

## NYSBA LEGISLATIVE PRIORITIES FOR 2014

### **State Legislative Priorities for 2014**

The process to select legislative priorities for 2014 began in July with a letter from President David Schraver to all NYSBA section and committee officers, requesting that they submit recommendations to be considered for the upcoming legislative session.

The initial review of issues in the Association's priority-selection process began with the Committee on Legislative Policy and the Committee on Federal Legislative Priorities, which met on September 19 and September 17, 2013, respectively. The committees discussed the Association's list of 2013 legislative priorities, reviewed the current recommendations, and determined which issues should be recommended to the Steering Committee on Legislative Priorities, which is chaired by President Schraver, and which met on October 7 to consider recommendations of the two committees and develop its report to the Executive Committee.

Below are the issues approved by the Executive Committee on November 1 as the Association's 2014 legislative priorities.

**Integrity of New York's Justice System.** An independent, well-functioning judicial system, accessible to all, is a bedrock principle of our democracy. The courts, more than any other arm of government, are the bulwark of liberty. As practitioners we have seen, whether through shortened court hours or delays in proceedings, the impact budget cuts have had on the operation of the court system. The Governor and Legislature must ensure that adequate resources are provided so that the courts can fulfill their essential role.

For the courts to properly do so, all members of society must have access to the courts. An independent judiciary is meaningless if the aggrieved cannot come before it. Government funding is necessary to ensure access to the justice system for the poor and vulnerable. State funding for civil legal services for the poor remains inadequate. Adequate funding via a dedicated revenue stream is necessary and prudent. For the past three years the Judiciary's proposed budget has recognized the substantial unmet need for civil legal services and included funding to implement recommendations to address the need. The investment in civil legal services will save a substantial amount of government dollars that would otherwise be spent for social services, housing and other programs.

In 2011, total filings in Family Court approached three quarters of a million. As courts opened for business in January 2012, 26 % of the previous year's filings, or 188,982, were still pending, and had been pending over 180 days. Despite increased caseloads, only four Family Court judgeships have been created outside New York City during the last decade and none has been created in New York City for more than twenty years.

The Association supports the creation of new Family Court judgeships to ensure justice for New York's children and families.

A number of Veterans Treatment Courts, like the very successful court in Buffalo, have been established across the state. The Association has been at the forefront of supporting the broader establishment of Veterans Treatment Courts, as an effective means to balance the needs of our communities and those who have served our country.

Wrongful convictions cast serious doubt on a fundamental assumption of our criminal justice system—that the innocent are protected. It is essential that our criminal justice system ensure that the innocent remain free and that the guilty are not free to commit more crimes. The eradication of wrongful convictions is essential to maintain the public's trust and confidence in our criminal justice system. Two of the root causes of wrongful convictions—false confessions and flawed eyewitness identification procedures—must be addressed. To this end, the Association has drafted legislation intended to avoid wrongful convictions. The legislation would mandate the electronic recording of custodial interrogations, including juveniles, and establish a procedure for law enforcement to follow when conducting eyewitness identifications.

New York's correctional system makes heavy use of solitary confinement. A growing body of research is showing the serious detrimental effects of solitary confinement. Out of respect for the dignity of the individual, and concern for the consequences when individuals are released from prison, the Association supports efforts to greatly lessen the use of solitary confinement within the parameters of maintaining a safe prison system.

**Sealing records of conviction of certain crimes.** New York law provides for the sealing of records of a limited number of crimes. There are many misdemeanor and non-violent crimes to which the sealing provisions do not apply. The consequences of a conviction can follow a person for the rest of his or her life, interfering, if not preventing, the person's reintegration into the community. Under the right circumstances, a fully reformed person, a person who has committed no further criminal acts, should have the opportunity to move forward without all the collateral consequences that follow a long-past conviction. The Association supports legislation that would allow a person who has been convicted of certain offenses to apply to the court to have their record sealed.

**Franchise Act.** The Association supports amending the franchise law to conform to the Federal Trade Commission's (FTC) franchise rules. The FTC rules have preempted much of current New York law, and this proposal would conform New York law to the FTC rules. Perhaps more importantly, the proposal would amend provisions of current New York law that are not preempted but that discourage franchisors from locating their headquarter operations in New York, thus driving jobs and economic benefit to other states.

## **Support for Our Democratic Ideals.**

Civics Education – Democracy depends upon an educated citizenry. A core mission of the Association is to foster an understanding and respect for democracy and the rule of law. The Association supports the enactment of public policy to require the incorporation of civics education in all grades, and the appropriate funding to implement this policy, to ensure an understanding of our system of government.

