



In its third year in office, the Trump Administration dramatically expanded discriminatory anti-LGBT policies

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INTRODUCTION

In 2019, the Trump Administration dramatically expanded upon the discriminatory policies implemented in 2017¹ and 2018² that are harming the health and well-being of LGBTQIA+ people in America and around the world. It rolled back sexual orientation and gender identity (SOGI) nondiscrimination provisions in health care, employment, and housing, and expanded discriminatory religious refusal policies. It appointed more anti-LGBT federal court judges and further attempted to roll back the collection of sexual orientation and gender identity data that is critical to understanding LGBT health disparities. It also enacted anti-immigration policies that advocates say directly contributed to the deaths of two transgender women seeking asylum^{3,4} and are also disproportionately affecting LGBT asylum seekers, generally.⁵

The Trump Administration did take some positive actions in its third year in office. It launched the Ending the HIV Epidemic Initiative, an ambitious campaign to end the domestic HIV epidemic. It also launched a global campaign, which President Trump spoke about before the United Nations in September,⁶ to advocate for the repeal of 70 laws in other countries that criminalize same-sex sexual behavior. However, ongoing anti-LGBT policies by the Trump Administration threaten to undermine progress made by the Ending the HIV Epidemic Initiative,⁷ and global LGBT advocates claim that there is no substance to the decriminalization effort.⁸ They also point to other anti-LGBT actions taken by the U.S. State Department and by the Trump Administration.

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 2. Cahill S, Wang T, Jenkins B. (2019). *Trump Administration continued to advance discriminatory policies and practices against LGBT people and people living with HIV in 2018*. Boston, MA: The Fenway Institute. Available online at: <https://fenwayhealth.org/wp-content/uploads/Trump-Administration-Impact-on-LGBTs-Year-Two-Brief-Web.pdf>
 3. Kessler B. (2019, June 3). Transgender asylum-seeker dies after six weeks in ICE custody. NBC News. Available online at: <https://www.nbcnews.com/news/us-news/transgender-asylum-seeker-dies-after-six-weeks-ice-custody-n1012956>
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 6. Kumar A. (2019, September 24). Decoding Trump's Speech Before the United Nations. *Politico*. Available online at: <https://www.politico.com/story/2019/09/24/trump-speech-at-un-1507923>
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ROLLBACK OF NONDISCRIMINATION REGULATIONS

In its third year in office, the Trump Administration continued to take action that would remove, weaken, and/or oppose nondiscrimination protections for LGBT Americans in health care, housing, employment, education, and civil rights.

Removing LGBT nondiscrimination language from seven federal health care regulations

In June 2019, the Department of Health and Human Services (HHS) released a proposed rule that, if finalized, would reverse the Obama-era final rule implementing Section 1557 of the Affordable Care Act (ACA), which prohibits discrimination in the provision of health care.

The 2016 final rule implementing Section 1557 of the ACA explicitly prohibits discrimination based on gender identity across federally-funded health care programs.⁹ It explicitly includes nonbinary and intersex individuals. The Section 1557 rule also prohibits some forms of sexual orientation discrimination that take the form of sex stereotyping. This could include, for example, denying fertility treatment to a lesbian couple based on the stereotypical and discriminatory belief that a woman should only be in a relationship with a man, or that children should not be raised by same-sex couples.

The 2016 Section 1557 rule was implemented to address anti-LGBT discrimination in health care which can range from being verbally or physically harassed to being denied treatment altogether.¹⁰ This discrimination, as well as the fear of experiencing it, is a barrier to seeking routine, preventive care as well as emergency care. A 2018 survey by the Center for American Progress (CAP) found that 14% of LGBTQ respondents who had experienced discrimination in health care settings in the past year avoided or postponed seeking necessary medical care, and 17% of LGBTQ respondents who had experienced discrimination in health care settings in the past year avoided seeking preventive screenings.¹¹ An earlier CAP survey found that 18% of LGBT respondents who had experienced discrimination in any setting avoided going to the doctor.¹² The 2015 U.S. Transgender Survey of nearly 28,000 transgender people found that 33% of respondents had experienced anti-transgender discrimination in health care in the year prior to the survey, and 23% of respondents chose to forego necessary health care due to fear of discrimination.¹³

Anti-LGBT discrimination itself can worsen health outcomes. In a 2017 study, 69% of LGBT people who reported sexual orientation or gender identity based discrimination in the past year reported that it negatively affected their psychological well-being, and 44% reported that it negatively affected their physical well-being.¹⁴ The Trump Administration's proposed reversal of the 2016 Section 1557 rule would undermine efforts to increase access to care and efforts to reduce LGBT health disparities, especially for transgender people.

9. U.S. Department of Health and Human Services. (2016, May 18). Nondiscrimination in Health Programs and Activities. *Federal Register* 81(96), p. 31387. Available online at: <https://www.federalregister.gov/articles/2016/05/18/2016-11458/nondiscrimination-in-health-programs-and-activities>

10. Lambda Legal. (2010). *When Health Care isn't Caring: Lambda Legal's Survey of Discrimination Against LGBT People and People with HIV*. New York: Lambda Legal.

11. Mirza S, Rooney C. (2018). *Discrimination Prevents LGBTQ People from Accessing Health Care*. Center for American Progress.

12. Singh S, Durso L. (2017). *Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways*. Center for American Progress. Accessed online at: <https://www.americanprogress.org/issues/lgbtq-rights/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>

13. James S E, Herman J L, Rankin S, Keisling M, Mottet L, Anafi M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality.

14. Singh and Durso, 2017.

The Trump Administration has **proposed removing explicit sexual orientation and gender identity (SOGI) nondiscrimination provisions** from several important health care regulations governing health insurance exchanges, Medicaid, and the Program of All-Inclusive Care for the Elderly (PACE).

The scope of the Trump Administration's proposed rule promulgated in June 2019 also extends beyond the gender identity and sex stereotyping provisions of the Section 1557 rule. The Trump Administration has proposed removing explicit sexual orientation and gender identity (SOGI) nondiscrimination provisions from several other important health care regulations governing health insurance exchanges, Medicaid, and the Program of All-Inclusive Care for the Elderly (PACE).

Medicaid is a health insurance program jointly funded by the federal government and states that covers low-income people and those in need, including children and people with disabilities. Under the ACA, 36 states expanded their Medicaid programs to cover low-income individuals without dependent children and to offer coverage immediately to people with HIV who have not received an AIDS diagnosis. Both changes resulted in much higher rates of health insurance coverage among LGBT people and people living with HIV.¹⁵ In states that expanded Medicaid coverage under the ACA, a significant portion (39%) of LGBT adults with incomes at 139% of the federal poverty level (\$16,753 in 2018 for an individual) had health insurance through Medicaid, and the uninsurance rate among low- and middle-income LGBT adults was much lower in Medicaid expansion states (18%) compared to non-expansion states (34%).¹⁶

The PACE program provides social services and health care for frail elders still living in the community who are generally disabled, low-income, and nursing home eligible. LGBT older adults experience high rates of social isolation¹⁷ and discrimination in accessing health, aging, and disability services.¹⁸ Rescinding nondiscrimination provisions from the PACE program will likely make many LGBT elders more fearful of discrimination in accessing elder services and health care, which in turn would exacerbate social isolation among LGBT older adults.

