



## TVC Special Report

### H.R. 2015, the Employment Non-Discrimination Act (ENDA)

*ENDA will force employers with 15 or more employees to implement the homosexual/transgender radical agenda in businesses across the nation.*

**Fall 2007** — Once again, homosexual legislator Barney Frank (D-MA) has introduced the [H.R. 2015, the Employment Non-Discrimination Act \(ENDA\)](#) to create federally-protected minority status for homosexuals and transgenders in housing and employment.

**The legislation includes “gender identity” for the first time.** The term “gender identity” is code for drag queens, transvestites, and transsexuals. The umbrella term “transgender” is used to describe these individuals.

In August, 2004, the homosexual community came out in favor of adding transgender language to ENDA for the 2005 version. This is now established policy among homosexual activists.

According to former HRC Executive Director Cheryl Jacques, *“Passing ENDA without gender identity and expression is like passing a copyright law that covers books and television shows but doesn’t cover digital music or videos.”* (HRC web site, August 13, 2004)

If [ENDA](#) is passed with “gender identity” language in it, it is likely that employers will be forced to allow individuals with [Gender Identity Disorders](#) to wear opposite sex clothing to work or use opposite rest rooms or shower facilities.

ENDA defines “sexual orientation” as homosexuality, bisexuality and heterosexuality, but also adds “gender identity” as a protected class. This is code for someone who thinks he’s the opposite sex or likes to wear opposite sex clothing. It also includes she-males, individuals who undergo only half of a sex-change operation. They are male from the waist down and female from the waist up.

By making “gender identity” a federally-protected class under the law, this normalizes what are mental illnesses, known as a Gender Identity Disorder and/or Transvestic Fetishism. *It elevates what a person “thinks” he is over what he actually is.* The federal government should not be legalizing the confused thinking of individuals who believe they are trapped in opposite sex bodies. This mental disorder is a treatable condition, not a fixed identity that must be accorded federally-protected class status.

Dr. Paul McHugh, for example, became the psychiatrist-in-chief at Johns Hopkins University in 1975 and put an end to the practice of providing sex-change operations for patients. Writing in his essay, [Surgical Sex](#) for *First Things* in 2004, McHugh observed: “We have wasted scientific and technical resources and damaged our professional

credibility by collaborating with madness rather than trying to study, cure, and ultimately prevent it [GID].”

Dr. McHugh believes that psychiatrists are collaborating with a mental illness by approving sex change operations on individuals. The problem is one of the mind, not the body. A person who has a gender identity disorder needs therapy, not surgery.

### **Lawyer Notes Problems With ‘Gender Identity’ In ENDA**

On September 5, 2007, the U.S. House Committee on Education and Labor, Subcommittee on Health, Employment, Labor and Pensions held a hearing on H.R. 2015 (ENDA).

During the hearing, labor attorney Lawrence Z. Lorber testified about the serious problems associated with adding “gender identity” to ENDA.

He noted, for example:

There is a major new issue raised in this section which the Committee may wish to focus on. For the first time, a new protected category, Gender Identity, has been introduced into the legislation. The term is defined in section 3 (a) (6) as “the gender related identity, appearance, or mannerisms or other gender-related characteristics of an individual, without regard to the individual’s designated sex at birth.” While gender identity may be viewed as a manifestation of an individual’s sexual orientation as defined in section 3 (a)(9), gender-identity, as defined in the bill does not seem to relate to any discernable innate characteristic or sexual orientation. Rather, as used in section 4 (a) it appears to relate to actions or representations of an individual perhaps related to sexual orientation or perhaps not. Thus, it stands as an independent protected classification not grounded in any discernable characteristic or status which is the basis for all of the non-discrimination legislation. I would suggest that the Committee examine in more detail how an employer might deal with this issue and insure that it does not violate the law. While, for example, section 8 (a)(4) permits employers to establish neutral reasonable dress or grooming standards, might not the requirement to accommodate an individual’s gender identity, which may or may not have relationship to the individual’s sexual orientation or gender transition, undermine the protection of section 8 (a)(4)?

