

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

EMPLOYMENT NON-DISCRIMINATION ACT OF 2013—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 815, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 184, S. 815, a bill to prohibit employment discrimination on the basis of sexual orientation or gender identity.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, today marks another step forward in the progress of the United States of America in making sure that all of our citizens are treated fairly and equitably under the law, that each citizen of this country will know he or she cannot be discriminated against because of race, religion, sex, or national origin. That was all covered in the Civil Rights Act of 1964.

In 1990 I was proud to stand at this very desk when we took another step forward when we said we were going to extend civil rights to cover people with disabilities. Today I stand here to mark another step forward when we will have a vote on proceeding to the debate to end discrimination in employment because of a person's sexual orientation. It is a huge step forward, one too long in coming.

I was here in 1996 when we voted on the Employment Non-Discrimination Act, the bill that is now before the Senate. We lost by one vote—50 to 49. That was a dark day. We have been trying to get it before the Senate ever since, and we have finally done so. I am proud to say that we got it through the HELP Committee this summer on a strong bipartisan vote, and we now have it before the Senate.

People should understand this is a momentous day in the development of our country, ensuring that every person is recognized for their individual worth and for what they contribute to society, not for the color of their skin or race or religion or national origin or whether they have a disability. Today we also say: We will make sure you cannot be discriminated against because of your sexual identity or whom you love.

It has been 17 years since Ted Kennedy, who chaired the committee at the time, brought this bill to the floor in 1996, and it was, again, one vote shy of passage. In the meantime, over those 17 years, the attitudes in this country have changed dramatically about the rights of gay, lesbian, transsexual, and transgender Americans. In a nutshell, I think the vast majority of Americans believe that individuals ought to have

the right to earn a living free from discrimination and that they should be judged on their performance in the workplace based on their talent, their ability, and their qualifications.

Interestingly enough, since 1996, 17 States—including my State of Iowa—have passed legislation that includes basic employment protections for all LGBT Americans. I will use that acronym or those letters to explain lesbian, gay, bisexual, and transgender Americans.

Eighty-eight percent of Fortune 500 businesses have included protections in their nondiscrimination policies, as have the majority of small businesses. Over 100 major businesses, including pharmaceutical and technology companies, banks, manufacturing companies, and chemical companies have announced their support for this bill. In fact, there are polls that show 8 out of 10 Americans already believe that discrimination against people because of their sexual orientation is already illegal; for example, that it is illegal to fire someone for being gay or for being a lesbian.

Why are we here today? Twenty-three years ago I stood at this desk as the manager of the Americans with Disabilities Act. That bill was to extend nondiscrimination clauses to people with disabilities. At that time a lot of people said: What is the problem?

Here is the problem in a nutshell. Let's say you are an African American—or a woman or Jewish or Catholic or anything else—and you applied for a job for which you were fully qualified and the prospective employer said: No, I am not hiring African Americans. I don't want any Black people working here. No, you are Jewish; get out of here. Do you know what you could do? You could turn right around, walk out the door, go down to the courthouse, and the courthouse door would be open for you. You can go into that courthouse and take that case to court.

When I stood here 23 years ago, I said: Until the President signs that bill into law, a person with a disability—for example, someone bound to a wheelchair—could be turned down in spite of being qualified for the job. The prospective employer could say: Get out of here; I don't hire cripples. If you then went down to the courthouse, the door was locked. You had no recourse under law for the violation of your civil rights. That is true today for gays, lesbians, bisexual, and transgender Americans. They could be fired just because of that. If they go down to the courthouse door, it is locked. They have no recourse under law.

As I said, 17 States have State laws, some municipalities have municipal laws, but the vast majority of Americans live in States in which there is no civil rights law governing LGBT people. The majority of Americans—more than 56 percent—live in States in which it is perfectly legal to fire or

refuse to hire someone because of who they are—lesbian, gay, bisexual, or transgender. They have no recourse under law. As I said, most people in America think they are covered. They think you can't discriminate against someone because of that. The fact is that it is still perfectly legal to do so in most States in the United States.

As I said, I think we have changed quite a bit in the 17 years since we last considered this bill. That last vote was 49 to 50. We lost by one vote, and there were no amendments. At that time a majority of Senators would have been enough to pass it. All we needed was one more vote. I remember Vice President Al Gore was sitting in the chair, but we were one vote short.

