

LEGISLATIVE UPDATES

By Rene Carballo

S. 21 “Prevention First Act of 2009” Introduced by Senator Harry Reid (D, NV)

The Prevention First Act seeks to improve women’s access to health care, specifically by increasing access to reproductive health care services.¹ Congress introduced this legislation to expand women’s access to these services by providing funds to states and other entities to invest in research, education, and preventative programs regarding teen pregnancy and sexually transmitted diseases.² The Act would require hospitals receiving federal funding to provide, upon request, emergency contraception to victims of sexual assault.³ In regard to health plans and their coverage, this Act would prohibit the exclusion or restriction of benefits related to prescription contraceptive drugs, devices, and outpatient services.⁴

Senator Harry Reid from Nevada introduced this Act on January 6, 2009 with 27 co-sponsors. After its introduction in the Senate, the Act was referred to the Committee on Health, Education, Labor, and Pensions. The companion bill in the House of Representatives, the Unintended Pregnancy Reduction Act of 2009, was referred to the committees on Energy and Commerce, Ways and Means, and Education and Labor.

S. 424 “Uniting American Families Act of 2009” Introduced by Senator Patrick Leahy (D, VT)

The Uniting American Families Act (UAFSA) was introduced to amend the Immigration and Nationality Act⁵ to eliminate discrimination by the following: 1) permitting permanent partners of United States citizens and lawful permanent residents to obtain lawful permanent resident status in the same manner as spouses of citizens and lawful permanent residents and 2) penalizing immigration fraud in connection with permanent partnerships.⁶

The Act defines the scope of a “permanent partner” as an individual 18 or older in a committed intimate relationship with another individual 18 or older in which both parties intend a lifelong commitment. The individual must be financially interdependent with the other party and not married to, or in a permanent partnership with, any other person. The individual must be unable to contract with the other individual a marriage cognizable under this Act and finally, the partners cannot be in first, second, or third degree blood relation to one another.⁷

Family reunification has been essential to U.S. immigration policy for decades, but lesbian and gay families have been entirely excluded from discussion.⁸ By introducing this legislation, Congress intended to extend the U.S. Immigration and Nationality Act to same-sex partners of U.S. citizens and permanent residents. Under the current law, same-sex partners are not considered “spouses.” Consequently, the current law tears apart bi-national couples and their families. According to the most recent U.S. Census, there are nearly 36,000 gay and lesbian bi-national couples.⁹ As with opposite-sex couples, there

are requirements such as providing proof of the relationship. Furthermore, this Act would impose harsh penalties for fraud, including up to five years in prison and as much as \$250,000 in fines.

Senator Patrick Leahy from Vermont introduced this Act on February 12, 2009 with 20 co-sponsors. After its introduction, it was referred to the Committee on the Judiciary. Representative Jerrold Nadler from New York introduced its companion legislation, H.R. 1024, in the House with 115 co-sponsors. After its introduction, it was referred on February 12, 2009 to the Committee on the Judiciary and on March 16, 2009 to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law.

S. 697 “Community Living Assistance Services and Supports (CLASS) Act of 2009” Introduced by Senator Edward M. Kennedy (D, MA)

This Act was introduced to amend the Public Health Service Act¹⁰ to help individuals with functional impairments and their families pay for the services and supports that they need to maximize their functionality and independence. The Act increases families’ options for community participation, education, and employment. This legislation creates a new financing strategy for community living assistance services to allow these individuals to live in the community. It also supports the establishment of an infrastructure that will help address America’s community living assistance services and support need and alleviate burdens on family caregivers.¹¹

Senator Ted Kennedy from Massachusetts introduced the CLASS Act on March 25, 2009 with five co-sponsors. It was referred to the Committee on Finance. Its companion legislation, H.R. 1721, was referred to the Committee on Energy and Commerce. It was referred to the House Committees on Ways and Means, Rules, and the Budget.

S. 909 “Matthew Shepard Hate Crimes Prevention Act of 2009”

Introduced by Senator Edward M. Kennedy (D, MA)

This Act was introduced to provide federal assistance to states, local jurisdictions, and Native American tribes to aid in the prosecution of hate crimes.¹² The legislative intent is to expand the scope of the 1969 U.S. federal hate-crimes law¹³ to include bodily crimes motivated by a victim’s actual or perceived gender, sexual orientation, gender identity, or disability. Furthermore, it codifies and expands the funding and investigative capabilities of federal officials for aiding their local counterparts, particularly at the behest of the Attorney General.¹⁴

The legislation was named after Matthew Wayne Shepard, a student at the University of Wyoming who died after being tortured because of his sexual orientation. Due to the circumstances surrounding Shepard’s murder, the legislation also amends the Hate Crimes Statistics Act. Data collection and

reporting requirements would now include crimes manifesting prejudice based on gender and gender identity, as well as hate crimes committed by and against juveniles.