\*\*\*

#### **Section 4(e)**

I would note as well that section 4 (e) of the legislation which prohibits association discrimination also includes *gender identity*. Section 4 (e) is modeled after the ADA, 42 USC sect 12112 (b)(4) and is understandable when applied to defined characteristics. It is less than clear, however, when applied to non-inherent characteristics which may be self-perceived by the individual but not apparent to the employer. This will seem to create the potential for difficult enforcement and even more potentially difficult litigation since the underlying issue may be ephemeral or not readily apparent to the employer.

\*\*\*

#### **Section 8(a)(3)**

Section 8(a)(3) requires an employer to provide adequate shower or dressing facilities to employees undergoing transgender transition. The committee should address whether this section creates the requirement for the provision of additional facilities or the requirement that use of certain facilities be timed to insure employee comfort for all employees. In addition, section

8(a)(3) as drafted requires that facilities not only accommodate employees who have undergone or are undergoing gender transition, but to accommodate the employees self-perceived gender identity. This would seem to present an extremely difficult standard for employers to meet and in fact would seem to require an employee to register his or her gender identity with the employer at the time of employment which seems to be highly intrusive to both employer and employee.

Mr. Lorber is concerned that the federal government will be creating a legal and employment policy nightmare for business owners because “gender identity” is “ephemeral” and not grounded in any “discernible characteristics” or “traits.”

“Gender identity” is what a person thinks about himself. It’s subject to change and is not an immutable characteristic like skin color or race.

### **Three News Stories Illustrate Problems With Protecting ‘Gender Identity’**

Mr. Lorber’s concerns about putting “gender identity” in ENDA is illustrated by the following three real life examples from the news:

***A so-called ‘transgender’ teenager in Texas won the right to wear girl’s clothing to school.*** Rodney Evans, who calls himself Rochelle, is a 15-year-old at Eastern Hills High School in Fort Worth, Texas. Evans fought for the right to wear make-up, fake breasts and women’s jeans to school. In a [Dallas News](#) (May 19, 2007) interview, Evans told the reporter: “*There was never a day when I was Rochelle for the whole day.* I love makeup. I started wearing makeup because it helped to complete me more. It made me feel more like a girl. With the help of makeup, you can create your own kind of life.”

The article quotes [Simon Aronoff](#), deputy director of the National Center for Transgender Equality in Washington, DC: “Transgender teens are demanding acceptance in all facets of society including school.” ([Aronoff is a young woman](#) who thinks she’s a man. She came out to her parents as a lesbian as a teenager, but is now taking male hormones and sports a goatee.)

**How will businesses deal with Rodney Evans when he enters the work force? He claims that there was “never a day when I was Rochelle for the whole day.”** If Evans can determine his “gender identity” from day to day, how will his behavior impact employment policies if ENDA passes?

Will Evans be a woman on Mondays, Wednesdays and Fridays at work and a man on Tuesdays and Thursdays? What restrooms will Evans use if he doesn’t undergo a sex change operation? What shower facilities? Will businesses have to provide separate facilities for him? If Evans applies to a school to become the women’s gym coach, will the school have to hire him?

***A second story out of Duke University also illustrates the problems of providing federal protection for the ephemeral term “gender identity.”***

In August, 2007, the Duke University *Chronicle* reported that a young gender-confused male student at Duke University (who thinks he’s a woman) was given permission to use the women’s restroom at a dorm on campus. The man has not yet had a so-called “sex

change” operation. (Even if he did have the operation, he would still be genetically a male, not a female.)

Lee Chauncey, a father of one of the female students said he was outraged by Duke’s willingness to permit this man to use a woman’s restroom. He contacted Duke University officials and the national media over this situation.

Chauncey told a local [ABC affiliate](#) that he didn’t think it was appropriate to have a man living like a woman and using women’s “shower and bathroom facilities.”

This incident at Duke University is a microcosm of the social chaos that will result if ENDA is passed. ENDA, by providing federally-protected status for “gender identity,” will be creating not only a third sex, but will be normalizing a [whole range of bizarre sexual orientations](#).

