

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS (Senate - June 23, 1994)

Mr. KENNEDY. Mr. President, I am pleased to introduce today the Employment Non-Discrimination Act of 1994.

From the beginning, civil rights has been the unfinished business of America--and it still is. In the past 30 years, America has made significant progress in removing the burden of bigotry from our land. We have had an ongoing peaceful revolution of change, and that change and its accomplishments are a tribute to our democracy and to the remarkable resilience of this Nation's founding principles.

Current Federal law rightly prohibits job discrimination on the basis of race, gender, religion, national origin, age, and disability. Establishing these essential protections was not easy or quick. But they have stood the test of time--and they have made us a better and a stronger nation.

Today, we move forward again by seeking to extend this protection to sexual orientation.

So I am proud to stand again with individuals--such as Coretta Scott King and Justin Dart--and organizations whose tireless commitment to freedom, justice, and opportunity for all has guided our national journey. In large part, we are here today, and America is America today, because of them.

We have been here before--and our work goes on.

The Employment Non-Discrimination Act is a great endeavor. It is another significant step on freedom's journey--another milestone in the civil rights march of our time.

The act parallels protections against job discrimination already provided under title VII of the Civil Rights Act. The bill prohibits employers, employment agencies, and labor unions from using an individual's sexual orientation as the basis for employment decisions, such as hiring, firing, promotion, or compensation. This prohibition on discrimination is familiar territory, and these well-established standards can be easily applied to sexual orientation.

The act is simple and straightforward. Its goal is to eliminate job discrimination against fellow Americans.

Under the act, no disparate impact claims would be permitted based on under-representation in the work force, and the religious exemption is broadly defined. In addition, the legislation makes clear that preferential treatment, including quotas, is prohibited, and benefits for domestic partners are not required. Finally, the act does not apply to members of the Armed Forces.

This bill is not about granting special rights--it is about righting senseless wrongs.

What it requires is simple justice for gay men and lesbians who deserve to be judged in their job settings--like all other Americans--by their ability to do the work.

Today, job discrimination on the basis of sexual orientation is too often a fact of life. From corporate suites to plant floors, qualified employees live in fear of losing their livelihood for reasons that have nothing to do with their skills or their performance. Yet there is no Federal prohibition on such discrimination.

This bill is not about statistics. It is about real Americans whose lives and livelihoods are being shattered by prejudice.

This bill is for the postal worker in Michigan who was verbally harassed and then beaten unconscious by his coworkers for being gay. He reported continued harassment to his superiors--but they did nothing. In a subsequent law suit, the court rejected his claim because discrimination based on sexual orientation is not covered under Federal law.

This bill is for a cook from Georgia who was fired despite a solid 3-year perfect performance record, after a nation-wide restaurant chain adopted a blanket policy excluding employees whose sexual orientation did not demonstrate normal heterosexual values. Her separation notice read: 'This employee is being terminated due to violation of company policy. The employee is gay.'

It doesn't get any clearer than that.

Job discrimination is not only un-American--it is unprofitable and counterproductive. It excludes qualified individuals, lowers work force productivity, and eventually hurts us all. If we are to compete effectively in a global economy, we have to use all our available talent and create a workplace environment where everyone can excel.

This reality had been recognized by many Fortune 500 companies, including General Electric, AT&T, and the Bank of Boston. They understand that ending discrimination based on sexual orientation is good for business and good for the country.

In the absence of a Federal remedy, many State and local governments have acted responsibly to prohibit job discrimination based on sexual orientation. Over a hundred mayors and Governors, Republicans and Democrats, have signed laws and issued orders protecting gay and lesbian employees.

Based on this successful State and local experience, it is time for the Federal Government to secure this fundamental promise of freedom by ensuring fairness throughout the workforce.

We know we cannot change attitudes overnight. But if we have learned anything from the burdens and the achievements of American history, it is that changes in the law are an essential step in breaking down barriers, exposing prejudice, and building a better tomorrow.

Today's action brings us one step closer to the ideals of liberty. I am pleased to be introducing the Employment Non-Discrimination Act of 1994 in the Senate along with

Senator **Chafee**--and more than 30 Senators committed to this effort. And I am also grateful to Representatives **Frank, Studds, Edwards,** and **Morella** for their leadership in the House.

