

GLAA questionnaire for Council Ward 2 candidates

(April 2020)

Response written and submitted by **KATHERINE VENICE**

HEALTH

1. Will you support budgets that target funds to address LGBTQ health disparities, including in mental health and substance abuse treatment, and mandate data collection and timely reporting on these populations?

The federal government's Office of Disease Prevention and Health Promotion has highlighted ¹ that the LGBT community faces staggering disparities in health outcomes, "linked to societal stigma, discrimination, and denial of their civil and human rights".

As the Trans Needs Assessment Survey Washington, DC notes for example ², "transgender, transsexual, trans-spectrum .. and gender-non conforming residents continue to experience devastatingly high rates of poverty, under- and unemployment, employment discrimination, and health disparities."

The price of this systemic stigma, prejudice and discrimination falls hard upon the LBGTQ community, who consequently experience significantly higher levels of poor mental health, suicide, substance abuse and violence. The ODPHP has therefore emphasized the importance of greater data collection and research, in order to better "understand and address the environmental factors that contribute to these health disparities. As part of this work, we need to increase the number of nationally-representative health-related surveys that collect information on sexual orientation and gender identity."

For example, according to the American Journal for Public Health ³, LGBTQ persons are up to 4 times more likely to experience PTSD. The risk of suicide is greatly increased for LGTBQ persons: for example, 40% of transgender people have attempted suicide ⁴ and LGBT youth are up to 3 times more likely to attempt suicide, according to the ODPHP ⁵. Depression and anxiety are also far more prevalent ⁶, while tobacco, alcohol and drug use is far higher ⁷.

Columbia School's Mailman School of Public Health found that LGBTQ prejudice and discrimination reduce life expectancy of LGBTQ persons by 12 years ⁸. A quarter of premature LGBTQ deaths were cardiovascular disease, with the researchers emphasizing that "Psychosocial stressors are strongly linked to cardiovascular risk. .. Discrimination, prejudice, and social marginalization create several unique demands on stigmatized individuals that are stress-inducing."

¹ <https://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health>¹

² <https://dctranscoalition.files.wordpress.com/2015/11/dctc-access-denied-final.pdf>

³ <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2011.300530?prevSearch=%5Bauthor%3A+Austin%2C+S.+Bryn%5D&searchHistoryKey=&>

⁴ <https://www.washingtonblade.com/2018/10/26/opinion-lgbtq-health-data-collection/>

⁵ <https://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health>

⁶ <https://www.advocate.com/health/2016/3/18/how-our-intolerant-society-contributes-lgbt-mental-disorders>

⁷ As per 4.

⁸ https://www.eurekalert.org/pub_releases/2014-02/cums-lil021414.php

Bisexual persons, who represent approximately half of the LGB population, experience the highest levels of health disparities⁹. People of color and transgender people represent a high proportion of the bisexual community, exposing them to even greater levels of stigma, prejudice and discrimination (bi-phobia, trans-phobia and racism).

Bisexual persons experience poorer outcomes in terms of cancer, obesity, high cholesterol, asthma, HPV, HIV, and mental ill health, including isolation, depression, eating disorders, self-harming, suicide, alcohol and drug use.

Compounding this health burden on the LGBTQ community of societal prejudice and discrimination, is the lack of access to healthcare, further worsening health outcomes and disparities.

The federal government's Institute of Medicine, the Agency for Healthcare Research and Quality, and the ODPHP have highlighted that the LGBTQ community experience substandard care and outright denial of care. The Kaiser Family Foundation¹⁰ explains that barriers for the LGBTQ community also include "gaps in coverage, cost-related issues, stigma including poor treatment from healthcare providers". Pew Research shows that LGBTQ people experience higher levels of poverty. Transgender persons have lower rates of health cover: in one study, "nearly half (48%) of respondents postponed or went without care when they were sick because they could not afford it". Most medical schools do not include LGBTQ-related issues in their syllabi or training. Unsurprisingly therefore, nearly 40% of transgender people "have faced some type of harassment or discrimination when seeking routine health care".

Whitman-Walker Health noted¹¹ that "research evidence is clear that many LGBTQ people routinely encounter misunderstanding, unwelcoming attitudes, or outright hostility from healthcare providers and staff. .. This is particularly true for many trans and nonbinary people. Out of a fear of this, many LGBTQ people are reluctant to seek medical attention unless they are in crisis."

Covid-19 is particularly concerning for the LGBT community, with several elevated risk factors, as the National LGBT Cancer Network¹² explains in an open letter, signed by over 100 organizations¹³:

"LGBTQ+ communities are among those who are particularly vulnerable to the negative health effects of this virus. Our increased vulnerability is a direct result of three factors:

1. The LGBTQ+ population uses tobacco at rates that are 50% higher than the general population. COVID-19 is a respiratory illness that has proven particularly harmful to smokers.
2. The LGBTQ+ population has higher rates of HIV and cancer, which means a greater number of us may have compromised immune systems, leaving us more vulnerable to COVID-19 infections.
3. LGBTQ+ people continue to experience discrimination, unwelcoming attitudes and lack of understanding from providers and staff in many health care settings, and as a result, many are reluctant to seek medical care except in situations that feel urgent – and perhaps not even then.

"In addition, there are more than 3 million LGBTQ+ older people living in the United States. LGBTQ+ elders are already less likely than their heterosexual and cisgender peers to reach out to health and aging providers, like senior centers, meal programs, and other programs designed to ensure their health and wellness, because they fear discrimination and harassment. The devastating impact of COVID-19 on older people – the current mortality rate is at 15% for this population – makes this a huge issue for the LGBTQ+ communities as well."

⁹ https://assets2.hrc.org/files/assets/resources/HRC-BiHealthBrief.pdf?_ga=2.126335117.1092226015.1520473616-942808400.1519853919

¹⁰ <https://www.kff.org/report-section/health-and-access-to-care-and-coverage-lgbt-individuals-in-the-us-health-challenges/>

¹¹ <https://www.metroweekly.com/2020/03/lgbtq-advocates-respond-to-washington-examiner-columnists-claims-on-covid-19/>

¹² <https://cancer-network.org/wp-content/uploads/2020/04/Press-Release-Open-Letter-LGBTQ-Covid19-17.pdf>

¹³ <https://cancer-network.org/coronavirus-2019-lgbtq-info/>

(I support Whitman-Walker Health's rebuttal of columnist Brad Polumbo's willful ignorance in response to their open letter.)

So in light of the above, I very strongly support targeting funding towards remedying these health disparities. As well as the extraordinary personal impact upon individuals, higher morbidity and mortality rates also negatively impact the District's economic growth and productivity. Furthermore, addressing these health disparities is critical from a fiscally prudent perspective, as preventative healthcare is always far more cost effective, thereby alleviating pressure on DC's healthcare budget.

That starts with strengthening the DC DoH's LGBTQ data collection and monitoring the implementation of the LGBTQ Health Data Collection Amendment Act of 2018, which became effective in April 2019 ¹⁴.

I also support monitoring the effective implementation of the LGBTQ Cultural Competency Continuing Education Amendment Act of 2016 ¹⁵, which took effect on February 2016 ¹⁶, including (as GLAA proposes) monitoring the effectiveness of such trainings.

Also absolutely critical is a far better focus on mental health support, starting with suicide prevention. If elected Ward 2's next Councilmember, I will spearhead a Suicide Prevention bill focusing on the LGBTQ community, especially LGBTQ youth. In its report for the US Department of Health and Human Services, the Suicide Prevention Resource Center wrote ¹⁷:

“It would be difficult to overstate the impact of stigma and discrimination against LGBT individuals in the United States. Stigma and discrimination are directly tied to risk factors for suicide. For example, discrimination has a strong association with mental illness, and heterosexism may lead to isolation, family rejection, and lack of access to culturally competent care.

“Suicide prevention programs can be effective in diminishing risk factors and especially in building protective factors, yet few target risk and protective factors relevant to LGBT youth.”

Social isolation, especially for LGBTQ youth and seniors, as well as substance abuse, need to be addressed.

PTSD is in general a hidden public health issue here in DC, with almost half of all children in the District manifesting symptoms of trauma. The far higher rates of PTSD and CPTSD experienced by the LGBTQ community, and especially bisexual persons of color, urgently require action. Currently, mental healthcare is inaccessible due to cost to far too many in the District, but especially those in most need of it – LGBTQ youth.

GLAA is right to support DCPS Health Standards that include sexual orientation and gender identity, and right to note that compliance with this needs to be consistently and carefully monitored and enforced.

