



NATIONAL CENTER FOR LESBIAN RIGHTS

## THE EMPLOYMENT NON-DISCRIMINATION ACT

### ***WHAT IS THE EMPLOYMENT NON-DISCRIMINATION ACT (ENDA) AND WHY SHOULD I CARE?***

The Employment Non Discrimination Act (ENDA) is a bill to create a federal law which would prohibit discrimination in employment based on sexual orientation or gender identity. After years of very hard work and thousands of conversations with law and policymakers, we are on the brink of passing ENDA.

But now, just when the political climate may be shifting to make such a law possible, our resolve and commitment is being tested.

This is a defining moment in our community's and movement's history. We are being asked what no community involved in a civil rights struggle should ever be asked to do: leave part of our community behind in order to secure an advance for some. Unfortunately, this thinking is based purely on a misguided and flawed political game. Nearly five years ago, the national legal and political LGBT groups worked side-by-side with Congressional leaders to ensure that federal legislation being advanced would protect not just lesbian, gay, and bisexual people who face discrimination because of who they love, but also transgender people and gender non-conforming lesbian, gay, and bisexual individuals who face discrimination because of how they look and act. A huge investment was made to ensure that the language in the proposed federal law would plug gaping holes in existing law that leaves our community vulnerable to discrimination. The language that was decided upon and was initially included in the version of ENDA advanced this legislative session was "sexual orientation and gender identity."

### ***WHY IS IT SO IMPORTANT THAT GENDER IDENTITY BE INCLUDED IN ENDA?***

There are three primary reasons why gender identity needs to be included in ENDA:

- 1) *By dropping "gender identity" from the bill, this enormously important federal law completely betrays the transgender community.* Our transgender brothers and sisters have stood with this movement from our earliest beginnings. Transgender individuals lose jobs, are rejected from consideration for employment, and are passed over for promotion at greater rates than lesbian, gay, or bisexual employees. It is morally wrong to work to gain protections for some at the expense of others, especially the most vulnerable members of our community. Cutting gender identity out of ENDA will make it immeasurably harder to ever pass federal protections for transgender people because it sends the message that this type of discrimination is acceptable and leaves trans people politically isolated. This is not an "incremental" strategy; this would push transgender people backward and make those most in need of protection in our community, even more vulnerable.
- 2) This is a bad bill for everyone. A version of ENDA that does not prohibit discrimination based on gender nonconformity is inadequate even to protect lesbian, gay, and bisexual

people. *Without gender identity protections, any lesbian, gay, or bisexual person who faces discrimination based on their appearance or failure to conform to gender roles or stereotypes may not be protected.* Sexual orientation in ENDA is very narrowly defined and does not include gender expression. Were the weaker version of ENDA to pass, some employers will claim that they have nothing against lesbians, gay men and bisexuals, and that a firing was based not on sexual orientation, but rather on an employee's failure to act feminine or masculine enough. That loophole will be invoked against almost any lesbian, gay man, or bisexual person who seeks protection against discrimination under ENDA.

- 3) The new version also removes a provision that would have allowed state and local governments to require equal benefits for domestic partners and provides a blanket exemption for employers affiliated with religious organizations, including universities and hospitals.

### ***WHAT HAPPENED AND WHAT ARE CONGRESSIONAL LEADERS SAYING ABOUT WHY PROTECTIONS BASED ON GENDER IDENTITY WERE REMOVED?***

At the end of September, following a positive hearing on the bill, Massachusetts' Representative Barney Frank made the decision, without meaningful consultation with the LGBT community, to drop the language of "gender identity" from the bill and introduced legislation focused exclusively on sexual orientation discrimination. The apparent justification for this weakened version of ENDA is that Congress will not pass the bill if it includes protections based on gender identity or gender expression. However, any bill passed by Congress is expected to be vetoed by President Bush. Given this fact, we have time to do the hard work of educating members of Congress about why protections based on gender identity are so important and how vital it is that discrimination based on gender identity and expression is made unlawful. The outcry from the LGBT community in reaction to the removal of protections based on gender identity was swift, strong, and effective. And we were heard. In response to the vocal opposition from every segment of our community across the country, Congressional leaders slowed down the train.

### ***WHAT CAN I DO TO STOP PASSAGE OF AN ENDA THAT DOES NOT INCLUDE GENDER IDENTITY?***

We now have a very short window of time in which we must mobilize and make clear to our legislative leaders the importance of leaving no part of our community unprotected under law. Once a vote on ENDA takes place and elected representatives have "gone on record," it will be enormously difficult to persuade them to cast a new vote in favor of a fully inclusive bill. We truly do have the power as a united community to stop bad legislation from moving forward. We need to send a clear message to Congress and we need to do it now!

To find your representative, visit <http://www.house.gov/house/MemberWWW.shtml>  
To write to your representative, visit <http://www.house.gov/writerep/>

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