

Greater Greater Washington 2022 Democratic primary questionnaire Attorney General

GGWash's endorsement protocol for 2022 elections in the District of Columbia is outlined [here](#). You can find all of our 2022 electoral work [here](#). Please note that this survey will close at 11:45 p.m. on Mon., May 16, 2022. If you have any questions about our questionnaire, email D.C. policy director Alex Baca at abaca@ggwash.org.

1. Contact information

Name: Brian Schwalb

Email: brian@brianfordc.com

Website: brianfordc.com

Social media accounts:

Twitter - [BrianforDC](#)

Instagram - [brianschwalbfordc](#)

Facebook - www.facebook.com/brianfordc

2. In your view, is the attorney general more appropriately thought of as the District's lawyer or the fourth branch of government?

District's lawyer

Fourth branch

3. Please explain your choice, resisting the urge to say you would balance the two. We would like to know why you believe your selection is the attorney general's primary mandate.

The Attorney General is statutorily required to serve as the chief legal officer of the District, simultaneously defending and advising the DC and its agencies, enforcing its laws and regulations, and protecting the public interest. It is essential that the Attorney General act as an independent law enforcement official ensuring that the laws of the District are faithfully executed.

I recognize that, at times, there will be tension between advising the Executive branch and holding the agencies of the Executive branch accountable if they fail to adhere to the law and to faithfully serve DC residents. Moreover, there are times when the interests of the District government are in conflict with the interests of particular DC residents. By providing sound, constructive, practical legal advice to the Executive branch, and by being an independent Attorney General that holds the Executive branch accountable, the OAG under my leadership will work to maximize the effectiveness of District agencies in serving the needs of all DC residents and, by doing so, serving the public interest. Through effective, creative, tireless work as the District's independent lawyer, the OAG can protect and advance the interests of the DC and its residents, all of which is in the public interest.

HOUSING AND LAND USE

4. Do you think the District should build more housing?

Yes

No

The demand for housing exceeds the supply in Washington, DC, creating ever-increasing upward pressure on prices. In order to address DC's affordable housing challenges, we need to continue to build more housing units, while also preserving the existing housing stock. The OAG plays an important role in advancing both imperatives.

5. The attorney general's office announced last year its [plans](#) to advocate for the public interest in zoning and development cases in the District. The current attorney general's interpretation of the public

interest in land use has not been defined or, if it has, it has not been shared with the public. How do you define the public interest in land use?

When making land use decisions, the public interest requires balancing the need to encourage investment in the development and construction of additional housing units in DC (affordable, workforce and market), while ensuring that existing neighbors and communities are not negatively impacted by development and construction. Having a focus during the planning and entitlement process on (i) increasing the amount of affordable housing (including deeply affordable housing and units large enough for families), (ii) advancing racial equity and equitable economic development, and (iii) protecting and sustaining the environment, will advance the public interest.

The way a municipality's land is used is often reflective of its commitment to distributive justice and as such, is a critical matter of public interest. The newly-expanded function of the Land Use Section of the OAG provides opportunities to address systemic inequities in DC by, for example, advocating that the Zoning Commission require developers to provide a greater number of affordable (including deeply affordable) housing units and take affirmative steps to avoid displacement of long standing residents during construction and/or large renovation projects. I would continue this pursuit of fairness and inclusivity in housing and development as the District continues to grow and expand (which it must continue to do in order to meet our shortage of available housing units), ensuring that DC residents have a voice and are fairly represented in the zoning and entitlement process, and that the process plays out on a level playing field. This will include fighting to prevent the unfair displacement of Black and brown families, many of whom have lived in Washington for generations, as well as some neighborhoods' resistance to affordable housing and to welcoming low income residents. This will also include negotiation and drafting of clear, unambiguous contracts and agreements (including Community Benefit Agreements) and ensuring that the terms of such agreements, after they are negotiated and executed, are enforced.

6. The attorney general's office also announced its plans to [support ANCs](#), in particular, in development decisions made by the zoning commission or Board of Zoning Adjustment. When would you defend the District, and when would you support ANCs?