Stigma and prejudice around mental ill health also needs to be addressed and remedied. An abundance of research shows that for persons with mental ill health and disability, the stigma, prejudice and discrimination experienced can sometimes be worse than the mental ill health or disability itself.

Ironically, some of the worst of this stigma, prejudice and discrimination comes from healthcare providers themselves. The commentary below is particularly relevant for those who have experienced LGBTQ stigma, prejudice, discrimination and abuse, and needs to be considered in terms of appropriate mental health services for this community.

¹⁴ <http://ims.dccouncil.us/Legislation/B22-0840?fbclid=IwAR0tNOs8oH-pm3pnrSNNmtiLqSQGmgjYPgcRQ6jQqEyVxuk5X7bYWeyzp4>

¹⁵ <https://code.dccouncil.us/dc/council/laws/21-95.html>

¹⁶ <https://trackbill.com/bill/district-of-columbia-bill-168-lgbtq-cultural-competency-continuing-education-amendment-act-of-2015/1175126/>

¹⁷ http://www.sprc.org/sites/default/files/migrate/library/SPRC_LGBT_Youth.pdf

For example, work by Professor Otto Wahl (*Telling Is Risky Business*), David Rosenhan (*On Being Sane In Insane Places*¹⁸, and part 1 of his *Thud Experiment*^{19 20}), and the National Alliance for the Mentally Ill (*Mental Health Recovery: What Helps and What Hinders?*²¹) shows that the psychiatric profession is still far too reliant on a Victorian model of controlling, punishing, coercing, abusing, devaluing and de-personalizing patients, rather than focusing on enabling recovery. These authors further highlight:

“[This] reflects a common experience for mental health consumers: their overall competence is doubted, as if all skills, knowledge and sensibilities are removed by mental illness.”

“To anticipate a high level of inability primarily on the basis of a psychiatric label or based solely on the knowledge that the person has had psychiatric treatment, however, is inappropriate. Many consumers, even with severe mental illness, are extraordinarily competent and accomplished.”

“What consumers were most concerned about, then, was the almost automatic, stereotypical assumption of lacking competence. They were distressed that others seemed simply to assume, because of the consumer’s label or treatment history, that he or she was fragile and incapable.”

“One common complaint, for example, was that people behaved as if mental illness were the same as mental retardation.”

“Psychiatric services can be experienced as a means of social control, countering individual efforts of recovery.”

A report²² by the National Association of State Mental Health Program Directors studying the prevalence of abuse histories within a clinical setting, highlighted these concerns:

“Given the history of silence among most mental health professionals about abusive treatment that is often routine in mental health settings.”

“.. a system so entrenched in punitive ways will not be able to incorporate the kind of work necessary to heal from trauma (Kalinowski & Penney, 1998) ”

“Some [patients] have learned that the abuse in their histories has been the primary formative factor in what was called their ‘mental illness’ ”

“Many people have spent years in the system without being asked about their trauma history or other aspects of their personal stories; their behavior, rather than their experience, has been the focus of treatment. Many have also felt constantly threatened with the loss of autonomy and civil rights (Blanch & Parrish, 1993).

“Mental health professionals would do well to consider how survivors have managed all the years their abuse histories remained hidden.”

“..the long-overdue recognition of trauma and abuse as primary factors in the development of symptoms that were once adaptive coping strategies.”

¹⁸ <http://psychrights.org/articles/rosenham.htm>

¹⁹ https://en.wikipedia.org/wiki/Rosenhan_experiment

²⁰ <https://bigthink.com/rosenhan-experiment-mental-institution>

²¹ <https://www.nasmhpd.org/content/mental-health-recovery-what-helps-and-what-hinders-national-research-project-development>

²² <https://www.nasmhpd.org/content/prevalence-abuse-histories-mental-health-system>

“..Given the documentation that the majority of people with psychiatric diagnoses are abuse survivors, many [patients] think the most effective way to address trauma and abuse histories is to assume that all [patients] are potentially abuse survivors.”

“.. Thus, [patients] who advocate against forced and punitive treatment as traumatizing violations of their humanity, now point out that the majority of diagnosed individuals are actually being re-traumatized in psychiatric settings (New York State Office of Mental Health, 1993). In the words of one [patient], if one was not a trauma survivor before entering the mental health system, one is sure to become one once labelled and locked up. In other words, no matter what theory an intervention is based on, unless the coercive culture of psychiatry is radically altered, many persons will continue to be traumatized.”

JUDICIARY AND PUBLIC SAFETY

2. Will you support Bill 23-435, the Tony Hunter and Bella Evangelista Panic Defense Prohibition Act of 2019?

Anyone who believes in the core Republican value of individual liberty, vociferously and unequivocally supports and promotes LGBTQ+ rights. I do.

Indeed, at the LCCA/DCCA forum on March 5 (my first public forum), I raised the issue of transgender abuse and LGBTQ hate crime repeatedly. In my introduction at that forum, I introduced my policy platform, the third point of which is better support for our LGBTQ+ community, and addressing hate crime and transgender abuse. I was the only candidate to do so.

I want to make the message emphatically clear that DC should be no place for hate crime.

Bella Evangelista, Tony Hunter, and all other LGBTQ people who have similarly lost their lives due to LGBTQ hate, phobia and prejudice, should still be with us today.

I am extremely concerned about the rise in hate crime across the country and in our city, especially since 2016. Here in DC, about half of all hate crime is related to LGBTQ-phobia. According to the LGBTQ Bar ²³, 20% of LGB people and 25% of transgender people will experience hate crime.

The lack of prosecution by the US Attorney’s Office has signaled its acceptance of such hate crime, thereby actively encouraging it. That the DC Attorney General has now taken over prosecutorial rights for hate crime is a crucial step forward.

However, as Professor W. Carsten Andresen (an expert on LGBTQ panic defense cases) points out ²⁴, LGBTQ panic defenses have been used successfully in 32% of murder trials, “even though the majority of these homicides involve incredible violence .. The offenders in these cases killed the victims in particularly violent ways, a level of violence that distinguishes them from the majority of homicides. .. In the murders, the offenders used firearms only about 26% of the time. In the majority of homicides, firearms are used 46% of the time. This is consistent with a 2012 study that examined 120 anti-LGBTQ+ murders, finding that many offenders used a knife or their hands to kill, instead of a gun.” Furthermore, “In 54% of cases, after the murder, the offender purposefully stole cash, credit cards, jewelry, computers, stereo equipment or automobiles.”

²³ <https://lgbtbar.org/programs/advocacy/gay-trans-panic-defense/>

²⁴ <https://theconversation.com/i-track-murder-cases-that-use-the-gay-panic-defense-a-controversial-practice-banned-in-9-states-129973>

The background of this ‘defense’ is insightful: the American Bar Association’s 2013 Resolution notes that ²⁵, “Homosexual panic disorder was briefly recognized in the American Psychiatric Association (“APA”) Diagnostic and Statistical Manual of Mental Disorders (“DSM”), appearing in the 1952 edition.” However, as the ABA later notes, “Despite debunking ‘gay panic disorder’ and its removal from the DSM by the American [Psychiatric] Association in 1973, legal defense teams continue to use it.” ²⁶

So yes, of course, I do indeed very strongly support both this David Grosso version of the LGBTQ panic defense prohibition bill ²⁷, and the Mendelson version too. This ‘defense’ is victim-blaming at its most grotesque and depraved: blaming a victim for their own murder, for the victim’s perceived ‘sin’ of just existing.

However, I have a concern about this bill - I am concerned that it may not be strong enough.

As I track through the various discussions, commentaries, etc, of both bills, I can see no focus on how to address and remedy the potential weaknesses of LGTBQ panic defense prohibition legislation, exposing future verdicts to potential challenge.

This concerns me greatly.

Here are some of the areas of weakness that may need to be better addressed and thus enable the proposed legislation to be strengthened.

Firstly is the issue of potential challenges based on an argument of violation of due process ²⁸, raised by former NYC Criminal Court Judge and professor at Fordham Law, Barry Kamins, as well as a number of defense attorneys.

New York criminal defense attorney Phillip Murphy explains ²⁹:

“some criminal defense advocates and attorneys issued statements indicating that any state legislatures barring any affirmative defenses is concerning because it violates all criminal defendants’ right to due process by preventing them from raising particular defenses. .. Any legislative prohibition that limits the ability for a defendant to mitigate or justify their conduct .. violates the due process clause of the US Constitution.”

Murphy notes however that this constitutional right:

“is not absolute and legislatures can qualify defenses. .. [For example] claiming ignorance is not a permissible defense to committing a crime, in general.”