***A third story out of Seattle also shows the serious problems that will be created by ENDA. [Transgender women invade men’s restrooms at Seattle mall.](#)***

On August 31, 2007 at a Seattle mall, two women who are taking male hormones were kicked out of a men’s restroom. They were attending a Gender Odyssey Conference at the Washington State Convention and Trade Center and were staging a “pee-in” at the 4<sup>th</sup> floor bathrooms. This was clearly a set-up.

Washington state passed a “sexual orientation” and “gender identity” protection law last year. These gender confused women are filing a lawsuit against the mall to test the law.

According to Sean (who only wanted her last name used), “Peeing is basic. Anyone who feels a need to use a bathroom should be able to do so without something [sic] rapping on the stall while your pants are down around your ankle.” Sean and her friend Simon want to use whatever restrooms they choose.

*If ENDA passes, businesses will be forced to permit “transitioning” men and women to use opposite sex restrooms.*

### **ENDA Defines ‘Sexual Orientation’**

Under ENDA, “sexual orientation” is defined as “homosexuality, bisexuality, or heterosexuality” in Section 3: Definitions. This makes homosexual and bisexual behaviors on an equal par with heterosexuality, which has been the norm throughout human history. Behaviors like homosexuality, bisexuality, and cross-dressing are expressions of gender identity confusion and should not be equated with heterosexuality as being “normal.”

However, in Section 4, Employment Discrimination Prohibited, **ENDA says that an employer cannot discriminate against an employee “because of such individual’s actual or perceived sexual orientation or gender identity.”**

**The inclusion of “perceived” in the definition of sexual orientation in ENDA is a recipe for legal disaster for businesses. There is no condition of sexual abnormality**

that may not be perceived to fall within one of these categories, including all those excluded by the ADA [Americans with Disabilities Act]: transvestism, transexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, and sexual behavior disorders. Without containing an explicit exclusion, persons with these conditions will have a certain degree of protection under ENDA.

In fact, the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM) lists [at least 30 sexual orientations](#), which includes incest, pedophilia, and coprophilia (sexual pleasure from feces). Individuals who engage in these activities can claim protection under ENDA under Section 4.

**“Gender identity”** is defined in Section 3 as “the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual’s designated sex at birth.” This vaguely-worded definition can mean someone who:

- **cross-dresses**
- **is undergoing a sex change operation**
- **thinks he or she is the opposite sex without a sex change operation**
- **lives as a she-male. These are sexually-confused individuals who undergo only a partial sex change operation. Usually males, they are female from the waist up and male from the waist down.**

If an employee decides he wishes to wear a dress to work because this is his sexual orientation, he can expect to be protected by ENDA. It will prove to be a nightmare for employers and normal employees who will be forced to remain silent as their cross-dressing co-workers press for the right to wear dresses to work.

### **ENDA And Restrooms/Shower Facilities**

Section 8 of ENDA lays out rules for how an employer must treat a person who has a different “gender identity” than his or her biological sex. The concept of “gender identity” is misleading. Transgender activists think that they’re normal. **What homosexual, transgender activists and Congressional sponsors of this bill are not saying is that “gender identity” is actually a Gender Identity Disorder, which is still considered a mental condition by the American Psychiatric Association.** Transgender activists who have helped craft this latest version of ENDA, assert that having a sex change operation is a perfectly legitimate way of dealing with individuals who are supposedly trapped in the wrong body.

In veiled language, Section 8 (3) describes how employers will be permitted to establish policies on shower rooms and [restrooms](#) and “gender identity” individuals. It states that employers must “provide reasonable access to adequate facilities that are not inconsistent with the employee’s gender identity as established by the employer at the time of

employment or upon notification to the employer that the employee has undergone or is undergoing gender transition, whichever is later.”

A plain reading of this section means that an employer must make restroom and shower facilities available to a transgender individual that is consistent with what sex *he* thinks he is -- even if he’s not yet had a sex change operation. In short, if a man thinks he’s a woman, he must be given access to women’s restrooms and shower facilities – *or the business must construct separate restrooms and shower facilities for a person who thinks he’s the opposite sex or is going through a so-called sex change operation.*

Either way, ENDA will be a legal and construction nightmare for businesses that will be forced to provide “adequate facilities” to these seriously confused individuals.

