For the reasons stated above as well as in appellants' motion for stay, the Court should extend the stay which is now in effect pending the determination of this appeal.

Respectfully submitted,

JUDITH W. ROGERS
Corporation Counsel, D.C.

RICHARD W. BURTON
Deputy Corporation Counsel, D.C.

DAVID P. SUTTON
Assistant Corporation Counsel, D.C.

JAMES J. STANFORD
Assistant Corporation Counsel, D.C.

Attorneys for Appellant District of Columbia
District Building
Washington, D. C. 20004
(202) 727-6303

JERRY D. ANKER (49726)
LESLIE D. MICHELSON (935049)
WALD, HARKRADER & ROSS
1300 Nineteenth Street, N.W.
Washington, D. C. 20036
(202) 828-1200

KERRY ALAN SCANLON (942276)
WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
733 Fifteenth Street, N. W.
Washington, D. C. 20005
(202) 347-3891

Attorneys for Appellants Metropolitan Washington Planning and Housing Association, Inc. and other Defendants-Intervenors

Of Counsel:

JASON I. NEWMAN (142786)
HARRISON INSTITUTE FOR PUBLIC LAW
605 G Street, N.W.
Suite 401
Washington, D. C. 20001
(202) 624-8235

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing motion and attached Supplemental Affidavit of Robert L. Moore were hand-delivered to counsel for appellee this day of

_____

DISTRICT OF COLUMBIA COURT OF APPEALS

DISTRICT OF COLUMBIA, and METROPOLITAN WASHINGTON PLANNING AND HOUSING ASSOCIATION, INC., et al., Appellants, v. THE WASHINGTON HOME OWNERSHIP COUNCIL, INC., Appellee.	C.A. No.: 79-1053

DISTRICT OF COLUMBIA
COURT OF APPEALS
REC'D. OCT 22 1979
Alexander L. Stevas
Clerk

APPELLANTS' EMERGENCY MOTION FOR AN IMMEDIATE STAY

Appellants respectfully move this Court for an immediate stay of the final order of the Superior Court of the District of Columbia (Judge George H. Revercomb) in this case, dated October 19, 1979 (Exhibit A), pending the determination of this appeal. If the Court is unable to decide today whether such a stay should be granted, appellants respectfully request that a temporary stay be granted immediately pending the Court's determination as to whether to grant a further stay. Such relief is absolutely essential in this case in order to preserve the status quo.

Appellants' motion for a stay in the court below was denied by Judge Revercomb at 10:00 A.M. today, October 22, 1979. He also denied a request for a temporary stay pending an application for a further stay in this Court.

As grounds for this motion appellants state the following:

1. This action was brought by plaintiff (appellee), the Washington Home Ownership Council, Inc. (WHOC), to challenge the validity of a number of acts of the Council of the District of Columbia which were enacted pursuant to the Council's emergency legislative authority under § 412(a) of the Home Rule Act, 1 D.C. Code § 146(a). That statute provides as follows:

> If the Council determines, by a vote of two thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days.

The acts challenged by plaintiffs were all second or subsequent enactments of emergency acts that had previously been adopted by the Council. The gravamen of plaintiff's complaint was that the Home Rule Act does not give the Council authority to enact any emergency measure more than once. The case was heard on cross motions for summary judgment, and the court sustained plaintiff's contentions.

2. The principal act at issue here is the Emergency Condominium and Cooperative Conversion Stabilization Act of 1979, D.C. Act 3-95, which became effective August 27, 1979.[1/] One previous act, identical to this one, was enacted on May 29, 1979. Because the presently effective act was a second enactment of a previous act, the court below declared it to be invalid and issued an injunction against its enforcement.

3. The purpose and effect of this act was to impose a moratorium on the conversion of rental housing units to condominiums or cooperatives. It was adopted on the basis of a finding by the Council that there was an escalating trend toward such conversions, which was creating a severe shortage of rental housing in the District of Columbia. At the time the first moratorium legislation was passed, the Council appointed a special commission to study the problem and recommend a permanent legislative solution. When it became apparent that the commission could not complete its work during the 90-day effective period

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1/ All of the other acts challenged by plaintiff have either expired or have been superseded by permanent legislation which substantially embodies all of their terms.

of the initial enactment, the Council reenacted it for an additional 90 days. The commission's report has now been completed, and it is anticipated that the Council will shortly consider permanent legislation.

4. The object of the moratorium was to stabilize the housing market, and prevent further conversions, until permanent legislation could be considered and adopted. The moratorium was similar, in purpose and effect, to the kind of zoning freeze which is commonly adopted when new zoning ordinances are under consideration. 2/

5. The effect of the injunction granted by the court below is to lift the moratorium and permit conversions to occur. As explained in the Affidavit of Robert L. Moore, attached hereto as Exhibit B, there are approximately 110 buildings containing close to 10,000 rental units which, prior to the moratorium, had already received so-called "certificates of eligibility" for conversion, and need only obtain registration in order to complete the conversion process. Once an application for registration has been filed, a notice of registration is issued within five days, and once such notice is issued, the registration must be granted regardless of whether the moratorium is in effect. Until now, the

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2/ It is a matter of common knowledge that a zoning plan of the extent contemplated in the instant case cannot be made in a day; therefore we may take judicial notice of the fact that it will take much time to work out the details of such a plan and that obviously it would be destructive of the plan if, during the period of its incubation, parties seeking to evade the operation thereof should be permitted to enter upon a course of construction which might progress so far as to defeat in whole or in part the ultimate execution of the plan.

Miller v. Board of Public Works, 195 Cal. 477, 234 P. 381, 388 (1925). See also Walworth Co. v. City of Elkhorn, 27 Wis.2d 30, 133 N.W. 257, 262 (1965); Campara v. Township of Clark, 82 N.J. Super. 392, 197 A.2d 711 (1964); and Downham v. City Council of Alexandria, 58 F.2d 784, 788 (E.D. Va. 1932).

moratorium law has stood in the way of such registration. Unless an immediate stay is issued, it can be anticipated that the conversion of these 110 buildings will occur, even if this court were later to reverse the judgment below.

6. The standards applicable to a stay pending appeal were stated in Virginia Petroleum Jobbers Association v FPC, 259 F.2d 921 (D.C. Cir. 1958), as follows:

> ***(1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal? ***(2) Has the petitioner shown that without such relief it will be irreparably injured? ***(3) Would the issuance of a stay substantially harm other parties interested in the proceedings? ***(4) Where lies the public interest?***

In Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977), the court made clear that the first of these requirements -- the likelihood of success -- is to be balanced against the other three factors, and where those other factors strongly favor a stay it should be granted even if the court is in doubt as to the likelihood of success on the merits:

> An order maintaining the status quo is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant. There is substantial equity, and need for judicial protection, whether or not movant has shown a mathematical probability of success.

559 F.2d at 844.

7. In this case, it is clear that "a serious legal question is presented." Nothing in the Home Rule Act expressly prohibits the Council from reenacting an emergency act a second time, if a new finding of "emergency circumstances" is made by the necessary two-thirds vote of the entire Council. Nor has any court previously held that the Council lacks such authority; the question

is one of first impression. We have attached as Exhibits C and D to this motion the briefs of appellants in the Superior Court which discuss the merits of this case in more detail. Certainly there is sufficient likelihood of success on this appeal to satisfy the first of the Virginia Petroleum Jobbers criteria.

8. The most compelling reason for the issuance of a stay in this case is that the denial of a stay will cause severe and irreparable injury to thousands of citizens of the District of Columbia, which could not be undone even if the judgment below were later reversed. As the affidavit of Robert Moore makes clear, any significant hiatus in the moratorium would create an opportunity for the conversion of thousands of rental units. This would lead to the eviction of the tenants in those units, a large proportion of whom are low and moderate income families for whom there is virtually no alternative rental housing available. Furthermore, once these units are converted they will be permanently removed from the stock of rental housing in the city. If the judgment below is correct, this result may be unavoidable. But it should not be permitted to occur until this court has a full opportunity to review the decision below.

9. On the other hand, the issuance of a stay would not cause substantial injury to plaintiff or to the real estate owners that plaintiff represents. The stay would merely continue in effect for the period of the appeal the condominium moratorium which has already been in effect since May. Defendant and intervenors are willing to cooperate with plaintiff to expedite the appeal, so that the period of the stay would be as short as possible.

10. Finally, the public interest plainly requires that a stay be granted. No one has even contended in this case, and the Court below did not find, that there is not a severe shortage of rental housing in the District of Columbia which would greatly

be exacerbated by the conversion of thousands of existing rental units to condominiums. The Council's finding that the situation constituted a true emergency, requiring immediate remedial action, has not been challenged. The only challenge here is to the procedure utilized by the Council to respond to this crisis. At the very least, the Council's moratorium legislation should be permitted to remain in effect until there is a final and definitive ruling by this Court concerning its validity.

Totally apart from the considerations discussed above, it should be emphasized that the court's holding effectively nullifies numerous other emergency measures not directly involved in this case, which have also been enacted more than once. As shown in Exhibit E attached hereto, there are many such measures presently in effect, affecting various areas of serious public importance. It is thus apparent that, even outside the housing area, the decision below, if not stayed, will create widespread chaos and uncertainty. This is an additional reason for staying the judgment below until it receives the full plenary consideration of this court on appeal.

Respectfully submitted,

JUDITH W. ROGERS
Corporation Counsel, D.C.

RICHARD W. BUTTON
Deputy Corporation Counsel, D.C.

DAVID P. SUTTON
Assistant Corporation Counsel, D.C.

JAMES J. STANFORD
Assistant Corporation Counsel, D.C.
Attorneys for Appellant District of Columbia
District Building
Washington, D.C. 20004
(202) 727-6303

JERRY D. ANKER (49726)
LESLIE D. MICHELSON (935049)
WALD, HARKRADER & ROSS
1300 19th Street, N.W.
Washington, D.C. 20036
(202) 828-1200

KERRY ALAN SCANLON (942276)
WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW
733 15th Street, N.W.
Washington, D.C. 20005
(202) 347-3801

Attorneys for Appellants Metropolitan Washington Planning and Housing Association, Inc. and other Defendants-Intervenors

Of Counsel:

JASON I. NEWMAN (142786)
HARRISON INSTITUTE FOR PUBLIC LAW
605 G Street, N.W.
Suite 401
Washington, D.C. 20001
(202) 624-8235

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing motion and attachments thereto were hand delivered to counsel for Appellee this 22nd day of October, 1979.

SUPERIOR COURT D.
RECEIVED AND FILE
AUG 28 1979
TIME
BY

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

THE WASHINGTON HOME OWNERSHIP COUNCIL, INC.,

Plaintiff,

v.

DISTRICT OF COLUMBIA,

Defendant.

Civil Action No. 10624-79

9.

STIPULATION

It is hereby stipulated by and between counsel for the Plaintiff and counsel for the Defendant that the schedule set forth below shall be followed by the parties to this proceeding.

1. The Plaintiff shall file a motion for summary judgment on September 10, 1979.

2. The Defendant shall answer or otherwise plead to the complaint and shall respond to the Plaintiff's motion for summary judgment on September 26, 1979.

3. The Plaintiff shall file a reply and/or an opposition to any motion filed by the Defendant on October 3, 1979.

4. The Defendant shall file any reply on October 10, 1979.

5. A hearing shall be held with respect to all pending motions in this cause on October 16, 1979.

Stephen M. Sacks (90522)

Arnold & Porter
1229 19th Street, N.W.
Washington, D.C. 20036
(202) 872-6681

Attorneys for Plaintiff

James C. Stanford

Office of the Corporation
Counsel of the District
of Columbia
Civil Division
Room 312
14th & E Streets, N.W.
Washington, D.C. 20013

Dated: August 28, 1979

SO ORDERED:

Judge 9/11/79

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

THE WASHINGTON HOME OWNERSHIP COUNCIL, INC.	:	
Plaintiff	:	
v.	:	Civil Action No. 10624-79
DISTRICT OF COLUMBIA	:	
Defendant	:	
METROPOLITAN WASHINGTON PLANNING AND HOUSING ASSOCIATION, INC., et al.	:	
Intervenor-Defendants	:	

SUPPLEMENTAL MEMORANDUM OF DEFENDANT, DISTRICT OF COLUMBIA, IN SUPPORT OF THE MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff's reply memorandum is nothing more than a general restatement of its position already set forth in its previous papers filed with this Court. The issue before the Court remains whether the enactment of the successive emergency acts cited in the complaint was a valid exercise of the legislative power vested in the City Council by the Home Rule Act. Defendant submits that nothing contained in plaintiff's reply memorandum undercuts or dilutes the strength of the District's argument that the enactment of these measures was proper.

Contrary to plaintiff's assertion [Plaintiff's Reply Memo., p. 1], the defendant has never stated that "the City Council's 'emergency' power is totally open-ended and without limit." To the contrary, defendant consistently recognizes that the exercise of the Council's emergency power was stringently safeguarded and circumscribed by the

Congressional requirement of a two-thirds vote and a 90 day limitation on each act. Moreover, it is significant in this regard that Congress requires a vote of two-thirds of the total membership for the enactment of each emergency act. The condition precedent of such an extraordinary majority imposes a severe limitation on the Council's power to enact emergency acts. Plaintiff conveniently ignores this crucial limitation imposed by Congress.

Plaintiff erroneously characterizes the defendant as arguing that the District cannot govern if it must comply with the terms of the Home Rule Act. [Plaintiff's Reply Memo., p. 3.]. To the contrary, the defendant's position is that the District can best govern if allowed to exercise the legislative authority granted by the clear language of the Home Rule Act. As we have demonstrated, this legislative authority is broad, conferring on the City Council all the traditional powers of a city, county, and state legislature. Moreover, the legislative authority includes the power to enact successive emergency acts under proper, stringent safeguards. The defendant asserts that the enactment of the successive emergency acts was in total compliance with the Home Rule Act.

Plaintiff asserts that defendant's interpretation of the phrase "such Act shall be effective for a period not to exceed ninety days" stands the English language on its head. [Plaintiff's Reply Memo., p. 5.]. Defendant reiterates, however, that the language of §412(b) of the Home Rule Act is clear on its face and imposes only two limits on the emergency legislative powers: (1) that two-thirds of the

Council must determine the existence of emergency circumstances, and (2) that the effectiveness of each act be limited to ninety days. Any other interpretation of §412(a) is unwarranted and incapable of support. Plaintiff again refused to address the crucial importance of the requirement of the extraordinary majority vote required before each emergency act can be enacted.

In its discussion of Congressman Rees' comments, plaintiff erroneously concludes that "the Congressman condemned the very action taken by the Council herein." [Plaintiff's Reply Memo., p. 7]. This is simply not so. It is true that Congressman Rees was concerned with the possibility of abuse in both declaring emergencies per se and enacting chain or successive emergency acts. Accordingly, Mr. Rees included the two-thirds vote requirement as a safeguard against both potential abuses.

Plaintiff is then less than candid with the Court when it quotes Congressman Rees' concluding comment:

> "Then if they want to extend the act past the ninety days they could obviously follow the second reading rule." (emphasis added).

Plaintiff glibly substitutes the word "would" for the Congressman's word "could" in its discussion of the meaning of the above passage. The above quotation is no more than an expression of the obvious by Congressman Rees that if the Council determines that a permanent act is advisable, it could so legislate. However, this is a far cry from saying that this is the only way in which the Council can extend an emergency act beyond the original ninety days.

Plaintiff's discussion of the 1978 amendments to the Home Rule Act misses the mark entirely. These amendments

and their legislative history reveal clearly that Congress was aware that the District was enacting successive emergency acts. Yet, with this knowledge and awareness, Congress did not prohibit the practice as it could easily have done. Rather, it merely reduced the layover time as one way of reducing the number of successive emergency acts.

Plaintiff's reliance on Sloan again demonstrates its lack of appreciation of the differences between the two statutory schemes. In Sloan, §12(k) of the SEC Act of 1934 authorized the Commission to "summarily suspend trading in any security . . . for a period of not exceeding ten days." This clearly establishes a time limit on the remedy available to the Commission. Section 412(a) of the Home Rule Act, on the other hand, limits only the duration of each act. Significantly, the Court expressly refused to read the SEC Act as limiting only the duration of a single suspension order. In the Home Rule Act, however, such a limitation is clearly set forth in the statute itself. In other words, the Home Rule Act expressly contains the exact limitation (duration of the act) that the Commission unsuccessfully sought to have the Supreme Court graft onto its statute. In view of this and the other differences in the two statutory schemes, Sloan adds nothing to plaintiff's arguments.

Likewise, plaintiff makes a weak, general, and unsupported rejoinder to defendant's argument that the Council's consistent interpretation of its own enabling legislation should be given great weight. Contrary to the assertion of plaintiff, the Council has consistently cited §412(a) of the Home Rule Act as the statutory basis for its emergency actions. Moreover, this interpretation of the

Home Rule Act is consistent with the most recent legal opinion of the Corporation Counsel which is set forth fully in defendant's memorandum in support of its motion for summary judgment. Finally, the Council's own interpretation of its emergency powers under the Home Rule Act should be given great weight because it is consistent with the statutory mandate, legislative history, and logic.

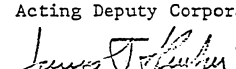
Plaintiff does interject one new argument which deserves close analysis and scrutiny because its implications are devastating and awesome. In response to defendant's mootness arguments, plaintiff asserts that the issues presented in this lawsuit are as important retroactively as prospectively. [Plaintiff's Reply Memo., p. 12.]. Plaintiff also alludes to past real estate transactions which were adversely affected by the lapsed emergency acts. Plaintiff is apparently asking the Court to turn back the hands of time for numerous owners who claim that their ability to immediately convert their buildings to cooperatives or condominiums was adversely affected by the series of lapsed emergency acts. Plaintiff is apparently asking the Court to retroactively rule that any owner who was adversely affected by any one of the lapsed emergency acts may now convert his property without restriction. Not only would such a result be unprecedented and without legal support, but it would likely lead to the very housing chaos which the Council cited as a basis for enacting the emergency acts in the first place.

Moreover, the requested ruling would create a strange and untenable situation since two of the three permanent acts which address the same substantive areas covered

in the emergency acts cited in Counts II and III of the complaint are now permanent laws, having completed their 30 legislative day Congressional layover time.[1/] Accordingly, plaintiff is asking the Court to give to the owners rights which they did not have under the lapsed emergency acts and which they do not have under the now or soon to be operative permanent laws.

JUDITH W. ROGERS
Corporation Counsel, D.C.

JOHN H. SUDA
Acting Deputy Corporation Counsel, D.C.

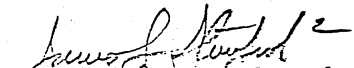


JAMES J. STANFORD (193805)
Assistant Corporation Counsel, D.C.
Attorneys for Defendant
District Building
Washington, D.C. 20004
727-6303

1/ Acts 3-62 and 3-63 became permanent laws on September 28, 1979, and are now D.C. Laws 3-18 and 3-19 respectively. Act 3-75 was transmitted to Congress on August 7, 1979, and will become a permanent law on or about October 18, 1979.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Memorandum of Defendant, District of Columbia, in Support of the Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment was hand delivered to Stephen M. Sacks, Esquire, Attorney for Plaintiff, 1229 19th Street, N.W., Washington, D.C. 20036; and to Jerry D. Anker, Esquire, 1300 19th Street, N.W., Washington, D.C. 20036 and Kerry Scanlon, Esquire, 733 15th Street, N.W., Washington, D.C. 20005, Attorneys for Defendant-Intervenors, this 10th day of October, 1979.



Assistant Corporation Counsel, D.C.
Attorney for Defendant
District Building
Washington, D.C. 20004

IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

DISTRICT OF COLUMBIA, et al., Appellants,	:	
v.	:	No. 79-1053
THE WASHINGTON HOME OWNERSHIP COUNCIL, INC., Appellee.	:	

REPLY OF DISTRICT OF COLUMBIA TO OPPOSITION OF APPELLEE TO MOTION FOR SUMMARY REVERSAL

Argument

Appellee has failed to justify the ruling of the court below that the D. C. Council lacks legislative power to reenact a 90 day emergency measure upon a determination of two thirds of its members that an emergency exists.

In its opposition to the summary reversal motions of the District and the intervenor, appellee attributes to the Council an attempt to engage in a "wholly open-ended" policy of "government by emergency" and thus to circumvent the procedure of congressional review which the Home Rule Act has mandated for permanent legislation. It is clear, however, that in advancing this point, appellee has completely failed to respond to our argument (summary reversal motion at 8-9) that Congress, in § 602(c) of the Home Rule Act, has specifically excluded emergency measures from the review requirement and in other sections of the Act has inserted counterbalancing procedural safeguards. Thus, a particular emergency act may be enacted only for 90 days at a time and then only upon a two-thirds vote of the entire membership of the Council (§ 412(a)). No other limits are placed on the Council's action in the Home Rule Act. Nor does reenactment of emergency measures escape the supervisory control of Congress as

appellee claims. In this regard, the Home Rule Act, § 601, D. C. Code, § 1-126 (Supp. V, 1978), specifically provides:

> * * * Notwithstanding any other provision of this Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council. (Emphasis added.)

The significance of this congressional retention of supervisory control was repeatedly stressed by various members of Congress as the Home Rule Act was nearing its passage (see e.g., Home Rule History at 3051, 3094, 3115, 3117). Or, as Senator Mathias of Maryland succinctly stated (id. at 3117):

> * * * [L]et me point out that under the terms of this bill, the Congress retains full residual, ultimate, and exclusive jurisdiction of the District. The Congress still has the power to repeal, amend, initiate local legislation, and to nullify individual acts of the Council. * * * (Emphasis added.)

In light of these circumstances, we submit that appellee's attempt to paint a picture of a "government by emergency" totally free from procedural constraints and congressional controls is without foundation and an inflammatory statement lacking a basis in the facts presented by appellee.

Likewise foundationless is appellee's contention (opposition at 4) that the particular "facts" of the case show "a clear cut abuse of [local legislative] power." In the court below, appellee did not present its case on a factual or evidentiary development that the Council abused its emergency powers in the peculiar circumstances

presented, but claimed that the reenactment of emergency legislation is ipso facto prohibited by the Home Rule Act. Similarly, the court took no issue with the validity of the Council's emergency declarations from a factual standpoint (op. at 11-12) and went on to state (id. at 12) that:

> The only issue * * * is whether the Council, having found an emergency to exist, may successively reenact substantially the same emergency act, so as to continue the substantive provisions of such an act in force for more than ninety days, without a second reading or Congressional review. This, also, is an issue of statutory construction. * * * (Emphasis added.)

As we demonstrated in our summary reversal motion, an analysis of numerous principles of statutory construction and their application to this case will inexorably compel the conclusion that the court's construction of the Home Rule Act in resolving this "only issue" was plainly erroneous.

In our summary reversal motion, we also urged that the court's interpretation of the Home Rule Act would, among other things, render the Council powerless to deal with a continuing emergency by enacting an additional 90 day measure designed to bridge the gap created by the congressional review period following passage of permanent legislation. Although appellee recognizes the significance of this factor, appellee claims that it is a "nonissue" in the instant case since we are not here concerned with permanent legislation currently in a review posture. But, such an approach to statutory construction unwarrantedly discourages this Court's attempt to ascertain from a totality of factors what Congress reasonably intended in defining the parameters of the Council's powers to enact emergency legislation. For, as we demonstrate in our summary reversal motion (id. at 9-12), the impact of the review period on the appropriateness of successive emergency measures is but one of several factors establishing that

a fair construction of the Home Rule Act does not restrict the Council to one such measure. We additionally pointed out that under the Home Rule Act, read as a whole, it would be virtually impossible for the Council to enact permanent legislation within the 90 day emergency period unless that Act is construed to permit reenactment of an emergency measure. We also urged that the complexity of the subject matter of legislation like that challenged here manifestly justifies a period in excess of 90 days for reflection and analysis concerning the effect of various proposed statutory solutions in an area that defies simple resolution.[1] Because of the lengthy congressional review layover period, the District Government necessarily was concerned that its permanent legislative enactments provide, to the greatest extent that the Council could determine, the "correct" and best legislative solution since amendment was a lengthy process involving an unpredictable and uncertain effective date. These were some of the problems that Congress surely must have realized in granting the Council authority to enact meaningful emergency measures.

