Rush	Slaughter	Velázquez
Ryan (OH)	Smith (WA)	Visclosky
Salazar	Snyder	Walz (MN)
Sánchez, Linda T.	Solis	Wasserman Schultz
Sanchez, Loretta	Space	Waters
Sarbanes	Spratt	Watson
Schakowsky	Stark	Watt
Schiff	Stupak	Waxman
Schwartz	Sutton	Weiner
Scott (GA)	Tauscher	Welch (VT)
Scott (VA)	Thompson (CA)	Wexler
Serrano	Thompson (MS)	Wilson (OH)
Sestak	Tierney	Woolsey
Shea-Porter	Towns	Wu
Sherman	Tsongas	Wynn
Sires	Udall (CO)	Yarmuth
Skelton	Udall (NM)	
	Van Hollen	

NAYS—205

Aderholt	Frelinghuysen	Neugebauer
Akin	Gallegly	Nunes
Alexander	Garrett (NJ)	Pearce
Bachmann	Gerlach	Pence
Bachus	Gilchrest	Peterson (PA)
Baker	Gingrey	Petri
Barrett (SC)	Gohmert	Pickering
Barrow	Goode	Pitts
Bartlett (MD)	Goodlatte	Platts
Barton (TX)	Granger	Poe
Biggert	Graves	Porter
Bilbray	Hall (TX)	Price (GA)
Bilirakis	Hastert	Pryce (OH)
Bishop (UT)	Hastings (WA)	Putnam
Blackburn	Hayes	Radanovich
Blunt	Heller	Ramstad
Boehner	Hensarling	Regula
Bonner	Herger	Rehberg
Bono	Hill	Reichert
Boozman	Hobson	Renzi
Boren	Hoekstra	Rogers (AL)
Boustany	Hulshof	Rogers (KY)
Boyd (FL)	Hunter	Rogers (MI)
Brady (TX)	Inglis (SC)	Rohrabacher
Broun (GA)	Issa	Ros-Lehtinen
Brown (SC)	Johnson (IL)	Roskam
Brown-Waite, Ginny	Johnson, Sam	Ross
Buchanan	Jones (NC)	Royce
Burgess	Jordan	Ryan (WI)
Burton (IN)	Keller	Sali
Calvert	King (IA)	Saxton
Camp (MI)	King (NY)	Schmidt
Campbell (CA)	Kingston	Sensenbrenner
Cannon	Kirk	Sessions
Cantor	Kline (MN)	Shadegg
Capito	Knollenberg	Shays
Carter	Kuhl (NY)	Shimkus
Castle	Lamborn	Shuler
Chabot	Lampson	Shuster
Coble	Latham	Simpson
Cole (OK)	LaTourette	Smith (NE)
Conaway	Lewis (CA)	Smith (NJ)
Crenshaw	Lewis (KY)	Smith (TX)
Culberson	Linder	Souder
Davis, David	LoBiondo	Stearns
Davis, Lincoln	Lucas	Sullivan
Davis, Tom	Lungren, Daniel E.	Tancredo
Deal (GA)	Mack	Tanner
Dent	Manzullo	Taylor
Diaz-Balart, L.	Marchant	Terry
Diaz-Balart, M.	Marshall	Thornberry
Donnelly	McCarthy (CA)	Tiahrt
Doolittle	McCaul (TX)	Tiberi
Drake	McCotter	Turner
Dreier	McCrery	Upton
Duncan	McHenry	Walberg
Ehlers	McHugh	Walden (OR)
Emerson	McIntyre	Walsh (NY)
English (PA)	McKeon	Wamp
Everett	McMorris Rodgers	Weldon (FL)
Fallin	Mica	Weller
Feeney	Miller (FL)	Whitfield
Ferguson	Miller (MI)	Wicker
Flake	Miller, Gary	Wilson (NM)
Forbes	Moran (KS)	Wilson (SC)
Fortenberry	Murphy, Tim	Wolf
Fossella	Musgrave	Young (AK)
Foxx	Myrick	Young (FL)
Franks (AZ)		

NOT VOTING—10

Buyer	Jindal	Reynolds
Carson	LaHood	Westmoreland
Cubin	Oberstar	
Davis (KY)	Paul	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1459

Mr. DONNELLY changed his vote from ''yea'' to ''nay.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GEORGE MILLER of California. Mr. Speaker, I ask unanimous consent that Members have 5 legislative days to revise and extend their remarks and insert extraneous material on H.R. 3685.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

EMPLOYMENT NON-DISCRIMINATION ACT OF 2007

The SPEAKER pro tempore. Pursuant to House Resolution 793 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3685.

□ 1500

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3685) to prohibit employment discrimination on the basis of sexual orientation, with Mrs. TAUSCHER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered read the first time.

The gentleman from California (Mr. GEORGE MILLER) and the gentleman from California (Mr. MCKEON) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. I thank the Chair, and I yield myself 3 minutes.

Madam Chairman and Members of the House, it is disgraceful but true that in much of the United States, it is perfectly legal for employers to fire workers simply on the basis of their sexual orientation.

I am proud that today the House will vote on legislation to end this discrimination. It has no place in American society.

The legislation we are considering was first introduced in the House in 1975, more than 30 years ago, and in the last three decades, gay, lesbian, and bisexual Americans have waged a courageous campaign for their workplace rights. I regret that they have had to wait so long for this vote, but I am pleased that this historic day has finally arrived.

The Employment Non-Discrimination Act ensures that employment decisions are based upon merit and performance and not prejudice. Federal law and the laws of 30 States permit employers to discriminate against employees based solely on their sexual orientation. In those 30 States, employers can fire, refuse to hire, demote, or refuse to promote employees on the basis of sexual orientation alone.

Earlier this year, under Chairman ANDREWS, the Health, Employment, Labor and Pensions Subcommittee heard testimony from Michael Carney, a highly decorated police officer. Officer Carney was initially denied the opportunity to return to his job with the Springfield, Massachusetts Police Department because he is gay. Fortunately, Massachusetts is not one of the 30 States to deny these basic rights to gay workers, and Officer Carney was eventually able to return to his job.

But that was not the case for Brooke Waites, who testified at the hearing. Ms. Waites was fired from her job in telecommunications after her employer discovered that she was a lesbian. Since the State of Texas allows employers to fire workers based on sexual orientation, Ms. Waites had no recourse. She could not get her job back.

It's hard to believe that fully qualified, capable individuals are being denied employment or fired from their jobs for these completely nonwork-related reasons. This is profoundly unfair and certainly un-American. Unless we act to outlaw this discrimination, millions of American workers will continue to live with the legitimate fear that they could be fired or denied a job and wind up unable to provide for themselves and their families. That is why it is essential that this Congress act to protect the rights of all workers, regardless of their sexual orientation.

The Employment Non-Discrimination Act extends employment nondiscrimination protections to gay, lesbian, bisexual, and heterosexual people. It prohibits employers, employment agencies, and labor unions from using an individual's sexual orientation as a basis for employment decisions such as hiring and firing, promotion, or compensation. The bill prohibits employers from subjecting an individual to different standards of treatment based upon the individual's sexual orientation. The bill does not apply to businesses with less than 15 workers, private membership clubs, or the U.S. Armed Forces. And it does not apply to religious schools or other religious organizations.

I urge my colleagues to support this legislation.

Madam Chairman, I reserve the balance of my time.

Mr. MCKEON. Madam Chairman, I yield myself such time as I may consume.

I rise in opposition to H.R. 3685, a proposal fraught with burdensome mandates, litigation traps, and constitutional concerns.

This bill purports to prohibit discrimination in the workplace, a goal to which we are all committed. However, the reality of this bill's consequences does not match the rhetoric of its supporters.

This bill departs from the longstanding framework and structure of the Civil Rights Act of 1964 by establishing stand-alone protections exclusively on the basis of sexual orientation. This new protected class would be afforded protections on the basis of vague and highly subjective measures that will cause confusion in the workplace and will result in costly litigation.

For example, the bill extends protections on the basis of ''perceived'' sexual orientation, a characteristic that is subjective by its very definition. How would an employer credibly refute such an accusation? This proposal could result in the exact opposite effect its supporters intend by creating new pressures on employers to consider and even document their employees' sexual orientation, actual or how it is perceived, in order to guard against litigation. This is a highly inappropriate infringement on employee privacy and would actually increase the consideration of such characteristics in the workplace. Also, any argument that the term ''perceived'' is already included in existing civil rights statutes is simply not true. This is a new term, applied to a new situation, which will increase uncertainty and litigation.

Even more broadly, this bill encroaches on two fundamental principles we hold dear: the free exercise of religion and preservation of the institution of marriage. H.R. 3685 is inconsistent with the longstanding religious exemption contained in title VII of the Civil Rights Act. The bill adds additional layers of complexity in determining whether a religious organization is covered, setting up highly intrusive Federal interference with the free expression of religion.

We understand an amendment is to be offered later today that attempts to move closer to existing title VII provisions. However, it remains unclear whether this amendment, which has been rewritten repeatedly, does enough to protect faith-based institutions.

On the issue of marriage, the majority adds a provision that prevents employers from considering marital status as a job qualification, even though they have not provided any evidence that such a limitation is necessary. We are left to speculate that the real reason for this provision could be an attempt to undermine the fundamental right of States to define, protect, and preserve the institution of marriage. The bill establishes new limitations on hiring practices only in those States that have prohibited same-sex marriage.

By limiting these new restrictions to States that have defined marriage as an institution between one man and one woman, the bill has essentially identified traditional marriage as a form of discrimination. This bill, then, could become the first step in a radical effort to undermine State marriage laws.

Madam Chairman, this bill has been introduced in various forms and fashions for some three decades. It has been introduced in the House three separate times this year alone. This is evidence of the inherent complexity that comes with such a far-reaching proposal.

Later today, we will consider an amendment that seeks to broaden these new protections even further, to purportedly cover discrimination based on gender identity, despite the fact that this provision was stripped from the bill before it was taken up in committee. There are serious practical and legal concerns with this amendment, and many questions remain unresolved. This is an effort to make an end-run around the legislative process, considering the full scope of this proposal only when it is convenient for supporters.

The bill before us is a sweeping departure from longstanding civil rights law, and its consequences will be far-reaching. A number of valid questions have been raised about how this bill will align with existing State and Federal anti-discrimination policies and those policies that have been voluntarily adopted by employers. These questions remain unanswered.

Because of that, I must oppose this bill and encourage my colleagues to do the same.

Madam Chairman, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Madam Chairman, I yield 3 minutes to the gentleman from New Jersey (Mr. ANDREWS), the Chair of the subcommittee that did a marvelous job in handling this legislation.

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. I thank my chairman and friend for yielding.

Madam Chairman, we very often hear people say in this House that they oppose discrimination. Today there's a chance to do something more than just say that you oppose discrimination; you can vote against it.

I listened to the questions raised by my friend from California, the ranking member of the full committee, and I would like to address them.

My friend says that there are burdensome new mandates imposed by this bill. That is not the case. If an employer has 15 or fewer employees, they are not covered by it at all. And there's really nothing burdensome about the idea that you can't refuse to hire or fire or mistreat someone because of their sexual orientation. That's no more of a burden than having the same rules based on race or religion or nationality.

My friend says there are highly subjective measures, and he points to the use of the word ''perceived'' discrimination. He says that when we ban discrimination based on perception of sexual orientation, it creates too much confusion. The reality is that precisely the same legal concept has been part of our Federal law since 1989 under the Americans with Disabilities Act.

Listen to this. I know the word ''perceived'' is not in the ADA, but the legal concept is the same. One Federal judge in New York heard a case, and that judge says that the case was based on ''harassment and discrimination based on her perceived disability.'' I'm not sure this judge is qualified, but most of the Senate does because it was Judge Michael Mukasey, who is now the President's nominee to be Attorney General of the United States. This doesn't create new confusion; it simply restates an existing principle.

On free exercise of religion, the gentleman from California is correct. There was some debate about the proper scope of the free exercise provisions in the underlying bill. Mr. MILLER's amendment, which we will hear shortly, imports precisely the same standard that has existed for the exercise of religion for the last 42 years under title VII.

The gentleman raises questions about marriage and says this is a radical attempt or a first step in a radical attempt to redefine marriage. Mr. MILLER's amendment will make it clear that precisely the opposite is true. Mr. MILLER's amendment will take the language that was approved by the House, signed by President Clinton, in the Defense of Marriage Act, which defines for Federal law purposes marriage as one man and one woman and import it into this bill.

Finally, the gentleman says this is a sweeping departure from civil rights laws. Nothing could be further from the truth. This is not a departure from civil rights laws. It's an inclusion of millions of Americans who should have been included for a very long time. It's a question of simple fairness. It's a question that says if you are a computer programmer or a bus driver or a carpenter, your job situation should be based on how well you drive the bus or how well you can program the computer, not on your sexual orientation.

□ 1515

Mr. MCKEON. At this time, Madam Chair, I'm happy to yield 5 minutes to the ranking member of the subcommittee involved, the gentleman from Minnesota, Representative KLINE.

Mr. KLINE of Minnesota. I thank my colleague, the gentleman from California, for yielding the time.

Madam Chair, I rise today in opposition to the Employment Non-Discrimination Act, H.R. 3685.

As the ranking member of the Health, Employment, Labor and Pension Subcommittee, I have reviewed this legislation in several different forms over the last several weeks. I've participated in debates and conversations that have brought this bill to the

floor, and I have to report that this legislation is still flawed.

The bill before us is drafted in such a way that it creates confusion and uncertainty. My colleagues offered a number of amendments to correct the inherent problems in this bill. Unfortunately, one critical amendment offered by Mr. SOUDER removing the word ''perceived'' was not accepted by the majority. My colleague has already introduced that point of confusion; I would like to expand on it.

This bill, and I quote, ''prohibits employers from discriminating against an individual because of an individual's actual or perceived sexual orientation.'' What does that mean, ''perceived sexual orientation''? We do not know because the bill fails to provide a definition. This raises a number of practical and legal concerns. The term ''perceived'' is overly broad, vague, and will inevitably lead to increased litigation, lots of increased litigation.

We cannot abdicate our constitutional duty by knowingly creating a law that is so vague that the courts must necessarily determine a definition. This is, frankly, a trial lawyer's dream. I would point out that in the course of our hearings one of our colleagues did express faith in ''Attorney World'' to clarify this issue. Well, it is kind of funny; I just don't think that's a theme park that we want to visit.

Employers may have difficulty in identifying noninherent characteristics of a person but could still be liable. Under the statute, employers would be accountable to prove that they did not make an employment decision based on either their own perception of an individual's sexual orientation or on that person's perception of themselves. I can see why ''Attorney World'' could be called upon here. Employers would find themselves in the unenviable position of defending themselves in lawsuits by proving a negative, that they did not perceive the individual to be part of a newly protected class.

Further, the term ''perceived'' does not appear in any other civil rights legislation. Let me be clear, we are not talking about the definition of gays, lesbians and bisexuals; we are talking about those individuals that may be ''perceived'' to be such. The Civil Rights Act protects individuals on the basis of race, color, religion, sex or national origin. Nowhere do we see the term ''perceived.''

Madam Chair, those who favor this bill presented on the floor today are motivated only by the end goals of this legislation and are failing to recognize the difficulty presented by vague terms and loose definitions. We are left with a bill that is filled with confusion and uncertainty.

I would ask that my colleagues carefully consider the inherent problems in enforcement of this legislation and vote against H.R. 3685.

Mr. GEORGE MILLER of California. Madam Chair, I yield 3 minutes to the gentleman from Massachusetts (Mr. FRANK), one of the pioneers of this legislation.

Mr. FRANK of Massachusetts. I am grateful for the obscurity of the opposition's argument.

I first filed a bill 35 years ago to say that you couldn't fire someone because he was gay or she was a lesbian, and at the time people were very straightforward about their opposition. Times have changed. It is no longer fashionable to say that you ought to be able to discriminate against someone based on his or her sexual orientation, so we now get other arguments.

Let me say this: I have heard a number of people raise this argument that the real problem is that it says ''perceived.'' I do not believe that a single one of them would change his or her position if we were to remove that. They are opposed to the notion that gay men and lesbians, people like me, should be allowed to prove themselves in the workplace without discrimination, but that's not a good argument to make. So we get ''perceived'' as the argument, and it is not a serious one.

In the first place, it's arguing about having to defend a negative; it's wrong, both legally and factually. The burden of proof is on the complainant. No employer has to prove a negative. It is the complainant who has the hard job of proving the positive. That's why historically statutes like this, every time we try to protect some people against discrimination, we go through two phases. First, beforehand, we get the most absurd exaggerations of the chaotic impact it will have. After the fact, they are rarely, unfortunately, enforced very vigorously. And by the way, if this ''perceived,'' if this were a problem, we would have examples of it. Nineteen States have laws like this on the books, and how many examples have you had of the poor, befuddled employer who is so unable to perceive that he is put on the dock? None. This is a made-up issue made up by people who don't want to confront the real issue.

And here is the real issue: there are millions of our fellow citizens, Madam Chair, gay or lesbian, who live in fear that they could be fired because they live in States where there is no such protection. And we have had real examples of that. And what we say today is, no, you can't be fired because of that.

Why is ''perceived'' in there? Because otherwise you're opening a big loophole. By the way, this notion of ''perceived,'' it is so unusual that it's in the American Disabilities Act and has been interpreted by several judges, Justice Alito, Judge Mukasey and Poser, three radicals who have enforced this.

So, let's not hide behind this semantic. That is not the genuine motivation for opposition to this bill on the part of anyone in this House. What they are saying is, we don't want to protect working men and women from this.

Madam Chair, I was accused in the last campaign by a former Member of this body of pursuing a radical homosexual agenda. Well, here it is in the House today, working, getting a job. That's what we are asking for, the right for people to go to work and be judged solely on how they work. Let's get rid of the semantic obscurantism.

Mr. MCKEON. I am happy now to yield 3 minutes to a member of the committee, the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. I thank our distinguished ranking member.

''Perceived'' is, in fact, a real problem because many businesses simply won't go to court. Obviously they will negotiate or not bother with it. That's the type of intimidation tactics that occur.

I am against the underlying bill. I have never hidden that I'm against the underlying bill. I think it's a disaster for Christian bookstores, at least 85 percent of which would fall under this, all sorts of Christian colleges. Even with the well-intentioned amendment that certainly improves the bill that Chairman MILLER is offering, it still doesn't fix the underlying problems.

One prominent attorney says that basically religious rights have to be trumped by sexual rights in the workplace, and that's the goal of this act, and that this gives religious rights a secondary status in our society to sexual rights.

I want to address one other thing, and I apologize for bringing politics into this. In my last campaign, in the last 10 days of my campaign, a cookie-cutter ad was dropped on me that started with pictures of Speaker HASTERT and JERRY LEWIS. Then a little clip was inserted into the ad that said Speaker HASTERT visited my district and that I was proud to have him visit my district. Then pictures of Duke Cunningham came up, and then a picture of Bob Ney came up, then a picture of Mark Foley. Mark Foley's picture came out from the screen, referring to ''Friends of MARK SOUDER'' and said that MARK SOUDER has friends who have even had unnatural sex with minors, which was a smear on Mark Foley; nothing was either proven or even directly alleged that way. But for a party that ran cookie-cutter ads, in order to get the majority against me, every half hour referring to unnatural sex with minors that wasn't proven and smeared me, Mark Foley, and others, to stand down here, not allow a vote on gender because they wouldn't want to divide their party on the vote, not allow any direct votes on ''perceived,'' not allow any religious protection votes, and then to attack us for being intolerant when your party used that ad against me and others is a tad cute.

Mr. GEORGE MILLER of California. I yield 1½ minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Madam Chairwoman, I rise in support of H.R. 3685.

Before I came to Congress, I was a human resources executive, and even then, during the 1970s, my company had a policy that prohibited discrimination based on sexual orientation. It

boggles my mind that it has taken Congress this long to even try to catch up.

I acknowledge that today's bill is a good start, but it is just a beginning. Many of my constituents want this legislation to include provisions that were in the original version of the bill and in the amendment that Representative BALDWIN will introduce later today.

I share the concern that the legislation before us does not protect the transgendered people. Transgendered people are particularly subject to workplace discrimination, and nearly one-half of all transgendered people have reported employment discrimination at some point in their lives.

My home State of California is one of a dozen States which already provide this basic liberty, freedom from discrimination based on gender identity. We have done so because we recognize that transgendered people, like all people, deserve protection.

