New York State Bar Association
New York County Lawyers Association
Standing Committee on the Delivery of Legal Services
Center for Innovation
International Law Section................................................................. 10A

Colorado Bar Association
Montana Bar Association
Tort Trial & Insurance Practice Section
Solo, Small Firm and General Practice Division
Standing Committee on the Delivery of Legal Services......................... 10B

Maricopa County Bar Association ......................................................... 10C

Proposed Amendments to the Constitution and Bylaws.............. 11-1 through 11-9

National Conference of the Administrative Law Judiciary
Government and Public Sector Lawyers Division.............................. 100A-B

National Association of Criminal Defense Lawyers
Criminal Justice Section
Civil Rights and Social Justice Section............................................... 101

Law Student Division........................................................................... 102

Commission on Law and Aging
Senior Lawyers Division.................................................................. 103A

Commission on Law and Aging
Senior Lawyers Division
Real Property, Trust and Estate Law Section...................................... 103B

Criminal Justice Section...................................................................... 104

Standing Committee on Gun Violence
Criminal Justice Section
Civil Rights and Social Justice Section
Commission on Domestic and Sexual Violence
Judicial Division.................................................................................. 105
Commission on Women in the Profession .......................................................... 106

Standing Committee on Professional Regulation
Young Lawyers Division
Litigation Section
Standing Committee on Public Protection in the Provision of Legal Services
Standing Committee on Ethics and Professional Responsibility
Standing Committee on Professionalism
Government and Public Sector Lawyers Division
National Organization of Bar Counsel .......................................................... 107

Standing Committee on Specialization ........................................................... 108

Young Lawyers Division .................................................................................. 109

Intellectual Property Law Section
Litigation Section .......................................................................................... 110A

Science & Technology Law Section ................................................................ 111

Science & Technology Law Section ................................................................ 112

Center for Human Rights .................................................................................. 113A

Civil Rights and Social Justice Section ........................................................... 113B-C

Commission on Domestic and Sexual Violence
Criminal Justice Section
Civil Rights and Social Justice Section ........................................................... 114

Civil Rights and Social Justice Section
National Native American Bar Association
Commission on Homelessness and Poverty ................................................... 115A

Civil Rights and Social Justice Section ........................................................... 115B

Civil Rights and Social Justice Section
National Native American Bar Association
Commission on Youth at Risk
Commission on Domestic and Sexual Violence ........................................... 115C

Civil Rights and Social Justice Section ........................................................... 115D
Civil Rights and Social Justice Section
Commission on Sexual Orientation and Gender Identity .................................. 115E

Civil Rights and Social Justice Section
Commission on Women in the Profession ........................................................ 115F

Civil Rights and Social Justice Section
State and Local Government Law Section
Commission on Homelessness and Poverty ................................................... 115G

Civil Rights and Social Justice Section
Commission on Domestic and Sexual Violence
Commission on Homelessness and Poverty ................................................... 115H

Litigation Section ................................................................................................ 116

Health Law Section ............................................................................................ 117A-B

Commission on Youth at Risk
Commission on Homelessness and Poverty
Litigation Section ................................................................................................ 118

Task Force on Gatekeeper Regulation and the Profession
Business Law Section
Real Property, Trust & Estate Law Section
Criminal Justice Section ..................................................................................... 119

International Law Section .................................................................................... 120

Commission on Immigration .............................................................................. 121A-F

Standing Committee on Paralegals .................................................................. 122

Steering Committee of the Nominating Committee ........................................... 200

Resolutions with Reports on Archiving .............................................................. 400A-400B
RESOLUTION

1 RESOLVED, That the American Bar Association adopts the ABA Best Practice Guidelines for Online Legal Document Providers dated August 2019; and

4 FURTHER RESOLVED, That the American Bar Association urges online legal document providers to follow the ABA Best Practice Guidelines for Online Legal Document Providers.
ABA BEST PRACTICE GUIDELINES FOR ONLINE LEGAL DOCUMENT PROVIDERS

The Utility of Their Online Legal Documents and Forms

(1) Online legal document providers ("Providers") should provide their customers ("Customers"), with clear, plain language instructions as to how to complete their forms, and the appropriate uses for each form.

(2) Any notifications to be provided pursuant to these Best Practice Guidelines should be understandable to the average person. Such notifications should be prominent, written in plain language, and delivered by the Provider in ways customers are reasonably likely to see, hear or encounter. The term "notify," as used in these Best Practice Guidelines, shall refer to notifications that conform to this Guideline.

(3) The forms that Providers offer to their Customers should be valid in the intended jurisdiction (as represented by the Provider or requested by the Customer). If not, Providers should inform their customers, in plain language, that the form is not substantially valid, or of any possible limitations on enforceability, in the intended jurisdiction and what steps can be taken to make it valid, including if necessary the retention of a lawyer. Providers may limit their warranties to "as is" warranties, using notifications consistent with Best Practices Guideline 2.

(4) Providers should keep their forms up-to-date and promptly account for material changes in the law. Providers should notify Customers or potential Customers as to when their forms were last updated.

(5) If a Provider selects the service agent for a form, the Provider should not disclaim legal responsibility for the proper recording or filing of the document, and should disclose the fees charged by or for the use of such service agent.

Protection of their Customers

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1 The term “online legal documents and forms” or “forms,” refers to documents and forms made available or prepared online, either for sale or free-of-charge from for-profit or not-for-profit enterprises, including lawyers or law firms (through ancillary businesses or otherwise), to members of the public who wish to engage in legal transactions (including, without limitation, real estate sales, purchase-and-sale transactions, corporate or partnership formation or structuring, wills, trusts, deeds, patent and trademark filings and the like) and/or to use or file in litigation (including, without limitation, form pleadings, releases, discovery requests, jury trial demands, and the like) without engaging a lawyer. This includes both static forms and forms created using an online document assembly process. This does not include: (a) forms prepared by lawyers, law firms, or legal services organizations for those with whom they have bona-fide client-lawyer relationships; (b) forms primarily prepared for or marketed to lawyers, either as part of legal treatises or otherwise; or (c) forms prepared by courts, court systems, court-related self-help centers, or government agencies. These Guidelines are not intended to address other online document marketplaces primarily addressed by other professionals, including without limitation tax filings and title searches.
(6) Providers should notify Customers of the terms and conditions of their relationship to the Provider, and Customers should have to actively manifest their assent (such as clicking on an “accept” button) to those terms and conditions.

(7) Providers should notify Customers of all of the ways (if any) they intend to use and share Customers’ information with third parties.

(8) Providers should notify Customers that the information Customers provide is not covered by the attorney-client privilege or work product protection.

(9) Providers should make reasonable efforts to prevent the inadvertent or unauthorized disclosure of or unauthorized access to Customer information. In the event of a significant data incident or breach the Provider should use reasonable remedial and notification efforts and otherwise comply with applicable data security statutes or other data security protections in a Customer’s jurisdiction.

(10) Providers should notify Customers: (a) how long they intend to keep and maintain Customer information provided to them; (b) how long the Provider will keep and maintain a completed form; and (c) how long the Provider will allow Customers access to their completed form without imposing a new or additional charge.

(11) Providers should not charge their Customers an excessive fee for their services.

Recommendation of Attorneys to Assist

(12) Providers should notify their Customers that their forms are not a substitute for the services of a lawyer, and that Customers may benefit from the services of a lawyer in any legal transaction.

(13) Providers should not advertise or describe their services in a manner that suggests their forms are a substitute for the advice of a lawyer.

Dispute Resolution

(14) Providers should notify their Customers of their legal name, address and email address to which Customers can direct any complaints or concerns about the Provider’s services.

(15) Providers should provide a forum convenient to the Customer for resolution of any dispute. Providers should offer inexpensive, efficient and effective dispute resolution, either in court, arbitration, or mediation, including without limitation local ADR or court proceedings, online dispute resolution or similar means. Providers should not impose lawyer fee or cost shifting to the Customer in any such proceeding. Providers should not unreasonably delay the resolution of disputes with Customers.
EXECUTIVE SUMMARY

1. **Summary of the Resolution.**

   The resolution adopts best practices and urges online legal forms providers to follow the ABA *Best Practices Guidelines for Online Providers* to protect consumers and provide a common-sense approach to self-regulation of online legal form providers.

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

   Best practices are needed to allow online legal forms providers to meet a significant need and access to justice while protecting consumer privacy and protection of customer data.

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

   The report proposes a set of best practices to enable self-regulation of online legal forms providers.

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

   There was a previous report and resolution 10-A which was withdrawn from consideration at the August 2018 meeting of the ABA House of Delegates in order to give ABA entities greater time for consideration. The August 2018 resolution called for both regulation of online legal document providers and the adoption of best practices. That resolution was withdrawn for further consideration.

   A subsequent resolution 10-A was submitted at the January 2019 meeting of the ABA House of Delegates after consultation with various ABA entities, which had been revised to include only an effort for the adoption of best practices, based upon the foundation of Resolution 103 - “Best Practices for Legal Information Web Site Providers,” adopted by the ABA House of Delegates on February 10, 2003 and Resolution 114 – “Links to Lawyers,” adopted by the ABA House of Delegates on August 8, 2016.

   The January 2019 resolution was withdrawn for further consultation and collaboration with a working group which included various ABA entities, bar groups and stakeholders, including:

   - ABA Business Law Section
   - ABA Center for Innovation
   - ABA Center for Professional Responsibility
   - ABA Judicial Division
10A

ABA Section of Administrative Law and Regulatory Practice
ABA Section of Dispute Resolution
ABA Section of Intellectual Property Law
ABA Section of International Law
ABA Section of Litigation
ABA Solo, Small Firm and General Practice Division
ABA Standing Committee on the Delivery of Legal Services
American Bar Foundation
Legal Services Corporation
Legal Zoom (industry)
Lexis-Nexis (industry)
National Center for State Courts
New York County Lawyers’ Association
New York State Bar Association
Priori Legal (industry)
Responsive Law (Consumer Group)
Texas A&M University School of Law

The present resolution is a product of those consultations and extensive collaboration. We know of no minority views of the resolution in its current form.
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal legislatures to enact legislation and appropriate adequate funding to ensure equal access to justice for Americans living in rural communities by deploying, to at least 98% of the population, broadband infrastructure with a download speed of at least 100 megabits per second, and an upload speed of at least 30 megabits per second.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution calls for the American Bar Association to adopt policy urging federal, state, local, territorial, and tribal legislatures to enact legislation and appropriate adequate funding to ensure equal access to justice for Americans living in rural communities by assuring proper broadband access is provided throughout the United States.

2. Summary of the Issue that the Resolution Addresses

Approximately 24 million Americans lack the bare minimum broadband speeds according to the Federal Communications Commission, 96% of whom live in rural areas. These individuals lack access to high-speed broadband at a rate four times higher than the national average. Non-metro-area attorneys cannot thrive without the ability to communicate and file documents electronically in their practices. Rural communities are struggling to attract new attorneys and the attorneys practicing in many of those areas are aging out. Self-represented litigants also need to be able to prosecute and defend their cases in rural communities. The ABA consistently hears concerns regarding the rising costs of legal services and the availability of lawyers in certain areas is limited. As a result, more and more people are forced to appear pro se. These individuals need the ability to download forms from courts’ websites and communicate with organizations that provide assistance. Not having the ability to do so creates an unnecessary burden on people who are already less likely to receive justice.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Deploying broadband infrastructure promotes access to justice by removing the electronic barrier of inadequate internet service affecting attorneys and self-represented litigants in rural areas. Reliable high-speed internet in rural communities will help bridge the divide between rural and urban areas, giving lawyers and self-represented litigants the tools they need in today’s digital world. Solving the digital divide will also have tremendous consequences outside the legal profession, including public safety, health care, education, and agriculture.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None identified.
RESOLVED, That the American Bar Association urges all private and public universities and colleges to adopt the following principles in furtherance of free expression on university and college campuses:

1. Universities and colleges have a responsibility to promote freedom of debate and thought, and to protect that freedom when others attempt to restrict it;

2. Except as necessary to comply with reasonable administrative rules applied on a content-neutral basis, universities and colleges should not restrict freedom of speech and debate; and

3. Universities and colleges should protect all members of their communities and all speakers on their campuses and other locations from censorship, intimidation or retaliation on the basis of their opinions or beliefs.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

This Resolution urges all private and public universities and colleges to uphold the principles of free expression on university and college campuses. They should follow these principles by promoting freedom of debate and thought, and to protect that freedom when others attempt to restrict it. Except as necessary to comply with reasonable administrative rules applied on a content-neutral basis, universities and colleges should not restrict freedom of speech and debate. They should protect all members of their communities and all speakers on their campuses and other locations from censorship, intimidation or retaliation on the basis of their opinions or beliefs.

2. **Summary of the Issue that the Resolution Addresses**

Free expression is indispensable to free thought, and therefore to achieving justice and the rule of law. From protecting minority interests to facilitating intellectual exchange, societies open to free expression foster safety, stability, and progress. Distrust and decay typically define regimes resigned to unitary ideological discourse. In England, successive monarchs spent centuries persecuting dissenting viewpoints to perpetuate their power. This generated unprecedented support in early America for intellectual inclusion, culminating in the adoption of the First Amendment.

Many universities face significant backlash for permitting speech some deem offensive. School administrators also sacrifice free speech principles to shield their own interests. Though free expression on campus has value independent of constitutional protections, it nevertheless is true that the most prominent manifestation of this country’s commitment to free expression lies in the First Amendment. Liberal education should prepare students to endure, understand, and combat opposing viewpoints with better facts and arguments. Education equips Americans to consider religious, political, and philosophical beliefs beyond their own. This skill is uniquely important to our multicultural society.