But, the most obvious flaw in appellee's argument that the significance of the review period is a "nonissue" in determining the scope of the Council's emergency power may be readily ascertained upon a consideration of the 1978 Amendments to the Home Rule Act. As emphasized in our summary reversal motion (id. at 18), Congress, in

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[1] Indeed, Representative Rosenthal of New York, expressing concern about a spreading problem, recently introduced legislation (H. R. 5175, 96th Cong., 1st Sess. (1979)) designed to impose a moratorium on conversion of rental housing to condominiums and cooperatives throughout the United States for a three-year period, during which a newly created Presidential Commission on Problems Relating to Condominium-Cooperative Conversions would study the conversion problem and make recommendations for permanent national legislation. Even Congressmen acknowledged the need for a study of how to solve the problem of conversion. The conversion moratorium is established by prohibiting Federal grants, loans, insurance or other forms of assistance to be used for conversion of rental housing to condominiums or cooperatives for a period of three years after enactment. (See 125 Cong. Rec. No. 111, September 5, 1979, at H 7346-7351 and H 7364.)

both the House and Senate reports on these amendments, spoke approvingly of the Council's practice of enacting successive emergency measures. Although Congress addressed that established practice in the context of the "unpredictability" of the duration of the "review period," Congress plainly did not, as it might have, limit the Council's power to reenact emergency measures to cases in which permanent legislation was undergoing review. Instead, Congress, with full awareness that the Council has construed the Home Rule Act as authorizing successive emergency measures consciously elected to permit that construction of local legislative power to remain unfettered by any newly imposed constraints. Not a shred of legislative history supports appellee's argument that the power to reenact an emergency measure can exist only in cases wherein permanent legislation is undergoing congressional review and that the exercise of that power in a context like that involved here is a "nonissue." We submit that the narrowness of such an approach to statutory construction only serves to underscore its frivolity and is patently contrary to the purpose of the Home Rule Act to delegate broad legislative authority to the D. C. Government.

In an attempt to bolster its argument that reenactment of an emergency measure violates the Home Rule Act, appellee claims that the Council may exercise another available option pending its adoption of permanent legislation. In that regard, appellee asserts that all the Council need do is enact temporary fixed term moratorium legislation as an "interim solution" to a problem such as that involved and submit such legislation to Congress for review. While the Council has, on occasion, tried such an approach in the past, it does not solve the basic dilemma -- not to enact permanent laws before consideration of the "correct" and best permanent laws. The Act plainly does not require this kind of legislation as an alternative to the reenactment of an emergency measure, but instead addresses two types of legislation (i.e., emergency and permanent) and places procedural restrictions

on the enactment of each. If the Act additionally addressed a temporary fixed term type of legislation and went on to impose procedural restrictions on the enactment of such legislation, there might be a basis for an inference that Congress intended this type of "interim solution" as an alternative to the reenactment of an emergency measure. Compare Sloan v. Securities and Exchange Commission, 436 U. S. 103, 112-114 (1978). But, the very failure of Congress to structure a legislative scheme which specifically provides for such an alternative or third local legislative option permits us to reasonably infer from the Home Rule Act as a whole that emergency measures may be reenacted while the Council is considering permanent legislation. Of course, the wisdom of such new or alternative restraints on the District's legislative power is totally distinct from the issue before this Court. It involves a matter of congressional judgment as to whether the experience of five years of Home Rule with emergency acts demonstrates the desirability of clarifying or limiting the Council's power to enact such measures under § 412.

In raising the specter of temporary legislation for a period in excess of 90 days, appellee suggests an analogy which is historically significant in construing the Council's power to enact emergency legislation under the Home Rule Act. In that connection, it is interesting to note that prior to the enactment of that Act, the Council was regulated by the District of Columbia Administrative Procedure Act (DCAPA) in the performance of its legislative functions. See P. L. 90-614, 82 Stat. 1203 et seq., D. C. Code, 1973, § 1-1501 through 1510. In spite of the circumstance that these functions were far less extensive than its functions under the Home Rule Act and in spite of the additional circumstance that its enactments were not then subjected to the layover period now required by the Home Rule Act, the Council was then permitted to enact emergency measures for 120 day durations. Moreover, the exercise of its emergency power as it then

existed was not conditioned on a two-thirds majority vote of its membership (DCAPA, § 6(b), D. C. Code, 1973, § 1-1505(c)).

The Council's legislative powers are now derived from the Home Rule Act and are no longer subject to the DCAPA. But, it defies logic to conclude that Congress, as the author of both of these enactments, would limit the home rule Council to a single emergency measure for a mere 90 day duration while at the same time broadening the scope of its legislative functions and imposing a review requirement. Moreover, at the time it enacted the Home Rule Act, Congress was obviously aware that various local agencies which remain subject to the DCAPA and perform more limited regulatory functions could continue to enact emergency measures for periods up to 120 days upon a simple majority vote. A consideration of these factors forces the conclusion that the Council can reenact 90 day emergency measures upon the satisfaction, prior to each measure, of the two-thirds vote requirement to which District of Columbia agencies with considerably less regulatory functions need not conform.

Moreover, both the House and Senate reports on the DCAPA make clear that Congress was completely familiar with the "model Act for administrative procedures in the states" (hereinafter "the model Act") since both reports state that the District's local Act was based on a "modified" version of the model act. H. R. Rep. No. 202, 90th Cong., 1st Sess. 4 (1967); S. Rep. No. 1581, 90th Cong., 2d Sess. 2 (1968). Yet, the model act as it then existed contained language designed to limit the renewal of emergency measures to a stated number of days. A leading commentator points out that the purpose of this language of restriction is to prevent administrative agencies from engaging in an unlimited renewal of emergency measures which could otherwise be accomplished in the absence of such language. See 1 Cooper, State Administrative Law (1965) at 200, 202. It is highly significant that Congress, in addressing emergency measures, omitted such language of restriction from both the DCAPA and the Home Rule Act.

Had Congress intended to restrict the Council's power by prohibiting the reenactment of an emergency measure upon the requisite two-thirds vote, Congress could readily have done so in language leaving no room for doubt. "An express provision 'would have been easy'." Palmore v. United States, 411 U. S. 389, 395, n. 5 (1973). And, since we are concerned with a legislative body akin to that of a state rather than with a local administrative agency, there is unmistakably less justification for reading into the Council's emergency legislative powers any reenactment restrictions not clearly expressed in the Home Rule Act. District of Columbia v. Thompson Co., 346 U. S. 100, 108-109 (1953); McIntosh v. Washington, 395 A. 2d 744, 753 (D. C. App., 1978). Appellee has fallen far short of demonstrating otherwise.

Conclusion

Upon the foregoing, it is respectfully submitted that the order of the court below should be summarily reversed and the case remanded with directions to dismiss appellee's action.

JUDITH W. ROGERS,
Corporation Counsel, D. C.

RICHARD W. BARTON,
Deputy Corporation Counsel, D. C.
Appellate Division

DAVID P. SUTTON,
Assistant Corporation Counsel, D. C.

JAMES J. STANFORD,
Assistant Corporation Counsel, D.C.

Attorneys for Appellant District of Columbia,
District Building,
Washington, D. C. 20004
Telephone: 727-6252

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was personally served, this 15th day of November 1979, on each of the following:

Stephen M. Sacks, Esquire
Thomas E. Silfen, Esquire
Linda G. Moore, Esquire
Arnold & Porter
1229 19th Street, N. W.
Washington, D. C. 20036

Attorneys for Appellee;

Jerry D. Anker, Esquire
Leslie D. Michelson, Esquire
Wald, Harkrader & Ross
1300 19th Street, N. W.
Washington, D. C. 20036;

Kerry Alan Scanlon, Esquire
Washington Lawyers' Committee
for Civil Rights Under Law
733 15th Street, N. W.
Washington, D. C. 20005,

Attorneys for Appellants
Metropolitan Washington
Planning and Housing
Association, Inc., et al.;

and

Jason I. Newman, Esquire
Harrison Institute for Public Law
605 G Street, N. W. Suite 401
Washington, D. C. 20001

Of Counsel.

DAVID P. SUTTON,
Assistant Corporation Counsel, D. C.

Mr. DIXON. May I now return to my statement, Mr. Chairman?

We at the Council would certainly welcome the opportunity to work with you, Mr. Chairman, and the subcommittee in a deliberative review of this entire area of the Council's emergency powers and the impact of the 30-day congressional review period on our ability to effectively legislate for the District of Columbia. However, I must again urge that the crisis which we have at this moment not be left unmet in a timely fashion. The longer the situation is left in its present state, the deeper the adverse impact on the citizens of the District of Columbia becomes. To allow the current situation to continue for any unwarranted period of time would, in my mind, be a very serious indictment of the ability of government to expeditiously address crisis situations.

S. 1999, minus section 2, would effectively restore order to our financial marketplace and permit our citizens to complete financial transactions which, in some instances, have been pending for months. Delay in its enactment could result in significant losses for individual citizens as well as for some of our financial institutions. I am sure, Mr. Chairman, that you and the rest of the subcommittee share the concern for District residents that we in the local government have expressed by seeking congressional enactment of this unprecedented legislative remedy.

We in the local government have fashioned a legislative remedy for what we recognized as a critical impediment to obtaining mortgage money. It is the congressional review period, coupled with legal uncertainties, which prevents timely operation of that remedy. You and your colleagues, Mr. Chairman, now have an unmistakable opportunity to further strengthen the partnership which exists between us by not allowing the 30-day congressional period to undo our efforts. The citizens of the District of Columbia deserve no less.

As indicated previously, I am opposed to enactment of section 2 of S. 1999 at this time. The very legal uncertainty which has contributed to, if not in fact precipitated the crisis with which we are confronted, might very well be worsened by enactment of section 2. Moreover, Mr. Chairman, it is highly unusual for the legislature to move legislatively in an area which is undergoing judicial scrutiny. That is in fact the situation which would result if further consideration is given to section 2.

The local government stands firmly behind its assertion that it is not abusing its emergency powers and that the exercise of them is and has been prefectly valid. For the Congress to speak on this subject prior to a determination by the highest court of the local government would in effect be an unwarranted legislative prejudgment of the issues now pending before that court. The prudent course, in my judgment, would be to await the judicial determination of the issue and then, if necessary, fashion an acceptable legislative response.

In conclusion, Mr. Chairman, I would again urge expeditious and favorable consideration of S. 1999 minus section 2. The crisis we face demands the remedy we seek. Thank you for your attention. I am available for questions.

Senator EAGLETON. Thank you, Mr. Dixon.

You are, to a certain degree, under similar constraints as was the Mayor because enactments of the District of Columbia City Council are before the court. Corporation Counsel, in a sense, is your attorney

as well as the Mayor's for the purposes of these matters. So, I will not pursue the matter further with you at this time.

Thank you very much.

Mr. DIXON. Thank you very much, Mr. Chairman.

Senator EAGLETON. We have a gentleman who has a plane he must catch, so we will call him out of order. Mr. Malcom Peabody is a member, board of directors, Washington Board of Realtors.

Mr. PEABODY. Thank you, Senator, for taking me out of order; I appreciate that.

TESTIMONY OF MALCOLM E. PEABODY, MEMBER, BOARD OF DIRECTORS, WASHINGTON BOARD OF REALTORS; ACCOMPANIED BY NORRIS A. DODSON

Mr. PEABODY. Senator and distinguished members of the committee, I am Malcolm E. Peabody, a member of the board of directors of the Washington Board of Realtors and chairman of its legislative committee.

With me this afternoon is Norris A. Dodson, sales manager of John R. Pinkett, Incorporated, who is also a member of the board of directors of the Washington Board of Realtors.

We appear before you today to urge you to take immediate action to allow the Interest Rate Modification Act of 1979, passed by the District of Columbia City Council, to take effect immediately by promptly waiving congressional review. We also ask that this action be unencumbered by any such change concerning its emergency powers because any such change ought to receive the careful consideration of a number of bodies prior to passage, and the time involved in such consideration would negate the purpose of waiving review on the usury rate legislation.

I believe you are all acquainted with the events leading up to the present crisis situation in the District of Columbia. Suffice it to say that the action by Fannie Mae and Freddie Mac in cutting off mortgage money to the District, pending the taking effect of the new usury rate law, has brought the residential real estate industry to a standstill and caused great personal hardship to hundreds of families and individuals.

To prepare for this meeting, we contacted 28 of our realtor members, representing approximately 10 percent of the firms engaged in residential real estate sales in the Washington Board of Realtors membership. We found that, within these 28 firms, there were 154 transactions being held up at this time, representing $20,647,900 of mortgage funds. This suggests that the total number of mortgages held up may be around 1,500.

Here are some of the hardships that are occurring as a result:

Interest rates on many of these commitments will rise sharply. Several of the purchases affected have mortgage commitments where interest rates are set at the market rate 30 days before closing. Since the market rate over the past few weeks has been rising sharply, any delay in closing will drive up mortgage costs and will cause sales cancellations where buyers cannot afford the new rate or cannot put up more equity to keep the mortgage cost down.

Delays and cancellations will have a cascading effect since most sellers are involved in buying their own new homes, and many of them

will be faced with double housing expense and may have great difficulty in reselling their homes if a cancellation occurs since the market has now slowed significantly due to rising interest rates and since empty homes are much harder to sell.

Buyers who had counted on moving in on a specific date with their families must find emergency rentals in a very tight housing market. Renting the homes they intended to purchase, however, would be a dangerous solution for the seller; since, if the sale does not go through, according to the rent control law, the seller must give 90 days notice to the tenant for repossession and must also accord tenants an elaborate first refusal right on any new sale which may delay a new sale for several months.

We have a case in hand where a settlement actually did take place, papers were signed, the new purchaser moved in, but the bank refused to send a check to the settlement office, therefore canceling the sale. The position now of the would-be purchaser who was in the building is anomalous. We really don't know what his situation is. He is in there rent free. If the sale is canceled, the owner is in a very difficult legal position. This is just one of the examples that we are faced with.

Some purchasers who have had their sales delayed may face serious tax consequences if the deadline date for reinvesting funds from the sale of their former residence passes in this interim.

The acute distress suffered by families and individuals facing these disruptions has a direct impact on others as well, notably their employers. The Federal Government, for example, depends heavily on the smooth functioning of the real estate market to facilitate the transfer of key personnel in and out of Washington. The State Department is particularly affected. The housing problems faced by these personnel can in turn complicate the functioning of their agencies.

In summary, a number of innocent people are facing hardship because of the current situation. The cutoff of mortgage funds would be serious enough in normal times; but, during the times of fast-rising interest rates, it has much worse consequences. For this reason, we hope that the Senate will waive the review requirements in this case and not encumber the waiver action with a change in the District's emergency legislative powers.

We feel that such action needs careful consideration for it raises the question of the entire relationship between the District and the Federal Government. This relationship may well be in need of readjustment, but we hope that any such changes will be incorporated in different legislation and given a thorough review prior to passage.

Thank you for the opportunity to appear before this subcommittee. That concludes my testimony.

Senator EAGLETON. Thank you very much.

Have you had an opportunity, sir, to consider the methodology that we use, or are attempting to use, in remedying the District of Columbia Charter with respect to emergency legislation?

Mr. PEABODY. Briefly, and as an individual but not as a board.

Senator EAGLETON. Speaking for yourself then, as an individual, and without trying to precisely endorse every comma, semicolon, et cetera, in our proposal—conceptually, does the approach we have taken appear to you to be commonsensical?

Mr. PEABODY. I would say that, if I had my druthers—being from New England, we have our druthers—I would raise the entire question of congressional review and raise it in that context. I think this bill does

not thoroughly address the question. For example, there is no attempt to define what an emergency is. The new bill would permit the kinds of emergency that you related concerning the ice cream vendors. It would not hold that down, as far as I can see, because there is no attempt to define what an emergency is within the charter now or within the amendment.

Senator EAGLETON. There could be no consecutive emergencies though. You understand that fact?

Mr. PEABODY. I do understand that fact, but 180 days for some emergencies have been damaging in some cases.

Also, I feel that——

Senator EAGLETON. Part of your remedy would be to take the congressional review process out entirely?

Mr. PEABODY. Well, I am not enough of a scholar at this point to understand the entire question. But it would seem to me that the need to review every piece of legislation is unnecessary, wasteful, and hampers the District government unnecessarily.

There are definitely reasons for the Federal Government to review certain legislation of the District which have national impact, which affect the Federal Government's activities here. But this is a blanket review. I think that it is unnecessarily hampering. I think that the District needs to have more freedom in that regard.

I think that by taking this problem by itself may reduce the need for an overall review which I think is essential.

Senator EAGLETON. Very good. Thank you very much.

The committee will be in recess for about 5 minutes.

[Recess taken.]

Senator EAGLETON. The committee will be in order.

Our next witness is Mr. James E. Murray, general counsel and vice president, Federal National Mortgage Association.

TESTIMONY OF JAMES E. MURRAY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, FEDERAL NATIONAL MORTGAGE ASSOCIATION

Mr. MURRAY. Good afternoon, Mr. Chairman.

Mr. Chairman, my name is James E. Murray. I am Senior Vice President and General Counsel of the Federal National Mortgage Association, popularly known as Fannie Mae.

I am here today at the subcommittee's request to set forth the basis on which Fannie Mae temporarily withdrew from the District of Columbia conventional mortgage market on November 2, 1979.

In view of the chairman's remarks, I would like my written statement to be made a part of the record. I will try very briefly to summarize our position.

As the chairman may know, Fannie Mae maintains a nationwide secondary market in home loans. Fannie Mae has found it necessary in the current high interest rate environment to monitor much more closely the usury statutes in the various jurisdictions and how they may affect the validity of the mortgages we buy.

Thus, in the case of the District of Columbia, we were aware of the enactment on July 10, 1979 of the first interest rate modification emergency act. This act, effective for a 90-day period expiring on October 9, 1979, eliminated interest rate ceilings on mortgage loans.

We were also aware of a subsequent enactment on October 5 of a second emergency interest rate modification act. This act, effective

for a 90-day period until January 3, 1980, set the mortgage interest rate ceiling at 15 percent.

On October 19, 1979, the Superior Court of the District of Columbia handed down its decision in *The Washington Home Ownership Council* v. *District of Columbia et al.* The *Home Ownership* case involved an application for a declaratory judgment that certain emergency acts of the District of Columbia Council relating to condominiums were unlawfully enacted.

In particular, the court was asked to decide whether the D.C. Self-Government and Governmental Reorganization Act, the Home Rule Act, permits the council to successively enact the same or similar emergency legislation.

In reaching its decision, the court noted:

When the legislative history of the Home Rule Act and the 1978 amendments thereto is considered, the only natural and logical conclusion that can be reached is that the Congress did not confer upon the Council the power to enact "temporary" legislation of indefinite duration through repeated use of the emergency power.

The court then concluded, and the court held in its findings:

that the successive enactment of substantially the same substantive provisions of law through the emergency power, maintaining such provisions in effect for more than 90 days without a second reading or submission for Congressional review is, with respect to the statutes at issue before the Court, unlawful.

Of course, the usury statute was not before the court. The basic legal principle in the *Home Ownership* case, however, and in the present usury matter is substantially the same. Similar to the legislation challenged in the *Home Ownership* case, the October 5 resolution of the City Council setting the usury rate at 15 percent was emergency legislation, succeeding a prior emergency measure on the same subject without an intervening new emergency.

Fannie Mae has concluded——

Senator EAGLETON. Is it fair to say that the significant difference between the case before Judge Revercomb, the condo case, where there were 10 successive "emergencies," and the Fannie Mae example—it is not a case yet—is that with Fannie Mae there were 2 successive emergencies? And Judge Revercomb did not try to decide how many emergencies were enough. The Mayor, in one of his remarks, thought maybe 10—I think he said maybe 10 were too many but 9 might be OK.

Mr. MURRAY. Right.

Senator EAGLETON. Anyway——

Mr. MURRAY. Actually, Mr. Chairman, the cases are a little bit closer than that. In the *Home Ownership* case, count one involved a second emergency enactment. The court ruled that that was invalid. So, presumably, as the court came down in the holding, even a second successive emergency act is invalid unless there is a new emergency. Now, in the case of the interest modification acts, we couldn't see a different emergency. The emergency all along was the same in the District.

So, that basically is the reason——

Senator EAGLETON. Well, your reading of the Revercomb case and mine are the same.

Mr. MURRAY. That's correct.

Senator EAGLETON. As General Counsel of Fannie Mae, have you read other cases in other jurisdiction dealing with emergencies?

Mr. MURRAY. Yes.

Senator EAGLETON. What is the thrust of the body of the law that you were able to ascertain?

Mr. MURRAY. Well, I think the chairman is correct in the belief, in the opinion, that most of the cases have held that there has to be a legitimate emergency. There has to be an emergency and it has to be dealt with. If it is used as a subterfuge to avoid public hearings or for some other purpose, then the law is pretty clear that it is an invalid exercise of the legislative power.

There were many arguments made, and we gave a lot of careful thought to it, but we again, operating in a nationwide market, we did not want to violate the usury law. If a State wants to have a usury law, that is perfectly all right with us; we are not going to interfere with that; we are going to obey the law.

Also, in the District, there is the fact that the lender loses all its interest if it violates the usury law. The argument that we should have waited until there is a lawsuit filed didn't really bear much weight with us because we are exposed constantly to criticism that we were making commitments to lenders, that we would purchase mortgages and then find out later on that they violated the usury law. So, the consequences, in our view, were too important, too serious not to have acted. We felt we had to act and act promptly.

Mr. Chairman, that concludes my remarks.

Senator EAGLETON. Are there other States—getting away from the question of emergency legislation and getting away from the question of successive emergencies—that have locked in place usury laws with rates like 10, 11, 12, rates that are pragmatically nonapplicable in today's high interest rate money market, where Fannie Mae has had to shut down its operation?

Mr. MURRAY. Yes, Mr. Chairman. We are effectively out of business now, as far as new business is concerned, in some 24 States—unfortunately, even in your own State of Missouri. Missouri attempted to set an interest rate, a floating rate, after a great deal of controversy, and they unfortunately picked the wrong float.

Senator EAGLETON. That's right. We always do that.

Mr. MURRAY. It is now 11:25. As we all know, the market rates are up around 12.5 or 13 percent. I do not want to get into the philosophy of the usury laws——

Senator EAGLETON. No, I understand.

This crisis—and it is a crisis—that is faced here in the District of Columbia is a crisis shared by some 20-plus other jurisdictions around the country.

Mr. MURRAY. That is correct.

Senator EAGLETON. I think I can judicially note for the record: I do not think there is any State legislature currently in session in the United States today. I may be wrong on that by maybe one or two; California has long sessions, but certainly Missouri is not in session. The vast bulk of the States have their legislative sessions beginning in January. Some have 60-day sessions; some have 90; some have 180 days. But practically all are finished by the month of November.

Hence, all of those States are in the same dilemma, and there will be no remedy in those States until next January.

Mr. MURRAY. That is correct, Mr. Chairman.

I believe the Governor of Arizona has announced that he will call an emergency session of their legislature.

Senator EAGLETON. All these States have the latitude of calling a special session.

Mr. MURRAY. Right. That is the only way that any relief could come.

We are eager to get back into business in the District of Columbia, Mr. Chairman. Our charter mandate is to provide liquidity to the mortgage market. We are not happy. We regret having done what we did. We felt we had no other option but to do that. We certainly support the efforts of the Mayor, the City Council, the administration and the Congress in trying to correct this situation as quickly as possible.

[The prepared statement of Mr. Murray follows:]

PREPARED STATEMENT OF JAMES E. MURRAY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, FNMA

Mr. Chairman and Members of the Subcommittee, my name is James E. Murray. I am Senior Vice President and General Counsel of the Federal National Mortgage Association (FNMA). I am here today at the Subcommittee's request to set forth the basis on which FNMA, on November 2, 1979, advised lenders which sell mortgages to our company that we would not consider the purchase of conventionally financed home loans on properties in the District of Columbia if those loans are made pursuant to Emergency Act 3-79, enacted into law on October 5, 1979, and called into question, we believe, by a recent ruling of the D.C. Superior Court.

Before discussing the legal considerations involved in our decision, it would be helpful to say a few words about our company. FNMA is a Federally chartered, but privately owned, managed and financed company. We are subject to certain Federal regulations and, of course, to Congressional oversight. We pay full Federal corporate income tax.

FNMA operates nationwide. The corporation does not originate mortgage loans. Rather, it buys home mortgages pursuant to forward commitments, generally good for a four-month period, issued to mortgage bankers, savings and loan associations, mutual savings banks, commercial banks and other originating lenders. These lenders have been approved on the basis of financial capacity and ability to make and service mortgages.

Based on FNMA's commitment, a lender will, in turn, commit itself to home builders, real estate agents or to prospective home buyers to make mortgage loans. FNMA, under its commitment procedure, is legally obligated to buy those mortgages delivered by the lender against outstanding commitments, provided those mortages meet our requirements.

Our operations are not financed, directly or indirectly, by the Federal Government, but by funds raised in the nation's money and capital markets.

Over the last several months, as home mortgage interest rates have risen, originating lenders have had to consider more carefully the legal effect, if any, of state and local usury laws on the residential loans they were making. Because many of these laws set interest rate ceilings below today's market rates, there is currently little or no conventional lending in a substantial number of jurisdictions. Thus, while not trying at all to minimize the problem now existing in the District, the problem here is not unique. In fact, the problem is so prevalent that the Congress is now actively considering legislation that would preempt state usury laws, not only for government-backed residential mortgages, such as those insured by the Federal Housing Administration or guaranteed by the Veterans Administration, but conventionally financed residential loans as well.

