

**IN THE DISTRICT OF COLUMBIA  
COURT OF APPEALS**

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**KIRBY VINING,**

**Plaintiff-Appellant,**

**v.**

**EXECUTIVE BOARD OF D.C. HEALTH BENEFIT  
EXCHANGE AUTHORITY, *et al.*,**

**Defendants-Appellees.**

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**ON APPEAL FROM THE SUPERIOR COURT  
OF THE DISTRICT OF COLUMBIA, CIVIL DIVISION**

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**BRIEF OF PLAINTIFF-APPELLANT KIRBY VINING**

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**PARTIES, INTERVENORS,  
AMICI CURIAE, AND THEIR COUNSEL**

The following parties, intervenors, and amici curiae appeared below and are part of this proceeding:

<u>Plaintiff-Appellant:</u>	Kirby Vining
<u>Defendants-Appellees:</u>	Executive Board of the District of Columbia Health Benefit Exchange Authority;  Mila Kofman, in her official capacity as Executive Director of the District of Columbia Health Benefit Exchange Authority; and  District of Columbia Health Benefit Exchange Authority

At the Superior Court, Plaintiff-Appellant Kirby Vining was represented by Michael Bekesha and Paul J. Orfanedes, both of Judicial Watch, Inc. On appeal, Plaintiff-Appellant Kirby Vining is being represented by Michael Bekesha of Judicial Watch, Inc.

At the Superior Court, Defendants-Appellees were represented by William F. Causey, Chad Copeland, and Grace Graham of the Office of the Attorney General for the District of Columbia. On appeal, Defendants-Appellees are being represented by Todd S. Kim, Solicitor General for the District of Columbia.

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## **STATEMENT OF THE ISSUES PRESENTED**

1. Whether Vining's Complaint is sufficient to demonstrate standing.
2. Whether the Health Benefit Exchange Establishment Act of 2011 is preempted.

## **STATEMENT OF THE CASE**

This case concerns the illegal expenditure of municipal funds. Defendants in this case are the Executive Board of the District of Columbia Health Benefit Exchange Authority; Mila Kofman, Executive Director of the District of Columbia Health Benefit Exchange Authority; and District of Columbia Health Benefit Exchange Authority. They have spent and continue to spend "municipal funds" on the Small Business Exchange and are allowing members of Congress, congressional staffers, and their dependents to participate in the exchange even though D.C. law expressly limits participation to employers with 50 or fewer employees. Congress obviously has far more than 50 employees. It has thousands of employees, and Defendants have allowed at least 12,359 congressional employees and their spouses and dependents to obtain health insurance through the Small Business Exchange. These 12,359 participants represent an astonishing 86% of the Small Business Exchange's total enrollment. In creating the Small Business Exchange, the D.C. Council intended to help small businesses operating in the District of Columbia provide health insurance to their employees. Instead, Defendants have allowed the Small Business Exchange to become a health insurance exchange for Congress. Allowing Congress to participate in the Small Business Exchange violates the law that created the exchange. In effect, Defendants are spending "municipal funds" on Congress's health insurance.

Kirby Vining, a longstanding resident and taxpayer of the District of Columbia ("D.C." or "the District"), seeks declaratory and injunctive relief stopping the illegal expenditure of "municipal funds." Specifically, Vining seeks to prevent Defendants from spending any

additional monies on this “health insurance exchange for Congress.” In response, Defendants moved to dismiss on two grounds: lack of standing and failure to state a claim. The Superior Court granted Defendants’ motion on both grounds and dismissed the case. Vining timely appealed.

## **STATEMENT OF FACTS**

The Patient Protection and Affordable Care Act (“ACA”) requires each state and the District of Columbia to establish two marketplaces for the purchase of health insurance: an “American Health Benefit Exchange” for individuals (“the Individual Exchange”) and a “Small Business Health Options Program” for small businesses (“the Small Business Exchange” or “SHOP Exchange”). Complaint at ¶ 6 (Appendix (“App”) 3). The D.C. Council subsequently enacted the Exchange Act to comply with the ACA. Complaint at ¶ 7 (App 3). The Exchange Act established the “District of Columbia Health Benefit Exchange Authority” (“the Exchange Authority”) and directed the Exchange Authority to create the two exchanges required by the ACA. *Id.* at ¶ 8 (App 3). The Exchange Act also created an executive board and an executive director. *Id.* at ¶ 9 (App 3). Under the Exchange Act, the Executive Board governs the Exchange Authority generally and the Executive Director serves as chief administrative officer and directs, administers, and manages the operations of the Authority. *Id.* (App 3-4).

The Exchange Authority created two exchanges: an individual exchange and a Small Business Exchange. Only businesses having 50 or fewer full-time employees may participate in the Small Business Exchange. Complaint at ¶ 16 (App 4). Since November 2013, the Exchange Authority has allowed the U.S. House of Representatives (“the House”) and the U.S. Senate (“the Senate”) (collectively “Congress”) to use the Small Business Exchange to provide health insurance to some (but not all) congressional employees, including members of Congress and

these employees' spouses and dependents. *Id.* at ¶ 17 (App 4-5). At all relevant times, Defendants have known that the House and the Senate were participating in the Small Business Exchange to provide health insurance to some (but not all) congressional employees. *Id.* at ¶ 18 (App 5). Beginning in early November 2013, the Exchange Authority conducted outreach efforts to the House and Senate about Congress' participation in the Small Business Exchange and provided weekly support sessions to assist members of Congress and their staffs with enrollment. *Id.* (App 5).

Neither the House nor the Senate is a small business under the Exchange Act, as each has more than 50 full-time employees. Complaint at ¶ 19 (App 5). Records provided by the Exchange Authority in response to a Freedom of Information Act request show that both the House and the Senate falsely claimed that they each employ only 45 full-time employees. *Id.* at ¶ 20 (App 5). When Congress applied to participate in the Small Business Exchange, representatives falsely asserted that the House and the Senate each employ 50 or fewer full-time employees. *Id.* (App 5). Defendants were fully aware of these false statements. *Id.* at ¶ 21 (App 6). Not only is it obvious that Congress, with its 535 members, employs more than 50 people, but Defendants' own guidelines require verification of employer information.

As of February 9, 2014, at least 12,359 congressional employees and their dependents had obtained health insurance through the Small Business Exchange. Complaint at ¶ 22 (App 6). These 12,359 persons represent approximately 86 percent of the 14,289 persons enrolled in the Small Business Exchange between October 1, 2013 and September 9, 2014. *Id.* (App 6).

## ARGUMENT

### I. Standard of Review.

Defendants moved for dismissal under both Rules 12(b)(1) and 12(b)(6) of the D.C. Superior Court's Rules of Civil Procedure. The Superior Court granted the motion on both grounds, and both are reviewed *de novo*. *Grayson v. AT&T Corporation*, 15 A.3d 219, 228 (D.C. 2011) (*en banc*) ("Whether the trial court has subject matter jurisdiction is a question of law which this court reviews *de novo*. We also review a dismissal for failure to state a claim *de novo*." (internal quotations and citations omitted)).

### II. Vining's Complaint Is Sufficient to Demonstrate Standing.

"[T]axpayers have always had the right, in the proper case, to initiate suit against the city government to prevent the illegal use of municipal funds." *Calvin-Humphrey v. District of Columbia*, 340 A.2d 795, 799 (D.C. 1975); *see also District of Columbia Common Cause v. District of Columbia*, 858 F.2d 1, 10 (D.C. Cir. 1988) and *Roberts v. Bradfield*, 12 App. D.C. 453, 459 (D.C. 1898).

In *District of Columbia Common Cause*, a taxpayer was found to have standing because the challenged expenditures were "made from funds appropriated by Congress." 858 F.2d at 11. The decision by the U.S. Court of Appeals for the District of Columbia focused not on where the public monies came from but how the public monies were being spent. *Id.* In *Calvin-Humphrey*, the D.C. Court of Appeals permitted the intervention of individual taxpayers even though the issue before the Court involved the assessment and collection of taxes from commercial property owners. 340 A.2d at 799. Although the government action at issue did not directly affect individual taxpayers, the Court concluded "[t]here can be no doubt but that the instant litigation 'concerns' the [individual taxpayers]: [they have] an economic interest of some magnitude in the

outcome of the suit, since we perceive a distinct and substantial possibility that [they] will incur higher taxes or suffer a diminution of municipal services” if the commercial property owners paid less taxes. *Id.* The focus there too was on how “municipal monies” were spent.

There is no dispute that Vining is a D.C. taxpayer and has resided at the same D.C. address since 1986. Complaint at ¶ 1 (App 2). There also is no dispute that Defendants are spending money on the Small Business Exchange or that Vining alleged that “municipal funds” are being spent to operate the exchange. *Id.* at ¶ 14 (App 4) (“Monies appropriated from the general Fund to the Exchange Fund were used to establish the Small Business Exchange and, on information and belief, are being used to administer the Exchange.”). Nor is there a dispute that Defendants have authorized Congress to use the Small Business Exchange to provide health insurance to certain congressional employees and their dependents even though D.C. law expressly limits participation in the exchange to employers with 50 or fewer employees. The Superior Court nonetheless concluded that Vining had “not demonstrated a reasonable inference that municipal taxpayer funds have been appropriated to defendant exchange authority to establish a cognizable injury to maintain standing to bring his underlying complaint.” Order at 4 (App 44).

The court’s ruling on the Rule 12(b)(1) motion is incorrect for at least two reasons. First, the Superior Court was required, at a minimum, to construe the Complaint in Vining’s favor. Second, to the extent the Court reviewed additional submissions to determine the sufficiency of the Complaint, the evidence supports Vining.

A Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction “may be either a ‘facial’ attack on the allegation of jurisdiction in the complaint, or a ‘factual’ attack on the basis of the Court’s jurisdiction.” *Heard v. Johnson*, 810 A.2d 871, 877 (D.C. 2002). When a

defendant makes a facial attack, the court “must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.” *Grayson*, 15 A.3d at 246. If a defendant attacks the factual basis upon which the plaintiff alleges jurisdiction, the court “may conduct an independent review of the evidence submitted by the parties, including affidavits, to resolve factual disputes.” *Matthews v. Automated Business Systems & Services*, 558 A.2d 1175, 1179 (D.C. 1989).

In their motion to dismiss, Defendants merely argued, “District of Columbia taxpayer money has never been used to fund or operate the D.C. Shop Exchange.” Memorandum of Points and Authorities in Support of Defendants’ Motion to Dismiss (“Defs’ Mem.”) at 12. They did not identify whether their motion was a facial or factual attack. Nor did the Superior Court identify whether it considered Defendants’ challenge to be facial or factual. *See generally* Order at 3-5 (App 43 – App 45). However, it appears as though the court considered the motion as a factual attack and looked beyond the four corners of the Complaint. If the Superior Court treated the motion as a facial attack – as it should have – the Superior Court incorrectly ignored Vining’s factual allegation that “municipal monies” from the District’s General Fund were used and continue to be used to administer and operate the Small Business Exchange. *See* Complaint at ¶ 14 (App 4). That allegation alone is sufficient to satisfy the inquiry concerning the use of “municipal funds.” *Grayson*, 15 A.3d at 246.

To the extent Defendants made a factual attack and the Superior Court treated the motion as such, Defendants did not submit any admissible evidence for the court to review. Instead of providing “testimony and affidavits” (*Heard*, 810 A.2d at 878), Defendants directed the Superior Court to a handful of internet links to various budget plans and reports of the D.C. government for Fiscal Years 2013 – 2015. *See* Order at 4 (App 44). Instead of submitting evidence about the

proper interpretation of the documents, the budget process, the various types of funds, and the numerous sources of the funds, Defendants summarily stated, “Funds used to establish and operate the D.C. SHOP Exchange in FY13 and 14 came exclusively from federal grants, while FY15 operations will be funded through a health carrier assessment.” Defs’ Mem. at 12.

Besides the fact that Defendants failed to submit admissible evidence to support their argument, the information found in the various budget plans and reports of the D.C. government for Fiscal Years 2013 – 2015 does not contradict Vining’s factual assertion that “municipal monies” from the District’s General Fund were used and continue to be used to administer and operate the Small Business Exchange.<sup>1</sup>

At no point have Defendants expended monies from the District’s Federal Funds account on the Small Business Exchange. On August 7, 2014, the District submitted to Congress its “FY 2015 Proposed Budget and Financial Plan,” which includes “Operating Appendices.” In addition to detailing the actual budget, approved budget, and proposed budget of each D.C. agency for Fiscal Years 2013 through 2015, the report contains a “Glossary of Budget Terms.” See App 23 – App 31. The following definitions are of particular relevance:

**General Fund** – The principal operating fund of the District, which is used to account for all financial resources except those required to be accounted for in another fund. General fund revenues consist of Local, Dedicated Tax, and Special Purpose Revenues.

**Federal Funds** – (1) Federal Grants: Funding provided by the federal government via a federal agency for a specific purpose with the conditions for the administration of the funding dictated by each grantor organization; (2) Federal Payments: Funding specifically detailed in the Federal Funds portion of the District of Columbia Appropriations Act with the conditions for the administration of the funding found within the statute and federal appropriations; (3) Federal Medicaid Payments: Funding provided to pay for a portion of the

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<sup>1</sup> It appears as though the Superior Court did not consider the complexity of the District’s budget. See Order at 4 (App 44) (The court summarized the District’s budget for a three-year period in one sentence.).



health care costs of eligible individuals with oversight performed by District and federal authorities.

**Private Revenue** – Funding from private grants to fund the intended purpose of the grant.

**Intra-District** – An accounting mechanism to track payments for services provided by one District agency to another District agency.

*Id.*

The report includes the Exchange Authority's actual budget, approved budget, and proposed budget for Fiscal Years 2013 through 2015. *See* App 33- App 35. According to the report, the Exchange Authority's actual budget for Fiscal Year 2013 was \$10,915,000. *Id.* The report identifies all of these "municipal monies" as originating from the District's General Fund. *Id.* No monies are identified as Federal Funds, Private Revenue, or Intra-District Funds. *Id.* For Fiscal Year 2014, the Exchange Authority was budgeted \$66,140,000 from the General Fund. *Id.* Again, no monies were budgeted from Federal Funds, Private Funds, or Intra-District Funds. *Id.* The "municipal monies" appropriated to establish, administer, and operate the Small Business Exchange came from "[t]he principal operating fund of the District," not from Federal Funds.

