Testimony by Bob Summersgill on the
"Human Rights Amendment Act of 2014," B20-803
before the Committee on the Judiciary and Public Safety, September 29, 2014

Chairman Wells:

Thank you for holding this hearing on the "Human Rights Amendment Act of 2014;" and thanks also for introducing it.

The deceptively simple Sec. 3(a) is very important step in making the Human Rights Act apply to everyone.

One of the most egregious violations of Home Rule was the Armstrong Amendment to single out sexual orientation for permissible discrimination by religiously affiliated schools. Congress directly enacted the changes to § 2-1402.41(3) of the District of Columbia Code in direct response to the successful lawsuit against Georgetown University in 1987. Every member of the D.C. Council supported the lawsuit to block the Armstrong Amendment from being imposed on the District, but ultimately lost. The Armstrong Amendment is named for former Senator Bill Armstrong (R-CO). Senator Mark Udall (D-CO) now holds his seat.

The change has remained in effect, although no religiously affiliated educational institution in the District has invoked the Human Rights Act exemption. GLAA has called for the D.C. Council to repeal these congressionally imposed provisions.

The following is from *Federal Intrusions and the Gay Community*, by Richard J. Rosendall, Guild Practitioner, October 1997, http://tinyurl.com/77vb6qo

During the 1980s, GLAA succeeded in persuading the D.C. Council to deny bond issues and street closings to Georgetown University, which was violating the D.C. Human Rights Law by denying equal treatment to gay student groups. After losing to the gay students in the D.C. Court of Appeals, the University settled with the students and began receiving its long-sought bond issues and street closings. Then Congress decided to step in. The following account is from the December 13, 1988 opinion by U.S. District Judge Royce C. Lamberth in *Clarke v. United States*:

> Congress enacted the Armstrong Amendment in response to the decision of the D.C. Court of Appeals in *Gay Rights Coalition v. Georgetown University*, 536 A.2d 1 (D.C. 1987) (en banc). In that case, a majority of the court construed the D.C. Human Rights Act to require that Georgetown University provide facilities and services to gay student groups equivalent to those provided to other student groups, although the court held that Georgetown need not officially recognize such groups. The court found that requiring such services did not violate the free exercise rights of Georgetown University, which is affiliated with the Roman Catholic religion. (*Clarke v. United States*, 705 F.Supp. 605 (D.D.C. 1988))

Plaintiffs in *Clarke v. United States* — that is, all thirteen members of the D.C. Council, led by then-Chairman David A. Clarke — challenged the constitutionality of the "Nation's Capital Religious Liberty and Academic Freedom Act," also known as the "Armstrong Amendment," which was enacted October 1, 1988 by Congress as part of the 1989 D.C. Appropriations Act. The Armstrong Amendment reads as follows:

> Sec. 145(a) This section may be cited as the 'Nation's Capital Religious Liberty and Academic Freedom Act.'
>
> (b) None of the funds appropriated by this Act shall be obligated or expended after December 31, 1988, if on that date the District of Columbia has not adopted subsection (c) of this section.
>
> (c) Section 1-2520 of the District of Columbia Code (1981 edition) is amended by adding after subsection (2) the following new subsection:
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> "(3) Notwithstanding any other provision of the laws of the District of Columbia, it shall not be an unlawful discriminatory practice in the District of Columbia for any educational institution that is affiliated with a religious organization or closely associated with the tenets of a religious organization to deny, restrict, abridge, or condition -
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> "(A) the use of any fund, service, facility, or benefit; or
>
> "(B) the granting of any endorsement, approval, or recognition,
>
> to any person or persons that are organized for, or engaged in, promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief." [Pub. L. No. 100-462 (Oct. 1, 1988); text printed at 134 Cong. Rec. S9108 (daily ed. July 8, 1988).]

In ruling for the plaintiffs, Judge Lamberth declared that Congress, while free to legislate directly for the District, may not compel the District's elected legislature to vote in a particular way.