Maintaining a nationwide secondary market in home loans, FNMA has found it necessary in this high mortgage interest rate environment to monitor much more closely the usury statutes in the various jurisdictions and how they may affect the validity of the mortgages we buy.

Thus, in the case of the District of Columbia, we were aware of the enactment on July 10, 1979 of the Interest Rate Modification Emergency Act of 1979 (EA 3-52). This resolution, effective for a ninety-day period expiring on October 9, 1979, eliminated interest rate ceilings on mortgage loans. We were also aware of the enactment on October 5, 1979 of the Interest Rate Modification Second Emergency Act of 1979 (EA 3-79). This resolution, effective for a ninety-day period until January 3, 1980, set the residential mortgage interest rate at 15 percent.

The D. C. Council has now passed and the Mayor has signed the Interest Rate Modification Act of 1979 (Act No. 3-119), which is permanent legislation setting the mortgage interest rate at 15 percent. It is this resolution which is

the subject of legislation now pending in the Congress in S. 1992, S. 1999, and H.R. 5811.

On October 19, 1979, the Superior Court of the District of Columbia handed down its decision in The Washington Home Ownership Council v. District of Columbia et al. (Civil Action no. 10624-79) (hereinafter referred to as "WHOC").

The WHOC case involved an application for a declaratory judgment that certain emergency acts of the D. C. Council relating to the sale, acquisition and development of real estate for cooperative or condominium ownership in the District were unlawfully enacted. In particular, the Court was asked to decide whether the Disctrict of Columbia Self-Government and Reorganization Act - the Home Rule Act - permits the Council to successively enact the same or similar "emergency" legislation. In reaching its decision, the Court noted that

> When the legislative history of the Home Rule Act and the 1978 amendments thereto is considered, the only natural and logical conclusion that can be reached is that the Congress did not confer upon the Council the power to enact "temporary" legislation of indefinite duration through repeated use of the emergency power.

The Court then concluded and held

> that the successive enactment of substantially the same substantive provisions of law through the emergency power, maintaining such provisions in effect for more than ninety days without a second reading or submission for Congressional review is, with respect to the statutes at issue before the Court, unlawful.

The validity of the Interest Rate Modification Second Emergency Act of 1979 (EA 3-79) was not before the Court in the WHOC case. The basic legal principle in WHOC, however, and in the present usury matter is substantially the same. Similar to the legislation challanged in the WHOC case, the October 5 resolution of the City Council (EA 3-79) setting the usury rate at 15 percent was emergency legislation, succeeding a prior emergency measure (EA 3-52) on the same subject without there being an intervening new emergency. I believe, therefore, that the holding in the WHOC case casts serious doubt on the legality of the present D.C. usury statute.

FNMA will not knowingly purchase a mortgage loan that has been made in violation of a state or local usury law. There also are severe consequences imposed on a lender or an investor for a violation of the D.C. usury law. FNMA has concluded that it would not be prudent to continue the purchase of conventional mortgages in the District where the interest rate on such mortgages is in excess of 11 percent, which is the rate contained in the permanent D.C. usury statute.

I am aware that the D.C. Court of Appeals will consider an appeal of the WHOC decision. The Superior Court's decision could be reversed, modified, or it could well be sustained.

In conclusion, Mr. Chairman, I want to say that FNMA regreted having to take the action it did. However, pending a final decision in the WHOC case or the enactment of permanent legislation resolving the D. C. interest rate problem, I continue to believe that, as a matter of prudent legal judgment, FNMA could have taken no other action than that which it did take.

The legislation now pending before this Subcommittee and in the House should resolve the matter. It should remove the uncertainty which presently plagues lenders, real estate salespersons, home builders, and, most importantly, home buyers and sellers. FNMA certainly supports this collective effort of the City Council, the Mayor, the Administration and the Congress because we believe that those who wish to buy and sell property located in the District should have access to home financing and to the benefits of the secondary mortgage market of which FNMA is a part. FNMA will be pleased to work with this Subcommittee to that end.

I will be happy to answer any questions.

Senator EAGLETON. Thank you, Mr. Murray.

Our next witness is Mr. Philip Brinkerhoff, President, Federal Home Loan Mortgage Corporation.

There is a vote on the floor. I will be back in a couple of minutes.

Mr. SHAPIRO. Mr. Brinkerhoff, you may proceed.

TESTIMONY OF PHILIP R. BRINKERHOFF, PRESIDENT, FEDERAL HOME LOAN MORTGAGE CORPORATION

Mr. BRINKERHOFF. I appreciate this opportunity to come before the subcommittee today and testify on this proposed legislation to validate the District of Columbia Council's action raising the usury limit to 15 percent. Like Mr. Murray, I applaud the action of the Congress, the Council and the administration in seeking to remedy this situation. So that investors such as the Mortgage Corporation, Fannie Mae and others can resume their activities in the District of Columbia with confidence.

I would like to present a bit of background on how the secondary mortgage market operates and the effect of usury ceilings on that marketplace.

Each year nearly $200 billion in mortgages are originated in the United States on single family homes. In the District of Columbia alone there were more than $900 million in home mortgages originated last year by savings and loan associations.

If all financial institutions had to hold these loans in their portfolios, the extent of their lending would be limited by the amount of deposits that they can attract, by the repayments they receive on the mortgages they have already made, and by the amount of borrowings that they can sustain. Fortunately, the institutions are not limited in this way, because they have access to the secondary mortgage market. Last year that market accounted for over $65 billion of mortgages in the United States.

The secondary market is made up of such diverse investors as pension funds, bank trust companies, and insurance companies. When thrift institutions and other typical mortgage lenders have excess funds, they will enter this national secondary mortgage market to buy loans from other parts of the country.

In addition to this, over the last 40 years, Congress has created three national secondary market entities. These also have played a very important part in establishing a secondary market nationwide and creating additional funds for housing.

In 1938, Fannie Mae was created by Congress as a secondary market entity within the Government. In 1968, the original Fannie Mae was split, in essence, into two parts. The Government National Mortgage Association—or Ginnie Mae—remained a part of HUD and took on the functions of guaranteeing mortgage-backed securities and buying mortgages at below-market interest rates. Fannie Mae then became in essence a private corporation with a charter to buy FHA VA mortgages at market rates.

By 1970, all of this activity in the FHA and VA markets had created a well-established national secondary market. FHA and VA mortgages then were originated on standardized forms. Because of their uniform nature, institutions all over the country were capable

and desirous of buying FHA and VA mortgages, and they were traded with real ease all over the country.

Unfortunately, there was no commensurate secondary market in conventional mortgage loans, even though such loans accounted for about 85 percent of all mortgage loans made nationwide. In 1970, Congress created the Federal Home Loan Mortgage Corporation—Freddie Mac, as it is commonly known—of which I am the president, with the purpose of increasing liquidity in the secondary market for conventional loans.

At that time, Fannie Mae was also authorized to purchase conventional loans in the secondary market.

Our corporation, the Federal Home Loan Mortgage Corporation, was established with an initial $100 million of capital from the 12 Federal Home Loan Banks and established with the board of directors consisting of the members of the Federal Home Loan Bank Board, who are appointed by the President and confirmed by the Senate.

These three corporations—GNMA, FNMA, and the Mortgage Corporation—provide a means of accomplishing two purposes. One is to take funds from areas of the country where they are in excess and supply them to areas where there is a deficit of funds. The second is to bring new money into housing from areas outside the housing sector altogether.

Last year the three entities purchased over $20 billion in mortgage loans, about $7.5 billion of which was purchased by the Mortgage Corporation.

With respect to the District of Columbia, so far this year we have purchased about $73 million in mortgages from 14 different District lenders active in our programs, compared to about $66 million last year. So, we have been more active in the District of Columbia during this particular year.

It is hard to get an exact count on that because the $73 million reflects lenders located in the District of Columbia that have commitments to sell mortgage loans to us. Some of these may be making loans on properties in Maryland and Virginia. By the same token, some Maryland and Virginia lenders may be making mortgages on District of Columbia properties. I think that is a pretty close estimate.

The way our program operates is that each week we hold an auction at which lenders submit bids to sell mortgages to us. We determine the volume of those bids that we can accept by looking at economic conditions generally, considering the volumes of bids that we receive and the support that we think is needed by the housing marketplace. Also, the amount of mortgages that we can purchase is determined by the amount that we can sell at any given period of time.

The Mortgage Corporation has a limited capital base and does not receive appropriations from Congress from the Federal budget. So, we have to, as a business policy, balance the purchases of mortgages with sales of those mortgages in the marketplace.

Since we have been founded, we have purchased over $20 billion in mortgage loans. We have sold most of those or provided financing for most of those purchases by selling mortgage-backed securities in the general capital marketplace. These mortgage-backed securities, which are know as participation certificates and guaranteed mortgage certificates, are sold to many investors who otherwise would not

invest in mortgages—such as bank trust accounts, pension funds, and insurance companies, and even thrift institutions when they have excess funds that they cannot put to use in their own communities.

In order to sell those mortgage-backed securities to such a broad class of investors, it is necessary for us to price them competitively with other kinds of competing investment opportunities for those investors. All of you are, I think, painfully aware of what has happened in the last few weeks in the capital marketplace in terms of interest rates. That is reflected in the fact that last Friday the yield at which we purchased mortgages was 13.22 percent.

This is a yield that is fairly comparable with other secondary market investors all over the country. It basically has to compete, as I said, with other kinds of investment opportunities that are available in the marketplace.

Unfortunately, when usury ceilings preclude the origination of mortgages at rates that are competitive in this kind of environment, many lenders are locked out of the marketplace altogether. Also unfortunately, usury laws are at their most damaging at particular points in the cycle where interest rates are rising fastest. In this type of an environment, savers are prone to withdraw their funds from thrift institutions and invest in other types of instruments in the capital markets.

Secondary market investors such as ourselves, who would like to provide additional sources of liquidity to lenders and to serve those needs, find themselves unable to do so if the lenders cannot originate mortgages at competitive rates.

Senator Eagleton asked about States that are restricted now by usury limits. As an attachment to the testimony, I have listed 24 States that are indicated by the U.S. League of Savings Associations as having rates of 13 percent or below and consequently would be impacted by the current interest rate environment. Lenders in all of these States now are effectively precluded from the secondary market because of their inability to offer competing rates.

In those States, even when lenders do experience savings inflows, the costs of those savings are such that it often makes it impractical for them to offer mortgage loans at rates that are less than those prevailing in other parts of the country.

You are undoubtedly award that, since June 1978, this cost has increased very dramatically. A great deal of the new sources of funds for savings and loan associations and other depository mortage lenders have come through money market certificates. This has, on the one hand, helped us sustain the savings inflows to thrift institutions. On the other hand, it has been very high-cost money tied to the 6 month Treasury bill rate. That rate now is in excess of 12 percent. In that kind of an environment, where lenders are paying 12 percent or more for their funds, they are reluctant to make loans at rates below 12 percent where usury laws dictate that situation.

One of the things that happens in an area where usury laws have this impact is that mortgage lenders who are severely impacted by the usury situation will take their funds and invest in mortgages from other areas of the country that are not affected by usury. That, for the local jurisdiction that is affected by the usury, has the unfortunate effect of transferring funds from out of that area to another area

of the country, with all that means for that area's economy, construction activity, housing and what have you.

What this all means is that, in the environment we are now in, basically all facets of mortgage lending have been tied into a nationwide kind of an environment, and——

Mr. SHAPIRO. Mr. Brinkerhoff, If I could interrupt, I notice, as you move from your background into tying it into the current situation, I would like to suspend for a couple of minutes until Senator Eagleton comes back. He is particularly concerned about this. He should be back from his vote momentarily.

Mr. BRINKERHOFF. Fine.

[Recess taken.]

Senator EAGLETON. Mr. Brinkerhoff, you may continue.

Mr. BRINKERHOFF. Thank you, Senator.

Just to recap in a sentence or two what I have been previously discussing, we are providing a little background for this discussion in terms of the operation of the secondary mortgage market, of which the Mortgage Corporation is a part.

Basically, the point that I was illustrating by the background material was that the mortgage market has become very much a national marketplace now, tied to interest rates in the capital markets and nationwide. Mortgage lenders are severely restricted in areas where there are usury laws that restrain the free movement of mortgage rates.

One of the impacts of that is that those lenders often have to take those funds and invest them in other areas of the country that are not impacted by usury limits. That transfers capital out of that particular locality such as the District of Columbia and has an impact on construction activity and housing, as you have heard from other witnesses here today.

With respect to situations where there are not usury laws in effect, competition in those areas among mortgage lenders tends to hold the mortgage rates in those areas to rates that prevail generally across the country. This competition basically provides the same kind of protection to consumers that usury laws were originally intended to give. I think the States of Maryland and Virginia, where there are no usury laws now, are a good example of how that marketplace works.

In this respect, the Corporation has taken an active role in supporting Federal preemption of State usury ceilings. As you know, Senator, in the Depository Institutions Deregulation Act, which was passed by the Senate earlier this month, there was a Federal preemption of State usury laws.

With this background, I want to turn to the events of last week and our part in what has happened.

Senator EAGLETON. Would it be fair to say that, in the interest of time, the decision process that you went through was somewhat analogous, if not identical, to the decisionmaking process by Fannie Mae?

Mr. BRINKERHOFF. Yes, sir, completely.

Senator EAGLETON. And it was done for about the same reasons as Fannie Mae made their decision?

Mr. BRINKERHOFF. Yes, sir. That would be correct.

Senator EAGLETON. Are you a lawyer?

Mr. BRINKERHOFF. Yes, sir.

Senator EAGLETON. Do you have a general counsel at Freddie Mac?

Mr. BRINKERHOFF. Yes.

Senator EAGLETON. Did the General Counsel advise you, based on the Revercomb decision, although not directly a case in point dealing with usury laws but nevertheless the rationale of the Revercomb decision, that further lending by Freddie Mac might be subject to legal challenge?

Mr. BRINKERHOFF. Yes, sir.

Senator EAGLETON. Did your General Counsel examine the body of law in other States that had dealt with either the frivolous exercise of an emergency clause or the continuous and successive exercise of an emergency clause?

Mr. BRINKERHOFF. I am not aware of that particular issue.

Senator EAGLETON. Did he give you a legal opinion in writing, your General Counsel?

Mr. BRINKERHOFF. I am not aware that I have a legal opinion in writing, but I discussed it with him in great detail.

Senator EAGLETON. Were your conversations with him totally oral?

Mr. BRINKEROFF. Basically, because we made our decision the day after Fannie Mae made its decision. We were operating in an environment where we had to quickly review that as well as the Revercomb decision and come to a conclusion as to what we were going to do in that situation.

We basically found that, while the usury situation and the Revercomb case are obviously not identical, there is a reasonable correlation between the situations there. We did not feel it was prudent for us to continue in the marketplace in that kind of environment.

Senator EAGLETON. Is Freddie Mac out of business in some 20 other States because of the usury laws that have been outstripped by the forces of the money market?

Mr. BRINKERHOFF. In effect.

We have attached to our testimony a list of 24 States that are now affected. Institutions there can discount loans and sell them to us, but it is a substantial loss to the institutions. They generally will not do that.

Senator EAGLETON. As far as I am concerned, that summarizes the points that I would be interested in hearing, unless you have something else you would want to add, Mr. Brinkerhoff. We will make the entirety of your statement a part of the record following your testimony.

Mr. BRINKERHOFF. I would just like to add that we were interested to make sure that the legislation that was before the House and the Senate would cover loans made between October 5 and such time as the legislation becomes effective. Our General Counsel has reviewed this legislation and is satisfied that that is the case; there will not be that hiatus in there.

We support very strongly a prompt action to enact this kind of legislation so that we can be active again in the District of Columbia marketplace. It has been a good market for us. We would like to be active in it.

Senator EAGLETON. Thank you very much, Mr. Brinkerhoff.

Mr. BRINKERHOFF. Thank you.

[The prepared statement of Mr. Brinkerhoff, with attachment, follows:]

PREPARED STATEMENT OF PHILIP R. BRINKERHOFF, PRESIDENT,
FEDERAL HOME LOAN MORTGAGE CORPORATION

Mr. Chairman and members of the committee, I appreciate the opportunity to testify before you today on proposed legislation to validate the District of Columbia Council's action raising the usury ceiling to 15 percent. I applaud the committee's action in moving swiftly toward passage so that investors will be able to return to the D.C. market with confidence.

Before discussing the events of the past few weeks, I think some background information on the secondary market and the effect of usury ceilings would be useful.

Each year, nearly $200 billion in mortgages are originated on single family homes across the country. In the District of Columbia, nearly $900 million in home mortgages were originated last year by savings and loan associations.

If financial institutions had to hold these loans in their portfolios, the extent of their lending obviously would be limited by the amount of savings deposits they could attract, loan repayments they would receive, and borrowings. Institutions are not limited in this way, however, because they can sell their loans in what is known as the secondary mortgage market. Last year, over $65 billion worth of mortgages were sold in the national secondary market.

The secondary market is made up of such diverse investors as pension funds and insurance companies as well as traditional mortgage lending institutions such as savings and loan associations which have funds in excess of those needed to meet local lending demand. This portion of the secondary market is called the private market.

In addition, over the last four decades, Congress has created three secondary market corporations, which in large part have been responsible for the growth of the private

market, and have also provided an important secondary market outlet in their own right.

In 1938, Congress created the Federal National Mortgage Association as a secondary market entity within the government. In 1968, Congress split the original FNMA into two corporations. The Government National Mortgage Association was made a corporation within HUD to buy mortgages at below market interest rates and to guarantee mortgage-backed securities issued by lenders. At that time, FNMA became a private corporation to buy market rate FHA and VA mortgages.

By 1970, the secondary market for FHA and VA mortgages was well established by these two corporations. FHA and VA loans were originated on standardized forms. Because of their uniform nature, financial institutions not only sold them to FNMA and GNMA, they also bought and sold them among themselves with relative ease.

There was no significant secondary market activity in conventional loans at that time, and each lender had its own forms and standards that varied widely.

In 1970, Congress created the Federal Home Loan Mortgage Corporation to increase the liquidity of the conventional mortgage, and to provide a secondary market for such loans. At that time, FNMA was also authorized to purchase conventional loans. The Federal Home Loan Mortgage Corporation was established for public and socially beneficial purposes and structured to operate as a corporation. It was capitalized with $100 million from the Federal Home Loan Banks, which are its only shareholders. The members of the Federal Home Loan Bank Board constitute the board of directors for the corporation. The board, of course, is appointed by the President of the United States.

These three corporations--GNMA, FNMA, and the Mortgage Corporation--provide a means of transferring funds from areas of the country which have excess funds to lend to regions where loan demand exceeds deposits. The three corporations purchased over $20 billion in mortgages during 1978, with the Mortgage Corporation accounting for $7.5 billion of that.

So far this year, we have purchased $73 million in mortgages from the 14 District lenders active in our programs (12 savings and loan associations, one commercial bank and one credit union). This compares with $66 million for 1978.

These figures do not reflect the exact volume of mortgages we've purchased that are secured by properties in the District, but they are probably a close estimate. Lenders in D.C. can also originate loans on properties in Maryland and Virginia and lenders in Maryland and Virginia, of course, can also lend on properties in the District.

Each week, the Mortgage Corporation holds an auction in which lenders submit bids to sell their mortgages to us. We determine the volume which we will buy each week based on the volume of bids received, the level of support needed by lenders and the economic outlook. The amount we purchase is also governed by the volume of mortgages we believe we can sell in a reasonable period of time. Since the corporation has a limited capital base and does not receive operating funds from the Federal budget, we must balance our purchases of mortgages with our sales.

Since its founding, the corporation has bought over $20 billion worth of mortgages and resold most of them in the form of pass-through securities. Our basic securities

are called Participation Certificates and Guaranteed Mortgage Certificates. They are designed to attract investors that generally would not invest in mortgages--such as pension funds, insurance companies and trust departments of commercial banks. When thrift institutions have funds in excess of loan demand, our securities provide them with another means of investing in mortgages.

In order to sell our securities, we must price them so they compete favorably with many non-housing securities such as corporate bonds. All of you are painfully aware of what is currently happening in the capital markets. Because of current market conditions, the weighted average yield at our auction of last Friday was 13.223 percent.

The yields we are requiring are not appreciably different from those required by other secondary market investors--both non-housing investors such as pension funds and those few financial institutions which do have funds to invest. Such investors are not willing to forego investments at today's high yields to invest in mortgages originated at much lower rates.

Where usury ceilings preclude origination of mortgages at rates competitive in the capital markets, lenders are locked out of the secondary market because they cannot meet investors' yield demands without discounting the loans. Such discounting could create substantial losses for lenders and would be in conflict with the institutions' fiduciary responsibilities to depositors.

Unfortunately, usury ceilings which are lower than realistic market rates are most damaging at points in the economic cycle when the secondary market is most needed by

lenders. When short-term rates in the capital markets rise, as they have been doing for some time, many savers withdraw their funds from thrift institutions and invest in capital markets. At such times, secondary market investors are a vital source of liquidity to lenders who want to continue serving homebuyers' needs. If lenders could originate at competitive rates, they could sell their loans to the Mortgage Corporation or to other secondary market investors and then reinvest the proceeds in new mortgages.

According to the United States League of Savings Associations, S&Ls in at least 24 states are restricted to rates of 13 percent or less by current usury ceilings. (A list of these states is attached.) Lenders in those states cannot effectively use the secondary market, and as a result, home lending has slowed to a virtual standstill.

Even when lenders do experience savings inflows, the high cost of savings deposits in times of tight credit makes it impractical for them to make mortgage loans at rates far below those prevailing in most areas of the country. Since June 1978, this cost has increased dramatically. Since that time, Money Market Certificates (MMCs) have been used extensively to sustain savings inflows to thrift institutions in the face of sharply rising interest rates in competing short-term debt markets. Maximum rates permitted to be offered on MMCs are tied to the weekly auction rate on six-month U. S. Treasury bills. Thrift institutions using MMCs to attract funds for mortgage lending now have to pay rates in excess of 12 percent for these funds. As a result, their overall cost of funds is such that lenders are reluctant to make loans at below market rates.

Normally, mortgage lenders severely affected by usury ceilings refrain from making loans in their own local markets, and instead, invest in securities or higher yielding mortgages from other parts of the country, to the extent permissible under federal and state regulations. In effect, then, funds generated from savers within the state are made available to borrowers outside state boundaries. Obviously, the transfer of local funds out of state will do damage not only to housing and construction activity in the state, but also to other sectors of the state's economy, or in this case the District.

As you can see from the above discussion, all facets of the nation's home lending delivery system have become closely tied to prevailing market rates across the country. The activities of the Mortage Corporation and others have produced a truly national market. In today's national market, competition among lenders will hold rates at levels consistent with rates generally prevailing across the country. This competition provides the same protection to consumers that state usury ceilings were originally intended to give. This has been demonstrated in several states where usury ceilings have been removed. Maryland and Virginia are two prime examples near at hand.

The corporation has taken an active role in supporting federal preemption of state usury ceilings for all mortgages. As you know, the Depository Institutions Deregulation Act of 1979, which was passed by the Senate earlier this month, contained such a preemption.

With this background, I will now turn to the events of last week. Your staff asked that I go into some detail about the decision we made to suspend purchases of mortgages secured by properties in the District of Columbia if effective interest on the mortgages exceeds 11 percent and the mortgages were closed on October 5th or later. Prior to FNMA's announcement,

we had not analyzed the October 19th District of Columbia Superior Court decision in the case of The Washington Home Ownership Council, Inc., v. District of Columbia, concerning emergency condominium conversion legislation.

FNMA's decision reflects a reasonable interpretation of the consequences of the condominium conversion decision, although there are factual distinctions between the condominium situation and the usury situation that could lead a court to uphold the emergency usury legislation. Once FNMA made its announcement, the chance that a borrower might sue was increased. This is a very important consideration for the corporation because of our need to sell virtually all of the mortgages we purchase. We would have to provide an opinion to our investors that there is no reasonable possibility that such a borrower's suit could be successfully prosecuted. There is enough similarity between the use of the emergency authority in the condominium situation and its use in the usury situation that we cannot give an unqualified opinion. Lenders wishing to sell to us cannot warrant that the loans are clearly not usurious. We therefore had no choice but to suspend purchase of D.C. loans.

The 14 D.C. lenders participating in our programs currently hold outstanding commitments to deliver $26 million worth of mortgages to us. To date, we know that at least $6.5 million of the loans they intended to sell to us are D.C. properties and carry rates in excess of 11 percent. These commitments represent a significant level of home lending to citizens of the District. Naturally, the lenders who are holding them are concerned because of the effect upon their financial planning and liquidity.

When we accept an offer to sell us mortgages, we do not know where the mortgaged properties will be located. The offer is simply for a certain dollar amount and yield. The lender can include loans from various jurisdictions.