15. Wang T, Cahill S. (2017) *The Essential Elements of a Revised National Health Care Policy for LGBT People and People Living with HIV*. The Fenway Institute. Accessed online at: <https://fenwayhealth.org/wp-content/uploads/Fenway-ACA-PLWHA-LGBT-Policy-Brief-March-2017.pdf>

16. Baker K, McGovern A, Gruberg S, and Cray A. (2016). *The Medicaid Program and LGBT Communities: Overview and Policy Recommendations*. Center for American Progress. Available online at: <https://cdn.americanprogress.org/wp-content/uploads/2016/08/08125221/2LGBTMedicaidExpansion-brief.pdf>

17. Fredriksen-Goldsen K, Kim H, Barkan S, Muraco A, Hoy-Ellis C. (2013). Health Disparities Among Lesbian, Gay, and Bisexual Older Adults: Results from a Population-Based Study. *American Journal of Public Health*, 103(10), pp. 1802-1809. doi:10.2105/AJPH.2012.301110

18. Fredriksen-Goldsen K, Kim H, Emler C, Muraco A, Erosheva E, Hoy-Ellis C, Petry H. (2011). *The Aging and Health Report: Disparities and Resilience Among Lesbian, Gay, Bisexual, and Transgender Older Adults*. Seattle, WA: Institute for Multigenerational Health.

Removing LGBT, sex, and religion nondiscrimination language from Health and Human Services grants and programming

Under this proposed rule, **LGBT people in need of medical care could be turned away** from federally funded health centers and clinics.

In November 2019, HHS released a new proposed rule that would remove regulatory provisions that explicitly prohibit organizations that receive HHS grant funding from discriminating on the basis of sexual orientation, gender identity, sex, and religion. Under this exceptionally broad proposed rule, millions of Americans, including LGBT people, women, people of minority faiths, and non-religious people could face discrimination from health and social service agencies that receive funding from HHS. HHS awards more than \$500 billion in grant funding annually. Its grantees include organizations that provide a wide array of health and social services, including health care

at federally funded community health centers, HIV and STI testing and prevention, refugee resettlement, elder care programs, childcare and after-school programs, community meal programs, and adoption and foster care services. These programs are vital to millions of Americans, especially for marginalized communities, including LGBT people, who already experience pervasive discrimination that acts as a barrier to accessing care and services.¹⁹

Under this proposed rule, LGBT people in need of medical care could be turned away from federally funded health centers and clinics. After-school programs like Head Start could refuse to serve LGBT youth or youth with LGBT parents. Senior service centers could refuse to serve LGBT elders. This rule, if enacted, would create a broad license to discriminate for agencies like Miracle Hill Ministries, a Christian nonprofit homeless and foster care agency in South Carolina. Miracle Hill Ministries received a special waiver from HHS to continue to receive federal grant funding despite only working with evangelical Christians and refusing to place children with a prospective parent who was Jewish²⁰ and another prospective family that was Catholic.²¹

19. Lambda Legal. (2010). *When Health Care Isn't Caring: Lambda Legal's Survey of Discrimination against LGBT People and People with HIV*. New York: Lambda Legal.

20. Meckler L. (2019, January 23). Trump administration grants waiver to agency that works only with Christian families. *Washington Post*. Accessed online at: https://www.washingtonpost.com/local/education/trump-administration-grants-waiver-to-agency-that-works-only-with-christian-families/2019/01/23/5beafed0-1f30-11e9-8b59-0a28f2191131_story.html

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Opposing the Equality Act

In June 2019 the U.S. House of Representatives passed the Equality Act, which would prohibit sexual orientation and gender identity discrimination under federal law. It would also prohibit discrimination based on sex and religion. As the House was considering the bill, a White House senior official voiced opposition to the Equality Act, stating that “this bill in its current form is filled with poison pills that threaten to undermine parental and conscience rights.”²² This reversed Trump’s stated support for LGBT people during the 2016 presidential campaign, when he tweeted support²³ for LGBT people after the terror attack on LGBT people at the Pulse Nightclub in Orlando, Florida and restated his support at the Republican National Convention.²⁴ It also reverses Trump’s own expressed stance to *The Advocate* magazine in a 2000 interview, when he said that he liked “the idea of amending the 1964 Civil Rights Act to include a ban of discrimination based on sexual orientation...It would be simple. It would be straightforward,” Trump said. “Amending the Civil Rights Act would grant the same protection to gay people that we give to other Americans — it’s only fair.”²⁵

Delegitimizing LGBT rights as human rights

In July 2019, Secretary of State Mike Pompeo established a “Commission on Unalienable Rights,” which aims to distinguish between “natural rights” and “ad hoc rights” in the Universal Declaration of Human Rights.²⁶ Pompeo appointed Mary Ann Glendon, a Harvard Law professor and prominent opponent of marriage equality,²⁷ reproductive rights,²⁸ and the idea that women’s rights are human rights²⁹ to Chair the Commission. Over 400 human rights and health care organizations including Amnesty International, the American Civil Liberties Union, and the American Psychological Association signed a letter to Secretary of State Mike Pompeo expressing their “deep concern” about the lack of “ideological diversity” on the Commission and its “clear interest in limiting human rights, including the rights of women and LGBTQI individuals.”³⁰ Additionally, the directors of the Human Rights Clinic at Duke University School of Law, the Human Rights Clinic at Columbia Law School, and the Center for Human Rights and Global Justice at New York University School of Law warned that the “risk is high that the Commission will advance a specific brand of conservative arguments aimed at: (a) dialing back gains on LGBTQI rights and women’s rights, including particularly the right to choose and the right to marriage equality...”³¹

22. Fitzsimons T. (2019, May 14). Trump Opposes Federal LGBTQ Nondiscrimination Bill, Citing ‘Poison Pills.’ *NBC News*. Available online at: <https://www.nbcnews.com/feature/nbc-out/trump-opposes-federal-lgbtq-nondiscrimination-bill-citing-poison-pills-n1005551>

23. Trump D. (2016, June 14). Tweet. *Twitter*. <https://twitter.com/realDonaldTrump/status/742771576039460864>

24. Elliott P. (2016, July 22). How Donald Trump Courted Gay Voters at the Convention. *Time*. <https://time.com/4418475/republican-convention-peter-thiel-lgbt-gay-rights/>

25. Advocate.com editors. (2015, September 28). READ: Donald Trump’s Advocate interview where he defends gays, Mexicans. *The Advocate*. Available online at: <https://www.advocate.com/election/2015/9/28/read-donald-trumps-advocate-interview-where-he-defends-gays-mexicans>

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27. Lavers M. (2019, July 8). Marriage opponent to chair State Department human rights commission. *Washington Blade*. <https://www.washingtonblade.com/2019/07/08/marriage-opponent-to-chair-state-department-human-rights-commission/>

28. Morello C. (2019, July 8). State Department launches panel focused on human rights and natural law. *Washington Post*. https://www.washingtonpost.com/world/national-security/state-department-to-name-panel-focused-on-human-rights-and-natural-law/2019/07/06/3bfe001e-9f54-11e9-b27f-ed2942f73d70_story.html

29. Marino K M. (2019, August 15). How Mike Pompeo’s New Commission on ‘Unalienable Rights’ Butchers History. *The Washington Post*. Available online at: <https://www.washingtonpost.com/outlook/2019/08/15/how-mike-pompeos-new-commission-unalienable-rights-butchers-history/>

30. Open Letter to Sec. of State Mike Pompeo. (2019, July 23). Available online: <https://www.humanrightsfirst.org/sites/default/files/Unalienable-Rights-Commission-NGO-Ltr.pdf>

31. Huckerby J, Knuckey S, Satterthwaite M. (2019, July 9). Trump’s “Unalienable Rights” Commission Likely to Promote Anti-Rights Agenda. *Just Security*. Available online at: <https://www.justsecurity.org/64859/trumps-unalienable-rights-commission-likely-to-promote-anti-rights-agenda/>

Employment

In 2019 the Trump Administration made legal arguments before the U.S. Supreme Court that would limit existing nondiscrimination provisions under Title VII that have been used to protect LGBT workers. In August 2019, the DOJ submitted a brief to the U.S. Supreme Court regarding *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission*, a case which seeks to establish whether Title VII of the Civil Rights Act of 1964 can be interpreted to protect transgender workers in cases of discrimination based on their gender identity or expression. In this case, Aimee Stephens, a transgender woman, was fired by her employer after she sent the company a letter stating that she struggled with gender identity disorder and planned to begin living as a woman. The U.S. Court of Appeals for the 6th Circuit found that the company violated the law by firing Aimee, but the case was appealed to the U.S. Supreme Court. The DOJ brief to the Supreme Court argues that Title VII's protections extend only to one's biological sex, and urges the Supreme Court to take this stance as well.³²

“Amending the Civil Rights Act would grant the same protection to gay people that we give to other Americans—it’s only fair.”

