

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



BRIAN L. SCHWALB
ATTORNEY GENERAL

May 16, 2023

OPINION OF THE ATTORNEY GENERAL

**SUBJECT: Validity of the *Comprehensive Policing and Justice Reform Amendment Act of 2022*,
D.C. Law 24-345, Following Expiration of 60-Day Congressional Review Period**

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Ave, N.W.
Washington, DC 20004

Dear Chairman Mendelson:

By letter dated May 15, 2023, you sought a formal opinion regarding what legal effect, if any, a resolution of the U.S. Senate disapproving the *Comprehensive Policing and Justice Reform Amendment Act of 2022* (D.C. Law 24-345) (“the Act”) might have on the validity of the Act given that the 60-day period for congressional review of the Act has expired. Pursuant to section 101(a)(2) of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, (D.C. Law 18-160; D.C. Official Code § 1-301.81(a)(2)),¹ and Reorganization Order 50 of 1953, as amended, it is the opinion of the D.C. Office of Attorney General that, because the 60-day period for congressional review of the Act expired on April 20, 2023, any vote of the U.S. Senate disapproving the Act would have no legal impact on the validity of the Act under the Home Rule Act.²

SUMMARY

The 60-day congressional review period under the Home Rule Act for D.C. Law 24-345 began on January 26, 2023, and ended on April 20, 2023. While the House of Representatives passed a resolution disapproving the Act on April 19, the period for passing a joint disapproval resolution lapsed without any action by the Senate. Under the Home Rule Act, any disapproval resolution that the Senate might pass at this time would have no legal effect on the validity of the Act in the District.

¹ “The Attorney General shall furnish opinions in writing to the Mayor and the Council whenever requested to do so.”

² Approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)).

STATUTORY BACKGROUND

Fifty years ago, Congress enacted the Home Rule Act to give District residents “powers of local self-government” and “relieve Congress of the burden of legislating upon essentially local District matters.”³ When the Council of the District of Columbia passes legislation, the Home Rule Act requires the Council Chairman to “transmit to the Speaker of the House of Representatives, and the President of the Senate, a copy of each act,” whether the legislation has been enacted with the Mayor’s signature, over the Mayor’s veto, or by Mayoral inaction.⁴

As relevant here, Section 602(c)(2) of the Home Rule Act provides that:

any [] act transmitted by the Chairman with respect to any act codified in Title 22, 23, or 24 of the District of Columbia Code . . . shall take effect at the end of the 60-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate unless, during such 60-day period, there has been enacted into law a joint resolution disapproving such act.

The Home Rule Act provides that the “60-day period” excludes “Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days.”⁵ Section 602(c)(2) of the Home Rule Act goes on to provide that if a joint resolution “has, within such 60-day period, passed both Houses of Congress and has been transmitted to the President,” that joint resolution, “upon becoming law subsequent to the expiration of such 60-day period shall be deemed to have repealed such act, as of the date such resolution becomes law.” For acts of the Council not codified in Titles 22, 23, or 24, the Home Rule Act sets forth an identical process, except the congressional review period is 30, not 60, days.⁶

FACTUAL BACKGROUND

On December 20, 2022, the Council passed the *Comprehensive Policing and Justice Reform Amendment Act of 2022* (“the Act”). The Act addresses certain local police practices and procedures in the District, including but not limited to the use of neck restraints, access to body-worn camera video, membership of the Use of Force Review Board, and officer discipline in use of force and other cases.

The Act was enacted without the Mayor’s signature on January 19, 2023. On January 26, 2023, in your capacity as Chairman of the Council and in accordance with the provisions of the Home Rule Act, you

³ D.C. Official Code § 1-201.02(a).

⁴ *Id.* § 1-206.02(c)(1).

⁵ *Id.*

⁶ *Id.* For purposes of this Opinion, the Office of Attorney General assumes that the longer 60-day review period applies to Congress’s opportunity to disapprove of the Act, rather than the shorter 30-day review period. You have not asked the Office to opine on whether the 30-day or 60-day period applies for congressional review of the Act and, accordingly, we render no opinion on that issue at this time.

transmitted the Act to the Speaker of the House of Representatives and the President of the Senate for Congressional review.

On March 9, 2023, Representative Andrew Clyde introduced House Joint Resolution 42, disapproving the action of the District of Columbia Council in approving the Act.⁷ On March 30, 2023, citing the District’s right to pass laws and measures that improve public safety in the District and enhance public confidence in law enforcement, President Biden threatened to veto any resolution disapproving of the Act.⁸ On Wednesday, April 19, 2023 – the day before the expiration of the 60 day disapproval period – the House of Representatives passed H.R.J. Res. 42.

More than three weeks later, on Thursday, May 11, 2023, Senator J.D. Vance introduced Senate Joint Resolution 26,⁹ disapproving the action of the District of Columbia Council in approving the Act. According to the Senate’s current calendar, the Senate is expected to consider the House Joint Resolution later today.

ANALYSIS

I. The Congressional review period for the Act was from January 26 to April 20, 2023.

We interpret the Home Rule Act using ordinary principles of statutory construction, and thus, we construe section 602 of the Home Rule Act “according to its terms,” *Intel Corp. Inv. Pol’y Comm. v. Sulyma*, 140 S. Ct. 768, 776 (2020) (citation omitted), giving “effect, if possible, to every clause and word,” *Roberts v. Sea-Land Servs.*, 566 U.S. 93, 111 (2012) (citation omitted). We read section 602 “in accord with the ordinary public meaning of its terms at the time of its enactment,” *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020), and “in their context and with a view to their place in the overall statutory scheme.” *Davis v. Mich. Dep’t of the Treasury*, 489 U.S. 803, 809 (1989).

