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## **GREATER WASHINGTON CENTRAL LABOR COUNCIL: A DILUTION OF HOME RULE ACT LIMITATIONS**

The provisions of the District of Columbia Self Government and Governmental Reorganization Act of 1973 (Home Rule Act)<sup>1</sup> impose certain limitations on the legislative power of the District of Columbia Council (D.C. Council).<sup>2</sup> For example, the D.C. Council may not repeal an act of Congress concerning federal functions or property; enact a law relating to the jurisdiction of the District of Columbia Courts; enact a law relating to federal courts in the District of Columbia; or exercise greater authority over a federal agency than the D.C. Council had before the District Charter became effective.<sup>3</sup> Whenever the Council enacts laws that appear to go

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1. Pub. L. No. 93-198, 87 Stat. 774 (1973) (codified in scattered sections of the D.C. CODE ANN. (1981)). (All citations are to the 1981 edition of the D. C. CODE.) The purposes of the Home Rule Act are to reorganize the governmental structure of the District of Columbia, to provide a charter for local government, and to delegate certain legislative powers to the local government. The Home Rule Act did not, however, grant full statehood to the District of Columbia.

2. *E.g.*, title VI of the Home Rule Act is entitled *Reservation of Congressional Authority*. The specific legislative limitations on the D.C. Council are contained in § 602 of the Home Rule Act. D.C. CODE ANN. § 1-233 (1981).

3. The relevant provisions of the Home Rule Act are:

§ 602(a). The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to:

.....

(3) Enact any act, or enact any act 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;

(4) Enact any act, resolution, or rule with respect to any provision of title 11 [of the District of Columbia Code] (relating to organization and jurisdiction of the District of Columbia courts);

.....

(8) Enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States Attorney or the United States Marshall for the District of Columbia;

.....

(b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological Park . . . or, except as otherwise specifically provided in this Act, over any Federal agency, than was vested in the Commissioner prior to January 2, 1975 [the effective date of title IV of this Act].

D.C. CODE ANN. § 1-233(a)(3), (4), (8), & (b) (1981). Title IV is the District Charter.

beyond one or more of the limitations, the District of Columbia courts are burdened with the task of ruling on the validity of such laws.

In 1980, the D.C. Council passed the Workers' Compensation Act of 1979 (Municipal Act).<sup>4</sup> The Municipal Act repealed and replaced a law passed by Congress in 1928,<sup>5</sup> the Workmen's Compensation Law of the District of Columbia (1928 Act). The Greater Washington Central Labor Council, AFL-CIO, challenged the validity of the Municipal Act, asserting that it violated several provisions of section 602 of the Home Rule Act. The Greater Washington Central Labor Council alleged that the D.C. Council, in passing the Municipal Act, had exceeded its congressionally delegated legislative authority under the Home Rule Act.<sup>6</sup> The Superior Court of the District of Columbia upheld the challenge, declaring the Municipal Act invalid;<sup>7</sup> however, the District of Columbia Court of Appeals, in *District of Columbia v. Greater Washington Central Labor Council*,<sup>8</sup> reversing the Superior Court, held the Municipal Act is valid. Based upon an expansive reading of the Home Rule Act and recognizing that workers' compensation is generally a state or local subject, *Greater Washington Central Labor Council* empowers the D.C. Council to legislate on this subject. This was apparently done to enable the District of Columbia to enact and administer its own workers' compensation law without congressional action.

Although one of the purposes of the Home Rule Act is "to relieve Congress of the burden of legislating on essentially local District matters,"<sup>9</sup> section 602 of the Home Rule Act prohibits the D.C. Council from legislating on certain subjects.<sup>10</sup> On several occasions the District of Columbia

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4. D.C. CODE ANN. § 36-303 (1981). The Act establishes a workers' compensation program for employees of private businesses principally located in the District, to be administered by an administrative agency of the District. It provides for enforcement of compensation orders in the Superior Court of the District of Columbia and appellate review in the District of Columbia Court of Appeals.

5. D.C. CODE ANN. § 36-501 (1981). By passing the 1928 Act, Congress made the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950 (1976) (Longshoremen's Act), applicable to private employees in the District. Under the 1928 Act the program was administered by the United States Department of Labor, with enforcement in the federal district court where the injury occurred and appellate review in the federal court of appeals for the circuit in which the injury occurred.

