UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DC ASSOCIATION OF CHARTERED PUBLIC SCHOOLS, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 14-cv-1293 (TSC)
DISTRICT OF COLUMBIA, et al.,	)	
Defendants.	)	

DEFENDANTS' MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants the District of Columbia ("District"), Mayor Vincent Gray, in his official capacity, and Chief Financial Officer, Jeffrey Dewitt, in his official capacity, by and through counsel, move to dismiss Plaintiffs' Complaint [Dkt. No. 1] with prejudice. The grounds for this request are set forth in the Memorandum of Points and Authorities accompanying this Motion, which Defendants incorporate by reference.[1] Because this is Motion is dispositive of the Complaint, Defendants have not sought Plaintiffs' consent to the relief requested. *See* L. Civ. R. 7(m). Defendants further request the opportunity for oral argument on this Motion.

September 29, 2014

Respectfully Submitted,

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[1] An appropriate proposed order also accompanies this Motion.

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

This case purports to challenge the authority of the District of Columbia ("District") to determine the level of local funding for District of Columbia Public Schools ("DCPS") and public charter schools. The Complaint generally alleges that the laws by which the District appropriates annual and supplemental funding for the two public education sectors results in mathematically inequitable distributions to the routine advantage of DCPS. That, Plaintiffs claim, violates the School Reform Act of 1995, a congressionally-enacted local law that provides, in part, that local funding for certain public education costs be determined pursuant to a formula. The Complaint hinges critically on the novel legal theory that, because the School Reform Act was enacted by Congress, any law passed by the Council that is inconsistent with it exceeds the Council's legislative authority and violates the Supremacy Clause of the U.S. Constitution.

That theory, however, has no basis in the structure of governance established by the Home Rule Act four decades ago or in any other governing legal principle. Instead, unless Congress states otherwise, which it has not in this context, the Council's authority under the Home Rule Act specifically allows it to modify the substance or terms of a congressional act,

such as the School Reform Act, which is limited in its application to the District. Similarly, the fact that the School Reform Act was enacted by Congress does not transform it into a law of national significance, such that it must preempt Council legislation relating to school funding. As a result, the policy choices made by the Council about which Plaintiffs complain are well within the legislative powers delegated to the Council by Congress; in fact, every one of the determinations Plaintiffs challenge have been tacitly approved, or affirmatively accepted, by Congress. In short, these are distinctively local decisions, requiring quintessentially local evaluation of the needs and resources of the District's public school system, and there is nothing in the School Reform Act or any other law suggesting that Congress intended to relieve the Council of its Home Rule Act authority to make them. In light of the foregoing, the Complaint fails to state any legally-cognizable claim, and dismissal *with prejudice* pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(6) is appropriate.

BACKGROUND

I. THE LEGISLATIVE POWER IN THE DISTRICT

In 1973, Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774 (1973), codified as amended, D.C. Code § 1-201.01, *et seq.* ("Home Rule Act"), "to relieve [itself] of the burden of legislating upon essentially local District matters," D.C. Code § 1-201.02(a).[1] The Home Rule Act provides for a popularly elected legislature (i.e. the Council) and delegates to it broad legislative authority limited by specified restrictions. *Id.* § 1-203.02 ("[e]xcept as provided in §§ 1-206.01 to 1-

[1] Congress' "exclusive" legislative authority over the District derives from the Constitution, Art. I, § 8, cl. 17, and has long been understood to be fully-delegable. *See John R. Thompson Co.*, 346 U.S. at 110 (no barrier "to the delegation by Congress to the District [ ] of full legislative power"). For a succinct history of the pre-Home Rule governance structure in the District, refer to Jason I. Newman & Jacques B. DePuy, *Bringing Democracy to the Nation's Last Colony: The District of Columbia Self-Government Act*, 24 Am. U. L. Rev. 537, 541-48 (1975).

206.03, the legislative power of the District shall extend to all rightful subjects of legislation with the District . . ."); *id.* § 1-204.04(a) ("legislative power granted to the District . . . is vested in and shall be exercised by the Council"). These include a reservation of Congress' exclusive constitutional power to legislate for the District, *id.* § 1-206.01 ("Congress . . . reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject . . . including legislation to amend or repeal any law in force in the District"); a prohibition on the Council legislating in nine enumerated areas[2] or in a manner inconsistent with the Home Rule Act, *id.* § 1-206.02(a)(1)-(8); and a general limitation on the District's control over the local budgetary process, *id.* § 1-206.03.[3] Pursuant to the Home Rule Act, Congress also retains ultimate authority over District legislation by providing for a 30-day period of passive congressional review as a condition precedent to ordinary Council laws becoming effective. *id.* § 1-206.02(c)(1) (act of Council "shall take effect upon the expiration of the 30-calendar-day period . . . unless during such 30-day period, there has been enacted into law a joint resolution disapproving such act"). Otherwise, however, Congress conferred to the Council general lawmaking powers extending to "all rightful subjects of legislation . . . consistent with the Constitution." *id*. § 1-203.02.

