Join #ABADay Digital 2020

Help storm the Hill on ABA Day from your office

What could be more powerful than hundreds of legal professionals storming Capitol Hill? Thousands more backing them up from across the country.

ABA Day is the annual conference where hundreds of ABA and state and local bar leaders gather in Washington, DC to talk directly to Members of Congress about the issues the legal profession cares about. Why do this? Senators and Representatives all agree that speaking face-to-face with their constituents is the best way for them to shape opinions on policy issues they are considering. Small congressional office spaces, scheduling conflicts, or travel costs often limit the number of legal professionals who can participate in this event though -- until now.

From April 21 to 23, the ABA Governmental Affairs Office (GAO) is looking forward to hosting about 300 bar leaders in Washington DC for ABA Day 2020. The importance of these volunteers coming to the Hill in person cannot be overstated. Two years ago, advocacy by our bar leaders helped preserve funding for legal rights presentations, self-help workshops and other informational programs to over 50,000 immigration detainees around the country annually. Last year, our advocacy helped persuade policymakers to give a $25 million increase in funding to the Legal Services Corporation for FY 2020, its largest appropriation ever.

When ABA and state and local bar leaders charge the Hill every year, so do numerous other associations, each trying to elevate their message and their time in the congressional spotlight. During ABA Day this year, we will elevate the voice of the legal profession by adding a two-day digital program to allow participants around the world to add their voice to the conversation.

While ABA Day 2020 events are happening on Capitol Hill this April, GAO will be simultaneously running an online conference called #ABADay Digital that will use digital advocacy tools, social media, and participant smartphones to show Congress what a united legal front can do.

On April 22 & 23, attorneys, law students, and other legal professionals can join the conversation online during scheduled events, including expert panels, live Q&A sessions, online campaigns, infographic videos, and even a “Twitter Takeover” where different advocates will temporarily control the GAO account to interact with online participants.
Timing is everything when it comes to effective advocacy, so we will also be announcing timed campaigns throughout the program aimed at specific issues bar leaders will be discussing in ABA Day meetings. These campaigns will use congressional messaging tools in the GAO Grassroots Action Center so participants can email, call, and create social media posts that will pass through congressional firewalls without ever having to leave the ABA website. This type of coordinated campaign will flood Member offices with every type of communication and force the Hill to listen to the voices of their constituents and our legal profession.

To learn more about this year’s ABA Day advocacy issues, find a schedule of #ABADay Digital events, or learn how YOU and your colleagues can join us to have a meaningful impact on Capitol Hill, visit ambar.org/abaday or watch for next month’s Washington Letter to learn more.

Don’t want to wait till then to get involved? Join the ABA Grassroots Action Team today at ambar.org/grassroots and add your voice now.
Recent Developments on the ERA

The ABA has long fought for gender equality, but the ever-allusive Equal Rights Amendment (ERA) has consistently been out of reach. The proposed constitutional amendment would assure that gender equality is recognized as a fundamental, irrevocable right protected by the highest law of the land. The key section of the amendment states, “Equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex.”

A constitutional amendment must pass both the House and Senate by a two-thirds majority vote and be ratified by three-fourths, or 38 of the 50 states, before it becomes part of the Constitution. In addition to these requirements, Congress included a seven-year deadline for ratification in the 1972 authorizing resolution transmitting it to the states. Congress later extended that deadline to 1982. Even with the extension, however, only 35 states ratified the amendment on time. As a result, efforts to advance the ERA all but halted until this past decade, when state legislatures once again started considering ratification legislation.

Recent efforts to ratify the ERA have paid off: Nevada ratified the ERA in 2017, Illinois followed suit in 2018, and Virginia became the 38th state to ratify the ERA in 2020. Despite the apparent victory, the fate of the ERA remains in limbo because of contention over the validity of these last three ratifications, and the legal effect of five states rescinding their ratifications following the expiration of the 1982 deadline.

To block the ERA from becoming part of our Constitution, Alabama, Louisiana, and South Dakota filed a federal lawsuit on December 16, 2019, to prevent the Archivist of the United States from accepting any new state ratifications. Following ratification by Virginia, but before any action on the lawsuit occurred, the Archivist, acting on the advice of the Department of Justice, refused to certify the ERA’s adoption as part of the U.S. Constitution.