Today, however, as times have changed, we know we need 60 votes to pass bills. Just think about that—17 years ago 51 votes would have passed this bill; now we have to have 60 votes. I won't get into the necessity of having to change the rules of the Senate. We need 60 votes before we can even bring up the bill. It is a tribute to the leadership of the bill's sponsors, Senator JEFF MERKLEY and Senator MARK KIRK, that we have now reached 60 votes. As of last week we only had about 57 or 58 votes, and then 2 more people decided to support the bill. Now that Senator HELLER of Nevada has announced his support for the bill, we have 60 votes. We have 60 votes, and I predict we will get more than 60 votes. Once we reach the critical mass, I think my colleagues will understand that this is another step in the direction of opening America and making our society more inclusive rather than exclusive.

Senator KIRK, who is managing the bill for the minority, had been a supporter of this legislation before he was elected to the House. Senator MERKLEY, who is the sponsor of the bill, was the leader of this effort when he was in the Oregon State Legislature. One Republican and one Democrat were champions of this bill before they came to Congress. They both played a critical role in ensuring the bill was brought before our committee. Even though Senator MERKLEY left our committee to join the Appropriations Committee, he always kept on top of this. With their help, we voted it out of our HELP Committee in July with a strong bipartisan vote of 15 to 7. I thank the present occupant of the Chair, the distinguished Senator from Connecticut, for all of his help and support for getting this bill through. We had the support of three Members of the minority as well. The vote was 15 to 7. It was a great vote.

Despite the passage of laws at the State and local levels, discrimination in the workplace continues to be all too real. Forty-two percent of lesbian, gay, and bisexual workers report having experienced some form of discrimination at work. Even with the progress that has been made at the State and local levels, as I mentioned, too many

hard-working Americans, whether employed by private companies or public entities, are judged not by their ability and qualifications but by their sexual orientation or gender identity.

Consider the example of Michael Carney, who was denied reinstatement as a police officer three times before successfully using the protections of State law to get his job back. This is a job in which he has now served with distinction for many years.

Consider Sam Hall, a West Virginia miner who suffered destruction of property and verbal harassment from co-workers because of his identity as a gay person. Sam is one of those millions of Americans who currently have no legal recourse without this law.

Discrimination against transgender Americans is even more common, with 78 percent reporting harassment at work. I was fortunate enough to hear from Kylar Broadus, who was a witness at our HELP Committee hearing last year. Kylar faced intense harassment at work as he transitioned from female to male. He has never fully recovered financially from the loss of his well-paid position.

Allyson Robinson also provided written testimony to the committee regarding the painful separation from her family that she endured because of financial hardships while she searched for her first job as an openly transgender female.

Again, too many of our fellow citizens are being judged not by what they can contribute to the workplace but by who they are and whom they choose to love. Unfortunately, we can cite countless cases of bigotry and blatant job discrimination based on sexual orientation or gender identity. Equal opportunity is not just an abstract principle or a matter of statistics. Every day, decent hard-working Americans are being hurt by this form of discrimination.

It has been almost 50 years since we first took steps to eliminate discrimination at work and 23 years since we passed the Americans with Disabilities Act to eliminate discrimination against people with disabilities. We still have a long way to go, but our country is a far better place because of laws against discrimination based on race and sex and national origin and religion and age and, yes, disability. At long last, it is time for us to also prohibit discrimination on the basis of sexual orientation and gender identity. Such discrimination is fundamentally wrong and cannot be tolerated any longer in our country.

Lesbian, gay, bisexual, and transgender Americans deserve the same civil rights protections as all other Americans. This bill will accomplish that. It will say to millions of LGBT Americans that they are full and welcome members of our American family and that they deserve the same civil rights protections as every other American.

The bill is very simple. It is very clear. It states that private businesses,

public employers, and labor unions cannot make employment decisions—hiring, firing, promotion or compensation—because of a person's actual or perceived sexual orientation or gender identity. There are exemptions for small businesses and religious organizations, and current rules that are applicable to the Armed Forces are not affected. The bill expressly prohibits disparate impact claims. I wish to repeat that. The bill expressly prohibits disparate impact claims. It is modeled on title VII of the Civil Rights Act. That law has been in place, as I said, since 1964. This bill also incorporates many suggestions from members of both sides, Republicans and Democrats, on our HELP Committee, and I am glad we could work on a bipartisan basis to improve the bill and get it through our committee.

