

ENDA

BY KAREN IRIS TUCKER

Will the Employment Non-Discrimination Act bill for LGBT workers get a vote?

Heavyweight Congressmen Barney Frank, James E. Clyburn and others are taking that goal to heart

Amid preparations for a plume- and sequined-filled Pride Month in which lesbian, gay, bisexual and transgender people from all walks of life will converge in parades, decisions are being made in Congress that will determine if and when a bill that would protect the civil rights of LGBT workers will make it to a vote this congressional session.

Known as the Employment Non-Discrimination Act (ENDA, H.R. 3017), the measure would provide federal job protections based on both sexual orientation and gender identity. It has a backer in high places, namely Majority Whip James E. Clyburn of South Carolina, who takes its potential for groundbreaking civil rights legislation very personally.

“I’ve experienced unfair treatment for no other reason than my skin color,” said Clyburn. *“When you have experienced certain things, you really internalize it and they become part of who, and what, you are.”*

Clyburn, who was a leading member of the Student Nonviolent Coordinating Committee and organized South Carolina’s first sit-ins in 1960, said he has a particular sensitivity toward the communities fighting for ENDA. *“I was there for the Civil Rights Act of 1964,”* said Clyburn. *“I remember it very well.”*

Matthew Billips, a law partner of Billips & Benjamin LLP in Atlanta, Ga., who specializes in employment law and job



Congressman Barney Frank

discrimination said, *“Under current law, if a private employer fires you because you are gay, there is nothing in Georgia that would prevent that.”*

Billips says he has been contacted by transgender clients that wanted to make a claim based on transgender status.

“I have turned down people who were raising claims that would be protected under ENDA and are not protected under current law. There wasn’t anything I could do to help them.”

It is currently legal in 29 states to fire someone for being lesbian, gay or bisexual; there are 38 states where people can still be fired for being transgender.

A 2007 ENDA passed in the House of Representatives but did not contain initial proposed language to protect transgender workers; that language was considered too risky at the time to include and was dropped to ensure the bill’s passage. The bill ultimately died in the Senate, but not before causing outrage among some in the LGBT communities that the transgender component had been sacrificed.

Clyburn acknowledges the potential impact of the transgender language on his colleagues in Congress. *“It’s a much bigger issue than what the bill was before. Any time you add something to a bill you*

raise a level of concern.” To detractors, he says, “This is an issue that ought to have the sensitivity of everyone in the country. We ought not to trivialize it and we ought not to play ‘gotcha’ with it. We ought to come together--Democrats and Republicans--and say, ‘This is a problem. People aren’t being treated fairly. This is not the American way.’”

Rep. Barney Frank (D-Mass.), one of three openly gay House members, is lead sponsor of the current bill, introduced in June 2009. He adds a subtle contextual layer to some of the employment bias that has taken place.

“The discrimination for people who are gay and lesbian isn’t as overt because gay and lesbian people have had the ability to hide,” said Frank. “So, for many of us, it was not being fired but being able to be honest about who we are.”

Frank initially said ENDA it would likely be brought to the floor of Congress in early April, after the hot-button health care reform legislation had been signed into law.

A vote on ENDA, however, has yet to be scheduled, leading some to contend members of Congress are foot-dragging on a controversial gay and transgender rights issue out of worry their seats may be in jeopardy in the fall elections.

One such skeptic is Dr. Jillian T. Weiss, an associate professor of law and society at Ramapo College of New Jersey and associate editor at the *Bilerico Project*, an LGBT political blog.

“Democrats are not known for their political courage,” said Weiss. “It [[ENDA]] will probably not be brought into law.”

Frank maintains it is still on the front burner.

“I am hoping that we get to ENDA end of summer,” he said, but he seemed weary of reassuring the skeptics. “My friends and allies can’t get this transgender protection through in New York, Massachusetts or Maryland. We’re trying to do it in Congress in Mississippi and Idaho, so they don’t understand how hard it is.”

Some moderate Republicans, and Blue Dogs, Democrats from conservative states, in Congress have declined to support ENDA. This may in part be a function of highly vocal conservative activists who are stating their case in a campaign season.

Billips cites what he considers a very common argument made by conservative groups against similar legislation: “This whole idea that non-discrimination laws create ‘special rights’ - it’s only to the extent that you consider being a full-fledged citizen a special right.” He adds, “Nobody is saying that this law will either require you to hire somebody

gay because they are gay or to be gay, yourself. Discrimination based on sexual orientation is like race discrimination. It has no rational purpose. It’s just a pure form of irrational bias.”

Weiss, known for her passionate support and years of research on transgender rights in the workplace, is incensed by what she views as a medley of excuses made by some in Congress to push off the vote on ENDA.

“They’re not moving because they don’t want to,” said Weiss, who has been blogging and arranging write-ins and call-ins to Congressmembers to raise support for ENDA since it was introduced a year and a half ago.

“What are they supposed to say, ‘We don’t want to’? They can’t say that, so they’ll say, ‘Well, the whip count’s not done.’ There’s no whip count that takes more than a month.”

The “whip count” or count necessary to verify there is sufficient support to bring ENDA to the floor for a vote in the House has in itself become a subject of dispute. Activists in the field--many of whom have been holding rallies across the country to apply political pressure--believe there are now enough votes to support the passage of ENDA in the House.

Leadership in some advocacy groups, however, say the bill would not survive a Republican-led “motion to recommit (MTR),” which could kill the bill or substantially weaken its intention. Speaker Nancy Pelosi has said the votes simply aren’t there for an MTR, said one prominent LGBT group member to this reporter, adding that no amount of protesting or demonstrations would bring a vote on ENDA until the numbers are shored up.

Weiss isn’t buying it. “Republicans are using MTRs on every bill now, so that’s not a reason to stall.”

Meanwhile, the import of ENDA, should it pass both the House and the Senate, is significant.

“The truth is all studies have shown that the way to economic viability in a

community is to make sure industry has the supply of talent it needs,” said Weiss. “You can find that talent in a diverse pool of workers, including the LGBT communities. That is why this act is important—not just because it is anti-discriminatory.” Clyburn, all too familiar with discrimination, has a poignant appeal he issues to his colleagues who are opponents of ENDA. “Put yourself in the other person’s shoes and think about your family members and friends,” said Clyburn. “Think about how you would want your brother and sister to be treated. I always say, ‘There but for the grace of God go I. That is just who I am.’”



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