6. See *supra* note 3 for the restrictions allegedly violated. See also *infra* notes 46-50 and accompanying text.

7. *Greater Washington Central Labor Council v. District of Columbia*, No. 9655-80 Civ. (Super. Ct. Sept. 26, 1980). Subsequent references to the unpublished opinion will be made to the relevant pages of the transcript of the record.

8. 442 A.2d 110 (D.C. 1982), *cert. denied*, 103 S. Ct. 1261 (1983).

9. Section 102(a) of the Home Rule Act. D.C. CODE ANN. § 1-201(a) (1981).

10. Section 602 explicitly forbids the D.C. Council from taxing the property of the

Court of Appeals has ruled on whether legislation enacted by the D.C. Council violated the Home Rule Act. In so doing, the court has had the delicate task of balancing the purposes of the Home Rule Act with the restrictions imposed by the same statute on the D.C. Council's legislative authority. In two cases the District of Columbia Court of Appeals validated the legislation on the basis of very fine distinctions. In two other cases the same court struck down the legislation almost peremptorily.

In *McIntosh v. Washington*,<sup>11</sup> the court upheld the authority of the D.C. Council to enact the Firearms Control Regulations Act (Firearms Act).<sup>12</sup> The Firearms Act imposed criminal penalties for violation of its provisions<sup>13</sup> and thus added to the crimes listed in title 22 of the District of Columbia Code. Section 602(a)(9) of the Home Rule Act<sup>14</sup> forbids the D.C. Council from passing any laws within a certain time period affecting title 22 of the District of Columbia Code. The *McIntosh* court interpreted section 602(a)(9) not as a restriction but "merely . . . a time constraint."<sup>15</sup> Although the Firearms Act was enacted in violation of that time constraint, the court concluded that "the validity of the Firearms Act can be

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United States; lending the public credit for the support of any private undertaking; enacting any act to amend or repeal any act of Congress which concerns the functions or property of the United States or which is not restricted in application exclusively in or to the District of Columbia; enacting any act, resolution, or rule with respect to title 11 of the D.C. Code (relating to organization or jurisdiction of the D.C. courts); imposing a commuter tax on nonresidents; enacting any act which permits a structure to exceed the height limitation contained in D.C. CODE ANN. § 5-405; enacting any act relating to any United States court in the District of Columbia; or legislating with respect to any provision of titles 22, 23, or 24 of the D.C. Code pertaining to the District's criminal code. *See generally* Newman & Dupuy, *Bringing Democracy to the Nation's Last Colony: The District of Columbia Self Government Act*, 24 AM. U.L. REV. 537 (1975).

11. 395 A.2d 744 (D.C. 1978).

12. D.C. CODE ANN. § 6-2301 (1981).

13. 395 A.2d at 754.

14. Section 602(a)(9) states:

The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to:

. . . .

(9) 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), or with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of Title 22 [of the District of Columbia Code], during the 48 full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office.

D.C. CODE ANN. § 1-233(a)(9) (1981). At the time *McIntosh* was decided § 602(a)(9) provided for 24 months, not 48 months.

15. 395 A.2d at 751.

sustained under the Council's *newly conferred* power set forth in [section 404(a)] of the Home Rule Act notwithstanding the limitation on such power contained in [section 602(a)(9)]."<sup>16</sup> The court stated in a footnote, without elaborating or citing any authority, that section 404(a) "distinguishes between transferred legislative power and newly conferred legislative power."<sup>17</sup>

The court's reasoning is flawed. First, even assuming section 602(a)(9) is merely a time constraint, that time constraint was disregarded by the D.C. Council. Second, the powers conferred by section 404(a) are "subject to the limitations specified in Title VI" by the plain language of section 404(a).<sup>18</sup> Therefore, creating a distinction between transferred and newly conferred legislative power does not change the fact that *all* of the D.C. Council's legislative power is subject to the limitations of title VI by the plain language of section 404(a).<sup>19</sup>

In *District of Columbia v. Sullivan*,<sup>20</sup> the court upheld the Traffic Adjudication Act (TAA)<sup>21</sup> despite the prohibitions of the Home Rule Act. The TAA provided that certain traffic violations should be adjudicated admin-

16. 395 A.2d at 751 (emphasis added). Section 404(a) provides:

Subject to the limitations specified in §§ 1-206, 1-207, 1-233, and 47-313 [§§ 601, 604, 602, and 603 of title VI of the Home Rule Act] 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 No. 3 of 1967, shall be carried out by the Council in accordance with the provisions of this Act.