Today's bill is not perfect, but please know that today and every day I commit to working with my colleagues to pass this bill and to keep up the fight to expand protection for all peoples.

Mr. MCKEON. I'm happy to yield 2 minutes to the gentleman from Ohio, JIM JORDAN.

Mr. JORDAN of Ohio. I thank the ranking member.

Madam Chair, I rise today to express my opposition to the so-called Employment Non-Discrimination Act.

Far from actually protecting new workers, this legislation will add confusion and contradictions to title VII's existing protections. We have already heard from speakers who talked about the ''perceived'' sexual orientation language in this bill. And it would violate the traditional bases used to determine protected status, those being an immutable characteristic, a history of economic disenfranchisement and political powerlessness. All of the protected classes that currently exist in title VII meet these standards, while those individuals this legislation seeks to protect do not. The current title VII protections are sufficient to protect our Nation's citizens. Expansion would only lead to confusion and more litigation. The previous Republican speaker talked about this. He talked about the contradiction that exists between sexual rights and religious rights. If this legislation is approved, it will certainly be challenged in court and produce a clash with religious freedom and expression.

And then, finally, two other things I would like to address. ENDA, I believe, has the potential to severely hurt business. Not only will the religious exemption fail to cover nondenominational religious elementary schools, high schools and colleges, but it may, in fact, force employers to violate their personal convictions and hire individuals that they determine may not be in the best interests of their business. Business owners with religious convictions should be free to apply those convictions to their hiring practices.

And I guess I would just close by saying, most importantly in my mind, this legislation, I believe, would undermine the institution of marriage and thereby undermine that key institution in our culture, which I believe in the end ultimately determines the strength of our entire society, and that being the family institution. You think about one of the reasons America is so great is because moms and dads and families sacrifice for the next generation. I believe this legislation has the real potential to undermine the importance of families in our culture and in our society and in our country.

For those reasons, Madam Chair, I would oppose the legislation. I thank the gentleman for yielding.

Mr. GEORGE MILLER of California. I yield 2 minutes to the gentlewoman from Ohio (Ms. PRYCE).

Ms. PRYCE of Ohio. Madam Chair, I thank the gentleman for yielding.

For more than two centuries, this country has advertised itself as a land of opportunity, of capitalism and free markets, of rugged individualism, where economic success awaited anybody who was willing to play by the rules and work hard. We pride ourselves as a Nation that doesn't necessarily guarantee equality and economic success, but promises equality and opportunity for all Americans. Yet today, these doors of opportunity aren't open for all Americans.

Gay Americans currently hold the dubious distinction of being the only segment of our workforce that can be overtly denied an opportunity to contribute to our economy and to earn a living.

Madam Chair, corporate America has never been widely identified as a vanguard for social change, but in the case of ensuring opportunity for gay Americans, the private sector is way ahead of the Federal law by leaps and bounds.

□ 1530

At present, 90 percent of American Fortune 500 companies have policies in place similar to what would be required under ENDA. They do it out of a sense of fairness, but also because it makes financial sense. Their bottom line is enhanced when they can attract talented and productive workers, men or women, gay or straight, that can contribute to the company's success without fear of recrimination or workplace reprisal. The ability to apply oneself, work hard and succeed has been the American Dream. This quintessential American right to pursue that dream should not be abridged. It should not be abrogated. Rather, it should be protected by the very government that has flourished for more than two centuries because of that dream.

Madam Chairman, the concept of ENDA, the fundamental American right to earn a living, should be a principle around which everyone in this Chamber, regardless of party or ideology, should be eager to embrace.

Mr. MCKEON. I am happy now to yield 3 minutes to the gentleman from Michigan, a member of the committee, Representative WALBERG.

Mr. WALBERG. I thank the ranking member for the opportunity to stand today in strong opposition to the ENDA Act. I use that acronym because I believe it is mistitled, that this is not a nondiscrimination act but rather a discrimination act, a reverse discrimination in many ways. But it certainly doesn't achieve what I think ought to be part of this society because it is a radical transformation of workplace discrimination law that stomps on the rights of private employers, adds new unfunded mandates and opens the judicial gates to a herd of endless litigation.

Pitting a newly protected class of individuals based on sexual orientation against our longstanding foundation of religious liberty will force job makers to walk a legal tightrope over which law to follow and which law to violate.

A business with as few as 15 employees will be slammed as new unfunded Federal mandates will provide additional protections for some employees, protections that may conflict with the ability of other employees to freely express their personal and religious convictions, again, without attempt to discriminate or treat wrongly. In fact, this legislation is so poorly written and broad, it will immediately serve as another way for trial lawyers to make a quick buck at the expense of small business owners. More lawsuits against jobs creators in my home State of Michigan, especially with recently passed tax increases, are the last thing employers in south central Michigan need to grow, prosper and thrive in a competitive environment.

ENDA is a fundamental departure from the longstanding principles of religious liberty as well, principles our country was founded upon. In fact, this will directly discriminate against people of traditional values and long-held faith principles. Rather than reducing discrimination, this legislation will instead reduce religious freedom and increase litigation.

The Founders of this great democratic Republic would invariably run afoul of this legislation if they were alive today. If you want to make a stand in favor of increasing lawsuits and penalizing small business owners at the benefit of trial lawyers, then by all means support this bill. If you want to chill the exercise of personal religious freedom, support this bill.

Madam Chairman, I, for one, am choosing to stand for the basic principle of religious freedom and nondiscrimination. I urge my colleagues to vote ''no.''

Mr. GEORGE MILLER of California. I yield 1½ minutes to the gentleman from Georgia (Mr. BISHOP).

Mr. BISHOP of Georgia. Madam Chairman, as one who has suffered the stigma and painful effects of state-enforced legal discrimination based on my race for the first 20 of my 60 years, and having spent all of my professional

life as an attorney and as an elected official fighting to eradicate unlawful discrimination based on race, creed, color, religion, gender, age, disability or national origin, and based on my study and understanding of the life and teachings of Jesus Christ, I cannot condone discrimination in employment based on sexual orientation.

The only appropriate consideration in employment should be the willingness and the ability to perform the job. Sexual orientation, unless it adversely affects job performance, is a private matter and should not be a basis for legal discrimination with the possible exception of the armed services and religious organizations.

Accordingly, after prayerful consideration, I must therefore support H.R. 3685, the Employment Non-Discrimination Act. I urge my colleagues to do the same.

Mr. KLINE of Minnesota. Madam Chairman, I am very pleased now to yield 3 minutes to our colleague from Texas, a former appellate judge, Mr. GOHMERT.

Mr. GOHMERT. Madam Chairman, my time is short. I'll get right to some of these issues. I just have a copy of the bill here.

Under the definition of ''religious organization,'' it actually excludes by definition schools, institutions that have been started by churches in which they set up their own boards, because it requires that the institution has to be in whole or in substantial part controlled, managed, owned or supported by the religion. So free-standing educational institutions, bookstores, things like that, would be opened up. Because there is so much language, I think while the Boy Scouts felt they were safe by the past litigation, but this opens up that whole new can of worms and we can expect more litigation against the Boy Scouts.

To add in some of these things like, you can bring a lawsuit for discrimination if you don't like your conditions. I had one lawsuit that went nowhere because a woman claimed she was moved from working on copper to working on aluminum and that was an insult. Under this, that's a legitimate lawsuit if you have manifested, acted or had people perceive you in such a way that they think you may be homosexual.

What this does is it invites people to come apply for a job, and if they feel like they may not get a job, make utterances like, well, you think I'm gay, that's why, and they will have a lawsuit. I can guarantee you, many lawyers will encourage their clients, the employers, to pay something just to make it go away.

Training programs are listed. If you don't get the seminar, then you can go in and say, you didn't give me that trip because you think I'm gay. There may be a lawsuit there. In fact, you could, and lawyers in some circumstances, I would say most circumstances, will say, yeah, you ought to settle with these guys because they can take you to the cleaners.

There is a provision, though, here. Isn't it nice, we have a provision in here that says States shall not be immune under the 11th amendment. This legislation is just going to set aside an amendment to the Constitution legislatively. My goodness. That's pretty bold. Pretty bold. Then we get down to what the real issue may be here, attorneys' fees on page 18. You're getting attorneys' fees. All the tort reform that occurred on med mal, this will bring litigation many times over if this becomes law. But the good news for the United States is, we have a provision in here, the United States will not be subject to punitive damages. Don't have a provision like that for States and for employers. So look out.

What this Congress is now attempting to dictate is which religious beliefs and moral beliefs the majority believes are okay and which religious beliefs it feels are not okay. This will actually encourage people, whether they are gay or not, to flaunt or manifest what may be perceived to be characterizations to help the lawyers.

Mr. GEORGE MILLER of California. I yield 2 minutes to the gentleman from Illinois (Mr. EMANUEL).

Mr. EMANUEL. Madam Chairman, more than 40 years ago, this House stood up in the name of America and did the right thing and passed sweeping civil rights legislation to protect men and women of all races from discrimination. By widening the circle of freedom to include those who stood outside its embrace, America strengthened the character of its democracy.

And that is exactly what we are doing today with this vote. The Civil Rights Act of 1964 has had a profound impact on our Nation. But the work to create a more just, equal Nation that began decades ago is unfinished. This morning, in 30 States across this country, millions of gay and lesbian Americans went to work knowing full well that they could be fired simply because of their sexual orientation. Their job performance would have nothing to do with their being fired. In too many places simply being gay can cost you your job.

We should all be able to agree that this type of discrimination is inconsistent with American values. But for too many gay and lesbian Americans, it is a reality. This Congress has a duty to make this form of discrimination a thing of the past. We should be gratified by the fact that many American employers already do the right thing and protect the rights of their workers. Many Fortune 500 companies take these type of policies. For those who say the private sector should be a guiding light for government, well, here is your chance to prove it.

Some employers have failed to protect their workers, though, so this Congress has been left with the duty to make sure our values are represented in our laws. The Employment Non-Discrimination Act offers basic protections that everyone enjoys and takes for granted, except gays and lesbians, and this law allows it to be true for them. But more importantly, this bill is yet another important step forward in ensuring that justice and genuine equality for every American is the law of the land.

Today, I hope my colleagues will join us to pass this critical legislation and continue this country's long-running commitment to eliminate discrimination in all its forms.

Mr. KLINE of Minnesota. Madam Chairman, I am very pleased now to yield 2½ minutes to the gentleman from Pennsylvania (Mr. PITTS).

Mr. PITTS. Madam Chairman, I rise in opposition to this ENDA bill. This bill, if signed into law, will have serious long-term implications on one of our most basic and treasured institutions, marriage. A Federal ENDA will provide activist judges with the legal ammunition to move toward the legalization of same-sex marriage. In fact, State ENDA laws are already being used by activist judges to impose gay marriage and civil unions on States.

One example is the landmark decision by the Massachusetts Supreme Court which determined that there was ''no rational basis for the denial of marriage to same-sex couples.'' And this decision used the State ENDA laws in their argument. Another example took place in Vermont where the court ordered the State legislature to pass either a same-sex marriage or civil union law. Again, this case referenced existing State ENDA legislation. Another example is the New Jersey Supreme Court, which gave the State legislature 6 months to either pass a same-sex marriage law or civil union law, and the court cited New Jersey ENDA laws in defense of this ruling.

Although ENDA is bad legislation on its face, more importantly, it is just one component of a larger strategy. An editorial in an activist publication recently compared this approach to building a house. It explains that hate crimes legislation is the foundation, ENDA is one of the walls, civil unions is the roof structure, and marriage is the shingles.

The author states, ''When all the various above issues have been resolved, think of all the money that would be freed up to focus on marriage. We can lobby the President and Congress on repealing DOMA, while targeting the weakest States to repeal their one man-one woman amendments.''

The strategy as laid out above is clear. ENDA is merely a building block for efforts to overturn traditional marriage laws and to impose same-sex marriage on States. I urge you to protect traditional marriage and oppose H.R. 3685.

Mr. GEORGE MILLER of California. May I just say, Madam Chairman, it's a rather interesting set of remarks, except it has nothing to do with the underlying legislation that is before us today.

I yield for the purpose of unanimous consent to the gentlewoman from New York.

(Mrs. MALONEY of New York asked and was given permission to revise and extend her remarks.)

Mrs. MALONEY of New York. Madam Chairman, I rise in strong support of this bill, and I urge my colleagues to help make history today by taking this important step forward.

Madam Chairman, I rise in strong support of this bill.

I urge my colleagues to help make history today by taking this important step towards ensuring that discrimination based on sexual orientation will not be tolerated in the United States of America.

In the year 2007, it is legal in 30 states to fire someone simply because he or she is gay, lesbian, or bisexual.

Hardworking, tax-paying Americans shouldn't have to live with the constant, legitimate fear they could lose their jobs. No one should be discriminated against because of his or her sexual orientation or perceived sexual orientation.

This bill will also lay the groundwork to provide sorely needed protections in the future to countless more Americans who need and deserve them.

History has shown that progress in the struggle for civil rights has been hard fought and incremental.

Most of our greatest legislative victories have only been achieved step by step.

While the measure before us today is by no means complete or definitive, I believe that the passage of this measure today will lay the foundation to provide additional protections in the future for the entire LGBT community.

So while I deeply regret that transgender Americans are not protected by this bill, I nonetheless urge my distinguished colleagues to support it. I do so with the knowledge and the determination that we will be back to continue to press the fight for all Americans to live free from discrimination.

Mr. GEORGE MILLER of California. I yield 1 minute to the gentleman from Minnesota (Mr. ELLISON).

Mr. ELLISON. Madam Chairman, today is a very proud day for me. I am proud to be an American today because when this ENDA bill passes, what we will be doing is affirming traditional values, traditional values like tolerance, traditional values like minding your own business, traditional values like allowing fellow Americans to rise to the full measure of their ability, traditional values, values that have made this country endure and pass the test of time.

Opportunity and traditional values is what this ENDA bill is all about. This bill has nothing to do with the institution of marriage. This bill is about giving opportunity to fellow Americans so that we can reap the full benefit, the talent, the creativity, this hardworking ethic of both gay and lesbian and all Americans. All.

This bill today makes me proud to be an American and makes me very, very happy to vote for it, and I do hope all of our Members do.

Mr. KLINE of Minnesota. Madam Chairman, I am very pleased now to yield 4 minutes to the Republican whip, the distinguished gentleman from Missouri (Mr. BLUNT).

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Mr. BLUNT. Madam Chairman, I thank the gentleman for yielding.

Madam Chairman, I am in opposition to the bill. It goes without saying that the authors of our Nation's founding document understood better than most that freedom to practice one's religion represents one of the most fundamental, most inalienable rights bestowed on us. It was, after all, the reason that many came to America, the reason that many fought to found America. The Founders made sure to include the free exercise of religion among the first rights they included in the Constitution.

While the Founders saw the Constitution as a means of ensuring religious freedom and that that be protected at all levels, this bill, innocently enough, named the Employment Non-Discrimination Act, would actually have the effect of rolling back these protections, depending on where you happen to work. Perhaps even worse, it deliberately sets out to create a constitutional conflict between one's right to religious freedom and another's right to sue you for practicing it.

Madam Chairman, the tension this bill could create is not difficult to foresee in practice. For instance, if you chose to keep a Bible at your work station or perhaps even display in your cubicle a verse you found particularly meaningful, the legal question is simple created by this legislation: Can one or more of your coworkers seeing that passage, seeing that Bible, understanding there are passages there about homosexuality, bring suit against you and your employer on the grounds that mere presence of religious symbols constitutes a ''hostile workplace'' in which they are being forced to work?

The answer, it seems to me, depends more on where you work than whether or not the Bible's position on your desk is offensive. Employees, for example, at Southwest Baptist University, where I was the president before I came to Congress, would be exempt from the standards of this measure because they have a relationship with a specific denomination. But employees of either a Christian bookstore or a Muslim bookstore would be granted no such dispensation, potentially being forced to choose between upholding the faith positions upon which they are based and on which they acquire customers and complying with a law that says the free exercise of religion can be abrogated by a whim of Congress. This is the wrong decision for us to expect them to make. We are told, however, that any of the legal questions here will be decided and settled in court. The very reason the Constitution established this exercise of religion as the first of all the amendments is so these issues would not have to be settled in court.

There is really no reason here to create a new protected class. This bill puts this newly protected freedom on a collision course with the oldest of all the protected freedoms, the freedom of religion. The inevitable upshot of pitting two classes of people against each other, one protected by the Constitution, the other by Congress, is litigation, and lots of it. We don't need to create more reasons for litigation in the country. We don't need to create differences from court jurisdiction to court jurisdiction. We need to go back and look at this issue again. We need to defeat this bill today. I urge my colleagues to vote ''no.''

Mr. GEORGE MILLER of California. Madam Chairman, I reserve the balance of my time.

Mr. KLINE of Minnesota. Madam Chairman, I yield 2½ minutes to my friend, the gentleman from Indiana (Mr. PENCE).

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Madam Chairman, I thank the gentleman for yielding.

Madam Chairman, I come before the House today in strong opposition to H.R. 3685, the Employment Non-Discrimination Act. However well-intended, the bill extends existing employment discrimination provisions of Federal law like those contained in title VII of the Civil Rights Act to prohibit employment discrimination based on sexual orientation.

Let me be clear. I don't condone discrimination against people for any reason whatsoever. I believe in civility and decency in society. But the problem here is that by extending the reach of Federal law to cover sexual orientation, employment discrimination protections, in effect, can wage war on the free exercise of religion in the workplace. In effect, as has been said already, this sets up something of a constitutional conflict between the right to religious freedom in the workplace and another person's newly created right to sue you for practicing your faith or acknowledging your faith in the workplace. This is, as has been said before, a deeply enshrined tradition in the American experiment, emanating, as it does, out of the first amendment of the Constitution of the United States.

Some examples: Under ENDA, employees around the country who possess religious beliefs that are opposed to homosexual behavior would be forced, in effect, to lay down their rights and convictions at the door. For example, if an employee keeps a Bible in his or her cubicle, if an employee displays a Bible verse on their desk, that employee could be claimed by a homosexual colleague to be creating a hostile work environment because the homosexual employee objects to passages in the Bible relating to homosexuality.

The employer is in a no-win situation as well. Either the employer has to ban

employees from having a Bible at the workplace for their break time, or displaying Bible verses, and thereby face a lawsuit under title VII for religious discrimination, or the employer then has to continue to allow it and face a potential lawsuit under ENDA by the homosexual employee. This sets up a constitutional conflict headed for the courts, about which Congress should not involve itself.

Madam Chairman, I strongly oppose the Employment Non-Discrimination Act. We must stand for the right of every American to practice their faith according to the dictates of their conscience, whether it be in the public square or in the workplace. So I oppose the Employment Non-Discrimination Act and urge my colleagues to do likewise.

Mr. GEORGE MILLER of California. Madam Chairman, I yield 30 seconds to the gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. Madam Chairman, the record should reflect some accuracy in the point two of our friends just made that the proposition that the display of a religious artifact such as a Bible in and of itself creates a hostile work environment. There is not a shred of that in this bill, nor is there a shred of case law anywhere in the 42-year history of title VII that supports that claim. The majority certainly is welcome to supplement the record if we are wrong. I just don't see it.

Mr. GEORGE MILLER of California. I yield 1 minute to the gentlewoman from Wisconsin (Ms. MOORE).

Ms. MOORE of Wisconsin. Madam Chairman, the opponents of H.R. 3685 have asked the question: What does perceived sexual orientation mean? It's when folks proclaim to have some sort of psychic ability to know who's gay. They have so-called ''gay-dar,'' so that a man who perhaps is slightly built or a woman like myself who has a deep voice is perceived to be homosexual and they could be discriminated against in the workplace.

I can tell you that hundreds of thousands of school children will pass through these Chambers in the years to come, and as the guides in the visitors bureau talk about the history of this Chamber, this will be a signature moment, and I want to be identified as one of the people who stood up to the last vestige of discrimination in our country.

Mr. KLINE of Minnesota. Madam Chairman, I am pleased now to yield 1½ minutes to my friend, the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. Madam Chairman, I would like to insert into the RECORD a letter from Agudath Israel of America on how this impacts Orthodox Jewish groups and their reasons they are opposing this, and an article by Andrew Sullivan, a gay editor of The New Republic, who correctly points out that, in fact, this does not meet the discrimination standards in the sense of, if we were having a situation in America where gays, homosexuals couldn't get jobs, it would be a different challenge.

But I wanted to make a couple of points. There is a great irony to this bill. In the faith-based debate, we couldn't get title VII included, and now the Democrats have included it in this bill.