> Congress may at any time exercise its authority as the legislature, but that exercise of authority must be constitutional.... Congress chose to create a legislative body, not an administrative one. Its expressed intent was to create "a system of municipal government similar to that provided in all other cities throughout the United States" and one "responsible and accountable to the voters" (H.R. Rep. No. 482, 93d Cong., 1st Sess. 2 (1973)) with powers to legislate in certain areas specified by Congress. Members of City Council, like any other legislators, have first amendment rights, and the fact that Congress retains the greater authority does not render the speech of Council members unprotected. Indeed, this greater authority merely renders Congress' interest in restricting the Council's speech all the less compelling. Accordingly, the court finds that the Armstrong Amendment places an unjustified burden on the first amendment rights of plaintiffs. The court therefore holds that the "Nation's Capital Religious Liberty and Academic Freedom Act" is unconstitutional. [(*Clarke v. United States*, 705 F.Supp. 605 (D.D.C. 1988)). This was affirmed by the U.S. Court of Appeals for the D.C. Circuit on Sept. 26, 1989 (886 F.2d 404 (D.C. Cir. 1989)). The court then re-heard the case en banc and vacated the prior opinion on procedural grounds on October 2, 1990, remanding it to Lamberth to be dismissed (915 F.2d 699 (D.C. Cir. 1990)). While Lamberth's argument quoted here is therefore not binding as precedent, the proposition involved — which was not specifically addressed by the Circuit Court — remains valid as a proposition.]

In the aftermath of this court ruling, Congress directly enacted the changes to Section 1-2520 of the District of Columbia Code that were specified by the Armstrong Amendment. Those changes remain in effect, although no religiously-affiliated educational institution in the District has invoked the Human Rights Law exemptions in question. GLAA has called for the D.C. Council to repeal these congressionally-imposed provisions.

The Armstrong Amendment is not a legitimate protection of religious practice. It was forced on the D.C. Council, and serves no purpose but to belittle gay and lesbian people.

I am pleased to see the repeal of the Armstrong Amendment in the bill.

Sec. 2 requires the Director of the Office of Human Rights to "have a demonstrated background in human rights law." Unlike other agencies where basic bureaucratic competence is enough, the Director of the Office of Human Rights must make legal determinations on the correctness of staff work and the confidence to stand up to other government officials. Recent Directors unfamiliar with the nuances of human rights law have made poor decisions. Future appointments should be based on qualifications and not political connections.

All of the members of the Committee on the Judiciary and Public Safety have responded positively in GLAA questionnaires in 2014. I hope that the committee members will all continue to maintain their positions on this issue.

7. Will you require that anyone you appoint as Director of the Office of Human Rights have professional training and experience in civil rights law enforcement?

Wells
Yes, I agree that the Director of the Office of Human Rights should be required to have professional training and experience in civil rights law enforcement.

Mayor Gray has nominated Monica Palacio to be the Director of the Office of Human Rights, The Committee on the Judiciary and Public Safety, which I chair, will hold a public hearing on PR20-567, the Office Of Human Rights Monica Palacio Confirmation Resolution of 2013. Ms. Palacio has a JD and has served as a commissioner on the Human Rights Commission. I will appreciate your testimony on her confirmation.

As Mayor, I will only appoint a Director of Human Rights with professional training and experience in civil rights law enforcement.

Bowser
Yes: I am proud that our Human Rights Act of 1977 (DCHRA) is one of the strongest human rights laws in the country. My administration will remain vigilant to ensure its enforcement.

I consider the appointment of a director for the Office of Human Rights one of the more important appointments I will make. I will be looking for someone with a professional background in human rights law to ensure he or she has the expertise to evaluate staff work and is able to provide guidance to the other officials in my administration.

Evans
Yes. In order to effectively lead such an important office, the Director should have a solid understanding of the practical and legal implications of the office's actions. A professional background in human rights law would be ideal. It is equally important to have an individual who adheres to procedures and falls in line with compliance. Requiring specific training and experience is a good idea to ensure this competence, so long as it does not prohibit a talented,

non-traditional candidate from holding the position. Conceivably a law professor or other such person who hasn't specifically been in an enforcement position could be a great Director as well.

8. Will you insist that anyone appointed as Director of the Office of Human Rights be required to have professional training and experience in civil rights law enforcement?

Bonds
Yes.

DC's strong human rights laws need a Director with a background of understanding, upholding, and enforcing the law's protections of our diverse populace. My expectations are the Director will work with the Mayor, the Office of LGBT Affairs, and the Director of Human Resources to ensure that all government agencies are compliant in awareness of the protected categories.

Additionally, all employees of and Human Rights Commission members should be required to have cultural and sensitivity training.

Further, the Department of Consumer and Regulatory Affairs should include a hand out of DCHRA laws and protections to all entities that register with the District.

Cheh
8. As I've stated in previous years, I agree that the Director should be required to have professional training and experience in civil rights law enforcement.

Please mark up the bill at the earliest possible date and move it through the Council.

Thank you.