For Fiscal Year 2015, the Exchange Authority's budget was reclassified from the General Fund to a newly created fund, separate and distinct from "Federal Funds." *See* App 37 – App 38. Monies budgeted from this new fund, much like the General Fund, must be appropriated by the D.C. Council, signed by the mayor, and approved by Congress. *See* D.C. Code §§ 1-204.04 and 1-204.46; *see also* App 40. Also, if the newly created fund did not exist, like in Fiscal Years 2013 and 2014, or if it experiences a shortfall, the District would be required to allocate monies from the General Fund to administer and operate the Small Business Exchange. Vining therefore has an economic interest in how all monies are being spent as he would "incur higher taxes" or

“suffer a diminution of municipal services” if the newly created fund did not have sufficient funds to support the Small Business Exchange. *Calvin-Humphrey*, 340 A.2d at 799. Similarly, it is “likely” that the District will again use at least some municipal funds to administer and operate the Small Business Exchange just like it did in Fiscal Years 2013 and 2014. *See District of Columbia Common Cause*, 858 F.2d at 9.<sup>2</sup>

Importantly, Vining sufficiently supported these irrefutable facts about the “municipal funds” at issue. He also did so by affidavit, not by internet links. The Superior Court ignored this evidence and, instead, found that Vining did “not substantively challenge the websites cited by” Defendants. Order at 4 (App 44). Not only is this demonstrably incorrect, it is also irrelevant whether Vining challenged Defendants’ assertions – which he did. To the extent that it reviewed material in addition to the Complaint, the Superior Court was required to review all of the evidence submitted by the parties, which would have included Vining’s submissions.

*Matthews*, 558 A.2d at 1179. As this Court has emphasized:

Before ruling on the motion to dismiss, it is within the trial court’s power to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff’s standing; and if, after this opportunity, the plaintiff’s standing does not adequately appear from all materials of record, the complaint must be dismissed.

*Grayson*, 15 A.3d at 246. Vining presented more than sufficient evidence to support his allegation that “municipal funds” were being spent on the Small Business Exchange. Taking the

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<sup>2</sup> Defendants also sought to support their assertion that “District of Columbia taxpayer money has never been used to fund or operate the D.C. Shop Exchange” by differentiating between various sources of municipal monies to support its argument. Defs’ Mem. at 12-13. Although the Superior Court did not address whether the law recognizes a distinction between “municipal funds” and the source of the “municipal funds,” Vining does not waive his right to respond if Defendants make a similar argument in its response brief. Distinguishing between “municipal funds” and the source of the “municipal funds” being expended has never been a prerequisite for establishing taxpayer standing in cases brought against the District.

allegations of the Complaint and the evidence submitted by Vining in support of the allegation, the Superior Court should not have dismissed Vining's Complaint.

At a minimum, Vining identified complex legal and factual issues that could not be adequately addressed at the pleading stage. Because of the multifaceted nature of the District's budget process as well as the budget itself, a decision on whether "municipal funds" are being spent would have been more appropriate after discovery, where a more complete record could be developed and the District's budget process could be analyzed more thoroughly. The Superior Court should not have dismissed the case on a motion to dismiss, where the court was only required to "review the substance of [Vining's] pleadings to determine whether general factual allegations . . . have been averred." *Grayson*, 15 A.3d at 246. For this reason alone, the case should be remanded.

### **III. The Exchange Act Is Not Preempted.**

The Superior Court also erred in finding that the Exchange Act is preempted. Ordinary preemption principles apply to D.C. law. *Washington Service Contractors Coalition v. District of Columbia*, 54 F.3d 811, 813, 815 (D.C. Cir. 1995). Although there is a presumption against preemption (*Tarrant Regional Water District v. Herrmann*, \_\_ U.S. \_\_, 133 S. Ct. 2120, 2132 (2013)), preemption of a D.C. law may occur in three ways. *Merrell Dow Pharmaceuticals v. Oxendine*, 649 A.2d 825, 828 (D.C. 1994). First, a federal law may expressly preempt a D.C. law. *Id.* Second, Congress may "so thoroughly occupy a legislative field as to make reasonable the inference that Congress left no room for the [District of Columbia] to supplement it." *Id.* (quoting *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992)). Third, implied or conflict preemption occurs if a D.C. law makes "compliance with both federal and [its] law impossible" or if "[its] law obstructs the federal purpose." *Id.* In addition, "[t]he existence of a hypothetical

or potential conflict is insufficient to warrant the preemption of” a D.C. law. *Rice v. Norman Williams Company*, 458 U.S. 654, 659 (1982).

**A. The Exchange Act is not preempted by the ACA.**

In a recent, separate lawsuit challenging another provision of the Exchange Act, Defendants argued that the ACA does not preempt D.C. law. The U.S. District Court for the District of Columbia agreed:

[E]xpress preemption is clearly unavailable. The ACA . . . squarely addresses preemption and provides that: “Nothing in this title shall be construed to preempt any State law that does not prevent the application of the provisions of this title.” 42 U.S.C. § 18041(d). Express preemption cannot apply because the ACA explicitly recognizes that State laws may be required to carry out the ACA mandate to provide minimum essential health coverage. Similarly, to the extent the plaintiff seeks to invoke “field” preemption by referencing “the authority of Congress to reserve for itself exclusive dominion over an entire field of legislative concern,” this effort is unavailing. The ACA expressly grants the States the choice of operating their own Exchanges, pursuant to state law, rather than adopt a Federal Exchange plainly undercutting any perceived congressional intent to control the entire field of local Exchanges.

*American Council of Life Insurers v. D.C. Health Benefit Exchange Authority*, 2014 U.S. Dist. LEXIS 160038, 26-27 (D.D.C. Nov. 13, 2014) (internal citations omitted). There plainly is no express preemption. Nor does the ACA occupy the field. If the Exchange Act is preempted at all, it would be by implication.

The ACA however does not preempt the Exchange Act by implication. The Exchange Act does not make compliance with federal law impossible. Nor does it stand as an obstacle to the purpose of the ACA. It is completely consistent and entirely compatible with the ACA. In fact, the sole purpose of the Exchange Act was to implement various provisions of the ACA, thereby assisting D.C. residents and employees of small D.C. employers in obtaining affordable health insurance. *See* D.C. Code § 31-3171.06(a).

Specifically, the ACA provides:

Each State shall, not later than January 1, 2014, establish an American Health Benefit Exchange (referred to in this title as an “Exchange”) for the State that –

(A) facilitates the purchase of qualified health plans;

(B) provides for the establishment of a Small Business Health Options Program (in this title referred to as a “SHOP Exchange”) that is designed to assist qualified employers in the State who are small employers in facilitating the enrollment of their employees in qualified health plans offered in the small group market in the State.

42 U.S.C. § 18031(b)(1). The ACA expressly defines a “small employer” as “an employer who employed an average of at least 1 but not more than 100 employees.”<sup>3</sup> 42 U.S.C. § 18024(b)(2).

The Exchange Act in turn created two exchanges: the Individual Exchange and the Small Business Exchange. Under the Exchange Act, D.C. residents may enroll themselves and their dependents on the Individual Exchange. D.C. Code § 31-3171.02(a). The Exchange Act limits the Small Business Exchange to single employers having 50 or fewer full-time employees (D.C. Code § 31-3171.01(16)(A)), but that limit is completely consistent with the ACA’s “not more than 100 employees” limit. 42 U.S.C. § 18024(b)(2). The D.C. exchanges created by the Exchange Act are completely consistent with the requirements of the ACA based on any reading of the plain language.

A separate provision of the ACA governs health plans for certain members of Congress and congressional employees. This provision provides:

Notwithstanding any other provision of law, after the effective date of this subtitle, the only health plans that the Federal Government may make available to Members of Congress and congressional employees with respect to their service

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<sup>3</sup> Beginning in 2017, the ACA authorizes all State or District-created exchanges to offer health insurance to anyone, including large employers. *See* 42 U.S.C. § 18031(f)(2)(b)(i). Thus, Congress plainly knew how to expand the scope of persons eligible to participate in the exchanges. It simply chose to limit participation in the first several years of the new law. There is no conflict or inconsistency here either.

as a Member of Congress or congressional employees shall be health plans that are –

(I) created under this Act (or an amendment made by this Act); or

(II) offered through an Exchange established under this Act (or an amendment made by this Act).

42 U.S.C. § 18032(d)(3)(D)(i). This section does not specify what health insurance should be offered to the affected congressional employees. It only specifies that the insurance must be created either under “this Act” or offered through an exchange established under “this Act.” Because Congress has not created health insurance specifically for the affected congressional employees, the affected employees must purchase insurance on an exchange created under the ACA. In other words, they must purchase insurance on an exchange created either by their state of residence (or by the District, if they are a D.C. resident) or by the federal government, if their state of residence did not establish an exchange.

In this regard, 42 U.S.C. § 18032(d)(3)(D)(i) is unambiguous. The plain language of the ACA unequivocally limits the purchase of insurance on a “SHOP Exchange” to employees of small businesses. If a state decides to create an exchange for all businesses, regardless of size, such an exchange would not be a “SHOP Exchange” created under the ACA. Similarly, if the District allows all businesses, regardless of size, to participate in its “SHOP Exchange,” the exchange would no longer be an exchange created under the ACA and members of Congress, congressional staffers, and their families would not be able to purchase health insurance on it.<sup>4</sup> Therefore, the affected employees do not have the option of purchasing health insurance through a “SHOP Exchange.” They must purchase health insurance through an individual exchange.

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<sup>4</sup> Arguably, the inclusion of Congress on D.C.’s Small Business Exchange causes the exchange to no longer be an exchange created under the ACA.

There is no inconsistency between the ACA and the Exchange Act. There is no impossibility or frustration of purpose. There is no preemption here.

The Superior Court however ignored the plain language of the ACA. It concluded:

[T]he court is not persuaded that 42 U.S.C. § 18032(d)(3)(D)(i) can be interpreted as either requiring members of Congress and their staff to purchase health plans via only the individual exchange or prohibiting those same members and their staff from purchasing a health plan via the small business exchange. . . . [T]his statutory subsection is vague in that it does not state which type of health plans can or cannot be purchased.

Order at 7 (App 47). The Superior Court then cited *Chevron, U.S.A., Inc. v. Natural Resource Defense Council, Inc.*, 467 U.S. 837 (1984) and determined that, because 42 U.S.C. § 18032(d)(3)(D)(i) is ambiguous, OPM had implicit, delegated authority to clarify the law. *Id.* at 7-8 (App 47 – App 48).

To the extent that 42 U.S.C. § 18032(d)(3)(D)(i) may be ambiguous – and Vining does not concede that it is – the Superior Court incorrectly concluded that Congress implicitly delegated the authority to OPM to decide where members of Congress, congressional staffers, and their families could purchase health insurance. *See* Order at 8 (App 48). As the Supreme Court recently affirmed, “In extraordinary cases, however, there may be reason to hesitate before concluding Congress has intended” to create “an implicit delegation to an agency to fill in [] statutory gaps.” *King v. Burwell*, \_\_\_ U.S. \_\_\_, 2015 U.S. LEXIS 4248, \*18 (June 25, 2015). As this section of the ACA concerns the health insurance of members of Congress, their staffs, and their families, it is highly unlikely that Congress would outsource decision-making about its own health insurance to an executive branch agency. Had Congress wanted to delegate such power

concerning an issue of obvious personal concern, it would have done so expressly. *Id.*

Therefore, the Superior Court incorrectly concluded that such authority was delegated.<sup>5</sup>

**B. The Exchange Act is not preempted by any regulation.**

Even if Congress implicitly delegated its authority to the executive branch – and Vining does not concede that it did – OPM did not resolve the ambiguity by regulation. Contrary to the Superior Court’s ruling, the regulation does not preempt the Exchange Act. The pertinent regulation merely states, in relevant part, that congressional employees “may purchase health benefit plans . . . offered by an appropriate SHOP as determined by the Director.”<sup>6</sup> 5 C.F.R. § 890.102(c)(9).

As with the ACA itself, there plainly is no preemption. The regulation does not identify which SHOP is appropriate for members of Congress or congressional employees to purchase health insurance. Nor does it make any mention of any state-created SHOP or D.C.’s Small Business Exchange. The District’s Small Business Exchange is only identified as the

---

<sup>5</sup> If the Court were to find 42 U.S.C. § 18032(d)(3)(D)(i) ambiguous and sought to determine the correct reading of the section (*id.* at \*19), the Court “must read the words ‘in context and with a view to their place in the overall statutory scheme.’” *Id.* (quoting *FDA v. Brown & Williamson Tobacco Corporation*, 529 U.S. 120, 133 (2000)). Because the ACA unequivocally limits the purchase of insurance on a SHOP Exchange to employees of small businesses, members of Congress, congressional staffers, and their families obviously must purchase health insurance through an individual exchange.

<sup>6</sup> A “SHOP” is defined as “a Small Business Health Options Program operated by an Exchange through which a qualified employer can provide its employees and their dependents with access to one or more health plans.” 5 C.F.R. § 890.101; 45 C.F.R. § 155.20. A “qualified employer” is defined as an employer who “employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.” 45 C.F.R. § 155.20. To remain consistent with the ACA, the regulation also allows, beginning in 2017, for a state to re-define a “qualified employer” to include a large employer if the state authorizes large employers to participate in an exchange. *Id.*



“appropriate SHOP as determined by the Director” in the “supplementary information”

published along with the regulation:

Given the location of Congress in the District of Columbia, OPM has determined that the DC SHOP, known as the DC Health Link Small Business Market administered by the DC Health Benefit Exchange Authority, is the appropriate SHOP from which Members of Congress and designated congressional staff will purchase health insurance in order to receive a Government contribution.

Federal Employees Health Benefits Program: Members of Congress and Congressional Staff, 78

Fed. Reg. 60653, 60654 (Oct. 2, 2013). The regulation does not preempt the Exchange Act.

To find that the regulation, much less the OPM director’s determination, has preemptive effect, the Court would have to find that all existing limitations on the size of employers eligible to participate in small business exchanges are of no force or effect.<sup>7</sup> Again, the ACA gives states and the District authority to create small business exchanges and establish limits – up to 100 employees – on the size of employers eligible to participate in their small business exchanges. 42 U.S.C. § 18024(b)(2). There is no provision in the regulation preempting state laws limiting the size of the employers that may participate in states’ small business exchanges. Nor is there any provision preempting the District’s 50-employee limit on participating in the Small Business Exchange.