Under most of our purchase programs, delivery under commitments is mandatory.

Our regional office is working individually with the seller/servicers affected by the unusual circumstances of this case. We're offering D.C. area sellers options along the following lines:

(1) They may deliver loans on properties in Maryland and Virginia;

(2) They may seek an extension of their commitment contract in anticipation of a legislative remedy;

(3) They may give a partial delivery of Maryland and Virginia mortgages and inform us that they had planned to meet the remainder of the commitment with loans on District properties;

(4) They may deliver no loans after informing us that they had planned to meet the entire commitment with District loans.

In the latter two cases, there will be no penalty for failure to deliver.

The D.C. Council legislation which would be made permanent by the bill before you will apply to loans made on or after October 5th. This legislation should clarify

the legal status of loans originated at rates in excess of 11 percent between October 5th and the effective date of your bill. Our general counsel has examined the House Committee's language, which I understand your bill tracks, and has assured me that it adequately addresses loans made during this period.

In closing, I want to stress that the Mortgage Corporation is anxious to resume its support of the District's housing market. I urge you to act promptly in sanctioning the City Council's action raising the usury ceiling to 15 percent.

I will be happy to answer any questions.

States with Usury Ceilings Below 13% Affecting Savings and Loan Associations*

Arizona	South Dakota
Arkansas	Washington
District of Columbia	Wisconsin
Hawaii	Georgia
Idaho	Illinois
Kansas	Iowa
Mississippi	Minnesota
Louisiana	Missouri
Nebraska	New York
New Jersey	Pennsylvania
New Mexico	Texas
North Dakota	Vermont
Oregon	

*Source: U.S. League of Savings Associations

Senator EAGLETON. Mr. Walter Mess is president, Mortgage Bankers Association of Metropolitan Washington.

TESTIMONY OF WALTER L. MESS, PRESIDENT, MORTGAGE BANKERS ASSOCIATION OF METROPOLITAN WASHINGTON

Mr. MESS. Mr. Chairman, thank you for the opportunity to appear.

My name is Walter L. Mess. I am president of the Mortgage Bankers Association of Metropolitan Washington, which represents 155 mortgage banking firms operating in the Washington, D.C., metropolitan area.

Much of what I have to say has already been said by you and by others. However, I will proceed; it is short.

As this subcommittee is aware, mortgage lending in the District of Columbia has come to a virtual standstill. This situation stems from the uncertainty created by a recent decision of the D.C. Superior Court which, at least arguabley, casts doubt on the legality of the Interest Rate Modification Second Emergency Act of 1979. It was pursuant to that act that the District of Columbia City Council provided a 15-percent interest rate ceiling for loans secured by first deeds of trust——

Senator EAGLETON. Are you an attorney, Mr. Mess?

Mr. MESS. I have legal degrees; yes, sir. I am not a practicing attorney.

Senator EAGLETON. Does the Mortgage Bankers Association have a legal counsel?

Mr. MESS. It does.

Senator EAGLETON. Did your legal counsel supply anything to you in writing after the Revercomb decision?

Mr. MESS. No, sir. We had a meeting with general counsel. It was decided that he had some question in his mind as to whether or not it could be applied, but there was a good argument that the decision had good grounds; however, there was room for a suit.

Senator EAGLETON. Would it be fair to say that, at the very least, the Revercomb dicision is unsettling insofar as the usury rates of the District of Columbia are concerned?

Mr. MESS. Yes, sir.

Senator EAGLETON. That almost goes without saying based on the testimony of Mr. Murray and Mr. Brinkerhoff; does it not?

Mr. MESS. That is right.

Senator EAGLETON. And, as long as it is unsettled, that has to disturb you, as the president of the Mortgage Bankers Association; right?

Mr. MESS. It does. As a matter of fact, we argued for no lid at all, as we had worked for in the State of Virginia and in Maryland.

Senator EAGLETON. I take it your association wants immediate and prompt action on the question of the usury rate. Is that correct?

Mr. MESS. Yes.

Senator EAGLETON. Has your association, as an association, taken any position with respect to remedying the emergency powers section of the D.C. Home Rule Act?

Mr. MESS. We have, and I have addressed it here.

Senator EAGLETON. OK; go to that.

Mr. MESS. As a consequence of this uncertainty, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC) and many private investors have cut off the purchase of first mortgage loans secured by D.C. properties made after October 5, 1979, where the interest rate exceeds 11 percent. This action has effectively eliminated the secondary mortgage market as a source of funds for the Housing Industry.

Mortgage banking firms cannot continue lending activities to deliver home loans into the secondary market. Therefore, at the present time, there is not a single mortgage banker obtaining new commitments for home loans in the District of Columbia.

This shutdown of home lending by mortgage banking firms combined with the reluctance of institutional investors to participate in home mortgages is having a potentially disastrous effect upon the home-buying and home-selling public in the District of Columbia. Without the ability to obtain financing, purchasers are unable to fulfill existing contracts and potential purchasers are unable to enter into sales agreements.

We have some numbers dealing with that at the moment. They approach $30 million. They are merely guesstimates and inferences.

In response to this crisis, the House District Committee last week favorably reported a bill, H.R. 5811, introduced by D.C. Delegate Walter Fauntroy, Congressman Michael Barnes of Maryland, and others, which would waive the 30-day congressional review period with respect to the Interest Rate Modification Act of 1979, the permanent legislation raising interest rates to 15 percent. Upon passage of H.R. 5811 by the House of Representatives and similar legislation by the Senate, the permanent D.C. usury legislation will become effective upon signing by the President. We had hoped to have this action accomplished by the third week in November.

However, it is now our understanding that this subcommittee will consider expanding the legislation in an attempt to not only accomplish a waiver of the 30-day congressional review period but also to amend the District of Columbia Self-Government and Governmental Reorganization Act—the Home Rule Act—to modify the provisions relating to the power of the city council to enact emergency legislation.

On the question of revising the provisions relating to the powers of the City Council to enact emergency legislation, recent events have demonstrated a need to study the current provision in light of actual experience.

We are concerned that expansion of the scope of the House bill may entail additional hearings in the House, resulting in time delays, which will in turn delay resolution of the critical situation with respect to mortgage lending in the District of Columbia.

We had felt that, because of the things that have come before the House and the Senate which are probably of more national and international need, that this would be delayed probably 6 months or maybe even forever.

We would respectfully urge, Mr. Chairman, that this subcommittee report out a bill identical to the version approved by the House Committee on the District of Columbia without delay. The speedy enactment of such legislation will allow us to get on with the business of home mortgage lending.

The very legitimate concerns relating to the adequacy of the emergency legislative powers of the District of Columbia City Council should be the subject of separate legislation so that any delay attendant to the consideration of such a substantive change to the provisions of the Home Rule Act will not encumber a quick resolution of the lending crisis.

I do admit that there are the two crises, and I agree with you totally because I believe that is the body of the law. However, the attempt to put these together may delay the situation. And it is only on that basis, simply because I have a smattering of the way these things are handled here. You, of course, believe that it can be handled rather quickly. I believe it will have to be addressed. I believe there is room. But I do know that there are certain situations in the emergency acts that do become repetitive.

You raised the question and I know just enough about it to give you some idea of why the emergency acts occur on the alley closings. It has to do with zoning. It is a question of the chicken and the egg. You'll see the emergency act done in order that the alley can be vacated so they can present their total plans, bring it back for the whole operation to take place. It is a chicken and egg set of circumstances.

That particular question needs some clarification. It might not be the real good example as the ice cream case. The ice cream case could actually have been, as you called it earlier, some shootouts going on. Maybe there is some reason for that. Ten—I have to agree.

That is my feeling on it. I am open to any questions. I will try to answer.

Senator EAGLETON. Do you own an apartment building in the District of Columbia?

Mr. MESS. I did and sold it.

Senator EAGLETON. Before or after rent control?

Mr. MESS. Quite some time ago, after I had taken a $150,000 loss.

Senator EAGLETON. If you owned an apartment building today and were thinking of converting it to a condominium, what would your feelings be about the subject matter before this subcommittee?

Mr. MESS. I believe it is private property. It should have the opportunity to be sold like an automobile or my suit.

Senator EAGLETON. But, if you owned that apartment building today and were thinking of converting it to a condominium, in light of the Revercomb decision, where would you be?

Mr. MESS. I would be unsettled.

Senator EAGLETON. Should not that matter be settled?

Mr. MESS. Immediately.

Senator EAGLETON. Should we await the ponderous nature of appellate review?

Mr. MESS. No.

I really applaud what you are attempting to get done. But I think, if it is done, it ought to be done separately, if it could be done separately. It might take—what—2 years to have it done, to settle it separately?

Senator EAGLETON. If that is the rapidity with which we can respond, then the Republic is in danger.

Mr. MESS. Are you under the firm belief that the District is a special case and that handling it simply the way you are doing it will handle this whole situation for the District?

Senator EAGLETON. I do.

Mr. MESS. And that they have no special reason—we believe there is some delay here. What do you think the time delay might be, Senator? That was our main question: The delay.

Senator EAGLETON. Well, I could pass my bill in the Senate tonight. We are holding the House bill at the desk. If I do obtain Senator Mathias' agreement, we can go call the bill up from the desk, add my amendment to it, and it will be in the House of Representatives tomorrow.

Mr. MESS. So, theoretically, our theory of delay doesn't have much basis?

Senator EAGLETON. Not as I see it, because the Senate can act tonight or, at the very latest, tomorrow.

Mr. MESS. If it wouldn't happen that time, what would be the element: 3 months?

Senator EAGLETON. Well, the House has expressed interest in this subject matter. Even Delegate Fauntroy, who supports the position of Mayor Barry and Mr. Dixon that we uncouple these two proposals, says that my proposal or the concept needs an expeditious remedy. Anybody who reads the Revercomb decision and juxtaposes the decision against the track record of the City Council and its frivolous exercise of the emergency clause realizes that the whole host of city ordinances of the District of Columbia are, for all practical purposes, illegal.

Mr. MESS. So are a lot of——

Senator EAGLETON. And I am not terribly concerned about the ice cream vendor ordinances. I do not think whether you can sell an Eskimo pie on the left-hand side of the street or the right-hand side of the street is going to make a heck of a lot of difference. But there are some very serious matters dealt with by the District of Columbia City Council. We intended that when we enacted the Home Rule Charter.

There are two very serious ones that we instantly know of: The one before us today, the usury law; the one that was before Judge Revercomb a few weeks ago, the condo law.

Anything that has an emergency clause on it is presumptively illegal now. Judge Revercomb stayed the effect of his opinion, but his opinion stands.

His opinion is clearly right. It tracks with a large body of law out of a whole host of States. The District is going to lose its case.

The Corporation Counsel, in previous opinions to the city government, told the City Council that successive emergency enactments put enactments of the City Council in judicial jeopardy.

Mr. MESS. I have one question. Would this 6 months that you are placing on it—could not they do it again in 6 months?

Senator EAGLETON. No.

Mr. MESS. I read all the way through. What is to prevent them from doing emergency legislation?

Senator EAGLETON. The weight of the Revercomb decision, which really encompasses common law with respect to successive emergencies. There are not successive emergencies dealing with the same subject matter, absent an intervening event. What is an intervening event: tornado, hurricane, earthquake—some significant change in the factual climate that would constitute a second emergency. When

there are either traumatic or unforeseen changes in the factual circumstances, then you can have a successive emergency because new facts have been developed.

There were no new facts that developed with respect to condos. It is a philosophical issue. It can be debated on both sides whether they should permit apartment owners who own fee simple title to convert to condos. Then you argue whether title to that property is free and absolute, and whether it is the title holder's prerogative to do with it what he will, subject to the lease. Or you say that there is an overriding public interest that transcends the right of private property, and the public has a right to intervene by legislation.

You can argue that case philosophically. Mike Dukakis may someday have it on "The Advocates" show as a debate. But there is no successive emergency over the issue. It is the same set of facts before the City Council on 10 consecutive occasions.

Judge Revercomb was clearly correct. Every court in the land would agree with it. To leave this matter unresolved and leave all this legislative outpouring from the City Council up in the air, I think, is a serious mistake.

Mr. MESS. That concludes my testimony, unless you have some additional questions.

We have some numbers that we have put together, but I think that doesn't go to the point. We know that those exist.

Thank you very much.

Senator EAGLETON. Thank you.

Our next witness, Mr. Thomas J. Owen is chairman of the board and president, Perpetual Savings and Loan Association.

TESTIMONY OF THOMAS J. OWEN, CHAIRMAN OF THE BOARD AND PRESIDENT OF PERPETUAL FEDERAL SAVINGS AND LOAN ASSOCIATION OF WASHINGTON, D.C., REPRESENTING THE METROPOLITAN WASHINGTON SAVINGS AND LOAN LEAGUE

Mr. OWEN. Good afternoon, Mr. Chairman.

My name is Thomas J. Owen. I am chairman of the board and president of Perpetual Federal Savings and Loan Association. I appear before you representing the Metropolitan Washington Savings and Loan League. This league is composed of 20 savings and loans serving the savers and home seekers of the District of Columbia and the metropolitan area.

On behalf of our industry, Mr. Chairman, I would like to urge immediate congressional passage of legislation waiving the 30-day congressional review period for the Interest Rate Modification Act of 1979.

On October 5, 1979, the District of Columbia City Council enacted by emergency legislation this act establishing a 15 percent usury ceiling for District of Columbia home loans secured by a first deed of trust. On November 2, 1979, the Federal National Mortgage Association issued notice to all sellers of conventional loans in the District of Columbia that it would no longer consider the purchase of conventional home loans. On November 7, the Federal Home Loan Mortgage Corporation followed a similar tack.

As a result of these actions, there currently exists no secondary market for the sale of District of Columbia mortgage loans. Without this source of capital, Washington savings and loan associations can only rely on savings deposits as the principal source of mortgage loan funds.

Unfortunately, savings outflows have been extremely heavy in the Washington area since August of this year. For example, in August of 1979, withdrawals exceeded deposits by some $12 million. In September, they exceeded deposits by some $33.8 million. In my own particular institution, whose experience is similar to that of other D.C. institutions, deposits have only exceeded withdrawals three times in the past 19 months.

Without the secondary market, D.C. savings and loan associations do not have the funds available to make mortgage loans and are thus not accepting any applications for D.C. mortgages at this time. Without the permanent usury legislation passed by the District of Columbia on November 6, 1979, the 603 loans representing over $39 million committed by Washington savings and loans since October 5 cannot be closed without the risk that these loans cannot be sold in the secondary market. Another 262 loan applications taken into processing during this period of time but not yet committed are frozen in the application pipeline and must remain there.

While we could talk about the millions of dollars in loans in jeopardy, I would prefer to talk about the hundreds or even thousands of District of Columbia families who expected to be in their homes for Thanksgiving and Christmas. These families are the real victims of industry's inability to close and sell mortgage loans made in the District of Columbia. These families deserve our utmost effort to immediately provide the funding necessary to settle their loans. It is on their behalf and on behalf of other families whose applications for mortgage loans we cannot even consider under current circumstances that we seek this committee's help in obtaining immediate passage of that portion of Senate bill 1999 which calls for the waiver of the 30-day congressional review period for the District of Columbia legislation.

We are aware of the fact that this committee is also considering measures relative to clarifying the issue of the District of Columbia's use of its emergency legislative powers. While the city's savings and loan industry understands how important such matters must be, we do not feel competent to address ourselves to them at this time. Our concern is simply that as quickly as possible permanent legislation establishing a workable usury ceiling in the District of Columbia be finally enacted.

Without this permanent legislation, the District of Columbia savings and loan industry must continue to close its doors to countless families who each week seek mortgage financing from us. Irreparable harm may be done to these people if the home financing industry must continue to refrain from making loans in the District until December or even January when the 30-day congressional review period for the District of Columbia Interest Rate Modification Act will expire.

To this end, we respectfully urge the committee to consider and favorably report to the Senate as a separate bill the waiver of the 30-day congressional review period for the Interest Rate Modification Act of 1979.

Before concluding, Mr. Chairman, I would like to try to clarify some points that were brought up by the representatives of Fannie Mae and Freddie Mac with respect to the effect of usury ceilings in 24 other States. The conversation seemed to be leaning toward the fact that the District of Columbia situation is similar to that of 24 other States, and that is not really the case.

The District of Columbia City Council, in its first emergency piece of legislation affecting interest rates, adopted an unlimited ceiling position. On the basis of this, savings and loans went ahead and made loans at then-market rates.

Following that, on October 5, they enacted a 15 percent usury ceiling. Savings and loans went ahead and committed at rates which were in excess of the 11 percent but certainly less than the 15 percent. So, what you have here are commitments outstanding with families who are hoping to buy, and savings and loans who must deliver that paper to their secondary market purchasers within specified timeframes. If that does not happen, then either the deals fold or the interest rates that they are now able to get are no longer available.

Also, in your questioning with Mr. Mess, you spoke to the mortgage banker's counsel's position on the Revercomb decision.

Speaking on behalf of Perpetual but not on behalf of the savings and loan industry here in Washington, we did look at Revercomb's decision in light of the October 5 act—and with counsel. We came to the conclusion that the factual circumstances surrounding the condo conversion and rent control bills were sufficiently dissimilar as to allow us the opportunity to move forward and continue to close those loans.

We did continue to close the loans in the few days following the Fannie Mae/Freddie Mac decision. We have ceased funding and have delayed the funding of all loans. We have now approximately $25 million in fundings in the next 30 days with some $20 million scheduled for funding next Monday. Unless some speedy action is taken, there will be approximately 250 families that we are dealing with right now who will be in serious difficulty.

I am open to questions.

Senator EAGLETON. Those points are well stated and well taken.

Freddie Mac and Fannie Mae are shut down in 20-some-odd other States. The circumstances of the shutdown in those States, though, are somewhat different from the District. The laws of those States were on the books for many years. Those usury laws date back—I don't know when. Thus, when the money market rates went clearly beyond whatever the statutory usury limit was of State *x*, Fannie Mae and Freddie Mac just went out of business and the savings and loans went out of business.

Mr. OWEN. But there were no commitments outstanding.

Senator EAGLETON. And there were no commitments outstanding, presumably.

Here, where you had these two successive enactments—one open ended, one with a 15-percent cap—commitments were made, et cetera. So, there are different circumstances, and that point is well taken.

Mr. OWEN. There are home buyers and home sellers out there fully expecting, until Fannie Mae cast a cloud—or Judge Revercomb——

Senator EAGLETON. But Perpetual operates in some of these other States; does it not?

Mr. OWEN. In Maryland and Virginia we do not have that problem. They both have eliminated their usury ceilings.

Senator EAGLETON. But doesn't Perpetual operate in States other than the District of Columbia, Maryland, and Virginia——

Mr. OWEN. No, sir, I have enough difficulty operating in——

Senator EAGLETON. Well, let's take Household or Beneficial——

Mr. OWEN. Household Finance or somebody like that might——

Senator EAGLETON. So, your peers at Household or Beneficial, Liberty Loan, or American Investment Corp., or whatever—they are all out of business in those States where the usury law has been exceeded by the action in the money marketplace. Is that not correct?

Mr. OWEN. Yes. Exactly.

Senator EAGLETON. So, I mean, you are not the only miserable savings and loans in the country. You are a little more miserable because you made some interim commitments that are now——

Mr. OWEN. Inflation has made it impossible for them to make commitments. That's right. And we are in the position of, do we fund these with this cloud over us; or do we pullout and leave those people hanging.

Senator EAGLETON. All right.

Does anyone else here wish to testify with respect to the two bills before this committee?

If not, I will testify.

I just want to outline the essence of what our proposal is. No one, for various reasons, wished to address themselves to the merits or demerits of our so-called emergency proposal. And I understand why. The Mayor and Mr. Dixon are indirectly involved in litigation. The others take the point of view that we should treat only the 15 percent usury law and leave these other things to another time.

But I think they are immediately before the Congress in any event. We cannot ignore them away. We cannot ignore away the Revercomb decision because it happens to be right.

So, here is a summary memo that I will read as to what our proposal, in fact, does.

First of all, what were the underlying principles upon which we relied in order to make our proposal? First, the District government must retain the power to enact some legislation which will take effect immediately without congressional review to deal with emergency situations. That is self-evident. There are situations that require an immediate response.

Second, emergency legislation should stay in effect long enough to insure that, one, the District would have reasonable time to adopt permanent legislation; and, two, that the congressional review period on the permanent legislation could be completed before the emergency legislation would terminate.

That seems common-sensical.

Our third premise was that emergency legislation must terminate at a time certain. Repeated renewal of emergency legislation, which has occurred under section 412 of the Home Rule Act as currently written, is unacceptable.

So, those were our three guiding principles.

What is our proposal? Here are the points of our proposal.

As under current law, the Council could determine by a vote of two-thirds of its members that emergency circumstances make it

necessary that an act be passed immediately upon enactment. Such emergency legislation would be effective for 180 days or less if the Council chose to include an earlier termination date in the legislation. Council might have a situation before it that they think is only a 60-day emergency and could have a shorter termination date at their option if they want it.

The second feature: the only circumstance in which emergency legislation would stay in effect for more than 180 days would be if the District had sent permanent legislation to the Congress for review and the Congress had adjourned sine die, meaning the congressional review period could not be completed.

In such a case, the so-called clock would stop on the congressional review period. The review period would resume when Congress reconvened. The emergency legislation would stay in effect until the review was completed.

Our third feature: if the District passes a piece of emergency legislation and the 180-day period elapses, the District cannot pass another piece of emergency legislation for the same purpose, covering the same subject matter, and based on the same emergency. That is the 11 ice cream vendor situations or, of more compelling substance, the 10 consecutive condo pieces of legislation.

However, during the 180-day period, the District could amend the emergency legislation.

Next, this legislation does not stop the Council from passing emergency legislation and, sometime after the legislation lapses, passing another piece of legislation to deal with an emergency in a related area. However, the legislation requires the Council to be dealing with a new emergency, a new set of facts, a new intervening event, some new change in circumstances.

The Council would be violating the law and risk being slapped down by Judge Revercomb or some other judge in a subsequent lawsuit if it legislated repeatedly on the same ground.

Let's use an example.

If the interest rate is at 15 percent, the Council could raise it to 17 percent or 20 percent, as necessary, during the 180-day emergency period. However, after the 180-day period is completed, the emergency provision will terminate. Six months later, if the Fed makes the prime rate jump again, there would be a new emergency and the Council could again pass emergency legislation in response to new or intervening action by the Fed.

One other additional feature of our bill: any piece of emergency legislation on the books at the time our proposal becomes law would be treated as follows; this would take care of legislation already on the books. The 90-day period in current law would be completed and the emergency legislation would automatically be given an additional 90 days. The Council would not have to renew it. If we enact my proposal, the Council wouldn't immediately have to come into session and pass or repass every law that it had passed in the past 5 years.

This provision is necessary to mesh fairly the existing laws and our proposal. Without such provision, emergency legislation enacted 80 days ago, for example, before the enactment of our legislation, would simply expire; and that would be an unfair result.

So, that is our proposal.

What I intend to do now is meet sometime today with Senator Mathias, who is the ranking Republican member of the subcommittee, and discuss today's hearing with him. If he is persuaded that the District is, in fact, presented with two immediate emergencies—the 15 percent usury law emergency and then the emergency over the emergency—and, if I can persuade him that we should move, we will take the House-passed bill that is at the desk, put our amendment, on it, send it back to the House tonight or the first thing tomorrow morning, and then it will be up to the House.

Senator Tydings, I see, is with us. We are delighted to have you with us, Senator.

TESTIMONY OF JOSEPH TYDINGS, FORMER U.S. SENATOR FROM THE STATE OF MARYLAND

Mr. TYDINGS. Thank you, Mr. Chairman.

I wonder if I might make a few comments on your last remarks and your statement with respect to the need for revision or strengthening of the emergency provisions of the D.C. Home Rule Act.

I do not see how any responsible person could disagree with the need for strengthening and reviewing the provisions of section 412 of the District of Columbia Self-Government and Governmental Reorganization Act. I think that the remarks which you just read into the hearing were pertinent.

There are several issues involving the present emergency statute, however, which you did not touch on and which seem to me, if you really focus on strengthening and review, need to be the subject of hearings and need to be the subject of review. For instance, it would seem to me to be appropriate to discuss and perhaps define with a little more clarity just exactly what an emergency is. The experience of other States, the language of other statutes, and indeed the language of judicial opinions might be appropriate to review.

I think, second, it would be appropriate to focus on what sort of committee activity is or is not necessary in an "emergency." Should there be a second reading, or should there not be a second reading of an emergency provision? Should not this whole area be addressed? In many other States or jurisdictions there are some sort of more normal legislative procedures than we presently have more emergency statutes in the District.

I think, third, you need to focus on and have hearings on exactly what you mean by "the same purpose covers the same subject matter." That would be very important. As presently stated in your legislation the District might be unduly restrained in emergency situations.

