

ENDA hits snag over transgender inclusion

House Democrats likely to drop gender identity provision

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House Democratic leaders are strongly considering dropping anti-discrimination protections for transgender persons from the Employment Non-Discrimination Act, or ENDA, after an internal Democratic head count on Wednesday found that the bill would likely be defeated if it included the trans provision, multiple sources familiar with the bill said.

The current version of the bill calls for banning employment discrimination based on sexual orientation and gender identity, terms that are defined in the measure to include gay men, lesbians, bisexuals and transgender persons.

As of late Wednesday, it appeared likely that the trans provision would be removed, setting up a potentially divisive fight within gay activist circles over whether or not to support an ENDA bill that excludes trans people.

The leader of one of the nation's most prominent transgender rights groups expressed strong skepticism over reports that support for the transgender provision was eroding.

"I do think we have the votes to pass this bill," said Mara Keisling, executive director of the National Center for Transgender Rights. "We're getting down to the wire, and whenever you get close to a vote on an important bill like this, some people always get worried."

Keisling and other gay and transgender rights leaders have been telling their members that ENDA enjoys widespread, bipartisan support and predicted it would pass the House, with some expecting a more difficult effort in the Senate.

But sources familiar with House Democratic leaders, including Speaker of the House Nancy Pelosi (D-Calif.), said problems arose suddenly during the past week when a number of Democratic House members expressed objections to the transgender provision.

The transgender objections surfaced shortly after Pelosi and House Democratic leaders agreed to a request by the National Conference of Catholic Bishops to broaden the bill's exemption for certain religious institutions that act as employers, the sources said.

"There has been an unraveling of the bill in the last week," said a lobbyist familiar with the situation, who spoke on condition of anonymity.

"We're hearing that Speaker Pelosi is very worried about how the gender identity issue will play on the floor," the lobbyist said.

The lobbyist and other sources said Pelosi and House Majority Leader Steny Hoyer (D-Md.), among other Democratic leaders, expressed concern that the defecting Democrats would help Republicans garner enough votes to pass a motion either deleting the transgender language from the bill or recommitting the bill to committee, which effectively would kill the entire bill.

“The speaker is committed to passing the strongest possible ENDA bill,” said Drew Hammill, Pelosi’s press secretary.

A decision to drop the transgender language from the bill is likely to cause a split in the coalition of civil rights groups that have lobbied for ENDA for more than a decade.

Two of the largest gay civil rights groups, Human Rights Campaign and National Gay & Lesbian Task Force, have said they would not support ENDA if it doesn’t include a transgender provision. The Task Force was among the first gay rights groups to call for including a trans provision in ENDA.

In 2004, HRC changed its position from opposing a trans provision, on grounds that it would hurt ENDA’s chances of passing, to one of opposing the entire bill unless its congressional sponsors added a trans clause. HRC’s change of position took place shortly after transgender activists staged a protest outside the HRC offices in Washington and threatened to urge supporters to stop contributing money to the group.

Rep. Barney Frank (D-Mass.), who is gay, said Pelosi called for an official “whip” count of all Democratic House members at the request of Rep. Tammy Baldwin (D-Wisc.), a lesbian. Frank and Baldwin are the only openly gay members of Congress.

Frank said Baldwin called for the count after learning that House Democrats had expressed concern that a growing number of their colleagues might join Republicans to vote against ENDA if it included a transgender provision.

Baldwin did not immediately respond to a request by the Blade for comment.

Frank said Pelosi made the decision to call for the whip count Wednesday morning during a meeting in her office with Frank, Baldwin, Hoyer and Reps. George Miller (D-Calif.), chair of the Committee on Education and Labor, which has jurisdiction over ENDA, and Robert Andrews (D-N.J.), chair of the subcommittee that recently held a hearing on ENDA.

Frank said that if the whip count found that ENDA could not pass with a transgender provision, he would strongly urge Pelosi and his Democratic colleagues to move the bill to the House floor without a trans provision, with the intent of introducing a separate transgender bill at a later date.

“I think the notion that we should let the whole bill die if we can’t pass [a] transgender [provision] is a terrible idea,” Frank said. “It’s exactly the opposite of what the civil rights movement always did,” he said, noting that legislation protecting other minorities, such as women, the disabled and Latinos, came about incrementally over a period of years.

Dave Noble, director of public policy and government affairs for the National Gay & Lesbian Task force, said the group remains confident the House would pass ENDA in its current form.

“Any speculation about amendments that have not yet been proposed is incredibly premature and, frankly, a distraction that’s not helpful to the efforts to line up the last votes we need to pass this bill,” he said.

Keisling said she has yet to learn the name of a single House Democrat who had expressed support for ENDA and who is now changing his or her mind because of the transgender provision.

She noted that many supporters worried about the ability to pass a hate crimes bill with a transgender provision earlier this year, especially after anti-gay groups denounced the trans provision as a recipe for promoting "cross dressing" and "she-males."

The House passed the hate crimes bill by a comfortable margin. Supporters said the Senate was expected to vote on the bill this week in the form of an amendment to a defense authorization bill.

"I just think that all this speculation is, in fact, nothing but speculation," she said. "The LGBT community is speaking clearly that we want ENDA passed. And every one of the Democratic presidential candidates has said they support ENDA as written. All of the sponsors have signed on to ENDA as it is currently written," she said.

"All we're asking as LGBT people is don't fire us," she said. "Speculation about what people might be speculating, about what other people might do, just doesn't make any sense to me," she said.

As of Wednesday night, House sources reported that the whip count conducted by House Democratic leaders indicated Republican opponents would likely have enough support from Democrats to kill the bill if it includes a transgender clause.

According to the sources, Pelosi and her Democratic leadership team would likely direct Democrats on the Committee on Education and Labor to delete the transgender provision in a markup hearing expected to be held within the next week.

Even without a trans provision, some Capitol Hill observers have said the bill, while expected to pass in the House, would likely encounter a filibuster in the Senate, requiring supporters to line up 60 votes to pass it.

If the bill clears that hurdle, observers say, it remains unclear whether President Bush would sign or veto it. Should the president veto the bill, as he has said he will do with the hate crimes measure, the bill would likely be shelved until 2009, following the November 2008 congressional and presidential elections.

Frank has predicted that the election of a Democratic president and a larger Democratic majority in the House and Senate would ensure passage of several key gay rights proposals, including ENDA, the hate crimes bill, and the repeal of the "Don't Ask, Don't Tell" policy on gays in the military.