I believe that the OAG's decision to intervene in certain zoning, land use and development processes is consistent with the OAG's statutory obligation to protect the public interest. The District's Advisory Neighborhood Commissions (ANC), composed of elected (and unpaid) ANC Commissioners, serve as the front-line mechanism by which

DC residents can have a greater voice in the matters that most acutely affect their neighborhoods, including zoning matters. Faced with complex development projects, technical zoning rules, and various stakeholder interests, ANC Commissioners often find themselves at a disadvantage with respect to time, information and resources. This is where the OAG can provide education, guidance and resources so that ANC Commissioners can effectively participate in the zoning and development process, and so that the entitlement process plays out on a level playing field. And, while a particular ANC's role is to represent the interests of its constituents, those interests must also be balanced against the District's broader public policy goals regarding housing (including gentrification and displacement), racial equity, the city's natural resources, and transportation/infrastructure. Under my leadership, the Land Use Section of the OAG will examine the facts in each instance to determine whether the OAG should intervene in a particular zoning case, and if so, whether it should be in support of an ANC or whether the public interest may be better served by defending a zoning/development decision made by a District agency. These are often tough calls that require a careful balancing of interests and active, impartial listening to all stakeholders, underscoring the need for an independent, experienced Attorney General.

7. Mayor Muriel Bowser has established a housing-production target for the District (12,000 units by 2025) and broken that target down into, most notably, publicly subsidized, means-tested housing units that need to be [produced per planning area](#). However, there are no consequences for the District if it fails to reach this target or for residents who stymie, through protest or lawsuit, the ability of the District to reach this target. Are you committed to the production of the fair share of publicly subsidized units per planning area?

YES
 NO

8. If you are committed to the production of the fair share of publicly subsidized, means-tested housing units per planning area, how will you enforce that? If there are currently no legal mechanisms by which

production targets can be enforced, what will you attempt to implement to do so?

The housing production targets are aspirational, not legally mandated. However, in determining how to protect and advance the public interest in particular development and land use cases, the OAG, under my leadership, will be informed by the long term aspirational goals set out by the Mayor and the DC Council. In the absence of mandatory legal or regulatory requirements, the OAG should advocate and negotiate for terms that advance the stated goals and targets, including where appropriate lowering the income levels to qualify for affordable units and requiring that more and larger affordable units be included in new residential buildings. Under my leadership, the OAG will also fight to preserve the existing stock of affordable housing by holding landlords accountable for maintaining their buildings in safe, habitable, code-compliant condition, and aggressively suing slumlords who are engaged in the illegal practice of constructive eviction.

If you are not committed to the production of the fair share of publicly subsidized housing units per planning area, please write, "I am not committed to the production of the fair share of publicly subsidized, means-tested housing units per planning area."

9. The Home Rule Act specifies that municipal planning is the duty of the mayor, not the D.C. Council ([page 13](#)). Some zoning commissioners have expressed so much interest in hearing on-the-record support from councilmembers for planned unit developments, however, that the commission's approval of PUDs that are not in conflict with the Comprehensive Plan is now perceived as contingent on support from councilmembers. Do you believe this to be a problem?

YES

NO

10. If you do believe that it is a problem that the zoning commission's approval of PUDs that are not in conflict with the Comprehensive Plan is now perceived as contingent on support from councilmembers, what will you do to remediate that? If you do not believe this is a problem, please write, "I do not believe this is a problem."

Support from a particular councilmember for a particular PUD in her or his Ward is, at best, reflective of the views of certain members of the community about a proposed project or development. Councilmembers have informed views and perspectives, and there is nothing improper about considering those views. But development of PUDs should not be contingent on the testimony or view of any single person, including any single councilmember. While a fair and transparent process should include input from all members of the community and stakeholders, no one's view (including the views of councilmembers) should be dispositive. To the extent that a councilmember's views become a litmus test for approval by the Zoning Commission, I will, if elected, seek to advocate that all views and laws be considered in evaluating what is in the public interest in any given case.

In ascertaining and advocating for the public interest in zoning commission decisions, the OAG must be independent and develop its positions based on the facts, law and circumstances. The PUD process itself is governed by many regulations that must be followed, and many other provisions of District law may come into play in evaluating any given proposed development. Consequently, while the Comprehensive Plan provides important guidance to the District's zoning authorities, it is by no means the sole source that must be considered in assessing any particular PUD. The Attorney General must evaluate all of the many legal requirements that may come into play in a given case - requirements that, if not followed, could lead to delays arising from litigation and the reversal of Zoning Commission decisions by the Court of Appeals.

Moreover, through the Land Use Section of OAG I will advocate for the broad public interest and consider other important factors, such as whether the racial equity lens has been adequately applied, whether residents will be displaced or otherwise disadvantaged by a PUD, and whether the proposed development will meaningfully contribute to genuinely affordable housing for District residents. Sometimes views advanced by particular interests, including by elected officials, are not in the public interest of DC. Where necessary, the OAG may need to advocate for positions that are contrary to a position advanced by a particular councilmember.

