



# MAJOR LEGISLATION OF INTEREST TO LAWYERS †

**110th Congress  
(Jan. 4, 2007 - Jan. 3, 2009)**

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*\*\*The 110th Congress did not finish the appropriations process for fiscal year 2009. Instead, P.L. 110-329 (H.R. 2638) was enacted 9/30/08 to maintain most of the federal government at fiscal year 2008 funding levels through 3/6/09. The 111th Congress, convening 1/6/09, will determine final fiscal year 2009 appropriations.\*\**

- \* ABA testified or submitted statement or letter to Congress or federal agency.
- ◆ ABA legislative and governmental priority during the 110th Congress, including issues encompassed in broad priorities.
- † This chart includes issues on which the ABA House of Delegates or Board of Governors has approved association policy, unless otherwise noted.



Subject	Description and Status	ABA Position
<h2>Administrative Law</h2>		
<b>*Administrative Conference of the United States (ACUS)</b>	P.L. 110-290 (H.R. 3564), enacted 7/30/08, reauthorizes ACUS through fiscal year 2011 at a funding level of \$3.2 million per year. No funding has been provided for ACUS since 1995, when the program was terminated after 25 years of advising the government on administrative procedural reform.	<i>Supports reauthorization and funding for ACUS.</i>
<h2>Alternative Dispute Resolution</h2>		
<b>Federal Consent Decrees</b>	S. 2289 and H.R. 4041 would have permitted state and local government officials to reopen and relitigate, for any reason, existing federal consent decrees to which they are a party. S. 2289 was referred to the Senate Judiciary Committee. H.R. 4041 was referred to the House Judiciary Committee.	<i>Opposes.</i>
<h2>Antitrust Law</h2>		
<b>*Leegin Decision/Resale Price Maintenance</b>	A Senate Judiciary subcommittee held a hearing on the impact of the Supreme Court's 7/28/07 decision in <i>Leegin Creative Leather Products Inc. v. PSKS Inc.</i> , 551 U.S. ____ (2007). The 5-4 decision overruled a 98-year-old precedent that vertical agreements between a supplier and its distributors or retailers on the minimum resale prices for the supplier's product are per se violations of Section 1 of the Sherman Act. S. 2261, which was referred to the Senate Judiciary Committee, would have restored the precedent. There was no comparable House legislation.	<i>Supports the Leegin decision.</i>



Subject	Description and Status	ABA Position
<h2>Business Law</h2>		
<b>◆* Attorney-Client Privilege/Employee Legal Rights – Government Waiver Policies</b>	<p>S. 186, S. 3217 and H.R. 3013 would have prohibited any federal official from pressuring companies to waive their attorney-client privilege, work product or employee legal protections, or to consider any voluntary waiver by companies when assessing whether companies are cooperating during investigations of corporate wrongdoing. The House passed H.R. 3013. S. 186 and S. 3217 were referred to the Senate Judiciary Committee, where there was no action on the bills. In August 2008, the Justice Department issued new corporate charging guidelines that protect attorney-client privilege, work product and employee rights. The Securities and Exchange Commission (SEC) issued a new enforcement manual in October 2008 that places some limits on the ability of SEC staff to request waiver. The General Services Administration, the Department of Defense and the National Aeronautics and Space Administration issued a final rule 11/12/08 clarifying that federal contractors will not be required to waive their attorney-client privilege or work product protections in order to receive cooperation credit.</p>	<p><i>Supports the legislation and government policies that preserve attorney-client privilege, work product and employee legal protections.</i></p>
<b>◆*Attorney-Client Privilege – Federal Rule of Evidence 502</b>	<p>P.L. 110-332 (S. 2450), enacted 9/19/08, adopts new Federal Rule of Evidence 502, as proposed by the U.S. Judicial Conference, to set clear guidelines regarding the inadvertent disclosure of privileged material during discovery. The new rule provides protection against accidental waiver of the attorney-client privilege and work product immunity and encompasses disclosures made during federal court litigation and in dealings with federal agencies. The rule required congressional approval because it modifies an evidentiary privilege.</p>	<p><i>Supports.</i></p>
<b>◆*Bankruptcy – Attorney Liability</b>	<p>A House Judiciary subcommittee held an oversight hearing on P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), which includes debtor attorney liability provisions requiring the attorney to: certify the accuracy of the debtor’s schedules of assets and liabilities under penalty of harsh court sanctions; certify the ability of the debtor to make future payments under reaffirmation agreements; and identify and advertise themselves as “debt relief agencies” subject to a host of intrusive regulations that interfere with the confidential attorney-client relationships. Although possible BAPCPA amendments were discussed at the hearing, including repeal of the attorney liability provisions, no legislation was introduced.</p>	<p><i>Opposes the attorney liability provisions in BAPCPA and has developed draft legislation to repeal the provisions.</i></p>



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<b>*Bankruptcy – Partnerships</b>	A House Judiciary subcommittee held an oversight hearing on P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Proposals included possible legislation to add a partnership bankruptcy structure to the Bankruptcy Code that includes an automatic stay inhibiting post-bankruptcy suits against general partners for partnership liabilities, to remain in effect for 60 days after a bankruptcy filing, and automatic stays of transfers outside the ordinary course of non-bankruptcy property by general partners of the filing partnership. No legislation was introduced.	<i>Supports legislation to establish a partnership structure in the Bankruptcy Code.</i>
<b>*Bankruptcy – Real Property Sales</b>	Senate and House Judiciary subcommittees began considering technical corrections legislation for P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), including a proposed amendment to alter 11 U.S.C. § 363 (f) of the Bankruptcy Code to clarify that a sale of real property free and clear of an unexpired lease under which the debtor is the lessor can be accomplished only if the non-debtor lessee is granted the same rights afforded to non-debtor lessees when their leases are rejected. No legislation was introduced.	<i>Supports the proposed amendment.</i>
<b>Children/Families</b>		
<b>*Adoption Assistance Appropriations</b>	P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes the following amounts for adoption-related grants: \$2.1 billion for adoption assistance, \$26.3 million for adoption opportunities, \$4.3 million for adoption incentives, and \$12.4 million for adoption awareness. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including adoption assistance programs, at fiscal year 2008 funding levels through 3/6/09.	<i>Supports efforts to encourage adoption.</i>
<b>*Child Abuse Prevention and Treatment Act (CAPTA)</b>	P.L. 110-161 (H.R. 2764), fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$26.5 million for basic state grants, \$41.6 million for community-based prevention grants, and \$27.1 million for discretionary activities under CAPTA. A new home visitation initiative will receive \$10 million. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including CAPTA, at fiscal year 2008 funding levels through 3/6/09.	<i>Supports.</i>



Subject	Description and Status	ABA Position
<b>*Domestic Violence in the Workplace</b>	S. 1136 and H.R. 2395 would have promoted the economic security and safety of victims of domestic violence, dating violence, sexual assault, or stalking by requiring employers with 15 or more employees to provide 30 days of job-protected, unpaid leave to employees to address issues relating to domestic violence and by prohibiting discrimination or denial of insurance coverage to victims of domestic violence. H.R. 4014 would have prohibited discrimination in insurance coverage of victims of domestic violence, dating violence, sexual assault or stalking. H.R. 4015 would have provided job protection for victims and H.R. 4016 would have provided unemployment insurance to those separated from their employment as a result of domestic violence. A Senate Health, Education, Pensions and Labor subcommittee held a hearing addressing domestic violence in the workplace.	<i>No position on specific pending legislation. Supports congressional efforts to increase awareness about the impact of domestic violence in the workplace and the need for employers to develop policies to assist and protect employees who are victims of such violence.</i>
<b>*Domestic Violence – Volunteer Attorney Network</b>	P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$36 million for increased legal access for victims of domestic violence. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including domestic violence programs, at fiscal year 2008 funding levels through 3/6/09. S. 1515 would have permitted the U.S. attorney general to award grants to the ABA Commission on Domestic Violence to work in collaboration with the ABA Committee on Pro Bono and Public Service and other organizations to create, recruit lawyers, and provide training, mentoring, and technical assistance for a National Domestic Violence Volunteer Attorney Network. Allocated funding would have been used by the ABA to create and maintain a network to field and manage inquiries from volunteer lawyers seeking to represent and assist victims of domestic violence. The Senate Judiciary Committee approved S. 1515. There was no comparable House legislation.	<i>Supports.</i>
<b>◆*Fostering Connections to Success and Increasing Adoptions Act</b>	P.L. 110-351 (H.R. 6893), enacted 10/7/08 as the Fostering Connections to Success and Increasing Adoptions Act, is the first major overhaul of the foster care system since 1997. The new law, which extends foster care and adoption assistance benefits to Indian children in tribal areas, does the following: provides grants for assistance payments to encourage the placement of foster children in the homes of relatives; expands federal financial resources to states to permit foster youth older than 18 to remain in foster care until they turn 21 as they transition into adulthood while attending school or working; expands programs that provide transportation to and from school for foster children; and provides financial incentives to states to increase the adoption of children older than nine and of children with special needs. P.L. 110-351 also makes funding available for additional training for attorneys and judges, as well as for the staff of abuse and neglect courts and other court-appointed special advocates.	<i>Supports efforts to encourage adoption, support American Indian children in foster care, and train attorneys and judges.</i>



Subject	Description and Status	ABA Position
<b>*Promoting Safe and Stable Families (PSSF)</b>	P.L. 110-161 (H.R. 2764), fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$408 million for PSSF and \$4.5 million for Title IV-E foster care assistance under the Social Security Act. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including PSSF and foster care assistance, at fiscal year 2008 funding levels through 3/6/09. H.R. 1104 would have ensured that foster children are able to use their Social Security and Supplemental Security Income benefits to address their needs and improve their lives. S. 1512 would have amended Title IV-E to expand federal eligibility up to age 21 for children in foster care who have attained age 18. H.R. 1104 was referred to the House Committee on Ways and Means. S. 1512 was referred to the Senate Finance Committee.	<i>Supports.</i>
<b>*Residential Treatment of Youth</b>	H.R. 5876 and H.R. 6358, a bipartisan compromise, would have required residential programs for teens to uphold certain standards and allocated resources for enforcement to prevent child abuse and neglect in facilities for teens. The House Education and Labor Committee held hearings on the increasing number of reports of abuse in such facilities. The House debated H.R. 5876, but further proceedings were delayed. The House passed H.R. 6358. There was no comparable Senate legislation.	<i>Urges enactment of state, territorial, and tribal laws to require licensing, regulation, and monitoring of residential treatment facilities not funded by public or government systems for at-risk children and youth under age 18 but rather functioning as privately-operated overnight facilities.</i>
<b>Civil Rights/Constitutional Law</b>		
<b>*Americans with Disabilities Act (ADA)</b>	P.L. 110-325 (S. 3406), enacted 9/25/08 with an effective date of 1/1/09, amends the ADA to expand the scope of protection under the law by clarifying the term “disability” and stating that the definition “shall be construed in favor of broad coverage of individuals under this act.” The new law overturns a decade of Supreme Court decisions that found that disabled individuals who are functional in the workplace because their illnesses are episodic or because they are treated by medication did not qualify for ADA protections.	<i>Commends congressional efforts to evaluate possible inequities in the law to ensure adequate access to redress for individuals with disabilities.</i>



