

Gay and Lesbian Activists Alliance

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April 3, 2014

To: Councilmembers Tommy Wells, Mary Cheh, Jack Evans, Anita Bonds, Muriel Bowser
Cc: Councilmember David Grosso, Council Chair Phil Mendelson
Subject: Please repeal Prostitution Free Zones

Dear Members of the Committee on the Judiciary and Public Safety:

It has come to our attention that Councilmember David Grosso is preparing to introduce a bill to repeal so-called Prostitution Free Zones. It will likely be referred to your committee.

We strongly support repeal of PFZs, as we have previously testified.

The use of Prostitution Free Zones (or PFZs) facilitates discriminatory police profiling of transgender people.[1] It is also a constitutionally questionable practice. As our colleagues from the DC Trans Coalition note:

1. The Attorney General has determined that PFZs can't be defended in court and are likely unconstitutional.
2. MPD has suspended PFZ implementation and is working to rescind its PFZ general order.
3. Eliminating PFZs is a step toward reducing violence against sex workers.
4. PFZ repeal makes sense from a public health perspective.

We agree with the 2005 testimony of Stephen M. Block, then legislative counsel for ACLU of the Nation's Capital, concerning the bill authorizing temporary PFZs that was then under consideration. I will summarize some of his citations.

- "The bill ... would punish people for their status, i.e., who they are rather than the wrong they have done. It authorizes an officer to order someone to leave an area, if the officer believes that the person is a prostitute even though the person has not done anything illegal.... This is antithetical to the fundamental American principle that we are not required to prove our innocence and cannot be arrested simply because we might be *thinking* of committing a crime.... See *Johnson v. City of Cincinnati*, 310 F.3d 484, 503 (6th Cir. 2002)."
- "The Court of Appeals for the District of Columbia threw out convictions for solicitation for prostitution based on evidence that the defendants "looked and perhaps acted like prostitutes." *Ford v. U.S.*, 533 A.2d 617, 625 (DC 1987). If such evidence is insufficient to sustain a conviction, it also cannot be sufficient to justify an order that someone leave a prostitution free zone.... See also *Coleman v. Richmond*, 364 S.E.2d 239, 244 (Va. App. 1988)"
- "Someone believed to be a prostitute may be in a prostitution free zone for a lawful purpose.... Because it would prohibit lawful activities, Title XXI is unconstitutionally overbroad. See *Shelton v. Tucker*, 364 U.S. 479, 488 (1960) ... *Johnson v. Carson*, 569 F.Supp 974 (M.D. Fla. 1983) ... *ACLU v. Alexandria*, 747 F.Supp. 324 (E.D. Va. 1990)."
- "Because Title XXI vests open-ended discretion in the police to order someone to leave a prostitution free zone without evidence of wrongdoing, the proposal is also unconstitutionally vague. See *Chicago v. Morales*, 527 U.S. 41, 56 (1999) ... *Akron v. Rowland*, 618 N.E.2d 138, 145 (Ohio 1993) ... *Louisiana v. Muschkat*, 706 So.2d 429 (Louisiana 1999); *Wyche v. Florida*, 619 So.2d 231 (Florida 1993)."
- "Title XXI will also be challenged as legally inadequate for failure to explicitly require specific intent (*mens rea*) as an element of the offense. See *NAACP v. Annapolis*, 133 F.Supp. 2d 795 (D. Md. 2001)."
- "The courts have also required the proponents of exclusion zones to demonstrate that there is no less onerous remedy. See *Johnson v. City of Cincinnati*, 310 F.3d at 505." [2]

The ruling in another case states that the law cannot punish people for their status, but only for a specific act. *Robinson v. California*, 370 U.S. 660 (1962).

Jason A. Terry testified for DC Trans Coalition on November 2, 2011: "Profiling trans people as sex workers is indeed such a prevalent occurrence that MPD's General Order 501.02 on interacting with trans people explicitly states 'Members shall not solely construe gender expression or presentation as reasonable suspicion or prima facie evidence that an individual is or has engaged in prostitution or any other crime.' Yet Prostitution Free Zones allow for exactly that suspicion to be made, and it almost always is." [3]

Public radio station *WAMU* reported on this problem on January 13, 2012. The reporter interviewed Cyndee Clay, executive director of Helping Individual Prostitutes Survive, or HIPS: "Clay says the prostitution-free zone law didn't get rid of prostitution in the District. The law simply moved it from downtown to the outskirts of the city.... [A]n analysis of the District's crime data shows that Clay is right....

"It's bad public health, it's bad social policy,' says Clay. 'It's not even effective judicial policy because we're not giving people the tools that they need to change their life or to make a change. We're just re-incarcerating the same people over and over again for the same thing.' ...

