



Is marriage equality safe in the Trump era?

LGBT, NEWS, POLITICS, RIGHTS

Feb 21, 2017

By [Gemma Alexander](#)

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BRIEF

Donald Trump's campaign made a lot of campaign promises, but none that threatened marriage equality. Nevertheless, proponents of LGBT rights are worried. So far, the new administration's actions on LGBT issues have sent mixed signals.

In January, circulated drafts of an executive order rescinding an Obama-era directive that prohibited federal contractors from discriminating against LGBT employees sparked panic, but in early February the White House issued a statement that the protection would remain intact.

More recently, however, Trump's Department of Justice appeared to side with those who want to force transgender students to use bathrooms and locker rooms consistent with the sex listed on their birth certificates, withdrawing its request that a Texas district court modify a temporary injunction that was blocking transgender students from using the facilities that matched their gender identity.

Given these inconsistent actions on LGBT issues, it's fair to ask: Is marriage equality safe in a Trump presidency?

The short answer? Probably, yes.

Slow-moving wheels of justice

When 60 Minutes asked about marriage equality shortly after the election, Trump answered, "It—it's irrelevant because it was already settled. It's law. It was settled in the Supreme Court. I mean it's done."

Marriage equality was established by the 5-4 Supreme Court Obergefell v Hodges decision. The court found that states could not ban same sex marriage and must recognize lawful marriages performed out of state. That should make marriage equality immune to any attack except a constitutional amendment, but there is a strategy for reversing Obergefell using the Supreme Court.

The first steps in that strategy have been accomplished—electing a Republican president and a Republican majority in both houses of Congress. The next steps would require a conservative majority on the Supreme Court. The nominee for the currently open seat, Neil Gorsuch, is no more likely to support LGBT rights than the late Antonin Scalia, who dissented from the Obergefell decision.

If Gorsuch is confirmed, the replacement of one liberal justice—perhaps Ruth Bader Ginsburg, who's 83 years old—with a conservative could tilt the court in favor of overturning the marriage equality decision.

Bringing a new case before a decidedly more conservative Supreme Court to overturn Obergefell would take years and numerous decisive right-wing wins. As public approval of same-sex marriage continues to grow, it is unclear whether this issue will remain a conservative priority. There are still numerous federal legislative and policy threats to LGBT people to keep track of, but for now, marriage equality is not one of them.

Tagged Donald Trump, LGBT, Marriage Equality, rights

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