This Resolution addresses the great debate about all students having the opportunity to freely express their opinion at private and public universities and colleges. Thus, the belief that the universities and colleges must adhere to specific principles to ensure that all forms of views are allowed and not actively suppressed by the majority opinion.

3. **Please Explain How the Proposed Policy Position will address the issue**

Given the current political climate, urging universities and colleges to protect other opinions will not only foster a greater learning environment for students, but it will also promote safety for those who feel they will be retaliated against for their opinion. Universities and colleges are institutions for learning and for challenging thinking, by them actively taking a stance to not restrict opinion.
4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

None as of this writing.
PROPOSAL: Amends §1.2 of the Constitution to include the following language as one of the purposes of the Association: “to defend the right to life of all innocent human beings, including all those conceived but not yet born.”

Amends §1.2 of the Constitution to read as follows:

§1.2 Purposes. The purposes of the Association are to uphold and defend the Constitution of the United States and maintain representative government; to defend the right to life of all innocent human beings, including all those conceived but not yet born; to advance the science of jurisprudence; to promote throughout the nation the administration of justice and the uniformity of legislation and of judicial decisions; to uphold the honor of the profession of law; to apply the knowledge and experience of the profession to the promotion of the public good; to encourage cordial intercourse among the members of the American bar; and to correlate and promote the activities of the bar organizations in the nation within these purposes and in the interests of the profession and of the public.

(Legislative Draft - - Additions underlined; deletions struck-through)

§1.2 Purposes. The purposes of the Association are to uphold and defend the Constitution of the United States and maintain representative government; to defend the right to life of all innocent human beings, including all those conceived but not yet born; to advance the science of jurisprudence; to promote throughout the nation the administration of justice and the uniformity of legislation and of judicial decisions; to uphold the honor of the profession of law; to apply the knowledge and experience of the profession to the promotion of the public good; to encourage cordial intercourse among the members of the American bar; and to correlate and promote the activities of the bar organizations in the nation within these purposes and in the interests of the profession and of the public.
Report
to the
House of Delegates
of the
American Bar Association
by
Edward Haskins Jacobs

On a Proposal to Amend the ABA Constitution
to
Add this as a fundamental ABA purpose:

*To defend the right to life of all innocent human beings, including all those conceived but not yet born.*

For consideration at the August 12 and 13, 2019 Annual Meeting

The undersigned proposes that the American Bar Association Constitution, Article 1, Section 1.2 - Purposes - be amended by inserting the following language (between the quotation marks) after the first semicolon: “to defend the right to life of all innocent human beings, including all those conceived but not yet born;”.

Article 1 of the ABA Constitution is entitled “Name and Purposes.” Section 1.2 is entitled “Purposes.” Once amended, section 1.2 would read in full as follows:

The purposes of the Association are to uphold and defend the Constitution of the United States and maintain representative government; *to defend the right to life of all innocent human beings, including all those conceived but not yet born*; to advance the science of jurisprudence; to promote throughout the nation the administration of justice and the uniformity of legislation and of judicial decisions; to uphold the honor of the profession of law; to apply the knowledge and experience of the profession to the promotion of the public good; to encourage cordial intercourse among the members of the American bar; and to correlate and promote the activities of the bar organizations in the nation within these purposes and in the interests of the profession and of the public. [The new language is in bold for the purpose of highlighting.]

Once again, God willing, I will move for the adoption of this proposal at the House of Delegates in San Francisco in August 2019. I made the same motion before the House of Delegates the last eighteen years in a row. My hope continues that some day our culture of death will be overcome. We lawyers must not turn a blind eye to our children being poisoned to death and torn apart in our midst. I may be crying in the wilderness, but the cry – and the thirst for justice it represents - will never die.
If adopted, the proposal would require the American Bar Association to stand up for the God-given right to life of all innocent human beings, a right that must be protected in the man-made law of all just societies. As Alexander Hamilton wrote, “[T]he first and primary end of human laws, is to maintain and regulate ... absolute rights of individuals. ... The sacred rights of mankind are ... written ... by the hand of the divinity itself, and can never be erased or obscured by mortal power.”

Given everything that has been happening lately (being written in early March 2019) in New York, Virginia, and in the U.S. Senate, involving abortion up to the moment of birth, and then infanticide, how long will it be before we start seeing letters like this, a hypothetical future letter from daughter to mother, found on the internet:

"January 22, 2023

"Dear Mom,

"Sorry we haven't really chatted since Christmas. I have some difficult news.

"It's about Timmy. He's been a real problem, Mom. He's a good kid, but quite honestly he's an unfair burden at this time in our lives. Ted and I have talked this through and finally made a choice. Plenty of other families have made it and are much better off.

"Our pastor is supportive and says sometimes hard decisions are necessary. He told us to be prayerful, consider all the factors, and do what is right to make the family work.

"He said that even though he probably wouldn't do it himself, the decision really is ours. He was kind though to refer us to a children’s clinic near here, so at least that part's easy.

"I'm not an uncaring mother. I do feel sorry for the little guy. I think he overheard Ted and me talking about "it" the other night. I turned around and saw him standing at the bottom step in his pj's with the little bear you gave him under his arm and his eyes sort of welling up.

"Mom, the way he looked at me just about broke my heart. I honestly believe this is better for Timmy, too. It's not fair to force him to live in a family that can't give him the time and attention he deserves.

"And please don't give me the kind of grief Grandma gave you over your abortions. It's the same thing, you know."

Leaving our horrifying glimpse into the future to address my proposal:

In none of the meetings of the House of Delegates where my proposal was considered was there an actual vote on the proposal. The first ten years, and almost all the years thereafter, after the presentation of the proposal, the Standing Committee on Constitution and Bylaws reported to the House that the proposal is inconsistent with another purpose of the ABA— to uphold and defend the Constitution of the United States - and that therefore the proposal was “out of order.” Each time the Committee has made that bold assertion, it has failed to explain either in writing to me before the House of Delegates meeting or at the meeting, why the proposal is inconsistent with upholding and defending the Constitution (despite my explicit written request to the Committee for many years to explain in writing why this position is taken). In each of those first ten years, then a motion was made that the House postpone indefinitely action on my proposal. In 2010, 2013, 2015, 2017, and 2018, Robert L. Weinberg from Washington, D.C., who disagrees with this proposal, tried to get the House to vote directly on the proposal, but his motion was rejected. In 2017, the chair of the House called for a headcount of the votes for and against the typical motion to postpone indefinitely a vote on the proposal itself, since she could not tell from the voice vote whether the motion carried. The motion to postpone indefinitely action on the proposal won in the headcount by a vote of 279 to 178. Of course, this vote tells us nothing about whether there would be any votes in favor of the proposal itself, if it were ever to come to a vote.

In 2011, the Committee chairperson reported to the House that the Committee took no position on the merits of the proposal that the ABA defend the right to life of all innocent human beings, including those conceived but not yet born, but stated that the Committee disagreed that this subject should be addressed in the purposes section of the ABA constitution, since the constitution does not adopt policy “beyond the basics”; and as a result, clearly by arrangement with the Committee, another member of the House rose to move that the proposal be postponed indefinitely, and this was overwhelmingly approved by voice vote, with maybe only about five or so “nays” as far as I could tell.

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2 Of course, even if the proposal were voted upon and rejected, it could continue to be made year after year. At the 2018 meeting, the Chair confirmed that if rejected, the proposal could be made the next year.

3 The Committee has almost always contended the proposal is inconsistent with the ABA constitutional purpose to uphold and defend the U.S. Constitution, although one year no specific inconsistent provision was cited, and another year the Committee simply claimed the proposal was “out of order and inappropriate” without bothering to state why this is so. In 2011 the Committee took no position on the merits but said the language of the proposal did not belong in the ABA constitution.

4 In 2001 by a non-committee member of the House, and in each time thereafter by the Committee representative himself or herself until 2016, when the motion to postpone indefinitely was made by a member of the ABA Board of Governors; and in 2018 a non-Committee member of the House moved for the indefinite postponement.
In 2012, the Committee chairperson said that the proposal is inconsistent with other purposes of the Association and should be rejected, but he did not state why he concluded that the proposal is inconsistent with other purposes of the Association and did not specifically mention any of the inconsistent purposes. Then someone else moved, not that the proposal be rejected as suggested by the Chairperson, but rather that the proposal be postponed indefinitely. In the voice vote then taken, I’d say about ten delegates opposed the motion, some quite vociferously. By overwhelming voice vote, the proposal was postponed indefinitely.

In 2013, when Bob Weinberg opposed the motion to postpone indefinitely, arguing for a vote on the proposal itself, another delegate, who also seemed to be opposed to the proposal, rose to say he agreed it should be voted on, and stated that the ABA can take positions on “moral issues,” and said the proposal is not inconsistent with upholding and defending the Constitution of the United States - such supposed inconsistency being the reason given for postponing action on the proposal year after year after year. That year there were many “nayes” on the vote to postpone indefinitely - probably because more delegates wanted to vote the proposal down directly - but upon the voice vote that the ayes had it, and the proposal was again postponed indefinitely on the extraordinarily odd contention that defending the right to life of all innocent human beings is inconsistent with upholding and defending the Constitution of the United States. What a perverse Constitution we must have!

In 2014, the Chair of the Standing Committee on Constitution and Bylaws said the proposal is “out of order and inappropriate” and a non-committee member of the House moved to postpone the proposal indefinitely. Although a House member rose to “bark at the moon,” seeking a vote on the proposal instead of postponing it; postponed it was, with maybe ten voice votes against. In 2015, three speakers raised the red herrings that the proposal asks the House to address not a legal issue, but rather a medical, theological, or a philosophical issue; or simply an issue of legal privacy, as reasons to postpone the issue indefinitely; or in Bob’s case, to reject it on its merits. In 2016, the chair of the Standing Committee again asserted the proposal is inconsistent with ABA purposes to uphold and defend the Constitution of the United States and representative government, and said the proposal should be proposed as a ABA policy position only, and a member of the ABA Board of Governors moved that the proposal be postponed indefinitely.5

5 If the proposal to defend the right to life of all innocent human beings is inconsistent with the ABA purposes (1) to uphold and defend the Constitution of the United States, and (2) to uphold and defend representative government, as the ABA Standing Committee on Constitution and Bylaws has repeatedly claimed, why does it make any sense to downgrade the proposal and make it as simply a proposed policy position of the ABA, instead of an ABA constitutional provision? If defending the right to life of all innocent human beings is inconsistent with the ABA purposes of upholding and defending the Constitution of the United States and upholding and defending representative government, as the Standing Committee keeps claiming, then how can the proposal possibly be appropriate as an ABA policy on a national issue? Shouldn’t the proposal be postponed indefinitely as a proposed policy position also if the Committee is right? So why should I seek its approval as a mere policy proposal? Of course, the Committee is wrong about this claimed inconsistency, and this is explained later in this report.
In 2001 the vote on the motion to postpone action indefinitely was 209 to 39, but you will never find the precise vote in the record of proceedings of that meeting, because even though the vote was displayed electronically on a large screen in the front of the room, the precise vote itself was not recorded. In 2002 through 2016, and in 2018, the vote on the motion to postpone indefinitely was taken by voice vote. In 2002 through 2015, with the noted exception of 2013, many uncounted voices intoned “yes,” and perhaps a hand full of people said “no,” except 2005, when I thought I heard maybe ten “no”s.

I want to see the House pass this proposal, but I realize passage now would take a miracle. This is driven home in each annual meeting when new members of the House who have never been members before stand up in order to be introduced to the assemblage. Each year there are fewer than twenty new members who have never been members before. And the House several years ago defeated a term limits proposal. It would seem, then, that the House of Delegates is a pretty closed club with lots of long-term members. In addition to looking for that miracle, I am also hoping that the consciences of a few of the members will be pricked enough that they will be willing to “submit a salmon slip” and stand up in the House and speak out for the right to life of the innocents in the face of embarrassment and possible ostracism. I would say perhaps the most amazing thing about the last eighteen years is that never once has any member of the House of Delegates submitted a salmon slip and stood up before the House to acknowledge the ABA must make it its mission to defend the right to life of all innocent human beings. Not once. Not a single person, ever.

Even if I have no chance short of a miracle for passage of the proposal, if we can just “get the ball rolling” with a little bit of courage from members who agree, who knows? The ABA House of Delegates is a speck, but an important speck in the process. Maybe before too many more years, or at least, eventually at some point in the future...
when sanity is restored, baby-killing-in-the-womb (or upon emergence from the womb)\textsuperscript{7} will go the way of slavery. It could happen.

“...does not want its representative to vote on this kind of social issue” is not a legitimate position to take, is it? The House of Delegates addresses these kinds of issues dealing with human rights and legislative proposals every annual meeting. The current ABA policy manual includes ABA policies: (1) supporting legislation on the federal and state level to finance abortion services for indigent women (adopted August 1978); (2) supporting state and federal legislation which protects the right of a woman to choose to terminate a pregnancy before fetal viability, or thereafter, if necessary to protect the life or health of the woman; and (3) opposing state or federal legislation which restricts this right. (adopted August, 1992). Other related and likely still current ABA policies are listed toward the end of this report.

The representative of your section, etc., must be ready to address fundamentally important legal issues if your section, etc., is to be fully represented in the House. If you are not up to taking on this mantle as a fully functioning delegate to the House, shouldn’t you resign your position? Please, stand up and be counted. If you don’t, won’t you regret it in the end, when you look back on your life seeking evidence of courage? I write as I do in this paragraph because I cannot believe that only ten members of the House, or fewer, recognize the obvious truth of my argument. So, once again, on to the meat of the issue:

Feminism - here meaning the conviction that women’s government-enforced rights and privileges have been neglected in the past and now need augmentation - begs the question, how far should women’s “rights” go? If you are a mother with a child in your womb, and if bearing your child to term or keeping your child after birth would be embarrassing, inconvenient, career-killing, poverty-causing, husband-limiting, depressing, or physically more than normally risky, do you have the right to kill your child as a legally-approved exit from motherhood, as long as you do it before your child fully emerges from the protection of your body? Or, doing the killing even after birth through obvious infanticide, if positive law keeps moving the way it is in the United States.