In response to these developments, last month Virginia, Illinois, and Nevada filed suit to “compel the Archivist to carry out his statutory duty of recognizing the complete and final adoption of the Equal Rights Amendment.”

While the courts address these competing lawsuits, expiration of the ratification deadline and state rescissions of their ratifications remain obstacles to any further movement on the ERA. Congress has offered two legislative approaches to address these obstacles. One approach is mapped out in H.J. Res.79 (Speier, D-CA), which proposes removing the deadline entirely for the ratification of the ERA and was passed the House on February 13,
2020, by a vote of 232 to 183. S.J. Res 6 (Cardin, D-MD), an identical resolution in the Senate, has not received any action. The other legislative approach embodied in H.J. Res. 35 (Maloney, D-NY) and S.J. Res 15 (Menendez, D-NJ) would start the process of ratification anew.

The ABA has long advocated for gender equality. In 1972, the ABA adopted policies supporting constitutional equality for women and condemning discriminatory hiring practices within the legal profession on the basis of gender, religion, race, or national origin. In 1974, the ABA specifically endorsed ratification of the ERA. At the time, there was broad bipartisan support, and ratification seemed imminent. Sadly, this optimism was ill-founded. In 2016, the ABA once again adopted policy reaffirming the need for, and its support of, ratification of the ERA. Such ratification would have three immediate effects:

1. Gender equality would be established under the law as a fundamental and irrevocable tenet of society;
2. Judges would be required to apply the highest standard of scrutiny when deciding cases involving sex discrimination; and
3. Existing gender equity laws would be protected, and enforcement of these laws would be reinvigorated.

While the ABA has several policies supporting ratification, the ABA has no policy on the legal obstacles impeding final passage of the amendment or on current legislative approaches to overcome these problems. As such, the ABA has taken no position on these obstacles.

Stay tuned for more updates by following us on Twitter @ABAGrassroots.
ABA President Martinez defends judiciary, prosecutors at Midyear Meeting

AUSTIN, Texas, Feb. 18, 2020 – American Bar Association President Judy Perry Martinez delivered a strong defense Monday of the judiciary and prosecutors in remarks to the ABA House of Delegates, the association’s policy-making body, on the final day of the ABA Midyear Meeting.

“The personal attacks on our judges and prosecutors must cease,” she said. “No one, no one, should interfere with the fair administration of justice. And no one, no one, should have to live in fear for following the law and upholding our Constitution of the United States.”

Martinez also noted that Americans of all backgrounds are paying renewed attention to issues of justice.

“They're talking about due process, evidence, attorney-client privilege, fair trials and just punishment; the imperative of the oath to protect and defend the Constitution, no better demonstrated than when lawyers and public servants operating within the framework of law are able to do so free from obstruction, intimidation and retribution,” she added.

The ABA is the largest voluntary association of lawyers in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. View our privacy statement online. Follow the latest ABA news at www.americanbar.org/news and on Twitter @ABANews.
February 28, 2020

An Election Center You Can Share

Check out the ABA’s brand-new online election resource

Whether you are a first-time voter, or an experienced poll worker, the ABA Election Center has tools and information available to help you get ready for this election cycle.

Do you need to know your state’s voting deadlines? Do you have a student going to school away from home in need of absentee or early voting ballots? Do you need to find your nearest polling location or check your registration status?

The ABA Governmental Affairs Office (GAO) has created a digital tool to help you find answers to these questions and more called the ABA Election Center. Here, ABA members and their networks can find everything they need to get ready for the upcoming presidential election, including the ability to check their registration status and register to vote. There is also state-by-state information on early and absentee voting, voter accessibility and voting laws, key election dates, and more.

In the Election Center, you can also find resources created by the National Journal, including non-partisan presidential candidate profiles and summaries of their positions on major issues being discussed this election season.

While registering to vote is extremely important, the Election Center also provides information on how interested people can register to work the polls in their state. For legal professionals, being a poll worker or poll watcher allows you to help contribute to the election process in your district. Given that the rules are different for each state, the Election Center identifies the requirements so you can determine if you are eligible to volunteer. The purpose of working the election booths is to help ensure the sanctity of the voting process in your state. This online tool also provides resources on “knowing your voting rights” and state accessibility laws, so as legal professionals, we can help educate people and make sure that those eligible voters who want to vote can cast their ballot in both the primaries and general election.