“Historically, the Supreme Court has looked at whether the law offends some principle of justice rooted in the traditions is to be ranked as fundamental in deciding whether the state can limit a defense that is challenged under the due process clause. The court also seeks to balance society’s interest against the right of the accused; for example, courts have limited a defendant’s right to present a particular defense in the interest of providing increased protection to victims.”

As I noted above, the LGBTQ panic defense is a relatively recent one and is thus not a “principle of justice rooted in the traditions”.

However, with regard to the Supreme Court “also seek[ing] to balance society’s interest against the right of the accused”, I highlight today’s Supreme Court composition and the fact that the ABA model legislation was drafted

²⁵ <https://lgbtbar.org/wp-content/uploads/sites/6/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>

²⁶ <https://www.americanbar.org/groups/crsj/publications/member-features/gay-trans-panic-defense/>

²⁷ https://legiscan.com/DC/text/B23-0435/id/2053994/Washington_D_C_-2019-B23-0435-Introduced.pdf

²⁸ <https://www.law.com/newyorklawjournal/2019/08/02/new-york-eliminates-a-criminal-defense-a-due-process-violation/>

²⁹ <https://www.phillipmurphylawyer.com/will-new-yorks-elimination-of-the-gay-trans-panic-defense-be-challenged-in-court-as-violating-due-process-rights/>

in a very different political era – 2013. GLAA’s commentary regarding William Barr is very relevant here. Has the ABA considered strengthening its model legislation accordingly, to pre-empt such shocking politicization of our core legal institutions?

Another important factor to consider in terms of possibly strengthening the bill is one made by Professor Andresen: “this legislation also does not ban murderers from arguing that they killed in self-defense in response to an attempted sexual assault.”

For example, even though California banned the panic defense in 2014, Gage McCartney was successfully able just last year to allege that his colleague had made “sexual advances” and accordingly got a lenient plea deal of manslaughter and a 12 year prison sentence.

This brings us to another important point:

GW Law Professor Cynthia Lee wrote in a 2008 paper ³⁰:

“Lessons from the Matthew Shepard trial: Formally barring gay panic provocation arguments from the criminal courtroom is not a good idea because it will not keep the jury from considering gay panic arguments. ..

“Defense attorneys will find more subtle ways to get the same idea across to the jury. When a message that relies on negative stereotypes is conveyed covertly, it will often have a more powerful impact than if the message had been aired overtly. This is because an explicit argument allows individuals to consciously correct or counter otherwise automatic stereotype-congruent responses, while more subtle insertions of bias are harder to defend against.”

Lee explores in considerable detail the body of research on implicit bias, noting “The existing research on stereotypes and prejudice suggests that stereotypes, which are deeply entrenched in the subconscious, are triggered more readily when not made salient.” I would point out that since her 2008 paper, this body of research has been greatly extended, to include ways to mitigate such bias.

Lee notes that even though the judge in the Matthew Shepard trial ruled that the defense attorneys could not use the provocation panic defense:

“McKinney’s defense attorneys called two witnesses and used their testimony to convey the idea that Matthew Shepard was sexually aggressive and deserved the beating he got, playing on stereotypical images of gay men.”

Additionally, Lee notes:

“Recent behavioral research on juries suggests that attempts to control the matters that a jury considers by prohibiting the introduction of specific topics at trial simply do not work.

“In one of the only studies to date based on actual jury deliberations, Shari Diamond and Neil Vidmar reviewed videotaped jury deliberations in forty civil cases, in an attempt to examine the effectiveness of ‘blindfolding’ - the commonly employed technique of withholding certain information from the jury.

“Despite evidentiary rules prohibiting the admission of certain types of evidence, Diamond and Vidmar found that prohibited evidence often finds its way into the deliberation room.

“Diamond and Vidmar’s research suggests that attempts to ban gay panic arguments from the criminal courtroom will not keep jurors from considering gay panic as a reason for the killing. Either the subject will come up inadvertently or purposefully during trial, or the jurors may think of the argument on their own.”

³⁰ https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1796&context=faculty_publications

I would be interested to know how case law since 2008 might have impacted upon Professor Lee's views.

But it is essential to use her critique to strengthen the proposed legislation, so that it can pre-empt and withstand the above risks.

Please note with regard to my comments above: I am not an attorney, nor have I any legal education or training, nor have I been able to talk to anyone about this issue who does or is. My comments are merely that of a (hopefully) reasonably well-informed lay-person, with sound research and analytical skills, who is deeply concerned about LGBTQ rights and hate crime.

As a last point on this question, I fully support GLAA's comments regarding the US AG. I also support the NYC Bar Association's letter of January this year³¹, which is "the first time a bar association from New York City or any comparable group has asked Congress to investigate a sitting attorney general. Last year, 450 former federal prosecutors from Republican and Democratic administrations signed a statement chastising Barr for his handling of the Mueller report on Russian election interference."³²

Barr's utter disregard and clear contempt for the Constitution, for the core tenets of democracy, for American values, for core Republican values, for the most basic standards of morality and decency, even for core Christian values (to focus on judging oneself, not others; to love all members of our human family; to reach out to and humbly serve those who are marginalized and left behind; etc) are obscene and utterly morally bankrupt.

His views also do not represent the vast majority of Catholics or mainstream Christians, 70% of whom fully support legislation protecting the LGBTQ community from discrimination, for example, as I note in my answers to questions further down.

If I am elected Ward 2's next Councilmember, I will not lose an opportunity to be exceedingly, relentlessly vocal about supporting our LGBTQ community. The LGBTQ community must have vociferous supporters on both sides of the party line. I commit to being that.

3. Will you support revision of the DC Riot Statute, Section 22-1322 of the District's penal code, to correct its overly broad language that allows abuse of prosecutorial discretion against individuals who exercise their First Amendment rights?

I agree with Peter Newsham – and with GLAA - that this statute needs to be changed.

Indeed, my Republican values dictate that this statute should be amended because in its current state, it clearly undermines basic constitutionally protected freedoms.

First, I am going to draw out some of the comments of the dissenting judge in the 1969 *Matthews* case.

Second, I will comment on the contents of the 2013 research paper by (then) Yale Law professor Margot Kaminski.

Lastly, I will comment on the material provided by GLAA.

³¹ http://documents.nycbar.org/files/Exercising_Congressional_Oversight_AG_Barr_01082020.pdf

³² <https://www.bloomberg.com/news/articles/2020-01-09/investigate-barr-for-bias-n-y-bar-association-tells-congress>

Turning first to the *Matthews* case³³:

GLAA points to this case in passing, conceding that the majority opinion in that appeals case came down in favor of the riot statute and rejected the appellant's argument around its vagueness (the argument used today by GLAA).

However, I think that this misses key insights, by way of the dissenting judge's commentary.

It is important to understand the background of this particular statute, since legislative intent can be insightful to any statute that contains dimensions of vagueness – as even a basic reading of this statute so clearly does.

As dissenting Justice J. Skelly Wright pointed out, "Congress enacted the D. C. riot statute as part of the District of Columbia Crime Act in December 1967", in the aftermath of the historic July 1967 race riots in Newark (protesting police brutality against an African American man) and a few weeks later in Detroit. Four months after this act was passed in DC, Dr Martin Luther King was tragically assassinated.

According to the majority opinion:

"The legislative history of this provision expresses clearly the Congressional purpose which underlay it, namely, that a statute be passed to enable the law enforcement authorities to handle future riotous situations in the District of Columbia similar to those which had afflicted cities such as Newark and Detroit the summer before. There is scant room, therefore, for mistaking the conduct contemplated by the statute when the words in question are read in that context. .. There are few citizens indeed who do not know a public riot when they see one. .. The Congressional focus was, it is clear from the legislative history, upon mindless, insensate violence and destruction unredeemed by any social value and serving no legitimate need for political expression."

Notice that last phrase: "Serving no legitimate need for political expression".

Dissenting Justice Wright opines that "one need only examine the great weight of the testimony before the Congress to see that the statute was conceived of as directed to disorders unrelated to political demonstrations."

And therein lies the core problem.

Justice Wright continues:

"It would blink reality not to realize that what begins as a political or social demonstration may end violently, and the violence may come from some of the demonstrators, from counter demonstrators, or from officials. Indeed, the demonstrations which followed the death of Dr. King began peacefully. On hearing of his assassination, people simply came out into the streets to grieve together in public, to mourn the loss of their religious, political and social leader, and to condemn his murder. The violence which followed was the work of relatively few of the demonstrators. Yet an expansive reading of the riot statute here would place in jeopardy the liberty of any demonstrator on the street who happened to witness the violence. The chill which such jeopardy would place on the exercise of First Amendment rights is just as obvious as the unconstitutionality of any statute which provides such a deterrent. ..

