



A G E N D A  
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AN ELECTION YEAR GUIDE  
TO LOCAL LGBT ISSUES  
IN WASHINGTON, DC



GAY AND LESBIAN  
ACTIVISTS ALLIANCE

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**Gay and Lesbian Activists Alliance of Washington, D.C.  
AGENDA: 2010**

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**This document is subject to revision.**

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<http://www.glaa.org/archive/2010/agenda2010.pdf>

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# Gay and Lesbian Activists Alliance of Washington, D.C.

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### 1. Introduction

Welcome to “Agenda: 2010,” GLAA’s policy brief on local LGBT issues in Washington, D.C. We began publishing what we originally titled “The Gay Agenda” in the 1990s as a means of briefing local candidates on our issues. By providing this updated compilation of GLAA’s advocacy on a wide range of issues, we turn our questionnaires for candidates running for Mayor and D.C. Council into open-book tests in which no guessing is necessary as to what answers and policy commitments we are seeking. While educating candidates remains the principal purpose of “Agenda: 2010,” it (like its predecessors) is a resource for other activists, journalists, and the general public.

Inevitably, another audience for GLAA’s advocacy is our opponents. If you subscribe to the Family Research Council’s email list, you may have seen this alarm from Tony Perkins in his June 16 “Washington Update”:

“In Washington, D.C., where same-sex ‘marriage’ is legal (for now), the gay and lesbian crowd is just getting warmed up. ... Local groups will try to elect more homosexuals to places of power, push in-school gay-straight alliances, support D.C. sex-oriented businesses, defend adult entertainment, grant special perks to cross-dressing prisoners, force same-sex adoption, and legalize sex trafficking. ... This has never been about ‘acceptance’ or ‘equality’ but about a devastating strategy meant to destroy innocence, the family, local communities, public health, and parental authority.”

Perkins cites none other than “Agenda: 2010” — that is, an earlier edition published on May 29. Oddly, though, he credits not GLAA but “the Left.” Right-wing demagogues consider all gay activists leftist. They are so horrified by the notion that gay and transgender people have a right to exist that they cannot distinguish between, say, GetEQUAL’s Robin McGehee and Andrew Sullivan. The idea that we could persuade people to vote for us does them in.

Perkins claims that GLAA seeks to “sever every moral underpinning in America.” This implies that Perkins has a clue about America’s moral underpinnings. We are fighting for LGBT people’s right to life, liberty, and the pursuit of happiness. How’s that for moral underpinning?

We hate breaking it to Perkins, but same-sex adoption has been legal in D.C. since a 1995 court ruling. The point is not “forcing” adoptions, but serving the best interests of the child by not arbitrarily excluding an entire group of people from consideration as parents. The science shows there is no harm to children of gay parents.

On the other hand, if lies were crude oil, a child forced to listen to Perkins would resemble the brown pelicans in Grand Isle, Louisiana nowadays.

The D.C. Board of Education has prohibited discrimination based on sexual orientation since 1972. Perkins apparently fears that gay-straight alliances are about recruiting rather than fostering understanding. We don’t know about his high school years, but in our case we needed no one to implant desires in us.

Transgender prisoners do not lose their rights because Perkins ignorantly dismisses them as “cross-dressers.” The D.C. Human Rights Act prohibits discrimination based on gender identity or expression. Protecting transgender detainees from harassment and assault is hardly providing “special perks.”

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It is amusing how the religious right gets its panties in a wad over other people enjoying adult entertainment, considering that porn consumption is reportedly highest in the Bible Belt.<sup>1</sup> GLAA, in contrast, is concerned about the harm done by moralizing hypocrites who use the government to meddle in their neighbors' business. In any case, it is more than a stretch to twist our critique of prostitution laws into support for "sex trafficking," which refers to the sexual slave trade.

In fact, GLAA is not touting the joys of sexual commerce but promoting assistance to the homeless teens and transgenders who have resorted to it for survival. They need job training, substance abuse treatment, mental health counseling, and transitional housing — not jail. Legalizing and regulating prostitution would provide a way to rescue sex workers from pimps and other predators. Public policies that harm vulnerable populations while helping no one deserve to be challenged.

Political advocacy like GLAA's inevitably rocks boats, which makes even some gay people uncomfortable. Indeed, many were uncomfortable with same-sex marriage when we first advocated it in 1975. Some folks are bound to be scandalized at our proposal to regulate prostitution rather than prosecute it. But we did not broach the subject lightly, and have offered serious arguments. Sex panic notwithstanding, "shut up" is no rebuttal.

Just as "Agenda: 2010" is prefaced by a notice that it is subject to revision, so are GLAA's policy positions. We are an all-volunteer group whose active members bring a wealth of experience and expertise on the topics presented. Yet we also gratefully acknowledge the invaluable expertise and perspectives provided by our allies and coalition partners in other organizations, which are referenced in these pages. As people engaged in the civic life of our city, we are part of a continuing conversation on a host of issues. While we expect revisions to this document will be frozen in early July just before we mail our questionnaire packets to candidates, our work continues — as does the wider conversation. We encourage you to be part of that conversation. As the recent victory for marriage equality in D.C. demonstrated, creating historic change requires help from the entire community and not just a few activists, proud as we are of our contribution.

You will note the wealth of footnotes in this document. The casual reader may well ignore them; they are provided both as documentation of our claims and as a starting point for those wishing to investigate further. For more information, visit our main website at [www.glaa.org](http://www.glaa.org) and our blog at [www.glaaforum.org](http://www.glaaforum.org).

One last point: We do not for a moment think that the issues raised here are the only issues to be considered in an election. That is one reason (in addition to our being nonpartisan) that we rate candidates on our issues rather than doing endorsements. A company that specializes in spark plugs does not imagine that spark plugs are the only important part in a functioning automobile. As with such a company, sticking to our specialty has fueled our accomplishments over nearly four decades. We take strong issue with those who denigrate our focus on LGBT issues as a sign of myopia. Our issues are not everything, but they are something, and addressing them plays as legitimate a part in the success of our diverse city as other issues. Indeed, our issues are interwoven with the rest. Much of our work is about making connections. A city thrives by ensuring that all its parts are healthy and work well together, not by overlooking differences. As the French say, *Vive la différence!*

[Adapted from a commentary published June 24, 2010 in *Metro Weekly* and *Bay Windows*; copyright © 2010 by Richard J. Rosendall. All rights reserved. Used by permission.]

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<sup>1</sup> Benjamin Edelman, "Red Light States: Who Buys Online Adult Entertainment?" *Journal of Economic Perspectives*, Winter 2009, Pages 209-220, <http://people.hbs.edu/bedelman/papers/redlightstates.pdf>

## 2. Marriage and Family

### 2.1 Preserving Civil Marriage Equality

D.C. is the first majority-black jurisdiction in the United States to enact civil marriage equality. The seeds for victory were sown and cultivated over decades, as a GLAA timeline shows.<sup>2</sup> LGBT people have been part of Washington's civic life since the dawn of Home Rule. The fight for marriage stirred a lot of people to action, but the crucial trust among key coalition partners was built over time in collaborations on many issues. When the Religious Freedom and Civil Marriage Equality Amendment Act of 2009 became law on March 3, the words of Chief Justice Earl Warren were reaffirmed: "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men." [*Loving v. Virginia*, 388 US 1 (1967)]

This victory vindicates GLAA's careful incremental strategy for winning equality. We salute the D.C. Council, Mayor Adrian Fenty, Congresswoman Eleanor Holmes Norton, and our coalition partners, including D.C. Clergy United for Marriage Equality, D.C. for Marriage, Gertrude Stein Democratic Club, the Campaign for All D.C. Families, the D.C. Coalition, the Human Rights Campaign, and the National Black Justice Coalition. It was not a victory merely for the privileged or for one isolated issue. The many legal protections of marriage are if anything more vital for the poor than for the rich and well-connected, and are integral with issues from health and education to housing, employment, and emergency services.

But even as the city issues record numbers of marriage licenses, we know that we are not done. Preserving our victory requires maintaining our broad-based coalition of LGBT and affirming organizations, including strong leadership from the African American and faith communities; consulting allies; networking with our counterparts in statewide and national organizations; coordinating congressional strategy with Congresswoman Norton; and continuing to build relationships with public officials, opinion leaders, and the general public.

GLAA opposes any attempt to impose a ban on same-sex marriage, whether by Congress or others. Several proposed voter initiatives against marriage equality have been blocked by the D.C. Board of Elections and Ethics and D.C. Superior Court. Such measures would authorize discrimination prohibited by the D.C. Human Rights Act (DCHRA). We are proud of the role we played in passing legislation in 1979 barring discriminatory ballot measures. We expect all elected officials in our city to oppose such initiatives. As for "Let the People Vote" sloganeering, it should be remembered that D.C. voters consistently elect gay-affirming candidates.

### 2.2 The Archdiocese of Washington and Church-State Separation

On December 14, the day before the D.C. Council's final passage of the Religious Freedom and Civil Marriage Equality Amendment Act of 2009, Councilmember Phil Mendelson, chairman of the Committee on Public Safety and the Judiciary, received proposed amendatory language from the Archdiocese of Washington. He had been in discussions with them in a good-faith effort to resolve any differences if resolution were possible. He consulted policy advocates including GLAA and faith leaders who had worked for passage of the bill.