Subject	Description and Status	ABA Position
<b>Civil Rights Tax Relief</b>	S. 1689 and H.R. 1540 would have amended the Internal Revenue Code of 1986 to exclude from gross income non-economic damages received as judgments on settlements of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims. S. 1689 was referred to the Senate Finance Committee. H.R. 1540 was referred to the House Ways and Means Committee.	<i>Supports.</i>
<b>*Discrimination – Sexual Orientation/ Gender Identity</b>	H.R. 2015 would have prohibited workplace discrimination based on actual or perceived sexual orientation and “gender identity,” defined as gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual’s designated sex at birth. H.R. 3685, a narrower bill, would have protected only against workplace discrimination based on actual or perceived sexual orientation, defining sexual orientation as “homosexuality, heterosexuality or bisexuality,” and would have enhanced protections for sexual orientation by clarifying the nature of the protected class and the basis of the prohibited actions. The House passed H.R. 3685. There was no comparable Senate legislation.	<i>Supports legislation to prohibit discrimination on the basis of sexual orientation and actual or perceived gender identity or expression in employment, housing and public accommodations.</i>
<b>*Fair Pay Restoration – Ledbetter Decision</b>	S. 1843 and H.R. 2831 would have overturned the Supreme Court’s wage discrimination decision in <i>Ledbetter v. Goodyear Tire and Rubber Co.</i> , 550 U.S. ____ (2007), by clarifying that employers could be sued for pay discrimination every time they issue a paycheck, no matter how long ago the original act of alleged discrimination occurred. The House passed H.R. 2831. The Senate Health, Education, Labor and Pensions Committee and the Senate Judiciary Committee held hearings on S. 1843 but did not vote on the measure. The Senate failed to garner the 60 votes necessary to bring H.R. 2831 to a floor vote.	<i>Urges Congress to amend federal anti-discrimination employment laws to ensure that in claims involving pay discrimination the statute of limitations runs from each paycheck reflecting the improper disparity.</i>
<b>Flag Desecration</b>	S.J. Res. 40 and H.J. Res. 9 proposed to amend the U.S. Constitution to authorize Congress and the states to prohibit the physical desecration of the flag of the United States and to set criminal penalties for that act. H.J. Res. 12 proposed to amend the U.S. Constitution to authorize Congress to prohibit the physical desecration of the flag of the United States. H.R. 4128, a criminal code and modernization bill, included provisions that anyone who knowingly desecrates the U.S. flag shall be imprisoned for not more than one year. S.J. Res. 40 was referred to the Senate Judiciary Committee. H.J. Res. 9, H.J. Res. 12 and H.R. 4128 were referred to the House Judiciary Committee.	<i>Opposes a constitutional amendment prohibiting flag desecration, or enactment of federal legislation that would criminalize flag desecration.</i>



Subject	Description and Status	ABA Position
<b>*Native Hawaiian Self-Determination</b>	S. 310 and H.R. 505 would have allowed Native Hawaiians to choose a political framework that could be recognized by the federal government and would have supported an indigenous governing entity for Native Hawaiians within the state of Hawaii. The House passed H.R. 505. The Senate Indian Affairs Committee approved S. 310.	<i>Supports.</i>
<b>*Presidential Signing Statements</b>	The House Judiciary Committee held a hearing on the potential misuse of presidential signing statements and launched a bipartisan investigation of President Bush's signing statements. S. 1747 and H.R. 3045 would have prohibited any state or federal court from relying on or deferring to a presidential signing statement as a source of authority when determining the meaning of any act of Congress. S. 1747 was referred to the Senate Judiciary Committee. H.R. 3045 was referred to the House Judiciary Committee.	<i>No position on specific pending legislation. Opposes the misuse of presidential statements that claim the authority or state an intention to disregard or decline to enforce all or part of a law the president has signed or to interpret such a law in a manner inconsistent with the clear intent of Congress.</i>
<b>◆Racial Profiling</b>	S. 2481 and H.R. 4611 sought to make racial profiling illegal by providing a prohibition of racial profiling, enforceable by injunctive relief; conditioning receipt of federal funds to state and local governments on the adoption of effective policies that prohibit racial profiling; establishing grants to support the development of best practices to end racial profiling; and creating requirements for data collection. S. 2481 was referred to the Senate Judiciary Committee. H.R. 4611 was referred to the House Judiciary Committee.	<i>Supports.</i>
<b>Religious Liberty/ School Prayer</b>	P.L. 110-161 (H.R. 2764), fiscal year 2008 consolidated appropriations legislation enacted 12/26/07, prohibited the Department of Education from using funds appropriated under the act to prevent implementation of programs of voluntary prayer and meditation in the public schools. H.J. Res. 11 and H.J. Res. 13 proposed to amend the U.S. Constitution to allow voluntary prayer and meditation in public schools. S.J. Res. 11 and H.J. Res. 41 proposed to amend the U.S. Constitution to clarify that the Constitution neither prohibits voluntary prayer nor requires prayer in schools. S.J. Res. 11 was referred to the Senate Judiciary Committee. H.J. Res. 11, H.J. Res. 13 and H.J. Res. 41 were referred to the House Judiciary Committee.	<i>Opposes adoption of a constitutional amendment or federal legislation that would allow for officially sanctioned prayer in public schools.</i>



Subject	Description and Status	ABA Position
<b>*Reporters' Shield</b>	S. 1267, S. 2035 and H.R. 2102 would have codified a federal shield law for journalists to protect them from federally compelled disclosure of confidential sources of information under specified conditions. The House passed H.R. 2102. The Senate Judiciary Committee approved S. 2035, but the Senate failed to garner the 60 votes necessary to bring the bill to a floor vote.	<i>Supports a federal shield law that would require any party seeking to subpoena a journalist to disclose his or her source of information to demonstrate that the information sought is essential to a critical issue in the matter, all reasonable alternative sources for acquiring the information have been exhausted, and the need for the information clearly outweighs the public interest in protecting the free flow of information.</i>
<b>Same-Sex Marriage</b>	S.J. Res. 43, H.J. Res. 22, H.J. Res. 74 and H.J. Res. 89 proposed to amend the U.S. Constitution to prohibit same-sex marriage. H.R. 107 would have defined marriage for all legal purposes in the District of Columbia to consist of the union of one man and one woman. S.J. Res 43 was referred to the Senate Judiciary Committee. H.J. Res. 22, H.J. Res. 74 and H.J. Res. 89 were referred to the House Judiciary Committee. H.R. 107 was referred to the House Oversight and Government Reform Committee.	<i>Opposes any federal enactment that would usurp the traditional authority of a state to determine its own rules governing marriage.</i>
<b>*Slavery</b>	H.R. 40 would have acknowledged the fundamental injustice, cruelty, brutality and inhumanity of slavery of the United States and the 13 American colonies between 1619 and 1865 and established a commission to examine the institution of slavery and its impact on African-Americans and to make recommendations to Congress on appropriate remedies. H.R. 40 was referred to the House Judiciary Committee, which held a hearing on the issue. There was no comparable Senate legislation. P.L. 110-183 (H.R. 3432), enacted 2/5/08, establishes the Commission on the Abolition of the Transatlantic Slave Trade to ensure a suitable national observance of the bicentennial of the abolition of the transatlantic slave trade and to study the impact of the slave trade on the United States and the Americas.	<i>Supports H.R. 40 in principle.</i>



Subject	Description and Status	ABA Position
<h2>Courts/Judiciary</h2>		
<b>*Administrative Law Judges (ALJs)</b>	<p>On 12/18/08, the president issued an executive order providing a 2.9 percent pay increase and locality pay adjustments for ALJs for 2009. H.R. 3136 and H.R. 6706 would have provided enhanced retirement benefits for ALJs. The bills were referred to the House Oversight and Government Reform Committee. There was no comparable Senate legislation. S. 1919 would have granted the International Trade Commission (ITC) authority to appoint hearing officers other than ALJs to preside over intellectual property infringement cases before the ITC. The Senate Finance Committee held a hearing on S. 1919. There was no comparable House legislation.</p>	<p><i>Supports fair and adequate compensation, including enhanced retirement benefits for ALJs. Supports preservation of the independence of the administrative judiciary and the role of ALJs in presiding over hearings conducted under the Administrative Procedure Act. Has taken no position on S. 1919.</i></p>
<b>*Cameras in the Courtroom</b>	<p>S. 352 and H.R. 2128 would have authorized presiding judges to permit media coverage of federal court proceedings and would have granted the U.S. Judicial Conference the authority to promulgate advisory guidelines for such judges determining courtroom recording and broadcasting standards. S. 344 would have required televised coverage of the U.S. Supreme Court's open sessions unless a majority of justices objected. The Senate Judiciary Committee approved S. 352 and S. 344. The House Judiciary Committee approved H.R. 2128.</p>	<p><i>Supports continuation of the debate on televising federal court proceedings and urges the U.S. Judicial Conference to authorize further experimentation with electronic media coverage.</i></p>
<b>◆*Court Security</b>	<p>P.L. 110-24 (H.R. 1130), enacted 5/3/07, restored through 2009 the authority for redaction of sensitive information that could compromise the safety of a judge or family member from financial disclosure statements that are available to the public. P.L. 110-177 (H.R. 660), enacted 1/7/08, further extends redaction authority to 2011 and responds to the needs expressed by the federal judiciary for a greater voice in working with the U.S. Marshals Service to determine security needs; creates new criminal penalties for violence against judges, their families, and others performing official duties; expands resources available to state courts for their security; and provides additional protections for law enforcement officers. P.L. 110-402 (S. 3296), enacted 10/13/08, extends the authority of the Supreme Court police.</p>	<p><i>Supports permanent redaction authority for the Judicial Conference. Supports enhanced judicial and court security, including provisions requiring greater consultation between the judiciary and the U.S. Marshals Service regarding court security matters. Does not support provisions in P.L. 110-177 creating new federal crimes or increased federal penalties for violence against judges.</i></p>



