



Congress expected to vote on ENDA in '07

Activists promise to heed lessons of gay rights battles in 1996 and 2002

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Editors' note: *This is the first in a two-part series looking at the history of ENDA and prospects for its passage in the new Congress.*

Congress is expected to vote this year on legislation to outlaw employment discrimination against gays and transgender citizens in the private workplace, according to gay U.S. Reps. Barney Frank (D-Mass.) and Tammy Baldwin (D-Wisc.).

Such a vote would come 11 years after the Senate narrowly defeated the legislation, the Employment Non-Discrimination Act, or ENDA, in a development that activists and gay-supportive lawmakers say could provide lessons useful for this year's effort on behalf of the bill.

On Sept. 10, 1996, the United States Senate came within one vote of passing a version of ENDA that did not include protection for transgender persons.

The vote of 50 to 49, with one absence, against ENDA was seen as a partial victory for gay civil rights because such legislation had never advanced that far since first being introduced in the 1970s.

Yet the near victory came at a high price. With the consent of national gay advocacy groups, Sen. Edward Kennedy (D-Mass.), the lead sponsor of ENDA, struck a deal with Senate Republican leaders that activists say they hope will never again be necessary.

GOP leaders said they would allow ENDA to come up for a vote only if Kennedy and his Democratic allies agreed to end a filibuster blocking a vote on the anti-gay Defense of Marriage Act. Known as DOMA, that legislation sought for the first time to define marriage under federal law as a union only between a man and a woman.

On the same day the Senate narrowly defeated ENDA, it passed DOMA by a vote of 85 to 14. The House also passed DOMA by a lopsided margin. Then-President Bill Clinton, in the midst of his 1996 re-election campaign, signed DOMA into law, drawing expressions of outrage from gay activists.

The disappointment over the close defeat of ENDA and the approval of DOMA was heightened by what ENDA supporters view as a quirk of fate that prevented the Senate from passing the gay rights measure. Sen. David Pryor (D-Ark.), who was expected to vote for ENDA, sent word that he had to rush to Arkansas to assist his son, who was undergoing cancer surgery, and could not be present in the Senate for the vote.

Had Pryor voted for ENDA, the outcome would have been a 50-50 tie. Then-Vice President Al Gore was set to enter the Senate chamber to break the tie by voting "yea" under his constitutional powers as president of the Senate, resulting in ENDA's approval.

Political observers say it would have been uncertain whether the Republican-controlled House, under the leadership of Speaker Newt Gingrich, would have passed ENDA that year, or even brought it up for a vote. But gay rights advocates said the Senate passage of the bill might have provided momentum for House approval of the bill in a House-Senate conference committee or for advancing it sometime over the next few years.

Republican leaders of the House and Senate, using their majority status, blocked future votes on ENDA until May of 2001, when Democrats won back control of the Senate by a one-vote margin. Sen. James Jeffords (D-Vt.) dropped his Republican affiliation to become an independent, while agreeing to vote with the Democrats on selecting Senate leaders, forcing Republicans to relinquish control.

During the next year and a half, Democrats once again had the ability to bring up ENDA and other gay rights measures to the Senate floor for a vote. They did not do so, and gay activists and political observers have had mixed views on why the Democrats shunned another vote on ENDA in 2001 and 2002.

Elizabeth Birch, the then-executive director of Human Rights Campaign, the nation's largest gay rights group, told the Blade that HRC and Senate Majority Leader Tom Daschle (D-S.D.) believed they could line up slightly more than 50 senators to vote for ENDA. But according to Birch, Daschle and other supportive Democrats expected a Republican-led filibuster, which would mean supporters had to line up at least 60 votes to end the filibuster and pass the bill. Rather than risk a defeat in a Senate floor vote on a filibuster, the better option appeared to be to hold off on a vote until 60 votes could be obtained, Birch said.

"It just didn't seem possible to reach the 60-vote threshold," Birch said, in recounting what happened several years later.

Birch disputed speculation by congressional insiders, who spoke on condition that they not be identified, that HRC and some gay Democratic leaders agreed not to press Daschle to bring ENDA up for a vote. With the 2002 election looming, some Democratic activists feared that a vote in support of ENDA could hurt several Democratic senators in their re-election bids, resulting in the Democrats once again losing control of the Senate.

Frank, at the time one of three open gays in the House, said he was not part of those discussions but said he agreed it would be better to protect Democratic senators at risk in the election by not calling a vote on ENDA. Frank said he held this view because ENDA would have been dead on arrival in the GOP-controlled House. Since it had no chance of clearing Congress, there would be nothing to gain by putting gay-supportive senators at risk that year, Frank said.

As it turned out, Republicans won back control of the Senate in the 2002 election, with Sen. Max Cleland (D-Ga.), an ENDA supporter, among the Democrats losing their re-election bids that year. Daschle lost his seat two years later in the 2004 election.

Now, five years after the fleeting Democratic majority in the Senate and 11 years after the Senate narrowly defeated ENDA, activists say they are far more confident in a positive outcome for the gay rights legislation.

"I think the chances are extremely good that the Democratic Congress will pass ENDA and a hate crimes bill this year," said veteran gay Democratic activist David Mixner.

Officials with HRC, the **National Gay & Lesbian Task Force** and other gay advocacy groups have joined Mixner in making ENDA and legislation giving the federal government authority to prosecute anti-gay and anti-transgender hate crimes a top priority this year.

“We expect to see the hate crimes bill come first, possibly in the summer or fall,” said Joe Solmonese, HRC’s current president.

Solmonese said a victory for the highly popular hate crimes bill would open the way for a victory on ENDA. The hate crimes measure has passed in separate years in the House and Senate, but GOP leaders have blocked its final passage.

“I hope to see ENDA pass in the House in the late summer or autumn,” said Baldwin.

“On ENDA, it has been a dozen years since we last had hearings,” she said, referring to congressional committee hearings that are a part of the process of passing bills in Congress.

Baldwin said ENDA is to be considered by four House committees, including the House Judiciary Committee, where various aspects of the bill will be examined. Among other things, Baldwin said the committee hearings would likely remind the public that in most states, employers could legally refuse to hire a gay person solely on the basis of his or her sexual orientation.