

LGBT leaders question Dems on hate crimes

by Ethan Jacobs
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The decision last week by U.S. House and Senate leaders to remove a hate crimes amendment from a Department of Defense authorization bill currently before Congress prompted strong criticism from various quarters ranging from the *New York Times* editorial board, which harshly criticized House Speaker Nancy Pelosi for the move, to LGBT groups including the National Gay and Lesbian Task Force, which pronounced itself "deeply angered and disappointed."

Pelosi pushed for the removal of the hate crimes language from the defense bill, citing a lack of votes to pass the bill in the House if it included the LGBT language. The move marked the second major split between Democratic leadership in Congress and LGBT advocates in the past few months, coming on the heels of the debate between House leadership and LGBT advocates over leadership's decision to remove transgender-inclusive language from the Employment Non-Discrimination Act (ENDA), which passed the House last month. But Congressman Barney Frank (D-Mass) and Human Rights Campaign (HRC) President Joe Solmonese told *Bay Windows* this week that while the hate crimes bill may not make it to the president's desk, the work in Congress on behalf of both hate crimes and ENDA is paving the way for the passage of those bills into law in 2009 if the country elects a pro-gay president and increases the pro-gay majority in the Senate.

Frank pointed to the successful House vote on the hate crimes bill last May and the Senate vote in September to add the hate crimes language into the defense authorization bill, the first time both chambers have passed an LGBT hate crimes bill in a single year since the 1991 Hate Crimes Statistics Act, which required the Justice Department to collect and report data on hate crimes. He argued that those votes demonstrate that under the Democrat-controlled Congress the hate crimes bill is viable. Democrats hope to expand their narrow 51-seat majority in the Senate in the 2008 elections, and Frank said if they succeed and also recapture the White House, then the passage of the hate crimes bill, as well as ENDA, will be a much likelier prospect.

Frank said the goal behind bringing both pieces of legislation to a vote was "to be in a position where there will be no reason for the Democrats not to move on them in 2009."

Difference in strategy

Senate leadership attached the hate crimes bill to the defense authorization, which includes funding for the Iraq war and the Defense Department, in the hope that Bush would feel compelled to sign it into law. But Frank said he does not believe that strategy would have succeeded.

"I never felt that [Bush] was going to sign the bill," said Frank. "He could veto it and send it back."

HRC's Solmonese declined to speculate on whether Bush would have vetoed the bill, but he said advocates and lawmakers went into this session expecting that the hate crimes bill would not make it past Bush's desk.

"At the beginning of this year one of our goals was to pass this bill through both bodies of Congress, understanding that the president was likely to veto it, and we did that," said Solmonese.

Like Frank, Solmonese said the successful votes in the House and Senate lay the groundwork for passing the bills under a more pro-LGBT White House administration.

"What 08 is going to be about is increasing a pro-LGBT majority in both houses of Congress and electing a president who is committed to signing these bills. ... A president committed and lobbying and working Congress to pass these bills is a very different dynamic within Congress than a Congress trying to find essentially a way around a presidential veto," said Solmonese.

But other proponents of the hate crimes bill felt it had a chance of success had it gone to Bush's desk as part of the defense bill. Sen. Ted Kennedy (D-Mass), lead sponsor of the Senate legislation, and Sen. Carl Levin (D-Michigan), chair of the Senate Armed Services Committee, issued a statement Dec. 6 saying that they were "deeply disappointed" by the decision of House leadership to remove the hate crimes language from the defense authorization bill, which they called "the best opportunity to enact hate crimes legislation in this Congress."

Kennedy plans to push for the Senate to vote for a freestanding hate crimes bill next year. Melissa Wagoner, a spokesperson for Kennedy, said Kennedy filed a freestanding hate crimes bill last April, which was the source of the hate crimes language used in the defense authorization bill. The freestanding bill, known as the Matthew Shepard Local Law Enforcement Hate Crimes Prevention Act of 2007, is currently before the Judiciary Committee, and Wagoner declined to say when further action would be taken on it.

Matt Foreman, executive director of the Task Force, said he was angered by the decision to strip the hate crimes language from the defense bill because congressional leadership had assured advocates that attaching the language to the bill was the only way to avoid a veto.

"We had questions about this strategy from the beginning, but we were assured that this was the way in which the hate crimes provisions could get to the president's desk," said Foreman. "So I think we feel let down by House leadership. This wasn't our chosen strategy, and it certainly put some of the most pro-LGBT members in a terrible position. Frankly if I was a member of Congress I would have been in a terrible position between weighing the hate crimes bill with funding for this immoral war."

While Foreman characterized the decision to add the hate crimes language to the defense bill as "a joint congressional strategy," both Frank and a House aide with close ties to House leadership said that strategy was orchestrated by Senate leadership.