[2] As enacted, Section 602 of Home Rule Act provided that the District could not: impose any tax on federal or state property; lend public credit for a private purpose; enact or amend any law concerning the functions of the federal government or that does not apply exclusively to the District; regulate the federal or local courts; impose a personal income tax on non-residents; permit the building of structures exceeding existing height restrictions; regulate the commission on Mental Health; or amend certain existing criminal laws for a specified time. D.C. Code § 1-206.02(a)(1)-(8). As discussed elsewhere in this brief, Section 602(a) was subsequently amended to include a restriction on the Council's authority to "Enact any act, resolution, or rule with respect to the District of Columbia Financial Responsibility and Management Assistance Authority."

[3] Unlike normal legislation, Congress must act affirmatively to appropriate funds for the District. *See id.* § 1-204.46. Broadly outlined, the budgetary process is as follows: The Mayor initially submits an annual budget proposal to Council, which is required to adopt it within 56 days and return it to the Mayor; the Mayor must then sign the budget, or it must be approved over his veto within 30 days; the budget is thereafter submitted as a "Budget Request Act" to the President for consideration and transfer to Congress as part of the national budget. *See id*. § 1-204.04(e)-(f). Revisions to the District's budget, including proposed supplemental appropriations, follow essentially the same process. *See id.* § 1-204.42(c).

II. THE SCHOOL REFORM ACT AND RELATED LEGISLATIVE ENACTMENTS

On April 26, 1996, Congress exercised its authority under the Home Rule Act to enact legislation for the District and passed the District of Columbia School Reform Act of 1995, codified as amended, D.C. Code § 38-1800.01, *et seq.* ("School Reform Act"), which addressed certain local education needs and facilitated the creation of charter schools in the District.[4] The School Reform Act is codified as local law and restricted in its application to the District. *See generally, id.* As relevant here, section 2401 of the School Reform Act provides for the Mayor to make annual payments of local funds for the "operating expenses" of both DCPS (including the expenses of the Office of the Superintendent of Education) and public charter schools. *Id.* § 38-1804.01.[5] The amount of the annual payments, according to the Act, is to be determined by the Mayor and the Council, in consultation with the Board of Education and the Superintendent, pursuant to a "formula," which is defined as the "number . . . of students enrolled" multiplied by "a uniform dollar amount." *Id.* § 38-1804.01(a)(2). The Act further provides that the formula amount is subject to adjustment, up or down, based on certain enumerated "exceptions." *Id.* § 38-1804.01(a)(3).[6]

On September 22, 1998, the Council first passed legislation establishing the "funding formula" described in section 2401 of the School Reform Act and providing for its implementation within the District's public education system. *See* Uniform Per Student Funding

[4] The School Reform Act was passed as section (b) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996). Among other things, the School Reform Act established standards and regulations governing local charter schools and created the Public Charter School Board to evaluate academic performance among charters and monitor compliance with local and federal law. *See* D.C. Code § 38-1802.01, *et seq.*

[5] The School Reform Act does not define the term "operating expenses."

[6] These include an increase for schools serving high numbers of students with special needs, literacy issues, and those housed in a residential setting. *Id.* § 38-1804.01(a)(3)(B)(i)-(iii). The Act also allows for adjustments to the amount of payments to charter schools for "facilities costs," such as leases/purchases of, and improvements to, real property.

Formula for Public Schools and Public Charter Schools and Tax Conformity Clarification Amendment Act of 1998, A12-494, D.C. Law 12-207 (1999), codified as amended D.C. Code § 38-2901, *et seq.* ("UPSFF Act"). Since then, the Council has legislated countless times in the area of education, generally, and school funding, in particular; in 2007, for example, the Council fundamentally restructured the governance of the public school system via the "Public Education Reform Amendment Act of 2007," D.C. Law 17-9 ("PERRA"), creating a new state-level education agency and abolishing, with congressional approval, the Board of Education. By operation of the Home Rule Act, specifically, Section 602(e), each local school reform law passed by the Council, including the UPSFF Act and PERRA, was presented to Congress for review. *See* D.C. Code § 1-206.02(c)(1). Likewise, all local appropriations, without exception, have been subject to the congressional budgetary process dictated by the Home Rule Act. *See* discussion *supra* at n. 3. Congress has not rejected any of these legislative initiatives.

