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Trump administration's new 'religious freedom' rule will encourage discrimination in health care

Women seeking abortions, LGBTQ people, and people with HIV could be denied care.

Zack Ford | Jan 18, 2018, 9:30 am | Updated: Jan 18, 2018, 12:19 pm

The Trump White House [announced a new rule](#) Thursday that overhauls the Department of Health and Human Services' Office of Civil Rights (OCR) by refocusing its mission protecting the "religious freedom" of health care providers. The new "Conscience and Religious Freedom Division" (CRFD) will focus entirely on ensuring providers are allowed to opt out of providing care when they have objections, which has huge implications for patients' access to abortion, LGBTQ people, and people living with HIV.

According to [drafts released Thursday morning](#), the CRFD will be "responsible for OCR's national conscience and religious freedom program, including enforcement of and compliance with laws protecting conscience and the free exercise of religion and prohibiting coercion and religious discrimination."

The shift will represent the biggest backlash in the pingponging policies over the past few presidential administrations. President Bush had some conscience protections for health care workers, but the Obama administration reversed them, noting that they were being used to justify various forms of discrimination. As Politico notes, this included refusing to provide birth control, refusing treatment for HIV and AIDS, denying fertility treatment to lesbian couples, or not providing ambulance transportation for someone planning to seek an abortion.

Many fear the new rule is also designed to specifically target the transgender community, particularly given its author. Last year, Trump appointed the Heritage Foundation's Roger Severino, a [massive opponent of LGBTQ equality](#), to serve as the head of HHS's civil rights department. Just a year prior, Severino had [co-written a report](#) objecting to the Obama administration's rules protecting transgender patients from health care discrimination, expressing his concern that medical professionals and organizations would be punished for rejecting the legitimacy of transgender identities.

As the Harper Jean Tobin of the National Center for Transgender Equality told Politico, "Any rule that grants a license to discriminate would be a disgrace and a mockery of the principal of religious freedom we all cherish."

The timing of the rule is not a coincidence. On Friday, Trump — who once said he believes there should be some sort of punishment for people who get abortions — will become the first sitting president to [address the March for Life](#), one of the largest anti-choice rallies in the country. Mike Pence became the first sitting vice president to address the march last year.

It's the latest in a string of particularly anti-choice moves by the Trump administration. In October, [an HHS draft strategic plan](#) was released that included language describing life as "beginning at conception" just days after a new rule was announced making it easier for employers to [refuse to cover birth control](#) for their employees.

The rule also comes just a day after [Trump sent a letter](#) to the Log Cabin Republicans, an LGBTQ Republican group, congratulating it on its 40th anniversary. Trump claimed to reaffirm his commitment to protecting people on the basis of sexual orientation — notably not gender identity — "to ensure that all Americans live in a country where they feel safe and where their opportunities are limitless." Though the Log Cabin Republicans have [consistently defended](#) the Trump administration, there is little defensible about it when it comes to LGBTQ issues.

The Trump administration has tried ([unsuccessfully](#)) to [ban transgender people from serving in the military](#), [abandoned transgender students and transgender workers experiencing discrimination](#), [argued in court it should be legal to fire people for being gay](#), [issued "religious freedom guidance" licensing anti-LGBTQ discrimination](#), [nominated a litany of anti-LGBTQ individuals to appointed positions](#), and [slashing funding for HIV research and services](#). And now, queer people might have no recourse when they are denied the basic health care they deserve.

UPDATE: HHS's announcement Thursday morning featured several speakers who spoke out about concerns related to abortion, but who also have long histories of opposing LGBTQ equality, including House Majority Leader Kevin McCarthy (R-CA), who [helped kill an LGBTQ rights bill in 2016](#), Sen. James Lankford (R-OK), who [believes it should be legal to fire people for being gay](#), Rep. Vicky Hartzler (R-MO), who [led the fight to keep transgender people out of the military](#), Montse Alvarado, [head of the anti-LGBTQ Becket Fund for Religious Liberty](#), and Everett Piper, who [proudly declared that Oklahoma Wesleyan University sought a religious exemption so it could discriminate against transgender people](#).

