



No ENDA Without Trans Protections

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For the past week, a passionate and emotional debate has been raging in the gay and lesbian blogosphere and on LGBT gay leadership list-servs about the decision by the Democratic leadership in the House of Representatives to remove protection for the transgendered from ENDA, the proposed federal Employment Non-Discrimination Act.

In that debate, sentiment has been overwhelming that an ENDA stripped of its language prohibiting discrimination on the basis of gender identity and expression, part of the version introduced earlier this year, isn't worth having. At last count, 113 national and state LGBT organizations have signed on to a letter pledging to oppose ENDA until protection of the transgendered is restored.

Conspicuously missing from this list is the Human Rights Campaign, the richest, most visible, and most Washington-influential of the gay lobbies.

HRC, which for years, until 2004, had insisted that trans protection be kept out of ENDA, has taken a lot of flak this time for its failure to oppose the Barney Frank-Nancy Pelosi decision to jettison the transgendered from ENDA - and rightly so.

In fact, HRC let the House Democrats know that it would accept the gelding of ENDA, reconfirming this in a Tuesday press release from its board saying, "[we] are not able to support, nor will we encourage Members of Congress to vote against, the newly introduced sexual orientation only bill." That's right - in this crucial debate, HRC - with a stance that typifies its conception of courage and moral consistency - is neutral.

Veteran trans activist Donna Rose, the first and only openly transgendered board member at HRC, resigned over the ENDA matter, with an open letter in which she said: "The relationship between HRC and the transgender community is one scarred by betrayal, distrust, and anger... I call on other like-minded board members, steering committee leaders, donors, corporate sponsors, and volunteers to think long and hard about whether this organization still stands for your values and to take decisive action as well."

Bravo to Donna!

Barney Frank, the openly gay Massachusetts congressman, has been calling the shots for the Democratic leadership in removing trans protection from ENDA and sequestering it in a separate bill.

I've known Frank since before either of us was out of the closet, and have long appreciated his acumen and his courage on gay matters - but this time he's dead wrong, both morally and politically.

Tammy Baldwin, the only openly lesbian member of Congress, apparently thought so too; she refused to put her name on Frank's new trans-excluding ENDA bill as a co-sponsor.

As one of my favorite LGBT leaders, Nadine Smith, executive director of Equality Florida, put it: "This is our moment of truth and we cannot blink... This is not the time to do the bigots' work for them, to make excuses, or to call fear 'pragmatism.'"

Or, as our friend across the river, Garden State Equality chair Steven Goldstein, wrote: "The passage of an ENDA that jettisons the transgender community is not an incremental step forward. It is not even staying in place. It is a repugnant, immoral step backward. The active jettisoning of the transgender community from the bill sends a pro-active signal that Congress finds discrimination against the transgender community acceptable."

On the politics of the bill, if trans protection is not included in ENDA when it passes the first time, it never will be in our lifetimes. It's sad that the transgendered are still so misunderstood and disdained in this country - but it's a fact, and only if the institutional gay community includes the transgendered under a sheltering wing of unbending solidarity will they ever achieve legal protection.

As Wayne Besen, who's done fine work exposing the frauds of the ex-gay movement, wrote in his column this week: "A minority as small as the trans community will never have the political clout to go it alone, nor will they have the funds to wage a credible fight in Congress unless Bill Gates wakes up tomorrow and decides to have a sex change. To put it bluntly, their only chance at legal protection is under the gay and lesbian banner. So, dropping an inclusive [ENDA] bill means that we have abandoned transgender people and told them to fend for themselves."

When the Michigan LGBT group the Triangle Foundation announced its opposition to an ENDA shorn of trans protection, its founder and executive director, the terrific Jeff Montgomery, pointed to Triangle's own experience with "hate crimes" legislation in support of its "No" to a truncated ENDA: "When the first version of 'hate crimes' legislation went through, and passed, the Michigan Legislature in 1988, 'sexual orientation' was cut at the last minute as a way to insure passage. We've been trying for the last 19 years to get it back in (now, of course with gender identity as well)."

Closer to home, the exact same point was made three years ago by the man who piloted the exclusion of trans protection from SONDA, the New York State law banning anti-gay discrimination - none other than Matt Foreman.

After becoming executive director of the National Gay and Lesbian Task Force, Foreman, in 2004, wrote a long mea culpa for his SONDA error. The "first lesson" of his misjudgment, he acknowledged, was "not to accept what legislators have to say on this subject, which is invariably that trans-inclusion will kill legislation... I believe now that if we had insisted on trans-inclusion years back, it would have happened... You have to make a bill trans-inclusive early on so that when it finally starts moving, the issue is behind you and can't be used as another excuse for inaction. This also requires not falling into the 'this will be the year if only' trap."