The Archdiocese sought a "business necessity" exemption to the non-discrimination provisions of DCHRA. Their proposed language amounted to a blanket license to discriminate far beyond the First Amendment's Free Exercise clause which allows them, for example, to deny the marriage sacrament in cases that violate their religious doctrine. Their amendments would effectively have dismantled the "wall of separation between church and state" described by Thomas Jefferson.

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<sup>2</sup> "A Timeline on Marriage Equality in D.C.," GLAA, 2010, <http://www.glaa.org/archive/2010/timeline0331.shtml>

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***Children needing loving homes are better off if one of the agencies providing placement services is not routinely and arbitrarily excluding an entire group from consideration as potential parents.***

Jesus said, "Render unto Caesar that which is Caesar's, and to God that which is God's." The Archdiocese's proposal rendered everything to their particular concept of God and nothing to the state or the secular sphere that people of every faith and no faith must share. The language in the bill already included protections for the core religious functions of religious organizations while preserving the right of the government to regulate the provision of public services. The Archdiocese provided social services for years without

demanding an exemption to discriminate against divorced and remarried persons, even though divorce and remarriage are contrary to Catholic doctrine. Their selective invocation of doctrinal concerns in the case of same-sex marriage was a hypocritical attempt to bully the city into letting them dictate public policy. Fortunately, the city refused to be bullied.

A revealing moment came when Mendelson asked the Archdiocese whether it would support the civil marriage equality bill if the Council accepted its proposed changes. The answer, of course, was no. This is the Archbishop's one-sided concept of negotiation. Mendelson rejected the amendments as they would not have improved the bill, garnered additional Council votes, nor lessened opposition in Congress. A conscience clause proposed by Councilmember Alexander, which would have allowed anyone to exempt themselves from DCHRA at will, was defeated 1-4 in committee.

The approximately two hundred gay-affirming D.C. clergy who signed a marriage equality pledge last year<sup>3</sup> demonstrated the diversity of religious beliefs on same-sex marriage. The bill as passed protects everyone. GLAA supports the right of any religious organization to deny gay people its sacraments, denounce us from its pulpit, and bar us from its sanctuary. Indeed, we led a coalition of gay rights and civil liberties advocates in December defending the right of the group Stand for Marriage D.C. to run anti-gay ads on D.C. Metro buses,<sup>4</sup> simply because Metro, as a quasi-governmental body, is barred by the First Amendment from censoring unpopular political speech.

The Archdiocese wanted to discriminate using public funds. This brought them criticism from other religious groups that did not subordinate their pastoral mission to anti-gay intolerance. Thus, when the Archdiocese ordered Catholic Charities to end its foster care program rather than provide health care to the spouses of its gay employees, all of the program's services, clients, and staff were seamlessly taken over by the Baptist-run National Center for Children and Families.

The Washington Post story on Catholic Charities ending its foster care program in D.C. stated that it was doing so "rather than license same-sex couples." But barring same-sex couples as foster parents would already violate DCHRA. Indeed, full adoption by same-sex couples has been the law here since 1995. [*In re M.M.D. v. B.H.M.*, 662 A.2d 837 (D.C. 1995)] So by raising this complaint, the Archdiocese tacitly conceded that it had been violating the Human Rights Act all along.

Children needing loving homes are better off if one of the agencies providing placement services is not routinely and arbitrarily excluding an entire group from consideration as potential parents. GLAA rejects the junk science

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<sup>3</sup> "Declaration of Religious Support for Marriage Equality," DC Clergy United for Marriage Equality, 2009, <http://www.clergyformarriage.com/read.html>

<sup>4</sup> Joint letter drafted by GLAA, December 18, 2009, <http://www.glaa.org/archive/2009/letter2wmata1218.shtml>

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used by our opponents to support allegations that children are harmed by being raised by gay parents. Credible studies consistently refute those claims.<sup>5</sup>

### 2.3 Domestic Partnership

GLAA was instrumental in codifying D.C.'s domestic partners law, the Health Care Benefits Expansion Act of 1992, which Congress finally allowed the District to implement in 2002. GLAA's incremental approach to the issue, crafted by former GLAA President Bob Summersgill, was a complete success and set the stage for civil marriage equality. With the unanimous passage of additional enhancing laws in the intervening years<sup>6</sup>, registered domestic partners are now granted virtually all of the rights and responsibilities of marriage.<sup>7</sup>

Passage of the Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009, which greatly increased the protections for children of domestic partners, was held up for months due to obstruction by the Office of the Attorney General over imagined federal interference – interference which OAG actually invited, though unsuccessfully. Prof. Nancy Polikoff of American University and Liz Seaton of the National Center for Lesbian Rights were invaluable in overcoming OAG's concerns. We also received advice from attorney Michele Zavos. We did appreciate Attorney General Peter Nickles's willingness to work with us.

At GLAA's urging, a provision was stricken from the marriage equality bill that would have sunset the domestic partnership law at the same time that marriage equality was enacted. The issues surrounding domestic partnerships are complex and should be carefully examined after threats to civil marriage equality have been overcome. Marriage is not an option for some domestic partners, such as a single parent and her own parent who are raising the grandchildren together. Also, any change to D.C.'s domestic partnership law would need to account for couples registered as domestic partners in other states; they are currently recognized as domestic partners in D.C., and abolishing that would leave their relationships without any protections. We oppose removing protections from any families that now enjoy them. Further changes to protect more of the families in our diverse city should be discussed on their own merits and not treated as something to be "traded" for marriage.

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<sup>5</sup> Brad Sears and Alan Hirsch, "No harm done to children of gay marriages: U.S. studies consistently dispute claims of opponents," *Edmonton Journal*, April 10, 2004, <http://www.law.ucla.edu/williamsinstitute/press/noharm.html>

<sup>6</sup> Rights and responsibilities of domestic partners have been expanded in the following bills:

- Fiscal Year 2002 Budget Support Act of 2001
- Health-Care Decisions Act of 2003
- Deed Recordation Tax and Related Amendments Amendment Act of 2004
- Human Rights Marital Status Clarification Amendment Act of 2004
- Domestic Partner Health Care Benefits Tax Exemption Act of 2005
- Health Care Benefits Expansion Amendment Act of 2006
- Domestic Partnership Equality Act of 2006
- Property Interest Amendment Act of 2006
- Fiscal Year 2007 Budget Support Act of 2006
- Domestic Partnerships Joint Filing Act of 2006
- Omnibus Public Safety Amendment Act of 2006
- Omnibus Domestic Partnership Equality Amendment Act of 2008
- Domestic Partnership Police and Fire Amendment Act of 2008
- Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009
- Adoption and Safe Families Amendment Act of 2009

<sup>7</sup> Rights and Responsibilities of Domestic Partners in the District of Columbia, <http://www.glaa.org/resources/dprightsandresponsibilitiesindc.pdf>

## **3. Public Health**

### **3.1 HIV and AIDS**

D.C. has the highest AIDS rate in the United States, comparable to those in sub-Saharan Africa. The District reports, "As of December 31, 2008 there were 16,513 residents of the District of Columbia living with HIV/AIDS, which accounts for approximately 3.2% of the population over the age of 12 years (adults and adolescents). This is a 9.2% increase from 15,120 cases reported at the end of 2007, with the increase due to both new HIV diagnoses from expanded HIV testing as well as more complete HIV reporting due to maturation of the names-based HIV reporting system."<sup>8</sup>

Men are 46.7% of the D.C. population, but account for 72% of those living with HIV/AIDS. There is a stark racial disparity: Blacks are 52.2% of D.C. residents over age 12, but account for 75.6 percent of those living with HIV/AIDS. Black women are 54.9% of D.C. women, but account for 91% of women living with HIV/AIDS.<sup>9</sup> D.C. tracks national trends with its increasing syphilis epidemic, especially as it affects men and men who have sex with men (MSM). Reported cases in D.C. doubled between 2004 and 2008, due in part to a new Internet Partner Notification program.<sup>10</sup>

*DC Agenda* [later renamed the *Washington Blade*] reported on April 1, "Ernest Hopkins, a veteran AIDS activist involved with programs in D.C. and San Francisco, said the D.C. government has been less aggressive and less visible in its AIDS prevention messages than in the past. He and D.C. Center Executive Director David Mariner called for greater city funding for community based HIV programs, including programs organized by the Center."<sup>11</sup> We agree with Hopkins and Mariner, and look forward to more projects like the announced collaboration involving Whitman-Walker Clinic and the Crew Club, funded by Gilead Sciences Inc. and the Crew Club, in which *Metro Weekly* reports that "patrons of the club can receive HIV and STD testing, results and counseling on site."<sup>12</sup>

Government leadership and community participation are key to improving the District's response to AIDS. The various planning bodies—including the HIV Prevention Community Planning Group, Regional Health Services Planning Council, and the Mayor's Task Force on HIV/AIDS—should publish their meeting minutes on the HAHSTA website. Also, stronger efforts should be made to appoint community members to these bodies who are not board members, employees, or consultants of groups receiving funds, while existing conflict-of-interest provisions (such as in the Ryan White CARE Act) should be enforced.

