Biden’s LGBTQ promises complicated by coronavirus, impeachment crises

Biden’s LGBTQ agenda may be complicated by coronavirus, impeachment crises.

President-elect Joe Biden will have his hands full upon his inauguration next week with coronavirus cases surging and impeachment proceedings in Congress, which may complicate his efforts to act on campaign promises to the LGBTQ community, especially signing the Equality Act into law with 100 days.

Biden, however, seems ready to pull the trigger on one LGBTQ initiative: Just before the holidays, Biden’s team told LGBTQ leaders in a conference call that Biden on his first day in office Jan. 20 would direct the Defense Department to dismantle the transgender military ban, individuals familiar with the call told the Washington Blade.

It may take an entire year before the Pentagon is completely able to undo the ban, which President Trump initiated by tweet in July 2017.

But after that day one action, things get more complicated. The cornerstone of Biden’s commitment to LGBTQ people during his presidential campaign was the Equality Act, which Biden called his No. 1 legislative priority and pledged to sign within 100 days of his administration. The Equality Act would amend the Civil Rights Act of 1964 to expand the prohibition on anti-LGBTQ discrimination under federal law.

Expectations are tamped down, to say the least, with coronavirus infections and deaths hitting record highs, an unsatisfactory rollout of the vaccines and the upcoming impeachment trial of President Trump, which would bar him from holding office in the future. The impeachment trial alone may hamper efforts in the U.S. Senate to confirm Biden’s Cabinet officials, which need to be addressed before significant action on any piece of Biden’s agenda can happen.

For the most part, LGBTQ advocates who spoke to the Blade on condition of anonymity for greater candor, were open to granting Biden leeway amid the coronavirus and impeachment crises.

“I think we’ve gotten the commitments that we expected and hoped for and sought from the Biden team and from legislative leadership, and what that means for us now is holding them accountable, but also understanding that the country, our democracy, and the ability of people to actually live is going to take priority,” said one LGBTQ advocate.

The LGBTQ advocate pointed out the committee of jurisdiction for the Equality Act in the Senate is the Judiciary Committee, the same panel responsible for coordinating Trump’s impeachment trial.

But the idea that leeway should be granted to Biden on LGBTQ issues amid national crises isn’t shared by everyone, and it remains to be seen how much patience LGBTQ movement leaders will have before they start calling him out for not acting on his campaign promises. If the Equality Act stalls out in Congress, the handful of advocates who had called for a LGBTQ policy staffer on the Biden campaign and transition team, may feel vindicated.

“The notion that our government can only focus on one thing at a time isn’t acceptable,” one Democratic insider told the Blade. “You can’t have the agenda and policy goals that Biden does and not have the process to move faster.”

Instead of watching the Equality Act become law in 100 days, the bill’s supporters may have to settle for having the legislation passed in one chamber of Congress within the 100-day timeframe. One LGBTQ advocate said House Speaker Nancy Pelosi (D-Calif.) has privately signaled she would bring up the
Equality Act in the U.S. House early on during the Biden administration, which is expected to translate to a floor vote within 100 days.

Pelosi’s office, however, hasn’t responded to repeated requests from the Blade since September on when she’d hold a vote on the Equality Act in the next administration.

In the Senate, one LGBTQ advocate predicted the U.S. Senate wouldn’t take up the legislation until summer or fall, and that would be only for the initial steps of committee action. Others LGBTQ advocates, however, strongly pushed back on that assessment and said no decisions have been made about the timing for Senate action on the Equality Act.

Sen. Jeff Merkley (D-Ore.) has sponsored the Equality Act in the U.S. Senate. He told the Blade through a spokesperson he’d continue to push for the legislation.

“The Equality Act is one of Sen. Merkley’s most critical legislative priorities for 2021, and he will be urging leaders in both chambers to move expeditiously and seize the window of opportunity to pass this historic legislation,” Martina McLennan, a Merkley spokesperson, said.

With the Senate in a 50-50 party split, another wrinkle in the Equality Act is having to overcome the legislative filibuster, the Senate tradition requiring 60 votes to move forward with debate on a bill if one member objects. Would the Equality Act be the piece of legislation that would be the tool to end the filibuster, which has been criticized as a relic of structural racism? Sen. Joe Manchin (D-W.Va.) has emphatically signaled he won’t vote to junk the legislative filibuster, so that idea might be dead on arrival.

If the 60-vote threshold remains intact, the bill’s supporters would have to find 10 Republicans willing to vote for the bill, which would be a tall order especially within the 100-day timeframe Biden has envisioned. The only Senate Republican who has previously signaled support is Sen. Susan Collins (R-Maine).

The offices of Sen. Richard Durbin (D-Ill.), the new chair of the Senate Judiciary Committee, and soon-to-be Senate Majority Leader Charles Schumer (D-N.Y.) didn’t respond to a request Wednesday from the Blade to comment on the Equality Act.

