FIREARMS CONTROL REGULATIONS ACT OF 1975
(Council Act No. 1–142)

HEARING AND DISPOSITION

BEFORE THE

COMMITTEE ON
THE DISTRICT OF COLUMBIA
HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H. Con. Res. 694

TO DISAPPROVE THE FIREARMS CONTROL REGULATIONS ACT OF 1975

AUGUST 25, 1976

Serial No. 94–24

Printed for the use of the
Committee on the District of Columbia

U.S. GOVERNMENT PRINTING OFFICE
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FIREARMS CONTROL REGULATIONS ACT OF 1975

TUESDAY, AUGUST 25, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 1310 Longworth House Office Building, Hon. Charles C. Diggs, Jr. (chairman of the committee) presiding.

Present: Representative Diggs, Delegate Fauntroy, and Representatives Mann, Harris, Gude, McKinney, Biester, and Whalen.

Also present: Edward C. Sylvester, Jr., staff director; Ruby G. Martin, general counsel; James T. Clark, legislative counsel; Mark Mathis, minority counsel; and James Christian, deputy minority counsel.

The CHAIRMAN. The meeting will come to order. The pending business before the committee this morning is House Concurrent Resolution 694, a resolution of disapproval introduced on July 30, 1976, by the gentleman from Texas, Congressman Ron Paul, to disapprove the District of Columbia Firearms Control Regulations Act which was adopted in the D.C. Council on the 29th of January 1976, signed by the Mayor on the 23d of July, and transmitted to the Speaker on the 26th of July.

[The documents referred to follow:]

[H. Con. Res. 694, 94th Cong., 2d sess., introduced by Mr. Paul on July 30, 1976]

CONCURRENT RESOLUTION

Resolved by the House of Representatives (the Senate concurring), That the Congress disapproves of the action of the District of Columbia Council described as follows: The Firearms Control Regulations Act of 1975 (Act 1-142) passed by the Council of the District of Columbia on June 29, 1976, signed by the Mayor of the District of Columbia on July 23, 1976, and transmitted to the Congress on July 27, 1976, pursuant to section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act.

[H. Con. Res. 716, identical to H. Con. Res. 694, was introduced by Mr. Paul (for himself, Mr. Kindness, Mr. Hall of Texas, Mr. Symms, Mr. Collins of Texas, Mr. Ashbrook, Mr. Ketchum, Mr. Melcher, and Mr. Rousselot), on August 23, 1976]

[H. Con. Res. 763, identical to H. Con. Res. 694, was introduced by Mr. Paul (for himself, Mr. Kindness, Mr. Hall of Texas, Mr. Symms, Mr. Collins of Texas, Mr. Ashbrook, Mr. Ketchum, Mr. Melcher, Mr. Rousellot, Mr. Kelly, Mr. Hughes, and Mr. Lott), on September 21, 1976]

[COMMITTEE PRINT]

FIREARMS CONTROL REGULATIONS ACT OF 1975

(Council Act No. 1-142)

AND

REPORT OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

AS REFERRED TO THE

COMMITTEE ON THE DISTRICT OF COLUMBIA HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

JULY 26, 1976

Serial No. S-11

Printed for the use of the Committee on the District of Columbia

U.S. GOVERNMENT PRINTING OFFICE

75-019 WASHINGTON : 1976

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LETTER OF TRANSMITTAL

COUNCIL OF THE DISTRICT OF COLUMBIA,
Washington, D.C., July 26, 1976.

Hon. CARL ALBERT,
Speaker of the House,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: I have the honor to transmit to you, in accordance with section 602(c) of the D.C. Self-Government and Governmental Reorganization Act, Public Law 93-198, a copy of an act adopted by the Council on June 29, 1976, and signed by the Mayor July 23, 1976. Act 1-142 would protect the citizens of the District from loss of property, death, and injury, by controlling the availability of firearms in the community.

Attached to the act is a docket for signature of the Clerk of the House by the expiration of the 30-day review period. In the event during this period the House adopts a resolution disapproving such act, please so advise the Council on the docket sheet, noting the resolution number and signature of the House Clerk.

To begin the count of the 30-day review by Congress, it would be appreciated if your office would acknowledge receipt of this document on the tissue copy attached.

Sincerely yours,

STERLING TUCKER,
Chairman.

Enclosures.

Docket for the Bill 1-154

Considered in Council June 15, 1976 Amended at First Vote June 15, 1976

RECORD OF COUNCIL VOTE

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
TUCKER	X				CLARK	X				SPAULDING	X			
TOWNS, D.		X			MASON	X				WILSON	X			
MURRY	X				MASON	X				WILSON	X			
CLARK	X				BROOKS, J.	X								
GRAY'S		X			SHACKLETON	X								

X—Indicates Vote A.B.—Absent N.V.—Not Voting

Robert A. Williams
(Secretary of the Council)

Final Vote in Council June 29, 1976

RECORD OF COUNCIL VOTE

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
TUCKER	X				CLARK	X				SPAULDING	X			
TOWNS, D.		X			MASON	X				WILSON	X			
MURRY	X				BROOKS	X				WILSON	X			
CLARK	X				BROOKS, J.	X								
GRAY'S	X				SHACKLETON	X								

X—Indicates Vote A.B.—Absent N.V.—Not Voting

Robert A. Williams
(Secretary of the Council)

Presented to the Mayor 7/6/76

Robert A. Williams
(Secretary of the Council)

Mayor's Action:
Approved: 23 JUL 1976
Disapproved: _____

23 JUL 1976
(Mayor's Signature)

Enacted without Mayor's Signature _____

(Secretary of the Council)

BILL 1-164

Bill Docket _____
Page Two

Reconsidered by Council _____ Vote _____

RECORD OF COUNCIL VOTE

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
TUCKER					DIXON					SPAULDING				
MOORE, D.					HARRIS					WILSON				
LARRY					HOBSON					WINTER				
CLARKE					MOORE, J.									
COATES					SHACKLETON									

X—Indicates Vote A. B.—Absent N. V.—Not Voting

_____
(Secretary of the Council)

Presented to the President _____

_____
(Secretary of the Council)

Sustain Mayor's Veto _____
Not Sustain Mayor's Veto _____

_____
(President of the U. S.)

Submitted to the Congress JUL 2 6 1976

_____
(Secretary of the Council)

Senate Action _____
Resolution Number _____

House Action _____
Resolution Number _____

_____
(Secretary of the Senate)

_____
(Clerk of the House)

Enacted without Congressional action _____

_____
(Secretary of the Council)

AN ACT 1-142 in the Council of the District of Columbia, July 23, 1976 To protect the citizens of the District from loss of property, death, and injury, by controlling the availability of firearms in the community

Be it enacted by the Council of the District of Columbia, That this act may be cited as the "Firearms Control Regulations Act of 1975."

SEC. 2. Findings and purpose.

The Council of the District of Columbia finds that in order to promote the health, safety and welfare of the people of the District of Columbia it is necessary to:

(1) Require the registration of all firearms that are owned by private citizens;

(2) Limit the types of weapons persons may lawfully possess;

(3) Assure that only qualified persons are allowed to possess firearms;

(4) Regulate deadly weapons dealers; and

(5) Make it more difficult for firearms, destructive devices, and ammunition to move in illicit commerce within the District of Columbia.

TITLE I—DEFINITIONS

SEC. 101. As used in this act the term—

(1) "Acts of Congress" means (A) an Act to control the possession, sale, transfer, and use of pistols and other dangerous weapons, in the District of Columbia (Dangerous Weapons Act), as amended, approved July 8, 1932 (D.C. Code, sec. 22–3201, et seq.); (B) Omnibus Crime Control and Safe Streets Act of 1968, as amended (Title VII, Unlawful Possession or Receipt of Firearms (82 Stat. 236; 18U. S.C. Appendix)); and (C) an Act to Amend Title 18, United States Code, to Provide for Better Control of the Interstate Traffic in firearms Act of 1968 (82 Stat. 1213; 18 U.S.C. 921, et seq.).

(2) "Ammunition" means cartridge cases, shells, projectiles (including shot), primers, bullets, propellant powder, or other devices or materials designed, redesigned, or intended for use in a firearm or destructive device.

(3) "Antique firearm" means—

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(B) any replica of any firearm described in subparagraph (1) if such replica—

(i) is not designed or resdesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

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(4) "Chief" means the Chief of Police of the Metropolitan Police Department of the District of Columbia or his designated agent.

(5) "Crime of Violence" means a crime of violence as defined in section 1 of the Act of July 8, 1932, as amended (D.C. Code, sec. 22–3201), committeed in any jurisdiction, but does not include larceny or attempted larceny.

(6) "Dealer's license" means a license to buy or sell, repair, trade, or otherwise deal in firearms, destructive devices, or ammunition as provided for in Title IV of this Act.

(7) "Destructive device" means—

(A) an explosive, incendiary, or poison gas bomb, grenade, rocket, mislle, mine, or similar device;

(B) any device by whatever name known which will, or is designed or redesigned, or may be readily converted or restored to expel a projectile by the action of an explosive or other propellant through a smooth bore barrel, except a shotgun.

(C) any device containing tear gas or a chemically similar lacrimator or sternutator by whatever name known;

(D) any device designed or redesigned, made or remade, or readily converted or restored, and intended to stun or disable a person by means of electric shock;

(E) any combination of parts designed or intended for use in converting any device into any destructive device; or from which a destructive device may be readily assembled: Provided, That the term shall not include—

(i) any pneumatic, spring, or B-B gun which expels a single projectile not exceeding .18 inch in diameter;

(ii) any device which is neither designed nor redesigned for use as a weapon;

(iii) any device originally a weapon which has been redesigned for use as a signaling, line throwing, or safety device; or,

(iv) any device which the Chief finds is not likely to be used as a weapon.

(8) "District" means District of Columbia.

(9) "Firearm" means any weapon which will, or is designed or redesigned, made or remade, readily converted or restored, and intended to, expel a projectile or projectiles by the action of an explosive; the frame or receiver of any such device; or any firearm muffler or silencer: Provided, That such term shall not include—

(A) antique firearms: and/or

(B) destructive devices;

(C) any device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission; or

(D) any device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

(10) "Machine gun" means any firearm which shoots, is designed to shoot, or can be readily converted or restored to shoot:

(A) automatically, more than one shot by a single function of the trigger;

(B) semiautomatically, more than twelve shots without manual reloading.

(11) "Organization" means any partnership, company, corporation, or other business entity, or any group or association of two or more persons united for a common purpose.

(12) "Pistol" means any firearm originally designed to be fired by use of a single hand.

(13) "Registration certificate" means a certificate validly issued pursuant to this act evincing the registration of a firearm pursuant to this act.

(14) "Rifle" means a grooved bore firearm using a fixed metallic cartridge with a single projectile and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(15) "Sawed-off shotgun" means a shotgun having a barrel of less than 18 inches in length; or a firearm made from a shotgun if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 18 inches in length.

(16) "Shotgun" means a smooth bore firearm using a fixed shotgun shell with either a number of ball shot or a single projectile, and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(17) "Short barreled rifle" means a rifle having any barrel less than 16 inches in length, or a firearm made from a rifle if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 16 inches.

(18) "Weapons offense" means any violation in any jurisdiction of any law which involves the sale, purchase, transfer in any manner, receipt, acquisition, possession, having under control, use, repair, manufacturer, carrying, or transportation of any firearm, ammunition, or destructive device.

TITLE II—FIREARMS AND DESTRUCTIVE DEVICES

SEC. 201. Registration Required. (a) Except as otherwise provided in this act, no person or organization shall within the District receive, possess, have under his control, transfer, offer for sale, sell, give, or deliver any destructive device, and no person or organization shall, within the District possess or have under his or its control any firearm, unless such person or organization is the holder of a valid registration certificate for such firearm. In the case of an organization, a registration certificate shall be issued (1) only to an organization which has in its employ one or more commissioned special police officers or other employees licensed to carry firearms, and which arms such employees with firearms during such employees duty hours and (2) only to such organization in its own name and in the name of its president or the chief executive.

(b) Subsection (a) shall not apply to—

(1) Any law enforcement officer or agent of the District or the United States, or any law enforcement officer or agent of the government of any State or subdivision thereof, or any member of the Armed Forces of the United States, the National Guard or Organized Reserves, when such officer, agent, or member is

authorized to possess such a firearm or device while on duty in the performance of official authorized functions.

(2) Any person holding a dealer's license: *Provided*, That the firearm or destructive device is—

(A) acquired by such person in the normal conduct of business;

(B) is kept at the place described in the dealer's license; and

(C) is not kept for such person's private use or protection, or for the protection of his business.

(3) With respect to firearms, any non-resident of the District participating in any lawful recreational firearm-related activity in the District, or on his way to or from such activity in another jurisdiction: *Provided*, That such person, whenever in possession of a firearm, shall upon demand of any member of the Metropolitan Police Department, or other bona fide law enforcement officer, exhibit proof that he is on his way to or from such activity, and that his possession or control of such firearm is lawful in the jurisdiction in which he resides: Provided further, that such weapon shall be unloaded, securely wrapped, and carried in open view.

SEC. 202. Unregisterable Firearms. No registration certificate shall be issued for any of the following types of firearms:

(a) Sawed-off shotgun;

(b) Machine gun;

(c) Short-barreled rifle;

(d) Pistol not validly registered to the current registrant in the District prior to the effective date of this act; and

(e) Pistol not possessed by the current registrant in conformity with the regulations in effect immediately prior to the effective date of this act.

SEC. 203. Prerequisites to registration; application for registration.

(a) No registration certificate shall be issued to any person (and in the case of a person between the ages of 18 and 21, to the person and his signatory parent or guardian) or organization unless the Chief determines that such person (or the president or chief executive in the case of an organization):

(1) is twenty-one years of age or older: Provided, That the Chief may issue to an applicant between the ages of eighteen and twenty-one years old, and who is otherwise qualified, a registration certificate if the application is accompanied by a notarized statement of the applicant's parent or guardian—

(A) that the applicant has the permission of his parent or guardian to own and use the firearm to be registered; and

(B) the parent or guardian assumes civil liability for all damages resulting from the actions of such applicant in the use of the firearm to be registered: Provided further, that such registration certificate shall expire on such person's twenty-first birthday;

(2) Has not been convicted of a crime of violence, weapons offense, or of a violation of this act;

(3) Is not under indictment for a crime of violence or a weapons offense;

(4) Has not been convicted within five years prior to the application of any—

(A) violation in any jurisdiction of any law restricting the use, possession, or sale of any narcotic or dangerous drug; or

(B) a violation of section 2 of the Act of July 16, 1912 (D.C. Code, sec. 22–507 (1973)), regarding threats to do bodily harm, or section 806 of the Act of March 3, 1901 (D.C. Code, sec. 22–504 (1973)), regarding assaults and threats, or any similar provision of the law of any other jurisdiction so as to indicate a likelihood to make unlawful use of a firearm;

(5) Within the five year period immediately preceding the application, has not been acquitted of any criminal charge by reason of insanity or has not been adjudicated a chronic alcoholic by any court, Provided, That this paragraph shall not apply if such person shall present to the Chief with the application, a medical certification indicating that the applicant has recovered from such insanity or alcoholic condition and is capable of safe and responsible possession of a firearm;

(6) Within the five years immediately preceding the application, has not been voluntary or involuntary committed to any mental hospital or institution; Provided, That this paragraph shall not apply, if such person shall present to the Chief with the applicant a medical certification that the applicant has recovered from whatever malady prompted such commitment;

(7) Does not appear to suffer from a physical defect which would tend to indicate that the applicant would not be able to possess and use a firearm safely and responsibly;

(8) Has not been adjudicated negligent in a firearm mishap causing death or serious injury to another human being;

(9) Is not otherwise ineligible to possess a pistol under section 3 of the Act of July 8, 1932 (D.C. Code, sec. 22–3203);

(10) Has not failed to demonstrate satisfactorily a knowledge of the laws of the District of Columbia pertaining to firearms and the safe and responsible use of the same in accordance with tests and standards prescribed by the Chief; Provided, That once this determination is made with respect to a given applicant for a particular type of firearm, it need not be made again for the same applicant with respect to a subsequent application for the same type of firearm; and

(11) Has vision better than or equal to that required to obtain a valid driver's license under the laws of the District of Columbia; Provided, That current licensure by the District of Columbia, of the applicant to drive, shall be prima facie evidence that such applicant's vision is sufficient and, Provided further, that this determination need not be made more than once per year per applicant.

(b) Every person applying for a registration certificate shall provide on a form prescribed by the Chief:

(1) The full name or any other name by which the applicant is known.

(2) The present address and each home address where the applicant has resided during the five year period immediately preceding the application.

(3) The present business or occupation and any business or occupation in which the applicant has engaged during the five-year period immediately preceding the application and the addresses of such businesses or places of employment.

(4) The date and place of birth of the applicant.

(5) The sex of the applicant.

(6) Whether (and if so, the reasons) the District, the United States or the government of any State or subdivision of any State has denied or revoked the applicant's license, registration certificate, or permit pertaining to any firearm.

(7) A description of the applicant's role in any mishap involving a firearm, including the date, place, time, circumstances, and the names of the person injured or killed.

(8) The intended use of the firearm.

(9) The caliber, make, model, manufacturer's identification number, serial number, and any other identifying marks on the firearm.

(10) The name and address of the person or organization from whom the firearm was obtained, and in the case of a dealer, his dealer's license number.

(11) Where the firearm will generally be kept.

(12) Whether the applicant has applied for any other registration certificates issued and outstanding.

(13) Such other information as the Chief determines is necessary to carry out the provisions of this act.

(c) Every organization applying for a registration certificate shall—

(1) with respect to the president or chief executive of such organization, comply with the requirements of subsection (b); and

(2) provide such other information as the Chief determines is necessary to carry out the provisions of this act.

SEC. 204. Fingerprinting, pictures, personal appearances.

(a) The Chief may require any person applying for a registration certificate to be fingerprinted if, in his judgment, this is necessary to conduct an efficient and adequate investigation into the matters described in section 203(a) and to effectuate the purpose of this act: Provided, That any person who has been fingerprinted by the Chief within five years prior to submitting the application need not, in the Chief's discretion, be fingerprinted again if he offers other satisfactory proof of identity.

(b) Each applicant, other than an organization, shall submit with the application two full-face photographs of himself, 1¾ by 1⅞-inches in size which shall have been taken within the thirty-day period immediately preceding the filing of the application.

(c) Every applicant (or in the case of an organization, the president or chief executive, or a person authorized in writing by him), shall appear in person at a time and place prescribed by the Chief, and may be required to bring with him the firearm for which a registration certificate is sought, which shall be unloaded and securely wrapped, and carried in open view.

SEC. 205. Application under oath; fees.

(a) Each applicant (the president or chief executive in the case of an organization) shall sign an oath or affirmation attesting to the truth of all the information required by section 203.

(b) Each application required by this title shall be accompanied by a non-refundable fee to be established by the Mayor; Provided, That such fee shall, in the judgment of the Mayor, reimburse the District for the cost of services provided under this title.

SEC. 206. Filing times for new purchase and firearms entering the District; previously registered firearms.

(a) An application for a registration certificate shall be filed (and a registration certificate issued) prior to taking possession of a firearm from a licensed dealer or from any person or organization holding a registration certificate therefor. In all other cases, an application for registration shall be filed immediately after a firearm is brought into the District. It shall be deemed compliance with the preceding sentence if such person personally communicates with the Metropolitan Police Department (as determined by the Chief to be sufficient) and provides such information as may be demanded: Provided, That such person files an application for a registration certificate within 48 hours after such communication.

(b) Any firearm validly registered under prior regulations must be registered pursuant to this act in accordance with procedures to be promulgated by the Chief. An application to register such firearm shall be filed pursuant to this act within 60 days of the effective date of this act.

SEC. 207. Issuance of registration certificate.

(a) upon receipt of a properly executed application for a registration certificate, the Chief, upon determining through inquiry, investigation, or otherwise, that the applicant is entitled and qualified under the provisions of this act, thereto, shall issue a registration certificate. Each registration certificate shall be in duplicate and bear a unique registration certificate number and such other information as the Chief determines is necessary to identify the applicant and the firearm registered. The duplicate of the registration certificate shall be delivered to the applicant and the Chief shall retain the original.

(b) The Chief shall approve or deny an application for a registration certificate within a 60 day period beginning on the date the Chief receives the application, unless good cause is shown, including non-receipt of information from sources outside the District government: *Provided*, That in the case of an application to register a firearm validly registered under prior regulations, the Chief shall have 365 days after the receipt of such application to approve or deny such application. The Chief may hold in abeyance an application where there is a revocation proceeding pending against such person or organization.

(c) Upon receipt of a registration certificate, each applicant shall examine same to ensure that the information thereon is correct. If the registration certificate is incorrect in any respect, the person or organization names thereon shall return it to the Chief with a signed statement showing the nature of the error. The Chief shall correct the error, if it occurred through administrative error. In the event the error resulted from information contained in the application, the applicant shall be required to file an amended application setting forth the correct information, and a statement explaining the error in the original application. Each amended application shall be accompanied by a fee equal to that required for the original application.

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(d) In the event the Chief learns of an error in a registration certificate other than as provided in subsection (c), he may require the holder to return the registration certificate for correction. If the error resulted from information contained in the application, the person or organization named therein shall be required to file an amended application as provided in subsection (c).

(e) Each registration certificate issued by the Chief shall be accompanied by a statement setting forth the registrant's duties under this act.

SEC. 208. Additional Duties of Registrants.

Each person and organization holding a registration certificate, in addition to any other requirements imposed by this act, or the Acts of of Congress, shall:

(a) notify the Chief in writing of:

(1) the loss, theft, or destruction of the registration certificate or of a registered firearm (including the circumstances, if known) immediately upon discovery of such loss, theft, or destruction;

(2) a change in any of the information appearing on the registration certificate or required by section 203 of this act;

(3) the sale, transfer or other disposition of the firearm not less than forty-eight hours prior to delivery, pursuant to such sale, transfer or other dispostion, including—

(A) identification of the registrant, the firearm and the serial number of the registration certificate;

(B) the name, residence, and business address and date of birth of the person to whom the firearm has been sold or transferred; and

(C) whether the firearm was sold or how it was otherwise transferred or disposed of.

(b) Return to the Chief, the registration certificate for any firearm which is lost, stoen, destroyed, or otherwise transferred or disposed of, at the time he notified the Chief of such loss, theft, destruction, sale, transfer, or other disposition.

(c) Have in his possession, whenever in possession of a firearm, the registration certificate for such firearm, and exhibit the same upon the demand of a member of the Metropolitan Police Department, or other law enforcement officer.

SEC. 209. Revocation.

A registration certificate shall be revoked if—

(1) any of the criteria in section 203 of this act are not currently met:

(2) the registered firearm has become an unregisterable firearm under the terms of section 202 of this act, or a destructive device;

(3) the information furnished to the Chief on the application for a registration certificate proves to be intentionally false; or

(4) there is a violation or omission of the duties, obligations or requirements imposed by section 208 of this act.

SEC. 210. Procedures for denial or revocation.

(a) If it appears to the Chief that an application for a registration certificate should be denied or that a registration certificate should be revoked, the Chief shall notify the applicant or registrant of the proposed denial or revocation, briefly stating the reason or reasons therefor. Service may be made by delivering a copy of the notice to the

applicant or registrant personally, or by leaving a copy thereof at the place of residence identified on the application or registration with some person of suitable age and discretion then residing therein, or by mailing a copy of the notice by certified mail to the residence address identified on the application or certificate, in which case service shall be complete as of the date the return receipt was signed. In the case of an organization, service may be made upon the president, chief executive, or other officer, managing agent or person authorized by appointment or law to receive such notice as described in the preceding sentence at the business address of the organization identified in the application or registration certificate. The person serving the notice shall make proof thereof with the Chief in a manner prescribed by him. In the case of service by certified mail, the signed return receipt shall be filed with the Chief together with a signed statement showing the date such notice was mailed; and if the return receipt does not purport to be signed by the person named in the notice, then specific facts from which the Chief can determine that the person who signed the receipt meets the appropriate qualifications for receipt of such notice set out in this subsection. The applicant or registrant shall have 15 days from the date the notice is served in which to submit further evidence in support of the application or qualifications to continue to hold a registration certificate, as the case may be: Provided, that if the applicant does not make such a submission within fifteen days from the date of service, the applicant or registrant shall be deemed to have conceded the validity of the reason or reasons stated in the notice, and the denial or revocation shall become final.

(b) Within ten days of the date upon which the Chief receives such a submission, he shall serve upon the applicant or registrant in the manner specified in subsection (a) notice of his final decision. The Chief's decision shall become effective at the expiration of the time within which to file a notice of appeal pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1–1501, et. seq.) or, if such a notice of appeal is filed, at the time the final order or judgment of the District of Columbia Court of Appeals becomes effective.

(c) Within seven days of a decision unfavorable to the applicant or registrant becoming final, the applicants or registrant shall (1) peaceably surrender to the Chief the firearm for which the registration certificate was revoked in the manner provided in section 704, or (2) lawfully remove such firearm from the District for so long as he has an interest in such firearm, or, (3) otherwise lawfully dispose of his interest in such firearm.

SEC. 211. Certain information not to be used as evidence

No information obtained from a person under this title or retained by a person in order to comply with any section of this title, shall be used as evidence against such person in any criminal proceeding with respect to a violation of this act, occurring prior to or concurrently with the filing of the information required by this title: *Provided*, That this section shall not apply to any violation of section 858 of the Act of March 3, 1901 (D.C. Code, sec. 22.2501) or section 703 of this act.

TITLE III—ESTATES CONTAINING FIREARMS

SEC. 301. Rights and responsibilities of executors and administrators.

(a) The executor or administrator of an estate containing a firearm shall notify the Chief of the death of the decedent within thirty days of his appointment or qualification, whichever is earlier.

(b) Until the lawful distribution of such firearm to an heir or legatee or the lawful sale, transfer, or disposition of the firearm by the estate; the executor or administrator of such estate shall be charged with the duties and obligations which would have been imposed by this act Upon the decedent, if the decedent were still alive: *Provided*, That such executor or administrator shall not be liable to the criminal penalties of section 705.

TITLE IV—LICENSING OF FIREARMS BUSINESSES

SEC. 401. —Prohibitions, exceptions.

(a) No person or organization shall manufacture any firearm, destructive device or parts thereof, or ammunition, within the District; *Provided*, That persons holding registration certificates may engage in hand loading, reloading, or custom loading ammunition for his registered firearms: *Provided further*, that such persons may not hand load, reload, or custom load ammunition for others.

(b) No person or organization shall engage in the business of selling, purchasing, or repairing any firearm, destructive device, parts therefor, or ammunition, without first obtaining a dealer's license, and no licensee shall engage in the business of selling, purchasing, or repairing firearms which are unregisterable under section 202 of this act, destructive devices, or parts therefor, except pursuant to a valid work or purchase order, for those persons specified in section 201(b)(1) of this act.

SEC. 402. Eligibility for dealer's license; application for same; fee.

(a) Any person eligible to register a firearm under this act, and who, if a registrant, has not previously failed to perform any of the duties imposed by this act; and, any person eligible under the Acts of Congress to engage in such business, may obtain a dealer's license, or a renewal thereof, which shall be valid for a period of not more than one year from the date of issuance. The license required by this act, shall be in addition to any other license or licensing procedure required by law.

(b) Each application for a dealer's license and each application for renewal thereof shall be made on a form prescribed by the Chief, shall be sworn to or affirmed by the applicant, and shall contain—

(1) the information required by section 203(a);

(2) the address where the applicant conducts or intends to conduct his business;

(3) whether the applicant, prior to the effective date of this act, held a license to deal in deadly weapons in the District; and

(4) such other information as the Chief may require, including fingerprints and photographs of the applicant, to carry out the purposes of this act.

(c) Each application for a dealer's license, or renewal shall be accompanied by a fee established by the Mayor; *Provided*, That such

fee shall in the judgment of the Mayor, reimburse the District for the cost of services provided under this title.

SEC. 403. Issuance of a dealer's license, procedure.

(a) Upon receipt of a properly executed application for a dealer's license, or renewal thereof, the Chief, upon determining through further inquiry, investigation, or otherwise, that the applicant is entitled and qualified under the provisions of this act thereto, shall issue a dealer's license. Each dealer's license shall be in duplicate and bear a unique dealer's license number, and such other information as the Chief determines is necessary to identify the applicant and premises. The duplicate of the dealer's license shall be delivered to the applicant and the Chief shall retain the original.

(b) The Chief shall approve or deny an application for a registration certificate within a 60-day period beginning on the date the Chief receives the application, unless good cause is shown, including nonreceipt of information from sources outside the District Government. The Chief may hold in abeyance an application where there is any firearms revocation proceeding pending against such person.

(c) Upon receipt of a dealer's license each applicant shall examine the same to ensure that the information thereon is correct. If the dealer's license is incorrect in any respect, the person named thereon shall return the same to the Chief with a signed statement showing the nature of the error. The Chief shall correct the error, if it occurred through administrative error. In the event the error resulted from information contained in the application, the applicant shall be required to file an amended application explaining the error in the original application. Each amended application shall be accompanied by a fee equal to that required for the original application.

(d) In the event the Chief learns of an error in a dealer's license, other than as provided in subsection (c), he may require the holder to return the dealer's license for correction. If the error resulted from information contained in the application, the person named therein shall be required to file an amended application as provided in subsection (c).

(e) Each dealer's license issued by the Chief shall be accompanied by a statement setting forth a dealer's duties under this act.

SEC. 404. Duties of licensed dealers; records, reports.

(a) Each person holding a dealer's license, in addition to any other requirements imposed by this act, the Acts of Congress, and other law, shall—

(1) display the dealer's license in a conspicuous place on the premises;

(2) notify the Chief in writing—

(A) of the loss, theft, or destruction of the dealer's license (including the circumstances, if known) immediately upon the discovery of such loss, theft, or destruction;

(B) of a change in any of the information appearing on the dealer's license or required by section 402 of this act immediately upon the occurrence of any such change;

(3) keep at the premises identified in the dealer's license a true and current record in book form of—

(A) the name, address, home phone, and date of birth of each employee handling firearms, ammunition, or destructive devices;

(B) each firearm or destructive device received into inventory or for repair including the—

(i) serial number, caliber, make, model, manufacturer's number (if any), dealer's identification number (if any), registration certificate number (if any) of the firearm, and similar descriptive information for destructive devices;

(ii) name, address, and dealer's license number (if any) of the person or organization from whom the firearm or destructive device was purchased or otherwise received;

(iii) consideration given for the firearm or destructive device, if any;

(iv) date and time received by the licensee and in the case of repair, returned to the person holding the registration certificate; and

(v) nature of the repairs made.

(C) each firearm or destructive device sold or transferred including the—

(i) serial number, caliber, make, model, manufacturer's number or dealer's identification number, and registration certificate number (if any) of the firearm or similar information for destructive devices;

(ii) name, address, registration certificate number or license number (if any) of the person or organization to whom transferred;

(iii) the consideration for transfer; and,

(iv) time and date of delivery of the firearm or destructive device to the transferee:

(D) ammunition received into inventory including the—

(i) brand and number of rounds of each caliber or gauge;

(ii) name, address, and dealer's license or registration number (if any) of the person or organization from whom received;

(iii) consideration given for the ammunition; and

(iv) date and time of the receipt of the ammunition;

(E) ammunition sold or transferred including—

(i) brand and number of rounds of each caliber or gauge;

(ii) name, address and dealer's license number (if any) of the person or organization to whom sold or transferred;

(iii) if the purchaser or transferee is not a licensee, the registration certificate number of the firearm for which the ammunition was sold or transferred;

(iv) the consideration for the sale and transfer; and

(v) the date and time of sale or transfer;

(b) The records required by subsection (a) shall upon demand be exhibited during normal business hours to any member of the Metropolitan Police Department.

(c) Each person holding a dealer's license shall, when required by the Chief in writing, submit on a form and for the periods of time specified, any record information required to be maintained by sub-

section (a), and any other information reasonably obtainable therefrom.

SEC. 405. Revocation.

A dealer's license shall be revoked if—

(a) any of the criteria in section 404 of this act is not currently met, or

(b) The information furnished to the Chief on the application for a dealer's license proves to be intentionally false; or

(c) there is a violation or omission of the duties, obligations, or requirements imposed by section 404 of this act.

SEC. 406. Procedures for denial and revocation.

(a) If it appears to the Chief that an application for a dealer's license should be denied or that a dealer's license should be revoked, the Chief shall notify the applicant or registrant of the proposed denial or revocation briefly stating the reason or reasons therefor. Service may be made as provided for in section 210(a) of this act. The applicant or dealer shall have fifteen days from the date of service in which to submit further evidence in support of the application or qualifications to continue to hold a dealer's license, as the case may be:

Provided, That if the applicant or dealer does not make such a submission within 15 days from the date of service, the applicant or dealer shall be deemed to have conceded the validity of the reason or reasons stated in the notice, and the denial or revocation shall become final.

(b) Within 10 days of the date upon which the Chief receives such a submission, the Chief shall serve upon the applicant or registrant in the manner provided in section 210(a) of this act notice of his final decision. The Chief's decision shall become effective at the expiration of the time within which to file a notice of appeal pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1–1501, et seq.) or, if such a notice of appeal is filed, at the time the final order or judgment of the District of Columbia Court of Appeals becomes effective.

(c) Within 45 days of a decision becoming effective, which is unfavorable to a licensee or to an applicant for a dealer's license, the licensee or applicant shall—

(1) if he is eligible to register firearms pursuant to this act, register such firearms in his inventory as are capable of registration pursuant to this act;

(2) peaceably surrender to the Chief any firearms in his inventory which he does not register, and all destructive devices in his inventory in the manner provided for in section 604;

(3) lawfully remove from the District any firearm in his inventory which he does not register and all destructive devices and ammunition in his inventory for so long as he has an interest in them; or

(4) otherwise lawfully dispose of any firearms in his inventory which he does not register and all destructive devices and ammunition in his inventory.

SEC. 407. Displays, employees.

(a) No licensed dealer shall display any firearm or ammunition in windows visible from a street or sidewalk. All firearms, destructive devices, and ammunition shall be kept at all times in a securely locked

place affixed to the premises except when being shown to a customer, being repaired, or otherwise being worked on.

(b) No licensee shall knowingly employ any person in his establishment if such person would not be eligible to register a firearm under this act.

SEC. 408. Firearm markings.

No licensee shall sell or offer for sale any firearm which does not have imbedded into the metal portion of such firearm a unique manufacturer's identification number or serial number, unless the licensee shall have imbedded into the metal portion of such firearm a unique dealer's identification number.

SEC. 409. Certain information not to be used as evidence.

No information obtained from or retained by a licensed dealer to comply with this title shall be used as evidence against such licensed dealer in any criminal proceeding with respect to a violation of this act occurring prior to or concurrently with the filing of such information; Provided, That this section shall not apply to any violation of section 858 of the Act of March 3, 1901 (D.C. Code, sec. 22–2501), or of section 703 of this act.

TITLE V—SALE AND TRANSFER OF FIREARMS, DESTRUCTIVE DEVICES, AND AMMUNITION

SEC. 501. Prohibition.

No person or organization shall sell, transfer or otherwise dispose of any firearm, destructive device or ammunition in the District except as provided in sections 502 or 604 of this act.

SEC. 502. Permissible sales and transfers.

(a) Any person or organization eligible to register a firearm may sell or otherwise transfer ammunition or any firearm, except those which are unregisterable under section 202 of this act, to a licensed dealer.

(b) Any licensed dealer may sell or otherwise transfer ammunition and any firearm or destructive device which is lawfully a part of such licensee's inventory to—

(1) any nonresident person or business licensed under the Acts of Congress and the jurisdiction where such person resides or conducts such business;

(2) any other licensed dealer;

(3) any law enforcement officer or agent of the District or the United States when such officer or agent is on duty, and acting within the scope of his duties when acquiring such firearm, ammunition, or destructive device, if the officer or agent has in his possession a statement from the head of his agency stating that the item is to be used in such officer's or agent's official duties.

(c) Any licensed dealer may sell or otherwise transfer a firearm except those which are unregisterable under section 202 of this act, to any person or organization possessing a registration certificate for such firearm; Provided, That if the Chief denies a registration certificate, he shall so advise the licensee who shall thereupon (1) withhold delivery until such time as a registration certificate is issued, or, at the option of the purchaser, (2) declare the contract null and void, in which case consideration paid to the licensee shall be returned to the purchaser; Provided further that this subsection shall not apply to persons covered by subsection (b).

(d) Except as provided in subsections (b) and (f), no licensed dealer shall sell or otherwise transfer ammunition unless—

(1) the sale or transfer is made in person; and

(2) the purchaser exhibits, at the time of sale or other transfer, a valid registration certificate, or, in the case of a nonresident, proof that the weapon is lawfully possessed in the jurisdiction where such person resides;

(3) the ammunition to be sold or transferred is of the same caliber or guage as the firearm described in the registration certificate, or other proof in the case of nonresident; and

(4) the purchaser signs a receipt for the ammunition which (in addition to the other records required under this act) shall be maintained by the licensed dealer for a period of one year from the date of sale.

(e) Any licensed dealer may sell ammunition to any person holding an ammunition collector's certificate on the effective date of this act; Provided, That the collector's certificate shall be exhibited to the licensed dealer whenever the collector purchases ammunition for his collection; Provided further that the collector shall sign a receipt for the ammunition, which shall be treated in the same manner as that required under subsection (d)(4) of this section.

