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June 6, 2018

Honorable Carolyn Maloney
2308 Rayburn House Office Building
Washington, DC 20515

Dear Representative Maloney:

I am writing on behalf of the ABA and its 400,000 members to commend you for holding today's *ad hoc* hearing on the Equal Rights Amendment (ERA) to focus public attention on the need to amend our U.S. Constitution to assure that gender equality is recognized as a fundamental, irrevocable right protected by the highest law of the land. Please include this letter in your hearing record.

The ABA has long advocated for gender equality. In 1972, the ABA adopted policies supporting constitutional equality for women and condemning discriminatory hiring practices within the legal profession on the basis of gender, religion, race, or national origin. In 1974, the ABA specifically endorsed ratification of the ERA. At the time, there was broad bipartisan support, and with 33 states already onboard, ratification seemed imminent. Sadly, this optimism was ill-founded, and in 2016, the ABA once again adopted policy reaffirming the need for, and its support of, ratification of the ERA.

In the intervening years, the ABA has advocated vigorously for passage of legislation to strengthen legal protections for women, including amendments to update Title VII of the Civil Rights Act, Title IX of the Education Amendments of 1972, the Pregnancy Discrimination Act, the Violence Against Women Act, the Lilly-Ledbetter Act, and the yet-to-pass Paycheck Fairness Act. We also have advocated for increased resources for the Equal Employment Opportunity Commission to enable it to carry out its congressionally mandated duty to enforce laws prohibiting discrimination, including gender discrimination.

These and other laws have helped protect women from gender-based violence and discrimination, but they provide patchwork protection and have been subject to different levels of enforcement and judicial interpretation. As demonstrated by the Supreme Court's decision in *Ledbetter v. Goodyear Tire and Rubber Co.*, which interpreted longstanding civil rights laws in a manner that severely limited protection against wage discrimination based on sex, legislation alone is insufficient to permanently guarantee gender equality. Similarly, the degree to which the equal protection clause of the Fourteenth Amendment protects gender equality is dependent on judicial interpretation. No fewer than three justices – two sitting justices and one deceased justice—have offered different opinions in public forums on the reach of the Fourteenth Amendment with regard to sex discrimination.

As you succinctly stated in your letter inviting our comment, “The Equal Rights Amendment is needed as a legal tool and a statement of principle.” Ratification would have three immediate effects. First, it would establish that gender equality under the law is a fundamental and irrevocable tenet of our society. Second, it would require all judges to apply the highest standard of scrutiny when deciding cases involving sex discrimination. This means judges would use the same standard of review in sex

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discrimination cases that they now use in deciding cases involving discrimination based on race, religion, and national origin. And third, it would protect and reinvigorate enforcement of existing gender equity laws.

We are encouraged that Nevada and Illinois have recently ratified the ERA because it signals a renewed recognition of the need for the ERA and the public's determination to make legislators affirm their verbal support for equal rights by voting for ratification. But the ABA, like you and other Members of Congress, recognizes that the fight will not be over when the 38th state ratifies the ERA because of issues involving the expiration of the deadline for ratification set by Congress and subsequent rescissions by states.

Even though the ABA has not taken a position on these legal complications or on current legislative approaches to overcome these problems, we remain committed to constitutional equality for women and ratification and implementation of the ERA.

Thank you for holding this *ad hoc* hearing to focus the attention of the public, the media, and your colleagues on existing gender inequality and the continuing need for the ERA. We are strong believers that advocacy through education is a powerful way to effect change.

Please contact Denise Cardman, deputy director of the Governmental Affairs Office, at denise.cardman@americanbar.org if we can be of additional assistance.

Sincerely,

A handwritten signature in black ink that reads "Thomas M. Susman". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Thomas M. Susman