Nevertheless, the Superior Court concluded that “OPM’s rules and regulations preempt” the Exchange Act. Order at 9 (App 49). In reality, the court ruled that a determination by a federal bureaucrat – in this instance, the director of OPM – trumps the 50-employee limit of the Exchange Act, at least with respect to Congress. No lawful regulation – much less a regulation that purports to delegate such authority to an agency head – can do that, and the Court cites no

---

<sup>7</sup> In other words, this Court would have to conclude that the OPM director has the authority to nullify sections of the ACA. This, of course, is wrong. Only Congress, by enacting new legislation, has the authority to change duly enacted laws.

legal authority whatsoever for their astonishing conclusion that it can. *See generally* Order at 5 – 10 (App 45 – App 50).

“To overcome the presumption against preemption, the party asserting preemption must demonstrate that the clear and manifest purpose of Congress supports preemption.”

*Biotechnology Industry Organization v. District of Columbia*, 505 F.3d 1343, 1351 (D.C. Cir. 2007). Like the ACA, it is clear that neither the plain language of the regulation nor the OPM director’s determination preempts the Exchange Act. There is no preemption. And Defendants have no justification or excuse for turning a blind eye to D.C. law. The Superior Court’s decision that the Exchange Act is preempted must be overturned.

### CONCLUSION

For the foregoing reasons, Vining respectfully requests that this Court reverse the Superior Court’s order granting Defendants’ motion to dismiss and remand for further proceedings.

Dated: July 13, 2015

Respectfully submitted,



Michael Bekesha  
JUDICIAL WATCH, INC.  
425 Third Street, S.W., Suite 800  
Washington, DC 20024  
(202) 646-5172

*Counsel for Plaintiff-Appellant*

# APPENDIX

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ARV

IN THE SUPERIOR COURT  
OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

KIRBY VINING  
16 Franklin Street, N.E.  
Washington, DC 20002

Plaintiff,

vs.

EXECUTIVE BOARD OF THE  
DISTRICT OF COLUMBIA HEALTH  
BENEFIT EXCHANGE AUTHORITY,  
1100 15th Street, N.W., 8th Floor  
Washington, DC 20005,

and

MILA KOFMAN, in her official  
capacity as Executive Director of the  
District of Columbia Health Benefit  
Exchange Authority,  
1100 15th Street, N.W., 8th Floor  
Washington, DC 20005,

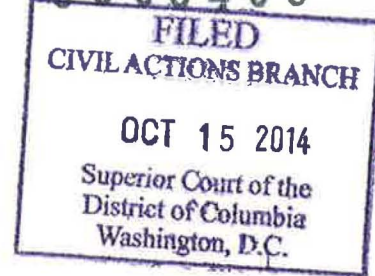
and

DISTRICT OF COLUMBIA HEALTH  
BENEFIT EXCHANGE AUTHORITY,  
1100 15th Street, N.W., 8th Floor  
Washington, DC 20005,

Defendants.

Serve **Executive Office of the Mayor  
for the District of Columbia**,  
1350 Pennsylvania Avenue, N.W.,  
Suite 316, Washington, DC 20004; and  
Serve **Office of the Attorney General  
for the District of Columbia**, 441 4th  
Street, N.W., 6th Floor South,  
Washington, D.C. 20001.

Case Number: 14 - 0006496



COMPLETED



**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
AND, IN THE ALTERNATIVE, PETITION FOR  
WRIT OF MANDAMUS**

Plaintiff Kirby Vining, by and through his attorneys, brings this action for declaratory and injunctive relief against the Executive Board of the District of Columbia Health Benefit Exchange Authority, Mila Kofman, in her official capacity as Executive Director of the District of Columbia Health Benefit Exchange Authority, and the District of Columbia Health Benefit Exchange Authority. Plaintiff seeks a judgment declaring that the U.S. Congress' participation in the District of Columbia's "Small Business Exchange" is unlawful and an injunction prohibiting Defendants from allowing Congress to participate in the exchange or expending taxpayer dollars on Congress' participation. In the alternative, Plaintiff petitions for a writ of mandamus ordering Executive Director Kofman to cease and desist from allowing Congress to participate in the exchange. As grounds therefor, Plaintiff alleges as follows:

**PARTIES**

1. Plaintiff Kirby Vining is a taxpayer of the District of Columbia, residing at 16 Franklin Street, N.E., Washington, DC 20002. He has been a taxpayer, residing at that address since 1986. As a taxpayer of the District of Columbia, Plaintiff has the right to initiate a suit in equity to prevent the illegal use of public funds. *Calvin-Humphrey v. District of Columbia*, 340 A.2d 795, 799 (D.C. 1975); *see also District of Columbia Common Cause v. District of Columbia*, 858 F.2d 1, 10 (D.C. Cir. 1988); *Roberts v. Bradfield*, 12 App. D.C. 453, 459 (D.C. 1898).

2. Defendant Executive Board of the District of Columbia Health Benefit Exchange Authority ("the Executive Board") is the governing body of the District of Columbia Health

Benefit Exchange. D.C. Code § 31-3171.05(a). The Executive Board has the express authority to sue and be sued. D.C. Code § 31-3171.06(c)(2).

3. Defendant Mila Kofman is the Executive Director of the District of Columbia Health Benefit Exchange Authority (“the Executive Director”). This action is brought against Executive Director Kofman in her official capacity.

4. Defendant District of Columbia Health Benefit Exchange Authority is an independent authority of the District of Columbia government. D.C. Code § 31-3171.02(a).

### **JURISDICTION**

5. The Court has jurisdiction over this action pursuant to D.C. Code § 11-921(a).

### **FACTUAL ALLEGATIONS**

6. The Patient Protection and Affordable Care Act (“ACA”) requires each State and the District of Columbia to establish two marketplaces for the purchase of health insurance: an “American Health Benefit Exchange” for individuals (“the Individual Exchange”) and a “Small Business Health Options Program” for small businesses (“the Small Business Exchange” or “the Exchange”).

7. In March 2012, the Council of the District of Columbia (“D.C. Council”) enacted “The Health Benefit Exchange Authority Establishment Act of 2011” (“the Exchange Act”) to comply with the ACA.

8. The Exchange Act established the “District of Columbia Health Benefit Exchange Authority” (“the Exchange Authority” or “the Authority”) and directed the Exchange Authority to create the two exchanges required by the ACA.

9. The Exchange Act also created an executive board and an executive director. Under the Act, the Executive Board governs the Exchange Authority generally and the Executive

Director serves as chief administrative officer and directs, administers, and manages the operations of the Authority.

10. To finance the Exchange Authority, the Act created the “District of Columbia Health Benefit Exchange Authority Fund” (“the Exchange Fund”). Among other monies, the Exchange Fund consists of monies from the General Fund – taxpayer money – appropriated by a line item in the annual budget approved by the D.C. Council.

11. In Fiscal Year 2013, the D.C. Council appropriated \$10,915,000 from the General Fund to the Exchange Fund.

12. In Fiscal Year 2014, the D.C. Council appropriated \$66,140,000 from the General Fund to the Exchange Fund.

13. As of October 1, 2014, the D.C. Council had not approved a budget for Fiscal Year 2015.

14. Monies appropriated from the General Fund to the Exchange Fund were used to establish the Small Business Exchange and, on information and belief, are being used to administer and operate the Exchange.

15. The Small Business Exchange began operating in October 2013.

16. Under the Exchange Act, a small business is a single employer having 50 or fewer full-time employees. D.C. Code § 31-3171.01(16)(A). Only small businesses that elect to provide coverage to all eligible employees or all eligible employees principally employed in the District of Columbia are eligible to participate in the Small Business Exchange. D.C. Code § 31-3171.01(11).

17. Since November 2013, the Exchange Authority has allowed the U.S. House of Representatives (“the House”) and the U.S. Senate (“the Senate”) (collectively “Congress”) to



use the Small Business Exchange to provide health insurance to some (but not all) congressional employees, including members of Congress, and these employees' spouses and dependents.

18. At all relevant times, the Executive Board and Executive Director Kofman knew that the House and the Senate were participating in the Small Business Exchange to provide health insurance to some (but not all) congressional employees. Beginning in early November 2013, the Exchange Authority conducted outreach efforts to the House and Senate about Congress' participation in the Small Business Exchange and provided weekly support sessions to assist members of Congress and their staffs with enrollment. These outreach efforts, weekly support sessions, and Congress' participation in the Exchange generally were discussed at a November 13, 2013 meeting of the Executive Board, and on November 20, 2013, Executive Director Kofman testified before the Senate's Small Business and Entrepreneurship Committee about Congress' participation in the Small Business Exchange. On information and belief, the Executive Board and Executive Director Kofman authorized and approved Congress' participation in the Small Business Exchange.

19. Neither the House nor the Senate is a small business under the Exchange Act, as each has more than 50 full-time employees.

20. When Congress applied to participate in the Small Business Exchange, representatives falsely asserted that the House and the Senate each employ 50 or fewer full-time employees. Specifically, records provided by the Exchange Authority in response to a Freedom of Information Act request show that both the House and the Senate falsely claimed that they each employ only 45 full-time employees.

21. On information and belief, the Executive Board and Executive Director Kofman knew that the House and the Senate each have more than 50 full-time employees and knew or should have known that Congress' certifications to the contrary were false.

22. At least 12,359 congressional employees and their spouses and dependents had obtained health insurance through the Small Business Exchange as of February 9, 2014. These 12,359 persons represent approximately 86 percent of the 14,289 persons enrolled in the Small Business Exchange between October 1, 2013 and September 9, 2014.

**COUNT ONE**  
**(Taxpayer Action – Declaratory and Injunctive Relief)**

23. Plaintiff reaffirms paragraphs 1-22 as though fully restated herein.

24. Under the Exchange Act, both the House and the Senate are ineligible to participate in the Small Business Exchange because they each employ more than 50 full-time employees.

25. By allowing Congress to participate in the Small Business Exchange, Defendants are exceeding their lawful powers and operating the Small Business Exchange in an illegal, unlawful, and *ultra vires* manner.

26. Because the Small Business Exchange is financed through measurable appropriations from the General Fund and Defendants are exceeding their lawful powers and operating the Small Business Exchange in an illegal, unlawful, and *ultra vires* manner, Defendants have injured Plaintiff irreparably in his/her interests as a taxpayer and will continue to injure Plaintiff irreparably unless and until Congress' participation in the Exchange is declared unlawful and Defendants are enjoined from allowing Congress to continue to participate in the Exchange.

27. Plaintiff has no adequate or alternative remedy at law.

**COUNT TWO**  
**(Writ of Mandamus)**

28. Plaintiff reaffirms paragraphs 1-27 as though fully restated herein.

29. Because the House and the Senate each employ more than 50 full-time employees, Defendant Kofman had a clear, non-discretionary, ministerial duty to deny them participation in the Small Business Exchange.

30. Defendant Kofman has failed and is failing to carry out this duty and will continue to fail to carry out this duty unless ordered to do so.

31. As a taxpayer and resident of the District of Columbia, Plaintiff has a clear and indisputable right to have Defendant Kofman carry out her public duties.

32. Plaintiff has no adequate or alternative means to obtain relief.

**WHEREFORE**, Plaintiff prays that the Court: (a) declare the House's and the Senate's participation in the Small Business Exchange to be unlawful; (b) enjoin Defendants from continuing to allow the House and the Senate to participate in the Small Business Exchange, or at a minimum, from expending further taxpayer funds on the House's and Senate's participation in the Small Business Exchange; (c) issue a writ of mandamus ordering Defendant Kofman to deny the House and the Senate further participation in the Small Business Exchange; (d) award Plaintiff reasonable attorneys' fees and costs; and (e) order such other and further relief as the Court finds just and equitable.

Dated: October 15, 2014

Respectfully submitted,



Michael Bekesha

D.C. Bar No. 995749

Paul J. Orfanedes

D.C. Bar No. 429716

JUDICIAL WATCH, INC.

425 Third Street S.W., Suite 800

Washington, DC 20024

Phone: (202) 646-5172

Email: mbekesha@judicialwatch.org

*Counsel for Plaintiff Kirby Vining*

Case Number : 2014 CA 6496  
Judge Herbert B. Dixon, Jr.  
Next Event: Initial Conference  
Date: January 16, 2015 at 9:30 a.m.

4. Pursuant to D.C. Code § 1-204.46, the Mayor of the District of Columbia must submit the budget adopted by the Council of the District of Columbia to the President of the United States for transmission to the Congress for approval.

5. On August 7, 2014, as part of his official duties and activities as required by D.C. Code § 1-204.46, the Mayor submitted “FY 2015 Proposed Budget and Financial Plan” to the President.

6. Attached hereto as Exhibit B is the “Glossary of Budget,” which was part of “FY 2015 Proposed Budget and Financial Plan” that was submitted to Congress by the Mayor on August 7, 2014.

7. Attached hereto as Exhibit C is the Schedule 40-PBB for the Health Benefit Exchange Authority, which was part of “FY 2015 Proposed Budget and Financial Plan” that was submitted to Congress by the Mayor on August 7, 2014.

8. Attached hereto as Exhibit D is the Schedule 30-PBB for the Health Benefit Exchange Authority, which was part of “FY 2015 Proposed Budget and Financial Plan” that was submitted to Congress by the Mayor on August 7, 2014.

9. Attached hereto as Exhibit E is the Schedule 80 for the Health Benefit Exchange Authority, which was part of “FY 2015 Proposed Budget and Financial Plan” that was submitted to Congress by the Mayor on August 7, 2014.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. on this 12th Day of December 2014.

  
Michael Bekesha

## **Exhibit A**



September 5, 2014

Michael Bekesha  
Judicial Watch, Inc.  
mbekesha@judicialwatch.org

Re: FOIA 2014-11

Dear Mr. Bekesha,

This letter is in response to your email sent August 14, 2014 containing a Freedom of Information Act request. Your request is granted in part and denied in part. Responsive documents are attached.

Request: Judicial Watch, Inc. requests from the DC Health Benefit Exchange Authority access to and a copy of the confirmation eligibility form completed by the U.S. Congress and/or the U.S. Senate and/or the U.S. House of Representatives when it signed up for DC Health Link. The confirmation eligibility form is identified on page 30 of the Small Business Guide to DC Health Link.

