



## ENDA Hurts Kids: The Impact on Classrooms

### OVERVIEW IN BRIEF:

S. 815/H.R. 1755, the Employment Non-Discrimination Act (ENDA), is radical legislation that hurts kids and forces schools to hire or retain transgendered teachers in every school district in America -- granting them protected minority status. ENDA is also a clear violation of the religious liberties and rights of conscience of Christian business owners.

Unfortunately, there are instances dotted across America where school systems have not only tossed aside parental concerns about transgender teachers making the transition from male to female (or vice versa), they have forced both parents and students to recognize this transition as normal.

Congressional proponents have cloaked ENDA as a non-controversial civil rights bill.

They are wrong.

Most Members of Congress have no clue how bad this bill is. Even more have no idea that ENDA will force employers to hire transgendered as a “protected class” -- much less what it will do to religious liberty and to children if signed into law. **Children need a psychologically stable and emotionally secure environment in which to learn** -- ENDA deliberately threatens this.

### QUICK FACTS:

- ENDA will have a chilling effect on free speech as well as religious liberty, as those with conscience objections or religious reservations will be under the threat of lawsuits in order to accommodate this new “protected class” of transgendered.
- Under ENDA, federal, state, and local governments, as well as businesses with 15 or more employees will be forced to employ and affirm the lifestyles of individuals undergoing surgery to affect a “sex change” -- including public school teachers.
- Currently, 34 states do not make "gender identity" into a protected minority under law. Under ENDA, those 34 states' laws will be overruled. ENDA will make transgendered men and women into a federally protected minority group.
- Young students in some states are already being confused by transgender teachers. If ENDA passes, students and children in daycare centers all across the nation will be subjected to individuals experimenting with their gender identities.
- ENDA is not about ending the stigmatization of persons. Rather, it is removing the right to exercise moral judgment about the actions of those persons.
- **Any comparison of ENDA with civil rights is simply an effort to stigmatize public debate**, aimed specifically at those who criticize the propriety of individual sexual preferences manifesting themselves through federal regulations and social policy.
- Christian businesses, Christian camps, Christian counselors, Christian child care, Christian bookstores, and Christian TV and radio stations will be forced by ENDA to hire individuals whose behavior is in violation of their religious tenets.

S. 815/ H.R. 1755, **The Employment Non-Discrimination Act (ENDA)** has been the crown jewel of the Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ)

movement, with the bill hovering quietly in the halls of Congress since the 1970s. Though the thrust of the legislation has seen different forms, ENDA is but the latest in

a series of attempts to push this radical legislation through Congress.

Yet in 2010, President Obama saw fit to make a recess appointment to the Equal Employment Opportunity Commission in the person of Chai Feldblum, a noted homosexual activist and the brainchild for ENDA. ENDA was written by Feldblum. The goal of Feldblum's legislation is to use the power of the federal government to promote every type of relationship as equal to traditional marriage, including **"polyamorous" relationships** (those involving three or more sexual partners). Feldblum states:

*"I, for one, am not sure whether marriage is a normatively good institution. I have moved away from the belief that marriage is clearly the best normative way to structure intimate relationships."*

Feldblum has also gone on the record as believing that **sexual liberty trumps religious liberty**, if for no other reason than religious liberty -- a constitutionally guaranteed freedom -- interferes with Feldblum's stated goals of using the government as a hammer to drive home ENDA's agenda

*"Sexual liberty should win in most cases. There can be a conflict between religious liberty and sexual liberty, but in almost all cases the sexual liberty should win because that's the only way that the dignity of gay people can be affirmed in any realistic manner."*

Kate Kendell, the executive director for the National Center for Lesbian Rights recently exclaimed, "It is long past time for federal law to provide basic workplace protections for LGBTQ people, and we are gratified that this important legislation has been re-introduced with strong bipartisan support."<sup>1</sup>

The truth of the matter is that ENDA does not have strong bipartisan support. Republican support for the bill is very weak as evidenced by ENDA only receiving one Republican lead sponsor in the U.S. House and two in the U.S. Senate.