Subject	Description and Status	ABA Position
◆Court Stripping	<p>H.R. 699 would have stripped jurisdiction from all federal courts to hear constitutional challenges to the interpretation of, or the validity of, the Pledge of Allegiance. H.R. 300 would have prohibited federal courts from adjudicating cases relating to religious liberties or privacy, including cases involving sexual practices, sexual orientation or reproduction. H.R. 1094 would have removed Supreme Court and district court jurisdiction to review cases relating to protecting the rights of human persons between conception and birth or prohibiting, limiting or regulating the performance of abortions or the use of public funds for abortions. H.R. 724 would have limited federal court jurisdiction over questions under the Defense of Marriage Act. The bills were referred to the House Judiciary Committee. There were no comparable Senate measures.</p>	<p><i>Opposes legislation that seeks to curtail the jurisdiction of federal courts or the remedies available to federal courts in cases involving constitutional rights.</i></p>
◆Foreign Judgments	<p>H. Res. 372 would have affirmed the sense of the House that judicial determinations regarding the meaning of the Constitution of the United States should not be based on judgments, laws, or pronouncements of foreign institutions unless such foreign judgments, laws, or pronouncements inform an understanding of the original meaning of the Constitution. H. Res. 372 was referred to the House Judiciary Committee. There was no comparable Senate legislation.</p>	<p><i>Opposes.</i></p>
◆*Inspector General - Judiciary	<p>S. 461 and H.R. 785 would have established a statutory Office of Inspector General for the judiciary for the purpose of conducting investigations of matters pertaining to the judicial branch, including possible judicial misconduct. Under both bills, the inspector general would have been appointed by the chief justice only after consultation with congressional leaders and would have been required to make prompt reports to Congress on any matters requiring attention. S. 461, but not H.R. 785, would have included investigation of alleged judicial misconduct by justices of the U.S. Supreme Court in the inspector general's jurisdiction. S. 461 was referred to the Senate Judiciary Committee. H.R. 785 was referred to the House Judiciary Committee.</p>	<p><i>Opposes any Congressional proposal that would create an Office of Inspector General for the judiciary with broad investigative powers and close ties to Congress.</i></p>
◆*Judicial Compensation	<p>In order for federal judges to receive cost-of-living adjustments (COLAs), two conditions must be met. First, Congress must not reject a COLA for its members (and therefore also for judges since their COLAs are linked). Second, Congress also must specifically authorize a COLA for judges by waiving Section 140 of P.L. 97-92. Judges received no salary increase for 2008 after members of Congress voted to forgo their COLA. Even though Congress is scheduled to receive a COLA for 2009, judges are not scheduled to receive a COLA because the 110th Congress did not enact legislation to waive Section 140. S. 1638 and H.R. 3753, as approved by their respective Judiciary Committees, would have provided for approximately a 30 percent increase in current judicial salaries. Both bills also contained additional provisions on judicial retirement and other matters.</p>	<p><i>Supports legislation to increase the compensation of federal judges, to ensure regular COLAs, provide periodic review of judicial salary levels, and to de-link congressional and judicial pay.</i></p>



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◆*Judicial Conduct	<p>The U.S. Judicial Conference unanimously approved binding rules in March 2008 for handling conduct and disability complaints against federal judges under the Judiciary Conduct and Disability Act of 1980. The new rules, originally proposed in draft form by the Judicial Conference's Committee on Judicial Conduct and Disability, were based on recommendations made by the Judicial Conduct and Disability Act Study Committee to promote greater uniformity and transparency in the implementation of the act. H.R. 2898 would have amended Title 28 of the U.S. Code to establish standards for impeachment of judges and justices of the United States. H.R. 2898 was referred to the House Judiciary Committee. There was no comparable Senate legislation. P.L. 110-402 (S. 3296), Supreme Court security legislation enacted 10/13/08, includes provisions banning all federal judges from accepting honorary club memberships valued at more than \$50.</p>	<p><i>Supports efforts to improve implementation of the Judicial Conduct and Disability Act of 1980. Opposes H.R. 2898.</i></p>
Judicial Improvements	<p>P.L. 110-406 (S. 3569), enacted 10/13/08, makes improvements supported by the U.S. Judicial Conference in the operation and administration of the federal courts, including provisions to enhance jury service.</p>	<p><i>Supports efforts to improve the administration of the federal courts.</i></p>
◆*Judicial Selection/ Vacancies	<p>During the 110th Congress, the Senate confirmed 10 appellate court nominees and 58 district court nominees. At the end of the Congress, there were 13 appellate court vacancies, 40 district court vacancies, 10 pending nominations for the appellate courts, and 20 pending nominations for the district courts.</p>	<p><i>Urges the president and the Senate to fill judicial vacancies expeditiously and urges selection and confirmation of individuals of racial and ethnic diversity to all levels of the federal bench. Supports prenomination consultation by the president and the use of bipartisan advisory nominating commissions.</i></p>
◆Ninth Judicial Circuit Division	<p>S. 525, H.R. 221 and H.R. 3520 would have divided the Ninth Judicial Circuit into two circuits and provided for the appointment of additional federal circuit judges. S. 525 was referred to the Senate Judiciary Committee. H.R. 221 and H.R. 3520 were referred to the House Judiciary Committee.</p>	<p><i>Opposes restructuring of the Ninth Judicial Circuit.</i></p>
State Justice Institute (SJI)	<p>P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$3.76 million for the SJI. P.L. 110-329 (H.R. 2638), a continuing appropriations resolution enacted 9/30/08, maintains most of the federal government, including the SJI, at fiscal year 2008 levels through 3/6/09. The Senate Appropriations Committee approved \$5 million for the SJI for fiscal year 2009; the House Appropriations Committee approved \$4.1 million.</p>	<p><i>Supports continued adequate federal funding for the SJI.</i></p>



Subject	Description and Status	ABA Position
<b>◆*Sunshine in Litigation Act</b>	H.R. 5884 would have circumvented the Rules Enabling Act to restrict the authority of the federal courts regarding protective orders under Federal Rule of Procedure 26(c). A House Judiciary subcommittee held a hearing on H.R. 5884. There was no comparable Senate legislation.	<i>Opposes any legislation that circumvents the Rules of Enabling Act process of amending federal court rules.</i>
<b>Criminal Law</b>		
<b>*Death Penalty Representation</b>	The Department of Justice (DOJ) published a final rule 12/11/08 implementing Section 507 of the USA PATRIOT Improvement and Reauthorization Act of 2005, which shifts authority from the federal courts to the U.S. attorney general to certify adequacy of state post-conviction defense processes in death penalty cases. Once granted, the certification would have permitted states to drastically streamline habeas corpus review. The Senate Judiciary Committee held a hearing on the inadequacy of death penalty representation.	<i>No position on whether Section 507 is good policy, but expressed in comments to DOJ that the proposed rule would allow states to obtain streamlined review without ensuring that capital defendants receive competent counsel or that such counsel is appropriately compensated in post conviction proceedings.</i>
<b>*Employment Background Checks</b>	H.R. 7033 would have provided critical safeguards when the Federal Bureau of Investigation (FBI) conducts criminal background checks for employment purposes by ensuring the accuracy and reliability of the FBI's criminal background record system. H.R. 7033 was referred to the House Judiciary Committee. There was no comparable Senate legislation.	<i>Supports.</i>
<b>*Gang Violence Prevention</b>	S. 456, H.R. 3922 and H.R. 3547 would have increased and enhanced law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent crime, to protect communities from violent criminals, to revise and enhance criminal penalties for violent crimes, and to expand and improve gang prevention programs. H.R. 3846 would have provided grants for planning and assessing evidence-based and promising practices related to juvenile delinquency and criminal street gang activity prevention and intervention. The Senate passed S. 456 following an agreement dropping provisions to authorize enhanced penalties for firearms-related offenses. A House Judiciary subcommittee held a hearing on gang crime prevention and innovative solutions at the federal level. H.R. 3922, H.R. 3547 and H.R. 3846 were referred to the House Committees on Judiciary, and Education and Labor.	<i>Supports efforts to deter gang violence, taking into consideration the psychological, neurological and physical differences between adults and youth.</i>



Subject	Description and Status	ABA Position
<b>*Gun Violence – D.C. Gun Laws</b>	In March 2007, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit struck down part of the District of Columbia’s ban on handgun and semiautomatic weapons as a violation of the Second Amendment right to bear arms. The city appealed the decision to the Supreme Court, which ruled in <i>District of Columbia v. Heller</i> , 554 U.S. ___(2008), that the District’s ban on handguns and its safe-storage requirements were unconstitutional while nevertheless recognizing the public interest in regulating gun ownership. H.R. 6842, as introduced, would have required the District of Columbia to revise its laws as necessary to comply with the court’s ruling. The House passed H.R. 6842 after amending the bill with far-reaching provisions to repeal a ban on semiautomatic weapons, prohibit registration requirements for most guns, and drop criminal penalties for possessing an unregistered firearm. There was no comparable Senate legislation.	<i>Supported the D.C. ban and opposed legislation to repeal it.</i>
<b>*Gun Violence – Gun Crime Trace Data</b>	S. 77 and H.R. 1895 would have improved the tracking of stolen firearms and firearms used in a crime, and would have repealed restrictions on disclosure of the content of the Firearms Trace System Database. S. 77 was referred to the Senate Judiciary Committee. H.R. 1895 was referred to the House Judiciary Committee.	<i>Supports collection of gun crime trace data and its disclosure and dissemination as public data.</i>
<b>*Gun Violence – Sales at Gun Shows</b>	S. 2237, comprehensive crime control legislation, S. 2577 and H.R. 96 would have closed a loophole in gun safety laws by requiring instant criminal backgrounds checks for all firearm sales at gun shows. S. 2237 and S. 2577 were referred to the Senate Judiciary Committee. H.R. 96 was referred to the House Judiciary Committee.	<i>Supports.</i>
<b>*Hate Crimes</b>	S. 1105 and H.R. 1592 would have provided federal assistance to states, local jurisdictions and Indian tribes to prosecute hate crimes. The House passed H.R. 1592. S. 1105 was referred to the Senate Judiciary Committee. The Senate-passed version of H.R. 1585, fiscal year 2008 Defense Department authorization legislation, included provisions to expand race-based hate-crime laws to include crimes committed against people because of their gender, sexual orientation or disability. Those provisions were not included in the final conference report on H.R. 1585, which was cleared by Congress but pocket-vetoed by the president. H.R. 6776 would have prevented hate crimes and allocated resources to assist victims of hate crimes, and H.R. 254 would have enhanced federal enforcement against hate crimes. Both bills were referred to the House Judiciary Committee.	<i>Supports hate crimes legislation.</i>