Or does your child, by her mere humanity, have a sacrosanct right to live, and continue to develop and grow in liberty and pursue happiness as she comes to know it? The answer: Human life, including that of our littlest ones, is sacred. This realization was one of the greatest advances of Christianity over the paganism that condoned exposing unto death the unwanted child. Abortion in our society is quicker than exposure, and is hidden away in the womb (or at the end of the birth canal) so that we

\textsuperscript{7} The human tragedy addressed by this proposal and the abandonment in the United States of the most basic rule of law demanded of any sane society has been highlighted by the failure in the United States Senate to have sufficient votes in favor of the Born-Alive Abortion Survivors Protection Act to protect the act from filibuster by getting 60 votes or more; as well as by legislative acts in New York and Virginia to allow for abortion up to the moment of birth. When a society labels intense evil as a good, we are truly beyond the pale.
can lie to ourselves about what we are doing. But respect for innocent human life must be fundamental to civilized society, as “Thou Shalt Not Kill” signifies.

We should know that human life is sacred and to be defended against all competing claims of “right.” Our nation’s declaration of birth - the Declaration of Independence of July 4, 1776 - set forth the raison d’etre for the United States of America as a separate nation. The Declaration asserted that it is self-evident that all men are endowed by their Creator with the unalienable right to life; and that governments are instituted among men to secure the rights to life, liberty, and the pursuit of happiness. This insistence upon governmental protection of the right to life of all innocent human beings must be a fundamental function of any legitimate government.

The Creator referenced in the Declaration of Independence chose to have each new child begin life within his or her mother. The child in the womb has her own unique set of DNA. She is a separate human being - not simply part of her mother. On April 23 and 24, 1981 a United States Senate Judiciary subcommittee held hearings on the question: When does each new human life begin? The internationally known group of geneticists and biologists had the same conclusion - each person’s life begins at conception.

The stories one hears about mothers on their way to have a child in the womb poisoned to death or ripped apart by an abortionist, suddenly having a change of heart when they see a another mother walking by holding and cuddling her baby, or seeing a poster of a baby with the words “Abortion kills,” are heart-warming, but they also underscore how the general discussion of the abortion problem in the media depersonalizes the separate human being held by God’s design in the vessel of her mother. That’s another, separate human being in there - one who has the right to life, liberty, and the pursuit of happiness, just as we do, no matter how deeply we stick our heads in the sand.

Shouldn’t we recognize the zygote, the embryo, the fetus in the womb of a human mother as another human being - one who has rights? I recommend you check out the website for the journal First Things and go to the Archives, and then to the May 2003 issue. There you will find an article by Maureen L. Condic, who is an associate professor of neurobiology and anatomy, and adjunct professor of pediatrics, at the University of Utah. She points out (in her May 2003 article, “Life: Defining the Beginning by the End”) that the common arguments about when human life begins are only of three general types: arguments from form, arguments from ability, and arguments from preference, and that these arguments are all highly subjective, amounting to arguments that the new organism growing in the womb is not a human being worthy of protection in law because it is tiny, or because it is not a “person,” or because it is early in its development.

Dr. Condic rightly rejects the use of these three flawed arguments about when life begins. Instead, she cogently argues that we should determine when the new human
organism begins, because that is the true beginning of the human being. She points out that one must distinguish between mere living cells that are not organized into an organism, and living organisms. Dr. Condic points out that “[o]rganisms are living beings composed of parts that have separate but mutually dependent functions. While organisms are made of living cells, living cells themselves do not necessarily constitute an organism. The critical difference between a collection of cells and a living organism is the ability of an organism to act in a coordinated manner for the continued health and maintenance of the body as a whole. ... Unlike other definitions, understanding human life to be an intrinsic property of human organism does not require subjective judgments regarding ‘quality of life’ or relative worth. A definition based on the organismal nature of human beings acknowledges that individuals with differing appearance, ability, and ‘desirability’ are, nonetheless, equally human. ... Once the nature of human beings as organisms has been abandoned as the basis for assigning legal personhood, it is difficult to propose an alternative definition that could not be used to deny humanity to virtually anyone.” The zygotes, the embryos, the fetuses in the wombs of human mothers are all human organisms; that is to say, human beings.8

But can any of us, with what we know about the child’s unique set of DNA beginning at conception, even pretend now that this is not true? The possibility of twinning does not diminish the recognition that upon conception there is brand new, separate, unique human life in the mother's body – a new person or persons. The mother is responsible for taking care of that child, but she does not own the child – God does. Slavery made the mistake of thinking that one human being can own another. We now know that no man should be permitted under man’s law to own another. But how can one justify killing another innocent human being if one does not own him? The inconvenience and burden of the other’s life on one’s own is not enough. The burden of the dependent relation does not end at the birth canal. How far should the right to kill those dependent upon us go? Should the standard evolve from the complete dependence of the womb to the excessive dependence of severe mental retardation and severe physical handicaps? The “right” to kill an already born baby by lack of ordinary care is the new advocacy for those who want all preborn baby rights denied.

Just because the child is held and nourished within her mother does not give her mother the right to kill her. To the contrary, the mother with a child in the womb has a special responsibility to protect and care for her child. In the language of the law, the mother, the parents, have a fiduciary duty to the child. The generally recognized principle that parents must take care of their children once they are born applies as well to the children while they are growing and developing in the womb. I am not judging

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8 In her May 23, 2013 testimony before the Committee on the Judiciary of the U. S. House of Representatives on H.R. 1797, which would require a 20 week fetus to be protected from pain, Dr. Condic noted that “it is entirely uncontested that a fetus experiences pain in some capacity, from as early as 8 weeks of development.” She further noted, “Imposing pain on any pain-capable living creature is cruelty. And ignoring the pain experienced by another human individual for any reason is barbaric.” Dr. Condic went on to note, “Given that fetuses are members of the human species - human beings like us - they deserve the benefit of the doubt regarding their experience of pain and protection from cruelty under the law.” [Italics in original.]
here the status of the soul of those who have had abortions or who commit abortions. I leave that (and the judging of my own soul) to God. But what we must judge as a people is what actions are so intrinsically evil, and do such harm to others who are innocent of wrongdoing (such as killing them), that the State, any decent State, must prohibit those actions from being inflicted on their victims. Obviously, the baby in the womb is the victim of abortion.

I do not want to offend the women who have been bamboozled by our abortion culture, but is not abortion the ultimate hate crime - the turning of legendary motherly love to the hatred of, and the killing of, one’s own child? Perhaps it is indifference to the child rather than hatred of the child, but this may be worse in its own way, as they say the opposite of love is not hate, but apathy. Abortion is the ultimate betrayal.

Motherly love was known through the centuries until recently as the gold standard of love – unselfish and without limit – the willingness to give one’s very life for one’s child. Remember the question from Isaiah 49: 14-15, attesting to this love. Motherly love is the foundation for a culture of life. Abortion is the foundation for our culture of death. Speaking of being bamboozled, recall the serpent in the Garden of Eden, enticing Eve to eat the forbidden fruit on the promise that she would become like God. Now mothers are enticed into abortion with the lie that they can become like men, and needn’t be burdened with a child in the womb or that child after birth. Eat the fruit of hatred of the life of your child and abandonment of your child, and freedom is yours. A Faustian bargain if ever there were one.

The United States of America fails in its fundamental mission if it refuses to secure for the weakest and most vulnerable innocent people amongst us the rights to life, liberty, and the pursuit of happiness. The ABA fails in its mission if it fails to stand up for the rights of the powerless. If we deny the right to life for children in the womb because they are developmentally immature (and therefore, in the eyes of some, not “persons”), then we not only tragically deny these children their rights - we open the door to infanticide and the killing of other weak and infirm people. There is a crisis in the United States over the loss of our moral roots. The ABA, which claims to be the voice of the legal profession, and to be an advocate of the protection of fundamental rights, should become a strong voice for all the weak and vulnerable innocents who so desperately need champions now.

We would do well also to realize that the Constitution of the United States - and the Supreme Court’s interpretation of it - is not the fundamental source of human rights within the United States. Our rights to life, liberty, and the pursuit of happiness do not arise out of our own “social contract” - the Constitution. To the contrary, as the Declaration asserts, these rights are endowed upon us by our Creator. The rights of the child are a burden to the mother, but fundamental rights of others are a burden we must bear.
At the 2001 Annual Meeting, the Chair of the Standing Committee on Constitution and Bylaws reported that the Committee “voted to recommend to the House that the proposal be considered out of order, in that it is inconsistent with the first purpose clause of Association’s Constitution, which is ... To uphold and defend the Constitution of the United States and maintain representative government.” The same claim was made in subsequent years, until 2011, when the Committee took no position “on the merits of the proposal,” but asserted the proposed language does not merit inclusion in the purposes section of the ABA constitution. Then in 2012 the Committee said the proposal should be rejected due to unexplained inconsistencies with other Association purposes.

Although the Committee changed its position in 2011, it went back to the earlier position in later years, so I hereafter explain again why defending the right to life of all innocent human beings, including all those conceived but not yet born, is consistent with supporting and defending the Constitution of the United States. Later in this report I explain why the language I propose does belong in the purposes section of the ABA constitution, which positioning has also been opposed by the Standing Committee on Constitution and Bylaws.

So, the inconsistency contention has no merit. First the obvious: Nowhere does the actual language of the United States Constitution specify that the States may not defend the right to life of each and every innocent human being within their respective jurisdictions (including all those conceived but not yet born). So the claim that the defense of such life is inconsistent with defending and upholding the Constitution is on its face highly suspect. If the inconsistency argument does not rest on the actual language of the Constitution, let us go beyond the actual language of the Constitution and try to articulate the argument. The inconsistency argument could be so stated:

1. *Roe v. Wade*, *Doe v. Bolton*, and *Planned Parenthood v. Casey* prohibit each State from defending the right to life of each and all innocent human beings conceived but not yet born, within the State’s jurisdiction.

2. The Supreme Court has determined that the Constitution’s penumbra of privacy rights attendant to the pregnant mothers is what prohibits the States from defending the right to life of each and all those conceived but not yet born.

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9 It is good that the Committee’s position in the first ten years and then each year after 2011, implicitly admitted that the children being killed in their mother’s wombs are in fact innocent human beings, not just blobs of tissue that are part of the mother’s body. That realization is step number one.

10 Like St. Thomas Aquinas, I construct the argument against my position. I have repeatedly asked the Standing Committee on Constitution and Bylaws to articulate the reason for its – to me, bizarre – position that taking a stance defending the right to life of all innocent human beings including all those conceived but not yet born is somehow inconsistent with upholding and defending the Constitution of the United States, but the Committee refuses to articulate the reasons for its position – either orally or in writing.
3. Therefore, it is the Constitution itself that prohibits the defense by the States of the right to life of all those conceived but not yet born.

4. Therefore, advocating the defense of the right to life of all those conceived but not yet born is inconsistent with upholding and defending the Constitution since the Constitution prohibits that defense.

But it cannot be reasonably be said (1) that the holdings of *Roe v. Wade* and *Doe v. Bolton*, as modified by *Planned Parenthood v. Casey* are the Constitution itself - and (2) that if one opposes *Roe, Doe, and Planned Parenthood*, one is opposing the Constitution itself - and failing to uphold and defend it. The lack of identity of particular Supreme Court interpretations of the Constitution with the Constitution itself should be rather self-evident. No doubt you (the members of the House) are aware that legal conclusions underlying many Supreme Court decisions - including those interpreting the Constitution - have been rejected by later Supreme Court decisions although the relevant language of the Constitution has not changed in the interim. Thus, generally, contending that opposition to a particular Supreme Court interpretation of the Constitution constitutes opposition to the Constitution itself is stretching language and logic to the breaking point.

Now, maybe a persuasive argument could be made that although some Supreme Court interpretations of the Constitution are subject to later change, some are so indisputably correct that in some real sense the interpretation could be said to be the Constitution itself. If the Supreme Court rationale for *Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey* were so rock-solid and accepted by American society in general as the proper articulation of a virtually undisputed fundamental individual right grounded in the Constitution, one could argue that in effect these Supreme Court decisions are equivalent to the Constitution; but that is certainly not the case with *Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey*. (And note that *Planned Parenthood* itself modified fundamental holdings of *Roe* and *Doe*.)

The truth is quite to the contrary of the position of the Standing Committee on Constitution and Bylaws. The reality is that the rationale underlying these two Supreme Court decisions deserves no support from an organization pledged to uphold and defend the Constitution of United States.11 This is because the underlying rationale for the decisions is bogus, even if one accepts the concept of the privacy rights penumbra. The Supreme Court's opinion in *Roe v. Wade* takes the position that neither Texas nor any

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11 As one wise observer has noted, “Roe v. Wade has deformed a great nation. The so-called right to abortion has pitted mothers against their children and women against men. It has sown violence and discord at the heart of the most intimate human relationships. It has aggravated the derogation of the father’s role in an increasingly fatherless society. It has portrayed the greatest of gifts—a child—as a competitor, an intrusion, and an inconvenience.... Human rights are not a privilege conferred by government. They are every human being’s entitlement by virtue of his humanity. The right to life does not depend, and must not be declared to be contingent, on the pleasure of anyone else, not even a parent or a sovereign.”
other State may legislatively determine that human life begins at conception, since (the Court asserted) there is uncertainty over the legitimacy of that claim - that human life does begin at conception. But this claimed uncertainty is a figment of the Supreme Court’s imagination. There is no real uncertainty over the point at which each human life begins - we all have our own unique set of 46 chromosomes. This set is forged at the moment of conception. The new child (or, perhaps, eventually, the new twins) is new human life - residing within the child’s mother, but not simply a part of her.