The Home Rule Act unambiguously states that the Congressional review period begins when legislation is “transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate.”¹⁰ It is undisputed that the Chairman of the Council transmitted the Act to the Speaker of the House and to the President of the Senate on Thursday, January 26, 2023.¹¹ Counting from that date, the

⁷ H.R.J. Res. 42, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-joint-resolution/42>.

⁸ Meagan Flynn, *Biden Would Veto Measure to Block D.C.’s Policing Bill, White House Says*, The Washington Post, Mar. 30, 2023, <https://www.washingtonpost.com/dc-md-va/2023/03/30/biden-veto-dc-policing-bill-congress/>.

⁹ S.R.J. Res. 26, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate-joint-resolution/26>.

¹⁰ D.C. Official Code § 1-206.02(c)(2).

¹¹ H.R.J. Res. 42, 118th Cong. (2023) (noting that the Act was transmitted on January 26, 2023); S.R.J. Res. 26, 118 Cong. (2023) (same).

60-day review period – excluding weekends, holidays, and days in which neither House of Congress was in session for more than three days at a time – expired on Thursday, April 20, 2023.¹²

II. Because the Congressional review period has lapsed, a Senate disapproval resolution at this time will have no legal effect.

Here, again, Section 602(c) of the Home Rule Act is unequivocal: an act of the Council “*shall take effect at the end of the 60-day period* beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate *unless, during such 60-day period*, there has been enacted into law a joint resolution disapproving such act.”¹³ Congress’s use of the mandatory term “shall take effect” leaves no ambiguity that an act of the Council becomes law after the expiration of the 60-day Congressional review period unless – *during the 60-day review period* – Congress passes a joint disapproval resolution.¹⁴

It is also undisputed that both houses of Congress – the House of Representatives and the Senate – did not pass a joint disapproval resolution before the end of the Congressional review period; only the House of Representatives did. Therefore, any disapproval resolution the Senate passes going forward with respect to the Act will necessarily fall outside the 60-day disapproval period prescribed by the Home Rule Act and be of no legal or practical significance.

While the disapproval procedures provided in the Home Rule Act are no longer available to Congress with respect to the *Comprehensive Policing and Justice Reform Amendment Act of 2022*, Congress may separately pass a bill at any time to repeal the Act. Under the Constitution’s District Clause,¹⁵ and as Congress reserved for itself in the Home Rule Act, Congress has the power “to amend or repeal any law in force in the District . . . and any act passed by the Council.”¹⁶ But the procedures and timeframes prescribed in the Home Rule Act by which Congress can nullify an act of the Council by a joint resolution of disapproval are expressly inapplicable once the 60-day review period lapses.

¹² We are aware of public reporting stating that some Senate Officials asserted that, because the Senate did not record transmission of the Act in the Congressional Record until February 13, the 60-day Congressional review period would expire on May 8, 2023. *See* 169 Cong. Rec. S351 (daily ed. Feb. 13, 2023) (Executive and other communications); *see also* Meagan Flynn, *House Set to Vote on Measure to Block D.C. Police Accountability Bill*, The Wash. Post, Apr. 16, 2023, <https://www.washingtonpost.com/dc-md-va/2023/04/16/house-vote-dc-policing-bill/>. However, the date Congress records transmission is irrelevant to the congressional review period under the Home Rule Act, which expressly begins the count with the date of transmission from the Council to Congress. Regardless, because both houses of Congress did not pass a joint disapproval resolution before May 8, it is not necessary for the Office of Attorney General to address this issue at this time.

¹³ D.C. Official Code § 1-206.02(c)(2) (emphases added).

¹⁴ *See* U.S. Const. art 1, § 7, cl. 3; *INS v. Chadha*, 462 U.S. 919, 957-58 (1983) (Congress legislates only by an act of both Houses presented to the President for signature and veto). If both houses of Congress pass a joint resolution disapproving of an act passed by the Council and transmit that joint resolution to the President, but the President does not act within the congressional review period, the Council’s act still goes into effect. *See* D.C. Official Code § 1-206.02(c)(2). If the President thereafter signs the joint resolution (or Congress overrides the President’s veto), the Council’s act is repealed. *Id.*

¹⁵ U.S. Const. art. 1, § 8, cl. 17.

¹⁶ D.C. Official Code § 1-206.01.

CONCLUSION

It is the considered opinion of this Office that the *Comprehensive Policing and Justice Reform Amendment Act of 2022* is in full force and effect in the District. The 60-day period for both houses of Congress (the House of Representatives and the Senate) to jointly disapprove of the Act expired without the Senate voting to disapprove. With the 60-day review period for the Act having lapsed without Senate disapproval, there would be no legal or practical significance under the Home Rule Act were the Senate now to pass a joint resolution disapproving of the Act. If Congress wishes to repeal the Act, it may do so through the regular legislative process, but it may not rely on the Home Rule Act's special disapproval procedures.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Schwalb", written in a cursive style.

Brian L. Schwalb
Attorney General for the District of Columbia