



NEW YORK STATE BAR ASSOCIATION

FEDERAL LEGISLATIVE PRIORITIES

2011



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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, the following items are included within this category: i) Funding and elimination of restrictions on funds for civil legal services; ii) protection of the attorney-client relationship; and, iii) creation of federal judgeships and swift confirmation of nominees.

Funding and elimination of restrictions on funds for civil legal services. The Legal Services Corporation (LSC), created in 1974 to ensure that all Americans have access to a lawyer and the justice system for civil legal issues regardless of their ability to pay, provides grants to independent local legal services programs to ensure that these goals are met. The Association has consistently called for adequate funding in New York State, to address the “justice gap” between the need for legal services by the indigent and the funds necessary to fulfill the need. Congress should adequately fund LSC and eliminate uneconomical restrictions that have been imposed by the federal government on the use of private, state, and local funds.

In particular, Congress should eliminate the restriction placed on LSC-funded providers that prohibits how they can spend the funds received from non-LSC sources. The result of this unreasonable and uneconomical restriction is that millions of dollars from state and local governments, private donors, and other non-LSC sources are restricted as if they were LSC funds. This prevents legal service providers’ clients from having access to the full range of legal tools available to clients of private attorneys. The Association supports appropriate funding of legal services and the elimination of restrictions on the use of funds.

Protection of the Attorney-Client Relationship. As important as the ability to access our system of justice system is, so too is the assurance that a client’s conversations with his or her attorney are guarded by the staunchest protection. The Association has consistently expressed concern over encroachment on the attorney-client privilege by policies of the United States Department of Justice. Those policies encourage organizations to waive their attorney-client privilege and related attorney work-product protection, to refuse to pay counsel fees to employees suspected of impropriety, and to fire employees who assert constitutional or other privileges. The attorney-client privilege is an essential element of the American system of justice, permitting the candid discussion of the facts and the law between client and counsel. The Association has actively supported the Attorney-Client Privilege Protection Act and other proposals to protect the attorney-client relationship.

Creation of Federal Judgeships and Swift Nomination and Confirmation of Nominees. Once an individual accesses the justice system, their claim should be resolved in a reasonable time-frame. Therefore, the Association supports legislation that would create new judgeships to address the increased caseloads that burden federal courts. Furthermore, the Association urges the swift nomination and confirmation of new federal judges to alleviate delay in the courts caused by increased caseloads.

Stephen P. Younger, *President*
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Repeal of the Defense of Marriage Act (DOMA). DOMA prohibits federal recognition of same-sex marriages, which are legal in a few states. The Association supports legislation that would extend federal recognition to same-sex marriages and repeal the Defense of Marriage Act—“DOMA.” 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. Such recognition would include any federal law involving a question of marital status, such as the tax code or Social Security.

The Association supports equity for same-sex couples and objects to discrimination against individuals on the basis of their sexual orientation. People in same-sex relationships should have the same legal rights and responsibilities as opposite-sex couples. The Association, therefore, urges repeal of DOMA.

Support for the Reporter Shield Law (Free Flow of Information Act). The Association supports a federal shield law to protect journalists from intrusive demands for information and documents obtained in the course of news gathering or reporting. Congress should approve such a law modeled on the New York State Shield Law (Section 79-h of the state Civil Rights Law).

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.

Support Legislation and Funding to Enhance Civic Education Programs. The Association supports federal programs developed to promote civic competence and responsibility among the nation’s elementary and secondary school students. Such programs augment the mission of the Association’s Law, Youth and Citizenship (LYC) program, which was established in 1974 to promote law-related education in New York’s public and private schools. The LYC program assists educators in preparing students, pre-kindergarten through 12th grade, for their active, engaged roles as citizens who have the knowledge, skills, and the civic attitudes fundamental to a healthy democracy.

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.



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