TITLE VI—POSSESSION OF AMMUNITION

SEC. 601. No person shall possess ammunition in the District of Columbia unless:

(a) He is a licensed dealer pursuant to Title IV of this act.

(b) He is an officer, agent, or employee of the District of Columbia or the United States of America, on duty and acting within the scope of his duties when possessing such ammunition.

(c) He is the holder of a valid registration certificate for a firearm of the same guage or caliber as the ammunition he possesses.

(d) He holds an ammunition collector's certificate on the effective date of this act.

TITLE VII—GENERAL PROVISIONS

SEC. 701. Pledges and loans.

(a) No firearm, destructive device, or ammunition shall be security for, or be taken or received by way of any mortgage, deposit, pledge, or pawn.

(b) No person may loan, borrow, give, or rent to or from another person, any firearm, destructive device, or ammunition.

SEC. 702. Except for law enforcement personnel described in section 201(b)(1), each registrant shall keep any firearms in his possession unloaded and disassembled or bound by a trigger lock or similar device unless such firearm is kept at his place of business, or while being used for lawful recreational purposes within the District of Columbia.

SEC. 703. Firing ranges.

Any person operating a firing range in the District, shall in addition to any other requirement imposed by law, register with the Chief, on a form prescribed by him, which shall include the business name of the range, the location, the names and home addresses of the owners and principal officers, the types of weapons fired there, the number and

COUNCIL OF THE DISTRICT OF COLUMBIA

REPORT*

To: Members of the Council.
From: Committee on the Judiciary and Criminal Law, David A Clarke, Chairperson
Date: April 21, 1976.
Subject: Bill No. 1–164, the "Firearms Control act of 1975."

The Committee on the Judiciary and Criminal Law, to which Bill No. 1–164 was referred, having considered the same, reports favorably on the bill as amended.

BACKGROUND OF THIS LEGISLATION

Bill No. 1–164, as amended, evolved from a series of "gun control" bills which have been introduced in this Council. On February 11, 1975, Councilmember John Wilson introduced the first bill (Bill No. 1–24) to amend the D.C. Police Regulations, Articles 50 through 55, dealing with comprehensive firearm bans, registration and licensing. On March 11, 1975, Councilmember Polly Shackleton introduced Bill No. 1–42, the "District of Columbia Handgun Control Act of 1975", which would have defined new crimes in the D.C. Code involving a comprehensive ban, except in certain circumstances, on handguns or handgun ammunition in the District of Columbia. On June 6 and 7, 1975, your committee conducted extensive public hearings concerning the above-described bills and concerning the more general issue of firearm controls. A copy of the notice and the witness list for such public hearings is attached hereto as "Exhibit A". Councilmember Wilson, who participated in the conduct of the aforementioned hearings, on July 22, 1975, introduced Bill No. 1–164 in lieu of his previous bill, in order to amend the D.C. Police Regulations, Articles 50 through 55. Your committee concentrated its attention to Bill No. 1–164 which basically was aimed at reforming the current, firearm registration and licensing regulations. In its major parts, original Bill No. 1–164 would have (1) expanded the registration and reporting requirements currently placed on firearm owners and/or dealers, (2) substantially increased the fees for registering firearms and for obtaining a license to deal in firearms, (3) placed specific duties on personnel of the Office of Corporation Counsel to prosecute and to monitor the firearm regulations, (4) increased the penalties for violating the police firearm regulations, (5) abolished judicial discretion in the process of meting out punishment for violation of the firearm regulations, and (6) mandated that the Chief of Police conduct an active campaign to seize all prohibited firearms. After lengthy research with regard to original Bill No. 1–164 and refinements of gun controls in the District of Columbia. your committee conducted a roundtable discussion and preliminary mark-up on Tuesday, April 6, 1976 to consider an amendment in the nature of a substitute to Bill No. 1–164. On Thursday, April 15, 1975,

*This report describes the bill as approved by the Council's Judiciary Committee and reported to the Council, which thereafter made some changes in the bill itself before passage.

your committee conducted a mark-up of such amendment. The reported Bill No. 1–164, as amended, is the product of the foregoing deliberations by your committee.

THE PURPOSE OF THIS LEGISLATION

The goals of this legislation are twofold: (1) to reduce the potentiality for gun-related crimes and gun-related deaths from occurring within the District of Columbia; and (2) to strengthen the capacity of the District of Columbia government to monitor the traffic in firearms and ammunition within this jurisdiction. Bill No. 1–164, as amended, would circumscribe the persons eligible to register firearms in the District of Columbia and would delineate the types of firearms which could not be registered within the District of Columbia. The bill sets forth new and stringent criteria in order to relegate guns with legitimate uses in an urban area to demonstrably responsible types of persons. This legislation would also place more expansive reporting duties upon all firearm owners and dealers. This increased accountability would fortify the government's ability to keep track of the guns which are within the District of Columbia. The increased penalties for violation of these new regulations are designed to deter avoidance of the new requirements.

THE NEED FOR THIS LEGISLATION

Your committee finds that, with reference to the possession, sale, purchase and control of any firearm or destructive device in the District of Columbia, the design and scope of the current D.C. Police Regulations, Articles 50 through 55, have not been sufficiently effective in reducing the potentiality of gun-related deaths and gun-related crimes from occurring within the District of Columbia, and there is a need to significantly improve the capacity of the District government to monitor the traffic of firearms within this jurisdiction.

The easy availability of firearms in the United States has been a major factor contributing to the drastic increase in gun-related violence and crime over the past 40 years. The number of deaths attributed to firearms grows each year. Since 1900, more people have been killed by private citizens using firearms than were killed in all our wars. One out of every 100 deaths in the United States is the result of a firearm. Guns are responsible for 69 deaths in this country each day. Approximately 25,000 gun-deaths occur each year and 200,000 individuals are wounded by firearms during this same period. Close to 3,000 accidential deaths are caused by firearms (¼ of the victims are under 14 years of age). For every intruder stopped by a homeowner with a firearm, there are 4 gun-related accidents within the home.

The nationwide statistics dealing with handguns are even more staggering. The number of handguns alone in the U.S. is estimated to be as high as 40 million. (Congressional findings in *Proposed Federal Firearms Act of 1976—H.R. 11193*). That's approximately 1 handgun for every 5 citizens in this country. And the supply of handguns may be increasing by as much as 2½ million each year.

A crime committed with a pistol is 7 times more likely to be lethal than a crime committed with any other weapon. Over the last several

years, statistics have shown that handguns are used in roughly 54% of all murders, 60% of robberies, 26% of assaults and 87% of all murders of law enforcement officials. In 1973, the FBI reported 19,510 murders in the United States, 53% of these homicides were committed with handguns. From 1964–1973 firearms were used to commit 95% of the slayings of police officers—613 by handguns, 104 by rifles and 101 with shotguns. (*Statement of D.C. Delegate Walter E. Fauntroy*).

In 1973, Detroit police reported 751 deaths from all criminal homicides, 24 more than the total number of civilians killed in Northern Ireland during the entire 5½ years of their civil strife. The picture in the District of Columbia is not bright either. The Metropolitan Police Department reported a record 285 murders in the District of Columbia during 1974. Handguns were responsible for 155 of these homicides. In other violent crimes in which firearms were used in 1974–1975, handguns accounted for 88% of the robberies and 91% of the assaults.

Contrary to popular opinion on this subject, firearms are more frequently involved in deaths and violence among relatives and friends than in premeditated criminal activities. Most murders are committed by previously law-abiding citizens, in situations where spontaneous violence is generated by anger, passion or intoxication, and where the killer and victim are acquainted. (*Murder and Gun Control, American Journal of Psychiatry*, 128 Jan. 1972: 456 No. 7). Twenty-five percent of these murders occur within families.

In addition to the inability of the present D.C. firearms law to reduce the potentiality for gun-related violence, the present regulations have not been sufficiently effective in efficiently monitoring the traffic of firearms and ammunition in the District. The Metropolitan Police Department reports that during the period of 1968–1975, 57,755 firearms were registered in the District of Columbia.[1] Of this total, 41,015 were handguns. However, in spite of the present regulations, less than ½ of 1% of the total number of firearms (1974) used in crimes and recovered by the police were registered in D.C. (*Statement of Maurice J. Cullinane, Chief of Police, Metropolitan Police Department before Committee on Judiciary and Criminal Law—1975*). Approximately 12% of the firearms recovered from all crimes in D.C. are then registered and only 1.7% of the above-mentioned firearms are registered by the person from whom they were recovered. In addition, pistols have become easy for juveniles to obtain, although the existing regulations prohibit possession of pistols by juveniles.

The startling statistics presented here emphasize the inability of the present law to cope with the problems of gun control in the District of Columbia. This bill, as amended, will strengthen the District Government's role in firearm control by:

(1) making pistols and shotguns not registered according to the regulations in effect prior to the effective date of this bill unregisterable in a reasonable endeavor toward eventually freezing the pistol and shotgun population within the District of Columbia.

(2) providing more appropriate penalties for violation of these Regulations.

(3) providing a more stringent pre-clearance procedure to prevent the acquisition, possession and use of firearms by disqualified persons.

[1] The total number of firearms registered in the District of Columbia as of 11:00 a.m., March 26, 1976, was 61,089. This includes firearms owned and used by the Metropolitan Police Department.

(4) providing for annual registration, which will enable the District Government to better monitor the traffic in firearms and provide additional revenue (from annual license and permit fees) to implement this comprehensive program of gun control.

(5) providing for a program of education in the District of Columbia designed to inform the community of the provisions of this act.

Your committee realizes the most effective gun control must eventually be applied at the national level. In the absence of such national action however, it becomes necessary for local governments to act to protect their citizens, and certainly the District of Columbia as the only totally urban statelike jurisdiction should be strong in its approach.

IMPACT ON EXISTING LEGISLATION

A. *Effect Upon Title 22, D.C. Code and Related Authority Questions*

Bill No. 1–164 as amended, the "Firearms Control Regulations Act of 1975", is enacted for the purpose of amending the existing District of Columbia Police Regulations. Specifically affected are Articles 50 through 55 of those Regulations. This bill does not amend or conflict with the provisions of Chapter 32 of Title 22 of the D.C. Code. It specifically provides as much in section 902.

The authority for the Council of the District of Columbia to amend the aforementioned D.C. Police Regulations stems from not only the plenary delegation of section 302 of the D.C. Self-Government and Governmental Reorganization Act (hereinafter "Home Rule Act") (87 Stat. 787, D.C. Code, sec. 1–124) but also from the second sentence of section 404(a) of that Act (D.C. Code, sec. 1–444(a)), which vests the Council of the District of Columbia with all functions granted to its predecessor District of Columbia Council, including but not limited to the police regulatory powers provided for in the Act of January 26, 1887 (D.C. Code § 1–224), the health and welfare regulatory powers provided for in the Act of February 26, 1892 (D.C. Code § 1–226), the firearm regulation powers provided for in the Act of June 30, 1906 (D.C. Code § 1–227), and the penalty-creating powers provided for in the Act of December 17, 1942 (D.C. Code § 1–224a).

The United States Court of Appeals for the District of Columbia Circuit has rendered a lengthy opinion delineating the relationship between the plenary power of Congress over District affairs and delegated the local government's powers (based on the pre-Home-Rule Act delegations) in the area of firearm control. In *Maryland and District of Columbia Rifle and Pistol Association, Inc.* v. *Washington*, 142 U.S. App. D.C. 375, 442 F.2d 123 (1971), the U.S. Court of Appeals upheld the authority of the former D.C. Council to promulgate the current gun control regulations.

Those seeking a declaration of invalidity in that case claimed that the Congress had pre-empted the area of gun control by the passage of An Act to Control the Possession, Sale, Transfer and Use of Pistols and Other Dangerous Weapons in the District of Columbia (47 Stat. 650) (codified in Chapter 32 of Title 22 of the District of Columbia Code), and that, in the passage of those Regulations the old Council was treading on ground the Congress had reserved for itself. The Court closely examined the legislative history of the various statutes noting that the 1932 statute was a substantial re-enactment of an 1892 statute (Act of July 13, 1892, 27 Stat. 116) predating the delega-

tion of firearms regulatory powers. [2] The Court went on to note that Congress failed to repeal the regulatory powers when it passed the 1932 Act (now codified in Title 22 of the D.C. Code) finding therefrom and from the rest of its examination "a satisfying assurance that Congress, having dealt with some aspects of weapons control, left others for regulation by the District. Indeed . . . [the Court could] not fathom any other purpose to be achieved by leaving Section 1–227 in force." (442 F.2d at 131). The Court set forth the text as follows:

> The important consideration, we think, is not whether the legislature and municipality have both entered the same field, but whether in doing so they have clashed. Statutory and local regulation may coexist in identical areas although the latter, not inconsistently with the former, exacts additional requirements, or imposes additional penalities. The test of concurrent authority, this court indicated many years ago, is the absence of conflict with the legislative will. As the court declared in *French* v. *District of Columbia*, where [t]he subject [is] peculiarly within the scope of the [expressly delegated] police powers of the municipality, the exercise of authority ought not to be questioned unless clearly inconsistent with the expressed will of Congress.

Bill 1–164, as amended, would not clash at all with any provision of Chapter 32 (or any other part) of Title 22 of the Code. Chapter 32 was not enacted to afford the right to possess or carry weapons. Absent some legislation to the contrary, one could possess and carry a gun. Rather Chapter 32 was enacted to restrict the ability to possess and carry a gun.

Far from being in conflict with it, Bill 1–164 applies to present day conditions, the same approach the 72nd Congress took with respect to 1932 conditions. Bill 1–164, as amended, does not permit anything which Chapter 32 was designed to prohibit.

The Corporation Counsel of the District of Columbia argued in his brief in *Maryland and D.C. Rifle and Pistol Association, Inc.* v. *Washington*. That "since neither the Act of July 8, 1932 [codified in Chapter 32 of Title 22 of the Code], nor any other Act, deals with the registration of pistols by private owners, Article 51, section 1 [of the Police Regulations, prohibiting possession without registration], is not in conflict with any congressional enactment . . . Merely because the District of Columbia Council has added to the very limited congressional enactments relating to possession and transfer of weapons in the District of Columbia, does not mean that the *additions* are in conflict with the original limited provisions of the 1932 Act." (Brief of Appellees, p. 14)

Thus it is clear that Bill 1–164, as amended, was within the authority of the former D.C. Council to enact had it seen fit to do so.

There is no "expressed will of Congress" in the Home Rule Act to repeal the earlier delegations of gun control authority to the city. Any repeal would have to be by implication, and it "is a well-settled rule of statutory construction that there is a presumption against repeals by implication. *See*, Sutherland, Statutory Construction, sec. 2014 (3rd Ed., 1943).[3]

[2] Act of June 30, 1906 (D.C. Code, sec. 1–227 (1973)).
[3] Brief for Appellees, *Maryland and D.C. Rifle and Pistol Association, Inc.* v. *Washington*, U.S. App. D.C. No. 22,927 (1969), p. 17, citing *United States* v. *Greathouse*, 166 U.S. 601 (1897).

The legislative history of the Home Rule Act clearly indicates that it was the intent of Congress to transfer to the new Council the full and immediate power of the old Council in this area. Both section 321(b) of S. 1435, as reported by the Senate Committee on the District of Columbia, and the second sentence of section 404(a) of H.R. 9682, as reported by the House Committee on the District of Columbia, contain transfers of the authority of the old Council to the new. Both of the Reports indicate an intent to carry forth the old authority. Senate Report No. 93–219 says at p. 3: "The powers of the present Council and Mayor-Commissioner are transferred to the new Council and Mayor." House Report No. 93–482 says on p. 21: "Section [sic] (a) [of section 404] provides that the powers and functions of the present Council and Commissioner are transferred to the new Council and Mayor." Neither of these bills included at the time of their report to their respective houses the contents of section 602(a)(9) of the Home Rule Act. That was added in conference, and thus the "except as otherwise provided in this Act" language of the second sentence of section 404(a) was not directed to section 602(a)(9). It was more probably directed to delegations by the Home Rule Act of authority held by the old Council to other agencies [S. 1435, as reported, provided in the very next section (sec. 322) for functions subdelegated by the old Council and Mayor-Commissioner were not to be considered as transferred pursuant to section 321 of the bill but to be recoupable by specific Council or Mayoral action]. The gun control powers delegated to the city by D.C. Code, sections 1–224, 1–224a, 1–226, and 1–227 conferred on the old Council by section 401(1), 401(2), and 401(4) of the Reorganization Plan Numbered 3 of 1967 were not subdelegated by the old Council nor were they reassigned by the Home Rule Act.

It would be absurd therefore to now conclude that the Home Rule Act, designed and understood by all to have expanded the authority of the local legislature, to have repealed the powers delegated earlier. "It is axiomatic that a statute must not be construed to produce an absurd result." See *Lange* v. *United States*, 143 U.S. App. D.C. 305, 307–308, 443 F. 2d 720, 722–723 (1971).[4]

Furthermore, Congressional Delegate Water E. Fauntroy, former Chairman of the Subcommittee on the Judiciary of the Committee on the District of Columbia of the United States House of Representatives, submitted for the record a legal memorandum (Exhibit B) supporting this Council's authority to pass Bill No. 1–42, which, as mentioned earlier, would have amended the current firearms law in the District of Columbia by creating a *statutory* ban on handguns within the District of Columbia. And Attorney Harley Daniels, former Counsel to the Subcommittee on the Judiciary of the Committee on the District of Columbia of the United States House of Representatives, also testified in support of this Council's authority to enact Bill 1–42. By contrast, Bill No. 1–164 as reported herein, amends the current police regulations passed by the former D. C. Council. The scope of Bill No. 1–164, as amended, is significantly more clearly within the ambit of authority of this Council than Bill 1–42.

[4] Memorandum of the District of Columbia, *District of Columbia* v. *Smith*, et al., D.C.C.A. No. 8780 (1974), p. 5.

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The following analysis of the major impact of this bill upon the current firearms regulations illustrates the point further.

B. More Stringent Provisions Regarding Firearm Registration

Bill No. 1–164, as amended, abolishes the dual system under the current regulations whereby persons who own rifles or shotguns must both register and get a license for such firearms. Under the bill, a uniform system of registration is required whereby the Chief obtains not only the same data about the firearms and their owners as he does under the current regulations; but, in addition, the Chief is authorized to obtain information which supplements the current data which he lawfully obtains. For example, under the bill, an applicant would have to inform the Chief as to purpose for which he or she intends to use the firearm.

The bill would require annual registration of firearms as opposed to the current, one-time registration requirement.

The bill would give the Chief 60 days within which to rule upon a registration application in contrast to 30 days under the current regulations.

The new regulations formulated in this bill would expand the existing pre-requisites to be met by any person in order to register his firearm. For example, the class of convicted persons ineligible to register a firearm has been enlarged in this bill. The bill disqualifies anyone from registering who within the 5 years preceding the application for registration was convicted of any weapons offenses (as defined in the bill), violation of any narcotics or dangerous drug laws, or violation of any laws regarding assaults or threats so as to indicate a likelihood to make unlawful use of a firearm. The current regulations have only a three-year disqualification period for persons convicted of offenses similar to those listed above. Unlike any provisions in the existing regulations, the bill disqualifies any person from registering who was involuntarily committed to a mental hospital within the *five* years prior to the application or who was adjudicated by any court to be insane or to be a chronic alcoholic within the five years prior to the application. The bill requires a medical certification of cure of the foregoing maladies prior to a registration certificate ever being issued by the Chief to such persons.

The bill changes the current fee schedule for registration certificates. The public record indicates that the $2.00 fee for a registration certificate under the current regulations does not even approximate the cost to the District of Columbia to administer the existing gun control registration system. This bill directs that the Mayor set the fee for registration at whatever amount will meet the cost to the government for administering the registration system.

Just as in the current gun regulations, the bill generally will not allow destructive devices, sawed-off shotguns, machine guns, or short-barreled rifles to be registered. Of course, the bill recognizes that on-duty federal and local law enforcement officers are permitted to possess the above noted weapons. Cf. D.C. Code §22–3214.

The bill adds a new category of generally unregisterable firearms in the District of Columbia, namely pistols not registered and shotguns not registered and licensed pursuant to the regulations in effect immediately prior to the effective date of this bill. Such provision

denotes a policy decision that handguns and shotguns have no legitimate use in the purely urban environment of the District of Columbia while at the same time avoiding any conflict with constitutional doctrines which might require compensation for materials declared to be illegal but which were legally possessed prior to the declaration. Moreover, the bill reflects a legislative decision that, at this point in time and due to the gun-control tragedies and horrors enumerated previously in this report, pistols and shotguns are no longer justified in this jurisdiction. During the Congressional review period of thirty legislative days, there will be adequate time for any current possessor of a pistol or shotgun, who is otherwise eligible, to register the same and thus be eligible for registration under the new regulations. Under section 203(c) of the bill, and Article 52, section 414 of the current regulations, his or her application cannot be used to prosecute him or her for illegal possession. If there is any fear that possibly there will be a flurry of firearm purchases or registrations of currently unregistered pistols and shotguns in the District of Columbia prior to this bill completing the full legislative process, it should be noted that the Police Department can provide the Council with daily statistics concerning recent registrations of firearms and with less frequent reports on the inventories of local firearm dealers. If the basis for the above-noted fears becomes a reality based on law enforcement reports, then this Council or the Congress can take further appropriate action prior to the bill being enacted.

Another innovation of the registration provisions of this bill would be the requirement in section 203(a)(10) whereby applicants would have to demonstrate to the Chief that they are knowledgeable of the District of Columbia firearms laws and that they can safely use the firearm which they seek to register.

C. Expanded Licensure Provisions

Bill No. 1–164, as amended, creates two classes of business licensees whereas only one class now exists. The impact of such classification is to freeze at the current level of fourteen the number of dealers who can sell registerable firearms to the public.

The bill would extend from the current 30 days to 60 days the time allotted to the Chief to rule upon applications for licenses.

The bill requires that applicants for licenses meet the same expanded eligibility requirements as are placed on persons applying for a registration certificate.

A major revision contemplated in this bill is the establishment of a process whereby a licensed dealer can dispose of his inventory in the event that he receives an unfavorable response to his application for renewal of his license. This is to avoid any constitutional problems of confiscation. The current regulations do not address the situation of what a dealer should do if his license is revoked. Under the provisions of this bill, if a denial or revocation becomes final, than the dealer would have to do any one of the following: register any registerable firearms in his possession, surrender to the Chief those firearms not registered plus all destructive devices, or lawfully dispose of or remove from the District of Columbia any firearms in which he has an interest.

Bill No. 1–164 as amended contemplates more accountability in the reporting requirements than are presently required of licensees under

Article 54, sec. 5(c) of the D.C. Police Regulations. Whereas a licensed dealer is currently required to submit "periodic" reports, Bill No. 1–164, as amended (sec. 410), would require the maintenance of very detailed monthly records by the licensee. The licensee would be required to keep the records current and to open them to inspection upon demand by the Chief.

D. Delineation of Sales or Transfers of Firearms

In both this bill and the current regulations, the range of firearms which may be generally sold or transferred coincides with the range of firearms which may be lawfully registered in the District of Columbia. However, Article 5 of Bill No. 1–164 provides that all sales and transfers of registerable firearms be accomplished only through a licensed dealer to a qualified purchaser.

E. Ammunition Transfers

Article 6 of Bill No. 1–164 substantially follows Article 53 of the current D.C. Police Regulations. Beyond this, section 602 of the bill sets out in detail the precise universe of lawfully possessors of firearms ammunition; namely, licensees, authorized government personnel, certified collectors, and registrants of firearms of the same caliber as the ammunition possessed.

F. Registration of Firing Range Operators

Section 703 provides that for the first time in this jurisdiction that firing ranges shall be registered with the Chief.

G. Expanded Enforcement Provisions

Under the present Regulations (Article 55, sec. 2) no penalty will befall a person who voluntarily surrenders to the Police a firearm which is not registered, so long as a proclaimed amnesty period is in effect. This bill would abolish the current amnesty and redemption regulations and allow for surrender of firearms to the Chief at any police station and at any time. The same provision is made regarding the voluntary surrender of ammunition.

This bill also provides in section 803 that the Chief of Police publicize certain aspects of the Police regulations concerning firearms. These matters include: the elements of lawful possession, the limitations placed on holders of permits, the provisions for enforcement of the regulations, the provisions for voluntary surrender, and the means by which persons may aid the Police in enforcing the firearms regulations.

The bill sets a new mandatory minimum penalty of 10 days imprisonment and a $300 fine for violation of certain key sections of the bill (section 201 (re: prohibition of possession of a destructive device or unregistered firearm), section 401 (re: prohibition of engaging in firearms business without firearms business license), section 501 (re: limitations on sale or transfer of firearms), section 601 (re: limitations on the sale of ammunition), and section 602 (re: limitations on the possession of ammunition)). Under the current regulations there are no such mandatory sentencing provisions. The Committee reluctantly rejected higher penalties in an effort to remain within the delegated powers of D.C. Code, secs. 1–224, 1–224a, 1–226, and 1–227 so as to be certain of the Council's authority.

The foregoing considered, it should be apparent that this bill would not cause a confiscation law, would not amend any existing gun laws beyond the current D.C. Police Regulations governing firearms, and would take nothing away from sportsmen and collectors.

EXECUTIVE POSITION

The Executive Branch position on Bill 1–164 is far from clear. From the time of its introduction on July 22, 1975 until March, 1976, there was no communication from the Branch on this particular bill.

On March 17, 1976, the Chairperson of your Committee sent a copy of a working draft containing most of the provisions of this bill, as amended, to the then Acting Corporation Counsel and to the Chief of Police inviting general comments, criticisms, and recommendations specifically requesting in each case certain information (Exhibit C). Copies of the letters were sent to the Mayor's Special Assistant for Legislation. It was requested that any information be provided by March 23, 1976 at a roundtable discussion to be conducted by your committee.

On March 23, 1976, a memorandum was received from the Acting Corporation Counsel the only critical comment of which was directed to a provision of the draft which would have limited prosecutorial plea bargaining (Exhibit D). That provision is not part of the bill as amended.

On March 23, 1976, a memorandum was also received from the Chief of Police claiming inability to complete the statistical data and analysis by that time (Exhibit E). The March 23, 1976 meeting was cancelled.

On March 30, 1976, a six page memorandum was received from the Chief of Police responding to so many of the specific requests contained in the letter of March 17, 1976 as addressed themselves to standards and procedures used in the enforcement of current regulations and to statistics (Exhibit F).

On April 6, 1976, when a mark-up session of your committee had been called, a memorandum was received from the Mayor's Special Assistant for Legislation indicating "a number of legally objectionable and administratively defective provisions" in the working draft—a nearly identical version of which was moved at that meeting as an amendment in the nature of a substitute (Exhibit G). The memorandum indicated that the Executive Branch was preparing a draft bill for the Committee's consideration "in the very near future". At the meeting, Mr. Chauncey Williams of the Office of Legislation declined to cite what the Executive Branch found to be legally objectionable and/or administratively deficient. The only "much needed change" in the existing law which Mr. Williams would identify was the requirement that persons register their firearms within forty-eight hours of arrival in the city. That meeting was recessed to give Mr. Williams a chance to ascertain by what time the Executive Branch could produce its draft bill. When the meeting resumed, Mr. Williams was unable to state a time but responded to an inquiry as to the ability of being ready in a week by saying that it could be done if one person worked upon the matter full time. The Committee thereupon set the matter over to April 15, 1976 requesting that it be provided with the Execu-

tive Branch's draft bill and other materials by the close of business on April 14, 1976.

No draft bill or other response from the Executive Branch was received by or on April 15, 1976 other than further response from the Chief of Police addressing the two sections of the Bill (203 and what is now 410) which had been specifically mentioned in the letter of March 17, 1976 (Exhibit II). Mr. Robert Greenberg of the Office of General Counsel of the Metropolitan Police Department appeared at the mark-up session on April 15, 1976 and was of great assistance. Of the 27 points in the Chief's memorandum, the Committee made amendments consistent with the Chief's comments to the amendment-in-the-nature-of-a-substitute before it in all respects except the following five (in none of which are the Committee's positions any less stringent than the current regulations):

(1) The Committee rejected the suggestion that persons convicted of violation of provisions of the bill be later permitted to register firearms after a period of disqualification similar to that required of those convicted of narcotics offenses. Your committee felt that one violation of the provisions of the bill was so serious as to indicate a permanent disability to safely and lawfully handle firearms.

(2) Your committee rejected the suggestion that persons voluntarily entering mental hospitals should be as ineligible as those committed involuntarily. Your committee feels that mere admission to a mental hospital does not indicate incapacity and that the fact of the voluntariness may indicate more of a presence of mind than an involuntary commitment.

(3) Your committee and the Executive Branch representatives present at the meeting were unable to formulate at the meeting any more specific standards for a disabling physical defect than are in the current regulations and which would be continued by the bill.

(4) The committee declined to make production of the firearm at a station at the time of application mandatory but chose to vest the Chief with discretion as in the current regulations. The Committee did not want to encourage guns on the streets in any fashion and felt that, if law enforcement needs dictated such production, the discretion afforded the Chief enables it.

(5) Your committee rejected the suggestion that one charged with a misdemeanor of assault or threats should, by virtue of being so charged, be ineligible to register a firearm. Your committee accepted the idea of disqualifications upon indictment because there is a judicial finding of probable cause. Your committee was here concerned with the interdependent eligibility-to-register and revocation sections which, if the Chief's suggestion were adopted, could unfairly result in a citizens' registration being revoked merely upon a charge of assault by another citizen.

In the last footnote of the document, the Chief says: "These comments, as previously noted, were specifically requested. While we believe adoption of the suggestions made would greatly improve §§ 203 and 408, we continue to believe the bill to be similarly deficient elsewhere to preclude supporting its passage. (Memorandum of Judy Rogers to Councilman Clarke dated April 6, 1976)."

Nevertheless, after repeated invitation, no representative of the Executive Branch would specify any objection or deficiency other than as hereinbefore mentioned.[5]

FISCAL IMPACT

The bill would permit the Mayor to set application fees for firearm registration and firearms business licenses at whatever is needed to pay costs of administering the provisions of the bill. Therefore its administration would entail no cost except approximately $2,500 for publication of information pursuant to the publicity program mandated by the bill.

There would be a net savings, as the current registration fee is set at $2.00 by the current regulations. The Chief of Police estimated that cost at $20.00 to register a gun. At the current rate of about 4,000 registrations per year, we are now sustaining a loss of about $72,000 per year. Thus the fiscal effect of passage of this bill over the next five years would be approximately a plus $357,500.

($72,000 × 5 = $360,000 − $2,500 = $357,500).

SECTION-BY-SECTION ANALYSIS

Section 101 of the bill sets forth the definitions of essential terms used in the bill.

Subsection (a) of section 201 provides for a general ban on destructive devices and directs that no person shall own, possess, or have under his control a firearm in the District of Columbia without a valid registration certificate being issued therefor to such person. In the case of an organization which owns any firearm, section 201 directs that dual registration be obtained both in the name of the organization and in the name of the president or chief executive of such organization. This provision is intended to establish personal responsibility at a high level within the organization for compliance with this Article. Subsection (b) of section 201 of the bill would provide an exception for licensees in that they would not be bound by the general registration requirements in subsection (a) with respect to firearms kept by them purely as inventory in their businesses.

Section 202 describes certain firearms which are unregisterable, namely any sawed-off shotgun, machine gun, short-barreled rifle and pistol not registered, or shotgun not registered and licensed, to the applicant pursuant to the regulations in effect immediately prior to the effective date of this bill.

Section 203 identifies the criteria and processes by which persons and chief executives in any organization owning firearms shall conform in order to obtain a registration certificate. Subsection (a) of section 203 lists the criteria which must be met by applicants registration certificate. The personal criteria set forth in subsection (a) of section 203 are designed to promote a situation in the District of

[5] The hearings on Bills 1–24 and 1–42, the then Corporation Counsel questioned as to the Council's authority to pass either of those measures (both of which had penalty sections beyond the scope of the old Council's authority to provide). The Office of Corporation Counsel has not addressed the authority to enact Bill 1–164. The question of the Council's authority to enact Bill 1–164, as amended, is treated in the section of this Report on "Impact on Existing Legislation", supra.

Columbia wherein registerable firearms, being lethal by nature, can only be registered to persons whose personal and social histories do not indicate a susceptibility on their parts to use any firearm in a manner which would be dangerous to themselves or to other persons. Subsection (b) of section 203 specifies the data which each applicant must provide for the Chief prior to his issuing any registration certificate. The burden is upon the applicant to provide the factual data required by subsection (b) to the Chief in order that the Chief be able to perform his duties under this bill. Subsection (c) of section 203 prohibits any information contained in an application from being used as evidence in a crivinal proceeding against the applicant, except for prosecutions for perjury in violation of D.C. Code §22-2501 or for violation of section 705 of this bill as amended. Subsection (e) of section 203 also provides that if a final determination has been made to deny the issuance of an application for a firearm, then the applicant shall have seven days within which to surrender the firearm, lawfully remove it from the District of Columbia, or otherwise lawfully dispose of such firearm. Subsection (d) of section 203 affords the Chief the option of fingerprinting and taking a photograph of an applicant for a firearm registration certificate. Subsection (e) authorizes the Chief, whenever he deems it advisable, to require an applicant to appear in person and to bring the firearm in question to the police department prior to the Chief's ruling on the application. Subsection (f) of section 203 mandates that each application be executed in duplicate and that each application be attested to by the applicant.

Section 204 provides that the registration certificate shall have an effective life-span of one year, thus establishing a system of annual registration.

Section 205 authorizes and directs the Mayor to set the fee scale for any services rendered pursuant to sections 201 through 210 of this bill in order to cover the cost to the District of Columbia government for providing such services such as the processing of registration applications. Section 205 specifically makes fees for registration applications non-refundable.

Section 206 establishes strict time frames within which applications must be filed. In particular, firearms registered or licensed under the Police Regulations in effect prior to the effective date of this bill must be registered within 60 days of the date upon which this bill becomes law. Otherwise a firearm must be registered within 48 hours after it is legally received or acquired or brought into the District of Columbia. Of course a firearm registered pursuant to this bill must be re-registered prior to the expiration of the registration certificate.

Section 207 sets a sixty-day time frame within which the Chief shall make a ruling upon an application for a registration certificate. The Chief shall have 120 days to rule upon applications for a registration certificate which have been filed within the first sixty days after the effective date of this bill.

Section 208 prescribes the grounds upon which a registration certificate shall be revoked. Generally, revocation shall be caused by a firearm becoming unregisterable under section 202, by the registrant becoming ineligible for registration under section 203(a), by failure to perform the duties set forth in section 210, or by the intentional falsification of information given to the Chief by the registrant

Subsection (a) of section 209 sets forth the procedures to be followed for the denial of a registration application or the revocation of a registration certificate. Subsection (a) provides due process protections to all registrants or applicants affected by this Article. The provision does not alter the doctrine that ownership of a firearm is a privilege and not a right. Subsection (b) of section 209 delineates the legally permissible options available to an applicant or registrant after an order of denial or revocation has become final. Subsection (c) of section 209 requires the Chief to destroy all firearms which are not needed as evidence by any prosecutorial authorities of any jurisdiction or which cannot be lawfully returned to the rightful owner thereof.

Subsection (a) of section 210 of the bill sets forth additional duties placed upon each person who has registered a firearm pursuant to these Regulations. Specifically, registrants shall report in writing to the Chief concerning the loss, theft, or destruction of the registration certificate or of the registered firearm within 48 hours of such event. Registrants shall also report within 48 hours any change of name or address from that recorded on the registration certificate. This latter duty is especially noteworthy for the president or chief executive of any organization which has registered its firearms. It is the intent of this subsection to insure that the Chief is kept well-informed of any change in the identity of the officer or an organization who is personally responsible for the oversight of the use of such organization's firearm(s). Registrants must also inform the Chief in writing of the sale or transfer or other disposition of the firearm by the registrant. Simultaneous with the notice to the Chief of the loss, theft, or other disposition of a firearm, registrants must return to the Chief the registration certificate for any firearm which has been stolen, lost, destroyed, sold, or otherwise disposed of. Finally, a registrant must have in his possession a valid registration certificate and an applicant, whose application has not yet been acted upon pursuant to section 207, must have in his possession his application for a registration certificate for each firearm possessed. Such registrants and applicants must exhibit the certificate or application, as the case may be, upon the lawful demand of any law enforcement officer. Subsection (b) of section 210 directs the Chief to inform each applicant for a registration certificate of the duties which flow from the provisions of this bill and which govern such applicant.

Section 301 of the bill establishes the duties of executors and administrators of estates containing firearms. If the estate contains a validly registered firearm, the fiduciary has an obligation to report the death of the registrant to the Chief. If such report is timely, then the registration certificate remains valid until the lawful distribution or transfer of the firearm in question. In the case of an estate containing a validly registered firearm, the fiduciary is charged with all of the duties which this bill would have impoesd upon the decedent if he or she were still alive, for example, the duties listed in section 210 of the bill. In the case of an estate containing a firearm which is not validly registered, the fiduciary shall have the duty to surrender the firearm

or lawfully dispose of such firearm as provided in subsection (b) of section 209 or in section 801 of the bill. However the executor or administrator shall not be liable for the criminal penalties set forth in section 802 of the bill.

