Bad Faith

Congress prepares to render unto the religious the right to discriminate against people with HIV. Doug Ireland explains the newest hate law.

November 1, 1999 By Doug Ireland

Congress seems intent on making it easier for you to be denied a job or a home. A dangerous bill that could shred state and local civil rights laws protecting HIVers—not to mention lesbians and gays, single parents and unmarried couples—has already passed the House and is speeding its way through the Senate. It bears a lofty title—the Religious Liberty Protection Act (RLPA)—and was ostensibly designed to protect members of minority religions from discrimination when following the rules of their faith, such as wearing beards, turbans or yarmulkes or observing religious holidays not celebrated by employers. But its scope could go much further than offering these basic protections.

The RLPA prohibits states from “placing a substantial burden upon a person’s religious exercise.” While the limits of the act will ultimately be decided in the courts, on its face the bill would permit people to discriminate against those with differences or conditions of which they disapprove on religious grounds. Thus, those who believe that AIDS is “God’s punishment” for homosexuality, drug use or promiscuity could, under the RLPA, claim a religious exemption from local civil rights laws. People with HIV who live in cities or states where they’re currently protected by anti-discrimination laws may find that those rights are about to be yanked away.

As Chai Feldblum, a law professor at Georgetown University who represents the National Gay and Lesbian Task Force in its opposition to the RLPA, notes: “This bill gives the religious the right to argue that they can discriminate because of the way people got a disease. And the recent Supreme Court decisions on the Americans with Disabilities Act [ADA] throw into doubt the question of who will be covered by the ADA, making state and local rights laws even more important for the HIV positive." As Christopher Anders, legislative counsel for the American Civil Liberties Union, put it in testimony before the House Judiciary Committee, “If the RLPA becomes law, an applicant for a job or housing may have no protection against having to answer such questions as ‘Is that your spouse?’ ‘Are you straight or gay?’ ‘Do you have HIV?’”

These concerns led Rep. Jerrold Nadler (D-N.Y.), an original RLPA House cosponsor, to offer an amendment protecting local civil rights laws. But on July 15 the Nadler amendment was defeated in the House, 234 to 190. And the RLPA—with the support of the Clinton administration—passed the House the same day by a veto-proof margin of 306 to 118.

A relentless religious-led coalition of some 70 organizations is backing the RLPA, and its members have mightily resisted any attempts to amend it to preserve local civil rights protections. The lopsided votes in the House auger badly for similar efforts to change the bill in the Senate. The only hope for a Nadler-like amendment in the upper chamber is if the RLPA is referred to the Judiciary Committee, whose chair happens to be Orrin Hatch (R-Utah), a devout Mormon and principal RLPA Senate sponsor. Fellow committee member and RLPA cosponsor Ted Kennedy (D-Mass.) and his staff are working hard for a "compromise" on civil rights protections. But the Nadler amendment was itself a compromise, for it still allowed discrimination under "religious exemption" in owner-occupied housing, small businesses and religious-run institutions. A Hatch–Kennedy compromise would likely be even weaker than Nadler's.

Moreover, there is the strong possibility that Hatch—whose doomed cuckoo presidential campaign means he has to pander to the GOP's social and religious conservatives—will bypass Judiciary and send the RLPA directly to the Senate floor, where Democratic Judiciary staffers say a Nadler-like amendment would have no chance of passage.

The RLPA in its current form is opposed by all major AIDS and gay civil rights groups and by other prominent groups such as the National Organization for Women. The NAACP Legal Defense and Educational Fund recently opined that the act "may be used in a manner to limit African Americans' and other minorities' rights to seek protection from discrimination [and] would significantly increase the litigation, time and expense of pursuing even workaday antidiscrimination actions."

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