RESOLUTION

1 RESOLVED, That the American Bar Association opposes the withholding by the
2 Executive Branch of funds previously appropriated by Congress for disaster relief and
3 recovery, or their diversion for other purposes.

4 FURTHER RESOLVED, That the American Bar Association reaffirms its support for the
5 August 2007 Principles of Rule of Law in Time of Major Disaster, including the principle
6 that government assistance authorized by law should be distributed in an expeditious and
7 efficient manner consistent with principles of equal treatment, due process and
8 transparency.
REPORT

In 2017, numerous natural disasters impacted the United States. Hurricanes Harvey, Irma, and Maria have devastated the southern United States as well as the American territories of Puerto Rico and the U.S. Virgin Islands, resulting in thousands of deaths and approximately $265 billion in total damage. Wildfires in the western states, as well as tornadoes, droughts, and other severe weather events throughout the country, resulted in additional deaths, as well as a combined $41 billion in damage. These disasters caused 2017 to become the most expensive year on record for disasters in the United States.¹

On February 9, 2018, the President of the United States signed Public Law 115-123 into law, known as the Bipartisan Budget Act of 2018. Among its provisions, the Act provided for nearly $90 billion in disaster relief for the U.S. Virgin Islands, Puerto Rico, Florida, Texas, California, and other jurisdictions affected by the 2017 Atlantic hurricane season and the 2017 western wildfires. This $90 billion relief package includes $23.5 billion to the Federal Emergency Management Agency for recovery and repair programs, $28 billion for block grants to rebuild housing and essential infrastructure, and $2 billion to improve the power grid in the U.S. Virgin Islands and Puerto Rico. It also included a $17.398 billion supplemental appropriation to the U.S. Army Corps of Engineers (USACE) to fund numerous disaster recovery and repair projects, including, but not limited to: construction of 60 flood and storm damage reduction projects in 16 states and one territory; repair and construction of levee and channel improvements in 10 states; completion of flood and coastal storm damage reduction studies in 14 states and two territories; repair damages to 69 USACE projects resulting from natural disasters in 18 states and one territory; and repair 81 locally-owned flood risk management projects in 16 states and one territory.²

A federal government shutdown began on December 22, 2018, due to the failure of Congress and the President to agree on an appropriations bill to continue to fund the government’s operations. The shutdown stems from an impasse with respect to funding for a proposed border wall between the United States and Mexico projected to cost $5.6 billion.³ As of the date of this report, the shutdown continues and has become the longest


On January 9, 2019, the President, through Twitter, stated that

Billions of dollars are sent to the State of California for Forest fires that, with proper Forest Management, would never happen. Unless they get their act together, which is unlikely, I have ordered FEMA to send no more money.

It is a disgraceful situation in lives & money!5

The day after the President’s tweet, media outlets began to report that the President was considering ending the impasse by declaring the situation at the Mexican border to be a national emergency and diverting approximately $13.9 billion of the disaster relief funds that had been appropriated to the USACE through Public Law 115-123, but had not yet been encumbered, to pay for the border wall.6 In the days that followed, Democratic and Republican leaders in Congress and the affected states and territories have almost universally condemned reallocating disaster funds in such a manner.7

Although a White House spokesperson has announced that “there are no plans to take money from disaster relief funding to pay for any potential projects,” the President emphasized that he would not issue an emergency designation “right now,” implying that the decision may be revisited in the future.8 Moreover, it was subsequently reported that this was not the first time the President had considered diverting or withholding Congressionally-appropriated disaster recovery and relief funds, with one administration official even resigning in protest over a previous attempt to withhold disaster funds from

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5 Donald J. Trump, @realDonaldTrump, http://twitter.com/realDonaldTrump/status/1083022011574747137 (Jan. 9, 2019).


Puerto Rico.9

It is the goal of the American Bar Association to “[i]ncrease public understanding of and respect for the rule of law, the legal process, and the role of the legal profession at home and throughout the world,” to “[h]old governments accountable under law, and to “[w]ork for just laws, including human rights, and a fair legal process.”10 To that end, the ABA House of Delegates has already urged Congress to adequately fund the departments and entities charged with responding to and assisting disaster survivors, particularly with respect to agencies that provide assistance to disadvantaged or vulnerable populations, and to honor the rule of law during times of disaster.11 This includes the principle that “[g]overnment assistance authorized by law should be distributed in an expeditious and efficient manner consistent with principles of equal treatment, due process and transparency.”12

In appropriating nearly $90 billion in disaster relief funds through Public Law 115-123, Congress specifically intended to both provide direct assistance to the states and territories affected by the natural disasters that occurred in 2017, and to make needed improvements to infrastructure to reduce the effects of future disasters. The jurisdictions designated to receive this funding were not arbitrarily chosen; they are the same states and territories for which a disaster had been declared by the President in accordance with the Stafford Act, 42 U.S.C. §§ 5127-5207. Therefore, in addition to these funds being appropriated by Congress, the President approved the provision of federal disaster relief to each jurisdiction twice: when the original Presidentially-approved disaster declaration was made, and when the President signed Public Law 115-123 into law.