Section 401 prohibits any person or organization from engaging in the business of selling, purchasing, or repairing firearms, ammunition, or destructive devices without first obtaining a license and limits the lawful scope of such business according to the class of the license issued to the licensee.

Section 402 defines the two classes of firearms business licenses: (1) a Class A license authorizes a business to engage in the sale, transfer, repair, and purchase of firearms and ammunition to any persons or organizations in accordance with the provisions of this bill, and (2) a Class B license authorizes a business to engage in the sale, transfer, repair, and purchase of firearms, ammunition and destructive devices only where the other party to the transaction is another licensee, as defined in the bill, or specified agents of the District of Columbia or the federal governments.

Section 403 specifies who is eligible to obtain each class of license described in section 402, above. Class B licenses may be issued to persons who or to organizations whose officers meet the registration eligibility requirements and do not fail to perform any of the duties set forth in this bill. Class A licenses are "grandfather" licenses which can only be issued to firearms businesses which have been licensed pursuant to the D.C. regulations in effect prior to the effective date of this bill and which qualify for a Class A license in accordance with the provisions of this bill.

Subsection (a) of section 404 regulates the contents of applications for firearms business licenses. Subsection (b) of section 404 provides a qualified evidentiary immunity for information elicited in applications for licenses.

Section 405 sets a sixty-day time frame within which the Chief shall make a ruling upon an application for a license. The Chief shall have one-hundred and twenty days to rule upon applications for a license which have been filed within the first sixty days after the effective date of this bill.

Section 406 authorizes and directs the Mayor to set the fee scale for any services rendered pursuant to sections 401 through 413 of the bill in order to cover the cost to the District of Columbia government for providing such services such as the processing of applications for licenses. Section 406 specifically makes fees for license applications non-refundable.

Section 407 provides that the license shall have an effective life span of one year.

Section 408 prescribes the grounds upon which a registration certificate shall be revoked.

Subsection (a) of section 409 sets forth the procedures to be followed with respect to denial of a license application or the revocation of a license. Subsection (a) provides due process protections to all licensees and applicants affected by this Article. Such provision does not alter the patent reality that carrying on a firearms business is a privilege and not a right. Subsection (b) of section 408 delineates the legally

permissible options available to an applicant or licensee after an order of denial or revocation has become final. Subsection (c) of section 409 directs the Chief to inform each applicant for a license of the duties which flow from the provisions of this bill and which govern the applicant.

Section 410 specifies the types of monthly records which must be maintained by each licensee concerning the nature of the inventories kept and the sales, transfers, and repairs conducted in the course of his, her or its business. The Chief is directed to monitor such records at reasonable regular intervals. Each record is to be kept for one year after the event recorded.

Section 411 indicates the permissible manner for a licensee to keep or display his inventory.

Section 412 provides that all firearms with which a licensee deals shall have identifying markings imbedded therein.

Section 413 directs that licensees shall display their licenses in a prominent place where customers may easily see them.

Section 501 of this bill specifically limits sales and transfers of firearms and destructive devices within the District of Columbia to the provisions contained in sections 209(b) (re: legal disposition of firearm after denial or revocation of registration), 502 (re: permissible sales and transfers), and 801 (re: voluntary surrender) of this bill.

Section 502 defines the permissible sales or transfers within the District of Columbia under the bill. Permissible sales under section 502 generally conform to the scope of the registration and licensing provisions of this bill. Subsection (a) of section 502 permits the sale or transfer of any registrable firearm to a Class B licensee Subsection (b) of section 502 respects licit sales of any registered rifle to any Class A licensee. Subsection (c) of section 502 allows any Class A licensee to sell or transfer any pistol or shotgun, which is lawfully part of his inventory on the effective date of this bill, to any firearms business licensed by a non-D.C. jurisdiction so long as the delivery of the pistol or shotgun to the purchaser or transferee is made outside the District of Columbia. Subsection (d) of section 502 allows any Class A licensee to sell or transfer any pistol or shotgun which is lawfully part of such licensee's inventory on the effective date of this bill to any Class B licensee. Subsection (e) of section 502 warrants the sale or transfer of a rifle by any licensee to any person or organization provided that at least three days pass between the time the transaction is initiated by the prospective transferee's exhibition of an application(s) to register the subject rifle(s) to the transferor and the time the transaction is finally consumated by delivery of the rifle(s). The three-day hold on the transaction affords the Chief the opportunity to review the registration application of the transferee and to stop or suspend the transaction in cases where the Chief finds cause to deny the registration application. Subsection (f) of section 502 generally permits any licensee to sell or transfer a firearm or destructive device to any on-duty agent or employee of the federal or District of Columbia governments when such agent is acting within the scope of his duties in acquiring such firearm or destructive device. Thus the only firearm purchasable by the general public would be a rifle.

Section 601 regulates the sale and transfer of firearm ammunition with the District of Columbia and provides generally that only

licensees can sell ammunition to non-licensees. The necessary conditions for any sale or transfer of ammunition by licensees are: (1) the transaction must be made in a face-to-face transaction; (2) the purchaser or transferee must sign a receipt for the ammunition and return such receipt for safe-keeping by the licensee; (3) the purchaser or transferee must show a legally authorized registration certificate to the licensee for the firearm for which ammunition is being sought; and (4) the ammunition being sold or transferred must be of the same caliber or gauge as the firearm described in the registration certificate. The latter two conditions would not apply in two cases: (a) where the purchaser or transferee is an on-duty agent of the federal or District of Columbia governments who is acting within the scope of his duties when acquiring such ammunition, or (b) when the purchaser or transferee is a certified ammunition collector who is purchasing ammunition for his collection.

Section 602 of this bill specifies the persons who may possess ammunition within the District of Columbia; namely, licensees, on-duty agents of the federal and District of Columbia governments, holders of valid registration certificates for firearms of the same gauge or caliber as the ammunition being possessed, and locally certified ammunition collectors.

Section 701 provides that no firearm or ammunition may be used as security in a transaction and that no person may loan, borrow, give, or rent any firearm except to the person who is the registrant for such firearm.

Section 702 specifies that all firearms shall be kept unloaded and disassembled in the District of Columbia except when such firearms are being used at registered firing ranges in D.C. and used at such ranges for recreational purposes.

Section 703 requires that any person who operates a firing range in the District of Columbia shall register the same with the Chief.

Section 704 discloses that the provisions of this bill shall not apply to on-duty officers, agents, or employees of the federal or District of Columbia governments when such persons are acting within the scope of their employment.

Section 705 prohibits the intentional giving of false information in course of applying for a registration certificate or license or in the course of supplying any information pursuant to these regulations. Section 706 also makes it unlawful to forge or alter any application, registration certificate, license, or temporary evidence of registration generated pursuant to this bill.

Section 801 provides a mechanism for the lawful surrender or abandoning of any firearm or ammunition to the Chief or to a Metropolitan police officer. Section 301 provides immunity from arrest or prosecution for any person who delivers any firearm or ammunition pursuant to the provisions contained in such section, but section 801 does not countenance the payment of any money to anyone in return for making such a delivery.

Section 802 sets out two levels of penalties for violation of the provisions of this bill. Each violation of section 201 (re: prohibition of possession of a destructive device or unregistered firearm), section 401 (re: prohibition of engaging in firearms business without firearms business license), section 501 (re: limitations on sale or transfer of

firearms), section 601 (re: limitations on the sale of ammunition), or section 602 (re: limitations on the possession of ammunition) is subject to the strict mandatory penalty of ten days imprisonment and a $300 fine. Any other violation of the bill is subject to a penalty of imprisonment of up to ten days or a fine of up to $300 or both.

Section 804 mandates a publicity program to be continuously conducted by the Chief in order to inform the citizens of the District of Columbia of the provisions of this bill and related matters.

Section 901 repeals the current firearms regulations which are to be replaced by the provisions of this bill. This section also repeals the regulation authorizing a bounty to be paid as a redemption for firearms turned in to the Chief by members of the public.

Section 902 fixes the supplementary nature of the requirements and penalties of this bill in relation to the requirements and penalties contained in statutes of the District of Columbia and of the United States dealing with similar subject matter.

Section 903 makes the individual sections or provisions of this bill severable from each other in terms of survival from any attack upon their validity.

Section 904 provides the effective date for the enactment of this bill.

COMMITTEE ACTION

On April 15, 1975, your committee convened in order to mark-up Chairperson Clarke's amendment in the nature of a substitute to Bill No. 1-164. On that date, your committee voted to report to the Council a bill which was basically comprised of the Clarke amendment-in-the-nature-of-a-substitute with the incorporation of many of the changes suggested by the Chief of Police (as discussed in the "Executive Position" section of this report). The committee vote was as follows: two (2) in favor (Clarke and Dixon), none opposed. The committee also unanimously voted to direct the staff to prepare a draft report on the reported bill for later consideration by the committee. On Wednesday, April 21, 1976, your committee met to approve this report and to affirm certain amendments to the reported bill of April 15. The following amendments were approved: (1) provision in sec. 201(b) that licensees would not be required to register their inventories; (2) provision in sections 401 and 402(b) that destructive devices could be sold by Class B licensees; (3) allowance in section 404(b) for evidentiary immunity for information contained on applications for licenses; (4) provision in section 410(c) to require licenses to preserve their section 410 records for 1 year; and (5) expansion of the limitations on ammunition sales or transfers in section 601 to all persons instead of merely to licensees. The foregoing amendments and this report were approved unanimously; the vote being: two (2) in favor (Clarke and Dixon), none opposed.

COMMITTEE ON THE JUDICIARY AND CRIMINAL LAW

Public Hearings on Bills 1–24 and 1–42

(Bill 1–24) "To protect the citizens of the District, to the maximum extent possible by law, from loss of property, death, and injury, by revising Articles 50–55 of the Police Regulation"; and (Bill 1–42) "To prohibit the manufacture, sale, purchase, transfer, receipt, transportation, possession, and ownership of handguns in the District of Columbia, except in certain circumstances."

Room 500, District Building
Washington, D.C. 20004
June 6–7, 1975

OPENING STATEMENTS

Chairperson David A Clarke, Councilmember Arrington Dixon, and Councilmember Polly Shackleton.

FRIDAY, JUNE 6TH—10 A.M. SESSION

Witness List

Name	*Organization*
1. Hon. Walter E. Fauntroy	Member of Congress, District of Columbia.
2. Councilmember John Wilson	City Council of the District of Columbia.
3. Chief Maurice Cullinane	Chief of Police, Metropolitan Police Department.
4. Mr. John W. Hechinger	Former Chairman, City Council of the District of Columbia, Member, Democratic Central Committee.
5. Ms. Kay McGrath	Americans for Democratic Action, Women's National Democratic Club.
6. Mr. Ed Volk	Citizen.
7. C. Francis Murphy, Esquire	Corporation Counsel.

FRIDAY, JUNE 6TH—7:30 P.M. SESSION

Name	*Organization*
1. Mr. James Howard	Past President, Deanwood Civic Association.
2. Mr. Allen Esworthy	Citizen.
3. Mr. Idus Holmes	Citizen.
4. Rev. David Bava	St. Francis DeSales Church Parish and Coordinating Council, Public Safety Committee.
5. Mr. Gregory T. Diaz	Citizen.
6. Rev. Standord Harris	Capitol Hill Group Ministry.
7. Mr. Absolum Jordan	Black United Front.
8. Mr. William P. Rich	Citizen.
9. Lawrence E. Smith, Esq.	Federal Civic Association.
10. Mr. Frederick H. McIntosh	Citizen.
11. Mrs. Marion A. McIntosh	Citizen.
12. Mr. George W. Brady	Federation of the Citizens Association of D.C.
13. Mrs. Ruth Webster	14th Street PAC

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SATURDAY, JUNE 7TH—10 A.M. SESSION

Name	*Organization*
1. Mr. William Rollow	D.C. Skeetshooting Association Advisory Panel Against Armed Violence.
2. Mr. Jess Johnson	National Rifle Association.
3. Mr. Albert T. Timentel	Citizen.
4. Mr. Richard S. Ware	Citizen.
5. Mr. Priestly Mance	Washington Outdoor Sportmen's Club.
6. Mr. Charles Hernandez	Chairman, People Organized for Progress and Equality (POPE).
7. Mr. William J. Saunders	Principal, Eastern High School.
8. Ms. Jennie Ross	Vice Chairperson, American Civil Liberties Union of National Capital Area.
9. Mr. E. Wayles Browne, Jr	National Rifle Association and Maryland and District of Columbia Rifle and Pistol Clubs.
10. Dr. Barbara Moulton	Citizen.

HOUSE OF REPRESENTATIVES,
Washington, D.C., February 13, 1975.

Hon. STERLING TUCKER,
Chairman, D.C. City Council,
Washington, D.C.

DEAR STERLING: As you know, I have introduced in the Congress national gun legislation. In the process of preparing my bill, it occurred to me that it might make some sense for the Council to consider gun legislation on the local level. I understand that Councilman John Wilson has prepared and introduced legislation on the subject, and I have prepared a bill which runs parallel to my national legislation that you may wish to consider, together with Councilman Wilson's legislation.

I also asked my staff to prepare a legal memorandum setting forth the authority of the Council to enact gun legislation in view of the limitations in the Home Rule Act. I hope that you will find this analysis useful.

If the Council holds hearings on gun control, I should very much like the opportunity to express my views on the issue.

Please let me know how I can be of help.

Sincerely yours,

WALTER E. FAUNTROY,
Member of Congress.

Enclosure.

MEMORANDUM

FEBRUARY 13, 1975.

Subject: Authority of District of Columbia Council to Enact Gun Control Legislation.

As you requested, we have researched the question of whether the District of Columbia has the authority under its home rule charter and other applicable laws to enact the gun control legislation you have prepared for their consideration. It is our conclusion that the D.C. Council possess such authority.

In essence, your proposed legislation would ban the manufacture, sale, purchase, transfer, transportation or possession of any handgun or handgun ammunition within the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act ("Home Rule Act") provides that "the legislative power of the District shall extend to all rightful subjects of legislation within the District . . ." It is generally agreed that this grant to authority is extremely broad, roughly comparable to the legislative power of a state legislature, and in the absence of specific limitation, would include the authority to enact the proposed legislation.

The Home Rule Act, however, does contain a limitation that bears upon the Council's authority to enact a comprehensive gun control bill. Section 602(a)(9) states, in part, that the Council shall have no authority to "enact any act, resolution, or rule . . . with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners) during the twenty-four full calendar months immediately following the day on which the Members of the Council first elected pursuant to this Act take office."

In our view, this provision does not preclude the Council from enacting the proposed gun control legislation. To begin with, the limitation is narrow in that it precludes Council enactment only with respect to specific provisions of title 22. It does not prevent the Council from acting with respect to criminal laws codified outside title 22. For example, the Uniform Narcotic Drug Act, which contains substantial criminal penalties, can be found in title 33 of the D.C. Code. Other substantial statutes having criminal penalties are scattered throughout the Code, beyond title 22 and the limitation set forth in Section 602 of the Home Rule Act. There should be little question that the title 22 limitation on Council authority would not apply to these criminal laws.

The Council appears to possess authority independent of title 22 to enact gun control legislation. Section 1–227 authorizes the District of Columbia Council to make all such "unusual and reasonable police regulations . . . as the Council may deem necessary for the regulation of firearms, projectiles, explosives or weapons of any kind in the District Columbia." This language is broad on its face, and would appear to give the Council ample authority to enact sweeping gun legislation. See *Maryland and District of Columbia Rifle and Pistol Association, Ins.* v. *Washington*, 442 F2d 123 (D.C. Cir. 1971). In the *Rifle and Pistol Association* case, the U.S. Court of Appeals for the District of Columbia upheld an extensive system of gun registration promulgated by the D.C. Council, finding section 1–227 to be broad in scope. The reason for enactment of this provision in 1906 was based on much the same considerations that apply today in banning the sale and possession of handguns. The District Commissioners testifying on the bill underscored the underlying basis for its enactment:

> The advantage to be gained is the freedom from accident from indiscriminate discharge of firearms within the territory of the District of Columbia [that] will safeguard human life and property to a large degree, which is now impossible. H.R. Rep. No. 4207, 59th Cong., 1st Sess. 4 (1906).

While section 1–227 would itself support Council action, two additional issues must be addressed in determining the authority of the Council to enact comprehensive gun control legislation. The first is whether the limitation of the Home Rule Act with respect to title 22

supercedes the Council's authority to proceed under section 1–227. The Council probably could have enacted a handgun ban prior to the Home Rule Act. There is no indication in the Home Rule Act or its legislative history that Congress intended to limit by implication authority possessed by the Council before the effective date of this Act. There is some evidence to the contrary. The delegation of authority to the Council was intended to be broad, an intention which must pervade interpretation of the Act. As a matter of construction, it is sound to assume that the Council possesses authority, unless a specific limitation circumscribes it. Further, Section 404(2) of the Home Rule Act seems to indicate that all powers possessed by the Council before January 2, 1975 would be carried forward. That section provides, in part:

> . . . all functions granted to or imposed upon or vested in or transferred to the District of Columbia Council, as established by Reorganization Plan Numbered 3 of 1967, shall be carried out by the Council in accordance with provisions of this Act.

The Council's authority under section 1–227 seems to survive the title 22 limitation under the Home Rule Act.

The second question is whether the gun control provisions now contained in title 22 preempt the Council's acting under Section 1–227. Our conclusion is that that title 22 does not preclude Council initiative. Chapter 32 of title 22 (hereinafter the "1932 Act") contains several provisions regulating weapons in the District. In *Maryland and District of Columbia Rifle and Pistol Association* v. *Washington*, 442 F 2d 123 (D.C. Cir. 1971), the plaintiff, who sought to overturn the Council's gun registration regulations, argued that the Congress foreclosed use of Section 1–227 by the enactment of its 1932 gun control law for the District contained in title 22. The Court ruled that the 1932 Act does not preempt the Council from acting pursuant to Section 1–227. The Court explained its holding by observing:

> In 1932, Congress enacted a limited gun control law for the District, leaving Section 1–227 untouched.

In *Firemen's Insurance Co. of Washington* v. *Washington*, 483 F 2d 1323 (D.C. Cir. 1973), the Court upheld substantial portions of a Council regulation on insurance despite the existence of a comprehensive insurance code enacted by Congress. The Court said:

> But we cannot agree that municipal regulation is precluded simply because the legislature has taken some action in reference to the same subject.

The Court further stated:

> Statutory and local regulation may co-exist in identical areas although the latter, not inconsistent with the former, exacts additional requirements, or imposes additional penalties.

The question, then, is whether the proposed gun control measure directly conflicts with the provisions of the 1932 Act. In broad terms, the proposed legislation would not alter the specific proscriptions contained in title 22. No action that would be subject to criminal penalty under the 1932 Act would be made lawful under the proposed gun law. It is significant to note that the 1932 Act nowhere expressly creates a right to own or possess a weapon, and this is the matter directly dealt with by the proposed legislation.

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The purpose of the Council act would be to "exact additional requirements, or to impose additional penalties", which is an appropriate purpose under the *Firemen's Insurance* test.

To avoid potential direct conflict, Section 11 of the proposed legislation states:

> No provision of this Act shall be construed as modifying or affecting any provision of any law codified in chapter 32 of title 22 of the District of Columbia Code.

Based on the above considerations, it is our view that the Council possesses the authority to enact the proposed gun control legislation under section 1-227.

COUNCIL OF THE DISTRICT OF COLUMBIA,
Washington, D.C., March 19, 1975.

Hon. WALTER E. FAUNTROY,
Member of Congress, House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN FAUNTROY: You will be pleased to know that your Bill, the "District of Columbia Handgun Control Act of 1975," was introduced by Councilmember Polly Shackleton and was referred to the Committee on Judiciary, chaired by Councilmember David A. Clarke.

The subject is of such controversy that I know public hearings will be held and I know they will be extensive. I am pleased that you are available to testify and we will advise your office as to dates so that appropriate arrangement can be made for your appearance.

Sincerely,

STERLING TUCKER,
Chairman.

MARCH 17, 1976.

LOUIS ROBBINS, Esquire
Acting Corporation Counsel, D.C. The District Building, Washington D.C.

DEAR MR. ROBBINS: Enclosed is a copy of a working draft of an amendment in the nature of a substitute to Councilmember John Wilson's Bill No. 1-164, the "Firearm Control Act of 1975". The bill amends the D.C. Police Regulation, Articles 50 through 55. On June 6 and 7, 1975, public hearings were held by the Committee on the Judiciary and Criminal Law concerning amendments to the current D.C. firearm control regulations. On Tuesday, March 23, 1976, the Committee on the Judiciary and Criminal Law will convene a public roundtable discussion in order to obtain public comments of certain governmental officials concerning the enclosed working draft. Comments, criticisms, and/or recommendations from your office would be most welcome at the March 23 meeting. In particular, a response to the following questions would be most helpful to the Committee on the Judiciary and Criminal Law in its deliberations.

1. Under section 801 of the working draft, could a person arrested for a criminal offense wherein a gun is seized thereafter surrender the gun and avoid prosecution?

2. Do statistics show a need for a limit upon prosecutional discretion in plea bargaining a firearm charge?

3. For the last 3 calendar years, how many firearm prosecutions were instituted in the District of Columbia? How many of the above-described prosecutions involved violation of the D.C. Police Regulations, Articles 50–55? In how many of the foregoing cases was there solely a prosecution for violation of the D.C. Police Regulations, Articles 50–55?

4. Have the use-immunity provisions in the current Police Regulations, Article 51, sec. 7, created any significant problems for your office? The use-immunity provisions in the working draft, section 203(c) basically tracks the current immunity provisions in the D.C. Police Regulations, Article 51, section 7. Do you foresee any significant problems with such provisions in the working draft?

Thank you for your cooperation in this matter.

Sincerely,

DAVID A. CLARKE,
Chairperson,
Committee on the Judiciary and Criminal Law.

MARCH 17, 1976.

Hon. MAURICE J. CULLINANE,
Chief, Metropolitan Police of the District of Columbia,
Washington, D.C.

DEAR CHIEF CULLINANE: Enclosed is a copy of a working draft of an amendment in the nature of a substitute to Councilmember John Wilson's Bill No. 1-164, the "Firearms Control Act of 1975". The bill amends the D.C. Police Regulations, Articles 50 through 55. On June 6 and 7, 1975, as you may recall, public hearings were held by the Committee on the Judiciary and Criminal Law concerning amendments to the current D.C. firearm control regulations. On Tuesday, March 23, 1976, the Committee on the Judiciary and Criminal Law will convene a public roundtable discussion in Room 501 of the District Building, in order to obtain comments from certain government officials concerning the enclosed working draft. The comments, criticisms, and/or recommendations of the Metropolitan Police Department would be most welcome at the March 23 meeting.

I would be most appreciative of your examination of the eligibility standards for registration in section 203 and the reporting requirements in section 408. With regard to the latter, we are concerned to require whatever the Department needs to be able to keep track of every gun in the District. Also, I pose the following questions to your office in order to obtain answers and statistics which should greatly assist the Committee on the Judiciary and Criminal Law in its deliberations.

1. How many ammunition collector's certificates have been issued to date by the M.P.D.C. under Article 53, section 5 of the D.C. Police Regulations? How it is determined that a person is a "bona fide collector" as provided in Article 53, section 5?

2. How many licensed firearm dealers currently operate in the District of Columbia? How many applications for new dealer licenses

have been filed during each of the last three years? How many such applications have been approved?

3. Please describe the general procedures used by the M.P.D.C. for processing the following items: (1) collector's certificates, (2) dealers in dangerous weapons, (3) licenses to carry a pistol, and (4) firearm registration certificates. How long, on the average, does it take to process each type of certificate or license? How many personnel are assigned to processing each item listed above? Do such personnel work on processing these items on a full-time basis?

4. What is the number of firearms registered in the District of Columbia at this time? How many new registration applications have been filed during each of the last three years? How many such applications have been approved?

5. How are firearms used by licensed special police officers registered? Is the registrant the S.P.O. organization or the individual S.P.O.?

6. How does the M.P.D.C. determine "a physical defect which would make it unsafe" for an applicant to possess rifle or shotgun pursuant to Article 52, section 5(c)(6) of the D.C. Police Regulations?

7. What does the M.P.D.C. do in response to a notification sent by an administrator or executor pursuant to section 5(c) of Article 54?

8. Under the current Police Regulations, Articles 50-55, are all owners of rifles and shotguns required to register such firearms pursuant to Article 54, section 4, in addition to being required to possess a license issued pursuant to Article 52, sections 2(b) and 5? If so, are there administrative difficulties in requiring both?

9. Under the current Police Regulations, the term "destructive device" includes tear gas and tear gas bombs. How does the M.P.D.C. currently monitor commerce in tear gas and tear gas bombs in the District of Columbia? Does the M.P.D.C. consider MACE to be a tear gas, a tear gas bomb, or another type of "destructive device"?

Thank you for your cooperation in the matter.

Sincerely,

DAVID A. CLARKE,
Chairperson,
Committee on the Judiciary and Criminal Law.

MEMORANDUM

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
March 23, 1976

To: David A. Clarke, Chairperson, Committee on the Judiciary and Criminal Law, Council of the District of Columbia.

From: Louis P. Robbins, Acting Corporation Counsel, District of Columbia.

Subject: Firearms Control Act of 1975 Bill.

By letter dated March 17, 1976, you requested the views of this office concerning your proposed substitute to Councilmember John Wilson's Bill No. 1-164, the "Firearms Control Act of 1975." The bills would amend Articles 50 through 55 of the Police Regulations of the

District of Columbia. You have solicited our comments with respect to the following four questions:

"1. Under section 801 of the working draft, could a person arrested for a criminal offense wherein a gun is seized thereafter surrender the gun and avoid prosecution?"

No. If a person is legally arrested and charged and/or the immediate area is searched, anything seized could not then be surrendered. Therefore, it is our view that the defendant could not avoid prosecution by claiming to have surrendered the firearm subsequent to his arrest. Additionally, the provisions of section 801 clearly call for the voluntary surrender of the gun and cites the specific place where the weapon must be surrendered. Additionally, there is the requirement that the weapon be securely wrapped and unloaded at the time of surrender. The latter elements would certainly not appear at the time of an arrest.

"2. Do statistics show a need for a limit upon prosecutorial discretion in plea bargaining a firearm charge?"

No. A limit upon prosecutorial discretion in plea bargaining would not constitute a limit as we would understand it, but would merely result in a shift of prosecutorial discretion to the police. Such would be the indirect result since once the prosecutor prepares a case, he would be forced to go forward with the case. It is our view that plea bargaining is a useful and necessary tool.

"3. For the last three calendar years, how many firearm prosecutions were instituted in the District of Columbia? How many of the above-described prosecutions involved violations of the D.C. Police Regulations, Articles 50-55? In how many of the foregoing cases was there solely a prosecution for violations of the D.C. Police Regulations, Articles 50-55?"

Your question is couched in terms of "firearm prosecutions" and thus would imply possible violations of laws enforced by the United States Attorney. If such be the intent of your question, it is suggested that such inquiry be more appropriately directed to the Office of the United States Attorney. With respect to prosecutions involving violations of Articles 50 through 55, our statistics indicate that during the period from July 1, 1975 through December 31, 1975, 2,472 prosecutions were instituted for violations of Article 54-4 (unregistered firearms) and 2,411 prosecutions were instituted for violations of Article 55-2 (ammunition violations). Due to the peculiar nature of available statistics, this office is unable to respond to the last portion of question 3.

"4. Have the use-immunity provisions in the current Police Regulations, Articles 54, sec. 7, created any significant problems for your office? The use-immunity provisions in the working draft, section 203(c) basically tracks the current immunity provisions in the D.C. Police Regulations, Article 54, section 7. Do you foresee any significant problems with such provisions in the working draft?"

It is respectfully submitted that you intended to refer to Article 54, section 4 of the current Police Regulations. The use-immunity provisions of Article 54, section 4 of the Police Regulations have not created any significant problems for this office. We do not foresee any significant problems with such provision in the working draft.

MEMORANDUM

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
METROPOLITAN POLICE DEPARTMENT,
March 22, 1976.

To: Hon. David A. Clarke,
D.C. City Council,
Thru: JULIAN R. DUGAS, City Administrator,
From: MAURICE J. CULLINANE, Chief of Police,
Subject: Request for statistics and analysis of amendment in the nature of a substitute to bill 1-164.

Please be advised that the statistical data and analysis requested by you in your letter of March 17, subject as above, and which was received on March 18, cannot be completed by March 23.

The Office of General Counsel together with the Gun Control Section began preparing the desired material immediately upon receipt, and will complete the request as expeditiously as possible.

MEMORANDUM

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

MARCH 29, 1976.

To: Hon. David A. Clarke, District of Columbia City Council.
Through: Julian R. Dugas, City Administrator.
From: Maurice J. Cullinane, Chief of Police.
Subject: Substitute draft to bill No. 1-164, The Firearms Control Act of 1975.

This is in further response to your letter dated March 17 and supplements my memorandum dated March 19, subject as above. In your letter you requested the Department's ". . . comments, criticisms, and or recommendations . . ." especially ". . . the eligibility standards for registration in section 203 and the reporting requirements in section 408." You also requested technical and statistical data in answer to nine specific questions. That material is provided below. However, due to the length and complexity of the substitute bill, its potential operational and budget impact on the Department, and its effect on D.C. law, we have not completed the analytical review you desire.

The questions posed and the Department's responses follow:

1. "How many ammunition collector's certificates have been issued to date by the M.P.D.C. under Article 53, section 5 of the D.C. Police Regulations? How it is (sic) determined that a person is a 'bona fide collector' as provided in Article 53, section 5?"

Answer. As of March 25, 1976, there are four (4) Ammunition Collector's Certificates issued and outstanding. The procedure employed to determine bona fideness begins with the applicant's submission of a P.D. Form 221 (Ammunition Collector's Certificate), together with two (2) full face photographs 1¾ by 1⅝ inches taken

within thirty (30) days prior to the date of the application. The applicant is then fingerprinted and the fingerprints are sent to the F.B.I. for a criminal history record check. The only "proof" required under § 5 is a notarized statement that the applicant is a bona fide collector. After the application is submitted, a police officer visits the premises to view the intended storage facility to determine whether it is "safe", applying the same standard that is applicable to dealers under Article 54, § 6. This same officer then makes an approval/disapproval recommendation. The application together with the investigating officer's recommendation is reviewed by the supervisor of the Gun Control Section, and then forwarded to the Director, Identification and Records Division, who, as the Chief's delegatee, makes the final determination.

2. "How many licensed firearm dealers currently operate in the District of Columbia? How many applications for new dealer licenses have been filed during each of the last three years? How many such applications have been approved?"

Answer. There are fourteen (14) licensed deadly weapons dealers operating in the District of Columbia. The application/approval figures for each of the last three years are:

	Applications	Approvals
1973	20	18
1974	20	18
1975	20	18

3. "Please describe the general procedures used by the M.P.D.C. for processing the following items: (1) collector's certificates, (2) dealers in dangerous weapons, (3) licenses to carry a pistol, and (4) firearm registration certificates. How long, on the average, does it take to process each type of certificate or license? How many personnel are assigned to processing each item listed above? Do such personnel work on processing these items on a full-time basis?"

Answer (1). See answer to question No. 1, supra:

(2) Dealers in dangerous weapons must make application to the Department of Licenses and Inspection. That application is then forwarded via the Chief of Police to the Firearms Registration Section for investigation and recommendation. Each applicant fills out an investigative worksheet, and is fingerprinted. A local and F.B.I. criminal history check is made to determine eligibility (e.g., convicted felon, prior violation of gun regulations) under the D.C. Code and the Police Regulations. The premises to be used for the dealership are then inspected to determine whether there is compliance with Art. 54, §6. Upon completion of the above investigation the Director, Identification and Records Division, makes a recommendation to the Chief of Police. The Chief of Police makes a final determination and returns the application to Licensing and Inspections;

(3) See D.C. Register, September 3, 1974, pp. 413-421.

(4) Each person acquiring a pistol, rifle or shotgun must register it within 48 hours after taking possession of any such weapon. Registration is accomplished by filling out a P.D. 217 (Gun Registration

Certificate) and paying a $2.00 fee at the Gun Registration Section Office. An investigation similar to that described in Answer #1, is then made to determine whether the applicant is eligible to possess a firearm. The applicant is then notified of the result of the investigation.

The following figures represent the average processing time for the specified license or certificate:

	Number of days
Ammunition collector's certificate	[1] 30
Dealer in deadly weapons	[1] 30
Gun registration certificate	5-7
Rifle/shotgun license	[1] 30
Application to sell or transfer a pistol	[1] 30
License to carry a pistol	[1] 30

[1] Due to FBI criminal history record check which averages 21 days.

There are 6 full-time employees assigned to the Firearms Registration Section, as follows:

Sergeant	1
Officers	2
GS-4 clerks	3

The 2 officers conduct the investigations described above.

4. "What is the number of firearms registered in the District of Columbia at this time? How many new registration applications have been filed during each of the last 3 years? How many such applications have been approved?"

Answer. Total firearms registered as of 11 a.m. March 26, 1976: 61,089.

	Applications submitted	Approved
1973	4,100	4,037
1974	3,951	3,831
1975 [1]	9,145	9,086

[1] Includes MPDC weapons entered into the computer gun register for the 1st time in 1975.

5. "How are firearms used by licensed special police officers registered? Is the registrant the S.P.O. organization or the individual S.P.O.?"

Answer. Firearms used by commissioned special police officers are registered in the same manner as weapons registered by other individuals. In the majority of cases the weapon is registered to the special officer, though either type of registration is currently permitted.

6. "How does the M.P.D.C. determine a physical defect which would make it unsafe for an applicant to use a rifle or shotgun pursuant to Article 52, section 5(c)(6) of the D.C. Police Regulations?"

At the present time anyone physically capable of qualifying for, or exhibiting, a driver's permit is deemed eligible under the cited section.

7. "What does the M.P.D.C. do in response to a notification sent by an administrator or executor pursuant to section 3(c) of Article 51."

Answer. M.P.D.C. amends the "hard copy" and computer files to show the weapon as part of the registrant/ decedent's estate.

8. "Under the current Police Regulations, Articles 50–55, are all owners of rifles and shotguns required to register such firearms pursuant to Article 51, section 1, in addition to being required to possess a license issued pursuant to Article 52, sections 2(b) and 5? If so, are there administrative difficulties in requiring both?"

Asnwer. Yes. There are no administrative difficulties associated with dual requirement.

9. "Under the current Police Regulations, the term 'destructive device' includes tear gas and tear gas bombs. How does the M.P.D.C. currently monitor commerce in tear gas and tear gas bombs in the District of Columbia? Does the M.P.D.C. consider MACE to be a tear gas, a tear gas bomb, or another type of 'destructive device'?"

Answer. The Firearms Registration Section makes unannounced periodic checks of all licensed deadly weapons dealers. These checks would include monitoring sales or stocks of destructive devices. In addition, they, together with other members of the force, investigate reports or indications of commerce in destructive devices as they occur.

The M.P.D.C. considers MACE to be a destructive device. In an opinion memorandum dated June 16, 1969 to then Chief of Police John B. Layton, Mr. Arthur L. Burnett, Legal Advisor to the Department, concluded the definitional language in Art. 50, §1(i) to be absolute, prohibiting all tear gas, regardless of the form it took or device used to deliver it to the target. On June 17, 1970 the Corporation Counsel opined that "On-Guard", a pen-like aerosol instrument was not a destructive device because it contained neither tear gas nor mace, but rather "Oleoresin capsicum, suspended in mineral oil and propelled by Freon 1 & 2." [Oleoresin capsicum is a derivative of the fruit of fastigiaum-cayenne or African pepper by acetone extraction and was considered by the Director of the D.C. Bureau of Laboratories to be no more damaging than red pepper.] Then on May 31, 1972, in another opinion, the Corporation Counsel concluded that a device called "1st Strike-CS-Aerosol Tear Gas" was a destructive device. The opinion did not discuss the competition of the compound, therefore, it is felt that the name was both descriptive and dispositive. Thus, at the present time, all tear gas compounds including Mace (an adulterated form of tear gas) and compounds containing chloroacetophenone (synonyms—phenacycholride, phenylchloromethyle ketone) are proscribed by the cited section.

MEMORANDUM

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
April 6, 1976.

To: Hon. David A. Clarke, Chairman, Committee on the Judiciary and Criminal Law, D.C. Council.
From: Judy Rogers, Jr., Special Assistant for Legislation.
Subject: Substitute draft to Bill No. 1–164, The Firearms Control Act of 1975.

This memorandum is to advise you of Executive Branch views regarding the substitute draft to Bill No. 1–164, The Firearms Control Act of 1975.

We have reviewed the proposed substitute bill and find it to contain a number of legally objectionable and administratively defective provisions which time does not permit us to set forth here. Also, we think the proposed substitute bill extensively duplicates the existing law without affecting much needed changes.

Accordingly, we would like to cooperate with you in this matter and we propose to prepare a draft bill for your consideration in the near future. At that time, we would be happy to discuss our respective concerns.

MEMORANDUM

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
METROPOLITAN POLICE DEPARTMENT,
April 15, 1976.