Section 8 (4) deals with “Dress and Grooming Standards.” The section states that the employer must permit “any employee who has undergone gender transition prior to the time of employment, and any employee who has notified the employer that the employee has undergone or is undergoing gender transition after the time of employment,” to “adhere to the same dress or grooming standards for the gender to which the employee has transitioned or is transitioning.”

In plain English, this means that an employer must permit a so-called transgender employee to wear clothing that reflects his chosen sex, not his biological sex. A man choosing to wear women’s clothing is protected under ENDA.

Since “[gender identity](#)” is a state of mind in ENDA, a person who thinks he’s the opposite sex but doesn’t want to have a sex change operation, would undoubtedly be protected by ENDA by claiming the “actual or perceived” section of the bill. This would permit a man to use a woman’s restroom or shower because he “thinks” he’s a woman.

Under ENDA, someone like Rodney Evans will be free to pick whatever restroom he wishes to use under the “gender identity” protection section.

And what will employers do with she-males? Will they be permitted to use either men’s or [women’s restrooms](#) and showers? After all, they’re both male and female and can claim protection under the gender identity section of ENDA.

*This is not a flight of fantasy. This is already happening on college campuses around the nation. The Duke University and Seattle mall cases are the most recent.*

In October, 2002, for example, a student group calling itself, “The Restroom Revolution,” at the University of Massachusetts, began demanding that the university establish unisex restrooms for so-called “transgendered” students. **This is what businesses will face if ENDA is passed.**

In June, 2001 a Latino AIDS Agency sued its former landlord for discrimination because the landlord was forcing a transgendered male to use the men’s restroom instead of the women’s restroom. The ACLU is defending the “right” of this man to use a woman’s restroom because he thinks he’s a woman. ENDA will result in endless litigation over restroom facilities.

In 2005, a man who calls himself a “male-bodied woman” and uses the name Pauline Park, won a lawsuit against the city of New York over the use of restrooms. Park’s

lawsuit permits any individual to use whatever restroom he wishes, depending on his “gender identity.”

### **Phony Religious Exemption In ENDA**

[ENDA](#) is legislation ostensibly designed to forbid “discrimination” against a person’s “[sexual orientation](#)” or “gender identity.” The bill covers any employer who is engaged in interstate commerce or has 15 or more employees.

ENDA provides a supposed “religious exemption” for religious denominations or organizations operated by religious denominations – but not other non-profit Christian or other religious organizations. **The bill says in Section 6, “Exemption for Religious Organizations” that a “religious corporation, association, educational institution, or society which has as its *primary* purpose religious ritual or worship or the teaching or spreading of religious doctrine or belief” is exempt from ENDA.**

***This is a phony religious exemption. A Christian school, for example, would probably not be exempt under ENDA because its *primary purpose* is education, not the teaching or spreading of religious doctrine. A Christian day care center would not be exempt from ENDA; nor any Christian-owned for-profit business such as a Bible or book publisher.***

The key word in Section 6 of ENDA is “primary.” If a judge decides that the primary purpose of a Christian organization is not to spread religious belief, then the entity would be forced to adhere to provisions under ENDA!

*It is also very likely that once ENDA is passed, lawsuits and liberal judges will sweep away any such weak exemptions in the bill.*

[ENDA](#) will pit religious employees against activist homosexuals in the workplace. The employer will be caught in the middle, trying to balance free speech, freedom of religion issues with the requirements of ENDA.

The employer will have to choose between suppressing the ability of employees to express their religious viewpoints, for which they have relatively little protection in the workplace (religious speech is far less protected than religious observances), and risking costly claims from homosexuals under ENDA’s broad language. Most likely, the employer will impose a rule on the workplace that, in effect, allows no criticism of homosexual or bisexual lifestyles, even among peers.

If ENDA passes, Christian bookstores, TV and radio stations would also be forced by ENDA to violate their religious beliefs by hiring individuals whose behavior is considered to be sinful and sexually perverted. They would very likely be forced by this law to hire or retain cross-dressers and individuals who engage in behaviors considered to be sins by Christians and other religious faiths.