—Donald Trump in a 2000 interview with *The Advocate*

The funeral homes case is one of three currently before the Supreme Court regarding whether Title VII prohibits anti-LGBT discrimination in employment. The other two cases (*Altitude Express Inc. v. Zarda* and *Bostock v. Clayton County*) involve gay men who allege that they were fired from their jobs after disclosing their sexual orientation.³³ There are years of federal court and Equal Employment Opportunity Commission rulings that have found that federal prohibitions on sex discrimination also prohibit discrimination based on sexual orientation and gender identity.³⁴

32. Law T. (2019, August 17). Trump Administration asks Supreme Court to Permit Employment Discrimination Against Transgender Workers.

TIME. Available online at: <https://time.com/5654844/title-vii-trump-transgender-department-of-justice-supreme-court/>

33. Millhiser I. (2019, October 8). The Supreme Court showdown over LGBTQ discrimination, explained. *Vox*. Available online at: <https://www.vox.com/2019/10/2/20883827/supreme-court-lgbtq-discrimination-title-vii-civil-rights-gay-trans-queer>

34. U.S. Equal Employment Opportunity Commission (updated 2017). *Examples of court decisions supporting coverage of LGBT-related discrimination under Title VII*. https://www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm



Education

In 2019, the Department of Education (DOE) continued to build on anti-transgender policies and actions from the Trump Administration's first two years in office. In 2017, the DOE reversed a 2016 guidance which interpreted Title IX of the Education Amendments Act of 1972 to prohibit discrimination on the basis of gender identity,³⁵ and in 2018, the DOE refused to hear or issue rulings on complaints regarding transgender students' access to bathrooms in school.³⁶ In 2019, Education Secretary Betsy DeVos refused to verbally confirm that the DOE supports policies that prohibit discrimination based on sexual orientation or gender identity. Secretary DeVos instead insisted that "we follow the law as defined."³⁷ In a separate instance, DeVos admitted she was aware that her 2017 decision to roll back a Title IX interpretation that protected students from discrimination based on their gender identity had resulted in negative impacts on transgender students, including harassment, depression, and worse educational outcomes.³⁸

35. Somashekar S, Brown E, Vucci E. (2017, February 22). Trump Administration Rolls Back Protections for Transgender Students. *Washington Post*. Available online at: https://www.washingtonpost.com/local/education/trump-administration-rolls-back-protections-for-transgender-students/2017/02/22/550a83b4-f913-11e6-bf01-d47f8cf9b643_story.html?utm_term=.11ef42f0311c

36. Turner C, Kamenetz A. (2018, February 12). The Education Department Says It Won't Act on Transgender Student Bathroom Access. *NPR*. Available online at: <https://www.npr.org/sections/ed/2018/02/12/585181704/the-education-department-says-it-wont-act-on-transgender-student-bathroom-access>

37. Ring T. (2019, March 26). Betsy DeVos Won't Say if She Opposes Anti-LGBTQ Discrimination. *The Advocate*. Available online at: <https://www.advocate.com/politics/2019/3/26/betsy-devos-wont-say-if-she-opposes-anti-lgbtq-discrimination>

38. Anapol A. (2019, April 10). DeVos Defends Controversial Guidance on Transgender Students. *The Hill*. Available online at: <https://thehill.com/homenews/administration/438257-dem-asks-devos-if-she-knew-of-potential-harm-to-transgender-students>



Housing

In May 2019, the Department of Housing and Urban Development (HUD) proposed an amendment to the Equal Access Rule, which ensures that homeless shelters do not discriminate based on sexual orientation or gender identity. This directly contradicts guidance issued in 2016 by former HUD Secretary Julian Castro.³⁹ The proposed change would allow shelters to use an “individual’s sex as reflected in official government documents” rather than gender identity for the purposes of determining admission to facilities.⁴⁰ It would also allow shelters to take religious beliefs into account when creating policies around sex-segregated facilities.⁴¹ It is common for many homeless shelters to have sex-segregated facilities not just in bathrooms and locker rooms, but also in sleeping quarters. This proposed rule would disproportionately harm transgender Americans, about a third of whom have experienced homelessness during their lifetime, and who are already regularly turned away from shelters.⁴²

In September 2019, HUD additionally amended the 2019 Notice of Funding Availability (NOFA) to remove a crucial incentive that encouraged housing providers to support LGBT individuals.⁴³ In previous years, among many other criteria, organizations applying for HUD funding were scored on their ability to address the needs of LGBT individuals, but this specific criterion was removed.⁴⁴ HUD also removed nearly all mentions of the Housing First initiative, which strives to provide stable housing as quickly as possible to homeless individuals. This combination could create a dangerous climate in which homeless LGBT individuals, especially homeless LGBT youth, struggle to find the support that they need.

39. Johnson C. (2019, May 22). HUD Proposes Rule Changes to Gut Trans Protections at Homeless Shelters. *The Washington Blade*.

Available online at: <https://www.washingtonblade.com/2019/05/22/hud-proposes-rule-change-to-gut-trans-protections-at-homeless-shelters/>

40. Department of Housing and Urban Development. (2019). Revised Requirements Under Community Planning and Development Housing Programs (FR-6152). Available online at: <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=2506-AC53>

41. Jan T. (2019, May 22). Proposed Rule HUD Would Strip Transgender Protections at Homeless Shelters. *The Washington Post*. Available online at: <https://www.washingtonpost.com/business/2019/05/22/proposed-hud-rule-would-strip-transgender-protections-homeless-shelters/>

42. *Ibid.*

43. Fazin R. (2019, September 19). Democrats Blast HUD for Removing LGBT Language from Grant Competition. *The Hill*. Available online at: <https://thehill.com/homenews/house/462256-61-lawmakers-knock-hud-for-excluding-incentives-for-housing-first-transgender>

44. *Ibid.*

Disparate Impact Civil Rights Regulations

In January 2019, the DOJ directed Trump Administration senior officials to pursue changing or eliminating disparate impact civil rights regulations. Disparate impact regulations, adopted across federal departments and agencies as part of Title VI of the 1964 Civil Rights Act, include unintentional bias as a form of discrimination. The concept of disparate impact asserts that policies that are neutral on paper but have an unequal impact in practice are forms of discrimination, even if this was not the intention of the policy.⁴⁵ This concept is often used to establish systemic discrimination in areas such as education, housing, and transportation. In August 2019, HUD proposed to alter disparate impact anti-discrimination standards within the Fair Housing Act (FHA). The proposal would limit what qualifies as a disparate impact violation and would shift the burden of proof from the defendant to the plaintiff, making many cases of disparate impact discrimination difficult to win.⁴⁶ The weakening of disparate impact regulations, when linked with the Trump Administration's attack on LGBT nondiscrimination protections, threatens the civil rights of millions of LGBT Americans as well as people of color.