Rep. Tammy Baldwin (D-Wisconsin), who along with Frank is one of the two openly gay members of Congress, also criticized the decision to strip the hate crimes language from the defense bill. Baldwin was also a vocal critic of the decision by House leaders this past fall to remove gender identity language from ENDA.

"The best prospect for overcoming or circumventing the president's veto threat against the Matthew Shepard Hate Crimes Act is to send it to him as part of a bill he will sign," wrote Baldwin in a statement released Dec. 12. "It is unfortunate that Congress failed to call his bluff."

Feels like déjà vu

The disappointment by LGBT advocates with House leadership's handling of hate crimes follows the debacle over the House ENDA bill. Last fall House leadership stripped gender identity

language out of ENDA after a whip count found that the trans-inclusive version of the bill would fail. A coalition of national and regional LGBT groups called United ENDA, which included nearly every national LGBT group with the notable exception of HRC, publicly opposed the ENDA bill covering only sexual orientation, but that bill ultimately passed the House last month. The dispute over ENDA prompted sometimes bitter public exchanges between advocates on both sides of the issue in the LGBT and mainstream press, and it led HRC's lone transgender board member, Donna Rose, to resign in protest.

Wagoner said Kennedy plans to move forward with ENDA in the Senate early next year.

Pelosi pushed for the removal of hate crimes language from the defense bill, sources say, because many pro-LGBT Democrats were unwilling to cast a vote in favor of more funding for the Iraq war, and conservative Republicans were expected to vote against the bill if it included the hate crimes language. The House aide cited above said that the Senate strategy of joining the hate crimes bill to the defense bill backfired in the House, where some of the stalwart LGBT rights supporters were vehemently opposed to more war funding.

"The strategy forces members of the House to have to vote for this defense authorization, which includes authorizing money for Iraq, and that's a choice that some liberal Democrats, they're going to vote against any Iraq language," said the aide.

Frank confirmed the aide's account, saying the defense bill would have failed by between 30 and 40 votes if it retained the hate crimes language. He said he lobbied some of his fellow members who were opposed to more war funding, but despite their support for hate crimes legislation they refused to budge. Frank said critics of the decision to strip the hate crimes language from the defense bill underestimate the difficulty of moving pro-LGBT legislation under a president threatening a veto and with a Senate ruled by a razor-thin Democratic majority. He also said advocates did not do enough to try to persuade pro-LGBT House members opposed to funding the Iraq war to vote in favor of the defense bill with hate crimes language.

"What is it that the Democratic leadership was supposed to have done? Part of the problem is our community still lags in lobbying," said Frank. "I do not think our community did a good job lobbying on the left [to vote for the defense authorization bill]."

Looking ahead, LGBT advocates said that Democratic leadership in Congress must develop strategies to build on the progress already made and pass the community's top legislative priorities, including ENDA and hate crimes, into law.

"All of the measures we're talking about have a legitimate possibility of moving into law, and the question becomes, 'How do we find the best vehicle for doing it, how do we hold our caucus together?' ... The situation with hate crimes and with ENDA show that something isn't quite where it needs to be yet, and the Democrats need to show how we're going to get there, and we need to be willing to help them with that," said Jon Hoadley, executive director of National Stonewall Democrats. He said the LGBT community needs to put pressure on Democrats in Congress by lobbying them and asking them to develop a winning strategy to push forward ENDA and hate crimes legislation.

Solmonese said one of the challenges pro-LGBT lawmakers face in making that happen is the difficulty of holding together the Democratic caucus in the House.

"It's a House that, I think that there have been challenges in keeping this caucus together on a whole range of issues, from the war right on down, and it's new leadership, a new majority, and not one that to my observation has fallen into line on many issues," said Solmonese. He said the presence of about 30 freshman Democrats in the House may be one cause of the dissent within the party on key issues, as many of those new lawmakers may be cautious about taking positions that could leave them vulnerable to an electoral challenger.

Foreman also said one of the key challenges in passing pro-LGBT legislation is the difficulty Democratic congressional leadership has faced maintaining party discipline.

"It would be one thing if it was just these gay-related measures, but the problem runs across the spectrum," said Foreman. "And the simple reality is that the Republicans have proved masterful at blocking legislation, and that the Democrats have a very hard time keeping their members together as a block. And the combination is a lack of progress on so many issues."

Hoadley said that despite the setbacks around hate crimes and ENDA, the Democrat-controlled Congress is making progress far beyond anything that was done during the years of the Republican majority.

"We're debating issues that have been silenced for the last 12 years under Republican control, so the fact we're bringing up these issues at all is an expenditure of political capital. ... I think LGBT Democrats are a vital component of the Democratic base and constituency, and we have an obligation to pass legislation that increases protections for our community and brings us closer to equality," said Hoadley.