III. PLAINTIFFS' COMPLAINT

Plaintiffs filed their Complaint in this matter on July 30, 2014. The gravamen of the Complaint is that the School Reform Act mandates dollar-for-dollar appropriation of local funds to both DCPS and public charter schools, and the District has repeatedly violated that requirement by providing funds to one or the other public education sector outside of the formula. *See e.g.* Compl. ¶ 25 ("[UPSFF is] exclusive mechanism for funding"). Specifically, Plaintiffs take issue with the following actions: (1) discrepancies in enrollment calculations for DCPS and charter schools as governed by D.C. Code § 38-2906, *et seq.*; (2) supplemental funding to DCPS accomplished via local appropriations and budget request acts; (3) inequitable annual budget funding during fiscal years 2008-2015; and (4) subsidized government services provided to DCPS under D.C. Code § 38-2902(b). *See* Compl. ¶¶ 84, 89, 92. In essence,

Plaintiffs assert that each time the Council passed funding legislation characterized by any of the four categories of purported deficiencies outlined in the Complaint, the District was in violation of Article I, Section 8, Clause 17 of the Constitution and the Home Rule Act (Count I), the Supremacy Clause, U.S. Const. Art. VI, § 8, cl. 2 (Count II), and the School Reform Act (Count III).[7] Assuming for the limited purpose of this Motion that there is inequity in funding as alleged by Plaintiffs, each count of the Complaint nevertheless fails to state a claim, for the reasons discussed in argument below. [8]

LEGAL STANDARD

Rule 12(b)(6) allows a party to move to dismiss a complaint that fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). In order to survive a motion to dismiss under Rule 12(b)(6), the factual allegations of the complaint "must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *accord Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (complaint survives only if it "contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face"). However, only well-pleaded factual allegations are entitled to an assumption of veracity: Conclusory allegations devoid of factual enhancement, legal conclusions, and inferences unsupported by the facts must all be rejected. *See Henneghan v. District of Columbia*, 916 F. Supp. 2d 5, 9 (D.D.C. 2013) (Sullivan, J.) (quoting *Iqbal*, 556 U.S. at 678). In addition to any well-pleaded facts, a court

[7] Plaintiffs seek only injunctive and declaratory relief. *See* Compl. ¶ 93.

[8] Ultimately, the District's actions are (and have been) fully consistent with the School Reform Act, but that argument is not necessary to resolve this Motion, which assumes *arguendo* that Plaintiffs' factual allegations are true. The District's policy choices regarding school funding reflect support for both the traditional and charter public schools, both of which receive funding at levels above the uniform formula of the School Reform Act, based on the District's annual, fact-specific review of the needs of each sector, all of which is mischaracterized or misunderstood in the Complaint. Nevertheless, these points need not be addressed in the Court's disposition of this Motion or this case.

ruling on a 12(b)(6) motion may consider "any documents either attached to or incorporated in the complaint and matters of which [it] may take judicial notice." *Trudeau v. Fed. Trade Comm'n*, 456 F.3d 178, 183 (D.C. Cir. 2006) (citation and quotations omitted). Ultimately, a complaint that fails to "set forth information to suggest that there is some recognized legal theory upon which relief may be granted" must be dismissed pursuant to the Rule. *See District of Columbia v. Air Fla., Inc.*, 750 F.2d 1077, 1078 (D.C. Cir. 1984). The dismissal must be with prejudice if "the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C. Cir. 1996).

ARGUMENT

Many of Plaintiffs' allegations are conclusory and unsupported by reference to fact; some fall clearly outside any conceivable limitations period; and all relate to legislative acts, not "administrative actions," as the Complaint summarily suggests, *see e.g.* Compl. ¶ 83 ("legislative enactments and administrative actions").[9] But far more problematic for the merits of Plaintiffs' case is the absence of any viable legal theory supporting their claims. As the following demonstrates, the District has not violated the Home Rule Act (Count I) because it has the authority under the Act to contradict congressional law that is limited in its application to the District, which the School Reform Act clearly is. Likewise, the School Reform Act does not

[9] For example, the Complaint often refers to challenged actions generically and supports them by allegations made "upon information and belief." *See e.g.* Compl. ¶¶ 45-48. Such allegations do not withstand a 12(b)(6) motion unless the apparently unknown facts are peculiarly within the Defendants' control, which is not the case for the budget legislation at issue here, all of which is public. *Evangelou v. District of Columbia*, 2012 U.S. Dist. LEXIS 158322 at *24 (D.D.C. Nov. 5, 2012). Likewise, Plaintiffs cannot challenge budget acts or supplemental appropriations acts passed more than three years prior to the date the Complaint was filed. *See* D.C. Code § 12-301(7) (three-year residual limitations period); *see also AMTRAK v. Lexington Ins. Co.*, 357 F. Supp. 2d 287, 292 (D.D.C. 2005) ("defendant may raise the affirmative defense of a statute of limitations via a Rule 12(b)(6) motion when the facts giving rise to the defense are apparent on the face of the complaint"). Lastly, Defendants are aware of no action challenged in the Complaint that is not traceable to an action or inaction by the Council; if it were otherwise, Defendants would be entitled to deference in their interpretation of the School Reform Act. *See Stevenson v. D.C. Bd. of Elections and Ethics*, 683 A.2d 1371, 1378 (D.C. 1996) (*per curium*) (citing *Chevron USA, Inc. v. Nat'l Resource Defense Council, Inc.*, 467 U.S. 837, 844 (1984)).

preempt Council legislation on school funding (Count II) since the Act is local in character and thus, is not the "law[ ] of the United States" under the meaning of the Supremacy Clause. Finally, because the Council does not violate any independent source of authority (e.g. the Home Rule Act or national law) by contradicting the School Reform Act, the contradiction itself, assuming *arguendo* that one exists, does not give rise to an independent cause of action (Count III). As such, the Complaint must be dismissed, and dismissal must be ***with prejudice***, since the allegation of different facts could not cure these deficiencies.