To: Honorable David A. Clarke, D. C. City Council.
From: Maurice J. Cullinane, Chief of Police.
Subject: Comments on Sections 203 and 408 of Substitute Draft to Bill No. 1–164, The Firearms Control Act of 1975.

This supplements my memorandum to you dated March 29, and briefly presents the Department's views which you specifically requested on the registration and reporting requirements in sections 203 and 408, respectively. The provisions are discussed *seriatum*, and the M.P.D.'s comments are numbered for ease of reference.

Section 203—Requirements for Registration

This section would appear to replace the contents of Article 51 §4 and Article 52 §§ 4 and 5. By and large, it is a recapitulation of those sections.[1] But, because of the regulatory methodology employed, the bill creates new problems not encountered in the Police Regulations. The bill seeks to create a single regulatory standard by which pistols, rifles, and shotguns would be certificated. While a single standard might normally be an improvement over the admittedly complicated arrangement found in Articles 50–55 of the Police Regulations, the District is confronted with Congressionally created standards for pistols and an absence of standards for rifles and shotguns. Thus, by establishing a single standard the M.P.D., and prospective applicants for certification of pistols must perform a rather complicated exercise in mental gymnastics to ascertain what the bill requires over and above the Code and which portions of the bill conflict with the Code and are inapplicable.

It is strongly suggested that pistols be dealt with separately and rifles and shotguns be dealt with separately.

Aside from this general view of the bill's approach, some of the particular changes proposed would appear to have significant consequences.

1. In § 203(a)(1) the minimum age requirement is lowered from 21 to 18. While the Department fully realizes and believes that many 18 year olds are mature, responsible and productive members of society, two problems with such a change are noted. First, the age of majority

[1] See, Appendix A, infra.

in the District of Columbia is still 21. We believe there is no reason to carve out an exception to the 21 year age of majority rule. We are cognizant of pending legislation to effect such a change; but it is our view that there is no compelling reason (unlike voting) to treat firearms specially. If the age of majority is to be lowered to 18, then eligibility to register a firearm should await the enactment of such general legislation.

2. Second, the draft offers less protection to the community-at-large than the present provisions of the Police Regulations. Article 52 § 5(f) provides that the Chief has discretionary authority to issue a rifle or shotgun license to a person in the 18–21 age group provided there is written proof that the applicant's parent or guardian has given his or her permission, and more importantly, assumes responsibility for all damages connected to the applicant's use of the weapon.[2] As noted above, many 18 to 21 year olds are capable of assuming financial responsibility for their actions. On the other hand, many are not. It is unwise to strip from the regulatory scheme, in the absence of lowering the general age of majority, the financial responsibility provisions now part of the Police Regulations.[3]

3. Section 201(a)(1) also employs the term "natural person". We assume that the term natural person is meant to exclude business entities, and to require every gun to be registered to a named individual.[4] While we understand how it would be assumed that such a registration system would seemingly facilitate tracking weapons, the opposite would occur.

Many weapons used by commissioned special police officers (SPO) are purchased and owned by the SPO's employer, whether it be in-house or rental guard arrangement. Assuming that the supervisor or chief of security for the employer registers the weapon, it would become difficult to administratively track the weapon by the registrant's name if the person registering the weapon were to leave. At the present time, the M.P.D. registers these weapons in the firm president's name, since there is less turnover in personnel at this level. Nevertheless, to a degree we do experience this very problem.[5] This situation is exacerbated when a weapons violation occurs after the named registrant leaves the firm. Since the weapon is really the firm's and not the former employee's (but is registered in the latter's name) prosecution is virtually impossible. We believe that in situations where a business entity is going to employ armed guards or engage in a rental guard service, the firearms should be registered in the firm's name, or, in the firm's name and an individual's, thereby establishing dual responsibility for the weapon. Of course, where a shop owner (as opposed to a firm hiring its own SPO security force), seeks to register a weapon (that will not be carried by another on the employer's property), the registration should be in the name of the shopowner.

[2] This assumes the applicant is only disqualified by reason of age. Art. 52 § 5(f)(2).
[3] It may well be preferable to require all applicants to establish financial responsibility, much as we do for motor vehicle licensure.
[4] Article 51 § 4 of the Police Regulations also uses the term "natural person" in limiting the protection against the use of required data to individuals as opposed to business entities.
[5] A related problem occurs when the firm moves, which in many firms occurs quite frequently. If the registration was in the firm's name an address change would be followed by an amendment to our registration files.

4. In section 203(a)(2) ineligibility to register a firearm is predicated upon a conviction for a crime of violence, as defined.[6] The Police Regulations presently renders a person ineligible if he has been convicted in any jurisdiction of a felony involving the use of force against another, or is under indictment for same.[7] The draft is deficient in two respects. First, it appears that a disabling conviction must occur in the District. Since the majority of states use similar definitions for crimes of violence,[8] and more importantly, because the intent of the section is to keep weapons out of the hands of violent persons, the situs of the conviction should be irrelevant. The "any jurisdiction" language in the cited section of the Police Regulations should be included in the draft to eliminate any doubt as to the intent of the section.

Second, we believe the present regulation is superior on this point in that it disables persons under indictment for violent crimes. If the indictment leads to conviction there is absolutely no justification for a loophole allowing such persons to legally obtain a deadly weapon between the time they are charged and the time the judgment of conviction is entered.[9] Likewise, it is our view that the interest an indicted individual subsequently exonerated might have in registering a weapon during the pendency of proceedings is far outweighed, on balance, by society's need to prevent violent criminals from easily obtaining weapons. In short, the hiatus between indictment and acquittal or dismissal is not too long a period to require a person to wait before being able to register and lawfully possess a weapon.

5. Section 203(a)(2) also makes permanently ineligible persons convicted of violations of the provisions of the draft. Under the Police Regulations, after 3 years the Chief has discretion to lift the disability for rifles and shotguns after certain conditions are met.[10] While we believe violations of Articles 50 to 55 are serious, we do not believe such persons should be treated the same as persons convicted or indicted for felony crimes of violence, or treated more harshly than convicted drug pushers.[11]

6. Section 203(a)(3) is defective for the reasons described in this paragraph and items 7 through 9, *infra*, First, it provides for a 5 year ineligibility for persons convicted of "weapons offenses" (except violations of the proposed regulation). "Weapons offenses" are nowhere defined. Other than 22 D.C. Code §§ 3201 *et seq.*, and Articles 50–55, we can think of no other "weapons offenses". If a conviction under 22 D.C. Code §§ 3201 *et seq.*, is the intended scope of the provision, it

[6] It adopts the definition in 22 D.C. Code § 3201 (1973 ed.), excepting therefrom larceny.
[7] Article 52 § 5(c)(4).
[8] This is largely a result of the F.B.I.'s Uniform Crime Reports Program, and certain L.E.A.A. programs.
[9] Given the large number of persons charged with violent crimes who are already on some form of conditional release, the effect of such a loophole is not inconsequential. While the M.P.D. does not track persons arrested for violent crimes with prior convictions for same because of financial limitations, our recidivist studies are relevant. For example, in the 4th quarter of 1975, approximately 55% of the persons arrested for aggravated assault were on release programs for prior acts of aggravated assault, burglary homicide, rape, or robbery; so were 48% of those arrested for burglary; so were 44% of those arrested for homicide; so were 78% of those arrested for rape; and so were 60% of those arrested for robbery. Thus, more than half the persons arrested for violent-type crimes had exhibited previous violent crime conduct warranting arrest. (Recidivist Report, Criminal Investigations Division, February 10, 1976). Under this draft, the 50+% of repeat violent crime offenders for the 4th quarter of 1975 could legally register a gun, a clearly undesirable result.
[10] Art. 52 § (c)(5).
[11] § 203(a)(3)(B); see discussion, *infra*.

would appear to amend §22–3203 of the Code. For example, it is a felony if a person convicted for maintaining a bawdy house is subsequently twice convicted for possessing a pistol.[12] If convicted, a person is forever barred from keeping or possessing a pistol.[13] However, under the draft bill, (if it is intended to effect an amendment in Title 22 of the D.C. Code) that person would be eligible after five years from the date of conviction. The provision is also amenable to an interpretation that would not amend the D.C. Code. For example, if a Person was Convicted of felony possession of a sand club,[14] arguably a weapons offense, the applicant after five years (assuming no other disabling events) would be able to register a rifle or shotgun, but not a pistol because of § 3203. While this interpretive approach is logical, clarification as to the intended operation would be desirable.

7. Second, there is no indication whether the weapons offense must have been committed in the District. It would be logical to assume so since the language "in any jurisdiction" which appears in connection with the 5 year disability for narcotics convictions is omitted in relation to weapons offenses. Weapons offenses, if sufficiently serious to warrant excluding an applicant, is sufficiently serious without regard to the situs of the offense.[15] Indeed, there is as close if not a more concrete nexus with respect to weapons offenses than narcotics offenses. In our view, they are deserving of equal and lasting disqualification.

8. Third, the provision is deficient because it does not exclude all convicted drug abusers from registering firearms, only those convicted of "narcotics" offenses. The D.C. Code denotes "narcotics" [16] and certain other "dangerous drugs" [17] in separate chapters of the D.C. Code. The language used could result in a serious regulatory gap. Indeed, the failure to make the class of disqualified drug abusers sufficiently expensive would also discriminate against narcotic abusers versus abusers of other drugs under the federal Controlled Substances Act.[18] Clearly, a convicted abuser of amphetamines is as dangerous to society as a convicted abuser of heroin. Their treatment under this bill should be the same. If the bill was intended to cover all drug-type offenses it should be made clearer. If it was intended not to disqualify persons convicted under Chapter 7 of Title 33, such a policy decision would be an egregious mistake.

9. Fourth, the Department opposes the attempt in this section to partially decriminalize marijuana. As proposed, persons convicted of possessing one ounce or less of marijuana would not be disqualified from registering and possessing firearms, if otherwise eligible. We shall not recapitulate our objections to decriminalization here, but simply reaffirm and incorporate those objections.[19]

As otherwise pertinent, such an exclusion would be administratively unworkable. There would be no way, at the present time, without going through actual court records (and in some cases the trial transcript) to determine whether the conviction was for simple possession of one

[12] 22 D.C. Code §§ 2722 and 3203(3) (1973 ed.).
[13] *Id.*, § 3203(3).
[14] *Id.*, § 3214(a).
[15] See, 22 D.C. Code § 3203(a) (1973 ed.) which also ignores situs in determining who may not keep or possess a pistol.
[16] 33 D.C. Code § 401(n) (1973 ed.).
[17] *Id.*, § 701(1).
[18] 21 U.S.C.A. 801 *et seq.* Compare, § 802(16) with § 802(1).
[19] See letter dated October 20, 1975 from Chief Cullinane to Councilman Clark on Bill 1–44, and generally, the legislative record for Bill 1–144.

ounce or less. Disposition records routinely forwarded to the Department by the U.S. Attorney, for example, would only reveal "CSA—6 mos.—suspended" or "UNA—4 mos.—probation." Without a large infusion of manpower to make manual searches in cases where narcotics convictions are noted, the proposed scheme would be excessively burdensome and unreasonable.[20]

10. Section 203(a)(4) disqualifies persons acquitted of a criminal charge on grounds of insanity within five years preceding the application. Again, a question arises whether the situs of the offense matters. Some states still adhere to the *M'Naghten* rule,[21] while others have adopted more liberal positions.[22] The Department believes that situs should be irrelevant. Whatever the rule applied by the state in a particular case, the M.P.D. would only be informed of the result, not the basis for the result. To require anything beyond mere acceptance of the states' conclusions would impose a burden similar to that noted previously with respect to decriminalization of marijuana. On the other hand, the proposed regulation could be read to be restricted to D.C. court determinations. However, we believe that result to be even less desirable. The M.P.D. has not encountered any difficulty implementing the insanity acquittal disqualification "by any court" under the Police Regulations.[23] We submit the present provision relating to acquittals by reason of insanity has not proven itself unworkable or in need of change and should be preserved.

11. That same provision lengthens the period of disability from the 3 years provided for by the Police Regulations to 5 years. The M.P.D. finds no fault with either a 3-or-5 year hiatus. Rather, we believe the underlying philosophy to be deficient. Under the present provision the Chief may authorize pistol registration if he finds the person is, *inter alia*, mentally capable of safe and responsible possession and use of a pistol. Under the proposed version, qualification would become automatic after 5 years. In neither case is a qualified medical person required to first certify the person to be over the "insanity" which up to that point has precluded registration. We believe that no person disqualified because of an insanity plea should be able to lawfully possess a weapon until the appropriate medical authorities are sure the condition is abated. Thus, in the absence of a medical determination the Chief should continue to be given discretionary authority to resist attempts to register weapons by persons whose very demeanor casts doubt on their recovery.

12. Section 203(a)(5) disqualifies applicants who have been involuntarily committed to a mental institution during the 5 years preceding the application. As noted in paragraph 11, *supra*, we believe an appropriate medical authority should be required to determine recovery

[20] Even if the application required the applicant to specify this data, the M.P.D. would be obligated to verify it through court records.

[21] *M'Naghten's Case*, 10 Clark & F. 200, 8 Eng. Rep. 718, (1843).

[22] *E.g.*, *Ryan* v. *People*, 60 Colo. 425, 153 P. 2d 756 (1915) (delusion); *State* v. *White*, 58 N.M. 324, 270 P. 2d 727 (1954) (irresistible impulse); *Durham* v. *U.S.*, 94 U.S. App. D.C. 228 (1964), (Durham or product rule) (while *Durham* is no longer followed in the District of Columbia, *U.S.* v. *Brawner*, 153 U.S. App. D.C. 1 (1972), the *Durham* rule is still used in some States); *People* v. *Henderson*, 35 Cal. Rptr. 77, 386 P. 2d 677 (1963) (diminished capacity); Model Penal Code § 4.01 (proposed official draft 1962) (substantial capacity).

[23] Art. 52 § 5(e)(2).

from the condition causing disqualification. It is quite possible a person involuntarily committed would have been released 5 years prior to the application and still be a danger to himself or others. Moreover, this very danger could be even more prevalent among voluntary patients, since they may leave medical facilities at will. We believe both voluntary and involuntary patients should be disqualified, and for both categories medical certification of cure should be required prior to authorizing possession of deadly weapons.

13. Section 203(a)(6) restates the language found in Art. 52 § 5(e)(6) of the Police Regulations, but extends it to include pistols as well as rifles and shotguns. At the present time, if the applicant appears physically normal, the M.P.D. makes no further inquiry. The "physical defect" test provides little guidance to police officers. For example, is a person without hands, but fitted with mechanical hands, suffering from a physical defect within the meaning of the draft language? Further, a physical defect connotes a permanently damaged or disabled body structure. Does this mean that persons suffering from temporary conditions, *e.g.*, two broken hands, may still register a weapon even though he is physically incapable of using such a weapon, much less use it safely?

Finally, under the Police Regulations the physical defect test goes to licensing of rifles and shotguns. We can think of many defects or conditions affecting the safe use of a rifle that would not interfere with use of a pistol. Is the same test to be applied without regard to the weapon involved.

14. Section 203(a)(7) is patterned after Article 52 §§5(e)(5) and (7) and supplements the conviction disqualifications found in §§203(a)(2) and (3).[24] The main difference between the draft and existing law is the increase in the disability period and elimination of the Chief's discretionary authority. This section should be combined with §203(a)(3). Convictions resulting in a 5 year disqualification should be treated together for ease of reference.

We also view these crimes to be serious enough to warrant disqualification during the pendency of criminal charges.[25]

15. Section 203(a)(10) [26] is identical to Art. 52 §5(e)(9), with the exception of the proviso. Under the present regulatory scheme, one who violates the law bring 22 D.C. Code §3203 into play (relating to possession of a pistol) is ineligible to obtain a rifle or shotgun license by operation of the cited section of the Police Regulations. The draft would permit a person disqualified from lawfully possessing a pistol under §3203 to lawfully possess a rifle or shotgun. Such a result is, we believe, a weakening of the gun control laws in the District, and a serious mistake. The same rationale leading Congress to conclude certain persons should not have pistols is applicable to denying such persons permission to possess a rifle or shotgun. We oppose any relaxation of the rules prohibiting convicted persons from lawfully obtaining weapons.[27]

[24] See paragraphs 4–9, *supra*.

[25] See paragraph 4, *supra*.

[26] The draft omits § 203(a)(9).

[27] Indeed, this section is legal surplusage. Since a person barred from possessing a pistol under 22 D.C. Code § 3203 could not lawfully possess one regardless of the provisions in the draft, the only weapons that could possibly be regulated in this situation would be rifles and shotguns.

16. Section 203(a)(11) provides that the firearms knowledge standard need only be met once by each applicant. We disagree insofar as different types of weapons are concerned. We believe that if a person first registers a pistol, the test provision may be waived for subsequent pistols. However, if that person subsequently seeks licensure for a shotgun, he should be required to meet the standard set by this section.

17. The opening clause to §203(b) provides that the "Chief shall endeavor to obtain" certain information. Does this mean the M.P.D. can register a weapon after trying and failing to obtain the enumerated information? Moreover, the burden appears to be placed on the Department. We oppose a regulatory scheme placing such a burden on the M.P.D. Registration and licensing of a deadly weapon in the District is a privilege and it is the applicant's duty to meet the standards established. Thus, the section should be recast to place on the applicant the burden of furnishing the information required by the draft.

18. Section 203(b)(3) reduces the work history to be provided from 5 years to 2 years preceding the application. Inasmuch as §203(a) speaks in terms of 5 years for disqualification purposes, a 5 year work history period is appropriate. Such data would assist the Department in learning of or raise suspicions about out of state convictions, mental institutionalization, etc., during the 5 year period.

19. Section 203(b)(6) restates the contents of Article 52 §4(b)(6). However, the former omits an important aspect of the latter: the applicant is not required to provide any information concerning "any mishap involving [a firearm], including the date, place, and circumstances and the names of persons injured or killed." Inasmuch as mishaps such as here described are grounds for disqualification under §203(a)(8), such information should be required of each applicant. The M.P.D. opposes the omission.

20. Section 203(b)(10) asks whether the applicant is or is intending to be an SPO or private detective. The M.P.D. already asks for SPO commission numbers and the description of intended use (*e.g.*, geographic, temporal) of the weapon is made a part of the commission issued to the SPO. Similarly, if a private detective is going to carry a weapon while protecting the property of a client, he too, would be an SPO. It is our view that this section should be eliminated.[28]

21. Section 203(b)(11) asks whether the applicant has possessed the weapon since the effective date of the bill, and if not, account for prior possessors. This section does not appear to be of any value to the Department.[29] If the weapon had been previously registered, the Department could account for its whereabouts. If not, most applicants could only indicate who they purchased it from. The language in Art. 52 § 4(b)(9) is preferable.

22. The second proviso in § 203(c) should be deleted and inserted in a more appropriate section. Section 203(c) speaks to not using required data as evidence in a criminal proceeding, with certain exceptions. The second proviso speaks to divestiture of weapons after denial of certification. While we agree this area is susceptible to abuse

[28] It might be advisable to add a section authorizing the Chief to require such other information as he deems necessary to carry out his duties under the draft. *Cf.*, Art. 55 § 4(b).

[29] Though not asked to comment on the bill except for §§ 203 and 408, it appears this section is tied to § 202(e). That section is, to say the least, one of the most troubling sections of the entire bill.

under the present scheme, we are not convinced the three options provided for are viable either. For example, one of the 3 approved methods of divestiture appears to invite unsuccessful applicants to violate federal law. The proviso states in part that an unsuccessful applicant may "remove the firearm in question from the District of Columbia for so long as he has an interest in . . . [it]." Suppose further that in accordance with this directive the person takes a pistol to Virginia, leaves it with a friend, and thereafter sells it to his friend. It is a felony to sell, give, trade, transport or deliver any firearm to any person (except certain licensed individuals) who the transferor knows or has reason to believe is a resident of a state other than that of the transferor.[30]

It is submitted that further study of this aspect of the gun control issue would be warranted prior to enacting any legislation.

23. Section 203(d) should be left to the discretion of the Chief even if prints had been taken within the last 5 years. Some prints are destroyed inadvertently, or are not sufficiently clear. No one would be hurt by such a delegation of discretionary authority.

24. Section 203(e) grants discretionary authority to require applicants to appear in person with the firearm to be registered. This should be a mandatory requirement. It would enable the personnel in the Firearms Registration Section the opportunity to inspect weapons for obvious defects. However, any such provision should explicitly protect the Department and its employees from liability for failure to discover any defect subsequently resulting in injury or death.

SECTION 408—REPORTING [31]

25. The M.P.D. opposes the monthly filing requirement imposed by § 408(a). The M.P.D. should not be made a storage facility for dealers' paperwork. Requiring a dealer to maintain at his place of business certain records, and to exhibit them upon demand to a police officer during business hours, would appear to serve the same purpose.

26. Moreover, it is submitted that § 408(a) is too rigid in its approach. A flexible approach such as adopted by the Congress in the Gun Control Act of 1968 would be preferable.[32] If a flexible approach were adopted the officials charged with enforcing the law would be able to determine the information necessary to accomplish their mission and require same to be provided in a usable fashion. Congress adopted this approach in § 902(d) of the Gun Control Act of 1968.[33] There, the Secretary of the Treasury was authorized to prescribe not only the types of records to be maintained by the licensee, but also the types and timing of reports to be filed based on the records. We believe such a framework would be more appropriate to achieve the desired result.

27. In light of paragraphs 25 and 26, § 408(b) should be deleted.

[30] 18 U.S.C.A. § 922(a)(5) (Supp. 1976).

[31] See Appendix B for comparison to existing law.

[32] 18 U.S.C.A. § 921 *et seq.* (Supp. 1976).

[33] 18 U.S.C.A. § 902(g) (Supp. 1976). These comments, as previously noted, were specifically requested. While we believe adoption of the suggestions made would greatly improve §§ 203 and 408, we continue to believe the bill to be similarly deficient elsewhere to preclude supporting its passage. (Memorandum of Judy Rogers to Councilman Clarke dated April 6, 1976).

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APPENDIX A

COMPARISON OF SEC. 203 OF COUNCILMAN CLARKE'S SUBSTITUTE TO BILL 1-164 AND POLICE REGULATIONS WITH COMMENTARY

Draft bill	Police regulations	Commentary.
Sec. 203(a)(1)	Art. 52 sec. 5(c)(1)	Lowers age of eligibility from 21 to 18.
Sec. 203(a)(2)	Art. 52 sec. 5(c)(4), (5)	Class of ineligible convicted persons expanded; persons under indictment made eligible.
Sec. 203(a)(3)	Art. 52 sec. 5(c)(3), (5)	Disability increased from 3 to 5 yr for weapons and drug convictions; marihuana and out of State weapon offense no bar.
Sec. 203(a)(4)	Art. 52 sec. 5(c)(2)	Disability increased from 3 to 5 yr for insanity acquittals. Out of jurisdiction pleas made eligible.
Sec. 203(a)(5)	Art. 52 sec. 5(c)(2)	Disability increased from 3 to 5 yr; test changed from mental incompetence to institutionalization.
Sec. 203(a)(6)	Art. 52 sec 5(c)(6)	Physical defect test for all firearms, not just rifles and shotguns.
Sec. 203(a)(7)	Art. 52 sec. 5(c)(5), (7)	Disability only to those convicted within 5 yr of application.
Sec. 203(a)(8)	Art. 52 sec. 5(c)(8)	No change.
Sec. 203(a)(10) (sic)	Art. 52 sec. 5(c)(9)	"Possess" instead of "purchase and possess" in registration disqualifier.
Sec. 203(a)(11)	Art. 52 sec. 5(d)(2)	Firearms knowledge required for 1st application only.
Sec. 203(a)(12)	Art. 52 sec. 5(d)(3)	Add discretionary 1 test per year per applicant.
Sec. 203(b)(1)	Art. 52 sec. 4(b)(1)	Identical.
Sec. 203(b)(2)	Art. 52 sec. 4(b)(2)	Do.
Sec. 203(b)(3)	Art. 52 sec. 4(b)(3)	Prior work history previous 2 instead of 5 yr.
Sec. 203(b)(4)	Art. 52 sec. 4(b)(4)	Identical.
Sec. 203(b)(5)	Art. 52 sec. 4(b)(5)	Do.
Sec. 203(b)(6)	Art. 52 sec. 4(b)(6)	Omits mishap disclosure statement and is cast in more general terms.
Sec. 203(b)(7)	Art. 52 sec. 4(6)(7)	Omits statement of need.
Sec. 203(b)(8)	Art. 52 sec. 4(b)(8)	Identical.
Sec. 203(b)(9)	Art. 52 sec. 4(b)(9)	Expanded to include private sales.
Sec. 203(b)(10)		Security guards and private detectives.
Sec. 203(b)(11)	Art. 52 sec. 4(b)(9)	Whether weapon possessed by applicant since enactment of legislation and how, from whom and when obtained.
Sec. 203(b)(12)		Where weapon will be kept.
Sec. 203(b)(14) (sic)		Whether other certificates held or applied for.
Sec. 203(c)	Art. 51 sec. 4	Expands exception; requires divestiture of weapon if denied.
Sec. 203(d)	Art. 52 sec. 4(c)	All applicants may be photographed.
Sec. 203(e)		Personal appearance of applicant and weapon.
Sec. 203(f)	Art. 52 sec. 4(a)	Signature under oath added.

APPENDIX B

COMPARISON OF SEC. 408 OF COUNCILMAN CLARKE'S SUBSTITUTE BILL 1-164 AND THE POLICE REGULATIONS WITH COMMENTARY

Draft bill	Police regulations	Commentary
Sec. 408(a)(1)		Monthly reports, dealer identification.
Sec. 408(a)(2)		Ibid., employee data.
Sec. 408(a)(3)	Art. 54 sec. 5(b)	Ibid., weapons inventory data.
Sec. 403(a)(4)		Ibid., repair data.
Sec. 408(a)(5)	Art. 54 sec. 5(b)	Ibid., sales data.
Sec. 408(a)(6)		Ibid., more repair data.
Sec. 408(a)(7)		Ibid., ammunition inventory data.
Sec. 408(a)(8)	Art. 54 sec. 5(c)	Ibid., ammunition-sales data.
Sec. 408(b)	Art. 54 sec. 5(b)	Adds data sold and registration number.

House District Committee Staff Summary of the Council's Gun Control Act

AN ACT

1-142, IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 23, 1976, To protect the citizens of the District from loss of property, death, and injury, by controlling the availability of firearms in the community.

Be it enacted by the Council of the District of Columbia, That this act may be cited as the "Firearms Control Regulations Act of 1975".

Section II defines the findings and purpose, including registration of all firearms, owned by private citizens, hereby making it more difficult to obtain firearms.

TITLE I—DEFINITIONS

TITLE II DEALS WITH FIREARMS AND DESTRUCTIVE DEVICES

Section 201—Registration required.—Prohibits persons or organizations from receiving, possessing or having under his control any firearm unless he holds a valid registration certificate. Organizations may be registered if they employ persons licensed to carry firearms for use during duty hours. Law enforcement agencies or Federal, State and local governments are exempt while on duty as are persons holding a valid dealer's license. Nonresidents who are participating in any lawful recreational firearm activity are exempt, provided he keeps the weapon unloaded and securely wrapped and in open view.

Section 202—Unregisterable firearms.—No registration certificate will be issued for sawed-off shotgun, machine guns, short-barreled rifles and pistols not previously registered. Pistols not possessed in conformity with the law prior to the effective date of this act are also unregisterable.

Section 203—Application and prerequisites for registration.—No registration certificate shall be issued to anyone under 21 (18 and above with parent or guardian). The parent or guardian must assume liabilities for damages for persons under 21. No registration will be issued if:

(*a*) The applicant has been convicted of a crime of violence, weapons offense, or violation of this act.

(*b*) The applicant is under indictment for weapon offense.

(*c*) The applicant has been convicted within 5 years of a narcotics violation, physical threat, assault or use of a firearm.

(*d*) The applicant has been adjudicated chronic alcoholic or insane.

(*e*) The applicant has been involuntarily committed to a mental hospital.

(*f*) The applicant has a physical defect which would prohibit him from using the firearm safely.

(*g*) The applicant has been adjudicated negligent in a firearm mishap.
(*h*) The applicant does not have vision equal to that required for a driver's license.

The applicant must demonstrate satisfactorily a knowledge of the laws of the District of Columbia pertaining to firearms and a knowledge of safe use of firearms under standards prescribed by the Chief of Police. Everyone applying for a registration certificate must provide a full background, including name, address, business, date of birth, sex, previous firearm record, intended use of firearm, description of firearm, where purchased, where it will be kept, and other information as the Chief of Police determines necessary.

Section 204—Fingerprinting, pictures, personal appearances.—The applicant shall appear in person and submit photographs of himself, and may be required to be fingerprinted and bring the firearm with him.

Section 205—Application under oath; fees.—Provides for an oath and fees.

Section 206—Filing times for new purchase and firearm entering the District; previously registered firearms.—Application for registration shall take place prior to the taking possession of a firearm or immediately after firearm has been brought into the District. Firearms registered prior to the effective date of this act must be registered within 60 days of the effective date of this act.

Section 207—Issuance of registration certificate.—The Chief of Police shall issue registration certificates upon the determination that the applicant is entitled. The Chief of Police shall approve or deny an application within 60 days except for previously registered firearms in which he will have one year. The Chief of Police may correct all errors in applications.

Section 208—Duties of registrants.—Each registrant must notify the Chief of Police in writing of the loss, theft, or destruction of certificate, the sale or transfer of the firearm, or change in any of the information appearing on the certificate. Information must be provided as to the transferee or purchaser of the firearms. The Chief of Police must also be notified of any transfer, theft, or loss of a firearm. The registrant is also required to keep the certificate with him whenever in possession of the firearm.

Section 209—Revocation.—The certificate shall be revoked upon failure to comply with Section 203 regarding eligibility criteria or upon discovery of false information on the application. The certificate may also be revoked for failure to report to the Chief of Police loss, theft, or transfer of the certificate or the firearm.

Section 210—Procedures for denial or revocation.—Establishes procedures for notification, service and time for applicant to be heard regarding revocation or denial of a certificate. Appeals may be made from the Chief of Police's decision pursuant to the Administrative Procedures Act.

Section 211—Certain information not to be used as evidence.—Information obtained pursuant to this title shall not be used in criminal proceedings with respect to violation of this act.

TITLE III—ESTATES CONTAINING FIREARMS

Executors must notify the Chief of Police upon the death of a person who owns a firearm. The executor must comply with the act concerning registration, but shall not be liable for criminal penalties.

TITLE IV—LICENSING OF FIREARMS BUSINESSES

Section 401—Prohibitions, exceptions.—No person or organization shall manufacture a firearm, destructive device or ammunition within the District. No person or organization shall deal in firearms without first obtaining a dealers license. No licensee shall deal in prohibited firearms except with a Government agency.

Section 402—Eligibility.—Anyone eligible to register a firearm and eligible under Acts of Congress to engage in such business, may register as a dealer. Each must file an application containing all the information required to register a firearm and the applicant's prior activity in the deadly weapons business and such other information as the Chief of Police may require.

Section 403—Issuance of a Dealer's License Procedure.—The Chief of Police shall, upon investigation, issue a dealer's license or deny it within a 60-day period. The Chief of Police may also correct errors in the license application.

Section 404—Duties of Dealers.—The dealer is required to: (1) display license; (2) notify the Chief of Police in writing of theft or loss of a license; (3) notify the Chief of Police of change in the information on the registration form; (4) keep a record book containing information about each employee, each firearm registered and sold, name and address of persons from whom weapons were purchased, price paid, date and time of receipt of weapon for repair, date returned, complete information on all firearms sales, and complete information on all ammunition sales. All of the above information must be made available to the Police Department during business hours. The Chief of Police may require any record information to be submitted.

Section 405—Revocation.—A dealer's license may be revoked for failure to keep proper records or for failure to provide adequate information on his application.

Section 406—Procedures for denial and revocation.—Establishes procedures for notification, service and time for applicant to be heard regarding revocation or denial of a certificate. Appeals may be made from the Chief of Police decision pursuant to the Administrative Procedures Act. If there is a revocation decision, he must register such firearms which are capable of registration and surrender the rest to the Chief of Police.

Section 407—Displays, employees.—Dealer shall not display firearms or ammunitions in windows. All firearms and ammunitions shall be kept locked, except when being shown, repaired or being worked on. All dealer's employees mustbe eligible to register a firearm under this act.

Section 408—Firearm markings.—Dealers may not sell firearms without an identification number on them.

TITLE V—SALE AND TRANSFER OF FIREARMS, DESTRUCTIVE DEVICES, AND AMMUNITIONS

Section 501—Prohibition.—No transfer or sales of firearms shall be made except as provided in this act.

Section 502—Permissible sales and transfers.—Anyone may sell or transfer ammunition or firearms except as provided by this act to a licensed dealer. Any dealer may sell part of his inventory to a nonresident pursuant to acts of Congress, and the purchaser's jurisdiction or to any other licensed dealer. He may also sell to government agents within the scope of their duty. Dealers may not sell to persons whom the Chief of Police has denied a registration certificate. Anyone may dispose of a firearm or ammunition after the Chief of Police has been notified and a registration certificate has been obtained.

TITLE VI—POSSESSION OF AMMUNITION

No one may possess ammunition unless he is a licensed dealer, government agent, holder of a government registration certificate for the weapon using that ammunition, or ammunition collector.

TITLE VII—GENERAL PROVISIONS

Section 701—Pledges and Loans.—No firearm or ammunition may be used for a deposit, pledge, or pawn, and no person may loan, borrow, give or rent a firearm.

Section 702—Condition of permitted firearms. Except for law enforcement officers, each registrant shall keep all firearms unloaded and disassembled or bound by a trigger lock, except when being used for recreation purposes or at a place of business.

Section 703—Firing ranges. Persons operating a range in the District shall register with the Chief of Police information concerning location, officers, type weapon fired, type of weapons stored, hours of operation and other information as the Chief of Police may require.

Section 704—False information, forgery, alteration. False information may not be given and documents may not be forged.

Section 705—Voluntary surrender; immunity. There shall be immunity from prosecution for persons who voluntarily and peaceably surrender weapons and ammunitions. Such weapons shall be destroyed unless used for evidence.

Section 706—Penalties. Not more than $300.00 or not more than 10 days for the first offense; subsequent offenses $300.00, and 10 to 90 days or both.

Section 707—Public education program. The Chief of Police shall carry on a suitable public education program about this act.

Section 708—Repealers. Repeals regulations no longer necessary.

Section 709—Conflict with Federal law. Compliance with this act does not excuse noncompliance with Federal laws. This act does not supersede existing statutes of the District and of the United States.

Section 711—Savings clause.—If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of this act and the application of such provision to other persons not similarly situated or to other circumstances shall not be effected thereby.

Section 712—Effective date. Thirty-day layover pursuant to Home Rule Act.

The CHAIRMAN. It is my hope that this committee acting on the resolution before us will acknowledge that the test of whether Congress should interfere with the will of the local council, is whether the legislation in question either exceeds the authority granted to the council or impinges upon the Federal interest.

That is the question. The substantive issues have already been discussed at the local level. We have on our witness list Mr. Paul, who will be accompanied by several people, and we also have on the witness list Mr. Ashbrook of Ohio. While we await the arrival of those witnesses, the Chair intends to call upon the Corporation Counsel, Mr. John Risher, who is here.

Mr. WHALEN. Mr. Chairman, Congressman Paul is now here.

The CHAIRMAN. Will the gentleman step up then? I am sorry. While Mr. Paul is taking his seat, I would like to yield to the gentleman from Maryland, Mr. Gude, for any statement he might have.

STATEMENT OF REPRESENTATIVE GUDE

Mr. GUDE. Thank you, Mr. Chairman. Mr. Chairman, I certainly want to thank you for calling the meeting so we can deliberate on a resolution introduced by our colleague, the gentleman from Texas. I am very interested in his statement and I think we should deliberate with care on it. It is a matter that should be considered by the entire District Committee.

Without prejudging, I would state that to state that the subject matter of our deliberations this morning, namely, gun control, evokes intense passion would be to indulge in understatement. Yet we all have to recognize that gun control does just that. If we proceed with this fact firmly in mind, I feel we will be better able to address ourselves objectively to the resolution of disapproval that has been introduced by our colleague.

I think we are all aware that under the Constitution, the Congress has the responsibility of legislating for the District. We are equally aware that by virtue of the Home Rule Act we delegated that responsibility with certain limitations to a locally elected government.

That government in an exercise of self-government and within the limitations of the Home Rule Act has enacted a measure regulating the use of weapons in the District. As an expression of the will of the people in the District of Columbia, this was passed.

I feel we in the Congress should respect and not interfere with that expression. We must not, Mr. Chairman, allow passion to rule reason as we deliberate the matter before us. Certainly there have been and will continue to be sharp differences of opinion over the efficacies of any approach to gun control but we have before us a decision on the matter which was made by a duly elected local government, a decision with which some of us might not agree in every detail.

But nevertheless it is a decision made on the local level after extensive debate and deliberations. I daresay that if a municipality back in our home districts enacted such legislation, I don't believe that any one of us would try to introduce a bill in Congress to nullify that legislation made by a duly constituted municipality in our own districts.

So I don't think, Mr. Chairman, we should undo on the local level here in the District what the Congress of the United States has really

failed to do on the national level, namely, begin the process of curtailing the availability of handguns.