D.C. CODE ANN. § 1-227(a) (1981).

17. 395 A.2d at 751 n.13.

18. *See supra* note 16.

19. The *McIntosh* court also stated that the Firearms Control Regulation Act repealed and replaced regulations in existence before the Home Rule Act was enacted. 395 A.2d at 754. The court read § 717(b) of the Home Rule Act as specific authority for amending pre-Home Rule Act regulations. Section 717(b) provides in relevant part:

No law or regulation which is in force on January 2, 1975 [the effective date of Title IV of this Act] shall be deemed amended or repealed by this Act except to the extent specifically provided herein or to the extent that such law or regulation is inconsistent with this Act, but any such law or regulation may be amended or repealed by act or resolution as authorized in this Act, or by Act of Congress . . . .

D.C. CODE ANN. § 1-208(b) (1981). Although this section does not contain the language "subject to the limitations of section 602," there is no reason to believe it is not, and the court did not cite any reasons why it should not be. Moreover, the plain language of § 717(b) does not provide specific authority for amending pre-Home Rule regulations except as authorized by the Home Rule Act, or by act of Congress. The Home Rule Act, in § 602(a)(9), prohibits the D.C. Council from amending title 22 of the District of Columbia Code, and the court did not cite any other act of Congress to the contrary.

20. 436 A.2d 364 (D.C. 1981).

21. D.C. CODE ANN. § 40-601 (1981).

istratively instead of being prosecuted as criminal offenses in Superior Court.<sup>22</sup> Section 602(a)(4),<sup>23</sup> however, prohibits the D.C. Council from legislating on the organization and jurisdiction of the District of Columbia courts. The court circumvented this restriction by stating that the TAA did not "purport to change the criminal jurisdiction or the specific responsibilities of the Superior Court or the Court of Appeals."<sup>24</sup> Examining the legislative history of the Home Rule Act, the court concluded that section 602(a)(4) was "enacted not to prohibit action with regard to specific offenses but, rather, to give the newly enacted District of Columbia Court Reorganization Act of 1970 an opportunity to prove its effectiveness."<sup>25</sup>

This reasoning implies that once the Court Reorganization Act has proved its effectiveness, the D.C. Council is no longer prohibited from changing the jurisdiction of the courts. This "time constraint" gloss the court puts on section 602(a)(4) borrows the *McIntosh* rationale which the court cited with approval.<sup>26</sup> In *McIntosh*, however, the limitation considered was section 602(a)(9) which has a time element built into it, whereas section 602(a)(4) does not.<sup>27</sup> Moreover, an examination of the legislative history of the Home Rule Act could also lead to a conclusion diametrically opposed to that drawn by the *Sullivan* court. The original bill, H.R. 9056, would have given the D.C. Council authority to alter the jurisdiction of the local courts eighteen months after the D.C. Council took office. However, after lengthy hearings, the bill was amended to eliminate the D.C. Council's power over local courts.<sup>28</sup>

The *Sullivan* court found additional support for the Council's action in section 431(a) of the Home Rule Act.<sup>29</sup> Section 431(a) gives the District of

22. 436 A.2d at 365.

23. For the text of § 602(a)(4) of the Home Rule Act, see *supra* note 3.

24. 436 A.2d at 365 (footnotes omitted).

25. *Id.* at 366 (footnotes omitted). The Court Reorganization Act referred to by the court is the District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473 (1970) (codified at D.C. CODE ANN. § 11-101 (1981)).

26. *Id.*

27. For the text of § 602(a)(9), see *supra* note 14; for the text of § 602(a)(4), see *supra* note 3.

28. See HOUSE COMM. ON THE DISTRICT OF COLUMBIA, 93D CONG., 2D SESS., HOME RULE FOR THE DISTRICT OF COLUMBIA 1973-1974, 942, 1098-99, 1416-24 (Comm. Print 1974).

