



ENDA Stalls In Congress, For This Week At Least

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With the furor over the removal of protections based on gender identity and expression in the proposed federal Employment Non-Discrimination Act (ENDA) now nearly a month old, the US House of Representatives stepped back from a plan - set in motion two weeks ago by Speaker Nancy Pelosi - to vote on the measure this week.

It was the second time that the House Democratic leadership has altered its game plan on advancing the gay rights bill, which it hopes to pass as a sign of its determination to move the agenda it was elected to deliver. When Barney Frank, the out gay Massachusetts Democrat who is one of the measure's two co-lead sponsors, announced in late September that the Education and Labor Committee would consider a new ENDA version, stripped of the transgender provisions the following week, the outcry forced Pelosi to put off the hearing to allow LGBT advocates more time to lobby members on the original, fully inclusive bill.

At a late Friday afternoon meeting in the speaker's office on October 12, a large group of LGBT advocates were told the votes were not there to ensure passage of a trans-inclusive ENDA and the House would proceed with consideration of Frank's revised bill. That measure won approval last week in the Education and Labor Committee and was slated for a floor vote on October 24.

By Tuesday, however, that target had slipped by a day and on the 24th it became clear that no vote would take place this week.

Rumors circulated on Capitol Hill that, in the face of growing numbers of Democrats unhappy with the prospects of voting either way on the bill as now written - to leave the trans community behind or to defeat the first gay rights vote ever held - leadership was weighing the option of pulling the bill altogether for the time being to regroup.

However, a spokesperson for Maryland Democrat Steny Hoyer, the House majority leader and Pelosi's number two, said his office is hoping to schedule the vote for next week, but that a date would not be firmed up until the end of this week. That spokesperson said no consideration had been given to pulling the measure.

Steven Adamske, a spokesman for Frank, said he had not heard anything "one way or the other" regarding a possible long-term delay in considering the measure.

Frank has been at the center of the heated ENDA debate, with many LGBT leaders openly questioning why he has been insistent on moving a bill that may or may not win Senate approval, but would certainly be vetoed by Republican President George W. Bush.

The Executive Office of the President this week issued a memorandum citing "constitutional and policy" concerns with ENDA, including encroachment on religious freedom and on the doctrine of state government immunity from federal lawsuits, the difficulty of discerning "perceived sexual orientation," and the fact that the measure would "give Federal statutory significance to same-sex

marriage rights under State law... [in] conflict with the Defense of Marriage Act."

The bottom line is that Bush would veto the measure, as he has warned he will do with the federal hate crimes statute, passed by both houses of Congress and currently being conformed in conference committee.

Answering his critics, Frank rather baldly referred to the implications of not acting on the Democrats' political standing, saying, "What will the message that we send if Nancy Pelosi... is portrayed in the headlines as someone who says, I give up, we can't pass the gay rights bill this year?"

But not passing the bill is exactly what roughly 300 LGBT groups nationwide have been asking for if trans rights are not restored. Organized under the ad hoc umbrella ENDA United, the groups have pledged to oppose the bill - and urged members of Congress to do the same - in its current form.

Frank has made no secret of just how wrong-headed he believes that approach is.

"This is a moment of truth as far as I'm concerned for responsible liberals in the Democratic Party," he said at an October 11 press conference. "The question is can we govern responsibly?.. [rather than] allow ourselves to defeat each other by giving the most passionate and involved and engaged groups a veto over any strategy that might make a real advance."

But even as he argued for the achievable over the perfect, Frank faced challenges from within his party. Early last week, Jerry Nadler, a West Side Democrat, told Gay City News that he would vote no if the final bill on the floor did not include trans protections.

"I have never seen such unanimity in the LGBT community," he said. "They want an inclusive bill."

In fact a phone call Nadler placed to Frank on October 11 conveying his position -which may have been seen as a sign a full-blown revolt might be in the offing - could have been a factor in leadership's decision to make clear its intention the following day to move forward expeditiously.

When the committee voted last week to advance the Frank version, the tally was 27-21, but significantly four Democrats - Brooklyn's Yvette Clarke, New Jersey's Rush Holt, California's Linda Sanchez, and Ohio's Dennis Kucinich - did not vote with their 23 party colleagues (and four Republicans), in protest over the lack of trans protections.

Also last week, the Democratic leadership okayed a plan by Tammy Baldwin, an out lesbian from Wisconsin and Frank's co-lead sponsor, to offer a floor amendment restoring the gender identity language to the bill.

Baldwin's gambit lent some semblance of unity to the effort. Frank and members of leadership joined the push to gather votes for the amendment, and the Human Rights Campaign - which had been isolated from hundreds of other LGBT rights groups in insisting that it would not oppose ENDA in any form if it were given a floor vote - lobbied alongside the National Gay and Lesbian Task Force and the National Center for Transgender Equality, two leaders in the fight that had made trans inclusion a bottom line issue.

But the Baldwin drive also carried risk. By isolating the issue of transgender protections, the amendment could expose the weakness of support there, and set inclusiveness back rather than advance it.

Amidst all this uncertainty, Congressman Anthony Weiner, a Democrat representing Brooklyn and

Queens who has made no secret of his intention to run for mayor again in 2009, took to the House floor to join Nadler, Clarke, and the others insisting on a fully inclusive ENDA. Arguing that civil rights advocates must not "negotiate against ourselves," Weiner, rejecting "half a loaf" and noting that even Senate action is not guaranteed in the current session, said, "If we're going to take a symbolic stand... let's let the symbolic message be that we're sticking together, that when we say GLB... T, we mean it."