I. THE COUNCIL'S AUTHORITY UNDER THE HOME RULE ACT ALLOWS IT TO CONTRADICT AN ACT OF CONGRESS THAT IS LIMITED IN ITS APPLICATION TO THE DISTRICT

There is no question that the Council may pass appropriations annually or through supplemental bills to fund schools in ways that are consistent with or contrary to the School Reform Act; Congress itself gave the Council that authority at the time it passed the Home Rule Act and has not taken it away since. As discussed in greater detail below, the Council's legislative authority under the Home Rule Act extends to all subjects of legislation within the District ***unless*** specifically limited by Congress. That broad delegation includes the power to amend or repeal an act of Congress, where, as here, the congressional act is limited in its application to the District. Therefore, Count I of the Complaint, which charges a violation of the Home Rule Act and Article I, Section 8, Clause 17 of the Constitution arising out of alleged conflicts between the School Reform Act and subsequent Council legislation, must be dismissed with prejudice for failure to state a claim.[10]

[10] Article I, Section 8, Clause 17 of the Constitution contains Congress' general grant of legislative authority over the District. To the extent that Plaintiffs argue that it creates a standalone limitation on the Council's authority to generate local legislation, that argument is entirely baseless. Congress transferred this constitutional authority to govern the District pursuant to the terms of the Home Rule Act, *see id.* § 1-201.02(a) ("to the greatest extent possible, consistent with the constitutional mandate"); the legislative power it reserved is a simple restatement of what the Constitution provides, *compare id.* § 1-206.01, *with* U.S. Const. Art. I, § 8, cl. 17. Accordingly, the Home Rule Act, not Article I, Section 8, Clause 17, logically governs any question of relative legislative authority in the

A. The Broad Delegation Of Legislative Authority From Congress To The District Under The Home Rule Act Includes The Power To Amend Congressional Legislation Limited In Its Application To The District

The structure of governance that Congress created through the Home Rule Act is one of general local authority subject to specified limitations. Section 302—the general delegation of lawmaking authority—empowers the District (via the Council) to legislate on "all rightful subjects of legislation." D.C. Code § 1-203.02. Section 602—the specified limitations on that authority—prohibit the Council from violating the Home Rule Act and from legislating in several specific, enumerated respects. *See id.* § 1-206.02; *supra* at n. 2 (enumerating Section 602 limitations). One such limitation states the Council "shall have no authority to . . . enact any act or amend or repeal any Act of Congress . . . which is not restricted in its application exclusively in or to the District." *Id.* § 1-206.02(a)(3). There is no limitation, however, on the Council "amend[ing] or repeal[ing]" or otherwise altering a congressional act that <u>*is*</u> limited in application "exclusively in or to the District." *Id.* In other words, such legislation is within the "rightful subjects" about which the Council may legislate under the Home Rule Act. *Id* § 1-203.02.

The D.C. Court of Appeals has long recognized this, "reject[ing] a restrictive view of the delegation of legislative authority under the Self-Government Act while preventing any intrusion by the Mayor and Council into specifically forbidden areas." *Sprint Communications Co. v. Kelly*, 642 A.2d 106, 111 n.14 (D.C. 1994) (citations omitted). For example, in *District of Columbia v. Greater Washington Central Labor Council*, the Court approved the Council's repeal of a workers' compensation statute enacted by Congress that was applicable only to private businesses within the District. 442 A.2d 110, 113, *reh'g denied*, 445 A.2d 960 (D.C.

District; the latter could have no independent force unless Congress revoked the delegation of self-government under the former.

1982), *cert. denied*, 460 U.S. 1016 (1983). There, the Court concluded, by reference to the limitation expressed in Section 602(a)(3), that the Council possessed the authority to repeal a congressionally-enacted statute limited in application to the District but not a federal statute of broader (e.g. national or intra-state) application, the law at issue being of the former variety. *Id.* at 115.[11] Importantly, the Court of Appeals' reasoning is owed deference by this Court, in so far as it deals with issues of local law, *Hall v. Ford*, 866 F.2d 255, 267 (D.C. Cir. 1998), of which the Council's authority to pass local legislation surely is one. *Compare Thomas v. Barry*, 729 F.2d 1469, 1471 (D.C. Cir. 1984) (Home Rule Act is "hybrid statute" involving both federal and local law) and *Bliley v. Kelly*, 23 F.3d 507, 511-13 (D.C. Cir. 1994) (no deference to D.C. Court of Appeals on interpretation of "exclusively federal aspect of the [Home Rule] Act") *with* D.C. Code § 1-203.02 (legislative powers granted to the District, no mention of Congress or federal government). Consistent with the reasoning in *Greater Washington* and its progeny, the Council is well within its Home Rule Act authority to legislate on matters of school funding, the School Reform Act notwithstanding. *See* discussion *infra* at 15-18 (School Reform Act limited to the District; no limitation on Council's power to amend).