I think there are undoubtedly other areas which the Mayor and the Council would think would be appropriate to focus on in your review.

In short, what I am saying is that the subject of section 2 of your proposed bill is extremely important. It is too important, I might say, Mr. Chairman, to be the subject of one hearing called on 48 hours notice and tacked on to another matter which, although indirectly related, is more directly related to commerce or whether or not people can settle their home mortgage loans and get into a new home by Thanksgiving or Christmas.

I would think that the authorization committees on both sides of Congress should very seriously consider the whole issue of emergency procedure, which you brought up and which you so properly are focusing on. It would just be my hope that you would not tie the two issues together. In order to do a proper job and to really have definitive hearings and to cover the issues, just a few of which I raised here, which are not covered in your bill, I think it deserves a little bit more time than a long week or even a week and a half.

Each week or each day that goes by without action to help the District's homeowners that want to settle for and move into a new home is a very drastic deprivation for those who want to be in a home by Thanksgiving or Christmas.

Senator EAGLETON. Very well put. That is why you are a very successful lawyer in the Greater Washington metropolitan area.

Mr. TYDINGS. Thank you.

Senator EAGLETON. Some of your points are very well taken, Senator Tydings. We appreciate it.

Does anyone else here wish to testify on the matters before this committee?

[No response.]

Senator EAGLETON. If not, that will conclude today's hearing.

Thank you very much.

[Whereupon, at 4:12 p.m., the meeting was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

II

96TH CONGRESS
1ST SESSION

S. 1992

To allow the Interest Rate Modification Act of 1979, passed by the Council of the District of Columbia, to take effect immediately.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8 (legislative day, NOVEMBER 5), 1979

Mr. MATHIAS introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

---

A BILL

To allow the Interest Rate Modification Act of 1979, passed by the Council of the District of Columbia, to take effect immediately.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act shall not apply to the Interest Rate Modification Act of 1979 (District of Columbia Act 3–119) passed by the Council of the District of Columbia on November 6, 1979, and signed by the Mayor of the District of Columbia on November 6, 1979, and such

District of Columbia Act shall become law on the date of the enactment of this Act, notwithstanding section 404(e) of the District of Columbia Self-Government and Governmental Reorganization Act and any provision to the contrary in such District of Columbia Act.

II

96TH CONGRESS
1ST SESSION

S. 2005

To allow the Interest Rate Modification Act of 1979, passed by the Council of the District of Columbia, to take effect immediately.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13 (legislative day, NOVEMBER 5), 1979

Mr. EAGLETON introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

---

A BILL

To allow the Interest Rate Modification Act of 1979, passed by the Council of the District of Columbia, to take effect immediately.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act shall not apply to the Interest Rate Modification Act of 1979 (District of Columbia Act 3–119) passed by the Council of the District of Columbia on November 6, 1979, and signed by the Mayor of the District of Columbia on November 6, 1979, and such

District of Columbia act shall become law on the date of the enactment of this Act, notwithstanding section 404(e) of the District of Columbia Self-Government and Governmental Reorganization Act and any provision to the contrary in such District of Columbia act.

SEC. 2. (a) Section 412(a) of the District of Columbia Self-Government and Governmental Reorganization Act is amended (1) by designating the existing text as paragraph (1); (2) by deleting "ninety days" and inserting in lieu thereof "one hundred and eighty days"; and (3) by adding at the end thereof the following new paragraph:

"(2) In no case shall any emergency act be passed by the Council arising out of or in connection with any emergency situation if such act is for the same purpose and covers, in whole or in part, the same subject matter as any prior emergency act and is based on the same emergency as that on which such prior act was based.".

(b) Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act is amended by adding at the end thereof the following new subsection:

"(d) Except as provided in this subsection, in any case in which an act is passed pursuant to subsection (a)(1) of this section on the basis of an emergency, such emergency act, including all amendments thereto, shall terminate on the date of termination provided in such act, or upon the expiration of

the one-hundred-and-eighty-day period following the date of passage of such emergency act, whichever first occurs. In any case in which the Council, during such one-hundred-and-eighty-day period, passes and transmits to the Speaker of the House of Representatives and the President of the Senate an act under the regular order for the same purpose, and covering and limited to the same subject matter, as that contained in such emergency act, and the Congress adjourns sine die prior to the termination of the thirty-day period provided in section 602(c)(1) of this Act for the consideration by Congress of such act of Council, the emergency act of Council shall remain effective until after the expiration of such thirty-day period, unless the Congress, during such thirty-day period, adopts a concurrent resolution disapproving such act.".

OSCAR M. JOHNSON,
Washington, D.C., November 14, 1979.

HON. THOMAS EAGLETON,
Chairman, D.C. Subcommittee,
Senate Committee on Governmental Affairs,
Washington, D.C.

DEAR SENATOR EAGLETON: This is to strongly urge that you not attempt to add non-emergency provisions to the D.C. mortgage interest ceiling bill passed by the House yesterday.

As a D.C. property owner, I will be adversely affected if the emergency bill is not passed by Tuesday, Nov. 20, at the latest. My house was sold under a contract last July. It has taken this long to find a buyer for the purchaser's present home in D.C., obtain approval of financing, and schedule settlement. We were on the verge of concluding this transaction, which affects the housing of 3 families directly, when the mortgage freeze was imposed as a result of FNMA action.

The lender to my property's buyer, Colonial Mortgage Co., said last week that it would honor its commitment for an 11½ percent mortgage only until Nov. 20. If the interest freeze is not lifted by then, the funds reserved for this sale and all other D.C. sales financed by Colonial Mortgage Co. will be used for loans in Maryland and Virginia.

I would hope that you would do all in your power to pass the emergency bill unchanged as soon as possible. Otherwise you will do grave injury to many in the District of Columbia.

My buyer will be unable to purchase the home if the existing mortgage is not concluded, because the interest rate from another lender would be higher and he could not afford it. The house would be put on the market during the slow year-end season and I could not pay many bills that are past due.

Many other home buyers and sellers are also doubtlessly affected by mortgage commitments expiring every day.

Any defects in the D.C. Council's use of emergency powers can be remedied by court action now underway. It would be premature to pass legislation on this until the Court of Appeals has ruled on the precedent-making case involving the condominium conversion moratorium.

As a former Legislative and Administrative Assistant to Members of Congress, I know that it is not necessary to add the type of provisions you envision to the emergency bill. It could be handled as separate legislation without unnecessarily jeopardizing the housing and financial security of hundreds of people caught in a bind not of their own making.

The need for simple emergency relief action has been recognized by the House. It would be tragic if those of you in the Senate worsened an already desperate situation.

Delegate Fauntroy has promised to cooperate by holding early hearings on the Council's abuse of its emergency legislation powers. But, any need for adoption of such legislation does not justify holding the other bill hostage. That would be abuse of your own responsibility with respect to the House-passed emergency bill.

Thank you for your assistace in this important matter.

Sincerely,

OSCAR M. JOHNSON.

D.C.-44
May 1967

Memorandum Government of the District of Columbia

TO: Marion Barry, Jr.
Mayor

Department, Agency, Office: Corporation Counsel
Legal Counsel Divisic:
ALS:SF:gji-TCB00673

FROM: Judith W. Rogers
Corporation Counsel, D.C.

Date: November 9, 1979

SUBJECT: Statement on action of FNMA in refusing to purchase conventional loans in the District of Columbia.

In a meeting with James Murray, the Vice President and General Counsel of the Federal National Mortgage Association, "FNMA", on November 7, 1979, he suggested that in keeping with FNMA's practice of deferring to the opinion of local counsel on questions involving local law, FNMA would be receptive to a reevaluation of its decision on the basis of an opinion of the District's counsel. This memorandum has been prepared for that purpose.

I. Background.

By letter dated November 2, 1979, FNMA advised all sellers of conventional loans in the District of Columbia that it would "not consider the purchase of conventional loans" on specified categories of real property. Such action was taken by FNMA in light of Judge George H. Revercomb's order of October 19, 1979 in the case of The Washington Home Ownership Council, Inc. v. District of Columbia and Metropolitan Washington Planning and Housing Association, Inc., Civil Action No. 10624-79 (hereinafter "Home Ownership") which is now pending appeal before the District of Columbia Court of Appeals in C.A. No. 79-1053.

The order of Judge Revercomb in Home Ownership does not address the legality of the City's usury legislation, but instead dealt with emergency legislation involving condominiums and cooperatives and amendments to the Rental Housing Act of 1977. The Revercomb order questioned the au-

J-2228-74

of the Council of the District of Columbia to enact successive emergency laws, which were substantially similar in content. For the following reasons, the rationale of the Revercomb decision is inapposite to the instant situation dealing with the usury legislation. Also, the basis for the emergency usury legislation is distinguishable from that of the emergency condominium-cooperative legislation considered by Judge Revercomb.

On July 3, 1979, the Council of the District of Columbia enacted the "Interest Rate Modification Emergency Act of 1979" (D.C. Act 3-58), which act became effective on July 10, 1979 upon approval by the Mayor. This act, which amended Regulation 74-21 (Regulation Establishing Interest Rates for Certain Loans, enacted on August 1, 1974), removed the then current usury ceilings applicable to mortgages, deeds of trust and cooperative housing loans. The Council resolution declaring this emergency stated that the District was then experiencing a shortage of funds available for residential mortgages due to the rise in prevailing interest rates. Act 3-58 expired on October 8, 1979. It should be noted that Regulation 74-21 is in the nature of permanent law.

On September 25, 1979, the Council passed the "Interest Rate Modification Second Emergency Act of 1979" (D.C. Act 3-105), which act became effective on October 5, 1979 with the signature of the Mayor and is due to expire on January 3, 1980. This act also amended Regulation 74-21 but differed from Act 3-58 in that it placed a 15% ceiling on mortgage loans as opposed to the aforementioned floating rate. The resolution accompanying this emergency law recited the existence of an emergency, based on the fact that upon expiration of Act 3-58 on October 8, 1979, the usury limits would have reverted to 11%, 11.5% and 12% as provided for in Regulation 74-21 and mortgage availability would have been severely curtailed.

In Home Ownership, plaintiffs challenged the Council's authority under § 412(a) of the District of Columbia Self Government and Governmental Reorganization Act, 87 Stat. 788, D.C. Code, § 1-146(a) (Supp. V, 1978) to pass successive re-enactments of emergency legislation. The Judge held that "the successive enactment of substantially the same substantive provisions of law through the emergency power. . . (was) unlawful." (Emphasis added.) The two emergency usury acts of the Council are not substantially similar in the same manner as was true of the emergency acts before the court in Home Ownership. Also, in the usury area, the Council

has passed permanent legislation. On November 6, 1979, prior to the expiration of the emergency act 3-105, the Council passed and the Mayor approved permanent legislation, the "Interest Rate Modification Act of 1979" (D.C. Act 3-119), to place a 15% ceiling on interest rates in the District. When this act, which must undergo a 30-day review period in Congress, pursuant to section 602(c)(1) of the Home Rule Act (D.C. Code, § 1-147(c) (Noncum. Supp. VI, 1979) becomes effective, Regulation No. 74-21 will be repealed and supplanted by this new legislation. Even the plaintiff's in Home Ownership do not contend that the process followed by the Council in the usury law was other than that contemplated by the Congress in enacting § 412 of the Self Government Act.

Presumably, FNMA took its action of November 2, 1979 on the premise that the decision of Judge Revercomb in Home Ownership would be equally controlling with regard to Act 3-105, and accordingly, mortgage loans made pursuant to such act could conceivably be held usurious should a civil action be filed by a borrower.

II. Prospective v. Retrospective Application.

Although Judge Revercomb declared the statutes at issue in the Home Ownership case were unlawfully enacted, the opinion states (pp. 11-12) that the Court is only empowered to prospectively enjoin enforcement of an act unlawfully enacted by the Council. Therefore, even imagining the worst set of facts (where Act 3-105, the Second Emergency Act, is later declared invalid), the retroactive invalidation of all loans made pursuant thereto would be an improbable judicial outcome.

The weight of authority in the District and in other jurisdictions repudiate retrospective invalidation especially when vested contract rights are involved. See, Safarik v. Udall, 304 F.2d 944 (D.C. Cir.) cert. denied, 371 U.S. 901, 83 S.Ct. 206 (1962); Durham v. U.S., 214 F.2d 862 (D.C. Cir. 1954); Mendes v. Johnson, 389 A.2d 781 (D.C. 1978); D.C. v. Keyes, 362 A.2d 729 (D.C. 1976).

In Slaymaker v. Peterkin, 518 P.2d 763 (Alaska 1974), the statutory interest rate was set as a function of a separate rate. When the prevailing rate fell below a contracted rate, the court nevertheless upheld the loan, stating:

> [T]he necessities of commerce, and in particular real estate financing, require that loan commitment which is legal when agreed to shall remain

> legal even though the rate of interest changes before completion of the transaction. To hold otherwise would cause commercial uncertainty and unnecessarily upset valid commercial agreements or transactions.

Reliance in good faith on prior valid law has been a major factor in the prospective, rather than retrospective, invalidation of statutes:

> [P]arties who have dealt with each other in good faith in reliance upon a statute which, in fact, is unconstitutional and who have materially altered their respective positions in reliance upon such a statute, may not invoke the aid of the courts to undo what they themselves have done.

Eads v. Humphries, 562 S.W.2d 805, 807 (Tenn. 1978).

Although the legislature cannot deprive contractual parties of their vested rights without running afoul of the constitutional prohibition against impairment of contracts,1/ no such prohibition applies to the courts. Nevertheless, courts have placed great weight on the fact that persons had "contracted and acquired rights in reliance on the legitimacy of the prevailing rule", and have, therefore, applied their decisions prospectively. E.g., Safarik v. Udall, supra.

This language recurs throughout the decisions. See e.g., District of Columbia v. Keyes, 362 A.2d 729, 735 (D.C. 1976), (apply invalidation of tax prospectively where retroactive operation would create economic hardship); Kelly Adjustment Co. v. Boyd, 342 A.2d 361 (D.C. 1975) (enforcement of judgments entered under prior law); Roebuck v. Walker-Thomas Furniture Co., Inc., 310 A.2d 845, 47-48 (D.C. 1973) (overruling decision would be applied prospectively since rights have become vested and actions have been taken).

The judicial disfavor of usury laws is particularly relevant in this regard, see Yaffee v. Int'l Co., 80 So.2d 910 (Fla. 1955); Rose v. Wheeler, 140 Cal. App. 217, 35 P.2d 220;

1/ Article I, § 10 provides that "no state shall. . .pass any. . .law impairing the obligation of contracts." See, Bolling v. Sharp, 347 U.S. 497 (1954).

60-238 O - 80 - 10

cited in Williston on Contracts § 1683 (3d Ed. 1972). To avoid finding a transaction usurious, and pursuant to a "duty" to construe usury statutes narrowly, court tends to apply prospectively such statutes. See Rose v. Wheeler, 140 Cal. App. 217, 35 P.2d 220.

III. The Interest Rate Modification Second Emergency Act Is Not Before The Home Ownership Court.

Judge Revercomb specifically limited his decision to those "statutes at issue before the Court" (p. 16).

The mortgage market, and specifically the usury area, on the other hand, suffers from exigent circumstances including a sudden rapid rise in interest rates and consequent shortage of funds for mortgage loans. It is, therefore, unlikely that the considerations which have resulted in Judge Revercomb's proposed invalidation of the rental housing legislation would be relevant in a mortgage interest challenge.

IV. Permanent Interest Rate Legislation Has Been Enacted By The City.

The permanent legislation, raising the interest rate to 15% was passed on second reading by the Council and signed by the Mayor. Public notice has occurred and the legislative safeguards observed, and the City has completed its legislative enactment. (The effective date of the act is subject to a thirty-day Congressional review period pursuant to § 602 of the Self-Government Act.) The Home Ownership decision implies that re-enactments of the same provisions for over ninety days without a second reading or submission for Congressional review might be unlawful. However, the timing of the declaration of the first emergency, with an effective date right before summer recess and an expiration date soon after the Council finished its work on the budget made it impossible to conduct a second reading within the first ninety days. In fact, the public hearing was held as soon as the Council returned, on September 4, 1979; the Committee considered and favorably recommended the Bill on September 21. At that time, the first emergency was about to expire, thus requiring the adoption of a second emergency.

V. Judge Revercomb's Decision Is Not Final.

Obviously, Home Ownership is on appeal, and the judgment has been stayed pending such appeal. Although the conservative reaction of FNMA is facially understandable, its policy in the past

has been to follow the guidance of the local jurisdiction in legal matters. Until the Court of Appeals issues a final decision in the case, arguments presented by the District are entitled to deference. And, in view of the foregoing, it is evident that the District's arguments are even more forceful in the case of the mortgage market. A premature reaction on the part of FNMA has caused uncertainty, adverse actions, and a loss of confidence on the part of the District's financial institutions. In fact, these actions have almost ensured the feared outcome. While it is surprising that an institution responsive to the community would not have awaited a final decision from the Court, or obtained the views of the District, before instituting its plan, it is now clear that unless FNMA reverses its decision, other financial institutions will not change theirs.

Following Judge Revercomb's order of October 22, 1979, wherein he denied the District's request for a stay of his order pending appeal, the District immediately filed an emergency motion for an immediate stay with the District of Columbia Court of Appeals. In support of such motion, the District cited the standards applicable to a stay pending appeal as stated in Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D.C. Cir. 1958) and Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977). In Holiday Tours, the court made clear that of the four standards enunciated in Virginia Petroleum Jobbers, the first of such requirements -- the likelihood of success -- is to be balanced against the other three factors, and where those other factors strongly favor a stay it should be granted even if the court is in doubt as to the likelihood of success on the merits. The stay was granted by the Court on October 22, 1979. Based on the legal precedents, the District is likely to prevail in this appeal.

One of the principal issues on appeal is whether Congress, in enacting section 412(a) of the Home Rule Act intended to limit the Council to only one emergency act. The District's position is that nowhere in section 412(a) is such a limitation either stated or necessarily implied. (See attached Motion for Summary Reversal.) Accordingly, one must assume that Congress legislated with care, and that had Congress intended the aforementioned suggested limitation, it would have

said so expressly and not left the matter to mere implication. See Palmore v. U.S., 411 U.S. 389, 395 (1973).

VI. The Second Emergency Act Is Not "Substantially The Same" As The First.

The Court in Home Ownership concluded that it was unlawful to re-enact "substantially the same substantive provisions of law through emergency power...." (p. 16). The emergency legislation before the Court involved identical re-enactments of prior emergency acts. In the case of the usury statute amendments, the first legislation, perceiving and declaring an emergency, lifted the usury ceiling altogether. The second, however, placed a 15% limit on permissible loans. In the first emergency, the Council had to contend with the fact that the then existing usury ceiling was too low to accommodate the mortgage market. In the second emergency, the Council made a political judgment that a "no-ceiling" usury rate was unacceptable. In each instance, different value judgments were involved. Accordingly, the substance of the first emergency law differed markedly from the second emergency law.

Further, the issues in the Home Ownership case are distinguishable from the instant usury legislation on purely economic grounds. Whereas the District has some measure of control over the local housing picture as such may be influenced by condominium-rent control legislation, such control is virtually absent when it comes to interest rates. Such rates are controlled by national factors. As such, because interest rates are in a constant state of flux, the District has of late found itself in a position of reacting to the various forces that control interest rates in general, and the usury ceiling specifically. As a result of the rapid change of such economic forces, the District has been required to react to a specific set of existing circumstances on an emergent basis. Accordingly, each successive emergency piece of legislation in the usury area must be construed as substantially different from its predecessor.

VII. Conclusion.

Based on the foregoing, it is my opinion that the Interest Rate Modification Second Emergency Act of 1979, D.C. Act 3-105,

is a valid act of the Council of the District of Columbia, and that it is unlikely that its provisions pertaining to allowable interest rates on loans consummated in the District would be stricken if it were challenged in court.

JWR

THE COUNCIL OF THE DISTRICT OF COLUMBIA'S EMERGENCY ACTIONS REPORT, DATED NOVEMBER 9, 1979

This report appears to encapsule the various areas in which the Council has passed emergency legislation in the past three years (with principal emphasis on 1978 and 1979).

The report indicates 49 separate pieces of emergency legislation. By quick count, 35 were renewed at least once, and many were renewed mutliple times (5, 7, 10).

The report also indicates that of the 49, 26 have subsequently been enacted as permanent legislation, or submitted to Congress for congressional review.

[The record should also reflect that the subcommittee staff first requested this information last Tuesday, and subsequently renewed their requests several times. It was received by the subcommittee at 12:45 today.]

COUNCIL OF THE DISTRICT OF COLUMBIA
EMERGENCY ACTIONS REPORT

Report Date NOVEMBER 9, 1979

TITLE	EMERGENCY ACT(S)	EXPIRATION DATE	COUNCIL ACTION (Date Adopted)	MAYORAL ACTION (Enactment Date)	STATUS OF PERMANENT LEGISLATION
D. C. Surplus Property Emergency Authority Act	EA 2-143(Act 2-255)	11-6-78	7-25-78	8-8-78	
	EA 2-152(Act 2-284)	1-23-79	10-3-78	10-25-78	
	EA 3-1 (Act 3-1)	4-23-79	1-16-79	1-23-79	D. C. Law 3-13, eff. 8-1-79
	EA 3-33(Act 3-30)	7-24-79	4-10-79	4-25-79	
	*EA 3-49(Act 3-61)	10-22-79	7-3-79	7-12-79*(eff. 7-24-79)	
Cooperative Regulation Emergency Act	EA 2-14(Act 2-13)	6-16-77	3-8-77	3-18-77	
	EA 2-28(Act 2-47)	9-15-77	6-14-77	6-17-77	
	EA 2-48(Act 2-88)	1-10-78	9-13-77	10-12-77 w/o sig.	
	EA 2-70(Vetoed)	Vetoed 1-20-78	12-6-77	Vetoed 1-20-78	
	EA 2-84(Act 2-171)	7-2-78	2-21-78	4-3-78	
	EA 2-128(Act 2-239)	10-18-78	6-27-78	7-17-78	D. C. Law 3-19, eff. 9-28-79
	EA 2-158(Act 2-290)	1-23-79	10-3-78	10-25-78	
	*EA 3-2(Act 3-2)	4-23-79	1-16-79	1-25-79*(eff. 1-23-79)	
	*EA 3-32(Act 3-37)	7-24-79	4-10-79	5-4-79*(eff. 4-25-79)	
	EA 3-54(Act 3-79)	11-1-79	7-17-79	8-3-79	
Air Quality Control Regulations Amendment Emergency Act	EA 2-131(Act 2-244)	10-30-78	7-11-78	8-1-78	
	EA 2-163(Act 2-296)	2-5-79	10-17-78	11-7-78	D. C. Law 2-133, eff. 3-3-79
	*EA 3-3(Act 3-3)	5-5-79	1-16-79	2-5-79*(eff. 2-4-79)	

COUNCIL OF THE DISTRICT OF COLUMBIA
EMERGENCY ACTIONS REPORT

Report Date NOVEMBER 9, 1979

	TITLE	EMERGENCY ACT(S)	EXPIRATION DATE	COUNCIL ACTION (Date Adopted)	MAYORAL ACTION (Enactment Date)	STATUS OF PERMANENT LEGISLATION
*	Educational Institution Licensure Emergency Extension Act	EA 2-95(Act 2-175)	7-12-78	3-7-78	4-13-78	No Permanent Legislation
		EA 2-121(Act 2-238)	10-15-78	6-27-78	7-17-78	
		EA 2-135(Act 2-271)	11-19-78	7-25-78	8-21-78	
		EA 2-162(Act 2-295)	2-5-79	10-17-78	11-7-78	
		*EA 3-4(Act 3-7)	5-6-79	1-30-79	2-16-79*(eff. 2-5-79)	
		*EA 3-35(Act 3-46)	8-15-79	5-8-79	5-29-79*(eff. 5-17-79)	
		*EA 3-65(Act 3-91)	11-13-79	7-31-79	8-27-79*(eff. 8-15-79)	
		EA 3-90		11-6-79		
	D. C. Unemployment Compensation Act Compulsory Amendment Emergency Act	EA 2-66(Act 2-126)	3-29-78	12-6-77	12-29-77	D. C. Law 2-129, eff. 3-3-79
		EA 2-93(Act 2-166)	6-26-78	3-7-78	3-28-78	
		EA 2-115(Act 2-227)	10-9-78	6-13-78	7-10-78	
		EA 2-142 (Act 2-266)	11-28-78	7-25-78	8-30-78	
		EA 3-5(Act 3-8)	5-22-79	1-30-79	2-21-79 w/o sig.	
	Police, Firefighters and Teachers Salary Act Amendment Emergency	EA 2-132(Act 2-245)	10-30-78	7-11-78	8-1-78	D. C. Law 2-139, eff. 3-3-79
		EA 2-161(Act 2-294)	2-5-79	10-17-78	11-7-78	
		EA 3-6(Act 3-4)	5-16-79	1-30-79	2-15-79	
	Real Property Tax Rate Emergency Act	EA 2-138(Act 2-256)	11-8-78	7-25-78	8-10-78	D. C. Law 2-138, eff. 3-3-79
		EA 2-164(Act 2-299)	2-7-79	10-17-78	11-9-78	
		EA 3-7(Act 3-6)	5-17-79	1-30-79	2-16-79	
	Sales Tax on Meals Exemption for Senior Citizens Emergency Act	EA 2-165(Act 2-302)	2-25-79	10-31-78	11-27-78	D. C. Law 2-145, eff. 3-3-79
		EA 3-8(Act 3-9)	5-24-79	2-13-79	2-23-79	