The Democrats opposed the Defense of Marriage Act, and now they are putting it in this bill.

Why does the bill exempt the military? Why can government discriminate and the private sector not discriminate? How in the world is this going to be upheld in court, to be able to hold a standard that the military can discriminate, that religious groups can discriminate, but Christian bookstores can't discriminate?

Clearly, in this bill the majority has tried to provide political cover, a fig leaf, so they can try to move a bill through, knowing full well that once you have the underlying bill, these other protections are going to be stripped out over time. It is internally inconsistent and ironic that the very people who oppose these things now insert them in this bill.

Another irony in this bill is that apparently the Boy Scouts' paid employees fall under this, but their volunteers don't. But this raises a question, what if they get their mileage reimbursed? What if they get expense reimbursement? It leads to a question of what if they go on and off the payroll. What about if they get a tax deduction? A lot of the reasons religious organizations are concerned about this is that is, in fact, a government benefit. Once we have a law that states that discrimination against homosexuals is wrong, this is obviously open to court interpretation, as many others are.

This is a bill fraught with so many problems that it should not see the light of day.

AGUDATH ISRAEL OF AMERICA,
Washington, DC, November 5, 2007.

HONORABLE MEMBERS,
House of Representatives.

As the House of Representatives prepares to vote on H.R. 3685, the Employment Non-discrimination Act, I write on behalf of Agudath Israel of America, a national Orthodox Jewish organization, to urge you to oppose the measure.

In an earlier correspondence, we explained in detail our key concerns regarding the legislation, particularly the shortcomings of the exemption for religious organizations set forth in Section 6. We will summarize them here:

Religious Freedom of Religiously-Controlled Charities Might be in Jeopardy. The exemption, by reference to Title VII, covers religious corporations and educational institutions controlled by religious corporations. Courts have given us no clarity as to whether Title VII protects independently-incorporated, secular, charities that are ''in whole or in substantial part controlled, managed, owned or supported by a particular religion, religious corporation, association or society.'' Because this bill on its face fails to settle this issue, thousands of charities could be adversely affected.

Secular Institutions Employing Religious Workers will not be Protected. Secular social service agencies or religiously-related businesses that employ workers that abide by certain religious/traditional tenets would not be protected. Unlike Title VII, where discrimination based on religion, sex or national origin is permitted when such status is a ''bona fide occupational qualification (BFOQ),'' no similar provision is included in ENDA when ''sexual orientation'' is a BFOQ.

Religious Groups that Avail themselves of Protection May Face Retaliation. In recent years, traditional values groups that adhere to constitutionally protected membership policies based on sexual orientation have faced various forms of legal disability from local governments. Groups claiming ENDA's exemption should not be treated as pariahs. The bill should include protection against retaliation.

Thank you for considering our views

RABBI ABBA COHEN,
Director and Counsel.

[From The Advocate, Apr. 14, 1998]

DO WE NEED THESE LAWS?—GAY RIGHTS—ARE WE REALLY ASKING FOR SPECIAL RIGHTS?

(By Andrew Sullivan)

Before I make myself irreparably unpopular, I might as well start with a concession. Almost all the arguments the fundamentalist right uses against gay ''special rights'' are phony ones. If there's legal protection for Blacks, Whites, Jews, Latinos, women, the disabled, and now men in the workplace, then it's hard to see why homosexuals should be excluded.

It's also true that such laws would ban discrimination against straights as well as gays, and so they target no single group for ''special'' protection. Nevertheless, there's a reason the special rights rhetoric works, and that is because it contains a germ of truth. However evenhanded antidiscrimination laws are in principle, in practice they're designed to protect the oppressed. So while the laws pretend to ban discrimination on the neutral grounds of sex, race, ethnicity, or disability, they really exist to protect women, Blacks, Latinos, the disabled, and so on. They are laws that create a class of victims and a battery of lawyers and lobbyists to protect them.

The real question, then, is this: Are gay people generally victims in employment? Have we historically been systematically barred from jobs in the same way that, say, women, Blacks, and the disabled have? And is a remedy therefore necessary? My own view is that, while there are some particular cases of discrimination against homosexuals, for the most part getting and keeping jobs is hardly the most pressing issue we face. Aided by our talents, by the ability of each generation to avoid handing on poverty to the next, and by the two-edged weapon of the closet, we have, by and large, avoided becoming economic victims. Even in those states where job-protection laws have been enacted, sexual orientation cases have made up a minuscule proportion of the whole caseload.

Most people—gay and straight—know this to be true; and so they sense that the push for gay employment rights is unconvincing and whiny. I think they're right. The truth is, most gay people are not victims, at least not in the economic sense. We may not be much richer than most Americans, but there's little evidence that we are much poorer. Despite intense psychological, social, and cultural hostility, we have managed to fare pretty well economically in the past few generations. Instead of continually whining that we need job protection, we should be touting our economic achievements, defending the free market that makes them possible, investing our resources in our churches and charities and social institutions, and politically focusing on the areas where we

clearly are discriminated against by our own government.

The problems of gay and lesbian Americans are not, after all, systematic exclusion from employment. They are (to name a few off the top of my head): a recourse to the closet, a lack of self-esteem, an inability to form lasting relationships, the threat of another epidemic, exclusion from our own churches, and our own government's denial of basic rights, such as marriage, immigration, and military service. In this sense, employment discrimination is a red herring. National gay rights groups love it because they are part of the lobbyist-lawyer nexus that will gain from it and because their polls tell them it's the least objectionable of our aims. But anyone could tell them it's the least objectionable because it's the least relevant.

Of course, we're told that until we're protected from discrimination in employment, we'll never be able to come out of the closet and effect the deeper changes we all want. But this is more victim-mongering. Who says gay people can't risk something for their own integrity? Who says a civil rights revolution can only occur when every single protection is already in place? If African-Americans in the 1960s had waited for such a moment, there would still be segregation in Alabama.

Our national leaders should spend less time making excuses for us and more time challenging us to risk our own lives and, yes, if necessary, jobs to come out and make a difference for the next generation. An ''equal rights'' rather than ''special rights'' agenda would focus on those areas in which gay people really are discriminated against. After all, have you heard any fundamentalist ''special rights'' rhetoric in the marriage debate? Or in the military battle? Not a squeak. What you hear instead is a revealing mumble of bigotry in opposition. And in these areas of clear government discrimination, we stand on firm, moral ground instead of the muddy bog of interest-group politics. In an equal-rights politics, we reverse the self-defeating logic of victim culture. We are proud and proactive instead of defensive and cowed. And we stop framing a movement around the tired 1970s mantra of ''what we want'' and start building one around the 1990s vision of ''who we actually want to be.''

Mr. GEORGE MILLER of California. Madam Chairman, I yield myself 1 minute.

Madam Chairman, I appreciate the frustration of my colleagues on the other side the aisle. They really don't like this bill. They don't believe that we should be outlawing discrimination against gay and lesbian individuals. What they are upset about is that most of the handles that they thought they could grab on to to destroy the consensus for this bill are gone.

Why are they gone? Because we went through a markup. We listened to our colleagues on the other side, and we made adjustments. We had a religious exemption in that many of the religious organizations strongly supported. We listened to the debate. We went back to them and suggested that a straight exemption from title VII would be preferable for all of those involved.

So we have continued to listen as that process has gone through. And, yes, we have a bill here now that is far more acceptable to far more Members of the Congress of the United States because it does what it says it is going to do.

Madam Chairman, I yield 1½ minutes to the gentlewoman from California (Mrs. DAVIS).

Mrs. DAVIS of California. Madam Chairman, I rise in support, but I am sorry we are not debating a more inclusive gender identity bill today, which I would have supported, and let me tell you why.

Employment discrimination strikes at a fundamental American value, the right of each individual to do his or her job without facing unfair discrimination. Transgendered people are among the most marginalized and vulnerable groups within the LGBT community.

I worked with a nationally known landscape architect as a member of the San Diego School Board that San Diegans know today as Vicki Estrada. Vicki Estrada spent the first 50 years of her life as Steve Estrada. Soon after Steve became Vicki, she was assured by a leader within the California Department of Transportation, where Vicki worked as a contractor, that she would be treated no differently.

Vicki had only a few problems with her transition, for two reasons: She had an internal advocate and the comprehensive protection of California State law. Others, Madam Chairman, are not so lucky, which is why it is so important for us to provide inclusive Federal protections.

I urge my colleagues to join me in continued support of the entire LGBT community, and I also urge them to join me in supporting this bill.

Mr. KLINE of Minnesota. Madam Chairman, for the purpose of making a unanimous consent request, I yield to the gentleman from Connecticut (Mr. SHAYS).

(Mr. SHAYS asked and was given permission to revise and extend his remarks.)

Mr. SHAYS. Madam Chairman, I rise in strong support of this legislation.

Madam Chairman, the Employment Non-Discrimination Act (or ENDA) is a common-sense solution to a very serious problem in the workplace. It:

Prohibits employers from making decisions about hiring, firing, promoting or compensating an employee based on sexual orientation;

Makes clear that preferential treatment and quotas are strictly prohibited, and that no claims will be permitted based on statistics about gays and lesbians in the workforce.

Until the 109th Congress, ENDA had been reintroduced in every Congress since 1994.

Our staff members' sexual orientation is no business of ours, and is irrelevant to their ability to perform the job.

One frequent objection to ENDA is that it would extend ''special rights'' to homosexuals.

That is simply not the case.

Gays and lesbians don't want special rights, they want the same as other Americans: equal protection under the law.

And they deserve no less.

ENDA supporter and former senator Barry Goldwater wrote: There was no gay exemption in the right to "life, liberty, and the pursuit of happiness." Job discrimination against gays—or anybody else—is contrary to each of these founding principles. Anybody who cares about real moral values understands that this isn't about granting special rights it's about protecting basic rights.

Paul Allaire, the former Chairman of the Board of Directors for Xerox, which is headquartered in Stamford, recognized the importance of non-discrimination policies when he wrote: We view diversity awareness and acceptance as enablers to increased productivity. We strive to create an atmosphere where all employees are encouraged to contribute to their fullest potential. Fear of reprisals on the basis of sexual orientation only serves to undermine that goal.

When ENDA is passed—a process that may take some time—working Americans who happen to be gay or lesbian will only have to prove themselves in the workplace and the employment market on the basis of their talents and abilities, just like other Americans.

They will be able to do so without fear of dismissal for any reason unrelated to the workplace.

Mr. GEORGE MILLER of California. Madam Chairman, I yield 1 minute to the distinguished majority leader, the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Madam Chairman, I thank the gentleman from California, the chairman of the committee, for yielding the time.

Madam Chairman, America was regaled today by the President of France, and he talked about America's values. He said that is why the world loves America, because of its values.

Now, whether all the world loves America's actions all the time is another question, but they know that one of our cardinal values was that we believe that all men and women are created equal and endowed by their creator with certain inalienable rights, and among these are life, liberty and the pursuit of happiness. No one in America believes that you can pursue life, liberty and the pursuit of happiness without the opportunity to have employment.

In America, we have discriminated historically against various groups of people. Some because of the color of their skin. Some because of their gender. Some because of their religion. Some because of their ethnic origin. There have been all sorts of reasons throughout our history that we have discriminated against people.

□ 1600

Madam Chairman, for more than 200 years our great Nation has fought for and advanced the timeless values and ideals that are embodied in our constitution: fairness, justice and equality under law.

And today through this bipartisan legislation, the Employment Non-Discrimination Act, we again take a momentous step in breaking down centuries of rank injustice, unthinking prejudice, and unjustified discrimination against gay and lesbian Americans.

It could be gays and lesbians, it could be African Americans, it could be Catholics, it could be Baptists like me. We have all been discriminated against

from time to time. It could be a Jew. It could be somebody of any other arbitrary distinction.

What this country really believes is that we should not discriminate against anybody. It so happens this bill describes one somebody, but it really refers to everybody. And it really is saying in this just Nation, we believe in equal opportunity.

When the Congress passed the Civil Rights Act of 1964, it prohibited employment discrimination based on race and gender; discrimination that often was open and far too often regarded as acceptable.

Frankly, my colleagues, as we sit here in this Chamber, hopefully all 435 of us believe that if we had lived in another time a half a century ago or perhaps a century ago, we would have even then thought it was wrong to discriminate against somebody because of the color of their skin. But we know that too many of our predecessors voted to allow and to further discrimination against people because of their color.

I presume that some of those looked back after their service in this body maybe 10 or 20 years later and said, I am historically sorry that I cast that discriminatory vote. I hope that none of my colleagues find themselves in that place today or tomorrow, and tomorrow or 10 years from now.

We have expanded the scope of the law's protection to prohibit employment discrimination based on religion, color, national origin, and disability. Today, through this historic civil rights legislation, we would simply add sexual orientation as a protected class, because even in 2007, there is little doubt that gay and lesbian Americans are too often the object of discrimination, not because of their actions but because of who they are. America believes that's wrong. That's what President Sarkozy was saying today.

Madam Chairman, let us be clear. This legislation is consistent with our values, our ideals, and America's long history of social progress. Thus, the question before us today is not only whether we will choose to do the right thing and pass this bill, but whether we will choose to stand on the right side of history; saying to some of our fellow citizens yes, you may be different than we are, but you are entitled by our Constitution and by our God and by our values to equal treatment under law.

This legislation, in fact, is the logical extension of the law in some 20 States that prohibit employment discrimination based on sexual orientation. I should note that the Federal Government, we have taken that action. All the people who work for us, we bar discrimination against them based upon sexual orientation.

Madam Chairman, as the lead House sponsor of the landmark Americans with Disabilities Act, I harbor no illusions that this legislation will topple centuries of prejudice overnight or that we can legislate that prejudice out of existence. That is probably not possible. But what we can do, what we ought to in fairness do this day is say that it is not lawful in the United States to have that prejudice prevent the pursuit of happiness and the enjoyment of opportunities offered by this great, fair and just Nation.

I urge my colleagues to stand with great pride, to vote against discrimination in this great, just land we call America.

Mr. KLINE of Minnesota. Madam Chairman, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Madam Chairman, I yield 1 minute to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Madam Chairman, the function of this Congress is to answer the question: Who are we? And one of the most defining characteristics of who we are is that we are a meritocracy. That is the reason why we are as strong and as wealthy and as influential as we are all over the globe. People come from all parts of the globe to America because they know that they will be judged here on the basis of their goodness as a member of society and their ability as a contributor to our economy. That's all this legislation does.

The people that it is directed to have no more control over their sexual orientation than the color of their skin. All we are saying is that you will be judged on your ability to contribute, not on any other artificial distinction.

As a sponsor of ENDA, I would have favored the further amendment by Congresswoman BALDWIN, but the fact is that this is a civil rights struggle, and struggles take time. But this measure today is a powerful sign of enlightenment and progressive change in America. It is defining legislation. I urge all my colleagues to vote for it.

Mr. GEORGE MILLER of California. Madam Chairman, I yield 1½ minutes to the gentleman from South Carolina (Mr. CLYBURN), the distinguished majority whip in the House.

Mr. CLYBURN. Thank you, Mr. Chairman, for yielding me time.

Madam Chairman, I rise in strong support of the Employment Non-Discrimination Act. As a former civil rights activist in South Carolina who has been incarcerated a number of times for advocating equal treatment for all, I have come to find that our Nation's civil rights issues are in fact human rights issues.

Whether you are talking about allowing people of color to sit and eat at lunch counters or about ensuring that gay and lesbian Americans can freely go to work and earn a living without fear of being discriminated against, you are talking about basic human rights.

Madam Chairman, before I came to Congress, I spent 18 years as South Carolina's human affairs commissioner. In that position, I came to find that bigotry and homophobia are sentiments that should never be allowed to permeate the American workplace. Such intolerance does nothing but take us back to a dark moment in our Nation's history that most of us never want to revisit.

I implore my friends on the other side of the aisle to stop misconstruing this issue as a marriage issue. This is an employment issue, not a marriage issue. And this bill does nothing to infringe on the institution of marriage which I have cherished for more than 46 years.

By passing this bill, Members of the House go on record as wanting to end discrimination in the workplace and not allowing its ugly face to persist. I urge my colleagues to bring fairness to the American workplace and support this important legislation.

Mr. KLINE of Minnesota. Madam Chairman, I continue to reserve.

Mr. GEORGE MILLER of California. Madam Chairman, I yield 1 minute to the gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Madam Chairman, this bill is about discrimination, but it is also about economic competition.

Thinking about this bill today, I was thinking about the 1964 University of Washington Huskies football team that went to the Rose Bowl. They had a slashing, tough, brutal halfback named Dave Kopay, a boyhood hero of mine. He helped them go to the Rose Bowl. Later on after he goes to the NFL, we learn he is gay. If the UW hadn't put that guy in, there are several games they would not have won.

And if software companies don't hire gay software engineers, they will not be economically competitive with the rest of the world. In America, let's get one thing real clear: All good athletes play and all good software engineers engineer and all good workers work. That's the American way. Let's pass this bill.

Mr. KLINE of Minnesota. Madam Chairman, I continue to reserve.

Mr. GEORGE MILLER of California. I yield 1 minute to the gentleman from Illinois (Mr. KIRK).

Mr. KIRK. Madam Chairman, if our Constitution stands for anything, it is the ideal of individual liberty. To defend that liberty, we support democracy. But underneath both of those key values in the West, we believe in tolerance for our Federal citizens. Tolerance.

In Nazi Germany, they killed Jews and gypsies; but they also killed homosexuals. Thanks to us, the Nazis were defeated by the tolerant democracies of the West.

Our history is one of expanding tolerance. First, that all white men are equal; then all men; then all men and women. These are the civil rights achievements of the 20th century. Now it is our turn to offer protection for those of a different orientation.

From the Land of Lincoln, our country is the leader in advancing the toleration values of the West. This bill is already the law in the Land of Lincoln; but today, we go forward to make it the law for all.

Mr. ANDREWS. Madam Chairman, I yield 1 minute to the gentleman from Florida (Mr. HASTINGS), a distinguished member of the Rules Committee.

Mr. HASTINGS of Florida. I thank the distinguished gentleman for yielding to me.

Madam Chairman, yesterday in the Rules Committee I commented that democracies should be about tolerance. Democracies and religions should be about tolerance.

Today we get an opportunity to manifest our tolerance within the body politic of this country. And it is an important day, just as 1964 was an important day for passage of the Civil Rights Act. As one who has stood in this struggle with brothers and sisters throughout this land to make this country live up to all of the creeds that are our values, American values, we cannot nor should we ever permit discrimination in the workplace or anyplace. It is wrong, it is intolerant, and it is un-American. I urge my colleagues to support this measure.

Mr. KLINE of Minnesota. Madam Chairman, could I inquire how many speakers my friend has?

The CHAIRMAN. Each side has 2½ minutes remaining.

Mr. ANDREWS. Madam Chairman, we have two speakers remaining, including the Speaker.

Mr. KLINE of Minnesota. Very well, then I will continue to reserve my time to close.

Mr. ANDREWS. Madam Chairman, I yield 1½ minutes to an icon in the protection of human and civil rights in our country, a hero for our generation, the gentleman from Georgia (Mr. LEWIS).

Mr. LEWIS of Georgia. Madam Chairman, I want to thank my friend for yielding.

Madam Chairman, I for one fought too long and too hard to end discrimination based on race and color not to stand up against discrimination against our gay and lesbian brothers and sisters. During the 1960s, we broke down those signs that said ''white'' and ''colored.''

Call it what you may, to discriminate against someone because they are gay is wrong. It is wrong; it is not right. There is not any room in our society for discrimination. Today, we must take this important step after more than 30 long years and pass the Employment Non-Discrimination Act. It is the right thing to do. It is the moral thing to do.

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Let us do it, not just for this generation, but for generations yet unborn.

Today, we have an opportunity to bring down those signs. Now is the time to do what is right, what is fair, what is just. The time is always right to do right. Let us pass this bill.

Mr. KLINE of Minnesota. Madam Chairman, I yield myself the balance of our time.

Today, we're considering a truly far-reaching modification to civil rights policy. There are some here who want this proposal to go even further, and we've heard that, while many of us believe that it already goes too far.

The free exercise of religion is fundamental; yet this bill could infringe upon it. The right of States to define and protect marriage is fundamental; yet this bill would undermine it. When enacting new Federal mandates, we should be seeking policies that employers can successfully implement; yet this bill is vague and subjective and invites costly litigation.

