

Recent Federal and State Government Impact on the LGBTQ+ Community

Article By:

Elaine Yap

Robert Augustin

The Biden administration has continued to show strong support for the LGBTQ+ community. The president and his administration continue to use executive orders along with guidance and regulations to show that supporting and protecting the LGBTQ+ community remains a top priority. While the federal government continues this trend since President Biden's election, some states have taken a different direction. The following is a summary of President Biden's actions since Jan. 28, 2021 impacting the LGBTQ+ community.

- On Jan. 28, 2021, The Biden-Harris Administration signed an executive order to strengthen Americans' access to quality, affordable healthcare. One of the actions initiated under this executive order is to protect women's health at home and abroad. Specifically, the executive order seeks to "protect and expand access to comprehensive reproductive healthcare" for individuals who have historically been denied access to reproductive health, i.e. "women, Black, Indigenous, and other people of color, LGBTQ+ people, and those with low incomes."^[1]
- On Feb. 4, 2021, President Biden issued a Memorandum on Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World. This memorandum reaffirmed and supplemented the principles established in the initial Dec. 6, 2011 Presidential Memorandum, signed by President Obama, which directed "all agencies engaged abroad to ensure that U.S. diplomacy and foreign assistance promote and protect the human rights of LGBT persons."^[2] The memorandum directs "agencies engaged abroad to ensure that United States Diplomacy and foreign assistance promote and protect the human rights of LGBTQI+ persons." Additionally, it directs agencies to do the following: (i) combat the criminalization of LGBTQI+ status or conduct abroad; (ii) protect vulnerable LGBTQI+ refugees and asylum seekers who are seeking refuge from violence and persecution; (iii) provide funding for foreign assistance programs with the goal to promote respect for the human rights of LGBTQI+ persons and to combat LGBTQI+ discrimination; (iv) provide swift and meaningful response to human rights abuses of LGBTQI+ persons abroad; (v) build coalitions of like-minded nations and engage international organizations in the fight against LGBTQI+ discrimination; and (vi) rescind inconsistent policies and report progress of

the LGBTQI+ human right initiatives around the world.^[3]

- On March 8, 2021, the Gender Policy Counsel within the Executive Office of the President was established by executive order. The Gender Policy Counsel is noted as “an essential part of the Biden-Harris Administration’s plan to ensure we build a more equal and just society – by aggressively protecting the rights and unique needs of those who experience multiple intersecting forms of discrimination, including individuals who are Black, Latina, Native, Asian American and Pacific Islander, people with disabilities, and LGBTQI+.”^[4]
- On March 17, 2021, President Biden “applaud[ed] the House of Representatives for passing the Violence Against Women Reauthorization Act (“VAWRA”) with bipartisan support ...” He recognized that as many as one in every three women are subjected to violence at some point in their lives and that women of color, Native American women, and members of the LGBTQ+ community suffer at even higher rates. He urged the Senate to pass the VAWRA so that he could sign the legislation quickly.^[5]
- On March 29, 2021, Kalisha Dessources Figures and Catherine E. Lhamon, published *Approaching Policy with Equity in Mind*. Figures is Special Assistant to the President for Gender Policy, and Lhamon is Deputy Assistant to the President and Deputy Director of the Domestic Policy Council for Racial Justice and Equity. The publication addresses the Administration’s equity-focused approach to policy, including its consideration of barriers for the safety and well-being of LGBTQ+ students. The article acknowledges that LGBTQ+ students, especially transgender students, are more likely than their “non-LGBTQ+ peers to receive detention, suspensions, and expulsions from school, often as a result of discrimination and harassment.” A key step that the Administration has taken to create a more equitable LGBTQ+ policy was President Biden’s executive order directing federal agencies to include sexual orientation and gender identity when implementing any federal laws that prevent discrimination on the basis of sex.^[6]
- On March 31, 2021, Transgender Day of Visibility, President Biden released a proclamation “honor[ing] and celebrat[ing] the achievements and resiliency of transgender individuals and communities.” President Biden and Vice President Harris affirmed that “transgender Americans make our Nation more prosperous, vibrant, and strong.” He emphasized the need to pass the Equality Act to provide legal protections for the LGBTQ+ Americans in “housing, education, public services, and lending systems.”^[7] Biden is the first sitting president to formally mark International Transgender Day of Visibility on March 31.^[8]
- On April 20, 2021, the Department of Housing and Urban Development (HUD) announced that it was “withdrawing a Trump-era policy that would have allowed taxpayer-funded homeless shelters to deny access to transgender people.” HUD Secretary Marcia Fudge stated that “[a]ccess to safe, stable housing – and shelter – is a basic necessity” and emphasized that transgender and gender non-conforming individuals suffer higher rates of homelessness than cisgender individuals.^[9]
- On April 20, 2021, the U.S. Department of Justice (DOJ) filed a brief in a case against the Georgia Department of Corrections. The underlying case involved a transgender woman who was housed in the men’s facility where prison officials “failed to protect her from repeated sexual assaults . . . and failed to provide her with adequate medical treatment . . .” Although DOJ did not weigh in on the merits of the case, it stated that “the Eighth Amendment of the U.S. Constitution requires prison officials to conduct individualized assessments that lead to