The states and territories affected by Hurricanes Harvey, Irma, and Maria, the western wildfires, and other disasters are still reeling from the negative effects of those disasters. The disaster aid funds appropriated through Public Law 115-123 provide a much needed lifeline for the impacted states and territories to continue the rebuilding process. Even now, approximately a year-and-a-half later, many communities in the affected areas remain without power and even without roofs. This is particularly true in the U.S. Virgin Islands and Puerto Rico, where hospitals, schools, and other important institutions have still not been rebuilt.

For much of this country’s history, providing relief to parts of the United States affected by a natural disaster or other tragedy has not been a partisan issue. No state or territory is immune from natural disasters. Whether the disaster comes in the form of a hurricane, wildfire, flood, tornado, nor’easter, bomb cyclone, typhoon, earthquake, or some other event, any American living in any part of the country may suddenly find

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10 AM. BAR ASSOC. GOAL IV.

11 See ABA Resolution 15M110; ABA Resolution 09A102B; ABA Resolution 07A113.

12 ABA Resolution 07A113.
themselves homeless, without food, water, or power, without sufficient medical care, or worse, due to natural events completely out of their control. To quote one former member of Congress, the norm was that “you deal with the emergency first, and you figure out how to pay for it later,” regardless of the partisan make-up of Congress, which party controls the White House, or the partisan leanings of the area where the disaster occurred.13

The recent suggestions to divert Congressionally-appropriated disaster relief and recovery funds for a different purpose, or to withhold such funds from certain states or territories have been rightly condemned by leaders of both major political parties. As the voice of the legal profession of the United States, the American Bar Association urges the Executive Branch to honor the clear will of Congress and permit the disaster relief and recovery funds appropriated by Public Law 115-123 to be used for their intended purpose in the designated states and territories.

Respectfully submitted,

Chivonne A.S. Thomas, Esq.
President, Virgin Islands Bar Association
January 2019

1. Summary of Resolution

Opposes the withholding of funds previously appropriated by Congress for disaster relief and recovery, or their diversion for other purposes, and reaffirms support for the Principles of Rule of Law in Time of Major Disaster, which had been previously adopted by the House of Delegates in August 2007.

2. Approval by Submitting Body

Approved by the Virgin Islands Bar Association and the Puerto Rico Bar Association on January 23, 2019

3. Has this or a similar Resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The following previously-enacted policies are relevant to this Resolution:

Resolution 15M110, which among other provisions urges Congress to adequately fund departments and entities charged with responding to and assisting disaster survivors, particularly those who serve the unique needs of vulnerable populations.

Resolution 09A102B, which among other provisions urges the federal government to provide additional funding to address the unmet legal needs of low-income residents of communities affected by major disasters.

Resolution 07A113, adopting the Principles of Rule of Law in Time of Major Disaster.

5. If this is a late Report, what urgency exists which requires action at this meeting of the House?

N/A.


The Supplemental Appropriations Act of 2019 (H.R. 268) passed the House of Representatives on January 16, 2019, and contains a provision that disaster funds appropriated to the Army Corps of Engineers or the Department of Homeland Security may not be used to plan, develop, or construct a border wall. The measure has not been taken up by the Senate.
7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

Transmittal of resolution to the President and Congress. If disaster funds are actually withheld or diverted and litigation results, the policy may also be implemented by the filing of an amicus curiae brief in an appropriate action, consistent with the Association’s procedures in that regard.

8. Cost to the Association (both indirect and direct costs).

None.


None.

10. Referrals

ABA Coalition on Racial and Ethnic Justice
ABA Commission on Hispanic Legal Rights & Responsibilities
ABA Government & Public Sector Lawyers Division
ABA Section on Civil Rights & Social Justice
ABA Section on State & Local Government Law
ABA Standing Committee on Disaster Response and Preparedness
ABA Young Lawyers Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address.)

Anthony M. Ciolli
Immediate Past President, Virgin Islands Bar
PO Box 590
St. Thomas, VI 00804
340-774-2237
aciolli@gmail.com

12. Contact Name and Address Information. (Who will present the Resolution with Report to the House?)

Anthony M. Ciolli
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EXECUTIVE SUMMARY

1. **Summary of Resolution.**

   Opposes the withholding of funds previously appropriated by Congress for disaster relief and recovery, or their diversion for other purposes, and reaffirms support for the Principles of Rule of Law in Time of Major Disaster, which had been previously adopted by the House of Delegates in August 2007.

2. **Summary of the Issue which the Resolution addresses.**

   Although Public Law 115-123 appropriated approximately $90 billion in disaster relief funds for the U.S. Virgin Islands, Puerto Rico, Florida, Texas, California, and other jurisdictions affected by the 2017 Atlantic hurricane season and the 2017 western wildfires, on several occasions in January 2019 the President has indicated an intent to withhold or divert funds from certain jurisdictions.

3. **An explanation of how the proposed policy position will address the issue.**

   This resolution addresses this issue by urging that disaster relief funds not be withheld or diverted.

4. **A summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

   No minority or opposing views have been identified.