

The Work Ahead: LGBTQ+ Legal Issues
Under the Biden/Harris Administration and the 117th Congress

Lavender Law 2021 General Attendance Plenary I: July 28, 2021 | 12:30 pm - 2:00 pm ET

Moderator: **Tobias Barrington Wolff** (*University of Pennsylvania Carey Law School*)

Alphonso David (*Human Rights Campaign*)

Rodrigo Heng-Lehtinen (*National Center for Transgender Equality*)

Pamela Karlan (*Department of Justice*)

Sharon McGowan (*Lambda Legal*)

The advent of the Biden/Harris administration heralds a reboot of federal policy with respect to LGBTQ+ equity. The past four years of the Trump/Pence administration witnessed tremendous rollbacks of hard-won gains, such as the revocation of President Obama's commitments to transgender servicemembers serving openly and equally, the elimination of sexual orientation and gender identity nondiscrimination provisions in Sec. 1557 of the Affordable Care Act, the issuance of Department of Education guidance falsely purporting that Title IX does not protect transgender students in schools, etc. Moreover, the former administration assailed the LGBTQ+ community with new harms, including regulations allowing homeless shelters to discriminate against transgender people, court briefs filed by the US Department of Justice taking the position that businesses must be permitted to opt out of complying with local pro-LGBTQ+ nondiscrimination laws, nominating anti-LGBTQ+ judges to the federal courts, and many more. This panel will discuss the progress that the Biden/Harris administration has made in working to reverse this damage and advance its stated commitment to LGBTQ+ equality. Our speakers will also explore the extent to which both the new President and the 117th Congress are likely to be able to achieve significant progress toward the overall well-being of LGBTQ+ people, through avenues such as the Equality Act as well as other legislation which would disproportionately benefit LGBTQ+ people.

Program Agenda

- I. Welcome and Introductions
- II. The Status in January of 2021 for the Biden/Harris Administration and the 117th Congress
 - A. Relevant CLE Materials**
 1. A Chart of Changes In LGBTQ Rights Under Obama And Trump. This document memorializes the pro-LGBTQ+ legal changes - statutory and regulatory - which had been enacted under the Obama Administration and which were rolled back during the Trump Administration, setting the stage for the discussion of the program's focus on the Biden

Administration's work to re-establish the rule of law and equitable treatment for LGBTQ+ people.

2. 'Whiplash' Of LGBTQ Protections And Rights, From Obama To Trump. This NPR article provides a deeper dive on some of the rollbacks in LGBTQ+ people's rights under the Trump Administration, further demonstrating the harms to LGBTQ+ people that the CLE panel members will be referencing.

III. Biden/Harris and Congressional Goals and Actions to date

A. Relevant CLE Materials:

1. A Timeline of the Biden Administration's Efforts To Support LGBTQ Equality in the First 100 Days. This article by the Center for American Progress provides a thoughtful review of a number of the actions taken by the Biden Administration as of this summer, many of which will be discussed by the panelists in greater detail. The panelists will, in particular, discuss the themes of racial and economic equality as forces for broader LGBTQ+ equity and the ongoing need to restore the rule of law over the next few years. The panel will discuss, *inter alia*, Section 1557 of the Affordable Care Act, the restoration of transgender servicemembers' right to openly serve, Title IX guidance from the Dept of education, and the HUD Equal Access and Fair Housing Act. The panel will further discuss the broad infrastructure and COVID relief legislation promoted by the Biden Administration, and how these proposed bills will support LGBTQ+ people, and will also discuss LGBTQ+ Administration appointments and nominations.
2. Lambda Legal's Judicial Report - Courts, Confirmations, & Consequences: How Trump Restructured the Federal Judiciary and Ushered in a Climate of Unprecedented Hostility toward LGBTQ+ People and Civil Rights. This Report by Lambda Legal (whose Chief Strategy Officer and Legal Director, Sharon McGowan, is a panelist) provides background for the discussion the panelists will have about the role of the U.S. Supreme Court and the lower Courts of Appeals to the future of LGBTQ+ equality on issues including religion and free speech, as well as the Administration's current rounds of judicial nominations and potential future nominations,

IV. What's to come

A. Relevant CLE Materials:

1. Equality Act text (House Res. 5, as of March 2021). The text of this proposed LGBTQ+ civil rights legislation provides the framework for discussion of the inequities faced by LGBTQ+ people which could be addressed by the Act's passage, and a discussion of the political realities and action items needed to enact this proposed law.

V. Audience Q&A

VI. Closing