UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DC ASSOCIATION OF CHARTERED PUBLIC SCHOOLS, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 14-cv-1293 (TSC)
DISTRICT OF COLUMBIA, et al.,	)	
Defendants.	)	

MEMORANDUM OF AMICI CURIAE IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Amici Curiae, through undersigned counsel, submit this memorandum in support of Defendants' Motion to Dismiss in the above-referenced action. The action brought by plaintiffs DC Association of Chartered Public Schools, Eagle Academy Public Charter School, and Washington Latin Public Charter School presents an existential threat to Home Rule and local control of public education in the District of Columbia. Should plaintiffs prevail on their proffered basis, the District of Columbia government, and therefore the District of Columbia's citizens, would be deprived of the ability and right to control public education – to which they devote on the order of 1 in 6 of their locally raised tax dollars[1] – an ability and right granted to them in 1973 with the passage of the Home Rule Act, D.C. Code § 1-201. *et seq***.** Even more troubling, under the theory advanced by plaintiffs, the District of Columbia and its citizens would be divested of their ability and right under the Home Rule Act to act in an area previously ceded to local control whenever Congress chose to act in that area. There is nothing in the

[1] The Mayor's proposed budget for fiscal year 2015 had funding for DCPS at $709 million and for charter schools at $674 million, totaling $1.383 billion. This funding was out of locally raised dollars of $7.720 billion. *See* Ex. 1 *available at* http://www.dcfpi.org/wp-content/uploads/2014/03/Budget-Overview-4-18-14.pdf.

language and history of the Home Rule Act that requires this result, nor is there anything in the District of Columbia School Reform Act of 1995,[2] codified as amended, D.C. Code § 38-1800.01, *et seq.* ("SRA"), requiring it in the area of education. For the reasons set forth below and in the memorandum supporting Defendants' Motion to Dismiss, plaintiffs' action should be dismissed.

The amici here are residents of the District of Columbia, current and former District of Columbia Public Schools ("DCPS") parents, and organizations and individuals who are leaders in the effort to ensure that every child in the District of Columbia has a quality public education. As set forth in their motion for leave to file this memorandum, amici have long histories of advocacy for strong public education for all District of Columbia children. They support a strong neighborhood, matter-of-right system, complemented by a regulated and robust charter sector, and seek overall high quality public school education. Amici believe that quality public education in the District of Columbia can only be achieved when District citizens have the right to determine the direction of their children's education and direct their educators. Amici have been participants in that ongoing process, but their ability to continue to do so is threatened by plaintiffs' contention that future changes to District of Columbia education law are now solely in the purview of Congress – a body in which they have no voting representation and extremely limited ability to influence.

Implicit in plaintiffs' complaint is the suggestion that the existing system in which the District of Columbia exercises its authority granted under Home Rule to legislate in the area of education and adjust the decisions made by Congress in the School Reform Act is unfair to

[2] Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104–134, 110 Stat. 1321 (1996).

charter schools. In reality, that system has led to a thriving charter sector in the District of Columbia. According to available data, including District of Columbia enrollment numbers, charter schools have gone from serving 160 students in 1996 to serving 36,565 students in 2013,[3] with over 44% of District of Columbia public school students then enrolled in public charter schools.[4] In addition, the Charter Audit Resource Management report for the years ending June 30, 2012 and 2013 posted by the Public Charter School Board ("PCSB")[5] shows that, as of June 30, 2013, District of Columbia charter schools as a whole had accumulated net assets of $283,833,557, unrestricted net assets of $ 276,686,406, unrestricted cash and cash equivalents of $197,652,883, and enjoyed an operating surplus in FY 2013 of $32,393,046 after accounting for depreciation expense and $61,699,133 before accounting for depreciation expense. Amici also note that the complaint does not allege that the funding for charter schools is inadequate.

