



LGBT Issues: Maximum Panic, Minimum Upheaval

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January 18, 2018

Sometimes the big stories are the ones that don't happen.

Days after his election, Donald Trump went on *60 Minutes* and said of the gay marriage legal cases: "They've been settled, and I'm fine with that." I predicted at *Overlawyered* that of the many reasons to worry about his incoming administration, "so far as I can see, anti-gay policies aren't in the top 25."

How'd that stand up? By and large, the "assault on LGBTQ equality" predicted by the *Huffington Post* and many others hasn't happened. True, Trump appointees pulled back from several controversial Obama positions. They withdrew an ill-considered plan to impose a nationwide school bathroom code. They refused to back the Democrats' Equality Act, which would nationalize public-accommodations law and minimize exemptions. They dis-endorsed an ambitious theory that Title VII of the 1964 Civil Rights Act *already* bans sexual orientation discrimination in the private workplace, and that courts simply didn't notice that fact until recently.

In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, they weighed in on the Christian baker's side—but not on religious liberty grounds, let alone with any urging of the Court to reconsider the *Obergefell* decision that legalized same-sex marriage nationwide. Instead, they offered careful and narrow First Amendment arguments based on the need to protect against forced expression.

Remember the enormous freakout last spring about a White House executive order that would give religious sentiments precedence over discrimination law? Presidents can't actually do that, but the reality didn't forestall a whole week of anticipatory #LicenseToDiscriminate rending of social justice garments.

When the actual executive order came out in May, it included almost none of the controversial ideas and mostly kicked future decisions down to the agency level. It didn't even roll back anti-discrimination rules for federal contractors.

The exception to all this caution and conciliation was Trump's impatient, imperious decree of a flat ban on military service by transgender people, which is currently stalled in court. Whatever the order's eventual fate, it serves as a reminder that the *T* track can diverge from the *G* and *L*.

Organized gay and anti-gay groups keep their respective bases in a constant state of alarm with crisis talk. But the actual course being steered is centrist.

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