Increased Voter Participation - New York's voter participation rates have continued to decline. This trend must be reversed. The Association supports changes to the law relating to voter registration and voting practices to make it easier to register and vote.

**Support for the Legal Profession.** A core mission of the New York State Bar Association is to represent the interests of the legal profession. In that regard, the Association will work to protect the independence of the judiciary, enhance access to the courts, promote affirmative legislative proposals that benefit the profession, and oppose those proposals that would burden it. The Association will work to ensure that attorneys are able to protect their clients' interests and effectively engage in the practice of law.

## Federal Legislative Priorities for 2014

**Integrity of the Justice System.** At all levels of government an independent, well-functioning judicial system, accessible to all, is a bedrock principle of our democracy. The courts more than any other arm of government, are the bulwark of liberty. Accordingly, sequestration, which was imposed by the Budget Control Act of 2011, should be eliminated. The Association will continue to urge federal policymakers to address important fiscal issues so as to prevent impairing access to justice. If the budget sequestration process remains in place, it will cripple the operation of the federal courts and the Legal Services Corporation, thereby limiting access to the justice system for individual New Yorkers and business entities.

**Repeal of the Defense of Marriage Act (DOMA)/Support the Respect for Marriage Act.** In *Windsor*, the Supreme Court struck down Section 3 of DOMA, which excluded married same-sex couples from federal protections, responsibilities, and programs. Section 2 of DOMA, which purports to excuse the states from honoring the marriage of same-sex couples performed by a sister state, still stands. The Respect for Marriage Act would repeal Section 2 of DOMA, and would also provide a uniform rule for recognizing couples under federal law, ensuring that all lawfully married couples will be recognized under federal law, no matter where they live. The Association supports legislation that would follow the well-established principle of “full faith and credit”, and require states to recognize each other’s marriage licenses for same-sex couples. The law should grant federal recognition to same-sex marriages entered into in any state that allows them, regardless of the couple’s state of residence. The Association supports equity for same-sex couples and objects to discrimination against individuals on the basis of their sexual orientation and, therefore, urges repeal of the remaining sections of DOMA and urges enactment of the Respect for Marriage Act.

**Support Increased Voter Participation.** In the United States, voting is one of our most fundamental rights, ensuring our ability to participate in the electoral process. However, the rate of voter participation is of concern throughout the nation. Measures to remove barriers to registration and voting and to encourage participation, while maintaining the integrity of the process, could go a long way to improve civic engagement and enhance our democracy. The Voter Empowerment Act would, among other things, amend the National Voter Registration Act of 1993 (NVRA) to require each state to make available official public websites for online voter registration. It also would authorize automated voter registration of certain individuals and establishes other initiatives to promote voter registration, such as same day registration and voter registration of individuals under 18 years of age.

**Support legislative reform to address the state of crisis in immigration representation.** The condition of immigrants who face civil immigration detention, removal and likely permanent expulsion from the United States is often undermined by the lack of available competent counsel necessary to navigate the “labyrinthine character of modern immigration law.” Without competent counsel in immigration proceedings, a vast majority of noncitizens are ill-equipped to know where to turn for help or how to proceed in an immigration matter. The Association is committed to enactment of a statutory right to appointed counsel to ensure justice for that community of immigrants who are confronted with sanctions under U.S. laws on immigration.

### **Administration of Justice.**

Support for the Rules Enabling Act rule-making process and maintaining Rule 11 of the Federal Rules of Civil Procedure (“FRCP”). The Lawsuit Abuse Reduction Act (LARA) would amend FRCP Rule 11 – via a process that is inconsistent with the Rules Enabling Act, 28 USC sections 2072-74 – to reinstate a mandatory sanctions provision that was deleted from the FRCP in 1993. Enactment of LARA would constitute bad public policy by restoring a system that was in effect from 1983 to 1993, and which was thoroughly discredited because it did not allow for ameliorative action by the courts. If enacted, LARA would significantly multiply satellite litigation, substantially degrade the efficiency of the courts, and greatly increase costs of the litigation process.

Support for states’ authority to regulate the tort system. Laws covering the area of civil justice are truly the province of state legislatures, the judiciary, and voters. For over 200 years the authority to promulgate “tort law”, including law relating to liability for medical errors, has rested with the states, which have the experience and expertise with these matters. The federal government should leave it to the states to determine how best to provide access to the courts for the injured to exercise their right to seek compensation for their injuries and to make reasonable adjustments to the system.

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