

## Divisive ENDA fight dominated year in gay news

Debate over trans inclusion prompted protests

Dec. 28, 2007

Passage of the Employment Non-Discrimination Act (ENDA) has long been at the top of gay activists' wish lists. The bill has been around in one form or another since the 1970s and after the Democrats took control of Congress in 2006, many were optimistic it would finally pass.

But the excitement gave way to a divisive fight over transgender rights this year, pitting some activists against gay Rep. Barney Frank and others who supported the gay-only version when it became clear there were not enough votes to pass the trans-inclusive version.

Many trans activists felt abandoned and some even picketed the annual Human Rights Campaign National Dinner. Others argued that a successful House vote — even with a White House veto threatened and looming — would be historic and bode well for more expansive legislation in the future.

The ENDA timeline below shows how the bill has progressed since 1974.

March 14, 1974 — Reps. Bella Abzug (D-N.Y.) and Ed Koch (D-N.Y.) introduce H.R. 14752, dubbed the “gay rights bill” or “Equality Act of 1974,” but it fails to make it out of committee. It proposes that new categories of sex, sexual orientation and marital status be added to the 1964 civil rights act. It is forwarded to the civil rights subcommittee, part of the Judiciary Committee, but because the committee is in the throes of impeachment hearings, the bill is seen as a long shot. Abzug’s version bars anti-gay discrimination in public accommodations and housing, but not transgender protections, thus making it further reaching than its modern counterpart.

1975 — Abzug introduces the Civil Rights Amendment of 1975, which would add “affectional or sexual preference” to existing civil rights laws, separating sex and marital status from sexual orientation.

1994 — The modern version, now called the Employment Non-Discrimination Act, is introduced with gay-only protection without public accommodations or housing provisions. The Senate Labor & Human Resources Committee holds the first hearings on ENDA. It fails to make it out of committee as does a 1995 version.

Sept. 10, 1996 — The Senate votes on ENDA without a gender identity provision. It loses by one vote, 49 to 50. The House doesn’t vote on the bill. The near victory came at a high price. With the consent of national gay advocacy groups, Sen. Edward Kennedy (D-Mass.), the lead sponsor of ENDA, struck a deal with Senate Republican leaders that activists say they hope will never again be necessary. GOP leaders said they would allow ENDA to come up for a vote only if Kennedy and his Democratic allies agreed to end a filibuster blocking a vote on the anti-gay Defense of Marriage Act. Known as DOMA, that legislation sought for the first time to define marriage under federal law as a union only between a man and a woman. On the same day the Senate narrowly defeated ENDA, it passed DOMA by a vote of 85 to 14. The disappointment over the close defeat of ENDA and the approval of DOMA was heightened by what ENDA supporters view as a quirk of fate that prevented the Senate from passing the gay rights measure. Sen. David Pryor (D-Ark.), who was expected to vote for ENDA, sent word that he had to rush to Arkansas to assist his son, who was undergoing cancer surgery, and could not be present in the Senate for the vote. ENDA languishes in the ensuing years.

1997 — Another version of ENDA is introduced with hearings held by the Senate Labor & Human Resources Committee. This version, also without a trans provision, fails to make it out of committee.

March 31, 1998 — Abzug dies.

1998 — President Bill Clinton issues an executive order prohibiting discrimination based on sexual orientation in much of the federal workplace. Later in the year, the House rejects an amendment that would have prohibited use of federal funds to enforce Clinton's order.

**1999 — The National Gay & Lesbian Task Force becomes the first gay civil rights organization to stop work on ENDA because of its lack of a trans provision. ENDA re-introduced, again without trans protections, fails to make it out of committee.**

MAY 2001 — Democrats win back control of the Senate by one vote. During the next year and a half, Democrats have the ability to bring up ENDA and other gay rights measures to the Senate floor for a vote but don't. In retrospect, Elizabeth Birch, then-director of HRC, and Tom Daschle (D-S.D.), then Senate Majority Leader, say they expected a Republican-led filibuster and didn't have the 60 votes to end such a move and pass the bill. A version of ENDA is considered in committee but doesn't make it to the House or Senate floor.

2002 — ENDA hearings are held before the Senate Health, Education, Labor & Pensions Committee. It's placed on the Senate calendar but never makes it to the floor.

2003 — ENDA re-introduced without trans provision but never makes it out of committee.

August 2004 — HRC changes its position from opposing a trans provision on the grounds that it would hurt ENDA's chance of passing, to one of opposition to the entire bill unless it includes a trans clause. The move follows a transgender protest outside the HRC offices in Washington.

April 24, 2007 — ENDA (H.R. 2015) introduced in the House by Reps. Barney Frank (D-Mass.), Tammy Baldwin (D-Wisc.), Deborah Price (R-Ohio) and Christopher Shays (R-Conn.) and includes a gender identity clause.

Sept. 26 — A preliminary whip count reportedly shows a trans-inclusive ENDA would fall at least 30 votes short. With Speaker of the House Nancy Pelosi's consent, Frank introduces a new "sexual orientation-only" version of ENDA (H.R. 3685) with a separate bill that would ban job discrimination based on gender identity. Frank calls for hearings on the gender identity bill, but says it doesn't have enough support to bring it up for a vote anytime soon. Frank also says it's unwise to push a vote that could result in defeat as it makes it harder to bring up later as members of Congress aren't likely to change their votes risking accusations of flip-flopping on a controversial issue. Some speculate 60 votes would be needed to pass ENDA in the Senate to overcome a filibuster.

