

And now there are two!

Massachusetts Passes Gay Rights Law

BY REX WOCKNER

Massachusetts joined ranks with lonely Wisconsin October 30 when it became the second U.S. state to pass a gay/lesbian rights bill.

Although gay rights laws are common in large American cities and in university towns, the process of pulling "yes" votes out of state legislators from rural America will provide a challenge for activists in the remaining 48 states well into the 21st century.

The Massachusetts battle began 17 years ago, when then state representative Barney Frank — now one of only two openly gay members of the 535-member U.S. Congress — introduced the controversial measure. Since then, opponents of gay rights have utilized complex parliamentary maneuvers to kill the bill year after year.

But on October 30 — dead tired of the issue, according to activists — the state Senate "enacted" the bill in a 24-15 vote. The state House of Representatives had passed the measure one week earlier.

"All the Senators were sick of addressing this issue in their districts," said Arline Isaacson, co-chair of Massachusetts Gay and Lesbian Political Caucus. "Whichever way they voted, they were always being criticized. They very much wanted to move on to easier issues."

Apart from wearing down Senators, activists stressed the importance of aggressive lobbying, grassroots organizing and coalition-building with supportive religious human rights groups. The bill bans discrimination based on sexual orientation in employment, housing, public accommodations and credit.

Activists are angry about several limiting amendments to the law. Legislators were careful to:

- Exempt religious institutions,
- Protect foster children from being placed with people whose sexual orientation is an "obstacle in the psychological or physical well-being of the child,"
- Deny any validation of gay marriage or benefits to a "homosexual spouse" and,
- Promise that the bill is not an "endorsement" of homosexuality.

The measure has always been supported by Massachusetts Governor Michael Dukakis, who was vigorously attacked by gay activists during last year's Presidential race.

Critics say Dukakis is anti-gay around foster care issues in particular and is more talk than action on gay rights matters in general.

But Isaacson insisted that "Dukakis has been with us all along in a very public way. He even got some of the legislators who were on the fence to support it," she said.

The bill was signed into law by Governor Dukakis on November 15.

ADA reaffirms homosexuality not a disability

Employers may no longer discriminate against someone because that person has HIV if the Americans With Disabilities Act becomes law

BY CHAI FELDBLUM AND LAURA MARKOWITZ

The Americans With Disabilities Act (ADA), drafted in early 1989, passed on the Senate floor during the first week of September with almost unprecedented speed and overwhelming support. Although this bill still has to pass in the House, AIDS and disability rights activists are delighted by the success.

On paper and in theory, President Bush came out in favor of protection for people with disabilities and in favor of protection for people with AIDS some time ago. But in Washington, it is a long way between supporting a concept and agreeing to all the actual paragraphs and provisions of a bill. It was the specific ADA provisions for which activists needed White House agreement.

ADA protects people in private employment settings — so that employers can no longer discriminate against someone because that person has HIV. It also protects people against discrimination as customers in all types of businesses — from a store selling video tapes to a doctor's office.

The only analogous law for that protection is Title II of the Civil Rights Act of 1964, which protects people from discrimination based on race, religion and national origin. That law offers a narrow definition of public accommodations, including only restaurants, hotels and places of recreation. Bush wanted ADA to also cover only those public accommodations, excluding all kinds of social services and businesses in the private sector. ADA supporters would not negotiate that point.

Bush also took issue with the extent of monetary remedies under the bill. The ADA allowed people with disabilities who experienced discrimination to bring private law suits to sue for back pay in employment and to sue for damages for pain and suffering. In the civil rights laws, one can sue for back pay but not for damages (although an older civil rights law allows people who have been discriminated against on the basis of race to sue for damages).

A compromise was reached, whereby Bush agreed to the broad scope of the bill, and agreed to support the whole bill, while advocates of the bill agreed that the bill would allow only court injunctions, back pay and the private right of legal action as remedies for enforcement, similar to the recent civil rights laws.

Armed with White House support, the Senate's ADA supporters brought the bill to the Senate floor on September 7. Activists were prepared to tackle any homophobic amendments that might be introduced. In fact, longtime anti-gay spokesman Senator Jesse Helms (R, NC) spoke at length to the sponsors of the bill asking why Congress should protect homosexuals with AIDS. But in fact the Helms staff focused mainly on ensuring that

current drug users would not be covered under the ADA.

Another notoriously anti-gay representative, Senator William Armstrong (R, CO), attempted to pass a broad, overreaching homophobic and blatantly discriminatory amendment that would have allowed anyone to discriminate against gays and lesbians whether they were HIV-infected or not, as well as drug addicts, alcoholics, and others, as long as they had a religious or moral belief for such discrimination. That would have gutted the ADA bill completely. Even though it seems absurd, worse amendments have indeed passed in the Senate. In response to Armstrong's reactionary amendment, proponents of the bill developed an alternative amendment, which avoided the reference to moral beliefs and stated simply that the term "disability" did not include a limited list of conditions. On that list were people that, as we say here, Congress "loves to hate": transvestites, transsexuals, exhibitionists, voyeurs, pyromaniacs, kleptomaniacs, those with psycho-substance-induced organic mental disorders, gender identity disorders, other sexual behavior disorders, homosexuals and bisexuals.

From a legal perspective, there is no harm done by having homosexuality and bisexuality on this list. From a policy perspective, it is completely distasteful because it reflects the homophobia of the current Senate. Legally, homosexuality and bisexuality haven't been considered mental disorders for the last 15 years. ADA was never intended to be a gay rights bill, because gay rights advocates would not want to argue that being gay is a disability. We will get gay rights in a gay rights bill, *not* in a disability bill. Transvestites and transsexuals, under the American Psychiatric Association's definition, are still considered disabled, and so this amendment does affect protection they might have had. This is unfortunate, although many people feel uncomfortable making the argument that transvestites and transsexuals are mentally disabled. But people with AIDS and HIV infection continue to be covered — which is key. In a roundabout way, this amendment has helped the bill, giving sponsors a clear way to convince more conservative members of Congress that ADA isn't a gay rights bill.

ADA passed, practically intact, by a 77-8 vote. That vote reflected the White House compromise — the fact that most members felt comfortable with the bill. The curtain is down on Act 1 of the ADA drama (and the players deserve a standing ovation).

Laura Markowitz is a lesbian activist and an editor for a national magazine for family therapists.

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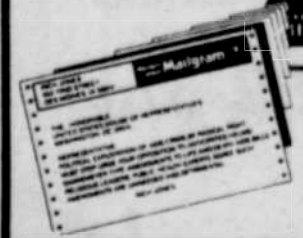
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