ENDA, as it is known—the Employment Non-Discrimination Act—has unprecedented support from major American businesses, including Dow Chemical, General Electric, Hilton Hotels, GlaxoSmithKline, Chevron, Wells Fargo, Marriott Hotels, Coca-Cola, Cisco, Kaiser, and on and on.

I ask unanimous consent to have printed in the RECORD this list of over 100 companies that support the passage of the bill.

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

BUSINESS COALITION FOR WORKPLACE
FAIRNESS

The majority of United States businesses have already started addressing workplace fairness for lesbian, gay, bisexual and transgender employees. But we need a federal standard that treats all employees the same way.

The Business Coalition for Workplace Fairness is a group of leading U.S. employers that support the Employment Non-Discrimination Act, a federal bill that would provide the same basic protections that are already afforded to workers across the country.

Lesbian, gay, bisexual and transgender employees are not protected under federal law from being fired, refused work or otherwise discriminated against. ENDA would do just that.

LEADING EMPLOYERS THAT SUPPORT WORK-
PLACE FAIRNESS AND THE PASSAGE OF THE
FEDERAL EMPLOYMENT NON-DISCRIMINATION
ACT

Accenture Ltd., New York, NY; AIG, New York, NY; Alcoa Inc., New York, NY; American Eagle Outfitters Inc., Pittsburgh, PA; American Institute of Architects, Washington, DC; Ameriprise Financial Inc., Minneapolis, MN; Amgen Inc., Thousand Oaks, CA; AMR Corp. (American Airlines), Fort Worth, TX; Apple, Cupertino, CA; Bank of America Corp., Charlotte, NC; The Bank of New York Mellon Corp. (BNY Mellon), New York, NY; Barclays, New York, NY; BASF Corp., Florham Park, NJ; Bausch & Lomb Inc., Rochester, NY; Best Buy Co. Inc., Richfield, MN; Bingham McCutchen LLP, Boston, MA; Biogen Idec Inc., Weston, MA; BMC Software Inc., Houston, TX; BNP Paribas, New York, NY; Boehringer Ingelheim Pharmaceuticals Inc., Ridgefield, CT; BP America Inc., Warrenville, IL; Bristol-Myers Squibb Co., New York, NY; Broadridge Financial Solutions Inc., Lake Success, NY; CA Technologies Inc., Islandia, NY; Caesars Enter-

tainment Corp., Las Vegas, NV; Capital One Financial Corp., McLean, VA; Cardinal Health Inc., Dublin, OH; CareFusion Corp., San Diego, CA.

CC Media Holdings Inc. (Clear Channel), San Antonio, TX; Charles Schwab & Co., San Francisco, CA; Chevron Corp., San Ramon, CA; Choice Hotels International Inc., Silver Spring, MD; Chubb Corp., Warren, NJ; Cisco Systems Inc., San Jose, CA; Citigroup, New York, NY; Clorox Co., Oakland, CA; The Coca-Cola Co., Atlanta, GA; Corning Inc., Corning, NY; Darden Restaurants Inc., Orlando, FL; Delhaize America Inc., Salisbury, NC; Dell Inc., Round Rock, TX; Deloitte LLP, New York, NY; The Depository Trust & Clearing Corp., New York, NY; Deutsche Bank, New York, NY; Diageo North America, Norwalk, CT; Dow Chemical Co., Midland, MI; E.I. du Pont de Nemours and Co. (DuPont), Wilmington, DE; Eastman Kodak Co., Rochester, NY; Electronic Arts Inc., Redwood City, CA; Eli Lilly & Co., Indianapolis, IN; EMC Corp., Hopkinton, MA; Ernst & Young LLP, New York, NY; Expedia Inc., Bellevue, WA; Gap Inc., San Francisco, CA; General Electric Co., Fairfield, CT; General Mills Inc., Minneapolis, MN; General Motors Corp., Detroit, MI; GlaxoSmithKline, Philadelphia, PA; Goldman Sachs Group Inc., New York, NY; Google Inc., Mountain View, CA.

