

Gender and LGBTQ Rights in a Trump Presidency

Margaret E. Johnson, Professor of Law, Co-Director, Center on Applied Feminism, Director, Bronfein Family Law Clinic

On January 19, 2017, one day before the Inauguration of President-Elect Donald J. Trump, the University of Baltimore School of Law held a conference examining the potential effects of the Trump Presidency, [The Law According to Trump: How the New President May Seek to Transform the Law](#). At the conference, I spoke about gender and LGBTQ rights. Given that Trump bragged about [grabbing women's genitalia](#) during the campaign, and Vice-President Elect Mike Pence as Governor of Indiana initially strongly supported a state law that [eroded civil rights of LGBTQ persons](#), you know I had a lot to discuss. As the administration begins, these are some areas to keep an eye on:

1. Gender and Employment

What should we expect when Kellyanne Conway, now Counselor to the President, [says it is a bad idea](#) for a mom to work in the White House? I expect an administration hostile to gender equality in the workplace. Here is what we know so far. **Paid family leave.** During Donald Trump's campaign, he called for six weeks of [paid maternity leave](#) for women after giving birth. This proposal, while a great improvement from unpaid leave, was a step back for gender equality because it left out fathers, unmarried parents, and parents who had adopted. **Minimum wage.** [Women](#) are overrepresented in low wage jobs and there is a gender gap in pay. Trump's nominee for Secretary of Labor, [Andrew Puzder](#), and Trump's nominee for Attorney General of the United States, [Jeff Sessions](#), oppose raising the minimum wage. **Equal pay.** [Sessions](#), nominated to head the leading U.S. civil rights enforcement agency, has voted against equal pay legislation, including the Lily Ledbetter Fair Pay Act. **Women-owned businesses.** [Sessions](#) also has voted against legislation that would require the government to contract with women-owned businesses for construction work.

2. Gender-Based Violence

We can probably expect less resources for gender-based violence. **Federal Legislation.** Sessions voted against the 2014 reauthorization of the **Violence Against Women Act**, which includes federal funding for programs aimed at eradicating gender-based violence. Perhaps that shouldn't be a surprise, since [Sessions](#) responded to Trump's *Access Hollywood* [videotape](#) by saying he wasn't sure that grabbing a woman's genitalia is sexual assault. [Sessions](#) also voted against the **Military Justice Improvement Act**, which would have increased assistance and protections for military persons subjected to sexual assault. **Title IX.** Proving a case of sexual assault on campus may get a lot harder. [The Republican Party Platform](#) says Title IX campus investigations should require the highest burden of proof - beyond a reasonable doubt - rather than the lower preponderance of the evidence standard, which is what other civil cases of discrimination [require](#).

3. Reproductive Justice

This issue is a clearly drawn battleground. **Abortion.** Trump has a [pro-life](#) litmus test for his nominations for Supreme Court Justice. Trump explicitly states that he hopes to [overturn](#)

[Roe v. Wade](#), which is the Supreme Court case granting a Constitutional right to privacy for women seeking abortions. While the filling of the late Justice Scalia's seat will not change the Court's majority in privacy cases, another Supreme Court vacancy could. Cause for more concern is that Trump [proposed](#) that women who get an abortion should face "some form of punishment," though he later retracted this. Trump's anti-abortion stance is fully supported by the Republican party whose [platform](#) includes a human life amendment to the Constitution that would make it unconstitutional to have an abortion. **Reproductive Health Care.** What's on the horizon for women's health care? Trump proposes defunding [Planned Parenthood](#), which is a national health care provider for 2.7 million women, men, and children, primarily of low-income. In line with Trump's position, Sessions has voted to defund Planned Parenthood. According to the [National Women's Law Center](#), Sessions has gone so far as to "oppose... allocating any funding to fight the Zika virus to family planning providers, including Planned Parenthood, despite the fact that Zika has been shown to cause microcephaly." Trump's Department of Health and Human Services Secretary Nominee, [Tom Price](#), opposes abortion and women's need for affordable birth control. Together he and [Sessions](#) oppose the Affordable Care Act, including its contraceptive care provision. How easily can Trump get rid of this provision? He can do so with a simple [regulatory change](#). Finally, Sessions testified during his [confirmation hearings](#) that religious freedom would be a high priority for him as Attorney General. There is concern that this Administration may use religious freedom to override women's right to privacy and liberty in seeking abortions and accessing contraception.

4. Gender Equality Federal Programs

Within State and USAID, there are important programs that support gender equality, including ending gender-based violence and supporting women's economic security, across the globe. Trump's transition team has [asked for a listing](#) of all names of those working on those programs, raising concerns of a witch hunt against staff engaged in such work.

5. Medicaid

For low income women, Medicaid provides critical health care access. Trump and the Republican Congress seek to undo the Medicaid expansion under the Affordable Care Act in thirty-one states, leaving 10 million or more without health insurance. [The Senate](#) needs only 51 votes to do this.

6. LGBTQ Rights

Trump's top Civil Rights official, [Sessions](#), and the Republican party have a record of hostility towards LGBTQ rights. The [Republican Party Platform](#) condemns extending Title IX's protection of equality in education to transgender persons. As the Obama administration's protections came in the form of [guidance](#), rather than formal regulations, an abrupt change of direction would not be too difficult. And if Sessions prioritizes religious freedom over civil rights, we might see new federal legislation like the [HB2](#) law enacted by North Carolina, which allows businesses to discriminate against LGBTQ persons based on the businesses' religious objections. Such action would be in line with [Sessions'](#) record, as he opposed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention [Act](#) targeting violence based on LGBTQ. He also voted against the [Employment Nondiscrimination Act](#), protecting against discrimination on

the basis of LGBTQ status. And [Sessions](#) voted to defund LGBTQ student organizations in Alabama.

7. Same-Sex Marriage

What will happen to the Supreme Court [Obergefell](#) ruling that same-sex marriage is constitutional? It is unclear. The [Republican Party Platform](#) says marriage is between a man and a woman and condemns [Obergefell](#). [Trump](#) has said that [Obergefell](#) is the law of the land. Sessions also said this in his [confirmation hearings](#). Yet, as a Senator, [Sessions](#) supported a proposed constitutional amendment defining marriage as between a man and a woman. Again, depending on the number of seats Trump gets to fill on the Supreme Court, and depending on their adherence to *stare decisis*, the principle of following legal precedent, it is uncertain what the future holds.

8. Immigration

Immigration was a signature issue of Trump's campaign, including deportation that could affect the separation of parents from children. For more on this topic, please see comments made by my colleague **Prof. Liz Keyes** at the conference.

9. Race-Based Federal Initiatives

Another signature issue of Trump's campaign was the delegitimizing of the Black Lives Matter movement. For more on this and Trump's other actions undercutting the civil rights of African Americans and other people of color, please see comments made by my colleague **Prof. Odeana Neal** at the conference.