"In fact, the existence of great discretion in the hands of executive officials in areas affecting First Amendment freedoms has often been condemned by the Supreme Court. ..

"The Supreme Court's concern with the chilling effect of vague statutes has focused on First Amendment freedoms. Unaided by a narrowing interpretation, or by any of the limiting safeguards discussed in Part II-A above, the D. C. riot statute clearly seems capable of deterring the basic right of freedom of assembly. ..

³³ <https://law.justia.com/cases/federal/appellate-courts/F2/419/1177/33367/>

“The evolution of the constitutional doctrines of vagueness and overbreadth reflects a number of distinct concerns. Foremost among these, as the Supreme Court has repeatedly emphasized, is the danger which vague statutes pose in their potential for deterring the exercise of constitutional rights. Even if the statute does not explicitly proscribe constitutionally protected conduct, the uncertainty of the line it draws may deter men from exercising their rights. ..

“The only explicit requirement imposed by the D. C. statute is that there be serious violence or the threat of it somewhere in the assemblage. By not explicitly limiting its sanction to those directly engaged in violence or intentionally encouraging it, the statute may easily deter people from attending an assemblage at which violence *might* occur. People would reasonably fear being swept up and arrested indiscriminately even if violence was perpetrated by outsiders or by other members of the assembly.”

Additionally, Justice Wright noted other key problems:

“In addition to chilling the exercise of such First Amendment rights, the vagueness of the D. C. riot statute as interpreted seems likely to deter the exercise of other constitutional rights, such as freedom of movement, sometimes called the right to travel, even in one's own neighborhood. ..

“The vagueness of the D. C. statute also produces other evils. It virtually eliminates the possibility of review of the actions of judges and juries. The vague standard of guilt articulated by the statute, and by the majority opinion in this case, licenses the jury to create its own standard in each case. This problem derives essentially from the failure to spell out the necessary connection between the individual's actions and the assemblage's violence. .. The jury seems to be turned loose to speculate on the connection between the defendant's conduct and the violence admittedly wreaked by others in the assemblage.”

Justice Wright concludes:

“In my view, the constitutionality of the majority's interpretation is open to serious doubt on this count alone.”

“The fact that no other court has upheld so broad a statute raises serious doubts about the constitutionality of the majority's expansive interpretation.”

Turning next to the 2013 research paper by professor Margot Kaminski, then at Yale Law ³⁴:

In this paper, Professor Kaminski performs what appears to be the first ever (at least as of 2013) comprehensive review of all anti-riot common law, state and federal statutes, analyzed with regard to the First Amendment.

She concluded that not only do crowds behave very differently now in the age of social media (the main medium by which protests are organized), but also that more advanced tools now exist that allow a far better understanding of crowd behavior. As a result, it is clear that existing legislation is no longer fit for purpose.

She also concluded that such statutes are unconstitutional.

In light of this, her paper “aims to alert courts to the problems inherent in existing state and federal statutes, and to encourage states to avoid using these statutes”.

Here are some more of Professor Kaminski's key insights:

³⁴ <https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1103&context=uclr>

“First Amendment jurisprudence has a particularly tortuous relationship with regulating speech directed to crowds. [Her review] concludes that many existing incitement-to-riot statutes are both bad policy and unconstitutional under *Brandenburg v. Ohio*. [Her review] consequently suggests that courts should be careful in the application of these statutes, and states should be hesitant to build upon existing incitement-to-riot statutes to regulate new media.”

“Incitement-to-riot statutes present a fascinating First Amendment problem because they implicate not one, but two protected freedoms: freedom of speech and freedom of assembly. Banning incitement to riot is dangerous because if the ban is overbroad, it can restrict not just speech, but the means by which people assemble. ... Incitement to riot thus provides an opportunity for a new discussion of what peaceable freedom of assembly means.”

Her review continues with:

“a discussion of crowd behavior and the justifications used for regulating crowds. Government regulation of crowds stems from fundamental understandings—and misunderstandings—of the nature of crowd activity. Regulation reveals a tension between conflicting understandings of the nature of crowds. ...

“[She] examines both how legislators and courts understood crowds in the past and how we understand them now. ... We need to reevaluate how crowds are regulated. ...

“Now is a particularly opportune time to rethink existing statutes on incitement to riot and the underlying offense of riot. Many existing statutes are overbroad and sweep in innocuous activity. One does not have to look at their application to social media to see that these statutes are overbroad; however, the use of social media for both democratic organization and destructive purposes makes the scope of these statutes a more pertinent and pressing issue.”

She goes on to submit a model law “backed by a more current understanding of crowd behavior” that is more proportionate and remedies the unconstitutionality. She draws from the landmark Supreme Court case *Brandenburg vs Ohio*, which established the ‘Imminent Lawless Action’ test regarding freedom of speech.

Her key recommendations are that:

“The incitement portion of the statute must contain intent, imminence, likelihood, and an audience likely to understand the command. ...

“A more reasonable base number might be fifteen. ...

“Alternatively, one could set up a statutory regime that redefines the underlying crime of riot. Riot could be defined as a gathering of a certain number of people that, as common law required, involves the use of force or violence—not the mere threat or risk of force or violence. This underlying definition could require actual damage.”

As it currently stands, DC Riot Statute, Section 22-1322 contains none of these recommended provisions.

As a hypothetical example, by my extremely limited, non-legal professional analysis, it is not clear to me that the following absurd scenario is not actually excluded from this statute:

Let’s say that 5 million Americans sign up today to attend a climate protest on the Mall scheduled for January 1st in 5 years time. Any such event (no matter how peaceful and impeccably behaved the protesters) implicitly carries the potential threat of tumultuous and violent conduct that could create damage to property (the lawn would not survive such an event intact, no doubt). Under the existing statute, this would expose all those who signed up for this protest to prosecution (with a possible jail sentence of 6 months), even if an individual did not actually attend the

protest in the end, but did encourage their mother to go, and even if no actual damage to property occurs at the protest. The threat of, and danger of, are alone sufficient to define a riot. I do not know how “violent conduct” is defined under DC Code, and whether stomping one’s foot on the ground, for example, would fall under such a definition.

Lastly, let’s turn to the material in GLAA’s policy paper:

A review of both the GLAA material, and of the events at and subsequent to the inauguration, illustrates that this statute is dysfunctional.

It enabled significant police misbehavior, as detailed in a report by the Police Complaints Board (one of whom is the President of GLAA) in February 2017.

This report noted that: “some arrests may not have been carried out according to the Standard Operating Procedures”; “weapons were used indiscriminately and without adequate warnings”; there was “widespread use of the weapons .. and they appeared to be deployed as a means of crowd control, and not necessarily in response to an unlawful action”; that verbal commands to step back were not given; that protesters should have been given the time and opportunity to disperse, but instead were “cordoned off” and “were not allowed to leave”; “OC spray was deployed to move the crowd, without warnings, and in many instances it was used on people who were simply standing in the wrong place”; and “many of those held and arrested, were visibly wearing items that identified them as not being associated with these protesters” (including media, as well as lawyers and law students identified as observers).

It also enabled the considerable emotional duress and immense financial consequences for the 192 innocent individuals (and their families) whom the US Attorney’s Office attempted to prosecute (failing in every single case).

It also failed to protect the city from the vandalism damage that occurred, and failed to prosecute the handful of protesters who were acting unlawfully and caused the considerable damage.

Furthermore, this also begs the question: why did the US Attorney’s Office not do the basic research that a mere layperson like myself was able to do (as above), and thus instead chose to waste so much taxpayers’ money pursuing a legal route that was so obviously pointless?

That said, I must end with this caveat: please note that I am not a legal professional, nor have I had the opportunity to consult with any legal professional or academic. The above opinion is based solely on my own initial research and analysis, and is not exhaustive. I have not been able to find any further academic papers on this subject since 2013 that carry weight or pertinence, nor any opinion refuting Professor Kaminski’s paper. Nor have I been able to access any relevant case law since *Matthews*, or review thereof.

HUMAN RIGHTS

4. Will you support a Gender Equity and Neutrality in the Official Code Amendment Act to update the D.C. Official Code as necessary to ensure that outdated terms are removed or replaced, as well as to utilize language inclusive of the gender diversity of our population?

Yes. A belief in maximizing personal freedom and opportunity for all makes this step absolutely necessary.

Language is far from trivial: it is immensely powerful, especially when used automatically, as it reflects back and reinforces societal values and prejudices.

