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Oversight and Government Reform Committee “Changes to The Heights Act: Shaping Washington, D.C., for the Future, Part II”

December 2, 2013

Thank you Chairman Issa for scheduling today’s hearing as a follow-up to your hearing last year, the first hearing on the Height Act in memory. In my more than 20 years of service in Congress, neither business interests nor D.C. residents have approached me regarding changing the Height Act, but I supported Chairman Issa’s call for a hearing on whether a 100-year-old law continues to serve the interests of both the federal government and the District government. The witnesses at that hearing, the National Capital Planning Commission (NCPC), the D.C. Office of Planning, the D.C. Chief Financial Officer, architect Roger Lewis, the D.C. Building Industry Association and the Committee of 100 on the Federal City, opened the issue, but the chairman wisely called on D.C. and NCPC to conduct a joint study of the Height Act, which I supported, with results that bring us here today. May I add how much I appreciate that this hearing reflects the chairman’s pattern of unfailing support not only for the city’s ongoing needs, including, most recently, his strong assistance in keeping the D.C. government open throughout the entire fiscal year after the federal government shut down, and the Chief Financial Officer vacancy and salary bills he quickly got through committee and to the floor. I also appreciate the chairman’s energetic and innovative work for budget autonomy, and his strong support on many occasions for home rule, which he has raised as a factor in connection with the Height Act.

As the Height Act study unfolded in community meetings and hearings over the past year, it became clear that many D.C. residents fear the loss of the unique horizontal scale that is part of the city’s home town identity, and that there are differing views on whether or how it should be changed. In fact, the D.C. government itself appears divided. Twelve of the 13 members of the D.C. Council cosponsored a resolution calling for no changes to the Height Act “at this time,” while the Mayor has recommended several changes to the Act.

It is not surprising that the Height Act stirs passions and divisions. The Height Act implicates many important issues: home rule, D.C.’s status as the nation’s capital, economic development, city planning, affordable housing, architecture, and historic preservation, among many others. The District Office of Planning argues that changes may be necessary to accommodate projected population and job growth and to reduce the cost of housing in the

future, and that the historic nature of the city can still be preserved. Opponents of changes argue just the opposite. They say that there is sufficient capacity in D.C. to accommodate projected population and job growth, that changes would increase the cost of housing, that changes would slow the spread of economic development across the city to areas that need development, and that changes would destroy the historic character of the city. At bottom, the issue raised by the study the chairman requested unavoidably is, if changes ever prove necessary, who should make changes to the Height Act affecting home town D.C.: the D.C. government or the federal government, and under what circumstances.

Every year, the underlying development issues have been part of my work in the Congress. I spend considerable time both fending off attacks on home rule and proposing its expansion with full local democracy, full congressional voting rights, budget autonomy and statehood, which have been and will continue to be overriding concerns. Yet, like any member of Congress, one of my principal jobs also has been to bring jobs and economic development to my district. In my role as the chair of the Economic Development Subcommittee, I took great interest in land development to bring affordable housing and jobs to the city. Much of the District's development depends upon the federal government either because it owns a significant percentage of land throughout the city or because the location of federal agencies in neighborhoods almost always stimulates the mixed-use development that residents desire. My bills and other committee work have created new neighborhoods, all away from downtown, in NoMa, at the Capitol Riverfront, on the Southwest Waterfront and in Ward 8, where the new Department of Homeland Security complex of buildings is rejuvenating Martin Luther King Jr. Avenue. Naturally, I am interested in whether the spreading of development away from downtown would be helped or hampered if space for federal or private offices were allowed in taller buildings.

When it comes to the Height Act, I wear two hats. As a federal official, I have an obligation to protect monumental Washington as a national symbol, as well as the values residents have come to associate over time with the scale of city life imposed by the Height Act. At the same time, as the congressional representative for the District, I have spent my career fighting for the District to have the right to make its own decisions, as every other local government in America does. I have not regarded the two obligations as irreconcilable.

The differences between today's two witnesses, one federal and one local should not be allowed to mask internal differences within the District that the city should confront. I have not had the opportunity to speak personally with Mayor Gray to hear his views, but D.C. Council Chairman Phil Mendelson called me, and in that conversation, I learned more about his concerns and perhaps the concerns of some other members of the Council. Unlike any other issue I have encountered while serving in the House, the concern seems not to be with the Congress but with the District itself. There is fear that economic forces, pulled perhaps by business interests, would lead to undesirably tall buildings. The implicit argument is that federal authority is necessary to protect the District against itself. Although in my own congressional work on development here, no developer has ever approached me about the Height Act, there is some evidence from a 1990 Council bill. Of only three congressional disapproval resolutions overturning D.C. legislation since the 1973 Home Rule Act, one involved the Height Act. In that case, the Council was convinced by a developer that buildings adjacent to public buildings could exceed the overall

limits set forth in the Height Act because the Height Act permitted the District Commissioners to set a Schedule of Heights for buildings next to public buildings. Congress, along with the Government Accountability Office and the Justice Department, disagreed, and the legislation was disapproved. If the city had authority on its own to change the Height Act in home town D.C., such changes might come to Congress for a layover period, but there might be no violation of the federal interest to justify congressional intervention. Surely there is a better solution than coming to Congress to request that Congress violate a home-rule decision or having a D.C. Height Act with too little defense against local interpretations and exceptions with results that opponents fear.

Considering the strong views of District residents on home rule, and, candidly, the risk to home rule posed by internal disagreement, I believe that elected officials have an obligation to avoid home-rule division if at all possible. Are the differences between the NCPC and the D.C. Office of Planning so far apart that they cannot be reconciled? Even the D.C. Office of Planning position would not free the District from the existing multilayered federal and District planning processes. Are there changes in the Comprehensive Plan process, zoning process, or local legislation that would give residents a meaningful opportunity to deter or stop risky changes in the District by the District? If changes by Congress to the Height Act are contemplated, should they be contingent on changes in the Comprehensive Plan process, zoning processes, local legislation or other changes as well? Can discussions between the Council and Mayor reconcile their differences between the two positions we will hear today?

I hope that the city confronts the issue before us consistent with its position for two centuries that the District, not Congress, must make its own decisions. I appreciate the intensive work of today's very knowledgeable witnesses and look forward to hearing from them and to learning more from their study about the Height Act, whether changes are necessary and, if so, the best way to see that they occur.

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