Additionally, while proponents of ENDA claim there is nothing controversial about ENDA, the reality is that ENDA is highly controversial and is bad for religious liberty, gives gender identity minority status and hurts our nation's children. **ENDA causes so much angst that even when Nancy Pelosi was House Speaker, they feared bringing ENDA up for a vote.**

And with good reason.

**“There can be a conflict between religious liberty and sexual liberty, but in almost all cases the sexual liberty should win.”**

**-- Georgetown Law Professor Chai Feldblum**  
Equal Employee Opportunity Commission appointee  
May 15, 2006

Source: [The Weekly Standard](#)

## What is Gender Identity?

One of the biggest problems with ENDA is the language regarding gender identity. According to ENDA, gender identity is defined 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."*

In other words, according to ENDA, an individual is free to act and dress in accord with whatever gender the individual wishes, on any given day, regardless of the individual's biological reality.

This definition of gender identity is highly problematic on many different levels. For one thing, one's gender identity is not necessarily a fixed and constant matter. Gender Spectrum, an organization that provides "consultation, training and events designed to help families, educators, professionals, and organizations understand and address the concepts of gender identity and expression," says that gender identity is sometimes fluid. According to their document on terms:<sup>2</sup>

**Gender fluidity** conveys a wider, more flexible range of gender expression, with interests and behaviors that may change, even from day to day.

Another LGBTQ organization<sup>3</sup> identifies a variant of gender identity called "bi-gender." According to this group:

**Bi-gender** is a tendency to move between masculine and feminine gender-typed behavior depending on context, expressing a distinctly male persona and a distinctly female persona. It is recognized by the APA as a subset of the transgendered group ... Although there are

<sup>1</sup> <http://www.advocate.com/politics/2013/04/25/enda-re-introduced-oregon-principal-loses-job-being-gay>

<sup>2</sup> <https://www.genderspectrum.org/images/stories/08%20a%20word%20about%20ords.gender.pdf>

<sup>3</sup> <http://transpride.tumblr.com/post/969671220>

*patterns; the only firm characteristic is the sense of dual gender.*

Then there's this revealing comment by way of liberal organization **ThinkProgress**<sup>4</sup>, who counsels readers on the risks of complete transgender transformation under the knife:

***Many transpeople never undergo such procedures, either because they are too expensive, because they do not want to lose their procreative ability, or because it simply isn't an important change for them to make to find authenticity in their identities.***

In other words, under ENDA, employers will have to figure out how to deal with the ever-changing behavior of an employee that shows up to work dressed and behaving as a man one day and dressing and behaving as a woman the next. This very idea, if enshrined in law, would suggest that one's biological reality as identifiable by their genetic makeup is subject to the individual's desired reality. So, if a genetically identifiable male decides that he is actually a woman, then ENDA would dictate that the man be treated in accordance with his desired reality, regardless of what his biological reality indicates.

## Washington State's She-Male Saunas

The issue of catering to the whims of individuals based upon their desired state of being when it doesn't conform to their biological reality creates problems in the use of public facilities, because *gender identity* does not mean conformity with *biological reality*, a man dressed as a woman must be accepted according to his/her desired so-called gender expression.

If that is the case, then men who think they are women will seek the use of facilities reserved only for women, such as bathrooms, locker rooms, changing rooms, and even showers. This is already a problem.

In October of 2012, a transgender individual leveled charges of discrimination because the man (the individual is a man self-identifying as a woman) was forced to leave the woman's sauna he was using in the recreation facility of Evergreen State College in Washington State.

According to a November 4 article by LGBTQ Nation:<sup>5</sup>

*Angry parents have contacted police after a young girl allegedly saw the transgender student naked*



*inside the locker room; the locker room is shared with the Capital High School swim club and a children's swim academy, along with the students at Evergreen.*

*According to parents, children as young as 6-years-old use the locker room.*

*"(A mother) reported her daughter was upset because she observed a person at the women's locker room naked and displaying male genitalia," said a police report filed in September by the mother of a 17-year-old girl.*

*The college said it has installed privacy curtains, but does not currently have plans to change its policy.*

*"The college has to follow state law," Evergreen spokesman Jason Wettstein told KOMO-TV. "The college cannot discriminate based on the basis of gender identity. Gender identity is one of the protected things in discrimination law in this state."*

The transsexual told KIRV TV

*"This is not 1959 Alabama. We don't call the police for drinking from the wrong water fountain."<sup>6</sup>*

Clearly, from the transsexual community's perspective, no limit on transgender behavior is acceptable. The transsexual in question here dared to compare the shock and outrage felt by both students and parents as comparable to Alabama in 1959 reacting to shared facilities between blacks and whites.