<https://thinkprogress.org/hhs-religious-freedom-rule-5a7ab6052dab/>

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Metro Weekly, DC, USA

U.S. Senate committee approves slate of anti-LGBTQ judges

Civil rights advocates criticize Republicans for pushing through some of Trump's most controversial nominees

By John Riley on January 18, 2018

The U.S. Senate Judiciary Committee voted to approve the nominations of 23 Trump appointees to the executive and judicial branches, including six nominees who have gained notoriety for their past opposition to civil rights protections for the LGBTQ community.

The five judicial nominees with questionable LGBTQ records were: Kyle Duncan, nominated for a seat on the 5th U.S. Circuit Court of Appeals; David Stras, nominated for the 8th U.S. Circuit Court of Appeals — and someone thought to be a “short-list” nominee for a future seat on the U.S. Supreme Court; Matthew Kacsmaryk, a nominee for the U.S. District Court for the Northern District of Texas; Thomas Farr, a nominee to the U.S. District Court for the Eastern District of North Carolina; and Mark Norris, a nominee to the U.S. District Court for the Western District of Tennessee.

Stras was approved by a 13-8 vote, with two Democrats, Sheldon Whitehouse (D-R.I.) and Amy Klobuchar (D-Minn.), voting in favor of his nomination. Duncan, Kacsmaryk, Farr, and Norris were approved on party-line votes of 11-10.

LGBTQ advocates and their allies, mostly Democrats, also objected to the confirmation of Eric Dreiband to be Assistant Attorney General of the Civil Rights Division. That nomination was approved by the committee on a party-line vote as well. Dreiband's nomination was previously approved on an 11-9 vote in October, but had to be reconsidered by the committee after he never received a floor vote.

All nominations now head to the full Senate for consideration. Republicans control the chamber 51-49, meaning two Republicans would have to vote with all Democrats to defeat any nominees they feel are unqualified or unable to be objective when hearing cases involving LGBTQ plaintiffs or defendants.

Several LGBTQ advocates, including the Human Rights Campaign, previously expressed objections to the nominees. David Stacy, HRC's government affairs director, said the nominees “pose a threat to the rights and safety of LGBTQ people across the nation and should not be entrusted with these important positions.”

Duncan is infamous among members of the LGBTQ community for representing the Gloucester County School Board in its fight with transgender student Gavin Grimm over his ability to use the boys' restroom at school. Duncan defended Louisiana's same-sex marriage

ban and penned an amicus brief on behalf of Louisiana and 14 other states, arguing that their marriage bans did not undermine the Supreme Court's 2013 ruling in *Windsor v. United States*. He also argued against allowing a same-sex couple married in New York to have their names added to their adopted child's birth certificate.

Stras has been flagged by LGBTQ advocates for his "originalist" philosophy, and his criticism of the U.S. Supreme Court's decision legalizing marriage equality. He has called into question the court's 2003 ruling declaring state sodomy laws unconstitutional. Stras also joined an opinion that allowed a highly misleading characterization of the 2012 anti-LGBT Minnesota Marriage Amendment referendum to appear on the ballot, holding that the state legislature had the authority to override the judgment of the Minnesota Secretary of State, who is obligated to ensure that titles and descriptions of ballot initiatives reflect the actual content of the measure.

Farr was flagged by civil rights groups for his evasiveness in answering [whether he knew in advance](#) about a 1990 postcard campaign designed by North Carolina Republicans to intimidate black voters, a former DOJ investigator claims.

Kacsmayk has been criticized for working for anti-LGBTQ organizations on various cases, and writing op-eds that oppose same-sex marriage, LGBTQ protections, and the rights of transgender people.

Norris, a former Tennessee state senator, has been criticized for sponsoring anti-LGBTQ measures during his time in the legislature, and for supporting Tennessee's lawsuit challenging the Obama administration's interpretation that Title IX's protections apply to transgender students.

Dreiband, the nominee to head the Justice Department's Civil Rights Division, has been criticized by LGBTQ advocates for his defense of North Carolina's HB 2 law restricting transgender people's ability to access public restrooms. He also represented nonprofit organizations seeking religious exemptions from having to provide insurance coverage for contraception under the Affordable Care Act. At his confirmation hearing, Democratic senators were particularly alarmed by his answers to questions such as whether he had been in communication with people who are considered far-right political agitators and to what degree they may influence his decisions if confirmed.

