Testimony of Julia H. Miller
before the
D.C. City Council Committee of the Whole
Regarding Bill 17-911

Nov. 21, 2008

Good afternoon, Mr. Chairman, members of the City Council. My name is Julia Miller, and I am testifying before you today in my capacity as a national legal expert on historic preservation law. I have lectured and written extensively on matters relating to preservation laws over the past 25 years, including a 3-volume treatise on historic preservation law and a lengthy article on why owner consent provisions in preservation ordinances should not be adopted. See "Owner Consent Provisions in Historic Preservation Ordinances, AreThey Legal?," 10 PRESERVATION LAW REPORTER 1019 (1991). If you are ever in the need of good rest, I recommend the article, because it will certainly put you to sleep.

I cannot support this bill. First, as explained by others before me, Bill 17-911 bill is of dubious legality. The basic concept behind this proposed legislation is to grant absolute power to a bare majority of owners within a proposed historic district. These owners can veto designation—for any reason or for no reason at all. This type of action—providing property owners with veto authority—has been struck down by the U.S. Supreme Court as unconstitutional in the context of zoning laws, because it places decisionmaking power in the hands of those who act in their own self-interest rather than the public good.

The authority to designate rests in the City Council. You can delegate that authority to the Historic Preservation Review Board because the individual board members have expertise in complementary disciplines related to preservation and thus they have the capacity to make fair and reasoned decisions based on the application of established criteria for designation. Correspondingly, you cannot delegate that authority to private property owners. The primary basis for landmark designation would no longer be based on an objective determination of historical significance, but rather the whim of individual property owners, which could change again and again over time.

Think about it. If the property owners in an established residential neighborhood decided by majority rule to convert their land to commercial zoning in contravention of the comprehensive plan, would that be considered appropriate on grounds of public participation? No. Likewise, placing decisionmaking authority in the hands of property owners, whether in residential Chevy Chase, or an existing downtown historic district—should a majority of property owners decide to secede from the district so they could demolish their historic buildings and replace them with new construction, makes no sense.

Secondly, I would like to emphasize that no other major city with a comparable stature to D.C. uses owner consent provisions. See, e.g., New York City, Philadelphia, Baltimore,

Boston, Detroit, Minneapolis, Dallas, Miami, San Francisco, Seattle, to name a few. Yes, I acknowledge that the State of Connecticut, through its enabling law, mandates a two-thirds majority approval to designate a historic district. I also note that Connecticut's legislation has engendered litigation over the owner consent process.

Cities have not conferred property owners with veto authority over historic designation because historic preservation has proven to be an important, effective, and economically viable means of improving the lives and general welfare of all of its citizenry. If cities provided owners with veto authority over designation, then not only would they lose their historic fabric, they would also lose the opportunity to provide interesting, viable downtowns and communities, just as D.C. has done in its downtown and individual neighborhoods.

Because of my 25 years of experience in historic preservation law, I can also attest to the fact that historic preservation is good for cities. Numerous studies in states around the country have concluded that property values in historic districts have outpaced comparable, non-designated areas. This is because historic designation spurs investment in residential and commercial properties and provides certainty that investments in historic property will be protected from incompatible development over time. See, e.g. "Economic Impact of Historic Preservation in Florida," Ch. 7, Fla. Dept. of State, 2002, posted at http://www.law.ufl.edu/cgr/technical-report.shtml; and "Historic Districts Are Good for Your Pocket book: The Impact of Local Historic Districts on Property Values in South Carolina," South Carolina Department of Archives & History, January 2000, posted at: http://www.state.sc.us/scdah/propval.pdf. For a list of economic studies see the website of the National Conference of State Historic Preservation Officers, http://www.ncshpo.org/current/impact.htm#FL, and that of the Advisory Council on Historic Preservation, http://www.achp.gov/economic-propertyvalues.html.

Designation by owner consent, whether a district or a landmark, undermines historic preservation and must not be embraced. D.C. would not be the city that it is today without its preservation law. In my professional view, this seemingly innocuous, good government, well-intended bill, opens up a hornet's nest of problems—legal and otherwise. It will prevent worthy resources from designation and open the door to de-designation of existing districts—including downtown, commercial districts and individual landmarks.

You don't need to provide veto power to address public participation concerns. Please don't support this bill.