

January 22 2014

Dear Mayor de Blasio,

On behalf of the undersigned organizations we urge you to take immediate steps to prohibit an existing policy that endangers and undermines the health of New Yorkers: the practice by police and prosecutors of citing condom possession as evidence of intent to engage in prostitution-related crimes. By issuing an Executive Order prohibiting this practice within 100 days of taking office, you can end this harmful policy and help New Yorkers better protect their health.

Allowing condoms to be used as “evidence” of prostitution-related offenses is contrary to a sound public health policy that encourages New Yorkers to carry and use condoms to reduce the transmission of HIV/AIDS, other sexually-transmitted infections, and unwanted pregnancies. Especially in New York City where the City’s Department of Health and Mental Hygiene distributes approximately 40 million condoms each year through its New York City Condom Campaign, these condoms are distributed only to be confiscated by the police. As a result, this practice has a chilling effect on New Yorkers, especially those who are most vulnerable to contracting HIV/AIDS and other STIs including women and men of color, LGBTQ people, young people, victims of trafficking and people in the sex trades. Together we have extensively documented the devastating deterrent effect this practice is having on the health and safety of New Yorkers: one survey found that around half of the respondents had at some point not carried a condom for fear of police harassment or criminal prosecution.¹

The time is right to unequivocally end the confiscation and citation of condom possession as evidence in prostitution-related cases. Several law enforcement agencies have already addressed the issue through a piecemeal approach. In Manhattan, the judge presiding over prostitution cases has rejected condoms as lacking probative value in these cases.² In Nassau County, District Attorney Kathleen Rice who is also currently head of New York State’s Association of District Attorneys, has repeatedly and vocally expressed her support for banning the use of condoms as evidence of any prostitution-related offenses, including trafficking offenses. Both the Brooklyn and Manhattan District Attorneys have gone on record calling for the NYPD to stop collecting condoms as evidence of prostitution and loitering for the purposes of prostitution.³

In fact the most straightforward and sensible reaction of a prosecutor was one early on in our efforts opposing this practice. At a community breakfast with District Attorney Cyrus Vance, an advocate objected to the use of condoms as evidence, and the District Attorney expressed disbelief that his office and the police were doing so, saying that if it were the case, he agreed that it would be “a public health disaster.” After lengthy follow-up advocacy with an array of members of his office, the Manhattan District Attorney finally issued the attached statement rejecting use of condoms as evidence of individual

¹ SEX WORKERS PROJECT OF THE URBAN JUSTICE CENTER & PROS NETWORK, PUBLIC HEALTH CRISIS: THE IMPACT OF USING CONDOMS AS EVIDENCE OF PROSTITUTION IN NEW YORK CITY 22 (2012), available at <http://sexworkersproject.org/publications/reports/public-health-crisis/>; HUMAN RIGHTS WATCH, SEX WORKERS AT RISK: CONDOMS AS EVIDENCE OF PROSTITUTION IN FOUR US CITIES (2012), available at <http://www.hrw.org/reports/2012/07/19/sex-workers-risk-0>; OPEN SOCIETY FOUNDATIONS, CRIMINALIZING CONDOMS: HOW POLICING PRACTICES PUT SEX WORKERS AND HIV SERVICES AT RISK IN KENYA, NAMIBIA, RUSSIA, SOUTH AFRICA, THE UNITED STATES, AND ZIMBABWE (2012), available at <http://www.opensocietyfoundations.org/reports/criminalizing-condoms>

² Emily Gogolak, *New York’s Condom Bait-and-Switch*, Village Voice, Mar. 6, 2012, <http://www.villagevoice.com/2013-03-06/news/nyc-s-condom-insanity/>.

³ See J. David Goodman, *Police in Brooklyn are Told not to Seize Condoms of Prostitutes*, N.Y. Times, May 29, 2013, <http://www.nytimes.com/2013/05/30/nyregion/brooklyn-wont-use-condoms-as-evidence-against-prostitutes.html> (citing letter written by Brooklyn District Attorney Charles J. Hynes advising Commissioner Raymond W. Kelly that “the collection and vouchering of condoms as evidence by members of your department” in prostitution and loitering for the purposes of prostitution cases in Brooklyn “should immediately cease.”). See also, CBS NEW YORK, *Nassau County Quits Using Condoms as Evidence for Prostitution Charges* (May 6, 2013, 10:08 PM), <http://newyork.cbslocal.com/2013/05/06/nassau-county-quits-using-condoms-as-evidence-for-prostitution-charges/>.

prostitution charges. The Manhattan District Attorney thus joined the Brooklyn District Attorney and District Attorney Rice, leader of the New York State District Attorney Association).

Despite these announcements, a comprehensive and universal policy is needed to provide clarity across all jurisdictions, and to protect the ability of *all* New Yorkers to carry condoms. New York City is lagging behind other major cities in the United States that have put an end to this dangerous practice.⁴ New York City and its residents need an official city-wide, well-publicized, street-level change prohibiting the NYPD from confiscating and collecting condoms as evidence and the District Attorney's Offices from citing possession or presence of condoms as evidence in criminal complaints, supporting depositions, plea negotiations, and at trial.

As you contemplate reforms to discriminatory law enforcement practices which undermine public safety in New York City, we urge you to immediately take action on this basic and critical public health issue by issuing an executive order prohibiting the NYPD from confiscating, collecting, or vouchering condoms as evidence in support of prostitution-related charges.

Currently, legislation is pending in the New York State legislature that would prohibit condom possession from being used as evidence of prostitution-related offenses. However, we cannot wait for the State legislature to act, and it is unlikely that the bill will pass this year based on the current makeup of the State Senate. We reach out to you as Mayor of New York City, where the existing policy has an especially strong and detrimental impact, to make sure that residents of this city can protect their health without the fear of being penalized.

Thank you for your time and consideration on this matter. We look forward to working with you in your first 100 days in office to ensure that this Executive Order is issued.

Thank you,

UNDERSIGNED GROUPS

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Center for HIV Law and Policy

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VOCAL New York

Gay Men's Health Crisis

Planned Parenthood NYC

Persist Health Project

New York Harm Reduction Educators

AIDS Center of Queens County.

⁴ See HUMAN RIGHTS WATCH, SEX WORKERS AT RISK: CONDOMS AS EVIDENCE OF PROSTITUTION IN FOUR US CITIES (2012), available at <http://www.hrw.org/reports/2012/07/19/sex-workers-risk-0>.

See also, Chris Roberts, *Condoms No Longer Evidence Against Sex Workers in San Francisco*, NBC BAY AREA (May 1, 2013), <http://www.nbcbayarea.com/news/local/Condoms-No-Longer-Evidence-Against-Sex-Workers-in-SF-205671121.html>.

Human Rights Watch:
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Boom! Health

Lambda Legal

Harm Reduction Coalition

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New York Civil Liberties Union

Family Services Network of New York

After Hours Project

The Peer Network of New York

Woodhull Sexual Freedom Alliance

Lower East Side Harm Reduction Center

Harlem United

St. Ann's Corner Harm Reduction

Ali Forney Center

New York Anti-Violence Project

Treatment Action Group

Washington Heights CORNER Project

Community Health Action of Staten Island