

# **Gay and Lesbian Activists Alliance of Washington, DC 2010 Questionnaire for D.C. Council Candidates**

## **Responses of Councilmember Mary M. Cheh**

### **MARRIAGE AND FAMILY**

*1. Will you oppose any effort to hold an initiative in the District that would take away the civil marriage rights now enjoyed by same-sex couples, and publicly campaign for marriage equality in the event such an initiative is held?*

Yes, of course. As you know, my support for marriage equality is unequivocal. I will strenuously oppose any and all efforts to undercut marriage equality in the District. Discrimination should never be the subject to referendum. I was very pleased that the DC Court of Appeals upheld the Board of Elections and Ethics and the Initiatives, Referendum, and Recall Procedures Act, which does not permit ballot measures that would violate or cause a violation of the Human Rights Act. This very sensible law passed 30 years ago and it remains important today. I will oppose any effort to undermine Home Rule or attempts to take away the Council's authority to legislate.

*2. If the District's civil marriage equality is taken away either directly by an act of Congress or by a ballot measure, will you support immediate re-passage of civil marriage equality?*

Again, Yes of course. The Council has an obligation to do everything in our power to protect the rights of all of our citizens. The Council, in this unlikely scenario, would still have the right to pass legislation. Re-instating equal rights would have to be at the top of our agenda. The results of the primary election showed that there is little support in D.C. for repealing the Religious Freedom and Marriage Equality Amendment Act. Everyone who voted for the bill was re-elected or moved up, and all of the anti-marriage candidates lost. I am confident that, should a referendum be forced on us against our will, we would win.

*3. Do you agree that private contractors doing business with the District should be required to provide equal benefits including health insurance to same-sex partners?*

Yes and, in that regard, please note that one of my first actions as a Councilmember was to urge PEPCO to provide equal benefits to domestic partners and that, in short order, they did so. (see attached letter)

Now that we have marriage equality, we need to change the focus from equal benefits to minimum standards of benefits. D.C.'s universal health care system needs to be coordinated with the recently passed federal health care law. Paid leave, retirement, and similar benefits should be both provided on an equal and non-discriminatory basis, but also with minimum standards.

*4. Will you oppose legislation containing either a "conscience clause" that would allow anyone to claim a Human Rights Act exemption at will, as was proposed by Councilmember Yvette Alexander during consideration of the marriage equality bill last year; or a "business necessity"*

*exemption that would allow taxpayer-funded charities run by religious groups to discriminate against married same-sex couples, as was proposed by the Archdiocese of Washington?*

Yes and, again, as you know, I led the opposition to Councilmember Alexander's proposed amendment and also publicly and strenuously objected to the business necessity exemption for taxpayer-funded charities. Both proposals would expand, if not encourage, discrimination. Bigotry because of religious bias against lesbian, gay, bisexual, and transgender people is no different than the deeply held beliefs--based on religious teaching or tradition--that were the basis of any other form of discrimination. One of the goals of our laws and regulations should be to reduce discrimination. I will not support any legislation that would expand or encourage discrimination.

## **PUBLIC HEALTH**

*5. Do you support sufficient funding to ensure that the drive to make HIV testing routine among District residents includes counseling and treatment referrals for those testing positive?*

Yes, though, as with all funding initiatives, all program amounts will reflect budgetary conditions. Fortunately, much of this effort is less based on costs to the District as it is changing standard practices of healthcare providers so that HIV testing becomes routine and not thought of as an unusual test. As part of a routine screening, we will also help reduce stigma of HIV and being tested.

*6. Are you committed to continuing and expanding the District's condom distribution program to include water-based lubricant and tracking of their distribution to specified locations?*

Yes. In that regard, please note that I support efforts to make free condoms and condom kits available in at-the-door baskets in nightclubs and restaurants. I also support the performance audits to ensure that community partners and contractors are actually distributing condom and lube to the venues that they are expected to supply.

*7. Will you support legislation giving the directors of the Office of GLBT Affairs and the Office of African Affairs the authority to issue competitive grants as other minority constituent offices have, that will be open to organizations serving the populations within the offices' purview?*

Yes. All of the community affairs offices should have the same legal mechanism for making grants. Oversight of grants is very important to avoid the ethical problems that arose from earmarks. New funding is unlikely to be available for grants by these offices while we suffer under our current financial situation. Some existing grants may include an outreach to specific populations. If the particular affairs office does not issue the sub-grant, they may provide community expertise to the issuing agency.

*8. Describe steps you will support to improve performance at the HIV/AIDS, Hepatitis, STD, and TB Administration (HAHSTA), including in HIV prevention, HIV/AIDS surveillance, and mental health services.*

I think we need more oversight of HAHSTA and should consider an overhaul of that office. Dr. Hader made a number of valuable changes, but more is needed. The epidemiological data is not yet mature, and not yet the basis of funding decisions. Our planning councils are dominated by service providers who meet to determine how much each of them will receive. More input

from people with HIV/AIDS and other disinterested parties is needed to make objective, data-driven decisions on how the funds should be spent.