45. Meckler L, Barrett D. (2019, January 3). Trump Administration Considers Rollback of Anti-Discrimination Rules. *The Washington Post*. Available online at: https://www.washingtonpost.com/local/education/trump-administration-considers-rollback-of-anti-discrimination-rules/2019/01/02/f96347ea-046d-11e9-b5df-5d3874flac36_story.html?noredirect=on

46. Merrefield C. (2019, October 25). How a Proposed HUD Rule Would Make it Harder to File Some Housing Discrimination Claims. *Journalist's Resource*. Available online at: <https://journalistsresource.org/studies/society/housing/proposed-hud-rule-disparate-impact-housing-discrimination/>

RELIGIOUS REFUSAL POLICIES

HHS Office of Civil Rights issues final “Conscience Rule” and changes its mission statement to permit discrimination based on religion and morality

In its third year in office, the Trump Administration continued to take a strong stance in favor of religious refusal regulations and policies that could allow for discrimination against LGBT people and other marginalized communities. In May 2019, HHS published a final “Conscience Rule,” which was originally proposed in 2018. The final rule strengthens regulations that allow healthcare providers to refuse to participate in medical procedures for religious reasons.⁴⁷ In doing so, it takes the concept of religious freedom and turns it on its head. True religious freedom protects an individual’s right to worship—or not—and harms no one. But the Trump Administration’s new rule is designed so that government employees and healthcare providers can deny service or treatment to LGBT people as a group by claiming that providing such service or treatment would violate their religious beliefs or sincerely held principles.

Exacerbating matters, the regulation also applies to any healthcare worker that has an “articulable connection” to the care being provided which could cover not only doctors and nurses, but also receptionists, anesthesiologists, or anyone else tangentially connected to procedures such as abortion, sterilization, assisted suicide, or sexual and reproductive healthcare such as HIV screening or prescribing birth control.⁴⁸ While LGBT individuals are not mentioned specifically in this rule, several procedures such as gender affirmation surgery and fertility treatment for same-sex couples are frequently contested on religious grounds. This overly broad rule allows healthcare providers and staff with any articulable connection to a procedure to refuse to serve LGBT patients based on religion, even in cases of emergency. As of this writing, the rule has yet to be implemented as it was struck down by three federal judges in New York, Washington state, and California.⁴⁹ U.S. District Judge William Alsup of Northern California stated, “When a rule is so saturated with error, as here, there is no point in trying to sever the problematic provisions. The whole rule must go.”⁵⁰

In the spring of 2019, the U.S. Department of Health and Human Services Office of Civil Rights also changed its mission statement as follows, as reported by National Public Radio:

Until last week, the website said the office’s mission was to “improve the health and well-being of people across the nation” and to ensure people have equal access to health care services provided by HHS. But the new statement repositions the OCR as a law enforcement agency that enforces civil rights laws, and conscience and religious freedom laws, and “protects that exercise of religious beliefs and moral convictions by individuals and institutions.”⁵¹

47. Kodjak A. (2019, May 2). New Trump Rule Protects Health Care Workers Who Refuse Care For Religious Reasons. NPR. Available online at: <https://www.npr.org/sections/health-shots/2019/05/02/688260025/new-trump-rule-protects-health-care-workers-who-refuse-care-for-religious-reason>

48. *Ibid.*

49. Ring T. (2019, November 19). Third Judge Voids Trump’s Rule Allowing Discrimination in Health Care. *The Advocate*. Available online at: <https://www.advocate.com/health/2019/11/19/third-judge-voids-trumps-rule-allowing-discrimination-health-care>

50. *Ibid.*

51. Kodjak A. (2019, May 2). New Trump Rule Protects Health Care Workers Who Refuse Care For Religious Reasons. *National Public Radio*.



Enabling religion- and morality-based discrimination by federal contractors

In August 2019, the Department of Labor Office of Federal Contract Compliance Programs (OFCCP) released a proposed rule that, if finalized, would allow a wider range of federal contractors to discriminate against LGBT people, as well as people of minority faiths and other marginalized groups, on the basis of discriminatory religious beliefs. The mission of the OFCCP is to ensure that federal contractors comply with Executive Order (EO) 11246, which prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. In 2014, President Obama added sexual orientation and gender identity as protected classes under EO 11246. EO 11246 includes a narrow religious exemption for religious organizations. The new proposed rule threatens to jeopardize the very mission of OFCCP and the original intent of EO 11246 by using overly broad and simplified definitions that would vastly expand which organizations can claim the religious exemption to the nondiscrimination provisions of EO 11246.

The rule proposes to create a new expanded definition for the term “religious corporation, association, educational institution or society.” Entities can meet this new definition and qualify for broadened religious exemptions even if they are not “engaged primarily” in a religious purpose and even if they are for-profit organizations. This is a vast expansion on both the cited legal precedent and the original religious exemption in EO 11246, which used much narrower definitions for entities qualified for religious exemptions. EO 11246’s existing religious exemption also clearly states that contractors and subcontractors that claim a religious exemption are “not exempted or excused from complying with the other requirements contained in this Order.” The proposed rule, on the other hand, explicitly states that federal contractors may condition employment on adherence to specific religious tenets, and the proposed rule fails to emphasize that discrimination on the basis of other protected classes under the pretext of religious tenets is still not permitted. Given the proposed rule’s broadened religious exemption and the current context of anti-LGBT religious refusal guidance and legislation, a wider array of federal contractors and subcontractors could feel wrongly empowered to discriminate against LGBT workers based on religious beliefs. If this sort of discrimination were to occur, the proposed rule would also make it harder for employees to challenge discrimination where religion is being used as a pretext for other prohibited discrimination.

HIV/AIDS POLICY

In February 2019, at the State of the Union address, President Trump announced his plan to end the HIV epidemic by 2030. Phase I of “Ending the HIV Epidemic: A Plan for America” began soon thereafter, with targeted outreach and resources into specific geographic areas hardest hit by the HIV epidemic.⁵² This phase will last through 2025, with a goal of reducing new HIV infection rates by 75%.⁵³ Phases II and III will continue these efforts by committing resources more broadly across America and implementing an intensive case management system, respectively. Phases II and III aim to reduce the infection rate by 90% by 2030.⁵⁴ Trump’s proposed federal budget for 2020 included an increase of \$291 million to fund the Ending the HIV Epidemic Initiative.⁵⁵ In 2019 the Administration made available \$1 million in Ryan White HIV/AIDS Program Grants, \$6 million from the Minority HIV/AIDS Fund, \$11.3 million in National Institutes of Health research funds, \$12 million in HHS funds, and \$2.4 million in Indian Health Service funds, all for specific use towards the Ending the HIV Epidemic Initiative.⁵⁶ Much of this has come from repurposing existing money in an effort to prioritize this initiative.

Ending the HIV Epidemic: A Plan for America is a promising new initiative. However, other discriminatory policies may undermine its effectiveness.

