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November 6, 2007

Dear Congressional Member:

On behalf of the American Bar Association, I urge your vote for passage of the Employment Non-Discrimination Act of 2007, HR 3685.

The ABA has a long tradition of actively opposing arbitrary discrimination on the basis of immaterial classifications. To this end, the Association has adopted policies calling upon local, state, and federal lawmakers to prohibit discrimination in employment, housing and public accommodations on the basis of real or perceived sexual orientation and on the basis of gender identity or expression.

For over 125 years the American Bar Association has represented the organized bar on issues of importance to the legal community and public policy. "Defending Liberty, Pursuing Justice" defines our guiding principles. Among our written goals is the statement: "To promote full and equal participation in the legal profession by minorities, women, persons with disabilities, and persons of differing sexual orientation and gender identities.

The American Bar Association supports protection of the civil rights of gay, lesbian, bisexual and transgendered peoples in all professions. These rights are not special rights, distinct from those of others in society, but equal rights, that deserve protection under law. Such equality is part of the American ideal.

The drafting of ENDA has been informed by our nation's experience with civil rights jurisprudence, and aided by an understanding of the unique aspects of sexual orientation discrimination. As with discrimination against other groups, the gay, lesbian and bisexual communities have been targeted for their defining characteristics; hence, the solution should be targeted as well. The bill before you prohibits discrimination in hiring, compensation, promotions or terminations based on sexual orientation while providing for carefully tailored exceptions.

HR 3685 would protect both worker and employer in our complex economy. American businesses benefit from a diverse workforce, which contributes to the high level productivity our national economy enjoys. Federal protection of minority groups, including the lesbian, gay and bisexual populations, encourages diversity in the workplace, and the benefits that flow from it. Ninety-two percent of Fortune 500 companies report incorporating workplace protections for the lesbian, gay and

bisexual communities in their corporate employment practices, demonstrating that protections make good business sense.

The ABA is proud to be among the organizations advancing these efforts in the legal community.

In 1989, the ABA adopted policy favoring antidiscrimination employment legislation in order to protect individuals of nonconforming sexual orientation. In August 2006, the association strengthened and reaffirmed that policy by passing supplemental policy that states:

RESOLVED, That the American Bar Association urges federal, state, local, and territorial governments to enact legislation prohibiting discrimination on the basis of actual or perceived gender identity or expression, in employment, housing and public accommodations.

Gender identity and gender expression protections would aid those who do not conform to stereotypical male or female gender expectations. Studies indicate that transgender and other gender nonconforming people face severe discrimination in all public aspects of their lives, particularly employment. We know that many Americans, regardless of sexual orientation, experience discrimination because their dress or behavior does not match that traditionally associated with their gender. In the employment context, the result can be a significant loss of human potential. In addition, discrimination based on sexual orientation is often couched in terms of discrimination based on gender identity and gender expression. Anti-discriminatory provisions protecting gender identity and gender expression in ENDA would enhance protections for sexual orientation by clarifying the nature of the protected class and the basis of the prohibited actions.

While disappointed that gender identity will not be addressed in HR 3685, enactment, nevertheless, will be a significant contribution to civil rights jurisprudence.

We urge you to support passage of H.R. 3685 and to oppose any motion to recommit.

Sincerely,

A handwritten signature in cursive script that reads "Denise A. Cardman". The signature is written in black ink and is positioned above the typed name.

Denise A. Cardman  
Acting Director