## **PUBLIC SAFETY AND THE JUDICIARY**

*9. Will you support funding for mandatory lesbian, gay bisexual, and transgender (LGBT) sensitivity and diversity training for all members of the Metropolitan Police Department and the Fire and Emergency Medical Services Department?*

Yes. But the need is broader. I think we need sensitivity and diversity training across all of our office and workplaces, including MPD and FEMS. We need to fill gaps, particularly with respect to sensitivity training concerning transgendered people. We also need to provide additional training for veteran MPD and FEMS officers who set the tone for newer employees.

*10. Will you support a budget for the Office of Police Complaints large enough to avoid developing a backlog of cases?*

Yes. It is important for the public to have confidence in the police. The Office of Police Complaints helps maintain the confidence that the police will act in a professional manner. But here again, precise amounts must reflect the then-existing budget circumstance.

*11. Will you support efforts to rein in police officials who respond to legitimate crime concerns with unsustainable, media-centric quick fixes that infringe constitutionally protected civil liberties? And will you do so without waiting for courts to overturn them, as the U.S. Court of Appeals did to the Neighborhood Safety Zone initiative in 2009?*

As you know, I publicly fought against this initiative and did so in the media and at Council hearings well before the Court of Appeals ruling. Indeed, it was one of the reasons I voted against Peter Nickles to be Attorney General.

*12. Will you support maintaining the award-winning Gay and Lesbian Liaison Unit with both a citywide scope and a dedicated and well-trained central core unit with a full-time sergeant?*

Yes. I was very disappointed when the Office lost Sergeant Brett Parson, whom I have come to know dating back well before becoming a Councilmember. He spoke of his activities in the Unit with my Criminal Procedure classes over the years. There should be a full-time sergeant who understands LGBT policing and the LGBT community.

*13. Will you press for increased oversight of the Metropolitan Police Department's gathering and analysis of crime statistics to ensure greater comprehensiveness and objectivity, including transgender-related hate crime data?*

Yes. There is a perennial problem with statistical reporting. And, in particular, discrepancies between local reporting and FBI reporting must be specifically explained. The MPD should not be using the more restrictive federal categories to the exclusion of the categories in our own laws. Statistical crime reporting, especially bias-crime reporting should be something that the MPD can handle, and not leave it to the Office of GLBT Affairs, as they have done.

*14. Do you support making the D.C. Attorney General an elected position?*

Yes. It must be acknowledged, however, that among the states, there are good arguments on both sides of the question. But, for the District, given our experience, and given the benefit of another District-wide officeholder and the ability to have a public discussion on the priorities of that office, the position should be elected. I voted for the "Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2009," and the "Elected Attorney General Referendum Congressional Review Emergency Amendment Act of 2010," which will put the issue before the voters in November.

## **HUMAN RIGHTS**

*15. Will you support a budget for the Office of Human Rights large enough to allow it to keep the backlog at below 70 aged cases; keep below 210 days the average time it takes to issue a probable cause finding; and expand education, prevention, and language access efforts?*

Yes. Although additional funding is currently not feasible, we should fund the Office of Human Rights to be able to meet the statutory obligations. OHR is a relatively small office with an important mandate, so we should be able to improve services and reduce the time it takes to issue a probable cause finding as the fiscal situation gets less dire.

*16. Will you block ceremonial resolutions and otherwise decline to honor individuals or organizations that promote any sort of bigotry?*

Yes. There is no reason for a person or group that promotes discrimination to be honored. Good works do not excuse bad behavior. While I expect that my staff and I will be alert to this, we may not be as familiar with various people or groups who have promoted bigotry as GLAA; so please be vigilant in providing assistance in identifying such persons or groups.

*17. Are you committed to including a transgender representative on the D.C. Commission on Human Rights?*

Yes. I will urge the incoming Mayor to appoint a qualified transgender person to the Commission on Human Rights. This will help focus attention of the Commission on one of the most recent additions to the Human Rights Act—gender identity and expression—and help work with a population that experiences a disproportionately high level of discrimination. However, the fact that someone is transgendered should not make appointment automatic—the individual must be otherwise thoroughly qualified.

