Analysis **Litigators**

With Trans Rights Under Question, a Shift in LGBTQ+ Legal Advocacy in the Second Trump Administration

At least one family law attorney is advising LGBTQ+ clients to engage in mediation and direct negotiation with their spouses instead of going to court, given stances taken by the current administration and a petition asking the Supreme Court to overturn a seminal marriage equality decision.

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Pride flags in Baltimore, MD. Photo: Diego M. Radzinschi/ALM

President Donald Trump's slate of executive actions targeting trans and non-binary people has had a profound effect on lawyers who focus their practice on advocating for the LGBTQ+ community. Those actions have included restricting access to transgender health care, banning trans people from serving openly in the military and recognizing "only two sexes, male and female."

Litigation Daily spoke with five openly LGBTQ+ lawyers who practice in the space and have been inspired to advocate on behalf of LGBTQ+ clients after Trump's reelection. Most say their

advocacy has radically shifted between the first and second Trump administrations, from a focus on marriage equality to transgender-specific issues.

John Nachlinger, a veteran divorce attorney and former chair of the LGBTQ rights section of the New Jersey State Bar Association, said that in his 22 years of practice, he has witnessed LGBTQ+ client concerns evolve from legalizing same-sex marriage to navigating the transgender "culture wars" that simmered under the Biden administration and came to a head during Trump's reelection campaign.

For example, he said, judges may now feel more comfortable siding with a spouse divorcing a transgender partner who has transitioned later in life and using their identity against them in custody arrangements.

For this reason—and with marriage equality potentially hanging in the balance following a petition to overturn the Supreme Court's landmark *Obergefell v. Hodges* decision—his practice is moving toward adopting a flat-fee model and encouraging LGBTQ+ clients to engage in mediation and direct negotiation with their spouses instead of going to court, he said.

"I think, more and more, if things continue the way they're going … that any member of the LGBT community would be insane to go into a courthouse for any reason," Nachlinger said.

Angela Giampolo, the founder of **Giampolo Law Group**, which focuses on LGBTQ+ law and estate planning in Pennsylvania and New Jersey, agreed that the "biggest change" to her practice after Trump's reelection is "trans folks reaching out," particularly those affected by Trump's executive order barring trans, non-binary and intersex people from updating the sex designation or using the gender marker "X" in their passports. The order, challenged in the case *Orr v. Trump,* was blocked with a preliminary injunction in April.

Giampolo's practice now extends to LGBTQ estate planning, confirmatory adoptions, name change and gender marker changes and preparing for expatriation, she said.

"I feel like,10 years ago when we got marriage equality, we breathed in legitimacy for the first time and … LGBTQ folks mistook that feeling of legitimacy for power," she said.

"Whether it's 'Don't Ask Don't Tell,' [the Defense of Marriage Act]–-now we have the new 'Don't Ask Don't Tell' with trans military folks—it's the same issues repeating until they just run out of litigated issues in which we're on the chopping block," she added.

Christopher Clark, senior counsel and pro bono relationships director at national LGBTQ+ civil rights legal advocacy organization **Lambda Legal** in Chicago, which currently has six open cases

against the Trump administration, said his position was created by Lambda a year ago to address attacks on “members of our community”—particularly trans and non-binary individuals.

Clark said the administration’s executive actions targeting Big Law firms has created an “interesting dynamic in the world of engaging with law firms in the pro bono space,” but Lambda has continued to successfully connect with law firms to take on pro bono work on behalf of LGBTQ+ causes.

“I observe that law firms across the spectrum probably seem to be having more review processes in place before they agree to take on a pro bono matter,” he said. “And it's also been the case that, absolutely, when I pitch something to law firms, the answer is sometimes no.”

But, Clark added, “What I’m seeing from my vantage point is firms are continuing to reach out to me to express interest in partnering with us … There remains a high level of interest, perhaps higher in light of what's going on from the administration right now, and that is provoking conversations within firms about how best to assist.”

Carlos Hernandez, senior trial lawyer at **Carpenter & Zuckerman**, who serves on the board of the LGBTQ+ Lawyers Association of Los Angeles, said that in the wake of Trump’s reelection, his firm is handling more cases involving trans individuals, including litigation on behalf of trans pretrial detainees and trans people **“**who may be unfairly targeted as sex workers.”

“What we're doing now more than before is you have a lot of really phenomenal LGBT non-profit organizations that are having their social services and legal staff just gutted, because they are having funding pulled,” he said. “We are taking on more of those cases … whether it's excessive force or just the targeting of LGBT individuals. So that is something that we're seeing more.”

LGBTQ+ employment lawyers, in particular, said they are seeing a spike in discrimination cases against trans people in the workplace–and are facing new hurdles under the policy shifts enacted by Trump’s U.S. Equal Employment Opportunity Commission.

“I've definitely seen a rise in gender-related issues, gender expression-related issues,” said **Steven Chizen,** founder of **Chizen Law**, a firm in Oakland, California, focused on employee-side employment disputes, who said he’s taken on more pro bono cases involving these issues during the second Trump administration.

“What I've noticed since Trump was reelected [is that] companies have felt more enabled and empowered to discriminate, particularly based on gender identity and gender expression,” he said. “So, I've had more cases and I've been looking for more cases based on folks who are discriminated against at work because of their pronouns.”

“A lot of the whole movement right now has made things harder for attorneys who represent people based on discrimination,” said **Lisa Walker**, a partner with the plaintiffs' employment litigation firm **Smithey Law Group**. Walker, an out, married lesbian woman, said she was inspired to relocate from Annapolis to her home state of Tennessee after Trump’s reelection, to provide support to LGBTQ+ clients residing in a red state.

“I have a transgender client [whose] supervisor just generally wouldn't even speak to them or talk or make eye contact with them,” Walker said. “They're just very emboldened now to not hold back.

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The EEOC’s shift of focus away from LGBTQ+ and sex discrimination cases, as well as Trump’s appointment of a wave of conservative judges, have complicated her practice, she said, forcing her firm to “adapt and strategize.”

But since Title VII protections fundamentally have not changed, she said, the surge in anti-trans discrimination in the workplace has ultimately resulted in an increase in business for employment firms like hers.

“For me, it's made me more determined and emboldened, and more likely to say, ‘This firm is a place for you to come if you need an advocate on these issues, because we fully support that,’” she said.

“The sentiment changing, the anti-DEI efforts—all of that hasn't weakened our practice. It's just

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