As demonstrated below, (i) the Home Rule Act granted the District government the ability to legislate in the area of public education; (ii) there is nothing in the Home Rule Act that deprives the District government of its ability to act in an area whenever Congress chooses to exercise its retained concurrent authority to act in that area; (iii) Congress has recognized that it does not divest the District of authority to act unless it explicitly utilizes its power to do so; (iv) the School Reform Act has not divested the District of Columbia government of authority to act

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[3] *See, e.g.*, Ex. 2 *available at* http://www.focusdc.org; Office of the State Superintendent of Education ("OSSE"), 2013 Audit Report, Ex. 3 *available at* http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/SY13-14%20Enrollment%20Audit%20Overview%20%282.26.2014%29%5B1%5D.pdf.

[4] *Id.*

[5] Exs. 4 and 6 *available at* http://www.livebinders.com/play/play?id=1362886.

in areas governed by the SRA; and (v) the District of Columbia government has repeatedly acted in areas governed by the SRA, often in ways beneficial to charter schools and with Congressional acquiescence.

I. The Home Rule Act Grants the District of Columbia Government the Authority to Act in the Area of Education and to Continue to do so Even When Congress Exercises its Concurrent Authority to Act in the Area

Passage of the District of Columbia Self-Government and Governmental Reorganization Act ("The Home Rule Act") over forty years ago was seen as a great victory in the struggle for civil rights. Until its passage, residents of the District of Columbia were denied the basic rights of democracy – the right to elect city officials and to self-govern. The primary purpose of the Home Rule Act was to give residents of the District the rights that all other citizens enjoy and to relieve Congress of the burden of legislating upon essentially local District matters. *See* D.C. Code § 1-201.02(a); President Nixon's Statement on Signing the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973) ("As the Nation approaches the 200th anniversary of its founding, it is particularly appropriate to assure those persons who live in our Capital City rights and privileges which have long been enjoyed by most of their countrymen.").[6]

Title IV of the Home Rule Act (otherwise known as the "District Charter") contains the self-governing portions of the Home Rule Act and grants plenary legislative power to the District of Columbia City Council ("District of Columbia Council") to enact "all rightful subjects of legislation." D.C. Code § 1-206.01. The right to self-govern is restricted only by certain enumerated limitations, made subject to Congress' right to review legislation proposed by the District, and constrained by Congress' retention of concurrent authority to act directly as the legislature of the District. *See* D.C. Code §§ 1-206.01-03. It is generally understood that the

[6] Ex. 5 *available at* http://www.presidency.ucsb.edu/ws/?pid=4086.

District of Columbia Council's interpretation of its responsibilities under the Act is entitled to great deference. *Tenley and Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331 (D.C. 1988), *cert. denied*, 489 U.S. 1082 (1988).

The Home Rule Act expressly limits the legislative authority of the District "to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District." D.C. Code § 1-206.02(a)(3). "). Other limitations prohibit the District of Columbia Council from legislating to amend the Home Rule Act unless it is pursuant to a power granted elsewhere in the act, D.C. Code §1-206(a), or impose taxes on property of the United States or any states, *id.* at §1-206(a)(1). There are also limitations relating to public credit, *id.* at §1-206(a)(2), the D.C. courts, *id.* at §1-206(a)(4), commuter taxes, *id.* at §1-206(a)(5), building heights, *id.* at § 602(a)(6), the Mental Health Commission, *id.* at §1-206(a)(7), federal courts, *id.* at §1-206(a)(8), criminal laws and procedure, *id.* at §1-206(a)(9), and various other federal entities, *id.* at §1-206(b). None of these apply here. Nowhere does the Home Rule Act limit the authority of the District of Columbia government to alter a law passed by Congress subsequent to Home Rule that is applicable solely to the District of Columbia.

Plaintiffs mistakenly rely upon the limitation on repealing acts of Congress not limited to applicability in the District of Columbia to assert that the District of Columbia Council has effectively improperly "amended or repealed" the SRA. Plaintiffs' argument is premised on a fundamental misunderstanding of the School Reform Act and an overly restrictive interpretation of the powers of the District of Columbia Council to self-govern on matters that are quintessentially local in nature, such as education.

As an initial matter, the SRA is clearly an act whose applicability is limited to the District of Columbia. It is codified in the D.C. Code and is precisely the type of local legislation subject to District of Columbia Council amendment under Home Rule.