Senator Edward M. Kennedy from Massachusetts introduced this Act in April 28, 2009 with 45 co-sponsors. After dying in committee when brought for a vote by Senator Kennedy in the 110th Congress, the Act was approved as an amendment to the Senate Defense Reauthorization bill. Due to staunch opposition, it was ultimately dropped from the Reauthorization, but President Obama indicated his goals to see the bill passed in its original language was signed into law on October 28, 2009. Its companion legislation, H.R. 1913, passed the House on April 29, 2009.¹⁵

S. 931 “Arbitration Fairness Act of 2009” Introduced by Representative Henry Johnson (D, GA)

The Arbitration Fairness Act would amend Title 9 of the United States Code to prevent the enforcement of pre-dispute arbitration agreements that require arbitration of employment, consumer, franchise, or civil rights disputes.¹⁶ The purpose of the amendment is to alter mandatory arbitration because it lacks any meaningful judicial review of the arbitrators’ decisions, undermining the development of public law for civil rights and consumer rights.¹⁷

Senator Russell Feingold from Wisconsin introduced this Act on April 29, 2009. It was referred to the Committee on the Judiciary. Representative Henry Johnson from Georgia introduced its companion legislation, H.R. 1020, on February 12, 2009 with 85 co-sponsors. It was referred to the House Committee on the Judiciary and on March 16, 2009 to the Subcommittee on Commercial and Administrative Law.

H.R. 3017 “Employment Non-Discrimination Act of 2009” Introduced by Representative Barney Frank (D, MA)

This Act was introduced to prohibit employment discrimination based on actual or perceived sexual orientation or gender identity.¹⁸ Specifically, the intent of the legislature is to

address the history and widespread pattern of discrimination on the basis of sexual orientation or gender identity by private sector employers and local, state, and federal government employers.¹⁹ It also seeks to provide comprehensive federal prohibition of employment discrimination on the basis of sexual orientation or gender identity and include meaningful and effective remedies for any such discrimination.

Because there is no federal law that consistently protects lesbian, gay, bisexual, and transgender individuals from employment discrimination, Congress invokes the 14th Amendment of the Constitution,²⁰ and Article I, Section 8 of the Constitution,²¹ granting it power to propose this legislation. However, this Act shall not apply to a corporation, association, educational institution, or society that is exempt from the discrimination provisions of Title VII of the Civil Rights Act of 1964. Under Title VII, all employers excluding the four aforementioned exceptions are not only prohibited from being motivated by discriminatory intent, but must also not use a facially neutral employment practice that has an unjustified adverse impact on members of a protected class.²² By enacting the Employment Non-Discrimination Act, Congress would extend the protected class under this disparate impact theory to include lesbian, gay, bisexual, and transgender people.

Representative Barney Frank from Massachusetts introduced this Act on June 24, 2009 with 152 co-sponsors. After being introduced it was referred to the Committee of Education and Labor, which held the first of its hearings on the bill on September 23, 2009.

Healthcare Reform

The Affordable Health Care for Americans Act of 2009 was introduced Representative John Dingell (D, MI) on October 29, 2009. The Obama Administration pushed for the introduction of the Affordable Health Care for Americans Act of 2009 in response to the growing demand for healthcare reform.²³ Earlier in the year, the House introduced H.R. 676, the United States National Health Care Act or the Expanded and Improved Medicare for All Act,²⁴ to provide for comprehensive health insurance coverage for all United States residents, improved healthcare delivery, and for other purposes. This in turn led to the Affordable Health Care for Americans Act, seeking to expand health care coverage to the approximately 40 million Americans who

THE SECOND ANNUAL LAMBDA LAW SOCIETY SYMPOSIUM: LGBTQ POVERTY AND BARRIERS TO ACCESS

FEBRUARY 12, 2010
2:00 pm – 5:00 pm

This Freedom to Marry Day, we step back to examine widespread poverty among lesbian, gay, bisexual, transgender, and queer (LGBTQ) communities. How do barriers to the basic needs of employment, health care, and housing affect LGBTQ survival? How do these access barriers create and exacerbate LGBTQ poverty? What roles do racism, homophobia, and disability phobia play? And where do we go from here?

Presented by the Lambda Law Society

are currently uninsured by lowering the cost of health care and making the system more efficient.

To successfully revamp the current health care system, the Act includes a new government-run insurance plan to compete with companies in the private sector. It would require that all Americans have health insurance, and prohibit denying coverage of those Americans with pre-existing conditions. In order to fund the project, there will be a surtax on households with an income above \$500,000. The legislative intent behind the Act is to help low- and middle-income individuals and families

purchase insurance. Despite mandating universal coverage and disallowing discriminatory practices for health status or gender, the premiums would still vary based on factors such as age, geography, and family size.

Representative John Dingell from Michigan introduced this Act on October 29, 2009 with six co-sponsors. The bill passed on November 7, 2009. Due to the pressing nature of the issue, amendments and potentially new legislation is bound to arise in the Senate during Congress' next session.

ENDNOTES

¹ Prevention First Act of 2009, S. 21, 111th Cong. (2009).

² *Id.* (putting into practice the goals of the At-Risk Communities Teen Pregnancy Prevention Act of 2009 and the Responsible Education About Life Act of 2009).

³ *Id.* (paralleling the Compassionate Assistance for Rape Emergencies Act of 2009).

⁴ *Id.* (exemplifying the application of the Equity in Prescription Insurance and Contraceptive Coverage Act of 2007).

