



We Are All Transgendered Now

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Gay and lesbian activists, me included, have a long, shameful history of throwing people of transgender experience under the bus, and out gay Congressman Barney Frank of Massachusetts, whom I otherwise admire, is prepared to cut them loose again. If there is anything good to come out of his likely successful effort to remove "gender identity and expression" from the federal Employment Non-Discrimination Act, or ENDA - leaving only "sexual orientation" as a protected class - it is that gay people and some non-gays are finally waking up to the fact that we are all transgendered, that is, somewhere along the "man" to "woman" spectrum with very few people at or near the poles.

The oppression that those of us who are gay and lesbian encounter is primarily based on our failure to fulfill stereotypes about what it means to be a man and what it means to be a woman, not whom we have sex with - though that is one of the ways in which we do not conform to gender norms.

The powerful prejudice behind those stereotypes keeps many straight men from engaging in activities from doing the dishes to performing ballet and many straight women from playing sports or assuming political leadership. On a more profound level, it contributes to the disproportionate propensity of men to settle disputes with violence and war.

The advances of the women's and LGBT movements have eased some of this prejudice, but it still completely rules some contemporary societies and is far from over in America. Just this week, the New York Times reported on an older lesbian who was bullied from her room in a nursing home when one of the residents screamed, "Get that man out of here!"

The first "gay rights bill" was conceived right here in New York City by the Gay Activists Alliance (GAA) in 1971. They coined the term "sexual orientation" as a category to be protected under the human rights law and originally defined it as "choice of sexual partner without regard to gender," a formulation eventually changed, probably because it made people think of sex too much.

That early formulation remains interesting, however, in that it included the idea of gender non-conformity.

Activist Allen Roskoff, then with GAA, recalled that when the bill looked likely to pass in 1974, "Councilmembers were screaming about men going into women's restrooms." The Council wanted to explicitly exclude cross-dressers from protection, but GAA refused. Thanks largely to intense lobbying by the Catholic Archdiocese and the firefighters union, where gender non-conformity was seen as a real threat, the bill was voted down in 1974, making it the first measure in the Council's history to clear committee but lose on the floor.

While New York could not get its gay rights bill passed, numerous other jurisdictions moved forward in the mid-1970s, including Minneapolis and Washington, where transsexuals as well were protected from discrimination. The legal term "gender identity and expression" had not yet been developed.

I joined the push for the city bill in 1975 - and it took until 1986 to pass gay rights legislation in

New York City. We eventually settled on a definition of "sexual orientation" as "heterosexuality, homosexuality, or bisexuality," borrowed from the 1992 Wisconsin state legislation because we thought it would be uncontroversial.

I recall that transgender inclusion was not a hot issue, but those of us who had some consciousness of it lied to ourselves that if you combined the categories of "sexual orientation" and "gender," people of transgender experience could bring discrimination complaints. Explicit coverage of transgendered New Yorkers did not become law until 2002, when protection was extended to "actual or perceived sex [that] shall also include a person's gender identity, self-image, appearance, behavior or expression, whether or not that... is different from that traditionally associated with the legal sex assigned to that person at birth."

New York State's gay rights bill proceeded down much the same track. The Sexual Orientation Non-Discrimination Act (SONDA) did not include gender identity and the Empire State Pride Agenda, led by Matt Foreman, was not going to let that get in the way of passing a measure languishing in Albany since 1971. Working with Lambda Legal, the group put out memos saying that people of transgender experience would arguably be covered by the human rights law that protected both sexual orientation and gender. And indeed there were such cases.

State Senator Tom Duane stepped up to offer an amendment adding "gender identity and expression" to SONDA, but it was voted down in his chamber and never even taken up in the Assembly, with its heavily Democratic, pro-gay majority. No senator, not even Duane, voted against SONDA over its lack of gender identity protections, despite the pleadings of transgender activists and the AIDS services group Housing Works.

In the five years since SONDA was passed, a follow-up Gender Expression Non-Discrimination Act has failed to win a vote in the Assembly, never mind much attention at all in the Republican Senate.

Now, this same scenario is likely to be repeated in the US House of Representatives despite massive, broad-based lobbying by nearly 300 LGBT and allied organizations. **Matt Foreman, who today is executive director of the National Gay and Lesbian Task Force, is one of the key leaders in the fight to put transgender protections back into ENDA**, and Lambda Legal and the Empire State Pride Agenda are also on board this time.

Nearly every group pressing the issue is unwilling to compromise on the gender identity question, but in perhaps a deadly blow to the effort the Human Rights Campaign, the community's top lobbyist on Capitol Hill, has already stated it would not oppose Frank's narrower legislative proposal.

The community is not demanding inclusion of "gender identity" in the numbers and with the force it is merely to redress an historical exclusion of transgendered Americans, though that in itself would be reason enough, but also because we acknowledge our own need for "gender identity" protections. This is a unique opportunity to educate the American public about the ways in which prejudices about the way all of us present our gender - transgendered or not, gay or straight - create inexcusable inequities in the workplace, and well beyond.

I'm not optimistic about an inclusive ENDA, but I am deeply moved by the outpouring of support for it from across the nation. Who says we can't change? Even a stripped-down ENDA is highly unlikely to win President George W. Bush's signature, so we have time to rethink it before it's ready for prime time in 2009.