29. Section 431(a) of the Home Rule Act provides:

The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District and of any criminal case under any law applicable exclusively to the District. The Superior Court has no jurisdiction over any civil or criminal matter over which a United States court has exclusive jurisdiction pursuant to an Act of

Columbia Court of Appeals jurisdiction of appeals from the Superior Court and, "to the extent provided by law," the District of Columbia Court of Appeals also has jurisdiction to review executive, legislative, or administrative decisions and orders of the District of Columbia. In addition, section 431(a) speaks generally of jurisdiction conferred "by other provisions of law." The *Sullivan* court construed section 431(a) to mean that "by amending the 'law' the Council may remove certain administrative cases from the direct review jurisdiction of [the Court of Appeals]" and "add cases to the jurisdiction of the Superior Court, as it has properly done here."<sup>30</sup> There is a contradiction here in the court's reasoning. After claiming that the TAA did not change the jurisdiction of the courts, the *Sullivan* court then noted that the TAA quite properly removed some cases from the jurisdiction of the Court of Appeals and added them to the jurisdiction of the Superior Court. Moreover, the court construed section 431(a) to allow precisely what section 602(a)(4) clearly prohibits the D.C. Council from doing.<sup>31</sup>

The *Sullivan* court cited *Capitol Hill Restoration Society, Inc. v. Moore*<sup>32</sup> for the proposition that final review of TAA cases was still available in the District of Columbia Court of Appeals even though direct review was not. The *Sullivan* court, however, failed to realize that the issue in *Capitol Hill* was not *final review*. The issue was whether a law<sup>33</sup> passed by the D.C. Council could confer *direct review* jurisdiction of agency action on the District of Columbia Court of Appeals. The *Capitol Hill* court held that section 602(a)(4) precludes the D.C. Council from expanding the District of Columbia Court of Appeals' direct review jurisdiction. In support of its holding, the *Capitol Hill* court merely quoted, in a footnote, the language of section 602(a)(4).<sup>34</sup> Unlike the *Sullivan* court, the *Capitol Hill* court did not discuss the Court Reform Act of 1970 or section 431(a) of the Home Rule Act in an attempt to validate the action of the D.C. Council.

Another law passed by the D.C. Council was nullified without much

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Congress. The Court of Appeals has jurisdiction of appeals from the Superior Court and, to the extent provided by law, to review orders and decisions of the Mayor, the Council, or any agency of the District. The District of Columbia courts shall also have jurisdiction over any other matters granted to the District of Columbia courts by other provisions of law.

D.C. CODE ANN. 11 app., § 11-431(a).

30. 436 A.2d at 368 (emphasis in original).

31. Section 602(a)(4) prohibits any legislation by the D.C. Council that affects the jurisdiction of the District of Columbia courts. See *supra* note 3.

32. 410 A.2d 184 (D.C. 1979).

33. 22 D.C. Reg. 7,240 (1976).

34. 410 A.2d at 188 n.11.

discussion in *Bishop v. District of Columbia*.<sup>35</sup> The issue there was whether section 605 of the Revenue Act of 1975<sup>36</sup> imposed an income tax on non-residents of the District of Columbia. Answering the question in the affirmative, the court held that it violated section 602(a)(5) of the Home Rule Act.<sup>37</sup> The court characterized section 602(a)(5) as an express and specific bar to the D.C. Council's authority to impose an income tax on nonresidents of the District of Columbia.<sup>38</sup>

In each of these cases, as in *Greater Washington Central Labor Council*, there was no genuine issue as to the facts; the court was deciding only a question of law.<sup>39</sup> The analysis in each case, however, was different. Each decision either ignored prior cases or incorrectly cited prior decisions for support. An examination of the analysis offered by the trial court and the appellate court in *Greater Washington Central Labor Council* shows no discernable pattern of statutory interpretation among these cases.

The Workers' Compensation Act of 1979 (Municipal Act) was passed by the Council in May 1980,<sup>40</sup> and since Congress did not disapprove the Act, it became law on October 1, 1981.<sup>41</sup> Before this date, however, the Greater Washington Labor Council and three individuals sought to have the Municipal Act declared invalid, contending that the Council had no authority to pass the Act. The trial court found the Municipal Act void since Congress had not intended to transfer the private employees worker's compensation program to the D.C. Council. Moreover, the trial court found that the Municipal Act violated four different provisions of the Home Rule Act.<sup>42</sup>

In an unpublished opinion, Superior Court Judge Doyle gave five reasons for declaring the Municipal Act invalid. First, he pointed out that in

35. 411 A.2d 997 (D.C.), *cert. denied*, 446 U.S. 966 (1980).

36. D.C. CODE ANN. § 47-1808.1 (1981).

37. Section 602(a)(5) of the Home Rule Act provides in part:

§ 602(a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to:

.....

(5) Impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District

.....