Response: The request granted in part and is denied in part pursuant to D.C. Official Code § 2-534(a)(2).

Under D.C. Official Code § 2-537 and 1 DCMR 412, you have the right to appeal this letter to the Mayor or to the Superior Court of the District of Columbia. If you elect to appeal to the Mayor, your appeal must be in writing and contain "Freedom of Information Act Appeal" or "FOIA Appeal" in the subject line of the letter as well on the outside of the envelope. The appeal must include (1) a copy of the original request; (2) a copy of any written denial; (3) a statement of the circumstances, reasons, and/or arguments advanced in support of disclosure; and (4) a daytime telephone number, and e-mail and/or U.S. Mail address at which you can be reached. The appeal must be mailed to: The Mayor's Correspondence Unit, FOIA Appeal, 1350 Pennsylvania Avenue, N.W., Suite 316, Washington, D.C. 20004. Electronic versions of the same information can instead be e-mailed to The Mayor's Correspondence Unit at [foia.mayor@dc.gov](mailto:foia.mayor@dc.gov). Further, a copy of all appeal materials must be forwarded to me as the Freedom of Information Officer of the involved agency.

Please do not hesitate to contact me if you have any questions. The file is now closed.

Sincerely,

A handwritten signature in black ink that reads "Mary Beth Senkewicz". The signature is fluid and cursive, with a large loop at the end of the last name.

Mary Beth Senkewicz  
Associate General Counsel and Policy Advisor  
FOIA Officer



1100 15th St., NW, Suite 800, Washington, DC 20005



Close

Print

## Employer Information

### Employer name & address

**Employer name** US House of Representatives

**Doing business as(name)** STAFF US House of Representatives

**Federal Employer Identification Number(EIN)** [REDACTED]

**Employer Type** State/local government

**Average Number of Full-Time Employees (in Prior Calendar Year)** ..

**Average Number of Part-Time Employees (in Prior Calendar Year)** ..

**Average Weekly Hours Worked By Part-Time Employees** ..

**Number of Full-Time Equivalents (FTEs) in Prior Calendar Year** 45

### Primary business address

**Business address Line 1** B-215 Longworth HOB

**Business address Line 2** ..

**City** Washington

**State** DC

**ZIP Code** 20515

## Contact name & email address

☒ Check here if you are the contact?

**Name** First Name Middle Initial Last Name Suffix

**Title** ..

**E-mail address**

## Contact mailing address

☒ Check here if the contact address is the same as the primary business address?

**Address** Mailing address Line 1 Mailing address Line 2  
US House of Representatives Members Svc Room 139A Cannon HOB  
City State ZIP Code  
Washington DC 20515

## Contact preferences

**Preferred phone number** Phone type Phone number Phone number Ext.

Work

**Secondary phone number** Phone type Phone number Phone number Ext.

-- -- --

**Fax number** ..

**Preferred spoken language** ...

**Preferred written language** ..

---

## Finalize Employees

1

First Name	Last Name	Date of Birth	ZIP Code	EE Class
Twenty	Congress	01/01/1994	20002	All Employees
Employee Dependents: None				

## Confirmation

☒ I attest that I employ 50 or fewer full time equivalent employees.

☒ I attest that I will offer coverage to all full-time employees working an average of 30 hours per week through DC Health Link (or, for multi-state employers, any other exchange serving those work locations outside of DC).

## Electronic Signature

I've provided true and correct answers to all the questions on this form to the best of my knowledge. I know that if I'm not truthful there may be a penalty. I know that I must tell (DC Health Link) if anything changes about what I wrote on this application.

☒ I agree

Job Title from Your  
Company

Signature: First Name Middle Initial

Last Name Suffix

Date 11/25/2013

Close

Close

Print

## Employer Information

---

### Employer name & address

**Employer name** United States Senate

**Doing business as(name)** United States Senate

**Federal Employer Identification Number(EIN)** [REDACTED]

**Employer Type** State/local government

**Average Number of Full-Time Employees (in Prior Calendar Year)** ..

**Average Number of Part-Time Employees (in Prior Calendar Year)** ..

**Average Weekly Hours Worked By Part-Time Employees** ..

**Number of Full-Time Equivalents (FTEs) in Prior Calendar Year** 45

### Primary business address

**Business address Line 1** United States Senate

**Business address Line 2** Disbursing Office

**City** Washington

**State** DC

**ZIP Code** 20510

## Contact name & email address

☐ Check here if you are the contact?

**Name** First Name Middle Initial Last Name Suffix

**Title** ..

**E-mail address**

## Contact mailing address

☐ Check here if the contact address is the same as the primary business address?

**Address** Mailing address Line 1 Mailing address Line 2 City State ZIP Code  
B-215 Longworth HOB - - Washington DC 20515

## Contact preferences

**Preferred phone number** Phone type Phone number Phone number Ext.  
Work

**Secondary phone number** Phone type Phone number Phone number Ext.  
-- -- --

**Fax number** ..

**Preferred spoken language** ..

**Preferred written language** ..

---

## Finalize Employees

---

1

First Name	Last Name	Date of Birth	ZIP Code	EE Class
------------	-----------	---------------	----------	----------

First Name	Last Name	Date of Birth	ZIP Code	EE Class
first	last	01/01/1980	20002	All Employees
Employee Dependents: None				

## Confirmation

- ☒ I attest that I employ 50 or fewer full time equivalent employees.
- ☒ I attest that I will offer coverage to all full-time employees working an average of 30 hours per week through DC Health Link (or, for multi-state employers, any other exchange serving those work locations outside of DC).

## Electronic Signature

I've provided true and correct answers to all the questions on this form to the best of my knowledge. I know that if I'm not truthful there may be a penalty. I know that I must tell (DC Health Link) if anything changes about what I wrote on this application.

☒ I agree

Job Title from Your  
Company

Signature: First Name Middle Initial

Last Name Suffix

Date 02/19/2014

Close

Print

Close

Print

## Employer Information

### Employer name & address

**Employer name** US House of Representatives

**Doing business as(name)** US House of Representatives

**Federal Employer  
Identification Number(EIN)** [REDACTED]

**Employer Type** State/local government

**Average Number of  
Full-Time Employees (in Prior  
Calendar Year)** ..

**Average Number of  
Part-Time Employees (in  
Prior Calendar Year)** ..

**Average Weekly Hours  
Worked By Part-Time  
Employees** ..

**Number of Full-Time  
Equivalents (FTEs) in Prior  
Calendar Year** 45

### Primary business address

**Business address Line 1** US House of Representatives

**Business address Line 2** Members Svc Room 139A Cannon HOB

**City** Washington

**State** DC

**ZIP Code** 20515

## Contact name & email address

☐ Check here if you are the contact?

Name First Name Middle Initial Last Name Suffix

Title --

E-mail address

## Contact mailing address

☐ Check here if the contact address is the same as the primary business address?

Address Mailing address Line 1 Mailing address Line 2 City State ZIP Code  
United States Senate Disbursing Office Washington DC 20510

## Contact preferences

Preferred phone number Phone type Phone number Phone number Ext.  
Work

Secondary phone number Phone type Phone number Phone number Ext.  
-- -- --

Fax number --

Preferred spoken language --

Preferred written language --

## Finalize Employees

1

First Name	Last Name	Date of Birth	ZIP Code	EE Class
------------	-----------	---------------	----------	----------



First Name	Last Name	Date of Birth	ZIP Code	EE Class
Twenty	Congress	01/01/1994	200#2	All Employees
Employee Dependents: None				

## Confirmation

☒ I attest that I employ 50 or fewer full time equivalent employees.

☒ I attest that I will offer coverage to all full-time employees working an average of 30 hours per week through DC Health Link (or, for multi-state employers, any other exchange serving those work locations outside of DC).

## Electronic Signature

I've provided true and correct answers to all the questions on this form to the best of my knowledge. I know that if I'm not truthful there may be a penalty. I know that I must tell (DC Health Link) if anything changes about what I wrote on this application.

☒ I agree

Job Title from Your --  
Company

Signature: First Name Middle Initial

Last Name Suffix

Date 11/03/2013

Close

Print

## **Exhibit B**

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# Appendix B

## Glossary of Budget Terms

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**Accrual basis of accounting** - An accounting method that recognizes the financial effect of transactions, events, and interfund activities when they occur, regardless of the timing of related cash flows. Accordingly, revenues are recognized when they are earned and expenses when they are incurred, not when cash changes hands. Contrast this term to "modified accrual basis of accounting."

**Activity** - A component part of the District's program structure that is comprised of a set of services grouped around a common purpose or result.

**Additional Gross Pay** - Pay other than base compensation and premium pay. Examples include Holiday Pay, Longevity Pay, Shift Differential, and Terminal Leave.

**Agency Financial Operations Program (AFO)** - A program within an agency's performance plan under Performance-Based Budgeting. AFO is used to track the funding and FTE count for all Office of the Chief Financial Officer (OCFO) FTEs assigned to the agencies. Though many of these employees work on-site at agency locations, all financial positions within District agencies report to the Chief Financial Officer. Under AFO, these costs fall within one of three activities: (1) Budget Operations, (2) Accounting Operations, (3) ACFO. Six Associate Chief Financial Officers (ACFOs), each representing one of the major appropriation titles in the District's budget, manage agency financial operations. Agency fiscal officers report to their respective ACFO, who serves as the key contact between the Office of Chief Financial Officer, the Mayor's Office of Budget and Finance, and the Office of the City Administrator in managing agency finances. For budgetary purposes, funding for these positions assigned to the agencies is included in the various agency budgets. This funding is not duplicated in the budget for the OCFO.

**Agency Management Program (AMP)** - A program within an agency's performance plan under Performance-Based Budgeting. AMP is used to track costs associated with common administrative expenses across the District. Under AMP, these costs fall within 15 activities: (1) Personnel, (2) Training and Employee Development, (3) Labor-Management Partnerships, (4) Contracting and Procurement, (5) Property Management, (6) Information Technology, (7) Financial Management, (8) Risk Management, (9) Legal Services, (10) Fleet Management, (11) Communications, (12) Customer Service, (13) Performance Management, (14) Language Access, and (15) Court-Ordered Supervision. Many agencies do not include all 15 of these activities.

**Allocable Revenue** - Revenue earned, collected, and used by the agency responsible for generating the revenue.

**Allocation** - The movement of budget from a central budget item, like a Reserve fund, to a specific budget location. In the case of the Highway Transportation Fund, the movement of capital budget from a master project to a capital project authorized within the master project group.

**Amendment** - A proposed change to a budget that is not yet finally approved, but has been formally submitted by the executive to the legislative branch.

**Annualization** - A budget increase to provide full-year budget authority for a budgetary item that was only partially funded in the prior-year budget.

**Appropriated Revenue** - Authority to collect revenue by an agency on behalf of the District Treasury; such revenue is used to support the operations of all agencies.

**Appropriation** - Authority to spend funds appropriated by Congress and financed by general District revenues.

**Appropriation Group (or Appropriation Title)** - The eight broad areas to which the District categorizes services to the citizens of Washington D.C. They include Governmental Direction and Support, Economic Development and Regulation, Public Safety and Justice, Public Education System, Human Support Services, Public Works, Financing and Other, and Enterprise and Other Funds.

**Arbitrage** - The differential between the rate at which funds are borrowed long term and then subsequently re-invested in short-term investment vehicles like a money market fund.

**ARRA** - American Recovery and Reinvestment Act of 2009, which made available supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization. Some ARRA funds continued beyond Fiscal Year 2009.

**Attrition** - Voluntary employment losses, such as retirements and resignations.

**Bonds** - Officially called debt securities, bonds provide ways for governments to raise large sums of money by borrowing. Bonds usually have a principal amount and a contract interest rate. For fixed rate bonds, the principal can be paid at maturity while the interest is generally paid semi-annually as a percent of the principal. For example, a government could issue \$10,000,000 in bonds with a 5 percent interest rate. If the bonds matured in five years, then the \$10,000,000 principal amount would be repaid to the bondholder on the fifth anniversary of issuance. During that period, \$500,000 would be paid in interest each year or \$250,000 semiannually. Governments may also issue floating rate bonds, where interest accrues at rates that are reset periodically (typically weekly or monthly). Interest payments may be due on a monthly basis, with principal due at maturity.

**Bond Rating** - A bond rating is an independent assessment of the creditworthiness of a bond issued by a state or municipality (including all short and long term indebtedness) rated by these agencies. The three primary rating agencies are Standard & Poor's Ratings Services (S & P), Moody's Investors Service, Inc. (Moody's), and Fitch Ratings, Inc. (Fitch). Bond ratings measure the probability of the timely repayment of principal and interest of a bond. Generally, a higher credit rating would lead to a more favorable effect on the marketability of a bond and lower cost of borrowing for the borrower. The credit rating symbols (long-term) for investment grade bonds range from the highest ratings of AAA, AA, and A to BBB-, the lowest investment grade ratings. Pluses are added to distinguish strength and minuses reflect weaknesses. Bonds rated below BBB- are referred to as speculative, high grade or junk bonds. The Bond Ratings table denotes the bond rating codes of the various rating agencies.

<b>Bond Ratings</b>			
<b>Rating</b>	<b>S &amp; P</b>	<b>Moody's</b>	<b>Fitch</b>
Best Quality; extremely strong capacity to pay principal and interest	AAA	Aaa	AAA
High Quality; very strong capacity to pay principal and interest	AA	Aa	AA
Upper Medium Quality; strong capacity to pay principal and interest	A	A	A
Medium Grade; adequate capacity to pay principal and interest	BBB	Baa	BBB
Somewhat Speculative	BB	Ba	BB
Low Grade, Speculative	B	B	B
Low Grade, Partial Recovery Possible	CCC	Caa	CCC
Low Grade, Default Recovery Possible	CC	Ca	CC
Recovery Unlikely	C	C	C

**Budget** - A plan of financial and operational intent embodying an estimate of proposed expenditures for a given period and proposed means of financing.

**Budget Authority** - Authority provided by law to enter into obligations that will result in expenditures. It may be classified by the period of availability (one-year, multiple-year, no-year), by the timing of congressional action (current or permanent), or by the manner of determining the amount available (definite or indefinite).