<sup>4</sup> <http://thinkprogress.org/lgbt/2013/06/14/2161991/transgender-social-security/>

<sup>5</sup> <http://www.lgbtqnation.com/2012/11/college-under-fire-for-allowing-transgender-female-to-use-womens-locker-room/>

<sup>6</sup> <http://www.kirotv.com/news/news/transgender-woman-told-leave-womens-locker-room/nSWT4/>

## DID YOU KNOW:

In 2013, the **American Psychiatric Association (APA) replaced science and medicine with political activism?** Until recently, the APA understood the condition under which an individual identifies with a gender that does not reflect their own biological reality to be a psychological disorder.

The brave men and women who stood up to fire hoses and police night sticks in Alabama weren't playing some head game in which they imagined that they were black. To compare this transgender "I think I am another gender therefore I am" phenomena to the brave and very real sacrifice of those martyred for civil rights is dishonest. It attempts to elevate "transgenderism" at the expense of a truly courageous chapter in American history.

### Sneaky Strategy

In order to pass ENDA, supporters are following a strategy long employed by the LGBTQ organization Human Rights Campaign (HRC).

In Delaware, HRC and their LGBTQ allies deliberately ignored the serious issues of gender identity and the use of public facilities. According to a June 2013 article in LGBT Weekly,<sup>7</sup> HRC employed something of a bait-and-switch strategy, using another piece of legislation as a "bright shiny object" in order to hide the real intent of the gender identity bill from public scrutiny.

In fact, according to the article, **their tactics included "keeping the gender identity bill as much as possible below the radar" and trans people out of sight which they felt was essential to passage of the bill.**

*"By staying low key, the coalition working on the gender identity bill didn't have to deal with the "bathroom bill" meme. To sate the arguments by the concerns some legislators had about facilities with unavoidable nudity – such as locker rooms – the bill spelled out that trans people could not be required to use a facility that conflicted with their gender identities."*

Even though ENDA specifically states that "Nothing in this Act shall be construed to require the construction of new or additional facilities," all this does is punt the issue down the field to be dealt with after the bill is passed, at which point the law will have to determine how these matters are to be handled in order to bring employers into compliance with

the law. Given the fact that gender identity is not a fixed notion -- as gender fluidity allows for an individual to change their gender identity as frequently as from day to day -- the situation becomes even more complicated.

**But the practical applications of ENDA are just the beginning of the problem.** The latest version of ENDA purports to include an exemption for religious organizations; however this exemption is full of holes and leaves the door open to expensive lawsuits and inconsistent application of law.

### Not A Real Religious Exemption

For instance, Section 6 of ENDA, the section on exemptions for religious organizations, cites Title VII of the Civil Rights Act of 1964, but title VII does not identify what constitutes a "religious corporation, association, educational institution or society."

Even though courts have examined relevant legislative history for guidance, because these statutory definitions do not exist, different courts have come to different conclusions as to what constitutes a "religious corporation, association, educational institution or society." The result is that employers very often find that they are unable to successfully defend themselves on the grounds that they are exempt as a religious organization. Furthermore, this unpredictability would place a significant burden on these faith-based entities to determine whether they would need to comply with ENDA and offer equal employment opportunities to homosexuals, bisexuals, transgendered and bi-gender individuals even though doing so would be contrary to their religious convictions and the mission of their enterprise.