We have a long way to go if we are ever able to achieve that goal. Each step in this direction moves us closer to its achievement. Congress still wants to play the role of the city council for the District.

We have delegated that function to the local government. Let's permit that local government to exercise it. For us to do so in this instance would not be an abdication of our constitutional responsibility.

So I hope that the full committee will deliberate very carefully on this, Mr. Chairman. I think this is something for which every member of the District Committee has a responsibility.

Thank you.

The CHAIRMAN. Thank you. Mr. Fauntroy?

STATEMENT OF DELEGATE FAUNTROY

Mr. FAUNTROY. Mr. Chairman, I want to associate my remarks with both those of the chairman and of the ranking minority member, with the chairman in reference to the statement that the only issue here is whether the Federal interest is in any way infringed upon by the action of the duly-elected local body, namely the mayor and city council of the District of Columbia and whether that Federal interest is so endangered that it justifies denying self-determination to the 750,000 people of the District of Columbia.

I certainly want to associate myself with the ranking minority member as relates to the need for us to uphold the judgment of this duly elected body. I want to disassociate myself from his remarks by saying that my statements hereafter are prejudgments.

They are prejudiced. At this point, Mr. Chairman, I am very annoyed at the situation in which the citizens of the Nation's Capital must have the judgments of their duly elected officials subject to the whim, political whims of the country. In recent days and certainly today, we see again the emotional question of gun control being used as it has been over the years and as other issues have been used over the years to deny the people of this city the basic right of self-determination.

We in the District find ourselves the whipping boy on this question in two regards. The Members of this Congress, when convenient, decry the crime and violence on the streets of our Nation's Capital and exaggerate that situation. When the people are afforded an opportunity to elect public officials who, after well-considered judgment, seek to take at least one of the deadly implements out of the hands of citizens, find themselves being criticized and brutalized and denied self-determination on the question of that effort to be responsive and responsible to the wishes and desires of the people of this city.

So, Mr. Chairman, I do hope that reason will prevail in the deliberations which we have and in the response that we will now receive to this action on the part of the duly elected representatives of the people of this city.

The CHAIRMAN. Anyone else seek recognition?

Mr. MCKINNEY. Just briefly, Mr. Chairman.

The CHAIRMAN. Mr. McKinney.

STATEMENT OF REPRESENTATIVE McKINNEY

Mr. MCKINNEY. It is very seldom on this committee, since our present chairman became chairman, that I have disagreed with him. I think I disagree, though, on the bill of the extension of prohibition of changing the criminal code because I felt it was an infringement on home rule.

I was not here during the debate but I did write the President a letter suggesting very strongly, particularly after what happened to the bill, that he veto that particular piece of legislation.

I just have got to say once again that no matter how foolish our 435 heads may assume a City Council action to be, the City Council, not Stewart McKinney, is the elected body to run the city of Washington. My efforts on this committee will be to hopefully get the city a decent fiscal base from which to operate and several other things and hopefully we can toss our expertise to other urban problems and let Sterling Tucker and the Mayor of Washington who were elected by the people of Washington run the city of Washington.

The CHAIRMAN. Any other comments?

[No response.]

The CHAIRMAN. Without objection, the statement from the gentleman from Montana, Mr. Melcher, will be included in the record.

We have a communication from the gentleman indicating a conflict this morning. Otherwise, he would be here. Without objection, the statement will be included in the record.

Without objection also the District Council hearings on the resolutions will also be included in the record.

[The documents referred to follow:]

STATEMENT OF CONGRESSMAN JOHN MELCHER OF MONTANA

Mr. Chairman and Members of the Committee, the District of Columbia City Council's apparent effort to combat crime by enacting the Firearms Control Regulations Act in July is misguided and unwise, and it should be defeated by Congress. I urge this Committee to recommend passage of a disapproving resolution by the House, as provided for under D.C.'s home rule charter.

First, it appears the Council may have acted out of concert with the District of Columbia Self Government and Governmental Reorganization Act, which denies the Council authority to take any actions "with respect to any provision of any law codified in Title 22 or 24 of the District of Columbia Code" prior to January 1977. This firearms act clearly makes reference to and supplements Title 22.

Second, this latest D.C. firearms action creates a series of ridiculous intrusions on the basic rights of D.C. residents; at the same time it does absolutely nothing to curb crime. Congress repeatedly has declined to enact harassing gun control legislation for the general populace of the United States because of constitutional questions and the obvious lack of results in eliminating crime. How inappropriate it would be for Congress to stand by and allow a federal entity to force on a small part of American citizenry a block on new handgun possessions, registration for all legal guns, including sportsmen's rifles and shotguns, stringent personal owner demands, extensive record-keeping and manufacture bans. From my understanding of this act, it would be illegal for you to own a shotgun without registering and telling police where you kept it. You could be fined $300 for loaning it or its ammunition to a hunting partner or for having shells in your possession not fitting your registered gun. The police also could have you fingerprinted. If we talked about legislation like that in Montana, my constituents would say the police state has arrived, and they'd be right.

In addition, it should be obvious that dealing with the criminals in our society, those who will press their evil goals with or without guns, with whatever weapon they have to intimidate, injure and murder their victims, never could be solved by trying to ignore the criminals themselves and instead trying to manufacture a panacea through the ridiculous mechanics of gun controls. A recent study by Treasury Department's Bureau of Alcohol, Tobacco and Firearms pretty well demonstrates that the only results of the D.C. law would be that the D.C. hoodlum would get his illegal gun from somewhere else but law abiding citizens would be re-tricted in owning a protective handgun.

Rather than engaging in this dangerous kind of law-making, the D.C. Council should be encouraged by us in Congress to strengthen its mandatory sentencing provisions for those using a gun in committing a crime. The punishment should be certain and swift for those guilty of using a gun in commission of a crime. A severe penalty for such a criminal would soon work as prevention of crimes involving guns.

Once again, I urge the Committee's support of a disapproving resolution. We need to block this kind of precedent-setting legislation which only harasses law-abiding citizens.

The CHAIRMAN. The Chair is delighted to welcome to the witness chair Hon. Ron Paul, U.S. Representative from the 22d District of Texas. The gentleman was elected in a special election and this may be his first appearance before any congressional committee.

We are delighted to be a part of this historical event. If the gentleman could identify his staff, we will proceed to receive his testimony.

STATEMENT OF HON. RON PAUL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, ACCOMPANIED BY RUFUS PECKHAM, A CITIZEN OF THE DISTRICT OF COLUMBIA

Mr. PAUL. Thank you very much, Mr. Chairman. I am delighted to be here. I have Mr. Rufus Peckham from the District of Columbia here, a citizen from the District of Columbia.

The CHAIRMAN. I thank the gentleman. Mr. Paul, you have submitted a statement to the committee.

Mr. PAUL. I have a rather long, written statement that I have submitted. I will try to summarize that in my own words. I am indeed grateful that you are holding the hearings and have invited me to testify on this resolution—House Concurrent Resolution 716—of disapproval.

This was introduced with eight cosponsors and it is an act with respect to title 19 of the District of Columbia Code which is prohibited by the Home Rule Charter. I feel as though I have received tremendous support this week for my endeavors.

I think the mood of the Congress, both the House and the Senate, is with me in that this was enacted—this was an act that should not have been legislated by the D.C. Council.

I certainly can interpret the support from the House and the Senate as saying that the bill should not have passed and also on my position of no strong gun control laws.

OPPOSES GUN CONTROL ACT

I feel as though there is no authority to pass such a law as the Firearms Control Act. I base this on three principles. I believe that law itself taken by itself is an unconstitutional law. I think it is a totally noneffective law. I do not think it can do what you would like it to do, unfortunately.

I would like to stop crime but this will not work. I believe—and this is the strongest position—that the procedure that was followed is illegal. First, I will take the unconstitutional grounds. I believe that the second amendment does protect the individual law abiding citizen's right to bear arms, to keep weapons for his protection.

I don't think there is really any question about that. I believe that I get support for the right to bear arms and not be harrassed with a lot of regulations with the ninth amendment as well.

If you would look on my testimony on pages 2 to 4, you can look at the tremendous list of requirements that you as a Congressman or any citizen in District of Columbia must fulfill in order to own a weapon for his self-defense.

If you are any way at all concerned about civil liberties I would think you would interpret this as an encroachment of your civil liberties. For a Congressman to be fingerprinted in order to own a defensive weapon and be living entirely within the law to me violates his civil liberties.

I think it is rather ironic that we in the Congress when we pass laws with regard to welfare, we do all we can to uphold the respect and the dignity of that person who has applied. We try not to belittle him and make him reveal every thing about himself in order to qualify. We want to recognize his dignity.

And yet when we look at what we do to the law abiding productive citizens of society, I think we have some serious questions to ask. If you take, for example, the Internal Revenue Service, what they do to the productive citizen versus what we try to prevent—prevent the same thing to the person who is receiving welfare, I think these regulations demonstrate this, too.

To put the regulations on the law abiding citizen, to me is unjust. In section 302 of the Home Rule Act, this guaranties that the law be consistent with the Constitution. This does obligate us. We cannot say this is a city responsibility.

Some day that may come about. But you cannot dodge that question and say it is the City Council's responsibility. The Home Rule Act puts it on us. Historical precedent puts it on us. There is no way in the world that you can keep the argument that we don't have a responsibility and an obligation to look at the laws that are passed there and rule on them, whether it is by negative and by inadvertent method of not looking at it and letting the law come into effect or by an active method.

I think either way, we do have a responsibility. In the introduction of the District of Columbia Firearms Control Act, it explicitly says it is to limit the types of weapons persons may lawfully possess. This is attacking the lawful, the legal, the rightful ownership of weapons and this is to limit it.

To me that is limiting rights. I would like to address now the subject of whether or not a law like this can be effective. It is my personal opinion and conviction that the law causes more trouble. It is not effective. It can even be compared to what happens when you prohibit alcohol or drugs.

It makes them illegal. They become more expensive. Those who will break the law will certainly use them. We did learn a lesson with prohibition. We did not learn a lesson that illegal drugs make prices go

up very, very high and people commit many crimes in order to get money to buy high priced drugs.

I would think the underworld who would make profit on black-market guns would welcome the illegality of owning guns.

I think that the best example to demonstrate is the example of in the thirties when we had the prohibition of alcohol how it increased crime. I believe any gun law will increase crime and not reduce it.

There are good statistics to back this up. Even in Washington, D.C., less than one-half of 1 percent of crime committeed with weapons which are registered. 80 percent of the guns that they take from criminals come from outside the District. So the registration laws have done no good at all. We cannot ignore that fact.

I am convinced also that societies that have in the past, that have had strong gun control laws are always societies that have had less freedom. Usually it sets the trend. The stronger the gun control laws, in the future the less freedom we have down the road.

This is backed up by history. Recently there have been more studies out. Many people have been converted from the idea that strong gun control laws do any good. There was one Franklin Zimmerink who was a well known gun control enthusiast. He has changed his opinion on this.

He says it doesn't work after he has looked at the studies. There is a Center for Criminal Justice at the Harvard Law School that did study the Massachusetts Gun Law which is a tough gun law. Their conclusion is that it has done no good in Massachusetts.

EXPERIENCES IN OTHER COUNTRIES

Cambridge University in 1970 studied the 1920 gun law in England. They came to the conclusion that the gun law in England does not create less crime or less violence. New York City's gun law is tougher than the gun law in England and yet crime and the use of weapons in crime is much greater in New York City than in England.

Switzerland, they have no strict gun control laws. There are more guns per capita in Switzerland than any other place in the world with a very low crime rate. We cannot ignore these statistics. The University of Wisconsin made a comprehensive study throughout all our States. They agree that strong gun laws will not reduce crime.

If there is the least chance that we are going to violate the rights and the civil liberties of the individual and it does not do any good, we should think seriously about the efficacy of gun laws.

More specifically to this particular law we are talking about, and this is the one I think you must pay attention to because whether or not you would like to give the responsibility to the City Council, the truth of the matter is it is you, the District of Columbia committee, that still has a tremendous amount of responsibility for what is happening in the District of Columbia.

LIBRARY OF CONGRESS OPINION

This law is illegal. There is a statement now put out by the Library of Congress agreeing with this. There is no question. It is a flat statement that the law passed by the District of Columbia is illegal. I think the sentiment of both the House and the Senate indicates that not only

is the mood against it but agrees that the method is not a proper procedure.

I don't think the law will hold up. I don't think, regardless of what you do, if it goes into effect, if it does not accomplish what some think it will, what is going to happen is this law is going to be challenged and it is going to be thrown out and then they are going to come back and say you know Congress is supposed to overlook this, the District of Columbia committee is supposed to overlook this.

If the law has been written so poorly and they have violated so many things even I as a nonattorney can clearly see, they are going to come back and say who supervised this?

Who permitted this thing to go into law?

I think you have to look at this and consider the facts that I have outlined in my testimony. The outline occurs from page 7 to page 17 on the defense, my defense that this law is illegal.

It is clear that there is exclusive authority in the same area of title 22 of the District of Columbia Code found in 602(a)(9) of the Home Rule Act. This does give Congress and the District of Columbia Committee exclusive authority over this and the Council cannot change title 22 of the District of Columbia Code. There is no way you can read that into it.

Now the Council, the City Council's defense is and through their committee on judicial and civil law, their defense is that it does not change title 22. We are not really dealing with title 22. But there is no argument there at all. They mention title 22 seven times in their description.

They sent it to Congress for approval as if it were part of a change in the criminal code. I have a copy or part of a letter put into the record from the police chief and he makes the assumption that in there that we are changing the criminal code.

For them to argue that we are changing police regulations and saying that this is not superseding the criminal code is just not so. You either have to change it or supersede it. The directions in the Home Rule Act says that they have no authority to enact any act, resolution or rule with respect to any provision of any law in title 22.

It could not be more clear than that. Not only this, but if you go back—and I have substantiated this—if you look at the conference report in the discussion of the Home Rule act and if you look at the floor debate when this was debated on the floor, it is explicit.

They do not have the real legal right. You might argue on the moral justification that they should have and work for that, but that is a different story. Right now they do not have the legal right to change the code and there is no question in my mind that they have changed the code.

If you read the bill carefully, they refer to different parts of the gun control bill, the act, and the numbers they refer to don't even exist. There are three blatant errors in this law. If you want to go on record as accepting this either by ignoring this or not disapproving it, I think that it is a serious error because you are condoning some very, very poor legislation.

I think it is very important to disallow this law. I think it is important to remain legally consistent. I think it is important to remain constitutionally consistent. I think it is very important to consider the fact that the law won't do any good at all, anyway.

I think the other concern that I have is the fact that this law, when it is on the books, you might argue that this city deserves the same treatment as any other city but it happens to be a very, very unique city. A gun control law like this on the books could be very detrimental to the constitutional rights of everybody else in this country.

So I do think that it deserves serious consideration and I hope you will agree with me on this.

Thank you.

The CHAIRMAN. We thank the gentleman. Mr. Gude, do you have any questions?

Mr. GUDE. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Fauntroy?

Mr. FAUNTROY. Thank you, Mr. Chairman. Congressman Paul, you make the point that the City Council's authority to pass this regulation is challenged by the Library of Congress?

Mr. PAUL. Right; I have a copy of this I will submit with my report.

Mr. FAUNTROY. I have a copy before me and that Library of Congress conclusion is that, as you see, and I quote it "An examination of the arguments suggests that the Firearms Control Regulation Act exceeds the authority."

To suggest and to conclude are of course quite different. Secondly, if you read the report, earlier, in reviewing the history of the exercise of legislative authority by the appointed City Council in utilizing the police regulations as a vehicle the courts concluded that there was no validity to the challenge registered by the Maryland and District of Columbia Rifle & Pistol Association to the authority of the appointed City Council to act under the police regulations, an authority which it had and which, God forbid, the President signed that bill passed by both Houses of this Congress, the Council will continue to have.

I wondered if you care to comment on the facts of the court decision clarifying the authority of the Council.

Mr. PAUL. I believe that court decision occurred prior to the D.C. Home Rule Act and therefore it would not have any effect.

Mr. FAUNTROY. The D.C. Home Rule Act did not change the authority of the Council to affect regulations.

Mr. PAUL. I think that point would be debatable.

Mr. FAUNTROY. It would be debatable if the President if he is unwise, signs the bill.

Mr. PAUL. If you look at he introduction on the Library of Congress argument, in the first paragraph of it it says "the conclusion of this report is that this act is not valid."

Again, "Enactment of the Firearms Act alters the law with respect to those areas which the Congress intended to examine in revising the D.C. Criminal Code law and therefore is beyond the legislative authority of the D.C. Council until January 2, 1977."

My strongest statement is their statement on the front page, this act is not valid.

Mr. FAUNTROY. Mr. Paul, you say that the Congress has an obligation to overturn this act. To whom does the Congress hold that obligation?

Mr. PAUL. Constitutional law——

Mr. FAUNTROY. So that you base that on the assumption that gun lobbyists are right when they interpret the second amendment to mean that it guarantees the right of individual citizens then to bear arms?

Mr. PAUL. That plus the fact that the procedure that they went through is entirely illegal. These two would be the strongest arguments, both the fact that the law is an unconstitutional law but the obvious fact that we have a responsibility still with the D.C. legislation is strongest.

I don't think that is a debatable fact, that we have some responsibility for or I would not be here. Why can a Congressman from Texas come and even say anything unless he had some authority to say something?

I can't go and talk to you about New York City.

Mr. FAUNTROY. And I certainly can't go to where?

Mr. PAUL. Houston. The fact that we have a District of Columbia Committee dramatizes that the District is different. If you want to change that that is another thing.

Mr. FAUNTROY. The question is to whom do you have an obligation to deny the citizens on a local question as to whether or not the citizens who live here——

Mr. PAUL. I have an obligation to do what I think is right with respect to law and fulfill the Constitution.

Mr. FAUNTROY. You have indicated that you feel the law has been violated as suggested by the Library of Congress report and as refuted by the courts. I think this is something that can be decided in the courts. I am sure that if this bill becomes law, District of Columbia and Maryland and their rifle associations will go to court and probably receive the same answer that they received in 1968.

You have based your other legal argument on the fact that you believe, contrary to two Supreme Court decisions, that the second amendment protects the rights of individuals to bear arms and that, contrary to the judgment of two supreme courts who have sat in judgment on this question, that it does not refer exclusively to the right of the colonies or the States to develop militias and maintain them.

Mr. PAUL. I would disagree with that. I think there is strong precedent that shows that the individual has the right to maintain arms.

Mr. FAUNTROY. Maybe we will go to court and have the Supreme Court do—decide that. We better do that.

Mr. PAUL. I am in good company for the last 200 years.

Mr. FAUNTROY. The Supreme Court is the highest court in the land and it is an assumption that they have refuted explicitly. Finally, Mr. Paul, you mentioned that one of the problems with the efforts on the part of people to withhold handguns from at least some segments of society that feels that the only access to manhood is through the barrel of a gun, that many of these efforts have been unsuccessful.

You cited the New York law. You cited the law in Massachusetts. You cited the fact that in the District of Columbia, because there is not a national gun control measure that would prevent the manufacture, sale and possession of guns outside the District of Columbia, that 80 percent of those used here in the commission of crimes come from outside the District of Columbia.

You make the point and acknowledge the point, and I want to agree with you, that until we can do something nationally about the

proliferation of guns in the country, we are going to have a difficult time allowing people in jurisdictions like the District of Columbia who want to control guns, who elect people whom they can judge every 4 years and put out of office if they do not translate their beliefs into public policy, despite the fact that these people want this kind of legislation, they pass to protect at least 20 percent, that they will not be truly successful in exercising their corrective will until we have a national legislation.

Mr. PAUL. I think that you should at least consider giving some attention to my analogy with the strong national law enforcement against the use of the marihuana and the importation of illicit drugs. It does not do any good. You still have many, many more people taking drugs.

I am totally convinced that this is one of the most common causes of crime, because this drives the prices of drugs up so high and those people needing the drugs then must go out and rob and kill because of a national law.

I think that you will create the same type of atmosphere of black-market in guns that you have in drugs and that you had in alcohol.

It just does not work.

Mr. FAUNTROY. I could not help but think as you made that point that you would be a strong advocate for the legalization of heroin and cocaine and the other drugs that are as you say responsible for the use of guns and make this country the most dangerous country in the world in which to live.

I happen not to agree with the legalization of hard drugs. I think we just don't agree on the question of home rule or gun control.

Mr. PAUL. How about alcohol?

Do we agree on that?

Mr. FAUNTROY. For my personal view, I think anybody who pickles his brains in alcohol or drugs is unwise.

Mr. GUDE. If the gentleman will yield at that point, I think if a man had the foresight about 5,000 years ago when the first grapes were trodden and they developed wine to prohibit alcohol, that maybe we could have been successful. But it has become such a part of our social context that that isn't possible any more.

But I don't know why we should do the same thing with marihuana and heroin and introduce these problems further now into society than they are already.

I agree with the gentleman.

Mr. FAUNTROY. Thank you, Mr. Chairman, and we end on a light note but the fact is that guns are the cause of a great deal of misery and death in this country. We are the most homicidal nation in the world. I take very seriously the effort on the part of this Congress to deny a freedom loving, nonviolent people who express their will through duly elected representatives the right to govern themselves on a simple matter of police regulations.

I fail to see how they infringe or invoke the obligation of Congressmen to protect the Federal interests within this jurisdiction.

The CHAIRMAN. Mr. McKinney, do you have any questions?

Mr. MCKINNEY. Not really, Mr. Chairman. I would say that I think that my colleague from Texas has probably done an exceedingly thorough job on the legal implications of the City Council's action.

I would have to suggest that, though I totally disagree with interfering with the city's actions, I would have to agree that I think that the City Council, unfortunately due to the box we put them in in Congress, looked long and hard to find a vehicle, a pretty poor vehicle at that, to pass this particular piece of legislation.

It is my hope, as I said in my opening statement, that the President will veto what I consider our ridiculously rash actions in both the Senate and the House the other day and that then the City Council will have an even better vehicle with which to make changes.

But I have to state again to the gentleman, and I know he may find it difficult to understand, but I joined this committee, which gives one a great deal of credit, 6 years ago to abolish it. I certainly would hope that my chairman would be head of an urban committee.

But my entire intent before I leave this place is to have the word "D.C." taken off the front of the door. The only place that D.C. belongs in this city is down on the white building on Pennsylvania Avenue, or wherever it is placed.

I will continue to work that way. So, even though I have to admire your homework on some of the legal implications of the method used by the City Council, I would have to say that I would allow them that same mistake as I do all six of my mayors who make their same mistakes.

The CHAIRMAN. Mr. Mann, do you have any questions?

Mr. MANN. Thank you very much.

I am strongly supportive of the home rule concept as I would be strongly supportive of the mayors in my district who acted according to the law. You know, there has been much talk and much effort in the Congress recently with reference to the control of the exercise of regulatory power.

Time and again we say that that regulatory power is a power that is delegated pursuant to statutory enactment and that it must be exercised in accordance with the intent of the Congress or the enacting body. Here is where we run into trouble on this action taken by the District of Columbia Council. The action on the floor of the House and the Senate yesterday—regarding H.R. 12261—is, in my judgment, regrettable from one rather unusual standpoint and that is that it will probably result in a complacency or a disinterest to the point that this committee may not get around to acting because of the problems of a quorum.

The same problem could exist in the Senate. I think that the action of the House with reference to the amendment did not necessarily accomplish the purposes intended in that it was intended to be retroactive and in my judgment the validity of that may be questioned.

It will be prospective in that if the President does sign the bill, it will clear up this question of whether or not the council can promulgate regulations on this subject.

COUNCIL ACT INVALID

Can it promulgate such regulations now?

I think that the Library of Congress is eminently correct. A mere look at title 22 shows that the title deals with the possession of firearms, firearms dealers, the traditional or ordered areas of firearms

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control. And yet the Council, through the regulatory power, has sought to amend that statute and they can't pass any regulations with reference to that statute because we deprived them of that privilege by reserving jurisdiction with reference to title 22.

So they can say well, they did not try to do it by regulation. They did it by a statutory enactment, with even less authority to do so, but not in the subject areas covered by titles 22, 23, and 24. So we here find ourselves confronted with an invalid act on the part of the District of Columbia and regardless of our attitude toward home rule or gun control, we are dealing here with the preservation of orderly process, legal processes and we must support what the congressional intent was.

The congressional intent cannot be, I submit, other than that title 22 dealt with the matter of guns, weapons, gun control and the authority with reference to those subjects was reserved by the Congress.

The statement of the gentleman from Texas does credit to a doctor who qualifies for forensic law or whatever they call it. But he of course is strongly supported in language that frankly is unusual for lawyers, even with the congressional reference service.

LIBRARY OF CONGRESS OPINION

My friend from the District of Columbia suggests that the word "suggests" is not strong enough but I suggest that the other language here is stronger than one usually finds on legal questions wherein it says:

> The fact that gun control legislation for the District of Columbia was then contained in title 22 makes it inconceivable that Congress did not intend to preserve the status quo in the area of weapons control.

In the beginning they state "the conclusion of this report is that the act is not valid."

So, I appreciate the efforts being made by the gentleman. I share his objective in that I do not believe that this Congress, regardless to how we feel about the extension of authority over criminal laws, this Congress can sit here and permit a circumvention of its intent.

We are not exercising our authority. We are not assuming the responsibility that was given to us when we preserved the right of titles 22, 23, and 24. I can understand the efforts of the District of Columbia to want to exercise the powers that it is eager to exercise.

But in this instance, they trod on forbidden ground and I cannot sit here and permit the law to be so twisted. I hope that we do have an opportunity to specifically send that message by a disapproval resolution.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Biester?

Mr. BIESTER. Thank you, Mr. Chairman. I would like to follow up on what Mr. Mann had to say. I guess the most interesting part of your testimony bears upon the legal question and the Library of Congress memorandum. Is there a Library of Congress memorandum on the issue of firearms constitutionality?

Mr. PAUL. Not with regard to this law, I don't have one in my possession.

Mr. BIESTER. You did not ask the Library of Congress about it?

CITIZEN'S RIGHTS

Mr. PAUL. No.

Mr. BIESTER. On that constitutional question that you did not ask the Library about, it is your opinion or your belief that no government in the United States has the power to control the right of a citizen to own any arms?

Mr. PAUL. My personal opinion would be that if a law-abiding citizen is using a weapon where he never harms somebody else and causes violence, then no, the government would not have the right to interfere.

Mr. BIESTER. He could own a machine gun, a howitzer, a mortar? As long as he never used them he could own them and no government could encroach on that?

Mr. PAUL. According to the Constitution, my interpretation——

Mr. BIESTER. With respect to the question of legality which I think is the key question here, to what extent is this a matter which ought to be resolved by this committee and the Congress and to what extent is this a matter which ought to be resolved by our court system?

Do you think we should decide exclusive of the courts?

Mr. PAUL. I think that we have a responsibility to review the laws that are passed by the D.C. Council, that we have jurisdiction over, yes. This certainly falls into that category.

Mr. BIESTER. In your review of the legal aspects of this, have you come to any conclusions as to which step by the Congress would lead to the earliest resolution of the legal question by the courts?

That is probably an unfair question.

Mr. PAUL. I am not even sure if I understand what you mean by your query.

PROCEDURE QUESTION

Mr. BIESTER. If we believe that the key question here is the legality of this process and if we agree that at least somewhere along the way the best forum for making that determination lies in the courts, then it would be of interest to me to discover that would be the most efficient and most rapid way to set a case in which that judgment might be made.

Mr. PAUL. Well, I would not concede the assumption that we should let it be determined in the courts. I would say that we have a responsibility to look at it and decide whether it was created illegally or not. If it was, we should disallow it.

If it is the opinion of the House that it was very proper and legal and had not violated the intent of Congress, then I would say vote on it and show that they want to permit this and then go ahead and test it in the courts.

But I think our responsibility is very clear, that we should look at it. I would have to admit if I was just going at this strictly constitutionally and strictly because I think it is totally ineffective, the Congress would not support me.

But with the facts that we have here and with the votes that we have had so far, I think it is obvious that the intent was incorrect as far as the Council was concerned.

EFFECT OF LEGISLATION

Mr. BIESTER. With respect to the legislation itself, I gather that there are a number of kinds of persons or classes of persons who are not permitted under this legislation to own or possess a firearm.

Do you believe that a person who had been involuntarily committed to a mental institution for the previous 5 years should be allowed to buy as many firearms as he might wish?

Mr. PAUL. I would be very careful with them because some of the involuntary admissions to mental institutions can occur very carelessly. Sometimes eccentric individuals end up in mental institutions and they have never caused harm in society, never have done anything violent. I draw my line when that individual is either there threatening violence or creating violence, yes, then it is the absolute obligation of the State, the government, local, Federal, what not, to restrain the violence.

Mr. BIESTER. That is often too late, though, is it not?

Mr. PAUL. Well, it is often too late if you destroy the Constitution and civil liberties of all individuals by taking away their right and you end up with a country that does not protect civil liberties.

That is what I am concerned about.

Mr. BIESTER. How about a person who has been acquitted of murder by reason of insanity within the last 5 years? Should that person be allowed to buy as many guns as he wants?

Mr. PAUL. If he committed violence such as murder, he certainly should have restrictions.

Mr. BIESTER. So you would agree with the D.C. legislation with respect to that aspect?

Mr. PAUL. If he had been convicted of murder?

Mr. BIESTER. No; he was acquitted by reason of insanity.

Mr. PAUL. If he committed the violence, you got to restrain him. That is what the responsibility is.

Mr. BIESTER. If he is committed—you would agree, then, with the D.C. legislation in that respect?

Mr. PAUL. In that one you mentioned or any other one that puts restraints on individuals who become criminals, whether it is a sane individual or insane individual? As soon as he creates the violence or threatens to—the violence, then there must be restraints.

Mr. BIESTER. Supposing he does not have sufficient vision to get a driver's license, should he be allowed to buy as many rifles as he wishes?

Mr. PAUL. As long as he does not cause violence.

Mr. BIESTER. How do you know?

Mr. PAUL. How do you know you won't cause violence going down the streets?

Mr. BIESTER. That is why I don't own arms.

Mr. PAUL. What about your automobile, alcohol?

Mr. BIESTER. Let me come back to my question. Do you think that somebody who can't see well enough to drive ought to be able to buy as many rifles with a range of over a mile as he wants to?

Mr. PAUL. If he has not committed violence the same way he can buy a bottle of beer. You do not put everybody into pens because of the potential that they might do or you don't have a free society anymore.

Mr. BIESTER. The D.C. Code is not talking about putting them into pens. It is talking about telling a person who can't see well enough to drive that he can't own certain firearms. My question is whether you agree with that, and I take it you do not?

Mr. PAUL. I disagree with that.

Mr. BIESTER. Thank you, Mr. Chairman.

The CHAIRMAN. Well, we——

Mr. PAUL. May I have permission for Mr. Peckham to leave his testimony?

The CHAIRMAN. Without objection, I was going to include Mr. Peckham's testimony in the record following your testimony.

Without objection it is so ordered.

[The documents referred to follow:]

PREPARED STATEMENT OF REPRESENTATIVE RON PAUL

I. THE FIREARMS CONTROL ACT OF 1975 IS UNCONSTITUTIONAL

1. The second amendment to the United States Constitution declares that "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The ninth amendment states that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Article I, Section 8, Clause 17 of the Constitution provides that the Congress shall have power "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of Government of the United States. . . ."

2. Let me begin by discussing the last provision first. This provision, granting exclusive authority over the District, was added to the Constitution because of the indignities and personal threats that Members of the Continental Congress suffered in Philadelphia in 1783 at the hands of disgruntled soldiers. At that time, the local authorities could not come to the aid of Congress, and the Members had to flee the city. In Federalist No. 43, James Madison wrote that "The indispensable necessity of complete authority at the seat of government carries its own evidence with it. . . . Without it . . . the public authority might be insulted and its proceedings interrupted with impunity. . . ."

3. I raise this issue, not to attack home rule in the District of Columbia, but to call attention to the fact that the Firearms Control Act passed by the City Council contains no exemption for Members of Congress. Section 201(b) of the Act contains the list of persons exempted, and Members of Congress do not appear on that list. It would seem, then, that any Member elected for the first time after this law goes into effect, or any present member without a legally registered handgun or pistol, would be prohibited from bringing any pistol or handgun into the District of Columbia.

4. Furthermore, the Act would subject a Member of Congress to the same complex registration process that the Act imposes on all law-abiding residents of the District of Columbia. For the information of the Members who are present at this hearing, here is a list of the things a person is required to do in order to register a gun under this gun control law:

Persons seeking to register a gun must:

(1) be 21 years of age, or 18 and have the permission of their parents, who must assume all civil liability;

(2) not have been convicted of a crime of violence, a weapons offense, or a violation of this Act;

(3) not be under indictment for a crime of violence or a weapons offense;

(4) be free of convictions for 5 years past of any drug law, or of any threat to do bodily harm, assault, "or any similar provision of the law of any other jurisdiction so as to indicate a likelihood to make unlawful use of a firearm." (Section 203[a][4][B]);

(5) not have been acquitted of any criminal charge by reason of insanity for the previous 5 years;

(6) not have been adjudicated a chronic alcoholic by any Court for the previous 5 years;
(7) not have been voluntarily or involuntarily committed to any mental institution for the previous 5 years;
(8) not appear to suffer from a handicap that would "tend to indicate that the applicant would not be able to possess and use a firearm safely and responsibly." (Section 203[a][7]);
(9) not have been judged negligent in a firearms accident causing death or serious injury;
(10) be eligible under present law to possess a pistol;
(11) pass a test on D.C. firearms laws devised by the Chief of Police;
(12) have vision equal to that required to obtain a valid driver's license in D.C.;
(13) provide his full name to the Chief of Police;
(14) provide his present address and each address for the previous 5 years;
(15) provide his present business address and each business address for the previous 5 years;
(16) provide his date and place of birth;
(17) record his or her gender;
(18) provide information concerning any denial or revocation of registration, permit, or license of a firearm;
(19) provide a description of any serious firearm accident involving the applicant;
(20) provide information on the intended use of the firearm;
(21) provide the caliber, make, model, manufacturer's number, serial number, and identifying marks on the firearm;
(22) provide the name and address and other identification of the person from whom the gun was obtained;
(23) tell where the firearm will be kept;
(24) tell whether the applicant has applied for any other registration certificates;
(25) provide "such other information as the Chief determines is necessary";
(26) provide 2 "full face" photographs, 1¾'' by 1⅝'', taken within the 30-day period preceding the date of application;
(27) appear in person when applying and, if required, to bring the firearm being registered;
(28) sign an oath attesting to the truth of all information provided;
(29) pay a fee set by the Mayor.

5. In addition to this comprehensive set of requirements, the Chief of Police may, at his discretion, require the fingerprinting of applicants. If this is the type of harassment that this Committee wishes to impose on Members of Congress, not to mention the people who live in the District of Columbia day in and day out, then I would suggest that this Committee and this Congress take no action to stop this law from becoming effective. If, however, the integrity of the Congress is to be preserved and its Members are to be allowed freedom from such unnecessary and irresponsible harassment, then this law must be disapproved by the Congress within the thirty (30) legislative days provided by the Self-Government and Governmental Reorganization Act. If this Act is not in actual conflict with the Constitution on this point, it is at least in conflict with the spirit of the Constitution and the legislative history of the provision of the Constitution which retains exclusive authority over the Federal District to Congress.

6. Let us now consider the second amendment to the Constitution which has been quoted above.

7. According to Section 302 of the Self-Government and Governmental Reorganization Act, the governing instrument of the District of Columbia Council, the "legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and provisions of this Act. . . ." Since the City Council acts only by the permission of this Congress, which has retained exclusive authority over the District, it is Constitutionally barred from passing laws infringing upon the right to keep and bear arms. This amendment has been narrowly construed to mean that the Congress or its agents can take virtually any action to control private ownership of weapons, despite the plain meaning of the words. The Amendment says: the right to keep and bear arms shall not be infringed. To "infringe," according to the Oxford English Dictionary, which quotes from Jefferson and Blackstone to illustrate the usage of this word, is to "break in upon or encroach." It is not necessary for a right to be totally destroyed or annihilated for it to be infringed. A right can be infringed by restricting it only a little. The history of gun control legislation in this country shows a gradually increasing infringement of the right to keep and bear arms.

8. Any literate individual who has any doubts that the Firearms Control Act would infringe on the right to keep and bear arms has not read even the introduction to the Act, in which the purposes of the Act are described as follows: to "limit" the types of weapons persons may lawfully possess"; to "assure that only qualified persons are allowed to possess firearms"; and "to make it more difficult for firearms, destructive devices, and ammunition to move in illicit commerce within the District of Columbia." The express purpose of this law is to infringe upon the right to keep and bear arms. The issue is whether the City Council, acting pursuant to Section 302 of the Self-Government and Governmental Reorganization Act, can legitimately pass this law. If the language of the Constitution means anything at all, the Council cannot pass it. It is the duty of this Congress, which is itself barred from enacting a piece of legislation like this, to strike down this Act before the residents of the District of Columbia are subjected to its onerous provisions.