**Budget Establishment** - The period immediately preceding the beginning of the budget fiscal year during which final revenue budgets, intra-District budgets, and expenditure budgets are prepared and entered into the formal accounting records of the District.

**Budget Formulation** - The budget planning and development process from the initial budget call up to and including final approval by Congress.

**Budget Modification** - A change in any portion of the budget during the fiscal year.

**Budget Reserve** - Funds that are earmarked to protect the District against shortfalls in revenue and unforeseen expenditures.

**Build America Bonds (BABs)** - The American Recovery and Reinvestment Act of 2009 provides federal subsidies for state and local governments to borrow at lower costs. Build America Bonds are taxable bonds issued by state and local governments to give them access to the conventional corporate debt markets where a portion of the debt service on these bonds are reimbursed from a direct federal payment subsidy. The Treasury Department directs subsidy payments to participating state or local governmental issuers in an amount equaling up to 35 percent of the interest payment on the Build America Bonds. The federal subsidy payment effectively lowers the net borrowing costs and increases the amount municipalities can borrow, compared to traditional tax-exempt or tax credit bonds.

**CAFR** - State and local governments issue an annual financial report referred to as the Comprehensive Annual Financial Report or CAFR. The CAFR has, at a minimum, the following three parts: (1) an introductory section, (2) a financial section, and (3) a statistical section. Some of the principal users of the CAFR are credit or bond rating agencies (Fitch Ratings, Moody's Investors Service, Standard and Poor's Ratings Services), institutions which buy and sell bonds, and those charged with managing and governing the state or local government.

**Capital Budget** - The budget that provides for the acquisition of District-owned assets that help meet the long-term and infrastructure needs, as summarized in the Capital Improvements Program.

**Capital Improvements Program (CIP)** - A plan for initiating the development, improvement, or replacement of District-owned assets during a six-year period. As annually revised, this plan provides the basis for future-year capital budget requests.

**Certificates of Participation (COP)** - is secured by the pledge of the issuing municipality to annually appropriate (each year that the COPs are outstanding) an amount sufficient to pay debt service on the bonds. In a typical lease-purchase arrangement, the District as lessee purchases property under contract from a lessor, usually a private corporation, another public entity, or a special purpose nonprofit corporation. The lessor receives a portion of each lease payment as tax-exempt interest. One common way of financing this is the Certificate of Participation (COP), where the lessor assigns the lease and lease payments to a trustee.

**Charter School** - A private non-profit entity that accepts and educates public school students under the terms of a charter granted by the District's chartering authority. Charter Schools receive the same public funding as D.C. Public Schools pursuant to the District's uniform per student funding formula; additionally, a facilities allowance is provided.

**Chart of Accounts** - A chart of expenditure and revenue accounts used to record each type of financial transaction incurred by District agencies.

**Collateral** - Security pledged to a creditor to assure that the obligor of a municipal credit will meet its payment obligations. When the obligor has performed, the creditor must release the collateral.

**Community Development Block Grant (CDBG)** - A federal grant that supports housing, economic development, health and human services, and planning and administration.

**Component Unit** - Legally separate organizations which meet the following criteria: (a) the primary government appoints a voting majority of the organization's board; and (b) there is a financial benefit/burden relationship between the primary government and the organization or the primary government is able to impose its will on the organization.

**Comptroller Object** - This represents the lowest level of the General Ledger Account structure for operating statement statewide accounting purposes. It includes revenue, expenditure, transfer and statistical accounts.

**Comptroller Source Group** - This is used to group Comptroller Objects for reporting purposes. Also called Object Class.

**Consolidated Plan** - The U.S. Department of Housing and Urban Development requires a single or consolidated plan and submission for

the following federal grant programs: Community Development Block Grant, HOME Investments Partnerships Program, Emergency Shelter Grants (ESG), and the Housing Opportunities for Persons with AIDS (HOPWA) grant.

**Contractual Services** - A budgetary classification of nonpersonal services that includes funds for contractual services.

**Controllable Property** - Non-capitalized tangible property with a value that is less than \$5,000 that is considered to be sensitive with a high risk of theft ; such property typically has an expected useful life of less than three years.

**Current Services Funding Level (CSFL)** - The CSFL is a Local funds ONLY representation of the true cost of operating District agencies, without consideration of any new policy decisions.

**Debt Cap** - This is a measure of the District's long-term debt capacity, supported by District revenues. The District has statutorily mandated debt limits of (a) 17 percent (maximum annual debt service to total current-year local revenues) for general obligation bonds, and (b) 12 percent (annual debt service to total General Fund expenditures) for all tax-supported debt.

**Debt Ratio** – Debt ratios are a means of measuring the affordability or burden of a municipality's outstanding debt. Common measurements include debt per capita, debt per general fund expenditures, and debt as a percentage of total income.

**Debt Service** - The payment of interest and the repayment of principal to bondholders on specified dates. Generally, principal is repaid once a year. Interest on fixed rate bonds is paid twice a year at six-month intervals, and interest on floating rate bonds is generally paid monthly.

**Dedicated Taxes** - Tax revenues that are dedicated by law to a particular agency for a particular purpose. Dedicated Tax revenue is part of General Fund revenue.

**Encumbrance** - An amount of funds committed for the payment of goods and services ordered but not yet received.

**Enterprise Funds** - Budget and accounting units created for particular purposes, such as water and sewer or other self-sustaining operations, to separate the revenue and financial control of such operations from the District's General Fund.

**Entitlement** - A service or grant that, under District or Federal law, must be provided to all applicants.

**Equipment and Equipment Rental** - The name of the object class used to allocate funds for such needs.

**Escrow Agreement** - The legal document outlining the terms and conditions under which proceeds of refunding bonds are used to pay the debt service of refunded bonds. The escrow (which should be irrevocable) stipulates which bond or bonds are to be refunded, whether the bonds will be redeemed at a call date or paid until maturity and what the refunding bond proceeds are invested in. Usually refunding bonds are invested in U.S. government securities.

**Expenditure** - A payment for goods or services received.

**FMAP (Federal Medicaid Assistance Percentage)** – The percentage of Medicaid expenditures that is reimbursed by the Federal Government. For the District, this percentage is generally 70 percent for most Medicaid functions, but it was temporarily increased from October 1, 2008, through December 31, 2010, as part of the American Recovery and Reinvestment Act.

#### **Federal Funds**

1. Federal Grants: Funding provided by the federal government via a federal agency for a specific purpose with the conditions for the administration of the funding dictated by each grantor organization.
2. Federal Payments: Funding specifically detailed in the Federal Funds portion of the District of Columbia Appropriations Act with the conditions for the administration of the funding found within the statute and federal appropriations law.
3. Federal Medicaid Payments: Funding provided to pay for a portion of the health care costs of eligible individuals, with oversight performed by District and federal authorities.

**Fixed Costs** - Expenses that do not change in proportion to the activity of a business and are related to the everyday functioning of a business. In the District, fixed costs are categorized as electricity, heating fuel, janitorial services, natural gas, occupancy, telecommunication, postage, rent, security services, steam, water and sewer, and fleet fuel and services. While the expense item is fixed, the costs do have variability. Rate fluctuations and consumption levels play a large part in determining the amount of fixed costs.

**Fringe Benefits** - Part of overall employee compensation costs, including life and health insurance and retirement and social security contributions.

**Full-Time Equivalent (FTE)** - An employment indicator that translates the total number of hours worked in a year by all employees, including part-time workers, to an equivalent number of work years. For example, one FTE generally equals 2,080 hours and 0.75 FTE equals 1,560 hours.

**Fund** - A budgeting and accounting device used to establish accounts for separating revenues and their related obligations and expenditures for one purpose from those revenues, obligations, and expenditures for other purposes.

**Fund Accounting** - Method of organizing and maintaining accounting activities on a fund basis. A fund is defined as a separate, distinct accounting entity that has its own assets, liabilities, equity, revenues, and expenditures/expenses. Funds are established for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

**Fund Balance** - The difference between fund assets and deferred outflows of resources and fund liabilities and deferred inflows of resources. The fund balance is cumulative over the life of the fund.

**Generally Accepted Accounting Principles (GAAP)** - Uniform minimum standard for accounting and financial reporting. GAAP includes the conventions, rules, and procedures that serve as the norm for the fair presentation of financial statements. The standard setting body which establishes GAAP for governmental entities is the Governmental Accounting Standards Board (GASB).

**GASB** - Established in June 1984, the Governmental Accounting Standards Board (GASB) is the ultimate authoritative accounting and financial reporting standard-setting body for state and local governments. Although GASB standards do not have the force of law, governments are required to follow GASB standards in order to obtain clean opinions from their auditors, and failure to comply with GASB standards can adversely affect a state or local government's bond ratings and thus, its attempts to issue bonds.

**GFOA** - The Government Finance Officers Association of the United States and Canada is the premier association of public- finance professionals. Since its inception in 1906, originally as the Municipal Finance Officers Association, the organization has played a major role in the development and promotion of GAAP for state and local government. The GFOA has sponsored the Certificate of Achievement for Excellence in Financial Reporting Program since 1946. Under this program, governments which achieve the highest standards in financial reporting are awarded a prestigious Certificate of Achievement. The GFOA also sponsors the Distinguished Budget Presentation Award Program, which recognizes governments whose budgets are deemed exemplary as policy documents, financial guides, operational guides, and communication devices. The GFOA also publishes Governmental Accounting, Auditing, and Financial Reporting (GAAFR), also known as "the Blue Book".

**GPRA** - Government Performance and Results Act. Legislation that requires the establishment of a direct relationship between the use of federal funds and the delivery of services by federal agencies. Many federal grants require GPRA performance measures as part of the reporting process.

**General Fund** - The principal operating fund of the District, which is used to account for all financial resources except those required to be accounted for in another fund. General Fund revenues consist of Local, Dedicated Tax, and Special Purpose Revenues.

**General Obligation Bonds** - Bonds are issued directly by state or local governments or their agencies to meet essential government functions such as schools and highway construction. These bonds are backed by the issuer's pledge of its full faith, credit and taxing power to meet interest and principal payments.

**Gift Funds** - Financial donations to the District government, which may only be accepted on behalf of the District by the Mayor, that may be earmarked for a specific purpose.

**Grant** - Contributions of assets (usually cash) by a government unit or private entity for specified purposes. The District government receives grants from the federal government (and occasionally from private entities) for a variety of purposes. District agencies also make grants to non-profit or other non-District government organizations. When the source of the District's grant to a non-District government organization is itself a grant, the District's grant is called a "subgrant."

**Grant Anticipation Revenue (GARVEE) Bonds** - Bonds used by state or state infrastructure agencies under the guidelines of the National Highway System Designation Act to finance major highway projects receiving Federal funding. States must repay the bonds using federal funds expected to be received in the future; however, the federal government does not guarantee that the funds will be made available to repay the bonds.

**Gross Budget** - A total budget amount that includes resources from all funding sources.

**Imprest Fund** - A fund of a designated amount out of which payments for expenses of small amounts are made (sometimes referred to as petty cash).

**Income Tax Secured Revenue Bond** - Revenue bonds secured by and paid solely from the individual income tax and the business franchise tax received by the District.

**Indirect Costs** - Administrative overhead costs incurred by the District in managing grant programs.

**Industrial Revenue Bond** - A bond issued by the District on behalf of a non-profit or other eligible entity to finance or refinance projects including housing, health facilities, transit, higher education, and or other industrial or commercial development.

**Inflation** - An increase in general price of goods or services resulting in a decline in the purchasing power of currently available money.

**Infrastructure** - Long-lived assets that are stationery in nature and normally can be preserved for a significantly greater number of years than most capital assets. Examples of infrastructure include such as highways, bridges, drainage systems, and water and sewer systems.

**Interest Accrual** - The interest that has accumulated on a bond since the last interest payment up to, but not including, the settlement date.

**Intra-District** - An accounting mechanism to track payments for services provided by one District agency to another District agency, similar to an internal service fund.

**Key Result Measures** - A set of result performance measures that are contained within each program. They are comprised of one result measure from each of the activities within that program.

**Local Education Agency (LEA)** - An education agency at the local level which exists primarily to operate schools or to contract for educational services. This term is used synonymously with the terms "school district," "school system," and "local basic administrative unit."

**Local Revenue** - Includes tax and non-tax revenue that is not earmarked for a particular purpose and is allocated to fund District programs during the annual budget process. Local revenue is part of General Fund revenue.

**Mandate** - Any responsibility, action or procedure that is imposed by one government on another through constitutional, legislative, administrative, executive, or judicial action as a direct order, or that is required as a condition of aid.

**MARC** - Maximum Allowable Request Ceiling. The maximum Local fund budget that the agencies are allowed to request at the beginning of the budget formulation process.

**Match** - A locally provided cash or in-kind services contribution required to supplement or equal a grant or gift as a condition for receiving the funds.

**Mission** - The mission is a clear, concise statement of the purpose of the agency. The mission focuses on the broad, yet distinct, results the agency will achieve for its customers.

**Modified Accrual Basis of Accounting** - A basis of accounting that recognizes revenues in the period they become measurable and available, and expenditures in the period in which the associated liability is incurred.

**Municipal Bond** - A bond issued by a state or a political subdivision. Also a bond issued by a state agency or authority. In general, interest earned on municipal bonds is exempt from federal income taxes and state and local taxes in the state if the investor lives in the issuing state.

**Nonpersonal Services (NPS)** - A budget category that includes budget objects for reporting other than personnel-related expenditures. Nonpersonal services includes supplies, utilities, communications, rent, other services and charges, subsidies and transfers, equipment and equipment rental, and debt service.

**Nonrecurring Expenditures** - One-time expenditures for special items, such as a new fire truck or a computer system, that do not need to be budgeted for again in the year following their purchase.



**Notice of Funding Availability (NOFA)** - A public notice that an agency will issue a Request for Applications (RFA), informing interested parties when and where an RFA may be obtained.

**Object Category** - The category of object classes for which the District budgets in the operating budget. There are two object categories: Personal Services (salaries, fringe benefits, additional pay, and overtime) and Nonpersonal Services (all object classes that are not personal services).

**Object Class** - A budgetary classification that breaks down the object categories of personal services and nonpersonal services into more specific types of expenditure, such as fringe benefits (Object Class 14) or supplies (Object Class 20). Also called Comptroller Source Group.