Upon passage of the Home Rule Act in 1973, the District of Columbia Council was vested with extensive legislative authority over local affairs. D.C. Code § 1-203.02 ("[T]he legislative power of the District shall extend to all rightful subjects of legislation within the District…"). While the Home Rule Act's restriction on amending or repealing acts of national applicability placed the District on the same footing as states in that it could not alter national laws, Congress did not limit the District's ability to amend or repeal acts of Congress that apply only locally, because doing so would have rendered the newly granted legislative authority meaningless. *See* D.C. Code § 1-206.02(a)(3). There is no limitation on the District of Columbia Council's ability to "amend or repeal" or otherwise alter a congressional act that is limited in application "exclusively in or to the District." *Id.* In practice this means the District of Columbia Council cannot repeal an act of national significance such as the Sherman Anti-Trust Act, but it is empowered to repeal or amend an act of Congress that is limited in scope to purely District matters.

In determining whether an act of the District of Columbia Council has the effect of amending or repealing an Act of Congress in contravention of D.C. Code § 1-206.02(a)(3), courts consider whether, in enacting the federal law in question, Congress was acting as the national legislature or as the local legislative body for the District. *McConnell v. United States,* 537 A.2d 211, 215 (D.C. 1988). The approach has been applied universally in cases upholding

proposed legislative measures against challenge under the Home Rule Act.[7] The result should be no different here.

Plaintiffs' argument that the District of Columbia Council does not have the authority to pass laws that "conflict with and effectively amend the School Reform Act," Compl. ¶ 83, relies upon a studied misreading of the Home Rule Act. According to Plaintiffs, any time that Congress acts on any issue – whether local or national in scope – the District of Columbia Council is divested of its authority to legislate on the same topic, even when the issue is local in nature.[8] *See* Compl. ¶ 81. But the Home Rule Act contains no such limitation. Section 1-206.02(a)(3) restricts the Council's ability to pass legislation that amends or repeals an act of Congress that applies to jurisdictions *outside of the District*. It does not, as plaintiffs' suggest, restrict the Council from legislating on local matters[9] just because Congress has also done so. Moreover, there is nothing in the text or legislative history of the School Reform Act that suggests that Congress intended to prohibit the District of Columbia Council from legislating on school funding after passage of the Act.

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[7] *See, e.g., District of Columbia v. Greater Wash. Cent. Labor Council,* 442 A.2d 110 (D.C. 1982) (Federal Workers' Compensation Act of 1928, which extended coverage under the Longshoreman's Act to private employees in the District, was a purely local law despite being administered by the U.S. Labor Department); *Am. Council of Life Ins. v. District of Columbia,* 645 F.Supp. 84 (D.D.C. 1986) (District's Prohibition of Discrimination in the Provision of Insurance Act, which banned discrimination on the basis of AIDS, did not violate the D.C. Home Rule Act because it only applied to insurers doing business in the District); *Techworld Dev. Corp. v. D.C. Pres. League,* 648 F. Supp. 106 (D.D.C. 1986) (Council did not violate the Home Rule Act when it closed a street and transferred title to federal government property to a developer); *Diamond v. District of Columbia,* 618 F. Supp. 519 (D.D.C. 1984) *aff'd in part and rev'd in part on other grounds,* 792 F.2d 179 (D.C. Cir. 1986) (District law requiring residents to obtain out-of-state insurance coverage did not violate Home Rule Act).

[8] The School Reform Act is limited in its application to the District. *See* D.C. Code § 38-1800.01, *et seq.*

[9] *See Dayton Bd. of Ed. v. Brinkman,* 433 U.S. 406, 410 (1977) ("[O]ur cases have … firmly recognized that local autonomy of school districts is a vital national tradition.")(collecting cases); *Missouri v. Jenkins,* 515 U.S. 70, 99 (1995) (citing *Brinkman*).