Count I of the Complaint argues otherwise. Relying on Section 601[12] of the Home Rule Act, Plaintiffs allege:

> When Congress resumes its role as the exclusive legislature for the District of Columbia under Article I, § 8 of the Constitution in a

[11] The D.C. Court of Appeals has reaffirmed this principle in subsequent contexts, never doubting its legal or logical validity. *See, e.g., Brizill v. District of Columbia Bd. of Elections and Ethics*, 911 A.2d 1212, 1215-16 (D.C. 2006) (striking down local law authorizing video lottery terminals on ground that it conflicted with and effectively amended federal law restricting gambling, reasoning that the latter applied to jurisdictions outside the District); *McConnell v. United States*, 537 A.2d 211, 214-15 (D.C. 1997) (holding that amendments to locally-enacted controlled substance law did not effectively repeal sentencing guidelines under federal narcotics statute because the latter applied nationwide and the Council thus had no authority to amend or repeal it).

[12] As noted elsewhere in this brief, Section 601 simply restates Congress' constitutional authority over the District. *Compare* D.C. Code § 1-206.01, *with* U.S. Const. Art. I, § 8, cl. 17.

> subject area previously delegated under the Home Rule Act, the D.C. Council, thereafter, has no authority to enact legislation that conflicts with and effectively amends such Congressional legislation in a manner that is inconsistent with it or contrary to its purpose.

Id. ¶ 81. Plaintiffs' interpretation of Section 601 stretches language and logic too far, for several reasons.

First, on its face, Section 601 does not purport to circumscribe the general legislative authority of the Council in any way. *See* D.C. Code § 1-206.02. As noted above, that is precisely what was addressed in the subsequent section of the Act; Section 602 *expressly* states the ways that the Council's authority is limited, *id.* § 1-206.02(a), and specifically addresses some situations (to the exclusion of others) where the Council cannot amend or repeal a congressional law, *id.* § 1-206.02(a)(3) ("no authority to . . . amend or repeal [ ] Act of Congress . . . which is not restricted in its application exclusively in or to the District"). If Congress had intended that Section 601 restrict the Council's authority in some specific way—especially in some way distinct from the amend and repeal limitation of Section 602(a)(3)—it could have said so, either on the face of Section 601 or by addition to Section 602. It did not.

Second, Plaintiffs' interpretation assumes a structure of governance that is clearly not what Congress intended when it granted Home Rule to the District. As Plaintiffs apparently see it, in every instance that Congress acts as local legislature it *ipso facto* restricts the Council's authority to legislate on the same subject; in turn, Congress would effectively retake the burden of dictating local prerogatives in the field of its legislation unless or until it repealed its law on the subject. While it was certainly within Congress' right to enact such an unstable scheme, Congress ultimately elected, in passing the Home Rule Act, to *relieve* itself of the burden of legislating upon essentially local matters "to the greatest extent possible, consistent with the

constitutional mandate." *Id.* § 1-201.02(a). So, under the Home Rule Act, Congress made all limitations on the power granted to the District express, *id.* § 1-206.02(a), retained the right to revise or revoke the terms of the grant, *id.* § 1-206.02(a); *see also infra* at 12-13 (discussing legislative history of Section 601), and reserved to itself ultimate veto power over the District's legislation, *id.* § 1-206.02(c)(1), but otherwise withdrew from the business of managing local District affairs, *id.* § 1-203.02. Viewed in light of this structure, Congress simply did not adopt, or intend to adopt, a model that permits revocation or limitation by implication.

The legislative history of the Home Rule Act provides clear evidence that this is true, both in terms of proving that Congress understood that it retained the power to limit the Council's authority, and in demonstrating that Congress appreciated the full extent of the delegation to the Council. In summarizing section 601, the House Committee Report explained that "[t]he delegation of home rule to the residents of the District is given with the express reservation that the Congress may, at any time, revoke or modify the delegation in whole or in part." H.R. Rep. No. 93-482 at 15 (1973). The Senate Report provides precisely the same explanation. *See* S. Rep. No. 93-219 at 4 (1973). Moreover, the House Report summarized Section 302, by reference to a recent Circuit opinion, for the proposition that when Congress delegates self-governance to the District it retains the right to limit and/or reverse the delegation; according to the Report, that authority was "very much in point" on its characterization of the nature of the delegation from Congress to the Council under the District's new governmental structure. *See* H.R. Rep. No. 93-482 at 8.[13]

[13] Specifically, in relevant part, the House Committee Report explained the delegation of authority under Section 302 as follows:

> This title delegates legislative power from the Congress to the District . . . . In this connection, a recent case of the United States Court of Appeals for the District of Columbia Circuit, is very much in point. The Court, in the case of *Firemen's Insurance Company of Washington D.C., v. Washington, et al* . . .