**Objectives** - Measurable activities of a program that are sought to achieve the overall mission.

**Obligations** - The amount of expenditures already made as well as the cost of commitments requiring future payments.

**Operating Budget** - The budget that encompasses the day-to-day District activities. The operating budget includes employee salaries, supplies, and other non-personnel items related to current activities. The operating budget also includes debt service and overhead costs related to daily operations.

**Other Services and Charges** - A budgetary classification of nonpersonal services that includes funds for printing, postage, tuition, travel, conference, and membership dues.

**Overtime Pay** - Pay for full-time employees whose work hours exceed their regular tour of duty, generally, for hours of work authorized in excess of 40 hours in a pay status in a workweek in accordance with provisions of section 7 of the Fair Labor Standards Act of 1938 (FLSA), as amended (29 USC 207) .

**Personal Services (PS)** - A budget category that includes budget objects for reporting personnel-related expenditures. Personal Services includes regular pay, other pay, additional gross pay, overtime, and fringe benefits.

**Performance-Based Budgeting (PBB)** - A budget system in which budget decisions are based on or informed by performance information that describes the cost or efficiency of producing an activity and the results achieved for customers.

**Performance Measures** - Measures that describe the information managers and other decision-makers need in order to make good business decisions. There are four types of measures: (1) results, (2) outputs, (3) demand, and (4) efficiency.

**Performance Plan** - An agency-level plan that contains the agency's mission, summary of services, objectives, initiatives, and performance measures for a set period of time.

**Private Revenue** - Funding from private grants to fund the intended purpose of the grant.

**Program** - A component part of the District's program structure. Comprised of a set of activities that have a common purpose or result, organized as a sub-unit of an agency for accounting, budgeting, planning, and performance measurement purposes.

**Program Structure** - The delineation of programs, activities, and services that constitute the work of an agency.

**Proprietary Fund** - Fund category that often emulates the private sector and focuses on the measurement of net income. Expenditures are typically funded by user charges and fees. Governments may have two types of proprietary funds: enterprise funds and/or internal service funds.

**Qualified Zone Academy Bond** - A federal bond program established to help schools raise funds to: renovate and repair buildings, invest in equipment and up-to-date technology, develop challenging curricula, and train quality teachers. QZABs reduce the burden of interest payments by giving financial institutions holding the bonds (or other debt mechanism) a tax credit in lieu of interest for construction in eligible low-income schools. Through a tax credit to the lending institution, the federal government covers all of the interest on these bonds, resulting in savings up to 50 percent of the cost of these renovation and improvement projects.

**Real (Constant) Dollars** - Refers to an adjusted value of currency used to compare dollar values from one period to another. Due to inflation, the purchasing power of the dollar changes over time, so in order to compare dollar values from one year to another, they need to be converted from nominal (current) dollar values to constant dollar values.

**Reallocation** - The modification of budget from one phase of a capital project to another. The total budget for the project remains the same.

**Redirections** - The permanent shift of funds or positions within an agency.

**Regular Pay - Continuing** - Salary and wages for all continuing full-time employees.

**Regular Pay - Other** - Salary and wages for part-time, part-year, or temporary employees.

**Reorganization** - A change in the budget and reporting structures within an agency.

**Reprogramming** - Any budget modification for purposes other than those originally planned, which results in an offsetting reallocation of budget authority from one budget category to another, or from one capital project to another.

**Request for Applications (RFA)** - The document that describes the requirements for subgrant applications.

**Request for Proposals (RFP)** - A solicitation document requesting from prospective contractors to submit a business proposal with a detailed description of the manner in which they plan to achieve the goals specified by the RFP, were they awarded a contract to do so. The plan usually includes the proposer's corporate and financial information, estimate of total cost, and required completion schedule.

**Rescission** - A legislative cancellation of budget authority previously approved by the Council and the Congress.

**Revenue Bonds** - A revenue bond is a special type of municipal bond distinguished by its guarantee of repayment solely from revenues generated by a specified revenue-generating entity or source associated with the purpose of the bonds, rather than from a tax.

**Revenue** - The annual income or receipts of the District from taxes, charges, grants, and investments.

**Revenue Category** - General types of revenue, such as taxes.

**Revenue Class** - Specific revenues, such as real property taxes.

**Review Panel** - A team of qualified individuals responsible for reviewing, scoring, and recommending applicants for subgrant awards.

**Revolving Fund** - A fund that is replenished as amounts are used, either by additional appropriations or by income/revenue from the programs the fund finances. Therefore, the fund retains a balance at all times.

**Service-Level Budgeting** - The development of budgets at program level four in SOAR. This is one level below the current level of budgeting for most agencies, which is at the activity level.

**Special Purpose Revenue** - Funds used to account for proceeds derived from specific revenue sources (other than expendable trusts, special assessments, or major capital projects) that are legally restricted to expenditures for specified purposes. Formerly called O-type or other revenue, Special Purpose Revenue is part of General Fund revenue.

**Stimulus** - Federal funding provided via the American Recovery and Reinvestment Act to stimulate the economy.

**Strategic Business Plan** - A strategic business plan establishes and articulates the purpose, strategic goals, operational organization, and performance expectations for an agency.

**Strategic Goal** - In strategic business planning, refers to goal statements that describe in measurable terms the significant results that an agency must accomplish over the next 2 to 5 years to respond to the critical trends, issues, and challenges.

**Structural Balance** - The degree to which revenues match expenditures over time.

**Subgrant** - The commitment of funds from a grant by a District government agency to a governmental or private organization to support specific services and operations. See D.C. Municipal Regulations, Title I, Chapter 50.

**Subsidies and Transfers** - The name of the object class used to allocate funds for a variety of public welfare and support costs and to transfer funds to other organizations, such as the Washington Metropolitan Area Transit Authority, providing services to District residents.

**Supplemental Budget** - An increase in the District's budget during the course of the fiscal year, after the budget has first been approved. After approval by Council and signature by the Mayor, a Supplemental Budget must also go to Congress for review. Within certain limits, the District may implement a Supplemental Budget after a 30-day review by Congress, if Congress does not disapprove it.

**Supplies and Materials** - The names of the budgetary object class used to allocate funds for consumable materials.

**System of Accounting and Reporting (SOAR)** – The financial management system currently used by the District as its official accounting system of record.

**Tax Abatement** - A decrease or rebate of a tax or burden improperly made. At times a tax abatement may reflect only an acknowledgment of a changed situation.

**Tax Increment Financing** - A method to pay for the costs of qualifying improvements necessary to create new development or redevelopment. The financing of the qualifying improvements is paid from increased property and/or sales taxes generated from the new development or redevelopment that would not occur “but for” such assistance.

**Tobacco Securitization** - Securitization is a financing method whereby a party sells bonds to investors backed by a future stream of payments. With tobacco securitization, the future stream of payments is the periodic payments tobacco companies will make as part of a settlement reached by the companies and various states in 1998. The District received funds up front from the proceeds of the bond sale. The investors receive principal and interest payments on their bonds from the tobacco companies' payments. Securitization shifts the risk that the tobacco companies will stop making settlement payments from the government to private investors or insurers.

**Trust and Agency Funds** – Fiduciary funds that are used to account for assets held by the District in a trustee capacity or as an agent for individuals, private organizations, and other governments.

**Transfers** - Reallocation of resources (funds or positions) among agencies or funds.

**Unfunded Liabilities** - Potential or actual debts for which no current funding is available.

**Uniform Per Student Funding Formula (UPSFF)** - Funding formula used by the District that determines the annual appropriation of Local funds for the operation of D.C. Public Schools and D.C. Public Charter Schools based on the number of students, the grade level, and the special programs in which they are enrolled.

**WAE** - The abbreviation for an “when-actually-employed” appointment. This is a temporary appointment under which the employee serves on an intermittent basis.

**Weighted Student Formula (WSF)** – Funding formula used by the D.C. Public School system to annually fund each school. The formula is based on enrollment, grade level, special education needs, free and reduced price lunch eligibility, and English as a Second Language characteristics.

**Within-Grade (Step) Increase** – A salary increase awarded to an employee based on longevity of service and acceptable performance.

## **Exhibit C**

**FY 2015 Proposed Budget  
for the District of Columbia Government**

(Dollars in Thousands)

**Program Summary by  
Comptroller Source Group**

Schedule  
**40-PBB**

**HIO D.C. Health Benefit Exchange Authority**

**1000 Agency Management Program**

Comptroller Source Group	General Funds				Federal Funds				Private Funds				Intra-District Funds				Gross Funds			
	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014
0011	1,475	2,401	0	-2,401	0	0	0	0	0	0	0	0	0	0	0	0	1,475	2,401	0	-2,401
0012	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0013	23	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	23	0	0	0
0014	176	552	0	-552	0	0	0	0	0	0	0	0	0	0	0	0	176	552	0	-552
0015	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0
<b>Subtotal: PS</b>	<b>1,676</b>	<b>2,953</b>	<b>0</b>	<b>-2,953</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,676</b>	<b>2,953</b>	<b>0</b>	<b>-2,953</b>
0020	14	12	0	-12	0	0	0	0	0	0	0	0	0	0	0	0	14	12	0	-12
0031	50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	50	0	0	0
0032	0	780	0	-780	0	0	0	0	0	0	0	0	0	0	0	0	0	780	0	-780
0040	51	131	0	-131	0	0	0	0	0	0	0	0	0	0	0	0	51	131	0	-131
0041	8,534	44,759	0	-44,759	0	0	0	0	0	0	0	0	0	0	0	0	8,534	44,759	0	-44,759
0050	464	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	464	0	0	0
0070	0	75	0	-75	0	0	0	0	0	0	0	0	0	0	0	0	0	75	0	-75
<b>Subtotal: NPS</b>	<b>9,114</b>	<b>45,758</b>	<b>0</b>	<b>-45,758</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>9,114</b>	<b>45,758</b>	<b>0</b>	<b>-45,758</b>
<b>Total 1000</b>	<b>10,790</b>	<b>48,711</b>	<b>0</b>	<b>-48,711</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10,790</b>	<b>48,711</b>	<b>0</b>	<b>-48,711</b>

**100F Agency Financial Operations**

Comptroller Source Group	General Funds				Federal Funds				Private Funds				Intra-District Funds				Gross Funds			
	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014
0011	0	514	0	-514	0	0	0	0	0	0	0	0	0	0	0	0	0	514	0	-514
0014	0	118	0	-118	0	0	0	0	0	0	0	0	0	0	0	0	0	118	0	-118
<b>Subtotal: PS</b>	<b>0</b>	<b>632</b>	<b>0</b>	<b>-632</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>632</b>	<b>0</b>	<b>-632</b>
0020	0	4	0	-4	0	0	0	0	0	0	0	0	0	0	0	0	0	4	0	-4
0040	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0041	0	320	0	-320	0	0	0	0	0	0	0	0	0	0	0	0	0	320	0	-320
0070	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Subtotal: NPS</b>	<b>0</b>	<b>324</b>	<b>0</b>	<b>-324</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>324</b>	<b>0</b>	<b>-324</b>
<b>Total 100F</b>	<b>0</b>	<b>956</b>	<b>0</b>	<b>-956</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>956</b>	<b>0</b>	<b>-956</b>

**2000 Plan Management Program**

Comptroller Source Group	General Funds				Federal Funds				Private Funds				Intra-District Funds				Gross Funds			
	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014
0011	50	197	0	-197	0	0	0	0	0	0	0	0	0	0	0	0	50	197	0	-197
0014	5	45	0	-45	0	0	0	0	0	0	0	0	0	0	0	0	5	45	0	-45
<b>Subtotal: PS</b>	<b>55</b>	<b>242</b>	<b>0</b>	<b>-242</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>55</b>	<b>242</b>	<b>0</b>	<b>-242</b>
0020	0	1	0	-1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	-1
0032	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0041	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

**FY 2015 Proposed Budget  
for the District of Columbia Government**

(Dollars in Thousands)

**Program Summary by  
Comptroller Source Group**

**Schedule  
40-PBB**

Comptroller Source Group	General Funds				Federal Funds				Private Funds				Intra-District Funds				Gross Funds			
	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014
<b>Subtotal: NPS</b>	0	1	0	-1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	-1
<b>Total 2000</b>	55	243	0	-243	0	0	0	0	0	0	0	0	0	0	0	0	55	243	0	-243

**3000 Eligibility And Enrollment Program**

Comptroller Source Group	General Funds				Federal Funds				Private Funds				Intra-District Funds				Gross Funds			
	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014
0011	15	197	0	-197	0	0	0	0	0	0	0	0	0	0	0	0	15	197	0	-197
0014	5	45	0	-45	0	0	0	0	0	0	0	0	0	0	0	0	5	45	0	-45
<b>Subtotal: PS</b>	20	242	0	-242	0	0	0	0	0	0	0	0	0	0	0	0	20	242	0	-242
0020	0	1	0	-1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	-1
0041	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Subtotal: NPS</b>	0	1	0	-1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	-1
<b>Total 3000</b>	20	243	0	-243	0	0	0	0	0	0	0	0	0	0	0	0	20	243	0	-243

**4000 S.H.O.P. Operations Program**

Comptroller Source Group	General Funds				Federal Funds				Private Funds				Intra-District Funds				Gross Funds			
	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014
0011	15	197	0	-197	0	0	0	0	0	0	0	0	0	0	0	0	15	197	0	-197
0014	5	45	0	-45	0	0	0	0	0	0	0	0	0	0	0	0	5	45	0	-45
<b>Subtotal: PS</b>	20	242	0	-242	0	0	0	0	0	0	0	0	0	0	0	0	20	242	0	-242
0020	0	1	0	-1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	-1
<b>Subtotal: NPS</b>	0	1	0	-1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	-1
<b>Total 4000</b>	20	243	0	-243	0	0	0	0	0	0	0	0	0	0	0	0	20	243	0	-243

**5000 Consumer Education And Outreach Program**

Comptroller Source Group	General Funds				Federal Funds				Private Funds				Intra-District Funds				Gross Funds			
	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014
0011	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0014	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Subtotal: PS</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0040	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0041	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
0050	0	15,200	0	-15,200	0	0	0	0	0	0	0	0	0	0	0	0	0	15,200	0	-15,200
<b>Subtotal: NPS</b>	0	15,200	0	-15,200	0	0	0	0	0	0	0	0	0	0	0	0	0	15,200	0	-15,200
<b>Total 5000</b>	0	15,200	0	-15,200	0	0	0	0	0	0	0	0	0	0	0	0	0	15,200	0	-15,200