D.C. CODE ANN. § 1-233(a)(5) (1981).

38. 411 A.2d at 999.

39. Record at 24a.

40. The Workers' Compensation Act of 1979 was approved by the Mayor and sent to Congress for review, as required by section 602(c)(1) of the Home Rule Act. Section 602(c)(1) is codified at D.C. CODE ANN. § 1-233(c)(1).

41. 442 A.2d at 114.

42. For the text of the relevant provisions, see *supra* note 3.



section 204(e)<sup>43</sup> of the Home Rule Act, Congress expressly transferred the workers' compensation program for government employees from the Department of Labor (DOL) to the District of Columbia but did not transfer the workers' compensation program for private employees.<sup>44</sup> Using a standard rule of statutory interpretation,<sup>45</sup> the trial court reasoned that Congress intended to transfer only what it had specifically transferred and had no intention of transferring what it had not specifically transferred.<sup>46</sup>

Second, Judge Doyle addressed the four specific limitations imposed on the D.C. Council's authority by the Home Rule Act.<sup>47</sup> Judge Doyle reasoned that the Act repealed a federal law, the 1928 Act, which mandated that a federal agency administer the workers' compensation program and federal courts enforce and review the workers' compensation claims. Therefore, Judge Doyle concluded, the repeal of this law affected the functions of the United States and thus violated section 602(a)(3).<sup>48</sup>

Additionally, the Municipal Act provides for enforcement of compensation orders by the Superior Court and for review of final compensation orders by the District of Columbia Court of Appeals. Judge Doyle concluded that this provision violates section 602(a)(4) since it expands the jurisdiction of the District of Columbia courts.<sup>49</sup> Furthermore, the Municipal Act removes enforcement jurisdiction of workers' compensation from the United States District Court, and appellate jurisdiction from the United States Courts of Appeals, thereby violating section 602(a)(8).<sup>50</sup> Finally, Judge Doyle explained that the Municipal Act eliminated a function of a federal agency, meaning the D.C. Council exercised greater authority over a federal agency than it possessed before the District Charter became

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43. Section 204(e) of the Home Rule Act provides:

All functions of the Secretary [of Labor] . . . with respect to the processing of claims filed by employees of the government of the District for compensation for work injuries, are transferred to and shall be exercised by the Commissioner, effective the day after the day on which the District establishes an independent personnel system or systems.

Pub. L. No. 93-198, 87 Stat. 774, 783 (1973). This section has not been codified in the District of Columbia Code Annotated.

44. Record at 25a.

45. Judge Doyle referred to the "Latin maxim *inclusio unius exclusio alterius*." Record at 30a. According to BLACKS LAW DICTIONARY 906 (rev. 4th ed. 1968), the phrase means: "the inclusion of one is the exclusion of another." For a detailed discussion of the phrase, see R. DICKERSON, *THE INTERPRETATION AND APPLICATION OF STATUTES* (1975).

46. Record at 30a.

47. For the relevant limitations imposed on the Council by the Home Rule Act, see *supra* note 3.

48. Record at 31a.

49. *Id.* at 32a.

50. *Id.*

effective, thus violating section 602(b).<sup>51</sup>

The Court of Appeals disagreed with the trial court on each point. On the statutory interpretation issue, the Court of Appeals reasoned that the express transfer of the workers' compensation program for government employees without a similar transfer of the program for private employees did not "reflect a Congressional intent to prohibit the local government from legislating with respect to private workmen's compensation."<sup>52</sup> The court explained that an express transfer of the program for public employees was required since the program "was entrusted to the Department of Labor by a federal statute that is not applicable exclusively to the District of Columbia."<sup>53</sup> In contrast, an express transfer of the program for private employees was not required since the 1928 Act "is a congressionally enacted local statute that deals exclusively with District of Columbia matters."<sup>54</sup>

The court conceded that the absence of an express transfer of the private employees' program "indicates that Congress chose not to transfer the administration of private workmen's compensation at that time,"<sup>55</sup> but insisted that it did "not indicate an intention to preclude [such legislation] at a later time"<sup>56</sup> under section 302 of the Home Rule Act.<sup>57</sup>

The reasoning of the *Greater Washington* court is, however, faulty. A statute enacted by Congress is a federal statute whether it applies to the whole nation or to only a part of it. Therefore, designating one "a federal statute" and the other a "congressionally enacted local statute" does not mean that Congress enacts two types of statutes. This is a flimsy distinction and not persuasive since Congress, in section 204(d) of the Home Rule Act, expressly transferred the voluntary apprenticeship program, that applied only to the District of Columbia, from DOL to the Commissioner of

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51. *Id.*

52. 442 A.2d at 115.

