

# THE WEEK

## How much would ENDA curb anti-gay discrimination?

With the Senate poised to vote on the Employer Non-Discrimination Act, President Obama blogs in favor at *The Huffington Post*

Peter Weber | November 4, 2013

On Monday, the Senate is [scheduled to vote](#) on the Employer Non-Discrimination Act, a bill that would ban workplace discrimination based on sexual orientation or transgenderism. It's an open question whether enough Republicans will support moving forward on the bill to give it the 60 votes needed to avoid a filibuster.

Four Republicans have publicly signaled that they are yes votes. All 53 Senate Democrats and the two Democrat-aligned independents support the measure. So does President Obama — in fact, he took the unusual step of [writing a blog post at The Huffington Post](#) on Sunday night to urge Congress to pass ENDA. Obama described the bill as a necessary remedy to an outdated problem:

Right now, in 2013, in many states a person can be fired simply for being lesbian, gay, bisexual, or transgender. As a result, millions of LGBT Americans go to work every day fearing that, without any warning, they could lose their jobs — not because of anything they've done, but simply because of who they are. It's offensive. It's wrong. And it needs to stop, because in the United States of America, who you are and who you love should never be a fireable offense. [\[Huffington Post\]](#)

Some gay rights groups are angry that Obama hasn't signed an executive order banning anti-gay discrimination by federal contractors — as he said he would do in 2008. "In less than the time that it took to write this blog post, the president could have signed an executive order to give strong LGBT workplace protections to millions of Americans," [Tico Almeida of Freedom to Work tells BuzzFeed](#).

Obama says he wants the anti-gay protections enshrined in law, not enacted through an executive order that can be canceled by the next president. The bill is exceedingly popular, and it will probably pass in the Senate, [say Jeff Lax and Justin Phillips at The Washington Post's Monkey Cage blog](#). It faces a tougher climb in the House, "where many believe that Speaker John Boehner (R-Ohio) will not allow the bill to come up for a vote."

But even if it passes, would it really do much to end anti-LGBT discrimination in the workforce?

Probably not, [says Walter Oslon at the conservervative think tank Cato Institute](#). Since it won't pass the House, the main point of "giving it prolonged attention now is more to inflict political

damage on Republicans for resisting a popular measure than to get a bill on President Obama's desk." But the larger problem is that "ENDA is a less salient bill than it looks."

It seeks to ratify (and take political credit for) a social change that has already occurred through nearly all the country, including even very conservative locales. Most larger employers are now on record with policies against discriminating against gay employees, and even smaller employers without formal policies mostly hew to the same path in practice.... Statistics from the many states and municipalities that have passed similar bills ("mini-ENDAs") indicate that they do not serve in practice as a basis for litigation as often as one might expect. [[Cato](#)]

It's true that when it comes to anti-gay discrimination, "the progress in the private sector over the last 10 years has been remarkable," [says Andrew Sullivan at \*The Dish\*](#), and so it may no longer be a problem "so vast that the federal government must be involved." Although he doesn't think "it will make much difference in reality," Sullivan ultimately concludes "I would not vote against ENDA if I, God help us, were a senator."

[T]o deny protection to one specific minority (which is very often the target of discrimination) while including so many others, becomes bizarre at best, and bigoted at worst. Leaving gays out sends a message, given the full legal context, that they don't qualify for discrimination protection, while African-Americans and Jews and Catholics and Latinos and almost everyone else is covered by such protections....

To me, this feels a lot like a) an easy concession to Gay Inc. which has devoted almost its entire existence to this bill, b) an easy vote for a Republican trying to hold onto a marginal seat, c) an even easier way for Democrats to grandstand on the issue, even though it stands a snowball's chance in Hell of getting through the current House. So I hope it passes. But forgive me for not cheering it on. [[The Dish](#)]