Government of the District of Columbia

Testimony of

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Disaster Capacity in the National Capital Region: Experiences, Capabilities, and Weaknesses

United States House of Representatives

Committee on Transportation and Infrastructure
Subcommittee on Economic Development, Public Buildings, and Emergency Management

The Honorable Eleanor Holmes Norton, Chairwoman

April 3, 2009

U.S. House of Representatives
Washington, DC 20515

Chairwoman Norton, members of the Committee, staff, and guests: my name is Peter Nickles, and I am the Attorney General of the District of Columbia. Thank you for the opportunity to present this statement on the impact on homeland security in the nation's capital of the amendment to the D.C. House Voting Rights Act (S. 160) proposed by Senator John Ensign (R-NV) (the "Ensign Amendment").

I would like to first take a moment to update you about the additional legislative action taken by the District of Columbia since the US Supreme Court issued its decision in *District of Columbia v. Heller*. As previously stated to the Committee, the District government – both the Executive and the Legislative branches – fully respects the Supreme Court's decision. Most recently, the Council of the District of Columbia enacted and the Mayor signed into law permanent legislation continuing the District's compliance with the *Heller* decision. Together these laws affirm District residents' right to register handguns and possess them for self defense within the home.

All of the District's legislation has been carefully crafted to comply with the Court's decision in *Heller*. Justice Scalia underscored the District's authority to regulate firearms under the Second Amendment when he stated:

> Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

District of Columbia v. Heller, 128 S. Ct. 2783, 2817 (U.S. 2008). Consistent with Justice Scalia's opinion, the District, like many states, has determined that assault weapons and certain unsafe firearms, are not eligible to be registered and possessed.

Some of the misinformation about the District gun laws needs to be corrected. Shotguns, rifles, and handguns – including many semi-automatic models – can all be registered in the District. Indeed, rifles and shotguns (including many semi-automatic versions) were never prohibited at all, and residents have been able to register many semi-automatic handguns since September 16, 2008. Since the Heller decision alone, more than 400 handguns and 160 long guns have been registered. Although there is currently only one licensed firearms dealer in the District, the free market will likely address that. Besides getting a firearms dealer license from

the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) and from the District, it is no more difficult to open a dealership than a restaurant. And the District is certainly not alone in requiring a firearms dealer's license—17 states do so as well.

However, the Ensign Amendment goes far beyond mere compliance with *Heller*. Most importantly, the Ensign Amendment would repeal the District's ban on assault weapons. The city's ban is similar to the federal ban in place until 2004. This ban was not unconstitutional; the federal law had a sunset provision after 10 years, at which time it was allowed to expire, and authority reverted to the states. In all, 10 states ban or regulate assault weapons, with five states having provisions similar to that of DC. Even the ATF has described assault weapons as "large capacity, semi-automatic firearms designed for rapid fire, combat use...Most are patterned after machine guns used by military forces."[1] Certainly the District's ban of these weapons is a reasonable exercise of its regulatory authority.

Critics of the District's ban will argue that criminals can get assault weapons anyway. The use of assault weapons by criminals is a growing problem in cities across the country, as we saw most recently in the tragic incident in Oakland in which two law enforcement officers were killed by a parolee with an assault rifle. Fortunately, however, assault weapons do not currently have a strong presence in DC. Last year, of the more than 2,500 illegal firearms recovered by police, only 1 percent were assault weapons. Certainly a determined criminal could get an assault weapon. And if our assault weapons ban were merely repealed, anyone eligible to purchase a firearm under federal law would be able to.

But the Ensign Amendment goes beyond that by taking the unprecedented step of allowing District residents to purchase firearms in Maryland and Virginia, which would have a significant impact on the ability of the entire region to regulate firearms—including assault weapons. Nowhere in the nation are residents allowed to purchase a firearm in another state without going through a federally licensed dealer in their own state. As Martin O'Malley, Governor of Maryland, has warned Congress, his state would not be able to properly regulate firearms purchased by District residents. Maryland does not have the necessary expertise to interpret District laws, much less the many possible dispositions under the city's criminal justice system. The result would be that even people who are prohibited under federal law from

[1] ATF, *Assault Weapons Profile, supra* note 7, at 19

purchasing a firearm may be able to take advantage of those gaps and buy a weapon—again, including an assault weapon—in Maryland or Virginia.

Last September, Cathy Lanier, Chief of Police of the Metropolitan Police Department of the District of Columbia, testified before the Committee on Oversight & Government Reform about the special concerns in protecting the District of Columbia. The terrorist attacks of September 11th, 2001, demonstrated something that we have known for some time: government facilities, dignitaries, and public servants are prime targets for terrorists, both foreign and domestic. Protecting government officials and infrastructure is a challenge for every city in the United States. But in Washington, DC, the likelihood of attack is higher, and the challenges to protecting the city are greater. As a result, the District is the last place where US residents across the country would want to allow assault weapons.

The District's high concentration of iconic structures—such as the national monuments, the White House, and, of course, the Capitol—make it a highly attractive target. The high-profile human targets—from the Nation's top elected leaders to the more than 400 foreign dignitaries that make official visits to DC each year—are also an obvious and attractive target. Moreover, it is not just well-coordinated terrorist attacks we need to secure the city against. We must also consider the unsophisticated "lone wolf" terrorist, angry at the US Government for whatever reason.

The second key vulnerability is due to the sheer volume of secure motorcades traveling in Washington on any given day. Given the daily movements around the city of the President, Vice President, and their families, and the fact that almost 3,000 foreign dignitaries spend time in our city each year—the routes for their movements cannot be shut down, as they are in other cities. As you know from your own districts, when the President and Vice President travel outside of Washington, roads are cleared of all traffic, parked cars, and such, and spectators are often kept behind barricades. We don't do this in DC because shutting down the routes for every motorcade would make it virtually impossible to navigate much of the city on a continuous basis, and we don't want the Nation's capital to take on the character of an armed fortress. This freedom, however, comes with the cost of higher vulnerability—both for the officials and dignitaries, and the general population. In attempted and successful assassinations around the world, the first step in attacking a motorcade is frequently to take out the security detail with

semi-automatic and automatic firearms. This forces the motorcade to stop, at which point the terrorist can use explosives to attack the armored vehicles carrying the targeted individual.

We all have an immediate concern for any life threatened or lost in a terrorist event. But as my colleague, Chief Lanier, noted, here in the Nation's Capital, we must also recognize that any terrorist incident, no matter how small, would garner world-wide attention and could have significant international implications. The broader repercussions of an incident in the city should also be of grave concern to everyone in this room.