Societal prejudices, unconscious false assumptions and unintentional stereotyping limit access to opportunities, and thus restrict an individual's ability to maximize their participation in economic and civic life.

Indeed, the business world has already started to move heavily towards embracing language that is inclusive of gender diversity, recognizing that using such language matters because it enables gender-diverse employees to be more engaged and feel valued, and thus organizational productivity is boosted. It is also essential because this helps a business reach out to wider talent pools.

From a personal liberty perspective, societal prejudice and unconscious bias present a considerable barrier to the individual liberty of those from the many different categories of diversity. We all carry unconscious bias (try the Harvard Banaji test or the Brian Nosek version, for example) and language is a key tool to either help us unlock and mitigate that bias, or reinforce it. Indeed, the use of language to change behavior has been long-established in certain areas of psychology.

Finally, as Joey DiGuglielmo, writing in the Washington Blade ³⁵, reminded us: "Language evolves. It always has. When you, Peggy Noonan, have been murdered or barred from gainful employment for daring to express your gender identity or having a sex life, then you get to have an opinion on this."

5. Will you support Bill 23-0318, Community Safety and Health Amendment Act of 2019, to decriminalize consensual sex work for people 18 or older and create a task force to monitor the implementation and effects of the act?

As someone who has previously been very involved in advocacy for gender-based violence prevention (on a voluntary basis), I strongly support any initiative that protects persons from and reduces the risk of gender-based violence, including sex workers. I also support any initiative that reduces the marginalization of, stigma, prejudice and discrimination against sex workers, which exacts an immeasurable cost from them.

It is very clear that DC Council and Government do not take gender-based violence seriously at all, with scant service provision for victims and survivors, who have to instead rely upon a handful of extremely resource-constrained local NGOs (who are doing phenomenal work in spite of their limited resources). Furthermore, the taboo and stigma around this issue are intense and pervasive, in spite of harming so many.

While I support the full de-criminalization of sex workers, it is not clear to me that this bill in its current form adequately protects our most vulnerable residents (including children, LGBTQ youths, foster youths, and persons of color) from an increased risk of trafficking and exploitation.

I therefore favor the partial-decriminalization 'Equality Model'.

I remain open to learning and understanding more on this issue.

It is also critical to radically bolster alternative economic options and pathways out of the trade, including job and sponsorship programs.

³⁵ <https://www.washingtonblade.com/2019/08/02/wsj-op-ed-on-gender-inclusive-language-insensitive-out-of-touch/>

6. Will you support increased funding for LGBTQ budget priorities, including fully funding the Office of Human Rights and establishing a new competitive community development grant program in the Office of LGBTQ Affairs?

The true measure of intent is not words, but actions. In the case of the city, it has focused on the former, and not the latter. As GLAA's policy commentary notes, the failure to allocate meaningful resources to substantiate claims of support for our LGBTQ community, simply lays bare the emptiness of such claims.

Let's change that.

Here is some context: LGBTQ organizations have requested an additional \$22.4 million³⁶ for 2021. The LGBTQ community represents 9% of the DC population.

In the last 3 years alone, DC's budget has risen by 27%, from \$8.1 billion to \$9.8 billion³⁷. A 9% slice of that increase of \$1.7 billion is \$153 million. So the \$22.4 million increase requested by LGBTQ organizations is – proportionate to the size of the LGBTQ population in DC – an exceedingly modest amount.

Looked at another way, this \$22.4m increase requested is just 1.3% of the total increase in DC's budget – and just 0.25% of the total budget itself.

And looked at yet another way, this \$22.4 million compares to a total debt expense paid by DC of a gigantic \$800 million each year.

Remember too that, as the DC Auditor has pointed out, DC – staggeringly - exercises very little control over how it spends taxpayers dollars. The scale therefore of this fiscal recklessness is frankly mind-bogglingly.³⁸

This lack of basic internal controls meant that last year alone, DC Public Schools managed to – illegally - overspend by \$23 million.^{39 40}

So yes, while we will inevitably have to cut DC's budget back considerably in the next couple of years (due to the pandemic) closer to 2017 levels, the one area of spending that I believed strongly needs to be increased is here, to better meet the needs of our LGBTQ community.

Yes, I do support each of the requests in the letter to the Mayor of January 30 2020 (including those in the question above), with just one exception: the request for funds to purchase property (on page 11). DC is at the top of a very significant commercial property bubble: I expect that commercial property values will decline enormously (at least 30%) over the next 3 to 5 years. Such purchases should be deferred for now.

³⁶ https://smyal.org/wp-content/uploads/2020/02/Transmittal-Letter-LGBTQ-FY-2021-Budget-Request-2_13_20-Update.pdf

³⁷ http://zd4l62ki6k620lqb52h9ldm1.wpengine.netdna-cdn.com/wp-content/uploads/2019/03/ODCA.Budget.Testimony.3.25.19.Final_.pdf
(see pages 6-12)

³⁸ http://zd4l62ki6k620lqb52h9ldm1.wpengine.netdna-cdn.com/wp-content/uploads/2019/01/InternalControls_Report_DIGITAL_JAN8_WEB.pdf

³⁹ https://www.washingtonpost.com/local/education/the-districts-public-school-system-faces-23-million-deficit-drawing-criticism/2019/07/14/a3df040c-a252-11e9-bd56-eac6bb02d01d_story.html

⁴⁰ <https://www.washingtoncitypaper.com/news/loose-lips/article/21075785/dc-auditor-suggests-legislation-or-litigation-to-address-misspent-at-risk-school-funds>

7. Will you support a study of employment of transgender individuals in the government of the District of Columbia as a first step to creating a truly inclusive workplace and the implementation of transgender employment initiatives?

Yes, of course. Republicans are not favorably inclined towards dysfunctional government.

We know that if something is not measured, then it cannot be managed.

We also know that any organization's operational effectiveness is significantly constrained by practices, processes and a culture that are not inclusive of all talent, and thus a barrier to enabling all talent to be fully maximized.

So being able to measure and monitor talent management of transgender employees is essential. Talent management is actions taken by the agency and managers that enable talent to flourish and thrive. And this starts with measuring and monitoring, and thereby being able to reduce the barriers, stigma, prejudice and discrimination in the workplace that hold back transgender talent development and growth.

I support fully the policy recommendations in the GLAA policy guide on this issue. Furthermore, the recommendations in the *Valuing Transgender Applicants & Employees: A Best Practice Guide for Employers*, by the National LGBTQ Task Force and the DC OHR are also a good start. But such efforts with DC Government need to go much further in order to more effectively enable transgender talent growth.

The following should also be implemented:

- Specific transgender policies to ensure inclusive recruitment, promotion and retention processes and practices
- All aspects of not only recruitment, but also promotion and retention policies and processes should be reviewed annually to ensure that any bias against transgender persons is removed
- Culture and bias training for all employees to create an environment that is fully supportive of transgender employees; cis-gender employees should be encouraged to challenge any non-transgender-inclusive behavior
- Agency leaders and managers must demonstrate regular, pro-active and visible involvement in transgender-supportive and transgender-inclusive culture and training programs, in order to demonstrate credibility to trans-inclusive efforts
- Performance reviews for agency leaders and managers should include criteria covering transgender-inclusive metrics; feedback ratings from transgender employees should be a criteria
- Establish an LGBTQ Employee Council to advise and give feedback to senior executives on trans-inclusive issues; establish an LGBTQ employee network and resource groups
- Have clear and robust policies to proactively support employees going through gender transition
- Offer access to support programs for transgender employees (to include CBT, self-compassion training, etc) to help manage and reduce the impact of emotional stress caused by transgender stigma in the workplace

Furthermore, I would like to see these transgender-inclusive programs also advanced in the private sector in DC too. Reaching out to business and industry groups in the District, including the BIDs, on this basis will be imperative in turning around the staggering lack of access to economic opportunity for transgender persons in the District.

Any business entity with more than 50 employees that bids for DC Government contracts should have all of the above programs in place in order to be eligible.

An annual transgender job fair also needs to be established to expand economic opportunity for the transgender community.

Furthermore, leaders across the private sector should step up and form a voluntary council focusing on teaching, training, mentoring and sponsoring transgender individuals as entrepreneurs.

A rapid response function to enable any transgender employee who wishes to nominate their employer for transgender-inclusive training also needs to be created.

It is important to note that the business case for actively creating a transgender-inclusive workplace is clear-cut: firstly, businesses are not recruiting the best talent if they are not accessing all talent pools, including the transgender talent pool.

