



NEW YORK STATE BAR ASSOCIATION

State Bar News

SEPTEMBER/OCTOBER 2016 | VOLUME 58, NO. 5 | WWW.NYSBA.ORG

As field evolves, New York attorneys chart new territory

By Christina Couto

If the legal profession does not adapt to continuously evolving technology and new ways of accessing and delivering legal services, will the traditional method of practicing law go the route of companies such as Kodak and Blockbuster?

While some attorneys have historically been resistant to changes in the legal field, many, including State Bar President Claire P. Gutekunst, believe it is critical that attorneys—and the State Bar—be

proactive, but at the same time, cautious.

“From technological advances to the ever-increasing number of nontraditional legal providers, there are enormous changes occurring in the legal profession,” Gutekunst said. “Our Association must play a part in developing the future of legal services in New York while ensuring that we maintain the core values and ethics of the profession and protect the public. We are committed to helping our members meet the challenges ahead.”

A working group to

study issues facing the legal profession was created in November 2015 by then-President David P. Miranda. The group has examined ways the Association can enhance access to justice for the poor and underserved (including middle class and small business clients) and what role non-lawyers should play. The group has also looked at the roles played by non-lawyer companies connecting lawyers to clients in the online marketplace and by bar association lawyer referral services.

Continued on page 3



The New York State Legislature created the Forest Preserve in 1885, protecting state-owned lands in the Adirondacks and Catskills. [Photo by Marty Kerins, Jr.]

State Bar examines 1899, 1969 and future environmental protections in N.Y. Constitution

By Lise Bang-Jensen

An environmental threat with economic consequences persuaded New York voters in 1894 to amend the state Constitution to mandate that the state-owned Forest Preserve “shall be forever kept as wild forest lands.”

That clause today protects nearly 3 million acres of forests in the Adirondacks and Catskills.

“While there is no reason to modify the forever wild clause, opportunities to simplify and

enhance other provisions in Article XIV merit serious consideration by policymakers and the public,” says the State Bar Association’s Committee on the New York State Constitution in its report on the “Conservation Article.”

Voters in November 2017 will decide whether to authorize a constitutional convention, which would analyze the existing document and could recommend changes. Statewide voters would have to approve any

amendments.

To educate the public about issues a convention might consider, the Association’s committee, chaired by Henry M. Greenberg of Albany (Greenberg Taurig LLP), is preparing a series of informational reports.

Previously, it examined the need for a non-partisan commission to prepare for the 2017 vote; and the “Home Rule” provision that deals with relative powers of the state and local govern-

Continued on page 4



Bar Around the Corner

Get to know the LGBT Bar Association of Greater N.Y.

Page 16



Summer Fun

NYSBA section members meet for summer meetings, but it's not all work.

Page 11

Also in this issue

Candidates for President-elect	2	Recent Decisions and Case Law	20
Denison Ray Civil Awards	6	CLE Seminar Schedule	21
Free Legal Answers	8	Lawyers Resource Directory	22
Meet the EASL Section	10	Classifieds	22
NYSBA at the ABA	13	Lawyer to Lawyer Referral	23

Got yours? State Bar gives away thousands of pocket-sized U.S. Constitutions in New York every year

The U.S. Constitution has been around 229 years and it's still a best-seller.

Sales of pocket-sized Constitutions spiked at number 2 on Amazon after Khizr Khan's speech at the Democratic National Convention in July, when he held his copy in the air. Its sales were exceeded only by "Harry Potter and the Cursed Child," which held onto its number-one spot.

The State Bar may not be giving away Harry Potter books, but it does provide copies of the pocket-sized Constitu-

tion it prints to anyone who calls the State Bar and requests one.

"People ask, and I provide them free of charge," said Martha Noordsy, director of the State Bar's Law, Youth and Citizenship Program (LYC).

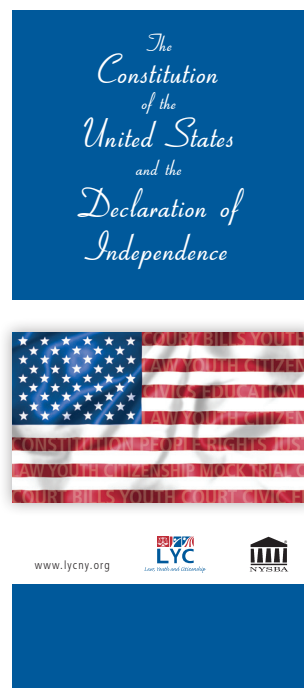
Noordsy said she received 425 requests the week after the Democratic convention, but noted there are always upticks in requests before the school year begins.

In 2015, about 10,000 copies of the LYC's pocket Constitution were distributed, Noordsy said. They are given out at all

LYC programs; and teachers are given anywhere from 40 to 60 copies to distribute to their students.

Every veteran released from the Albany Stratton Veterans' Administration Medical Center in Albany is given a pocket Constitution and attorneys and judges who visit classes

Pocket-size copies of the U.S. Constitution and Declaration of Independence are produced at the State Bar's Green Island printing facility and regularly distributed for free by the Law, Youth and Citizenship Program.



distribute the document as well, Noordsy said.

