June 20, 2018

The Honorable Edward J. Markey
United States Senate
Washington, DC 20510

Dear Senator Markey:

The “gay panic” and “trans panic” legal defenses are remnants of a by-gone era – an era when legalized discrimination and widespread hostility toward lesbian, gay, bisexual, and transgender (LGBT) individuals was the norm. These defenses have no place in either our society or justice system and should be legislated out of existence.

That is why I am writing on behalf of the American Bar Association to voice our strong support for the Gay and Trans Panic Defense Prohibition Act of 2018, which you are planning to introduce next week. The ABA, with over 400,000 members, is the leading organization of the legal profession in the United States. Our members include private and corporate lawyers, solo practitioners, prosecutors, public defenders, judges, and law enforcement personnel in addition to legislators, law students, law professors, and others in related fields.

In August 2013 the ABA adopted a policy resolution that is directly aligned with your bill. The heart of the resolution is a recommendation that legislation be enacted—

(a) Requiring courts in any criminal trial or proceeding, upon the request of a party, to instruct the jury not to let bias, sympathy, prejudice, or public opinion influence its decision about the victims, witnesses, or defendants based upon sexual orientation or gender identity; and

(b) Specifying that neither a non-violent sexual advance, nor the discovery of a person’s sex or gender identity, constitutes legally adequate provocation to mitigate the crime of murder to manslaughter, or to mitigate the severity of any non-capital crime.

An extensive report accompanying the resolution set out extensive examples where the gay or trans panic defenses were invoked, many times successfully; the legal history of the defenses; and proposed responses to eliminate their use. We are pleased to see that the legislation closely conforms to our recommendation and look forward to working with you and the 115th Congress towards its enactment.

Sincerely,

Thomas M. Susman