The legislative history and provisions of the D.C. Financial Responsibility and Management Assistance Act, Public Law 104-8 ("Financial Responsibility Act"), support this reasoning. Passed by Congress the same year as the School Reform Act, the Financial Responsibility Act placed certain government functions under the control of the Financial Responsibility and Management Assistance Authority, commonly known as the "Control Board." Like the School Reform Act, the Financial Responsibility Act was enacted pursuant to Congress' residual legislative authority under section 1-206.01 of the Home Rule Act, applied exclusively to the District, and was codified in the D.C. Code. *See* D.C. Code §47-391.01. Unlike the School Reform Act, section 108 of the Financial Responsibility Act expressly amended the Home Rule Act to provide that "[t]he Council shall have no authority…to…enact any act, resolution, or rule with respect to the [Control Board] established under the [Financial Responsibility Act]." D.C. Code §1-206.02(a)(10). Accordingly, with respect to the Financial Responsibility Act, Congress acted to limit the Council's otherwise relatively unfettered authority to legislate on local matters. It made no such exception when it passed the School Reform Act. Indeed, if Congress had intended to limit the District of Columbia Council's mandate to legislate over matters relating to D.C. schools, it could have amended the Home Rule Act when it passed the School Reform Act, but it did not.

II. The District of Columbia Has Repeatedly Acted to Amend the SRA, Often to the Benefit of Charter Schools

Since the SRA's enactment in 1996, the District of Columbia government has modified, added to, or repealed sections of the Act in many different ways over the years.[10] Those

[10] *See, e.g.*, Fiscal Year 2001 Budget Support Act of 2000, D.C. Law 13-172 (2000); Public School Enrollment Integrity Clarification and Board of Education Honoraria Amendment Act of 2004, D.C. Law 15-348 (2005) (codified as D.C. Code §38-1804.03); Fiscal Year 2006 Budget Support Act of 2005, D.C. Law 16-33 (2005); Public Charter School Assets and Facilities Preservation Amendment Act of 2006, D.C. Law 16-268 (2007); Public Education Reform

modifications were enacted to address the changing needs of District of Columbia students and schools and to ensure effective oversight, management, performance, and funding of those schools. Charter schools have at times participated in seeking such changes and at other times acquiesced in the process to make such changes through Council action. All of these amendments have been subject to Congressional review, and Congress has never indicated that it objected to the specific changes, much less objected to the assertion of authority to make them by the District of Columbia government.[11] Congress clearly knows how to challenge District of Columbia government action when it believes the Council lacks authority. The following are just a few examples of how the District of Columbia government has utilized its authority to change the SRA.

A. 2004 Repeal of Annual March Clawback Provision

The enrollment auditing provisions of the SRA are codified at D.C. Code § 38-1804.03. From its enactment until 2004, the SRA required an October audit of enrollment in charter schools and a second enrollment audit as of March 15 each year. SRA, §2403. The second audit could result in a financial adjustment to reflect enrollment changes. If enrollment in a charter school increased, it would receive an additional 50% of the annual per pupil funding for each additional student. If enrollment had decreased, per pupil annual funding for the school would decrease by 50% for each lost student. *Id*. In 2005, the requirement for the second March audit and adjustment was repealed by the District of Columbia Council. Public School Enrollment

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Amendment Act of 2007, D.C. Law 17-9 (2007); Fiscal Year 2012 Budget Support Act of 2011, D.C. Law 19-21 (2011).

[11] Of course, to the extent any of the changes plaintiffs challenge were accomplished in the District of Columbia budget, they are in fact acts of Congress, as Congress retained exclusive control to enact the District's budget even after the Home Rule Act was enacted. *See* D.C. Code §1-206.03.

Integrity Clarification and Board of Education Honoraria Amendment Act of 2004, D.C. Law 15-348 (2005) (codified as D.C. Code §38-1804.03).

If the patterns described in an OSSE study on student mobility during SY 2011-2012 were typical, the repeal of the annual March clawback worked to the financial benefit of charter schools. For example, the PCSB's audit showed that charter schools received on average $15,938 per student for SY 2011-2012.[12] The OSSE Mobility Study showed that charter schools lost 1,947 students during the course of that school year.[13] If that school year, the only one for which OSSE has published data, was indicative of regular patterns, repeal of the March clawback has delivered tens of millions of dollars in benefits to charter schools over the years.