⁵ Immigration and Nationality Act of 1952 Pub. L. No. 82-414, 66 Stat. 163 (1952) (Allowing U.S. citizens and legal permanent residents to sponsor their spouses and other immediate family members for immigration purposes).

⁶ Uniting American Families Act of 2009, S. 424, 111th Cong. (2009).

⁷ *Id.*

⁸ Human Rights Campaign, Talking Points: The Uniting America Families Act, http://www.hrc.org/issues/int_rights_immigration/13114.htm (last visited Nov. 18, 2009).

⁹ *Id.* (referring to the U.S. Census Bureau, Census 2000 stating the median age of these bi-national couples is 38 and 47% of them are raising children).

¹⁰ 42 U.S.C. § 201 (2008).

¹¹ Community Living Assistance Services and Supports Act of 2009, S. 697, 111th Cong. (2009).

¹² Matthew Shepard Hate Crimes Prevention Act of 2009, S. 909, 111th Cong. (2009).

¹³ Distinguished from the definition of "hate crime" as set forth in the Violent Crime Control and Law Enforcement Act of 1994, which included gender and sexual orientation, in addition to race, color, religion, ethnicity, and national origin.

¹⁴ S. 909.

¹⁵ Local Law Enforcement Hate Crimes Prevention Act of 2009, H.R. 1913, 111th Cong. (2009).

¹⁶ Arbitration Fairness Act of 2009, S. 931, 111th Cong. (2009).

¹⁷ *Id.* (providing arbitrators near complete freedom to ignore the law or even their own rules in making decisions).

¹⁸ Employment Non-Discrimination Act of 2009, H.R. 3017, 111th Cong. (2009).

¹⁹ See 42 U.S.C. §2000 (referring to the Civil Rights Act of 1964 to define employees and employers for purposes of this legislation).

²⁰ U.S. CONST. amend. XIV ("no state shall . . . deny to any person within its jurisdiction the equal protection of the law").

²¹ U.S. CONST. Art. 1, § 8 (ensuring a Congressional right to regulate interstate commerce to provide for the general welfare).

²² Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. §2000).

²³ Affordable Health Care for American Act, H.R. 3962, 111th Cong. (2009).

²⁴ National Health Care Act or the Expanded and Improved Medicare for All Act, H.R. 676, 111th Cong. (2009).

PRINTING INFORMATION

The Modern American will print issues in accordance with the standards established by the Forest Stewardship Council ("FSC") that are designed to eliminate habitat destruction, water pollution, displacement of indigenous peoples, and violence against people and wildlife that often accompanies logging.

Achieving FSC Certification requires that every step of the printing process, from lumber gathering to transportation to printing to paper sorting, must comply with the chain of custody established by the FSC which runs a strict auditing system to maintain the integrity of their certification process.

Currently, FSC Certification is one of four methods a publisher can employ to ensure its publications are being produced using the best sustainable practices. It is also the method practiced by our printer, HBP, Inc. (FSC Chain-of-Custody Certification: SW-COC-002553).

Printed by HBP, Inc. on partially recycled paper.



ABOUT THE MODERN AMERICAN

Diversity is one of America's greatest assets. It continues to reshape and refine our laws and culture daily. *The Modern American* is the Washington College of Law's non-partisan, student-run publication dedicated to cutting-edge issues in diversity and the law. It promotes a provocative, fresh dialogue evaluating legal and social issues influencing minority groups in our country today. *The Modern American* discusses America's legal and social systems' treatment of racial, ethnic, sexual, and other underrepresented peoples from a wide range of political and social viewpoints.

Featuring a broad spectrum of stimulating articles by legal scholars and practitioners from all over the country, *The Modern American* publishes submissions regardless of their political sway, social leaning, or limitation to legal issues. To submit or subscribe to the publication for free, send a "Letter to the Editor," or request more information, please email tma@wcl.american.edu.

For more information, please visit our web site at:

<http://wcl.american.edu/modernamerican/>

SUBMISSION GUIDELINES

The Modern American accepts articles on a rolling basis. We will not publish articles over 50 pages in length. Please email all articles submissions to tma@wcl.american.edu and a cover letter with your name, phone number, address, biographical sketch of all authors, as well as a short abstract of the article. Articles should be in MS Word, in Times New Roman, and double-spaced. Citations should conform to *A Uniform System of Citation* (18th Ed.) (the *Bluebook*). For questions of literary style, authors should consult *The Chicago Manual of Style* (15th Ed).

Articles or portions of articles already published may be eligible with permission. Please indicate all publications in which your proposed article appears or is forthcoming. Please contact *The Modern American* with any questions regarding the eligibility of your article.

THE MODERN AMERICAN DISCLAIMER

No portion of this publication may be reprinted without the express written permission of *The Modern American*. The views expressed in this publication are those of the writers and are not necessarily those of the editors or American University. American University Washington College of Law is an equal opportunity, affirmative action university.

Corrections: Volume 5 – Issue 1, Much Ado About Nothing or A Wake Up Call to Do Something By Lydia Edwards, Esq.

Corrections to this piece will be available online January 2010.