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Quandary Over Gay Rights Bill: Is It Better to Protect Some or None?

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There's a saying in Congress about passing legislation: Don't let the perfect be the enemy of the good. The transgender community is learning that lesson the hard way.

Today, the House Education and Labor Committee is scheduled to consider a bill that would ban employment discrimination based on sexual orientation. Originally, the 2007 version of what is called the Employment Non-Discrimination Act, or ENDA, introduced in April, also included gender identity. But when Democrats realized that the transgender expansion could cost them a win, they dropped it -- much as they would shed a controversial agricultural subsidy that threatened to bring down a bigger farm bill.

Yet the decision ignited a firestorm among gay, lesbian and transgender advocacy groups, creating a rift between pragmatists who believed that a flawed bill was better than no bill and those who preferred nothing if they couldn't have it all. As it now stands, the more limited bill is expected to narrowly clear the House next week, at which point the Senate will likely move forward.

Caught in the middle of the House debate was [Rep. Barney Frank](#) (D-Mass.), who was a co-author of the bill and is one of two openly gay members of Congress. Frank added the transgender language because he believes that discrimination against people based on gender identity is real and serious. Then he was informed by Education and Labor Chairman [George Miller](#) (D-Calif.) that Democrats on the committee were balking.

On Sept. 27, House leaders announced that they would move forward with sexual-orientation-only protections that had been sought by gay and lesbian organizations for more than a decade. Frank, a longtime crusader for the cause, endorsed the move, noting that the transgender provisions could reemerge as a separate bill once support for them grew.

"In general, in the legislative context, if you can pass a bill that improves things for a large number of people, then take it," Frank said. "The notion that you don't protect most people if you don't protect them all -- that's never worked."

Historically speaking, civil rights protections tend to expand very slowly and group by group. Never before has the political climate been as hospitable to gays and lesbians as it has been since the Democrats won control of the House and Senate in November. Last month, the Senate approved another long-sought goal, voting to broaden the federal hate-crimes definition beyond race, color, religion and nationality to include violence based on a person's gender identity and sexual orientation.

The original ENDA bill was introduced in 1994 in both chambers. It came before the Senate in 1996 and lost by one vote. The idea of expanding it to include transgender protections arose a few years ago, but the addition didn't appear in a bill until Frank introduced his legislation in April.

Despite the political reality as presented by Miller, gay, lesbian and transgender groups were furious -- and to Frank's dismay, they lobbied Democratic House members to oppose the bill unless the transgender provision was restored. "No ENDA without genda" became their mantra.

"We stood together and said we would rather have no ENDA than a bill that left some of us behind," the National Center for Transgender Equality told its members. **The National Gay and Lesbian Task Force established the ENDA Action Center to fight the bill.** In an Oct. 1 letter to [House Speaker Nancy Pelosi](#) (D-Calif.), more than 300 gay, lesbian and transgender groups said they opposed legislation "that leaves part of our community without protections and basic security."

One major advocacy group not on the list was the [Human Rights Campaign](#), the lead lobbying force for the gay rights community on [Capitol Hill](#). HRC is neither opposing nor supporting the current bill. Its leaders met with Pelosi staffers last week and extracted a promise that if and when the original language gains the backing of a House majority, a floor vote will be scheduled. But otherwise the group is not trying to thwart the protections for sexual orientation, which would cover a large majority of its membership.

"The speaker's and Representative Frank's legislative path for action on ENDA, while not our choice, follows the path of other civil rights and business regulatory legislation," said Joe Solmonese, president of the Human Rights Campaign.

For instance, the Family and Medical Leave Act was introduced in consecutive congresses for eight years and was vetoed twice by President [George H.W. Bush](#), before President [Bill Clinton](#) signed it into law on Feb. 5, 1993. And each time the act was introduced, lawmakers broadened its protections.

If Miller's committee approves ENDA as expected today, the plan is to bring the bill to the House floor next week. [Rep. Tammy Baldwin](#) (D-Wis.), Frank's co-author on the original bill, said at that point she would offer an amendment to restore the transgender protections. Many Democrats worry that Baldwin's amendment will suffer a fate potentially worse than omission: sweeping defeat.

"I am under no illusions about the challenges of achieving our goal," Baldwin, who also is openly gay, said in a written statement. "But, the quest for advancement of civil rights in our nation has never been easy."