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Anti-gay discrimination bill faces less certain future in house

By: Nick O'Malley - November 8, 2013

The US Senate has passed a bill that would ban workplace discrimination on the grounds of or sexuality or gender identification.

As expected the Employment Non-Discrimination Act was supported by all of the Senate's Democrats and two independents as well ten Republicans.

It is already illegal under federal law for employers to discriminate for reasons of disability, race, nationality, religion or gender.

But at present the bill is dead in the water because the Republican Speaker of the House of Representatives, John Boehner, will not even allow it to come to a vote in the House.

Mr Boehner's spokesman last week explained, "The Speaker believes this legislation will increase frivolous litigation and cost American jobs, especially small business jobs."

Only one Republican senator, Dan Coats, voiced an objection. He said it infringed upon the freedom of faith-based institutions such as daycare centres to discriminate against gays in hiring, despite a religious exception being inserted into the bill.

Others have argued against it on libertarian grounds. Senior Fellow with the Cato Institute, Walter Olson, has argued that similar state-based laws have had little effect, and that the expansion of anti-discrimination laws to ever more groups would lead to "a new presumption... that no employer should be free to terminate or take other 'adverse action' against an employee without being prepared to show good cause to a judge."

In response to Olson's argument the commentator and blogger Andrew Sullivan writes, "To 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." (It is probably worth noting that both Olson and Sullivan are gay.)

The bill's supporters do not accept Mr Boehner's economic argument either, noting that it is opposed by neither the US Chamber of Commerce nor the National Small Businesses Association, and that the Human Rights Campaign has found that 88 per cent of Fortune 500 companies have non-discrimination policies with respect to homosexuality, and 57 percent also include gender identity in their policies.

Of course the key reason the bill is stalled is politics. Where once it was good for conservatives to be seen to speak out against such laws, public opinion has shifted so far that members of the House apparently don't want to be seen to be voting against it.