"HIPS keeps track of every sex worker it encounters, and the group is seeing roughly the same number of sex workers on the streets now as there was a decade ago. The difference is now they're more likely to get a criminal record and more likely to be working in a violent area. The sex workers are more isolated and more at risk. But they're less visible." [4]

Councilmember Alexander responded to David Schultz, the *WAMU* reporter, in an exchange on Twitter on January 17, 2012. She wrote, "Prostitution is illegal and our residents as well as PG are fed up!" Jason Terry of DC Trans Coalition replied, "I appreciate your ire, but why not tackle the roots of injustice instead the symptoms?" Councilmember Alexander replied, "I'm supportive of that too, but how do you answer my communities' frustration? Come with me to Eastern Ave."

We have been to Eastern Avenue. In July, 2011, many of us had occasion to visit that neighborhood to attend a vigil in memory of Lashai Mclean, a transgender woman who was murdered on the 6100 block of Dix Street NE. Like Jason Terry, we appreciate Councilmember Alexander's and her constituents' frustration. Like him, we think the proper response to that frustration is to seek real solutions rather than merely chasing sex workers to different streetcorners.

A 2007 story by Oregon's *East Portland News* reported that the Portland City Council had allowed that city's PFZ law to expire due to its ineffectiveness and discriminatory enforcement. [5] John H. Campbell, whose firm Campbell DeLong Resources, Inc. was commissioned by Portland Mayor Tom Potter to study Portland's Prostitution and Drug Free Zones, found that they were enforced unfairly against minorities. Campbell sent then GLAA President Miguel Tuason some suggestions on Jan. 19, 2012 based on Portland's experience:

"It is one thing to permit a police chief to designate a zone for a short period of time, but it seems quite another to grant power to designate such zones in perpetuity. If there is sufficient discomfort with the law that all agree it should not apply to the whole city, it seems odd to grant any non-elected official the power to extend such a law, on a permanent basis, to an ever increasing amount of the city." He would reserve the designating power for the D.C. Council.

Mr. Campbell continues: "I would hope that an arrest for engaging in prostitution or 'prostitution related offenses' as defined in the relevant criminal code would be a minimal prerequisite before an exclusion can be issued or enforced. A step further would be to require, in addition to the arrest for prostitution, a past conviction for related crimes as well in order for a pre-trial exclusion to be issued or enforced. A step still further would be to require the specific prostitution conviction, with the full criminal proof that requires, and make exclusion either part of the sentencing or an option for police at that time for a given period of time....

"Suggest suspending enactment of any ordinance until police have summarized for Council national best practices for prostitution problem solving.... The tools available cover a very wide range and depend on the characteristics of the activity and physical location....

"Withhold support for any ordinance that doesn't include a method to measure, report, and take all appropriate corrective action regarding the incidence of transgender profiling."

Legislators have a responsibility to pay attention to whether their policy solutions, and police methods, actually work. Chasing sex workers into more distant and unsafe neighborhoods is no solution. Giving them criminal records only makes it harder for them to escape the streets by finding better jobs. Many transgender people are driven into sex work by gender identity discrimination that renders them jobless.[6] To resolve this situation we must step back from a purely crime-based perspective to recognize and address the intersecting problems that lead to it.

We understand that police have a job to do, but they must do it in a constitutional manner, as they themselves recognize. **We urge you to support Councilmember Grasso's bill to repeal PFZs.** Let us then work together—residents, activists, and policymakers—to find solutions that will work better for everyone as well as hold up in court.

Yours sincerely,

Richard J. Rosendall
President, GLAA
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[1] "Transgender activists say D.C. prostitution bill will lead to profiling," Joshua Lynsen, *Washington Blade*, March 29, 2006

[2] Testimony on Bill 16-247, Stephen M. Block, American Civil Liberties Union Of the Nation's Capital, June 30, 2005, <http://tinyurl.com/7fzewpy>

[3] Testimony on Hate Crimes and Police Response, Jason A. Terry, DC Trans Coalition, November 2, 2011, <http://tinyurl.com/cks2gu4>

[4] "D.C. Cracks Down On Prostitution," David Schultz, *WAMU*, January 13, 2012, <http://tinyurl.com/7arl63a>

[5] "Life after Prostitution-free Zones," David F. Ashton, *East Portland News*, 2007, <http://tinyurl.com/7wosphf>

[6] "Transgender Need Not Apply: A Report on Gender Identity Job Discrimination," Make the Road New York, March 2010, <http://tinyurl.com/7gvm74t>