Subject	Description and Status	ABA Position
<b>◆*Indigent Defense Funding</b>	P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$835 million for federal defender services, and, beginning 1/1/08, the hourly panel attorney compensation rate for non-death penalty cases rose from \$94 to \$100, and the maximum hourly rate for death penalty cases rose from \$166 to \$170. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including indigent defense services, at fiscal year 2008 funding levels through 3/6/09. The federal judiciary proposed \$911 million for indigent defense services for fiscal year 2009, and H.R. 2829, a fiscal year 2009 appropriations bill, included \$854 million for Defender Services and would have increased the hourly rate for panel attorney in non-capital cases from \$100 to \$102. The hourly rate for capital cases would have increased from \$170 to \$174. The House passed H.R. 2829, and the bill was approved by the Senate Appropriations Committee.	<i>Supports sufficient funding for appropriate indigent defense services.</i>
<b>*Internet Access to Plea Agreements in Criminal Cases</b>	The U.S. Judicial Conference's Committee on Court Administration and Case Management issued a request for comments in September 2007 on a Justice Department (DOJ) proposal to restrict public Internet access to plea agreements in criminal cases that may contain information identifying defendants who are cooperating with law enforcement investigations. The request specifically sought comments regarding the privacy and security implications of Internet access to such files and potential policy alternatives. The committee declined to endorse the DOJ proposal, decided against recommending a national policy, and urged each federal trial court to adopt its own protocol for deciding Internet access on a case-by-case basis.	<i>Generally opposes restrictions on the public's right to access to court proceedings and pleadings. Supports procedures that provide the public and parties with access to the records while providing a measure of protection to cooperating defendants consistent with the relevant ABA Criminal Justice Standards.</i>
<b>*Justice Integrity Act</b>	S. 3245 and H.R. 6518 would have established a five-year pilot program in 10 districts, under the supervision of the U.S. attorney general, to investigate and address unwarranted racial and ethnic disparities in the federal criminal justice system. S. 3245 was referred to the Senate Judiciary Committee. H.R. 6518 was referred to the House Judiciary Committee.	<i>Supports.</i>



Subject	Description and Status	ABA Position
◆*Juvenile Justice	S. 3155, H.R. 1806 and H.R. 3411 would have amended and reauthorized the Juvenile Justice and Delinquency Prevention Act (JJDP), which expired on 9/30/07, focusing on strengthening the four core requirements of the act. Hearings on JJDP were held jointly by a House Judiciary subcommittee and a House Education and Labor subcommittee and by the House Education and Labor Committee and the Senate Judiciary Committee. The Senate Judiciary Committee approved S. 3155 after attaching an amendment that would have phased out use of the Valid Court Order (VCO) exception that allows non-delinquent status offenders to be confined in detention centers. H.R. 1806 and H.R. 3411 were referred to the House Committees on Education and Labor, and Energy and Commerce.	<i>Supports reauthorization of the JJDP with the amendment phasing out the VCO.</i>
*Juvenile Mental Health Services	P.L. 110-416 (S. 2304), enacted 10/14/08, amends the Omnibus Crime Control and Safe Streets Act of 1968 to provide grants to improve the mental health services and treatment available to juvenile and adult offenders with mental illnesses. H.R. 2647 would have amended the Public Health Service Act to award grants to mental health and substance abuse providers to improve the early detection and treatment of mental health illnesses in youth. H.R. 2647 was referred to the House Energy and Commerce Committee. Prior to approving S. 3155, juvenile justice reauthorization legislation, the Senate Judiciary Committee attached an amendment to require early assessment and mental health services for youth in the juvenile justice system.	<i>Supports.</i>
*Juvenile Sex Offender Registry	The Sex Offender Registration and Notification Act (SORNA), part of the Adam Walsh Child Protection Act of 2006, was enacted to target sexual predators and strengthen the nationwide network of sex offender registration and notification programs. The Department of Justice (DOJ) issued final regulations 7/2/08 that apply SORNA retroactively to all sex offenders, including juveniles.	<i>Maintains that the "lifetime registration" requirements of SORNA violate ABA standards and are detrimental to both rehabilitation and crime prevention.</i>
◆* Mandatory Minimum Sentencing	A House Judiciary subcommittee held a hearing on issues related to mandatory minimum sentencing.	<i>Opposes mandatory minimum sentences.</i>
*National Instant Criminal Background Check System (NICS)	P.L. 110-180 (H.R. 2640), enacted 1/8/08, improves the NICS by requiring federal agencies to provide relevant records to the U.S. attorney general for inclusion in the NICS, and by providing grants to state and Indian tribal governments to establish or upgrade information technologies and improve the automation and transmittal to federal and state record repositories of criminal history determinations.	<i>Supports.</i>



Subject	Description and Status	ABA Position
<b>*National Institute of Corrections (NIC)</b>	P.L. 110-161 (H.R. 2964), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, provides \$22 million for the NIC as part of the Bureau of Prisons (BOP) budget, but extensive cuts proposed in the BOP budget may prevent the bureau from continuing to fund the program in the future. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including the BOP, at fiscal year 2008 funding levels through 3/6/09.	<i>Supports continued funding for the NIC.</i>
<b>*Prison Litigation Reform Act (PLRA)</b>	H.R. 4109 would have amended the PLRA to repeal the requirement that prisoners suffer a physical injury in order to recover a civil award, modified current requirements for exhaustion of administrative remedies, allowed prisoners who prevail on civil rights claims to be awarded attorneys' fees on the same basis as the general public, and repealed the provisions extending the PLRA to juveniles confined at secured detention and correctional facilities. H.R. 4109 was referred to the House Judiciary Committee, where a subcommittee held two hearings on the bill. There was no comparable Senate legislation.	<i>Supports.</i>
<b>*Prison Phone System Contracting Reform</b>	H.R. 555 would have required the Federal Communications Commission to prescribe rules regulating inmate telephone service rates that would have assured that there was a reasonable opportunity for prison and jail inmates to maintain telephonic communication with the free community and that telephone services in the correctional setting were offered with an appropriate range of options at the lowest possible rates. H.R. 555 was referred to the House Energy and Commerce Committee. There was no comparable Senate legislation.	<i>Supports.</i>
<b>◆*Second Chance Act</b>	P.L. 110-199 (H.R. 1593), enacted 4/9/08, amends the Omnibus Crime Control and Safe Streets Act of 1968 to help prepare inmates and ex-offenders to successfully return to their communities by providing grants to states and localities so that they can provide coordinated assistance to those being released from prison.	<i>Supports prisoner reentry programs, including substance abuse treatment, educational and job training, and mental health counseling and services.</i>



Subject	Description and Status	ABA Position
◆*Sentencing Disparities	S. 1711 and H.R. 4545 would have equalized powder and crack sentences by raising the crack quantity thresholds by a factor of 100. The bills also would have eliminated the mandatory minimum sentence for simple possession offenses, and would have recommended sentence enhancements for offenses that involve dangerous weapons or violence and criminal drug activities. S. 1383, S. 1685, H.R. 79, H.R. 460, and H.R. 5035 also would have addressed the cocaine sentencing disparity. The Senate bills were referred to the Senate Judiciary Committee. A Senate Judiciary subcommittee held a hearing on drug sentencing. The House bills were referred to the House Judiciary Committee. H.R. 460 also was referred to the House Energy and Commerce Committee.	<i>Supports efforts to eliminate the disparity in cocaine sentencing.</i>
◆*Sentencing Guidelines – Cocaine Sentencing Amendments/Sentence Reduction/Incarceration Alternatives	The U.S. Sentencing Commission issued a report in May 2007 proposing an amendment to the federal Sentencing Guidelines regarding federal sentences for crack versus powder cocaine offenses. The amendment, which modified drug quantity thresholds and adjusted crack cocaine offenses downward by two levels, went into effect 11/1/07, and the commission voted 12/11/07 to apply the amendment retroactively, effective 3/3/08, to any person serving a term of imprisonment for a crack offense. The retroactive guideline amendment does not affect federal statutory mandatory minimum sentences for such offenses. The commission also proposed an amendment, which became effective 11/7/07, to give sentencing courts guidance on granting release to prisoners for extraordinary and compelling reasons. The commission held hearings on a range of issues, and proposed alternatives to incarceration as a priority policy issue for its amendment cycle ending 5/1/09. In July 2008, the commission hosted the “Symposium on Crime and Punishment in the United States: Alternatives to Incarceration.”	<i>Supports the guideline amendment addressing the cocaine sentencing disparities and making the amendment retroactive. Supports amendments to provide for sentence reduction and for alternatives to incarceration.</i>
◆*Student Drug Convictions	P.L. 110-315 (H.R. 4137), Higher Education Act reauthorization legislation enacted 8/14/08, lifts the ban on federal financial assistance to students with past felony drug convictions.	<i>Believes that prospective students should not be denied access to federal student financial aid because of past drug offenses if there is no current evidence of drug abuse and their debt to society has been paid.</i>
*Victims of Crime Act (VOCA)	H.R. 2941 would have sought to safeguard the Crime Victims Fund by prohibiting the consideration of any legislation that would authorize the use of, or appropriate, amounts in the Crime Victims Fund, including amounts designated to remain the fund for future fiscal years, for any purpose other than a purpose authorized by the Victims of Crime Act of 1984. H.R. 2941 was referred to the House Judiciary Committee. There was no comparable Senate legislation.	<i>Supports full funding of the Crime Victims Fund.</i>



**Subject**

**Description and Status**

**ABA Position**

## Elder Law

**\*Elder Justice Act**

S. 1070 and H.R. 1783 would have amended the Social Security Act to create an infrastructure and provide federal resources needed to develop and implement a nationally coordinated public health and law enforcement strategy in collaboration with the states to address elder abuse, neglect and exploitation. H.R. 5352 would have established specialized elder abuse prosecution and research programs and activities to aid victims of elder abuse, to provide training to prosecutors and other law enforcement officials related to elder abuse and protection, and to establish programs that provide for emergency crisis response teams to combat elder abuse. S. 1577 would have provided funding for the expansion of a nationwide pilot program for conducting criminal background checks of employees at long-term care centers. A House Judiciary subcommittee held a hearing on H.R. 1783 and H.R. 5352, among other issues. The Senate Finance Committee approved S. 1070 and S. 1577. The House Judiciary Committee approved H.R. 1783. The House passed H.R. 5352.

*Supports comprehensive legislation to improve the response of federal, state and local governments and of the criminal justice systems to address elder abuse, neglect and exploitation. Urges federal, state, local, tribal and territorial governments and their prosecutors to vigorously prosecute cases of elder abuse, neglect, and financial exploitation.*

**\*Guardianship**

Following hearings in 2006 held by the Senate Special Committee on Aging, the committee released a report in December 2007 on the condition of federal oversight in the guardianship system in conjunction with the release of a report by AARP and the ABA on state needs related to the guardianship community.