The State Bar's office of Bar Services handed out an additional 600 copies during its Youth Law Day programs earlier this year, sponsored by the Association's Committee on Diversity and Inclusion, said Mark Wilson, manager of Bar Services.

The copies distributed by LYC and Bar Services are printed at the State Bar's Green Island printing facility. Anticipating increased requests for copies of the Constitution following Khan's speech at the Democratic

convention, Noordsy said she put in an order for 5,000 reprints.

To request copies of the Constitution, visit www.lycny.org or email mnoordsy@nysba.org.

LYC sponsors civic education programs and works with New York teachers and school districts to offer no-cost professional development in the areas of civic- and law-related education. The State Bar's LYC program is the third largest law-related and civic education program in the nation. ♦

—Christina Couto

State Bar examines the future of New York's constitutional protections

Continued from page 1

ments. It plans future reports on New York's court structure and other topics.

'Forever wild clause'

During the 19th century, the destruction of Adirondack forests by the lumber industry raised alarm about the impact on rivers, canals and water supplies hundreds of miles away, all critical to the state's economic well-being.

"Each summer the water supply for these rivers and canals is lessened, and commerce has suffered," wrote Verplanck Colvin, an Albany lawyer-turned surveyor, in 1871. "The immediate cause has been the chopping and burning off of vast tracts of forest in the wilderness, which have hitherto sheltered from the sun's heat and evaporation the deep and lingering snows, [and] brooks and rivulets."

Heeding such concerns, the state Legislature created the Forest Preserve in 1885, protecting state-owned lands in the Adirondacks and Catskills.

"In the decade after 1885, despite the Forest Commission's oversight, 100,000 acres of forest were logged unlawfully in the Adirondacks," according the committee's report. "Concerns over the destruction of the State's forests, and the resulting impact on the public's health and well-being, became a central issue during the 1894 Constitutional Convention."

By a vote of 122 to 0, convention delegates recommended adding two sentences to the state Constitution:

"The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed."

Approved by voters in 1894, the provision made New York the first state to adopt a constitutional provision mandating nature conservation.

The "forever wild" provision today "remains intact. Throughout its history, there has never

been broad-based public support for repealing or diluting the forever wild protections, and nothing in the lengthy record of past Conventions and amendments to Article XIV suggest that delegates to a 2019 Convention would seek to do so," according to the report.

Referring to those who in 1997 feared that a constitutional convention would undermine the "forever wild" clause, the report cites examples of public support, including numerous statewide referendums enlarging the protected land.

Since 1894, voters and the Legislature continually have expanded the Forest Preserve, which today protects 2.6 million acres in the Adirondacks and 286,000 acres in the Catskills.

Voters have agreed to narrow amendments to the "forever wild" section, authorizing exchanges of discrete parcels of Forest Preserve for parcels of equal or greater acreage and value.

Other sections of Article XIV

Turning to other sec-

tions of Article XIV, the report examines Section 2, adopted in 1913, which reserves up to 3 percent of the Forest Preserve for reservoirs and dams. In recent years, few reservoirs have been constructed in New York, raising questions whether Section 2 should remain in the Constitution.

In 1969, New York voters approved a "Conservation Bill of Rights," but "it is debatable whether it has attained fundamental constitutional stature," according to the report.

Rather than conveying specific rights, the language appears aspirational, saying for example, that conserving and protecting "natural resources and scenic beauty" shall be "policy of the state" and directing the Legislature, "in implementing this policy," to include "adequate provision for abatement of air and water pollution" as well as other environmental goals.

The section lacks teeth. The report explains "the provision amounts to little more than an exhortation for the government

to act. Citizens apparently cannot seek judicial enforcement of the Conservation Bill of Rights, as they can the 'forever wild' clause."

In contrast, Pennsylvania's constitution outlines specific rights of the people, such as "a right to clean air, pure water," among others. Florida, Hawaii, Illinois and Montana provide comparable environmental rights in their constitutions.

Should New York join them? The report looks at the pros and cons.

"It is by no means clear that New York would benefit from the inclusion in the state Constitution of a self-executing environmental right," it states, saying it "might even lead to needless, duplicative litigation, which would discourage economic development, especially in economically-depressed regions of the state." It also points to federal and state laws enacted since passage of the amendment in 1969.

On the other side of the argument, the report observes: "Arguably, the narrow scope of Section 4 in Article XIV is insuffi-

cient to address New York's new environmental challenges."

In 1894, destruction of forests "was deemed a crisis worthy of constitutional reform . . . In 1969, pollution presented a comparable crisis. Today's analogue may be impacts associated with climate change," the report observes.

The report concludes, "In 2017, voters will have a unique opportunity to debate whether the provisions of the state Constitution's conservation article, Article XIV, are sufficient to meet current needs or can otherwise be improved."

Read the report or comment

The report is available at nysba.org/ArticleXIV report.

The House of Delegates will consider the report at its November 5, 2016 meeting. Sections, committees and individuals can submit comments prior to the meeting at reportsgroup@nysba.org. ♦

Bang-Jensen is NYSBA's director of Media Services.