COUNCIL OF THE DISTRICT OF COLUMBIA
EMERGENCY ACTIONS REPORT

Report Date NOVEMBER 9, 1979

TITLE	EMERGENCY ACT(S)	EXPIRATION DATE	COUNCIL ACTION (Date Adopted)	MAYORAL ACTION (Enactment Date)	STATUS OF PERMANENT LEGISLATION
Rental Vehicle Tax Reform Emergency Act	EA 2-137(Act 2-264)	11-14-78	7-25-78	8-16-78	
	EA 2-170(Act 2-306)	2-25-79	10-31-78	11-27-79	D. C. Law 2-157, eff. 3-6-79
	EA 3-9(Act 3-11)	5-27-79	2-13-79	2-26-79	
Condominium Conversion Emergency Act	EA 2-64(Act 2-116)	3-9-78	11-22-77	12-9-77 w/o sig.	
	EA 2-89(Act 2-159)	6-8-78	2-21-78	3-10-78	
	EA 2-112 (Act 2-204)	9-7-78	5-30-78	6-9-78	
	EA 2-136(Act 2-272)	11-19-78	7-25-78	8-21-78	D. C. Law 2-125, eff. 3-3-79
	EA 2-172(Act 2-309)	2-28-79	11-14-78	11-30-78	
	EA 3-10 (Act 3-10)	5-24-79	2-13-79	2-23-79	
D. C. Renters and Homeowners Tax Reduction Emergency Act	EA 2-139(Act 2-265)	11-28-78	7-25-78	8-30-78	
	EA 2-169(Act 2-305)	2-25-79	10-31-78	11-27-78	D. C. Law 2-130, eff. 3-3-79
	EA 3-11(Act 3-13)	5-27-79	2-13-79	2-26-79	
People's Counsel Authorization Emergency Act	EA 2-141(Act 2-258)	11-12-78	7-25-78	8-14-78	
	EA 2-168(Act 2-304)	2-25-79	10-31-78	11-27-78	D. C. Law 3-34, eff. 10-20-79
	EA 3-12(Act 3-13)	5-27-79	2-13-79	2-26-79	
	EA 3-38(Act 3-49)	8-28-79	5-8-79	5-30-79	
	EA 3-67(Act 3-93)	11-25-79	7-31-79	8-27-79	
Board of Election Vacancy Election Act Emergency	EA 3-13(Act 3-5)	5-17-79	2-13-79	2-16-79	Bill 3-92 pending in Government Operations Committee

COUNCIL OF THE DISTRICT OF COLUMBIA
EMERGENCY ACTIONS REPORT

Report Date NOVEMBER 9, 1979

TITLE	EMERGENCY ACT(S)	EXPIRATION DATE	COUNCIL ACTION (Date Adopted)	MAYORAL ACTION (Enactment Date)	STATUS OF PERMANENT LEGISLATION
Multi-Family Rental Housing Purchase Emergency Act	EA 2-149(Act 2-277)	1-1-79	9-19-78	10-3-78	D. C. Law 3-18, eff. 9-28-79
	EA 2-171(Act 2-314)	3-14-79	11-14-78	12-14-78	
	*EA 3-14 (Act 3-15)	6-12-79	2-27-79	3-13-79*(eff. 3-14-79)	
	EA 3-39(Act 3-53)	9-9-79	5-22-79	6-11-79	
	EA 3-64(Act 3-90)	11-25-79	7-31-79	8-27-79	
Emergency Offer to Purchase Act	EA 2-144(Act 2-273)	11-30-78	8-10-78	9-1-78	D. C. Law 3-26, eff. 10-18-79
	EA 2-173(Act 2-315)	3-15-79	11-14-78 Reconsidered 11-28-78	12-15-78	
	*EA 3-15(Act 3-16)	6-12-79	2-27-79 Reconsidered 3-13-79	3-16-79*(eff. 3-14-79)	
	EA 3-40(Act 3-54)	9-10-79	5-22-79	6-12-79	
	EA 3-72(Act 3-96)	11-25-79	7-31-79	8-27-79	
D. C. Government Comprehensive Merit Personnel Act Emergency Amendments	EA 3-16(Act 3-14)	5-30-79	2-27-79	3-1-79	D. C. Law 3-14, eff. 8-1-79
	*EA 3-34(Act 3-45)	8-28-79	5-8-79	5-29-79*(eff. 5-30-79)	
Harbor and Boating Safety Regulations Emergency Act *	EA 3-17		Referred to Judiciary Committee. No Action Taken		D. C. Law 3-35, eff. 9-28-79
	EA 3-47(Act 3-69)	10-10-79	6-19-79	7-12-79	
Merit Personnel System Amendments Emergency Act	EA 3-18		Referred to Committee of the Whole with comments from Government Operations. No Action Taken.		No Permanent Legislation

COUNCIL OF THE DISTRICT OF COLUMBIA
EMERGENCY ACTIONS REPORT

Report Date NOVEMBER 9, 1979

	TITLE	EMERGENCY ACT(S)	EXPIRATION DATE	COUNCIL ACTION (Date Adopted)	MAYORAL ACTION (Enactment Date)	STATUS OF PERMANENT LEGISLATION
	D.C. Consumer Layaway Plan Service Charge Emergency Act	EA 3-185(Act 2-337) EA 3-19(Act 3-17) EA 3-46(Act 3-60) EA 3-76(Act 3-106)	3-29-79 6-26-79 10-10-79 1-10-80	12-12-78 3-13-79 6-19-79 9-25-79	12-29-78 3-27-79 7-12-79 10-12-79	D.C. Law 3-28, eff. 10-18-79
*	Closing of Public Alley in Square 214 Emergency Act	EA 3-20(Act 3-22) EA 3-50(Act 3-82) EA 3-85(	7-12-79 11-7-79	4-10-79 7-3-79 10-23-79	4-13-79 8-9-79 Transmitted to Mayor 11-8-79--Pending Review	Bill 3-163 reported out of committee, scheduled for Work Session 11-13-79
	Mayoral Contract Authorization Emergency Act	EA 3-21		Referred to Committee of the Whole. No action taken.		No Permanent Legislation
	Moratorium on Retail Service Stations Conversion Emergency Act	EA 2-177(Act 2-329) EA 3-22(Act 3-19) EA 3-48(Act 3-71) EA 3-82(Act 3-116)	3-29-79 7-12-79 10-30-79 1-31-80	12-12-78 3-27-79 7-3-79 Reconsidered 7-31-79 10-9-79	12-29-78 4-13-79 8-1-79 11-2-79	Act 3-118 in the Office of the Secretary pending transmittal to Congress
*	Closing of a Public Alley in Square 77 Emergency Act	EA 3-184 (Act 2-336) EA 3-23(Act 3-20)	3-29-79 6-27-79	12-12-78 3-27-79	12-29-78 4-13-79*(eff. 3-29-79)	D.C. Law 3-5, eff. 6-7-79
*	Closing of a Public Alley in Square 2855 Emergency Act	EA 2-145(Act 2-276) EA 2-181(Act 2-333) *EA 3-24(Act 3-21) EA 3-45 (Vetoed)	1-3-79 3-29-79 6-27-79 Vetoed 7-12-79	9-19-78 12-12-78 3-27-79 6-19-79	10-5-78 12-29-78 4-13-79*(eff. 3-29-79) Vetoed 7-12-79	D. C. Law 3-8, eff. 6-22-79
	Youth Employment Emergency Act	EA 3-25(Act 3-42) *EA 3-55(Act 3-84) EA 3-86	8-20-79 11-19-79	4-10-79 Reconsidered 5-8-79 7-17-79 10-23-79	5-22-79 8-14-79*(eff. 8-21-79) Transmitted to Mayor 10-29-79--Pending Review	Bill 3-138 Adopted by Council on 10-23-79 is pending Mayoral review. To Mayor 10-30-79

Report Date NOVEMBER 9, 1979

TITLE	EMERGENCY ACT(S)	EXPIRATION DATE	COUNCIL ACTION (Date Adopted)	MAYORAL ACTION (Enactment Date)	STATUS OF PERMANENT LEGISLATION
Real Property Tax Classification for Tax Year 1980 Emergency Act	EA 3-26(Act 3-56)	9-27-79	5-22-79 Reconsidered 6-5-79	6-29-79	Act 3-104 pending Congressional Review.
	EA 3-73(Act 3-103)	12-28-79	9-11-79	9-28-79	Transmitted to Congress 10-5-79
Realty Violations Correction Fund Emergency Act	EA 3-27(Act 3-36)	8-2-79	4-10-79	5-4-79	Bill 3-136 Adopted by Council on 10-23-79 is pending Mayoral review. To Mayor 11-5-79
	*EA 3-58(Act 3-87)	11-4-79	7-17-79	8-14-79*(eff. 8-6-79)	
	EA 3-87		10-23-79	Transmitted to Mayor 10-30-79--Pending Mayoral review.	
Home Purchase Assistance Fund Expansion Act Emergency	EA 3-28(Act 3-38)	8-5-79	4-10-79	5-7-79	Bill 3-137 withdrawn at Legislative Session on 9-25-79 at first reading
	*EA 3-56(Act 3-85)	11-19-79	7-17-79	8-14-79*(eff 8-3-79)	
Development Assistance Seed Money Loan Fund Emergency Act	EA 3-29(Act 3-39)	8-5-79	4-10-79	5-7-79	Bill 3-135 withdrawn at Legislative Session on 9-25-79 at first reading
	*EA 3-57(Act 3-86)	11-4-79	7-17-79	8-14-79*(eff. 8-6-79)	
D. C. Income & Franchise Tax Statute of Limitations Extension Emergency Act	*EA 3-30(Act 3-43)	7-15-79	4-10-79 Reconsidered 5-8-79	5-22-79*(eff. 4-16-79)	
	EA 3-51(Act 3-72)	10-30-79	7-3-79 Reconsidered 7-31-79	8-1-79	D. C. Law 3-21, eff. 9-28-79
Emergency Amendments to the D. C. Consumer Transmission of Money Act	EA 3-31(Act 3-40)	8-6-79	4-10-79	5-8-79	Act 3-113 pending Congressional Review.
	EA 3-68(Act 3-94)	11-25-79	7-31-79	8-27-79	
	EA 3-89		11-6-79	Pending transmittal to the Mayor	Transmitted to Congress 11-5-79
Emergency Condominium-Cooperative Conversion Rent Level Act	EA 3-36(Act 3-47)	8-27-79	5-8-79	5-29-79	D. C. Law 3-35, eff. 10-20-79

TITLE	EMERGENCY ACT(S)	EXPIRATION DATE	COUNCIL ACTION (Date Adopted)	MAYORAL ACTION (Enactment Date)	STATUS OF PERMANENT LEGISLATION
Emergency Regulation Enforcement Act	EA 3-37(Act 3-48) EA 3-59(Act 3-88) EA 3-92	8-28-79 11-12-79	5-8-79 7-17-79 11-6-79	5-30-79 8-14-79 Pending transmittal to the Mayor	Act 3-114 pending Congressional Review Transmitted to Congress 11-5-79
Full Political Participation Emergency Act	EA 3-41(Act 3-52) EA 3-66(Act 3-92) EA 3-84(Act 3-109)	9-6-79 12-5-79 1-13-80	5-22-79 7-31-79 10-9-79	6-8-79 8-27-79*(eff. 9-6-79) 10-15-79	Bill 3-158 is pending in Government Operations Committee
Emergency Condominium and Cooperative Stabilization Act	EA 3-42(Act 3-44) EA 3-70(Act 3-95)	8-27-79 11-25-79	5-22-79 7-31-79	5-29-79 8-27-79	Bill 3-208 is pending in Housing & Economic Dev. Committee
Emergency D. C. Government Comprehensive Merit Personnel Act Disability Comprehensive Claims Amendment	EA 3-43 (Vetoed)	Vetoed 6-26-79	6-5-79	Vetoed 6-26-79	No Permanent Legislation
Vacant Housing Registration & Regulation Emergency Act	EA 3-44		Referred to Committee of the Whole with comment from Housing & Economic Dev. Pending in committee		No Permanent Legislation
Closing of Public Alley in Square 2855 Emergency Act	EA 3-45 (Vetoed)	Vetoed 7-12-79	6-19-79	Vetoed 7-12-79	D. C. Law 3-8, eff. 6-22-79
Interest Rate Modification Emergency Act	EA 3-52(Act 3-58) EA 3-79(Act 3-105)	10-8-79 1-3-80	7-3-79 9-25-79	7-10-79 10-5-79	Act 3-199 pending Congressional Review Transmitted to Congress 11-6-79
Accounting & Certification Systems Emergency Act	EA 3-60 (Vetoed)	Vetoed 8-27-79	7-31-79	Vetoed 8-27-79	Bill 3-180 is pending in the Committee of the Whole

COUNCIL OF THE DISTRICT OF COLUMBIA
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Report Date NOVEMBER 9, 1979

TITLE	EMERGENCY ACT(S)	EXPIRATION DATE	COUNCIL ACTION (Date Adopted)	MAYORAL ACTION (Enactment Date)	STATUS OF PERMANENT LEGISLATION
D. C. Comprehensive Merit Personnel Emergency Amendments Act	EA 3-61(Act 3-89) EA 3-91	11-14-79	7-31-79 11-6-79	8-16-79 Pending transmittal to the Mayor	No Permanent Legislation
Closing of Streets & Alleys for the Washington Civic Center	EA 3-62(Act 3-97) EA 3-88	11-29-79	7-31-79 11-6-79	8-31-79 Pending transmittal to the Mayor	Bill 3-199 reported out of committee, scheduled for Work Session 11-13-79
Confidentiality & Disclosure of Records on Abused & Neglected Children Emergency Act	EA 3-63(Act 3-73)	10-30-79	7-31-79	8-1-79	D. C. Law 3-29, eff. 10-18-79
Real Property Tax Rates for Tax Year 1980 Emergency	EA 3-69(Act 3-74) EA 3-83(Act 3-111)	10-31-79 1-24-80	7-31-79 10-9-79	8-2-79 10-26-79	Act 3-112 pending Congressional Review. Transmitted to Congress 10-31-79
Emergency Amendment to the Community Residence Facilities Licensure Act	EA 3-71(Act 3-98)	11-29-79	7-31-79	8-31-79	Act 3-114 pending Congressional Review. Transmitted to Congress 11-5-79
Electric & Gas Utility Services Termination to Master-metered Apartment Bldgs. Emergency Act	EA 3-75(Act 3-110)	1-16-80	9-25-79	10-18-79 w/o sig.	Bill 3-186 pending in Public Services & Consumer Affairs and Housing and Economic Dev. Committees.
Property Tax Relief Application Deadline Extension Emergency Act	EA 3-78(Act 3-108)	1-13-80	9-25-79	10-15-79	Bill 3-210 pending in Finance & Revenue Committee

COUNCIL OF THE DISTRICT OF COLUMBIA
EMERGENCY ACTIONS REPORT

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TITLE	EMERGENCY ACT(S)	EXPIRATION DATE	COUNCIL ACTION (Date Adopted)	MAYORAL ACTION (Enactment Date)	STATUS OF PERMANENT LEGISLATION
D. C. Fund Accounting Emergency Act	EA 3-80		Pending in Committee of the Whole. Withdrawn Legislative Session of 11-6-79		Bill 3-197 is pending in the Committee of the Whole.
Emergency Heating Oil Cost Rent Adjustment Act	EA 3-81(Act 3-115)	1-30-80	10-23-79	11-2-79	Bill 3-206 is pending in Housing & Economic Development Committee

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

THE WASHINGTON HOME OWNERSHIP COUNCIL, INC.,
Plaintiff

v.

DISTRICT OF COLUMBIA,
Defendant

METROPOLITAN WASHINGTON PLANNING AND HOUSING ASSOCIATION, INC., et al.
Intervenor-Defendants

C.A. No. 10624-79

OPINION AND ORDER

In this action, plaintiff Washington Home Ownership Council, Inc. ("WHOC") seeks a declaratory judgment that certain "emergency" acts of the council of the District of Columbia relating to the sale, acquisition and development of real estate for cooperative or condominium ownership were unlawfully enacted. Plaintiff also seeks to enjoin enforcement of any such act unlawfully enacted which has not been superceded by permanent legislation. The matter is before the Court on the parties' cross motions for summary judgment.

I. BACKGROUND

Article 1, Section 8, clause 17 of the United States Constitution vests legislative authority over the District of Columbia in the United States Congress. Congress may, however, delegate any or all of its legislative responsibility over the District's local affairs to a local legislative body in the District, so long as Congress retains the power to revise, alter and revoke the acts of the local government. District of Columbia v. John R. Thompson Company, Inc., 346 U.S. 100 (1953).

Over the years, Congress has instituted various forms of local government in the District. Local government in the District is currently authorized by the "District of Columbia Self-Government and Government Reorganization Act," P.L. 93-198, 1 D.C. Code §§121 et seq, as amended (Supp. VI, 1979) (the "Home Rule Act").

The delegation of legislative power by the Congress to the Council of the District of Columbia ("the Council") provided for in the Home

Rule Act, is subject to certain limitations of a procedural nature, which are intended to provide for both citizen input into the legislative process (Section 412(a), 1 D.C. Code §146(a)), and for Congressional review of Council Acts prior to their becoming law (Section 602, 1 D.C. Code §147 (c)(1)). An exception to these procedural limitations is provided in Section 412(a) of the Home Rule Act, 1 D.C. Code §146(a), for "emergency" legislation:

> If the Council determines, by a vote of two thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days.

Thus, the Council is empowered to enact both "permanent" legislation (that which has passed through two readings and Congressional review) and "emergency" legislation (effective immediately but for no more than ninety days).

In this action, plaintiff WHOC alleges that successive enactment by the Council of numerous "emergency" acts dealing with ownership and development of condominium and cooperative properties in the District is in violation of the Home Rule Act. Defendant District of Columbia and the Intervenor-defendants vigorously contest this allegation. Only the procedure by which those acts were enacted is at issue in this litigation; the legality or constitutionality of the substantive provisions of those "emergency" acts is not before the Court.*/

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*/ Plaintiff WHOC is a District of Columbia not-for-profit corporation, composed of member companies and individuals engaged in ownership, brokerage, development and/or management of real estate in the District, including condominium and cooperative housing. Intervenor defendants are the Metropolitan Washington Planning and Housing Association, Inc., a not-for-profit corporation involved in representing and assisting low and moderate income families in need of housing in the District, and the following tenant organizations: Towne Towers/ Aristocrat Tenants Association, Dorchester Tenants Association, Mintwood Tenants Association, Park Regent Tenants Association, Covington Tenants Association and Arundel Association.

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II. FACTS

In the three counts of its Complaint, plaintiff challenges the validity of three separate groups of "emergency" acts, as follows:

A: Count One:

1. Emergency Condominium and Cooperative Stabilization Act of 1979, D.C. Act 3-44, approved May 29, 1979.

Accompanied by Resolution 3-126, May 22, 1979, setting forth the circumstances deemed by the council to constitute an emergency, this act imposed a 90 day moratorium on condominium and cooperative conversions, and established the Emergency Condominium and Cooperative Conversion Commission to study the subject and recommend permanent legislation thereon.

2. Emergency Condominium and Cooperative Conversion Stabilization Act of 1979, D.C. Act 3-95, approved August 27, 1979.

Accompanied by Resolution 3-201, July 31, 1979, which is identical to Resolution 3-126, supra, with only minor statistical additions. Both resolutions recite that:

> [t]he preservation of the public peace, health safety and general welfare necessitates an emergency act to impose temporary controls on the conversion of rental properties to condominium or cooperative status and thus to stabilize rental housing in the District of Columbia.

B. Count Two:

Following enactment of two "emergency" moratorium acts */, the Council enacted (after two readings) and transmitted to Congress the Cooperative Conversion Moratorium Act, D.C. Law 1-71, 29 D.C. Code §801 (Supp. V 1978). It became law on June 19, 1976, at the expiration of the 30 day Congressional review period, no concurrent resolution of disapproval having been passed in Congress. That law provided for a 180 day moratorium on cooperative conversions, expiring on November 3, 1976. The report of the Council's Committee on Housing and Urban Development which accompanied the bill that became D.C. Law 1-71 stated

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*/ The Emergency Cooperative Conversion Act, D.C. Act 1-90, approved February 6, 1976, and the Second Emergency Cooperative Conversion Moratorium Act of 1976, D.C. Act 1-112, approved May 6, 1976.

that the 180 day moratorium was needed to allow the Council time to "construct and offer permanent legislation which will serve to govern the establishment and conduct of cooperative housing accomodations in the District."

Following the expiration of the 180 day moratorium, ten successive emergency acts were passed by the Council and approved by the Mayor, with the effect of continuing the moratorium in force. These acts were:

1. Emergency Cooperative Regulation Act of 1976, D.C. Act 1-189, approved January 3, 1977.

Accompanied by Resolution 1-434, December 7, 1976, which finds emergency circumstances in the fact that the Congressionally approved 180 day moratorium would expire before the Council could enact "comprehensive legislation" due to the Council's "legislative Schedule", and that "chaos...in the housing market" would result from termination of the moratorium prior to enactment of comprehensive legislation.

2. Emergency Cooperative Regulation Act of 1977, D.C. Act 2-13, approved March 18, 1977.

Accompanied by Resolution 2-38, March 8, 1977, this Act follows the language of the first emergency moratorium (D.C. Act 1-189, supra), and is based on the same emergency circumstances.

3. Second Emergency Cooperative Regulation Act of 1977, D.C. Act 2-47, approved June 17, 1977.

Accompanied by Resolution 2-100, June 14, 1977, both the act and resolution are the same as their predecessors, except that the act adds provisions for housing and relocation assistance to persons displaced by conversions occurring within the limited exceptions to the moratorium.

4. Third Emergency Cooperative Regulation Act of 1977.

Accompanied by Resolution 2-165, September 13, 1977, this act and its resolution are identical in provisions and reasons therefor to the act and resolution immediately preceding them (D.C. Act 2-47 and Resolution 2-100, supra.)

On December 6, 1977, the Council enacted the First Emergency Cooperative Conversion Regulation Act of 1978, D.C. Act 2-70, following adoption of Resolution 2-224. The provisions of that Act were substantially the same as D.C. Act 2-88, supra, as was the accompanying

Resolution 2-224. On January 20, 1978, the Mayor disapproved D.C. Act 2-70, due to numerous technical deficiencies in the language of the Act (and in the language of the similarly worded "permanent" legislation then pending on the same subject). In his statement of reasons, the Mayor stated that his action would not adversely affect tenants in the District.

5. Second Emergency Cooperative Regulation Act of 1978, D.C. Act 2-171, approved April 3, 1978.

Accompanied by Resolution 2-258, February 21, 1978, which notes that the Mayor's disapproval of D.C. Act 2-70, supra, has left a gap in regulation of cooperative conversions, resulting in an emergency because a continued moratorium is needed to prevent chaos, the act is a reworded version of D.C. Act 2-88, supra.

6. Third Emergency Cooperative Regulation Act of 1978, D.C. Act 2-239, approved July 17, 1978.

Accompanied by Resolution 2-389, which recites that comprehensive legislation is under consideration in committee and scheduled for public hearings, and that moratorium must continue to avoid chaos, the act is identical to D.C. Act 2-171, supra.

7. Fourth Emergency Cooperative Regulation Act of 1978, D.C. Act 2-290, approved October 25, 1978.

Accompanied by Resolution 2-447, October 3, 1978, the act and resolution are identical in terms to D.C. Act 2-239 and Resolution 2-389, supra.

8. First Emergency Cooperative Regulations Act of 1979, D.C. Act 3-12, approved January 25, 1979.

Accompanied by Resolution 3-12, January 16, 1979, this act is identical to its predecessor except that additional amendments were made to D.C. Code provisions governing the Relocation Assistance Office. Resolution is identical to Resolution 2-447, supra.

9. Second Emergency Cooperative Regulation Act of 1979, D.C. Act 3-37, approved May 4, 1979.

Accompanied by Resolution 3-73, April 10, 1979, the act and the resolution are substantially identical to their predecessors except for dates.