The bipartisan coalition for civil rights in Congress has been a powerful force for justice and opportunity.

Our case is strong--our cause is just--and we intend to prevail.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the Record.

There being no objection, the material was ordered to be printed in the **Record**, as follows:

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S. 2238

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Employment Non-Discrimination Act of 1994'.

SEC. 2. FINDINGS AND PURPOSES.

(a) **Findings:** The Congress finds that--

(1) an individual's sexual orientation bears no relationship to the individual's ability to contribute fully to the economic and civic life of society;

(2) historically, American society has tended to isolate, stigmatize, and persecute gay men, lesbians, and bisexuals;

(3) one of the main areas in which gay men, lesbians, and bisexuals face discrimination is employment;

(4) employment discrimination on the basis of sexual orientation violates fundamental American values of equality and fairness;

(5) the continuing existence of employment discrimination on the basis of sexual orientation denies gay men, lesbians, and bisexuals equal opportunity in the workplace and affects interstate commerce;

(6) individuals who have experienced employment discrimination on the basis of sexual orientation often lack recourse under Federal law; and

(7) gay men, lesbians, and bisexuals have historically been excluded from full participation in the political process, comprise a discrete and insular minority, and have historically been subjected to purposeful unequal treatment based on characteristics not

indicative of their ability to participate in or contribute to society.

(b) **Purposes:** It is the purpose of this Act--

(1) to provide a comprehensive Federal prohibition of employment discrimination on the basis of sexual orientation;

(2) to provide meaningful and effective remedies for employment discrimination on the basis of sexual orientation; and

(3) to invoke congressional powers, including the powers to enforce the 14th amendment to the Constitution and to regulate commerce, in order to prohibit employment discrimination on the basis of sexual orientation.

SEC. 3. DISCRIMINATION PROHIBITED.

A covered entity, in connection with employment or employment opportunities, shall not--

(1) subject an individual to different standards or treatment on the basis of sexual orientation;

(2) discriminate against an individual based on the sexual orientation of persons with whom such individual is believed to associate or to have associated; or

(3) otherwise discriminate against an individual on the basis of sexual orientation.

SEC. 4. BENEFITS.

This Act does not apply to the provision of employee benefits to an individual for the benefit of his or her partner.

SEC. 5. NO DISPARATE IMPACT.

The fact that an employment practice has a disparate impact, as the term 'disparate impact' is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(k)), on the basis of sexual orientation does not establish a prima facie violation of this Act.

SEC. 6. QUOTAS AND PREFERENTIAL TREATMENT PROHIBITED.

(a) **Quotas:** A covered entity shall not adopt or implement a quota on the basis of sexual orientation.

(b) **Preferential Treatment:** A covered entity shall not give preferential treatment to an individual on the basis of sexual orientation.

SEC. 7. RELIGIOUS EXEMPTION.

(a) **In General:** Except as provided in subsection (b), this Act shall not apply to religious organizations.

(b) **For-Profit Activities:** This Act shall apply to a religious organization's for-profit activities subject to taxation under section 511(a) of the Internal Revenue Code of 1986 as in effect on the date of the enactment of this Act.

SEC. 8. NON-APPLICATION TO MEMBERS OF THE ARMED FORCES; VETERANS' PREFERENCES.

(a) **Armed Forces:**

(1) For purposes of this Act, the term 'employment or employment opportunities' does not apply to the relationship between the United States and members of the Armed Forces.

(2) As used in paragraph (1), the term 'Armed Forces' means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) **Veterans' Preferences:** This Act does not repeal or modify any Federal, State, territorial, or local law creating special rights or preferences for veterans.

SEC. 9. ENFORCEMENT.

(a) **Enforcement Powers:** With respect to the administration and enforcement of this Act--

(1) the Commission and the Librarian of Congress shall have the same powers, respectively, as the Commission and the Librarian of Congress have to administer and enforce title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(2) the Attorney General of the United States shall have the same powers as the Attorney General has to administer and enforce such title; and

(3) the district courts of the United States shall have the same jurisdiction and powers as such courts have to enforce such title and section 309 of the Civil Rights Act of 1991 (2 U.S.C. 1209).