**ENDA forbids any employer from failing to hire or to fire any individual because of his “actual or perceived sexual orientation or gender identity” (Section 4). It will also forbid an employer from taking any action against an employee because of the sexual orientation of a person he may associate with outside of work. (Section 4[e].)**

### **ENDA Will Encourage Lawsuits**

States, universities and local communities that have already passed “sexual orientation” laws are already beginning to feel the severe economic impact of these laws.

- In July 2007, Fresno State University was fined \$5.8 million by a jury for its alleged discrimination against a lesbian volleyball coach, Lindy Vivas. She claimed she was the victim of sexual orientation discrimination because she was a feminist activist and lesbian.
- In April 2007, a homosexual couple filed a lawsuit against the Rochester Athletic Club for refusing to grant them a family membership. The couple claimed that the club was violating the state’s Minnesota Human Rights Act and “sexual orientation” discrimination law.
- In July 2007, a jury in Los Angeles awarded a lesbian firefighter \$6.2 million in a sexual orientation/harassment case. Lesbian Brenda Lee claimed she was harassed because she’s a black lesbian.
- In April 2006, a homosexual group, Colorado Legal Initiatives Project filed a lawsuit on behalf of homosexual Richard James Miller against his company, AIMCO. The lawsuit claimed he was the victim of sexual orientation discrimination. Denver has a sexual orientation policy.

These are just a few of the cases that have been fueled by “sexual orientation” ordinances passed by states and cities.

Once ENDA is passed, it will unleash a veritable flood of such cases in businesses, colleges, non-profit organizations and churches. The cost of litigation will potentially destroy many businesses – especially smaller businesses – without the resources to fight against well-funded homosexual legal groups.

### **ENDA will add to the economic burden of employers.**

To defend a company against an individual filing a discrimination charge, the following fees might apply:

**Agency dismissal stage:** \$5,000-\$25,000;

**If claimant files suit, and company wins summary judgment:** \$50,000-\$100,000;

**To prevail at trial:** \$150,000-\$250,000

Simply defending one’s company from a frivolous lawsuit could bankrupt smaller businesses. Employers may eventually win these suits but suffer huge financial losses and bad publicity. This legislation will certainly help homosexual lawyers fill their coffers, but it will result in financial ruin for business owners.

Here are important points to consider about **ENDA's impact on businesses**:

- The cost of defending—and winning one discrimination case can be enough to break a small company. Most small companies do not have insurance that covers discrimination claims.
- The Law of Unintended Consequences dictates that even laws intentionally limited in scope become expanded by the courts, with consequences never intended by Congress.
- ENDA is not a simple inclusion of sexual orientation into federal discrimination law.
- ENDA is broader than any federal discrimination law ever passed, both in its definition of discrimination and its protection of different categories of persons.
- Employers will have difficulty defending themselves against ENDA claims because the protected class is not based on a known characteristic, may be based on a behavior one can opt into and out of, and is subject to interpretation.
- Employers will be caught in the crossfire between homosexual activist staffers and employees with deeply held religious, moral, or traditional beliefs against homosexual behavior.
- Employers will have great difficulty in enforcing existing anti-harassment rules once homosexuality becomes a protected category.
- Employers will be unable to identify and prevent hostile work environments due to sexual orientation, without invading the privacy of employees.

### **ENDA Is Based On A Faulty Premise**

One underlying assumption of ENDA is that the '[sexual orientation](#)' considered in this bill is 'fixed,' 'normal,' and 'healthy' in the context of American life and human action. It isn't. Homosexual sex acts have dangerous consequences, including AIDS, bowel diseases, STDs, etc. ENDA, however, attempts to impose a federal gag order on the crucial question about whether or not homosexual activity is voluntary and whether or not homosexuality has scandalous social consequences.

ENDA is based upon the faulty premise that homosexuality is normal and that individuals are "born gay." And, now they're saying that individuals are born bisexual or trapped in the body of the wrong sex. This "born gay" premise has recently been exposed to be a fraud by none other than homosexual researchers themselves who have admitted there is no scientific proof that a homosexual "gene" or "brain" exist.

Psychologists with the National Association for Research and Therapy of Homosexuality (NARTH) have recently published "[The Innate-Immutable Argument Finds No Basis in Science.](#)" which quotes homosexual researchers and philosophers on the "born gay" theory.