Based on the faulty contention that the child in the womb cannot properly be legislatively determined to be a human being, the Supreme Court denigrated the child to the status “potential life,” stripping the child of her rightful status under the law as a human being. The Court then set up a false dichotomy of competing rights: the mother’s “right to privacy” right to kill the non-human blob in her womb verses the State’s interest in protecting the “potential life” in the womb and the health of the mother.12 (Referring to a living being with its own DNA as “potential life” is doublespeak at its best.) The hand dealt the child in the womb by the Supreme Court was dealt from a stacked deck - based upon the lie that the child in the womb is not really a child. As a “potential life” rather than a real, live human being, the child’s real rights get pushed aside by the Supreme Court. The rationale of Roe v. Wade is not indisputable (and thus, one might argue, the Constitution itself); rather, the rationale of Roe v. Wade is fatuous.

Finally, the proposal (and all already articulated purposes in ABA Constitution Section 1.2) presupposes the ABA defense of the right to life of the innocents will be undertaken by lawful means. Suppose the ABA as an organization were to advocate a change through lawful means in the language of the United States Constitution (or in a Supreme Court interpretation of the Constitution). Would this mean the ABA had abandoned its purpose to uphold and defend the Constitution? Of course not. We have an obligation to address constitutional issues that need addressing. We honor the Constitution by doing so. So, even if I were advocating change in the language of the Constitution by lawful means, my proposal would not conflict with the ABA purpose to uphold and defend the Constitution.

Several times, including in 2018, the Committee on Constitution and Bylaws has suggested that what I advocate should be proposed as a policy position for the ABA, not a purpose of the ABA, and therefore my proposal should be rejected on the ground that it does not belong in Section 1.2 of the ABA Constitution. Putting aside the absurdity of

12 Nor does basing a supposed constitutional right to abortion upon the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution ( . . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws . . . ), as advocated by Justice Ginsburg and three other Justices in the Ginsburg dissent in Gonzales v. Carhart, 550 U.S. 124, 172 (2007) make any more sense. The child in the womb is still a human being; a child; and her right to life trumps the mother’s interest in having her killed, whether based on a supposed right to privacy or upon the Equal Protection Clause. See also, Erika Bachiochi, Embodied Equality: Debunking Equal Protection Arguments for Abortion Rights, Harvard Journal of Law & Public Policy, vol. 34, no. 3, Summer 2011.
suggesting a policy that is supposedly inconsistent with the ABA constitution, I disagree with this contention also. After all, what is a purpose? A purpose is simply a fundamental policy. The innocent human beings in the wombs of their mothers (many of whom have become mortal enemies of their own children) cry out for our country to renew its commitment to the basic principles of the Declaration of Independence - that every innocent human being has the right to life, liberty, and the pursuit of happiness. And it is not just the innocents in the womb who cry out for champions. We are sliding down the slippery slope of disregard for the sanctity of human life for many outside the womb as well - the old, the infirm, and the disabled. If we do not wake up and start standing up for what is right, soon many of these innocents will have to be justifying why their lives should be spared - why we should be spending money and effort on their inconvenient and bothersome lives. The intentional killing of perhaps 1.2 million innocent human beings by abortion in the United States each year in recent years (and even more before) is such an affront to justice that the ABA should make defending the rights of those (and other) innocent beings one of its fundamental policies – one of its very purposes.

Remember the argument over the propriety of amending the U.S. Constitution with the Bill of Rights shortly after the approval of the Constitution itself? There were those who argued that it is unnecessary and inappropriate to articulate in the Constitution these rights of the people and of the States against intrusion by the federal government, since the federal government was permitted to exercise only those powers granted to it in the Constitution anyway. But those rights articulated in those first ten amendments were considered so fundamental that they should be explicitly set forth in the Constitution itself.

Well, our country has abandoned its fundamental argument for its own formation when it denies to some innocents the inalienable God-given right to life itself, allowing others with the sanction of law to kill off innocents. This is a fundamental perversion of what the United States should be. The ABA should make the correction of this deviation one of its bedrock, fundamental policies – that is, one of its very purposes of being. The ABA goes on and on nowadays about its support of “the rule of law,” but where is that support when it comes to children in the womb? Where are their lawyers defending their rights? Where is the defense and pursuit of justice here?

The Committee claimed that the subject of the proposal is not fundamental enough - or is not of the right character - to be included in the purposes section of the ABA constitution. But compare a stance against stripping the right to life from millions of innocents to the purposes that are in the ABA constitution. Defending the right to life of innocents when it is being denied by our “law” is much more fundamental than even the upholding and defending of our hallowed U.S. Constitution and representative government. The ABA purpose I propose goes to the very heart of what an association of American lawyers should be all about. We are supposed to be the upholders of the law. We are supposed to champion those whose rights are being disrespected. Incredibly, a fundamental disrespect for a category of persons’ rights has been
incorporated as a fundamental tenant of our American “law.” A stand against this cries out for inclusion in the purposes section of the ABA constitution.

Matters of much lower import and importance to our law and our role as lawyers are already included in the articulation of ABA purposes. My proposal is more fundamental than the ABA constitution existing purposes to “advance the science of jurisprudence”, “promote the uniformity of legislation and of judicial decisions”, “uphold the honor of the profession of law”, and to “encourage cordial intercourse among members of the American bar.” The Committee is wrong when it says that my proposal does not belong in the purposes section of the ABA constitution.

At the House of Delegates in August 2001, the speaker who advocated postponing the proposal indefinitely said that the proposal “changes fundamentally the purpose of the American Bar Association and the Constitution and Bylaws, and has ramifications over a wide array of policy that the Association has adopted and implemented.” I have reviewed the ABA Policy and Procedures Handbook and note here policy positions taken by the ABA that are, or may be regarded as, inconsistent with the proposal being made hereby.

The ABA Policy and Procedures Handbook lists hundreds of standing policies adopted by the ABA over the years, although action was taken at the 2001 meeting to “archive” some policies over ten years old, taking them off the list of current policy positions. Way back in 1978, the ABA adopted a policy, still in the 2013-2014 Handbook, supporting federal and state legislation to “finance abortion services for indigent women.” In 1991, the ABA adopted a policy supporting legislation to promote “full counseling and referrals on all medical options” in federally funded family planning clinics. In 1992, the ABA adopted a policy, still in the Handbook, opposing federal legislation restricting abortions prior to viability and thereafter if the abortion is “necessary to protect the life or health of the woman ... .” And in 1994, the ABA adopted a policy recommending that the United States, at the Fourth World Conference on Women in Beijing, China, in 1995, “actively support the inclusion in the Platform for Action of [e]ffective measures to accelerate the removal of the remaining obstacles to the realization of women’s basic rights.” At the annual meeting in 2001 the ABA adopted a policy provision opposing the Mexico City Policy, which prohibits overseas funding by the United States of nongovernmental organizations that provide abortion-related health or medical services. The ABA House of Delegates has also fairly recently adopted a policy implicitly approving government-funded killing of innocent human beings in their embryonic stage for stem cell and other research work.

If the proposal is adopted, inconsistent policies would be revoked by implication. Legal protection for all innocent human life is essential to a properly ordered society. Advocacy of such protection should be fundamental ABA policy.

In John F. Kennedy’s 1961 inaugural address he rightly said, “The rights of man come not from the generosity of the state, but from the hand of God.” Professor Robert
P. George of Princeton University gave an address at Georgetown University the day after President Obama’s initial presidential inauguration. In urging his listeners to pray for an end to legal abortion in the United States, Professor George said, “We must ask God’s forgiveness for our great national sin of abandoning the unborn to the crime of abortion and implore His guidance and assistance in recalling the nation to its founding ideals of liberty and justice for all.”

Feel free to join me as a sponsor next year, or at least to submit a salmon slip to speak in favor of the proposal. Email me at edwardjacobs@yahoo.com.
SPONSORS: Anthony M. Ciolli

PROPOSAL: Amends § 6.2(a)(1) of the ABA Constitution to provide the United States Virgin Islands with a State Delegate.

Amends § 6.2(a)(1) of the ABA Constitution to read as follows:

§6.2 Composition. (a) The House of Delegates, which is designed to be representative of the legal profession of the United States, is composed of the following members of the Association:

(1) The State Delegates, one for each state, who also serve as chairs of the delegate groups from the respective states.

(Legislative Draft – Additions underlined; deletions struck through)

§6.2 Composition. (a) The House of Delegates, which is designed to be representative of the legal profession of the United States, is composed of the following members of the Association:

(1) The State Delegates, one for each state and the United States Virgin Islands, who also serve as chairs of the delegate groups from the respective states.

. . . .
REPORT

Article 9 of the ABA Constitution provides the means for nomination for elected offices of the Association for elected members of the Board of Governors. Nominations may only be made in two ways: by the Nominating Committee, pursuant to Section 9.2, or by petition to the House of Delegates, pursuant to the provisions of Section 9.3. As a practical matter, virtually all nominations are made by the Nominating Committee, and nomination by the Nominating Committee is tantamount to the election to office by the House of Delegates.

Of the 69 members of the Nominating Committee, 52 are State Delegates, who represent the 50 States, the District of Columbia, and Puerto Rico. Nine members represent sections and divisions (seven selected by the Section Officers Conference, with the other two members elected, respectively, by the Young Lawyers Division and the Judicial Division). In recognition of the importance of assuring that membership on the Nominating Committee reflects membership in the profession as a whole, eight members of the Nominating Committee are Goal III members at-large selected from at-large nominations; however, the Goal III members are limited to those who are women, minorities, LGBT, or have a disability.

The U.S. Virgin Islands, despite having approximately 1,100 attorneys—only a couple of hundred less than small states such as North Dakota, and Wyoming—is not represented by a State Delegate, and therefore lacks representation on the Nominating Committee. This exclusion of lawyers from the U.S. Virgin Islands from the electoral process is inconsistent with the Association’s policy of inclusion, particularly Goal III, which states that it is the objective of the Association to “[p]romote full and equal participation in the association, our profession, and the justice system by all persons.” In fact, it is inconsistent with the Association’s long-standing policy, first adopted in 1992, urging that the United States Constitution be amended to permit citizens in American’s territories to vote in national elections.¹ It is also contrary to the governance policies of other national legal organizations—including the National Bar Association, the Federal Bar Association, and the Conference of Chief Justices—as well as other national professional organizations like the American Medical Association, none of whom exclude their dues-paying members from governance opportunities solely due to which part of the United States they call home.

This amendment, if adopted, would amend Article 6.2 of the ABA Constitution to provide the the U.S. Virgin Islands with a State Delegate, who pursuant to the existing language of Article 9.2 would automatically serve as a member of the Nominating Committee. Because the amendment only changes the definition of State Delegate to include the U.S. Virgin Islands, but does not change the definition of state found in Article 2.2, its adoption would not place the U.S. Virgin Islands in a district for the Board of Governors.

Every member of the American Bar Association ought to have a true voice in the election of the officers of the Association. This proposal would accomplish this objective for the U.S. Virgin Islands, whose attorneys have a long history of active involvement in the ABA.

Respectfully submitted,

Anthony M. Ciolli
SPONSORS:  Anthony M. Ciolli

PROPOSAL:  Amends § 6.4(a) of the ABA Constitution to allow individuals who meet a state’s definition of young lawyer to serve as a young lawyer member of the House of Delegates for that state.

Amends § 6.4(a) of the ABA Constitution to read as follows:

§6.4 State Bar and Local Bar Association Delegates. (a) A state bar association is entitled to at least one delegate in the House of Delegates, except that if there is more than one state bar association in a state the House shall determine which associations may select delegates. A state bar association in a state that has more than 4,000 lawyers is entitled to an additional delegate for each additional 2,500 lawyers above 4,000 until it is entitled to four delegates. A state bar association in a state that has more than 14,000 lawyers and not more than 20,000 lawyers is entitled to five delegates. If it has more than 20,000 lawyers, it is entitled to six delegates. If the bar associations of a state are entitled to four or more delegates, at least one delegate representing the state bar or a local bar association in that state must have been admitted to practice in his or her first bar within the past five years, or must be less than 36 years old at the beginning of the term, or meet the state’s definition of a young lawyer. Each state delegation, or meet the state’s definition of a young lawyer, as well as the United States Virgin Islands, that did not have an additional young lawyer delegate prior to the 2015 Annual Meeting shall be entitled to one additional delegate, chosen by either the state bar association or one of the qualifying local bar associations referred to in Articles 6.4(b) and 6.9 below, provided that such delegate was admitted to his or her first bar within the past five years or is less than 36 years old or meets the state’s definition of a young lawyer at the beginning of his or her term. It is the responsibility of the state bar association to ensure that this requirement is satisfied. However, a state bar association is entitled to at least as many delegates as it was entitled to certify at the 1990 annual meeting.