reasonably safe conditions of confinement and adequate medical care for all prisoners.”^[10]

- As of April 29, 2021, of the approximately 1,500 agency appointees hired by President Biden, so far 14% identify as LGBTQI+.^[11]
- On April 29, 2021, President Biden announced the American Families Plan, which seeks to advance equity and racial justice by “investing in teachers and students, empowering workers and their families, and reimagining a tax code that rewards work over wealth.” Relevantly, this plan will “[c]reate a national comprehensive paid family and medical leave program.” The plan provides for an “inclusive definition of family, ensuring workers can care for and be cared by a loved one who is not related by blood, which will greatly impact LGBTQ individuals and people with disabilities.” “The program will provide workers up to \$4,000 a month, with a minimum of two-thirds of average weekly wages replaced, rising to 80% for the lowest wage workers” and cost approximately \$225 billion over a decade.^[12]
- On April 30, 2021, in President Biden’s Proclamation on National Mental Health Awareness Month, 2021, he recognized that “[s]uicide rates are disproportionately high among Black youth, and LGBTQI+ persons” He emphasized his administration’s commitment to “advancing suicide prevention best practices and improving non-punitive crisis response.”^[13]
- On May 10, 2021, the U.S. Department of Health and Human Services (HHS) confirmed its stance that federal laws forbid discrimination based on sex and that sex includes members of the LGBTQ+ community.^[14] “[I]t is the position of the Department of Health and Human Services that everyone – including LGBTQ people – should be able to access healthcare, free from discrimination or interference, period,” said HHS Secretary Xavier Becerra. The announcement of this policy marks the end of the Trump administration’s narrow reading of the definition of “sex.”

While the president and his administration have made many strides to protect the LGBTQ+ community, the same has not been done on the state level. Many state legislatures have either enacted or introduced bills aimed at restricting members of the LGBTQ+ community and, more specifically, at violating the rights of transgender individuals. The bills include legislation in the areas of healthcare coverage, restriction on identification documents, and religious exemption bills, with the bulk of bills targeting middle and high school sports. Some states have gone as far as to include college sports of the institutions that are within the state borders. Of the many laws passed since the beginning of 2021, there are even more in committee or waiting final vote.^[15] Below are summaries of various bills that have been recently enacted that violate the rights of transgender individuals:

Insurance

- On April 14, 2021 the Arkansas General Assembly enacted HB1570 entitled the “Arkansas Save Adolescents from Experimentation (SAFE) Act” (“SAFE”) by overriding the Governor’s Executive Veto.^[16] SAFE prohibits physicians and other healthcare professionals from (i) providing gender transition procedures to anyone under the age of 18 and (ii) referring any individual under 18 to another healthcare professional for gender transition procedures. (20-9-1502). SAFE further prohibits any public funds from being “directly or indirectly used . . . to any entity, organization, or individual that provides gender transition procedures to an individual under 18 years of age.” Insurance companies are also prohibited from allowing reimbursements for anyone under the age of 18 that has undergone gender transition

procedures in the state and gives the insurance company the option not to provide coverage for any gender transition procedure, even if the individual is over the age of 18.^[17]

School Sports

- On March 11, 2021 the governor of Mississippi signed into law Senate Bill No. 2536.^[18] This bill requires athletic teams in the State of Mississippi to affix the same designations as Arkansas Act 953.^[19] Unlike Arkansas Act 953 (discussed below), Mississippi prohibits any “government entity, any licensing or accrediting organization, or any athletic association or organization”^[20] from entertaining any complaint or opening investigations against any educational institution, including colleges, for maintaining separate teams or sports for female or male students.”
- On April 29, 2021, the governor of Arkansas signed into law Act 953 entitled the “Gender Integrity Reinforcement Legislation for Sports (GIRLS) Act.”^[21] GIRLS defines sex as “a person’s immutable biological sex as objectively determined by anatomy and genetics existing at the time of birth”.^[22] GIRLS places a requirement on all athletic teams to designate the team as either (1) Male, (2) Female, or (3) Coed.^[23] Once the team has been designated by one of the approved designations, individuals of the opposite sex of that designation are prohibited from participating on that team.^[24]

^[1] [FACT SHEET: President Biden to Sign Executive Orders Strengthening Americans’ Access to Quality, Affordable Health Care | The White House](#)

^[2] <https://obamawhitehouse.archives.gov/the-press-office/2011/12/06/presidential-memorandum-international-initiatives-advance-human-rights-l>

^[3] [Memorandum on Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World | The White House](#)

^[4] [Fact Sheet: President Biden to Sign Executive Orders Establishing the White House Gender Policy Council and Ensuring Education Free from Sexual Violence | The White House](#)

^[5] [Statement by President Biden on the Passage of the Violence Against Women Reauthorization Act of 2021 in the House of Representatives | The White House](#)

^[6] [Approaching Policy with Equity in Mind | The White House](#)

^[7] [A Proclamation on Transgender Day Of Visibility, 2021 | The White House](#)

^[8] [Joe Biden: 10 LGBT wins from his first 100 days \(pinknews.co.uk\)](#)

^[9] <https://apnews.com/article/business-government-and-politics-db45d1468f7f8dde5dedfcffabbbba697>

^[10] [DOJ weighs in on suit filed by trans woman in Georgia prison \(apnews.com\)](#)

^[11] [FACT SHEET: 100 Days In, Biden-Harris Administration Makes History with Presidential Appointees | The White House](#)

[12] <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/29/fact-sheet-the-american-families-plan-advances-equity-and-racial-justice/>

[13] <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/30/a-proclamation-on-national-mental-health-awareness-month-2021/>

[14] <https://www.foxnews.com/politics/biden-hhs-reverses-trump-era-policy-transgender-health-rights>

[15] <https://www.aclu.org/legislation-affecting-lgbt-rights-across-country>

[16]

<https://www.arkleg.state.ar.us/Bills/Detail?id=HB1570&ddBienniumSession=2021%2F2021R&Search=>

[17] A.C.A. 23-79-164

[18] Mississippi SB2536 (2021)

[19] Miss Senate Bill NO. 2536 Section 1

[20] Miss Senate Bill NO 2536 Section 2

[21] Arkansas Act 953

[22] A.C.A. 16-129-103 (2)

[23] A.C.A. 16-129-104 (a)(1)-(3)

[24] A.C.A. 16-129-104 (b)

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National Law Review, Volume XI, Number 165

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