10. Third Emergency Cooperative Regulation Act of 1979, D.C. Act 3-79, approved August 3, 1979.

Accompanied by Resolution 3-170, July 17, 1979, which recites that

permanent legislation is before the Mayor and the moratorium must meanwhile remain in effect to avoid chaos. Provisions of this act are identical to D.C. Act 3-37, supra.

On June 5, 1979, the Council finally did adopt "permanent" legislation in the Cooperative Regulation Act of 1979, which became D.C. Law 3-19 on September 28, 1979, upon expiration of the 30 day period for Congressional review. This law, containing essentially the same provisions as those included in the "emergency" acts that preceded it, was adopted by the Council almost three years after the enactment of the 180 day moratorium, approved by Congress, which was supposed to allow the Council time to enact permanent legislation on this subject.

III. COUNT THREE

On November 29, 1977, the Council passed the Rental Housing Act of 1977, D.C. Act 2-118. Upon completion of the Congressional review period, it became D.C. Law 2-54 on March 16, 1978, 45 D.C. Code §§1681 et seq. (Supp. VI, 1979). "Permanent" legislation to amend that act has been passed by the Council in the Offer to Purchase Act of 1979, D.C. Act 3-75, approved August 1, 1979, which became law on October 18, 1979, and the Multi-Family Rental Housing Purchase Act of 1979, which completed Congressional review and became D.C. Law 3-18 on September 28, 1979. In the interim between the enactment of the Rental Housing Act of 1977 and the "permanent" amendments, the substance of these amendments was enacted in the form of numerous "emergency" measures, as follows:

1. Emergency Offer to Purchase Act of 1978, D.C. Act 2-273, approved September 1, 1978.

Accompanied by Resolution 2-425, August 10, 1978, this act amended Sections 601 and 602 of the Rental Housing Act of 1977. The resolution describes perceived inadequacies in the 1977 Act and states that an emergency exists in that immediate amendment of the provisions of the 1977 Act is needed to prevent evictions of tenants.

2. Emergency Multi-Family Rental Housing Purchase Act of 1978, D.C. Act 2-277, approved October 3, 1978.

Accompanied by Resolution 2-434, September 19, 1978, which finds an

emergency in the fact that the amendment to Section 602(b) of the 1977 Act contained in this act would be beneficial to tenants, who would otherwise be at a disadvantage in seeking to buy their dwellings.

3. Second Emergency Offer to Purchase Act of 1978, D.C. Act 2-315, approved December 15, 1978.

Accompanied by Resolution 2-471, November 14, 1978, which recites that permanent legislation had been introduced in the Council, this act and resolution are otherwise identical to D.C. Act 273 and Resolution 2-425, supra.

4. Emergency Multi-Family Rental Housing Purchase Act of 1979, D.C. Act 2-314, approved December 14, 1978.

Accompanied by Resolution 2-469, December 12, 1978, this act deletes §602(b) of the Rental Housing Act of 1977 and substitutes a new §602(b). The resolution recites that "permanent" legislation was under consideration in Committee, but a scheduled recess was coming up, so no permanent legislation could be enacted prior to expiration of previous emergency act (D.C. Act 2-277), and this constituted an emergency.

5. Second Emergency Multi-Family Rental Housing Purchase Act of 1979, D.C. Act 3-15, approved March 13, 1979.

Accompanied by Resolution 3-39, which states that Committee consideration of "permanent" legislation continues and "permanent" legislation cannot be enacted before expiration of D.C. Act 2-314, supra. Provisions of this act are identical to those of D.C. Act 2-314, supra.

6. First Emergency Offer to Purchase Act of 1979, */ D.C. Act 3-16, approved March 16, 1979.

Accompanied by Resolution 3-42, reciting that permanent legislation had been introduced in the Council but would not be enacted prior to expiration of D.C. Act 2-315, thus creating the need to reenact the provisions of D.C. Act 2-315.

7. Third Emergency Multi-Family Rental Housing Purchase Act of 1979, D.C. Act 3-53, June 11, 1979.

Accompanied by Resolution 3-119, May 22, 1979, reciting same reasons for emergency as its predecessor (D.C. Act 3-15, supra) and noting that

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*/ The official title of this Act ("First") suggests that the Council anticipated when it passed this one that further "emergency" enactments on the same subject would be required, as proved to be the case.

a "permanent" bill had been reported out of Committee.

8. Second Emergency Offer to Purchase Act of 1979, D.C. Act 3-54, approved June 12, 1979.

Accompanied by Resolution 3-120, May 22, 1979, the act and resolution are substantially identical to D.C. Act 3-16 and Resolution 3-42, supra.

9. Fourth Emergency Multi-Family Rental Housing Purchase Act of 1979, D.C. Act 3-90, approved August 27, 1979.

Accompanied by Resolution 3-179, July 31, 1979, this act was enacted subsequent to transmittal of permanent legislation to Congress, to "fill the gap" between enactment of the "permanent" bill and expiration of the Congressional review period.

10. Latest Conforming Emergency Offer to Purchase Act of 1979, D.C. Act 3-96, approved August 27, 1979.

Accompanied by Resolution 3-205, this act includes provisions of the previously-enacted "permanent" bill on this subject as well as those of its predecessors. It is also a "fill the gap" act, to cover the period of Congressional review.

The parties do not dispute that the above-listed acts were enacted by the Council by the requisite majority. Consequently, the only issues remaining in this case are issues of law. Summary judgment is therefore appropriate at this time.

III. ISSUES PRESENTED.

1. Whether any of the matters raised in plaintiff's Complaint are moot.

2. Whether the Home Rule Act permits the Council to successively enact the same or similar "emergency" legislation.

IV. DISCUSSION

1. Mootness

At the outset, the Court must address the argument, vigorously asserted by defendant and intervenor-defendants, that the second and third counts of the complaint are moot. Since all of the emergency statutes at issue in these counts have expired or have been superceded

by "permanent" legislation, */ injunctive relief is not available as to those counts, as plaintiff conceded at oral argument. However, those counts continue to present a justiciable controversy susceptible of resolution through a declaratory judgment.

The defendant takes the position that the Council may, consistent with the Home Rule Act, reenact substantially the same emergency measure an indefinite number of times, and the succession of statutes at issue in plaintiff's counts two and three graphically illustrates the Council's adherence to that position. If defendant could evade judicial review of this practice by enactment of identical permanent legislation whenever the practice is challenged, the practice could be forever "capable of repetition, yet evading review." Southern Pactific Terminal Co. v. ICC, 219 U.S. 498, 515 (1911).

In considering the mootness issue in a case strikingly similar in principle to the present matter, the Supreme Court has held that a case is not moot when "(1) The challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again" SEC v. Sloan, 436 U.S. 103, 109 (1978) (quoting Weinstein v. Bradford, 423 U.S. 147 (1975). Here, ninety days is certainly not sufficient time for full litigation of the validity of these acts, and the Council's conduct and the legal arguments submitted on its behalf leave more than a reasonable expectation that the Council would, if it were legal for it to do so, enact additional emergency acts affecting plaintiff and its members. See also County of Los Angeles v. Davis, 99 S. Ct. 1379 (1979).

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*/ The matters in Count two have been addressed in the Cooperative Regulation Act of 1979, D.C. Law 3-19, which became law on September 28, 1979. The matters in Count Three have been dealt with in the Multi-Family Rental Housing Purchase Act of 1979, D.C. Law 3-18, which became law on September 28, 1979, and the Offer to Purchase Act of 1979, D.C. Law 3-26, which became law on October 18, 1979. In light of these events it is unnecessary for the Court to decide the issue, raised at argument, of whether successive reenactment of emergency acts may be permissible during the period that a permanent act is before Congress for review.

Additionally, the Council has demonstrated in the conduct underlying all three counts, that enactment of "permanent" legislation does not necessarily mean that no further "emergency" enactments will be forthcoming on the same subject, since all of the emergency statutes at issue here supercede, suspend, or amend provisions of the D.C. Code. In short, defendant has failed to meet its heavy burden of demonstrating mootness. United States v. W.T. Grant, 345 U.S. 629 (1953).

2. Successive Enactment.

Plaintiff alleges that the Council has abused its "emergency" legislative power, in successively enacting the acts at issue in this case. As a threshold matter, it is necessary for the Court to define the parameters of the Council's emergency power.

Neither the Home Rule Act, nor its legislative history, nor any reported decision in this jurisdiction, contain a definition of the term "emergency circumstances". However, prior statutory provisions in the District, resolutions of the Council, and judicial decisions of other jurisdictions provide a more than adequate basis for this Court to judicially construe the statutory language.

The appointed Council which preceded the current elected Council was subject to the provisions of the D.C. Administrative Procedure Act, 1 D.C. Code §§1501 et seq. Section 6(c) of that Act provides in part that, when

> in an emergency, as determined by the Commissioner or the Council or an independent agency the adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals, the Commissioner or Council or such independent agency may adopt such rules as may be necessary in the circumstances, and such rules as may be necessary in the circumstances, and such rule may become effective immediately. [emphasis added]

This provision was also included in the Rules of the appointed Council, 2 D.C.R.R. §2.6(b).

While defendant correctly points out that the elected Council under the Home Rule Act has far broader legislative authority than its

predecessor, that body has also adopted the standard set forth above for defining emergency action. See Emergency Condominium Cooperative Conversion Stabilization Resolution of 1979, Resolution 3-201 (July 31, 1979); Emergency Condominium Cooperative Conversion Control Resolution of 1979, Resolution 3-126 (May 22, 1979); Amendment Defining Emergency in the Council Rules, Proposed Resolution 2-19 (introduced in 1977 but apparently not adopted by the Council).

The "emergency circumstances" language used by Congress in the Home Rule Act is not uncommon in municipal charters, as Congress recognized when the provision giving the Council this power was added to the proposed Home Rule bill in Committee. See Home Rule for the District of Columbia, 1973-1974, Background and Legislative History, pp. 1042-43 (Committee Print, 1974). The Courts of other jurisdictions have had numerous opportunities to consider the meaning of such a provision, and the weight of authority supports the conclusion that an emergency is "an unforeseen occurrence or condition calling for immediate action; an exigency; a crisis; or a time of difficulty or danger." 5 McQuillan, Municipal Corporations, §15.40, and cases cited therein (n.38). See "The Emergency Legislation Authority of the Council", 1 Opinions of the Corporation Counsel, D.C. 467, 472 (1977).*/

The Court therefore holds that the emergency legislative authority of the Council, conferred by 1 D.C. Code §146(a), may properly be invoked only where two thirds of the members of the Council find that circumstances exist constituting an unforeseen occurrence or condition calling for immediate action to preserve the public peace, health, safety, welfare or morals. It is a power intended for use only in times of exigency, crisis, difficulty or danger.

Statutory construction and issuance of a declaratory judgment based thereon are traditional functions of the judiciary and are within the jurisdiction of this Court. McIntosh v. Washington, 395 A.2d 744 (D.C. App. 1978). This Court is empowered to prospectively enjoin enforcement

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*/ Hereinafter cited as Op. C.C., D.C.

of any act enacted by the Council which contravenes, procedurally or substantively, the United States Constitution or an act of Congress, */ so that the remedies potentially available to the plaintiff are clear. Plaintiff conceded at argument that it did not seek to have the Court review the Council's factual determination that the rental housing situation in the District rose to the level of an emergency, and such an inquiry is in any event unncessary in light of the Court's disposition of this case. **/

The only issue remaining is whether the Council, having found an emergency to exist, may successively reenact substantially the same emergency act, so as to continue the substantive provisions of such an act in force for more than ninety days, without a second reading or Congressional review. This, also, is an issue of statutory construction. The question will then become one of determining what relief, it any, is appropriate in light of the great reluctance that this and every Court should have to interfere in the province of the legislature.

Defendant argues that the Council may successively enact emergency legislation so long as a new emergency resolution is first passed each time by the required majority. Plaintiff's position is that, with a possible exception not present here, the Council may not do so, but rather must submit such legislation to a second reading and Congressional review if a duration of more than ninety days is desired.

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*/ The Court iterates that the substantive provisions of the acts at issue here are not before the Court for review in this action.

**/ While there is a split of authority among the Courts that have had occasion to consider whether the legislature's finding of an emergency is conclusive on the Courts, See 5 McQuillan, Municipal Corporations §15.40 (3d. Ed., 1969), this Court is of the opinion that the better rule is that such a factual determination, made on the basis of the standard enunciated herein, would be conclusive on the Court unless it were apparent on the face of the act and/or resolution itself that no emergency could have existed. Any doubt should be resolved in favor of the legislative determination.

The plain language of the statute provides greater support for plaintiff's position than for that taken by defendant. When the legislative history of the Home Rule Act and the 1978 amendments thereto is considered, the only natural and logical conclusion that can be reached is that the Congress did not confer upon the Council the power to enact "temporary" legislation of indefinite duration through repeated use of the emergency power.

Section 412(a) of the Home Rule Act, as amended, 1 D.C. Code §146(a) (Supp. VI, 1979), provides a limited exception to the procedural requirements which Congress required the Council to follow in enacting legislation. It is clear that Congress expected the Council to have a second reading of all legislation routinely enacted by the Council, and to submit that legislation to Congress for review prior to its becoming law. These procedural requirements are not mere formalities. The purpose of the second reading is to provide an opportunity for interested citizens to have notice of a bill and to submit their views to their representatives prior to final consideration of that bill. See Home Rule for the District of Columbia, 1973-1974, Background and Legislative History, p. 1042. (Committee Print, 1974). The opportunity for Congressional review is provided for in the act as a means to facilitate Congress' discharge of its ultimate Constitutional responsibility for the affairs of the District of Columbia. Id., pp. 2084 et seq.

The "emergency" power was added to the Home Rule Act in Committee in conjunction with the amendment adding the second reading rule, Id., pp. 1042-43, to enable the Council to bypass the second reading in the case of true emergencies. It is clearly intended to be used for extraordinary circumstances, not routine legislation, no matter how desireable or beneficial such legislation may be. */

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*/ Plaintiff has suggested, and defendant has not contested the suggestion, that the Council has used the emergency power extensively to legislate on numerous issues. The Court emphasizes that this power is not intended to be used as a "shortcut" vehicle for enacting routine or temporary measures.

By its terms, the Home Rule Act provides that an emergency act "shall be effective for a period of not to exceed ninety days." 1 D.C. Code §146(a). It is clear to the Court that the statutory language is not susceptible of any reasonable intepretation other than that the Council may not, through its emergency power, continue in effect substantially the same substantive provisions of law for more than ninety days without a second reading of the act. This is what Congress anticipated. Home Rule for the District of Columbia, 1973-1974, Background and Legislative History, p. 1043 (Committee Print, 1974). See SEC v. Sloan, 436 U.S. 103, 112 (1978).

Defendant has argued that SEC v. Sloan, supra, is distinguishable on the ground that the statutory language at issue in that case differs materially from that of the Home Rule Act, so that the SEC Act limits the remedy while the Home Rule Act limits only the duration of a single act. The Court finds that argument unpersuasive, in light of the plain language of Section 412(a) of the Home Rule Act.

Defendant has also argued that Congress has implicitly approved the Council's practice of successively reenacting emergency measures, in the course of Congressional consideration of the 1978 amendments to the Home Rule Act. The Supreme Court rejected a far more persuasive argument for Congressional approval in SEC v. Sloan, supra., stating that

> We are extremely hesitant to presume general congressional awareness of the Commission's construction based only upon a few isolated statements in the thousands of pages of legislative documents. That language in a Committee Report, without additional indication of more widespread congressional awareness, is simply not sufficient to invoke the presumption in a case such as this. For here its invocation would result in a construction of the statute which is not only at odds with the language of the section in question and the pattern of the statute taken as a whole, but is extremely far reaching in terms of the virtually untrammeled and unreviewable power it would vest in a regulatory agency.
>
> Even if we were willing to presume such general awareness on the part of Congress, we are not at all sure that such awareness at the

> time of re-enactment would be tantamount to amendment of what we conceive to be the rather plain meaning of the language of §12(k).

Id., 436 U.S., 121. In any event, the only context in which Congress may be said to have approved the Council's use of its emergency power in 1978, is with respect to "filling the gap" created by the Congressional review period, and it is arguable that Congress' intent in 1978 was to eliminate the justification for doing even that in the future. There is no explicit Congressional approval of the Council's use of the emergency power to enact temporary legislation for an indefinite period while the Council considers permanent legislation.

The Corporation Counsel of the District of Columbia, who is the District's chief legal officer, has repeatedly stated, in published opinions, that successive enactment of "emergency" legislation is violative of the Home Rule Act. Comments on EA 1-86: Emergency Cooperative Regulation Act of 1976, 1 Op. C.C.,D.C. 424 (1977); The Emergency Legislation Authority of the Council, 1 Op. C.C., D.C. 467 (1977); Comments on EA 2-133, the "First Emergency Housing Discontinuance Regulation Act of 1978," 3 Op. C.C.,D.C. 258 (1978). Such opinions "are entitled to weight unless plainly unreasonable or contrary to ascertainable legislative intention." Williams v. WMATC, 153 U.S. App. D.C. 183, 189, 472 F.2d 1258, 1264 (1972); Jordan v. District of Columbia, 362 A.2d 114, 118 (1976). Although Corporation Counsel has found itself compelled to adopt a radically different position in the course of fulfilling its duty to the District in defending this action, the earlier opinions of that office reflect a more reasoned interpretation of the Home Rule Act.

Defendant's argument that Congress, in requiring a two thirds majority of the entire Council for enacting an emergency act, intended no other limitation on the use of the emergency power is totally unpersuasive in light of the plain language and legislative history of the

Home Rule Act. The imposition of this requirement, indeed, highlights the congressional intent that the emergency power be a limited exception to the legislative procedures required by Congress in the Home Rule Act.

The Court concludes that the successive enactment of substantially the same substantive provisions of law through the emergency power, maintaining such provisions in effect for more than ninety days without a second reading or submission for Congressional review is, with respect to the statutes at issue before the Court, unlawful. */

WHEREFORE, it is this 19th day of October, 1979,

ORDERED that enforcement of the Emergency Condominium and Cooperative Conversion Stabilization Act of 1979, D.C. Act 3-95 (approved August 27, 1979) is enjoined.

And it is FURTHER ORDERED, ADJUDGED AND DECLARED that those emergency acts at issue herein, which were enacted to continue in force the substantive provisions of prior emergency acts, were unlawfully enacted.

And it is FURTHER ORDERED that plaintiff's Motion for Summary Judgment is GRANTED to the extent set forth herein and otherwise DENIED. Defendant's cross-Motion for Summary Judgment is DENIED.

George H. Revercomb, Judge

*/ Contrary to defendant's assertions, this holding will not "hamstring" the legislative authority of the Council. Alternative procedures for achieving the results sought by the Council through successive emergency enactments are available. All the Council need do to enact temporary legislation is to follow the procedure it used in enacting the Cooperative Conversion Moratorium Act, D.C. Law 1-71, 29 D.C. Code §801 (Supp. V, 1978). Furthermore, as the Office of the Corporation Counsel has previously observed, it was Congress' expectation that the Council would treat the enactment of an emergency act as the first reading of a permanent act, so that a second reading and Congressional review could usually be completed within the allotted ninety days. The Council has chosen not to follow that procedure. Should it be the judgment of the Council that it needs the authority to enact emergency legislation of indefinite duration without a second reading or Congressional review, that authority could be sought from Congress.

THE WASHINGTON HOME OWNERSHIP COUNCIL, INC., Plaintiff	:	
v.	:	
DISTRICT OF COLUMBIA, Defendant	:	C.A. No. 10624-79
METROPOLITAN WASHINGTON PLANNING AND HOUSING ASSOCIATION, INC., et al. Intervenor-Defendants	:	

Copies of the foregoing Opinion and Order in the above case were mailed postage prepaid to parties indicated below on October 19, 1979.

Gloria M. Fuller

Gloria M. Fuller, Secretary to
Judge Revercomb

Stephen M. Sacks, Esquire
Arnold and Porter
1229 19th Street, N.W.
Washington, D.C. 20036

James J. Stanford, Esquire
Assistant Corporation Counsel
for the District of Columbia
District Building
Washington, D.C. 20004

Jerry D. Anker, Esquire
Wald, Harkrader & Ross
1300 19th Street, N.W.
Washington, D.C. 20036

Kerry Alan Scanlon, Esquire
Washington Lawyers' Committee for
Civil Rights Under Law
733 15th Street, N.W.
Washington, D.C. 20005

Jason I. Newman, Esquire
Harrison Institute for Public Law
605 G Street, N.W.
Suite 401
Washington, D.C. 20001

DISTRICT OF COLUMBIA COURT OF APPEALS

DISTRICT OF COLUMBIA, and METROPOLITAN WASHINGTON PLANNING AND HOUSING ASSOCIATION, INC. et al., Appellants, v. THE WASHINGTON HOME OWNERSHIP COUNCIL, INC., Appellee.	No. 79-1053

APPELLEE'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY AFFIRMANCE

Stephen M. Sacks (90522)
Thomas E. Silfen (15245)
Linda G. Moore (941617)

ARNOLD & PORTER
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 872-6700

Attorneys for Plaintiff-Appellee

Dated: October 26, 1979

DISTRICT OF COLUMBIA COURT OF APPEALS

DISTRICT OF COLUMBIA, and METROPOLITAN WASHINGTON PLANNING AND HOUSING ASSOCIATION, INC., et al., Appellants, v. THE WASHINGTON HOME OWNERSHIP COUNCIL, INC., Appellee.	No. 79-1053

APPELLEE'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY AFFIRMANCE

This memorandum is filed on behalf of plaintiff-appellee The Washington Home Ownership Council, Inc. ("WHOC") in support of its motion for summary affirmance of the Opinion and Order entered in this case by the Superior Court on October 19, 1979. As we will show herein, this case presents a clear and important question of law for which expedited consideration by means of this motion is appropriate. As we will further show, the Opinion and Order entered below was plainly correct and should be promptly affirmed by this Court.

I. STATEMENT OF CASE AND SUMMARY OF ARGUMENT

Introduction

Pursuant to the District of Columbia Self-Government and Government Reorganization

Act, 1 D.C. Code § 121 et seq. (Supp. V 1978) (the "Home Rule Act"), the United States Congress delegated certain specified legislative powers to the City Council of the District of Columbia on the express condition that legislation would conform to certain procedural requirements and would be subject, for a specified period, to review by Congress. In order to meet exigent circumstances, the City Council was further empowered to enact "emergency" statutes in accordance with expedited procedures and without submission to Congress. These emergency acts, however, were expressly limited in duration to a period "not to exceed 90 days."

There was no dispute below as to how the City Council has purported to exercise the legislative authority conferred by the Home Rule Act. With regard to the statutes in issue in this case, instead of enacting permanent legislation subject to the prescribed procedural safeguards and review by Congress, the Council has repeatedly enacted and reenacted a series of virtually identical "emergency" statutes for successive 90-day periods. The result has been the following "emergency" statutes in issue in this case:

-- the Third Emergency Cooperative Regulation Act of 1979 (in effect without substantial change since December 1976 by the enactment and reenactment of ten successive 90-day "emergency" statutes);

-- the Fourth Emergency Multi-Family Rental Housing Purchase Act of 1979 (in effect without substantial change since October 1978 by the enactment and reenactment of five successive 90-day "emergency" statutes);

-- the Latest Conforming Offer to Purchase Act of 1979 (in effect without substantial change since September 1978 by the enactment

and reenactment of five successive 90-day "emergency" statutes); and

-- the [Second] Emergency Condominium and Cooperative Conversion Stabilization Act of 1979 (in effect without substantial change since May 1979 by the enactment and reenactment of two successive 90-day "emergency" statutes).1/

WHOC in its complaint sought a declaratory judgment to the effect that this use of the emergency power by the City Council was unlawful.2/ The defendant District of Columbia and the intervenor-defendants below agreed that the Council had done precisely what WHOC alleged. But, they contended that the successive enactment and reenactment of the same "emergency" legislation was lawful since the Council's "emergency" powers were open-ended and without limit. According to the defendants, it was perfectly proper for the Council to enact and reenact the same "emergency" legislation for as many successive 90-day periods as the Council wanted so long as two-thirds of the Council said that an "emergency" existed. And, according to the defendants, these successive "emergency" statutes were not reviewable by anyone -- not by Congress as mandated in the Home Rule Act and not by the courts because the Council's determination of an "emergency" was final.

1/ A complete description of each of the statutes in issue in this case is set forth in the Superior Court's Opinion and Order (at pp. 3-8).

2/ The statutes in issue in this case are not isolated or atypical examples of the way in which the Council has utilized the "emergency" powers granted to it in the Home Rule Act. There are over 100 emergency acts in effect in the District of Columbia, a substantial portion of which are "renewed" emergencies. See Table V, D.C. Code and D.C. Rules and Regulations Update (June 1979).

