



Dropping the “T”: New Version of ENDA Does Not Protect Trans People

by Kilian Melloy
EDGE Boston Contributor
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GLBT news outlets and equality organizations reported late last week and over the weekend on a startling new development regarding ENDA, the long-sought Employment Non-Discrimination Act: Representative Barney Frank is moving forward with a watered-down version of the bill that would continue to extend federal anti-discrimination protections on the job to gay, lesbian, and bisexual workers, but without language to include transsexuals or transgendered workers.

Frank has said that he would rather see the more limited version of the bill pass and then mount an effort to pass a bill to protect transgendered workers later.

The Advocate reported over the weekend that the stripped-down ENDA bill would be introduced Tuesday and possibly sent to the floor of the House for a vote shortly afterwards.

Steven Adamske, spokesperson for Barney Frank, told the Advocate that, "The other one, GENDA if you will, will move on a separate track and will give the ability for the committee and other lawmakers to hold hearings on it and better educate other lawmakers."

As originally written, ENDA would have protected that "T" in GLBT, but a preliminary vote convinced Frank that there was not enough support in the house for the bill to get it passed as long as it contained provisions to protect transsexuals and transgendered people.

Convinced that a non-trans version of ENDA could pass, Frank decided to split the bill's provisions into two separate, narrower measures.

GLBT equality leaders are not so sure.

Said Mara Keisling, executive director of the National Center for Transgender Equality (NCTE), "We think the bill was pulled prematurely and abruptly."

Continued Keisling, "Because they pulled the bill, we'll never know."

Keisling referenced language in the original bill that would have provided for trans people's needs for showers and dressing areas, saying that otherwise, the two versions of ENDA were more or less identical.

Keisling said the language of the two new bills was probably close to identical, with the exception that the gender identity bill had some shower and dressing room provisions that were specific to trans people.

The NCTE issued a statement last Friday morning, Sept. 28, which said, in part, "It is disheartening to see that a bill, drafted over several years through a collaborative effort of LGBT

advocates and allies, would be rejected without the counsel or assent of a single one of these organizations."

Twelve GLBT equality groups, including the NCTE, the National Gay and Lesbian Task Force, and the National Stonewall Democrats, stated their opposition to the stripped-down ENDA bill.

The Human Rights Campaign called the development "devastating," but did not declare that it would not support the measure.

An editorial published in the Washington Post on Friday supported Frank's maneuver, saying, "Delaying passage of ENDA, which was first introduced in the House in the mid 1970s by Rep. Bella Abzug (D-N.Y.), until the transgender community changes enough hearts and minds would be a mistake."

On Friday afternoon, Speaker of the House Nancy Pelosi said, "The Employment Non-Discrimination Act, ENDA, sponsored by Congressman Barney Frank, is an historic advancement for gays and lesbians and their families. I am proud to be the first speaker to bring this legislation to the House floor, which was first introduced in 1994."

Pelosi continued, "While I personally favor legislation that would include gender identity, the new ENDA legislation proposed by Congressman Frank has the best prospects for success on the House floor."

But LGBT leaders are furious over Frank's maneuver, reported 365Gay.com, adding that Rep. Tammy Baldwin--other than Frank, Congress' only openly gay member--had withdrawn her sponsorship of ENDA with the announcement of the new version.

Said Masen Davis, Executive Director of the Transgender Law Center, "This is a divide that we cannot afford."

Continued Davis, "LGBT organizations and allies have been working for years to pass a bill that protects gay, lesbian, bisexual and transgender employees alike. I fear that this move by the Congressional leadership will create unnecessary divisiveness among our communities."

Frank himself wrote a statement that was featured at The Bilerico Project. On the blog, which was posted Sept. 28, Frank wrote that, "Being in the majority is a mixed blessing. On the one hand, we have the ability to move forward in a positive way on important public policy goals. Detracting from that is the fact that it is never possible for us at any given time to get everything that we would like, and so we have to make difficult choices."

Continued Frank, "But it is important to remember that the good part of this greatly outweighs the bad. Going from a situation in which all we can do is to prevent bad things from happening to one in which we have to decide exactly how much good is achievable and what strategic choices we must make to get there is a great advance."

Speaking directly about ENDA, Frank said, "We are on the verge of an historic victory that supporters of civil rights have been working on for more than thirty years: the passage for the first time in American history by either house of Congress of legislation declaring it illegal to discriminate against people in employment based on their sexual orientation."

