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Public Advocacy Center, Room 223

Touro Law Center

225 Eastview Drive, Central Islip NY 11722

631 650 2310

www.saltlaw.org

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June 3, 2011

Dean Donald J. Polden

Chair, Standards Review Committee

American Bar Association Section of Legal Education and Admissions to the Bar

Santa Clara Law

Santa Clara University

500 El Camino Real

Santa Clara, California 95053

Re: Proposed Revisions to Standards 211 and 212

Dear Dean Polden:

SALT is writing to request the Committee to include Standard 211 and Standard 212 in its current revision process. We understand that the current review process is supposed to be a comprehensive review of all standards and interpretations in accordance with Department of Education regulations. SALT believes revisions to these standards are necessary to bring them into conformity with ABA goals and to ensure that ABA-approved law schools are providing equal opportunity in a way that will achieve meaningful diversity. The current standards are antiquated and inconsistent with the ABA's and the legal academy's stated commitment to equality and diversity.

SALT proposes two changes to the American Bar Association's Standards and Rules of Procedure for Approval of Law Schools:

- Amend Standard 211(a), (b), (c) and (d) (Non-Discrimination and Equality of Opportunity) to include gender identity.
- Amend Standard 212(a) and (b) (Equal Opportunity and Diversity) to include sexual orientation and gender identity.

These changes will bring Standards 211 and 212 into conformity with current ABA goals and policies. The ABA has explicitly recognized the importance of equality with respect to sexual orientation and gender identity. In 2007, the ABA amended its Goal IX to include "persons of differing sexual orientations and gender identities." In addition, the Association's Goal III is "To Eliminate Bias and Enhance Diversity," with the stated objectives of "(1) promot[ing] full and equal participation in the association, our profession, and the justice system by all persons, and (2) eliminat[ing] bias in the legal profession and the justice system."

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Consistent with its internal goals and policies, the ABA has also advocated for changes to laws that discriminate based on sexual orientation and gender identity. On August 10, 2010, the ABA House of Delegates adopted a policy urging state, territorial, and tribal governments to eliminate legal barriers to civil marriage between two persons of the same sex. The ABA has also urged repeal of Don't Ask Don't Tell and pushed for the passage of the Employment and Non-Discrimination Act which would prohibit discrimination based on sexual orientation and gender identity. In addition, the ABA has been active in educating the legal profession on issues particular to the LGBT community. The ABA's Center on Children and the Law has sought to improve the legal advocacy for LGBT youth; the ABA's Commission on Sexual Orientation and Gender Identity participated in a day-long program educating the judiciary; and the ABA Section on Family Law created a program on "Estate and Tax Planning for Same-Sex Couples."

There are additional compelling reasons for including LGBT persons in Standards 211 and 212. LGBT persons have long been subject to discrimination in both law and fact. In over half the states, LGBT workers are not protected by state antidiscrimination statutes. And while AALS bylaws require member schools to adopt antidiscrimination policies that protect LGBT employees and students, other protections have not been widely adopted. For example, of the 171 law schools responding to an LSAC survey, over thirty percent report that they do not offer domestic partnership benefits.¹ At least thirty-one schools report they have no self-identified LGBT faculty or administrators while less than half report that they have either a faculty member or an administrator that self-identified but not both.² We also note that surveys consistently show that LGBT law students suffer discrimination during their legal educations.³ In addition, LGBT persons are underrepresented in legal practice and the judiciary. For example, the 2010 National Association for Law Placement survey shows that only 1.8 percent of attorneys report as LGBT, even though approximately four to five percent of all law students so identify.⁴ Among the roughly 30,000 local, state, and federal jurists, only 75 to 100 are openly gay.⁵ The recent attacks on Judge Vaughn Walker's decision in *Perry v. Brown* based on his sexual orientation serve as an additional potent reminder that openly gay or lesbian legal practitioners and judges remain targets of discrimination.

¹ The data is available at <http://www.lsac.org/jd/diversity/lgbt-chart.asp>. 171 law schools responded to the survey and 52 law schools reported no domestic partnership benefits; 41 reported there was no faculty member who identified as LGBT while 42 schools reported no administrator and 31 schools reported having neither a faculty member nor an administrator who identified as LGBT.

² See *id.*

³ See J. Kelly Strader, *et al.*, *An Assessment of the Law School Climate for GLBT Students*, 58 J. Legal Educ. 214 (2008)(reporting on law student demographic data).

⁴ See <http://www.nalp.org/dec10lgbt> (2010 data shows that "Nonetheless, the numbers remain relatively small, and because the total number of lawyers included in this analysis is smaller compared with 2009, the overall count of 2,137 LGBT lawyers is lower than it was in 2009."); Strader, *et al.*, note 3, at 214.

⁵ Joan Biskupic, *Amid Debate Over Rights, Number of Gay Judges Rising*, USA Today (Oct. 17, 2006) available at http://www.usatoday.com/news/washington/2006-10-17-gay-judges_x.htm.

For these reasons, we respectfully request that you include Standard 211 and 212 in your current revision process and provide an opportunity for discussion and comment as you go forward. We appreciate the opportunity to submit these comments.

Sincerely yours,

A handwritten signature in black ink that reads "Raquel Aldana". The signature is written in a cursive style with a large initial 'R'.

Raquel Aldana
Co-President

A handwritten signature in black ink that reads "Steven Bender". The signature is written in a cursive style with a large initial 'S'.

Steven Bender
Co-President