We heard a discussion earlier about the concerns in employment law around a hostile work environment and what this newly protected class, how this would fit into that. It was asked, could an employee have a quote from the Bible that soundly condemns homosexuality, would that in itself create a hostile work environment. I would say we do not know the answer to that question. This is a boon for trial lawyers and court cases stacked up like cordwood.

Because of these concerns, Madam Chairman, the White House issued a Statement of Administration Policy indicating that if this bill were to reach the President's desk, his senior advisers would recommend that it be vetoed. The administration identified a number of concerns, both on a constitutional level and with the underlying policy. Unfortunately, these concerns have not been given the full attention they deserve in this debate.

The number of amendments has been seriously limited. We have seen an extraordinary step of putting in the rule a mandatory withdrawal of a proposed amendment. This deserves a fuller examination.

Republicans were prevented from offering key amendments that would have highlighted and attempted to correct some of the more glaring problems which we see in the underlying bill. As a result, Madam Chair, H.R. 3685 remains fatally flawed.

I oppose the bill and urge my colleagues to join me in voting ''no'' on this overreaching proposal.

Madam Chairman, I yield back the balance of our time.

Mr. ANDREWS. Madam Chairman, at this time, it is my honor to yield 1 minute to a woman of faith and strength, the leader of our House, our Speaker, the gentlelady from California.

Ms. PELOSI. Madam Chairman, I thank the gentleman for yielding and I thank Mr. ANDREWS of New Jersey for his leadership on this important issue. He knows, as does the chairman of the full committee, Mr. MILLER, that discrimination has no place in America. Our country is a great country because we recognized that long ago, but we have more work to do.

I thank them both for their strong leadership in fighting discrimination and thank them for, in the case of Mr. MILLER, decades of service and leadership on social justice. I commend Mr. ANDREWS for his commitment to protecting the rights of America's workers.

This is truly an historic day. Today, the House of Representatives will consider and hopefully pass for the first time the Employment Non-Discrimination Act, or ENDA. As someone who has looked forward to this day for 20 years that I have served in Congress, it is a joyous occasion. It simply would not have been possible without the outstanding leadership and courage of Chairman BARNEY FRANK and of Congresswoman TAMMY BALDWIN. Anyone who cares about a country without discrimination is deeply in debt to TAMMY BALDWIN and to BARNEY FRANK for their leadership in this regard.

While ENDA's victory will represent an historic victory, I share the disappointment of TAMMY BALDWIN, BARNEY FRANK and others who support including protection for transgender individuals in ENDA. While I had hoped that we could have included gender identity, I support final passage of ENDA because its passage will build momentum for further advances on gender identity rights and the rights of all Americans.

America is a country that is great and wealthy, but we cannot afford to squander the talents of any of our citizens, nor should we. We all benefit if everyone gets a chance to work hard and support their families. Yet today, in 30 States an American can be denied a job or fired because they are gay, lesbian, bisexual or transgender. This is wrong. Working Americans should be judged on one criterion, their job performance, and not be subjected to prejudice.

Madam Chairman, our history teaches us that progress on civil rights is never easy. It is often marked by small and difficult steps. We must take this step today toward the ideal of equality that is both our heritage and our hope.

I've heard the use of the word ''tolerance'' today, and I respect the use of that word, but if I may respectfully depart from it and say that in my community that is blessed with a diverse community, our diversity is of all kinds: religion, gender identification, religious faith and the rest. And I always say that the beauty is in the mix. And it's not that we're tolerant in my district in California in San Francisco; it is that we have so much respect for the role that each person plays in our society.

So tolerance, maybe; respect, definitely. But let me also add that it is the pride that we take in that diversity, and it is the pride that I take in the gay, lesbian, bisexual and transgender community that brings me to the floor today to urge a ''yes'' vote on this important legislation.

Ms. LINDA T. SÁNCHEZ of California. Madam Chairman, at the outset, I'd like to note that I did not vote for this bill in Committee, not because I don't support its goals—I do—but because I strongly believe that we could have done better by protecting more people from discrimination.

That is why I am proud to support the amendment by my colleague from Wisconsin, that will add a prohibition against gender identity discrimination. This amendment is needed because protecting transgender people is the right thing to do. We're talking about a small group of people, but a group that faces tremendous discrimination and that deserves to be protected from workplace discrimination just as much as anybody else.

Now that this bill is out of committee and on the floor, let me be clear, I will vote for it because it extends a basic right to millions of Americans. And that right is the right to go to work and earn a living.

That's all, just the right to support themselves and their families. It is a right that is so basic that I'm appalled that some in this Chamber actually oppose this bill.

What is so problematic about protecting Americans from losing their jobs, not due to job performance, but due to bigotry?

Americans believe that if you work hard and do your job, you should be rewarded. And Americans believe that this basic principle should apply across the board.

Poll after poll reveal that an overwhelming majority of Americans agree someone shouldn't lose a job or be denied a promotion simply for being gay or lesbian.

Americans also believe that it is already illegal to do so. Unfortunately, in many states, it isn't. That's why this bill is so important.

The passage of this bill is just one part of an overall effort to improve the lives of working Americans. So far this year, the New Direction Congress has already worked to increase the opportunities available to working Americans and their families.

We have increased the minimum wage.

We have made college more affordable by increasing Pell Grants and reducing interest rates on student loans.

We have investigated the Administration's failure to protect workers on the job, and begun efforts to ensure that the Occupational Safety and Health Administration and Mine Safety and Health Administration do their jobs: keep workers safe so they can go home to their families after a day's work free of injury and disease.

It is wrong to deny someone a job, a raise, or a promotion because of his or her real or perceived sexual orientation. And it is past time for Congress to say so.

Ending employment discrimination against gay, lesbian, and bisexual people by enacting ENDA is such a common sense solution, and so consistent with the American principles of freedom, justice, and equality that it's amazing to me that in 2007, we still haven't passed this bill.

Let's work together to make the ''American Dream'' a reality for millions of Americans. Let's vote for the Baldwin amendment and pass this bill.

Ms. ESHOO. Madam Chairman, I rise today to express my strong support for The Employment Non-Discrimination Act, ENDA. I was an original cosponsor of this bill when it was first introduced in 1994 and have supported it ever since.

This legislation is a long time in coming. For years we've had workplace protections in place for race, religion, gender, national origin, age, and disability, but nothing to cover sexual orientation. Surprisingly, in 2007, it's still legal to fire someone based on their sexual orientation in 30 different States. ENDA will extend Federal employment discrimination protections to include sexual orientation for all workers.

This bill will not impose new costs and obligations on employers. ENDA will not require employers to give benefits to partners of gay, lesbian, or bisexual employees, although I believe they should. ENDA will not set ''quotas'' for hiring or provide special rights to a unique class of citizens. ENDA will simply end one of the last areas of legal discrimination against Americans in the workplace today.

As introduced in the 110th Congress, this bill originally included protections for transgendered Americans in their jobs. While the bill that comes to the Floor today does not include this provision, it is something I strongly support and will continue to advocate for.

I take pride in being a citizen of a country that promotes tolerance and equality . . . but we must ensure these founding principles extend to all American citizens. I believe ENDA is the next step for us to take on the journey toward full equality for all Americans.

Mr. VAN HOLLEN. Madam Chairman, I rise today in support of H.R. 3685, the Employment Non-Discrimination Act of 2007. Currently American workers are not entitled to protection from discrimination in the work place based upon their sexual orientation. As a result, it is legal to fire or refuse to hire someone simply because they are gay or lesbian. That is simply wrong! This country has a rich history of battling discrimination. Over the years Congress has banned employment discrimination on the basis of race, color, religion, sex, national origin, disability and age. However, our work is not done; we must continue to fight against injustice and extend basic workplace protection to gays and lesbians.

The American people do not support workplace intolerance. A Gallup poll in May of this year found that 89 percent of the American people support equal treatment for gays and lesbians regarding employment opportunities. The sexual orientation of an employee should not factor into the determination of one's competence to perform a particular job. American values are rooted in fairness and opportunities for all, in basic recognition that employment, free of discrimination, is a basic civil right, a human right that must be extended without regard to one's sexual orientation.

My own State of Maryland, in 2001, enacted a law prohibiting employment discrimination on the basis of sexual orientation. I was proud then to have worked on its passage through the State legislature. I am proud today to stand before the House and help pass this bill through Congress. Legislation to promote fairness in employment for gays and lesbians at the national level is long overdue. It is time to take action and extend equality to all Americans.

Mr. LANGEVIN. Madam Chairman, I rise in strong support of H.R. 3685, the Employment Non-Discrimination Act. This important measure demonstrates Congress's commitment to combating prejudice and ensures that Americans will not be denied access to employment because of their sexual orientation.

Current Federal law prevents employment discrimination on the basis of race, gender, religion, national origin, or disability. As a person with a disability, I know how important those Federal protections are for people who want to contribute to the workforce. Unfortunately, too many Americans are still able to be fired based on their sexual orientation. I am proud I come from a State where discrimination based on sexual orientation is against the law, but in 30 States, a person may be fired from a job simply for being gay, lesbian, or bisexual. We need a strong Federal law to protect those Americans and end a practice that is contrary to the American promise of equality and opportunity for all.

The Employment Non-Discrimination Act would prohibit employers from using an individual's sexual orientation as the sole basis for employment decisions. As previously mentioned, Rhode Island is one of 20 States that have comparable State laws. Similarly, a growing number of companies are incorporating non-discrimination policies because they recognize that they should be recruiting and retaining the best individuals for the job, irrespective of a person's sexual orientation. However, despite these advances, too many Americans still face discrimination in the workplace. Today we have the opportunity to make a stand for civil rights and equality by passing ENDA.

I also want to voice my strong support for an amendment to be offered by the gentlewoman from Wisconsin, Ms. BALDWIN, which would prevent discrimination based on gender identity. Rhode Island is one of 12 States that protect gender identity in employment, and our experience has been a positive one. Transgender individuals often have their own set of challenges in the workplace, and we must ensure that their rights are protected as well. I am deeply disappointed that the underlying bill does not include gender identity, especially as I am a cosponsor of a fully inclusive ENDA. Today, the House of Representatives is sending a clear message to the Nation that no American should face discrimination at work or in society, and I think we are missing an unprecedented opportunity to make the measure as inclusive as possible. However, if the Baldwin amendment is unsuccessful, I pledge to work with her and other supporters to see this important provision enacted into law.

I would like to thank everyone who contributed to developing this legislation and bringing it to the floor for a historic vote. I urge all of my colleagues to make a strong stand for equal rights and support H.R. 3685.

Mr. STARK. Madam Chairman, I rise today in strong support of equal rights for all people. No job applicant should be discriminated against because of his or her race, religion, gender, ethnicity, age, disability, political affiliation—or sexual orientation or gender identity.

The Employment Non-Discrimination Act (ENDA, H.R. 3685) simply modernizes existing non-discrimination law to prohibit discriminatory employment practices on the basis of sexual orientation.

Everyone knows that employment discrimination against people based on their sexual orientation occurs daily in our country. Many of us know people who have been the victims of such discrimination. It is wrong and it should be against the law. I'm only sorry it has taken us so long to bring this bill forward.

This legislation succeeds in advancing civil rights. However, it still falls short of what

needs to be accomplished. By no means is this bill as inclusive as it should be. It fails to include gender identity as a protected class. I commend Congresswoman BALDWIN for her efforts to include the transgender community in today's legislation. Had her amendment reached a vote on the House floor, I would have proudly supported it.

Our Declaration of Independence states that Americans have an inalienable right to liberty and happiness, neither of which can be achieved if equal rights are granted to some and not others. Today's bill continues to leave transgender individuals without equal protection from discrimination.

I support this bill because it brings the country one step closer to a prejudice-free workplace, but I implore my colleagues to work toward legislation that guarantees fair employment practices to all people.

Most of us look back on America's history and bemoan that women and non-whites had to struggle for rights that should have automatically been granted to them. If we as a Congress cannot stand against discrimination for a group of citizens who simply demand the right to be treated fairly in the workplace, we are no better than past legislators who opposed a woman's right to vote or the right of African Americans to sit in the same section of a bus or restaurant as whites. I urge my colleagues to do what is right and support this legislation.

Mr. HONDA. Madam Chairman, I rise today to support the Employment Non-Discrimination Act (ENDA), an important step forward in the fight for civil rights in the United States. It is high time for Congress to recognize and address the fear of persecution in the workplace experienced by gay, lesbian, bisexual, and transgender Americans. The Federal Government is right to follow the lead of 20 progressive states to extend federal employment protection to the lesbian and gay community, and I look forward to casting my vote in favor of this bill. ENDA ensures that American workers will be judged on their ability as workers instead of allowing ignorance and fear to bar them from contributing to the success of the Nation and enjoying the unalienable rights of ''life, liberty, and the pursuit of happiness.''

Sadly, more inclusive language was narrowed to exclude the most vulnerable, least understood group within the LGBT community, transgender men and women. I congratulate Representative BALDWIN on offering an amendment to re-insert this wording into the underlying bill and I proudly support her effort. Although this amendment was withdrawn, I was prepared to vote in its favor. Despite this compromise, I support final passage of the bill because I recognize that the perfect should not be the enemy of the good. I trust in my colleagues and my leadership that we will not stop the push for civil rights after consideration of this bill, and I reiterate my dedication to further expanding protection to transgender men and women.

Finally, I strongly object to the mischaracterization of this bill as anti-religious. Gay, lesbian, and straight people alike, strongly religious and strongly secular, support this important step in the struggle for civil rights. Yet, the authors of the bill have wisely sought a compromise for those who still hold a religious objection to these civil rights protections by crafting exemptions for religious organizations and schools.

I am proud to vote for this bill and urge my colleagues to do the same.

Ms. DEGETTE. Madam Chairman, I am a proud cosponsor of the original Employment Non-Discrimination Act (ENDA) that included gender identity.

I will support final passage of this legislation today because passing this bill is important and extending these protections is the right thing to do.

But I will cast my vote with deep regret the trangendered community has been denied the protections offered to gays and lesbians in this bill.

I did not support its removal from the overall legislation and am extremely disappointed that it will not be included when the House passes H.R. 3685.

I have cosponsored ENDA every session since I was first elected to Congress. I have strongly supported this legislation because it is an important step forward in eliminating discrimination against gay people.

I believe that all citizens should be treated equally in this country, regardless of their sexual orientation. Firing someone from their job, or evicting them from their home simply because of their sexual orientation, is immoral and undemocratic.

All members of the gay, lesbian, bisexual and transgender community should be protected from employment discrimination, and by not including gender identity we are essentially abandoning Americans who, frankly, are among the most discriminated against individuals in this country.

Mr. RYAN of Wisconsin. Madam Chairman, today, the House will consider H.R. 3685, the Employment Non-Discrimination Act of 2007. In essence, the bill would expand the protections of Title VII of the Civil Rights Act that prohibit discrimination on the basis of color, religion, national origin and gender to include sexual orientation. As H.R. 3685 has undergone various iterations over the previous months, I have spent a considerable amount of time weighing the implications this legislation would have on our society as a whole. My gravest concerns lie with how religious institutions would be affected. The protections afforded to these groups by our country's founders have been upheld for centuries, and I would not support any legislation that would erode those freedoms.

H.R. 3685, however, provides explicit and concrete exemptions for religious institutions that are similar to the ones included in Title VII of the Civil Rights Act. Specifically, religious organizations, define as ''a religious corporation, association, or society; or a school, college, university, or other educational institution or institution,'' are exempted from complying with the requirements of this law. Effectively, where religious institutions are currently allowed to make hiring decisions on the basis of religion, this protection will be extended so these organizations can continue this practice. In addition, I feel strongly that non-denominational institutions, that is, religious institutions not affiliated or supported by a specific denomination, should be included in this exemption. With passage of the Miller amendment, H.R. 3685 will be adequately modified so that the hiring practices of non-denominational institutions are equally protected and will not be affected by the bill.

Given this, I intend to support the legislation pending before the House. I believe individuals should be judged based on merit and their ability to perform the tasks required rather than on perceived characteristics and unrelated biases.

One of the essential roles of the Federal Government is to protect the equal rights of individuals. H.R. 3685 is not a bill that grants special rights to a certain class of people. If this were the case, I would oppose the bill. This legislation simply protects the equal rights of individuals from workplace discrimination. Indeed, Congress is not alone in its attempt to end sexual orientation discrimination in the workplace. In fact, my home state of Wisconsin has had a very similar law in place since 1982. The legislation the House will consider is an extension of this type of protection. Congress has historically acted to protect workers from discrimination and I believe H.R. 3685 meets this objective.

Mr. WAXMAN. Madam Chairman, I rise in strong support of the Employment Non-Discrimination Act, or ENDA. This legislation is long overdue. Prejudice has no place in the workplace.

Nearly 10 years ago, the Federal Government set a bold example when President Clinton issued an executive order specifically outlawing discrimination based on sexual orientation in the federal government. Today, 22 States, the District of Columbia and more than 180 cities and counties nationwide have enacted laws prohibiting sexual orientation discrimination in the workplace. I am proud that my home State of California and my congressional district in Los Angeles have played a leading role in the effort to promote understanding, acceptance, tolerance, and equality for gay Americans.

But congressional leadership is sorely needed to set a national standard for this fundamental civil rights protection. The health of our democracy requires that all Americans be entitled to justice. Civil rights and human rights should not stop at State boundaries.

Like many civil rights battles before it, the fight for gay rights has been long, arduous, and frustrating. In recent years, we have faced many setbacks with anti-gay initiatives by President Bush and Republicans in Congress that serve only to fan the flames of intolerance and bigotry.

The tide is turning. Earlier this year the Democratic leadership in the House and Senate achieved victories with hate crimes legislation that would criminalize attacks against individuals based on their sexual orientation or gender identity. With the passage of ENDA, we will push further by making it illegal to fire, refuse to hire, or deny a promotion to an individual on the basis of sexual orientation.

As an original cosponsor of H.R. 2015, a more comprehensive version of this legislation, I am disappointed that H.R. 3685 does not protect against discrimination based on gender identity. I strongly support the amendment Representative BALDWIN will offer to include gender identity in H.R. 3685 and if that amendment is not adopted, I pledge to work for an ENDA that includes gender identity.

I look forward to passing this landmark legislation, which is a great leap forward for equal rights.

Mr. LEVIN. Madam Chairman, I rise in support of the Employment Non-Discrimination Act.

This day is long overdue. Freedom from discrimination in the workplace. A simple concept

really. One should be judged by the quality of their work, not by the color of their skin, not by their age, not by their disability, and of course, not by their sexual orientation.

Thirty States continue to permit employers to discriminate against employees based solely on their sexual orientation. It is vital that we adopt federal protections to end this unjust discrimination that affects millions of Americans. The bill before the House today would extend the basic protections of the Civil Rights Act by prohibiting employment discrimination based on sexual orientation.

For all of my life, this country has been grappling with the issue of how to extend fundamental rights to every individual in our society. We all know the profound impact of the Civil Rights Act of 1964, which made it illegal to fire, refuse to hire, deny promotions or otherwise discriminate against employees based on race. While the Civil Rights Act was controversial in the years leading up to its enactment, one of our country's proudest moments was the day President Johnson signed it into law.

I very much regret that the Bush Administration is threatening to veto this legislation. Back in 1990, the first President Bush signed the landmark Americans with Disabilities Act, which barred workplace discrimination against qualified individuals with disabilities. It is unfortunate that the current Bush Administration has chosen not to build on this progress.

But today is about progress. Today we stand up for gay Americans and say it is long overdue that you have the protections needed in our Nation's employment laws. Tomorrow we continue to educate and outreach around the need to also prohibit employment discrimination on the basis of gender identity.

Mr. WELDON of Florida. Madam Chairman, I rise to express my concerns about H.R. 3685, the Employment Non-Discrimination Act (ENDA). Unfortunately, this bill goes far beyond simply providing protections against discrimination. If that had been the sole purpose of H.R. 3685, the authors would have closely tracked the Civil Rights Act. The fact that they chose not to follow the Civil Rights Act, but instead create a whole new statute belies their true motives. Because H.R. 3685 does not consider the rights of other protected classes by giving them less protection than have already been provided for them under Title VII of the Civil Rights Act, I believe this legislation is unfair and unwise.

Again, as has become the common practice with the new majority, this bill is on the floor with little review, no committee hearings, and little input from religious organizations and employees that will feel the largest impact from this legislation. Having a one-sided piece of legislation rushed to the floor is no way to pass legislation whose implications will be deeply felt by all Americans. This haste to the House floor, fear of constructive criticism, and failure to model this bill after other successful Federal civil rights legislation, is unwise and is plagued with pitfalls.