Charter school advocates sought this repeal. A few witnesses testified in support of the legislation which included this repeal, and two of them were representatives of charter schools or organizations that support them. The Committee report from the Committee on Education, Libraries and Recreation, to which the bill was referred, states:

> Josephine Baker, Executive Director of the District of Columbia Charter School Board, testified as a member of the work of the Technical Working Group convened by the SEO and commended the work of the Technical Working Group as an "inclusive and cooperative approach to these very important issues.[14]

In addition, the Committee report indicates that Robert Cane, Executive Director of Friends of Choice in Urban Schools ("FOCUS"), a charter school advocate, supported the legislation. Cane testified at a public roundtable:

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[12] Ex. 6 *available at* http://www.livebinders.com/play/play?id=1362886.

[13] Ex.7 *available at* http://osse.dc.gov/sites/default/files/dc/sites/osse/release_content/attachments/DC%20Student%20Mobility%20Study%20%28Feb%202013%29.pdf.

[14] "Bill 15-411, The 'Public School Enrollment Integrity Act of 2003," The Committee on Education, Libraries and Recreation, Council of the District of Columbia (Dec. 6, 2004), Ex. 8 *available at* http://dcclims1.dccouncil.us/images/00001/20050126115621.pdf.

> We are delighted that you are moving this bill to final passage. We think it preserves all of the necessary elements, of the public charter school and DCPS funding scheme that was developed under your auspices several years ago and has worked smoothly ever since. Many people don't realize that before some of us at this table got together several years ago in your office and started working on this, the funding was complete chaos for the charter schools and this has been a major contribution of yours to the charter school movement here and also to the funding of DCPS. I have nothing bad to say about the bill. And so I just want to close by thanking you for all the years of effort of yours on behalf of DC education and specifically of the charter schools.[15]

Thus, charter schools supported this amendment and specifically approved of the District of Columbia Council's legislative process – which they now complain is illegitimate – and in the process secured what proved to be a significant benefit for themselves.

B. Facilities Allowance

The SRA, as amended in 1997, allowed charter schools to obtain an adjustment to their annual payment to take into account leases or purchases of, or improvements to, real property. *See* District of Columbia Appropriations Act of 1998, Pub. L. 105-100, § 170, 111 Stat. 2160 (1997). Thus, it was contemplated that the charter schools' facilities payments would be based on actual costs. In 1998, the District of Columbia Council enacted the "Uniform Per Student Funding Formula for Public Schools and Public Charter Schools and Tax Conformity Clarification Amendment Act of 1998." Act 12-494 (1999); D.C. Law 12-207 (1998) (codified as D.C. Code §38–2908). Among other things, this Act essentially amended this SRA provision to establish a facilities allowance for the Charter Schools which was based on per pupil facilities costs for DCPS. D.C. Law 12-207. This statute provided that the charter schools' allowance calculations would be primarily based on an annual moving five-year average of DCPS' per pupil facilities costs multiplied by the number of students estimated to be attending charter

[15] "Public Roundtable, Committee on Education, Libraries and Recreation," District of Columbia Office of Cable Television (Dec. 6, 2004), available at http://oct.dc.gov/services/on_demand_video/on_demand_december_2004_week_2.shtm.

schools. *Id*.[16] Thus, the charter schools' facilities allowance bears no relationship to its actual facilities costs, nor is there any limit on the use of the funds.[17] The 1998 statute provided that the payments would be made in accordance with the fiscal year payments then provided for in the SRA, with 75% provided in the first payment and 25% provided in the second payment. *Id*. The District of Columbia Council has amended the provisions relating to the charter schools' facilities allowances on a number of occasions over the years.[18] In 2002, the Council amended the allowance provisions to provide, among other things, that the full facilities allowance would be paid to the charter schools in the first payment rather than split between payments. D.C. Law 14-190 (2002). In 2006, the Council again amended the allowance provisions to provide additional facilities funds to DCPS and charter schools for those pupils for whom they provided room and board in a residential setting. D.C. Law 16-192 (2006). In 2008, the facilities allowance calculation was amended yet again to provide for a set dollar amount ($3,109) per pupil for the charter schools multiplied by the number of students estimated to be attending. D.C. Law 17-219 (2008) (codified as D.C. Code § 38–2908). This number has been adjusted twice in subsequent amendments to the statute.[19]

Recognizing the inherent challenges in allocating facilities payments based on a per student funding formula for the Charter Schools, in 2009, the D.C. Council enacted the "Public Charter School Facilities Allotment Task Force Establishment Act of 2009." This Act

[16]The statute provided that the allowance would commence with a calculation based on a one-year DCPS facilities cost and gradually build to the five-year moving average. *Id*.