In addition, President Trump reconvened the Presidential Advisory Council on HIV/AIDS (PACHA); the Council met in March 2019 for the first time since December 2017.⁵⁷ The Department of Health and Human Services (HHS) has additionally launched the Ready, Set, PrEP campaign, a vital piece of the Ending the Epidemic Initiative that strives to get as many at-risk individuals onto Pre-Exposure Prophylaxis (PrEP) as possible in an effort to reduce new HIV infections.⁵⁸ HHS has also partnered with Gilead to secure donations of PrEP for up to 200,000 people per year for the next five to eleven years.⁵⁹

52. HIV.gov. (2019, September 3). What is ‘Ending the HIV Epidemic: A Plan for America’? *HIV.gov*. Available online at: <https://www.hiv.gov/federal-response/ending-the-hiv-epidemic/overview>

53. *Ibid.*

54. *Ibid.*

55. Sun L H. (2019, March 11). Trump Budget Calls for \$291 Million to Fund HIV Initiative. *The Washington Post*. Available online at: <https://www.washingtonpost.com/health/2019/03/11/trump-budget-calls-million-fund-hiv-initiative/>

56. HIV.gov. (2019, November 1). Ending the HIV Epidemic: A Timeline. *HIV.gov*. Available online at: <https://www.hiv.gov/ending-the-hiv-epidemic/overview/ending-epidemic-timeline>

57. HIV.gov. (2019, November 15). About PACHA. *HIV.gov*. Available online at: <https://www.hiv.gov/federal-response/pacha/about-pacha>

58. HIV.gov. (2019, December 3). Ready, Set, PrEP. *HIV.gov*. Available online at: <https://www.hiv.gov/federal-response/ending-the-hiv-epidemic/prep-program>

59. Department of Health and Human Services. (2019, May 9). Trump Administration Secures Historic Donation of Billions of Dollars in HIV Prevention Drugs. Department of Health and Human Services Press Office. Available online at: <https://www.hiv.gov/blog/news-release-trump-administration-secures-historic-donation-billions-dollars-hiv-prevention>



Ending the HIV Epidemic: A Plan for America is a promising new initiative from an Administration that had done little in its first two years in office to make a meaningful change in the fight against HIV/AIDS. However, the campaign does little to address anti-LGBT discrimination and stigma, which are the underlying drivers behind the HIV epidemic among the most disproportionately affected populations in this country.^{60,61} Black gay and bisexual men as well as transgender women of color are at a significantly higher risk of contracting HIV and are much less likely to have health insurance, seek out and engage with HIV services, or even to receive adequate medical care at all.⁶² The Administration's work to uphold religious refusal protections, repeal nondiscrimination protections for LGBT Americans, and other such actions may actually increase discrimination against LGBT people, creating additional barriers to success for the Ending the HIV Epidemic Initiative.

Other problematic HIV policies

In February 2019, a federal judge blocked the United States Air Force from discharging service members who are living with HIV.⁶³ The case, which began in 2018, concerned two Airmen who are HIV-positive but virally-suppressed with an undetectable viral load, and demonstrates a concerning attitude among Trump's Department of Defense (DOD) that is discriminatory and not reflective of modern science.⁶⁴ (As we went to press, a federal court agreed that the service members were wrongly discharged.) In June 2019, President Trump cut federal funding to government researchers using fetal tissue to test and approve new HIV therapies.⁶⁵ These troubling moves by the current Administration could further contribute to anti-HIV stigma, undermining the Ending the HIV Epidemic Initiative and signaling potential conflicting priorities in regards to HIV/AIDS policy in 2020.

60. McNeil Jr. D G. (2019, March 18). Trump Plans to End AIDS Epidemic: In Places like Mississippi Obstacles are Everywhere. *The New York Times*. Available online at: <https://www.nytimes.com/2019/03/18/health/trump-hiv-aids-blacks.html>

61. El-Sadr W, Mayer K, Rabkin M, Hodder S. (2019). AIDS in America – Back in the Headlines at Long Last. *The New England Journal of Medicine*.

62. *Ibid.*

63. The Associated Press. (2019, February 15). Judge Halts Air Force's Efforts to Discharge Airmen with HIV. *Air Force Times*. Available online at: <https://www.airforcetimes.com/news/your-air-force/2019/02/15/judge-halts-air-forces-efforts-to-discharge-airmen-with-hiv/>

64. *Ibid.*

65. Goldstein A. (2019, June 5). New Restriction on Fetal Tissue Research 'Was the President's Decision.' *The New York Times*. Available online at: https://www.washingtonpost.com/health/trump-administration-imposes-new-restrictions-on-fetal-tissue-research/2019/06/05/b13433c0-8709-11e9-a491-25df61c78dc4_story.html

JUDICIAL APPOINTMENTS

In 2019, the Trump Administration and Republican-controlled Senate continued to nominate and confirm federal judges hostile towards LGBT Americans and causes. The appointment of Justices Neil Gorsuch and Brett Kavanaugh to the Supreme Court received a great deal of attention in 2017 and 2018, but lower court judges play a vital role in the US judicial system. Lower court justices hear hundreds of cases a year, and a proliferation of anti-LGBT justices will have real and measurable effects for LGBT Americans. Over the past two years, nearly 1 in 3 nominees for federal judicial appointments have expressed anti-LGBT sentiments and/or have histories of ruling against the interests of LGBT Americans.⁶⁶ Approximately 12 federal judges with anti-LGBT records who were nominated by Trump in 2018 were confirmed by the Senate and began service in 2019; half of them have worked to oppose or undermine marriage equality.⁶⁷ Several of the justices who were confirmed and began service in 2019 have spoken out publicly or filed amicus briefs in support of bakers, florists, photographers, or other wedding vendors who have refused to serve same-sex couples. These individuals include Chad Readler of the Sixth Circuit Court of Appeals,⁶⁸ John Campbell Barker⁶⁹ and Michael Truncale⁷⁰ of the District Court for the Eastern District of Texas, and Lee Rudofsky of the District court for the Eastern District of Arkansas.⁷¹

One in three Trump nominees to the federal judiciary have anti-LGBT records.

Many of these judicial appointees have been outspoken about their belief that sexual and gender minorities should be excluded from non-discrimination protections. Judges Eric Murphy of the Sixth Circuit Court of Appeals,⁷² Neomi Rao of the D.C. Circuit Court of Appeals,⁷³ Brantley Starr of the District court for the Northern District of Texas,⁷⁴ and Steven Menashi of the Second Circuit Court

of Appeals⁷⁵ have all worked to weaken Title IX protections for transgender and other LGB students across the United States. Judge Eric Murphy, specifically, defended the Gloucester County School Board (Virginia), which refused to allow transgender student and plaintiff Gavin Grimm to use the bathroom that matched his gender identity.⁷⁶

66. Lambda Legal. (2019, January 31). Stacking the courts: The Fight Against Trump's Extremist Judicial Nominees. Lambda Legal. Available online at: <https://www.lambdalegal.org/judicial-nominees>

67. Alliance for Justice. (n.d.) Trump's judges: On the issues – LGBTQ Americans. Alliance for Justice. Available online at: <https://afj.org/our-work/judicial-selection/trumps-judges-on-the-issues#lgbtq>

68. Alliance for Justice. (2018, June). AFJ Nominee Report: Chad Readler. Alliance for Justice. Available online at: <https://afj.org/wp-content/uploads/2018/06/Readler-Final.pdf>

69. Alliance for Justice. (2018, May). AFJ Nominee Snapshot: John Campbell Barker. Alliance for Justice. Available online at: <https://afj.org/wp-content/uploads/2018/05/Barker-FINAL-Full-Report.pdf>

70. Alliance for Justice. (2019, April 23). Truncale's Inflammatory Statements Raise Questions. Alliance for Justice: Justice Watch Blog. Available online at: <https://www.afj.org/blog/truncales-inflammatory-statements-raise-questions>

71. Alliance for Justice. (2019, July). AFJ Nominee Report: Lee Rudofsky. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2019/07/Rudofsky-Report-FINAL.pdf>

72. Alliance for Justice. (2019, June). AFJ Nominee Report: Eric Murphy. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2018/06/Murphy-Full-Report-FINAL.pdf>

73. Alliance for Justice. (2019, January). AFJ Nominee Report: Neomi Rao. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2019/01/Rao-Report.pdf>

74. Alliance for Justice. (2019, April). Brantley Starr Snapshot. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2019/04/Starr-Snapshot-Final.pdf>

75. Alliance for Justice. (2019, September). AFJ Nominee Report: Steven Menashi. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2019/09/Menashi-Report-FINAL.pdf>

76. Alliance for Justice. (2019, June). AFJ Nominee Report: Eric Murphy. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2018/06/Murphy-Full-Report-FINAL.pdf>

Judicial nominee Lawrence Van Dyke has portrayed LGBT people as **deviant and dangerous**.

