

May 3, 2013

The Honorable Tommy Wells
Chairperson
Committee on The Judiciary and Public Safety
John A. Wilson Building
1350 Pennsylvania Avenue
Washington, D.C. 20004

Dear Councilmember Wells:

As individuals with considerable experience working in or closely with the District of Columbia government, we write in support of Bill 20-134, the Elected Attorney General Implementation and Legal Service Establishment Amendment Act of 2013, currently under consideration by the Committee on The Judiciary and Public Safety. We urge prompt passage of the bill.

As you know, in January 2015, an elected District of Columbia Attorney General will take office for the first time in the District's history. The District, as a result of 2010 legislation passed by the Council and a subsequent voter referendum, will move from its long-standing model under which the Mayor appoints the Attorney General, and will join the many states that have a divided executive with an elected Attorney General. Our focus is on the bill's provisions that would ensure that attorneys serving in the general counsel offices for those District executive agencies subordinate to the Mayor remain in the Mayoral reporting line. This is the current arrangement and we believe it should continue, which would be accomplished by enactment of the relevant portion of the pending reform bill.

Based on our long and varied collective and individual experiences with the District government, we believe that unless future Mayors and the agency directors have complete confidence that agency counsel owe their undivided client loyalty to the agency and the Mayoral Administration, the executive branch may be unable to operate effectively to carry out the policies and programs for which the Mayor is accountable to the electorate. No person, and especially not a lawyer who owes an ethical duty of undivided loyalty to the client, can serve two masters. That is essentially what will happen if an independent, elected Attorney General, with no allegiance to the Mayor, can appoint all of the staff of the general counsel of all of the Mayor's subordinate agencies. If agency counsel are appointed, compensated, promoted or terminated by the independent Attorney General, with no obligations to the programs and policies of the Mayor, there is a risk of creating serious dysfunction, unnecessary conflicts, and even stalemate and paralysis in the executive branch agencies.

The bill wisely avoids this problem through the restructuring of the agency reporting lines and the use of a small group of lawyers under the Mayor to ensure uniformity of substantive legal policy, compensation, and training in coordination with the Attorney General. Essentially tracking the model used in the federal government and that used in most states with an elected attorney general, the bill provides that agency counsel will serve within their respective agencies, rather than reporting to the Attorney General. Under the bill, they will be appointed by and loyal to the agency director, who in turn reports to the Mayor. This policy represents an important step in sensibly structuring the District's government to account for the upcoming divided

executive. Agency General Counsels serve as core parts of agency management teams and are quite appropriately called on to provide key policy and practical day to day advice, as well as legal counsel, to their respective agency directors. Their core job is to advance -- within the boundaries of law -- the policy goals of the agency director, which are ultimately the goals of the Mayor. The current structure, which has been in place for less than a decade and under which all subordinate agency counsel report to the Attorney General, has been effective mainly because the agency directors and the Attorney General report to a common ultimate authority -- the Mayor.

That is why doing nothing to account for the upcoming divided executive, as some have proposed, would be an unfortunate policy choice. While the current structure largely works, it works in our experience because the Attorney General and agency directors report to a common authority. Because that predicate is changing with the coming elected Attorney General, the District needs to act wisely to assure that the change will serve the District's long-term interests. With the upcoming transition to an elected Attorney General, the executive branch should be structured to maintain the Mayor's ability to establish policy for the District and to have control over matters for which the electorate will hold him or her accountable, while also ensuring a strong and independent Attorney General who controls the litigation choices and provides definitive legal opinions, including interpretations of statutes.

Importantly, the bill will advance this goal while keeping in place a robust Office of the Attorney General comprised of over 200 litigators and legal advisors (plus a several hundred person cadre of support staff) to be supervised by the elected Attorney General that will handle the District's extensive litigation in court and provide legal opinions. The Attorney General, as is the case now, will continue to have the final say for the executive branch (unless overturned by a court) on questions of constitutional and statutory interpretation in the District, and will have the substantial resources necessary to carry out his or her significant mission.

Thank you for consideration of our views on this matter of importance to the long-term successful functioning of the District of Columbia government. We urge the Committee and full Council to move forward with this legislation promptly to provide clarity and sufficient time for effective planning for the transition to a divided executive.

Sincerely,

/s Anthony A. Williams

Anthony A. Williams

Mayor, District of Columbia, 1999-2007; Chief Financial Officer, District of Columbia, 1995-1999

/s Peter B. Edelman

Peter B. Edelman

Chair, District of Columbia Access to Justice Commission; Co-Director, Joint Degree in Law and Public Policy; Faculty Director, Center on Poverty, Inequality, and Public Policy, Professor of Law, Georgetown University Law Centerⁱ

/s Alan B. Morrison

Alan B. Morrison

Senior Counsel to the District of Columbia Attorney General, 2007; Lerner Family Associate Dean for Public Interest and Public Service Law, and Professorial Lecturer in Law, George Washington University Law School

/s Michael C. Rodgers

Michael C. Rodgers

City Administrator and Deputy Mayor for Operations for the District of Columbia, 1995-1997; Executive Director of the Metropolitan Washington Council of Governments, 1998-2003; Chairman, District of Columbia Water and Sewer Authority, 1996-1998

/s Thomas M. Susman

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President, District of Columbia Open Government Coalition; Director of Governmental Affairs, American Bar Association

Cc:

All Additional Councilmembers:

The Honorable Phil Mendelson

The Honorable Jim Graham

The Honorable Jack Evans

The Honorable Mary Cheh

The Honorable Muriel Bowser

The Honorable Kenyan McDuffie

The Honorable Yvette M. Alexander

The Honorable Marion Barry

The Honorable David Catania

The Honorable David Grosso

The Honorable Vincent Orange

The Honorable Anita Bonds

ⁱ All affiliations are provided for identification purposes only. The letter is solely on behalf of the listed signatories.