More importantly, the dissenting views of the House Committee Report clearly indicate that Congress was aware not only of the broad nature of the legislative power conferred under Section 302, but also of a potential for future substantive modifications by the Council of local congressional legislation. The Report concludes, in unequivocal terms, that the local congressional law and the Council's legislation would be parallel in effect, absent congressional intent to limit the Council's authority (or action by Congress to overturn the Council's actions):

> H.R. 9682 would delegate the full range of legislative authority from Congress to the local government. The District would be able freely to "experiment" with legislation, in such areas as social welfare, that the Congress would refuse to enact, or that could damage the spirit as well as the substance of the Federal interest. In such instances where the local Council would go beyond the bounds that Congress desires, Congress would be left with its "ultimate" power to set it aside (Section 102). If the District re-enacted the same legislation, there would ensue a "legislative dance" between the District and the Congress that could presumably only be terminated by the Congress specifically forbidding the Council to pass any act on such subject again. H.R. 9682, rather than restricting the legislative authority of the Council, might be said to commit the Congress to engage in this "experimental" legislative process, the results of which no one could predict.

Id. at 121. Of course, under this characterization, Congress not only foresaw a potential "legislative dance" between laws passed by the Council and acts of Congress enacted pursuant to Section 601, but more importantly, it understood that the mechanism for ending the "dance" was an expression by Congress to limit the Council's power to legislate.

> held that "Congress, in legislating for the District, has all the powers of a state legislature, and Congress may delegate to the District government that full legislative authority, subject of course to Constitutional limitations to which all lawmaking is subservient and subject also to the power of Congress at any time to revise, alter, revoke the authority granted." The Court also asserted that "[w]hen Congress delegates its police power to the local government, that entity's powers become *as broad as those of Congress, limited only by the Constitution or specific Congressional enactment* . . . ."

H.R. REP. No. 93-482 at 8 (emphasis added).

Statements in the House Committee and on the House floor indicate much the same. For example, in a dialogue before the full committee, Representative Adams, Chairman of the House District Subcommittee on Government Operations (i.e. the subcommittee charged with drafting the bill), explained the Council's authority to amend congressional law as follows:

> Mr. Adams. [The Council could amend] the District of Columbia section, yes, not [ ] sections that do not involve the District of Columbia, not [ ] sections that are prohibited under the Charter or prohibited under other provisions of this act, nor [ ] provisions which Congress itself would say are not amendable. For example, there is contained in this bill a reservation of power to the Federal Government that says height limitations shall not be able to be changed. Now, that could not be changed. But the Code provisions dealing with the District of Columbia generally could be.
>
> * * *
>
> Mr. Hogan. Would you have the District Council acting to amend an enactment of Congress or would the action they take supersede enactment of Congress?
>
> Mr. Adams. To the Degree that we have passed, and by we I mean the Congress of the United States, for many years innumerable code sections, the whole basis of this bill is that we would let local government be changing those unless this Committee prohibited it because we cannot and have not been able to sit down and do away with the old archaic systems. So that, yes, they do do[*sic*] have that and now, if this Committee or the Congress itself is concerned about an action of the local Council on that, then this Committee could so act, place it in the United States Code and it would be beyond the reach of the local government.

House Comm. on the District of Columbia, 93rd Cong., Markup by Full Committee of H.R. 9056, Titles III and IV (July 18, 1973). During the House Debate, Representative Broyhill clarified that the Council's authority to amend and repeal would necessarily extend to ***future*** acts of Congress:

> We have already agreed that we should limit the council's authority insofar as budgetary control is concerned. We have

> already agreed that we should limit their authority insofar as the criminal code is concerned. So we have already shown by our prior actions that we question the amount of confidence that we should have in this city council. Yet we have given them authority in this legislation to amend and repeal prior acts of Congress. *In fact they could even repeal future acts of Congress.*

House Proceedings on H.R. 9682, 93rd Cong. (Oct. 10, 1973) (emphasis added). Thus, both the proponents and opponents of home rule understood that the Council would be authorized to act in these circumstances.

Ultimately, these authorities make express what is evident in the structure of the Home Rule Act: that the Council's broad legislative authority under Section 302 permits it to amend or repeal any local law, including acts of Congress directed at plainly local interests, up to the limits stated in Section 602, and subject to Congress' ultimate right to further restrict the Council in any manner it sees fit. As discussed, that interpretation gives meaning and effect to all relevant provisions of the Home Rule Act while reconciling it with its stated purpose of relieving Congress of the burden of legislating upon essentially local matters "*to the greatest extent possible.*" *Id.* § 1-201.02(a) (emphasis added). It is likewise consistent with the reasoning of the D.C. Court of Appeals in interpreting the same provisions of the Act, to which this Court is obliged to defer under the circumstances. As the following section demonstrates, Congress has never limited the Council's authority to legislate on matters of education funding, which is within the "rightful subjects of legislation" falling within the Council's purview, notwithstanding the fact that Congress has also legislated in the same field.