Secondly, as my former collaborator labor economist Professor Peter Cappelli at Wharton has pointed out, the only way that a business can sustainably differentiate itself from its competitors is via talent – how it accesses and recruits talent, and how it develops that talent. For a business to be fully transgender-inclusive and thus enable its transgender talent to fully flourish is to create a powerful competitive differentiator.

Thirdly, as leading business diversity expert Professor Scott Page has demonstrated, cognitively-diverse groups consistently out-perform cognitively-homogenous groups at complex problem-solving. Competing successfully as a business requires as much cognitive diversity in its employee base as possible: and clearly, transgender employees are a rich source of cognitive diversity, thus enabling the business to compete far more successfully.

Fourthly, any smart business leader recognizes that transgender people have spent every day of most of their lives meeting immense barriers to a full participation in life that non-transgender people simply haven't even come close to experiencing. And so like a ballet-dancer who spends every single day since childhood developing phenomenal resilience, strength, adaptability, creative-thinking and problem-solving capacity far beyond the level of the rest of the population, transgender people have experience that has given them what are also invaluable business skills – and ones that cannot be taught, not even on a Harvard MBA course – far beyond those who have not had to experience the same perpetual barriers to full participation in daily life. Smart businesses hire, promote and retain as many transgender people as they possibly can. That is why 50 of America's largest companies (including Accenture, Apple, Facebook, Google, Amazon, Bank of America, and Marriott) wrote a letter protesting the erasure of transgender persons by the president, pointing out that, "diversity and inclusion are good for business. ... Transgender people are our beloved family members and friends, and our valued team members. What harms transgender people harms our companies."⁴¹

YOUTH

8. Will you support improved services and treatment for homeless LGBTQ youth, including extended transitional housing?

⁴¹ <https://www.cnbc.com/2018/11/01/companies-sign-letter-against-trumps-proposed-gender-definition-change.html>

In the last three years, the budget spend per capita has risen 27% (as the DC Auditor has pointed out). The good times have clearly been rolling for the District.

Which begs the question: why, in spite of all the free-spending of the last several years, has DC Council left 300+ LGBTQ youths - who are homeless because their families rejected them, who have been subjected to harrowing violence, who have been inhumanely denied any decent foundation from which to build their lives - to sleep on the streets?

What on earth is the point of being one of the most left-leaning legislative bodies in the country if it can't take 300+ transgender youth off the street and give them a safe place to live, recover and build a future for themselves?

(I am estimating that the number of LGBTQ youth experiencing homelessness is 300+, based on most recent Point-in-Time count and the ICH 2019 Performance Oversight Hearing Report ⁴². This may be an under-count, according to the DC Homeless Youth Census ⁴³ however.)

DC Councilmembers jump at any photo opportunities with LGBTQ groups, yet ignore the community's repeated requests for desperately needed increased funding. For the Council Chair last year to avoid taking responsibility by incorrectly believing his role to be a passive one (it isn't) and complaining that the LGBTQ groups "did not do a very good job of alerting us to the funding needs. I was unaware of it until after the Council voted on the budget" shows a deplorable lack of basic executive thinking. His job is to be proactive, to get out into the community and figure out who most needs taxpayers' dollars.

From the perspective of the core Republican values of (i) opportunity for all, and (ii) personal liberty for all, focusing on better serving our LGBTQ youth who are experiencing homelessness is an absolute imperative. Such youth have clearly extremely limited access to any economic opportunity and clearly have very little semblance of personal liberty. I write in greater depth about this issue in my answer to question 10.

I have volunteered hundreds of hours of my time, directly advocating for homeless persons inside DC's shelter system. I know the shelter system inside out; I also know inside out the DC Code governing the shelter system, which is widely and largely ignored by the shelters because DC Council doesn't bother to exercise any oversight at all. As a result of this lack of basic oversight by DC Council, for survivors of transgender abuse, domestic violence (one in three homeless women are victims of domestic violence) and other forms of gender violence, the homeless shelters are absolutely harrowing no-go zones. Domestic violence prevention advocates have described DC's shelters are more dangerous than the streets because of abuse by guards. Abuse by guards and staff is rife, and a recent ACLU report ⁴⁴ (covering shelters in LA) gives a good description that also fits the shelters here in DC too. If these shelters are difficult enough for mature adults to navigate, they are impossible for LGBTQ youth – 63% of whom have experienced violence from a parent, guardian or intimate partner ⁴⁵, which was a key factor in their becoming homeless - to do so.

For those outside the LGBTQ advocacy community and who may not be aware, it is really important to point out the heart-breaking scale of this issue ^{46,47}: 43% of homeless youth in DC identify as LGBTQ, and the main cause of their homelessness is family rejection because of their gender identity or sexual orientation, and family abuse. Nearly 60% of LGBTQ homeless youth have been sexually victimized. Most have also experienced stigma, rejection, marginalization, bullying and discrimination during their education, critically undermining their

⁴² https://dccouncil.us/wp-content/uploads/2019/02/ICHPOH19_Pre-Hearing-Responses_HS_Final.pdf

⁴³ <https://www.streetsensemedia.org/article/there-was-an-800-person-discrepancy-between-annual-counts-of-youth-homelessness-in-dc-this-year/#.XpZRTEBK0s>

⁴⁴ https://www.aclusocal.org/sites/default/files/aclu_social_oc_shelters_report.pdf

⁴⁵ ICH Executive Committee, 2019 March; Youth Count DC

⁴⁶ <https://nationalhomeless.org/wp-content/uploads/2017/06/LGBTQ-Homelessness.pdf>

⁴⁷ <https://www.hrc.org/blog/speaking-out-to-end-lgbtq-youth-homelessness>

education. Many then have to navigate their way alone into adulthood without any support from family and social networks, without sufficient educational attainments, and without access to economic opportunity. They also experience systemic housing and employment discrimination. Living on the streets is itself an overwhelming mental strain, where many experience violence, sexual abuse and exploitation, as well as additional stigma, marginalization and discrimination. Unsurprisingly, as a result of all of these harrowing challenges and traumatic experiences, 62% of LGBTQ homeless youth attempt suicide.

For LGBTQ youth experiencing homelessness to have any chance at building the successful, fulfilled, happy and healthy life that each one of them deserves and being able to access economic opportunity, it is absolutely imperative that DC provides LGBTQ-specific stable, extended transitional housing for LGBTQ youths. If ever there were a case to support and improve access to economic opportunity, this is it.

The work that SMYAL, Casa Ruby, the Wanda Alston Foundation, Whitman-Walker Health, The DC Center, and other organizations supporting LGBTQ youth, especially those experiencing or at risk of homelessness, helping those youths towards sustainable economic viability and independence, saves DC taxpayers dollars that would otherwise be spent on those individuals for the rest of their lives, in terms of increasing healthcare and shelter costs, and more. Fully funding the work that these organizations do is therefore simply the fiscally prudent appropriate decision, as well as the morally, humanly appropriate one.

I support the request for \$22.4 million⁴⁸ by these and other LGBTQ organizations. I support sufficient funding for LGBTQ-dedicated extended transitional housing so that none of these entities have a wait-list, and so that there are no homeless LGBTQ youth left to live on the streets or in shelters. I support sufficient funding for programs for all such youth to meet their continuing education, job skills training, life skills training, support, affirmation, counseling, emotional self-care and self-empowerment needs. I support sufficient funding for culturally-competent and affirmative services to meet LGBTQ youths' sexual health needs, especially for transgender women (one in four of whom across the US is living with HIV⁴⁹).

As LGBTQ protections against discrimination are increasingly removed at the federal level (with the recent new federal regulations proposed by the White House that would allow federally-funded entities to discriminate against LGBTQ individuals), it will be vitally important for Ward 2's next Councilmember, and the Council as a whole, to take very proactive leadership to protect, nurture and serve our LGBTQ youth community. If I am Ward 2 next's Councilmember, I will be as relentless an advocate for our LGBTQ youths as I have been for the homeless community inside DC's shelters.

SENIORS

9. Will you support improved services and treatment for LGBTQ seniors, including affirming senior housing and tenant based rental assistance and the Care for LGBT Seniors and Senior with HIV Amendment Act of 2019?

At the DCCA/LCCA Ward 2 candidate forum on March 5, the question came up "what specific policies and legal changes do you support?" for LGBTQ seniors. I was the only candidate, along with just one other after me, who was aware of and actually referenced this Act – which had just had its Council hearing on February 19. (I was also the only person who referenced the recent \$22.4 million request by the LGBTQ community, which none of the other candidates referenced at all in their answers.)

