November 2, 2011

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United State Senate  
Washington, D.C. 20510

The Honorable Charles E. Grassley  
Ranking Member  
Committee on the Judiciary  
United State Senate  
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the American Bar Association, which has nearly 400,000 members, I write to express our strong support for S. 598, the Respect for Marriage Act. This legislation would repeal the Defense of Marriage Act (DOMA) and protect the state regulation of marriage by making clear that all marriages validly licensed and recognized by the various states must be recognized by the federal government as well. This bill is consistent with the ABA’s long history of supporting the authority conferred upon the states under our federal system to determine a person’s marital status.

In 2009, the ABA adopted policy urging Congress to repeal 1 U.S.C. § 7, which denies federal benefits to same-sex couples and their families. Marital status is a factor in determining whether an individual is eligible for federal rights or benefits in over one thousand federal statutory provisions, including family medical leave, health care, and Social Security survivor benefits. The Respect for Marriage Act would eliminate this discriminatory policy and allow state-sanctioned same-sex marriages to be recognized at the federal level.

After many years of legal confusion and complications created by DOMA, the Respect for Marriage Act would provide a much-needed level of clarity that would allow lawyers to better serve their clients and communities. For example, because of DOMA, same-sex married couples seeking divorce cannot obtain qualified domestic relations orders that allow courts to divide retirement accounts without federal tax penalty to either party. As a result, DOMA ties the hands of judges and family attorneys who have the difficult task of dividing marital property. In addition, general counsels for businesses must advise their clients on the numerous and unique federal tax pitfalls, as well as administrative
burdens, that DOMA presents to businesses that provide spousal employment benefits to their gay and lesbian employees. These are but two examples of how DOMA not only harms same-sex couples and their families, but imposes unnecessary burdens on lawyers, judges, and businesses.

The Respect for Marriage Act would also repeal 28 U.S.C § 1738C, which absolves states from respecting same-sex marriages under the laws of another state. In 2010 the ABA called for states to “eliminate all of their barriers to civil marriage between two persons of the same sex who are otherwise eligible to marry”; repealing DOMA is needed to eliminate a significant barrier to states’ ability to respect lawful marriages between same-sex couples.

On behalf of the American Bar Association, I urge you to support the Respect for Marriage Act and rectify the inequities that have plagued legally married same-sex couples since the adoption of DOMA.

Sincerely,

Thomas M. Susman

cc: Members, Senate Committee on the Judiciary