To showcase this new tool for ABA members, the Election Center had its own booth during the ABA Midyear Meeting in Austin across from the registration desk. There, ABA members posted notes saying why voting was important to them, saw a presentation by a Travis County Board of Elections official, explored the ABA’s election resources, both online and in print, and more. Members told us they were especially looking forward to sharing the Election Center with their networks, especially for people they know who have recently
moved and their younger family members who have either never voted before or are away at college.

To visit the Election Center, head to ambar.org/electioncenter. The website is constantly being updated with new information, so stay tuned! For the most up-to-date information, follow us on Twitter @ABAGrassroots.

To learn more about the ABA’s efforts to help people Vote Their Voice, visit the Standing Committee on Election Law’s website.
Native American Voting Rights

Barriers and Solutions Examined by Congress

Earlier this month, the House Administration Subcommittee on Elections held a hearing on barriers to Native American voting rights and on H.R. 1694, the Native American Voting Rights Act of 2019. On February 28, the ABA submitted comments for the hearing record based on policy just adopted during the Midyear Meeting.

The ABA has repeatedly advocated for the federal government to fulfill its unique trust and treaty obligations owed to all Native Tribes. Pursuant to this obligation, the federal government has the responsibility to ensure that Native Americans and Alaska Natives have the ability to exercise their fundamental right to vote.

In furtherance of this federal responsibility and our long-standing commitment to protecting voting rights and increasing voter participation, the ABA’s new policy acknowledges the serious voting barriers faced by Native Americans and Alaska Natives and urges specific remedial actions to remove these barriers and establish mechanisms to safeguard their future access to the polls.

Presently, 1.2 million eligible Native American voters are not registered to vote. In 2018, the Native American Voting Rights Coalition released a report that documented the obstacles that have impeded the ability of Native Americans and Alaska Natives to participate in the voting process. Language barriers, poverty, lack of access to transportation, lack of residential addresses, lack of access to mail, the digital divide, and distance are just some of the obstacles included in that report. Election laws and policies create additional barriers, such as voter identification laws and lack of polling locations on or near Tribal lands.

To rectify voter participation barriers, the new ABA policy urges federal, state, local, territorial, and tribal governments to enact legislation that:

(1) Provides equal access to voter registration and polling sites for Native American and Alaska Natives to increase Native American and Alaska Native access at each stage of the voting process;

(2) Ensures equal treatment for Tribal identification by directing election officials and voting precincts to treat Tribal identification cards like state and local identification cards for purposes of voting and registering to vote;
ABA Governmental Affairs Office  

(3) Requires jurisdictions to give notice and obtain consent from Native Americans and Alaska Native Tribes before eliminating the only polling location or voter registration site on tribal lands; closing or moving a polling place or voter registration site to a location one mile or further from the current location; or other aspects of election administration; and

(4) Requires adequate language assistance by directing states to consult with Tribes on appropriate methods for furnishing instructions, assistance, and other information related to registration and voting under Section 203 of the Voting Rights Act.

The ABA policy also urges the federal government to improve voter outreach and access in Indian Country by:

(1) Providing Tribal leaders a direct pathway to request Federal election observers;

(2) Requiring the United States Department of Justice to conduct annual voting consultation with Indian Tribes; and

(3) Establishing a Native American Voting Rights Task Force under the Office for Civil Rights at the Office of Justice Programs of the Department of Justice, in coordination with the Department of the Interior, to provide grant funds to Tribal and state consortia for purposes of boosting Native voter registration, education, and election participation in Tribal communities.

Congress examined the Native American Voting Rights Act of 2019, H.R. 1694, during its recent hearing which includes provisions that would accomplish each of these ABA goals. The ABA supports this legislation and will work to persuade Congress to enact these important solutions to Native American voting barriers before the end of this legislative session.

Stay tuned for more updates by following us on Twitter @ABAGrassroots.
ABA, Education Department settle student loan forgiveness case

WASHINGTON, Feb. 19, 2020 — The U.S. Department of Education has agreed to recognize employees who work for the American Bar Association as public service workers who are eligible for student loan forgiveness. This settles a 3-year-old lawsuit that accused the department of improperly administering the Public Service Loan Forgiveness program.

The department sent a letter yesterday, Feb. 18, acknowledging that full-time ABA employees are “employed in a public service job” with “a public service organization,” and therefore are eligible for student loan forgiveness under PSLF.