(b) **Procedures and Remedies:** The procedures and remedies applicable to a claim for a violation of this Act are as follows:

(1) For a violation alleged by an individual, other than an individual specified in paragraph (2) or (3), the procedures and remedies applicable to a claim brought by an individual for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall apply.

(2) For a violation alleged by an employee of the House of Representatives or of an instrumentality of the Congress, the procedures and remedies applicable to a claim by such employee for a violation of section 117 of the Civil Rights Act of 1991 (2 U.S.C. 60f) shall apply.

(3) For a violation alleged by an employee of the Senate, the procedures and remedies applicable to a claim by such employee for a violation of section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202) shall apply.

SEC. 10. STATE AND FEDERAL IMMUNITY.

(a) **State Immunity:** A State shall not be immune under the 11th amendment to the Constitution of the United States from an action in a Federal court of competent jurisdiction for a violation of this Act. In an action against a State for a violation of this Act, remedies (including remedies at law and in equity) are available for the violation to

the same extent as such remedies are available in an action against any public or private entity other than a State.

(b) **Liability of the United States:** The United States shall be liable for all remedies under this Act to the same extent as a private person and shall be liable to the same extent as a nonpublic party for interest to compensate for delay in payment.

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SEC. 11. ATTORNEYS' FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or the Commission, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee, including expert fees and other litigation expenses, and costs. The United States shall be liable for the foregoing the same as a private person.

SEC. 12. RETALIATION AND COERCION PROHIBITED.

(a) **Retaliation:** A covered entity shall not discriminate against an individual because such individual opposed any act or practice prohibited by this Act or because such individual made a charge, assisted, testified, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) **Coercion:** A person shall not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of or on account of his or her having exercised, enjoyed, assisted, or encouraged the exercise or enjoyment of, any right protected by this Act.

SEC. 13. POSTING NOTICES.

A covered entity shall post notices for employees, applicants for employment, and members describing the applicable provisions of this Act, in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SEC. 14. REGULATIONS.

The Commission shall have the authority to issue regulations to carry out this Act.

SEC. 15. RELATIONSHIP TO OTHER LAWS.

This Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other Federal law or any law of a State or political subdivision of a State.

SEC. 16. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 17. EFFECTIVE DATE.

This Act shall take effect 60 days after the date of the enactment of this Act, and shall not apply to conduct occurring before such effective date.

SEC. 18. DEFINITIONS.

As used in this Act--

(1) the term `commerce' has the meaning given such term in section 701(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(g));

(2) the term `Commission' means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4);

(3) the term `covered entity' means an employer, employment agency, labor organization, joint labor-management committee, an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)) applies, an employing authority of the House of Representatives, an employing office of the Senate, or an instrumentality of the Congress;

(4) the term `employee of the Senate' has the meaning given such term in section 301(c) of the Civil Rights Act of 1991 (2 U.S.C. 1201(c));

(5) the term `employer' has the meaning given such term in section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b));

(6) the term `employment agency' has the meaning given such term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c));

(7) the term `employment or employment opportunities' includes job application procedures, hiring, advancement, discharge, compensation, job training, or any other term, condition, or privilege of employment;

(8) the term `instrumentalities of the Congress' has the meaning given such term in section 117(b)(4) of the Civil Rights Act of 1991 (2 U.S.C. 601(b)(4));

(9) the term `labor organization' has the meaning given such term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d));

(10) the term `person' has the meaning given such term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a));

(11) the term `religious organization' means--

(A) a religious corporation, association, or society; or

(B) a college, school, university, or other educational institution, not otherwise a religious organization, if--

(i) it is in whole or substantial part controlled, managed, owned, or supported by a religious corporation, association, or society; or

(ii) its curriculum is directed toward the propagation of a particular religion;

(12) the term `sexual orientation' means lesbian, gay, bisexual, or heterosexual orientation, real or perceived, as manifested by identity, acts, statements, or associations; and

(13) the term `State' has the meaning given such term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)).

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Remarks by Coretta Scott King at the Press Conference on the Introduction of the Employment Non-Discrimination Act of 1994

Thank you for your gracious introduction. And I want to thank all of the members of the press for joining us today for this important press conference on the employment non-discrimination of 1994.