9. The ninth amendment to the Constitution, quoted above, makes it abundantly clear that unenumerated rights are retained by the people. It is not sufficient to argue, as many gun control advocates have argued, that the second amendment is applicable only to the National Guard, an organization which was not created until the twentieth century. This deliberate misconstruction of the second amendment's meaning still faces the problem of what to do with the plain meaning of the ninth amendment. The federal government is a government of delegated powers; nowhere in the Constitution is the federal government given the authority to pass gun control laws. The specific Constitution limitations on the federal government are written into the Self-Government and Governmental Reorganization Act.

II. THE FIREARMS CONTROL REGULATIONS ACT OF 1975 IS ILLEGAL

1. In section 601 of the Self-Government and Governmental Reorganization Act, Congress has retained plenary power over the District of Columbia to enact any legislation for the District on any subject, whether within or without the scope of the legislative power granted to the Council, including legislation to amend or repeal any law in force in the District.

2. In addition to this retention of plenary legislative authority, Congress reserved to itself exclusively many areas of law, including Title 22 of the District of Columbia Code. This specific denial of authority to the City Council is found in Section 602(a)(9), which states that: The Council shall have no authority to . . . enact any Act, resolution, or rule with respect to any provision of Title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision of any law codified in Title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners) during the twenty-four full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office.

3. The first elected City Council members took office on January 2, 1975. Obviously, the twenty-four month period had not expired when the District government passed this law in July, and it still has not expired. So there is no question that the exclusive authority which Congress retained over Title 22 still remains. The question which now must be answered is this: does the Firearms Control Regulations Act of 1975 constitute "any act, resolution, or rule with respect . . . to any provision of any law codified in Title 22 or 24 of the District of Columbia Code"? The City Council answers in the negative. Let us examine their argument.

4. The Report of the Committee on the Judiciary and Criminal Law, a Committee of the District of Columbia Council, maintains that "This bill does not amend or conflict with the provisions of Chapter 32 of Title 22 of the D.C. Code. It specifically provides as much in Section 902." (For those who are not familiar with the D.C. Code, let me say that Chapter 32 of Title 22 is the Chapter that deals with weapons.)

5. The first thing that should be pointed out is that the Self-Government and Governmental Reorganization Act does not use the language "amend or conflict" when it denies authority to the City Council over criminal laws. The language of the Act is much broader—as broad as language can be. It says, and I repeat, that the City Council "shall have *no* authority to . . . *enact any act, resolution, or*

rule with respect to . . . any provision of any law codified in Title 22 . . ." (emphasis added). I want to emphasize the fact that the words "no", "any", and "with respect to" are used, and not "amend or conflict," as the City Council apparently believes. The word "any" is used four times in subsection (9) and the words "with respect to" twice. It is difficult to conceive of a formulation that is more sweeping in its scope or broad in its meaning than the formulation that appears in Section 602(a)(9).

In the opinion handed down in the case *Maryland and D.C. Rifle and Pistol Association, Inc.* v. *Washington et al.*, 442 F. 2d 123 (February 24, 1971) the Court declared, The first and perhaps most important indication of congressional intent springs from the words in which the statute is cast . . . Absent strong reason for a contrary reading, our function is to take this language for what it plainly says, for "(t)here is . . . no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." (*U.S.* v. *American Trucking Associations*, 310 U.S. 334, 543 [1940].)

6. The legislative history of this section in the Self-Government and Governmental Reorganization Act corroborates this understanding of the words in Section 602(a)(9). For example, in the Conference Report on the bill, S. 1435, Report Number 93-703, the Conferees explain that "The House Amendment [the "major provisions" of which were adopted by the Conference substitute] contained provisions, not in the Senate bill, providing . . . (3) the Council could not change building height limitations nor change D.C. criminal laws or the organization and jurisdiction of the D.C. court." Any change at all in the criminal laws, if the language of the Conference Report means anything, is prohibited Changes that result in more severe laws or new penalties or the creation of new offenses are prescribed, just as are any changes that would meliorate the severity of the laws.

7. If one wishes to trace the legislative history back further, he will find that this particular restriction on the power of the District City Council was not a part of the bill (H.R. 9682) reported from the District of Columbia Committee. Rather, the restriction was added during debate on the Floor of the House, October 10, 1973.

8. The restriction on the power of the City Council first appeared as part of an amendment in the nature of a substitute for H.R. 9682, the bill reported by the D.C. Committee. The substitute was sponsored by 15 members of the D.C. Committee, only eight of whom are still on the Committee. At the time there was a great deal of confusion about the Committee amendment, and serious questions were raised about the manner in which it was prepared and offered, but that is immaterial at this point. What are important are the descriptions given by Brock Adams and Thomas Rees, sponsors of the amendment containing the provision restricting the Council's "authority over criminal laws." Mr. Adams said, "it prohibits the Council from changing certain specific titles of the District of Columbia Code. These are the titles of the District of Columbia Code which deal with the District of Columbia criminal laws." (*Congressional Record*, October 10, 1973, Page 33635.) Thomas Rees, another sponsor of the Amendment had this to say: "If individuals are worried about crime in the District, there is another Congressional reservation on Page 90, which is number (8) on line 5, which says that the City Council cannot enact any ordinance that affects in any way Titles 22 or 24 of the District of Columbia Criminal Code." (*Congressional Record*, October 10, 1973, Page 33647.) The language of the Self-Government and Governmental Reorganization Act itself is plain enough, but there can be absolutely no doubt about its meaning when one considers the descriptions of the section in question made by sponsors of the section itself. These descriptions, let me point out, were made during debate in the House, and the House passed the bill with the understanding that the language "with respect to" means exactly what it says: that the City Council cannot enact any ordinance that affects in any way Titles 22 or 24 of the District of Columbia Criminal Code."

9. Therefore, the entire legislative history of this restriction on the authority of the City Council confirms the plain meaning of the words found in section 602(a)(9), that the Council has no authority to enact any legislation whatsoever with respect to Title 22 of the D.C. Code. The opinion of the present Committee of the District of Columbia, most of whose Members did not serve on the D.C. Committee in 1973, regarding the proper interpretation of the language of Section 602(a)(9) of the Self-Government and Governmental Reorganization Act is, I might add, totally irrelevant, whatever that opinion might be. If anyone cannot understand the plain meaning of the section, let him examine its legislative history. It is improper and inadmissible for a Committee unilateraly to render an opinion on the meaning of language enacted by the entire Congress—language that is umistakable in its interpretation.

10. The second point that ought to be made about the statement contained in the Report of the Committee on the Judiciary and Criminal Law is this: Section 709 of the Gun Control Act, which provides that "This act and the penalties prescribed in Section 605 [Note: there is no section 605 in the Act] of this act, for violations of this act, shall not supersede but shall supplement all statutes of the District and the United States in which similar conduct is prohibited or regulated," renders the entire act an absurdity. How do two different laws supplement each other without one superseding the other? If one law, for example, mandates one year imprisonment for an offense, and another law mandates two years for the same offense, one must supersede the other. There is no possibility of supplementation in such a situation.

11. To apply this principle to the instant case, Chapter 3201 of Title 22 of the D.C. Code defines a "sawed-off shotgun" as "any shotgun with a barrel less than twenty inches in length." The Firearms Control Regulations Act, however, defines a "sawed-off shotgun" as a "shotgun having a barrel of less than 18 inches in length . . ." How, may I ask you, is this Firearms Act going to supplement Chapter 3201 of Title 22 on the matter of what constitutes a "sawed-off shotgun"? If the new Firearms Act is enforced at all in this regard, then it is superseding, not supplementing Title 22 of the District of Columbia Code.

12. Lest anyone think that this is the only example that can be given in which the Firearms Act supersedes provisions of Title 22 of the D.C. Code, I hasten to cite several others. The definitions of "pistol" and "machine gun" are also different in the Firearms Act from Title 22 of the D.C. Code. The registration requirements imposed in the Firearms Act are far different from those provisions found in Chapter 3206 of Title 22 of the D.C. Code. The regulations and recordkeeping requirements imposed on gun dealers are far different in the Firearms Control Act from what they are in Chapters 3208, 3209, and 3210, of Title 22 of the D.C. Code. Chapter 3215 of Title 22 describes the penalties for violations of the weapons laws of the District: up to $1,000 in fines and up to one year in jail, or both, unless specifically provided otherwise in Chapter 32. The Firearms Control Act, on the other hand, contains penalties of up to $300 in fines and up to 10 days in prison for the first offense, and mandates penalties of a $300 fine and at least 10 and no more than 90 days in prison for subsequent offenses. Now, if we are to understand that the Firearms Control Act does not supersede the D.C. Code, Title 22, Chapter 3215, then what are we to conclude when a person, convicted of his second offense, may be sentenced to five days in prison under the Code, but must be sentenced to ten days in prison under the Firearms Control Act? Has the Firearms Act supplemented or superseded the Code? I believe the answer is obvious.

13. Chief of Police, Maurice J. Cullinane, displayed some awareness of the problem in his letter of April 15, 1976, to Councilman David A. Clarke. Chief Cullinane pointed out:

> * * * because of the regulatory methodology employed, the bill creates new problems not encountered in the Police Regulations. The bill seeks to create a single regulatory standard by which pistols, rifles, and shotguns would be certificated, while a single standard might normally be an improvement over the admittedly, complicated arrangement found in Articles 50-55 of the Police Regulations, the District is confronted with Congressionally created standards for pistols and an absence of standards for rifles and shotguns. Thus, by establishing a single standard, the M.P.D., and prospective applicants for certification of pistols must perform a rather complicated exercise in mental gymnastics to ascertain what the bill requires over and above the Code and which portions of the bill conflict with the Code and are inapplicable.

It is obvious that Chief Cullinane recognizes the fact that this bill is, in fact, legislation "with respect to" Title 22 of the D.C. Code, and also in conflict with the Code.

14. If the Firearms Act changes the present provisions of the D.C. Code in any way—and I have just mentioned several ways in which it does—then it is in fact superseding the D.C. Code. The section of the Firearms Act that seeks to allow the Act to run through a loophole by claiming that it supplements rather than supersedes present D.C. law is either a nullity or it makes the Firearms Act itself of no effect.

15. The third point that ought to be made about Section 709 of the Firearms Act, which claims that the Act supplements rather than supersedes Federal

law and the D.C. Code, is that it, in itself, is an admission that the Firearms Act is legislation enacted "with respect to" provisions of law in Title 22 of the D.C. Code, an action specifically prohibited by Section 602(a)(9) of the Self-Government and Governmental Reorganization Act. By including Section 709 in the Firearms Act, the City Council obviously intended to make an end-run around the express intent of Congress to reserve all authority over criminal laws in the District of Columbia for itself. However, not only does the end-run fail, it constitutes an explicit admission that the Firearms Act is in fact an act "with respect to" Title 22 of the D.C. Code.

16. Let us continue with our examination of the argument for the legality of the Firearms Act. It is specifically argued that authority for enacting the Act may be found in Section 302 of the Self-Government and Governmental Reorganization Act. However, we have already seen that Section 302 places an express Constitutional limitation on the authority of the City Council. It is further argued that authority flows from the D.C. Code, Title I, Chapters 224, 226, and 227. However, if one examines those Chapters of the Code, one will find that Chapter 224 deals with penalties for violations of building regulations, for violations of leashing regulations for large dogs, and for police regulations dealing with such things as pawnbrokers, junk dealers, the storage of flammable substances, street vendors, fees for hackney carriages, herds of animals in the streets of the District, littering, fireworks and explosives, and loud noises such as horns and cries.

17. Chapter 226 grants the Council authority 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." The question arises then, whether the Firearms Act is such that it is, in fact, "necessary for the protection of lives, limbs, health, comfort and quiet of all persons . . ." in the District of Columbia. That question will be treated below, under the third heading.

18. Chapter 227, the last of the Chapters cited in the argument for the legality of the Firearms Act, is the only Chapter cited which specifically authorizes the Council to make "all such usual and reasonable police regulations . . . as the Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind in the District of Columbia." It is upon this Chapter in the D.C. Code that the argument for the legality of the Firearms Act primarily rests. However, no authority is given in this Chapter or in any other Chapter cited by the Committee for imposing penalties for violations of these firearms regulations. The penalty-imposing power cited by the Report of the Committee on the Judiciary and Criminal Law is found in Title I, Chapter 224(a). However, if one looks at that Chapter, one will find that it grants authority "to prescribe reasonable penalties of fine not to exceed $300 or imprisonments not to exceed ten days [the Firearms Act contemplates imprisonments up to 90 days], in lieu of or in addition to any fine, for the violation of any building regulation . . ., any regulation promulgated under authority of section 1–228, and any regulation promulgated under authority of section 1–22, and any regulation promulgated under authority of section 1–226." There is no penalty-making power granted in 1–224(a) for violations of Section 1–227, the section dealing specifically with firearms regulations.

19. The argument for legality, if valid, would result in anomalous and absurd conclusion. The anomaly lies in the fact that if this Chapter authorizing the Council to enact police regulations can be used to justify the Firearms Act, then a regulation made pursuant to one Chapter of the D.C. Code can overturn, not another regulation, which would be entirely proper, but a Chapter of the Code. To use the analogy of Constitutional law and statutory law, it would be comparable to repealing or superseding part of the Constitution by passing a new statute. It is a well-established legal principle that laws can only be changed or superseded by laws of a similar nature. Regulations cannot supersede statutes, and statutes cannot supersede constitutions. The argument that police regulations made pursuant to Title 1, Chapter 227 of the Code can change other provisions of the Code is absurd. The City Council is not competent to make any law "with respect to" Title 22 of the Code, and it is doubly prevented from changing Title 22 by means of imposing new police regulations. As the Court in *Maryland and D.C. Rifle and Pistol Association, Inc.* v. *Washington et al.* declared, "To be sure, a municipal regulation cannot permit an act which the statute forbids, or forbids an act which the statute permits." (442 F.2d 123, 130) [February 24, 1971]).

20. Those who argue for the legality of the Firearms Act point out that "In *Maryland and District of Columbia Rifle and Pistol Association, Inc.* v. *Washington*, 142 U.S. App. D.C. 375, 442 F.2d 123 (1971), the U.S. Court of Appeals upheld the authority of the former D.C. Council to promulgate the current gun control regulations." The plaintiffs argued in that case that in passage of those gun control regulations, the former Council was treading on ground that the Congress had reserved to itself. They lost the case. What relevance this Court decision has to the question at hand is not clear, for it was in reference to the former Council, not the present Council. The powers of the present Council have been explicitly circumscribed by Section 602(a)(9) which expressly prohibits tampering in any way with any provision of Title 22 of the D.C. Code. It would be perverse if a Court were to hold at this time, subsequent to passage of the Self-Government and Governmental Reorganization Act, that the Council could act in conflict with the express intention of Congress to reserve to itself control over the criminal laws of the District of Columbia. The citation of this obsolete Court decision is, then, irrelevant. About the only statement that the Court made in that decision that is worth considering is that "the exercise of authority (by the City Council) ought not to be questioned unless clearly inconsistent with the expressed will of Congress." Since the Firearms Act is clearly inconsistent with the expressed will of Congress to retain exclusive authority over criminal laws, then the authority of the City Council to pass that act is void.

III. THE FIREARMS CONTROL REGULATIONS ACT OF 1975 IS NOT NECESSARY TO PROTECT THE LIVES, HEALTH AND SAFETY OF THE PEOPLE OF THE DISTRICT OF COLUMBIA

1. Sixty years ago the liberals, who by today's standards might be considered conservative, were leading a campaign to outlaw the manufacture, sale, and transportation of goods that they believed were responsible for an untold number of deaths, broken homes, and a great deal of human misery in general. In 1919 they succeeded, and added the 18th amendment to the Constitution, prohibiting the manufacture, sale, transportation, importation, and exportation of intoxicating liquors. The Prohibition lasted 15 years, until its repeal in 1933. During the 15-year period Prohibition was in effect, organized crime emerged in America as a force to be reckoned with. But the only reason organized crime became so powerful is that the federal government created the conditions in which it could flourish.

2. Gun control laws are the Prohibition laws of the latter half of the 20th century. They are aimed at controlling guns, not beverages, but the mythology that surrounded the liquor control laws applies. In both cases, some inanimate objects (firearms or beverages) are regarded as the cause (not the instrument) of many evils. Responsibility is shifted from persons to objects, and laws are directed away from persons abusing or misusing firearms or beverages and toward the firearms or beverages themselves. In so prohibiting or curtailing traffic or commerce in goods that are desired by great numbers of people, the government creates a situation in which the people who want guns or beverages must buy in black markets, that is, markets that have been outlawed. Because these markets and transactions are illegal, the people most likely to flourish in them are not the law-abiding citizens, but persons who have no compunction about operating outside the law. When guns are outlawed, only outlaws will sell guns. If the D.C. Police Department thinks it has a difficult time now coping with the gray market in guns that already exists, they will have a much more difficult time if this law goes into effect. Instead of meliorating the crime problem, the Firearms Control Act would greatly aggravate it. Organized crime would flourish in the District, just as it did throughout the nation during the era of Prohibition. The only people who will abide by this law are those who are law-abiding anyway, those whom it is allegedly designed to protect. It will not and cannot protect them, since it will result in their disarmament. It certainly will not result in the disarming of the criminal element.

3. A new study by the Bureau of Alcohol, Tobacco, and Firearms clearly indicates that the Firearms Control Act will not be able to achieve its stated purpose of "protect[ing] the citizens of the District from the loss of property, death, and injury by controlling the availability of firearms in the community." What will be controlled, of course, are legally registered firearms, but they are only a small fraction of the gun population of the city anyway. The A.T.F. study indicates that over 80% of the traceable hand guns seized in the District from mid-February through July originated outside the District of Columbia. The conclusion of the study is that tough local gun controls do not cut off the supply

of handguns but simply increase the number of unregistered guns imported from other areas.

4. What the Firearms Control Act will do, then, follows a pattern set by all legislation that interferes with the functioning of the market. By creating the black market conditions in which crime can flourish, the Act will actually exacerbate the crime problem, not allegiate it. Then, in order to "correct" the new, enlarged crime problem, the District and/or Congress will be pressured into still more restrictive measures, including, perhaps, national legislation outlawing commerce in or possession of firearms. After all, in 1821 the U.S. Supreme Court declared that the Congress may enact nationwide legislation to the extent necessary to make local District laws effective. (*Cohens* v. *Virginia* 19 U.S. 264). I do not wish to imply, of course, that nationwide gun control would be any more effective than local gun control, because it would not. Effectiveness is the excuse that would be used to justify a nationwide law. Whether the law is local or national in scope it would be equally ineffective. One reason being, of course, that criminals are not legally required to register their guns. (*Haynes* v. *U.S.* 390 U.S. 85.) And the other being that the laws of economics do not stop at the boundaries of the District of Columbia.

5. Another indication of the ineffectiveness of gun control laws, including laws such as the Firearms Control Act, which contains mandatory sentencing provisions, is the study recently conducted by the Center for Criminal Justice at Harvard Law School. On the question of whether or not a mandatory prison sentence for violations—which is more severe than the mandatory sentence in the Firearms Control Act—reduced the availability of firearms, the study concluded: "There is no clear evidence that the general circulation of firearms in Massachusetts has declined."

On the more important question of whether the crime rate was reduced by the stiff Massachusetts law, the Harvard study has this to say: Crime data for early 1976 have reinforced this analysis; there has been a visible break in the growth of robbery in Boston. While that reduction has extended to firearm robbery, the drop in firearm robbery has not been any more extensive than drops in other forms of robbery. Thus, the proportional role of firearms in robbery has shown greater stability, but no clear reduction.

The Harvard study goes on to say: Within that broad framework, however, we must recognize a brief shift in weapon choice during the period around the time Bartley-Fox [the Massachusetts law] was taking effect. The use of the firearms in robbery declined during the first six months of 1975. This did not produce any drop in total (or armed) robberies during that period—other weapons took up the slack and the proportional contribution of weapons to robbery actually increased slightly during the same period.

The study concludes, however, that this shift has "dissipated" and that "no effect on the level of firearm use in robbery has occurred . . ."

6. If one wonders about the effect of the Massachusetts law on assaults, the Harvard study points out: ". . . the proportion of assaults which involved firearms dropped significantly in 1975, beginning in March . . . A further reduction in this proportional figure has occurred in early 1976. Firearm assaults showed a small increase over 1975; non-firearm assaults, however, increased explosively over the same period." As for homicide, "no clear drop in firearm assault deaths has been demonstrated to date."

7. The Harvard study also points out that Franklin Zimring, who has contributed so much to the mythology surrounding gun control laws by arguing that guns cause crime, has changed his position to one emphasizing that it is not the guns but the criminals who cause crime.

8. This revision of preconceived ideas is not limited to people in this country. In 1970, Cambridge University in England conducted a study of the 1920 British gun control laws banning private ownership of handguns and concluded that the law has had no effect on the level of violence in England. The authors of the Cambridge study point out that New York City has more restrictive gun laws than does England, but suffers from a far higher crime rate than England. Switzerland on the other hand, has the world's highest rate of per capita gun possession, but a minimal rate of violence.

9. A third study that ought to be mentioned here is one conducted last year at the University of Wisconsin. The authors of the Wisconsin study scrutinized the gun laws of every State of the Union and compared them to all relevant demographic, economic and other statistical data. They concluded that—and I quote—"gun control laws have no individual or collective effect in reducing the rates of violent crime."

The Wisconsin study goes on to refute the argument, which I mentioned above, that local gun laws are ineffective only because adjacent jurisdictions have lax gun laws. The authors point out that for about fifty-five years, New York State and Canada have had somewhat restrictive laws on handguns. Canada and New York border American States having lax gun laws, yet the homicide rate in Canada is less than half New York State's and less than one-quarter New York City's. There is a difference between the Canadian and New York State laws, however. In Canada, it is comparatively easy for a law-abiding citizen to get a permit to keep a handgun in his home or business.

10. One wonders how much argument and evidence is needed before the gun prohibitionists begin to realize that gun control cannot reduce the crime rate, but, in fact, may increase it. My own opinion is that some gun prohibitionists will never be convinced simply because they have developed a monomaniacal vendetta against firearms. I certainly hope that such is not the case in the present example of a gun control law. I would remind everyone, however, that one of the predecessor bills to the Firearms Contol Act of 1975 would have banned toy guns, too. In view of the fact that less than one-half of one percent of all the guns seized by the D.C. police last year in connection with crimes were legally registered, it seems both futile and absurd to impose further registration requirements. Over 99.5% of all the guns seized were not registered; I fail to see how creating stiffer registration procedures is going to lower that percentage any. I also cannot understand how making registration more difficult than it already is will reduce crime, since the criminals obviously do not register their guns. The only sensible reason that one could favor gun control laws—and I hope this is not the reason the D.C. Council favors the Firearms Control Regulations Act—would be to disarm the innocent population so that the criminals and the government could prey on them at will. An article presenting this argument appeared in the June/July issue of The Civil Liberties Review. I have included it as an appendix to my testimony.

CONCLUSIONS

I have argued for the uncontsitutionality, the illegality and the futility of the Firearms Control Regulations Act of 1975. I believe that if any one of these arguments is valid, this Committee and this Congress ought to disapprove the Firearms Act and prevent its provisions from becoming effective. Not only is the integrity of the Constitution and the Home Rule Charter called into question by this Act, but the safety of the residents of the District of Columbia will be further endangered if it becomes law. I strongly urge you to act quickly to protect the lives, property and safety of the people of the District of Columbia by disapproving this bill.

Thank you.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., August 18, 1976.

FIREARMS CONTROL REGULATIONS ACT OF 1975: IS THE ACT A VALID EXERCISE OF THE AUTHORITY GRANTED BY SECTIONS 1-224, 1-226, 1-227 (REGULATION OF FIREARMS, EXPLOSIVES AND WEAPONS) OF THE D.C. CODE, OR IS IT A VIOLATION OF SECTION 602(a)(9) OF THE DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENT REORGANIZATION ACT (87 STAT. 894-95(1973))

INTRODUCTION

The Firearms Control Regulations Act of 1975. D.C. Act No. 1-142, approved July 23, 1976 raises questions as to whether the Act is the valid exercise of authority granted by D.C. Code Sec 1-227, 1-226, 1-224 or a violation of the limitation imposed on the legislative authority of the D.C. City Council by section 602(a)(9) of the District of Columbia Self-Government and Government Reorganization Act, 87 Stat 894-95(1973), D.C. Code Sec. 1-147(a)(9) (Supp. II). The conclusion of this report is that the Act is not valid.

Section 602(a)(9) provides:

The Council shall have no authority . . . to—

* * * * * * *

(9) enact any act, resolution, or rule with respect to any provision of title 23 (relating to criminal procedure), or with respect to any provision of any law

codified in title 22 or 24 (relating to crimes and treatment of prisoners) during the twenty-four full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office.

Sections 1–227, 1–226 and 1–224 of the D.C. Code state:

Section 1–227 Regulations relative to firearms, explosives, and weapons.

The District of Columbia Council is hereby authorized and empowered to make, and the Commissioner of the District of Columbia is hereby authorized and empowered to enforce, all such usual and reasonable police regulations, in addition to those already made under sections 1–224, 1–225, and 1–226 as the Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind in the District of Columbia.

Section 1–226 Regulations for protection of life, health, and property.

The District of Columbia Council is hereby authorized and empowered to make, and the Commissioner of the District of Columbia is hereby authorized and empowered to enforce, all such reasonable and usual police regulations in addition to those already made under sections 1–224, 1–225, 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.

Section 1–224 Police regulations authorized in certain cases.

The District of Columbia Council is hereby authorized and empowered to make and modify, and the Commissioner of the District of Columbia is hereby authorized and empowered to enforce, usual and reasonable police regulations in and for said District as follows:

First. For causing full inspection to be made, at any reasonable times, of the places where the business of pawnbroking, junk-dealing, or second-hand clothing business may be carried on.

Second. To regulate the storage of highly inflammable substances in the thickly populated portions of the District.

Third. To locate the places where licensed vendors on streets and public places shall stand, and change them as often as the public interests require, and to make all necessary regulations governing business.

* * * * * * *

Ninth. To regulate or prohibit loud noises with horns, gongs, or other instruments, or loud cries, upon the streets or public places, and to prohibit the use of any fireworks or explosives within such portions of the District as it may think necessary to public safety.

* * * * * * *

Eleventh. To prescribe reasonable penalties for the violation of any of the regulations in this section mentioned; and said penalties may be enforced in any court of the District of Columbia having jurisdiction over minor offenses, and in the same manner that such minor offenses are now by law prosecuted and punished.

BACKGROUND

Congress enacted legislation governing the carrying and selling of firearms in the District in 1892. 27 Stat. 116. Several years later it passed legislation governing the "killing of wild birds and wild animals in the District of Columbia," 34 Stat. 808(1906) which included language similar to that currently contained in D.C. Code Sec. 1–227.

When the basic provisions of title 22, chapter 32 of the D.C. Code replaced the 1892 legislation, the District's regulatory authority under the 1906 Act was left unchanged, 47 Stat. 650(1932), as amended, D.C. Code secs. 22–3201 to 22–3217.

In 1968, the District promulgated police regulations covering the possession, registration and sale of firearms and destructive devices, D.C. Police Regis. arts. 50–55. The Maryland and District of Columbia Rifle and Pistol Association challenged the validity of the '68 regulations on the ground that in enacting D.C. Code secs. 22–3201 to 22–3217 Congress had preempted the field and withdrawn the delegation of legislative authority granted by D.C. Code sec. 1–227. They contended, alternatively, that the regulations exceeded the authority granted by the 1906 legislation which they argued should be read narrowly to permit only regulations associated with hunting of wild birds and animals.

The United States Court of Appeals rejected both of these arguments, *Maryland and District of Columbia Rifle and Pistol Association, Inc.* v. *Washington*, 442 F. 2d. 123 (D.C. Cir. 1971). It noted that broad language contained in section 1–227 does not suggest the narrow interpretation offered and that by subsequently repealing all of the 1906 statute except the firearm regulation provision Congress intended section 1–227 to be interpreted as broadly as its language. The Court also observed with respect to the preemption issue:

The important consideration, we think, is not whether the legislature and municipality have both entered the same field, but whether in doing so they have clashed. Statutory and local regulation may coexist in identical areas although the latter, not inconsistently with the former, exacts additional requirements, or imposes additional penalties. The test of concurrent authority, this court indicated many years ago, is the absence of conflict with the legislative will . . . .

We find, too, from the fact that section 1–224 was not repealed, either in 1932 when the gun control law was passed or in 1958 when the 1906 wildlife legislation was repealed, a satisfying assurance that Congress, having dealt with some aspects of weapons control, left others for regulation by the District. Indeed, as we have pointed out, we cannot fathom any other purpose to be achieved by leaving section 1–227 in force. We are aware of a brief observation in the legislative history of the 1932 act that it would effect a "comprehensive program of [gun] control," but we cannot accept that as an expression of intent to preempt the entire field. Examination discloses that the 1932 act is not comprehensive with respect to rifles and shotguns, and the regulations under review demonstrate a clear design to leave the areas preempted by the statute unaffected. Id. at 130–32.

When Congress delegated broad general legislative authority to the City Council in the District of Columbia Self-Government and Government Reorganization Act, it restricted its grant by providing that:

The Council shall have no authority . . . to—

* * * * * * *

(9) enact any act, resolution, or rule with respect to any provision of title 23 (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 (relating to crimes and treatment of prisoners) during the twenty-four full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office. 87 Stat. 894–95(1973, D.C. Code Sec. 1–147(a)(9).

This subsection was added to the bill by House sponsors during debate, 119 Cong. Rec. 33353(1973). Under its provisions, one of the sponsors noted, "the City Council is prohibited from making any changes in the criminal law applicable to the District. The conference committee, "agreed to transfer authority to the Council to make changes in Titles 22, 23 and 24 of the District of Columbia Code, effective January 2, 1977. . . . It is the intention of the Conferees that their respective legislative committees will seek to revise the District of Columbia Criminal Code prior to the effective date of the transfer of authority referred to." H.R. Rep. No. 93–702, 93d Cong., 1st Sess. 75(1973). We have been unable to locate any further express indication of legislative intent as to the meaning of section 602(a)(9). Other than the language of section 404(a) there is no express indication as to whether the limitation applies to D.C. Code Sec. 1–227:

Subject to the limitations specified in title VI of this Act [which includes sec. 602(a)(9)], the legislative power granted to the District by this Act is vested in and shall be exercised by the Council in accordance with this Act. In addition, except as otherwise provided in this Act all functions granted to or imposed upon, or vested in or transferred to the District of Columbia Council, as established by Reorganization Plan Number 3 of 1967, shall be carried out by the Council in accordance with the provisions of the Act. 87 Stat. 787(1973).

ARGUMENTS THAT THE ACT IS BEYOND THE AUTHORITY OF THE COUNCIL

Congress reserved to itself legislative jurisdiction over criminal law and procedure in the District of Columbia until January 2, 1977 by enactment of section 602(a)(9). This fact is established by the legislative history cited above and the statements contained in this year's House committee report on the bill to extend that date, H.R. Rep. No. 94–1418, 94th Cong., 2d Sess. (1976). Any act which prohibits under criminal penalty the control, transfer, offer for sale, sale, gift or deliver of destructive devices such as explosives, poison gas bombs, tear gas, and tasers; the manufacture of firearms within the District of Columbia; and the possession of pistols acquired after the effective of the Act involves the exercise of criminal legislative jurisdiction.

By enacting section 602(a)(9) Congress imposed a moratorium over the Council's legislative authority over matters covered by titles 22, 23 and 24 so that the Congress could revise the District's criminal law and procedure including especially those matters currently contained within the three titles. The District of Columbia weapons control statutes are currently all found within title 22 including provisions for licensing weapons dealers, licensing those who carry pistols and prohibiting possession of certain firearms and weapons. This is the law which Congress intended to freeze by enacting section 602(a)(9). Enactment of the Firearms Control Act alters the law with respect to those areas which Congress intended to examine in revising the D.C. criminal law and is therefore within the limitation of that section and beyond the legislative authority of the D.C. City Council until January 2, 1977.

The Firearms Control Regulations Act is an act with respect to title 22 because it is an act containing "general and permanent laws relating to the District of Columbia" which will have to be placed in the D.C. Code, 1 U.S.C. Sec. 203, and the most, in fact only, logical repository for those provisions is chapter 32 of title 22.

The Firearms Control Regulations Act is an act with respect to title 22 because it deals with many of the same subject matters contained in chapter 32 of title 22: circumstances under which a pistol may be lawfully possessed, compare D.C. Code sec. 22-3202 with D.C. Act No. 1-142, sec. 201, 202(d), 202(e), 706; licensing of those who deal in weapons, compare D.C. Code secs. 22-3209, 22-3210 with D.C. Act No. 1-142 secs. 401-409; regulation of the transfer of firearms compare D.C. Code secs. 22-3208 with D.C. Act No. 1-142 secs. 501, 502

The Firearms Control Regulations Act is an act with respect to title 22 because it replaces and repeals D.C. Police Regulations Arts. 50-51 which deals with the same subject matter as chapter 32 of title 22, *Maryland and District of Columbia Rifle and Pistol Association, Inc.* v. *Washington*, 442 F. 2d 123 (D.C. Cir. 1971).

The Firearms Control Regulations Act is an act with respect to title 22 because the City Council intended it to supplement chapter 32 of title 22 as is evidenced by a comparison of the findings and purpose of the Act with the title of the 1932 Act which became chapter 32 of title 22; compare, "An Act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia. . ." 47 Stat. 650(1932) with D.C. Act No. 1-142, sec. 2.

The Firearms Control Regulations Act is an act with respect to title 22 because even if the Council could have passed regulations containing the same provisions as an exercise of municipal legislative authority under D.C. Code secs. 1-224, 1-226, 1-227 it chose to enact a statute under legislative authority first delegated in the District of Columbia Self Government and Government Reorganization Act, 87 Stat. 774 (1973), D.C. Code sec. 1-124 (Supp. II).

The Firearms Control Regulations Act is an act with respect to title 22 because no argument to the contrary is tenable. As noted earlier, even if the Act could have been promulgated as police regulations under the authority of D.C. Code secs. 1-224, 1-226 and/or 1-227, the Council did not elect that approach. However, it seems more reasonable to conclude that section 602(a)(9) limits the authority granted by D.C. Code secs. 1-224, 1-226, 1-227. The legislative history indicates that section was intended to freeze D.C. criminal law until Congress could work a general revision. Congress could not have therefore intended to prohibit amendments to titles 22, 23 and 24 covering things like firearms control, rape, assault etc. but permitting the identical provisions to be validly enacted under the authority of D.C. Code secs. 1-224, 1-226, 1-227. Moreover, in spite of the fact that the language used in the Act, "An Act to protect the citizens of the District from loss of property, death, and injury . . . in order to promote the health, safety and welfare of the people of the District of Columbia. . . ." suggests that the authority of D.C. Code sec. 1-226, ". . . police regulations . . . for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia" was used, the Council's selection of penalties in excess of those permitted for regulations enacted under D.C. Code secs. 1-226, 1-224 negates any argument that the Act was passed pursuant to authority vested by those sections. (D.C. Code Sec. 1-224a provides that the maximum penalties established for violation of D.C. Code secs. 1-224, 1-226 may exceed imprisonment for 10 days; second and subsequent offenders of D.C. Act No. 1-142 are punishable by imprisonment for not more than 90 days, D.C. Act No. 1-142, sec. 706).

The Act cannot be classified as primarily regulatory with only those criminal provisions which would be necessary to enforce any regulatory scheme because in its regulatory aspects the Act by and large simply reproduces the Police Regulations found in Articles 50-55 onto which new criminal prohibitions have been grafted, *e.g.*, prohibitions against various and sundry destructive devices, against possession of pistols by D.C. residents acquired after the effective date of the Act, and against manufacturing firearms within the District. Finally, the validity of the Act cannot be supported by reference to *Maryland and District of Columbia Rifle and Pistol Association, Inc.* v. *Washington*, 442 F. 2d. 123 (D.C. Cir. 1971). That case arose prior to the Home Rule Act and dealt with the issue of whether in the absence of an express limitation Congress had preempted the District's municipal legislative authority. The Firearms Control Regulations Act's validity turns on the applicability of section 602(a)(9), an express reservation of the legislative authority the District would otherwise have been delegated.

ARGUMENTS THAT THE ACT IS WITHIN THE COUNCIL'S AUTHORITY

The limitation of section 602(a)(9) is a restriction on the legislative authority, most comparable to that exercised by a state legislature, which the Home Rule Act vested in the City Council. It does not restrict the Council's authority to enact municipal ordinances. If it did, Congress could have and would have made that clear either in the Act or its legislative history.

The Firearms Control Regulation Act is regulatory in nature not criminal. Most regulatory schemes provide minor criminal penalties for violation. Two of the principal differences between regulatory and criminal provisions are the extent of noncriminal matter included and the severity of the penalties imposed. The basic thrust of the Firearms Act is administrative, regulatory. Maximum penalties of 10 days and $300 are the kind of sanctions that support the administrative dealings of municipality with its businessmen and citizens; they are not the kind of penalties one establishes as a crime control measure.

Section 602(a)(9) restricts amendments to title 22, 23 and 24. The Firearms Act does not amend any of those sections.

Finally, if Congress fails to disallow the Act, it would serve as a further indication that section 602(a)(9) was not intended to restrict D.C. Code Sec. 1-227 or even gun control regulation under its general legislative powers.

