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April 2, 2019

The Honorable Jerrold Nadler
Chairman, U. S. House Committee on the Judiciary
House of Representatives
Washington, DC 20515

The Honorable Doug Collins
Ranking Member, U. S. House Committee on the Judiciary
House of Representatives
Washington, DC 20515

RE: ABA SUPPORT FOR H.R.5, THE EQUALITY ACT OF 2019

Dear Representatives Nadler and Collins:

On behalf of the American Bar Association and its over 400,000 members, I am writing to voice our support for H.R.5, The Equality Act of 2019, which addresses the need to protect every American regardless of their sexual orientation or gender identity. We offer the following comments in support of the legislation and request that this letter be made part of the hearing record.

The Equality Act will include LGBTQ+ people in the Civil Rights Act of 1964. Over 50 years ago, when this landmark civil rights legislation was enacted, a minority group was omitted; this needs to be rectified. Currently, the rights of LGBTQ+ individuals depend on the state where they reside, and in 30 states, LGBTQ+ people are at risk of being denied housing, credit, services, public accommodations, education, access to their children, employment, or jury service simply because of their sexual orientation or gender identity.

There is bipartisan support for the Equality Act, and 70 percent of Americans support equal rights for LGBTQ+. When the Equality Act was introduced in the last Congress, it received unprecedented support from businesses and more than 180 national and statewide organizations.

Last summer the ABA adopted a resolution specifically supporting enactment of the Equality Act. Let me elaborate on our reasons for supporting this important legislation:

1. The Equality Act will protect LGBTQ+ people from workplace discrimination because of their sexual orientation, gender identity, or gender expression.

The Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, or national origin. The Government Employee Rights Act of 1991 prohibits discrimination based on race, color, religion, sex, national origin, age, or disability. They will both be amended to include, “sex, (including sexual orientation, and gender identity).”

Every day LGBTQ+ employees, co-workers, and job applicants are subjected to discrimination in the workplace. Other social groups have been protected by legislation, yet the LGBTQ+ community has not been included even though their livelihood, careers, and quality of life are equally affected.

The Equal Employment Opportunity Commission (EEOC) enforces federal laws that protect job applicants or employees from discrimination based on race, color, religion, sex, national origin, age, disability, or genetic information. In *EEOC v. R.G. & G.R. Harris Funeral Homes*, the EEOC filed a lawsuit against Harris Family Funeral Homes on behalf of Aimee Stephens, a transgender woman who was fired shortly after telling her employer she was transgender. The Sixth Circuit Court of Appeals concluded that Title VII prohibits discrimination based on gender identity, thus applying to businesses claiming exemption based on anti-LGBTQ+ religious beliefs.

The Equality Act will codify this case law making discrimination against LGBTQ+ people in the workplace unlawful by explicitly stating that sexual orientation and gender identity are protected traits.

2. The Equality Act will prevent LGBTQ+ people from being denied services and public accommodations because of their sexual orientation, gender identity, or gender expression.

Title II of the Civil Rights Act of 1964 prohibits discrimination in public accommodations based on race, color, religion, or national origin. However, it is currently legal in 30 states to deny LGBTQ+ people services without cause and bar them from public accommodations such as hotels, restaurants, and libraries.

In *Joel Doe v. Boyertown Area School District*, Boyertown Area High School in Pennsylvania had a policy to respect the gender identity of transgender students. In 2017, an anti-LGBTQ+ organization filed a lawsuit challenging the policy, stating that the privacy of non-transgender students is threatened by transgender students using the restrooms and locker rooms that align with their gender identity. The Third Circuit Court of Appeals rejected the plaintiff’s claims that transgender-inclusive policies violate people’s privacy. The Equality Act is necessary to codify this ruling for the entire country. Denying public accommodations to LGBTQ+ individuals is harmful to their health and dignity and precludes them from fully participating in public life.

In addition to the places of public accommodation already included in the 1964 Civil Rights Act, the Equality Act will revise the law to ensure that other providers of products,

services, and public accommodations, such as stores, accountant firms, transportation, and banks, may not discriminate against a protected social group.

3. The Equality Act will prevent LGBTQ+ people from being denied or evicted from housing based on their sexual orientation, gender identity, or gender expression.

The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, prohibits discrimination in the sale, rental, or financing of housing by landlords, real estate agents, municipalities, banks, other lending institutions, and homeowner's insurance companies based on race, color, national origin, religion, sex, family status, or disability.

LGBTQ+ individuals may be rejected when trying to purchase or rent a home. LGBTQ+ people can face eviction, which may have financial and legal consequences. A partner's request to be added to the insurance of a homeowner may be rejected which could affect the property title.

In *Smith v. Avanti*, a landlord in Colorado refused to rent to a same-sex couple, one of whom was also transgender. The United States District Court stated that the property owner violated the Colorado Anti-Discrimination Act. This was the first time a federal court, placing sexual orientation and gender identity under the umbrella of sex discrimination, has ruled that anti-LGBTQ+ discrimination violated the Fair Housing Act.

Since homelessness in the LGBTQ+ community is more prevalent than it is in the general population, enactment of the Equality Act can help reduce these higher rates.

4. The Equality Act will ensure that LGBTQ+ individuals are not denied credit based on their sexual orientation, gender identity, or gender expression.

The Equal Credit Opportunity Act (ECOA) prohibits discrimination based on race, color, religion, national origin, sex, marital status, or age with respect to credit transactions. The Equality Act will amend ECOA to include "sexual orientation" and "gender identity" as protected classes.

LGBTQ+ individuals are often denied credit and mortgages. The negative financial impact can mean that they are often unable to become homeowners, pursue higher education or vocational training, build assets, or purchase a car. By amending ECOA, the Equality Act will allow for equal access to credit, financial improvements, education, and affordable housing.

5. The Equality Act will protect LGBTQ+ people from discrimination in jury service.

The Equal Protection Clause of the Fourteenth Amendment protects the right of a criminal defendant to a jury selection process free from racial, ethnic, or gender discrimination. When LGBTQ+ people are unfairly dismissed from jury service, there is no recourse in the justice system.

The Equality Act will protect the integrity of the jury selection process for the defendant, as well as the rights of the LGBTQ+ jurors.

The American Bar Association believes that everyone deserves equal protection under the law. Nearly two-thirds of LGBTQ+ Americans reported that they have experienced discrimination in their everyday lives. We urge Congress to pass legislation explicitly affirming that discrimination due to sexual orientation, gender identity or expression, or sex stereotyping is sex discrimination prohibited by the Civil Rights Act of 1964, among other federal statutes, and including sex, sexual orientation, and gender identity or expression protections in those statutes.

Thank you for this opportunity to convey the ABA's position on this important legislation. If you have any questions regarding these comments, please contact Thomas M. Susman, Governmental Affairs Office, at 202-662-1765 or Thomas.susman@americanbar.org.

Sincerely,

A handwritten signature in black ink that reads "Robert M. Carlson". The signature is written in a cursive, slightly slanted style.

Robert M. Carlson