[17] Thus, charter schools have been allowed to use their facilities allowance for any purpose consistent with their charters.

[18] D.C. Law 14-190 (2002); D.C. Law 16-192 (2007) (codified as D.C. Code § 38-3301); D.C. Law 17-219 (2008) (codified as D.C. Code § 38–2908); D.C. Law 18-111 (2010) (codified as D.C. Code § 38–1837.01 and D.C. Code § 38–1837.02; D.C. Law 18-223 (2010).

[19] D.C. Law 18-111 (2009) (changing amount to $2800 per pupil); D.C. Law 18-223 (2010) (changing allowance to $3000 per pupil).

established a Public Charter School Facilities Allotment Task Force to conduct an analysis of facilities expenditures among public charter schools and develop recommendations for a cost-based allocation formula for the public charter schools facilities allowance. D.C. Law 18-111 (codified as D.C. Code § 38–1837.01). This task force was overseen by the Public Charter School Board. D.C. Law 18-111 (codified as D.C. Code § 38–1837.02).

Charter schools received $105,161,863 as a facilities allowance in SY 2012-13 and reported "occupancy expenses" of $104,587,699. Those reported "occupancy expenses" include categories such as depreciation and amortization and a catch-all "other occupancy" expenses, not referenced in the original Congressionally enacted version of the facilities allowance that was tied to actual costs.[20] As a result, in the aggregate charter schools have received more in funding for facilities costs, and depending on the appropriate categorization of those expenses, may have received significantly more than Congress originally contemplated by the move from an actual cost to standard per pupil calculation with no limit on how the dollars are used.

The history of the facilities allowance for the charter schools demonstrates precisely why Congress must have intended that the District of Columbia Council be able to amend the SRA as necessary to address the needs of D.C. public schools over time. Figuring out to how provide funds for local facilities, and being able to adjust how that is provided with the benefit of experience and as needs change, is a quintessential local function. The District of Columbia Council may or may not have sorted this out perfectly, but certainly Congress is not in a position to provide this kind of detailed fiscal oversight, and there is no evidence in the SRA that Congress intended to exercise such oversight. In fact, the lack of intervention by Congress for nearly 19 years further demonstrates the inherent authority of the District of Columbia Council to make adjustments in the SRA.

[20]Ex. 6 *available at* http://www.livebinders.com/play/play?id=1362886.

C. Public Charter School Board Appointments

The Public Charter School Board governs the charter schools. It consists of seven members. D.C. Code §38-1802.14. When enacted, the SRA provided for PCSB appointments to be made through a process in which the Secretary of Education recommended 15 qualified candidates to the Mayor, who in turn selected seven from that list in consultation with the Council. SRA, Sec. 2214 (1996). Statutory provisions related to the PCSB have been amended many times.[21] Notably, in 2010, the District of Columbia Council amended Section 1802.14 to eliminate the Secretary of Education's involvement in the appointment of PCSB board members. Instead, the statute provided that the Mayor would appoint the seven members in consultation with and with the consent of the Council. Public Charter School Board Membership Selection and Staff Compensation Clarification Amendment Act of 2010, D.C. Law 18-223 (2010).

This is yet another example where the Council has taken steps to localize the governance of D.C. public schools. Oversight of the charter schools is a local issue that properly should be addressed by the District of Columbia Council. Congress had every opportunity to veto this amendment expressly removing federal involvement in part of the process and chose not to do so.