Similarly, Judge Brantley Starr has defended several Texas bills that discriminate against LGBT couples looking to adopt a child.⁷⁷ Judge Rao, before her appointment to the D.C. Court of Appeals, worked at the Office of Information and Regulatory Affairs (OIRA) on a proposed Department of Health and Human Services (HHS) rule that would strengthen religious refusal policies for healthcare providers, all but legalizing discrimination

in healthcare settings.⁷⁸ In June 2019, Judge Matthew Kacsmaryk began service at the District Court for the Northern District of Texas. Judge Kacsmaryk has shown his disdain for LGBT rights through his writing. He has written that the Civil Rights Movement was on the “right side of history,” but LGBT rights movements are not. Kacsmaryk claims LGBT movements have “sought public affirmation of the lie that the human person is an autonomous blob of Silly Putty unconstrained by nature or biology, and that marriage, sexuality, gender identity, and even the unborn child must yield to the erotic desires of liberated adults.”⁷⁹

In October 2019, President Trump nominated Lawrence VanDyke to the United States Court of Appeals for the Ninth Circuit.⁸⁰ If confirmed, VanDyke will be the second appellate court judge to have worked at the Alliance Defending Freedom (ADF). The ADF has been classified by the Southern Poverty Law Center as a hate group and advocates for the sterilization of transgender individuals and the criminalization of homosexuality both in the U.S. and abroad.⁸¹ The ADF continues to spread misinformation by linking homosexuality to pedophilia, and VanDyke continues this legacy in his published writing by claiming LGBT people are deviant and dangerous. VanDyke opposed marriage equality based on Christian morality rather than fair-minded and fact-based assessments of the impacts of same-sex marriage.⁸²

77. Alliance for Justice. (2019, April). Brantley Starr Snapshot. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2019/04/Starr-Snapshot-Final.pdf>

78. Alliance for Justice. (2019, January). AFJ Nominee Report: Neomi Rao. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2019/01/Rao-Report.pdf>

79. Kacsmaryk M. (2015, September 4). The Inequality Act: Weaponizing Same-Sex Marriage. *Public Discourse: The Journal of the Witherspoon Institute*. Available online at: <https://www.thepublicdiscourse.com/2015/09/15612/>

80. Alliance for Justice. (2019). AFJ Nominee Report: Lawrence Vandyke. Available online at: <https://afj.org/wp-content/uploads/2019/10/VanDyke-Final-Report.pdf>

81. Southern Poverty Law Center. (n.d.) Alliance Defending Freedom. Southern Poverty Law Center. Available online at: <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>

82. Alliance for Justice. (2019). Trump's Judges: On The Issues. Alliance Defending Freedom. Available online at: <https://afj.org/our-work/judicial-selection/trumps-judges-on-the-issues#lgbtq>

IMMIGRATION POLICY

The Trump Administration continued to enact anti-immigration policies that are having devastating effects on LGBT refugees and immigrants. In June 2019, a transgender woman from El Salvador seeking asylum in the United States died just days after being released from a detention center in New Mexico that had been sued in March 2019 for creating “unconscionable conditions” for LGBT immigrants.⁸³

Her death came one year nearly to the day on the anniversary of the death of another transgender woman from Honduras seeking asylum. An autopsy report found that the woman died of complications from AIDS while in the custody of ICE agents.⁸⁴ The Honduran woman had been denied medical care despite her requests for assistance and additional requests for assistance on her behalf by other migrants.⁸⁵ ICE destroyed video footage from the woman’s time in custody despite orders to preserve it.⁸⁶

The March 2019 lawsuit alleging frequent verbal, physical, and sexual abuse at the Otero County Processing Center, an ICE detention center in New Mexico, was filed by a group of transgender and gay immigrants working with the ACLU.⁸⁷ Transgender detainees reported being denied hormone treatment, and one gay detainee reported being sent to solitary confinement for reporting sexual abuse to ICE officials.⁸⁸

In July 2019, the Departments of Justice and Homeland Security announced a new rule that restricts asylum hearings in the United States only to people who have been denied asylum in another country or who have been victims of human trafficking. The ACLU and other rights groups challenged the new rule, asserting that it creates unprecedented barriers to entry to the United States for asylum seekers. In September, the Supreme Court issued an order stating that the Trump Administration may enforce the new rule. Justices Sonia Sotomayor and Ruth Bader Ginsburg dissented from the decision, with Sotomayor writing, “The rule the government promulgated topples decades of settled asylum practices and affects some of the most vulnerable people in the Western Hemisphere.”⁸⁹

83. Kessler B. (2019, June 3). Transgender asylum-seeker dies after six weeks in ICE custody. *NBC News*. Available online at: <https://www.nbcnews.com/news/us-news/transgender-asylum-seeker-dies-after-six-weeks-ice-custody-n1012956>

84. Sanchez A. (2019, April 9). *UPDATED: Statement Regarding the Death of Roxsana Hernandez*. The University of New Mexico Health Sciences. Available online at: <http://hscnews.unm.edu/news/statement-regarding-the-death-of-roxsana-hernandez>

85. Flores A. (2019, March 25). ICE Destroyed Footage Of A Trans Asylum-Seeker Who Died In Custody Despite A Request To Save It. *BuzzFeed*. Available online at: <https://www.buzzfeednews.com/article/adolfoflores/ice-destroyed-footage-of-a-trans-asylum-seeker-who-died-in>

86. *Ibid.*

87. Moore R. (March 25, 2019). Gay, Transgender Detainees Allege Abuse at ICE Facility in New Mexico. *The Washington Post*.

88. *Ibid.*

89. Liptak A. (2019, September 11). Supreme Court Says Trump Can Bar Asylum Seekers While Legal Fight Continues. *The New York Times*.



SEXUAL ORIENTATION AND GENDER IDENTITY DATA COLLECTION

In its third year in office, the Trump Administration continued attempts to roll back the collection of sexual orientation and gender identity (SOGI) data in federal surveys. In April 2019, HHS announced a new proposed rule which would remove sexual orientation data collection for foster youth and foster and adoptive parents in the Adoption and Foster Care Analysis and Reporting System (AFCARS). Sexual and gender minority youth are overrepresented in the foster care system, with one Los Angeles area study finding that nearly 1 in 5 foster youth identified as LGBTQ. The study also found that sexual and gender minority youth in foster care reported higher rates of poor treatment and worse outcomes, including multiple home placements, hospitalizations, homelessness, and criminal justice involvement.⁹⁰ Collecting SOGI data among foster youth is critical to ensuring the safety and well-being of LGBTQ youth in foster care. Collecting these data among foster and adoptive parents is also necessary for ensuring that diverse and affirming families are identified to care for foster youth.

