Trump, on Way Out, Continues Attacking LGBTQ+ Americans

In recent days the Trump administration has endorsed anti-LGBTQ+ discrimination by groups receiving federal grants.

Donald Trump and his minions are on their way out, but they’re still attacking LGBTQ+ Americans.

The Department of Health and Human Services has finalized a rule revoking an LGBTQ-inclusive antidiscrimination policy for organizations that receive grants through the agency. This includes organizations that provide adoption and foster care placements as well as those handling a variety of health care services.

It rescinds a policy put in place when Barack Obama was president, barring grantees from discriminating on the basis of sex, religion, sexual orientation, and gender identity, and requiring them to recognize the validity of same-sex couples’ marriages. HHS said the policy interferes with faith-based groups’ free exercise of religion. But its revocation opens the door to discrimination against LGBTQ+ people, those who follow a religion different from the grantee’s, or others who somehow offend a grantee’s religious beliefs.

HHS announced the final rule last Thursday, and it will be published in the Federal Register Tuesday. It will become effective 30 days from then. The good news, however, is that Joe Biden will have been sworn in as president by that time, despite efforts by Trump to prevent that, and the Biden administration will undoubtedly return to the Obama-era policy. HHS ceased enforcing the inclusive policy in November 2019, when it announced the proposed rule.

The Trump administration had already granted South Carolina an exemption from the inclusive policy, which the state had sought on behalf of foster care agency Miracle Hill Ministries. A married lesbian couple sued the state and HHS in 2019 after being turned away by Miracle Hill; the lawsuit is still pending. There are other ongoing legal challenges to discrimination by HHS grantees. Also, a case from a faith-based foster services contractor seeking an exemption from Philadelphia’s antidiscrimination law was heard by the Supreme Court in November, and the court will rule on it this spring.

In another parting shot, the Department of Education — where Betsy DeVos resigned as secretary last week — has issued a memo saying Title IX of the Education Amendments of 1972, which prohibits sex discrimination in education, does not apply to discrimination based on sexual orientation and gender identity. The Supreme Court’s decision last year in Bostock v. Clayton County called for an LGBTQ-inclusive reading of another federal law, Title VII of the Civil Rights Act of 1964, which bans sex discrimination in the workplace. But the Education Department asserted that the court ruling cannot be construed to apply to education. The Bostock decision does not mention Title IX, but it does say unequivocally that anti-LGBTQ+ discrimination cannot be separated from sex discrimination.

LGBTQ+ groups and other civil rights activists denounced the attacks committed in the Trump administration’s waning days. “The Trump administration will be remembered for many vile acts and among them will be its wave of policies enabling discrimination against LGBTQ people,” Leslie Cooper, deputy director of the American Civil Liberties Union’s LGBT & HIV Project, said in a prepared statement. The rule “would allow billions of dollars in federal grants to go to agencies that discriminate against LGBTQ people and others, including people from minority faith communities,” Cooper continued. “These programs include health care, services for seniors, homeless shelters, and many other critical services
including foster care which is the subject of a pending Supreme Court case, *Fulton v. City of Philadelphia*. Discrimination should have no place in taxpayer-funded programs. The Biden administration must immediately roll back the Trump administration’s many attacks on LGBTQ rights and ensure that tax dollars are not used to discriminate against LGBTQ people and others.”

Alphonso David, president of the Human Rights Campaign, released this statement: “At the 11th hour, the lame duck Trump-Pence administration has published its parting assault on the LGBTQ community via a federal regulation that would permit discrimination across the entire spectrum of HHS programs receiving federal funding. The Biden-Harris administration and Secretary Designate Xavier Becerra must urgently work to rescind this discriminatory regulation.”

David also called on the Education Department to rescind its “misreading” of the Bostock decision. “In her final moments at the Department of Education, Secretary Betsy DeVos prioritized punishing LGBTQ students,” he said. “The memorandum refusing to apply *Bostock* to federal education law is unconscionable and legally flawed. Over the last four years, Secretary DeVos has repeatedly attacked the LGBTQ community — especially transgender students — leaving an egregious record of recruiting anti-LGBTQ extremists, making it difficult for survivors of sexual assault to receive justice, and rescinding guidance to schools on their obligations to transgender students.” He urged the Biden-Harris administration to rescind the memo as well.

The Equality Act, pending in Congress, would clearly ban anti-LGBTQ+ discrimination in education, housing, public accommodations, federal programs, and other areas of life in addition to employment. Biden has pledged to make passage of the act a priority in his first 100 days in office, and he’ll have Democratic majorities in the House and Senate, making approval likely.