In this article, NARTH quotes homosexual researcher Dean Hamer, "There is not a single master gene that makes people gay. . . . I don't think we will ever be able to predict who will be gay." Homosexual researcher Simon LeVay who studied hypothalamic differences between heterosexual and homosexual brains noted: "I didn't show that gay men are born

that way, the most common mistake people make in interpreting my work. Nor did I locate a gay center in the brain.”

NARTH also quotes lesbian activist and philosopher Camile Paglia who had the most blunt words about homosexuality: “Homosexuality is not ‘normal.’ On the contrary, it is a challenge to the norm . . . Nature exists whether academics like it or not. And in nature, procreation is the single relentless rule. That is the norm. Our sexual bodies were designed for reproduction . . . No one is born gay. The idea is ridiculous. . . . homosexuality is an adaptation, not an inborn trait.”

Homosexuality is a behavior and a lifestyle choice. It is not genetically-based nor is it a healthy way to live. AIDS and sexually-transmitted diseases running rampant among this population are clear evidence that this lifestyle choice is not one to be protected nor encouraged by our culture. *The federal government has no right to force America’s businesses, labor unions, and non-profits to support a poor, unsafe lifestyle choice.*

Individuals who consider themselves “transgendered” have a mental condition known as [Gender Identity Disorder \(GID\)](#), also called Gender Dysphoria. These individuals are in need of psychiatric, psychological or spiritual counseling so they will stop rejecting their birth sex. A mental condition cannot be effectively treated by surgery nor should it be.

To put a “gender identity” protection into federal law is to affirm that these individuals are normal and must be protected and accommodated by businesses and non-profit organizations. A serious mental condition must not be accorded specially-protected minority status under the law – nor should American businesses be forced to bend to the wishes of individuals with a treatable mental condition.

TVC’s report, [“A Gender Identity Disorder Goes Mainstream”](#) describes the radical transgender agenda and its goal of overturning all concepts of male and female in our culture. Dr. Paul McHugh’s essay, [“Surgical Sex”](#) describes the failure of surgery to deal with what is a mental problem.

## **Conclusion**

If ENDA is signed into law, the homosexual/transgender movement will have won a major victory. They will have accomplished a long-term goal of having “sexual orientation” and “gender identity” given federally-protected minority status under the law.

Once this happens, efforts to oppose the homosexual agenda will be considered a violation of federal law.

More serious consequences will ensue. Christians and other religious faiths will be forced to violate their firmly-held religious beliefs to bend to the will of homosexual and transgender activists. Freedom of religion will be suppressed by ruthless homosexual/transgender activists.

Freedom of speech will be targeted as well. Once homosexuals and gender confused individuals have minority status under federal law, criticism of their behaviors will be considered discriminatory and will be punished. The efforts to pass “hate crime” legislation will increase. So-called “Hate speech” will be considered outside the protection of the First Amendment. Homosexuals are arguing that “hate speech,” (anything critical of homosexuality) provokes “hate crimes” and thus can be banned.

**What homosexuals are actually targeting is “truth speech”** from those who understand the dangers of homosexual sex and the impact that this behavior will have on children and the future of families in America. Transgender activists are, likewise, smearing those who tell the truth about their mental condition as being “transphobic.”

**Congress, in the words of [Dr. Paul McHugh](#), is collaborating with madness by considering passage of ENDA.**

Neither homosexual behaviors nor the mental condition of gender confused individuals should have federally-protected minority status. ENDA and all other bills pushed by homosexual-transgender activists should be voted down in Congress or vetoed by President Bush.

---

**Additional Reading:**

[\*The Agenda: The Homosexual Plan To Change America\* by Rev. Louis P. Sheldon](#)

[A Gender Identity Disorder Goes Mainstream](#)

[What Is A Sexual Orientation?](#)

[Summary Of ‘Peeing In Peace’](#)

[Intersex Report](#)

[Homosexuality 101](#)

[TVC Legislative Analysis of HR2232](#)

[TVC Special Report S. 1105](#)

[Surgical Sex](#) by Dr. Paul McHugh

[The Overhauling Of Straight America](#)