*Maintains that federal guardianship legislation is unnecessary, but recognizes the growing need for a federal role in offering resources and incentives for quality improvement and reform.*

**\*Social Security Administration (SSA) Disability Appeals Process**

The SSA has worked intensively to address an enormous backlog of SSA disability claims. The SSA issued proposed rules 10/19/07 to make significant changes at the Administrative Law Judge, Appeals Council and Decision Review Board appeals levels for both disability and non-disability claims. Portions of the regulations with which the ABA was concerned were rescinded by SSA before the regulations were finalized. The president proposed a 6 percent increase in SSA administrative funding for fiscal year 2009 in part to help address the disability case backlog. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including the SSA, at fiscal year 2008 funding levels through 3/6/09.

*Supports the intensive efforts of the SSA commissioner to reduce the backlog. Supports the intent of the 10/19/07 proposed rules to improve the process, but expressed concerns in comments submitted to the SSA that some of the rules would have significant potential to adversely impact claimants' receipt of benefits to which they are legitimately entitled. Supports increased funding for SSA administrative funding to help reduce the backlog.*



Subject	Description and Status	ABA Position
<h2>Election Law</h2>		
<b>◆*D.C. Voting Rights</b>	S. 1257 and H.R. 1905 would have given the District of Columbia delegate in the House a full vote and also granted a new seat in the House to the state of Utah. The House passed H.R. 1905. The Senate Homeland Security and Governmental Affairs Committee approved S. 1257, but the Senate failed to garner the necessary votes to close debate and proceed to a vote on the legislation.	<i>Supports securing voting representation in Congress for citizens of the District of Columbia.</i>
<b>*Older Voters</b>	The Senate Special Aging Committee held a hearing on issues related to older voters, assessing various obstacles restricting elderly and disabled citizens from voting that include inaccessible polls and poor voter assistance in long-term care facilities.	<i>Supports broad cross-cutting actions to help not just those with cognitive or other impairments but all voters, including development of better ballot design; use of mobile polling; use of communications accessible to those with disabilities; and acceptance of alternative forms of identification to facilitate registration and voting.</i>
<b>*Voting Rights for Ex-offenders</b>	S. 3640, H.R. 818, H.R. 6778 and H.R. 7136 would have secured the federal voting rights of persons who have been released from incarceration. S. 3640 was referred to the Senate Judiciary Committee. The House bills were referred to the House Judiciary Committee.	<i>Supports.</i>
<h2>Emergency Preparedness</h2>		
<b>*Disaster Response</b>	A Senate Homeland Security and Governmental Affairs subcommittee and a House Transportation and Infrastructure subcommittee held hearings reviewing the government's response in the aftermath of recent natural disasters and studying ways to improve emergency preparedness.	<i>Supports the creation of a bipartisan independent commission to study the issues relating to rebuilding the Gulf Coast in the aftermath of Hurricanes Katrina and Rita, and to make recommendations to address current needs, bolster preparedness, and mitigate the future vulnerability of communities to natural disasters.</i>



**Subject**

**Description and Status**

**ABA Position**

## Environmental Law

**Global Climate Change**

Numerous bills were introduced to address the means and mechanisms for a federal response to climate change issues. S. 3036, a leading proposal, would have set a comprehensive national policy to address global warming, including a cap on greenhouse gas emissions. Other leading bills – such as S. 280, S. 2191, H.R. 620 and H.R. 4226 – would have provided for a program to decrease greenhouse gas emissions. The Senate failed to garner the necessary votes to bring S. 3036 to a floor vote. The Senate Environment and Public Works Committee approved S. 2191, but there was no further action. H.R. 620 and H.R. 4226 were referred to the House Energy and Commerce Committee.

*Supports enactment of appropriate climate change legislation, and urges the U.S. government to take a leadership role in addressing the issue of climate change through legal, policy, financial and educational mechanisms and to engage in active*

**\*Oceans and Fisheries Reform**

H.R. 21, broad ocean governance legislation, would have established a formal national oceans policy, reorganized the National Oceanic and Atmospheric Administration (NOAA) to formally establish it as a part of the Department of Commerce and define its mission, and established a National Oceans Advisor, a Committee on Ocean Policy, a Council of Advisors on Oceans Policy, and a coordinated management regime for activities in federal waters. H.R. 250, a narrower bill, would have reorganized NOAA and formally established it as a part of the Department of Commerce, defined the mission of NOAA, restructured the agency, and elevated various senior NOAA officials to high-level positions within the Department of Commerce. S. 3314 would have specified a national oceans policy and reestablished NOAA as a civilian agency. A House Natural Resources subcommittee held a hearing on H.R. 21 and approved the bill. H.R. 250 was referred to the House Committees on Science and Technology, and Natural Resources. S. 3314 was referred to the Senate Commerce, Science and Transportation Committee.

*Urges the federal government to improve federal regulation of the nation's oceans, coastal resources and fisheries, and to enhance the U.S. role in international initiatives to protect the world's marine ecosystems and resources.*

## Health Law

**◆\*Mental Health and Addiction Equity Act**

P.L. 110-343 (H.R. 1424), emergency economic stabilization legislation enacted 10/3/08, includes parity provisions, effective 1/1/10, to require group health plans covering 50 or more employees to apply the same level of treatment benefits to mental health and substance-related disorders as they do to other medically necessary care.

*Supports.*



Subject	Description and Status	ABA Position
<b>*Advance Directives</b>	P.L. 110-275 (H.R. 6331), Medicare improvements legislation enacted 7/15/08 after the House and Senate overrode a presidential veto, includes a provision adding coverage of “end-of-life planning” to the initial Medicare welcome exam to which all new enrollees are entitled. S. 464, S. 465 and H.R. 5702 would have amended Titles XVIII and XIX of the Social Security Act to improve the requirements regarding advance directives in order to ensure compliance with an individual’s health care decisions by, among other things, requiring an opportunity to patients to discuss advance directives with a trained professional, requiring the patient’s advance directive to be included in the patient’s medical record, and ensuring portability across state lines. The three bills varied in the range of educational, research and other support efforts they mandated. S. 465, S. 466 and H.R. 5702 included the Medicare welcome provision encompassed in P.L. 110-275. The Senate Special Committee on Aging held a hearing on end-of-life planning.	<i>Supports.</i>
<b>*AIDS Funding</b>	P.L. 110-293 (H.R. 5501), enacted 7/30/08, reauthorizes the Tom Lantos and Henry J. Hyde U.S. Global Leadership Against HIV/AIDS, Tuberculosis and Malaria Act at a funding level of \$48 billion over five years through 2013. P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, provides \$5 billion for the President’s Emergency Plan for AIDS Relief, \$808.5 million for State AIDS Drug Assistance Programs authorized by Section 2616 of the Public Health Service Act, \$121.5 million for international HIV/AIDS prevention programs, \$30 million for grants to states for HIV/AIDS testing under Section 2625 of the Public Service Act, and \$845 million for the U.S. contribution to the Global Fund to Fight AIDS, Tuberculosis and Malaria. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including AIDS programs, at fiscal year 2008 funding levels through 3/6/09. H.R. 1943 would have provided for an effective HIV/AIDS program in federal prisons. The House passed H.R. 1943, and the Senate Judiciary Committee approved the bill.	<i>Supports funding of HIV/AIDS prevention efforts and the global strategy of the World Health Organization for the worldwide prevention and control of AIDS.</i>
<b>*Biomedical Research/ Stem Cell Research</b>	S. 5 and H.R. 3 would have directed the secretary of Health and Human Services to conduct and support research that utilizes human embryonic stem cells under strict scientific and ethical standards. S. 30 would have supported research using non-embryonic types of human stem cells. The Senate and House passed S. 5, but the bill was vetoed by the president. No override of the veto was attempted by Congress. The Senate passed S. 30. The House passed H.R. 3.	<i>Supports legislation to permit the continuation of biomedical research involving embryonic stem cells that is undertaken with accepted scientific research safeguards against misuse.</i>



Subject	Description and Status	ABA Position
<b>*Health Care – “Right of Conscience” Regulations</b>	<p>The Department of Health and Human Services issued final regulations 12/18/08 that seek to protect the right of health-care workers to refuse to participate in the provision of medical services that violate their beliefs on moral or religious grounds. The new regulations expand the definitions of what it means to assist in the performance of a health care service, potentially leaving room for any worker in the health care continuum to refuse to provide patients with the health information they need. S. 20 and H.R. 7130 would have prohibited implementation of the regulations. S. 20 was referred to the Senate Health, Education, Labor and Pensions Committee. H.R. 7130 was referred to the House Energy and Commerce Committee.</p>	<p><i>Opposes the regulations. Supports S. 20 and H.R. 7130.</i></p>
<b>*Indian Health Care Improvement</b>	<p>S. 1200 and H.R. 1328 would have amended the Indian Health Care Improvement Act to revise and extend the act, including creation of a National Bipartisan Commission on Indian Health Care. S. 2532 would have amended the Social Security Act to improve health care for American Indians under Medicare, Medicaid and the State Children’s Health Insurance Program. The Senate passed S. 1200. The House Natural Resources Committee and a House Energy and Commerce subcommittee approved H.R. 1328. The Senate Finance Committee approved S. 2532. There was no comparable House legislation.</p>	<p><i>Supports.</i></p>
<b>*International Family Planning</b>	<p>The Senate-passed version of H.R. 2764, State-Foreign Operations fiscal year 2008 appropriations legislation, would have repealed the “Mexico City” policy, which bans the receipt of U.S. family planning assistance funds by foreign nongovernmental organizations that use their own funds to provide abortion-related services, including counseling and referrals, or to advocate or conduct public education campaigns relating to abortion. The House-passed version of the bill would have allowed condoms, but not funds, to be provided to the organizations. The ban was retained in the final version of the appropriations legislation, P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government at fiscal year 2008 funding levels and extends restrictive language through 3/6/09.</p>	<p><i>Supports repeal of the “Mexico City” policy.</i></p>