The Committee summarily rejected amendments to (1) broaden the exemption for religious schools not covered by the definition in H.R. 3685 to make it consistent with Title VII exemptions; (2) strike the vague and confusing ''perceived'' sexual orientation language; (3) prohibit retaliation against employees who may not agree with employer policies relating to this bill on the basis of sincerely held religious beliefs and; (4) remove the provision making it unlawful to condition employment in a State in which a person cannot marry a person of the same sex. One wonders why in the quest to protect one group, the authors of this bill are so willing to infringe and discriminate against the rights of others. In fact, I do not believe it is going too far to say that the authors of this bill are willing to infringe on the consciences of others in their attempt to create new protections.

H.R. 3685 contains a much narrower religious exemption than is provided under Title VII of the Civil Rights Act, which broadly exempts religious corporations, associations, societies, and educational institutions. There is strong evidence to suggest that non-denominational independent religious schools will not be exempt from complying with H.R. 3685 even though they are under Title VII. This issue has been glossed over by the Democratic leaders even though Congress specifically amended the Civil Rights Act in 1972 to forthrightly protect the mission-critical hiring rights of religious organizations.

A significant concern over H.R. 3685 is its inadequate protection for religious employers and those with deeply held religious convictions. Under Title VII, religious corporations, associations, societies and educational institutions are given broad exemptions. H.R. 3685 contains insufficient exemptions for religious organizations and companies with sincerely held religious beliefs. While houses of worship, missions, and some religious schools would be exempt, H.R. 3685's definition of ''religious organizations'' is a two-part test to determine if an educational institution qualifies for an exemption. In light of the broad exemptions provided in Title VII and the successful management of competing protections, why does H.R. 3685 feel it is necessary to subject religious organizations to intrusive snooping of the Federal Government to investigate if the organization is ''religious enough?'' This requirement indeed constitutes an excessive government entanglement with religion in violation of the First Amendment, and it is doubtful that it would survive scrutiny by the Supreme Court.

H.R. 3685 is vaguely drafted to prohibit employers from discriminating against an individual's actual or ''perceived'' sexual orientation or the actual or ''perceived'' sexual orientation of a person with whom the employee associates. Again, someone's ''perceived'' status is not included in any other civil rights legislation, including Title VII, which protects race, color, religion, sex, and national origin. Employers will now be subjected to claims and potential liability based on the highly subjective standard of someone's perception. With this legislation applying to essentially every company in the country with more than 15 employees, exposing employers to the threat of liability based on ''perception'' seems highly unwise and will create a lawyer's bonanza. This will force employers to defend themselves in claims and litigation by having to prove a negative—that they weren't able to perceive someone's sexual orientation. I'm sure this is welcome news for the nation's trial bar who will welcome vague loopholes to create Title VII claims to litigate. We should not open employers up to lawsuits because they were unable to ''perceive'' a person's sexual orientation, but that is what this bill does. This is especially an unfair burden on our small business owners, who will not be able to afford lengthy and costly litigation. This bill allows individuals to file suit, if their claims aren't resolved by the EEOC, for punitive damages up to $300,000.

H.R. 3685 will also needlessly create hostile work environments, as religious employees protected under Title VII will have their right to free religious expression challenged by the new rights created in ENDA for individuals based on their ''actual or perceived sexual orientation.'' The balancing of these two will lead to an impossible balancing test of which law to follow and which to violate.

While I strongly oppose intentional discrimination in the workplace to anyone, H.R. 3685 would favor some classes of citizens over other already protected classes. I cannot support a bill that does not provide adequate and equal protections to religious organizations, especially religious educational institutions that will be forced to act against their consciences if this legislation becomes law.

Mr. BLUMENAUER. Madam Chairman, today I vote in favor of H.R. 3685, the Employment Non-Discrimination Act (ENDA) because all Americans deserve to be protected from discrimination in the workplace. As a new legislator, one of the first hearings I attended in Congress was on this very bill and while I am pleased to finally vote on it, I'm sad it took twelve years for this day to come.

I see today's vote as part of our nation's struggle to achieve civil rights—an effort to make our country more equitable, more just, and more fair, so that every child has the opportunity to pursue their dreams in a safe and accepting environment. As I look back on how we have achieved civil rights legislation, I am struck that each accomplishment was both monumental and yet disappointingly incomplete. I am saddened that the gender identity provision did not pass this time around, but remain committed to resolving this inequity in the future.

I appreciate the advocates in my district, and across the country, who have worked tirelessly to bring about today's successful passage of ENDA. I am confident we will continue these efforts to keep these issues at the forefront of our agenda. Together, we can put an end to the ugliness of intolerance and bigotry.

Ms. HIRONO. Madam Chairman, I rise today in support of H.R. 3865, the Employment Non-Discrimination Act of 2007 (ENDA), as well as in support of the amendment to the bill offered by Congresswoman TAMMY BALDWIN.

I would like to thank the chief sponsor .of the bill, Congressman BARNEY FRANK, and GEORGE MILLER, Chairman of the Education and Labor Committee, for their leadership. This is truly a historic moment, which was largely made possible by their commitment to the democratic ideals of equality and fairness.

As an original cosponsor of the original ENDA, H.R. 2015, I am glad to be able to have this opportunity to debate the BALDWIN amendment to include anti-discrimination protections for transgender individuals. It is unfortunate that political realities made it difficult to bring an inclusive ENDA to the floor today in the first place.

However, I stand with Congresswoman BALDWIN in her courageous fight to provide for the inclusion of a group that is probably the most in need of workplace protections. I look forward to continuing to work with her and our

likeminded colleagues in any effort to build upon the momentum of H.R. 3865 and provide employment protections for gender identity through future educational and legislative initiatives.

The Civil Rights Act of 1964 prohibited employment discrimination based on race and gender. The scope of protections has expanded since then to also bar employment discrimination based on religion, color, and national origin. And while versions of H.R. 3865 have been introduced in each Congress since 1975, this is the first time it will be voted on by the U.S. House of Representatives.

H.R. 3865 provides us with a historic opportunity to be able to respond to the prejudice and discrimination that face millions of Americans in our workforce. It is at moments like these, this ability to provide for civil rights progress, that I am truly proud to be a member of the Democratic majority making freshmen class.

I urge my colleagues to join me in voting for H.R. 3865 and working toward the inclusion of gender identity in future legislation. Mahalo (thank you).

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the bill shall be considered read for amendment under the 5-minute rule.

The text of the bill is as follows:

H.R. 3685

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Employment Non-Discrimination Act of 2007''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to provide a comprehensive Federal prohibition of employment discrimination on the basis of sexual orientation;

(2) to provide meaningful and effective remedies for employment discrimination on the basis of sexual orientation; and

(3) to invoke congressional powers, including the powers to enforce the 14th amendment to the Constitution, and to regulate interstate commerce and provide for the general welfare pursuant to section 8 of article I of the Constitution, in order to prohibit employment discrimination on the basis of sexual orientation.

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—In this Act:

(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission.

(2) COVERED ENTITY.—The term ''covered entity'' means an employer, employment agency, labor organization, or joint labor-management committee.

(3) EMPLOYEE.—

(A) IN GENERAL.—the term ''employee'' means—

(i) an employee as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f);

(ii) a Presidential appointee or State employee to which section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16(a)(1) applies;

(iii) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301) or section 411(c) of title 3, United States Code; or

(iv) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a)) applies.

(B) EXCEPTION.—The provisions of this Act that apply to an employee or individual shall not apply to a volunteer who receives no compensation.

(4) EMPLOYER.—The term ''employer'' means—

(A) a person engaged in an industry affecting commerce (as defined in section (701)(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h)) who has 15 or more employees (as defined in subparagraphs (A)(i) and (B) of paragraph (3)) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986;

(B) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 applies;

(C) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 or section 411(c) of title 3, United States Code; or

(D) an entity to which section 717(a) of the Civil Rights Act of 1964 applies.

(5) EMPLOYMENT AGENCY.—The term ''employment agency'' has the meaning given the term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

(6) LABOR ORGANIZATION.—The term ''labor organization'' has the meaning given the term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d)).

(7) PERSON.—The term ''person'' has the meaning given the term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

(8) RELIGIOUS ORGANIZATION.—The term ''religious organization'' means—

(A) a religious corporation, association, or society; or

(B) a school, college, university, or other educational institution or institution of learning, if—

(i) the institution is in whole or substantial part controlled, managed, owned, or supported by a particular religion, religious corporation, association, or society; or

(ii) the curriculum of the institution is directed toward the propagation of a particular religion.

(9) SEXUAL ORIENTATION.—The term ''sexual orientation'' means homosexuality, heterosexuality, or bisexuality.

(10) STATE.—The term ''State'' has the meaning given the term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)).

(b) APPLICATION OF DEFINITIONS.—For purposes of this section, a reference in section 701 of the Civil Rights Act of 1964—

(1) to an employee or an employer shall be considered to refer to an employee (as defined in paragraph (3)) or an employer (as defined in paragraph (4)), respectively, except as provided in paragraph (2) below; and

(2) to an employer in subsection (f) of that section shall be considered to refer to an employer (as defined in paragraph (4)(A)).

SEC. 4. EMPLOYMENT DISCRIMINATION PROHIBITED.

(a) EMPLOYER PRACTICES.—It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual's actual or perceived sexual orientation; or

(2) to limit, segregate, or classify the employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment or otherwise adversely affect the status of the individual as an employee, because of such individual's actual or perceived sexual orientation.

(b) EMPLOYMENT AGENCY PRACTICES.—It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation of the individual or to classify or refer for employment any individual on the basis of the actual or perceived sexual orientation of the individual.

(c) LABOR ORGANIZATION PRACTICES.—It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation of the individual;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment, or would limit such employment or otherwise adversely affect the status of the individual as an employee or as an applicant for employment because of such individual's actual or perceived sexual orientation; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) TRAINING PROGRAMS.—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of the actual or perceived sexual orientation of the individual in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) ASSOCIATION.—An unlawful employment practice described in any of subsections (a) through (d) shall be considered to include an action described in that subsection, taken against an individual based on the actual or perceived sexual orientation of a person with whom the individual associates or has associated.

(f) NO PREFERENTIAL TREATMENT OR QUOTAS.—Nothing in this Act shall be construed or interpreted to require or permit—

(1) any covered entity to grant preferential treatment to any individual or to any group because of the actual or perceived sexual orientation of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any actual or perceived sexual orientation employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such actual or perceived sexual orientation in any community, State, section, or other area, or in the available work force in any community, State, section, or other area; or

(2) the adoption or implementation by a covered entity of a quota on the basis of actual or perceived sexual orientation.

(g) DISPARATE IMPACT.—Only disparate treatment claims may be brought under this Act.

SEC. 5. RETALIATION PROHIBITED.

It shall be an unlawful employment practice for a covered entity to discriminate against an individual because such individual (1) opposed any practice made an unlawful employment practice by this Act; or (2) made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

SEC. 6. EXEMPTION FOR RELIGIOUS ORGANIZATIONS.

This Act shall not apply to a religious organization.

SEC. 7. NONAPPLICATION TO MEMBERS OF THE ARMED FORCES; VETERANS' PREFERENCES.

(a) ARMED FORCES.—

(1) EMPLOYMENT.—In this Act, the term ''employment'' does not apply to the relationship between the United States and members of the Armed Forces.

(2) ARMED FORCES.—In paragraph (1) the term ''Armed Forces'' means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) VETERANS' PREFERENCES.—This title does not repeal or modify any Federal, State, territorial, or local law creating a special right or preference concerning employment for a veteran.

SEC. 8. CONSTRUCTION.

(a) EMPLOYER RULES AND POLICIES.—

(1) IN GENERAL.—Nothing in this Act shall be construed to prohibit a covered entity from enforcing rules and policies that do not intentionally circumvent the purposes of this Act, if the rules or policies are designed for, and uniformly applied to, all individuals regardless of actual or perceived sexual orientation.

(2) SEXUAL HARASSMENT.—Nothing in this Act shall be construed to limit a covered entity from taking adverse action against an individual because of a charge of sexual harassment against that individual, provided that rules and policies on sexual harassment, including when adverse action is taken, are designed for, and uniformly applied to, all individuals regardless of actual or perceived sexual orientation.

(3) ACTIONS CONDITIONED ON MARRIAGE.—An unlawful employment practice under section 4 shall include an action described in that section that is conditioned, in a State in which a person cannot marry a person of the same sex, either on being married or being eligible to marry.

(b) EMPLOYEE BENEFITS.—Nothing in this Act shall be construed to require a covered entity to treat a couple who are not married, including a same-sex couple who are not married, in the same manner as the covered entity treats a married couple for purposes of employee benefits.

SEC. 9. COLLECTION OF STATISTICS PROHIBITED.

The Commission shall not collect statistics on actual or perceived sexual orientation from covered entities, or compel the collection of such statistics by covered entities.

SEC. 10. ENFORCEMENT.

(a) ENFORCEMENT POWERS.—With respect to the administration and enforcement of this Act in the case of a claim alleged by an individual for a violation of this Act—

(1) the Commission shall have the same powers as the Commission has to administer and enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b and 2000e–16c),

in the case of a claim alleged by such individual for a violation of such title, or of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b(a)(1)), respectively;

(2) the Librarian of Congress shall have the same powers as the Librarian of Congress has to administer and enforce title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(3) the Board (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301)) shall have the same powers as the Board has to administer and enforce the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1));

(4) the Attorney General shall have the same powers as the Attorney General has to administer and enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b and 2000e–16c);

in the case of a claim alleged by such individual for a violation of such title, or of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b(a)(1)), respectively;

(5) the President, the Commission, and the Merit Systems Protection Board shall have the same powers as the President, the Commission, and the Board, respectively, have to administer and enforce chapter 5 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of section 411 of such title; and

(6) a court of the United States shall have the same jurisdiction and powers as the court has to enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b and 2000e–16c) in the case of a claim alleged by such individual for a violation of section 302(a)(1) of such Act (42 U.S.C. 2000e–16b(a)(1));

(C) the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)); and

(D) chapter 5 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of section 411 of such title.

(b) PROCEDURES AND REMEDIES.—The procedures and remedies applicable to a claim alleged by an individual for a violation of this Act are—

(1) the procedures and remedies applicable for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(2) the procedures and remedies applicable for a violation of section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) in the case of a claim alleged by such individual for a violation of such section;

(3) the procedures and remedies applicable for a violation of section 201(a)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in the case of a claim alleged by such individual for a violation of such section; and

(4) the procedures and remedies applicable for a violation of section 411 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of such section.

(c) OTHER APPLICABLE PROVISIONS.—With respect to a claim alleged by a covered employee (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301)) for a violation of this Act, title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleged by such a covered employee for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

SEC. 11. STATE AND FEDERAL IMMUNITY.

(a) STATE IMMUNITY.—A State shall not be immune under the 11th amendment to the Constitution from a suit described in subsection (b) and brought in a Federal court of competent jurisdiction for a violation of this Act.

(b) REMEDIES FOR STATE EMPLOYEES.—

(1) IN GENERAL.—

(A) WAIVER.—A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th amendment to the Constitution or otherwise, to a suit brought by an employee or applicant for employment of that program or activity under this Act for a remedy authorized under subsection (c).

(B) DEFINITION.—In this paragraph, the term ''program or activity'' has the meaning given the term in section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4a).

(2) OFFICIALS.—An official of a State may be sued in the official capacity of the official by any employee or applicant for employment who has complied with the applicable procedures of section 10, for equitable relief that is authorized under this Act. In such a suit the court may award to the prevailing party those costs authorized by section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

(3) EFFECTIVE DATE.—With respect to a particular program or activity, paragraphs (1) and (2) apply to conduct occurring on or after the day, after the date of enactment of this Act, on which a State first receives or uses Federal financial assistance for that program or activity.

(c) REMEDIES AGAINST THE UNITED STATES AND THE STATES.—Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States or a State for a violation of this Act, remedies (including remedies at law and in equity, and interest) are available for the violation to the same extent as the remedies are available for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) by a private entity, except that—

(1) punitive damages are not available; and

(2) compensatory damages are available to the extent specified in section 1977A(b) of the Revised Statutes (42 U.S.C. 1981a(b)).

SEC. 12. ATTORNEYS' FEES.

Notwithstanding any other provision of this Act, in an action or administrative proceeding for a violation of this Act, an entity described in section 10(a) (other than paragraph (4) of such section), in the discretion of the entity, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs. The Commission and the United States shall be liable for the costs to the same extent as a private person.

SEC. 13. POSTING NOTICES.

A covered entity who is required to post notices described in section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10) shall post notices for employees, applicants for employment, and members, to whom the provisions specified in section 10(b) apply, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964.

SEC. 14. REGULATIONS.

(a) IN GENERAL.—Except as provided in subsections (b), (c), and (d), the Commission shall have authority to issue regulations to carry out this Act.

(b) LIBRARIAN OF CONGRESS.—The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to

employees and applicants for employment of the Library of Congress.

(c) BOARD.—The Board referred to in section 10(a)(3) shall have authority to issue regulations to carry out this Act, in accordance with section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1384), with respect to covered employees, as defined in section 101 of such Act (2 U.S.C. 1301).

(d) PRESIDENT.—The President shall have authority to issue regulations to carry out this Act with respect to covered employees, as defined in section 411(c) of title 3, United States Code.

SEC. 15. RELATIONSHIP TO OTHER LAWS.

This Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other Federal law or regulation or any law or regulation of a State or political subdivision of a State.

SEC. 16. SEVERABILITY.

If any provision of this Act, or the application of the provision to any person or circumstance, is held to be invalid, the remainder of this Act and the application of the provision to any other person or circumstances shall not be affected by the invalidity.

SEC. 17. EFFECTIVE DATE.

This Act shall take effect 6 months after the date of the enactment of this Act and shall not apply to conduct occurring before the effective date.

The CHAIRMAN. No amendment to the bill is in order except those printed in House Report 110–422. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent of the amendment, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

Amendment No. 3 in the report may be withdrawn.

AMENDMENT NO. 1 OFFERED BY MR. GEORGE MILLER OF CALIFORNIA

The CHAIRMAN. It is now in order to consider amendment No. 1 printed in House Report 110–422.

Mr. GEORGE MILLER of California. Madam Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. GEORGE MILLER of California:

Strike paragraph (8) of section 3(a) (and redesignate paragraphs (9) and (10) of such section as paragraphs (8) and (9), respectively).

Strike section 6 and insert the following:

SEC. 6. EXEMPTION FOR RELIGIOUS ORGANIZATIONS.

This Act shall not apply to a corporation, association, educational institution, or society that is exempt from the religious discrimination provisions of title VII of the Civil Rights Acts of 1964 pursuant to section 702(a) or 703(e)(2) of such Act (42 U.S.C. 2000e–1(a); 2000e–2(e)(2)).

In section 8(b), strike '', including a same-sex couple who are not married,''.

At the end of section 8, insert the following:

(c) DEFINITION OF MARRIAGE.—As used in this Act, the term ''married'' or ''marry'' refer to marriage as such term is defined in section 7 of title I, United States Code (referred to as the Defense of Marriage Act).

The CHAIRMAN. Pursuant to House Resolution 793, the gentleman from California (Mr. GEORGE MILLER) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from California.

Mr. GEORGE MILLER of California. Madam Chairman, I yield myself 4½ minutes.

Madam Chairman, I rise in support of an amendment to this ENDA legislation that I and Mr. STUPAK have written to ensure that this law will protect religious liberties of religious corporations, societies, associations, and in particular, religious schools, including those religious schools that are not affiliated with any particular church or denomination. Our amendment would make it clear that the ENDA exemption matches the religious exemption found in title VII of the Civil Rights Act of 1964. Under my amendment, a religious corporation, association, or school would be categorically exempt from ENDA.

In addition, our amendment also clarifies that the references to the term ''married'' refer to the Federal definition of marriage as between one man and one woman, as enacted in the 1996 Federal law referred to as the Defense of Marriage Act.

With respect to the religious exemption, this issue has been the cause of a lot of confusion in the past weeks. The religious exemption that was part of the ENDA bill that passed out of the Education and Labor Committee on October 18 was exceptionally broad; however, several nondenominational religious schools raised concerns that they might not be covered under the ENDA exemption.