#### **3.1.1 Flaws in D.C. MSM Study**

The population hit hardest by HIV in D.C. is men who have sex with men (MSM). Earlier this year, HAHSTA released a study, "MSM in D.C.: A Life Long Commitment to Stay HIV Free,"<sup>13</sup> which reported that more than 14% of men who have sex with men (MSM) were HIV positive, with nearly 75% being older men; more than 40% were unaware of their diagnosis prior to the study; and more men of color were HIV positive than white men, with nearly all HIV-positive young men being men of color.

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<sup>8</sup> "HIV/AIDS, Hepatitis, STD and TB Annual Report 2009 Update," D.C. Department of Health, <http://tinyurl.com/2weyom9>

<sup>9</sup> *Ibid.*, pp. 16-17.

<sup>10</sup> *Ibid.*, p. 3.

<sup>11</sup> "The numbers are staggering," *DC Agenda*, April 1, 2010, <http://tinyurl.com/2w2jcy4>

<sup>12</sup> "Deciphering the Data," *Metro Weekly*, March 31, 2010, <http://www.metroweekly.com/news/?ak=5037>

<sup>13</sup> "MSM in DC: A Life Long Commitment to Stay HIV Free," HIV/AIDS, Hepatitis, STD, and TB Administration, D.C. Department of Health, 2010, <http://tinyurl.com/yahvgpn>

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Effective HIV prevention programs and HIV/AIDS care strategies for MSMs must be based on solid understanding, including risk behaviors and problems accessing health care. Unfortunately, the “MSM in D.C.” study was based on a single, new methodology that HAHSTA staff on April 8 admitted cannot be used to describe HIV infection or risk behaviors of D.C.’s MSM population. This contrasts with HAHSTA’s extensive HIV surveillance system, which includes numerous data gathering methodologies and yields more useful data every year.

The methodological limitations of the “MSM in D.C.” study are suggested by this description from page 3: “Following the CDC protocol for men who have sex [with] men, the D.C. HIV Behavior Study used a community-based recruitment method to recruit over 500 men at open air venues, gyms, bars, restaurants, and clubs men who have sex with men tend to frequent. Participants were interviewed at these venues which were located in Wards 1, 2, 5, 6, and 8.” This sampling method did not capture the full demographics of MSM in the District.

***Reports based on limited data could actually impede HIV prevention and care efforts by contributing to public misunderstanding.***

Reports based on limited data could actually impede HIV prevention and care efforts by contributing to public misunderstanding. For instance, the “MSM in D.C.” study reported that no Caucasian men under the age of 30 were HIV positive, implying that men under 30 are not at risk for HIV. Why did HAHSTA choose to publish this misleading observation in the only stand-alone study of MSM published by HAHSTA in several years?

This same study arbitrarily defines “older MSM” as anyone over the age of 30. Ageism is a major social problem among gay people, and sadly, HAHSTA’s study unnecessarily adds to the stigma already faced by older gay men.

HAHSTA should publish a more thorough and insightful analysis of HIV among MSM as soon as possible.

### *3.1.2 Reforms at HIV/AIDS, Hepatitis, STD, and TB Administration (HAHSTA)*

The D.C. Appleseed Center issued a comprehensive report in 2005 that exposed many problems at what is now HAHSTA.<sup>14</sup> Several of the report’s recommendations were implemented, including reform of the handling of epidemiologic data; a citywide HIV testing campaign; and a citywide condom distribution program. D.C. Appleseed states that additional changes are needed in “HIV prevention among drug users; HIV prevention education in DCPS; condom distribution; HIV/AIDS surveillance; and mental health services related to HIV/AIDS.” Financial and service audits need to continue. D.C. Council oversight of HAHSTA has greatly improved in recent years under Health Committee Chair David Catania. Continued monitoring will help ensure that the reforms continue.

### *3.1.3 Testing for Sexually Transmitted Diseases*

The fact that HIV has been treated so differently from other infectious diseases has helped to perpetuate the stigma and contributed to its spread. HIV testing should become part of routine physical exams for adults and teens. 25% of people with HIV don’t inform their partners because they don’t know. This lack of knowledge is a leading reason for the spread of HIV.

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<sup>14</sup> “HIV/AIDS in the Nation’s Capital,” DC Appleseed Center, August 2005

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Under proposed guidelines from the Centers for Disease Control and Prevention, patients would be tested for HIV as part of a standard battery of tests when they go for urgent or emergency care, or even during a routine physical. HAHSTA is leading an effort to make HIV testing standard in all D.C. run health facilities, and encouraged in private facilities. To normalize HIV testing and care, the test should be covered in a clinic or hospital's standard care consent form. However, patients should be allowed to decline the testing, and should never be required to be tested except in D.C. jails, as noted below. HAHSTA should maintain anonymous testing sites and educate residents about the difference between confidential and anonymous testing.

### 3.1.4 *HIV testing in D.C. prisons*

Reducing HIV transmission in the D.C. Jail will reduce transmission to the partners of released inmates. A voluntary HIV testing program at the D.C. Jail has resulted in 90 percent of inmates being tested. The program includes counseling and treatment, and has been recognized by the American Correctional Association. We congratulate the Department of Corrections for this successful program, which Councilmember David Catania calls "a CDC model for health care."<sup>15</sup>

### 3.1.5 *Post-Exposure Prophylaxis (PEP)*

Post-exposure prophylaxis (PEP) for HIV should be provided at all D.C. emergency rooms, urgent care centers and health clinics. The availability of PEP should be publicized and included in student health classes. PEP needs to be started within 72 hours after exposure to HIV to be effective, so people must not be forced to wait for a doctor's office appointment. Studies in animals have shown PEP to be up to 100% effective if given within 24 hours and a course of medications is taken for four weeks.

### 3.1.6 *HIV Prevention*

- a. **HIV PREVENTION PROGRAMS FOR SENIORS AND OTHER OVERLOOKED POPULATIONS:** Today, anyone who has sex is at risk for HIV. With HIV infection in the District of Columbia at epidemic levels, HAHSTA must ensure that all segments of D.C.'s population have adequate HIV prevention programs. No segment of the community should be overlooked. For instance, D.C. has never provided HIV prevention programs for seniors. Consequently, many seniors do not understand the behaviors that may lead to HIV infection, and lack access to safer-sex materials. Other overlooked populations, such as the deaf and hard of hearing, should receive targeted HIV prevention programs.

We cannot afford to repeat the mistakes of the past, when prevention programs were delayed until the infection rate for an at-risk population was readily apparent. HAHSTA should develop and implement HIV prevention programs targeting overlooked populations. Programs targeted at adults of all ages are not effective with seniors. Many seniors believe HIV cannot affect them. Training programs and materials for seniors must depict seniors and emphasize messages that are tailored to seniors. HASTA and the Office on Aging should ensure that D.C. seniors receive HIV prevention programs specifically developed for them, and that they have ready access to safer-sex materials.

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<sup>15</sup> "D.C. Jail HIV Testing Spurs Debate Between Barry, Catania," News Channel 8, September 21, 2009, <http://www.news8.net/news/stories/0909/661332.html>

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- b. **CLEAN NEEDLE EXCHANGE:** Given the clear evidence that syringe exchange programs (SEPs) help prevent blood-borne disease without promoting increased drug use,<sup>16</sup> we celebrated when Congress finally lifted its ban on D.C. funding of SEPs in the Fiscal Year 2008 D.C. appropriations bill. With the nationwide federal SEP ban also now history, science at last trumps demagoguery.

A fact sheet on the District's Needle Exchange Program (D.C. NEX) states, "All participants in the program are provided a D.C. Needle Exchange Program ID card. As authorized by D.C. Municipal Code 48-1103.01, needle exchange programs are legal and participants are not breaking the law by having syringes or needles as part of the program. Information cards have been distributed to the Metropolitan Police Department and communities about the program."<sup>17</sup>

The District reports that injection drug users, while approximately 16.3% of people living with HIV or AIDS in the District, accounted for nearly a third of AIDS-related deaths from 2001 to 2006.<sup>18</sup> This highlights the importance of continuing D.C. NEX and monitoring its effectiveness.

- c. **CONDOM DISTRIBUTION:** The use of condoms is the safest and most effective prevention method for reducing HIV transmission. Condoms and water-based lubricant need to be widely and consistently available throughout the District. Unfortunately, the District's distribution efforts have fallen short over the years. For example, in September 2007, the District claimed to have distributed 650,000 condoms, but activist David Mariner wrote that "HAHSTA is counting all the condoms they have given to local agencies, without regard to whether or not they have been handed out to actual people. Boxes and boxes of these 'distributed' condoms are actually in storage at local organizations." HAHSTA's FY10 Performance Plan stated its intention of achieving Mayor Fenty's goal of distributing 3 million condoms.<sup>19</sup> We look forward to seeing a report on the implementation. Lack of access to a condom should never be the reason for not using one.
- d. **OPPOSE CRIMINAL PENALTIES FOR HIV TRANSMISSION:** Criminal penalties should not be used to address healthcare issues, as some have proposed. Imposing criminal penalties for knowingly transmitting HIV would have the unintended effect of harming HIV testing and prevention efforts by driving activity underground and encouraging more anonymous sex. It would also increase the stigma of HIV. HIV transmission is a public health issue and needs to be addressed as such.