Subject	Description and Status	ABA Position
<b>*Needle-Exchange Programs</b>	P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, lifted restrictions that had been in effect since 1989 that prohibited the District of Columbia from spending local funds for needle-exchange programs that seek to combat the spread of HIV infection among drug users and those who are exposed to them. H.R. 6680 would have allowed federal funds to support syringe-exchange programs. The bill was referred to the House Energy and Commerce Committee. There was no comparable Senate legislation.	<i>Supports lifting the restriction, opposing legal barriers to establishment and operation of approved needle-exchange programs that include a component of drug counseling and drug treatment referral.</i>
<b>*Pain Relief</b>	S. 3887 and H.R. 2994 would have provided for the promotion and advancement of scientific understanding of pain management and palliative care and for dissemination of effective protocols and evidence-based practices. S. 3387 was referred to the Senate Health, Education, Labor and Pensions Committee. The House passed H.R. 2994.	<i>Supports legislation promoting better pain management practices.</i>
<b>Patients' Bill of Rights</b>	H.R. 979 would have set forth standards for group health plans to protect patients, including requiring plans to conduct utilization review activities, establishing internal and external appeals processes, requiring a grievance system, requiring plans to offer out-of network coverage, prohibiting plans to require prior authorization for emergency services, requiring plans to provide continuity of care during transition periods, and requiring prompt payment of claims. The bill did not include provisions in previous proposals that would have amended the Employee Retirement Income Security Act (ERISA) to remove the ERISA shield and permit patients injured by decisions made by their employer-sponsored health care plans to bring cases regarding medically reviewable issues in state court under state tort laws. H.R. 979 was referred to the House Committees on Energy and Commerce, Education and Labor, and Ways and Means. There was no comparable Senate legislation.	<i>Supports removing the ERISA shield, and supports the rights of all consumers to a fair and efficient process for resolving differences with managed health care providers and the institutions that serve such plans and providers, including a rigorous system of internal and external review.</i>
<b>*U.N. Population Fund (UNFPA)</b>	P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$40 million for the UNFPA and continues current policy prohibiting making funds available for the UNFPA if the president determines that the fund supports or participates in the management of a program of coercive abortion or involuntary sterilization. The law specifically prohibits UNFPA funds from being used in China. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including UNFPA, at fiscal year 2008 funding levels through 3/6/09.	<i>Supports UNFPA funding as critical to fighting the HIV/AIDS crisis.</i>



**Subject**

**Description and Status**

**ABA Position**

## Housing/ Homelessness

**\*Homeless Assistance**

P.L. 110-378 (S. 2982), enacted 10/8/08, amends the Run-away and Homeless Youth Act to revise the requirements for transitional living programs, expands the definition of a “homeless youth,” and authorizes appropriations for fiscal years 2009-2013. S. 1518, H.R. 840 and H.R. 7221 would have reauthorized the McKinney-Vento Homeless Assistance Act through fiscal year 2012 and would have amended the act to expand the definition of homelessness to include people who are staying for a short time in the housing of others or a hotel and have moved frequently. The Senate Banking, Housing and Urban Affairs Committee approved S. 1518. The House Financial Services Committee approved H.R. 840, and further negotiations produced H.R. 7221, which would have expanded the Department of Housing and Urban Development’s definition of homelessness and included provisions to include children and their families who are defined as homeless under other federal statutes. The House passed H.R. 7221.

*Supports efforts to address homelessness, including access to public education for homeless children and youth, and the inclusion in the definition of “homeless persons” individuals who lack a fixed regular and adequate nighttime residence, including those who due to loss of housing, economic hardship, or similar reasons are sharing the housing of others or living in motels, hotels or camping grounds.*

**Housing Choice Voucher Program**

P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$14.7 billion for the Section 8 Housing Choice Voucher Program, a Department of Housing and Urban Development program that allows very low-income families to choose and lease or purchase safe, decent, and affordable privately owned rental housing. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including the Housing Choice Voucher Program, at fiscal year 2008 funding levels through 3/6/09. H.R. 3018 would have revised the requirements for the administrative fee to public housing agencies to cover the cost associated with administering family self-sufficiency programs in connection with the Housing Choice Voucher Program. The House passed H.R. 3018. H.R. 1851 and S. 2684 would have reformed the program. The House passed H.R. 1851. A Senate Banking, Housing and Urban Affairs subcommittee held hearings on the issue.

*Supports full and adequate funding for public housing programs that provide rental assistance for low-income families.*



Subject	Description and Status	ABA Position
<b>*National Affordable Housing Trust Fund</b>	S. 2523 and H.R. 2895 would have established the National Affordable Housing Trust Fund to provide for the construction, rehabilitation and preservation of decent, safe and affordable housing for low-income families. S. 2523 was referred to the Senate Banking, Housing and Urban Affairs Committee. The House passed H.R. 2895. Trust fund provisions became law as part of P.L. 110-289 (H.R. 3221), housing and economic recovery legislation enacted 7/30/08. The new law provides broad housing reform and assistance to government-sponsored enterprises (GSEs) such as Freddie Mac and Fannie Mae, and creates a National Affordable Housing Trust Fund with financing from those GSEs to be used for construction, maintenance and preservation of affordable rental housing.	<i>Supports creation of the trust fund, provided at least half of such units are available to the very poor; remain affordable housing for a prolonged period of time; and such funding is not in lieu of other major federal housing programs.</i>

## Immigration Law

<b>◆*Board of Immigration Appeals</b>	The House Judiciary Committee held a hearing on the need to reform the Executive Office of Immigration Review, which oversees the Board of Immigration Appeals. Concerns about the immigration appeals process include problems with the hiring of immigration judges, inconsistent rulings, a shortage of judges, and an escalating workload.	<i>Supports reform of the Board of Immigration Appeals.</i>
<b>◆* Comprehensive Immigration Reform</b>	S. 1348, legislation crafted by a bipartisan group of senators, would have increased border security and enforcement, reduced the backlog of family- and employment-based visas, created a temporary worker program, and established a plan to allow approximately 12 million illegal immigrants who met certain requirements, including returning to their home countries for a specified period of time, to apply for permanent resident status. The Senate fell short of the votes to end debate and vote on S. 1348. A revised bill, S. 1639, was introduced that included a similar path to permanent residency and a mandatory \$4.4 billion for border security. The Senate also failed to garner enough votes to end debate and vote on S. 1639. An attempt to pass parts of the bill separately failed when the Senate fell short of the votes to consider S. 2205, the Development, Relief and Education for Alien Minors Act (DREAM Act), to allow some children of illegal immigrants to adjust their status. H.R. 1645, the Security Through Regularized Immigration and Vibrant Economy Act (STRIVE Act), would have provided for comprehensive immigration reform. A House Judiciary subcommittee held hearings on H.R. 1645.	<i>Supports comprehensive immigration reform provisions similar to those in H.R. 1645 that include temporary worker programs with a path to permanent residence for undocumented laborers currently in the United States.</i>



Subject	Description and Status	ABA Position
◆* <b>Detainee Transfers</b>	Over the past couple of years, Immigration and Customs Enforcement (ICE) has been transferring hundreds of immigration detainees from East Coast facilities to rural areas such as South Texas without taking into account whether the detainees are already being represented by counsel – a violation of the ICE National Detainee Transfer Standard. Such transfers have resulted in detainees’ inability to maintain legal representation.	<i>Opposes the involuntary transfer of detained immigrants and asylum seekers when the transfer impedes an existing attorney-client relationship and makes it difficult to obtain new representation.</i>
◆* <b>Detention Standards</b>	A House Homeland Security subcommittee held hearings on issues surrounding the detention of immigrants and detention standards. Several organizations submitted a petition to the Department of Homeland Security (DHS) calling for promulgation of regulations for the detention standards to help ensure that detained immigrants are treated humanely and have meaningful access to the legal process. S. 3005 and H.R. 5950 would have directed the secretary of DHS to establish procedures for the delivery of comprehensive medical and mental health care for immigration detainees. H.R. 5950 was referred to the House Judiciary Committee, where a subcommittee held hearings on the issue. S. 3005 was referred to the Senate Judiciary Committee.	<i>Assisted in the development of detention standards that went into effect in 2001 and supports regulations for the standards to ensure consistent implementation. Supports S. 3005 and H.R. 5950.</i>
◆* <b>DREAM Act</b>	S. 2205 and H.R. 1275, the Development, Relief and Education for Alien Minors Act (DREAM Act), would have authorized the cancellation of removal and adjustment of status of certain immigrant students who are long-term U.S. residents and who entered the United States as children. The Senate fell short of the votes to end debate and vote on S. 2205. H.R. 1275 was referred to the House Committees on Education and Labor, and Judiciary.	<i>Supports providing noncitizens who reside in the United States and who demonstrate significant ties to this country with an opportunity to acquire lawful permanent residence.</i>
◆* <b>Fee Increases</b>	U.S. Immigration and Customs Enforcement issued a proposed rule in April 2008 that would double the fee for the I-901 Student Exchange Visitor Program (SEVP) from \$100 to \$200 for F and M visa students and nearly double the fee for J-1 Exchange Visitors from \$100 to \$180. The increased fees would be used for additional enforcement activities related to the programs.	<i>Opposes the fee increases as a financial burden that would deter individuals from traveling to the United States for legitimate scientific or scholarly purposes.</i>
◆* <b>HIV Visa Ban</b>	P.L.110-293 (H.R. 5501), global HIV/AIDS prevention legislation enacted 7/30/08, includes provisions repealing the ban on HIV-positive visitors to the United States.	<i>Supports repeal of the ban.</i>



Subject	Description and Status	ABA Position
<b>◆*Unaccompanied Immigrant Children</b>	S. 844 would have provided legal representation and guardians ad litem for unaccompanied alien children, directed the Office of Immigration Review to develop model guidelines for legal representation of children, and exempted unaccompanied children from certain removal and asylum provisions. H.R. 844 was referred to the Senate Judiciary Committee. There was no comparable House legislation. P.L. 110-457 (H.R. 7311), enacted 12/23/08, reauthorizes and strengthens the Trafficking Victims Protection Act of 2000 through fiscal year 2011 and includes a narrower version of H.R. 844 to protect unaccompanied children by requiring, among other things, that children be placed in the least restrictive setting possible, that the Office of Refugee Resettlement do a suitability assessment before placing a child with any agency or person, and that pro bono legal representation be provided for unaccompanied alien children in their immigration matters, where possible, at no expense to the government.	<i>Supports.</i>
<b>Intellectual Property Law</b>		
<b>Patent and Trademark Office (USPTO) Funding</b>	P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$1.9 billion for the USPTO to be derived from patent user fees. P.L. 110-329 (H.R. 2764), a continuing appropriations resolution enacted 9/30/08, extends funding for the USPTO at its fiscal year 2008 level through 3/6/09.	<i>Opposes diversion of patent user fees to fund other programs.</i>
<b>*First-Inventor-To-File Rule</b>	S. 1145, S. 3600 and H.R. 1908, patent law overhaul legislation, included provisions to institute a “first-inventor-to-file” rule to replace the current “proof-of-invention date” system. The House bill would have delayed the change until other countries make changes to conform their patent laws to that of the United States in certain regards. The Senate Judiciary Committee approved S. 1145. The House passed H.R. 1908. S. 3600 was referred to the Senate Judiciary Committee.	<i>Supports the proposed “first-inventor-to-file” rule.</i>
<b>International Law</b>		
<b>*Darfur</b>	P.L. 110-174 (S. 2271), enacted 12/31/07, authorizes state and local governments, in response to ongoing genocide in Darfur, Sudan, to divest assets in companies that conduct operations in Sudan and to prohibit U.S. government contracts with such companies. P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes approximately \$1 billion in aid to Sudan, including \$550 million to support the U.N. peacekeeping mission there, and \$209 million for humanitarian aid. P.L. 110-329 (H.R. 2638), a continuing appropriations resolution enacted 9/30/08, extends funding at fiscal year 2008 levels through 3/6/09.	<i>Urges the U.S. government to take all necessary and proper actions to end the ongoing atrocities (including genocide, crimes against humanity, and war crimes) in Darfur.</i>