For example, the president of Wheaton College in Naperville, Illinois, sent a letter to Representative TIM WALBERG in advance of the Education and Labor Committee's markup on ENDA. Mr. WALBERG then shared that letter with the entire committee, and our Republican colleagues argued that Wheaton College, which is clearly a religious school despite the fact that it is not controlled by or affiliated with any specific church, may not be covered by the ENDA exemption. That argument was incorrect.

Wheaton, along with other religious schools and organizations such as the Council for Christian Colleges and Universities, asked that we ''ensure that the act categorically exempts religious organizations as in section 702(a) of title VII,'' and we have done precisely what Wheaton College and the Council for Christian Colleges has asked us to do.

Under this amendment, if a religious organization, including a religious school, is exempt under either section 702(a) or the arguably broader section 703(e)(2), then that organization or school is exempt from ENDA, period. So, if a school qualifies for either one of those exemptions under title VII, it is categorically, as they requested, exempt from ENDA. By directly referencing title VII, we also ensure that the many decades of case law on title VII's religious exemption is imported to ENDA.

This amendment provides clarity for religious schools that have experience with the title VII exemption, and it should satisfy all of their legitimate concerns about ENDA.

Let me be clear, the title VII exemption, and therefore, the ENDA exemption, applies to both nondenominational religious schools like Wheaton and church-affiliated schools. And as one court explained, ''Even though a Christian corporation or organization is nondenominational, it nevertheless may subscribe to particular religious views with which other Christians do not agree, and conversely, it may disagree with the religious views of other Christians.'' And to go on, the court said, ''This is precisely the situation for which the title VII exemptions were enacted; the exemptions allow religious institutions to employ only persons whose beliefs are consistent with the views of the religious organization.'' And that is the purpose of this exemption. That is the purpose of this amendment.

In addition to clarifying the scope of the ENDA religious exemption, my amendment also specifically states that the references to marriage in ENDA refers to the definition of marriage as defined in Federal law. Specifically, these terms in ENDA are given the meaning provided by the Federal law that is referred to as the Defense of Marriage Act, which defines marriage for Federal purposes as the union of one man and one woman. That is the definition that applies to ENDA, and my amendment makes that definition absolutely clear.

Madam Chairman, because our amendment offers strong protections for religious organizations, including nondenominational or nonaffiliated religious schools, and because our amendment clarifies that the Defense of Marriage Act operates to define the term ''marriage'' in this bill, I trust that the Miller amendment will receive a large bipartisan vote in its favor.

Madam Chairman, I would like now to yield 4 minutes to my cosponsor of this legislation, Mr. STUPAK.

Mr. STUPAK. Madam Chairman, I thank the chairman of the committee.

I rise in support of the Miller-Stupak amendment to the Employment Non-Discrimination Act of 2007.

This amendment makes two important clarifications. First, our amendment asserts and clarifies that any religious organization that is currently covered by the Civil Rights Act of 1964 would be exempt from the Employment Non-Discrimination Act. This will continue to protect religious organizations, including corporations, schools, associations, and societies from religious discrimination claims.

For the past 40-plus years, religious high schools, colleges and other organizations throughout the Nation have been allowed to hire individuals based on that institution's religious principles.

Today, as we adopt employment protections based on sexual orientation, these principles should be upheld.

Continuing America's long-standing separation of church and State, this amendment will ensure that the Federal Government does not unconstitutionally infringe on religious organizations' hiring practices.

Religious schools and organizations throughout my district and throughout this Nation will continue to freely practice their beliefs without being afraid of being charged with discrimination.

Several major religious organizations support the inclusion of a religious exemption in ENDA, including the U.S. Conference of Catholic Bishops, Union of Orthodox Jewish Congregations of America, and the General Conference of the Seventh-day Adventist Church.

The Miller-Stupak amendment also upholds the Defense of Marriage Act. It also clarifies that any reference to ''marriage'' within ENDA refers to the legal union between one man and one woman as husband and wife.

In 1996, a bipartisan group of 342 Members, including myself, voted in favor of the Defense of Marriage Act. Marriage is between a man and woman. I support including a clear definition of marriage as a union between a man and woman in this legislation.

No American should have to face discrimination in the workplace, regardless of their race, gender or sexual orientation. However, religious organizations should be able to hire individuals who agree with their religious beliefs.

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It is also important to make it explicitly clear that marriage is a union between a man and a woman and that no part of the Employment Non-Discrimination Act could be misconstrued to undercut the Defense of Marriage Act.

I urge my colleagues to join with me and the chairman in voting for this amendment. With the inclusion of this amendment, I encourage Members to vote for final passage of the Employment Non-Discrimination Act.

I ask for a ''yes'' vote on the Miller-Stupak amendment.

Mr. GEORGE MILLER of California. Madam Chairman, I reserve the balance of my time.

Mr. MCKEON. Madam Chairman, I rise to claim the time in opposition to the amendment. However, I do not oppose the amendment.

The CHAIRMAN. Without objection, the gentleman from California is recognized for 10 minutes.

There was no objection.

Mr. MCKEON. Madam Chairman, I yield myself such time as I may consume.

With this amendment, the majority tries to correct fundamental flaws related to hiring protections for faith-based institutions and the preservation of marriage. I will reluctantly support this relatively futile attempt, but let me be clear, on the issues of faith-based protections and the institution of marriage, this amendment fails to solve the problems. As such, even with adoption of this amendment, the underlying bill should be defeated.

For months, my colleagues and I have raised substantive legal and policy concerns related to this legislation. After a series of legislative false starts, the bill brought to the floor continues to pose a number of challenges. The amendment offered by Chairman MILLER is an obvious attempt to address a few, but certainly not all, of the issues we have identified.

We expressed concern that the bill created a new anti-discrimination framework outside the existing scope of title VII of the Civil Rights Act of 1964. Among other things, this allowed for a new set of provisions to dictate the hiring rights of religious organizations, thereby stripping faith-based institutions of their long-standing title VII protections.

I appreciate that the majority has recognized and agreed with our concerns about how this bill would intrude on religious freedom. In response to those concerns, the amendment moves closer to title VII. Inexplicably, however, it still leaves out an important piece of current law.

Chairman MILLER says his amendment fully restores protections to faith-based institutions. It does not. We expressed concern that the bill could undermine the rights of States to define, protect and preserve the institution of marriage. The Miller amendment deletes troublesome provisions related to employee benefits for same-sex couples and references the Federal Defense of Marriage Act, which defines marriage as a union between one man and one woman. Unfortunately, despite these steps, or perhaps even because of them, the bill taken as a whole continues to create potential conflicts between State and Federal marriage laws.

Chairman MILLER says his amendment protects the rights of States to define and preserve traditional marriage. It does not.

A Presidential veto threat has been issued on constitutional and policy grounds. This amendment fails to fully address those concerns. I reluctantly support passage of this amendment to partially address a few of the problems we have identified throughout this bill's troubled legislative path.

But I remind my colleagues that this amendment is not enough. The bill remains a litigation trap that undermines marriage and provides insufficient protections to faith-based organizations. Even after supporting this amendment, I urge my colleagues to reject the underlying bill.

Madam Chairman, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Does the gentleman have additional speakers? We only have one speaker left and we have the right to close.

Mr. MCKEON. Who has the right to close?

The CHAIRMAN. The gentleman from California (Mr. MCKEON) has the right to close.

Mr. MCKEON. Madam Chairman, I am happy to yield at this time 2½ minutes to the gentleman from Georgia, Representative BROUN.

Mr. BROUN of Georgia. I thank the gentleman for yielding.

Madam Chairman, the House of Representatives is debating H.R. 3685, the Employment Non-Discrimination Act, today.

As well meaning as the title of this bill sounds, I want my constituents in the 10th Congressional District of Georgia and all Americans to know why this legislation is bad for Georgia and bad for America. Just like the ill-conceived hate crimes legislation that this Democratic majority passed, this bill will increase discrimination, yes, increase, and not decrease it.

I believe in the Constitution of the United States as our Founding Fathers intended. The first amendment to our Constitution expressly protects religious freedom. So while I am opposed to discrimination, I am also opposed to creating special rights and privileges for certain classes, and that is exactly what this bill does. This bill would elevate one person's desire for a particular job over another person's right to practice and honor their religious beliefs.

If H.R. 3685 is signed into law, and I pray that it will not be, it would deny the civil rights of employers, and it would abridge the freedom of association enshrined in our first amendment.

ENDA will force employers, including Christians, Muslims, Jews and people of other faiths to hire individuals that are diametrically opposed to their fundamental belief system. If they stand up for their religious beliefs and refuse to hire those opposed to their faith, they will be sued. In fact, one thing the bill will accomplish is to dramatically increase lawsuits against employers.

Further, while the Democratic majority will argue that religious organizations are exempt, the highly nuanced definition contained in this bill for religious organizations and religious educational institutions is so bad as to make this exemption essentially meaningless. The bill would grant special employment privileges and protected minority status to anyone that defines themselves by their sexual orientation. Further, an employer can be sued for not only making an employment decision based on a person's sexual orientation, but on his perception of their orientation.

Countless individuals and organizations, including Christian and Jewish schools, Christian bookstores and even

religious daycare providers will be forced to either hire a homosexual or transgender individual or face prosecution.

This legislation is unnecessary and is unconstitutional. I urge my colleagues on both sides of the aisle to do the right and courageous thing and to vote ''no'' on H.R. 3685.

Mr. MCKEON. Might I inquire how much time we have left?

The CHAIRMAN. The gentleman from California (Mr. MCKEON) has 4½ minutes. The gentleman from California (Mr. GEORGE MILLER) has 3 minutes.

Mr. MCKEON. At this time, I would be happy to yield 3½ minutes to the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. I want to thank Chairman MILLER. As a former Republican staff director on the Children and Family Committee when he was chairman of that, and working with the committee, I found, as he said earlier, that he listened to the Hoekstra amendment committee and made some adjustments that, in fact, occasionally he is right. It's occasional, but occasionally he is right. This addressed some of our concerns. It did not address all of our concerns.

As you know, when you are dealing with religious law or any law, it isn't at the heart of the matter, it's at the fringes. In communion, can minors take real alcohol and wine? Can Native Americans smoke peyote?

Here we're not dealing, and this amendment helps clarify that, we're not dealing with religious colleges. We're not dealing with the church proper, but law in the United States is we deal with religious discrimination, the ability to deal whether sexual discrimination trumps religious discrimination, which is fundamentally what this bill is about, that people who hold deeply held religious beliefs, which is part of Orthodox Jewish teaching, fundamentalist Muslim teaching and, in the Bible, unlike civil rights, where civil rights were led by William Wilberforce in England, by the abolitionists in America because the Bible was not explicit. But here, in fact, the Bible is explicit. The Koran is explicit. The Torah is explicit. And people have deeply held religious beliefs. So 85 percent of the Christian bookstores in America would not be covered by this protection. Certain types of church camps would not be, depending on how it's handled. Group homes that are often independent and do not have an overt religious message that grew out of the faith message of a church but do not necessarily now have an overtly religious mission, they're part of the outgrowth of the religion, would be covered. They wouldn't be able to have a husband and wife be the house parents under this bill. Religious law is a lot more complex than it was presented today.

One of the other challenges here is when we are trying to talk about how do we debate in public life over people of faith and which party are they going to be in, how are we going to reach out to this, the American people have heard in this debate today people who seriously are uncomfortable with this debate. We don't like to talk about this type of thing. I have tried to treat everybody in my life, regardless of how they have been in this Congress or friends back home or people I have worked with, with respect and dignity and do not practice personal discrimination.

But I have heard my religion and my religious belief called prejudiced, bigoted, hate-filled, that the predominant religions in America have had their basic beliefs, those who believe in a literal Bible, have seen their faith smeared today on this House floor, and I am very disappointed in much of the tone. I understand the passion. I understand why people who have a homosexual life-style feel they have been discriminated against, but this is a classic question in our country. If, in fact, nobody could get a job, we would be facing a different challenge today. I openly admit that.

But the challenge here is do people who have deeply held religious convictions based on the fundamental text of their faith have the right to practice their faith, too, or are they going to be trumped? This amendment is a step, but it's only a step.

Mr. GEORGE MILLER of California. Madam Chairman, I yield the remaining time to the gentleman from New Jersey (Mr. ANDREWS).

The CHAIRMAN. The gentleman from New Jersey is recognized for 3 minutes.

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. I thank the chairman for yielding.

Madam Chairman, I rise in support of this well-thought-out amendment from Chairman MILLER and Mr. STUPAK. I think it quite fairly addresses some of the concerns people have raised.

First, with respect to religion, on October 3, 2007, the president of Wheaton College wrote to our colleague, Mr. WALBERG from Michigan. President Litfin worried about the scope of the religious exemption in the underlying bill, and here is what he said: ''I urge you to remove the problematic religious definition language currently in ENDA and ensure that the act categorically exempts religious organizations as in section 702(a) of title VII of the Civil Rights Act.''

Here is what the amendment in front of us says: ''This act shall not apply to a corporation, association, educational institution, or society that is exempt from the religious discrimination provisions of title VII of the Civil Rights Act of 1964 pursuant to section 702(a),'' precisely what was asked for.

Second, I have heard concerns that there is preferential treatment or special rights for persons protected under this bill. The gentleman and others should read page 8 of the underlying bill, subparagraph (f), which is captioned ''No Preferential Treatment or Quotas.'' Let me read from it: ''Nothing in this Act shall be construed or interpreted to require or to permit any covered entity to grant preferential treatment to any individual or any group because of the actual or perceived sexual orientation of such individual.''

It's helpful to read the bill.

Finally, we have heard suggestions that somehow the institution of marriage is undermined. It's very important to read the second part of Mr. MILLER and Mr. STUPAK's amendment, subsection (c) and I will read it: ''As used in this Act, the term 'married' or 'marry' refer to marriage as such term as defined in section 7 of title I,'' which is the Defense of Marriage Act which explicitly defines marriage as a union between one man and one woman.

These were concerns that were raised. They are met. I respect and appreciate the fact that the ranking member of the full committee will vote ''yes'' on this amendment. So will I, and so will an overwhelming majority so we can proceed to passage of this bill with a strong bipartisan majority.

I urge a ''yes'' vote on this amendment.

Mr. MCKEON. Madam Chairman, I yield myself the balance of my time.

The CHAIRMAN. The gentleman from California is recognized for 1 minute.

Mr. MCKEON. This is an emotional issue, it's a serious issue, and I think it's hard for some of us, I know on this, to control our passions. It's disturbing that some are offended, have been offended during the debate today, and I feel badly about that.

My concerns are more with the flaws that I see in the bill. I am concerned that we are all trying to end discrimination. I don't think you do that by passing laws. I think we have to engage people in their hearts, in their minds and try to work with that approach.

While this amendment does not correct or even address all of the challenges created by the underlying legislation, I recognize the incremental steps it takes. I appreciate the chairman for making this effort at trying to resolve these issues. I will support its passage.

Madam Chairman, I yield back the balance of my time.

□ 1645

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. GEORGE MILLER).

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. GEORGE MILLER of California. Madam Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California will be postponed.

AMENDMENT NO. 2 OFFERED BY MR. SOUDER

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 110–422.

Mr. SOUDER. Madam Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. SOUDER:
Strike paragraph (3) of section 8(a).

The CHAIRMAN. Pursuant to House Resolution 793, the gentleman from Indiana (Mr. SOUDER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Indiana.

Mr. SOUDER. Madam Chairman, I yield myself 3 minutes.

My amendment is very simple. It strikes paragraph 3 of 8(a). It does that because, what this clause does, in the name of protecting homosexuals, actually takes out any ability of any business, any youth home, any group, any organization to have any kind of marriage criteria. This doesn't go to the defense of marriage question directly, although it builds in inherent contradictions, because the last amendment, in attempting to address that, merely bred confusion and contradiction inside of the bill, which will have to be resolved by courts. Defense of marriage makes it so that, for example, somebody married in Vermont or Hawaii doesn't have to have their marital status recognized in Indiana. But it doesn't address the fundamental question of can marriage be a criteria.

In fact, this bill even goes beyond that. It doesn't allow you to have any kind of criteria on any type of sexual behavior. It isn't just about homosexual behavior. It isn't clear that any organization can have any guidelines on adultery, on polygamy or anything else, because by eliminating marriage, by eliminating any kind of sexual standards, it's unclear what standards you can have that relate to sex at all. So if you have any kind of ministry goal and aren't a profoundly Christian organization that falls under the very narrow definition of the last amendment, you're in deep trouble here.

So you can't find things like we've seen just recently on the Web site that says things like house parents, cottage parents, counselor parents, family teaching couples. Any organization that wants to try to do this cannot do so. This obviously comes in for Christian child care centers. This is going to come in, which are not overtly Christian missions, it's going to come into exercise centers that may be operated by religious organizations. It comes into all Christian bookstores, obviously, into different counseling centers that maybe both secular and Christian counseling will not be covered by their ability to say that in order to do family counseling you have to be married and you have to subscribe to certain kinds of sexual standards. They will be prohibited, because they aren't covered by title VII under a narrow definition of title VII.

My amendment would eliminate all this. It doesn't fix the bill. I admit, it doesn't change my opinion on the underlying bill, but it helps solve a deeper problem that was created, and I understand why it was created, because those who want to protect homosexuals didn't want to have a back-door way to, in effect, discriminate against them. But by doing this, they set up another class of discrimination, once again pitting sexual discrimination up against the right to practice religious liberty.

I'll reserve the balance of my time.

Mr. GEORGE MILLER of California. I ask unanimous consent to claim the time in opposition.

The CHAIRMAN. Without objection, the gentleman is recognized for 5 minutes.

There was no objection.

Mr. GEORGE MILLER of California. Madam Chair and members of the Committee, I first want to correct some of the mistaken assumptions that I think Mr. SOUDER just made in his remarks.

He claims that the language of section 8(a)(3) would undermine the definition of marriage that some States have chosen to adopt. This is untrue. Even after ENDA becomes law, regardless of whether section 8(a)(3) remains in the bill or is taken out, the States, for purposes of State law, decide marriage issues for themselves. Nothing in ENDA would change that. Nothing in ENDA would alter the Federal laws referred to in the Defense of Marriage Act.

Second, Mr. SOUDER makes a claim that section 8(a)(3) would have prevented an employer from firing an employee who has extramarital sex. Frankly, I don't see anything in the text of 8(a)(3) that discusses extramarital sex. In fact, I don't see anything anywhere in the text of ENDA that discusses extramarital sex, and I can't understand how Mr. SOUDER's come to this conclusion about extramarital sex. But the entire issue is just a diversion from what ENDA actually does.

ENDA is very simple. ENDA will prevent employers from firing a perfectly qualified gay, lesbian or bisexual employee just because of that employee's sexual orientation.

Madam Chairman, in short, I will vote for this amendment, but the fact of the matter is I don't think it is necessary. But Mr. SOUDER has pursued this course, and I think that it's important. Another important provision of ENDA is the nondiscrimination section that already outlaws employers from discriminating based upon sexual orientation through any pretext policy including the pretext of marital status.

Moreover, many States, including Mr. SOUDER's home State in Indiana, have already created State laws that allow a plaintiff to sue their employer based upon marital status discrimination. And those State laws would further protect against pretextual discrimination against gay and lesbian Americans.

Finally, I want to explain in more detail why I will vote for Mr. SOUDER's amendment. I have realized that section 8(a)(3) is redundant. It is unnecessary. The concern that section 8(a)(3) has sought to address and will actually be addressed in many cases by section 4 of ENDA.

Let me explain this concern. When Mr. FRANK and other original ENDA sponsors and I wrote this bill, we were worried that a clever discriminatory employer might realize he could not fire a gay employee specifically because of his or her sexual orientation, so the discriminatory employer might decide to create a pretextual reason for firing that person; in this case, the fact that the employee is not married or does not have the right to get married. That's why we drafted section 8(a)(3).

However, the thing that convinced me to vote for the Souder amendment is the fact that section 4 of ENDA, which my committee marked up and favorably reported, makes the Souder amendment practically irrelevant. Section 4 of ENDA is the portion of the bill that will very clearly prohibit the discrimination based upon sexual orientation. So if an employer is actually discriminating based upon sexual orientation, but is pretending that the decision is based upon marital status, the gay plaintiff will have the opportunity to convince a Federal jury of that fact.

Consider the following example: A large accounting firm that has no policy whatsoever about whether its accountants should be single or married. That's not hard to picture because not many accounting firms anywhere in America have a policy that requires an accountant to be married. Being a good accountant is the reason that they hire people.