### 3.2 Grantmaking Authority for Office of GLBT Affairs

The D.C. Council last summer abolished earmarks for arts and social service organizations in order to close a projected budget deficit and to address abuses of earmarks by Councilmember Barry. These cuts affected vital

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<sup>16</sup> "Evidence-Based Findings on the Efficacy of Syringe Exchange Programs: An Analysis from the Assistant Secretary for Health and Surgeon General of the Scientific Research Completed Since April 1998," U.S. Department of Health and Human Services, March 17, 2000, <http://www.dogwoodcenter.org/references/Satcher00.html>

<sup>17</sup> "Fact Sheet: District of Columbia Needle Exchange/Harm Reduction Programs," D.C. Department of Health, [http://doh.dc.gov/doh/frames.asp?doc=/doh/lib/doh/pdf/nex\\_fact\\_sheet.pdf](http://doh.dc.gov/doh/frames.asp?doc=/doh/lib/doh/pdf/nex_fact_sheet.pdf)

<sup>18</sup> "District of Columbia Comprehensive Care Plan 2009 – 2011," HIV/AIDS, Hepatitis, STD, and TB Administration, D.C. Department of Health, <http://tinyurl.com/2e9eapu>

<sup>19</sup> FY 2010 Performance Plan, D.C. Department of Health, p. 17. <http://capstat.oca.dc.gov/docs/fy10/DOH.pdf>

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services provided by the D.C. Center, Transgender Health Empowerment, and the Mautner Project. A significant portion of such services are in the area of health.

***We call on the Council to pass legislation giving the directors of the Office of GLBT Affairs and the Office of African Affairs the authority to issue grants to organizations serving the populations within their purview.***

In order to create mechanisms for directing needed services to minority and at-risk populations, we call on the Council to pass legislation giving the directors of the Office of GLBT Affairs and the Office of African Affairs the authority to issue grants to organizations serving the populations within their purview. This authority is already granted to the other minority constituent offices. Once funding can be found, such authority will facilitate the provision of services that the city does not otherwise fund, as exemplified by the Center's Crystal Meth Working Group.

### 3.3 Medical Marijuana

GLAA thanks the D.C. Council for passing the Legalization of Marijuana for Medical Treatment Initiative Amendment Act of 2010. This sensible legislation is a tribute to the long, clear-eyed advocacy of Wayne Turner and the leadership of Councilmember David Catania. It fulfills the intent of Initiative 59 to help the seriously ill without promoting recreational use of the drug. We agree with Turner: "It would be a grave mistake to unnecessarily provoke further congressional interference by creating a system vulnerable to abuses. The council's plan represents the best chance to implement medical marijuana and to protect those patients whose quality of life may depend upon this medication of last resort." That said, if it survives congressional review it will be the most restrictive such law in the nation, and those restrictions will place extra burdens on patients. While the Council's enactment is a significant advance, it leaves unanswered the question of what legitimate public purpose is served by criminalizing the recreational use of marijuana.

### 3.4 Women's Health Needs

Lesbians are at particular risk of not receiving early diagnoses of breast and cervical cancers, based on lack of access to and sensitivity of medical providers to lesbian sexuality issues. The city must ensure that its health centers are staffed with people sensitive to such issues.

### 3.5 Transgender Health Needs

A report on LGB health<sup>20</sup> released by the Mayor's Office of GLBT Affairs on June 30, 2010, states that "the District of Columbia is making investments in the health of the GLBT community." Yet under "Limitations," the report notes that "there were no questions asked about transgender residents." This is because the report is based on the Behavioral Risk Factor Surveillance System (BRFSS)<sup>21</sup> which, as the report states, "is a cross-sectional telephone survey conducted by state health departments with technical and methodological assistance provided by the Center for Disease Control." The lack of transgender data thus stems from the failure by the federal Centers for Disease Control and Prevention to include transgender people in BRFSS.

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<sup>20</sup> "A Report of Lesbian, Gay and Bisexual Health in the District of Columbia," Mayor's Office of Gay, Lesbian, Bisexual and Transgender Affairs, June 30, 2010, <http://tinyurl.com/28j222p>

<sup>21</sup> Behavioral Risk Factor Surveillance System, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, <http://www.cdc.gov/brfss/>

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The CDC's omission may explain, but does not excuse, the District's omission. GLAA shares the concerns expressed by the DC Trans Coalition in response to the GLB health report.<sup>22</sup> While we appreciate the report's purpose "to prompt discussion about how to improve health outcomes in the GLBT community in Washington, DC," the data and the discussion need to include the "T" part of the community. As with hate crime reporting, any limitations in what federal authorities track should not limit what the District tracks. We therefore endorse the recommendations in DCTC's July 7 letter to Mayor Adrian Fenty, which include needs assessment funding, issuing a trans health report, improved data collection, and commitment to true inclusion.<sup>23</sup>

Transgender people in D.C. are disproportionately poor and unreached by our health care system. Prostitution is often a means of survival as discrimination and sex-transitioning keep many out of stable employment. This is a serious HIV transmission vector that has been neglected by HAHSTA because of the relatively small number of transgender people. HAHSTA must make medical care for this at-risk population a priority. The discrimination faced by transgender people limits their access and willingness to seek medical care. A comprehensive approach by the city is needed, and that must begin with data gathering. The city can begin by examining other data sources which have been documented by DCTC.<sup>24</sup>

### 3.6 Tuberculosis, Hepatitis and Substance Abuse

Drug-resistant tuberculosis (TB) and Hepatitis B and C must be aggressively fought to keep them from becoming entrenched among people with HIV/AIDS and their caregivers.

People with HIV are 40 times more likely to develop active, infectious tuberculosis if exposed to the contagion than are people with healthy immune systems. In 1994 the federal government began offering matching funds to states and territories to help them develop a limited Medicaid benefit for people who are infected with TB. The District should use these funds because current treatment is now funded by limited Ryan White or Alliance dollars. Also, these funds would be beneficial for keeping open the city's cash strapped TB/STD clinic, which serves as a major point of entry for people newly diagnosed with HIV into the city's health care system.

According to data from HAHSTA, TB cases have not increased. There were 9.1 reported cases per 100,000 in 2008, compared with 9.4 per 100,000 in 2005. (The rate was higher in 2006, at 12.3 cases per 100,000.) However, African Americans consistently suffer disproportionately from the disease, accounting for 75.9% of cases in 2008. HIV-positive patients accounted for 16.7% of cases in 2008, down from 29.1% in 2005.<sup>25</sup>

Substance abuse ranging from alcohol to crystal meth remains a serious problem in the District and contributes to the spread of HIV and other diseases. GLAA supports continued funding of targeted substance abuse treatment programs.

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<sup>22</sup> "DCTC Alarmed by Exclusion of Trans Communities in LGB Health Report," DC Trans Coalition, July 7, 2010, <http://tinyurl.com/2edr4ck>

<sup>23</sup> Letter to Mayor Adrian Fenty, DC Trans Coalition, July 7, 2010, <http://tinyurl.com/2fpz4za>

<sup>24</sup> Reports and Research, DC Trans Coalition, <http://tinyurl.com/2wuy7lv>

<sup>25</sup> "Reported Tuberculosis Cases and Selected Case Characteristics, District of Columbia, 2005-2008," D.C. Department of Health, September 2009, <http://tinyurl.com/33zwwq8e>

## **4. Public Safety and the Judiciary**

### **4.1 Gay and Lesbian Liaison Unit and Police Response to Hate Crimes**

At a community meeting last November 17, Assistant Police Chief Diane Groomes described the Gay and Lesbian Liaison Unit (GLLU) as an award-winning police unit while showing no concern that it had been starved of resources for two years. She promised to share the curriculum for officer training on the GLLU with community members, but the training was just days away. A few hours of training cannot substitute for the expertise and trust built up by the core unit over several years.

At the November 17 meeting, Sampson McCormick described an incident in Ward 8 in which he and friends managed to overpower some assailants and hold them until police arrived, but then the police treated the victims as the perpetrators and let the assailants go free. The officers, according to McCormick, also made homophobic comments and denied that the GLLU existed. Is this the kind of law enforcement we are paying for?

Such ignorance in the wider police force can hardly be resolved by a few hours' training for the few dozen officers who volunteered for the GLLU-related training. We were promised again on November 17 that there would be in-service training for all officers, such as at roll calls, but we have been waiting for years for results. It is not enough for officials to say that open bias on the part of officers is unacceptable. When discriminatory behavior goes unpunished, the message received is that the fine words coming from the top are hollow and can be disregarded with impunity.

On November 19, the day before a Judiciary Committee hearing on hate crimes and police response to them, Mayor Fenty's office released a report titled "Bias-Related Crime in the District of Columbia" which glaringly omitted "gender identity or expression" as a "Type of Bias" in the table of hate crime statistics.