⁴⁸ <https://www.washingtonblade.com/2020/02/21/dc-job-market-not-welcoming-to-trans-youth/>

⁴⁹ <https://www.ncbi.nlm.nih.gov/pubmed/23260128?dopt=Abstract>

Let's remember that the 'Stonewall Generation' has lived through decades of stigma, prejudice and discrimination. And so yes: cultural competency matters, cultural sensitivity matters. Creating healthcare and housing environments and services for elderly LGBTQ that are free from systemic stigma, prejudice and discrimination matters. An HIV long-term care bill of rights for LGBTQ seniors also matters. Better addressing the mental health issues of isolation, depression, dementia and Alzheimer's, also matter. And I support steps to address and implement these.

I am also extremely concerned that about the pandemic and closure of many LGBTQ seniors services in the city, which provide meals, company and other vital services to our most vulnerable members of the community.

It is important to put all of this into context. Extraordinarily, the first ever nationwide, population-based study, which investigated the chronic health disparities of LGB seniors, was only completed in 2017 – a staggering reflection of the societal attitudes that may not be nearly as advanced as we might like to think.

A subsequent report⁵⁰ in *The Gerontological Society of America* highlighted the following:

“LGBTQ older adults remain an underserved and understudied population. They are largely invisible; yet, by 2060 their numbers will exceed 5 million, and will account for more than 20 million older adults when including those who do not publicly self-identify.”

(Before coming across this report above, I had noticed, and wondered why, there was no chapter on transgender seniors in the *November 2015 Access Denied: Washington DC Trans Needs Assessment Report*.)

The report continues:

“We found that sexual minority older adults, compared to heterosexual older adults, showed significantly higher likelihoods of chronic health conditions .. and disabilities. In addition, lesbian and bisexual older women were significantly more likely than heterosexual older women to report strokes, heart attacks, asthma, arthritis, or multiple chronic conditions. Gay and bisexual older men were more likely to report angina pectoris and cancer compared to heterosexual men. We also found higher rates of disparities in cognitive impairments in lesbian, gay, and bisexual older adults, which as a health issue simply has not been addressed either in these communities nor in our existing health care systems.

“While transgender older adults are rarely identified in public health surveys due to the lack of gender identity and expression measures, they have elevated health disparities relative to lesbian, gay, and bisexual older adults; LGBT older adults of color and those living in poverty also have elevated rates of health disparities.

“Yet, despite the health disparities that exist, many health-care providers don't have the knowledge and skills necessary to provide culturally relevant care. .. Previous negative experiences also may inhibit LGBTQ people from being open with their physicians and other providers, and as a result restrict information about potential health concerns, such as breast or prostate cancer or HIV risks.”

“Given the current social context, I see an uptick in fear among LGBTQ older adults, who have walked out of the shadow cast by bias and discrimination. Our research show that discrimination is the strongest predictor of poor health among LGBTQ older adults. As the climate for change has cooled, these communities are increasingly confronted with bias.”

So yes, I do support this Act. However, I would strongly caution that it is not enough. Legislation is nothing more than pieces of (virtual) paper if not implemented and consistently enforced. DC Council is (rightly) notorious for focusing on passing as many pieces of new legislation as possible rather than on the implementation of legislation

⁵⁰ <https://academic.oup.com/ppar/article/28/1/24/4958396>

already on the books. LGBTQ discrimination is already legally prohibited in DC: yet this legislation is consistently not enforced. That concerns me greatly.

Remember, for example, an important point made by Mark Lee ⁵¹:

“during the last D.C. Council legislative period, a total of 90 bills were passed that were, either in whole or in part, subject to the later appropriation of funds to pay for them. According to a D.C. Council Budget Office report, it was the highest number of unfunded bills passed in Council history, and would result in fully 71 of the 90 measures remaining unfunded following budget deliberations. .. [Mayor] Bowser pointed out that the Council had last year approved bills totaling more than a billion dollars in required funding. [DC’s budget is just over \$8.5bn.] In other words, local legislators are enacting laws and approving programs for which they are knowingly aware there will not be available funds to underwrite and implement. It’s a cynical con that leaves residents perplexed.”

Take, for example, the training requirement (training will only be required once every two years) of this new Act.

Let me illustrate with an actual example to indicate what is likely to happen with this:

Early on in my voluntary advocacy over the last couple of years against the systemic abuse by guards in DC’s shelters, I was very surprised to stumble upon the DC Code that clearly forbids such abuse, random violence and trauma-triggering behavior by guards. Indeed, there is more than sufficient code to prohibit such abuse of and discrimination against persons with disabilities, against LGBTQ persons, and victims of domestic violence (all protected categories under DC Human Rights legislation) inside the shelters. The shelters are full of persons who fit into all three categories: for example, survivors of transgender abuse, domestic violence and other gender-based violence typically suffer from PTSD as a consequence of their abuse, and PTSD is classified as a disability. And yet, instead of exhibiting any signs of trauma-training or trauma-awareness, the guards instead routinely trigger trauma by abusing and terrorizing shelter residents. Indeed, they abuse their positions of power, as they enjoy zero accountability, as the Council does not bother to exercise any effective oversight. The question is why is the legislation – which is very clear and simple to read - so routinely ignored across the city’s shelters? Why is there such a massive gap, between what is legislated and what is reality?

In general, it is true that DC (across its various agencies) simply does not take violence against women, especially transgender women and women of color, seriously at all – especially the abuse and re-victimization of vulnerable women, especially transgender women and women of color, inside the city’s shelters.

It took me over a hundred hours of advocacy, all the way ‘up the chain’ to the top of the DHS, to the OHR, to the OAG, repeatedly asking why is the legislation so glaringly ignored, before I understood why: no-one bothers at all to implement and enforce this legislation. Worse, this abuse is aggressively covered up by those who are in a position (and have the obligation) to prevent it. For example, after I issued formal legal requests to the DHS, their lawyers admitted that they do not hold nor ask for any records from the security firm providers to show that they are complying with this legal obligation to trauma-train their guards. Unsurprisingly, the security guard CEOs do not bother to spend money on something (such as their legal obligation to trauma-train their guards) that they are never asked to demonstrate compliance with. I had hoped that by drawing attention to what was going on at the ground level, that those with power to oversee and enforce would act. But instead, even after appealing directly to the AG himself, the OAG responded by aggressively shutting down my advocacy efforts. (I acknowledge that his job is to protect any branch of DC Government from litigation risk: however, he chose the job.)

I finally had my answer: this is no innocent, accidental lack of oversight. Rather, DC does not take its own legislation seriously at all, and aggressively covers up and shuts down any attempt to hold it accountable. DC Council is responsible for actively enabling institutional abuse of its most vulnerable residents, because Councilmembers ignore their obligation of oversight and are instead too focused on photo-ops and press releases declaring yet more new legislation. Guards are allowed to roam the shelters with no accountability, abusing,

⁵¹ <https://www.washingtonblade.com/2020/01/20/d-c-enacts-bills-with-no-hope-of-funding/>

terrorizing and punishing the residents as though the residents were dangerous, murderous criminals (they are not), forgetting that in fact, the residents are the most victimized, marginalized, discriminated against and vulnerable in our city. (I strongly recommend the ACLU report ⁵² to get a sense of the institutionalized abuse of the shelter system. Although this report covers shelters in LA, the description well describes the shelters here in DC too.) I call this issue possibly the biggest *hidden* human rights issue in the city.

(In my first campaign media interview, I talked about two issues, the second of which was this one:

<https://www.youtube.com/watch?v=X-U3Ouzf9DU>)

DC Council needs a Councilmember who ignores the photo-ops and snazzy press releases, and instead manifests her empathy and concern more genuinely by doing the rather grittier work of digging her heels in hard behind the scenes, conscientiously exercising oversight on behalf of our most vulnerable, marginalized, victimized communities – which our transgender community surely is. I don't know that the other candidates have stuck their necks out like this and displayed this level of initiative, determination and relentless drive to advocate – on a voluntary basis – for those most under-served, stigmatized, discredited and invisible in our community.

A Democrat Councilmember cannot do this: they cannot ask tough questions and rock the boat, because of partisan loyalty. We need a Republican Councilmember, who is thus free from such partisan bonds, to be able to effect meaningful oversight.

Finally, DC definitely needs a Republican voice to relentlessly and publicly push for LGBTQ rights and protections. We have a platform here in Ward 2, right in front of the White House, and an opportunity to send a powerful message to the rest of the country. The LGBTQ community needs advocates on both sides of the partisan line.

HOME RULE

10. Will you oppose Trump administration efforts to nullify the legal identities of transgender individuals, such as by assigning a person's gender based on their "original" birth certificate.

Vigorously.