B. Neither The Home Rule Act Nor The School Reform Act Limits The Council's Authority To Pass Laws Governing School Funding Or To Legislate Inconsistent With The Funding Provisions Of The School Reform Act

For the reasons set forth above, the Council possesses the authority to pass laws that "conflict with [or] effectively amend the School Reform Act," which is limited in its application

to the District, unless Congress has restricted the Council's power to do so. Compl. ¶ 83.[14] Congress has not done so. No such limitation exists on the face of the Home Rule Act. *See* D.C. Code § 1-206.02(a). And there is nothing in the text or history of the School Reform Act, or subsequently, that suggests that Congress intended to fix in time the Council's authority to legislate on the subjects the Act reaches (specifically, as relevant here, school funding). The absence of a limitation in this area makes sense: Education has long been understood as a quintessentially local issue. *See, e.g.*, *Mo. v. Jenkins*, 515 U.S. 70, 99 (U.S. 1995) ("our cases recognize that local autonomy of school districts is a vital national tradition"). Congress accepted as much, even at the time the Home Rule Act was passed, which is ***directly*** confirmed in the legislative record of the Act. *See* H.R. Rep. No. 93-482, Dissenting Views, at 114 ("the public school system was one functional area that could be delegated to the administration of locally elected officials . . . ," while touching some federal prerogatives, "by and large, it was considered that the interest there was predominantly local"). Given this context, Congress' decision not to limit the authority of the Council on issues of school funding was intentional.

This reading is directly reinforced by Congress' enactment of unrelated District legislation during the same congressional term as the School Reform Act. On April 17, 1995, Congress enacted the D.C. Financial Responsibility and Management Assistance Act, Public Law 104-8 ("Financial Responsibility Act"). Among other things, the Financial Responsibility Act placed various local government functions under the control of a Financial Responsibility and Management Assistance Authority, commonly referred to as the "Control Board." The Financial Responsibility Act, which was enacted pursuant to Congress' residual legislative authority under the Home Rule Act, was codified as local law and restricted in its application

[14] The School Reform Act is limited in its application to the District. It deals squarely with matters of local education; the funding provisions on which Plaintiffs rely deal uniquely with appropriations of local revenue.

exclusively to the District. *See* D.C. Code § 47-391.01, *et seq.* (Financial Responsibility Act); *id.* § 1-206.01 ("Congress . . . reserves the right . . . to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject"). Notably, Section 108 of the Act amended Section 602(a) of the Home Rule Act to expressly provide that "[t]he Council shall have no authority . . . to . . . enact any act, resolution, or rule with respect to the [Control Board] established under the [Financial Responsibility Act]." *id.* § 1-206.02(a)(10). In this sense, Congress acted affirmatively to create a specified exception (i.e. limit) to the Council's otherwise broad legislative authority delegated to it in 1973. By implication, if Congress had intended the same with respect to school funding or any other specific area with which the School Reform Act dealt, there is every reason to expect that it would have amended Section 602(a) accordingly.

Moreover, Congress, through its roles in the District's legislative and budgetary processes, has the opportunity to review and reject (or in the case of appropriations laws, refuse to enact) any Council law whatsoever, including those identified in Plaintiffs' Complaint. *See* D.C. Code § 1-206.02(c)(1) (30 day congressional review of ordinary legislation); *id.* § 1-204.46 (affirmative congressional law required to pass local budget). That Congress has not so acted with respect to the countless education laws passed by the Council since enactment of the School Reform Act is significant evidence that Congress had no desire to so limit the Council at the time the Act was passed. This point is further substantiated by the fact that Congress amended the School Reform Act ***after*** enactment by the Council of provisions implementing the Act and, specifically, its funding requirements. *See* Pub. L. No. 106-113, § 155, 113 Stat. 1526. If indeed Congress intended to limit the Council's authority to make decisions regarding local funding for schools, it had many opportunities to do so contemporaneous and subsequent to its enactment of

the School Reform Act. It has not done so, acquiescing consistently and over an extended period of time to the approach taken by the District's local government.

The foregoing demonstrates that, notwithstanding the fact that Congress had the authority and opportunity to impose limits on the Council's authority in the area of school funding, there is no obvious limit. Because no limit exists, any legislative action conflicting (or effectively amending) the funding provisions of the School Reform Act could not give rise to a Home Rule Act violation. For that reason, Count I of the Complaint fails to state a viable claim and must be dismissed.