With passage of the Equality Act in question, LGBTQ advocates are instead renewing calls on Biden to sign an executive order directing federal agencies to implement fully the U.S. Supreme Court’s decision in Bostock v. Clayton County, which found anti-LGBTQ discrimination is a form of sex discrimination, thus illegal under existing civil rights law.

The Center for American Progress on Tuesday issued a new report, “Improving the Lives and Rights of LGBTQ People in America: A Road Map for the Biden Administration,” which makes the executive order to implement a centerpiece in their proposal.

Sharita Gruberg, senior director for LGBTQ research and communications at the Center for American Progress, said during a conference call with reporters Tuesday the Biden transition team has been “receptive” to the requests in the report, but any declined to specify if any timing commitments were made.

“We get the impression that the Biden administration definitely prioritizes these issues and understands the need for immediate action,” Gruberg added. “The Equality Act is competing with a lot of other very critical priorities, but again, we have received every indication from champions, as well as the administration that this remains a critical priority.”

The executive order to implement Bostock, however, wouldn’t be as sweeping as the Equality Act because no law bans sex discrimination in federal programs or public accommodations. The Equality Act would
amend the Civil Rights Act to ban sex and anti-LGBTQ discrimination in those venues and expand the definition of public accommodations to include retail stores, banks, transportation services and health care services.

One Democratic insider close to the transition team said dozens of executive orders are before Biden in draft form and he’d “sign a steady series of them” beginning next week, but whether or not a directive is among them implementing the Bostock decision is unclear.

Another emerging request from the American Civil Liberties Union is an executive order directing federal agencies to update government-issued IDs and to remove medical documentation requirements for a change in gender marker and the selection of a non-binary option, which would be consistent with both Biden’s and Vice President-elect Kamala Harris’s campaign pledges to allow for a third-gender option.

Arli Christian, national political campaign strategist with the ACLU, said Biden team members were supportive about the idea of an executive order to implement the president-elect’s campaign promise for self-attestation of gender and a gender-neutral option on government IDs, but said they were still figuring out details on the path moving forward.

“This executive order would go beyond cleaning up the mess of the last four years and actually move the ball forward on rights and recognition of trans and non-binary Americans,” Christian said. “It’s a way the new administration can really show that they’re a proactive champion of trans rights.”

Biden’s comprehensive LGBTQ plan, which he proposed during the Democratic primary, also puts additional timelines on Biden’s LGBTQ plans. According to the plan, Biden “on his first day in office” would direct the Department of Education to reissue Title IX guidance requiring schools to grant transgender kids access to sports, bathrooms and locker rooms consistent with their gender identity, which was rescinded during the first year of the Trump administration.

The guidance could be folded into an executive order implementing the Bostock decision because they both relate to interpreting laws on sex discrimination, including Title IX of the Education Amendments of 1972, to apply to cases of anti-LGBTQ discrimination. In any event, Biden is expected to reverse the Department of Education’s interpretation of Bostock under the Trump administration, which just last week issued a memo excluding transgender kids from Title IX in contravention of widespread interpretation of the law.

Another campaign promise Biden made to the LGBTQ community with a timeline in his comprehensive plan was a presidential memorandum within one week after inauguration prioritizing his administration’s support for LGBTQ+ human rights and development worldwide. It’s unclear where the memorandum stands in the week before Biden takes office.

LGBTQ-specific appointments Biden pledged to name as part of his administration who would help push along his LGBTQ commitments remained undecided, including the White House LGBTQ liaison and the State Department envoy for international LGBTQ rights.

Among leaders in the LGBTQ movement, there’s widespread expectation Reggie Greer, who handled LGBTQ outreach for the Biden campaign, will become White House LGBTQ liaison. Greer would have support from LGBTQ movement leaders as an alum of the LGBTQ Victory Institute.

For the position of State Department LGBTQ envoy, one name enumerated by LGBTQ advocates in foreign affairs as a potential contender — and who has support in the LGBTQ movement — is Jessica Stern of OutRight International. Another contender is Todd Larson, senior LGBTQ coordinator at the U.S. Agency for International Development, whom sources say is gunning for the job.
Insiders also said there’s talk of naming a Foreign Service officer to the role, but LGBTQ movement leaders have said they don’t want a gay white male for the position, and the LGBTQ candidates who could be chosen from that pool are overwhelmingly gay white men.

Jamal Brown, a spokesperson for the Biden transition team, affirmed Biden remains committed to his campaign promises to the LGBTQ community and would act on his first day in office, but declined to elaborate on details.

“President-elect Biden is committed to advancing the most pro-equality agenda in history and his administration will begin implementing that vision on day one,” Brown said.