Group Inc., Chicago, IL; Hanover Direct Inc., Weehawken, NJ; Herman Miller Inc., Zeeland, MI; The Hershey Co., Hershey, PA; Hewlett-Packard Co., Palo Alto, CA; Hillshire Brands Co., Downers Grove, IL; Hilton Worldwide, McLean, VA; Hospira Inc., Lake Forest, IL; HSBC—North America, Prospect Heights, IL; Hyatt Hotels Corp., Chicago, IL; Integrity Staffing Solutions Inc., Wilmington, DE; Intel Corp., Santa Clara, CA; InterContinental Hotels Group Americas, Atlanta, GA; International Business Machines Corp., Armonk, NY; Jenner & Block LLP, Chicago, IL; JPMorgan Chase & Co., New York, NY; Kaiser Permanente, Oakland, CA; KeyCorp, Cleveland, OH; Kimpton Hotel & Restaurant Group, San Francisco, CA; KPMG LLP, New York, NY; Levi Strauss & Co., San Francisco, CA; Marriott International Inc., Bethesda, MD; Marsh & McLennan Companies Inc., New York, NY; Merck & Co. Inc., Whitehouse Station, NJ; Microsoft Corp., Redmond, WA; MillerCoors Brewing Co., Chicago, IL.

Mitchell Gold + Bob Williams, Taylorsville, NC; Moody's Corp., New York, NY; Morgan Stanley, New York, NY; Motorola Inc., Schaumburg, IL; Nationwide, Columbus, OH; The Nielsen Co., Schaumburg, IL; Nike Inc., Beaverton, OR; Oracle Corp., Redwood City, CA; Orbitz Worldwide Inc., Chicago, IL; Pfizer Inc., New York, NY; PricewaterhouseCoopers LLP, New York, NY; Procter & Gamble Co., Cincinnati, OH; QUALCOMM Inc., San Diego, CA; RBC Wealth Management, Minneapolis, MN; Replacements Ltd., McLeansville, NC; Robins, Kaplan, Miller & Ciresi LLP, Minneapolis, MN; Self-Help Credit Union, Durham, NC; SUPERVALU Inc., Eden Prairie, MN; Target Corp., Minneapolis, MN; Teachers Insurance and Annuity Association—College Retirement Equities Fund, New York, NY; Tech Data Corp., Clearwater, FL; Texas Instruments Inc., Dallas, TX; Thomson Reuters, New York, NY; Time Warner Inc., New York, NY; Travelers Companies Inc., New York, NY; UBS AG, Stamford, CT; US Airways Group Inc., Tempe, AZ; WellPoint Inc., Indianapolis, IN; Wells Fargo & Co., San Francisco, CA; Whirlpool Corp., Benton Harbor, MI; Wynn Resorts Ltd., Las Vegas, NV; Xerox Corp., Stamford, CT; Yahoo! Inc., Sunnyvale, CA.

Mr. HARKIN. Mr. President, in the course of our hearings on this bill, we

heard from executives from Nike and General Mills, among others. Asked why they had chosen to implement strong nondiscrimination policies themselves, the Nike executive testified:

ENDA is good for business because teams thrive in an open and welcoming work environment, where individuals are bringing their full selves to work.

The bill we are debating specifically protects religious liberty with a substantial exemption that allows specific religious organizations to continue to take sexual orientation and gender identity into account when making employment decisions in their religious organizations. I might point out this bill is supported by 60 faith-based organizations, including congregations and organizations ranging from the Presbyterian Church of America, the Episcopal Church, the Progressive National Baptist Convention, the Union of Reform Judaism, the Union Synagogue of Conservative Judaism, the Islamic Society of North America, and many others.

Among other things, polls show that 67 percent of American Catholics support basic workplace protections for LGBT workers. Almost 70 percent in that poll of evangelical Christians supports LGBT employment protections. So there is overwhelming support for this bill, as I said, amongst people of faith and religious-based organizations.

Again, I acknowledge the leadership of Senator KIRK, as well as the bill's lead sponsor, Senator JEFF MERKLEY of Oregon, who has championed this bill and without whom, I dare say, we would not be starting this debate today. In addition, we are fortunate the lead Democratic sponsor of the bill in the House in previous Congresses is now a Member of the Senate and a member of our HELP Committee, that is Senator TAMMY BALDWIN of Wisconsin. I hope she will soon be able to say she helped pass this bill in both the House and the Senate.