Sharon McGowan, the director of strategy at Lambda Legal, criticized the Judiciary Committee for approving some of the more controversial nominees despite various people who appeared before the committee to testify against them.

"What we saw this morning in the Senate Judiciary Committee was quite astonishing. On one side of the room sat civil rights leaders, parents of trans kids, and members of the Congressional Black Caucus all united behind Senate Democrats in their effort to stop a slate of President Trump's most divisive and appalling nominees to the executive and judicial branches," McGowan said. "In stark contrast on the other side of the room sat a cowardly group of Senate Republicans, led by Chairman Grassley, abdicating their responsibilities and

telling every face in the crowd that their voices don't matter.

"If Senate Republicans refuse to be a check on this Administration's most bigoted impulses, the American people will," added McGowan. "Whether it's Jeff Mateer, Kyle Duncan, Matthew Kacsmark, or Eric Dreiband, Lambda Legal is ready to fight this Administration's plan to pack the courts and agencies with people who have made their careers opposing civil rights and equality for all, particularly LGBT people.

"We expect that Senate Majority Leader Mitch McConnell will soon bring this fight to the Senate floor, where he and every Republican Senator will have to decide whether they are going to continue to embrace Trump's racist, homophobic, transphobic and misogynistic agenda, or whether they are going to listen the voices of the American people who know that bigotry and hate have no place in our country and our courts," McGowan concluded.

Sherrilyn Ifill the president and director-counsel of the NAACP's Legal Defense Fund, called all Farr, Norris, Stras and Dreiband "part of a coterie of anti-civil rights nominees" put up by the Trump administration.

"On Monday, senators on both sides of the aisle celebrated Martin Luther King, Jr. and his tireless work to advance the cause of racial justice in the United States," Ifill said. "Days later, however, when faced with an opportunity to honor Dr. King's legacy with more than mere lip service, Republicans in the Senate Judiciary Committee instead voted to advance the nominations of three federal court judges — Thomas Farr, Mark Norris, David Stras — and Eric Dreiband as Assistant Attorney General for Civil Rights. Each nominee has a clear and unequivocal history of hostility to civil rights.

"We must conclude that this is a deliberate and shameful plan to degrade our judiciary and destroy the norms that have governed the appointment of federal judicial nominees," Ifill added. "The Senate's Constitutional obligation to advise and consent on nominations is one of our last safeguards, and the Senate must do better than today's deeply disappointing Judiciary Committee vote. Now the ball falls in the court of the full Senate. We call on the full Senate to stand up for the American people."

<http://www.metroweekly.com/2018/01/u-s-senate-approves-slate-anti-lgbtq-judges/>

Washington Blade, DC, USA

January 18, 2018 at 4:53 pm EST | by Chris Johnson

New HHS division slammed as tool for anti-LGBT discrimination

Consistent with media reports indicating the move was coming, the Department of Health & Human Services on Thursday formally established a conscience division that critics say will allow medical practitioners to deny abortion-related services and treatment to LGBT people on religious grounds.

Roger Severino, a former Heritage Foundation scholar and now director of the HHS Office for Civil Rights, said in a statement the new agency — called the Conscience & Religious Freedom Division — will help enforcement of laws designed to protect religious freedom.

“Laws protecting religious freedom and conscience rights are just empty words on paper if they aren’t enforced,” Severino said. “No one should be forced to choose between helping sick people and living by one’s deepest moral or religious convictions, and the new division will help guarantee that victims of unlawful discrimination find justice.”

As a Heritage Foundation scholar, Severino expressed anti-transgender views, such as opposition to allowing transgender people in the U.S. military and the Obama administration’s litigation against North Carolina’s anti-trans bathroom law House Bill 2.

Acting Secretary of Health & Human Services Eric Hargan echoed Severino’s praise for the new division in a statement.

“President Trump promised the American people that his administration would vigorously uphold the rights of conscience and religious freedom,” Hargan said. “That promise is being kept today. The Founding Fathers knew that a nation that respects conscience rights is more diverse and more free, and OCR’s new division will help make that vision a reality.”

The new division was unveiled Thursday at HHS in an event with both Hargan and Severino as well as members of Congress who have anti-LGBT records, including House Majority Leader Kevin McCarthy (R-Calif.), Rep. Vicky Hartzler (R-Mo.) and Sen. James Lankford (R-Okla.).