Subject	Description and Status	ABA Position
◆ <b>International Affairs Budget</b>	P.L. 110-161 (H.R. 2674), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$1.3 billion for international organizations and \$1.7 billion for international peacekeeping activities. P.L. 110-329 (H.R. 2638), a continuing appropriations resolution enacted 9/30/08, extends funding for the programs at their fiscal year 2008 levels through 3/6/09. S. 3288, approved by the Senate Appropriations Committee, and a draft bill approved by a House Appropriations subcommittee included \$36.6 billion for the international affairs budget for fiscal year 2009.	<i>Supports funding for various international assistance programs.</i>
◆ <b>International Criminal Court (ICC)</b>	P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, continues to prohibit Economic Support Fund assistance to the government of any country that is part of the ICC and has not signed a bilateral immunity agreement with the United States that would protect U.S. military and other personnel from prosecution by the ICC. The law allows the president to waive the restrictions, however, in certain circumstances affecting national security.	<i>Urges that the United States accede to the treaty establishing the ICC.</i>
◆ <b>*Rule of Law Programs</b>	P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$164 million for the promotion of democracy globally. P.L. 110-329 (H.R. 2638), a continuing appropriations resolution enacted 9/30/08, extends funding for the programs at fiscal year 2008 levels through 3/6/09.	<i>Supports.</i>
* <b>Trafficking Victims Protection</b>	P.L. 110-457 (H.R. 7311), enacted 12/23/08, reauthorizes and strengthens the Trafficking Victims Protection Act of 2000 through fiscal year 2011. The new law includes provisions to provide more protection to trafficking victims, particularly child victims, and gives prosecutors new tools to gain cooperation from witnesses and informants who can provide vital testimony in human trafficking prosecutions. Also included are provisions to ensure that unaccompanied alien children receive humane and appropriate treatment while in the custody of the U.S. government.	<i>Supports.</i>
◆ <b>*Treaties</b>	The Senate approved the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and an Amendment and Three Protocols to the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects. The Senate Foreign Relations Committee held hearings on and approved the Law of the Sea Treaty, which provides a legal framework governing the use of the oceans and their resources. H. Res. 101 would have expressed the sense of the House that the Senate should ratify the Convention on the Elimination of All Forms of Discrimination Against Women. H. Res. 101 was referred to the House Foreign Affairs Committee. There was no action on several other treaties, including the Convention on the Rights of the Child.	<i>Supports.</i>



Subject	Description and Status	ABA Position
<h2>International Trade</h2>		
<b>*General Agreement on Trade in Services – Doha Round Negotiations</b>	The Doha Round Negotiations continued on the General Agreement on Trade in Services. The chair of the services negotiations issued a report in May 2008 on the elements required for the completion of the services negotiations. The annex to the report contained a draft services text to be considered for adoption by World Trade Organization members. Talks continued in July but broke down before final agreement could be reached.	<i>Urges the United States to consider legal services a service sector priority and to seek the opening of legal services markets as part of the Doha Round negotiations.</i>
<b>*Trade Promotion Authority</b>	H.R. 5724 would have implemented the United States-Colombia Trade Promotion Agreement. The House passed H. Res. 1092, which suspended the use of special expedited Trade Promotion Authority procedures for considering the agreement that require an up-or-down vote within 90 days of the agreement being sent to Congress. A vote on the agreement was indefinitely delayed.	<i>Opposed H. Res. 1092 and urged the House to preserve and adhere to the Trade Promotion Authority-eligible status of legislation to implement the United States-Colombia Trade Promotion Agreement.</i>
<h2>Legal Education</h2>		
<b>◆*Council on Legal Education Opportunity (CLEO)/Thurgood Marshall Program</b>	P.L. 110-315 (H.R. 4137), Higher Education Act reauthorization legislation enacted 8/14/08, reauthorizes the Thurgood Marshall Legal Educational Opportunity Program at \$5 million per year through fiscal year 2014 and expands eligibility for the program's services to students in secondary schools. The Marshall program, which is administered by CLEO, provides practical and financial assistance to low-income minority or disadvantaged students to help them gain access to and complete legal studies. P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$2.9 million for the program. P.L. 110-329 (H.R. 2638), a continuing appropriations resolution enacted 9/30/08, maintains most of the federal government, including the Marshall program, at fiscal year 2008 funding levels through 3/6/09.	<i>Supports reauthorization, expansion and funding for the Thurgood Marshall program.</i>



Subject	Description and Status	ABA Position
<p><b>*Higher Education Act (HEA) Reauthorization</b></p>	<p>P.L. 110-315 (H.R. 4137), enacted 8/14/08, reauthorizes programs under the Higher Education Act of 1965 through fiscal year 2014 and includes provisions authorizing increases in federal financial aid programs, seeking ways to keep college costs down, and providing for loan repayment and forgiveness. <b>See related entries.</b></p>	<p><i>Supports programs under the HEA that encourage greater access to higher education, including the Thurgood Marshall Legal Educational Opportunity Program and loan forgiveness and repayment provisions for public service lawyers.</i></p>
<p><b>◆*Loan Forgiveness and Repayment Assistance</b></p>	<p>P.L. 110-315 (H.R. 4137), Higher Education Act (HEA) reauthorization legislation enacted 8/14/08, includes four new loan forgiveness and repayment programs that benefit public interest lawyers: John R. Justice Prosecutors and Defenders Incentive Act; Legal Assistance Loan Repayment Program; Loan Forgiveness for Service in Areas of National Need; and Perkins Loan Cancellation for Public Service. P.L. 110-84 (H.R. 2669), enacted 9/27/07, provides for cancellation of loans under the William Ford Direct Loan program for certain borrowers employed in qualifying public service positions; allows those in public interest positions to consolidate other qualifying federal student loans into the direct loan program for the purposes of pursuing loan forgiveness; and allows borrowers to further opt for the Ford program's income-contingent repayment option (ICR) and, by July 2009, for a new more generous income-based repayment option. The Department of Education issued final regulations for P.L. 110-84 on 10/3/08. P.L. 110-153 (S. 2371), HEA technical corrections legislation enacted 12/21/07, allows a borrower to wholly exclude a spouse's income when calculating income-based loan repayment terms by filing separate tax returns.</p>	<p><i>Supports loan repayment assistance programs for law school graduates accepting low-paying, public interest law employment.</i></p>

## Legal Research

<p><b>*Law Library of Congress</b></p>	<p>The House Administration Committee held a hearing on Library of Congress management issues, including concerns about the security of the library's inventory, cataloging, and the status of the Law Library of Congress. H.R. 6589, approved by the House Administration Committee, would have provided additional funding for the Law Library, established a separate budget line-item, and created a foundation to enhance the Law Library's services. P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$395.7 million for the Library of Congress, which encompasses funding for the Law Library of Congress and the Global Legal Information Network (GLIN). P.L. 110-329 (H.R. 2683), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including the Library of Congress, at fiscal year 2008 funding levels through 3/6/09.</p>	<p><i>Supports a separate budget line-item and increased funding for the Law Library of Congress to allow for enhancement of services, including electronic development, reclassification and cataloguing. Supports funding for GLIN.</i></p>
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Subject	Description and Status	ABA Position
<h2>Legal Services</h2>		
◆*Group Legal Services	S. 1130 and H.R. 1840 would have restored, permanently authorized and eliminated the dollar limitation for Section 120 of the Internal Revenue Code of 1986, which before expiring on 6/30/92 allowed employers to offer on a pre-tax basis group legal services benefits to their employees. S. 1120 was referred to the Senate Finance Committee. H.R. 1840 was referred to the House Ways and Means Committee. H.R. 6049, the House-passed version of a tax-extender bill, included a provision to reinstate the group legal services pre-tax status for one year with a \$70 cap on the pre-tax benefit. Several Senate versions of the bill also included the provision, but the final tax-extender provisions incorporated into P.L. 110-343 (H.R. 1424), emergency economic stabilization legislation enacted 10/3/08, did not include reinstatement of Section 120 benefits.	<i>Supports permanent reauthorization for Section 120.</i>
◆*Legal Services Corporation (LSC)	P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$350.49 million for the LSC (a \$2 million increase over fiscal year 2007) and continues restrictions prohibiting LSC-funded legal aid programs from representing certain clients or filing certain types of cases. P.L. 110-329 (H.R. 2638), continuing appropriations legislation enacted 9/30/08, maintains most of the federal government, including the LSC, at fiscal year 2008 funding levels through 3/6/09. Both the House and Senate Appropriations Committees approved increasing LSC funding to \$390 million as part of their proposed fiscal year 2009 funding bills.	<i>Supports adequate LSC funding and opposes restrictions that limit the types of legal services available to the poor.</i>
<h2>Military Law</h2>		
◆*Equal Justice for the Military	S. 2052 and H.R. 3174 would have eliminated an inequity in current law by permitting court-martialed servicemembers who face dismissal, discharge or lengthy confinement to petition for review by the U.S. Supreme Court even if denied review by the Court of Appeals for the Armed Forces. The House passed H.R. 3174. The Senate Judiciary Committee approved S. 2052.	<i>Supports.</i>
◆*Legal Services for the Military and Veterans	S. 1569 and H.R. 6414 would have established a pilot program for the provision of legal services to assist veterans and members of the Armed Forces who receive health care, benefits and services. S. 1569 was referred to the Senate Veterans Affairs Committee. H.R. 6414 was referred to the House Committees on Veterans' Affairs, and Armed Services.	<i>Supports legislation that promotes the provision of legal services to veterans and members of the Armed Forces to assist them in obtaining the full range of health care, benefits and services to which they are lawfully entitled.</i>



Subject	Description and Status	ABA Position
<b>*Predatory Lending</b>	The Department of Defense issued final regulations in October 2007 to implement the Military Lending Act of 2006, which include protections for military servicemembers from predatory lending practices.	<i>Supports protection for military service-members and their dependents from predatory lending. Expressed concern over uncertainty of certain terms in the implementing regulation and encouraged revisiting the issue periodically to monitor for developments.</i>
<b>*Veterans Representation</b>	The Department of Veterans Affairs issued final regulations to implement the Veterans Benefits, Health Care and Information Technology Act of 2006, which included provisions lifting a 150-year-old prohibition on veterans being able to hire lawyers to pursue appeals of claims for benefits, including certification requirements for lawyer and non-lawyer representatives, and establishing rules of conduct for lawyers appearing before the VA to closely trace the language and requirements of the <i>ABA Model Rules of Professional Conduct</i> .	<i>Supports final regulations that defer to a lawyer's good standing in a state bar for certification purposes, require ongoing education, and remove certain proposed regulations that may have discouraged pro bono representation efforts.</i>