Senator **Chaffee**, Senator **Kennedy**, Representatives **Edwards**, **Frank**, **Studds**, and **Morella**, distinguished guests, members of the press, today I am proud to join in supporting this much-needed legislation, which would provide some long-overdue protection to American workers from the injustice of discrimination based on sexual orientation.

I support this legislation because lesbian and gay people are a permanent part of the American work force, who currently have no protection from the arbitrary abuse of their rights on the job. For too long, our Nation has tolerated the insidious form of discrimination against this group of Americans, who have worked as hard as any other group, paid their taxes like everyone else, and yet have been denied equal protection under the law.

By including victims of discrimination based on sexual orientation, this bill would do much to rectify this injustice in the workplaces of America. I am much encouraged that a recent newsweek opinion poll found that 74 percent of the respondents favored protecting gay and lesbian people from job discrimination, and I am proud to stand with this overwhelming majority of Americans who recognize the justice of this cause.

This bill would grant the same rights to victims of discrimination based on sexual orientation that are extended to victims of racial, gender, and religious discrimination and those who have been unfairly treated in the workplace because of their age, ethnicity, or disability. The bill provides no preferential treatment or special rights that have been denied these groups.

I support the Employment Non-discrimination Act of 1994 because I believe that freedom and justice cannot be parceled out in pieces to suit political convenience. As my husband, Martin Luther King, Jr. said, `Injustice anywhere is a threat to justice everywhere.' On another occasion he said, `I have worked too long and hard against segregated public accommodations to end up segregating my moral concern. Justice is indivisible.' Like Martin, I don't believe you can stand for freedom for one group of people and deny it to others.

So I see this bill as a step forward for freedom and human rights in our country and a logical extension of the Bill of Rights and the civil rights reforms of the 1950's and 60's.

The great promise of American democracy is that no group of people will be forced to suffer discrimination and injustice. I believe that this legislation will provide protection to a large group of working people, who have suffered persecution and discrimination for many years. To this endeavor, I pledge my wholehearted support.

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Remarks by Justin Dart, Former Chairman of the President's Committee on Employment of People With Disabilities, Press Conference, the Employment Non-Discrimination Act 1994

This is a great day for democracy. Mr. Jefferson and Martin Luther King are smiling.

On behalf of my colleagues in the Disability Rights Movement, I congratulate all the sponsors and other supporters of the Employment Non-Discrimination Act of 1994.

I call on the Members of Congress to pass and the President to sign this historic bill. I call on all who love the American dream to support it.

It is a special privilege to be here today with great patriots of justice like Coretta Scott King, Pat Wright and many others.

Senator **Edward Kennedy** is an authentic hero of the Civil and Disability Rights Movements.

Senator **John Chafee** and Representatives **Connie Morella** and **Barney Frank** have been consistent supporters of the rights of people with and without disabilities.

The Non-Discrimination Act of 1994 will be another landmark of justice in the great tradition of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991.

Why am I, a disability Rights Advocate, supporting this bill on sexual orientation?

Because what Martin Luther King said is profoundly true. 'Injustice anywhere is a threat to justice everywhere.' None of us are truly free until all of us are free.

Because eventually every family in the United States will have one or more members whose basic constitutional rights will be protected by this law. This is not a law for 'them.' This is a law for us. All of us.

Historically, there has been opposition to civil rights. There is the assertion that civil rights is a kind of bothersome burden that do-gooders impose on sound business and sound government. This is a dangerous fallacy.

Civil rights and free enterprise are two sides of the same solid gold cultural currency that has revolutionized the productivity and the quality of human life.

Our forefathers and mothers came to this country because we offered extraordinary legal guarantees of equal opportunity. They got rich and America got rich. Every time we expanded those civil rights guarantees to include another oppressed minority, Americans got richer, America became more democratic.

Civil rights puts the `free' in free enterprise. America is not rich in spite of civil rights. America is rich because of civil rights.

The Non-Discrimination Act of 1994 will produce profits that will reduce deficits and enrich every citizen in terms of money and of quality of life.

It's the right thing to do. We will keep the sacred pledge of liberty and justice for all.

Let us join together, Republicans, Democrats, just plain Americans, to support the passage of this great law, and then to implement it in every heart and mind and community in America. Together, we shall overcome.