Oct. 2 — HRC announces its board has voted to reaffirm its 2004 position not to support ENDA without trans protections but HRC President Joe Solmonese angers trans activists and leaders of other gay groups by saying HRC will not encourage members of Congress to vote against a gay-only bill.

Oct. 3 — HRC says it's stepping up its lobbying efforts on ENDA by launching a "full-scale, nationwide call to action in support of a fully inclusive" bill.

Oct. 3 — Donna Rose, the only transgender HRC board member, resigns saying she "cannot align myself with an organization that I can't trust to stand up for all of us."

Oct. 4 — The National Transgender Advocacy Coalition announces plans to picket HRC's National Dinner.

**Week of Oct. 5 — Leaders of 150 state and national gay groups led by National Gay & Lesbian Task Force sign a statement demanding that members of Congress oppose any version of ENDA that lacks trans protection. The group eventually claims to represent**

**more than 300 organizations and calls itself United ENDA.** Members argue that with President Bush in office, the bill is unlikely to become law anyway, so Congress should proceed with a fully inclusive version. Solmonese said passing any form of ENDA in the House now would set an important precedent that would improve chances of enacting the bill into law in the near future even if it doesn't make it into law this year. He argues a successful gay-only ENDA will pave the way for future trans provisions. Frank, Pelosi and others also say moving a version of ENDA successfully through Congress has symbolic significance regardless of what the president might do.

Oct. 6 — Fireworks erupt at the HRC National Dinner in Washington as trans activists picket the entrance of the Convention Center in Washington, claiming they feel betrayed that HRC opted to move ahead with a gay-only ENDA. Solmonese says inside that he understands their stance. Pelosi, on hand to accept an award and choosing her words carefully, promises to fight for "the most inclusive ENDA possible" and receives a lengthy standing ovation.

Oct. 10 — Pelosi says she strongly disagrees with activists who say Congress should refuse to vote on a gay-only ENDA and says lobbying Congress "does not mean finding the three biggest champions for your issue and banging them over the head."

Oct. 12 — Democratic House leaders tell gay and trans activists they plan to move ahead with a gay-only ENDA.

Week of Oct. 18 — Washington gay groups the Gertrude Stein Democratic Club and the Gay & Lesbian Activists Alliance (GLAA) break ranks with their counterparts in other states by announcing they won't ask Congress to vote against a gay-only ENDA.

Meanwhile, Baldwin announces she plans to introduce a trans amendment to ENDA.

Oct. 18 — The House Committee on Education & Labor votes to approve a gay-only ENDA and reports it to the full House for action. Four Democrats — including presidential hopeful Dennis Kucinich (D-Ohio) — vote against it because it lacks trans inclusion. Four Republicans join Democrats in voting for the measure.

Week of Oct. 24 — Democratic leaders postpone House vote on ENDA citing work to get an accurate whip count, hours after the White House issues a statement that senior advisers have recommended President Bush veto the measure saying ENDA is inconsistent with the right to the free exercise of religion codified by Congress in the Religious Freedom Restoration Act. Kennedy is planning to introduce ENDA in the Senate but won't say if his version will include a trans provision. Frank says waiting until 2009 to introduce ENDA would be a mistake.

A spokesperson for Kennedy says he'll wait to see how ENDA fares in the House before introducing it in the Senate.

Week of Oct. 31 — ENDA postponed for unspecified reasons. Freshman House Democrats reportedly urge Pelosi not to allow Baldwin to introduce her amendment in fear that voting on it will hurt their re-election efforts.

NOV. 6 — Leadership Conference on Civil Rights, the nation's most prominent mainline civil rights organization, endorses the non-trans-inclusive ENDA, calling it a first step in continuing efforts to push for more comprehensive protection. The Conference is joined by HRC, NAACP and others.

NOV. 7 — Rep. Tammy Baldwin (D-Wisc.) introduces, then withdraws before a vote, an amendment to add a trans provision to the bill. It's a symbolic move made to assure trans people they are not forgotten, she says. Reps. Howard McKeon (R-Calif.) and Mark Souder (R-Ind.) attempt a parliamentary move to prevent Baldwin from withdrawing the measure but are ruled out of order. A motion to recommit the bill (effectively killing it for the year) fails 222 to 198. Rep. Randy Forbes (R-Va.) introduces it.

ENDA passes in the House 235 to 184; seven gay-supportive Democrats vote against the bill because it lacks trans provision.

**The Task Force's Matt Foreman, who helped organize the United ENDA Coalition, says he and his supporters are "deeply disappointed that House leadership decided to ignore the position of a vast majority of LGBT organizations."**

Kennedy says he'll "soon" introduce ENDA in the Senate but gives no time frame.

*Editor's note: This timeline was constructed from the writings of the Blade's Lou Chibbaro Jr., other Blade archived articles, congressional records, and material from the **National Gay & Lesbian Task Force** and Human Rights Campaign.*