**6000 Business Development Program**

Comptroller Source Group	General Funds				Federal Funds				Private Funds				Intra-District Funds				Gross Funds			
	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014
0011	25	441	0	-441	0	0	0	0	0	0	0	0	0	0	0	0	25	441	0	-441

**FY 2015 Proposed Budget  
for the District of Columbia Government**

*(Dollars in Thousands)*

**Program Summary by  
Comptroller Source Group**

**Schedule  
40-PBB**

Comptroller Source Group	General Funds				Federal Funds				Private Funds				Intra-District Funds				Gross Funds			
	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014	FY 2013 Actual	FY 2014 Appr	FY 2015 Req	Change vs 2014
0014	5	101	0	-101	0	0	0	0	0	0	0	0	0	0	0	0	5	101	0	-101
<b>Subtotal: PS</b>	30	542	0	-542	0	0	0	0	0	0	0	0	0	0	0	0	30	542	0	-542
0020	0	2	0	-2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	-2
<b>Subtotal: NPS</b>	0	2	0	-2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	-2
<b>Total 6000</b>	30	544	0	-544	0	0	0	0	0	0	0	0	0	0	0	0	30	544	0	-544
<b>Total budget</b>	10,915	66,140	0	-66,140	0	0	0	0	0	0	0	0	0	0	0	0	10,915	66,140	0	-66,140

## **Exhibit D**



**FY 2015 Proposed Budget  
for the District of Columbia Government**

(Dollars in Thousands)

**Program Summary by  
Activity**

Schedule  
**30-PBB**

D.C. Health Benefit Exchange Authority Name	HIO Code	FY 2013 Actual	FY 2014 Approved	FY 2015 Request	Change from FY 2014	Local (Dedicated Taxes)	Other	General (Local + Other)	Federal	Private	Intra- District
<b>AGENCY MANAGEMENT PROGRAM</b>	<b>1000</b>										
PERSONNEL	1010	0	159	301	142	0	0	0	0	0	0
TRAINING	1015	0	55	35	-20	0	0	0	0	0	0
CONTRACTS AND PROCUREMENT	1020	9,521	14,295	1,614	-12,681	0	0	0	0	0	0
PROPERTY MANAGEMENT	1030	50	1,187	1,083	-105	0	0	0	0	0	0
INFORMATION TECHNOLOGY	1040	99	30,350	9,107	-21,243	0	0	0	0	0	0
RISK MANAGEMENT	1055	0	300	100	-200	0	0	0	0	0	0
LEGAL SERVICES	1060	261	608	1,025	417	0	0	0	0	0	0
FLEET MANAGEMENT	1070	0	12	0	-12	0	0	0	0	0	0
COMMUNICATIONS	1080	215	441	486	45	0	0	0	0	0	0
CUSTOMER SERVICE	1085	58	174	329	155	0	0	0	0	0	0
PERFORMANCE MANAGEMENT	1090	586	1,129	2,734	1,605	0	0	0	0	0	0
<b>Subtotal: AGENCY MANAGEMENT PROGRAM</b>		<b>10,790</b>	<b>48,711</b>	<b>16,815</b>	<b>-31,896</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>AGENCY FINANCIAL OPERATIONS</b>	<b>100F</b>										
BUDGET OPERATIONS	110F	0	101	120	19	0	0	0	0	0	0
ACCOUNTING OPERATIONS	120F	-35	213	124	-89	0	0	0	0	0	0
AGENCY FISCAL OFFICER	140F	35	642	422	-220	0	0	0	0	0	0
<b>Subtotal: AGENCY FINANCIAL OPERATIONS</b>		<b>0</b>	<b>956</b>	<b>666</b>	<b>-290</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>PLAN MANAGEMENT PROGRAM</b>	<b>2000</b>										
PLAN MANAGEMENT SUPPORT SERVICE	2010	55	243	5,919	5,676	0	0	0	0	0	0
<b>Subtotal: PLAN MANAGEMENT PROGRAM</b>		<b>55</b>	<b>243</b>	<b>5,919</b>	<b>5,676</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>ELIGIBILITY AND ENROLLMENT PROGRAM</b>	<b>3000</b>										
ELIGIBILITY & ENROLLMENT SUPPORT SVCE	3010	20	243	2,698	2,454	0	0	0	0	0	0
<b>Subtotal: ELIGIBILITY AND ENROLLMENT PROGRAM</b>		<b>20</b>	<b>243</b>	<b>2,698</b>	<b>2,454</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>S.H.O.P. OPERATIONS PROGRAM</b>	<b>4000</b>										
S.H.O.P. OPERATIONS SUPPORT SVCE	4010	20	243	373	130	0	0	0	0	0	0
<b>Subtotal: S.H.O.P. OPERATIONS PROGRAM</b>		<b>20</b>	<b>243</b>	<b>373</b>	<b>130</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CONSUMER EDUCATION AND OUTREACH PROGRAM</b>	<b>5000</b>										
CONSUMER EDUC & OUTREACH SUPPORT SVCE	5010	0	15,200	1,479	-13,721	0	0	0	0	0	0
<b>Subtotal: CONSUMER EDUCATION AND OUTREACH PROGRAM</b>		<b>0</b>	<b>15,200</b>	<b>1,479</b>	<b>-13,721</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**FY 2015 Proposed Budget  
for the District of Columbia Government**

*(Dollars in Thousands)*

**Program Summary by  
Activity**

Schedule  
**30-PBB**

D.C. Health Benefit Exchange Authority Name	HIO Code	FY 2013 Actual	FY 2014 Approved	FY 2015 Request	Change from FY 2014	Local (Dedicated Taxes)	Other	General (Local + Other)	Federal	Private	Intra- District
<b>BUSINESS DEVELOPMENT PROGRAM</b>	<b>6000</b>										
BUSINESS DEVELOPMENT SUPPORT SVCE	6010	30	544	802	258	0	0	0	0	0	0
<b>Subtotal: BUSINESS DEVELOPMENT PROGRAM</b>		<b>30</b>	<b>544</b>	<b>802</b>	<b>258</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total: D.C. Health Benefit Exchange Authority</b>		<b>10,915</b>	<b>66,140</b>	<b>28,751</b>	<b>-37,389</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

## **Exhibit E**

**FY 2015 Proposed Budget  
for the District of Columbia Government**

*(Dollars in Thousands)*

**Agency Summary  
by Revenue Source**

Schedule

**80**

**HIO D.C. Health Benefit Exchange Authority**

Appropriated Fund Title	Revenue Source Code	Revenue Source Name	Budget Request	FTEs
<b>Enterprise and Other</b>				
<b>Enterprise And Other Funds</b>				
	6202	HEALTH BENEFIT EXCHANGE AUTHORITY FUND	\$28,531	52.00
	6203	HBX LEVEL 1 FUNDING	\$220	2.00
<b>Subtotal: Enterprise And Other Funds</b>			<b>\$28,751</b>	<b>54.00</b>
<b>Subtotal: Enterprise and Other</b>			<b>\$28,751</b>	<b>54.00</b>
<b>General Fund</b>				
<b>Total: D.C. Health Benefit Exchange Authority</b>			<b>\$28,751</b>	<b>54.00</b>

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division**

**KIRBY VINING,**  
Plaintiff,  
v.

**EXECUTIVE BOARD OF THE  
D.C. HEALTH BENEFIT EXCHANGE  
AUTHORITY, et al.,**  
Defendants.

**Case No. 2014 CA 006496 B  
Judge Herbert B. Dixon, Jr.**

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

This matter is before the court upon a *Motion to Dismiss the Complaint* filed by Defendants Executive Board of the D.C. Health Benefit Exchange Authority, Mila Kofman, and D.C. Health Benefit Exchange Authority. Upon consideration of the defendants' motion and reply, the plaintiff's opposition, the applicable law, and the entire record herein, the court concludes that the defendants' motion should be granted.

**BACKGROUND**

On October 15, 2014, Plaintiff Kirby Vining filed a complaint seeking declaratory and injunctive relief or, alternatively, a writ of mandamus against Defendants Executive Board of the D.C. Health Benefit Exchange Authority, Mila Kofman, and D.C. Health Benefit Exchange Authority (hereinafter "the collective defendants" or "the defendant exchange authority") in relation to the collective defendants' allowing some, but not all, members of Congress and their staff to participate in the District's small business health options program or "small business exchange." Specifically, the plaintiff contends that since D.C. Code § 31-3171.01 (11), (16)(A) defines a "small employer" qualified to offer its employees health insurance coverage through the District's small business exchange as a small business that employs no more than 50

employees and the U.S. Congress employs at least 12,359 employees, the U.S. Congress cannot be deemed a “small employer” as defined by the statute. Given this contention, the plaintiff requests that the court enter an order declaring the U.S. Congress’ participation in the District’s small business exchange to be unlawful.

On November 7, 2014, the collective defendants filed the underlying motion to dismiss, arguing that 1) the plaintiff lacked standing to bring this complaint as no District taxpayer funds have been appropriated to fund the defendant exchange authority and 2) the actions of the defendant exchange authority are expressly and specifically authorized by federal law.

In opposition, Plaintiff Kirby Vining relies on *Calvin-Humphrey v. District of Columbia*, 340 A.2d 795 (D.C. 1975) to argue that the plaintiff as a District resident and taxpayer always has standing to file suit in order to prevent an illegal use of municipal funds. The plaintiff continues that the budget reports cited by the collective defendants identify the funding source for the defendant exchange authority to be originating from the District’s general fund.<sup>1</sup> In addition, the plaintiff counters that the collective defendants have not proffered admissible evidence to demonstrate that the defendant exchange authority is only expending federal grant funds. Finally, the plaintiff contends that if the court were to be inclined to find that funds appropriated to the defendant exchange authority for the 2015 fiscal year are not municipal funds, the plaintiff could still have standing given that the District would be required to fund the defendant exchange authority should it experience a shortfall in funding.

In addressing the collective defendants’ second argument, the plaintiff asserts that neither the Patient Protection and Affordable Care Act (ACA) nor any implementing regulation expressly preempts the District’s Health Benefit Exchange Authority Establishment Act of 2011.

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<sup>1</sup> The plaintiff further argues that the source of the public funds appropriated to the defendant exchange authority is a factual issue disputed by the parties.

Similarly, the plaintiff further insists that the defendant exchange authority's ability to comply with federal and state law is impossible. The plaintiff reasons that that since the ACA unambiguously limits the purchase of insurance on a small business health options program to only small businesses, members of Congress and their staff must purchase health insurance through an individual exchange.

## ANALYSIS

### A. Taxpayer Standing Issue

“Standing is a threshold jurisdictional question which must be addressed prior to and independent of the merits of a party's claims.” *Grayson v. AT&T Corp.*, 15 A.3d 219, 229 (D.C. 2011) (*en banc*) (quoting *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005)). The central question of this threshold inquiry “is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue.” *Id.* (quoting *United States v. One Lincoln Navigator 1998*, 328 F.3d 1011, 1013 (8th Cir. 2003)). “The *sine qua non* of constitutional standing to sue is an actual or imminently threatened injury that is attributable to the defendant and capable of redress by the court.” *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 1206-07 (D.C. 2002) (citing *Speyer v. Barry*, 588 A.2d 1147, 1160 (D.C. 1991)); *see also Cmty. Credit Union Servs., Inc. v. Fed. Express Servs. Corp.*, 534 A.2d 331, 333 (D.C. 1987) (“[U]nder ‘prudential principles’ of standing, a plaintiff may assert only its own legal rights, may not attempt to litigate ‘generalized grievances,’ and may assert only interests that ‘fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.’” (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 474-75, 102 S. Ct. 752, 760 (1982))). Further, in deciding whether a plaintiff has standing to sue, the court is “not obliged to accept any of [the

plaintiff's] allegations as true" and is empowered to decide whether it has subject-matter jurisdiction based on any evidence presented by the parties. *Matthews v. Automated Bus. Sys. & Servs., Inc.*, 558 A.2d 1175, 1179 (D.C. 1989) (citation omitted).

Here, the collective defendants cite to proposed budget and financial plans for fiscal years 2013, 2014, and 2015. In particular, the FY 2015 Proposed Budget and Financial Plan reflects that \$10,915,000 as being appropriated to the defendant exchange authority for the 2013 fiscal year from special purpose revenue funds,<sup>2</sup> \$66,140,000 as being appropriated for the 2014 fiscal year from special purpose revenue funds, and \$28,751,000 as being the proposed budget for the defendant exchange authority for the 2015 fiscal year. *See* GOV'T OF THE DISTRICT OF COLUMBIA, FY 2015 PROPOSED BUDGET & FINANCIAL PLAN VOL. 1 - EXECUTIVE SUMMARY App. B-8 (2014), [http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO\\_Volume\\_1\\_web.pdf](http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_Volume_1_web.pdf). The collective defendants further argue that their contention is corroborated by a U.S. Centers for Medicare and Medicaid Services website, which acknowledges that \$68,452,437 in federal funds were awarded to the D.C. Department of Health Care Finance to establish the defendant exchange authority.<sup>3</sup> *See* District of Columbia Health Insurance Marketplace Grants Awards List, <http://www.cms.gov/CCIIO/Resources/Marketplace-Grants/dc.html> (last visited February 25, 2015). Given that the plaintiff does not substantively challenge the websites cited by the collective defendants, the court finds that the plaintiff has not demonstrated a reasonable inference that municipal taxpayer funds have been appropriated to the

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<sup>2</sup> The court notes that special purpose revenues are classified and defined as a subset of financial resources within the District's general fund. Furthermore, the term "special purpose revenue" is defined as "[f]unds used to account for proceeds derived from specific revenue sources . . . that are legally restricted to expenditures for specified purposes." GOV'T OF THE DISTRICT OF COLUMBIA, FY 2015 PROPOSED BUDGET & FINANCIAL PLAN VOL. 1 - EXECUTIVE SUMMARY App. B-8 (2014), [http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO\\_Volume\\_1\\_web.pdf](http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_Volume_1_web.pdf).