90. Wilson B, Cooper K, Kastanis A, Nezhad S. (2014). *Sexual and Gender Minority Youth in Los Angeles Foster Care*. The Williams Institute, Los Angeles LGBT Center, Holarchy Consulting, and Permanency Innovations Initiative. Funded by the Department of Health and Human Services. Available online at: https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf?_ga=2.266159183.1386249068.1575568529-62561675.1575568529

FOREIGN POLICY

In February 2019, the Trump Administration announced that it would launch a global campaign to end the criminalization of homosexuality.⁹¹ Homosexuality is still a crime in 70 countries around the world,⁹² where the pervasive anti-gay stigma can lead to worse health outcomes and increased violence and persecution. Many of the exact details of this campaign remain unclear, but it is being led by U.S. Ambassador to Germany Richard Grenell, the highest profile openly gay person in the Trump Administration.⁹³ In early 2019, Grenell hosted a convening with activists from across Europe to discuss the decriminalization campaign.⁹⁴ In December 2019, Grenell hosted a side event on LGBT issues at the United Nations Security Council meeting. President Trump spoke of the effort before the United Nations in September 2019:

In February 2019, the Trump Administration announced that it would launch a **global campaign to end the criminalization of homosexuality.**

As we defend American values, we affirm the right of all people to live in dignity. For this reason, my Administration is working with other nations to stop criminalizing of homosexuality, and we stand in solidarity with LGBTQ people who live in countries that punish, jail, or execute individuals based on sexual orientation.⁹⁵

Reporter Michelangelo Signorile looked into this initiative, and wrote in the *Washington Post* that:

Ultimately, the State Department confirmed that there was no new initiative. Rather, in a rare exception, the Trump Administration was actually continuing a pro-LGBTQ effort from the Obama era.⁹⁶

Some political analysts have speculated that the Trump Administration's anti-criminalization campaign may be at least in part motivated by attempts to pressure European allies to join the U.S. in its campaign against Iran, where the public hanging of a gay man was one of Grenell's motivations for championing this new initiative.⁹⁷

91. Lederman J. (2019, February 19). Trump Administration Launches Global Effort to End Criminalization of Homosexuality. *NBC News*. Available online at: <https://www.nbcnews.com/politics/national-security/trump-administration-launches-global-effort-end-criminalization-homosexuality-n973081>

92. The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). (2019). Sexual Orientation Laws in the World – 2019. *ILGA*. Available online at: <https://ilga.org/maps-sexual-orientation-laws>

93. Kirby J. (2019, February 19). The Trump Administration Reportedly Wants to Push Countries to Decriminalize Homosexuality. *Vox*. Available online at: <https://www.vox.com/world/2019/2/19/18232163/trump-administration-grenell-decriminalize-lgbt>

94. *Ibid.*

95. Spinelli, 2019.

96. Signorile M. (2019, August 20). Trump has a devastating record on LGBTQ rights. Don't deny the truth. *Washington Post*. Available online at: https://www.washingtonpost.com/opinions/trump-may-want-you-to-think-hes-lgbtq-friendly-dont-be-fooled/2019/08/20/c2b7a7be-c36b-11e9-b72f-b31d1faa77212_story.html

97. Signorile, 2019.

Several global LGBT activists questioned whether there was any substance to the campaign:

“There’s nothing,” says David Pressman, a partner at the Boies Schiller Flexner law firm who worked on international LGBTQ policy under Obama. Grenell’s events, he says, have “not translated into any meaningful, coordinated, strategic effort.”⁹⁸

“President Trump really fancies himself an LGBT ally,” says Ryan Thoreson, a Yale Law school lecturer and researcher with Human Rights Watch. “He thinks that he’s really good for LGBT rights and seems disconnected from the reality that his Administration has consistently attacked LGBT people domestically, and hasn’t offered anything more than rhetoric for LGBT abroad.”⁹⁹

Sources told *Mother Jones* that the U.S. State Department’s Bureau of Democracy, Human Rights, and Labor (DRL), which played a key role in the Obama Administration’s promotion of LGBT equality as a key goal of U.S. foreign policy,¹⁰⁰ was not involved in the current criminalization repeal effort:

“No one in DRL has any idea what’s going on,” a former State Department official said. “There is no process.”

Global LGBT rights became a foreign policy priority for the first time in U.S. history under former President Barack Obama.^{101,102} Early in his Administration, Obama condemned a proposed anti-gay bill in Uganda, describing it as “odious.”¹⁰³ He later warned that passage of the bill would complicate the United States’ relationship with Uganda.¹⁰⁴ In 2011, then-Secretary of State Hillary Clinton delivered a speech before the United Nations on International Human Rights Day declaring that “[g]ay rights are human rights and human rights are gay rights.”¹⁰⁵ In 2015, during the second-ever visit to Kenya by a sitting U.S. president, Obama stood next to Kenyan president Uhuru Kenyatta and declared that it was wrong to punish gay people for “who they love.”¹⁰⁶ The Obama Administration also advocated globally for LGBT rights by having its foreign embassies fly rainbow flags during Pride month and support local advocacy efforts.¹⁰⁷ In 2012, for example, the US embassy in Kenya hosted the country’s first-ever LGBT Pride event.¹⁰⁸

98. Spinelli, 2019.

99. Signorile, 2019.

100. U.S. State Department fact sheet. (2013). Advancing the human rights of lesbian, gay, bisexual and transgender persons worldwide: A State Department priority. U.S. Department of State. <http://www.state.gov/documents/organization/211690.pdf>

101. Nossel, S. (2013, June 5). *How Samantha Power Could Change U.S. Diplomacy: Meet Richard Holbrooke, 2.0*. Foreign Policy.

102. Encarnación O. (2016, June 16). *Clinton’s Legacy on Gay Rights: From Skeptic to Supporter*. Foreign Policy.

103. Spetalnick M. (2010, February 4). Obama condemns Uganda anti-gay bill as “odious.” Reuters. Available online at: <https://www.reuters.com/article/us-uganda-gays-obama/obama-condemns-uganda-anti-gay-bill-as-odious-idUSTRE6134EZ20100204?irpc=932>

104. Holland S. (2014, February 16). Obama warns Uganda over anti-gay law. Reuters. Available online at: <https://www.reuters.com/article/us-uganda-usa-obama/obama-warns-uganda-over-anti-gay-law-idUSBREA1FOQL20140217>

105. Capehart J. (2011, December 7). Clinton’s Geneva accord: ‘Gay rights are human rights.’ *Washington Post*. Available online at: https://www.washingtonpost.com/blogs/post-partisan/post/clintons-geneva-accord-gay-rights-are-human-rights/2011/03/04/gIQAUPiPC_blog.html

106. Smith D. (2015, July 25). Barack Obama tells African states to abandon anti-gay discrimination. *The Guardian*. Available online at:

107. <https://www.theguardian.com/us-news/2015/jul/25/barack-obama-african-states-abandon-anti-gay-discrimination>

108. Associated Press in Warsaw. (2014, June 28). Obama uses embassies to push for LGBT rights abroad. *The Guardian*. Available online at: <https://www.theguardian.com/world/2014/jun/28/obama-gay-rights-abroad-embassies-activism>

This year, in contradiction with its stated campaign to end the criminalization of homosexuality globally, the Trump Administration has been inconsistent in speaking out against anti-LGBT actions by other governments. In March 2019, the Southeast Asian country of Brunei enacted a new law punishing adultery and homosexual sex with death by stoning. The U.S. State Department joined other countries in condemning the law.¹⁰⁹ The department also issued a statement this year saying that the United States was “deeply disturbed” by anti-LGBT actions by the government of Chechnya that resulted in at least two deaths.¹¹⁰ That statement built on sanctions the U.S. imposed in 2017 on two Chechen leaders involved with an earlier episode of anti-LGBT persecution that affected hundreds of gay men.¹¹¹ However, the Trump Administration has been silent on similar anti-LGBT actions this year by Saudi Arabia, Qatar, and Kenya.

Other actions taken by the Trump Administration conflict with its global campaign to decriminalize homosexuality and mark a significant break with past U.S. efforts to promote LGBT equality around the globe.