(Legislative Draft – Additions underlined; deletions struck through)

§6.4 State Bar and Local Bar Association Delegates. (a) A state bar association is entitled to at least one delegate in the House of Delegates, except that if there is more than one state bar association in a state the House shall determine which associations may select delegates. A state bar association in a state that has more than 4,000 lawyers is entitled to an additional delegate for each additional 2,500 lawyers above 4,000 until it is entitled to four delegates. A state bar association in a state that has more than 14,000
lawyers and not more than 20,000 lawyers is entitled to five delegates. If it has more than 20,000 lawyers, it is entitled to six delegates. If the bar associations of a state are entitled to four or more delegates, at least one delegate representing the state bar or a local bar association in that state must have been admitted to practice in his or her first bar within the past five years, or must be less than 36 years old at the beginning of the term, or meet the state’s definition of a young lawyer. Each state delegation, as well as the United States Virgin Islands, that did not have an additional young lawyer delegate prior to the 2015 Annual Meeting shall be entitled to one additional delegate, chosen by either the state bar association or one of the qualifying local bar associations referred to in Articles 6.4(b) and 6.9 below, provided that such delegate was admitted to his or her first bar within the past five years or is less than 36 years old or meets the state’s definition of a young lawyer at the beginning of his or her term. It is the responsibility of the state bar association to ensure that this requirement is satisfied. However, a state bar association is entitled to at least as many delegates as it was entitled to certify at the 1990 annual meeting.
REPORT

These amendments reconcile the eligibility requirements for young lawyer members of the House of Delegates representing state bar associations with the more-inclusive definition of “young lawyer” employed by 23 state bar associations.

The term “young lawyer” is not defined in the ABA Constitution, but is defined in the Bylaws of the ABA Young Lawyers Division as “a lawyer who has been admitted to practice in his or her first bar within the past five years, or is less than thirty-six years old.” These age and practice limitations have been incorporated into the language of § 6.4(a) of the ABA Constitution. However, the positions created by § 6.4(a) are not intended to represent the ABA Young Lawyers Division, but young lawyers generally throughout the country.2

When the ABA YLD first enacted the less than thirty-six years old age requirement in 1934, the average age of law school graduation was in the early 20s. However, in the ensuing 85 years, the average age of law school graduation has risen to the mid-to-late 20s. As a result, 23 state bar associations,3 other sections of the ABA,4 as well as numerous national, local, and international bar associations,5 have enacted expanded definitions of young lawyer that allow for greater age and years of practice limitations. Recognizing that state bar associations and other entities have enacted different definitions of “young lawyer,” the ABA Young Lawyers Division has amended its Bylaws to provide that individuals may continue to participate in Division governance if they are members in good standing of their state or local young lawyer affiliate, even if they are not members of the ABA YLD.6

1 AM. BAR ASS'N YOUNG LAWYERS DIV. BYLAWS § 2.1.
2 The ABA Young Lawyers Division is directly given representation in the House of Delegates and the Nominating Committee through § 6.2(5) and § 6.7. These provisions do not directly include specific age or practice limitations, but include them indirectly by requiring that the individuals be members of the ABA Young Lawyers Division.
3 The state bar associations with a definition of “young lawyer” that exceeds the definition of “young lawyer” found in the ABA YLD Bylaws include Arizona, Colorado, Connecticut, Delaware, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, the U.S. Virgin Islands, Vermont, and West Virginia.
4 ABA sections with a definition of “young lawyer” that exceeds those in the ABA YLD Bylaws include the ABA Business Law Section and the ABA Real Property, Trust, and Estates Section.
5 The number of local, national, and international bar associations that define “young lawyer” more inclusively is too voluminous to list, but includes the National Bar Association, the National Asian Pacific American Bar Association, the Canadian Bar Association, the American Association for Justice, the Defense Research Institute, the American Intellectual Property Law Association, the Chicago Bar Association, the Columbus Bar Association, and the New York City Bar Association.
6 AM. BAR ASS'N YOUNG LAWYERS DIV. BYLAWS § 4.2(a).
These amendments, if adopted, will allow states that have enacted more-inclusive definitions of “young lawyer” to allow individuals who meet that state’s expanded definition to serve as that state’s young lawyer member of the House of Delegates, or to serve as a young lawyer member-at-large to the Board of Governors. Although it does not appear that any state has a less-inclusive definition of “young lawyer” than that found in the ABA YLD Bylaws, the ABA YLD definition of “young lawyer” will remain in § 6.4(a) so as to provide a floor for eligibility. These changes will respect the decisions of our states and territories to define young lawyer differently from the ABA, and allow all young lawyers to fill positions designated for young lawyers generally.

Respectfully submitted,

Anthony M. Ciolli
SPONSORS: Negeen Sadeghi-Movahed (Principal Sponsor), Matthew Wallace, Sarah Correll, Taurus Myhand, Miosotti Tenecora, Erika Lessane, Ashley Baker

PROPOSAL: Amends Section 6.7(b) of the ABA Constitution to increase the number of delegates from three to six.

Amends Section 6.7(b) of the ABA Constitution to increase the number of delegates from three to six.

§6.7 Division or Conference Delegates.

...(b) Each year the Law Student Division shall elect, in the manner prescribed by its bylaws, three of its members as delegates to the House for one Association year.

(Legislative Draft – Additions underlined; deletions struck through)

§6.7 Division or Conference Delegates.

...(b) Each year the Law Student Division shall elect, in the manner prescribed by its bylaws, six of its members as delegates to the House for one Association year.
**REPORT**

**Law student reach has grown rapidly because of the Division’s changes.**

In 2014, law student membership in the ABA was hovering around 20,000 members, down from over 40,000 members at its peak in the 2000s. In 2015, to help address the steady decline in student membership and waning relevancy, the ABA Board of Governors took action to eliminate the $25 law student membership dues. ABA membership became free for American law students. Since then, the Division’s membership has grown rapidly. It now serves over 110,000 members, including law students and graduates who have not yet passed the bar. That represents an estimated three-quarters of all law students who attend ABA accredited law schools.

After the change to its membership dues, the Division worked diligently at ABA Board of Governors’ behest to create a “freemium” business model. For a yearly fee, students can upgrade to a premium membership which entitles them to extra benefits. The freemium business model and its benefits were developed in less than a year after the elimination of law student dues. The Division now has over 18,000 paid premium members included in its count of over 110,000 non-dues paying members. The premium program has brought in around $800,000 in revenue to the ABA over the last two fiscal years. Also during this time, Division volunteer leaders worked with staff to restructure its governance and implement voluntary cost-saving measures in order to redirect resources to activities and benefits that might attract a broader range of students. The new revenue streams and cost-cutting measures helped alleviate the loss in dues revenue to the Association. Despite this progress, the Law Student Division’s delegate count has not changed since its rapid membership growth and structural changes.

**Law student voices are underrepresented in the ABA House and across the Association.**

With only four students eligible to vote among the 589-member House of Delegates - three delegates and one Student at-Large on the ABA Board of Governors - students make up less than one percent (0.679%) of its composition. Given that students are ineligible to serve in various other House opportunities, these four are the only law students in the House. The House of Delegates infographic distributed in 2019 shows that only 3% of delegates are under thirty (30) years old. As the Association continues to focus on recruiting and retaining law students and young lawyers, those who join can be disheartened by a dearth of people who look like them in important Association roles.

Section 6.6 of the ABA’s Constitution and Bylaws entitles each section to a minimum of two delegates, with one additional delegate for a Section with more than 20,000 members, and one additional for a Section with more than 45,000 members. This model ensures that most constituencies and groups in the ABA have a level of representation that reflects their membership. This formula does not consider the additional, indirect representation that Sections and Divisions have through other types of delegate seats such as state and affiliate delegations, which law students are not eligible to hold. If the Law Student Division were a Section and its delegates were decided by the above-stated formula, the Division has not only surpassed the 45,000 member threshold to qualify for
a 4th delegate - it has more than doubled it. In comparison, the Young Lawyers Division, which now counts law students as a majority of its membership, is prescribed six (6) delegates.

At the 2018 Annual Meeting, the House of Delegates approved the Senior Lawyers Division’s proposal to increase its number of delegates in the House from two (2) to four (4) following its membership increase from approximately 3,500 members to around 63,000. The Division cited its increase in membership as justification for such a change. Similar to the Law Student Division, the Senior Lawyers Division’s increase in membership was the result of the Division’s transition from a dues-based entity to one free-of-charge to eligible Association members. And while the Senior Lawyers Division was awarded additional representation in 2018, the Senior Lawyers Division’s transition to a new business model and its membership growth occurred after the Law Student Division’s successful transition and even larger member growth.

The Law Student Division has been at the forefront of the American Bar Association’s efforts to turn around decreasing membership. It has changed its business model, increased law student membership, expanded its reach, developed new revenue streams, and cut ever-increasing costs. Yet, its representation in the House remains relatively miniscule. It is often stated that the Association’s new membership model must be implemented in a way that connects with law students and young lawyers- and that these groups must be a priority if the Association is to survive. We hear consistently from Association leadership that the next generation of lawyers must be given a meaningful voice within the ABA, and that all Association members must listen to that voice. This resolution is one step, albeit a small one, to put those words into action.

Respectfully Submitted,

Negeen Sadeghi-Movahed
Chair, 2018-19 Law Student Division

Matthew W. Wallace
Law Student at-Large, ABA Board of Governors
2018-19 Law Student Division
Sponsors: Tyrus H. Thompson (Principal Sponsor); Paul M. Breakman; Adrienne E. Clair; Patricia Dondanville; Lisa A. Dunner; Dorothy B. Franzoni; Sheila S. Hollis; Jonathan C. Ihrig; Christopher R. Koon; Richard Meyer; Steve Minor; Jay A. Morrison; Matthew R. Rudolphi; Robert B. Schwentker; Wallace Tillman; Clinton A. Vince

Proposal: Amend § 6.8(a) of the Constitution to include the Electric Cooperative Bar Association as an Affiliated Organization.

Amends § 6.8(a) of the Constitution to read as follows:

The following organizations are entitled to be represented in the House of Delegates as affiliated organizations: The American Immigration Lawyers Association, the American Law Institute, the Association of American Law Schools, the Association of Life Insurance Counsel, the Conference of Chief Justices, the Energy Bar Association, the Federal Bar Association, the Federal Circuit Bar Association, the Federal Communications Bar Association, the Hispanic National Bar Association, the Judge Advocates Association, the Maritime Law Association of the United States, the National Asian Pacific American Bar Association, the National Association of Attorneys General, the National Association of Bar Executives, the National Association of Criminal Defense Lawyers, the National Association of Women Judges, the National Association of Women Lawyers, the National Bar Association, the National Conference of Bar Examiners, the National Conference of Commissioners on Uniform State Laws, the National Conference of Women’s Bar Associations, the National District Attorneys Association, the National Legal Aid and Defender Association, the National LGBT Bar Association, the National Organization of Bar Counsel.

(Legislative Draft – Additions underlined; deletions struck through)

The following organizations are entitled to be represented in the House of Delegates as affiliated organizations: The American Immigration Lawyers Association, the American Law Institute, the Association of American Law Schools, the Association of Life Insurance Counsel, the Conference of Chief Justices, the Energy Bar Association, the Federal Bar Association, the Federal Circuit Bar Association, the Federal Communications Bar Association, the Hispanic National Bar Association, the Judge Advocates Association, the Maritime Law Association of the United States, the National Asian Pacific American Bar Association, the National Association of Attorneys General, the National Association of Bar Executives, the National Association of Criminal Defense Lawyers, the National Association of Women Judges, the National Association of Women Lawyers, the National Bar Association, the National Conference of Bar Examiners, the National Conference of Commissioners on Uniform State Laws, the National Conference of Women’s Bar Associations, the National District Attorneys Association, the National Legal Aid and Defender Association, the National LGBT Bar Association, the National Organization of Bar Counsel.
National Bar Association, the National Conference of Bar Examiners, the National Conference of Commissioners on Uniform State Laws, the National Conference of Women’s Bar Associations, the National District Attorneys Association, the National Legal Aid and Defender Association, the National LGBT Bar Association, the National Organization of Bar Counsel, and the National Native American Bar Association. and the Electric Cooperative Bar Association.
The purpose of this report is to respectfully request the Constitution be amended as set forth above so the Electric Cooperative Bar Association (ECBA) can be recognized as an Affiliated Organization and have a delegate in the American Bar Association (ABA) House of Delegates (House). Such status would be mutually beneficial for ABA and ECBA members. An ECBA delegate would add further diversity of practice and perspective to the debates and decision making of the House. It would also provide the House with another means by which to promote its important work. Equally, representation in the House would allow ECBA to be more formally engaged with the ABA and be more effective at supporting the ABA’s mission. Having an ECBA delegate would be a real opportunity to serve both organizations’ members and the legal profession.

ECBA would be a unique contributor to the existing ABA Affiliated Organizations. ECBA’s uniqueness is attributable to its members, where they practice law, the aspects of law they practice, and their clients – America’s Rural Electric Cooperatives.

The majority of ECBA’s roughly 770 attorney members are small firm or solo practitioners representing electric cooperatives across the United States – mostly in rural America. An ECBA delegate would provide an opportunity for the ABA to have a unique touchpoint for attorneys who predominately practice in communities across rural America. As the ABA has recognized, practicing law in rural America has unique issues, challenges, and opportunities. As a result, the ABA has supported efforts to help rural practitioners and communities – including pro bono and access to justice projects in rural communities. Some examples are the ABA’s support for Project Rural Practice and the ABA’s Rural Pro Bono Delivery Initiative. ECBA could assist the ABA with these and other efforts to support the practice of law in rural communities.

ECBA attorneys also have special knowledge about the cooperative business model – which is unique as compared to the for-profit business model. Businesses that operate using the cooperative business model can be found in many different industries in the United States, not just the utility industry. These cooperatives, including electric cooperatives, play a significant part in the U.S. economy, and play a vital role – such as the distribution of electricity to parts of the country where there may not otherwise be electric service. Interestingly, as far as we know, ECBA is the only formally organized bar association comprised of attorneys who represent cooperatives, and thus have this special knowledge of the cooperative business model and the legal issues that follow.