CONCLUSION

An examination of the arguments suggests that the Firearms Control Regulations Act exceeds the legislative authority delegated to the City Council. Congress in enacting section 602(a)(9) intended to freeze those areas of criminal law and procedure contained in titles 22, 23 and 24. The fact that gun control legislation for the District of Columbia was then contained in title 22 makes it inconceivable that Congress did not intend to preserve the status quo in the area of weapons control.

Of course, Congress could enact the provisions of the Firearms Control Regulations Act, or in the absence of federal legislation the City Council could enact them after January 2, 1977.

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[From The Civil Liberties Review]

WHY A CIVIL LIBERTARIAN OPPOSES GUN CONTROL.

(By Don B. Kates, Jr.*)

I am frequently asked: how can a civil libertarian oppose gun control? My reply is: how can a civil libertarian trust the military and the police with a monopoly on arms and with the power to determine which civilians may have them? I consider self-defense a human right—and one that is particularly vital for women who choose to live without "male protectors" in an increasingly violent society. I also fear that enforcement of even a partial prohibition on hand-

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guns would take an immense toll in human liberty and bring about a sharp increase in repugnant police practices as well as hundreds of thousands of jail sentences.

If as both British and American studies assure us, gun prohibition has no ascertainable effect upon violence, then it seems that its rationale is revulsion against the handgun as a symbol and antagonism toward the conservative but generally lawabiding people who value that symbol. Such a rationale, however, is no more acceptable than the conservative's argument against homosexuality: "I don't do it and I don't like people who do—so it ought to be illegal."

Advocacy of controversial political or social views frequently provokes violent antagonisms. Although they are usually unwilling or politically unable to overtly suppress these views, officials can covertly withdraw police protection, leaving the job to such groups as the Ku Klux Klan, the White Citizens Council, the Storm Troopers, the Cherry Society, and the Black Hand.

What might have happened to civil rights workers if there had been strict gun control in the South is exemplified in the 1969 machine-gunning of several hundred marchers by right-wing extremists in Mexico City. Both the possession of automatic weapons and the act of murder are as strictly forbidden by law in Mexico as they are in the U.S. Nevertheless, the police made no arrests—either on the scene or when the attackers later invaded hospitals to finish off the wounded.

Even assuming that gun prohibition would be enforced against right-wing extremists also, the effect is to render dissenters defenseless without meaningfully preventing lethal attacks upon them. A group of Klansmen or other neo-fascists will hesitate to attack someone they know to be armed or to fire-bomb his house, because they don't want their n nbers to risk injury or death. Even though they may be unarmed, they will not hesitate to attack if they know that their intended victim is also unarmed and that the police will not defend him. No one had guns in the hostile mob which burned the headquarters of the Marxist W. E. B. DuBois Club in 1966 while New York City police looked on. But the DuBois Club member who had to pull a pistol on the mob in order to get out of the burning clubhouse was immediately arrested for gun possession. Needless to say, no members of the mob were arrested.

During the civil rights turmoil in the South, Klan violence was bad enough; it might have been worse with gun control. It was only because black neighborhoods were full of people who had guns and could fight back that the Klan didn't shoot up civil rights meetings or terrorize blacks by shooting at random from cars.

Moreover, civil rights workers' access to firearms for self-defense often caused southern police to preserve the peace as they would not have done if only the Ku Kluxers had been armed. I remember how Klansmen broke up a series of marchers in a Louisiana town with hideous violence and head-bashing while the police looked on in benevolent neutrality. The unarmed marchers' appeals to the governor for state police protection were in vain. After many weeks of heavy injuries to the marchers a black man shot one of several Klansmen who attacked him with clubs. The state police arrived the next day, and there was no further violence.

Contrast an incident that occurred in Madrid on November 6, 1975. A meeting of opposition reform parties was broken up and its participants severely beaten by right-wing gunmen. The victims could offer no resistance, since Spanish law strictly forbids civilian possession of handguns (except by right-wing thugs with permits). Falangist policy follows the gun laws of Nazi Germany and fascist Italy, under which Jews and political opponents were disarmed and left helpless against mob violence in the early 1930s. As Hermann Göring said in 1933, "Certainly I shall use the police—and most ruthlessly—whenever the German people are hurt; but I refuse the notion that the police are protective troops for Jewish stores. The police protect whoever comes into Germany legitimately, but not Jewish usurers."

Not only political and racial minorities but also women would be handicapped by gun restrictions. Throughout history women's status has been fixed, and their self-determination curtailed, by male authority figures to whom they had to look for protection. Today, as women increasingly choose lifestyles independent of male protection, their ability to protect themselves in a violent society becomes more important. Obviously, in most situations it is futile and perhaps dangerous for a woman to resist a male attacker. Armed defence is even more dangerous, since a rapist will invariably get a gun away from a woman and use it on her—or so most movie and television scripts tell us. It seems that a woman who doesn't have a male to protect her had better just "lie back and enjoy it" and hope her attacker doesn't intend to murder or mutilate her afterward.

Men—even police chiefs—who voice such opinions, however, are usually surprisingly short on specific examples. I have researched the subject in detail and have found no case in which a rapist was able to disarm his victim. Those who are familiar with the martial arts know how extraordinary dangerous it is to attempt to disarm anyone—even an untrained person. Police training emphasizes that this maneuver should be avoided, unless the alternative is immediate death.

If women defend themselves with firearms less frequently than they could, it is only because they have been brainwashed by the steady stream of propaganda generated by males. The Eisenhower Commission Firearms Task Force Report, for example, contemptuously dismisses women in a single sentence: They are "less knowledgeable than men about guns and generally are less capable of self-defense." (To make certain they stay that way, the commission recommends banning handguns.) Having trained women to handle guns and having studied police training for women, I know that they are at least as capable of combat shooting as are men. In a mechanical age which has largely rendered irrelevant male-female differences in strength, the concept that women are incapable of using firearms is an anachronism. I have investigated over 150 cases in which women rejected this notion. It is noteworthy that in 80% of the cases studied, women chose to defend themselves with handguns. Such weapons are infinitely preferable to long guns because they are more portable and maneuverable and far less lethal. Here are some abbreviated example:

California, 1969: A Los Angeles woman shot and seriously wounded an attempted rapist who broke into her house. Police later charged him with two other rapes.

California, 1970; An armed Modesto woman storekeeper who had wounded armed robbers on two other occasions captured a third.

Maryland, 1970: Knocked to the street by punches in the face and stomach by a mugger who told her, "You know what I want," a Baltimore woman drew her pistol and gave him a bullet in the neck instead.

Maryland, 1971: A Baltimore woman shot to death a man who had raped her and threatened to kill her children if she called the police.

Tennessee, 1972: When a Chattanooga woman drew a pistol, the man who was preparing to rape her left in too great a hurry to collect the clothes he had just taken off. He was later traced and apprehended through identification found in his abandoned clothing.

Florida, 1973: Although she was seriously wounded by a burglar who stabbed her several times, a Barstow woman shot him to death.

Kansas, 1974: Commenting, "I don't think you want to do that," a Wichita storeowner's wife drew a pistol on two armed robbers. They departed in haste.

West Virginia, 1975: A retired schoolteacher awakened to find an armed burglar in her bedroom. Knocking his gun away, she seized her own pistol and shot him to death.

Gun prohibitionists deny the value of civilian possession of firearms in combatting crime. They cite the Eisenhower Commission's conclusion that "the gun is rarely an effective means of protecting the home against either the burglar or the robber: the former avoids confrontation, the latter confronts too swiftly." But the report, unlike many people who cite it, makes clear that this conclusion applies only to householders, and specifically to those householders who do not have firearms immediately at hand because a criminal attack is completely unexpected. Robbers do not "confront too swiftly" for armed storekeepers, who, the report admits, foil appreciable numbers of them each year. And, although it offers no figures on the success rate of citizens who carry arms for self-defense, the report admits that this practice (which it deplores) does allow for some resistance to street crime.

Like much gun control propaganda, the report does not discuss the utility of guns in defending householders against political or other criminal attacks which they have reason to expect. But among over one hundred people murdered by Ku Kluxers in the 1950–65 era, I can recall only one who was armed. While his gun did not prevent that civil rights worker's death, it lay down covering fire which allowed his wife and children to escape the Klansmen who surrounded their their burning house. The shots also disabled a Klan car through which the FBI was able to trace, catch, and convict the murderers.

The Eisenhower Commission report admits that there are no comprehensive statistics on the number of lives saved by armed citizens. Its negative conclusion on the ability of armed householders to defend themselves is based on a limited study, conducted in only two cities and over two short periods of time, of the

number of criminals *killed* by armed householders. My own study, which is national in scope and covers hundreds of incidents, shows that householders and others against whom crimes are attempted injure far more criminals than they kill, and capture without shooting far more criminals than they wound. Moreover, at least half of the incidents I studied were not cases of self-defense but a householders coming to the aid of their neighbors—an issue which the Eisenhower Commission report ignores.

The hundreds of incidents reported by the national gun magazines, culled by readers from their local newspapers, represent only the tip of an immense iceberg. The local newspapers do not publish every case of civilian self-defense reported to police, and certainly the gun magazines' readers do not check every newspaper or clip every item they see. Far more importantly, the vast majority of such instances are never reported to the police—because the near victim cannot provide an adequate description of the criminal and/or because the citizen possessed or carried his gun illegally.

One rough indication of the frequency of such incidents is the fact that hundreds of thousands of felony arrests are made each year by off-duty police. A trained officer doubtlessly is more capable of pursuing and arresting a robber or a rapist than is an ordinary person who is armed. But an off-duty officer is no more likely to encounter such a situation. Perhaps a better indicator is the apparent success of civilian firearms defense training. In 1968, after Orlando, Florida conducted a highly publicized shooting course for over 6,000 women, it became the only city with a population over 100,000 which showed a decrease in crime. Rape, aggravated assault, and burglary were reduced by 90%, 25%, and 24% respectively. After a similiarly publicized program for retail merchants in Highland Park, Michigan, armed robberies dropped from a total of 80 in a four-month period to zero in the succeeding four months. In Detroit, after grocers received firearms training and shot seven robbers, the number of armed robberies dropped by almost 90%.

The Eisenhower Commission's view that crime will cease when its victims are deprived of the means of self-defense reflects the commission's privileged white intellectual membership and their elitist disregard for those who cannot afford to move to "safe" neighborhoods or the high-security apartment buildings. This constitutes the easy pacifism of those who may never need a gun for self-defense because they can obtain armed security services or special police protection whenever they need it.

A very different view is taken by underprivileged and/or minority people who lack the wealth to flee the areas in which the police have given up on crime control. They know that the only real protection they have is that which they provide themselves. Studies and surveys have repeatedly established that blacks are the most frequent victims of crime, are most afraid of crime, and are most likely to keep and carry guns for self-defense regardless of the law. Indeed, the only in-depth study of the question concludes that even the high rate of firearms prosecution against blacks will not stop them from carrying guns for self-defense so long as ghetto areas continue to be plagued by violence.

Selectively misleading American statistics and misrepresentations of British experience have led many people in this country to believe that banning handguns would reduce violence. Guns make an easy scapegoat for problems which would otherwise be insoluble short of radically reshaping the mores and institutions which produce violent people. Demands for gun prohibition allow us to ignore our own unwillingness either to make the necessary fundamental changes or to accept and live with a violent society. Criminological studies both in the U.S. and in England overwhelmingly demonstrate that peaceful societies do not need handgun prohibition and violent societies will not benefit from it.

Handguns were banned in England in 1920. The only indepth study of that prohibition, conducted at Cambridge University in 1970, concluded that it has had no ascertainable effect on violence. The prohibition was obeyed only because England was so peaceful in the 1920s that firearms were not necessary for self-defense. The Cambridge study reports that Britain has remained peaceful despite the fact "that 50 years of very strict controls on pistols has left a vast pool of illegal weapons." The study notes that although New York City's firearms controls are more stringent than England's, New York has far more violence. On the other hand, Switzerland's firearms violence rate is negligible even though it has the world's highest rate of gun possession among civilians.

A 1975 study at the University of Wisconsin concluded that "gun control laws have no individual or collective effect in reducing the rate of violent crime." This

study involved a computerized comparison between each state's gun control laws and its crime data. It took into account demographic, economic, racial, and other variables relating to gun control effectiveness which could be quantified statistically.

Gun control propagandists have evaded the same conclusions of many previous studies by arguing that violence persists only because existing state prohibitions just have not been able to get rid of enough pistols. To test this theory, the Wisconsin study examined handgun ownership statistics and found no correlation between high civilian pistol ownership and violence.

Without the societal changes necessary to diminish violence, an effective handgun ban would drive people to the far more lethal long guns for self-defense or for criminal purposes. Those who wish to carry their weapons could, working for a few minutes with a hacksaw, reduce long guns to handgun size. Thus a handgun ban would make the shootings in ou violent society as deadly as they are in England without reducing their incidence.

However erroneously, millions of Americans feel that they have the constitutional right to own guns or that guns are necessary for their personal security. The sign frequently displayed in their homes and stores. "They'll get my gun when they pry it from my cold, dead fingers," undoubtedly exaggerates the degree of their resistance to gun prohibition. But experience with the far more enforceable prohibitions on liquor and marijuana indicates that millions of people would be alienated by what they deem a tyrannical law, and that those who believe they can get away with it will disobey the law. British police, unhampered by the Fourth Amendment, have nevertheless been unable to stem illegal arms traffic—even with the special search and other powers which successive gun prohibition bills have given them. The British army has been unable to enforce gun laws in Northern Ireland, even with mass street searches and random raids in homes.

In this country, even partial enforcement of a handgun prohibition would result in large numbers of snoopers and informers, "stop and frisk" laws, no knock" searches, and other repugnant police practices. The result of such invasions of privacy would probably be the jailing of hundreds of thousands of otherwise law-abiding citizens who would react to gun prohibition with the same self-righteous spirit against tyranny that greeted liquor and marijuana prohibitions. In a free society, those who would restrict the people bear the burden of proving probable benefit. The proof would not need to be great in order to ban that which few people value deeply. But mere speculation—against the weight of the evidence—cannot justify banning that which is valued as deeply as some 40 million Americans value their handguns.

Such a band is not desirable in itself. It would be virtually unenforceable, and would not be worth the enormous costs in civil liberties of even partial enforcement. As the Wisconsin study concludes: "If the law cannot control such highly visible criminal activity as drug traffic, gambling, and prostitution, with their continuing sales of commodities and services to the general public, then it seems unlikely that it could control the one-time sale of an item that can last for generations. The basic question is, then, are we willing to make sociological and economic investments of such a tremendous nature in a social experiment for which there is no empirical support?"

STATEMENT OF RUFUS W. PECKHAM, JR.

My name is Rufus W. Peckham, Jr. I am a third generation native Washingtonian and I have resided in the District of Columbia all of my adult life. I am an attorney by profession and I am one of those who derive much pleasure from the recreational and sporting use of firearms. I own a modest collection of contemporary firearms and I have been issued a federal fire arms license as a collector of curios and relics by the U.S. Treasury Department.

OPPOSES COUNCIL ACT

I appear here today to urge you most respectfully to disapprove the D.C. City Council's Act No. 1-142, cited as the Firearms Control Regulations Act of 1975.

In my humble opinion, and conceded even by some of the proponents, this act will do absolutely nothing to curb violence in our city much less remove firearms

from the hands of the criminal element. It will only harass and eventually disarm honest citizens and legitimate sportsmen.

However, what I believe should be of even more concern to you, the Congress, is the fact that the City Council has apparently acted in complete defiance of your statutory mandate! Section 602(a)(9) of the District of Columbia Self-Government and Governmental Reorganization Act enacted by the Congress specifically mandates *inter alia* that the City Council shall have no authority to "enact any act, resolution, or rule . . . with respect to any provision of any law codified in title 22 . . . of the District of Columbia Code . . ." for at least two years following the Council's first taking office. Title 22 Section 3208 of the District of Columbia Code (1973 Edition) provides a procedure which a resident must follow if he wishes to acquire a pistol. The City Council, however, in complete disregard of this Congressional direction has now flatly prohibited the ownership of pistols to everyone—including members of Congress—not already in lawful possession of them on the effective date of its Act. Gentlemen, was it really your intent to allow the local City Council to prohibit you and your soon-to-be-elected colleagues from keeping a pistol in your Washington homes if you so desired?

To summarize the legal arguments; I respectfully suggest that the City Council's action was flagrantly in excess of its jurisdictional authority as limited by Section 602(a)(9) of the aforesaid Self-Government Act.

Now let me outline some of the more highly objectionable features of the Council's Act.

OBJECTION TO COUNCIL ACT NO. 1–142

Section 201(a) would prohibit the possession of tear gas or similar irritants as they are destructive devices as defined under Section 101(7)(C). Many otherwise defenseless women and elderly people own these devices for their self protection and many have saved themselves from grave bodily harm and possibly death by their timely defensive use. Why should these devices be outlawed? They rarely, if ever, have lasting ill effects and far more dangerous substances are sold openly in hardware stores and super markets, e.g. concentrated lye and other highly toxic substances packaged in aerosol canisters and used to clean stoves, ovens and other household appliances.

Section 202 of the Council's Act would prohibit any further ownership of pistols and I have already referred to its questionable legality.

Section 203 and 204 provide for firearms registration procedures which are unnecessarily burdensome, complicated and involved. The District of Columbia already has a firearms registration procedure and it certainly seems to be accomplishing its intended purpose quite adequately. What need is there to change the present system?

Section 205 requires a fee to be imposed on all applications for firearms registration certificates. But no where is an amount specified except that it shall "reimburse the District for the cost of the services provided." This section opens the door to a veritable host of possible excesses. Is a whole new and costly bureaucracy to be established to supervise lawful firearms owners? If so the cost could well be staggering and it would all fall on the backs of legitimate firearms owners; $5 per certificate, $10, $50, $100 or even higher, who knows? The wording is certainly vague.

Also, it is by no means clear just when or how often firearms must be reregistered. Is an initial registration certificate valid until the firearm is transferred or otherwise disposed of or must all firearms be reregistered periodically? Some City Council sources are reputed to have stated that this act requires annual reregistration of all firearms. If this is to be the case then a truly crippling financial blow will be struck at collectors, hunters and other sportsmen such as skeet shooters and competition rifle or pistol shooters to whom multiple firearms ownership is quite commonplace. Not only is reregistration (absent a change in ownership) unnecessary and time consuming for the police department (which surely has more important things to do) it is blatantly and shockingly discriminatory against those of modest means.

Section 206 provides for the reregistration of firearms already registered. Can the City Council offer any possible reason for this duplication of effort and expense?

Section 301 pertains to estates containing firearms. But there is no provision for estates containing pistols. What happens to them? Are they to be forfeited or confiscated? Many District of Columbia collectors have valuable pistol collections. What happens to this property when they die? Are their estates and their legatees to be denied this valuable property by legislative whim and caprice?

What about the estate and inheritance taxes on this proeprty? Is the public treasury to be denied this lawful revenue? I have no answer and neither, apparently, did the City Council.

Title IV, *Section 401 et seq* of the Council's Act pertains to locally licensed dealers, which I am not, so I will refrain from comment upon it.

Section 502 controls sales and transfers. Subpart (a), however, prohibits any sale or transfer of pistols. Is a collector or other owner of a valuable pistol or pistols to be forever prohibited from realizing his profit on his sound investment? Also, this section prohibits any sale of firearms or ammunition between private parties despite their being lawfully entitled to acquire them. This means that a firearms owner wishing to sell or otherwise dispose of them can sell them only to a licensed dealer and at the dealer's price. This seems a grossly unfair restraint on a firearms owner's right to sell his property if he choses.

Section 701(b) prohibits the loan of firearms or ammunition regardless of the qualification and eligibility of the borrower. Thus a father could not loan his qualified son a hunting rifle to go on his first hunting trip. Nor could I loan my fellow skeet shooting neighbor a box of shotgun shells to take to the range if he should have the misfortune to be temporarily out of them. Surely such a harsh restriction serves no useful purpose.

Section 702 requires that firearms be kept disassembled or bound by trigger locks. In the first place, revolvers and lever action rifles should not be disassembled except by qualified gunsmiths. Trigger locks will not deter a thief nor are they even available for all makes of firearms. Note, however, that this requirement is inapplicable to firearms kept in one's place of business. Can it be that the City Council places more value on commerce than it does on the sanctity of one's home and family? Apparently so because this section clearly implies that it is permissable to use a firearm to protect and defend your commercial interests but not your home or your wife or your children! Surely merchants in their stores are not entitled to a higher degree of self-protection than families in their homes! This is unconscionable to say nothing of a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment to our Constitution!

In the interest of conserving your valuable time I have only referred to the more repressive, unjust, unnecessary and in my view illegal features of this poorly conceived and ill advised City Council action. Other witnesses will no doubt call other objectionable points to your attention.

In its statement of purpose the City Council stated that its intent was to protect the citizens of the District. I believe the true intent of this Act was more accurately stated in an editorial in the *Washington Post* of August 20, 1976, which stated in part that ". . . guns (are) a dangerous and unwelcome force in the community." If this is the true state of affairs then it is axiomatic that gun owners are also unwelcome and that if this repressive act is permitted to become law then a great many law abiding District of Columbia gun owners will have no choice but to make their homes elsewhere and thereby even further erode this city's shrinking tax base.

In the name of common sense and on behalf of all legitimate firearms owners in Washington I urge the Congress to disapprove the City Council's unwise act.

Thank you for your consideration.

Respectfully submitted,

RUFUS W. PECKHAM, JR.

The CHAIRMAN. We want to thank the gentleman for articulating his position on this matter. I am sure that the dialogue today has been educational to the members of the committee on the substantive issues and also it has afforded an opportunity to discuss some of the legal dilemmas and even some of the procedural aspects of this matter that will have a bearing on the ultimate decision of the committee.

I hope that the gentleman is able to remain to hear the testimony of our colleague, Mr. Ashbrook, and also the testimony of the Corporation Counsel, who has a different view with respect to the legal interpretation.

Mr. GUDE. Despite what differences we may have, I think there is a difference of opinion in the committee as to whether these matters should be decided by the courts or decided by Congress.

But our colleague is not even a bona fide freshman. He took his seat by a special election and yet he is working hard to represent his constituents. I see that he campaigned on a theme of putting big government on a diet. I hope he is successful in the right places in that effort.

I want to thank the gentleman for representing his constituency.

The CHAIRMAN. The Chair now calls the gentleman from Ohio, Mr. Ashbrook, to the witness chair. The gentleman has prepared a statement, a rather short statement and he may proceed as he wishes.

STATEMENT OF HON. JOHN M. ASHBROOK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. ASHBROOK. Thank you, Mr. Chairman. I listened to my colleagues' testimony and the questions of the members of this able committee and I guess I feel a little bit like the fifth husband of Zaza Gabor. I know what I have to do but I am not sure how to make it interesting.

[Laughter.]

Mr. ASHBROOK. I introduced House Resolution 1474 to disapprove the Firearms Control Regulations Act of 1975 enacted by the District of Columbia Council on July 23, 1976.

I'm opposed to that enactment because I regard it as a monstrous imposition on the law-abiding citizens of the District of Columbia, and because these regulations were adopted illegally by the City Council in complete and flagrant disregard of the congressional injunction against amendments to the D.C. Criminal Code.

HOME RULE ACT PROHIBITION

That prohibition is very clear. It forbids the Council from enacting any law or regulation, "with respect to any provision of any law codified in title 22 of the D.C. Code," which pertains to criminal offenses, including firearms laws. The language "with respect to" is not limited to enactments which repeal, or conflict with title 22. The lagnuage states broadly the intention of Congress to prevent any amendments, that is to say, any provisions which change or add to the congressionally-enacted criminal laws relating to firearms.

The fact is that no resolution of disapproval should be needed against a law passed by the Council illegally, exceeding its jurisdiction. Such a law is null and void to begin with.

The Council, however, tried to circumvent that restriction by asserting that its regulations somehow were not related to the criminal code. The Council made various self-serving declarations that its bill was "not to be construed as amending title 22," that it was only amending the police regulations, and so forth. That position was and is transparently absurd.

COUNCIL ACT NO. 1–142

Among other things, the Council banned the future possession of handguns except by those persons now in the District who already were registered owners, and made it a crime for a person to loan any firearm in his own home to protect himself against a breakin.

In so doing the Council effectively amended numerous provisions of title 22. It amended section 3203, which defines when possession of a handgun is unlawful, section 3204, which defines unlawful carrying of a handgun—and specifically excludes carrying in one's home, as well as section 3214, which enumerates weapons prohibited from private possession.

The Council can call these police regulations, or anything they like. Those are distinctions without a difference; they still are de facto amendments to title 22. And that is not within the Council's statutory power.

H.R. 12261

For that reason I was pleased to see that the House last Monday adopted an amendment to H.R. 12261, a bill to extend the duration of this jurisdictional limitation, which made it absolutely clear that the language of section 602(a)(9) of the D.C. Home Rule Act means precisely what it says.

When the Congress said that the City Council could pass no law, "with respect to," any provision of the criminal code, that is what it meant. It is ridiculous to suppose that the Congress intended to give the City Council a free ticket to evade that restriction by calling something a "police regulation."

It is unfortunate that Monday's corrective action by the House should even have been necessary. The language of the D.C. Home Rule Act is plain enough. But I think it is well that the House has spoken so that there can be not even a possibility of misunderstanding.

LIBRARY OF CONGRESS OPINION

On this point in particular I would like to offer for the record a legal opinion which I have received from the American Law Division of the Congressional Research Service regarding the validity of the Council's new gun regulation. The opinion concludes that the Council's action is in fact an amendment to title 22, and is therefore in violation of section 602(a)(9). [The opinion appear heretofore on pp. 89.]

The CRS research further makes it clear that a 1971 court case upholding the authority of the previous City Council to enact gun control regulations dealt with an entirely different situation.

That City Council, appointed by the President, was authorized by Congress to enact any police regulations that did not "clash" or "conflict" with the congressionally-enacted criminal laws.

That is no longer the case. The District of Columbia Home Rule Act, passed in 1974, sought to maintain the *status quo* with regard to criminal laws in the District, and the City Council elected under the provisions of the Act is proscribed from making any kind of changes—even non-conflicting ones—with respect to matters covered in title 22.

I think our colleague, Mr. Fauntroy, pointed out that it was a suggestion and not a conclusion, but I think any other opinion would hold it up and it would be supported by a court.

In view of that opinion I would respectfully suggest to this committee that its consideration of any concurrent resolution under section 602(c) of the Home Rule Act is not appropriate, since that

section relates only to Council enactments "with respect to" provisions of law codified in titles other than 22, 23 or 24.

Since the Senate yesterday passed H.R. 12261, it appears that further action by the House may not be necessary. If this bill is signed by the President, it would automatically nullify the regulations which the Council passed on July 23.

This is because the prohibition in section 602(a)(9) of the District of Columbia Home Rule Act is explicitly referenced to the first 48 months immediately following the Council's election to office, a time period which began in January 1975.

I thank the committee for its time.

The CHAIRMAN. I thank the gentleman. Since the gentleman is a distinguished member of the bar, I wondered if he had the time to remain while we ask the corporation counsel to deliver his testimony which is essentially on the legal point.

Mr. ASHBROOK. I certainly will, Mr. Chairman.

The CHAIRMAN. Then both of you could be subject to questions from the panel.

Mr. ASHBROOK. I would be glad to defer to whatever format the chairman would like. To answer your question, yes, I will remain and I will be available.

The CHAIRMAN. Thank you very much. Mr. Risher, if you will take a witness chair, please render your testimony. Mr. John R. Risher, Corporation Counsel, District of Columbia Government.

He is accompanied by Mr. George W. Porter, Assistant Corporation Counsel, District of Columbia Government.

Mr. Risher, you have a statement. Without objection, the entire statement will be placed in the record at this point, Mr. Risher.

Mr. RISHER. Thank you, Mr. Chairman.

[The document referred to follows:]

PREPARED STATEMENT OF JOHN R. RISHER, JR., CORPORATION COUNSEL, D.C.

Mr. Chairman and members of the committee, I appreciate this opportunity to appear before this Committee to discuss the legal analysis which led me to advise the Mayor that there "is no compelling reason to find [act 1-142] legally objectionable." (Statement of The Hon. Walter E. Washington, Mayor of the District of Columbia, upon approving Bill 1-164, . . . July 23, 1976, p. 3.) As of this date, I have not received—and therefore have not had an opportunity to review—any detailed presentation that argues in support of a contrary conclusion. Accordingly, the views which I present today do not serve as a substitute for a rebuttal.

It is my understanding that there is but a single issue before the Committee, today, namely the legal one of whether, because of section 602(a)(9) of P.L. 93-198, the Council was prohibited from enacting the subject measure. Section 602(a)(9) is but one of the many explicit limitations imposed by the Congress in its grant of "Home Rule" to the citizens of the District of Columbia. It explicitly prohibits the City's legislature from:

"enact[ing] any act, resolution, or rule with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to Crimes and treatment of prisoners [prior to January 3, 1977])." 87 Stat. 813.

The legislative history of this provision is quite scanty; indeed, the provision was not contained in H.R. 9056 when that Bill was reported out of this Committee. Thereafter, the provision was inserted (along with others) in this Committee's "substitute print". See Newman & Depuy, "Bringing Democracy to the Nation's Last Colony: The District of Columbia Self-Government Act," 24 Amer. U.L. Rev. 537, 649-50 (1975), hereinafter "Newman & Depuy". Yet,

despite its meager legislative history, it *does* appear that the purpose of the measure was to assuage those who apprehended that the District's new legislature might "mak[e] the code and sanctions more lenient." Background and Legislative History of H.R. 9286, and Related Bills Culminating in the District of Columbia Self-Government . . . Act, 93d Cong., 2d Sess. (House Committee on the District of Columbia Committee Print), p. 1779 (1976), hereinafter "Committee Print". See, also, *ibid.*, pp. 1703, 2171. It therefore is perhaps ironical that the argument against the subject measure is that it seeks to make the laws pertaining to the possession of weapons more stringent, rather than lenient. In other words the argument against the measure concedes the measure cannot be said to be prohibited by the spirit of section 602(a)(9).

Nor, as I shall demonstrate, can it be said that enactment runs counter to the letter of section 602(a)(9). However, before addressing that issue directly, I should refer to the letter of June 29, 1976, which I, as Acting Mayor, transmitted to this Committee, and a copy of which is attached. There, in objecting to an extension of the period during which the Council would be prohibited from addressing the provisions of title 22, I commented that although section 602(a)(9) explicitly mentions only titles 22, 23, and 24, it is my opinion that the legislative history *of the Act* indicates this prohibition was intended to apply to all criminal provisions *in the Code*. Ibid, p. 2. (Emphasis added.)

My opinion that the provision is to be *broadly* construed, of course, is not universally held; indeed, it is rejected by two of the principal legal advisors who aided in the drafting of the "Home Rule" Charter. Newman & Depuy, *supra*, pp. 649-50. Moreover, as I noted in my letter, my view serves to exacerbate many of the problems confronting the District, as certain new criminal laws are vital. In any event, it therefore cannot be said that—although I, as a matter of policy, favor a narrow construction of section 602(a)(9)—I have allowed my policy desires to obscure what my legal training dictates.

It is against this background—and the fact that during fiscal year 1975 there were 695 cases of aggravated assault, 3,405 cases of robbery and 133 homicides committed in the District by use of revolvers and pistols—that I turn to the sole issue I am addressing. My analysis rests upon the reasoned premise that in granting the District "Home Rule" the Congress did not diminish the District's police power. In other words, my analysis does not rest, to any extent, upon any concept of an increase in police power authority under "Home Rule".

Since 1887, the District has been "authorized and empowered to make and modify . . . and enforce [certain] usual and reasonable police regulations . . ." D.C. Code, § 1-224; see also D.C. Code, §§ 1-224a, b, 1-226. And, in 1906, Congress amplified this grant of authority when it explicitly authorized the local government to regulate firearms by enacting the following provisions, codified since then as D.C. Code, § 1-227:

"The District of Columbia Council is hereby authorized and empowered to make, and the Commissioner of the District of Columbia is hereby authorized and empowered to enforce, all such usual and reasonable police regulations, in addition to those already made under §§ 1-224, 1-225, and 1-226 as the Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons *of any kind* in the District of Columbia." (Emphasis added.)

Therefore, acting pursuant to this explicit authority, on July 19, 1968, the existing firearms regulations (D.C. Police Regs., Articles 50-55) were adopted. (These regulations were amended into their present form on January 30, 1969.) Soon thereafter a nonprofit corporation, suing on behalf of its members, sought from the United States District Court a judgment that the regulations were *ultra vires, i.e.* beyond the authority of the City to enact. However, the regulations were sustained in the District Court for the District of Columbia in *Maryland and District of Columbia Rifle and Pistol Associations* v. *Washington*, 294 F. Supp. 1166 (D.D.C. 1969); that ruling rested on the above-quoted provisions of D.C. Code, section 1-227.

In an opinion affirming the District Court, the United States Court of Appeals, District of Columbia Circuit, concluded: "Section 1-227 authorized passage of the regulations under attack. We discern no exertion of Congressional prerogatives disabling the District of Columbia Council from adopting them." 142 U.S. App. D.C. 375; 442 F. 2d 123, 132 (1971).

The challenge to the regulations in that case was rested upon essentially the same objections that have been advanced with respect to the Firearms Control Regulations Act of 1975. Therefore, it is appropriate to repeat some of the reasoning employed by the Court of Appeals, which it acknowledged included many of

the same considerations resolved by *District of Columbia* v. *John R. Thompson Co.*, 346 U.S. 100 (1953). Ibid. 442 F. 2d at 126, n. 14.

After reciting the history of the relevant legislation, the Court of Appeals addressed:

". . . appellant's argument that even if Section 1-227 originally empowered the District to promulgate the regulations under scrutiny, Congress foreclosed further exercise of the power by the enactment of its 1932 gun control law for the District. [D.C. Code, §§ 22-3201-22-3217.] That law requires, among other things, the licensing of persons carrying pistols and of dealers in certain types of weapons, and makes possession of pistols by certain classes of persons a crime. The regulation before us go further, in the main by adding rifles and shotguns to the licensing requirement, by exacting firearms registration, and by restricting the sale of ammunition. Appellees claim that the regulations legitimately supplement the statute in areas Congress left untouched.

"While the District is invested with broad authority to prescribe local regulations, the ultimate power to legislate for the District resides solely in Congress. Many years ago, Congress granted the District relative autonomy, but briefly thereafter constituted it a municipal corporation, and established a relationship with it comparable to that commonly existing between municipalities without home rule and their parent states. So it is that principles analogous to those well established in the law governing municipal corporations come into operation in this case.

"Congressional enactments prevail over local regulations in conflict with them, of course, and Congress may at any time withdraw authority previously delegated to the District, and any regulations dependent on the delegation then lapse. But, just as clearly, Congress may indulge the District in the exercise of regulatory powers, enabling it to provide for its needs as deemed necessary or desirable. Section 1-227 is such a grant, as we have held, and the remaining inquiry is whether Congress, by enacting the 1932 gun control law preempted the field so as to thereafter preclude the regulation of firearms by the District.

"Appellant contends that it did, arguing that congressional legislation on a particular subject thwarts additional regualtion of that subject by the District. In our view, however, appellant's thesis suggests far too much. To be sure, a municipal regulation cannot permit an act which the statute forbids, or forbid an act which the statute permits. Nor is there room for local regulation where the legislature has dealt with the subject in such manner as to indicate plainly that no further action respecting it is tolerable. But we cannot agree that municipal regulation is precluded simply because the legislature has taken some action in reference to the same subject.

"The important consideration, we think, is not whether the legislature and municipality have both entered the same field, but whether in doing so they have clashed. Statutory and local regulation may coexist in identical areas although the latter not inconsistently with the former, exacts additional requirements, or imposes additional penalties. The test of concurrent authority, this court indicated many years ago, is the absence of conflict with the legislative will. As the court declared in *French* v. *District of Columbia*, where [t]he subject [is] peculiarly within the scope of the [expressly delegated] police powers of the municipality, the exercise of authority ought not to be questioned unless clearly inconsistent with the expressed will of Congress."

* * * * * * *

"We are aware of a brief observation in the legislative history of the 1932 act that it would effect a 'comprehensive program of [gun] control', but we cannot accept that as an expression of intent to preempt the entire field. Examination discloses that the 1932 act is not comprehensive with respect to rifles and shotguns, and the regulations under review demonstrate a clear design to leave the areas preempted by the statute unaffected." (Emphasis added and footnotes omitted.) *Ibid.*, 442 F.2d at 129-32.

A similar principle has been enunciated by the Supreme Court of Texas in *City of Sweetwater* v. *Geron*, 380 S.W. 2d 550 (1964). In that case the court added further emphasis to the last point in concluding: "Although broad powers granted to home rule cities by the Constitution, Article XI, Section 5, Vernon's Ann. St., may be limited by acts of the Legislature, it seems that should the Legislature decide to exercise that authority, its intention to do so should appear with unmistakable clarity." *Ibid.* at 552.

I therefore respectfully submit that the firearms regulations that are now before you for approval or disapproval "legitimately supplement the statute in areas Congress left untouched", (to quote the language of the United States

Court of Appeals in *Maryland and District of Columbia Rifle Association*, 442 F. 2d at 130). In other words, as was true of the regulations considered there by the courts, the subject provisions do not "permit an act which the statute forbids, or forbid an act which the statute permits." They do no depend for their authority upon any provision of title 22, nor do they modify or affect any of the felony provisions of any portion of the D.C. Code.