I find these efforts - and the roll-back of transgender rights under the current federal administration, including each of the 65 anti-LGBTQ actions taken by his administration, as listed by the NCTE⁵³ – to be deeply morally abhorrent. I fully concur with the comments in GLAA's attached policy document. Such steps attempt to de-humanize the transgender community, and deprive transgender persons of basic human rights of self-determination, autonomy and equal dignity. These efforts also go against core American values of justice, liberty and equality. They are also scientifically nonsensical – as, for example, a letter from over 2,600 of the country's leading scientists, including no fewer than 9 Nobel laureates, and an editorial by the scientific journal *Nature*, have pointed out ^{54 55 56}.

Furthermore, the anti-transgender steps above taken by the federal administration: (i) undermine the Constitutional separation of church and state; (ii) are deeply antithetical to core Republican values of liberty and the rejection of over-reach by government; (iii) are not representative of Americans' values today, an overwhelming majority of

⁵² <https://www.aclusocal.org/en/press-releases/aclu-uncovers-horrific-conditions-sexual-harassment-oc-homeless-shelters>

⁵³ <https://transequality.org/the-discrimination-administration>

⁵⁴ <https://not-binary.org/statement/>

⁵⁵ <https://www.buzzfeednews.com/article/azeenghorayshi/scientists-vs-gender-binary>

⁵⁶ <https://www.nature.com/articles/d41586-018-07238-8>

whom support anti-discrimination legislation to protect LGBTQ persons; and (iv) are not representative of a clear majority of persons across all major religions.

Allow me to share my reasoning on some of the above points:

Undermining the Constitutional separation of church and state

The president has been very explicit about why he is pushing the roll-back of transgender rights: he is favoring and championing, and thus endorsing, a particular set of religious beliefs of a small subset of Christianity over the religious rights of all Americans.

This is deeply unconstitutional. Under the First Amendment, “Congress shall make no law respecting an establishment of religion”.

According to a Brookings report⁵⁷, the separation of church and state is also supported by two-thirds of the American public.

Furthermore, the religious liberty of all Americans *outside* the president’s preferred small religious subset is also being subjugated by such actions, contrary to the First Amendment: namely, the 70% of Catholics, 80% of Jewish persons, 71% of white mainstream Protestants, 65% of African American Protestants, 75% of Buddhists, and 79% of Hindus, who are fully supportive of anti-discrimination legislation that protects LGBTQ persons, and whose religious views lead them to be actively inclusive towards, supportive and protective of marginalized, stigmatized, discriminated communities, and to focus one’s judgment upon oneself, not on others.

(Note that these statistics come from the non-partisan entity, the Public Religion Research Institute, which partners with the Brookings Institution and has a very high credibility rating from Media Bias/Fact Check ⁵⁸.)

As the Republican group, The Lincoln Project, advocates, “the priority for all patriotic Americans must be a shared fidelity to the Constitution.”

Antithetical to core Republican values of liberty and the rejection of government over-reach

The right of transgender persons to even a basic level of liberty is grossly impinged upon, systemically across the United States. Any Republican supporter of individual liberty is by definition a vehement supporter of transgender people’s rights, starting with the core right not to be erased as a human-being. Transgender rights are surely one of the defining personal liberty issues of our era.

Even aided by the statistics that show the magnitude, it is hard for non-transgender persons to fully comprehend or imagine what it is like to feel the weight of and experience the impact of the ever-present stigma, prejudice and discrimination against transgender people across every facet of daily life. Try thinking about what daily life must have been like for Zoe Spears, Ashanti Carmon, Lashai Mclean, Dee Dee Dodds, and Alice Carter – and how little personal liberty they had, to live their lives free from societal stigma, prejudice, discrimination and harrowing violence.

Core Republican values of individual liberty for all - and personal integrity – actually support a very aggressive championing of full transgender rights and protections against discrimination. (Indeed, the Republican group, The Lincoln Project, noted above writes that, “Mr. Trump and his enablers have abandoned .. longstanding Republican

⁵⁷ <https://www.prii.org/wp-content/uploads/2011/09/Pluralism-2011-Brookings-Report.pdf>

⁵⁸ <https://mediabiasfactcheck.com/public-religion-research-institute-prii/>

principles. ... Mr Trump and his fellow travelers daily undermine the proposition we as a people have a responsibility and an obligation to continually bend the arc of history toward justice.”)

And yet, the president advances the intellectually bankrupt argument that the existence of LGBTQ persons is an infringement of a small religious subset’s right of religious freedom, and that this religious freedom allows the right to harm others via acts of discrimination.

There are clearly limits to rights of religious freedom. My right to religious freedom clearly doesn’t come at the expense of someone else’s right to exist and manifest their equal humanity and dignity to mine. My right to religious freedom clearly doesn’t allow me to harm (via discrimination or otherwise) another person. My right to religious freedom clearly does not allow me the right to impose my religious beliefs upon those who do not share my beliefs. My right to religious freedom clearly does not come at another person’s cost. It is egregious to suggest otherwise.

Indeed, the bipartisan US Commission on Civil Rights in its 2017⁵⁹ and 2019⁶⁰ reports slammed hard the notion that the religious rights of a few trump the core human and civil rights of all Americans. Further, before the current administration, the US Supreme Court broadly-speaking (*2014 Hobby Lobby* being an exception) had a long record of recognizing that religious freedom should not be interpreted to allow harm upon others.

Let’s contrast the long-standing, pervasive harm of societal and institutional discrimination towards the LGBTQ community⁶¹, to the purported ‘harm’ suffered by this religious subset, which wishes to be legally permitted to harm the LGBTQ community via discrimination for religious reasons: this religious subset does not suffer hate crime, as the LGBTQ community, and Jewish and Muslim groups⁶², routinely do; this religious subset does not have to live with the barbaric threat of and actual violence just because they exist, as transgender people routinely do; this religious subset does not suffer systemic barriers to and within the employment world that LGBTQ persons routinely experience; this religious subset does not suffer the barriers to housing that LGBTQ persons routinely experience; this religious subset does not have its right of self-determination and autonomy as individuals severely compromised as transgender persons do; this religious subset does not experience the suicide rate and extreme harm to mental health suffered by transgender persons as a result of the grotesque societal and institutional stigma, prejudice and discrimination against them; and so forth.

Even the Heritage Foundation⁶³ uses precisely this very same logic: firstly, that individuals have the right to be free from “the cultural majority” and from society’s prejudice and preferences; and secondly, that Jim Crow laws resulted in such pervasive stigma, prejudice and discrimination, which “denied African-Americans basic necessities”, and hence required the government to step in with anti-discrimination protection. The Heritage Foundation then bizarrely goes on to execute an impressively acrobatic contortion and pole-vaults to a conclusion that breaks entirely with the integrity of that very same logic.

Lastly, the Trump administration’s open embrace of a religious subset’s beliefs is also a rejection of core Republican values that reject government over-reach. Enabling religious institutions (such as hospitals or adoption agencies) to abuse their power by using refusal rights to impose their anti-LGBTQ religious values on individuals and the wider American population is an egregious example of government over-reach.

Unsurprisingly, 69% of moderate Republicans support anti-discrimination legislation for the LGBTQ community⁶⁴.

Other points

⁵⁹ https://www.usccr.gov/pubs/docs/LGBT_Employment_Discrimination2017.pdf

⁶⁰ <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>

⁶¹ <https://www.usccr.gov/press/2019/06-07-Commission-Equality-Act-Statement.pdf>

⁶² FBI 2017 hate crime data shows that 80% of all religiously motivated hate crime targets Jewish or Muslim communities

⁶³ <https://www.heritage.org/religious-liberty/heritage-explains/religious-freedom-whats-stake-if-we-lose-it>

⁶⁴ Public Religion Research Institute

I admire the DC Office of Human Rights for pushing back hard against the federal administration's anti-LGBTQ efforts, for example, with its *#WontBeErased* statement on October 25, 2018 ⁶⁵.

I also strongly admire that in 2017, DC became the first jurisdiction in the US to issue gender-neutral driver's licenses and IDs.

Also, regarding the GLAA's comment on the erasure of individuals and authoritarianism in the 1930s, I would like to mention a book that I read decades ago, which is the only book that I have never forgotten, because it struck me then - and does now more than ever - that this book is surely the most essential piece of non-religious reading material for everyone to read in terms of understanding one's core moral obligations as a human-being. That book was by Primo Levi, and the title that he gave it best reflects his intended lesson: *If This Be A Man*. The author's title was replaced with the title *Survival in Auschwitz* for American publication.

⁶⁵ <https://twitter.com/DCHumanRights/status/1055581085281779712>