Finally, ECBA was established in 2000, and its roughly 770 attorneys are collegial, engaged, and care deeply about the legal profession. They are represented by a member-elected advisory board. They form a strong community of legal professionals that are proud to support their electric cooperative clients who are consumer-owned and whom serve the community. ECBA members also volunteer; for example, some ECBA members

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1 See Laird, Lorelei, In rural America, there are job opportunities and a need for lawyers. ABA Journal (Oct. 2014) (Cover Story).
have, and still do, volunteer to serve on ABA committees. ECBA members also show their engagement by frequently contributing to conversations about electric cooperative legal issues through an ECBA discussion list and attendance at ECBA sponsored events, like webinars and the ECBA annual meeting. If ECBA were honored with an ABA delegate, that same level of engagement and care would be made at the House meetings.

We respectfully ask the House to adopt the proposed amendment.

Respectfully submitted,

Tyrus H. Thompson (Principal Sponsor)

Paul M. Breakman
Adrienne E. Clair
Patricia Dondanville
Lisa Dunner
Dorothy B. Franzoni
Sheila S. Hollis
Jonathan C. Ihrig
Christopher Koon
Richard Meyer
Steve Minor
Jay A. Morrison
Robert B. Schwentker
Matthew R. Rudolphi
Wallace Tillman
Clinton A. Vince
SPONSORS: William Weisenberg, Russell Frisby, Estelle Rogers, and Mark Tuohey

PROPOSAL: Amends Section 31.7 of the Bylaws to dissolve the Standing Committee on Governmental Affairs.

Amends Section 31.7 to delete the paragraph headed Government Affairs.

Governmental Affairs. The Standing Committee on Governmental Affairs consists of not more than 11 members. The Committee has jurisdiction over matters relating to the Association’s governmental affairs program. In carrying out its functions, the Committee shall:

(a) Make recommendations to the Board of Governors regarding the governmental affairs program;
(b) Provide assistance to the Governmental Affairs Office;
(c) Review the legislative and governmental priorities recommendations of the Governmental Affairs Office;
(d) Make Committee recommendations to the Board of Governors on legislative and governmental priorities as it deems appropriate; and
(e) Select the members of Congress to receive recognition at ABA Day in Washington.
On May 2, 1996, a Task Force of distinguished lawyers highly knowledgeable about how the federal government makes policy issued a report to the ABA Board of Governors recommending that the ABA invest greater resources, both financial and staff, to become a more effective lobbying force on Capitol Hill and with the federal government generally. The report included the following seven recommendations:

1. Increase the staff and resources for the GAO, and ensure the staff has members from both sides of the political aisle.
2. Enhance the ABA’s grassroots network and grassroots involvement in Association advocacy.
3. Focus the governmental affairs agenda on a small number of core issues of the highest priority to the Association – those that affect the profession and the administration of justice.
4. Increase the Association’s leadership and Bar leaders in the Association's advocacy effort, including the convening of a day-long annual lobbying event on Capitol Hill.
5. Create a Standing Committee on Governmental Affairs to work with the Governmental Affairs Office to review the approaches and methodologies employed to implement the Association's governmental affairs agenda and to advise the Board on ways the program can be enhanced (specifically, “focus should remain on the process, not issues”).
6. Endorse and reaffirm the ABA’s role in the selection of federal judges.
7. Not establish a PAC, make campaign contributions, or endorse candidates for office.

During the next 20+ years, the ABA’s Executive Director and Director of Governmental Affairs insured that the ABA invested adequate staff and financial resources into the Association’s advocacy role to improve its effectiveness and bipartisan efforts. The Standing Committee on Governmental Affairs (SCGA) focused more on working with the ABA GAO staff to execute annual lobby days on Capitol Hill led by ABA leadership, state bar leaders, and grassroots advocates; improve on the Associations' grassroots network; prioritize legislative issues for each Congress; and focus the governmental affairs agenda as the need arose.

Initially, the Committee met at each annual and midyear meeting to achieve these objectives. In the last several years, however, there has been no need to meet in person. Instead, SCGA has used teleconferences to assist the GAO team on a more limited scope of tasks. Specifically, the SCGA has helped identify issues on which to advocate during ABA Day in Washington DC, approved recipients for the ABA’s Justice Awards, and helped identify and present recommended legislative priorities for each Congress to the BOG. Selection of advocacy issues for ABA Day and identification of recipients for the ABA Day awardees (Justice Awards and Grassroots Advocates Awards) are tasks also done by the ABA Day Planning Committee that the ABA President appoints. The Director of GAO continues to manage staff, resources, the grassroots network, and prioritization...
of lobbying efforts to support the Association’s day-to-day advocacy mission. Currently, the only task done solely by the SCGA is the identification and presentation of the recommended legislative priorities for each Congress.

As the last four Chairs of the Standing Committee on Governmental Affairs, we think that maintaining this standing committee is no longer a judicious use of dedicated Association resources. The Standing Committee requested $2,750 for FY2019, but that amount was cut completely in the final budget. At this point, we think the committee itself should be cut too and we unanimously offer the following recommendations: 1) the SCGA be defunded during the FY 2020 budget process; 2) the SCGA sunset at the conclusion of the 2019 Annual meeting; 3) the ABA Day Planning Committee assume full responsibility for working with the GAO to identify issues for the annual ABA Days in Washington DC and select recipients for the ABA’s Justice and Grassroots Advocacy Awards, and 4) the ABA President appoint one Board liaison experienced in governmental affairs to serve as a subject matter mentor to the Governmental Affairs Office and to help identify and present recommendations on legislative and governmental priorities to the Board of Governors for approval at the beginning of each Congress.

Respectfully submitted,

William Weisenberg
Chair, Standing Committee on Governmental Affairs

PROPOSAL: Amends §31.7 of the Bylaws to dissolve the Standing Committee on the American Judicial System.

Amends §31.7 of the Bylaws to delete the paragraph headed American Judicial System.

**American Judicial System.** The Standing Committee on the American Judicial System shall consist of twenty-one members as described in paragraph (a) and shall be composed of the Subcommittee on State Courts and the Subcommittee on Federal Courts, as described in paragraphs (c)-(d).

(a) The Standing Committee on the American Judicial System shall have twenty-one members appointed by the President. The members shall consist of a chair of the Standing Committee, who shall not be a currently serving judge, plus ten members designated as appointees to the Subcommittee on State Courts and ten members designated as appointees to the Subcommittee on Federal Courts. A majority of the members of each Subcommittee shall be non-judges. Annually, one non-judge member of each Subcommittee shall be designated by the President to serve as chair of that Subcommittee. The two chairs of the Subcommittees shall serve as vice-chairs of the Standing Committee. The chair of the Standing Committee and the two Subcommittee chairs shall comprise the executive committee of the Standing Committee.

(b) The Standing Committee on the American Judicial System shall:

1. coordinate activities within the Association and act as a clearinghouse for the Association’s activities relating to preservation and improvement of the judicial system, judicial independence and the preservation of fair and impartial courts, preservation of the American jury system, and methods of judicial selection and retention, including support of and coordination with the Task Force on Preservation of the Justice System and the Commission on the American Jury Project;

2. assist courts, administrative judiciaries, and bar associations to prepare for and respond to attacks on judicial independence, the ability of the courts to remain fair and impartial, and any other threats to the fair, impartial and efficient administration of justice;
support efforts to increase public understanding of the importance of fair and impartial courts, the role of the judicial branch, and other matters related to the fair and efficient administration of justice within American judicial systems;

(4) make recommendations to improve and enhance the American judicial system, support and protect fair and impartial courts, and ensure adequate funding of the American judicial system; and

(5) maintain liaison with other persons and organizations concerned with judicial reform, with the judiciary, and with other appropriate government officials and court-related entities.

(c) The Subcommittee on State Courts shall:

(1) carry out the mission of the Standing Committee with regard to state, local, and other non-federal American judicial systems;

(2) support efforts to increase public understanding of judicial selection and retention methods and to increase informed citizen participation in states where judges are subject to election of any kind;

(3) make recommendations regarding appropriate compensation for state and local judges, creation and filling of needed judgeships, and adequate funding of state and local judicial systems; and

(4) work with state and local courts and bar associations and maintain liaison with other persons and organizations concerned with judicial reform related to state courts and judicial selection, with the Conference of Chief Justices, the National Center for State Courts, and with other appropriate government officials and court-related entities.

(d) The Subcommittee on Federal Courts shall:

(1) carry out the mission of the Standing Committee with regard to the federal judicial system;

(2) study, monitor, and make recommendations regarding

(i) the appropriate compensation for federal judges;

(ii) the adequacy of the number of federal judgeships, including authorization of additional judgeships and filling judicial vacancies, and

(iii) the adequacy of the funding of the federal judicial system;
(3) work and maintain liaison with the federal judiciary and other appropriate
government officials and court-related entities to support and improve the
fair and effective administration of justice in the federal judicial system; and

(4) work with the ABA Governmental Affairs Office and maintain liaison with the
Administrative Office of the United States Courts, the Judicial Conference
of the United States, the Federal Judicial Center, and other persons and
organizations concerned with judicial reform related to the federal judicial
system.

(e) Ex-Officio Members. The chair of the Standing Committee may designate the chair
of any other ABA entity as an ex-officio member of the Standing Committee if the
jurisdiction of the other entity closely aligns with that of the Standing Committee
and if participation by the chair of the other entity as an ex-officio member will
advance the mission of the Standing Committee.

(f) Honorary Co-Chairs. Two Honorary Co-Chairs of the Standing Committee shall be
invited by the executive committee of the Standing Committee to serve one-year
renewable terms. One shall be a recently retired state Supreme Court Justice or
Judge of a state’s highest court of appeals. One shall be a retired federal court
judge. The Honorary Co-Chairs shall have such duties as determined by the Chair.
REPORT

The Standing Committee on the American Judicial System (“SCAJS”) was created by the ABA House of Delegates at the 2014 Annual Meeting to continue and expand upon the work of its predecessor entities, the Standing Committee on Federal Judicial Improvements and the Standing Committee on Judicial Independence. SCAJS focuses on protecting fair and impartial courts, improving the administration of justice, ensuring adequate court funding, and defending against unfair attacks on the judicial branch. It supports efforts to increase public understanding about the role of the judiciary and the importance of fair courts within the American democracy. Since its creation, SCAJS has elevated its profile, obtained significant grants, and engaged in outreach to state and federal judges around the country. SCAJS seeks to have a meaningful impact and ensure access to courts that are fair, efficient, and accountable, and is committed to carrying out its mission, providing greater coordination of efforts, and enhancing the ability of the ABA to be a national voice on behalf of the American judicial system.

In 2018, the Board of Governors voted to reduce the funding of the SCAJS to $8600 per year. The Committee lost all staff support, although the Judicial Division staff provided administrative assistance. The Committee met by conference call and in person at donated space at the Midyear Meeting in Las Vegas. SCAJS leaders presented a proposal to the Section of Litigation, asking that the Committee become part of the Section. The Section voted in favor of the proposal and the SCAJS seeks to dissolve its status as a standing committee and become an entity of the Section of Litigation.

The ABA President-Elect Judy Perry-Martinez and Alan Kopit, Chair, Standing Committee on the American Judicial System understand and agree with the decision to sunset the Committee.

Respectfully submitted,

Alan Kopit
Chair, Standing Committee on the American Judicial System
SPONSORS: Ruthe C. Ashley (Principal Sponsor), Stephen E. Chappelear, Alice A. Bruno, Michael D. Goler, Sebastian Kaplan, Adrienne C. Nelson, Carl D. Smallwood, G. Michael Witte

PROPOSAL: Amends Article 31.7 of the Association’s Bylaws to change the jurisdictional statement of the Standing Committee on Public Education.

Amends Article 31.7 of the Association’s Bylaws to change the number of members for the Standing Committee on Public Education and the Advisory Commission to the Standing Committee.

§31.7 Designation, Jurisdiction, and Special Tenures of Standing Committees.
The designation, jurisdiction, and special tenures of standing committees are as follows:

... Public Education. The Standing Committee on Public Education shall consist of fifteen members, one of whom shall be a designated national Law Day chair, appointed annually by the President, and the chair of the Standing Committee on Gavel Awards, who shall serve ex officio. The Standing Committee shall:

(a) Provide policy direction and oversight for the Division for Public Education and coordinate the activities of its component entities;

(b) Assist Association activities designed to improve public understanding about the law;

(c) Promote activities of, and assist, state and local bar associations, other legal groups, and nonlegal organizations in educating the public about the law; and

(d) Foster and promote comprehensive, multifaceted school and community-based public education programs, including the development and implementation of model public education programs for youth, college and adult audiences.

(Legislative Draft – Additions underlined; deletions struck through)

... Public Education. The Standing Committee on Public Education shall consist of fifteen members, one of whom shall be designated national Law Day chair, appointed annually by the President, and the chair of the Standing Committee on Gavel Awards, who shall serve ex officio. The Standing Committee shall:
(a) Provide policy direction and oversight for the Division for Public Education and coordinate the activities of its component entities.

(b) Foster Association activities designed to improve public understanding about the law;

(c) Promote activities of, and assist, state and local bar associations, other legal groups, and nonlegal organizations in educating the public about the law; and

(d) Foster and promote multifaceted school and community-based public education programs, including the development and implementation of model public education programs for youth, college, and adult audiences.

In 1997, the House of Delegates created the Advisory Commission to the Standing Committee on Public Education with the following charge:

The Advisory Commission shall consist of fourteen members.

The Advisory Commission membership will include educators and scholars, civic and media leaders, and representatives from new constituencies that public education programs seek to reach.

(Legislative Draft – Additions underlined; deletions struck through)

The Advisory Commission shall consist of fourteen members.