II. THE SUPREMACY CLAUSE DOES NOT LIMIT THE COUNCIL'S AUTHORITY UNDER THE HOME RULE ACT TO CONTRADICT AN ACT OF CONGRESS PASSED PURSUANT TO U.S. CONSTITUTION ART. I, SEC. 8, CL. 17

Count II of the Complaint purports to state a violation of the Supremacy Clause arising out of the same alleged "conflicts" that underlie Count I. *See* Compl. ¶¶ 86-89. The Supremacy Clause indeed dictates that "the laws of the United States . . . shall be the supreme law of the land." U.S. Const. Art. VI, § 8, cl. 2. That provision, however, does not elevate acts passed by Congress solely in its role as *local legislature for the District* to national statutes (i.e. "laws of the United States"), thereby preempting Council legislation, as Plaintiffs apparently argue. Rather, the D.C. Circuit has emphasized that "[w]hen Congress acts as the local legislature for the District [ ] and enacts legislation applicable only to the District [ ] and tailored to meet specifically local needs, it [*sic*] enactments should—absent evidence of contrary congressional intent—be treated as local law, interacting with federal law as would the laws of the several states." *District Properties Associates v. District of Columbia*, 743 F.2d 21, 27 (D.C. Cir. 1984) (citing *Sullivan v. Murphy*, 478 F.2d 938, 971-73 (D.C. Cir. 1973); *see also Roth v. District of Columbia Courts*, 160 F. Supp. 2d 104, 108 (D.D.C. 2001) ("provisions of law applicable only to

the District of Columbia are similar to laws 'enacted by state and local governments having plenary power to legislate for the general welfare of their citizens'" (quoting *Key v. Doyle*, 434 U.S. 59, 68 n.13 (1977))). Stated differently, when Congress enacts local law for the District, dealing solely with local acts and the rules governing local officials (as it did when it enacted the School Reform Act), it changes legislative roles, from federal to local. *Banner v. United States*, 428 F.3d 303 (D.C. Cir. 2005) ("Congress, when it legislates for the District, stands in the same relation to District residents as a state legislature does to residents of its own state"). In turn, the legislation it enacts in its local legislative role is accorded "no more weight than would be accorded a similar state statute." *District Properties Associates*, 743 F.2d at 27-28. (applying foregoing analysis to dispose of jurisdictional conflict between D.C. Administrative Procedures Act, a local law enacted by Congress, and 42 U.S.C. § 1983); cf. *McConnell v. United States*, 537 A.2d 211, 215 (D.C. 1988) (holding that D.C. Council has no authority to repeal legislation enacted by Congress acting in its role as *national* legislature). As a result, Plaintiffs' contention in Count II that the Supremacy Clause prohibits the Council from legislating in a manner that conflicts with the School Reform Act also fails to state a viable claim and must be dismissed.

III. IN THE ABSENCE OF A CONFLICT BETWEEN COUNCIL'S ACTIONS AND EITHER THE HOME RULE ACT OR THE SUPREMACY CLAUSE, PLAINTIFF'S CONTENTION THAT THE COUNCIL HAS VIOLATED THE SCHOOL REFORM ACT ALSO FAILS.

Count III simply restates Plaintiffs' over-arching allegation that Defendants violate the School Reform Act by taking legislative actions that conflict with the Act's requirements. *See* Compl. ¶¶ 90-92. As the foregoing demonstrates, however, Defendants have not violated the Home Rule Act or the Supremacy Clause; Count III thus cannot give rise to an independent cause of action for the simple reason that there is no other legal barrier to the Council legislating inconsistent with the law of the District. Indeed, it is black-letter law that a local legislature can

legislate inconsistent with existing local law; that is the foundation for the doctrine of implied repeal. *See United States v. Wright*, 819 F.2d 318 (D.C. Cir. 1987) (discussing "legal fiction" serving as basis for doctrine of implied repeal). In fact, where a Court is presented with a true conflict between laws of the same jurisdiction, the doctrine permits the Court to resolve the conflict, giving effect to both, if possible, or repeal (by implication) the earlier enacted law. *Smith v. Robinson*, 468 U.S. 992, 1024 (1984) (restating "familiar principle" that where laws of equal force conflict the court must "give effect to each but [ ] allow a later enacted, more specific statute to amend an earlier, more general statute"). But Plaintiffs here have asked the Court to invalidate the later enacted laws (i.e. those passed by the Council subsequent to the School Reform Act), which the Court simply has no power to do under the circumstances. As such, Count III likewise states no claim for relief and must be dismissed.

CONCLUSION

As the foregoing demonstrates, Plaintiffs have not stated any claim for relief under the Home Rule Act, the Supremacy Clause, or the School Reform Act itself. Moreover, because their claims cannot be saved with the addition of more or different facts, their Complaint should be dismissed with prejudice. *Firestone*, 76 F.3d at 1209 (dismissal with prejudice where "allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency").

September 29, 2014

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DC ASSOCIATION OF CHARTERED PUBLIC SCHOOLS, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 14-cv-1293 (TSC)
DISTRICT OF COLUMBIA, et al.,	)	
Defendants.	)	

[Proposed] ORDER

Upon consideration of Defendants' Motion to Dismiss the Complaint in the above-captioned matter, including all written and oral argument in support of and in opposition thereto, it is on this _____ day of _____, _____ ORDERED that:

Defendants' motion to dismiss is GRANTED.

It is FURTHER ORDERED that Plaintiffs' Complaint [Dkt. No. 1] in the above-captioned matter is DISMISSED WITH PREJUDICE.

_____

The Honorable Tanya S. Chutkan
U.S. District Court Judge
District of Columbia