TRANSPORTATION

Question Title

* 11. Do you think inducing residents and visitors to drive less should be an explicit policy goal of the District?

YES

NO

12. In 2018, the D.C. Council voted to decriminalize fare evasion in the District over objections from Mayor Bowser, the Washington Metropolitan Area Transit Authority, Metro Transit Police Department, and the Amalgamated Transit Union Local 689. Should fare evasion be decriminalized?

YES

NO

The decision to decriminalize fare evasion has already been made, and it is the obligation of the OAG to enforce the law. Personally, I agree with the decision to decriminalize fare evasion, and instead believe that fare evasion should be addressed through civil and regulatory penalties and enforcement. However, if the DC Council were to change the law, it would be the obligation of OAG to enforce it.

13. Should the WMATA Board of Directors abolish its penalties for fare evasion?

YES

NO

The decision whether WMATA should abolish monetary penalties for fare evasion is not a policy or legal decision made by DC alone (given the regional governance of WMATA), nor a decision that the OAG can unilaterally make for fare evasion that occurs in Washington. The decision whether WMATA should abolish penalties for fare evasion needs to be based on an assessment of whether the costs associated with imposing and enforcing monetary penalties are outweighed by the benefits of increased fare payment. Personally, I believe that WMATA, in conjunction with policy makers in Maryland, Virginia and DC, should determine whether publicly subsidized public transportation might, in the short and long run, be more beneficial in advancing our community's transportation, public safety, economic and environmental objectives.

14. Will you work to ensure the attorneys general in Maryland and Virginia, and their subordinates, suspend prosecution of fare evasion offenses?

YES
 NO

As Attorney General, I intend to work closely with law enforcement officials in Maryland and Virginia, including the state attorneys general, to address transportation and other issues that impact our regional economy and infrastructure. Throughout my campaign, I have made traffic violence and related-traffic law enforcement issues a central part of my platform. Predictable, consistent law enforcement throughout regional systems is important. Fare evasion on the metro is one important issue, as is the reciprocal enforcement of speeding and parking tickets. Developing consistent law enforcement priorities and strategies across the DMV will require not only collaboration with state and local law enforcement (Attorneys General and State's Attorneys), but also with the DC Mayor and DC Council, the US Attorney, and the Governors and legislatures of Maryland and Virginia.

15. What powers does the attorney general have to reduce dangerous behavior by drivers on the District's roads? What will you do to ensure that no one is killed by a driver, especially by a driver who has demonstrated their failure to comply with traffic laws through unpaid parking and driving violations?

As Attorney General, I intend to focus on developing comprehensive strategies to address traffic violence and other traffic-related issues (environmental sustainability, regulatory enforcement, amendment of the Clean Hands Statute). Aggressive, smart prosecution of traffic crimes (reckless driving, repeat speeding, DUI), crimes over which the OAG has prosecutorial authority, will be part of that comprehensive approach. Addressing traffic issues also requires collaboration with the Mayor and District agencies, and as Attorney General, I will work to convene stakeholders and to enhance communication, cooperation and a productive attorney-client relationship with the governmental agencies (e.g., DDOT, DOEE, DMPED) that need to be part of comprehensive approaches to address traffic related issues. I will work with the lawyers in the OAG's Public Advocacy Division to assemble a traffic violence task force with relevant stakeholders to address pedestrian/bicyclist accidents, environmental sustainability, regulatory enforcement and ticket enforcement, with a special focus on communities east of the Anacostia River which contain less than one quarter of the District's total population but experience nearly half of its traffic fatalities. Additionally, I will advance policies that improve transit equity such as supporting legislative action that would address disparities in access to public transportation, including the redesign of bus networks in the DC, VA and MD to expand access to jobs and other essential activities. Finally, I will focus on strategies to ensure that non-DC drivers who violate DC traffic and parking laws are required to pay their tickets just as DC drivers are required to do.

16. Delivery companies notoriously violate the District's parking laws, treating tickets as a business expense and negotiating batch discounts with the District, thereby ensuring that poor and unsafe behavior on their employees' parts will be excused. As attorney general, what will you do to force delivery companies to ensure that their drivers obey traffic laws?

