



NEW YORK STATE BAR ASSOCIATION

# FEDERAL LEGISLATIVE PRIORITIES 2016



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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 Association will continue to urge federal policy-makers to address important fiscal issues so as to prevent impairing the operation of the federal courts and the Legal Services Corporation (LSC), and ultimately impairing access to justice for individuals and business entities. We are pleased that the budget for Fiscal Year 2016 included funding essentially equal to the Judiciary's budget request and increased funding for LSC.

**Support Criminal Justice Reform.** The Association supports the Sentencing Reform and Corrections Act, which is the result of a bi-partisan agreement by leaders of the U.S. Senate. In particular, the Association supports provisions to reduce certain mandatory-minimum sentences, to provide judges with greater discretion when determining appropriate sentences, to limit the use of solitary confinement of juveniles and allow sealing convictions of juveniles in certain circumstances, and to aid law enforcement in focusing on drug kingpins.

**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. The Association supports the Voting Rights Amendment Act, which responds to the U.S. Supreme Court's decision in *Shelby County v. Holder* regarding protection, under the Voting Rights Act of 1965, against racial voting discrimination. The legislation would provide for a new approach to determining which jurisdictions are "covered" for purposes of Section 5 preclearance.

**Support Family Paid Leave.** The Family and Medical Insurance Leave Act, S.786 (Gillibrand) would provide workers with family and medical leave insurance benefit payments when a family or medical need arises. It would be funded in a manner similar to the Social Security program.

With more than half of all women in the U.S. workforce today, the rapidly aging U.S. population, and generational workforce shifts, the need for our country to revisit and address family and medical leave is essential. This legislation is a timely, pragmatic and useful strategic solution in the development of a national, uniform strategy and business-planning approach that supports businesses and the U.S. workforce of today and tomorrow.

**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 legal proceedings.

**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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David P. Miranda, *President*

Claire P. Gutekunst, *President-Elect*

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**Support the Paycheck Fairness Act.** The Act would amend the portion of the Fair Labor Standards Act of 1938 (FLSA), known as the Equal Pay Act, to revise remedies for, enforcement of and exceptions to prohibitions against sex discrimination in the payment of wages.

**Oppose Lawsuit Abuse Reduction Act (LARA).** This bill would amend Rule 11 of the Federal Rules of Civil Procedure (“FRCP”) — via a process that is inconsistent with the Rules Enabling Act, 28 USC sections 2072-74.

Moreover, enactment of this legislation would restore 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. The bill would require the imposition of monetary sanctions, including attorneys’ fees, for violation of Rule 11, and would eliminate a provision adopted in 1993 that allows parties and their attorneys to avoid sanctions by withdrawing particular claims, and thereby resolving issues before the matter goes before the court.

If enacted, this bill would significantly multiply satellite litigation, substantially degrade the efficiency of the courts, and greatly increase costs of the litigation process. Changing Rule 11 in this way would impair the relationships between parties and their attorneys, making cases more difficult to settle.

**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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