The settlement comes one year after a federal judge ruled against the Education Department, saying the department had improperly changed terms of the PSLF program for some men and women who have dedicated their careers to public service. On Feb. 22, 2019, U.S. District Judge Timothy J. Kelly ruled that changes to the eligibility requirements, made several years after the program began, were “arbitrary and capricious.”

Kelly ruled in favor of three individual plaintiffs who worked several years in public service and were initially approved for loan forgiveness, only to be notified years later that the approval was retroactively denied by the Education Department based on new rules.

“We are pleased the Department of Education now fully accepts providing loan forgiveness to many people who rightfully earned it,” said ABA Executive Director Jack Rives. “Without the dedicated public service of so many attorneys, our nation would not be able to provide services to those in need. Student loan forgiveness is a small but very meaningful way to repay young people who spend 10 years of their lives in lower-paying jobs to serve the public.”

The ABA and four public servants, represented by the law firm of Ropes & Gray, sued the Education Department and the education secretary in December 2016, alleging mismanagement of the PSLF program. The lawsuit detailed how the department changed eligibility requirements for work that was clearly “public service” after previously approving the same work, and after individuals had made major life decisions based on those prior approvals.
“After years of financial uncertainty, these dedicated, service-oriented professionals finally got the fair shake they deserve from the Department of Education,” said Ropes & Gray partner Chong S. Park. “We are very pleased with the positive impact this has for our individual plaintiffs as well as other student loan borrowers in similar positions.”

The ABA claimed that the department and its contractor, FedLoan Servicing, hurt employees of some nonprofit groups by initially telling them they qualified for loan forgiveness, then reneged on those promises years later. Kelly agreed, ruling that the Education Department’s rule changes had “an immediate and significant impact on their ability to plan their careers and finances.”

The PSLF program, enacted in 2007 and signed into law by President George W. Bush, provides incentives for graduates to pursue full-time public service careers. It provides a mechanism to forgive student loan debt balances for men and women who make timely loan payments for 10 years while working full-time in public service jobs. The program broadly defines public service jobs as those providing “public interest law services,” “public education,” “public service for individuals with disabilities,” and “public service for the elderly,” among a variety of other categories.

The case is titled *American Bar Association v. United States Department of Education*, case number 1:16-cv-02476 in U.S. District Court for the District of Columbia. The lawsuit can be downloaded [here](#) and the judge’s 2019 ruling can be downloaded [here](#). The settlement letter can be found [here](#).
New ABA policies endorse expanding access to justice, voting

The American Bar Association House of Delegates approved resolutions on Feb. 17 that both encourage states to test innovative approaches in their regulatory frameworks and would make it easier for teens to register to vote when they turn 18.

Overall, the House adopted more than three dozen measures that included recommendations for governments to review deadly force policies, curb gun violence and lessen the burden for release after a conviction and before sentencing on criminal charges. The all-day session concluded the ABA Midyear Meeting in Austin, Texas, which began Feb. 13.

The new policy on regulatory innovation, known as Resolution 115, calls for state regulators and bar associations to continue to explore ideas that have the potential to improve the accessibility, affordability and quality of civil legal services. At least six states have proposed or adopted substantial regulatory changes that could loosen rules, and more are considering doing the same.

Adopted overwhelmingly by voice vote of the 596-member House, the policy does not embrace any single effort. Rather, it encourages states to continue innovative regulatory projects and “ensure that changes are effective in increasing access to legal services and are in the interest of clients and the public.”

To allay the concerns of opponents, drafters from the ABA Center for Innovation added last-minute language that says: “Nothing in this resolution should be construed as recommending any changes to any of the ABA Model Rules of Professional Conduct, including Rule 5.4, as they relate to nonlawyer ownership of law firms, the unauthorized practice of law or any other subject.” Rule 5.4 limits sharing of legal fees with nonlawyers and bars nonlawyer equity in law firms.

The House also adopted measures to make voting more accessible. One new policy urges governmental units to allow eligible youth between 16- and 18-years-old to preregister to vote and asks them to automatically add preregistered teens to the voter rolls when they reach the legal voting age. Two others seek to remove voting barriers for Native Americans and Alaska Natives and change residency requirements to make it easier for those without street addresses to use alternative forms of an address to register to vote.