The Advisory Commission membership will include educators and scholars, civic and media leaders, and representatives from new constituencies that public education programs seek to reach.
The Standing Committee on Public Education seeks these changes to its jurisdictional statement to reduce the size of the Committee and its Advisory Commission. In the current budget environment, a reduction in the number of members of the Committee and Commission will significantly reduce expenses for meetings and travel for the Committee and Commission.

In 2018, the budget for meetings was cut to $8,600, which was based on a typical committee size of seven members. The Standing Committee on Public Education does not recommend reducing the size of the Committee and Commission to that level because the Division relies on the larger Standing Committee membership to be advocates and partners in the Division’s outreach and public education programs. Similarly, it wishes to maintain the Advisory Commission at a sufficient size to retain a diverse range of voices of educators, scholars, and other leaders who are audiences for and partners in the work of the Division.

The Standing Committee plans to reach the target numbers over three years by adding fewer members to the Committee and Commission each year as current members finish their three-year terms. The Committee and Commission expects to complete the reduction by the 2021-2022 bar year.

Respectfully submitted,

Stephen Chappelear, Chair
Standing Committee’s Subcommittee on Oversight and Planning

PROPOSAL: Amends Article 33.1 and Article 33.2 of the Association’s Bylaws to change the jurisdictional statements.

Amends §§ 33.1 and 33.2.

Article 33. Publications

§33.1 American Bar Association Journal. (a) The American Bar Association Journal shall be published by Board of Editors consisting of the President, the President-Elect, the Chair of the House of Delegates, and the Treasurer, who are members ex-officio, and nine Association members elected by the Board of Governors as vacancies occur.

(b) The Board of Editors shall elect one of its members as Chair. The Chair shall act as liaison with the Board of Governors and, on the invitation of the President, shall report to it and attend its meetings.

(c) Members of the Board elected by the Board of Governors serve for three-year terms and are ineligible to serve more than two terms. However, a member who is serving as Chair when his or her second term expires is eligible to serve a third term.

(Legislative Draft – additions underlined; deletions struck through)

§33.1 American Bar Association Journal. (a) The American Bar Association Journal shall have a be published by Board of Editors responsible for non-financial operations and the editorial integrity of the Journal. The Board of Editors consists consisting of the President, the President-Elect, the Chair of the House of Delegates, and the Treasurer, who are members ex-officio, and nine Association members elected nominated by the Board of Governors Editors and elected by the Board of Governors as vacancies occur.

(b) The Board of Editors shall elect one of its members as Chair. The Chair shall act as liaison with the Board of Governors and, on the invitation of the President, shall report to it and attend its meetings.

(c) Members of the Board elected by the Board of Governors serve for three-year terms and are ineligible to serve more than two terms. However, a member who is serving elected as Chair when his or her second term is expiring expires is eligible to serve a third term.
§33.2 Authority of Board of Editors. The Board of Editors shall manage the Journal and its financial affairs. It may employ an editor and such other employees as it considers necessary. It may create an advisory board. The proceedings of the Board of Editors shall be reported to the Board of Governors which, by a majority vote of its entire membership, may disapprove, change, or rescind any action or appointment of the Board of Editors.

(Legislative Draft – additions underlined; deletions struck through)

§33.2 Authority of Board of Editors. The Board of Editors shall manage the Journal and its financial affairs. It may employ an editor and such other employees as it considers necessary. It may create an advisory board. The proceedings of the Board of Editors shall be reported to the Board of Governors which, by a majority vote of its entire membership, may disapprove, change, or rescind any action or appointment of the Board of Editors.

The Board of Editors may provide recommendations to the Board of Governors on budget matters and revenue opportunities involving the Journal. An Editor-in-Chief/Publisher shall be employed by the Association and selected with consultation and advice from the Board of Editors. The Editor-in-Chief/Publisher shall be responsible for managing the operation, editorial content and editorial integrity of the Journal. The proceedings of the Board of Editors shall be reported to the Board of Governors which, by a majority vote of its entire membership, may disapprove, change, or rescind any action or appointment of the Board of Editors.
The current version of Article 33 of the Constitution and Bylaws has been substantially unchanged since the early 1920s, just after the ABA Journal was created. The language of sections 33.1 and 33.2 refers to actions that have been and are performed by management and thus, the language does not conform with actual practice. The proposed amendment to Article 33 will normalize the work of the Board of Editors, and the appointed volunteer members will be able to provide their perspectives and guidance regarding the Journal. Nothing in the proposed amendments will change the current practice of journalistic independence. The amendment will enable the Board of Editors to function in the manner that other appointed volunteer leaders function, and to permit the professional staff to handle the day-to-day management responsibilities.

Respectfully submitted,

Scott C. LaBarre
Lynne B. Barr
Andrew J. Demetriou
H. Russell Frisby, Jr.
Rew Goodenow
Susan Holden
Andrew J. Markus
Lorelie S. Masters
Hon. Leslie Miller
C. Edward Rawl
RESOLUTION

RESOLVED, That the American Bar Association urges state, local and territorial jurisdictions to use a central panel system for state administrative law adjudications; and

FURTHER RESOLVED, That the American Bar Association encourages state legislatures to implement several recommendations to increase central panel fairness and efficiency, including (1) independent funding allocated directly by the legislature; (2) the creation of an advisory council to review, analyze, and advise on current and proposed central panel practices; (3) a more balanced system of generalist/specialist ALJs within the central panels; (4) a complaint process for parties to voice their concerns; and (5) more training for adjudicating pro se litigants, addressing implicit bias, and increasing ALJ diversity.
EXECUTIVE SUMMARY

1. Summary of the Resolution

As more state, local and territorial governments look to create efficiency in the administration of their duties, administrative adjudication is increasingly utilized to resolve litigation instituted by governmental agencies or the general public. Typically, litigation in an administrative hearing is presided over by an Administrative Law Judge, or comparable hearing officer ("ALJ"), who is employed by or contracted by an agency that is usually a party to the litigation. While the ALJ and the agency can and often do take steps to ensure impartiality and independence, a negatively inherent perception of this relationship remains. This perception seldom reflects the reality of a conflict, but in the eyes of the citizen-litigant the perception creates doubt.

A central panel removes the ALJ from the agency and places the ALJ in a neutral central agency reporting to a chief ALJ. By removing the ALJ from the agency that is a party to the litigation, the central panel removes the stigma of this inherently negative perception. This creates in the ALJ a degree of decisional independence that allows the ALJ the ability to decide cases based on the facts and the law, avoiding even the appearance of a conflict.

This Resolution encourages state, local and territorial jurisdictions to establish the central panel model for administrative hearings as it has been demonstrated that this system of administrative adjudication delivers decisional independence, increased efficiency, cost effectiveness, greater transparency, a highly-qualified cadre of administrative law judges, expansion of jurisdiction, greater protection for unrepresented litigants, and enhanced public trust in an impartial system of administrative justice for all litigants. These conclusions have now been confirmed by the 2019 Chicago Appleseed Fund for Justice Report entitled, The Need for a Central Panel Approach to Administrative Adjudications: Pros, Cons, and Selected Practices, authored by Malcolm C. Rich, JD and Alison C. Goldstein, MPH (with pro bono assistance from Goldberg Kohn). The Resolution also outlines five specific recommendations to increase central panel fairness and efficiency.

2. Summary of the Issue that the Resolution Addresses

The continued expansion of central panels into state, local and territorial governments will enhance the administrative law judiciary by removing the perception associated with a judiciary that is compensated by a party to the litigation. A majority of the states and many metropolitan areas have already converted from the old decentralized agency adjudicator system to the central panel model. Most central panels are different and custom designed. This resolution recommends the continuation of a custom design central panel based
on conclusions reached in a new comparative central panel study. In support of this concept, Malcom Rich’s original research in 1981 was the seminal study of the then existing seven state central panels. His original monograph study was commissioned by the American Judicature Society in 1980 and was later published as a law review article, entitled, *Adapting the Central Panel System: A Study of Seven States*, in 65 JUDICATURE 246 (1981). After almost 40 years Malcom Rich again undertook a thorough study of the now greatly expanded majority of states that have now established a central panel. Since his original study the central panel model has also spread to several major metropolitan areas. His conclusions in his most recent monograph study emphasizes the success of the existing central panels as “laboratories in developing new approaches to resolving disputes” when “the lives of hundreds of thousands of persons and businesses are at stake.” His latest study was partially underwritten by the American Bar Association. This Resolution, supported by the findings of this study and as previously conceptually endorsed by the ABA, encourages jurisdictions that have not adopted a central panel to now do so and thereby provide litigants a more just, effective and efficient forum.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Common within the broader context of the judiciary within American jurisprudence, the core functions of an ALJ is to hear the presentation of facts and law by the parties involved in litigation, make an impartial decision that is independent from all outside influences, and conduct mediations when appropriate. A separate central panel agency within a governmental unit becomes free to focus on judicial independence and efficiencies while providing the citizens a fair and impartial administrative hearing. To that end, ABA endorsement of the central panel approach for administrative adjudications will encourage other states, local and territorial jurisdictions that have not adopted this approach to consider doing so.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

No minority or opposing views have been identified.
RESOLVED, That the American Bar Association urges Congress to ensure that all Administrative Adjudicators, whether designated as Administrative Law Judges, Administrative Judges, Immigration Judges, Administrative Appeals Judges, Hearing Officers, Presiding Officers, or any other Administrative Adjudicator who decides matters of statute, regulation, or any equivalent thereto shall be free from improper influence in decision-making, including decisional quotas or agency pressure to decide a case on any basis other than on the evidence and in accordance with duly adopted agency rules and regulations, and that their decisional independence shall be protected; and

FURTHER RESOLVED, That the American Bar Association urges all state, local, county, territorial and tribal lawmakers to ensure that their respective Administrative Adjudicators, whether designated as Administrative Law Judges, Administrative Judges, Administrative Appeals Judges, Hearing Officers, Presiding Officers, or any other Administrative Adjudicator who decides matters of statute, regulation, or any equivalent thereto shall be free from improper influence in decision-making, including decisional quotas or agency pressure to decide a case on any basis other than on the evidence and in accordance with duly adopted agency rules and regulations, and that their decisional independence shall be protected.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

The Resolution encourages federal, state, and local governments to take all measures to maximize the ability of all Administrative Adjudicators to render decisions, freely, fairly, and independent of agency interference.

2. **Summary of the Issue that the Resolution Addresses**

All persons appearing before an Administrative Adjudicator are entitled to a fair and impartial hearing that fully comports with the requirements of due process. Any outside considerations that could impact the Administrative Adjudicator’s independent decision-making in a given case, whether they be job incentives, personal allegiances, or otherwise, are anathema to the judges’ constitutional duties. These resolutions seek to address those fundamental concerns.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

The resolution will encourage Congress and state, territory, tribal, and local governments to take steps to insulate the administrative judiciary from improper influences from their employing agencies.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

None.
RESOLUTION

RESOLVED, That the American Bar Association urges the federal government to immediately implement the First Step Act of 2018 by providing all necessary funding for its full implementation;

FURTHER RESOLVED, the federal government should engage the National Institute of Justice to choose a nonpartisan, nonprofit organization, with expertise in risk and needs assessment, to host an Independent Review Committee to develop a risk-and-needs-assessment system necessary to implement the “earned time credits” provided for in the Act, so that certain federal prisoners can earn good-time credits by completing rehabilitative programming and engaging in productive activities that can be applied to pre-release custody or supervised release;

FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation to apply retroactively all of the sentencing amelioration provisions of the Act;

FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation to make effective immediately the increase in “good time credits” for federal prisoners from 47 days credit per year to 54 days per year; and

FURTHER RESOLVED, That the American Bar Association urges that, until legislation is adopted to make all of the sentencing amelioration provisions of the Act retroactive, the President and the Department of Justice should immediately implement a systemic program to consider commutation of the sentences of federal prisoners whose sentences would be lower if all of the ameliorative sentencing provisions of the Act were retroactive.
**EXECUTIVE SUMMARY**

1. **Summary of the Resolution** The resolution urges Congress to make the ameliorative provisions of the First Step Act retroactive and urges the President and Attorney General to take action to implement the provisions of the Act. It also urges the President to take action through his power to commute federal sentences to reduce them to what they would be if the ameliorative sentencing provisions of the Act were retroactive.

2. **Summary of the Issue that the Resolution Addresses** It assures that the correction of harsh federal prison sentences corrected by the Act are corrected for all eligible federal inmates regarding whom it is unclear whether the Act currently applies. The Act is unclear about retroactive application of its provisions or does not apply for the retroactive application of provisions.

3. **Please Explain How the Proposed Policy Position Will Address the Issue** The proposed policy would seek to make the ameliorative sentencing provisions in the Act retroactive.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified** There have been no minority views expressed within or outside the ABA.
RESOLVED, That the American Bar Association urges state, territorial, tribal courts, and law schools to adopt a “Pro Bono Scholars Program” in their respective jurisdictions that allows law students, in their final semester of law school, to obtain a full-time externship placement providing supervised pro bono services which deliver legal and other law-related services to the underserved through non-profit legal organizations; and

FURTHER RESOLVED, That the American Bar Association urges that eligible “Pro Bono Scholars” be provided the opportunity to take the February bar examination in their respective jurisdictions (if offered) during their final semester of law school.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges state, territorial, tribal courts, and law schools to adopt a “Pro Bono Scholars Program” in their respective jurisdictions that allows law students, in the final semester of law school, to obtain a full-time externship placement providing supervised pro bono services which deliver legal and other law-related services to the underserved through non-profit legal organizations. The Resolution also urges that eligible “Pro Bono Scholars” be provided the opportunity to take the February bar examination in their respective jurisdictions (if offered) during their final semester of law school.