As Attorney General, I will aggressively enforce DC laws to ensure that all businesses play by the rules and that cheaters are held accountable, particularly those that create unsafe conditions for DC residents. When economic actors are not dis-incentivized to break the law, and instead treat tickets and fines as a cost of doing business (which they then pass on to their customers who are DC residents and business owners), the OAG must consider bringing enforcement actions under statutes and common law theories that penalize such behavior, including by seeking punitive and/or treble damages and the recovery of legal fees. By working closely with DC agencies (including, when it comes to delivery companies' systemic violation of parking and idling

laws, DPW, DOEE and Parking Enforcement), the OAG can help develop and then enforce legal strategies that effectively change behavior.

17. The District's automated traffic enforcement program cannot meaningfully enforce consequences for unsafe driving upon Maryland and Virginia residents, as the District does not have any reciprocity agreement with those states. As attorney general, what will you do to facilitate those agreements, and what will you do to implement them?

Unfortunately, the reciprocity agreements that apply to moving violations in the DMV do not apply to automated speed and red-light camera tickets. As Attorney General, I will work to close this loophole in the District's traffic enforcement strategy, which I believe is an important step toward making our streets safer. Given the high volumes of cross-boundary driving in the DMV area, I will advocate for inter-jurisdictional reciprocity for enforcement of automated traffic penalties in two main ways. First, I will work closely with the Mayor to lobby the governors of MD and VA to extend the Non-Resident Violators Compact (in which DC, MD and VA already participate) to automated ticket cameras, as contemplated in the 2020 Vision Zero Omnibus Bill. Second, I will lobby the region's Transportation Planning Board to undertake a coordinated effort to urge the MD and VA governors and the District Mayor to establish a legal framework for accountability. This effort will be supported by data on the types of violations involved, their frequency and locations, and amount of unpaid fines.

Once the Non-Resident Violators Compact is extended to automated tickets (or some other DMV-wide reciprocity arrangement is put in place), the OAG under my leadership will work with our counterpart offices in MD and VA to establish a framework for legal accountability and effective, reciprocal enforcement. The OAG will also advise the District Department of Motor Vehicles on implementing systems to track and coordinate enforcement of unpaid automated tickets. Without tangible consequences, the District is left holding the bag on millions in unpaid fines owed by MD and VA drivers and, even worse, reckless drivers will continue to act with impunity on our roads.

18. Fines and fees for unsafe driving disproportionately harm low-income drivers and drivers of color. GGWash has, in the past, proposed that the District switch from fines to points on a drivers' license to emphasize that automated enforcement is not about

revenue or surveillance, but about ensuring that drivers are behaving safely and responsibly. Do you support changing the consequences of an automated ticket program from fines to points and, if so, how would you make that change law?

As Attorney General, it is essential to use the law to make the lives of people who live in the District safer and better, and also to address the racial and income disparities that have plagued the justice system as a whole. While the OAG does not have the unilateral authority to make laws, the AG can propose new legislation and can advocate strongly for amending existing legislation. Accordingly, I would use my platform as the top elected law enforcement official in the District to advocate for an automatic ticket program that more equitably achieves the goal of less traffic violence and safer streets for motorists, cyclists, and pedestrians alike, while not unfairly penalizing (or criminalizing) poor DC residents and drivers.

In this vein, I support repealing the provision of the "Clean Hands Law" that applies to driver's licenses. As it currently stands, the Clean Hands Law automatically disqualifies District residents who owe the District more than \$100 in parking, traffic or other fines or fees from obtaining or renewing their driver's licenses. The law has a devastating impact on thousands of District residents who are too poor to pay these debts, with no evidence to suggest that the policy improves traffic safety. Without a driver's license, it is harder not only to get to the grocery store, attend medical appointments, transport children to childcare and school, and visit and care for elderly relatives, but also to find and keep employment – employment that would facilitate repayment of the outstanding fines and fees. It puts too many people who are poor at risk of being arrested for driving without a valid driver's license which, given historical over-policing of Black and brown drivers, disproportionately results in criminalizing poor communities of color.

19. The District's goal to be carbon-free by 2050 requires most of the reduction of its transportation emissions to come from residents turning existing single-occupancy vehicle trips into transit, walking, and biking trips. Please describe at least one trip you currently take by car that you can commit to taking on foot, by bus, by train, or by bike instead.

I can commit to using public transportation (bus and metro) more regularly to commute to and from work downtown, particularly when I don't have commitments or meetings before, during or after work that require a car to get to or from. Like many who live in DC, my home is walking distance from bus routes along major arterial roadways, and an easy bus trip to several metro stations. As Attorney General, in addition to advocating for public transportation subsidies for OAG employees, I will commit to leading by example, encouraging the lawyers and legal professionals who work in the OAG to similarly make more frequent and regular use of public transportation.