**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Executive Office of Mayor Muriel Bowser**



Public Hearing on

**B22-452, The “Clemency Board Establishment Act of 2017”**

Testimony of

**Kevin Donahue**

Deputy City Administrator

Deputy Mayor for Public Safety and Justice

Committee on the Judiciary and Public Safety

Charles Allen, Chairperson

Council of the District of Columbia

October 19, 2017

Room 123

John A. Wilson Building

Good afternoon, Chairperson Allen, members, and staff of the Committee on the Judiciary and Public Safety. I am Helder Gil, Chief of Staff to Deputy Mayor Kevin Donahue, who could not attend today’s hearing due to a family commitment. I am here to present Deputy Mayor Donahue’s testimony on Bill 22-452, the “Clemency Board Establishment Act of 2017.”

The bill seeks to provide greater local control over the clemency process for District of Columbia Code offenders by creating a review procedure for applications on pardons and sentence commutations. Although D.C. Official Code § 1-301.76, originally enacted by Congress in the late 19th century, states that the Mayor of the District of Columbia may grant pardons, the U.S. Department of Justice (DOJ) appears to believe that the Mayor’s authority to grant clemency, if any even exists, must be narrowly interpreted and that only the President has authority to grant clemency petitions for criminal cases in the District.[[1]](#footnote-1)

Currently, inmates and returning citizens in the District must submit clemency petitions to the DOJ, which then sends them to the President for consideration. This process is an affront to our Home Rule and basic democratic principles. It is unconscionable that a District resident who was convicted of violating District law in a District court must appeal to the President of the United States for a clemency petition.

Bill 22-452 would create an independent Clemency Board tasked with:

* Developing criteria and an application for clemency requests;
* Conducting hearings, and allowing the applicant to have access to legal representation during hearings;
* Reviewing each application to determine whether to recommend clemency; and
* Submitting an annual report to Council on the number of applications reviewed and the status of each, including whether the President granted clemency on any of them.

The Clemency Board would be comprised of nine members, with backgrounds in returning citizen affairs, mental health, victim’s rights, as well as members from the U.S. Attorney’s Office, the Office of the Attorney General, the Public Defender Service, the D.C. Superior Court, and two Council appointees. The bill also prescribes procedural requirements for the Clemency Board, including the confidentiality of its proceedings and its records.

Finally, the bill establishes requirements for D.C. Code offenders to be eligible to submit an application to the Clemency Board, including:

* A three-year waiting period from the completion of incarceration and any parole, probation, or supervised release for non-violent offenses, and a five-year waiting period for violent crimes;
* No further convictions or pending criminal cases relevant to the initial conviction;
* Compliance with all terms of the sentence and supervised release;
* A description of their rehabilitation; and
* An explanation of how clemency would assist the applicant in achieving their goals and contributing to the community.

The Executive supports the bill’s intent of providing inmates and rehabilitated returning citizens with a means to reduce their sentence or clear their criminal record. If passed by the Council, the Mayor will support the legislation. However, we need to be more ambitious. The enactment of this legislation will not impact whether the President approves – or even reviews – any application submitted to the Clemency Board. This legislation, on its own, will not provide the Clemency Board with any ability to require the President to consider their recommendations. In effect, the recommendations of the Clemency Board will carry the same weight with the President as appeals for clemency submitted directly by any District resident or inmate.

Instead, the better way to protect the integrity of our Home Rule is by providing the District’s chief executive with the same power inherent in the office of the chief executive of each state. As I stated earlier, it is inherently undemocratic for a District resident convicted of a District crime in a District court to be forced to seek clemency from the President. Mayor Bowser’s goal is for the District of Columbia to attain statehood and its residents be treated like American citizens with all of the rights guaranteed to us by the Constitution – including the right to full representation in Congress.

We are grateful for Congresswoman Eleanor Holmes Norton’s bill, the “District of Columbia Home Rule Clemency Act” (H.R. 1765), which was introduced in the House of Representatives on March 28, 2017, and referred to the Committee on Oversight and Government Reform. Her bill would provide the District with the same authority to grant clemency for local law violations as provided to all states. The Congresswoman’s bill would grant clemency authority not currently reserved to the Mayor under D.C. Official Code § 1-301.76 to the District government, which would be authorized to establish its own clemency system. The Norton bill would allow the District to grant clemency authority to the Mayor, a commission (such as a Clemency Board), or some other entity.

Chairperson Allen, while Bill 22-452 sends an important message about the need to ensure local self-determination, the bill’s impact – on its own – will be limited. We appreciate the intent of this bill and we support the work being done by Congresswoman Norton – and our statehood advocates – to continue to expand the District’s right to self-determination.

Thank you for the opportunity to provide testimony on this bill. I welcome your questions.

1. An undated letter, possibly from 2001, from the former DOJ Pardon Attorney, Roger C. Adams, provides historical context on the changes to the District’s form of government between 1802 and 1901 to support its proposition that the Mayor does not have clemency powers. The letter argues that the clemency power existed only between 1871 and 1874 when the District was organized under a territorial governor and an 11-member Legislative Assembly. The letter is found on the website of the Criminal Justice Policy Foundation:

   (<https://static1.squarespace.com/static/53ce893fe4b076d747fd326e/t/53d6b7f9e4b0d47dc085ba57/1406580729050/DCletter2.pdf>). [↑](#footnote-ref-1)