Then imagine that one of the accountants in a branch office let's his coworkers know that he is gay. Now let's say that the branch office has a homophobic manager who the very next day sends out a memo announcing a new policy in the branch office that all accountants will have to be married to keep their job. The manager has figured out this new policy will allow him to fire gay or lesbian accountants, and it happens only to an accountant who is unmarried.

Also imagine that after sending out the memo, the homophobic branch manager sends an e-mail to some of his colleagues explaining: ''Now that we have our new marriage policy, we can fire that disgusting homosexual accountant.''

That gay accountant will be able to file a lawsuit pursuant to ENDA. And that's the point of this legislation. They will be able to put evidence before a Federal jury and to try and convince them he was really fired because of sexual orientation, not because of marriage policy. And that is why this legislation exists.

My point of this scenario that I've just described to you is that already covered by section 4 of ENDA stating that the same thing of section 8(a)(3) is just redundant. For all of these reasons I will vote for the amendment offered by Mr. SOUDER. Even if 8(a)(3) is stricken from ENDA, I believe that the gay plaintiff will still be able to succeed in court and have a meritorious claim.

I reserve the balance of my time.

Mr. SOUDER. I yield myself such time as remains.

The CHAIRMAN. The gentleman is recognized for 2 minutes.

Mr. SOUDER. I appreciate the Chairman's explanation, and there's no use to belabor a point when you've won.

At the same time, I do want to clarify a couple of things inside that.

A, my amendment is far too weak to reach my own goals, and I realize that. I was hoping it could be adopted because I think it improves the bill.

B, I think that the chairman correctly stated the challenge here and the inherent inconsistency in the bill. By merely removing this clause, it didn't allow, in effect, a bill that was intended to protect gay people into other areas, in marriage criteria and other sexual things, because that could have been far more reaching because many organizations have in one man-one woman marriage clauses, also fidelity clauses with the marriage clause, which is why I refer to that.

In this mix, however, I understand that in the purposes of the bill, without the protection that you announced, in fact, somebody could try to get around the intent of the bill. And I understand what you're trying to address.

So, in conclusion, while my amendment, I think, doesn't fix or still has inherent contradictions, still is going to lead to lawsuits, still lead to all sorts of questions, nevertheless, it will improve the bill.

I appreciate the chairman's willingness to support this amendment. It's an incremental improvement. It doesn't fix much, but at least it's another small step.

I yield back.

Mr. GEORGE MILLER of California. How much time do I have remaining?

The CHAIRMAN. The gentleman from California has 30 seconds.

Mr. GEORGE MILLER of California. I yield 15 seconds to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Madam Chairman, we have these laws in 19 States. Nothing like that fantasy has ever come forward. There is a saying that if it ain't broke, don't fix it. If it doesn't exist, you can't fix it.

They have made this up. We have had the experience for over 25 years with laws exactly like this in 19 States.

Mr. GEORGE MILLER of California. I yield 15 seconds to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Just on the underlying bill, every American deserves to have a nondiscriminatory workplace, and that means whoever you are, whatever faith, whatever sexual orientation, you deserve a nondiscriminatory workplace.

I rise to support this legislation and ask my statement to be put into the RECORD and to ensure that my constituents in Houston, Texas, can be free of discrimination in the workplace.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. SOUDER).

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. GEORGE MILLER of California. Madam Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Indiana will be postponed.

AMENDMENT NO. 3 OFFERED BY MS. BALDWIN

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 110–422.

Ms. BALDWIN. Madam Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Ms. BALDWIN:

Throughout the Act, insert ''or gender identity'' after ''sexual orientation'' each place it appears.

In section 3(a), after paragraph (5) insert the following (and redesignate succeeding paragraphs accordingly):

(6) GENDER IDENTITY.—The term ''gender identity'' means 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 section 8(a), insert after paragraph (2) the following (and redesignate succeeding paragraph accordingly):

(3) CERTAIN SHARED FACILITIES.—Nothing in this Act shall be construed to establish an unlawful employment practice based on actual or perceived gender identity due to the denial of access to shared shower or dressing facilities in which being seen unclothed is unavoidable, provided that the employer provides reasonable access to adequate facilities that are not inconsistent with the employee's gender identity as established with 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.

(4) ADDITIONAL FACILITIES NOT REQUIRED.—Nothing in this Act shall be construed to require the construction of new or additional facilities.

(5) DRESS AND GROOMING STANDARDS.—Nothing in this Act shall prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of Federal, State, or local law, provided that the employer permits 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.

The CHAIRMAN. Pursuant to House Resolution 793, the gentlewoman from Wisconsin (Ms. BALDWIN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Wisconsin.

Ms. BALDWIN. Madam Chairman, I yield myself 3½ minutes.

Madam Chairman, in the United States, the law forbids discrimination in employment on the basis of a person's race, color, sex, religion or national origin. It forbids discrimination based on age or disability, perceived or real. These protections were not easy to achieve, but we are better for them.

Today, ENDA seeks to expand the law to prohibit job discrimination against people because of their sexual orientation, and my amendment would also include gender identity.

We have worked steadily over the years to rid our Nation of irrational hate and fear against gay and transgender Americans that too often results in violent hate crimes, ostracism, bullying and discrimination in employment, housing, public accommodations or education.

Today, at least 282 cities and towns and 19 States across the country have protections against discrimination based on sexual orientation in both public and private sector jobs. And more than 93 local jurisdictions in 11 States have laws that include protections based on gender identity.

195 American businesses employing more than 8.3 million American workers have exemplary policies that protect gay, lesbian, bisexual and transgender employees, consumers and investors; 58 percent of these firms provide employment protections on the basis of gender identity.

It is time for Congress to catch up to our communities and American businesses. Today we can strengthen our laws against discrimination in the workplace.

While gay and lesbian Americans are now out and accepted in record numbers, not everyone understands the issue of gender identity. Few understand how a person's body might not match their internal sense of gender.

□ 1700

This is not a new phenomenon. It is not a fad. And it is certainly not a reason to lose one's job.

Some have asked why it is essential to include protections for transgender Americans in this legislation. The answer is that this community shares a common history with the rest of the lesbian, gay, and bisexual community, a history of suffering, discrimination, and too often violence, just for being who they are.

The importance of nondiscrimination laws cannot be overstated. Substantively, they provide legal remedies and a chance to seek justice. Symbolically, they say that in America we judge our fellow citizens by their integrity, their character, their talents; and not their sexual orientation or gender

identity, race or religion, age or disability.

Irrational hate and fear have no place in our society. If we truly believe in life, liberty, and the pursuit of happiness; if we truly want to protect the most vulnerable in our society; if we continue to profess that all men are created equal, then we must work towards achieving the American Dream for all, and not just for some.

Madam Chairman, I reserve the balance of my time.

Mr. SOUDER. Madam Chairman, I claim the time in opposition.

The CHAIRMAN. The gentleman from Indiana is recognized for 5 minutes.

Mr. SOUDER. If I may inquire, do I have the right to close?

The CHAIRMAN. Yes, the gentleman does.

Mr. SOUDER. Madam Chairman, I yield myself 4 minutes.

This amendment both would protect transgender in the sense of people who have had sex change operations, and transvestites, people who dress up as the opposite sex, who are not covered, apparently, under the underlying bill.

This bill was to come in front of our committee. Ostensibly, partly because there was a major convention, a disruption occurred on the other party's side over this particular amendment, and the bill was withdrawn. Then continued debate occurred, and in committee a number of the Democrat members voted against the bill because this amendment wasn't included, and, presumably, that was going to be so the amendment could be offered on the floor and people would have a right to vote on this.

I don't really need a right to vote on it. I think most people probably know where I stand on the issue. But I think that to not have a vote on an amendment like this is a political ploy. It's a political ploy in the sense of what appears to be happening here is that the majority doesn't want to have the embarrassment of their side dividing on an issue. Or maybe they're afraid that our people would actually vote for this amendment and put it over the top to kill the bill, but I would suggest on a vote like this, that would be extremely unlikely. I think it's more that they want to shield their Members from having a difficult vote. Therefore, they can go out and tell the transgender community, oh, we tried, but, in fact, in a very peculiar rule, it appears that the intention is to keep us from calling for a vote and having Members actually show where they stand on this issue, not where they give speeches on this issue but where they actually stand on this issue. Clearly, the word ''perceived'' in an amendment that I had been denied for this bill would have had a huge relevance also to this particular category.

The challenge before us as we look at this, and from a conservative perspective, we have heard repeatedly today from multiple speakers, from the opening debate on rules, through the general debate, through here, that we are eventually going to move in this direction. And yet we are told that we as conservatives are paranoiac, that religious organizations are going to be protected, this and that, it's going to be protected.

We have seen the Democrats move and add a title VII protection that they opposed over in the faith-based for years on this House floor. We saw them add a defense of marriage clause, which they had opposed for years. We've seen them move even to the point of including, contrary to what the majority leader said that the government is applying this, know that the military is exempt from having this bill applied to them, inconsistency. Clearly, they are willing to tolerate major changes in the majority's position in order to move the bill, which moves people on the other side to ask, what's the point of moving the bill if there are this many compromises? Oh, they've been saying all day long that they're going to expand this bill. Once it becomes law, it's going to go to court to resolve the different things. Hence, some of us believe that many of the things that were added today, on the marriage clause, on the religious exemption clause, the blocking of this amendment to be offered, were to make the bill more palatable. As my friend the chairman of Financial Services said, you can't get everything in the first thing. It's to make it more palatable to, in effect, move it in place.

And this isn't the end of the day here. This is the start of a move that many of us who just simply don't approve of the lifestyle, there are many different things we don't approve of, but this is a deeply held position of faith by millions of Americans. And this is an attempt, a start, of what's likely to be an increasing effort to have sexual liberties trump religious liberties.

Madam Chairman, I reserve the balance of my time.

Ms. BALDWIN. Madam Chairman, I yield myself the balance of my time.

The CHAIRMAN. The gentlewoman from Wisconsin is recognized for 1½ minutes.

Ms. BALDWIN. My amendment reflects my belief that we should be acting on an inclusive ENDA, covering both sexual orientation and gender identity. Now, those of us in politics know that it is much easier to protect a provision in a bill from removal on the floor than it is to add a provision to a bill once it has been reported out of committee. This amendment is no exception to that rule. But while I believe that a roll call vote on this amendment would demonstrate strong support for an inclusive ENDA, I believe that it will fall short of adoption.

People have asked why I pressed for and insisted upon bringing an amendment to the floor and maintaining the option to withdraw it without a vote. The reason is simple: I believe that those who will be left behind by this bill deserve to hear on this House floor that you are not forgotten and our job will not be finished until you too share fully in the American Dream.

So at the moment at which the closing arguments are made, I will withdraw this amendment with a commitment to my colleagues and all Americans committed to equality of opportunity and ending discrimination that I will do everything within my power to make this measure whole again.

The CHAIRMAN. Does the gentlewoman yield back her time?

Ms. BALDWIN. If I withdraw right now, I will preclude the gentleman from making his closing. I do not want to preclude him from doing that; so I will just wait to withdraw until he has finished with his remarks.

Mr. SOUDER. I have the right to close since I am defending?

The CHAIRMAN. The gentleman has the right to close and has 1¼ minutes remaining.

Mr. SOUDER. I will reserve the balance of my time until she yields back. I have the right to close.

The CHAIRMAN. The gentlewoman from Wisconsin's time has expired.

Mr. SOUDER. Madam Chairman, I strongly oppose this amendment. I believe the majority of the House opposes this amendment.

Mrs. MALONEY of New York. Madam Chairman, I rise today in strong support of the amendment offered today by my distinguished colleague, Congresswoman TAMMY BALDWIN.

Transgender Americans need and deserve protection from employment discrimination. All too often they bear the brunt of brutal bigotry, and are subject to unspeakable hatred and violence inspired by fear and ignorance.

That is why I strongly support this amendment to provide protection from job discrimination to transgender Americans.

Congress took an important step earlier this year when we passed a hate crimes bill that included protections for lesbian, gay, bisexual, and transgender people.

It is unfortunate that there is not at this time the same degree of support in the House to pass this measure.

Discrimination based on gender identity and gender expression should simply not be tolerated in the United States of America.

And, while there may not be enough support for us to pass this amendment today, I pledge to work with my distinguished colleague from Wisconsin and other like-minded Members to educate and persuade this House of the need to enact protections from discrimination for transgender Americans.

We will not rest until the right of every American, regardless of his or her gender identity or gender expression, to live free of fear, discrimination and intolerance is the law of the land.

I urge my distinguished colleagues in this House to strike a blow for justice and tolerance by passing this amendment.

Mr. SOUDER. Madam Chairman, I yield back the balance of my time and call for a recorded vote.

Ms. BALDWIN. Madam Chairman, I withdraw the amendment.

The CHAIRMAN. Pursuant to House Resolution 793, the amendment is withdrawn.

PARLIAMENTARY INQUIRY

Mr. SOUDER. Parliamentary inquiry.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. SOUDER. Since I moved for a recorded vote before the amendment was withdrawn and because I had the right to close, how did she get recognized over my motion?

The CHAIRMAN. The gentlewoman withdrew the amendment before the Chair put the question on the amendment.

Mr. SOUDER. But why did you recognize her when I had the right to close?

The CHAIRMAN. The gentleman made the closing remarks in debate. Then the amendment was withdrawn.

PARLIAMENTARY INQUIRY

Mr. FRANK of Massachusetts. Parliamentary inquiry.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. FRANK of Massachusetts. Is it in order to demand a roll call before the Chair has put the voice vote?

The CHAIRMAN. No.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed, in the following order:

Amendment No. 1 by Mr. GEORGE MILLER of California.

Amendment No. 2 by Mr. SOUDER of Indiana.

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 1 OFFERED BY MR. GEORGE MILLER OF CALIFORNIA

The CHAIRMAN. The unfinished business is the demand for a recorded vote on amendment No. 1 printed in House Report 110–422 offered by the gentleman from California (Mr. GEORGE MILLER) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 402, noes 25, not voting 10, as follows:

[Roll No. 1054]

AYES—402

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Altmire
Andrews
Arcuri
Baca
Bachmann
Bachus
Baird
Baker
Baldwin
Barrow
Bartlett (MD)
Bean
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blumenauer
Blunt
Boehner
Bonner
Bono
Boozman
Bordallo
Boren
Boswell
Boucher
Boustany
Boyd (FL)
Boyda (KS)
Brady (PA)
Brady (TX)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Calvert
Camp (MI)
Campbell (CA)
Cantor
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carter
Castle
Castor
Chabot
Chandler
Clarke
Clay
Cleaver
Clyburn
Coble
Cohen
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crenshaw
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis, David
Davis, Lincoln
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Ellison
Ellsworth
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Everett
Faleomavaega
Fallin
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Forbes
Fortenberry
Fortuño
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gilchrest
Gillibrand
Gingrey
Gonzalez
Goodlatte
Gordon
Granger
Graves
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hall (TX)
Hare
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Hinchey
Hinojosa
Hirono
Hobson
Hodes
Hoekstra
Holden
Holt
Honda
Hooley
Hoyer
Hulshof
Hunter
Inglis (SC)
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Jones (OH)
Jordan
Kagen
Kanjorski
Kaptur
Keller
Kennedy
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Klein (FL)
Kline (MN)
Knollenberg
Kucinich
Kuhl (NY)
Lamborn
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Levin
Lewis (CA)
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Mahoney (FL)
Maloney (NY)
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McMorris Rodgers
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Norton
Nunes
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Pearce
Pence
Perlmutter
Peterson (MN)
Peterson (PA)
Petri
Pickering
Platts
Poe
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Richardson
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sali
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Saxton
Schiff
Schmidt
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shays
Shea-Porter
Sherman
Shimkus
Shuler
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Space
Spratt
Stearns
Stupak
Sullivan
Sutton
Tancredo
Tanner
Tauscher
Taylor
Terry
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Visclosky
Walberg
Walden (OR)
Walsh (NY)
Walz (MN)
Wamp
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Weldon (FL)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (OH)
Wilson (SC)
Wolf
Wu
Wynn
Yarmuth
Young (AK)
Young (FL)

NOES—25

Barrett (SC)
Barton (TX)
Blackburn
Broun (GA)
Cannon
Culberson
Davis (KY)
Foxx
Gohmert
Goode
Johnson, Sam
Jones (NC)
Lee
Lewis (KY)
Linder
Marchant
McCaul (TX)
Pitts
Schakowsky
Shuster
Stark
Tsongas
Velázquez
Wasserman Schultz
Woolsey

NOT VOTING—10

Braley (IA)
Buyer
Carson
Christensen
Cubin
Jindal
LaHood
Oberstar
Paul
Westmoreland

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN (during the vote). Two minutes remain in this vote.

□ 1735

Mr. STARK, Ms. WOOLSEY, Ms. VELÁZQUEZ and Ms. SCHAKOWSKY changed their vote from ''aye'' to ''no.''

Messrs. FORBES, MILLER of Florida, LAMBORN, SALI, BURTON of Indiana, ADERHOLT, KINGSTON, AKIN and Ms. WATERS changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 2 OFFERED BY MR. SOUDER

The CHAIRMAN. The unfinished business is the demand for a recorded vote on amendment No. 2 printed in House Report 110–422 offered by the gentleman from Indiana (Mr. SOUDER) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 325, noes 101, not voting 11, as follows:

[Roll No. 1055]

AYES—325

Aderholt
Akin
Alexander
Altmire
Andrews
Arcuri
Baca
Bachmann
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bean
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (UT)

Blackburn
Blumenauer
Blunt
Boehner
Bonner
Bono
Boozman
Bordallo
Boucher
Boustany
Boyd (FL)
Boyda (KS)
Brady (PA)
Brady (TX)
Broun (GA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capuano
Cardoza
Carnahan
Carney
Carter
Castle
Chabot
Chandler
Cleaver
Coble
Cole (OK)
Conaway
Cooper
Costa
Costello
Courtney
Cramer
Crenshaw
Cuellar
Culberson
Davis (AL)
Davis (CA)
Davis (KY)
Davis, David
Davis, Lincoln
Davis, Tom
Deal (GA)
DeFazio
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Doggett
Donnelly
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Ellsworth
Emanuel
Emerson
English (PA)
Eshoo
Etheridge
Everett
Faleomavaega
Fallin
Fattah
Feeney
Ferguson
Flake
Forbes
Fortenberry
Fortuño
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gilchrest
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green, Gene
Hall (TX)
Hastert
Hastings (WA)
Hayes
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Hinojosa
Hirono
Hobson
Hoekstra
Holden
Hooley
Hoyer
Hulshof
Hunter
Inglis (SC)
Issa
Jackson (IL)
Jefferson
Johnson (IL)
Johnson, Sam
Jones (NC)
Jordan
Kagen
Kanjorski
Kaptur
Keller
Kildee
Kind
King (IA)
King (NY)
Kingston
Kirk
Klein (FL)
Kline (MN)
Knollenberg
Kuhl (NY)
Lamborn
Lampson
Langevin
Larson (CT)
Latham
LaTourette
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas
Lungren, Daniel E.
Lynch
Mack
Mahoney (FL)
Maloney (NY)
Manzullo
Marchant
Markey
Marshall
Matheson
McCarthy (CA)
McCarthy (NY)
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris Rodgers
McNerney
Meek (FL)
Melancon
Mica
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mitchell
Mollohan
Moore (KS)
Moran (KS)
Murphy, Patrick
Murphy, Tim
Murtha
Musgrave
Myrick
Neal (MA)
Neugebauer
Norton
Nunes
Obey
Olver
Ortiz
Pascrell
Pastor
Pearce
Pence
Perlmutter
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Richardson
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Ross
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Salazar
Sali
Sanchez, Loretta
Saxton
Schiff
Schmidt
Schwartz
Scott (GA)
Sensenbrenner
Sessions
Sestak
Shadegg
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Smith (NE)
Smith (NJ)
Smith (TX)
Snyder
Souder
Space
Spratt
Stearns
Stupak
Sullivan
Tancredo
Tanner
Tauscher
Taylor
Terry
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Turner
Udall (CO)
Udall (NM)
Upton
Visclosky
Walberg
Walden (OR)
Walsh (NY)
Walz (MN)
Wamp
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (OH)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—101

Abercrombie
Ackerman
Allen
Baird
Baldwin
Becerra
Berkley
Berman
Bishop (NY)
Boswell
Capps
Castor
Clarke
Clay
Clyburn
Cohen
Conyers
Crowley
Cummings
Davis (IL)
DeGette
Delahunt
Dingell
Ellison
Engel
Farr
Filner
Giffords
Gillibrand
Green, Al
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Hinchey
Hodes
Holt
Honda
Inslee
Israel
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Jones (OH)
Kennedy
Kilpatrick
Kucinich
Lantos
Larsen (WA)
Lee
Lewis (GA)
Loebsack
Lofgren, Zoe
Lowey
Matsui
McDermott
McGovern
McNulty
Meeks (NY)
Michaud
Moore (WI)
Moran (VA)
Murphy (CT)
Nadler
Napolitano
Pallone
Payne
Rothman
Roybal-Allard
Rush
Sánchez, Linda T.
Sarbanes
Schakowsky
Scott (VA)
Serrano
Shays
Shea-Porter
Sherman
Slaughter
Smith (WA)
Solis
Stark
Sutton
Towns
Tsongas
Van Hollen
Velázquez
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Wexler
Woolsey
Wu
Wynn
Yarmuth

NOT VOTING—11

Boren
Braley (IA)
Buyer
Carson
Christensen
Cubin
Jindal
LaHood
Oberstar
Paul
Westmoreland

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN (during the vote). There are 2 minutes remaining on this vote.