We pointed out this omission at the hearing. Transgender citizens are disproportionately targeted for hate crimes, yet the city's report lumped them in with "sexual orientation," a separate category. To the extent that FBI reporting standards are narrower than under D.C. law (though a revision is needed in light of the trans-inclusive federal hate crime law), the Metropolitan Police Department should separately track hate crimes based on sexual orientation and gender identity or expression, and combine them if necessary in reporting to the FBI. The categories on the police incident report, Form PD-251, should include all the D.C. categories. Failing to report anti-transgender hate crimes renders the invisibility of this at-risk community structural. We were promised that the report would be revised; we trust the error will not be repeated.

In a news release on the 2009 Transgender Day of Remembrance, the D.C. Trans Coalition noted, "A lack of consistent identity documents, fear of prejudiced and hateful officers and other factors can create complicated problems when interacting with police." They added that "police harassment on the street and the threat of being arrested and sent to jail remains a constant problem for many."

Chief Lanier has called her critics a small group of activists who do not represent the majority of the community. This cynical attempt to pit the wider community against the activists is a sad waste of a valuable perspective. Contrary to her statements, gay activists never suggested that the LGBT community was exclusively located in Dupont Circle or the Third Police District. Maintaining a centralized unit was always about coordination and cohesion, not neglecting any part of the city. We all supported training officers in all patrol districts. That doesn't

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take away from the need for a robust core unit with a full-time sergeant. GLLU, established in 2000 under Chief Charles Ramsey, was the first such unit in the country to combine community relations with full policing powers.

The strong support across the LGBT community for GLLU under its former head, Sergeant Brett Parson, showed how far we have come since the police entrapment of gay men and the raids of gay bars in the 1950s and 60s—and even since the Halloween riot against gays by police in 1991. This strong community investment in a police unit must not be squandered. Regarding hate crimes, we look to the leadership of the reborn Gays and Lesbians Opposing Violence in monitoring and responding to developments.

### 4.2 MPD Diversity Training and Discipline

To sustain and capitalize on the gains achieved, MPD must continue its community diversity and sensitivity training for new recruits and lateral transfers, and expand it to veteran officers who set the everyday departmental climate for new officers. The presence of qualified LGBT trainers, and their support by the leaders of the Police Academy, brings a dose of reality to the training and sends a message to all officers that homophobia will not be tolerated on the force. This must be matched by consequences for misbehavior. The need for serious attention to disciplinary matters by the MPD brass was underscored in 2008 by the spectacle of dismissed officers having to be rehired due to managers' failure to meet certain deadlines.<sup>26</sup>

### 4.3 MPD Transgender Policy

It was a breakthrough in October 2007 when Chief Lanier issued a General Order, "Handling Interactions with Transgender Individuals,"<sup>27</sup> to insure professional, respectful and courteous interaction between MPD personnel and transgender people. This demonstrated what could be achieved through collaboration with affected populations. More work is needed, however, as transgender residents have continued to be mistreated by many officers.

### 4.4 Police Infringement of Civil Liberties

The July 10, 2009 ruling<sup>28</sup> by the U.S. Court of Appeals against Chief Lanier's Neighborhood Safety Zone (NSZ) initiative was a victory not only for the Partnership for Civil Justice, which filed the lawsuit, but for

***Rather than resorting to unsustainable, media-centric quick fixes with constitutionally questionable methods, the city should recommit itself to improving basic policing and to consulting with community voices, and stop trying to pit groups of citizens against one another.***

constitutionally protected civil liberties. The court rebuked Chief Lanier, who had pledged in July 2008 to continue the military-style checkpoints "until a judge orders me to stop." Partnership for Civil Justice co-founder Carl Messineo said, "This opinion is an emphatic and unambiguous rejection of the mayor and Attorney General Peter Nickles' practice of disregarding our constitutional rights as residents of the District in their zeal to implement publicity-stunt law enforcement measures that do not address the root causes of crime."<sup>29</sup>

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<sup>26</sup> "17 Officers Fired for Misconduct Reinstated," *The Washington Post*, May 20, 2008, <http://tinyurl.com/23m98gc>

<sup>27</sup> MPD General Order 501.02, "Handling Interactions with Transgender Individuals," October 15, 2007 <http://newsroom.dc.gov/show.aspx/agency/mpdc/section/4/release/12001/year/2007>

<sup>28</sup> *Mills v. District of Columbia*, 584 F. Supp. 2d 47, 58 n.8 (D.D.C. 2008), <http://tinyurl.com/38zmdx8>

<sup>29</sup> Press release, Partnership for Civil Justice, July 10, 2009, <http://tinyurl.com/377vti6>

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GLAA had joined our allies from the NAACP, the National Black Police Association, the ACLU, and others at a rally in the Trinidad neighborhood of Northeast Washington in June 2007 to protest the initiative's curtailment of civil liberties in response to crime. NSZ came on the heels of MPD's troubling Safe Homes initiative to knock on doors in certain neighborhoods asking to do warrantless searches for guns, which did not allow residents to be adequately advised (independently of MPD) of their rights and of the possible consequences of compliance.<sup>30</sup>

GLAA works in coalition with other groups because we know that the freedoms of all are threatened when those of a few are infringed. We are as concerned about crime as anyone—the LGBT community lives in all parts of our city—but we reject the notion that fighting crime requires turning the police into an occupation force. What we need is better basic policing, starting with officers getting out of their cars and getting to know the people in troubled neighborhoods.

Chief Lanier excluded members of the Fair and Inclusive Policing Task Force (on which GLAA is represented, and which the Chief has allowed to die on the vine) from deliberations and planning on the NSZ initiative; but that did not make her ill-advised initiative any more successful. Rather than resorting to unsustainable, media-centric quick fixes with constitutionally questionable methods, the city should recommit itself to improving basic policing and to consulting with community voices, and stop trying to pit groups of citizens against one another. We are grateful to the MPD officers who raised doubts about the constitutionality of the NSZ initiative. The top brass should listen to these good officers instead of digging in their heels until forced by court orders to desist.

### 4.5 Curfews

We oppose the imposition of arbitrary curfews, whether on adults or youth. Such curfews limit both the freedom of adults to enjoy District parks and that of young people to enjoy life in our vibrant city in general. In addition, the rights of parents to determine how best to raise their children and set appropriate limits for them are abrogated by such curfews. While proponents of such curfews argue that such measures protect people from becoming both victims and perpetrators of crime, we have seen no specific evidence that this is so. Telling people to stay home and retreat behind locked doors is no proper solution to crime, and is no proper substitute for effective policing.

### 4.6 Office of Police Complaints

The Metropolitan Police Department is more accountable to the community because of the opening in 2001 of the Office of Police Complaints (OPC), which, with its governing body, the Police Complaints Board (PCB), was created after extensive advocacy by the NAACP D.C. Police Task Force, a coalition of which GLAA is a founding member. Under the leadership of PCB Chair Kurt Vorndran and OPC Executive Director Phil Eure, OPC seeks to employ the best practices of citizen oversight of law enforcement, with the goal of improving public confidence in the police.

*Washington Examiner* columnist Harry Jaffe on May 12 called OPC useless and urged its abolition.<sup>31</sup> We strongly disagree. The *City Paper's* Loose Lips was closer to the truth when he wrote that "police union chief Kristopher Baumann should get a co-bylines for Jaffe's miserable columns." As LL notes, "There are reasons to critique that office. Like a lot of city agencies, it doesn't have enough power to effect change i.e. to make much progress in the way of eliminating police abuses. But it has made a tremendous difference in the lives of

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<sup>30</sup> "D.C. Seeks Consent To Search for Guns," *The Washington Post*, March 13, 2008, <http://tinyurl.com/3b8vdd>

<sup>31</sup> "Save \$2.6 million - kill office of police complaint," *Washington Examiner*, May 12, 2010, <http://tinyurl.com/32m25zk>

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mentally-ill residents—it lobbied successfully for years for the police to change the way it responds to residents in crisis. It should be commended for its difficult work.”<sup>32</sup>

In 2007, OPC took in the most complaints and mediated the most complaints of any year since it opened. OPC also issued four reports with recommendations for police reform, and conducted a variety of community outreach activities across the city.<sup>33</sup> Independent oversight is a key to holding our public servants accountable. Eure and his staff have shown patience, persistence, thoroughness and scrupulousness in pursuing their mission. To its difficult work OPC has brought expertise, integrity, and a commitment to fairness for all—not just those who file complaints, but those against whom they are filed, and the wider community from which both are drawn.

### 4.7 Inclusion of LGBT Community Members in Searches for New Police and Fire Chiefs

The manner in which Police Chief Cathy Lanier was hired in 2007 is a sore point. In response to GLAA’s 2006 mayoral questionnaire, candidate Adrian Fenty explicitly promised, “I will include members of the GLBT community in the search process when I appoint a new Police Chief and new Fire/EMS Chief.”<sup>34</sup> In actuality, Fenty’s entire process for selecting a new police chief consisted of inviting Lanier to breakfast and offering her the job. Fenty was more collegial in his search for a Fire/EMS chief, and then-GLAA President Barrett Brick participated in candidate interviews which resulted in the selection of Chief Dennis L. Rubin. In contrast to Chief Lanier, Chief Rubin has had friendlier relationships with the city’s diverse communities. We call on the next mayor to be more consistent than Fenty in consulting community advocates before making such key hires.