Under an agreed-upon expedited schedule, the parties filed cross-motions for summary judgment. These motions were heard by Superior Court Judge George H. Revercomb on October 16, 1979. The Superior Court entered its Opinion and Order on October 19, 1979.

The Superior Court Decision in Issue

Judge Revercomb rejected the defendant and intervenor-defendants' position and held that "the successive enactment of substantially the same substantive provisions of law through the emergency power, maintaining such provisions in effect for more than ninety days without a second reading or submission for Congressional review is, with respect to the statutes at issue before the Court, unlawful." (Mem. Op., p. 16.)

As set forth in the Opinion and Order, the Court based its conclusion on detailed consideration of the text of the Home Rule Act; the legislative history of both the Act and its amendments in 1978; the decision of the Supreme Court in SEC v. Sloan, 436 U.S. 103 (1978); and the consistent opinions of the Corporation Counsel of the District of Columbia (prior to this litigation) that the "successive enactment of 'emergency' legislation is violative of the Home Rule Act." (Mem. Op., pp. 14-15.)3/

3/ The Court also rejected the defendant's contention that the issues in this case were moot since the challenged action was of duration too short to be fully litigated prior to its cessation and "the Council's

The Court squarely rejected the District of Columbia's contention that two-thirds of the City Council could declare as many successive "emergencies" as they wanted without review either by Congress or the courts. According to the Court, this reading of the Home Rule Act was "totally unpersuasive in light of the plain language and legislative history of the Home Rule Act." (Mem. Op., p. 16.) On the contrary, the imposition of the two-thirds requirement "highlights the Congressional intent that the emergency power be a limited exception to the legislative procedures required by Congress in the Home Rule Act." (Ibid.)

The Court also rejected claims that such a limitation of the Council's emergency powers would "hamstring" its legislative authority, holding that "alternative procedures," consistent with the Home Rule Act, are available to deal with even temporary problems. Indeed, the Court pointed out that the Council had utilized such a lawful alternative when it enacted, as a permanent statute reviewed by Congress, the Cooperative Conversion Moratorium Act, 29 D.C. Code § 801 (Supp. V 1978). That Act provided for a 180-day moratorium on cooperative conversions in order to allow the Council time to "construct and offer permanent legislation which will serve to govern the establishment

[Footnote continued]
conduct and the legal arguments submitted on its behalf leave more than a reasonable expectation that the Council would, if it were legal for it to do so, enact additional emergency acts affecting plaintiff and its members." (Id. p. 9.)

and conduct of cooperative housing accommodations in the District." (Id. pp. 4, 16.)

For all of the foregoing reasons, the Court entered a declaratory judgment to the effect that the statutes in issue in this litigation "were unlawfully enacted" and ordered that enforcement of the Emergency Condominium and Cooperative Conversion Stabilization Act of 1979 (D.C. Act 3-95) (the only emergency act challenged in the litigation presently in force) be enjoined. (Mem. Op., p. 16.)

The Issue on Appeal

There is no dispute in this case regarding the facts. The sole issue on appeal is a straightforward question of law: Did the Superior Court correctly conclude with regard to the statutes challenged in this case that, under the Home Rule Act, the City Council may not successively enact and reenact substantially the same provisions of law through its "emergency" power for periods in excess of 90 days?

Summary of Argument

We believe that Judge Revercomb's decision is clearly correct and should be promptly affirmed by this Court.

First, the Home Rule Act makes absolutely clear that permanent legislation adopted by the Council must meet certain minimum procedural requirements and must be transmitted to Congress for review. Only a limited exception is granted to meet "emergency circumstances" and, then, only "for a period of not to exceed ninety

days." 1 D.C. Code § 146(a). On its face, this legislation is clear and does not authorize repeated use of the exception -- the "emergency" power -- to swallow the rule by which legislation must be adopted.

Second, what the Council has done here is virtually identical to practices engaged in by the SEC and condemned by the Supreme Court in SEC v. Sloan, 436 U.S. 103 (1978). In Sloan, the applicable statute provided that the SEC could summarily suspend trading in securities for a period "not exceeding ten days." The SEC implemented this power by successively adopting and readopting identical 10-day suspension orders for extensive periods. The Supreme Court condemned this practice as a violation of the plain meaning of the applicable statute and its legislative history. As Judge Revercomb found, the same conclusion applies here.

Third, the successive enactment and reenactment of the same emergency legislation is a violation of Congress' clear intent in adopting the Home Rule Act. As set forth in Judge Revercomb's opinion, the critical political debate underlying the enactment of the Home Rule Act concerned the distribution of power between Congress and the District Government. Some favored more stringent congressional control; others favored more discretion for the District. In the end, a compromise was struck by which all legislation of the City Council would be reviewed by Congress save for the most exceptional circumstances and then only for a period of 90 days. There simply is no way to harmonize

one year or two years or three years of government by "emergency" act with the fundamental congressional determination to review all legislation.

Fourth, the abbreviated (and, in some cases, nonexistent) procedures used by the Council in passing the successive "emergency" statutes in issue in this case have deprived citizens of the District of Columbia of a full and fair opportunity to participate in the legislative process, as guaranteed in the Home Rule Act and the United States Constitution. The Home Rule Act and the Council's own rules of procedure were designed to give citizens this opportunity and to afford the Council the benefit of citizen input. But, the government by "emergency" as practiced by the Council, with "emergency" statutes (which are effective immediately) being introduced and enacted at one meeting without any advance public notice or other public participation, negates entirely the intended guarantees of public participation.

Fifth, as Judge Revercomb found, the City Council has demonstrated that it is capable of dealing even with "emergency" situations in the housing field and yet complying with the Home Rule Act. (Mem. Op., p. 16.) When the Council deems it necessary to keep essentially temporary legislation in place for more than 90 days while it ponders what to do with respect to a complex social or economic problem, it has already shown the way to deal with the problem -- read the proposed legislation twice and send it to Congress for review as required under the Home Rule Act. If the Council's interim solution is good enough to govern

the people of the District of Columbia for a year or two years or even three years (as has been the case in the housing field), then it is surely good enough to send to Congress for the required approval.

In sum, as we will show below, Judge Revercomb's decision was clearly correct and should be expeditiously affirmed by this Court.

II. THE SUCCESSIVE REENACTMENT OF IDENTICAL EMERGENCY LEGISLATION VIOLATES THE DELEGATION OF LEGISLATIVE POWERS GRANTED TO THE DISTRICT OF COLUMBIA IN THE HOME RULE ACT

The Home Rule Act marked a significant advance for the District of Columbia in its quest for ultimate self-government. However, Congress made clear that it was only delegating "certain legislative powers" to the District "subject to the retention by Congress of ultimate legislative authority over the Nation's Capital granted by Article 1, Section 8 of the Constitution." 1 D.C. Code § 121. Congress further made clear that the District could exercise only those powers specifically granted to it and had no authority, for example, "to pass any act contrary to the provisions of the [Home Rule] Act." Id. § 147.

The bounds of the limited authority so delegated are spelled out plainly in the Home Rule Act. The statute prescribes the manner in which the City Council must enact permanent legislation:

> "The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting,

> unless otherwise provided in this Act or by the Council. The Council shall use acts for all legislative purposes. Each proposed act shall be read twice in substantially the same form, with at least thirteen days intervening between each reading." 1 D.C. Code § 146(a). (Emphasis supplied.)

The Act further provides that, subject to certain specified exceptions, no act will take effect until it has been transmitted to both Houses of the United States Congress and Congress has failed to adopt a concurrent resolution of disapproval within a specified time period. Id. § 147(a).

The Home Rule Act sets fort'. the manner and circumstances under which the Council can enact temporary legislation based on the existence of "emergency circumstances":

> "If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days." 1 D.C. Code § 146(a). (Emphasis supplied.)

Such temporary "emergency" legislation is specifically exempted from the requirement that acts of the Council be read twice in substantially the same form, with 13 days intervening, and from the requirement that acts of the Council be transmitted to Congress.

The issue in this case arises because the Council has construed this statutory framework so that it may, by periodically redeclaring the same "emergency circumstances," enact important substantive legislation

and maintain that legislation in effect for periods well in excess of 90 days -- indeed, for as many as 900 days -- without regard to the requirements applicable to permanent legislation. What the Council has done and is doing is vividly described in the following exchange during one Council session early this year considering the legislation in issue in this case:

> "Ms. Kane: The resolution states that permanent legislation is under consideration by the [Council's] Committee on Housing and Urban Development. . . . [T]he background is that there were four emergencies during the previous session, which would have been a whole year's worth of emergencies . . . .
>
> "Ms. Winter: Yes, Ms. Kane, your analysis is correct. 1975, '76, '77, we have been wrestling with a Cooperative bill. the bill did have public hearings last year and received a great deal of opposition on the way it was doing. What we are doing here, I have reintroduced the bill. What Ms. Hardy is doing, to introduce the moratorium, more or less, until the committee can act on the Cooperative bill." Transcript of 2d Legislative Session of the Council, January 16, 1979, pp. 30-31.

An equally graphic example of the same course of conduct occurred later in the year when the Council realized that certain of the "emergency" statutes involved in this case would expire either before or shortly after the August recess. To deal with this situation, the Council merely resolved that there would be an "emergency" while it was on vacation and enacted in one sitting the Third Emergency Cooperative Regulation Act of 1979; the Emergency Condominium and Cooperative Conversion Stabilization Act of 1979 (for the second

time); the Fourth Emergency Multi-Family Housing Rental Purchase Act of 1979; and the Latest Conforming Offer to Purchase Act of 1979.

These examples are not isolated or atypical. They are the pattern. The reasons given by the Council for the enactment of the "emergency" legislation in this case have also included:

-- The fact that the Council has not yet considered permanent legislation:

> "Permanent legislation has been introduced in the Council. It has not yet had the opportunity to be considered in the Council. Therefore, I move that an emergency exists." Transcript of the 41st Legislative Session of the Council, November 14, 1978, p. 121.

-- The fact that legislation is under review by the Council:

> "Chairman Dixon: Mrs. Hardy, if I may, let me ask, all of these are repeated emergencies; is that not correct?
>
> "Ms. Hardy: Yes.
>
> "Chairman Dixon: So we have had them before us before?
>
> "Ms. Hardy: Yes, you have had them before you before.
>
> "Chairman Dixon: They are all basically legislation in place or moving, is that correct?
>
> "Ms. Hardy: Yes, sir . . . ." Transcript of 15th Legislative Session of the Council, July 17, 1979, p. 102.

-- And, the fact that the Council will take a recess:

> "Ms. Jarvis: Mr. Chairman, if I may ask Mrs. Hardy, if she will, each time she presents to state the nature of the emergency . . . .
>
> "Ms. Hardy: Oh, sure. The emergency, we do have a permanent piece. The present emergency the Cooperative Regulation Act of 1979 will expire on July 24. So therefore it is necessary -- this third emergency is identical to the other. This will expire when we are in recess.
>
> "Chairman Dixon: Fine. The emergency is it will expire when we are in recess." Transcript of the 15th Legislative Session of the Council, July 17, 1979, pp. 103-04. (Emphasis supplied.)

As we now show, and as Judge Revercomb found, this is an unlawful construction of the Home Rule Act; it is rebutted by the plain language of the statute, by its legislative history, by judicial precedent, and by the consistent opinions of the Corporation Counsel.

A. The Plain Language of the Home Rule Act Limits Use of Emergency Legislation to a Maximum Period of 90 Days

The Home Rule Act specifically states that an "emergency" enactment "shall be effective for a period of not to exceed 90 days." 1 D.C. Code § 146(a). Defendants' attempt to twist this obvious limitation into a mandate for repeated, identical enactments for periods of up to three years is simply not credible. As Judge Revercomb stated:

> "The statutory language is not susceptible of any reasonable interpretation other than that the Council may not, through its emergency power, continue in effect substantially the same substantive provisions of law for more than 90 days without a second reading." (Mem. Op., p. 14.)

What the Council has done here is similar to practices of the SEC condemned by the Supreme Court in SEC v. Sloan, 436 U.S. 103 (1978) -- a case "strikingly similar in principle to the present matter." (Mem. Op., p. 9.) In Sloan, the SEC urged that, under a statute allowing it to summarily suspend trading in securities "for a period not exceeding 10 days," it could repeatedly suspend such trading so long as it redetermined every 10 days that such renewed suspension was in the public interest. The Court reached precisely the opposite result -- that the emergency orders could not be renewed -- stating that "the first and most salient point leading us to this conclusion is the language of the statute." 436 U.S. at 111. The SEC's reading of that language, the Court held, was "not the most natural or logical one."

> "The duration limitation rather appears on its face to be just that -- a maximum time period for which trading can be suspended for any single set of circumstances." Id. at 112.

The Supreme Court further reasoned that the open-ended renewal power utilized by the SEC was so "awesome" and had such potentially strong effect on private parties (who had no opportunity to be heard on the record) that "a clear mandate" from Congress could be expected before the SEC's practice could be considered proper. 436 U.S. at 112. According to the Court, no such mandate existed or could be inferred from the 10-day limit imposed by the applicable statute itself or from any other portion of that statute.

Both this case and Sloan involve agencies created by Congress, with powers wholly derived from Congress. The critical statutory language involved in this case -- "such acts shall be effective for a period of not to exceed 90 days" -- is essentially identical to that in Sloan; and the Council's attempt to utilize that language as an open-ended authorization is equally "unnatural and illogical." The 90-day limit imposed by the Home Rule Act "appears on its face to be just that," a maximum time period clearly specified by Congress for the duration of the emergency legislation. Similarly, as in Sloan, the power which the Council seeks is overwhelming in its impact on private rights: i.e., the power to enact long-term solutions to urgent problems without reference to Congress and without public participation. A "clear mandate" for such power would seem necessary, but just the opposite -- a clear time limitation -- was provided by Congress.

In short, as found by Judge Revercomb, the actions of the Council violate the plain language of the Home Rule Act.

B. The Legislative History of the Home Rule Act Confirms That the Repeated Reenactment of Emergency Legislation Is Unlawful

The legislative framework created for the District of Columbia in the Home Rule Act was not an accidental or inadvertent development; it was adopted by the Congress only after careful consideration and as a result of a compromise between the House, the Senate and the proponents of full home rule for the District.

At the very heart of this compromise was the understanding that legislation was to be enacted by the Council only after successive readings and transmittal to the Congress for review, save in limited circumstances of an "emergency."

The 90-day emergency language was added by amendment to a draft of the Home Rule Act during a "markup" session before the House District Committee. See Markup Hearings Before the House District Committee on H.R. 9056, 93d Cong., 2d Sess. at 1042 (1973). Congressman Rees, in introducing this amendment, initially discussed the procedures applicable to permanent legislation, stressing particularly the importance of the two-reading rule as a guarantee of public participation:

> "What this merely does is set up a technique which is followed in most legislative bodies in the country. This would be so the City Council or members of the City Council can't bring up a bill all in one session and pass it. It says that except in an emergency, each act shall be read twice in substantially the same form with at least one week intervening between the actions of the Council, and no act shall take effect until one week after it has been made available to the public in a manner which the Council shall determine.
>
> "It is merely a parliamentary procedure that is followed in most legislative bodies in the country. Most bodies have three readings of the bill. This requires two readings and the first reading, it would be one week between the first reading and the second reading and during this period, of course, the public and interested parties can discuss this legislation." Ibid.

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Congressman Rees then made absolutely clear that the purpose of the 90-day emergency power was to permit the Council a short period in which to deal with "emergency circumstances" while providing a time in which "permanent" legislation, in full compliance with the procedural requirements of the statute, could be considered. According to Congressman Rees:

> "What I think you're suggesting is a good suggestion, usually in most legislative bodies, if here we can waive the rules by a two-thirds majority, as we did here before the week of the Fourth of July recess, I think that you might amend this to say 'if the Council determines by a two-thirds vote that emergency circumstances make it necessary that an act be adopted at a single reading or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days.' Usually by a ninety-day period, you ascertain whether the act is necessary on a continuing basis and then follow the second and third reading rule and adopt the act which will be a permanent part of the municipal regulations." Id. at 1043. (Emphasis supplied.)

> "I think in the emergency situation, it would be best to have a two-thirds majority vote. I think there could be some chain hanky-panky. We think there is an emergency, they could say that, and we declare it an emergency. So I would offer an amendment to the amendment. I suggest to the gentlemen from Maryland, the last sentence, if the Council by two-thirds vote that emergency circumstances make it necessary that an act be adopted at a single reading or that it take effect immediately upon enactment, and I think this would put the proper safeguard in there. Then if they want to extend the act past the ninety days, they could obviously follow the second reading rule." Ibid. (Emphasis supplied.)

Thereafter, the Home Rule Act went through further legislative changes as various proponents and

opponents of home rule advanced their positions. The legislative framework which emerged from this debate was a compromise and was clearly spelled out in the final Conference Report:

> "The House amendment provisions, not in the Senate bill . . . (2) require the Council to submit all but emergency acts to Congress for a 30-day layover before they become effective; and (3) emergency legislation to be effective for only 90 days. The Conference . . . adopts the House amendment provisions together with a Senate provision specifying that no act of the Council may be passed until 13 days after its introduction." H.R. Rep. No. 93-703, 93d Cong., 1st Sess. 76 (1973).

The proponents of the Home Rule Act repeatedly stressed in Congress before the Act was adopted that one reason for adopting the legislation and giving the District of Columbia "home rule" was that Congress was not abandoning its ultimate responsibility for the District. As Chairman Diggs stated in urging that the Act be approved, the Act "[p]rovides for a 30-day layover for congressional disapproval of all Council acts." (Emphasis supplied.) Statement of Chairman Diggs, Cong. Rec. 3041 (December 6, 1973). See also Cong. Rec. 3117, 3062, 3094 (December 19, 1973).

. It can scarcely be inferred, in this context, that Congress meant to render the congressional review provisions discretionary by granting the Council indefinite "emergency" legislative powers. This would lead to the anomalous result that, in the case of the most pressing and urgent problems, Congress could be

bypassed for extended periods. To put it another way, it defies logic to assume that Congress, dedicated as it was to preserving congressional review, somehow meant less than it said when it specified a 90-day time limit on emergency legislation.

There is simply no way to harmonize one year or two years or three years of government by emergency with the legislative history of the Home Rule Act.

C. The Consistent Opinions of the Corporation Counsel of the District of Columbia Confirm That the Successive Reenactment of Emergency Legislation Is Unlawful

The Corporation Counsel is the chief legal officer of the District of Columbia, charged with responsibility for interpreting the laws of the District. As Judge Revercomb found and as this Court has previously indicated, the views of the Corporation Counsel are entitled to great weight.[4/] Before this case the Corporation Counsel had consistently made clear in published opinions that "successive emergency acts . . . [are] presumptively invalid" (Comments on EA 2-333, The Housing Discontinuance Regulation Act, 3 OP.C.C.D.C. 258 (1978)) and that a pattern of successive enactment of emergency laws "tends to circumvent the intent and purpose of the authority delegated" to the District

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4/ The courts in the District of Columbia have repeatedly held that the Corporation Counsel's rulings "are entitled to weight as a construction of the District of Columbia code unless plainly unreasonable or contrary to ascertainable legislative intention." Williams v. WMA Transit Company, 153 U.S. App. D.C. 183, 189, 472 F.2d 1258, 1264 (1972); Jordan v. District of Columbia, 362 A.2d 114, 118 (1976).

Government in the Home Rule Act. (EA 1-86, Emergency Cooperative Regulation Act of 1976, 1 OP.C.C.D.C. 424 (1978).)[5/]

We do not propose to describe in this memorandum all of the opinions of the Corporation Counsel dealing with this issue. A few examples should suffice:

> "The only justification offered therein is that the above mentioned permanent legislation will not be effective prior to the September 12, 1978, primary election . . . . [T]he fact that identical permanent legislation will not take effect until the expiration of the Congressional review period pursuant to § 602(c) of the Self-Government Act, D.C. Code, § 1-147(c) (Supp. V, 1978), is not in my view, sufficient to justify the Council's use of the emergency legislation authority." Election of Delegates Emergency Act of 1978, 3 OP.C.C.D.C. 268 (1978). (Emphasis supplied.)

> "Even assuming that the need for a possible 5% increase in public assistance for some recipients constituted an emergency, it is clear that this emergency was of the Council's own creation. The 'normal legislative process' cited in the three resolutions were not mandated by Congress but were imposed by the Council's Rules. See Res. 1-2, as amended (21 D.C. Reg. 1553). Contrary to the House District Committee's assumption that the Council would make an emergency act permanent simply by holding additional readings, the procedure utilized by the Council treats a permanent measure that is identical to an emergency act as an entirely separate piece of legislation. Usually, the permanent bill must retrace the path of the emergency bill through the entire legislative process. In the above case, the permanent legislation, Bill 1-334, was not passed

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5/ The Corporation Counsel made no effort below to explain its abrupt change of position and simply asserted that the prior opinions of the Corporation Counsel were superseded.

> on first reading until November 11, 1976, more than six months after it was introduced (July 9, 1976) and the identical emergency bill was passed by the Council (June 30, 1976). Such occurrences such as these force me to conclude that it is essential that the Council revise its current Rules of Organization and Procedure, Res. 2-1 (23 D.C. Reg. ___), to facilitate the enactment of desirable emergency legislation into permanent law. Its failure to do this cannot serve as a proper ground under § 412(a) of the Self-Government Act for re-newing emergency legislation." Opinion of the Corporation Counsel, April 27, 1978. (Emphasis supplied.)

We fully endorse the views of the Corporation Counsel.

III. THE REENACTMENT OF SUCCESSIVE EMERGENCY LEGISLATION VIOLATES THE PROCEDURAL RIGHTS AFFORDED TO CITIZENS OF THE DISTRICT OF COLUMBIA TO PARTICIPATE IN THE LEGISLATIVE PROCESS GRANTED BY THE HOME RULE ACT, THE COUNCIL'S OWN RULES AND THE FIFTH AMENDMENT

In enacting the Home Rule Act, Congress went to considerable lengths to ensure that citizens of the District of Columbia would have a full opportunity to participate in the legislative process. The most important provision is, of course, the two-reading rule. As emphasized by Congressman Rees in his remarks quoted above, that rule was designed to assure that "the City Council can't bring up a bill all in one session and pass it." The 13-day waiting period guarantees that "the public and interested parties can discuss the legislation." Supra at pp. 16-17.6/

6/ As one court has noted, provisions of this kind are "calculated to permit proper consideration of . . . [legislation] and to provide an opportunity for those interested to be heard before it is adopted." Burnsville v. City of Bloomington, 268 Minn. 84, 128 N.W.2d 97, 102 (1964).

The Home Rule Act further specified that the Council "shall adopt and publish rules of procedures which shall include provisions for adequate public notification of intended actions of the Council." 1 D.C. Code § 144(c). The Council's own rules of procedures, subsequently promulgated, set forth detailed rules to ensure proper notice for and public participation in the legislative process. For example, Section 709 of the Council's Rules provides, in pertinent part, that

> "The Council shall, at least fifteen (15) days prior to the adoption of any act or resolution other than a ceremonial resolution or emergency measure, publish notice of the intended action in the District of Columbia Register . . . so as to afford interested persons an opportunity to submit data and views either orally or in writing as may be specified in such notice: PROVIDED, That less than fifteen (15) days notice may be given upon good cause found and published with such notice; and PROVIDED FURTHER, That if emergency circumstances, as determined by the Council, necessitate the adoption of acts, resolutions and rules on an emergency basis, such act, resolutions and rules may become effective immediately."

The actions of the City Council in enacting and reenacting emergency legislation make a mockery of the procedural rights afforded by the Home Rule Act and the Council's Rules. The emergency statutes in issue in this case were often not even listed on proposed agendas put out by the City Council shortly before its meetings. To the contrary, those emergency statutes

were frequently brought up by Council members (many times without even adequate notice to other Council members), and then passed without any further action. The meeting of July 31, 1979, just before the Council's recent vacation, is a good example. The four pieces of emergency legislation adopted at that meeting were not specified on any published agenda issued before the meeting and were brought up and enacted by the City Council in a matter of minutes.7/ On another occasion, the following occurred with respect to renewal of certain of the statutes in issue in this case:

> "We have Consideration of Matters on an Emergency Basis. I think we can take all of these at once. They are all carry overs [sic], all renewed emergencies." Transcript of the 41st Legislative Session of the Council, November 14, 1978, p. 119.

The effect of the Council's legislating by "emergency" in this fashion is that legislation substantially affecting property and other rights of the citizens of the District of Columbia is continued in effect without notice to those citizens that the statutes are under consideration; without consideration by a Committee of the City Council where interested citizens may have the opportunity to make their views known; without a chance by citizens to make their views known to members of the Council before harmful

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7/ Indeed, the first public notice of the enactment of the latest Emergency Acts at issue in this case was in the August 31 D.C. Register (Vol. 26, No. 9) -- one month after their passage.