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RE: H.R. 2389, THE PLEDGE PROTECTION ACT OF 2005

Dear Representative:

We understand that the House is scheduled to consider H.R. 2389 tomorrow. We are writing to express our opposition to this legislation, which would strip from all federal courts jurisdiction to hear constitutional challenges to the interpretation of, or the validity of, the Pledge of Allegiance.

Our views on H.R. 2389 are informed by our long-standing opposition to legislative curtailment of the jurisdiction of the Supreme Court of the United States and the inferior federal courts for the purpose of effecting changes in constitutional law. The ABA has taken no position on the underlying issues regarding recitation of the Pledge of Allegiance in public schools; instead, our strong opposition to H.R. 2389 and other pending legislation that would strip the federal courts of jurisdiction to hear selected types of constitutional cases is based on our concern for the integrity of our system of government.

This legislation would authorize Congress to use its regulatory power over federal jurisdiction to advance a particular legislative outcome by insulating it from constitutional scrutiny by the federal judiciary. In addition to being constitutionally suspect, this legislation would establish a dangerous precedent if enacted. As a matter of policy, Congress should not jettison our foundational principles because of current dissatisfaction with a controversial decision of the Supreme Court or lower federal courts by permanently stripping the jurisdiction of the federal courts to hear certain categories of cases. Rather than strengthening its legislative role, Congress, by pressing its own checking power to the extreme, imperils the entire system of separated powers.

If enacted, H.R. 2389 would restrict the role of the federal courts in our system of checks and balances and thereby limit the ability of the federal courts to protect the constitutional rights of all Americans. Indeed, this legislation would leave the state courts as the final arbiters of federal constitutional law, creating the possibility that some state judges might choose not to follow Supreme Court precedents. Because the legislation would nullify the Supremacy Clause in certain classes of cases, the Constitution could mean something different from

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state to state; and, contrary to the expressed intentions of the Framers, our fundamental rights and the balance of power among the branches would be subject to evanescent majority opinion.

At a time when Congress is accusing the federal courts of overstepping their constitutional role and calling for judicial restraint, we urge you to likewise exercise legislative restraint and demonstrate your continued commitment to the doctrine of separation of powers and a government composed of separate but coequal branches by voting to defeat passage of H.R. 2389.

If you have any questions regarding our position, please have your staff contact Denise Cardman, Deputy Director of the Governmental Affairs Office.

Sincerely,

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

Robert D. Evans