

GOVERNMENTAL AFFAIRS  
OFFICE

AMERICAN BAR ASSOCIATION

Governmental Affairs Office

740 Fifteenth Street, NW  
Washington, DC 20005-1022  
(202) 662-1760  
FAX: (202) 662-1762

DIRECTOR

Robert D. Evans

(202) 662-1765

rdevans@staff.abanet.org

SENIOR LEGISLATIVE COUNSEL

Denise A. Cardman

(202) 662-1761

cardmand@staff.abanet.org

Kevin J. Driscoll

(202) 662-1766

driscollk@staff.abanet.org

Lillian B. Gaskin

(202) 662-1768

gaskinl@staff.abanet.org

LEGISLATIVE COUNSEL

R. Larson Frisby

(202) 662-1098

frisbyr@staff.abanet.org

Kristi Gaines

(202) 662-1763

gainesk@staff.abanet.org

Kenneth J. Goldsmith

(202) 662-1789

goldsmithk@staff.abanet.org

Ellen McBarnette

(202) 662-1767

mcbarnee@staff.abanet.org

E. Bruce Nicholson

(202) 662-1769

nicholsonb@staff.abanet.org

DIRECTOR GRASSROOTS

OPERATIONS/LEGISLATIVE COUNSEL

Julie M. Strandlie

(202) 662-1764

strandlj@staff.abanet.org

INTELLECTUAL PROPERTY

LAW CONSULTANT

Hayden Gregory

(202) 662-1772

gregoryh@staff.abanet.org

STATE LEGISLATIVE COUNSEL

Rita C. Aguilar

(202) 662-1780

aguilarr@staff.abanet.org

EXECUTIVE ASSISTANT

Julie Pasatiempo

(202) 662-1776

jpasatiempo@staff.abanet.org

STAFF DIRECTOR FOR

INFORMATION SERVICES

Sharon Greene

(202) 662-1014

greenes@staff.abanet.org

EDITOR WASHINGTON LETTER

Rhonda J. McMillion

(202) 662-1017

mcmillionr@staff.abanet.org

**September 21, 2004**

**U.S. House of Representatives  
Washington, DC**

**VIA FACSIMILE**

**RE: H.R. 2028**

**Dear Representative:**

**Tomorrow, the House is scheduled to consider H.R. 2028, legislation to strip from the federal courts jurisdiction to hear constitutional challenges to the phrase “under God” in the Pledge of Allegiance. Far from protecting our heritage and endorsing principles of federalism, enactment of this legislation would violate the doctrine of separation of powers, which is fundamental to our system of government, and would imperil the ability of our federal courts to protect our constitutional liberties. The American Bar Association urges you to oppose H.R. 2028.**

**Our views on H.R. 2028 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 issue regarding the mandatory recitation of the Pledge of Allegiance in public schools; instead, our strong opposition to H.R. 2028 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, in effect, 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 itself, this legislation would establish a dangerous precedent if enacted. As a matter of policy, this nation should not start down a road where, each time a decision of the Supreme Court or lower federal court offends that particular Congress, the jurisdiction of the federal courts to hear that issue would be stripped away, leaving the state courts as the final arbiters of federal constitutional law.**

**Even though we do not concede that shifting jurisdiction will necessarily result in substantive changes to constitutional law (state judges, after all, take the same oath of office as federal judges), this legislation creates 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 state to state and contrary to what we have always believed, our fundamental rights and the balance of power among the branches would be subject to evanescent majority opinion.**

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**At a time when Congress is accusing the federal courts of overstepping their constitutional role and calling for judicial restraint, we urge Congress to likewise exercise legislative restraint and demonstrate its continued commitment to the doctrine of separation of powers and a government composed of separate but coequal branches by voting to oppose H.R. 2028.**

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Evans". The signature is written in black ink and is positioned below the word "Sincerely,".

**Robert D. Evans**