53. *Id.* The court did not cite the provision of the Home Rule Act under which an express transfer is required to transfer a program properly from the federal government to the D.C. Government. It could be § 717(b) of the Home Rule Act. D.C. CODE ANN. § 1-208(b) (1981). See *supra* note 19.

54. 442 A.2d at 115.

55. *Id.*

56. *Id.*

57. Section 302 of the Home Rule Act provides:

Except as provided in §§ 1-206, 1-233, and 47-313, [ §§ 601, 602, and 603 ], 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 the provisions of this Act subject to all the restrictions and limitations imposed upon the States by the 10th section of the 1st article of the Constitution of the United States.

D.C. CODE ANN. § 1-204 (1981).

the District of Columbia.<sup>58</sup> As argued by the Intervenor in its petition for en banc review,<sup>59</sup> if Congress expressly transferred the functions under this statute which applied exclusively to the District, it did so because an express transfer was necessary to effect the transfer of functions from the federal government to the District of Columbia government. Therefore, a similar express transfer is also necessary for transferring the private workers' compensation program to the District of Columbia government.

The second flaw in the Court of Appeals' reasoning is that Congress meant to allow the D.C. Council to legislate on this subject at a later time. Congress expressly prohibited the Council from legislating on some subjects at the time the Home Rule Act was passed, expressly providing the Council an opportunity to legislate on those subjects at a later time.<sup>60</sup> If, therefore, Congress intended that the Council be allowed to legislate on private workers' compensation at a later time, it could have taken the same action on this subject. The fact that it did not do so may be viewed as deliberate, especially in light of the legislative history of the Act. At hearings that preceded passage of the Home Rule Act, then Secretary of Labor Brennan recommended that Congress transfer the private workers' compensation program to the District of Columbia government, but not transfer the voluntary apprenticeship program.<sup>61</sup> Congress chose to ignore these recommendations, however, and "took precisely the opposite course" when it enacted the Home Rule Act.<sup>62</sup>

The *Greater Washington* court acknowledged that the Home Rule Act does not explain what constitutes "functions of the United States" as the term is used in section 602(a)(3).<sup>63</sup> Nevertheless, the court "surmised" from the second clause of section 602(a)(3), "which is not restricted in its

58. Section 204(d) of the Home Rule Act provides:

All functions of the Secretary of Labor and of the Director of Apprenticeship under this chapter [entitled 'An Act to Provide for Voluntary Apprenticeship in the District of Columbia'] . . . are transferred to and shall be exercised by the mayor.

The office of Director of Apprenticeship . . . is abolished.

D.C. CODE ANN. § 36-406 (1981). The weakness of the court's argument is plainly revealed here since the Act to Provide for Voluntary Apprenticeship in the District of Columbia could also be designated a "congressionally enacted local statute" and yet Congress expressly provided for the transfer of the apprenticeship program.

59. The Food and Allied Service Trades Council of Metropolitan Washington intervened. See Petition for En Banc Review at 5, *District of Columbia v. Greater Washington Central Labor Council*, 442 A.2d 110 (D.C. 1982).

60. See, e.g., § 602(a)(9) of the Home Rule Act, *supra* note 14.

61. Record at 25a. See HOUSE COMMITTEE ON THE DISTRICT OF COLUMBIA, 93D CONG., 2D SESS., HOME RULE FOR THE DISTRICT OF COLUMBIA 1973-1974, 3559 (Comm. Print 1974).

62. Record at 25a.

63. 442 A.2d at 116.

application exclusively in or to the District,"<sup>64</sup> that when federal officials administer "laws that relate solely to the District of Columbia" they do not perform a "function of the United States."<sup>65</sup> The court's surmise, however, is incorrect since the two clauses of the statute are to be read in the disjunctive rather than in the conjunctive.<sup>66</sup> By construing them together, the court changes "or" into "and." The effect of this is that, although section 602(a)(3) has two limitations on D.C. Council action, the court finds only one.<sup>67</sup>