III. Charter Schools Have Sought and Received Funds Outside of the Formula Through the District of Columbia Budget Process

In addition to the benefit charter schools in the aggregate appear to have received from the repeal of the March clawback and the benefit in the aggregate charter schools have received from the "per pupil" as opposed to "actual cost" approach to the facilities allowance – both

[21] *See, e.g.*, Omnibus Consolidated Appropriations Act of 1997, Pub. L. 104-208, § 5205(g), 110 Stat. 3009,1471 (1996); District of Columbia Appropriations Act of 1998, Pub. L. 105-100, §167, 111 Stat. 2160 (1997); District of Columbia Appropriations Act of 2005, Pub. L. 108-335, §347, 118 Stat. 1352 (2004); D.C. Law 17-9, §802(f), 54 DCR 4102 (2006); D.C. Law 17-108, §214(b), 54 DCR 10993 (2008); D.C. Law 17-202, §606, 55 DCR 6297 (2008); D.C. Law 17-353, §223(f), 56 DCR 1117 (2009); D.C. Law 18-223, §4082, 57 DCR 6242 (2010).

deviations from what Congress originally enacted – charter schools also have benefited from the kinds of budget allocations to DCPS that plaintiffs challenge here.

In the current budget year, FY 2015, charter schools will receive two $2 million grants through the annual budget process.[22] One $2 million grant is for the development of a language immersion public charter school campus serving middle and high school-aged students in the District. The other $2 million grant is for the project development and management of an athletic and community meeting space at the Washington Latin charter school, one of the named plaintiffs in this case. Memorandum from David Catania, Chair of Education Committee, to Members of the District of Columbia Council (May 15, 2014), at 90-91 (Ex. 9).

These grants were provided as part of the budget for the District of Columbia. In May 2014, as part of the budgeting process, the Education Committee recommended:

> a $3,527,000 increase in local funds for the Deputy Mayor for Education. This increase is the net result of an additional $4,000,000 transferred to the Committee from the Committee on Transportation and the Environment, offset by the transfer of $473,000 to OSSE to support the Youth Re-Engagement Center.
>
> The Committee directs that the additional $4,000,000 be used to support two facilities planning grants for public charter schools. *Id*. at 15.

The Committee further provided that the $4,000,000 will

> be used for two grants –$2,000,000 for a collaboration of language immersion public charter schools and $2,000,000 for a tier 1 classical education public charter school in MFP Cluster 18 of Ward 4. The Committee directs that both grants fund operating, predevelopment and planning costs, including but not limited to, architectural design, staffing, studies and surveys, and costs associated with project management and materials acquisition. *Id*. at 70 (reporting on variations to budget for Deputy Mayor for Education).
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> These grants were approved as part of the Final FY 2015 District of Columbia Budget.

See Committee of the Whole Committee Report on the Fiscal Year 2015 Budget Request Act of

[22] In citing to these grants, amici are not taking the position that the Council properly followed its internal earmark procedures in making them, only that it had the authority under the SRA and Home Rule Act to do so.

2014 (May 28, 2014) (Ex. 10); Excerpts from FY 2015 District of Columbia Council Operating Budget Adjustments, at 26, 35 (Ex. 11). The budget was thereafter approved by Congress. H.R. Con. Res. 124, 114th Cong. (2013–2014) (enacted).

Plaintiffs cannot have it both ways. They cannot invoke the legislative process when it works to their benefit on the one hand, thereby acknowledging its legitimacy, while at the same time claiming that the District of Columbia government does not have the authority to provide funds through the budgeting process to DCPS.

It should also be noted that the provisions of funds through the District of Columbia budget is expressly approved by Congress, leaving no room for argument that the District of Columbia government lacks the authority to take such action on the grounds that it is inconsistent with a Congressional mandate. The budget as approved by the Council and signed by the Mayor is effectively both District and Congressional action.

IV. Conclusion

Education is the quintessential local issue. The Home Rule Act granted the District of Columbia authority to act in this area. While Congress utilized its retained authority to legislate on District of Columbia local matters when it passed the School Reform Act, nothing in that act divested the District of Columbia government of its authority in the area of education or precluded the government from modifying the SRA. Since 1996, the District of Columbia has, with Congressional acquiescence, repeatedly used its authority to modify provisions of the SRA and adopt new laws inconsistent with the original Act. Plaintiffs' attempt here to reverse that nearly twenty (20) years of history is not supported by the SRA, Home Rule Act, or any other provision of law. Their arguments should be rejected. The Complaint should be dismissed.

Dated: October 24, 2014

Respectfully submitted,

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