And, in saying the gay community should insist on a trans-inclusive ENDA, Foreman added: "I failed to recognize my own anti-trans ignorance and prejudices. Legislators essentially said, 'You gays in suits are okay, but them, there's no way.' I realize now that I bought that I was a 'good gay,' and there's no escaping the unspoken corollaries, 'I am better and I am not one of them.'"

HRC should take note of Matt's self-serving of crow.

Moreover, Lambda Legal - not exactly known as a hotbed of radicalism - has pointed out that the new, trans-absent ENDA "is not simply the old version with the transgender protections stripped out - but rather has modified the old version in several additional and troubling ways."

"In addition to the missing vital protections for transgender people on the job," Lambda Legal's Kevin Cathcart pointed out this Monday, "this new bill also leaves out a key element to protect any employee, including lesbians and gay men, who may not conform to their employer's idea of how a man or woman should look and act. This is a huge loophole through which employers sued for sexual orientation discrimination can claim that their conduct was actually based on gender expression, a type of discrimination that the new bill does not prohibit."

Moreover, Lambda Legal noted, "This version of ENDA states without qualification that refusal by employers to extend health insurance benefits to the domestic partners of their employees that are provided only to married couples cannot be considered sexual orientation discrimination."

The old version at least provided that states and local governments could require that employees be provided domestic partner health insurance when such benefits are provided to spouses."

Finally, Lambda Legal underscored how the Democratic leadership's version of ENDA bends the knee to the Christian Right: "In the previous version of ENDA the religious exemptions had some limitations. The new version has a blanket exemption under which, for example, hospitals or universities run by faith-based groups can fire or refuse to hire people they think might be gay or lesbian."

We should all ask, what's the rush to pass this deeply flawed, discriminatory version of ENDA? We're only a year away from national legislative elections in which, the generic polls on a congressional vote suggest, the Democratic majority in the House will be increased, and the chances of passing a trans-inclusive bill hopefully enhanced. And of course we may, in 2009, have a president who would actually sign a nondiscrimination bill.

Underlying all this is another problem, which longtime gay and AIDS activist Sean Strub, the founder of POZ magazine, nailed last Friday in a blogpost opposing the new trans-shorn ENDA: "Trans people are trotted out as ornaments to demonstrate our diversity when useful, but otherwise are often treated like third-class citizens within the movement, 'their' issues relegated to something that is outside of the 'mainstream' gay agenda. To me, their issues are our issues, and anyone who can't understand that needs to read some history."

Strub continued, "We started out as a sexual liberation movement, but the advent of identity politics and the development of a movement driven by fundraising and an 'inside the Beltway' mentality has downplayed sexual liberation in favor of civil rights, pigeon-holing us as an interest group pitted against other interest groups rather than as a movement that fundamentally can be liberating to every member of the species."

Transpeople, being the most visible members of the LGBT community, take it in the neck for the rest of us who can (if we so choose) "pass." As Gay and Lesbian Anti-Violence Project executive director Clarence Patton said to me this week, "The transgendered have a much higher murder rate over the last decade, 30-40 percent higher, than gays and lesbians. And a much higher percentage of all hate violence - 11 percent according to our data - than their percentage in the LGBT community. And that is despite the fact that anti-trans violence is under-reported."

What, after all, are the transgendered asking for? As transgender leader Jennifer Finney Boylan - a novelist and professor of English at Colby - put it in a speech at the National Press Club in May, they want a country "where Americans understand that transgendered people come in all shapes

and sizes and embodiments, where to be a cross-dresser or a transsexual or a drag queen or trans man or genderqueer is seen as simply another way of being human."

Only if the gay community's organizational spokespeople at all levels take a tough line and say we won't support this bill if the trans are thrown overboard and declared less than human will there be any hope of getting trans protection back into the bill.

State LGBT organizations should hold their state Congressional delegations' feet to the fire on this - and not spare the kerosene. This is not the moment for HRC-style capitulationism to preserve "access" for the future - that feeble game makes us all look like wimps, and always leaves us getting screwed. Instead we must all stand up loud and firm and protect those whose visibility makes them the most vulnerable to discrimination and hatred - i.e., the transgendered.

No Trans Protection, No ENDA - that must be our slogan.

Doug Ireland can be reached through his blog, DIRELAND, at <http://direland.typepad.com/direland/> . The coalition of organizations opposing a trans-stripped ENDA have launched a Web site featuring resources and speakers at www.UnitedENDA.org . And the National Stonewall Democrats have launched a similar Web site, and an online petition, at www.NoSubstitutes.org .