Under the 1928 Act, the right to enforce<sup>68</sup> and to review<sup>69</sup> workers' compensation orders was given only to federal courts. The Municipal Act vests these powers in the Superior Court of the District of Columbia and the District of Columbia Court of Appeals, respectively. Despite this transfer of cases from the federal courts to the District of Columbia Courts, the Court of Appeals held that the D.C. Council "did not affect impermissibly the jurisdiction of the local courts"<sup>70</sup> because the Superior Court already had jurisdiction over these cases under its general equitable powers<sup>71</sup> and the Court of Appeals had "preexisting jurisdiction to review administrative proceedings."<sup>72</sup> From this reasoning, the court concluded that the Municipal Act did not violate section 602(a)(4) which provides that the D.C. Council has no authority to enact legislation relating to the jurisdiction of the District of Columbia courts.

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64. See *supra* note 3.

65. 442 A.2d at 116.

66. Section 602(a)(3) of the Home Rule Act provides:

§ 602(a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to:

. . . .

(3) Enact any act, or enact any act 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 ANN. § 1-233(a)(3) (1981) (emphasis supplied). The two clauses of § 602(a)(3) are connected by the word "or," not by the word "and." From the plain language of § 602(a)(3), the two clauses are separate and constitute two distinct restrictions on the D.C. Council's actions.

67. Two memoranda prepared by the District of Columbia's Office of Corporation Counsel, dated February 8, 1980, and April 21, 1980, express the view that the DOL's administration of the workers' compensation program might constitute a "function of the United States" even though the functions are essentially local.

68. See Longshoremen's and Harbor Workers' Compensation Act of 1928, § 18(c), 33 U.S.C. § 918(a) (1976).

69. See Longshoremen's and Harbor Workers' Compensation Act of 1928, § 21(c), 33 U.S.C. § 921(c) (1976).

70. 442 A.2d at 117.

71. *Id.*

72. *Id.* at 118.

The distinction between what is permissible and impermissible is inapposite. Section 602(a)(4) is a blanket prohibition. Moreover, the court ignored section 431(a)<sup>73</sup> of the Home Rule Act which denies the Superior Court jurisdiction over any matter under the exclusive jurisdiction of a federal court.<sup>74</sup> Therefore, its "preexisting jurisdiction to review administrative proceedings" does not include cases arising under the 1928 Act.<sup>75</sup> When this is taken into consideration, the inescapable conclusion is that the jurisdiction of both the District of Columbia Superior Court and the Court of Appeals has been expanded by the Act, in violation of section 602(a)(4). The *Greater Washington* court cited *Capitol Hill* to explain that its jurisdiction to review administrative actions was limited to contested cases, but, as in *Sullivan*, the court did not recognize the limitations of its holding in *Capitol Hill*.<sup>76</sup>

Just as the court found no expansion of local court jurisdiction in violation of section 602(a)(4), it found no decrease of federal court jurisdiction in violation of section 602(a)(8). The justification offered by the *Greater Washington* court was that through the Court Reform Act of 1970,<sup>77</sup> Congress had already deprived the federal courts of jurisdiction over local matters, vesting it in the local courts. Therefore, the "Council's action [in repealing the 1928 Act] merely repealed the congressional incorporation of a national law into local statutes."<sup>78</sup> The court also noted that "[t]he United States Courts retain their jurisdiction to hear claims arising under the Longshoremen's Act."<sup>79</sup>

However, in the order denying a rehearing,<sup>80</sup> Associate Judge Belson, with whom Associate Judges Kern, Nebeker, and Ferren joined, spoke in favor of a rehearing en banc because: "The plain fact is that the District of Columbia Workers' Compensation Act of 1979 has effectively transferred a class of cases from the federal courts to the District of Columbia

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73. The relevant portion of § 431(a) states: "The Superior Court has no jurisdiction over any civil or criminal matter over which a United States Court has exclusive jurisdiction pursuant to an Act of Congress." D.C. CODE ANN. 11 app., § 11-431(a) (1981).

74. See *supra* notes 66-67 and accompanying text.

75. See *supra* notes 66-67 and accompanying text and *infra* notes 78-80 and accompanying text.

76. As discussed *supra* at notes 30-32 and accompanying text, the *Capitol Hill* court refused to permit the D.C. Council to expand its jurisdiction. The *Sullivan* and *Greater Washington* courts, however, cite *Capitol Hill* to support their validation of D.C. Council laws that do expand the jurisdiction of the District of Columbia courts.

77. D.C. CODE ANN. § 11-921 (1981).

78. 442 A.2d at 118.