However, added the congressman, "Detracting from the sense of celebration many of us feel about that is regret that under the current political situation, we do not have sufficient support in the House to include in that bill explicit protection for people who are transgender. The question facing us--the LGBT community and the tens of millions of others who are active supporters of our fight against prejudice--is whether we should pass up the chance to adopt a very good bill

because it has one major gap."

Wrote Frank, "I believe that it would be a grave error to let this opportunity to pass a sexual orientation nondiscrimination bill go forward, not simply because it is one of the most important advances we'll have made in securing civil rights for Americans in decades, but because moving forward on this bill now will also better serve the ultimate goal of including people who are transgender than simply accepting total defeat today."

"When the bill banning sexual orientation discrimination was first introduced by Bella Abzug and Paul Tsongas more than thirty years ago," Rep. Frank continued, "it was a remote hope. Over time because of a good deal of work, education of the general public, and particularly the decision by tens of millions of gay and lesbian people over that time to be honest about our sexual orientation, we have finally reached the point where we have a majority in the House ready to pass this bill."

Continued Frank, "Those of us who are sponsoring it had hoped that we could also include in the prohibition discrimination based on gender identity. This is a fairly recent addition to the fight, and part of the problem we face is that while there have been literally decades of education of the public about the unfairness of sexual orientation discrimination and the inaccuracy of the myths that perpetuated it, our educational efforts regarding gender identity are much less far along, and given the prejudices that exist, face a steeper climb."

The Representative cited last week's historic passage of the Matthew Shepard Act, which cleared the Senate despite pressure from conservative and religious organizations who sought to characterize the Act as a bill that would criminalize critiques of the LGBT community.

Wrote Frank, "There was some initial resistance to the inclusion of transgender people [in the Matthew Shepard Act], but a very organized effort on the part of Congresswoman Baldwin, who took a major role in this, myself, and the Democratic leadership allowed us to overcome it, with the support of some of our Republican colleagues."

Continued Frank, "We then began the work on passing a transgender inclusive ENDA," and added, "One of the problems I have found over the years of discussing this is an unwillingness on the part of many, including leaders in the transgender community, to acknowledge a fact: namely that there is more resistance to protection for people who are transgender than for people who are gay, lesbian and bisexual. This is not a good fact, but ignoring bad facts is a bad way to get legislation passed."

Said Frank, "I have for some time been concerned that people in the transgender leadership were underestimating the difficulty we faced in a broadly inclusive bill being adopted." The congressman then referenced his own extensive testimony in which he advocated for the rights of transgendered people, but, Frank said, "with Republicans overwhelmingly likely to be opposed--even on hate crimes on the critical vote we were able to retain only nine Republican supporters out of two hundred Republican Members--it became clear that an amendment offered by Republicans either to omit the transgender provision altogether or severely restrict it in very obnoxious ways would pass."

Frank detailed how a preliminary vote was taken, from which "it became very clear that while we would retain a significant majority of Democrats, we would lose enough so that a bill that included transgender protection would lose if not amended, and that an anti-transgender amendment would pass."

At that point, wrote Frank, several options presented themselves.

"One was to go forward with the bill understanding that an amendment would be offered to strike the transgender provision. There was a proposal to have the Democratic leadership do that in

what is known as a manager's amendment, in the hopes of avoiding a divisive roll call on the subject. But the Democratic leadership did not want to take the lead in killing a provision to which its Members are committed as a matter of principle," wrote Frank, going on to add, "The main reason not to put this to a vote is our interest in ultimately adopting transgender protection."

Explained the congressman, "If we were to push for a vote now, knowing that the transgender provision would be defeated by a majority, we would be making it harder ultimately to win that support. As recent campaigns indicate, Members of Congress who are accused of switching their position on votes are pilloried, even when this is done unfairly as it was to Senator Kerry. Thus, forcing a vote on transgender inclusion now, which would without any question result in a majority against it, would make it harder to win when we have done better in our educational work, because Members who vote no now will be harder to persuade to switch their votes than to persuade them to vote yes in the first instance."

Frank also pointed out that not pursuing a quick passage for the measure would lead to "Republican procedural maneuvers" that would "substantially delay" ENDA's passage, possibly leading to a severe diminishing of support.

Wrote Frank, "Leaders in the GLBT community, who strongly support the inclusion of transgender, now acknowledge that this would be the case--namely that the transgender provision would lose--so their proposed alternative was simply to withhold the bill from the House altogether.