In closing, I state but the obvious: It is not to be presumed that Congress—in granting "Home Rule"—intended to restrict the ability of the people of this City to provide for their safety. Yet, it is such an inconsistent syllogism which must be fashioned to support the argument that section 602(a)(9) prohibited enactment of the subject measure. Clearly, the measure does not fall within the prohibition of section 602(a)(9).

Thank you, Mr. Chairman.

STATEMENT OF HON. WALTER E. WASHINGTON, MAYOR OF THE DISTRICT OF COLUMBIA, UPON APPROVING BILL 1-164, THE FIREARMS CONTROL REGULATIONS ACT JULY 23, 1976

Today I have approved Bill 1-164, the "Firearms Control Regulations Act." The bill is an effort by the Government of the District of Columbia—within the limitations of the Charter—to meet the need to protect its residents and its visitors from both the anguish and fear that firearms produce. It is an important step in the right direction. It represents a step taken with the understanding that no system of firearms control can be fully effective without appropriate controls at the regional and national levels. However, the fact that others must also assist obviously does not serve as a valid reason why the City Government should not do its part to reduce the human misery and toll caused by the possion of handguns by certain persons in our community.

The bill will ban possession of handguns by anyone except police officers and special police, unless the weapons are registered with the City when the law takes effect; new handguns may not thereafter be registered. Possession of sawed-off shotguns, short-barreled rifles and machine guns will continue to be illegal.

It should be noted that the measure does not bar ownership or possession of shotguns and rifles. However, it does require that any firearm validly registered under prior regulations must be registered pursuant to the new law; an application for re-registration is to be filed within sixty days.

Measures such as this one raise issues concerning the rights and privileges of private individuals in our society. Our mail has been particularly heavy on the gun control issue in the past weeks. The letters have ranged from those who want no controls to those who want outright confiscation of all firearms. The majority of letters have stressed individual concern for personal safety. I understand these concerns. But, as law enforcement officers have stressed, a gun in the hands of anyone other than a law enforcement officer or the military does not provide genuine protection for any of us.

I have considered all of the substantial arguments raised against gun control, and I'm not indifferent to any. But, the time has come when it must be concluded that the lessons of recent history demonstrate that this government must provide the best program of gun control within the limits of its powers.

In short, we regard this measure as a sound attempt to curtail the source of weapons in the City. The City Council has worked closely with my staff in an effort to pass a bill which addresses these concerns and many of the arguments of those who oppose gun control. The measure which it passed, this Bill—is administratively acceptable. I appreciate this effort by the Council. And althought there is some concern about the administrative costs and inconvenience of the re-registration provisions of this measure, these concerns are not, in my opinion, of so serious a nature as to warrant disapproval of the Bill.

Finally, I would add a word to those who disagree with the action the City Government has taken. I ask your cooperation and support of our efforts to do what we can to assure the safety and protection of the residents of this community and the many visitors to the nation's capital. We know this Bill is not a panacea; it is just a beginning of a long process in this nation. In the opinion of the Chief of Police the Bill represents, on balance, a clear improvement over current law and would foster public safety. In the opinion of the Corporation Counsel there is no compelling reason to find the Bill legally objectionable. As the Chief Executive of the District of Columbia, I think it is my duty to approve

the Bill and I ask the community to support the City Government in its action today which has but one purpose, that is the protection of the safety and welfare of its citizens and visitors.

THE DISTRICT OF COLUMBIA,
Washington, D.C., June 29, 1976.

HON. CHARLES C. DIGGS,
Chairman, Committee on the District of Columbia, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Government of the District of Columbia has for report H.R. 12261, a bill "To extend the period during which the Council of the District of Columbia is prohibited from revising the criminal laws of the District."

The bill would amend section 602(a)(9) of the District of Columbia Self-Government and Governmental Reorganization Act [D.C. Code, § 1-147(a)(9) (Supp. II, 1975)] by extending by two years the period during which the Council is prohibited from taking any action with respect to the provisions in titles 22, 23, and 24 of the D.C. Code (relating to criminal offenses, criminal procedure, and prisoners). Under current law, the Council would assume such authority on January 3, 1977. This bill would postpone the Council's assumption of this authority to January 3, 1979.

The District is strongly opposed to this bill. The right of the people, acting through their elected representatives, to determine the laws which govern them is a fundamental principle of democracy. This right is presently denied to the citizens of the District with respect to the enactment of criminal laws and procedures—matters which are of paramount concern to the people of a city faced with the increasing incidence of crime that has plagued all urban areas. Further postponement of this right would be inconsistent with the concept of self-government.

The District of Columbia Law Revision Commission has begun the comprehensive task of modernizing the criminal laws of the District and has made significant progress with a limited staff. The District thoroughly agrees that such a major revision should not be undertaken without the benefit of the Commission's recommendations. However, there are a number of additions to the criminal laws which are urgently needed to enable the District to meet the challenge of a changing society. A number of such provisions proposed by the District have been pending before this Committee—for example, proopsals to prohibit the unauthorized use of credit cards, to include mobile homes within the scope of the burglary statutes, and to make it unlawful to obtain telecommunication services through misrepresentation. The enactment by the Council of provisions similar to these would not interfere with the work of the Commission. Nor can it be presumed that the Council requies the result of the Commission's study before it should be permitted to enact such legislation.

In addition, the prohibition in section 602(a)(9) of the Self-Government Act raises doubts as to the Council's authority to amend criminal provisions located in titles of the D.C. Code other than those specifically mentioned. The Corporation Council is of the opinion that the legislative history of the Act indicates this prohibition was intended to apply to all criminal provisions in the Code. To avoid the danger of subsequent judicial invalidation of legislative enactments containing criminal sanctions, the District has postponed consideration of a number of important proposals. For example, the enactment of an occupational safety and health act in the District, to fulfill the requirements of the Occupation Safety and Health Act of 1970, P.L. 91-596, 84 Stat. 1590, has been delayed to 1977, because the Act requires such a local law to include criminal sanctions at least as effective as those in the Federal law. A further delay of two years would jeopardize the District's implementation of a State Occupational Safety and Health Act Plan under that Act. Moreover, this bill would delay the enactment of laws urgently needed to strengthen the tax avoidance provisions in title 47 of the D.C. Code, to reduce this source of revenue loss by the District.

In conclusion, the continuation of this prohibition on the people of the District to govern themselves in this most important area would be contrary to the spirit of the Self-Government Act and the principle of self-determination, and would be detrimental to the urgent needs of the District to respond to the challenges of crime. Therefore, the District Government is opposed to the enactment of H.R. 12261.

Sincerely yours,

JOHN R. RISHER, Jr.,
Corporation Counsel, D.C.
(For Mayor Walter E. Washington).

STATEMENT OF JOHN R. RISHER, JR., CORPORATION COUNSEL, DISTRICT OF COLUMBIA GOVERNMENT, ACCOMPANIED BY GEORGE W. PORTER, ASSISTANT CORPORATION COUNSEL

Mr. RISHER. Thank you, Mr. Chairman. I might state my appreciation to you and the other members of this committee for this opportunity to appear before you to discuss the legal analysis which led me to advise the Mayor of the District of Columbia that there is no compelling reason to find the subject piece of legislation legally objectionable.

As of this date, I have not received and have not had an opportunity to review any detailed presentation that argues for a conclusion contrary to that which I have given. I however will try in a very few brief statements throughout the course of my presentation this morning to answer some of what I consider to be the more significant arguments which may suggest that a different conclusion is valid. In any event, my written statement which has been submitted to you cannot be considered as a substantive rebuttal.

COUNCIL PROHIBITION IN HOME RULE ACT

It is my understanding that there is but a single issue before this committee today; namely, the legal one of whether because of section 602(a)(9) of Public Law 93-198, which is often referred to as the home rule bill, the Council of the District of Columbia was prohibited from enacting the subject measure.

Section 602(a)(9) is one of the many explicit limitations contained in the Home Rule Act imposed by Congress. It explicitly prohibits the City Council or the city's legislature, if you will, from enacting "any act, resolution, or rule with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners)" prior to January 3, 1977.

Let me go back over that provision because there is something which is apparent on the face of it which to the best of my knowledge no one has really commented upon and certainly no one has commented on this very significant language during the course of the testimony today.

The first portion of that section which I have just read prohibits any action by the city "with respect to any provision of title 23." It does not say with respect to any provision of title 22, 23, or 24. It says only with respect to any provision of title 23.

Then it goes on to say "or with respect to any provision of any law codified in title 22 or 24." Why did not the Congress just simply strike the first part of that phrase and extend the prohibition to any provision of title 22, 23, or 24?

Why did it make the distinction in language and say the prohibition applies "with respect to any provision of title 23," but with respect to any provision of law codified in titles 22 and 24?

I will come back to that particular point. Its significance I think should be self-evident and that is the prohibition with respect to title 23 applies to subject matter that is—it applies to the subject matter of title 23 and the Council therefore shall not touch upon that matter.

The provisions with respect to 22 and 24 is with respect to the particular provisions of those titles and not with respect to their subject matter.

The legislative history of section 602(a)(9) of course is quite scanty. Indeed the provision was not contained in this committee's version of the bill that was reported to the House but was not found until the committee's substitute was thereafer submitted.

Yet despite the meager legislative history of the provision, there is no doubt in my mind that the purpose of it was to assuage the apprehensions of those who fear that the District's new legislature might make the code and sanctions more lenient.

It therefore is perhaps ironic that it was concern that the District's government might make the criminal provisions more lenient that led to the enactment, but the argument which is being used against the validity of the enactment is that it does the contrary; it makes the provisions more stringent. I would suggest that the argument against the validity of the measure on its face concedes that the measure at least is not inconsistent with the spirit of section 602(a)(9).

I believe, as I shall demonstrate, it cannot be said that the enactment runs counter to the letter of the law, to the letter of section 602(a)(9). Before addressing that issue, I should make reference to a letter which I submitted to you as acting mayor on June 29, 1976, a copy of which is attached to my prepared text.

There I objected to the measure which would extend the prohibition against the city's enactment of criminal legislation form January 1977 to 1979. In that letter, I also stated in commenting with respect to the provisions of 602(a)(9) that it was my opinion that the legislative history of the act, not of just that provision, indicates that the prohibition was intended by the Congress to apply to all criminal provisions codified in the code.

CORPORATION COUNSEL'S OPINION

My legal opinion is that—and it is binding on all agencies of the District of Columbia government except and unless the courts should rule otherwise or laws should be enacted to the contrary—the prohibition contained in 602(a)(9) is to be broadly construed. That is not a universally held opinion. Indeed, as I note in my statement, the principal legal advisers to this committee when it was drafting what we now know as the self-government act have argued quite persuasively that 602(a)(9) limits the council only to the extent of literal language of that provision, and that is the Council may not pass any measure which purports to amend title 22, 23, or 24. I take a far broader position legally.

My policy position as a citizen of the District of Columbia and a member of its executive branch is that the restriction should not be there.

But my legal position tells me that notwithstanding what my druthers are, I must accept the conclusion that it is to be broadly and not just narrowly construed. It is against this background that I turn to the precise legal issue.

It cannot be said that Congress in giving to the District of Columbia government home rule intended to diminish the police powers of the District of Columbia prior to home rule status.

My analysis of the legal issue therefore does not rest upon any argument or any concept that with home rule came broader powers. My argument instead rests upon the reasoned premise that the city now has under home rule no less police power authority than it enjoyed prior to home rule.

HISTORY OF POLICE REGULATIONS

Since 1887, shortly after the District of Columbia was divested of home rule authority, in the 19th century, the District has been authorized and empowered to make and enforce certain usual and regular police regulations.

In 1906 the Congress amplied this grant of authority to the District of Columbia government when it explicitly authorized that local government to regulate firearms by enacting what has been in the code since 1906, the provisions of the district of Columbia Code, section 1–227, the provisions of which have not been mentioned by any of the witnesses who proceeded me this morning. What does 1–227 provide? It provides as follows and I quote:

> The District of Columbia Council is hereby authorized and empowered to make and enforce, all such usual and reasonable police regulations, in addition to those already made under Sections 1–224, 1–225 and 1–226 as the Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind in the District of Columbia.

FIREARMS REGULATIONS

Since 1906, the city has had that explicit authorization to, again, in the language of the statute, enact, any measure "the Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind." It was pursuant to this explicit authority that the City Council in 1968 enacted the present firearms regulations. Those regulations were of course challenged through the courts of the District of Columbia, the Federal Courts of the District of Columbia, the court of general jurisdiction at that time, in a civil action known as Maryland and the District of Columbia Rifle and Pistol Association versus the District of Columbia.

Both the district court and the U.S. Court of Appeals sustained the authority of the City Council, that pre-home rule City Council, to enact the present regulations. Parenthetically I might note that if one compares the subject act with the present regulations that have been in existence for now in excess of 6 years since prior to enactment of the Home Rule Act, one will see that the dissimilarity between the scope of those provisions is not substantial.

That aside. Back to the court decision (*Md. and D.C. Rifle & Pistol Assn.* v. *Washington*). That particular court challenge was based upon the same proposition which is being urged today and that is that the city lacked the authority, because of the congressional enactments found in chapter 32 of title 22, to enact any regulations with respect to gun control.

To state the argument differently, the plaintiffs in that action, the opponents of the regulation, argued that Congress had preempted the field in enacting subsequent to 1906 the gun control measures which were contained in chapter 32.

As I at length set forth in my written statement Judge Gasch in the district court and a unanimous panel of the U.S. Court of Appeals for

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the District of Columbia rejected these arguments—concluding in the language of the court of appeals as follows:

> Section 1–227 authorized passage of the regulations under attack. We discern no exertion of Congressional prerogatives disabling the District of Columbia Council from adopting them. (142 U.S. App. D.C. 375; 442 F. 2d 123, 132 (1971))

I can summarize the court's reasoning and will by stating that what the court concluded was that Congress had not intended to preoccupy the field, if you will, of gun control.

What Congress had decided in its wisdom was to pass certain felony provisions with respect to gun control.

It had decided to do so some 27 years after it had authorized the District of Columbia to enact, pursuant to its police powers, certain nonfelony provisions. The court of appeals concluded, and I think that the reasoning is simply far too persuasive to have been said to have been countered by anything heard today, that Congress had no intent to say to the citizens of the District of Columbia that you therefore may not legislate then with respect to other matters with respect to gun control that we have not touched by felony provisions.

In short, Mr. Chairman, prior to enacting the Home Rule Act, the Congress knew that it had given to the District of Columbia government the explicit authority to enact comprehensive measures pertaining to weapons of any kind.

The Congress knew that the courts of the District of Columbia, the Federal Courts of the District of Columbia, had sustained this exercised police power by the District of Columbia. The Congress knew that the Home Rule Act would provide all powers theretofore exercised by the District of Columbia could continue to be exercised by the successor government of the District of Columbia.

Yet the Congress chose not to place any provisions within the context of the Home Rule Act or within the context of the legislative history—I am using that term very, very embracively and broadly—would indicate that it was taking away from the District of Columbia a power which it had given to the District of Columbia 70 some years prior to granting it home rule.

I therefore respectfully submit that the firearms regulation that is now before you cannot be said to constitute a transgression upon any provision of law that the Congress has said the District of Columbia government may not enact legislation with respect to.

These provisions do not depend upon any provision found in either title 22, 23, or 24 or their authority. Nor do they modify or affect any of those felony provisions. Indeed, the explicit authority permitting their enactment is that which has existed for some 70 years.

In closing I would therefore state the obvious. It is not to be presumed that the Congress in granting home rule intended to restrict the ability of the District of Columbia, the people of the District of Columbia, to provide for their safety.

Yet it is such a syllogism, such an internally inconsistent syllogism which must be fashioned to support the argument that the subject legislation is somehow prohibited by any provision of the charter.

I would close, Mr. Chairman, by noting that as I read the explicit statements of Mr. Dent before the House on Monday of this week, he made it quite clear as I think we must all agree necessarily is the case, that his measure, if enacted into positive law, would not serve as a congressional veto of the subject legislation.

It would have no legal import on the subject legislation. The charter quite explicitly provides how the Congress may disapprove legislation enacted by the city. Mr. Dent's measure does not pertain to any matter which is before the legislature of the right now. It speaks only in futuro and not retrospectively.

I thank you for the opportunity to appear.

The CHAIRMAN. Thank you very much. Mr. Ashbrook, do you have any comments or questions of counsel?

Mr. ASHBROOK. I think it is very appropriate, Mr. Chairman, that we do lay out contrasting points of view and let the committee strike at them. I am impressed by the arguments. In most of my legislative career I have been arguing for the short end of the stick so I know sometimes how hard it is to hang on.

HOME RULE ACT PROHIBITION

Let's go through the two major points you made, first as to 602 (a)(9). I think it is very clear if you read that they were separating 23 from 22 and 24 only for the purposes of indicating that 23 relates to criminal procedure where 22 and 24 relate to the criminal code.

It was a very legitimate reason. If you look at the conference report, they were in tandem. The conference report refers to 22, 23, and 24 with no separation. The report says the City Council is prohibited from making any changes in the criminal law applicable to the District.

It goes on "agreed to transfer authority to the Council to make changes in titles 22, 23, and 24," no separation, "effective January 1, 1977." I would suggest that your effort to say that there was a separation between titles 22, 23, and 24, really isn't much to hang on to because they were separated for the reasons stated.

One refers to criminal procedure while the others "relate to criminals and treatment of prisoners."

There can be no doubt that what we are talking about in the District of Columbia Act is something that relates to a crime. I would say very quickly to your second point, it would seem to me that first we must be clear that while you used the regulations under section 1–227 to hang your hat on, the Council did not choose to enact the regulation, it chose to enact a statute.

That should be made very clear. The second point is even if they were to try to say it was a regulation, the penalties go far beyond anything authorized by Council in 1–227.

PENALTY PROVISIONS

You are talking about penalties of 10 days and up. That is not what you are talking about in the statutory provisions enacted by council. You are talking about penalties far beyond anything authorized in the regulations.

Third: Your point here that the Congress did not presume, let me throw that back at you, I see no way to argue that the Congress would presume to freeze criminal actions under titles 22, 23, and 24 until 1977.

But as you argue, it would allow the Council to do the same thing by regulations. To me that argument just does not make any sense at all. There is no way you can convince me the Congress would carve

out this area and say there will be no actions until January, 1977 but as you say, then for one reason or another, allow the District of Columbia to do precisely the same thing by regulations.

REGULATION OR STATUTE

You are having it both ways. You are talking about a regulation but they enacted a statute. You are talking about the presumption on a regulation where I think the Congress clearly intended to freeze all areas of the District of Columbia criminal law.

Last, in trying to refer to the regulations that you say in effect Congress continued, previous regulations, did not prohibit ownership of firearms. Previous regulations did not get into this vital issue.

The statute that was passed did get into this issue. I think on maybe all four points, you have a basic difference. I think it is very clear, at least to me, that the Congress would not freeze this area, freezing all of titles 22, 23, and 24—I don't think you can separate them—and then allow the Council by regulation to do what it is clearly said should not be done.

I think you have done a very good job, but I respectfully would say I don't think it would stand up.

The CHAIRMAN. Mr. Gude?

Mr. GUDE. No comment, Mr. Chairman.

The CHAIRMAN. Mr. Mann?

Mr. MANN. I will pass for the moment, Mr. Chairman.

The CHAIRMAN. Mr. Biester?

HOME RULE ACT

Mr. BIESTER. Thank you, Mr. Chairman. I wonder whether we could have an answer to this question. I assume there is a general repeal of laws in the home rule charter. If there is, would not the authorization of 1906 have been at least implicitly repealed by the prohibition set forth in section 602?

If that is the case, then the original grant of authority no longer pertains and the thread of continuity would not be there.

Mr. RISHER. The fact of the matter is that not only was there not a repeal, there is an explicit provision in the charter that continues in full force and effect, all laws, statutes, rules, regulations of the District of Columbia that existed as of the date of the city's succession into charter form of government.

Mr. BIESTER. Then it is subject to the limitations specified in title VI. That section begins with subject to the limitations specified in title VI of this act, the legislative power granted.

Mr. RISHER. I understand your question. There is no question but that title VI contains certain limitations. Those limitations, I would suggest to you, without single exception, predated the enactment of home rule, every single limitation to be found in title VI.

Mr. BIESTER. If I understand your argument, it is that Congress granted certain general authority to the District, the then District Government, 1906, to dispose of regulations involving firearms and that it is merely a logical extension of that grant of authority which is being exercised by the Council in these regulations.

My question is: Is it that original grant of authority in 1906 that is limited to whatever the state of the law was in the city adopted

pursuant to that grant of authority as of the date of adoption of the charter?

The charter provides that there is a limitation on expansion of action in the criminal code and provides in section 761 dealing with rules of construction to the extent that any provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall prevail and shall be deemed to precede the provisions of such law.

It seems to me there was a freeze imposed on further extension of the 1906 authorization when we adopted the charter.

Mr. RISHER. Perhaps I did not understand the question the first time I responded. The conclusion is the same. The reason for it is more persuasive. The charter now in section 714 of the Self-Government Act, section 714(a) provides that any statute, regulation, or other action shall be held—shall continue into effect past the succession, the date of succession to home rule, self-government status.

All of my arguments, as I explicitly stated in my statement, rest upon the premise that the District had the authority prior to obtaining its current standing and its current authority; and while under home rule the District has greater authority, I don't have to look to that reservoir of greater authority to find authority for this measure.

The District has had the police authority to enact measures of this type since 1906. Section 714(a) begins by saying that all statutes including the act of Congress in 1906 codified as D.C. Code in 1–227 as a statute shall remain in force and shall have the full force and effect that they had prior to the achievement of home rule status.

Mr. BIESTER. There is a phrase left out there which I think is important and that is "except to the extend modified or * * *."

Mr. ASHBROOK. That is exactly what I was going to say. The Council is correct when it carries forward the authority. What he is overlooking is we are not talking about the authority, we are talking about a congressional reservation which of course is exactly what 602(a)(9) is. There is a direct congressional reservation in titles 22, 23, and 24. It is already clearly—it has clearly been shown that under the regulation they went beyond anything that was already on the books so it in effect is a new statute and falls within that area.

Mr. BIESTER. I am getting close to being clear in my own mind. The regulation could continue in the form it was adopted prior to the adoption of the charter.

Mr. ASHBROOK. 1–227?

Mr. BIESTER. Yes.

Mr. ASHBROOK. Sure.

Mr. BIESTER. The statutory power to create regulations would subsist as long as it was not inconsistent with or had been modified by law, and the charter in the limitations in article 6 modifies, it seems to me, that statute.

REGULATION OR STATUTE

Mr. ASHBROOK. Plus, I would ask the counsel, whether or not he thinks that is a regulation. I allege that it is a statute that has the effect of a statute, that the counsel does not even refer to it as a regulation. The Council itself elected to call it a statute. They went far beyond any of the statutory punishment or penalties that were allowed in 1–227 and it has every earmark of a statute, regardless of what you call it.

Yet they are trying to hang it on to the 1–227 and say it is a regulation under the existing power of 1906. I think it is a statute and it is clearly criminal and Congress did not presume them to allow them to do by regulation what they could not do by statute.

I think they have it both ways wrong but that is what makes court cases.

Mr. BIESTER. I should give counsel the opportunity to respond.

Mr. RISHER. Let me first respond to that which was stated last. The first comment that I might make with respect to the statute-regulation argument is that about a month ago, I submitted a draft of an intended opinion which I will probably not release until Monday of next week, of 26 pages, that addresses the question of whether the Council may act by act or resolution.

I think that the views that I set forth in that opinion have been accepted unanimously by the members of the Council. The charter very clearly says the Council shall use only two forms by which to express itself, acts or resolutions. Section 602(2) does refer to regulations as well as acts. But the Council acts as a legislative body by passing acts or adopting resolutions. But because we are so technical and mindful of the nice legal arguments in the District of Columbia government, we decided to call this subject piece of legislation the Firearms Control Regulations Act of 1975.

So I say to the gentleman from Ohio that we address him on both scores.

Mr. ASHBROOK. Would you answer the one remaining question? Would you not stipulate that the Council has penalties in excess of those permitted in regulations?

Mr. RISHER. The term regulation has no applicable technical basis to any enactment of this Council. What the former Council did by regulation, this Council does by act.

Mr. ASHBROOK. Except you are trying to hang it on to the 1–227.

Mr. RISHER. Not trying to hang it on, sir, trying to rest it firmly. [Laughter.]

Mr. ASHBROOK. If you are going to hang it on to that authority, then you have to limit yourself to the penalties under those sections and you went far beyond any penalties allowed under those regulations under the District of Columbia Code.

The CHAIRMAN. The time of the gentleman has expired. Mr. Harris?

Mr. HARRIS. Thank you, Mr. Chairman. I also suffer from a legal education, and I have really just one question and I think it is to Mr. Ashbrook.

REVIEW OF COUNCIL ACTS

Is it your contention that the function and authority to determine the legal authority of an act of the District Council is in Congress or in the courts or in both?

Mr. ASHBROOK. I would say in the first instance, in answer to my colleague from Virginia, since it is a special relationship and we do have a District of Columbia Committee, in the first case, it would probably be the Congress. Automatically it would probably rest in a decision of the courts.

In this particular area, I think it is clear that the Congress reserved to itself legislative jurisdiction over criminal law and procedure until

January 1977. I would answer in the affirmative. The Council went ahead and made enactment. If the Council does nothing about it, then I assume that the authority would have to be tested in court.

In the first instance, the Congress should have a whack at it. Ultimately the courts would have a whack at it in any case.

Mr. HARRIS. If I understand your answer, the authority to determine the legal authority of the Council with regard to any act it takes is in both Congress and the courts?

Mr. ASHBROOK. Yes. In the first case, it is in Congress.

Mr. HARRIS. I was limiting the question very specifically as to the legal authority the Council has in acting. I am not talking about all the other things that I think Congress must take into consideration with regard to its responsibility to review ordinances.

I am talking about the legal aspects. Do you feel that that remains in Congress also?

Mr. ASHBROOK. I am one of those who thinks that the Council acted without authority. I would hope that the Congress would redress that action. In the end if we do not, I would assume in response to my colleague, that some citizen would then challenge the law that was enacted without proper jurisdiction.

But I think the action we took Monday, I would say, again, in response to your question, is an indication that the Congress did think that there was some effort here to act beyond what they could legally do under the delegation of authority we gave them.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. RISHER. Mr. Chairman, might I add a comment in further responding to Mr. Harris' question?

The CHAIRMAN. Certainly.

Mr. RISHER. I think that the use of the term "reservation" in speaking with reference to the provisions of section 602 is an unfortunate one. My comment is that as I said before the District of Columbia government had no authority to do any of the things which are really prohibited by section 602 at any time during the 20th century, just to show you how far back that goes, or earlier.

RESERVATIONS OF CONGRESSIONAL AUTHORITY

The provisions, in section 602, I would suggest, do not constitute, therefore, reservations of congressional authority as much they constitute limitations on the Council.

I think that is why title VI speaks broadly and generically by use of the caption "Reservation of Congressional Authority." The introduction of section 602 is phrased "Limitations on the Council."

I think that is indeed what they are. The Council has all legitimate legislative powers except those which it may not implement because of certain limitations placed upon the city by the Congress. But it can't be said that the Congress reserved to itself the vast reservoir of powers that only legislatures can enact; that is inconsistent with the notion of home rule. The delegation in section 302 of the Self-Government Act is with respect to all legitimate matters of legislation. That is the language. Then throughout the act, essentially in section 602, you see a limitation on that broad delegation to be found in section 302.

Mr. ASHBROOK. No. 1, what is the reason for a limitation? The reason is to make sure the District of Columbia does not act in areas where the Congress itself had deemed and reserved, if you will, transcending interest. Title VI, if you look at the large type, the Corporation Counsel read the limitations.

The large tray says reservation of congressional authority. It says to enact or repeal any act of Congress. We referred to limitations based on what the Congress had already done. In response to your question, we did not give absolute home rule. We reserved the congressional interest. If you look through those lines, you will find Congress, the Speaker of the House, Chairman of the House of Representatives, the reasons for the limitations were cited in title VI at the heading.

I would honestly say respectfully it is a distinction without a difference.

The CHAIRMAN. Mr. Whalen.

Mr. WHALEN. Thank you, Mr. Chairman.

Before proceeding with my question, Mr. Chairman, let me just reiterate my firm support of the Home Rule Act. I sincerely believe that the Congress should not reject actions taken by the D.C. Council absent some compelling reasons. Now Dr. Paul in his testimony cited three arguments in opposition to the act passed by the D.C. Council.

I am going to just comment on them, not in the order in which they were presented. First, he indicated that such an act is futile and unenforcible. I think there might be some merit to this argument but it seems to me that this is a decision that rests with the D.C. Council, not the U.S. Congress. If it is a mistake, it is a mistake for them to make.

Second, he raised the question of the constitutionality of such action. Now I am not burdened with a law degree so I am not competent to respond to that argument.

It does seem to me, however, that we have had gun legislation either in the form of municipal ordinances or State laws for many years and to my knowledge, the Federal courts have not ruled that such legislation is unconstitutional.

So it seems to me it gets down to the third point that Dr. Paul made and that is that the act contravenes the provisions of the so-called home rule bill. This seems to be suported by a document which has been released by Mr. Charles Doyle of the Congressional Research Service, Library of Congress.

LIBRARY OF CONGRESS OPINION

Have you had a chance, Mr. Risher, to analyze this? Could you comment on the conclusion? Let me just read the conclusion for the record. He indicates:

> An examination of the argument suggests that the firearms control regulations Act exceeds the legislative authority delegated to the city council. Congress in enacting Section 602(a)(9) intended to freeze those areas of criminal law and procedure contained in Titles 22, 23 and 24. The fact that gun control legislation for the District of Columbia was then contained in Title 22 makes it inconceivable that Congres did not intend to preserve the status quo in the area of weapons control.

Mr. RISHER. To answer your first question, I became aware of the document during Mr. Paul's testimony. I quickly read through it during the course of Mr. Ashbrook's testimony. So I have read it and I think notwithstanding the shortness of time, I understand it. Just to get into the language that you just read by way of excerpt from the document, I must disagree with the language.

I think it argues for a conclusion that was preordained. The language if I understood you correctly said——

Mr. WHALEN. You say the conclusion was preordained, on the basis that this study was apparently commisioned by one who opposes this. I would argue that that does not necessarily mean that the conclusion would be written to conform with those views.

Mr. RISHER. That was not my suggestion, sir. The basic premise of the argument is that if a matter is mentioned in title 22, 23 or 24, therefore that matter comes within the proscription or the limitation of section 602(a)(9) and I don't think the literal language of 602(a)(9) allows anyone to say that.

That was the point I was making when I read that particular provision. The first line of the first clause of that provision says that the Council may not enact any act, rule or resolution with respect to any provision of title 23. Then it goes no to say or with respect to any provision of law codified in provisions 22 or 24. The rhetorical question I raised in my statement is, Why did the Congress state the limitation in 602(a) in two clauses and why not just one? Why was not the first clause written with respect to any provisions of title 22, title 23 or title 24? It was not written that way. My analysis of just the language is that that first clause prohibits any act, resolution or rule with respect to any subject matter that is addressed by title 23 of the code. The second clause, the wording of which is quite different, contains a limitation only with respect to particular things which are either permitted or prohibited by the language of titles 22 and 24.

The chairman told me before we began this morning that my statement is esoteric. Therefore, this analysis is not included in it because it is a fairly sophisticated one but I think it is a valid one: the language in the concluding paragraph of the Library of Congress report says that the subject legislation by the District of Columbia is illegal because it pertains to matters contained in title 22 of the District of Columbia Code. But the prohibition in 602(a)(9) insofar as it pertains to titles 22 and 24 does not extend to the subject matters of 22 or 24. It does not extend, in other words, to what is contained in 22 or 24 by way of subject matter references. The subject matter prohibition is contained in title 23.

Title 24, to give you an example, refers to the authority of the Commission of the District of Columbia over the Director of the Department of Corrections, how many guards must be there, and what-have-you.

I am sure this Congress did not intend that the District of Columbia would have no authority to do anything with respect to the operations of that correctional complex prior to 1977 as the prohibition in 602(a)(9) now reads. That subject matter of prisoners and their treatment which is the titles for title 24 certainly cannot be said to be beyond the authority of the District of Columbia government.

It is beyond the authority, the question is who is going to run the prisons? The rule of reason creeps in here also. You can go through

22, 23, and 24 and find similar provisions which lead you to make such comments and analyses.

Mr. ASHBROOK. You are hanging your hat on 24 but 22 clearly relates to crimes. The statute which you enacted which is a statute relates to crimes under 22 and it is not logical to think that the Congress would freeze 22, 23, and 24 in the areas of criminal statutes, differentiating a regulation and allow you by the back door to hang a criminal statute on a regulation.

I think we have already stipulated it is a criminal statute. It has all of the thrusts of a statute and yet in this case I think the District of Columbia Corporation Counsel is trying to say we enacted a regulation. I just don't think it will wash.

The CHAIRMAN. Mr. Gude?

Mr. GUDE. Mr. Chairman, if the gentleman would yield, the House is in session. We have a quorum call and we are going to be under the 5-minute rule as I understand it on the student loan program. I am very concerned about some of the amendments to that bill.

Mr. Biester just spoke to me and he said he is not ready to vote. I don't think it would be appropriate to take a vote at this time. I would like assurances that there will not be any action.

The CHAIRMAN. The gentleman is correct. I will call a recess, subject to the call of the Chair.

[Whereupon, at 12:15 p.m., the committee adjourned, subject to the call of the Chair.]

APPENDIX

CHRONOLOGY

June 29, 1976—Firearms Control Regulations Act of 1975, adopted by Council of the District of Columbia (Council Act No. 1-142).
July 23, 1976—Approved by Mayor.
July 26, 1976—Transmitted to Speaker. Received by Speaker.
July 27, 1976—Referred by Speaker to House District Committee.
July 28, 1976—Received by Committee.
July 29, 1976—H. Res. 1447 (resolution of disapproval) introduced by Congressman Paul; referred to Committee.
July 30, 1976—H. Con. Res. 694 (concurrent resolution of disapproval) introduced by Congressman Paul; referred to Committee.
August 10, 1976—H. Res. 1474 (resolution of disapproval) introduced by Congressman Ashbrook; referred to Committee.
August 23, 1976—H. Res. 1481 (resolution of disapproval) introduced by Congressman Paul et al.; referred to Committee.
August 23, 1976—H. Con. Res. 716 (concurrent resolution of disapproval) introduced by Congressman Paul et al.; referred to Committee.
August 25, 1976—Committee hearing held on H. Con. Res. 694. No Committee vote taken as no quorum, and House met as hearing ended.
September 1, 1976—Committee meeting scheduled. No quorum.
September 8, 1976—Committee meeting cancelled when no quorum available per whip check.
September 17, 1976—Committee meeting scheduled. No quorum in morning or afternoon.
September 21, 1976—Committee meeting scheduled. No quorum.
September 21, 1976—H. Con. Res. 763 (concurrent resolution introduced by Congressman Paul et al.; referred to Committee.
September 21, 1976—H. Res. 1560 (resolution of disapproval) introduced by Congressman Paul et al.; referred to Committee.
September 22, 1976—Speaker sustained Chairman's point of order against the consideration of H. Res. 1481 by the House.
September 24, 1976—Congress not having disapproved, Council Act No. 1-142 became effective (D.C. Law 1-85). Subsequently November 22, 1976) the Council extended the effective date for re-registering firearms to December 31, 1976.

ADDITIONAL DISAPPROVAL RESOLUTIONS

[H. Res. 1447, 94th Cong., 2d sess., by Mr. Paul on July 29, 1976]

RESOLUTION

Resolved, That the House of Representatives disapproves of the action of the District of Columbia Council described as follows: The Firearms Control Regulations Act of 1975 (Act 1–142) passed by the Council of the District of Columbia on June 29, 1976, signed by the Mayor of the District of Columbia on July 23, 1976, and transmitted to the Congress on July 27, 1976, pursuant to section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act.

[H. Res. 1474, 94th Cong., 2d sess., by Mr. Ashbrook on August 10, 1976]

RESOLUTION

Resolved, That the House of Representatives disapproves of the action of the District of Columbia Council described as follows: The Firearms Control Regulations Act of 1975 (Act 1–142) passed by the Council of the District of Columbia on June 29, 1976, signed by the Mayor of the District of Columbia on July 23, 1976, and transmitted to the Congress on July 26, 1976, pursuant to section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act.

[H. Res. 1481, 94th Cong., 2d sess., by Mr. Paul (for himself, Mr. Kindness, Mr. Hall of Texas, Mr. Symms, Mr. Collins of Texas, Mr. Ashbrook, Mr. Ketchum, Mr. Melcher, and Mr. Rousselot) on August 23, 1976]

RESOLUTION

Resolved, That the House of Representatives disapproves of the action of the District of Columbia Council described as follows: The Firearms Control Regulations Act of 1975 (Act 1–142) passed by the Council of the District of Columbia on June 29, 1976, signed by the Mayor of the District of Columbia on July 23, 1976, and transmitted to the Congress on July 26, 1976, pursuant to section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act.

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