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March 8, 2006

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

Dear Chairman Specter:

We understand that the Senate Judiciary Committee is expected this week to mark up S.J.Res. 1, a joint resolution proposing an amendment to the U.S. Constitution relating to marriage. 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, the Association staunchly opposes S.J.Res. 1 and any other federal legislative proposals that would restrict the ability of each state to determine the qualifications for civil marriage between two persons within its jurisdiction.

S.J.Res. 1 seeks to prohibit same-sex civil marriages by defining marriage as “only...the union of a man and a woman” and dictating how state and federal courts should apply state and federal constitutional provisions to civil marriage statutes. This would trample on the traditional authority of each state to establish its own laws governing civil marriage and debase the grandeur and timelessness of our Constitution by invoking the amendment process to halt robust, democratic debate within the states on this subject.

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. Over the years, the variations in state laws and judicial interpretations governing social and economic institutions have benefited our citizens and strengthened our nation by respecting its diversity.

Our federal system gives each state the authority to adopt and interpret its own state constitution. Further, as the late Chief Justice William H. Rehnquist stated in his majority opinion in *Arizona v. Evans*, 514 U.S. 1, 8 (1995), “[S]tate courts are absolutely free to interpret state constitutional

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provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution.” Absent urgent and compelling circumstances, the constitutional amendment process should not be used to undermine the authority of states to define and protect the rights and liberties of their own residents.

Despite employing the rhetoric of dire consequences, Marriage amendment supporters have failed to demonstrate that there is an urgent need for this proposed drastic action. At present, 49 states grant civil marriage licenses exclusively to heterosexual couples, and 18 states have adopted state constitutional amendments banning same-sex marriages. This year, Alabama, South Carolina, South Dakota, Tennessee, Virginia and Wisconsin will hold statewide referendums on constitutional amendments to ban same-sex marriages, and similar amendments have been proposed and are making their way through the legislative process in multiple other states. No one can assert that the states are shirking their responsibilities or waiting for Congress to intervene; indeed, state legislatures are vigorously engaged in this socially charged debate and are responding to the needs and wishes of their residents.

As former U.S. Representative Bob Barr 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 rigid viewpoint regarding a controversial issue of great consequence to this nation. If our Constitution is to continue to embody the spirit of liberty for future generations, we must not allow it to be used to enshrine still-evolving societal views. We urge the Senate Judiciary Committee to act with appropriate restraint and deference and reject S.J.Res. 1.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Evans".

Robert D. Evans

Cc: Members of the Committee on the Judiciary