



‘Sexual Orientation Only’ ENDA is Bad Strategy

Op-Ed

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By Susan Christian

The other day, I received an email from a good friend who is very smart, progressive and lesbian. She wrote that she doesn't spend too much time reading about political issues, gay or not, and that my partner—who is her best friend—had explained my opposition to a “sexual orientation only” Employment Non-Discrimination Act (ENDA):

“I didn't understand it, I thought it totally jeopardized the attempt to protect gay and lesbian workers... and I don't understand why it got so polarized if it doesn't jeopardize the passage of ENDA.”

There is no one “ENDA”—there is the original version of the bill which includes protection for gender identity and expression, and there is a stripped-down version which excludes gender identity/expression as well as other provisions important for the protection of lesbian and gay workers. An ENDA which fails to provide protection for gender identity and expression not only fails to protect transgender workers, it does not fully protect individuals who are lesbian or gay. At this stage, presentation of a non-inclusive ENDA is bad civil rights strategy that will do grievous harm to state and local legislative efforts that have been producing significant and comprehensive results.

Over the last 15 years, 13 states and the District of Columbia have passed laws that protect people against various forms of discrimination based upon both sexual orientation and gender identity/expression. Eight states currently ban discrimination based upon sexual orientation only. So, 13 of the 21, or 62 percent, of states that prohibit sexual orientation discrimination also prohibit gender identity/expression discrimination. Additionally, nearly 100 municipalities in the 30 states without nondiscrimination laws have their own local nondiscrimination ordinances. According to the Transgender Law and Policy Institute, 92 of these municipalities prohibit discrimination based upon gender identity and expression. **(The National Gay and Lesbian Task Force is currently compiling an in-depth analysis that will be provided to our elected officials and communities.)**

In the face of this ongoing progress, introduction of federal legislation—by the consistently-progressive Democrat who is San Francisco's Representative as well as the first woman to be elected Speaker of the House and Representative Barney Frank, the powerful and openly-gay champion of civil rights legislation—that intentionally excludes protection for gender identity and expression would be a devastating blow to on-going efforts to advance comprehensive civil rights legislation. It has, in fact, already begun to have that negative affect: word has reached the National Center for Lesbian Rights that a Florida legislator preparing to introduce an anti-discrimination ordinance which included gender identity and expression removed these provisions after learning that House Democratic leadership had weakened ENDA and stripped the bill of gender identity/expression protections, reasoning that, “If it's good enough for Barney Frank, it's good enough for me.”

The physician's guiding principle is to first do no harm. This must also become a guiding principal for our political leaders and legislators. As demonstrated by the statistics above, in the last decade a significant degree of the authority that had previously been exercised solely at the federal level has come to be shared by legislators at the state and local level. Any new federal legislation must take account of this changed landscape and build upon the progress made by the states and localities.

During her historic keynote address at the 1976 Democratic Convention in New York, the great Congresswoman Barbara Jordan noted that previously unimaginable social change had led to her, an African-American woman, addressing the Convention. The Congresswoman reminded those listening that:

“We are a party of innovation. We do not reject our traditions, but we are willing to adapt to changing circumstances, when change we must. We are willing to suffer the discomfort of change in order to achieve a better future ... And now we must look to the future. Let us heed the voice of the people and recognize their common sense. If we do not, we not only blaspheme our political heritage, we ignore the common ties that bind all Americans.”

In response to the possibility of an ENDA that fails to protect people based upon gender identity and expression, over 300 national, state and local LGBT organizations formed a coalition to fight for a fully-inclusive ENDA. Alice is one of these organizations. Lambda Legal and NCLR, the lawyers who together have won every significant legal victory lesbians and gay men have achieved, are leaders in this coalition. After analyzing the “sexual orientation only” ENDA currently being considered, both legal organizations concluded that the bill is bad legislation. Their in-depth analyses have been distributed to legislators and are posted on their websites. Please read them.

Being transgender is not the same as being lesbian or gay. This fact, coupled with the reality that a portion of the diverse transgender community identifies as heterosexual rather than queer, begs the question of why we should consider ourselves to be one community and postpone our rights to protect people who are not lesbian or gay. I believe that we are one community because the majority of lesbian, gay, bisexual and transgender people have consciously come together to work as one community. The reality is that the larger society views all of us who deviate from the heterosexual norm where biological females partner with biological males as “queers.” Moreover, there is for each of us a relationship between our sexual orientation and the ways that we feel compelled to express ourselves and our gender identities.

So, while a sexual orientation only ENDA would prevent me from being fired (or not hired) because my partner is another woman, I could still be denied a job as a lawyer because I never wear make-up, always wear “mannish” business suits and am (apparently) a little butch. In San Francisco, maybe this is not such an issue—but what if I lived in Tallahassee?

At this stage in our history, anti-discrimination legislation that intentionally excludes protection based upon gender identity and expression is bad civil rights strategy that undermines progress on the ground and is not worth the moral compromise and divisiveness that it brings.

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