

## What can we expect from an Obama administration?

by Ethan Jacobs/Bay Windows  
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With the election of Barack Obama and the expanded Democratic majority in Congress LGBT advocates are hopeful that they will be able to move forward with a federal agenda that had largely stalled under the Bush administration. Yet despite the change in leadership in the White House, advocates say it is unclear when the new president and Congress would begin taking action on some of the big-ticket items on the LGBT political agenda - passage of an inclusive Employment Non-Discrimination Act (ENDA), expansion of hate crimes laws to include sexual orientation and gender identity, repeal of "Don't Ask, Don't Tell," repeal of the Defense of Marriage Act (DOMA), and passage of the Uniting American Families Act, to name a few measures Obama said he supports during the campaign.

Joe Solmonese, president of the Human Rights Campaign (HRC), said HRC and other advocates would be assessing the make-up of the new Congress and the priorities of the new Obama administration to determine when different agenda items would be most viable.

"As a community and as a movement ... before we go back to talking about how [different agenda items] might play out, I think the first thing for us to do is evaluate what the face of the new Congress looks like. ... But I think you then have to move with an evaluative look at a whole range of LGBT issues, and I think you can see that different issues are at different places along the spectrum," said Solmonese.

He said hate crimes legislation, which passed in the House and Senate last year but was dropped from a defense authorization bill before final passage, would potentially be an easier victory in the short term, since lawmakers in both chambers have passed it and Obama has announced his support for the measure. ENDA would require more work, Solmonese said; last year the House passed a non-transgender-inclusive version of the bill, and the Senate has not yet voted on it, so there would be more work needed to build support for it in both chambers. Repealing "Don't Ask, Don't Tell" will require significantly more work, Solmonese said, since Congress has not voted on any repeal legislation and the new administration would have to win the support of the Defense Department and the Joint Chiefs of Staff.

Allison Herwitz, HRC's legislative director, said as of the morning of Nov. 5 it was too soon to tell how supportive the new Congress would be.

"The general take is that it looks like the Democrats will in general gain north of about 20 seats. In terms of where all those Democrats will fall on support for LGBT issues, we're still in the middle of our analysis and sussing it out. We look at not the partisan breakdown of the House and the Senate but the breakdown of [where lawmakers stand on] our issues, and there's a lot of analysis of what's going on," said Herwitz.

She said based on what they know so far HRC is confident that the majority in favor of a hate crimes bill has grown. HRC would work with the new administration and congressional leadership to try to bring it up for a vote sometime next year, said Herwitz. It is too soon to tell what prospects ENDA, "Don't Ask, Don't Tell" repeal, extension of domestic partner benefits to federal employees and other initiatives have in the new Congress.

While Democrats did well nationally, LGBT-friendly Republicans lost seats in Congress. Connecticut's Rep. Chris Shays, a reliable LGBT-rights supporter, lost his reelection bid, and as Bay Windows went to press Oregon Sen. Gordon Smith, who supported the Federal Marriage Amendment but also supported other LGBT-rights legislation, and his Democratic opponent were nearly tied in a race that was too close to call.

"Chris Shays is a very, very sad loss for the LGBT community," said Herwitz. "He has been a longtime friend and stalwart leader on trying to move pro-equality legislation forward and really worked within his leadership, such that that was. So that's sad. With the Gordon Smith race still undecided we'll have to wait and see. ... In the bigger picture having bipartisan support for pro-equality legislation is very important, so regardless in the end what members are there or not, HRC will always look to have bipartisan legislation and to not leave any vote unturned."

Evan Wolfson, president of Freedom to Marry, said he believes an Obama presidency has the potential to help bring about significant gains in LGBT rights at the national level, but he said the LGBT community has much work to do to bring that about. Wolfson said President Bill Clinton's presidency taught the LGBT community not to take a president's stated support for LGBT rights for granted. Despite Clinton's stated support for gay and lesbian rights he signed the Defense of Marriage Act, and his administration helped craft the "Don't Ask, Don't Tell" policy.

"One of the lessons we should have learned is just electing a president, however good, does not solve all the problems, and it doesn't mean we don't have to work hard. ... We have to work hard for ourselves and we have to hold that president to their obligations," said Wolfson.

Yet Wolfson said despite the new support in the White House he expects much of the community's focus, particularly within the marriage equality movement, to remain at the state level, where it has been focused through much of the Bush administration. Since marriage is principally a state issue marriage activism must by necessity be done at the state level, Wolfson observed, and taking a local approach also gives advocates a chance to craft messages in favor of equal marriage rights that resonate with people in a given state. But Wolfson does see strong potential for an Obama administration to repeal DOMA.

"I think under Obama we will see real efforts to undo it, which he has committed to supporting. But that doesn't take the place of the work that has to be done state by state," said Wolfson.

