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November 1, 2005

**Honorable Arlen Specter, Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510**

**Honorable Sam Brownback, Chair
Subcommittee on the Constitution, Civil Rights and Property Rights
Committee on the Judiciary
United States Senate
Washington, DC 20510**

Dear Chairman Specter and Chairman Brownback:

We understand that the Subcommittee on the Constitution, Civil Rights and Property Rights is expected this week to mark up S.J.Res. 1, a resolution proposing an amendment to the U.S. Constitution relating to marriage, and that the full Committee is expected to mark it up the following day. We are writing to urge you to disapprove this measure.

While the American Bar Association has taken no position either favoring or opposing laws that would allow same-sex couples to enter into civil marriages, we oppose attempts to restrict the ability of each state to determine the qualifications for civil marriage between two persons within its jurisdiction. We particularly oppose recently proposed constitutional amendments that seek to prohibit same-sex civil marriages by either dictating how state and federal courts should interpret state and federal constitutions, or by explicitly stripping state and federal courts of their right to hear constitutional challenges to laws limiting civil marriage to heterosexual couples. Proposals such as S.J.Res. 1 intrude upon the traditional authority of each state to establish its own laws governing civil marriage and debase our Constitutional system of checks and balances.

The authority to regulate marriage and other family-related matters has resided with the states since the founding of our country and is rooted in principles of federalism. This has enabled states to enact diverse marriage laws that respect and reflect the unique needs and views of their residents.

Our federal system also gives states the authority to adopt their own state constitutions and to interpret its provisions to accord greater protection to individual rights than are granted under similar provisions of the U.S. Constitution. Over the years, not only has our nation successfully tolerated the fact that state laws and judicial interpretations governing marriage are not uniform, we have benefited from it. Variations among state laws governing same-sex unions have provided the opportunity to examine the effect different laws have on a state's population, increased each state's exposure to new ideas, and served as guidance to states that seek to modify their laws.

The Constitution should not be amended absent urgent and compelling circumstances. It certainly should not be amended to call a halt to democratic debate within the states or to prohibit state and federal courts from determining the constitutionality of certain laws.

No urgent need for this drastic action has been demonstrated. While the majority of state legislatures and courts currently are wrestling with this issue and considering various proposed changes, at present, 49 states grant civil marriage licenses exclusively to heterosexual couples and 16 states have adopted state constitutional amendments banning same-sex marriages (one is under appeal). Last year, 13 states voted on same-sex marriage restrictions and all of them passed. Earlier this year, Kansas voters passed a same-sex marriage ban in a special election, and on November 8, Texas voters are scheduled to consider a ballot initiative that would ban same-sex marriage. The states are not shirking their responsibilities or waiting for Congress to intervene; indeed, state legislatures are vigorously engaged in finding workable, legal solutions to one of the most socially charged issues of our time and are responding to the needs and wishes of their residents.

As Bob Barr, former U.S. Representative from Georgia, succinctly stated in testimony before the Senate Judiciary Committee this past spring, "We meddle with the Constitution to our own peril. If we begin to treat the Constitution as our personal sandbox, in which to build and destroy castles as we please, we risk diluting the grandeur of having a Constitution in the first place."

Congress should not rush to judgment and use the constitutional amendment process to impose on the states a particular viewpoint on this highly controversial issue. We urge the Senate Judiciary Committee to act with restraint in this area as a demonstration of respect for and confidence in our state legislatures and our judiciaries.

Sincerely,



Robert D. Evans

cc. Members of the Committee on the Judiciary