## National Security

<b>◆*Anti-Torture</b>	The Department of Defense adopted a new <i>Army Field Manual on Human Intelligence Collector Operations</i> in 2006 that bars torture and requires military interrogations to be conducted in compliance with the Detainee Treatment Act and Common Article 3 of the Geneva Conventions. In July 2007, the president issued an executive order permitting the use of "enhanced interrogation tactics" by civilian agencies such as the Central Intelligence Agency. H.R. 4114 would have extended to all U.S. personnel the current prohibitions against torture included in the <i>Army Field Manual</i> . The House passed the provisions of H.R. 4114 as part of H.R. 4156, emergency war supplemental appropriations legislation, and the conference report on H.R. 2082, fiscal year 2008 intelligence reauthorization legislation. The Senate fell short of the votes necessary to bring H.R. 4156 to a vote. Congress passed the conference report on H.R. 2082, but the president vetoed the legislation. The House failed to override the veto.	<i>Condemns any use of torture or other cruel, inhuman or degrading treatment or punishment upon persons within the custody or under the physical control of the U.S. government or its contractors and any enforcement or authorization of such measures by government lawyers, officials and agents.</i>
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Subject	Description and Status	ABA Position
◆*Enemy Combatants/ Habeas Corpus	P.L. 109-366, military commissions legislation enacted 10/17/06, prohibited, retroactive to 9/11/01, any court from considering an application for a writ of habeas corpus from any individual detained by the United States who was determined to be an “enemy combatant” or who was awaiting such a determination. In <i>Boumediene v. Bush</i> and <i>Al Odah v. United States</i> , 553 U.S. ____ (2008), the Supreme Court struck down the habeas-stripping provisions in P.L. 109-366, holding that petitioners at Guantanamo Bay have a constitutional right to petition for habeas corpus and that the process established by P.L. 109-148, the Detainee Treatment Act, for judicial review of determinations of Combatant Status Review Tribunals was not an adequate substitute for habeas corpus.	<i>Supports legislation to restore the right of habeas corpus to those detained by the United States.</i>
◆* Foreign Intelligence Surveillance Act (FISA)	P.L. 110-261 (H.R. 6304), enacted 7/10/08 and set to sunset in 2012, requires prior FISA Court review of targeting and minimization procedures, except in exigent circumstances, for warrantless surveillance targeting foreign terrorist suspects located outside the United States and FISA Court approval of a warrant to target U.S. persons located outside the United States. P.L. 110-261 affirms that FISA is the exclusive means for conducting electronic surveillance within the United States for foreign intelligence purposes and that any exception requires specific congressional authorization. The new law also requires an inspector general audit of the legality of post-9/11 surveillance activities conducted by the Bush administration without FISA Court approval and authorizes the U.S. district courts to review whether the telephone companies received assurances that the wiretapping under the secret program was legal in determining if they are entitled to retroactive immunity.	<i>Urges that any future surveillance in the United States by the government for foreign intelligence purposes comply with FISA provisions.</i>
◆*State Secrets Privilege	S. 2533 and H.R. 5607 would have established standards for resolving claims involving the state secrets privilege, which is asserted to shield sensitive national security information from disclosure in civil litigation. The Senate Judiciary Committee approved S. 2533. A House Judiciary subcommittee approved H.R. 5607.	<i>Supports.</i>
<b>Tax Law</b>		
*Internal Revenue Service (IRS) Funding	P.L. 110-161 (H.R. 2764), consolidated fiscal year 2008 appropriations legislation enacted 12/26/07, includes \$10.9 billion for the IRS. P.L. 110-329 (H.R. 2638), a continuing appropriations resolution enacted 9/30/08, maintains most of the federal government, including the IRS, at fiscal year 2008 funding levels through 3/6/09.	<i>Supports adequate IRS funding for enforcement and compliance functions.</i>



Subject	Description and Status	ABA Position
<b>◆*Tax Simplification</b>	<p>H.R. 3970 would have overhauled the tax system by amending the Internal Revenue Code of 1986 to provide additional tax relief to low- and moderate-income individuals, to repeal the Alternative Minimum Tax (AMT), and to reform the corporate income tax. The House passed H.R. 3996, a narrower version of the legislation that was further narrowed in the Senate to include only a one-year patch for the AMT. The House passed another narrow bill, H.R. 4351, but the Senate fell short of the votes required to take up the measure. The House and Senate then passed the stripped-down H.R. 3996, which became P.L. 110-166 after being signed by the president 12/26/07. P.L. 110-343 (H.R. 1424), emergency economic stabilization legislation enacted 10/3/08, provides a one-year patch designed to prevent an additional 21 million taxpayers from paying the AMT on 2008 income.</p>	<p><i>Supports simplification of the tax laws, including a permanent fix or repeal of the AMT.</i></p>
<h2>Tort and Insurance Practice</h2>		
<b>◆*Alternatives to Medical Malpractice Litigation</b>	<p>S. 1481 and H.R. 2497 would have provided demonstration grants to states to develop alternatives to medical malpractice litigation. Unlike similar legislation in the 109th Congress, the legislation did not specifically list health courts as an alternative. S. 1481 was referred to the Senate Health, Education, Labor and Pensions Committee. H.R. 2497 was referred to the House Energy and Commerce Committee.</p>	<p><i>Supports the use of voluntary alternative dispute mechanisms that are entered into after a dispute has arisen, but opposes establishment of health courts that take away the right of a trial by jury.</i></p>
<b>◆*McCarran-Ferguson Act</b>	<p>S. 618 and H.R. 1081 would have repealed the McCarran-Ferguson Act, which largely exempts the insurance industry from the federal antitrust laws. S. 618 and H.R. 1081 would not have preempted or otherwise affected the ability of states to regulate or tax the business of insurance, and the Justice Department and the Federal Trade Commission would have issued joint statements of their antitrust policies regarding joint activities relating to the business of insurance. The Senate Judiciary Committee held a hearing on S. 618. H.R. 1081 was referred to the House Committees on Energy and Commerce, Financial Services, and Judiciary.</p>	<p><i>Supports repeal of the McCarran-Ferguson exemption and replacing it with a series of safe harbors to make clear that certain types of conduct by insurers are pro-competitive and beneficial to the American economy.</i></p>



Subject	Description and Status	ABA Position
<b>*Medical Device Safety</b>	S. 3398 and H.R. 6381 would have addressed the Supreme Court decision in <i>Riegel v. Medtronic Inc.</i> , 552 U.S. ____ (2008), which ruled that a product liability lawsuit filed against Medtronic Inc. in a state court was preempted because the device had received approval from the U.S. Food and Drug Administration. The bills would have amended the Federal Food, Drug and Cosmetic Act to allow injured patients to hold negligent medical device manufacturers liable for damages in state courts under state law for product-related death and injuries. S. 3398 was referred to the Senate Health, Education, Labor and Pensions Committee. H.R. 6381 was referred to the House Energy and Commerce Committee.	<i>Supports.</i>
<b>◆*Medical Professional Liability</b>	S. 243 and H.R. 2580 would have preempted substantial portions of the state medical liability laws and, among other things, imposed a cap of \$250,000 on pain and suffering awards, limited punitive damages, eliminated joint liability on non-economic damages, and imposed a federal statute of limitations. S. 244 would have limited liability specifically in the areas of emergency care and obstetrics and gynecological care. The language of S. 244 was offered on the Senate floor as an amendment to H.R. 2419, farm legislation, but the Senate rejected the amendment. S. 243 was referred to the Senate Health, Education, Labor and Pensions Committee. H.R. 2580 was referred to the House Energy and Commerce Committee. Provisions to preempt state medical malpractice laws also were included in S. 2662 and H.R. 5480, Medicare funding warning bills. S. 2662 was referred to the Senate Finance Committee. H.R. 5480 was referred to the House Ways and Means Committee.	<i>Opposes caps on pain and suffering awards and federal preemption of state medical malpractice law, but supports certain changes at the state level.</i>
<b>◆*Medicare Secondary Payer Act</b>	H.R. 2549 would have amended Section 1862 of the Social Security Act to provide certainty and efficiency in the Medicare set-aside process for workers' compensation settlements. H.R. 2549 was referred to the House Committees on Energy and Commerce, and Ways and Means. There was no comparable Senate legislation.	<i>Supports.</i>
<b>*Product and Seller Liability</b>	H.R. 989 would have limited a seller's liability for the sale of defective products. The House Small Business Committee held a hearing regarding the impact of such legislation on small businesses. H.R. 989 was referred to the House Committees on Judiciary, and Energy and Commerce. There was no comparable Senate legislation.	<i>Opposes enactment of broad federal product liability legislation and legislation that would limit a seller's liability for sale of defective products.</i>
<b>*Terrorism Risk Insurance Act (TRIA)</b>	P.L 110-160 (H.R. 2761), enacted 12/26/07, extends TRIA through fiscal year 2014 to ensure availability of terrorism insurance for U.S. businesses, retaining the current \$100 million trigger level for coverage.	<i>Supports.</i>



## 2009 Congressional Schedule 111th Congress - First Session

<b>Senate</b>		<b>House</b>	
Convenes	<b>Jan. 6</b>	Convenes	<b>Jan. 6</b>
Presidential Inauguration	<b>Jan. 20</b>	Presidential Inauguration	<b>Jan. 20</b>
Presidents' Day Recess	<b>Feb. 14-22</b>	Presidents' Day Recess	<b>Feb. 14-22</b>
Spring Recess	<b>April 4-19</b>	Spring Recess	<b>April 4-19</b>
Memorial Day Recess	<b>May 23-31</b>	Memorial Day Recess	<b>May 23-31</b>
Independence Day Recess	<b>June 27-July 5</b>	Independence Day Recess	<b>June 27-July 5</b>
Summer Recess	<b>Aug. 8-Sept. 7</b>	Summer Recess	<b>Aug. 1-Sept. 7</b>
Target Adjournment	<b>TBA</b>	Target Adjournment	<b>Oct. 30</b>

  


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American Bar Association, 740 15th Street, N.W., Washington, D.C. 20005-1022. (202) 662-1017.

Rhonda J. McMillion, editor; Holly Mattocks, legislative assistant.

[mcmillionr@staff.abanet.org](mailto:mcmillionr@staff.abanet.org)