As for when advocates will begin pushing the new administration to pass LGBT-rights legislation, some say they plan to give Obama time to focus on broader issues in the short term like the economy and the wars in Iraq and Afghanistan before urging passage of LGBT-related bills. Aubrey Sarvis, executive director of the Servicemembers Legal Defense Network (SLDN), said he feels optimistic about the prospect of overturning "Don't Ask, Don't Tell" under the Obama administration, but he said as a result of lessons learned during the Clinton years SLDN plans to hold off on pressuring the White House to take action. Clinton pushed early on in his first term for repeal of the military's ban on gay service members, but he faced intense opposition from the Joint Chiefs of Staff and members of Congress. Ultimately the White House, the Joint Chiefs and Congress settled on the current "Don't Ask, Don't Tell" policy as a compromise, but discharges have continued under the policy; according to SLDN nearly 10,000 service members have been discharged since it went into effect.

"I'm certainly not going to be pushing this administration in the first 100 days. I don't want a repeat of 1993," said Sarvis.

That does not mean SLDN will be sitting on the sidelines for next few months. Sarvis said the organization would continue laying the groundwork for a successful repeal of "Don't Ask, Don't Tell." In July Congress held its first hearing on the policy; Sarvis expects another hearing sometime in late spring or early summer of next year.

"The reality is the Pentagon, the new secretary [of defense] and the Joint Chiefs will be called to testify. So folks will have to get ready," said Sarvis.

He said he would be urging the new administration to begin reaching out to the Defense Department and the Joint Chiefs of Staff to get them on board with repealing "Don't Ask, Don't Tell."

"I would urge the president-elect to work very closely with the Defense Department, partner with them in finding a way to bring about a consensus within DOD, and that includes the secretary and the men and women around the new secretary," said Sarvis. "And equally important it includes the Joint Chiefs of Staff. I think a lesson from last round is the Defense Department has got to be a key player, and it's important to get their support."

**Rea Carey, executive director of the National Gay and Lesbian Task Force (NGLTF), agreed that advocates would wait before pressing the Obama administration to act on LGBT political priorities, but she said that does not mean LGBT advocacy will be put on hold in Washington for the first few months of the administration.**

**"What we want to make sure of as a community is that in those discussions and in those decisions we are not left behind," said Carey, saying that as the Obama administration formulates policy on taxes, the economy and healthcare advocates must ensure that those policies have a positive impact on LGBT people. "We will be working on a number of fronts to ensure the big conversations the next administration will be having on the economy, on healthcare, on education, that our community will not be left behind."**

One area where LGBT advocates are breathing easy in the aftermath of the election relates to the federal judiciary. With at least one, and possibly several, of the U.S. Supreme Court's more liberal justices expected to retire in the next four years, LGBT legal experts worried that a John McCain administration would further stack the court with conservative justices likely to rule against LGBT interests. Lee Swislow, executive director of Gay and Lesbian Advocates and Defenders (GLAD), said Obama's win means that liberal justices will likely maintain their narrow majority on the court, and she expects Obama to appoint LGBT-friendly justices throughout the federal judiciary.

"An Obama victory throughout the federal judicial system is likely to lead to appointments of justices who are much more sympathetic to our arguments," said Swislow.

For the past several years legal advocacy organizations like GLAD, Lambda Legal and National Center for Lesbian Rights have focused their litigation primarily at the state level, scoring wins for marriage equality in Massachusetts, California and Connecticut. Swislow said work in the states will still be the primary focus, but she said with the maintenance of the current balance on the Supreme Court under Obama it is conceivable that advocates could file litigation in federal court around relationship recognition.

"I think with an Obama victory and a Supreme Court that maintains the current judicial philosophy and balance of power it provides the opportunity to bring the right piece of litigation forward," said Swislow. "It's a Supreme Court that has been sensitive to our issues, and it's a court that we at GLAD would feel comfortable arguing in front of on the right case. ... Certainly relationship recognition is in the mix."

Wolfson also believes there is potential to persuade Obama to change his stance to support equal marriage rights, rather than civil unions. He said Obama's explanations for his opposition to marriage rights are "the jarring false note in what he's said over the years," and he believes that Obama opposes marriage equality for political rather than principled reasons. He said over the next four years advocates must work at the state level to build support among the public for

marriage equality and change the landscape to make it politically viable to support equal marriage rights.

"[His position in favor of civil unions is] what he has said and it's what we have to work with and work around, and that will be part of the challenge in the next several years," said Wolfson. He added that the way forward was "by changing the circumstances around him and letting him follow. So we need to hold him to his part [in terms of his commitment to repeal DOMA] ... while at the same time we create the climate that shows him that the answer is full marriage equality, not just opposition to discrimination."