

# San Francisco Chronicle

## House approves bill banning bias against gays in workplace

Carolyn Lochhead, Chronicle Washington Bureau  
Thursday, November 8, 2007

The House passed a landmark civil rights bill on Wednesday that had been sought for three decades by the gay community, but the celebration was muddied by miscalculations by Democratic leaders and recriminations among many of those the bill is intended to help.

The Employment Non-Discrimination Act would ban job discrimination against gays, lesbians and bisexuals, but not against transgender people. Rep. Barney Frank, D-Mass., the only openly gay man in the House, and Rep. George Miller, D-Martinez, argued strenuously that if gender identity were kept in the legislation, as proposed initially, it would fail.

The House vote was largely symbolic, however, because the legislation stands little chance of enactment in this Congress. It faces daunting odds in the Senate, where it has not even been introduced, and President Bush has promised a veto.

The emotional debate about whether to include gender identity in the bill split gays, lesbians, bisexuals and transgender people for weeks. Most gay rights organizations, with the exception of the Human Rights Campaign, opposed the legislation, and a handful of liberal Democrats voted against the bill with evident distress.

"It's a helluva thing to vote against the bill," said Rep. Jerrold Nadler, D-N.Y. "I've never voted against a civil rights bill in my life, and I don't want to, but I think you have to make a statement here. ... I sponsored or co-sponsored gay rights bills since 1977, every year since I was elected to the (New York) Assembly, and now I've got to vote against this because I think it's mistaken tactics."

Nadler was one of 25 Democrats to oppose the bill, which passed 235-184. Thirty-five Republicans and 200 Democrats voted for it. The legislation would ban employment discrimination based on sexual orientation, adding it to protections such as those based on race, religion and gender.

House Speaker Nancy Pelosi, wearing a lavender suit as a symbolic gesture of solidarity with the gay community, said she had looked forward to the day the bill would pass since joining Congress 20 years ago as a Democrat representing San Francisco. She said she was disappointed that it excluded transgender people but argued that passing a narrower bill would "build momentum for further advances on gender identity rights and the rights of all Americans."

"History teaches that progress on civil rights is never easy. It is often marked by small and difficult steps," Pelosi said, adding that she is proud of "my community" of San Francisco, where "the beauty is in the mix."

Democratic leaders had hoped to highlight earlier passage of a hate crimes law, followed by Wednesday's passage of anti-discrimination legislation, as proof of the change they have brought to Washington and their ability to deliver to their core constituents.

Instead, dropping transgender people from the anti-discrimination bill, known as ENDA, enraged gay leaders and tore apart the gay community. For the first time, most gay rights groups were on

the opposite side of Frank, their longtime champion, each angrily and publicly denouncing the other.

Pelosi was forced to delay a vote for weeks while gay rights groups attempted, without success, to round up votes for an amendment by Rep. Tammy Baldwin, D-Wis., the only openly lesbian House member, to include transgender people in the bill.

Baldwin's amendment was debated but was withdrawn without a vote, avoiding a tough decision for newly elected Democrats from conservative districts. Their opposition to transgender inclusion was what led Frank to narrow the bill in the first place.

Rep. Ellen Tauscher, D-Walnut Creek, who leads the moderate New Democrat Coalition, said she understood the disappointment about leaving out job discrimination protections for transgender people, but "you can't make members do things."

"A lot of people don't want this debate, and the fact that we are having it shows the change we have with Democrats in the majority," Tauscher said.

Baldwin, too, wore lavender and vowed that transgender people "deserve to hear you are not forgotten, and our job will not be finished until you share the American dream. ... I will do everything in my power to make this measure whole again."

**Matt Foreman, executive director of the National Gay and Lesbian Task Force, said the bill "does not have the support of the vast majority of LGBT rights organizations across the country," referring to lesbian, gay, bisexual and transgender groups.**

**"This would be a much tougher conversation if ENDA was moving into law," Foreman said. "It's not moving into law. It would take a miracle for us to move it through the Senate, and the White House has always said Bush would veto it. That's what's made this entire episode so confounding and painful and inexplicable."**

Nadler also criticized the decision by the Democratic leadership to drop transgender people from the bill's protections.

"The arguments for this bill without the transgender is that you have to take what you can get," Nadler said. "That would be a very difficult judgment to make if in fact this bill was going to be passed into law. ... But that's not our choice now. Because this bill isn't passing."

Frank, however, denounced what he called self-defeating ideological purists and called the bill a "moment of truth for responsible liberals in the Democratic Party."

The Human Rights Campaign, which did not join other groups in opposing the legislation, switched from neutral to supportive as the legislation headed to the floor. The group released a poll Tuesday saying 70 percent of lesbian, gay, bisexual and transgender people it surveyed preferred a bill omitting transgender people to not passing a bill at all. The Human Rights Campaign, the largest gay lobbying group in Washington, is very close with House Democratic leaders and a strong ally of Frank.

The Leadership Conference on Civil Rights also changed course and supported the bill, calling the decision "extraordinarily difficult."

Religious organizations are exempted from the bill. But Republicans warned that the legislation would force Christian, Muslim and other religious businesses such as bookstores that are not affiliated with an official religious group to hire homosexuals. To beat back GOP attacks, Democrats also included a reaffirmation that the Defense of Marriage Act banning federal recognition of same-sex marriage remains intact.

Conservative religious groups such as the Family Research Council and Traditional Values Coalition lobbied hard against the bill, putting special pressure on conservative Democrats. As

Republicans tried to kill the bill with a procedural motion raising the issue of marriage, Frank rose with an emotional plea to his fellow Democrats not to fall for what he called "a sham."

"Don't send me out of here" without the legislation, Frank pleaded. "This is personal."

"There are people who are your fellow citizens that are being discriminated against. This is a simple bill. Please don't turn your back on them."