

What We May Face Next: LGBT Rights and the November National Election

By Stan Kimer



Expert Forum

2/20/17



Acknowledgment: Thank you to [Out & Equal Workplace Advocates](#) for compiling much of the information contained in this summary.

Introduction: There is a lot of uncertainty and much angst and consternation about what may be next for LGBT (Lesbian, Gay, Bisexual Transgender) Americans with the election of US President Donald Trump. It is important to provide a facts-based analysis and what could possibly change and how fast.

There are some people who are in total panic and believe all gains for LGBT equality will be totally destroyed within a few months, and on other end there are people who believe that President Trump is a great friend of the LGBT community, and that very little will change. In reality, the truth is probably somewhere in the middle.

This resource will examine some of the gains for LGBT equality under President Barack Obama's administration, the various branches of the government that brought about these changes, what could change and how fast, current key issues, and then finally, what are some actions with can be taken.

Summary of gains and progress: When looking at the past progress, it is important to understand that changes have come through different branches of the government. Some of the changes include:

- From the US Supreme Court:
 - Sexual activity between consenting adults not illegal, *Lawrence vs Texas*, 2003
 - Marriage should not exclude same-gender couples, *US vs. Windsor*, 2013
 - All states need to license and recognize same-gender marriage, *Obergefell vs Hodges*
- From the US Congress:
 - Federal Hates Crimes Act expanded to include sexual orientation and gender identity, 2009
 - Ending of "Don't Ask, Don't Tell" in the US Military, 2011
 - Expanding the Violence Against Women Act's protections to LGBT people, 2013
- From the executive branch via Presidential Executive Orders and executive departments ([link to a fact sheet from the Obama administration on various LGBT advances](#))

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- Protections for government contractors
- Anti-LGBT bullying resources included by the Departments of Education and Health
- LGBT cases included in Equal Opportunity Commission complaints and investigations
- LGBT discrimination not permitted in Housing and Urban Development programs nor in Consumer Finance Protection (e.g. loan) programs

What could change and how fast: Why is it important to understand how various changes came about? It is because undoing these items takes longer and is far more difficult depending on the originating branch of government.

The hardest things to reverse are Supreme Court Decisions. A court case would take several years to work its way back up to the Supreme Court to undo something like universal same-gender marriage. Plus a party would have to prove that there was injury or adverse effect to allowing same gender marriage, which by a court of law, would be extremely difficult to prove.

The next hardest things to reverse are laws passed by Congress. A whole new bill would need to be introduced, survive through committee and be voted upon. And then all the governmental bureaucracy around the current law would all need to be redone. We are already seeing with the Affordable Car Act that Congress simply cannot “undo it” with a simply fast vote without working through the consequences.

The easiest items to change are executive orders. President Trump can quickly start issuing lots of executive orders on his own. However, even if the new President issues orders to undo some of the LGBT gains made under President Obama, it will take time for the various departments to change all the policies and procedures put in place.

When it comes to President Trump and how fast LGBT gains may be undone, there are several variables that will come into effect:

- What are President Trump’s priorities? Does he have other more urgent areas to address so that the LGBT items fly under the radar?
- How LGBT-unfriendly will his Cabinet appointments be and how much will they focus on reversing LGBT gains?
- How anti-LGBT will President Trump’s Supreme Court appointees really be?

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- How slow or fast, how supportive or unsupportive will federal department employees be toward reversing pro-LGBT programs? And how complex will this “undoing and redoing” be?
- How much pro- and anti-LGBT lobbying and influence will there be approaching President Trump and his team?

Some key LGBT issue areas to be aware of: These are some of the issues which may quickly be targeted for change and that the community needs to be vigilant protecting:

- Fairness in housing practices and prohibiting discrimination against LGBT people
- Assuring appropriate health coverage and benefits for same-gender couples and for transgender people
- Extending family leave benefits to married same-gender couples
- Public schools and facilities allowing transgender people to use the rest room corresponding to their gender identity. These items will very soon come before the US Supreme Court, the Gavin Grimm case.
- The workplace non-discrimination act to prohibit LGBT workplace discrimination is very unlikely to progress under a Republican-controlled Congress and President.

So what can we do? The first step is to not panic, take a deep breath, and then logically examine the facts. One of the most impactful areas to focus on positive progress is within the business world. Traditionally, businesses have been a leading proponent in promoting fairness and equality since businesses realize that equal treatment of all leads to a more healthy workplace and economy. We need to leverage our connections within the business world to both move the LGBT equality agenda forward, and hold losses and reversals to a minimum. Recommended steps include:

- LGBT people being out at work, especially if they are able to do some because of state laws or corporate policies. Be visible and show support to your corporate leaders who are supporting LGBT equality.
- Being active within a company’s LGBT employee resource group or diversity council so that these issues are continually made visible to corporate leaders.
- Kicking off and fostering ally networks so that non-LGBT people can learn the facts and become more comfortable supporting us.
- Teach wherever you can and tell your story.

In addition to promoting the benefits of LGBT equality in the workplace, also consider various ways of becoming politically involved if feasible. Attending

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Congress members' town hall meetings to speak out, calling their officers to register positions on key votes, and meeting with them one-on-one could help build support that LGBT equality is an American core value. Here is an excellent resource on being politically involved – a [25 page guide written by former congressional staffers](#).