*18. Do you agree that the Director of the Office of Human Rights should be required to have professional training and experience in civil rights law enforcement?*

Yes. The Director of the Office of Human Rights must make and review legal decisions, requiring a nuanced understanding of the law. An education and experience in human rights allows the director to determine if staff have decided correctly and have the confidence to stand up to other agency directors. An OHR Director with a background in human rights would not have accepted a proposal to weaken the regulations protecting transgender people or accepted discrimination in correctional facilities as appropriate. See my letter on GLAA's website, <http://www.glaa.org/archive/2008/cheh2ohrontransrulemaking0807.pdf>

An OHR Director with a background in human rights would not have allowed a decision that allowed ex-gay to be considered a distinct sexual orientation and not as a political movement,

neither of which trumps the First Amendment rights of the NEA. Handing PFOX a court victory, of sorts, is far worse than the clumsy accidental issuance of a certificate of honor.

## **PUBLIC EDUCATION AND YOUTH**

*19. Will you oppose both federal and local voucher programs that fund students in religious schools that are beyond the protections of the D.C. Human Rights Act?*

I have opposed voucher programs but, as a matter of equity and stability for students already enrolled in such programs, I would not oppose allowing those already in the program to continue. The students themselves have developed relationships and friendships and it may be disruptive, to them, to just cut them off.

*20. Will you support improved services and treatment for gay and transgender homeless youth, including transitional housing?*

Yes. Transgender people, homeless people, and youth are all in need of special services. Transgender homeless youth have the needs of all three groups. The Wanda Alston House is a good step towards providing those needs, but it can help very few people. We must ensure that all of our shelters and services are available to everyone without regard to sexual orientation, gender identity and expression. We must further ensure adequate shelter, housing, and other services for all homeless youth. LGBT homeless youth must not have anything less than their straight counterparts. We will need to make services more accessible without additional funding, though, at least until we are past our current financial situation.

*21. Will you oppose the use of either federal or District taxpayer funds to promote “abstinence only until marriage” sex education that undermines safer-sex programs by excluding more comprehensive information?*

Yes. These programs are just ideologically driven and, by themselves, do not work. Abstinence should be seen as one option among many in a comprehensive sexual education program. There is no benefit in preventing our children from learning how to handle relationships and protect themselves from STDs and unwanted pregnancy.

## **CONSUMERS AND BUSINESSES**

*22. Do you support the right of adults in the District to choose adult-oriented entertainment for themselves, and the right of appropriately licensed and zoned businesses to provide it?*

Yes, of course. Adults are constitutionally entitled to choose adult-oriented entertainment. I am committed to maintaining the diversity of entertainment and attractions in the District. I voted for the Bill 17-0109, “The One-Time Relocation of Licensees Displaced by The Ballpark and Skyland Development Project Act of 2007.” The law helped adult businesses to relocate.

*23. Will you support legislation to curb abuses by NIMBYs who are now allowed to file an endless series of baseless complaints to harass or extort bars and restaurants?*

As phrased, the answer is yes. But, of course, it may be impossible to eliminate completely the use of process--otherwise valid--to harass bars and restaurants. We do have levers, though, such as the equivalent of Rule 11 sanctions and a bar on successive filings.

*24. What are your thoughts regarding GLAA's proposal, explained in Agenda: 2010, to mitigate the problems associated with prostitution by legalizing and regulating it? What will you do to provide alternatives to survival sex for at-risk populations like homeless youth and transgender people?*

When I did a stint at the United States Attorney's Office in the 1980s, the most troubling cases were prostitution prosecutions. I would consider alternatives to the criminal model but cannot now say where I would land on the issue. The criminal model has one advantage in that it enables the government to bring victims within its control and, with creative sentencing, to assist them in escaping their circumstances and getting services they need. Perhaps we have not done enough along these lines yet to know that this model should be abandoned.

## **APPENDIX**

Here are some items beyond those referred to in the questionnaire itself:

- Passed legislation requiring insurance companies to pay for HIV/AIDS testing whenever someone comes to a hospital emergency room. At a Health Committee oversight hearing, pressed the Department of Health to see that the law was implemented.
- Introduced legislation (passed as part of the budget) prohibiting discrimination and harassment against unpaid interns.
- Introduced legislation (passed as part of the Omnibus Public Safety and Justice Amendment Act) adding homelessness as a protected class to the anti-bias crime laws.
- Co-sponsored the "Hate Crimes Training for Law Enforcement Amendment Act of 2007" and co-introduced the "Sense of the Council in Opposition to Acts of Hate Resolution of 2008"
- Opposed proposed rulemaking that would have removed the protections of the Human Rights Act to persons in custody.

<http://www.glaa.org/archive/2008/cheh2ohrontransrulemaking0807.pdf>

- Shepherded the Healthy Schools Act, which among other things, requires public schools, including public charter schools, to provide health education to students. I received the DC Metro Teen AIDS Advocacy Award for my efforts on the Healthy Schools Act.
- In the 1980s, I spearheaded changes to the George Washington University's policy of antidiscrimination to include discrimination based on sexual discrimination.
- At GW Law, I participate in special programs (such as welcoming new admittees) aimed at out LGBT students.