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Majority of Catholics - but not the bishops - support passing ENDA today

by Jamie Manson

Grace on the Margins

Update: This afternoon, the Senate passed ENDA by a vote of 64-32. Though the vote suggests strong bipartisan support, ENDA is expected to face an uphill battle in the House, with Speaker John Boehner refusing to support the bill.

While ENDA passed the Senate, an amendment to the bill from Sen. Pat Toomey (R-Pa.) that would have expanded the number of organizations entitled to religious exemptions was defeated. The Toomey amendment would have covered organizations that do not primarily engage in religious work, such as schools that only teach religion for a few hours a day or hospitals affiliated with religious groups.

The current ENDA proposal will still provide exemptions for institutions whose "purpose and character are primarily religious."

With the ongoing of firings of gay, lesbian and transgender employees of Catholic institutions, it may appear that church organizations are the only workplaces where LGBT people still face discrimination.

The truth is, throughout this country and in all kinds of workplaces, LGBT employees are fired or denied job opportunities, promotions and raises because of their sexual orientation or gender identity.

To this day, there is no federal law that offers consistent protections for LGBT workers. Only 21 states have laws that explicitly prohibit discrimination based sexual orientation, and only 17 states protect employees based on gender identity.

For years, activists and lawmakers have sought to pass a bill known as ENDA, the Employment Non-Discrimination Act. Since 1994, the bill has been introduced in every Congress (except the 2005-2007 session) only to die either in committee or the Senate. Originally created to only cover gays, lesbians and bisexuals, in 2009, the bill was expanded to include protections for transgender persons.

ENDA's latest incarnation cleared its first hurdle in the Senate on Monday, getting 61 votes for cloture. A vote is expected today, and its fate remains uncertain.

This even though, as *The Washington Post* reported earlier this week, ENDA has strong bipartisan backing from Americans, with nearly three-quarters of the population supporting workplace protections for LGBT persons. Majorities of Republicans (60 percent), Democrats (80 percent) and all major religious groups (including 59 percent of white evangelicals!) support the protections that ENDA would guarantee.

According to the Human Rights Campaign, ENDA would "extend federal discrimination protections currently provided based on race, religion, gender, national origin, age and disability to sexual orientation and gender identity." It would prohibit employers, employment agencies, and labor unions from using an individual's sexual orientation or gender identity as the basis for employment decisions.

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It also protects individuals from being subjected to different standards of treatment based on their actual or perceived sexual orientation or gender identity, and it prohibits discrimination against an individual based on the sexual orientation or gender identity of those with whom she or he associates.

ENDA does not cover businesses with less than 15 employees, nor does it allow preferential treatment, including quotas, based on sexual orientation or gender identity. It does not require the Equal Employment Opportunity Commission to collect statistics on sexual orientation or gender identity, and it will not apply retroactively.

And, perhaps most interesting in light of the ongoing battle over religious liberty, ENDA does not apply to religious organizations. Houses of worship will be exempt, as will religiously based schools, universities, hospitals and charities, including employees who have no religious function.

Regardless of their position in a faith-based organization (housekeepers, cafeteria workers, medical personnel), gay, lesbian and transgender employees and those perceived to be so can still be legally fired or denied job opportunities on the basis of their sexual orientations or gender identities.

Those familiar with the United States Conference of Catholic Bishops' ongoing religious liberty battle with the Affordable Care Act will not be surprised that, even with this exemption, the bishops stand firmly opposed to ENDA.

Their reasons are fivefold. In a letter to the U.S. Senate signed by three of the USCCB's most ardent culture warriors, Archbishop William Lori, Archbishop Salvatore Cordileone and Bishop Stephen Blaire insist they "oppose unjust discrimination in the workplace."

"No one should be an object of scorn, hatred, or violence for any reason, including his or her sexual inclinations," the letter continues.

Nevertheless, they complain, ENDA "does not include an exemption for a 'bona fide occupational qualification' (BFOQ), for those cases where it is neither unjust nor inappropriate to consider an applicant's sexual inclinations." Such an omission equates sexual orientation to the same level of race discrimination "and above religion, sex, and national origin discrimination."

Adding to that, the bishops argue, "ENDA's vague definition of 'sexual orientation' would encompass sexual conduct outside of marriage." Therefore, it will legally affirm and protect what they consider to be extramarital sex.

And speaking of marriage, the bishops believe ENDA will be used in courts to argue that same-sex marriage is a constitutional right.

Not surprisingly, gender identity protections create another host of worries for the bishops. ENDA, they say, legally forces them to view gender as little more than "a social construct or psychosocial reality" that an individual can choose.

The bishops say the bill would also violate the privacy of other employees in places where they may reasonably expect people of the same sex. One assumes they are referring to bathrooms or locker rooms here. It's a worry that apparently hasn't arisen in the 17 states where gender identity protections are already in place, but the bishops fear this could become a problem.

All of this adds up to their ultimate concern: ENDA threatens religious liberty. The bill threatens to punish the church by treating the teachings of the Catholic faith as discrimination. The exemption for religious employers is uncertain, they insist, and they are convinced that even exempted employers will face government retaliation.

Even with this litany of complaints, the bishops conclude their letter insisting that they are ready to work with "all people of good will to end all forms of unjust discrimination, including against those who experience same sex attraction."

The bishops declare they want to work to fight LGBT discrimination in the very same document where they use remarkably discriminatory ideas.

Not only do they want to continue to fight for their right to fire and discriminate against LGBT employees, they call all same-sex relationships extramarital behavior unworthy of protection, and they negate the deep experience of transgender persons. With thoughts like these, one shudders to think what their version of ENDA might read like.

Perhaps saddest of all, the bishops make these claims even in light of a recent poll that 76 percent of Catholics in the U.S. support ENDA, marking yet another episode in which the conscience of the majority of Catholics is at odds with the unabashed monologue of the Catholic hierarchy.

Some LGBT activists have argued that ENDA should not move forward until the religious exemption is eliminated from the bill. "There are no shortcuts or bargains on civil rights," gay activist Michelangelo Signorile argued this week at The Huffington Post.

But with hierarchs like Lori, Cordileone and Blaire at the helm of the religious liberty battle, striving for a

more inclusive ENDA will add an interminable amount of wait time for a bill that has been in stasis for nearly 20 years.

As distressing as the ENDA exemptions for schools, hospitals and charities are, LGBT employees working in organizations that are not faith-based are long overdue for equal protection in the workplace. They should not have to wait out the saber-rattling of religious conservatives who still insist on viewing a struggle for civil rights as religious liberty under siege.

Ultimately, the only way to get the hierarchy to call off the religious liberty dogs will be by transforming their understanding of the dignity, value and gifts of LGBT employees.

As the bishops' letter demonstrates, that journey will be long and arduous. But with so many exceptional LGBT employees already laboring -- often in silence and fear -- in Catholic churches, charities, schools and hospitals, it is a path well worth taking.

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