### 4.8 Fire and Emergency Medical Services Department

After being hired in 2007, Fire and Emergency Medical Services (FEMS) Chief Dennis L. Rubin began long-awaited reforms. FEMS finally implemented a diversity training program to teach staffers how to deal with LGBT people in the District. Rubin also appointed Sergeant J.B. Wallace as LGBT Liaison. Wallace has been promoted to Captain, and is now an EMS Field Supervisor; we look forward to working with the new liaison, Firefighter Deborah Hassan.

GLAA was pleased in 2008 when the District finally settled a discrimination case brought by former FEMS EEO Expert/Training Specialist Kenda Kirby. In April 2007, D.C. Superior Court Judge Geoffrey M. Alprin found probable cause against FEMS. The evidence showed that FEMS personnel, including top management, had created a hostile work environment and engaged in gender-based discrimination against Ms. Kirby. She had been hired to implement the Tyra Hunter Human Diversity Training Series created as part of the 2000 settlement over the wrongful death in 1995 of Tyra Hunter, a transgender woman who died following an auto-pedestrian accident.

Chief Rubin has made a good beginning at reforms to end bias at FEMS and ensure that the force serves all Washingtonians. Supervisory follow-through and consequences for violation of the FEMS diversity policy will be essential to ensure that the training is more than window dressing.

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<sup>32</sup> Loose Lips Daily, *WashingtonCityPaper.com*, May 12, 2010, <http://tinyurl.com/28zjzsb>

<sup>33</sup> Fiscal Year 2008 Annual Report, Police Complaints Board and Office of Police Complaints, May 26, 2009 <http://tinyurl.com/2bauko7>

<sup>34</sup> Responses of Adrian Fenty to GLAA 2006 Questionnaire for DC Mayoral Candidates, August 2006, <http://www.glaa.org/archive/2006/mqfenty.shtml>

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### 4.9 Department of Corrections Discrimination Against Transgender Detainees

The D.C. Government website states, “The mission of the Department of Corrections (DOC) is to provide a safe, secure, orderly, and humane environment for the confinement of pretrial detainees and sentenced inmates...” This contrasts with the discrimination faced by transgender inmates, who are often housed solely based on their genitalia, denied appropriate health care, sexually assaulted, abusively strip-searched, and placed in protective custody that amounts to punishing the victim.<sup>35</sup>

***Transgender inmates... are often housed solely based on their genitalia, denied appropriate health care, sexually assaulted, abusively strip-searched, and placed in protective custody that amounts to punishing the victim.***

In July 2008, a proposed rulemaking was published in the D.C. Register that amounted to repeal by regulation of the transgender protections in the D.C. Human Rights Act as they pertain to DOC. GLAA joined dozens of local and national LGBT advocates in opposition.<sup>36</sup> We helped get attention with our testimony opposing the confirmation of Peter Nickles as Attorney General.<sup>37</sup> After months of negotiations and research, the rulemaking was withdrawn and a revised policy was issued on the classification and housing of transgender inmates.<sup>38</sup> While imperfect, it represents progress. GLAA lauds the efforts of the D.C. Trans Coalition, Just Detention International, and the Washington Lawyers’ Committee for Civil Rights and Urban Affairs to make our city live up to its own legal standards. The D.C. Human Rights Act is not a ceremonial resolution. The District must take further steps to end discrimination against transgender detainees and inmates.

### 4.10 Electing D.C.’s Attorney General

As a result of emergency legislation adopted by the D.C. Council on June 1, District voters will decide by referendum this November whether to amend the Home Rule Charter to replace the current procedure, in which the city’s attorney general is appointed by the Mayor and confirmed by the Council, with an elected attorney general whose four-year term coincides with that of the Mayor. GLAA endorses this referendum.

As Councilmember Phil Mendelson said, “The city’s chief legal officer needs to represent the public’s interest and not any particular branch of government. This makes the AG more independent.”<sup>39</sup>

Attorney General Peter Nickles, expressing support for changing his job to an elected position, said, “In most states, the attorney general is elected. ... But most times the attorney general is thinking about running for governor. He’s a separate, independent force. So whoever’s going to look at this is going to need to take into account whether they want an attorney general who is politically motivated.”<sup>40</sup>

Mr. Nickles raises a legitimate concern; but the status quo, in which the AG is widely seen as serving the Mayor’s interests rather than those of the city as a whole, hardly eliminates political motivation. Given the importance of ensuring that the AG serves all of the people, we support making it an elected position.

<sup>35</sup> “Jails,” DC Trans Coalition, <http://dctranscoalition.wordpress.com/campaigns/department-of-corrections-campaign/>

<sup>36</sup> “GLAA objects to proposed rollback of transgender protections,” letter to General Counsel of D.C. Office of Human Rights, July 21, 2008, <http://www.glaa.org/archive/2008/glaaontransprotections0721.shtml>

<sup>37</sup> Testimony on Confirmation of Peter J. Nickles as D.C. Attorney General, GLAA, October 17, 2008, <http://www.glaa.org/archive/2008/glaaonnicklesconfirmation1017.shtml>

<sup>38</sup> Program Statement on Gender Classification and Housing, D.C. Department of Corrections, February 20, 2009, <http://www.glaa.org/archive/2009/nicklesontranspolicy0220.pdf>

<sup>39</sup> “D.C. voters to decide on election of attorney general,” *The Washington Post*, June 2, 2010, <http://tinyurl.com/2fy9q2y>

<sup>40</sup> “Norton advocates for elected D.C. attorney general,” *Voice of the Hill*, November 23, 2009, <http://tinyurl.com/2drwhcl>

## **5. Human Rights**

### **5.1 Preserving and Continuing Reforms at Office of Human Rights**

The District government made great strides in recent years both in strengthening the D.C. Human Rights Act of 1977 (DCHRA) and in enforcing it through the Office of Human Rights (OHR). Among the notable improvements are legislation outlawing the use of genetic information as a basis for discriminatory treatment; legislation expanding the definition of “marital status” within DCHRA to prohibit discrimination against registered domestic partners; and clarifying legislation explicitly prohibiting discrimination based on “gender identity or expression.”

In 2007 Mayor Fenty broke a promise to include GLAA in the selection process for a new director, as had occurred in 2003 prior to the appointment of former OHR Director Kenneth Saunders. Even so, we appreciate the efforts and responsiveness of the director Fenty hired, Gustavo Velasquez. His office reports that OHR in FY 2009 recorded a 32% growth in the number of new cases; educated 2,847 employers, workers and residents about their employment and housing rights; increased community awareness with posters in the Metro System and multilingual print and broadcast ads; trained 700 employees from 15 agencies on compliance with the D.C. Language Access Act of 2004; and developed a formula through which government agencies are rated on EEO compliance, training 158 employees designated with EEO responsibilities from 52 agencies.<sup>41</sup> The problem is not with the statistics, but in the particulars of individual cases and the application of policy. A professional background in civil rights law equips an OHR director with the expertise to verify the correctness of staff work and the confidence to stand up to other government officials. Where upholding and enforcing DCHRA is concerned, the devil is in the details.

### **5.2 Combating Transgender Discrimination and Unemployment**

Discrimination against transgender people is a continuing problem requiring greater attention by the city. Our transgender-inclusive Human Rights Act is not enough. Initiatives need to be created, and programs implemented. Transgender individuals need representation in key District agencies.

Transgender youth are bullied and harassed in schools. Adults are treated with gawking curiosity, or outright malevolence. That malevolence sometimes translates into physical violence. There is a subtler form of violence, that of poverty.

The transgender population in the District suffers unemployment at a rate ten times the national average. Most of that population lives far below the poverty level. This should not come as a surprise. According to information obtained last year from the District’s Office of GLBT Affairs, only six out of 26,000 employees at District government agencies were openly transgender. More transgender women have been murdered in the last ten years than are presently employed in the District government’s own workforce. Whatever is being done, it is clearly not enough.

There are significant costs to the District as a result of transgender employment discrimination: HIV clinics, correctional facilities and halfway houses, courts, police services—all after the fact. Much of this could be avoided. The transgender community wants to work. No one’s talents should go to waste in our city, and no one should be driven to the margins of society by discrimination.

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<sup>41</sup> “Annual Highlights – FY09,” D.C. Office of Human Rights, <http://tinyurl.com/38rjw69>

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Public accommodations are another problem. The D.C. Trans Coalition (DCTC) has gathered reports of businesses, primarily restaurants and bars, which have single occupancy restrooms but gender-specific signage. Regulations require single-occupancy restrooms to have gender-neutral signage. A list of non-compliant businesses was submitted to OHR, but the promised letter has not been issued asking them to change their signage to come into compliance. DCTC's survey reveals that 68 percent of respondents who self-identify as trans and/or gender non-conforming reported experiencing hostility and/or violence when attempting to use public restrooms in the District.<sup>42</sup> We support the D.C. Center's plan to make a formal complaint against one business a day this summer until OHR fulfills its promise to send the letter.