"That is," Frank continued, "their recommendation was that the Speaker simply announce that she was not going to allow the Employment Non-Discrimination Act to come up at all."

Frank wrote, "I believe that would be a disaster--politically, morally, and strategically," because "the impression that would be given to the country was that Speaker Pelosi, the first Democratic Speaker in thirteen years, and a lifelong strong supporter of LGBT rights, had decided that we could not go forward on what had been the major single legislative goal of gay and lesbian people for over thirty years."

Wrote the congressman, "There are people who believe--in the transgender community and elsewhere--that it would be wrong to enact a law that banned discrimination based on sexual orientation unless it fully included people who are transgender. I think this argument is deeply flawed."

Frank went on to explain that, "since I first became a legislator thirty-five years ago, I have spent a lot of time and energy helping enact legislation to protect a variety of groups from discrimination. In no case has any of those bills ever covered everybody or everything. Antidiscrimination legislation is always partial. It improves coverage either to some group or some subject matter, but never achieves everything at once. And insistence on achieving everything at once would be a prescription for achieving nothing ever."

Frank went on, "That is, if you always insist on doing all the difficult things in one bite, you will probably never be successful. Dismantling the opposition piecemeal has always worked better."

Frank explained the two bills he had created from the original singly ENDA.

"One will be ENDA as it has historically existed, banning discrimination on sexual orientation," the congressman wrote.

"A second will add transgender protections to that basic scheme. We will move forward with the ban on sexual orientation for which we finally--after thirty-plus years--have the votes. After we are successful in winning that vote, I will urge the Committee on Education and Labor to proceed with our next step, which will be to continue the educational process that I believe will ultimately lead

to our being able to add transgender protections."

Explained Frank, "This will mean within a month or two a hearing in the Committee on Education and Labor which, unlike the hearings we previously had on this bill, will focus exclusively on transgender issues, and will give Members a chance to meet transgender people, to understand who they really are, and to deal with the fears that exist."

Joe Solomnese, Executive Director of the HRC, issued a statement in response to Frank's announcement in which he said, "During this entire campaign to win an inclusive ENDA, we have been guided by the principle of trying to achieve the end result the fastest way possible. Without question, that result has been-and continues to be-an inclusive ENDA that covers the entire GLBT community. We will continue to use that as our benchmark as we move forward in this process."

Solomnese continued, "Unfortunately, we now know what we're facing. The decision has been made... the House will consider a version of ENDA that does not include gender identity."

Solomnese went on, "This is not what any of us wanted, and certainly not what we've been fighting for. But, it has been made clear that the House leadership and bill sponsors are moving forward with a non-inclusive ENDA even without the full support of our community. They view this as the best opportunity they will have this year to help the largest number of people-and have stated that they do not intend to miss this opportunity."

Said Solomnese, "Passing an inclusive ENDA is the right thing to do for our community, our economy and our country. However, we're facing a stark reality."

Solomnese acknowledged that for the HRC to support the new ENDA would be a departure for the organization. "Since 2004, the Human Rights Campaign's policy has been to only support civil rights legislation that is inclusive of gender identity," Solomnese said.

"The breaking news that the House has decided to move forward on a non-discrimination bill that is not inclusive of gender identity is devastating," Solomnese continued. "The Human Rights Campaign remains dedicated to the fight for full equality for our entire community and, in light of this new reality, continues to consult with members of Congress and our lobbyists to determine how we can achieve that goal."

"This has been a long battle," Solomnese went on. "HRC first started the quest for ENDA in 1994. We've been pushing for an inclusive bill since 2004. Within two weeks, ENDA could pass the House for the first time in history, but not as an inclusive bill."

Matt Foreman, Executive Director of the Gay and Lesbian Task Force, offered a more definitive reaction.

"It is politically inexplicable and unconscionable that some congressional leaders are rushing to strip protections for transgender people from ENDA-just as the Senate votes overwhelmingly to pass transgender-inclusive hate crimes legislation, and states from coast to coast are adding transgender-inclusive workplace protections at an unprecedented pace," said Foreman.

"If the question is shoring up support for the bill as it stands, the answer is to give us more time, not to leave a part of our community behind," Foreman continued.

"We will pull out all the stops over the next few days to convince Congress that the right thing to do is move forward with the ENDA that was already introduced, and reject any substitute bill that cuts out members of our community."

However, as both Frank and Solomnese noted, an ENDA that does not include transgendered people is likely to pass even without the support of LGBT equality organizations.