But LGBT groups decried the establishment of the Conscience & Religious Freedom Division on the basis that it would enable religious objectors to refuse to treat transgender people or provide abortion-related services.

Rea Carey, executive director of the National LGBTQ Task Force, said in a statement the new division is a wolf in sheep’s clothing.

“We are not fooled: The new office announced this morning is meant to make it easier for people to discriminate, not to protect people of faith,” Carey said. “Health professionals have a duty to care for all their patients regardless of one’s gender identity, sexual orientation, faith, creed, race, political views, gender or disability, and no one should be denied care for being who they are.”

Creation of the division was first reported on Wednesday by Politico in an article indicating HHS would establish the agency as part of a proposed new rule enabling religious exemptions for medical providers. Although the new agency was created, no new rule has been published in the Federal Register.

HHS hasn’t responded to repeated inquiries from the Washington Blade on the nature of the new division or whether a new rule would be forthcoming.

Gregory Angelo, president of the Log Cabin Republicans, was among the LGBT groups that criticized the new division as means to enable anti-LGBT discrimination.

“It’s amazing how the same people who regularly deride the LGBT community for seeking special rights are now reveling in the creation of special rights for themselves,” Angelo said. “Log Cabin Republicans is proud to support both religious liberty and LGBT equality, but the Conscience & Religious Freedom Division at HHS seems primed to tip the scales in favor of overly broad, vague, and frivolous complaints that disproportionately impact the LGBT community in matters — quite literally — that could mean life and death.”

Jason Lemieux, director of government affairs for the Center for Inquiry, said in a statement the new division is at odds with ensuring access to health care.

“The Department of Health & Human Services should have as its sole priority the health and well-being of every American, pursuing policies based in facts and evidence, regardless of any person’s religious beliefs or lack thereof,” Lemieux said. “This grossly misnamed division represents the opposite. It is an abdication of the department’s vital responsibility to the health of all Americans, placing the dogmatic beliefs of a few above the health and lives of the people they serve.”

Cheering the creation of the division as means to protect religious freedom, on the other hand, was Tony Perkins, president of the anti-LGBT Family Research Council.

“Health care providers and others protected under federal conscience laws should be greatly encouraged that HHS will address any government actions taken against those who have objections to participating in an abortion or purchasing health insurance that includes abortion,” Perkins said. “Americans should not be forced to choose between their faith and their desire to help patients.”

In contrast to the Trump administration, the Obama administration issued a rule interpreting the provision barring sex discrimination under Obamacare to bar medical providers from discriminating against transgender patients or women who have had abortions. After a legal

challenge, however, HHS was enjoined from enforcing that rule as a result of [a court order](#) issued by U.S. District Judge Reed O'Connor in Texas.

The Center for American Progress published a [report](#) on the same day the HHS division was created indicating a significant minority of LGBT people have faced denial of services in the medical sector. The report, titled "[Discrimination Prevents LGBTQ People from Accessing Health Care](#)," is based on a 2017 survey conducted by the organization.

Among the findings was 29 percent of transgender people surveyed said a doctor or health care provider refused to see them because of their gender identity. Another 12 percent said a health care provider refused to provide them transition-related care.

For individuals who identified as lesbian, gay, bisexual or queer, the survey found eight percent said a doctor or other health care provider refused to see them because of their sexual orientation. Another six percent said a doctor or other health care provider refused to give them health care related to being lesbian, gay, bisexual or queer.

Shabab Mirza, an LGBT research assistant at the Center of American Progress and co-author of the report, said in a statement the conscience division "is the latest in the harms the Trump administration has enacted on this community."

"These data show the breadth of the discrimination that LGBTQ people, and especially transgender people, experience in health care settings," Mirza said. "From avoiding doctor's offices out of fear of discrimination, to hearing demeaning language, to being denied care outright, it is no wonder that LGBTQ people report poorer health than their peers."

Conscience & Religious Freedom Division is created days before the anti-abortion rights March for Life rally in D.C., which President Trump is set to address via a video message. Trump may address the creation of the new division in remarks to the crowd.

<https://www.washingtonblade.com/2018/01/18/new-hhs-conscience-division-slammed-tool-anti-lgbt-discrimination/>