During President Trump’s first year in office, foreign embassies were permitted to continue the practice of flying rainbow flags during Pride month.¹¹² But this year that guidance was reversed after the U.S. Embassy in Brazil requested to fly the rainbow pride flag in June, citing an increasingly hostile anti-LGBT environment in Brazil after the election last year of President Jair Bolsonaro.¹¹³ The State Department refused the request and also stated that the rainbow flag could not be displayed on any public-facing flagpole at embassies across the globe.¹¹⁴

Also during Trump’s first year in office, the Trump Administration reassigned the first-ever Special Envoy for the Human Rights of LGBTI Persons, Randall Berry, to the State Department’s Bureau of Democracy, Human Rights and Labor.¹¹⁵ Berry was appointed to the Special Envoy position by President Obama in 2015 and since Berry’s reassignment, the position has remained unfilled.¹¹⁶

109. Stapleton A. (2019, March 31). Brunei’s new anti-gay law goes into effect this week. Here’s how the world is reacting. *CNN*. Available online at: <https://www.cnn.com/2019/03/30/asia/brunei-lgbt-death-penalty-intl/index.html>

110. Laver M. (2019, January 17). State Department ‘deeply disturbed’ by latest Chechnya anti-LGBTI crackdown. *Washington Blade*. Available online at: <https://www.washingtonblade.com/2019/01/17/state-department-deeply-disturbed-by-latest-chechnya-anti-lgbti-crackdown/>

111. Associated Press and Sopelsa B (2017, December 20). U.S slaps Chechen leaders with sanctions over human rights abuses. *NBC News*. <https://www.nbcnews.com/feature/nbc-out/u-s-slaps-chechen-leaders-sanctions-over-human-rights-abuses-n831546>

112. Lavers M. (2017, June 2). State Dept. allows embassies, consulates to acknowledge Pride month. *Washington Blade*. Available online at: <https://www.washingtonblade.com/2017/06/02/state-department-allow-embassies-consulates-acknowledge-pride-month/>

113. Londono E. (2019, June 9). Pride Flags and Foreign Policy: U.S. Diplomats See Shift on Gay Rights. *The New York Times*.

114. *Ibid.*

115. Lavers MK (2017, November 30). Randy Berry is no longer US LGBTI envoy. *Washington Blade*. <https://www.washingtonblade.com/2017/11/30/andy-berry-no-longer-us-lgbti-envoy/>

116. Spinelli, 2019.

During Trump's second year in office, presidential advisor Mick Mulvaney, who was then the Director of the Office of Management and Budget as well as the Consumer Financial Protection Bureau, defended anti-LGBT actions by other nations at the Ministerial to Advance Religious Freedom conference.¹¹⁷ The religious freedom initiative was created in 2018 by Secretary of State Mike Pompeo to promote religious freedoms worldwide.¹¹⁸ During his remarks, Mulvaney described efforts to support LGBT advocacy in African nations as a form of "religious persecution."

In June 2019, dozens of global LGBT rights activists sent a letter to Secretary of State Mike Pompeo asserting that "the State department, under your leadership and that of President Trump, has abandoned full support of LGBTQI people within its global human rights policy."¹¹⁹ The letter cited the refusal to fly the rainbow pride flags, as well as the State Department's refusal for the first time in many years to issue a statement on the International Day Against Homophobia, Transphobia, and Biphobia.¹²⁰

In November 2019, the U.S. Ambassador to Zambia criticized the Zambian government for sentencing a gay male couple to 15 years in prison for violating a British colonial-era criminalization law. U.S. Ambassador Daniel Foote said he was "horrified" by the sentence. In response, Zambia President Edgar Lungu ordered Foote to leave Zambia and demanded that President Trump reprimand Foote.¹²¹ As of this writing, the Trump Administration has not commented publicly on the controversy, despite Foote's having received threats to his life from Zambians over his pro-LGBT remarks considered credible enough that Foote was forced to cancel public appearances for World AIDS Day.¹²² Just before Christmas 2019, the U.S. State Department recalled Ambassador Daniel Foote from Zambia following his criticism of the Zambian government for sentencing a gay couple to 15 years in prison.¹²³

The May 2019 final "Conscience Rule" described in the Religious Refusal Policy section of this report also threatens HIV prevention efforts for gay and bisexual men and transgender women in Africa and elsewhere across the globe that have been supported by the US President's Emergency Plan for AIDS Relief over the past decade. The final rule states that funding recipients cannot be required to "endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a religious or moral objection."¹²⁴ This could mean that organizations working in the global south could refuse to work with LGBT people, sex workers, people who use drugs, prisoners, migrant workers, and others who are at elevated risk of HIV infection and already extremely marginalized and vulnerable.

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119. Bromley M, Mitchum P, Bank R, et al. (2019, June 20). To The Honorable Mike Pompeo, Secretary of State. Public Letter. Available online at: <https://www.washingtonblade.com/content/files/2019/06/SecPompeoJune2019-1.pdf>

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124. Department of Health and Human Services. (2019, May 21). Protecting Statutory Conscience Rights in Health Care, Delegations of Authority. Final Rule. Available online at: <https://www.federalregister.gov/documents/2019/05/21/2019-09667/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority>



TRANSGENDER MILITARY BAN

In July 2017, President Trump issued a series of tweets announcing a ban on transgender people serving in the U.S. military based on “tremendous medical costs and disruption” that he believed transgender troops would impose.¹²⁵ In response to public outcry and several legal challenges, the Trump Administration revised the policy to allow transgender people to serve so long as they did not undergo medical transition, were already actively serving in the military, and served in accordance with their biological sex rather than their gender identity.¹²⁶ In 2018, the proposed ban faced several legal battles and was blocked by lower courts.¹²⁷ In January 2019, the D.C. Court of Appeals as well as the Supreme Court of the United States ruled in favor of the ban, lifting injunctions imposed by lower courts.^{128,129} On April 12, 2019, this ban formally went into effect, putting an estimated 13,600 transgender individuals at risk of being discharged.¹³⁰

125. Cahill S, Geffen S, Wang T. (2018). *One year in, Trump Administration amasses striking anti-LGBT record*. Boston, MA: The Fenway Institute. Available online at: <https://fenwayhealth.org/wp-content/uploads/The-Fenway-Institute-Trump-Pence-Administration-One-Year-Report.pdf>

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CONCLUSION

While there were some positive developments—including the launch of the End the HIV Epidemic Initiative and opposition to other countries' laws criminalizing homosexuality—overall the Trump Administration continued to advance policies that undermine the ability of LGBT people to access health care, earn a living, and access basic human services. Many of these actions are already having direct negative and quantifiable impact on the health, well-being, and safety of LGBT people in America and those seeking asylum from oppressive, anti-LGBT cultures and regimes.

Some of the actions that the Trump Administration has taken will have predictable and quantifiable repercussions, such as the loss of health insurance and access to health care due to the continued undermining of the ACA and its nondiscrimination provisions. However, it is more difficult to predict the full extent of harm of many of the Trump Administration's anti-LGBT actions, such as its support of religious refusal legislation, narrow reinterpretation of sex discrimination, appointment of anti-LGBT justices, and other attempts to rollback LGBT rights and protections that have taken decades to pass.

Taken together, these actions are almost certainly worsening the health of LGBTQIA+ people generally. It is well-established that discrimination itself—even if it does not limit access to health care—can negatively impact the physical and psychological health of those experiencing discrimination. Conversely, laws that protect the rights of LGBT people have been found to have beneficial impacts on health. A study published in the *American Journal of Public Health* found that in the 12-month period after marriage equality was enacted in Massachusetts, gay and bisexual male patients at an urban health center experienced a 13 percent drop in medical care visits, and a 13 percent drop in appointments related to mental health.¹³¹

Despite President Trump's 2016 campaign promise to support the LGBTQIA+ community, and despite the Log Cabin Republicans' controversial decision to endorse Trump for reelection,¹³² the Trump Administration continues to promote anti-LGBTQIA+ policies in the U.S. and abroad that harm LGBTQIA+ peoples' health, well-being, and safety.

131. Hatzenbuehler M, O'Leirigh C, et al. (2012). Effect of Same-Sex Marriage Laws on Health Care Use and Expenditures in Sexual Minority Men: A Quasi-Natural Experiment. *American Journal of Public Health*. <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2011.300382>

132. Signorile, 2019.

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