<sup>3</sup> To be exact, the Centers for Medicare and Medicaid Services website reflects that the D.C. Department of Health Care Finance was awarded grant funds in the amount of \$8,200,716 on August 12, 2011, \$34,418,790 on October 23, 2013, and \$25,832,931 on July 25, 2014 with the express purpose that these funds would be used to "enable the District to establish a certified and functioning exchange by January 2014."



defendant exchange authority to establish a cognizable injury to maintain standing to bring his underlying complaint.<sup>4</sup> *See, e.g., D.C. Common Cause v. District of Columbia*, 858 F.2d 1, 5 (D.C. Cir. 1988) (reasoning that a municipal taxpayer can establish standing and satisfy the injury requirement when the challenged activity, expenditure, or program involves a measurable appropriation of municipal taxpayer funds or a loss of general tax revenue); *Freedom from Religion Found., Inc. v. Zielke*, 845 F.2d 1463, 1469-70 (7th Cir. 1988) (holding that municipal taxpayers have standing to challenge the improper use of tax revenues but finding plaintiff taxpayers had no standing where there had been no expenditure of city funds).

*B. Legality of the Defendant Exchange Authority's Actions*<sup>5</sup>

As an initial matter, a motion to dismiss pursuant to Rule 12 (b)(6) deals with the legal sufficiency of the underlying complaint. *Mazza v. Housecraft LLC*, 18 A.3d 786, 790 (D.C. 2011) (citation omitted). In analyzing a complaint's legal sufficiency, the complaint should only be dismissed if it does not satisfy Rule 8 (a)(2)'s requirement to contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Moreover, while this pleading requirement does not insist upon detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009)). Therefore, the complaint must make factual allegations that would, if true, allow the court to draw the reasonable inference that the plaintiff is entitled to the relief requested on more than a speculative level and that the defendant is liable for the alleged transgression. *Id.*

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<sup>4</sup> Although the plaintiff points out that the source of funds for the defendant exchange authority is a quintessential disputed fact, the plaintiff does not proffer any basis for the court to conclude that the defendant exchange authority has received or is receiving municipal taxpayer funds beyond mere conjecture that the defendant exchange authority will experience a funding shortfall.

<sup>5</sup> Notwithstanding the court's finding that the plaintiff lacks standing, the court will proceed to analyze the merits of the plaintiff's complaint.

(citing *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949); *Clampitt v. Am. Univ.*, 957 A.2d 23, 29 (D.C. 2008) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965 (2007)). As an added requirement, the underlying complaint must give the defendant “fair notice of what the pleader’s claim is and the grounds upon which it rests.” *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 963 (D.C. 2008) (citations omitted).

Although the court should not dismiss a complaint because it believes that a plaintiff will not prevail on his claim, *Grayson v. AT&T Corp.*, 15 A.3d 219, 229 (D.C. 2011) (*en banc*) (citation omitted), dismissal shall be required where “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Murray v. Wells Fargo Home Mortgage*, 953 A.2d 308, 316 (D.C. 2008) (citations omitted). Similarly, dismissal will be appropriate “where the complaint fails to allege the elements of a legally viable claim.” *OneWest Bank, FSB v. Marshall*, 18 A.3d 715, 721 (D.C. 2011) (citation omitted).

In addressing the substance of the plaintiff’s complaint, the court concludes that the defendant exchange authority’s action in allowing members of Congress and their staff to participate in the District’s small business health options program is authorized by federal regulations.

While the plaintiff’s reading of D.C. Code § 31-3171.01 (11), (16)(A) is correct in requiring that a business cannot employ more than 50 employees to be deemed a “small employer” and qualified to participate in the District’s small business exchange, the defendant exchange authority does not represent that the U.S. Congress’ status as a “small employer” authorizes its participation in the District’s small business exchange. Rather, the defendant exchange authority avers that its conduct is authorized by the ACA and its implementing federal regulations.

In stating the applicability of the ACA to members of Congress and their staff, the Act provides in pertinent part that:

[ . . . ] Notwithstanding any other provision of law, after the effective date of this subtitle [effective March 23, 2010], the only health plans that the Federal Government may make available to Members of Congress and congressional staff with respect to their service as a Member of Congress or congressional staff shall be health plans that are--

- (I) created under this Act (or an amendment made by this Act); or
- (II) offered through an Exchange established under this Act (or an amendment made by this Act).

42 U.S.C. § 18032 (d)(3)(D)(i) (2015). Although the plaintiff vehemently argues the ACA unambiguously requires members of Congress and their staff purchase health insurance through the individual exchange versus the small business exchange, this member of the court is not persuaded that 42 U.S.C. § 18032 (d)(3)(D)(i) can be interpreted as either requiring members of Congress and their staff to purchase health plans via only the individual exchange or prohibiting those same members and their staff from purchasing a health plan via the small business exchange. Indeed, while the parties do not dispute that members of Congress and their staff must purchase “health plans that are created under this Act,” the court finds that this statutory subsection is vague in that it does not state which type of health plans can or cannot be purchased.

As a general matter, a federal administrative agency can only exercise authority given to it by Congress. *See La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374, 106 S. Ct. 1890, 1901 (1986) (“[A]n agency literally has no power to act . . . unless and until Congress confers power upon it.”). Moreover, some delegations of authority are implicitly made by the use of ambiguous statutes in topical arenas where a particular agency already administers the same or a similar congressionally-created mandate. *See Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844, 104 S. Ct. 2778, 2782 (1984) (“Sometimes the legislative delegation to an

agency on a particular question is implicit rather than explicit.”); *Morton v. Ruiz*, 415 U.S. 199, 231, 94 S. Ct. 1055, 1072 (1974) (“The power of an administrative agency to administer a congressionally created and funded program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.”). Pursuant to federal law, the Office of Personnel Management (OPM) is empowered to contract with qualified carriers in offering health benefit plans to qualified federal employees. 5 U.S.C. § 8902 (a).

Based on the ambiguous wording of 42 U.S.C. § 18032 (d)(3)(D)(i), OPM promulgated federal regulations clarifying that members of Congress and their designated staff can “purchase health plans, as defined in 5 U.S.C. § 8901 (6), that are offered by an appropriate SHOP as determined by the Director” of OPM so that those members of Congress and their staff can receive an employer contribution towards the health insurance coverage purchased. 5 C.F.R. § 890.102 (c)(9) (2015); *see also* Federal Employees Health Benefits Program: Members of Congress and Congressional Staff, 78 Fed. Reg. 60,653, 60,654 (Oct. 2, 2013) (to be codified at 5 C.F.R. pt. 890), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2013-10-02/pdf/2013-23565.pdf>. In fact, OPM indicated in its final rule that all members of Congress wishing to purchase a health benefit plan under the ACA must use the District of Columbia’s small business exchange. Federal Employees Health Benefits Program: Members of Congress and Congressional Staff, 78 Fed. Reg. at 60,654 (“Given the location of Congress in the District of Columbia, OPM has determined that the DC SHOP, known as the DC Health Link Small Business Market administered by the DC Health Benefit Exchange Authority, is the appropriate SHOP from which Members of Congress and designated congressional staff will purchase health insurance in order to receive a Government contribution.”).

Furthermore, contrary to the plaintiff's contention that the U.S. Congress cannot be deemed a "small employer" to participate in the District's small business exchange, the court also notes that the Centers for Medicare and Medicaid Services issued a formal guidance consistent with OPM's final rule stating that "offices of the Members of Congress, as qualified employers, are eligible to participate in a SHOP regardless of the size and offering requirements set forth in the definition of 'qualified employer' in the Exchange final rule."<sup>6</sup> Center for Consumer Information and Insurance Oversight, *Affordable Insurance Exchanges Guidance: Members of Congress and Staff Accessing Coverage through Health Insurance Exchanges*, <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/members-of-congress-faq-9-30-2013.pdf> (last visited February 25, 2015).

Finally, even if OPM's administrative rules and regulations<sup>7</sup> were construed as conflicting with the District's Health Benefit Exchange Authority Establishment Act of 2011, the court would necessarily conclude that OPM's rules and regulations preempt the plaintiff's asserted interpretation of D.C. Code § 31-3171.01 (11), (16)(A). *See, e.g., Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 881, 120 S. Ct. 1913, 1925 (2000) (reasoning that when a state law serves as an obstacle to the execution of important means-related federal objectives, that state law is pre-empted); *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374, 106 S. Ct. 1890, 1901 (1986) (stating that "a federal agency may pre-empt state law only when and if it is acting within the scope of its congressionally delegated authority"); *Capital Cities Cable, Inc. v. Crisp*, 467

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<sup>6</sup> The court notes that the "Exchange final rule" referred to is the Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers. 77 Fed. Reg. 18,310 (Mar. 27, 2012) (to be codified 45 C.F.R. pts. 155, 156, & 157), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2012-03-27/pdf/2012-6125.pdf>.


<sup>7</sup> Although the plaintiff argues in part that OPM is "unlawfully attempting to rewrite a federal law," Pl.'s Opp. 16, the underlying complaint is solely directed at the lawfulness of the defendant exchange authority's conduct in allowing some members of Congress and their staff to participate in the District's small business exchange and not the validity of OPM's regulations.

U.S. 691, 699, 104 S. Ct. 2694, 2700 (1984) (“Federal regulations have no less pre-emptive effect than federal statutes.”).

**THEREFORE**, it is by the court this 25<sup>th</sup> day of February 2015

**ORDERED**, that the defendants’ *Motion to Dismiss the Complaint* shall be and is hereby **GRANTED**; and it is further

**ORDERED**, that Plaintiff Kirby Vining’s complaint shall be and is hereby **DISMISSED WITH PREJUDICE**.

  
\_\_\_\_\_  
**Herbert B. Dixon, Jr.**  
**Judge**  
**(Signed in Chambers)**

Copies to:

Michael Bekesha, Esq.  
Paul J. Orfanedes, Esq.  
William F. Causey, Esq.

**Form 1. Notice of Appeal Tax, Civil, Family Court - (Except Juvenile Cases), and Probate**

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
NOTICE OF APPEAL (\_\_\_\_ CROSS APPEAL)  
TAX, CIVIL, FAMILY COURT - (EXCEPT JUVENILE CASES), AND  
PROBATE**

Superior Court Case Caption: Vining v. Executive Board of D.C. Health Benefit Exchange Authority, et al.

Superior Court Case No.: 2014 CA 006496 B

A. Notice is given that (person appealing) Plaintiff Kirby Vining is appealing an order/judgment from the:

☐ Tax Division      ☒ Civil Division      ☐ Family Court      ☐ Probate Division

1. Date of entry of judgment or order appealed from (if more than one judgment or order appealed, list all):

February 25, 2015

2. Filing date of any post-judgment motion: \_\_\_\_\_

3. Date of entry of post-judgment order: \_\_\_\_\_

4. Superior Court Judge: Herbert B. Dixon, Jr.

5. Is the order final (*i.e.*, disposes of all claims and has been entered by a Superior Court Judge, not a Magistrate Judge)?      ☒ YES      ☐ NO

If no, state the basis for jurisdiction: \_\_\_\_\_

Has there been any other notice of appeal filed in this case:      ☐ YES ☒ NO

If so, list the other appeal numbers: \_\_\_\_\_

6. If this case was consolidated with another case in this court, list the parties' names and the Superior Court case number: \_\_\_\_\_

B. Type of Case: ☒ Civil I      ☐ Civil II      ☐ Landlord and Tenant      ☐ Neglect  
☐ Termination of Parental Rights      ☐ Adoption      ☐ Guardianship      ☐ Mental Health  
☐ Probate      ☐ Intervention      ☐ Domestic Relations      ☐ Mental Retardation  
☐ Paternity & Child Support      ☐ Other: \_\_\_\_\_

C. Indicate Status of Case:      ☒ Paid      ☐ In Forma Pauperis      ☐ CCAN

Was counsel appointed in the trial court?      ☐ YES ☒ NO

**(COMPLETE REVERSE SIDE)**

- D.** Provide the names, addresses, and telephone numbers of all parties to be served. For persons represented by counsel, identify counsel and whom the counsel represents. For each person, state whether the person was a plaintiff or defendant in the Superior Court.  
\*Attach additional pages if necessary.

Name	Address	Party Status (Plaintiff, Defendant)	Telephone No.
William F. Causey	441 Fourth Street, N.W., Sixth Floor South Washington, DC 20001	Counsel for Defendants	(202) 724-6610

- E.** Identify the portions of the transcript needed for appeal, including the date of the proceeding, the name of the Court Reporter (or state that the matter was recorded on tape if no Court Reporter was present), the courtroom number where the proceeding was held, and the date the transcript was ordered, or a motion was filed for preparation of the transcript. \*Attach additional pages if needed.

Date of Proceeding/Portion	Reporter/Courtroom No.	Date ordered

☒ Check this box if no transcript is needed for this appeal.

- F.** Person filing appeal: ☐ Plaintiff Pro Se ☐ Defendant Pro Se  
☐ Third Party/Intervenor ☒ Counsel for Plaintiff  
☐ Counsel for Defendant

**ATTACH A COPY OF THE ORDER, JUDGMENT OR DOCKET ENTRY FROM WHICH THIS APPEAL IS TAKEN**

Michael Bekesha		995749
Print Name of Appellant/Attorney	Signature	Bar No.

425 Third Street, S.W., Suite 800, Washington, DC 20024  
Address

202-646-5172  
Telephone Number

\*Appellant is responsible for ordering and paying the fee for transcript(s) in the Court Reporting and Recording Division, Room 5500. If appellant has been granted In Forma Pauperis status, or had an attorney appointed by the Family Court, *and* transcript is needed for this appeal, appellant must file a Motion for Transcript in Court Reporting and Recording Division, Room 5500. That office number is (202) 879-1009. If that motion is granted, transcript will be prepared at no cost to appellant.



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Exchange Authority, et al

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Judge Herbert Dixon Jr Electronic

JAA Dixon Electronic

LC Dixon Electronic

William Causey Electronic

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of July 2015, I caused an original and three copies of the foregoing **BRIEF OF PLAINTIFF-APPELLANT KIRBY VINING** to be filed with the Clerk of the Court filed via hand delivery. I also caused a copy of the foregoing **BRIEF OF PLAINTIFF-APPELLANT KIRBY VINING** to be served on counsel for Appellees via Federal Express.

I also certify that I transmitted a copy of the foregoing **BRIEF OF PLAINTIFF-APPELLANT KIRBY VINING** in PDF format to [briefs@dcappeals.gov](mailto:briefs@dcappeals.gov).



Michael Bekesha  
JUDICIAL WATCH, INC.