79. *Id.*

80. 445 A.2d 960 (D.C. 1982).

courts.”<sup>81</sup>

The *Greater Washington* court did not use the Court Reform Act argument to support the conclusion that there had been no increase in the jurisdiction of the local courts. Nevertheless, it did use this argument to support the conclusion that there was no decrease in the jurisdiction of the federal courts. The two questions are opposite sides of the same coin, but the court did not use the same argument. Moreover, the *Greater Washington* court ignored the argument that private workers' compensation cases do not arise under the Longshoremen's Act.<sup>82</sup> They arise under the 1928 Act that gives the United States Courts of Appeals exclusive appellate jurisdiction. Under the Municipal Act, the United States Courts of Appeals lose this jurisdiction, in violation of section 602(a)(8). Thus, retaining jurisdiction to hear claims under the Longshoremen's Act is beside the point. Furthermore, labelling the 1928 Act “congressional incorporation of a national law into local statutes” does not make it less of a federal law, and the effect of its repeal is the same as repeal of any other federal law.<sup>83</sup> Once again, the court speaks of no “impermissible” effect on the jurisdiction of federal courts. But section 602(a)(8), like section 602(a)(4), is a total prohibition containing no exceptions.

The court found no violation of section 602(b)<sup>84</sup> because “[e]nactment of the Workers' Compensation Act neither increases nor decreases the District's authority over the Department of Labor. The sole effect . . . is that one category of cases presently handled by that agency . . . no longer will be administered by the Secretary of Labor.”<sup>85</sup> The Municipal Act does not increase or decrease the Council's authority over the DOL, but it does eliminate a function<sup>86</sup> of that agency and, in eliminating this function, the D.C. Council has exercised an authority it did not have prior to the enactment of the Home Rule Act. The exercise of such authority is forbidden by section 602(b).<sup>87</sup>

The reasoning in *Greater Washington* does not follow the analysis of *McIntosh*, where the court relied on section 404(a),<sup>88</sup> distinguishing be-

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81. *Id.* at 960 (footnotes omitted).

82. See Appellee's Brief in Support of Petition for Rehearing and/or Rehearing En Banc, *District of Columbia v. Greater Washington Central Labor Council*, 442 A.2d 110 (D.C. 1982), *cert. denied*, 103 S. Ct. 1261 (1983).

83. See *supra* text accompanying notes 57 and 58.

84. See *supra* note 3.

85. 442 A.2d at 119.

86. Record at 32a. The DOL's function of administering the private workers' compensation program for the District of Columbia is eliminated.

87. Record at 32a.

88. See *supra* notes 11-19 and accompanying text.

tween transferred and newly conferred legislative power. Furthermore, the opinion does not even mention section 431(a), on which the court relied in *Sullivan*.<sup>89</sup> Finally, the holding in *Greater Washington* clearly does not follow *Capitol Hill*<sup>90</sup> or *Bishop*,<sup>91</sup> where the court struck down laws based on the plain language of section 602(a).

The analysis the court offers is strained and flimsy, but it enables the court to achieve the desired result. The court in effect rewrote the Home Rule Act, or at least redefined the meaning of the Act to the point where some of its provisions are emasculated.<sup>92</sup>

The rationale in *Greater Washington* is different from that of other cases in which the court has upheld legislation enacted by the D.C. Council. Here, the court has sidestepped and evaded the limitations imposed on the D.C. Council by the Home Rule Act. For this reason, the trial court's analysis appears to be preferable since it applies the statutory language as written and preserves the purpose of section 602. Under the appellate decision, the D.C. Council is empowered to do what the Home Rule Act expressly prohibits it from doing. It remains to be seen whether this case will set a trend or provide the precedent for a more liberal interpretation of the limitations imposed upon the D.C. Council by the Home Rule Act, or, as with past cases, be ignored by future decisions.

*Shaheda Sultan*

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89. See *supra* notes 29-31 and accompanying text.

90. See *supra* notes 32-34 and accompanying text.

91. See *supra* notes 35-38 and accompanying text.

92. For example, § 602(a)(3) has now been defined by this court to mean that the D.C. Council can amend an act of Congress which is restricted in application to the District of Columbia, even if it affects a function or property of the United States. Other examples are the exceptions the court has created in §§ 602(a)(4) & 602(a)(8) where Congress enacted complete limitations. See *supra* notes 72-84 and accompanying text.