ENDA is even more damaging to religion-based educational institutions because of how extremely difficult it is to predict whether such institutions would be exempt unless it receives most of its financial support from a recognized religious organization or is clearly under the direct management or control of a recognized religious organization. Faith-based educational institutions would be subject to suit under ENDA unless they could demonstrate to a court that there is "substantial" ownership, control,

<sup>7</sup> <http://lgbtweekly.com/2013/06/27/the-hrc-working-on-trans-equality/>

management or support by a recognized religious organization. Christian schools or universities that are not controlled, managed, owned or supported by a denomination, religious corporation, association or society likely would not be protected under the religious exemption.

At a bare minimum, these faith-based organizations, in most instances, would face the burden of protracted litigation and expensive, time-consuming discovery before they would have the opportunity to demonstrate to a court that they are exempt from ENDA as a religious corporation, association or society.

While the religious exemption section states its applicability to religious organizations, the fact of the matter is that there is no exemption for religious individuals. ENDA, by its very nature, destroys the religious liberties of individuals and by extension could wreak havoc in the workplace.

There are a wide variety of circumstances under which an employer could be held liable for discrimination because of an employee's actual or perceived sexual orientation. For instance, if co-workers or even supervisors or other management personnel express disapproval or an otherwise negative opinion regarding the LGBT lifestyle(s) based on their personal religious beliefs, such evidence could be used as evidence of pretext and to argue that the workplace was permeated with anti-LGBT animus. Furthermore, any evidence that a decision maker has a private religious belief that LGBT behavior is wrong or immoral could lead to sanctions identified in ENDA.

## Punished for Not Affirming LGBTQ

In fact, not affirming the LGBT lifestyle by remaining silent could be construed as negative bias against LGBT individuals.

On May 20, 2013, a Department of Justice document titled, "LGBT Inclusion at Work: The 7 Habits of Highly Effective Managers,"<sup>8</sup> was leaked to the public. Specifically, the document tells DOJ managers, "DON'T judge or remain silent. Silence will be interpreted as disapproval." If the Department of Justice is already identifying silence as disapproval, then it stands to reason that silence will be argued as disapproval in the courts, and thereby used as evidence by LGBT individuals as a form of discrimination in the workplace. The document also commands DOJ managers to attend LGBT events and display LGBT-affirming stickers and literature in order to identify the workplace as "safe." What this means is that employers and co-workers will have their religious liberties completely

trampled and destroyed because they could be required, under law, to affirm the lifestyle activities of LGBT individuals.

The truth is, however, that the LGBTQ lobby will not be satisfied with any sort of religious exemption at all, as their aim is to obtain legal access to any and all places of employment, regardless of religious affiliation. For instance, on April 25, 2013, Lisa Mottet, Transgender Civil Rights Project Director for the National Gay and Lesbian Taskforce said,<sup>9</sup>

*"Are there other changes we would like to see to ENDA? Sure, there are a few places we would be interested in making other improvements. The most notable one is the religious exemption ... The way ENDA's religious exemption is worded right now, it might be interpreted the way we want. But it could sure use some clarification."*

In a joint letter<sup>10</sup> signed by the ACLU, Lambda Legal, the National Center for Lesbian Rights, and the Transgender Law Center, and issued the same day as Mottet's article, these organizations expressed "grave concerns" over ENDA's religious exemptions:

*"While we applaud the progress that has been made, we stand united in expressing very grave concerns with the religious exemptions in ENDA. It could provide religiously affiliated organizations – far beyond houses of worship – with a blank check to engage in employment discrimination against LGBT people. Some courts have said that even hospitals and universities may be able to claim the exemption; thus it is possible that a religiously affiliated hospital could fire a transgender doctor or a religiously affiliated university could terminate a gay groundskeeper. It gives a stamp of legitimacy to LGBT discrimination that our civil rights laws have never given to discrimination based upon an individual's race, sex, national origin, age or disability. **This sweeping, unprecedented exemption undermines the core goal of ENDA** by leaving too many jobs, and LGBT workers, outside the scope of its protections.*

*We are fully committed to continuing to work for the passage of ENDA and an appropriate exemption for religious organizations. We remain hopeful that our allies in Congress will agree that singling out LGBT people alone for **this kind of unequal and unfair exemption to otherwise applicable non-***