To make real DCHRA's transgender protections, it is time for a qualified transgender person to be appointed to the Commission on Human Rights.

### 5.3 Maintaining OHR and CHR Funding and Director Qualifications

GLAA has long advocated that OHR's budget and staffing be set at sufficient levels to keep its case backlog from growing and to reduce the average number of days it takes after the filing of a discrimination complaint to issue a finding of probable cause. We also strongly believe that future OHR directors should be required to have a background in civil rights law enforcement, as was the case with former OHR Director Kenneth Saunders, but is not the case with Mr. Velasquez. In the 1990s, OHR was submerged in another department that was never headed by anyone with a civil rights law background. The result was a cannibalization of OHR staff and budget and an explosion in its case backlog. At GLAA's urging, OHR was re-established as an independent agency at the end of the 1990s by then Councilmember Kathy Patterson. An OHR director with a background in civil rights law enforcement would be better equipped to uphold the D.C. Human Rights Act.

We support a separate line item in the District budget for the Commission on Human Rights, in harmony with its independent status.

### 5.4 Honors for the Honorable

We appreciate it when the Mayor's Office and the D.C. Council issue official proclamations and ceremonial resolutions honoring worthy contributions. Unfortunately, D.C. officials have sometimes also honored people and organizations openly hostile to the LGBT community. The honors given last year by Mayor Fenty's office to the director of the notorious "ex-gay" group PFOX (which uses junk science to justify discrimination) were blamed on staff error. We expect candidates for public office not only to denounce bigotry, whatever form it takes, but to ensure that procedures are in place to prevent such slip-ups. One excuse we have heard for extending honors to anti-gay people and organizations, including the Salvation Army, is that they have otherwise done good works. But good works do not excuse discrimination or bias. No such excuse would ever be made for honoring notorious racists, and the same principle should be applied against extending honors to bigots of any description.

***One excuse we have heard for extending honors to anti-gay people and organizations, including the Salvation Army, is that they have otherwise done good works. But good works do not excuse discrimination or bias.***

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<sup>42</sup> "Our Survey Results," DC Trans Coalition, November 8, 2009, <http://tinyurl.com/3a4uhx8>

## 6. Public Education and Youth

### 6.1 Vouchers

The congressional imposition of a voucher system several years ago to subsidize parochial and other private schools in the District of Columbia at taxpayer expense was an assault upon home rule and the constitutional separation of church and state. Unfortunately, the effort during the past year or so to continue federal funding for this program, not just for currently enrolled students but for future participants (as proposed by Senator Lieberman), was supported by Mayor Fenty and several councilmembers who had gone on record against vouchers for religiously oriented private schools.

*Many of the federal funds in the voucher program have wound up in the hands of religiously-affiliated schools where gay and lesbian students, teachers and employees enjoy none of the anti-discrimination protections of The D.C. Human Rights Act.*

District voters overwhelmingly rejected vouchers (89% to 11%) in a public referendum in 1981. Many of the federal funds in the voucher program have wound up in the hands of religiously-affiliated schools where gay and lesbian students, teachers and employees enjoy none of the anti-discrimination protections of the D.C. Human Rights Act. Such schools are free to subject students to homophobic teachings and

practices while enjoying public subsidies. Instead of diverting public funds to give another option to a small percentage of students, we should continue to press reforms in schools that are accountable to taxpayers.

### 6.2 Transitional Housing for Homeless LGBT Youth

The opening in 2008 of the Wanda Alston House for homeless LGBT youth marked a milestone in the growth of Transgender Health Empowerment (THE), and was a welcome advance in serving a population at heightened risk for substance abuse, sexually transmitted diseases, suicide, and survival sex. The D.C. Department of Human Services and the Community Partnership for the Prevention of Homelessness made this possible, along with the groups partnering with THE to identify prospective residents—Covenant House Washington, the Sexual Minority Youth Assistance League, and the Latin American Youth Center. The Wanda Alston House's first eight transitional residents received not only housing but crucial wraparound services like job training, substance abuse treatment, and counseling. This must be seen as only the start of a long-term campaign to expand services to meet the needs of all at-risk LGBT youth in our city.

The problem is nationwide, as the Center for American Progress reports: "Gay and transgender youth are disproportionately represented among homeless youth in our country, experiencing extreme rates of violence, discrimination, and poor health while homeless...."

"Today, the usual coming out age is in the mid-teen years.... [T]oo many youth who come out are rejected by their families, harassed and victimized in schools, discriminated against in out-of-home care facilities, and brutalized in homeless shelters. They often resort to criminal activity, such as theft or "survival sex" in order to survive. The high rates of rejection, violence, and institutional discrimination combined with hostile school environments and social prejudice lead to an over-representation of gay and transgender youth among the homeless youth population."<sup>43</sup>

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<sup>43</sup> "On the Streets: The Federal Response to Gay and Transgender Homeless Youth," by Nico Sifra Quintana, Josh Rosenthal, and Jeff Krehely, Center for American Progress, June 21, 2010, [http://www.americanprogress.org/issues/2010/06/on\\_the\\_streets.html](http://www.americanprogress.org/issues/2010/06/on_the_streets.html)

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### 6.3 Youth Risk Behavior Survey

According to the Sexual Minority Baseline Fact Sheet released by D.C. Public Schools (DCPS) in 2008, self-identified gay, lesbian, and bisexual students in D.C. public high schools were four times likelier to attempt suicide in 2007. This and other disturbing data were extracted from the Youth Risk Behavior Survey (YRBS) conducted by DCPS and the Centers for Disease Control and Prevention.<sup>44</sup> The survey also found that 23.3 percent of gay high school students reported using crystal meth, compared to 2.5 percent of straight students. 24.8 percent of gay high school students reported using ecstasy, compared to 3.9 percent of straight students. Twice as many gay students as straight students reported being bullied on school grounds.

The District announced one new partnership for at-risk youth last year: “Beginning May 5, 2009, DCPS partnered with First Home Care (FHC), an organization specializing in behavioral support for at-risk youth, to assist students transitioning from restrictive education environments to District public schools. FHC acts as a liaison between DCPS, parents, and schools to ensure a successful transition. The partnership provides students with wrap-around services and monitors each student’s progress upon entry into their new school.”<sup>45</sup> More initiatives are needed to address the range of risks to District youth. Additionally, YRBS should be expanded to include transgender students.

David Mariner of the DC Center notes, “The data from the 2009 YRBS was useless because the response rate was so low, the CDC took the extraordinary measure of rejecting DC’s YRBS data.” The city needs to improve its data gathering efforts; in the meantime, the DC Center notes, “Nationwide data ... suggests that transgender students are harassed more and, subsequently, are at higher risk than their non-transgender peers.”<sup>46</sup>

### 6.4 Anti-Bullying Policy

Responding to efforts spearheaded by GLAA, the D.C. Council years ago made harassment an explicit form of illegal discrimination in employment and educational institutions. In a complementary fashion, the D.C. Board of Education amended school policies to prohibit harassment and sexual harassment. Councilmember Michael Brown and Chairman Vincent Gray have co-introduced the “Bullying Prevention Act of 2010,” and the Gay, Lesbian and Straight Education Network (GLSEN) is working with them to suggest edits inspired by GLSEN’s “Model School Anti-Bullying and Harassment Policy.”<sup>47</sup> We believe that any such bill must include explicit language covering public charter schools. But having a good anti-bullying policy on paper is not enough. Administrators, teachers and students should be reacquainted with the policy several times annually through various means including assemblies, skits, and role-playing. Violations should be met with appropriate intervention; but policymakers should avoid rigid prescriptions that tie the hands of teachers and school administrators who need to apply judgment in addressing situations that arise. The support and promotion of training programs is vital to the well-being of all DCPS students and staff.

### 6.5 Health Education

Because of our strong support for comprehensive sex education for all District youth, GLAA enthusiastically endorsed the Health Standards drafted by DCPS in 2007. We commended the inclusion of sexual orientation

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<sup>44</sup> “Youth Risk Behavior Survey,” D.C. Public Schools, 2007, <http://www.dccampaign.org/content/view/142/89/>

<sup>45</sup> “Mayor Fenty Announces Accomplishments, New Initiatives in Special Education,” D.C. Public Schools, October 1, 2009, <http://tinyurl.com/25w7h9w>

<sup>46</sup> “Center Facts: LGBT Youth in the District of Columbia,” [http://www.thedcenter.org/facts\\_youth.html](http://www.thedcenter.org/facts_youth.html)

<sup>47</sup> “Model School Anti-Bullying and Harassment Policy,” Gay, Lesbian and Straight Education Network, [http://www.glsen.org/binary-data/GLSEN\\_ATTACHMENTS/file/000/001/1578-1.PDF](http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1578-1.PDF)

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and gender identity as part of what the introduction calls “the knowledge and skills that students need to maintain and improve their health and wellness, prevent disease, and reduce health-jeopardizing behaviors.”