I look forward to the vote later today when we will vote to proceed to this bill. As we all know, under the rules of the Senate, after cloture is invoked, we will have up to 30 hours of debate and then the bill will be on the floor and open. We had several amendments filed in committee that members of the HELP Committee reserved to try to bring to the floor. So I am confident we can work with those if they are offered again. I hope all amendments that are offered will be directed at improving this important civil rights legislation. I hope amendments that are focused on unrelated matters can wait for another time, another day, perhaps when that issue is on the floor. This is just too important—this major step forward in expanding our concept of civil rights laws—too important to be dragged down by spurious amendments that have nothing to do with the bill whatsoever. I hope we do not get bogged down with that.

As I said, it has been a long time coming for this bill, when we think

about it. Seventeen years ago we voted on it and lost by one vote. Attempts have been made periodically to get it back to the floor again and it has just never happened, but now we have the opportunity. We reported it out of committee, as I said, with a good bipartisan vote.

ENDA is a critically needed bill. It is commonsense legislation. It has overwhelming support from corporate America, from religious groups, from small and large businesses all across the country. As I said, 8 out of 10 Americans already think it is the law. So let's make sure those 8 in 10 Americans who already think it is the law will now know it is the law, and we can pass it, send it to the House. Hopefully, the House will pass it and the President can sign it into law as soon as possible.

No American should be turned away or have to fear the loss of their job or their means of support or fear of not being hired, even though they are eminently qualified, for any reasons other than their ability to do that job. People shouldn't be fired and shouldn't be discriminated against in hiring because of the color of their skin, their race, their religion, their sex, national origin, disability. That is already in the law; now we put this next piece in place—no one should be denied a job, an opportunity to work because they are gay, lesbian, bisexual or transgender. That is what this bill does.

I encourage all Senators to join with us in passing this important civil rights legislation and continuing our Nation's advance toward freedom and inclusion for everyone in our society. Let's say this is a bright day for America. We are finally bringing it to the floor. As I said, we will have the vote later today. We have 60 people who have said they will vote for it; I hope we have more. Sometime later this week—I don't know if we will use the 30 hours but, hopefully, sometime later this week, we can finally pass it. As I said, I think this week will be one that will be an uplifting week. We have had a lot of problems around this place over the last couple of months. I know from the polls that Members of Congress, in both the House and the Senate, are probably about as popular as a toothache with the general public right now. But this week we can show the American people we can come together and we can lift our eyes above the haze and the smoke on the horizon, and we can make this country a better place for all of us by passing this bill. Let's do this, and let's bring to the American people what they think they have already and what they now want. That is, a society free of discrimination.

I yield the floor and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BARRASSO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

HEALTH CARE

Mr. BARRASSO. Mr. President, I just returned from spending a weekend in my home State of Wyoming, traveling around the State and visiting with people in Natrona County and Casper as well as in Rock Springs, WY. I attended a marvelous event held every year in Sweetwater County called Cowboys Against Cancer. There were 700 people there to celebrate successes and remember those whom we have lost in these battles. I was there along with Senator ENZI as well as our Governor and others talking about an issue facing the Nation—an issue, of course, that is on everyone's mind—the health care law. This has been a very rough 5 weeks for hard-working Americans who are concerned about their health, and this obviously came up for significant discussion at the Cowboys Against Cancer event Saturday night in Wyoming.

Many people were hoping the Democrats' health care law would actually help decrease costs; that it would actually help increase access to quality health care. But all America knows that hasn't happened. On October 1, the Obama administration launched its health care exchange. This was to be the biggest moment of the President's signature achievement in office. It was one where people were looking forward to the opening of the exchanges, and it flopped. It completely flopped. The Web site crashed and fell right on the heads of the people who were already anxious about their health care. People all across the country saw this collapse, and even the late-night comedians have made a lot of jokes about the incompetence and the mismanagement of the Obama administration.

But I have to say the failure of the exchange is no laughing matter, because this is much more than a failed Web site. Real people are facing real health care problems and are being hurt because of this administration's failed health care law. Because of this law, millions of people are getting letters saying their insurance has been canceled. I talked to some of them this past weekend in Wyoming. There are at least 3½ million people impacted by this across the country, and the number continues to climb every day. The Obama administration says that is no big deal. They say only 3½ million people are losing the insurance plans they have now. But this administration's goal—their goal—was just 7 million people covered in the exchanges. So why does the White House think 3½ million Americans losing their coverage is no big deal when their goal this year was to cover 7 million Americans?

President Obama and Democrats in Congress promised over and over: If