□ 1744

Mrs. LOWEY changed her vote from ''aye'' to ''no.''

Ms. CORRINE BROWN of Florida, Messrs. NEAL of Massachusetts, CLEAVER, WALZ of Minnesota, UDALL of Colorado and GENE GREEN of Texas changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. There being no further amendments, under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SNYDER) having assumed the chair, Mrs. TAUSCHER, Chairman of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 3685) to prohibit employment discrimination on the basis of sexual orientation, pursuant to House Resolution 793, she reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment reported from the Committee of the Whole? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

□ 1745

MOTION TO RECOMMIT OFFERED BY MR. FORBES

Mr. FORBES. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. FORBES. In its present form I am.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Forbes moves to recommit the bill, H.R. 3685, to the Committee on Education and Labor with instructions to report the same back to the House promptly with the following amendment:

In section 8(c) (as amended), strike ''As used in'' and insert the following:

(1) As used in

At the end of section 8(c) (as amended), insert the following:

(2) Nothing in this Act may be construed to modify, limit, restrict, or in any way overturn any State or Federal definition of marriage as between one man and one woman, including the use of this Act as a legal predicate in litigation on the issue of marriage.

The SPEAKER pro tempore. The gentleman from Virginia is recognized for 5 minutes.

Mr. FORBES. Mr. Speaker, one of the big concerns that many of us have with legislation of this type is that courts across the country have used it to establish public policy, and then certain judges have taken that and determined from that public policy that they are going to redefine the institution of marriage.

In considering this bill, I am deeply troubled by not only what is in the bill, but where I believe this bill is leading us. And you don't have to take my word for it. A memo from the Marriage Law Project at Catholic University's Columbus School of Law noted this:

''ENDA is about more than jobs. It is also about marriage. ENDA is based on the idea that State laws restricting marriage to the union of one man and one woman are a 'subterfuge' for discrimination against homosexuals and bisexuals. If the courts accept the proposition that marriage is a 'subterfuge' for discrimination on the basis of sexual orientation, the Defense of Marriage Act will be struck down as unconstitutional.''

And that is the goal, Mr. Speaker. This legislation will ultimately allow activist judges across the country to redefine the institution of marriage. The majority might say that is not their intent, but I guarantee that is exactly what will happen if ENDA passes as it is. If we don't vote to stop it, then we are tacitly allowing one of our most sacred institutions to be torn down.

This legislation will provide certain activist judges with the legal justification to strike down State and Federal

marriage laws that define marriage as between one man and one woman. State ENDA laws are being used by activist judges to impose same-sex marriage and civil unions on States. State courts are using ENDA and other similar laws to justify the argument that the government has no rational basis to continue discriminating in the area of marriage. And this is not something that might happen down the road. It has already happened in three States: Massachusetts, Vermont and New Jersey.

In Massachusetts, the supreme court there decided in Goodridge v. Department of Public Health that there was no rational basis for the denial of marriage to same-sex couples. In that case the court cited a list of State statutes, including nondiscrimination laws, as evidence that the State should not discriminate in the area of marriage. The court's opinion laid it out clearly, writing, ''Massachusetts has a strong, affirmative policy of preventing discrimination on the basis of sexual orientation.'' You can't get any clearer than that on how nondiscrimination laws can be used to undermine marriage.

However, even before the Massachusetts decision, the supreme court of Vermont in 1999 ordered the State legislature to pass either a same-sex marriage or civil union law. The Vermont court relied in part on the fact that the State had a law preventing discrimination based on sexual orientation. The court said it would be irrational and thus not meet the rational basis test to argue that the State could refuse to allow same-sex marriage or civil unions when they clearly already had a law prohibiting discrimination on the basis of sexual orientation.

Most recently, New Jersey's courts have gotten into the game. In 2006, the New Jersey Supreme Court gave the State legislature 6 months to pass either a same-sex marriage law or a civil union law. In Lewis v. Harris the court stated, ''New Jersey's legislature has been at the forefront of combating sexual orientation discrimination and advancing equality of treatment towards gays and lesbians. In 1992, through an amendment to the law against discrimination, New Jersey became the fifth State in the Nation to prohibit discrimination on the basis of affectional or sexual orientation.''

Mr. Speaker, I rise today to ensure that this bill does not become the building block that some may want to use to destroy the institution of marriage. The motion simply says this: That nothing in this act may be construed to modify, limit, restrict, or in any way overturn any State or Federal definition of marriage as between one man and one woman, including the use of this act as a legal predicate in litigation on the issue of marriage.

On the wall in my office, I have a framed copy of the Declaration of Independence and the pictures of our Founding Fathers. This wall serves as a reminder to me of the ideals and institutions our country was founded on. Yet every day we see people trying to rewrite our history and tear down those ideals and institutions.

This country is great because of the ideals of our Founding Fathers, but eventually if we chip away at enough of our values, we will lose our foundation. This is what is happening and will continue to happen unless we stand up and make sure it doesn't.

Marriage between a man and woman has been the cornerstone of strength in our country, and while it may be under attack from all sides, I believe it is an institution worth protecting. This motion allows us to take a stand for marriage, for our country, and, at least for today, puts a stop to those that are trying or may try to use this legislation as a predicate to change those laws. This motion would ensure that the intentions of this Congress are clear and unambiguous.

Mr. FRANK of Massachusetts. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Mr. FRANK of Massachusetts. Before I begin, I have an inquiry: If I could yield to the gentleman from Virginia, the proponent of the motion, would he consider my making a unanimous consent request to change this to a ''motion of forthwith,'' so the House could simply adopt this ''forthwith'' and go to dinner?

Mr. FORBES. I would object.

Mr. FRANK of Massachusetts. Well, this is now clear. This is a motion to do this promptly. ''Promptly'' means at the speediest nine calendar days, because it does not, as the Parliamentarian has informed us in writing, waive any of the rules for committee meetings, for Rules Committee, et cetera. So the purpose here, the intent, perhaps not the purpose, but the unmistakable intent would be to put this off until after we are due to adjourn November 16. And for what purpose? For the purpose of restating what has already been stated.

It is interesting, Mr. Speaker, and I take some encouragement from this, that opponents of the principle of nondiscrimination don't want to debate it on its merits. We haven't heard any defense of discrimination. We just have a parliamentary maneuver to protect it.

This is not about marriage. In fact, this is not a recommit. It is a statement. It says ''nothing in this act may be construed.'' Correct. No one who reads English could think to the contrary.

But, just to make sure, the gentleman from California offered a motion, and the minority tried to have it not be roll-called, and you voted for it, Members of the House. It says, ''As used in this act, the terms 'married' or 'marry' refer to marriage as defined in section 7, title I of the U.S. Code, the Defense of Marriage Act.'' The Members of the House just voted overwhelmingly to reaffirm that definition.

So what do we have? A motion now simply to delay by reaffirming the last vote.

The gentleman from Indiana thought there was some other language that might lead to a marriage problem, so we adopted that. So this is the third effort to say the same thing. It is not to say the same thing, but to defeat it.

I would say this. I would recommend to my friend from California, who has done such a good job on this, once we have concluded this, report this out as a separate bill, this third reiteration, if it gives people some comfort.

I asked the gentleman to make it ''forthwith.'' If there was a real need to do this, it would be now part of the law and we would be voting. It is ''promptly'' because it adds nothing to the bill, nothing, literally nothing; it subtracts nothing. It is simply a motion to delay.

I now want to address that. I want to address the motion to delay.

Mr. Speaker, we say here that we don't take things personally, and usually that is true. Members, Mr. Speaker, will have to forgive me. I take it a little personally.

Thirty-five years ago, I filed a bill to try to get rid of discrimination based on sexual orientation. As we sit here today, there are millions of Americans in States where this is not the law. By the way, 19 States have such a law. In no case has it led to that decision. The Massachusetts law passed in 1989, that did not lead to the decision in 2004. Unrelated.

But here is the deal. I used to be someone subject to this prejudice, and, through luck, circumstance, I got to be a big shot. I am now above that prejudice. But I feel an obligation to 15-year-olds dreading to go to school because of the torments, to people afraid that they will lose their job in a gas station if someone finds out who they love. I feel an obligation to use the status I have been lucky enough to get to help them.

I want to ask my colleagues here, Mr. Speaker, on a personal basis, please, don't fall for this sham. Don't send me out of here having failed to help those people.

We have already today twice voted overwhelmingly to repudiate any suggestion that this had anything to do with marriage. What you have is a ploy by people who want to keep discrimination on the books, who want to deny protection to so many vulnerable victims of discrimination, but they at least understand that is not something you can say explicitly. So they give us this sham.

I ask, I ask again, would the gentleman allow us to adopt this forthwith? I would yield to the gentleman for that purpose so we can make that forthwith.

Mr. FORBES. Mr. Speaker, I would be glad, if the gentleman would yield me some time.

Mr. FRANK of Massachusetts. I asked the gentleman a simple question.

Mr. FORBES. If the gentleman doesn't want me to respond, then I won't.

Mr. FRANK of Massachusetts. The response is ''no.'' I was ready to yield to make this ''forthwith'' so this extra language which does nothing could be added. But if you don't do that, as they won't, and you vote for this, you are killing this bill. Understand that. Nine days later it is too late for this bill and we are out of this.

So I will close with this. Yes, this is personal. There are people who are your fellow citizens being discriminated against. We have a simple bill that says you can go to work and be judged on how you work and not be penalized. Please don't turn your back on them.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. FORBES. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by a 5-minute vote on passage of the bill, if ordered, and suspension of the rules and adoption of House Concurrent Resolution 236.

The vote was taken by electronic device, and there were—yeas 198, nays 222, not voting 13, as follows:

[Roll No. 1056]

YEAS—198

Aderholt
Akin
Alexander
Altmire
Bachmann
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Boozman
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Castle
Chabot
Coble
Cole (OK)
Conaway
Crenshaw
Culberson
Davis (KY)
Davis, David
Davis, Lincoln
Davis, Tom
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Donnelly
Doolittle
Drake
Dreier
Duncan
Ehlers
Ellsworth
Emerson
English (PA)
Everett
Fallin
Feeney
Ferguson
Flake
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Hall (TX)
Hastert
Hastings (WA)
Hayes
Heller
Hensarling
Hill
Hobson
Hoekstra
Hulshof
Hunter
Inglis (SC)
Issa
Johnson (IL)
Johnson, Sam
Jones (NC)
Jordan
Keller
King (IA)
King (NY)
Kingston
Kline (MN)
Knollenberg
Kuhl (NY)
Lamborn
Lampson
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCarthy (CA)
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy, Tim
Musgrave
Myrick
Neugebauer
Nunes
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Poe
Porter
Price (GA)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Roskam
Royce
Ryan (WI)
Sali
Saxton
Schmidt
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuler
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Space
Stearns
Sullivan
Tancredo
Taylor
Terry
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walberg
Walden (OR)
Walsh (NY)
Wamp
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—222

Abercrombie
Ackerman
Allen
Andrews
Arcuri
Baca
Baird
Baldwin
Bean
Becerra
Berkley
Berman
Berry
Biggert
Bishop (GA)
Bishop (NY)
Blumenauer
Bono
Boswell
Boucher
Boyd (FL)
Boyda (KS)
Brady (PA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Castor
Chandler
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Ellison
Emanuel
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Frank (MA)
Gilchrest
Gillibrand
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Herseth Sandlin
Higgins
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson, E. B.
Jones (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind
Kirk
Klein (FL)
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Lynch
Mahoney (FL)
Maloney (NY)
Markey
Matsui
McCarthy (NY)
McCollum (MN)
McDermott
McGovern
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murtha
Nadler
Napolitano
Neal (MA)
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Pelosi
Perlmutter
Platts
Pomeroy
Price (NC)
Pryce (OH)
Rahall
Rangel
Reyes
Richardson
Rodriguez
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shays
Shea-Porter
Sherman
Sires
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stupak
Sutton
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Tsongas
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walz (MN)
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Wexler
Wilson (OH)
Woolsey
Wu
Wynn
Yarmuth

NOT VOTING—13

Boren
Braley (IA)
Buyer
Carson
Cubin
Giffords
Herger
Jindal
LaHood
Oberstar
Paul
Shuster
Westmoreland

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1816

Mr. TAYLOR changed his vote from ''nay'' to ''yea.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. HERGER. Mr. Speaker, on rollcall No. 1056, the Forbes motion to recommit H.R. 3685—Employment Non-Discrimination Act with instructions, I was unavoidably detained and missed the vote. Had I been present, I would have voted ''yea.''

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. PRICE of Georgia. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 235, nays 184, not voting 14, as follows:

[Roll No. 1057]

YEAS—235

Abercrombie
Ackerman
Allen
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Bean
Becerra
Berkley
Berman
Biggert
Bishop (GA)
Bishop (NY)
Blumenauer
Bono
Boswell
Boucher
Boyda (KS)
Brady (PA)
Brown, Corrine
Butterfield
Campbell (CA)
Capps
Capuano
Cardoza
Carnahan
Carney
Castle
Castor
Chandler
Clay
Cleaver
Clyburn
Cohen
Conyers
Cooper
Costa
Costello
Courtney
Crowley
Cuellar
Cummings
Davis (CA)
Davis (IL)
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly
Doyle
Dreier
Ellison
Ellsworth
Emanuel
Engel
English (PA)
Eshoo
Etheridge
Farr
Fattah
Filner
Flake
Fossella
Frank (MA)
Frelinghuysen
Gerlach
Gilchrest
Gillibrand
Gonzalez
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Herseth Sandlin
Higgins
Hill
Hinchey
Hinojosa
Hirono
Hobson
Hodes
Holden
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Jones (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind
Kirk
Klein (FL)
Knollenberg
Kucinich
Kuhl (NY)
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lynch
Mahoney (FL)
Maloney (NY)
Markey
Matheson
Matsui
McCarthy (NY)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHugh
McNerney

McNulty
Meek (FL)
Meeks (NY)
Miller (MI)
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murtha
Napolitano
Neal (MA)
Obey
Ortiz
Pallone
Pascrell
Pastor
Payne
Pelosi
Perlmutter
Peterson (MN)
Platts
Pomeroy
Porter
Price (NC)
Pryce (OH)
Ramstad
Rangel
Reichert
Reyes
Richardson
Rodriguez
Ros-Lehtinen
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Saxton
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shays
Shea-Porter
Sherman
Sires
Slaughter
Smith (WA)
Snyder
Solis
Space
Spratt
Stark
Stupak
Sutton
Tauscher
Thompson (CA)
Thompson (MS)
Tiberi
Tierney
Tsongas
Udall (CO)
Udall (NM)
Van Hollen
Visclosky
Walden (OR)
Walz (MN)
Wasserman Schultz
Waters
Watson
Watt
Waxman
Welch (VT)
Wexler
Wilson (OH)
Woolsey
Wu
Wynn
Yarmuth

NAYS—184

Aderholt
Akin
Alexander
Bachmann
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Berry
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Boozman
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Calvert
Camp (MI)
Cannon
Cantor
Capito
Carter
Chabot
Clarke
Coble
Cole (OK)
Conaway
Cramer
Crenshaw
Culberson
Davis (AL)
Davis (KY)
Davis, David
Davis, Lincoln
Deal (GA)
Doolittle
Drake
Duncan
Edwards
Ehlers
Emerson
Everett
Fallin
Feeney
Ferguson
Forbes
Fortenberry
Foxx
Franks (AZ)
Gallegly
Garrett (NJ)
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Hall (TX)
Hastert
Hastings (WA)
Hayes
Heller
Hensarling
Herger
Hoekstra
Holt
Hulshof
Hunter
Inglis (SC)
Issa
Johnson (IL)
Johnson, Sam
Jones (NC)
Jordan
Keller
King (IA)
King (NY)
Kingston
Kline (MN)
Lamborn
Lampson
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
McCarthy (CA)
McCaul (TX)
McHenry
McIntyre
McKeon
McMorris Rodgers
Melancon
Mica
Michaud
Miller (FL)
Miller, Gary
Moran (KS)
Murphy, Tim
Musgrave
Myrick
Nadler
Neugebauer
Nunes
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Poe
Price (GA)
Putnam
Radanovich
Rahall
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Roskam
Ross
Royce
Sali
Schmidt
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuler
Shuster
Simpson
Skelton
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Tancredo
Tanner
Taylor
Terry
Thornberry
Tiahrt
Towns
Turner
Upton
Velázquez
Walberg
Walsh (NY)
Wamp
Weiner
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—14

Boren
Boyd (FL)
Braley (IA)
Buyer
Carson
Cubin
Giffords
Jefferson
Jindal
LaHood
Oberstar
Olver
Paul
Westmoreland

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining on the vote.

□ 1823

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

RECOGNIZING THE CLOSE RELATIONSHIP BETWEEN THE UNITED STATES AND THE REPUBLIC OF SAN MARINO

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and agree to the concurrent resolution, H. Con. Res. 236, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. ENGEL) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 236, as amended.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 396, nays 0, not voting 36, as follows:

[Roll No. 1058]

YEAS—396

Abercrombie
Aderholt
Akin
Alexander
Allen
Altmire
Andrews
Arcuri
Baca
Bachmann
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Barton (TX)
Bean
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonner
Bono
Boozman
Boswell
Boucher
Boustany
Boyd (FL)
Boyda (KS)
Brady (PA)
Brady (TX)
Broun (GA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Calvert
Camp (MI)
Campbell (CA)
Cantor
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Castle
Castor
Chabot
Chandler
Clarke
Clay
Cleaver
Clyburn
Coble
Cohen
Cole (OK)
Conaway
Cooper
Costa
Costello
Courtney
Cramer
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis, David
Davis, Lincoln
Davis, Tom
Deal (GA)
DeFazio
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Donnelly
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Ellison
Ellsworth
Emanuel
Emerson
Engel
Eshoo
Etheridge
Everett
Fallin
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Forbes
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gilchrest
Gillibrand
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hall (TX)
Hare
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Hinchey
Hinojosa
Hobson
Hodes
Hoekstra
Holden
Holt
Honda
Hooley
Hoyer
Hulshof
Hunter
Inglis (SC)
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Jordan
Kagen
Kanjorski
Kaptur
Keller
Kennedy
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Klein (FL)
Kline (MN)
Knollenberg
Kucinich
Kuhl (NY)
Lamborn
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
Levin
Lewis (CA)
Lewis (GA)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Mahoney (FL)
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McGovern
McHenry
McHugh
McIntyre
McKeon
McMorris Rodgers
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Nunes
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Pearce
Pence
Perlmutter
Peterson (MN)
Peterson (PA)
Petri
Pickering
Platts
Poe
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Richardson
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Roskam
Ross
Rothman
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sali
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Saxton
Schakowsky
Schiff
Schmidt
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shays
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Snyder
Solis
Souder
Space
Spratt
Stearns
Stupak
Sullivan
Sutton
Tancredo
Tanner
Tauscher
Taylor
Terry
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Tsongas
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walberg
Walden (OR)
Walsh (NY)
Walz (MN)
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Weldon (FL)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (OH)
Wilson (SC)
Wolf
Wu
Wynn
Yarmuth
Young (AK)
Young (FL)

NOT VOTING—36

Ackerman
Bartlett (MD)
Bilirakis
Boren
Braley (IA)
Buyer
Cannon
Carson
Carter
Conyers
Cubin
DeGette
Doggett
English (PA)
Giffords
Gingrey
Harman
Hirono
Jindal
LaHood
LaTourette