In particular, we agreed that the curriculum for Grade 6 should “explain the benefits of abstinence, postponing sexual behavior, and setting limits on sexual behavior.” Abstinence education is part of a comprehensive approach to teaching sexual health. This is different from the federal “abstinence-only until marriage” policy, which studies have shown does not deter teen sex. Care must be taken not to allow the appropriate teaching of responsibility and postponement of gratification to morph into a message that celibacy is the only option for sexual minority youth.

We agreed with the inclusion of this for Grade 8: “Compare and contrast the theories about what determines sexual orientation, including genetics; prenatal, social, and cultural influences; psychological factors; and a combination of all of these.” The established scientific consensus is what should be taught. Homosexuality is recognized as a normal variant of human sexuality by the American Psychiatric Association and the American Psychological Association, and that normality is not erased by right-wing pseudoscience.

Some teachers and principals impose their own whims and disregard DCPS policy. For the health education program to be successful, it is essential to monitor and enforce compliance.

### **6.6 Gay-Straight Alliances**

Gay-Straight Alliances (GSA) are student-initiated organizations in schools. GSAs enrich a school’s learning environment, help provide a safe and supportive climate for students, and foster tolerance among students. Teachers, administrators and public officials should encourage students to form GSAs and take action against officials who illegally interfere with GSAs in the public schools.

### **6.7 Presentations by Outside Organizations**

Outside organizations, such as the Sexual Minority Youth Assistance League (SMYAL), conduct training for students, teachers and administrators designed to reduce harassment in the schools. These groups should be welcomed by the schools and encouraged to make presentations.

### **6.8 School Libraries**

School libraries should carry a wide range of books, including those that deal with homosexuality in a positive manner. Donated books by groups such as Parents, Families and Friends of Lesbians and Gays (PFLAG) should be welcomed as they have been and encouraged as a low-cost means of expanding the library holdings.

### **6.9 Condom Availability**

The District’s condom availability program for public school students, established in 1992, was hailed as a sound public health measure to reduce the spread of HIV, other STDs and unwanted pregnancies. Condoms should be available from the Department of Health through school nurses. Unfortunately, condoms are available sporadically and without uniform guidelines. Many public high schools don’t provide condoms at all, and others impose restrictions that deter students from seeking or using condoms. This program needs to be revitalized.

## 7. Consumers and Businesses

### 7.1 Fighting Regulatory Abuse

Fights in recent years against the gay-welcoming Washington businesses Fab Lounge,<sup>48</sup> Hank's Oyster Bar,<sup>49</sup> Cada Vez,<sup>50</sup> and Be Bar<sup>51</sup> revealed a pattern of abuse of the regulatory process by "gangs of five" and other unrepresentative groups. The problem is not anti-gay bigotry but unreasonable hostility toward urban nightlife by people who seek to turn vital city neighborhoods into quiet suburbs.

We call for regulatory reforms to prevent the gaming of the system by small numbers of people to prevent legitimate businesses from operating, or to gain concessions that they could not obtain on the merits. It should be plain to all by now that so-called "voluntary agreements" are usually nothing of the sort, but amount to a holdup of businesses by small numbers of cranks and NIMBYs.

Not only should the provision for "gangs of five" be re-examined, steps should be taken to prevent the abuse of anonymous complaints against licensed establishments. For example, confidentiality can be preserved while recording the names of complainants to help identify persons who repeatedly file complaints in a bad-faith effort to harass a particular business. Persons with a record of frequent complaints not sustained by the evidence should have their subsequent complaints flagged as suspicious, receive a warning, and be fined if their abuse continues. If multiple investigations show a particular complaint against a business to be without merit, a moratorium of 90 to 120 days should be imposed on repeat investigations of substantially the same complaint. There is no reason why law-abiding business owners, who bear the financial risk while serving customers and generating tax revenue, should have to endure such harassment, nor why taxpayers should have to subsidize it.

### 7.2 Defending Adult Entertainment

As a city whose hospitality industry generates a sizable portion of its revenue, the District should preserve the place of adult entertainment as part of the mix. Those who disapprove of nude dancing establishments are free to avoid patronizing them, but have no right to deny those choices to other adults.

Busybodies should not be permitted to misuse the government to boss their neighbors on matters that are none of their business. We were gratified when Ziegfeld's/Secrets found a new location on Half Street, SW after the new baseball stadium displaced the old gay club zone; but the recent five-day liquor license suspension against Ziegfeld's/Secrets by the ABC Board is the latest demonstration of the persistent impulse by some in our society to interfere with the choices of consenting adults. As Frank Kameny says, "Queen Victoria has been dead for 108 years. It's about time they realize that."<sup>52</sup>

***Busybodies should not be permitted to misuse the government to boss their neighbors on matters that are none of their business.***

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<sup>48</sup> "New gay bar set to open in Dupont," *The Washington Blade*, February 3, 2006

<sup>49</sup> "Lesbian faces opposition to new restaurant," *The Washington Blade*, April 15, 2005

<sup>50</sup> "Off-duty officials take photos of gay Latino club," *The Washington Blade*, July 29, 2005

<sup>51</sup> "Catania, Graham troubled over Be Bar opposition," *The Washington Blade*, April 26, 2006

<sup>52</sup> "Liquor board suspends Ziegfeld's/Secrets license," *The Washington Blade*, June 8, 2010, <http://tinyurl.com/32uyhfo>

### 7.3 Prostitution: Legalize It, Regulate It, Zone It, Tax It

Public officials seldom ask a most practical question: who benefits from the criminalization of prostitution?

Samuel Johnson described the ills associated with prostitution—crowding, intemperance, famine, filth, and disease—and assured his friend John Boswell that “severe laws, steadily enforced, would be sufficient against those evils, and would promote marriage.” Jesse Ventura came closer to the truth when he told *Playboy* in 1999, “Prostitution is criminal, and bad things happen because it’s run illegally by dirt-bags who are criminals. If it’s legal, then the girls could have health checks, unions, benefits, anything any other worker gets, and it would be far better.” Not just girls, Jesse.

As advocates of the legalization of prostitution, we think it needs neither sanitizing nor glorifying. It is not a profession filled exclusively with people who freely chose it from a host of other options. No doubt there are some in that category, like the college student turning tricks for extra cash. But too many turn to it by necessity. These include gay teenagers who have been thrown out of the house by their parents, and transgender people whom discrimination has left with few options.

People in these situations are practicing survival sex. They face greater risk of substance abuse, mental and physical abuse, and sexually transmitted diseases. The District has seen numerous murders of sex workers in recent years—murders that were made harder to prevent and harder to solve by the fact that the victims worked the streets and were without legal sanction or protection.

Harassing, arresting and prosecuting people for survival sex solve none of their problems, but only pile more on.<sup>53</sup> Whose idea of responsible public policy is this? To be justified, any public law ought to serve some identifiable common good. Saying to people as Sister Mary Ignatius did, “You do the thing that makes Jesus puke,” is no basis for criminalizing whatever it is. Having been the targets of moralistic lawmaking, we as gay people are especially on guard against it.

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No matter how bad you may think something is, if your proposed response is likely only to make it worse, then you should pull back. Policymakers are often too enamored of their own initiatives to pay attention to the consequences. If you want to provide safer, healthier, and more sustainable alternatives to survival sex, you can support the creation of

drop-in centers, transitional housing, job training, counseling, addiction recovery programs, mental health services, and STD testing and treatment for at-risk populations. Key is creating safe spaces where help can be expected, not exploitation.

Our society’s penchant for legislating morality is the chief obstacle to eliminating the harm caused by prostitution and solicitation laws. Otherwise compassionate and practical people often lose their bearings when the subject turns to the “naughty bits.” Overcoming this will take time, especially in D.C. with its constitutional vulnerability to congressional grandstanding; but we will never get there if we do not start. We can begin with a humble recognition of the normal variation in sexual expression, the proper limits of government coercion, and the fact that other people’s personal choices are none of our business unless they harm us. In the case of sex

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<sup>53</sup> “Move Along: Policing Sex Work in Washington D.C.,” Alliance for a Safe and Diverse DC, May 1, 2008, <http://dctranscoalition.files.wordpress.com/2010/05/movealongreport.pdf>

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behind closed doors, whether in homes or hotel rooms, the fact that someone is paying for it is no more a legitimate basis for police involvement than if the transaction is a more informal one involving dinner and a show.

There is too much observable misery associated with prostitution for us to say it carries no problems; but they derive substantially, albeit not exclusively, from prostitution's forced existence underground. Mitigating them requires leaving the moral implications to the participants and doing the few things that government can usefully do regarding prostitution: legalize it, regulate it, zone it, and tax it. In pursuing this course, the District can benefit from the experience of other jurisdictions, both domestic and foreign, that treat the sex trade in a more realistic manner.

We know that we are breaking a taboo by discussing this; but avoiding the issue will not make it go away. We ask those who disagree with our position to address our arguments seriously. Failed policies do not deserve to be defended with reflexive dismissals.

[Adapted from a commentary published May 8, 2008 in *Metro Weekly* and *Bay Windows*; copyright © 2008 by Richard J. Rosendall. All rights reserved. Used by permission.]