

Trump's Judicial Assault on LGBT Rights

A Brief Analysis of Trump's Reshaping of the Courts One Year In

By Lambda Legal
December 20, 2017

THE TOP LINE: The record speed with which President Trump is reshaping the courts, coupled with the staggeringly high number of judges with anti-LGBT records whom he has nominated for lifetime appointments (nearly one-third of those nominated), is triggering a growing and vast judicial crisis for LGBT people, with sweeping consequences that will last decades after Trump is gone.

Trump's takeover of courts: When President Trump assumed office, he inherited over 120 federal judicial vacancies. Since that time, he has made 59 nominations to fill those seats, and the Senate has confirmed 18 of them. Of the 18 judges confirmed so far, 12 are circuit court judges and 6 are district court judges.

Breakneck pace of nominations: The pace with which the Senate is confirming judges is striking, especially when compared with past administrations. By comparison, at this time in their administrations, President Barack Obama had confirmed 3 circuit court judges, President George W. Bush had confirmed 5 circuit court judges, and President Bill Clinton had confirmed 3 circuit court judges. In other words, Trump has confirmed more circuit court judges than all three prior presidents combined, at the same time of their presidency (the end of their first year in office).

Impact of circuit court judges: Circuit court judges exert tremendous influence in shaping our nation's laws and have a profound impact on the everyday lives of Americans. During the term ending in 2016, the Supreme Court heard only 69 cases,¹ whereas the U.S. Courts of Appeals had 53,649 filings, and the U.S. District Courts had 354,339 filings.² These cases, and their decisions, affect an unquantifiable number of Americans, as circuit court judges have final say on most matters of national significance, and on issues that impact millions of people. And since almost all federal judges serve lifetime appointments, Trump's success in rapidly appointing judges will impact millions of Americans long after he has left office, for decades to come.

Anti-LGBT record of nominees: Trump's record speed and the alarmingly high number of nominees with anti-LGBT records whom he is advancing is triggering a growing judicial crisis for

¹ Kenneth W. Moffett, *Four predictions about President Trump's Supreme Court*, Washington Post (Nov. 23, 2016), available at <https://www.washingtonpost.com/news/monkey-cage/wp/2016/11/23/four-predictions-about-president-trumps-supreme-court/>.

² United States Courts, *Federal Judicial Caseload Statistics 2016*, available at <http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2016>.

LGBT people. Nearly one-in-three have records that demonstrate hostility towards the rights of LGBT people. While several of these nominees are anti-LGBT activists who have openly denigrated LGBT people and families, others have more quietly undermined LGBT rights and protections. As an organization that has defended the rights of LGBT people in the courts for over forty years, Lambda Legal believes that it has an obligation to the communities that we serve to sound the alarm about this attempted takeover of the federal judiciary. As a result, Lambda Legal has publicly opposed 16 of Trump's 59 judicial nominees,³ and has thoroughly documented how each nominee's record poses a threat to LGBT civil rights. Lambda Legal has concluded that this cluster of nominees would be unable to administer justice impartially to all Americans.

Reshaping the courts for decades to come: LGBT people are living during a pivotal and consequential moment in the ongoing fight for equality. With nearly one-third of Trump's judicial nominees having records of working to undermine LGBT rights and protections, LGBT people are facing the prospect of a federal judiciary stacked with judges who are hostile to LGBT people and rights and who, due to their lifetime appointments, will continue to serve long after Trump has left office.

Impact on LGBT people living in the south: Of particular concern is the impact Trump's nominees will have on LGBT people living in the South. The largest percentage (35%) of LGBT people in the United States live in the South, with the combined population of Louisiana, Mississippi, and Texas including approximately 772,000 LGBT people, and an estimated 57,000 same-sex couples.⁴ LGBT families in this part of the country are more likely to lack employment protections, earn less than \$24,000 a year, and report that they cannot afford food or health care, and are less likely to have insurance than anywhere else in the country.⁵

Fifth Circuit Court of Appeals: Set against this backdrop, Trump has named four circuit court nominees for the Fifth Circuit alone, which consists of Louisiana, Mississippi, and Texas. There are 17 active judges currently serving here. LGBT people in these states report high rates of discrimination, and polls have found that 81% of residents in Louisiana⁶ and Mississippi⁷ and 79% in Texas⁸ think that LGBT people experience discrimination.

³ The headline figure of "nearly one-in-three" nominees is likely an underestimation. In addition to opposing 16 of Trump's judicial nominees, Lambda Legal has raised concerns about others, including nominees with affiliations to anti-LGBT groups like Alliance Defending Freedom and First Liberty Institute. See, e.g., *Lambda Legal Letter of Concern about the Nomination of James Ho* (Dec. 6, 2017), available at https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/lambda_legal_letter_of_concern_regarding_the_nomination_of_james_ho.pdf. Furthermore, with the ultra-conservative Heritage Foundation reportedly vetting judicial nominations, additional nominees may hold anti-LGBT animus that is not yet explicit in their record.

⁴ The Williams Institute, *LGBT in the South* (Mar. 2016), available at <https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-in-the-south/>.

⁵ *Id.*

⁶ The Williams Institute, *LGBT People in Louisiana* (Mar. 2016), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Louisiana-fact-sheet.pdf>.

⁷ The Williams Institute, *LGBT People in Mississippi* (Mar. 2016), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Mississippi-fact-sheet.pdf>.

Courts becoming increasingly hostile to LGBT people: Trump's expeditious engineering of a federal judiciary is creating a judicial catastrophe for LGBT people who will not only face greater chances of having their own cases heard by a Trump-appointed judge, but who will be impacted by the decisions made by Trump-appointed judges for decades to come. These decisions will concern issues of monumental significance for LGBT people, many of which are still being litigated in the courts and which include:

- Workplace protections
- Public accommodations
- Health care coverage
- Conditions of LGBT people in prisons and jails
- Access to identity documents
- Voting protections

Overview of Trump's Nominees with Anti-LGBT Records

Trump's presidency, and his reshaping of the federal courts, is quickly shaping up to be one of the most pivotal, consequential moments for LGBT rights. The federal judicial landscape is growing increasingly hostile to LGBT people, as captured in the records of the below nominees—some of whom have been confirmed by the Senate, others who are currently awaiting Senate confirmation, and one whose nomination has been pulled. Because of their anti-LGBT records (which can be viewed by clicking on each of the nominees' hyperlinked names), Lambda Legal has opposed them for being unable to administer justice impartially to all Americans.

- [Neil Gorsuch](#)
- [Gregory Katsas](#)
- [Kyle Duncan](#)
- [Don Willett](#)
- [John K. Bush](#)
- [Amy Coney Barrett](#)
- [Allison Eid](#)
- [Stephanos Bibas](#)
- [Joan Larsen](#)
- [Steven Grasz](#)
- [David Stas](#)
- [Mark Norris](#)
- [Jeff Mateer](#)
- [Matthew Kacsmaryk](#)
- [Stephen Schwartz](#)
- [Damien Schiff](#)

⁸ The Williams Institute, *LGBT People in Texas* (Mar. 2016), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Texas-fact-sheet.pdf>.