

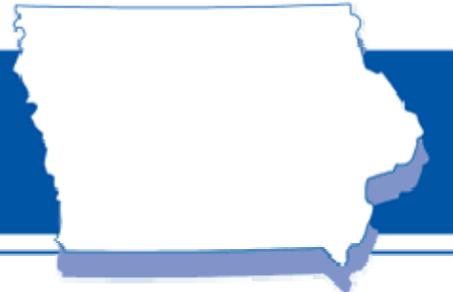
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U.S. Senator

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STATEMENT OF CHAIRMAN TOM HARKIN (D-IA)

AT HELP COMMITTEE HEARING ON “THE EMPLOYMENT NON-DISCRIMINATION ACT OF 2009: ENSURING OPPORTUNITY FOR ALL AMERICANS”

As Prepared for Delivery

"Welcome everyone. Today our Committee will hear testimony on an important piece of civil rights legislation – the Employment Non-Discrimination Act, also known as ENDA.

"The issue here could not be more simple. We are talking about a fundamental American value – equal treatment for all – a principle that citizens who work hard, pay their taxes and contribute to their communities deserve fair treatment and should not be discriminated against.

"Over the last 45 years, we have made great strides towards eliminating discrimination in the workplace. The Civil Rights Act of 1964 prohibited discrimination on the basis of race, sex, national origin and religion. The Age Discrimination in Employment Act, in 1967, prohibited discrimination on the basis of age. The Americans with Disabilities Act, in 1990, prohibited discrimination on the basis of disability. It is time, at long last, for us to prohibit discrimination on the basis of sexual orientation and gender identity as well. Such discrimination is wrong and cannot be tolerated.

"The former chair of this Committee, Senator Kennedy, worked his entire career to ensure opportunity for all Americans. And he first introduced this legislation in 1994. Today, by taking up this important bill, we continue Senator Kennedy's work, and we continue the proud commitment of this Committee to uphold fair treatment for working Americans.

"One of our newest members, Senator Merkley, led the effort in Oregon for full equality for lesbian, gay, bisexual and transgender Americans, and has established himself as a champion on these issues here in the Senate. I thank him for his

leadership and I look forward to working with him closely as this important legislation moves through Congress.

"Full equality for lesbian, gay, bisexual and transgender Americans is a vital issue, but it is by no means a new one. As we will hear today, our states have already led the way toward ensuring full equality for our fellow Americans.

"Currently, the District of Columbia and 12 states, including Iowa, I am proud to say, have enacted statutes that prohibit discrimination on the basis of sexual orientation and gender identity. Another nine states bar job discrimination on the basis of sexual orientation alone. These states have found that full equality for all their citizens is not only the right thing to do, but is beneficial all.

"Likewise, leading companies across the country have found that equality in the workplace is not only the right thing to do, but also makes good business sense. Eighty-seven percent of Fortune 500 companies have sexual orientation non-discrimination policies, and 41 percent have gender identity non-discrimination policies. I look forward to hearing from our witnesses today about the positive experiences that businesses have had.

"While these states and businesses provide important protections and should be commended, the harsh reality is that employers in most states in this country can still fire, refuse to hire, or otherwise discriminate against individuals because of their sexual orientation or gender identity – and, shockingly, they can do so within the law.

"As we will hear today, too many hardworking Americans are being judged not by their talent, ability and qualifications, but by their sexual orientation or gender identity. Unfortunately, we can cite example after example of bigotry and blatant job discrimination.

"Moreover, it is not just private employers that have been guilty of discrimination. Unfortunately, state governments also have engaged in a widespread pattern of unconstitutional employment discrimination against lesbian, gay, bisexual and transgender employees. I particularly refer my colleagues to the voluminous study by the Charles R. Williams Institute at UCLA Law School which documented discrimination on the basis of sexual orientation and gender identity in state employment.

"Equal opportunity is not just an abstract principle or a matter of statistics. Decent, hardworking Americans are being hurt by discrimination every day.

"We are here, today, because of people like Mike Carney, one of our witnesses, a decorated police officer who was discriminated against because of his sexual orientation.

"We are here because of people like Kimya Afi Ayodele, a social worker with more than two decades of experience. She suffered through a year of threatening messages, vandalism to her car, and slurs uttered in the workplace. Then, in 2003, she was fired. Her supervisors told her, 'This would not be happening if you were not a lesbian.' Kimya sought legal help, but quickly learned that nothing in her state's law protected her from being fired because of her sexual orientation.

"We are also here because of people like Diane Schroer, who is in the audience today. Diane is one of the many transgender Americans who we hope to protect through the bill. For 25 years, Diane served in the United States Army, rising through the ranks to become a Special Forces commander. After retiring from the military, Diane applied for a position as a terrorism specialist with the Congressional Research Service of the Library of Congress. After being offered the job, she explained to the Library that she was transitioning from living as David Schroer to living as Diane Schroer, consistent with her female gender identity. Although David had been the Library's top choice for the position, the Library notified her that

Diane was 'not a good fit' and rescinded the job offer.

"Qualified workers should not be turned away or have to fear losing their livelihood for reasons that have nothing to do with their capabilities, skills or performance. Such practices are un-American and it is time for them to stop.

"This bill is simple. It makes clear 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. It contains exemptions for small businesses and religious organizations, and current rules applicable to the armed forces are not affected. And, it specifically prohibits disparate impact claims.

"As we will hear today, this legislation follows in the footsteps of our existing civil rights laws. Just as when we passed those earlier civil rights bills, we are hearing claims, today, that ENDA will lead to a flood of lawsuits or be an undue burden on religious organizations. These claims are false.

"Indeed, we are pleased to have broad bipartisan support and the endorsement of civil rights organizations, countless businesses and religious leaders.

"It is long past time to eliminate bigotry in the workplace and ensure equal opportunity for all Americans. It is time to make clear that lesbian, gay, bisexual and transgender Americans are first-class citizens. They are full and welcome members of our American family. And, they deserve the same civil rights protections as all other Americans."