<sup>8</sup> [http://libertycounsel.com/wp-content/uploads/2013/05/LGBT\\_tips\\_for\\_managers.pdf](http://libertycounsel.com/wp-content/uploads/2013/05/LGBT_tips_for_managers.pdf)

<sup>9</sup> <http://thetaskforceblog.org/2013/04/25/5-new-things-you-need-to-know-about-enda/>

<sup>10</sup> <http://www.aclu.org/lgbt-rights/employment-non-discrimination-act-statement>

***discrimination laws has no place in this historic legislation.”***

It is already clear that the religious exemptions do not adequately protect religious institutions and completely violates the religious liberties of individuals, but even those exemptions are too much for LGBT lobbyists.

Should ENDA pass, organizations like ACLU, Lambda Legal, the National Center for Lesbian Rights, and the Transgender Law Center and many others will stop at nothing to ensure that even religious institutions will be required by law to employ and even affirm LGBT lifestyles.

## **ENDA Hurts Our Nation’s Children**

The truth is **ENDA harms our nation’s children, whose education and well-being should be more important than the unhealthy psychological condition of a very small group of individuals.**

Currently, 34 states do not make "gender identity" into a protected minority under law. **If ENDA passes, it will override the laws of those 34 states, and every school district must comply. Every school administrator will be forbidden by law from reassigning or not hiring any she-male or other psychologically unhealthy teacher, as this would be considered "discrimination" under ENDA.**

**Every state will be forced to make bi-gender, gender fluid, transgender, genderqueer, and she-males (male-female hybrids) into protected classes.**

ENDA is not fair to children. Students should not be forced into such an environment where they are coerced to accept or affirm a teacher’s gender identity issues.

In a California incident in 2008, students and parents were outraged to learn that a female music teacher at Foxboro Elementary School underwent surgery to become a man. Parents were not informed about this so-called sex change in advance so they could remove their children from her class. In addition, the kids were required to refer to her as “Mister.”

The school district refused to notify parents about this she-male’s so-called sex change because of “privacy laws” – that is, federal HIPPA laws. By using the privacy laws within HIPPA as a shield, transgenders are seeking to transform laws designed to protect working mothers and those with pre-existing conditions into something HIPPA was never intended to do -- push the homosexual agenda.

## **34 States Affected by ENDA**

Alabama	Alaska	Arizona	Arkansas
Delaware	Florida	Georgia	Idaho
Indiana	Kansas	Kentucky	Louisiana
Maryland	Michigan	Mississippi	Missouri
Montana	Nebraska	New Hampshire	New York
North Carolina	North Dakota	Ohio	Oklahoma
Pennsylvania	South Carolina	South Dakota	Tennessee
Texas	Utah	Virginia	West Virginia
	Wisconsin	Wyoming	

When school districts hide behind HIPPA in order to introduce transgenders into the classroom, the alarms start going off in churches and families across the United States.

In yet another incident, students at a high school in Batavia, New York faced this in 2006. The earth sciences teacher decided he was a woman and began wearing dresses to class. Students and parents who thought this was abnormal were vilified by school officials. Students were forbidden from opting out of his class. In addition, the students had to refer to him as “Mrs.”

In each case, a psychologically disturbed individual’s gender choice was protected, while the rights of the children and parents were violated.

Not only were these classrooms sexualized, they were done so in direct violation of the rights of the parents themselves to determine the best environment in which their children ought to be educated.

As parents, we know that our children deserve a psychologically stable and emotionally secure environment in which to learn. ENDA threatens that.

The ramifications of ENDA are devastating. ENDA hurts kids, infringes upon the rights of parents, and experiments dangerously with the well-being of millions of children who would now be forced to be exposed to transgenderism and transsexuality.

ENDA will cause untold damage to employers who will be forced to spend a large amount of time and money in order to try to maintain compliance with the law. And worst of all, ENDA will demolish the last vestiges of religious liberty left in this country.

With ENDA all that changes, as schoolchildren will now be forced to learn about and ask questions about transgenders and transsexuals who bring their "gender identity" issues into our classrooms and businesses -- all without the discretion of a parent’s personal values to interpose as a moral guide.