2. Summary of the Issue that the Resolution Addresses

This Resolution hits on three main issues: (1) moving towards closing the access-to-justice gap through the administration of greater pro bono legal services; (2) preparing law school graduates for the profession with greater practical experience; and (3) providing schools and states with a program that better prepares their students and better attracts students to their law schools and jurisdictions.

3. Please Explain How the Proposed Policy Position Will Address the Issue

First, with regard to the access-to-justice gap, each law student who participates in a Scholars program will provide, on average, 500 hours of pro bono legal services to their local community. This is a substantial, immediate impact on communities nationwide.

Second, with regard to practical experience, it is undisputed that working full-time for several months prior to graduation from law school will prepare law students to be better lawyers. It will benefit both those students who do have jobs lined up to excel as first-year associates; and, it will give a significant advantage to those students who do not yet have jobs, by providing them connections, experience, and a head-start on their career.

Finally, through the development of these programs, law schools will maintain autonomy is designing a program, accepting students, selecting placements, and offering the classroom component. Moreover, this program provides an attractive marketing opportunity with regard to prospective students, forms strong connections between law schools and their local communities (thereby helping schools reap short and long term benefits), and does not dismiss schools’ needs with regard to tuition.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

No opposition has been identified.
RESOLVED, That the American Bar Association urges Congress to enact S. 22, the Medicare Dental Benefit Act of 2019 (116th Cong.), or similar legislation to repeal the statutory exclusion of dental care and dentures in Section 1862(a)(12) of the Social Security Act and expressly add coverage of comprehensive dental and oral health services to the Medicare program.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
The resolution calls for Congressional action to repeal the statutory exclusion of dental care and dentures from Medicare and expressly add coverage of comprehensive dental and oral health services to the Medicare program.

2. **Summary of the Issue that the Resolution Addresses**
The lack of access to oral health benefits under Medicare, especially for the poor and minorities, results in major health complications, poor health overall, economic hardship, and increased medical costs to the public for treatment of the adverse effects.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**
It supports legislation to repeal the current statutory exclusion of dental care and dentures from Medicare and expressly add coverage of comprehensive dental and oral health services to the Medicare program.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**
None identified.
RESOLVED, That the American Bar Association urges all lawyers who provide estate planning services to include counseling for advance care planning that comports with the following principles:

1. The most important legal component of advance care planning is careful selection and appointment of a health care agent/proxy in a valid power of attorney for health care document. Persons who cannot or do not want to identify a proxy should delineate their wishes in an advance directive.

2. Advance care planning takes place over a lifetime. It changes as one’s goals and priorities in life change through different stages of life and health conditions. Reflection, discussion, and communication with one’s proxy and clinical professionals, along with family, friends, and advisors is essential to having one’s wishes understood and honored.

3. Reflection and discussion should focus primarily on one’s values, goals, and priorities in the event of worsening health rather than on specific treatments or clinical interventions for distant hypothetical situations.

4. Advance care planning decision tools and guides can provide structure and guidance to the process of reflection and discussion and help individuals identify their values, goals, and priorities, and ensure more authentic and useful conversations and advance directives.

5. Instructions and guidance documented in an advance directive should result from the process of information sharing, reflection, discussion, and communication and provide enough flexibility in application to allow surrogate decision-makers to respond to new circumstances and complexities.

6. Documentation of one’s values, goals, and wishes in the form of an advance directive or other record should be shared with one’s proxy, loved ones, significant
others, and primary/key health care providers, and be included in the medical record, so that they are adequately informed before a crisis arises.

(7) If individuals are facing serious diagnoses, such as cancer, or have been told they have a limited prognosis, the focus may then move to specific treatment preferences. In these cases, the client should be advised to confer with their health care provider to create a care plan that aligns with the client’s goals, values and preferences. For advanced illness, clients should be advised to inquire about palliative care options and the appropriateness of portable medical orders such as Physician’s Orders for Life Sustaining Treatment (POLST) to ensure that the individual’s wishes are translated by medical professionals into actionable medical orders; and

FURTHER RESOLVED, That the American Bar Association urges lawyers who provide estate planning services to seek greater coordination of advance care planning efforts with the healthcare system and medical providers through congruent advice and practices, greater willingness to reach out to one another, and greater collaboration in joint continuing education.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges all lawyers who provide estate planning services to include counseling for advance care planning that comports with seven principles that were developed through the John A. Hartford Foundation funded project, under which the Commission on Law and Aging brought together legal and clinical experts together to examine how the advance care planning practices of lawyers and clinicians could be brought into greater alignment, so as to ensure patient/client values, goals, and wishes are known and honored near the end of life.

The second resolved clause urges greater coordination of advance care planning efforts with the healthcare system and medical providers through congruent advice and practices, greater willingness to reach out to one another, and greater collaboration in joint continuing education.

2. Summary of the Issue that the Resolution Addresses

Advance care planning research literature strongly identifies the process of repeated, meaningful discussion among patient and family and health care providers and use of decision aids as critical factors in effective advance care planning. Lawyers are not well-positioned to engage clients fully in that process. Lawyers have mainly been drafters of advance directive documents. While the existence of an advance directive makes a difference, the real driver for having patients’ wishes known and honored is the conversation before and during any clinical episode. Effective practice principles and techniques have been developed that can be incorporated into the usual workflow of lawyers that can enhance their clients engagement in advance care planning and result in more effective advance directives.

3. Please Explain How the Proposed Policy Position Will Address the Issue

These practice principles developed by clinical and legal experts will change both the conceptual understanding and the counseling practices of lawyers to bring legal practices into greater alignment with clinical realities and ensure patient/client values, goals, and wishes are known and honored near the end of life.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None identified.
RESOLVED, That the American Bar Association urges Congress to enact legislation to exempt from the Controlled Substances Act any production, distribution, possession, or use of marijuana carried out in compliance with state laws;

FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation to remove marijuana from Schedule I of the Controlled Substances Act, 21 U.S.C. §§ 801 et seq.; and

FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation to encourage scientific research into the efficacy, dose, routes of administration, or side effects of commonly used and commercially available cannabis products in the United States.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution resolves the current stalemate between state and federal law over marijuana regulation and to update federal marijuana policy. A majority of states have legalized marijuana in at least some circumstances, while the federal government continues to ban the drug outright. Although the federal government has taken limited steps to accommodate state reforms, the gap between state and federal law has created a regulatory quagmire that is counter-productive for all parties interested in marijuana policy. The resolution allows states to develop their own sensible marijuana policies while giving the federal government an important role in establishing minimum regulatory standards. The resolution enables beneficial access to marijuana under federal law and promotes research to ensure that both state and federal policy are informed by scientific knowledge.

2. Summary of the Issue that the Resolution Addresses

This resolution addresses the outdated placement of marijuana as a Schedule 1 controlled substance in federal Controlled Substances Act and the continuing conflict with newly-enacted state statutes that either allow marijuana use by adults and/or for medical purposes. Businesses that produce marijuana lawfully within state borders are not able to utilize banking services and other federal statutes regulating commerce. Placement of marijuana as a Schedule 1 controlled substance is a barrier to research, and without research, the DEA cannot recommend that marijuana be moved to another schedule or be eliminated from the CSA altogether.

3. Please Explain How the Proposed Policy Position Will Address the Issue

These resolutions will allow the ABA to advocate for federal statutes that remove marijuana from Schedule 1 of the CSA, that enable marijuana businesses to utilize banking and other services run by the federal government, and encourages research into marijuana.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified.

These resolutions do not address and do not promote international trafficking of marijuana, which many believe should still be illegal at both the state and federal level. In addition, there are concerns about the overuse of marijuana by young people and adults, or the public threat by those who operate a motor vehicle while under the influence of marijuana; many of these views would be addressed if there was greater factual evidence of the benefits and harm of marijuana.
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal courts and legislatures to develop policies and protocols as to who may carry firearms in courthouses, courtrooms, and judicial centers that allow only those persons necessary to ensure security, including approved safety officers, judges, and court personnel, have weapons in the courthouse, courtroom, or judicial center, including common areas within the buildings as well as the grounds immediately adjacent to the justice complex, and that require training for those who are permitted to carry firearms.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Urges state, local, territorial, and tribal governments to enact statutes, rules, or regulations and judges promulgate policies to limit the possession of firearms in court houses and judicial centers, including common areas within the buildings as well as grounds immediately adjacent to the justice complex, to those charged with courtroom and judicial center security or active law enforcement officers, unless they are a party to the action pending before the court. All persons permitted to carry firearms in the courtroom, courthouse or judicial center, should be required to train in firearm safety.

2. Summary of the Issue that the Resolution Addresses

Increasingly, there have been occurrences where violence has erupted and firearms are used inside and outside of the courtroom as well as areas in the surrounding justice complex. When parties and court personnel believe court facilities are not safe, the integrity of the entire judicial process is compromised and undermined. Courtrooms and the judicial complex should be perceived as safe and secure environments. Most restrictions on possession of firearms within the courthouse complexes provide so many exceptions as to make such constraints meaningless. Tragically firearms have been wrestled away from personnel who are authorized to carry firearms while providing courtroom security.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Limited exceptions to any ban as to who may possess firearms in the courtroom and expanding the area of the ban to the entire judicial complex will provide both for the immediate safety of persons attending court proceedings as well as a cooling off period before persons have access to their personal firearms. Courtroom personnel who are both proficient in firearm safety as well as firearm use, will reduce the incidences of firearms seized from lawfully armed individuals.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.
RESOLVED, That the American Bar Association urges all employers in the legal profession to implement and maintain policies and practices to address and close the compensation gap between similarly situated men and women lawyers. Such policies and practices for achieving that goal may, depending on the circumstances, include the following:

1. Commit to a policy where leadership and governance committees are comprised of a critical mass of women including diverse women;  
2. Commit to include a critical mass of women including diverse women in the pool of candidates for leadership roles;  
3. Not rely solely on prior salary history when setting compensation for new hires;  
4. Implement training for the elimination of gender bias for all involved in hiring and compensation setting processes;  
5. Ensure that in the performance review process implicit bias does not go unchecked and does not lead to an unwarranted compensation gap;  
6. Have a transparent compensation system to allow leaders and executives to identify compensation gaps with attorneys who are similarly situated to them;  
7. Identify, in writing, key elements that determine compensation and which may help the attorneys succeed and increase their compensation;  
8. Provide an appeal process for compensation decisions;  
9. Analyze on an individual basis the causes for any compensation gap between similarly situated attorneys of different genders, whether in base, bonus, or other compensation;
10. Have a written protocol for allocation of credit for business generation, including an appeal process;

11. Remove barriers to business generation, including gendered exclusion from business generation teams, inordinate legacy credit for existing clients and implement a transparent system for business origination opportunities;

12. Provide equal access to mentoring and sponsoring relationships and marketing opportunities across genders, and implement a transparent system for succession of leadership opportunities;

13. Analyze gaps in promotion rates between similarly qualified attorneys of different genders and addressing the cause of such gaps;

14. Review the assignment system to ensure that attorneys of different genders have equal access to high-impact and high-visibility assignments that may lead to higher compensation; and

15. Consider the impact of non-legal task assignments on attorneys of different genders and their compensation.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges all legal employers to implement and maintain policies and practices to close the compensation gap between similarly situated male and female lawyers. It also identifies fifteen best practices and policies that legal employers can implement in order to eliminate the gender pay gap in their organizations.

2. Summary of the Issue that the Resolution Addresses

This Resolution addresses the compensation inequality that continues to exist between men and women within the legal profession. The Resolution outlines specific practices and policies based on the association's own research and available data. By implementing the practice and policies outlined in this Resolution organizations can promote equality in compensation between male and female lawyers.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposed policy addresses the issue of compensation inequality by providing best practices and policies that legal employers can implement in order to eliminate compensation disparity.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None at this time.
RESOLUTION

RESOLVED: That the American Bar Association urges each state’s highest court, and those of each territory and tribe, to study and adopt proactive management-based regulatory programs appropriate for their jurisdiction, as a way to enhance compliance with applicable rules of professional conduct and supplement existing disciplinary enforcement mechanisms, and to:

a. assist lawyers, law firms, and other entities in which lawyers practice law in the development and maintenance of ethical infrastructures that help to prevent violations of applicable rules of professional conduct;

b. reduce complaints to lawyer disciplinary authorities;

c. enhance lawyers’ provision of competent and cost-effective legal services; and

d. encourage professionalism and civility in the profession.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This collaborative work of the Standing Committee on Professional Regulation and Young Lawyers Division urges each state’s highest court, and those of each territory and tribe, to study and adopt jurisdictionally appropriate proactive management-based regulatory (PMBR) programs to enhance compliance with applicable rules of professional conduct and supplement existing disciplinary enforcement mechanisms. PMBR programs offer a systemic preventive approach to help lawyers, and the entities where they practice law, develop ethical infrastructures to improve the delivery of competent and cost-effective legal services. PMBR programs operate separately from the disciplinary process. A goal of PMBR is to reduce complaints to lawyer disciplinary agencies and malpractice actions. PMBR programs encourage professionalism and civility, and change for the better the relationship between the regulator and regulated. PMBR programs are not one-size-fits-all, may be crafted to meet the needs of each jurisdiction, and are reasonable in cost.

PMBR is consistent with longstanding ABA regulatory policies, including the 1992 Report of the Commission on Evaluation of Disciplinary Enforcement (McKay Report) and the 2016 ABA Model Regulatory Objectives for the Provision of Legal Services.

2. Summary of the Issue that the Resolution Addresses

PMBR programs provide lawyers with an array tools, including self-assessment checklists and online programming, to help them and the entities where they practice law develop ethical infrastructures and identify where they may need additional skills, training, and education. As noted above, PMBR’s goals are also to reduce complaints to lawyer disciplinary authorities and encourage professionalism and civility in the profession.

The Professional Regulation Committee has been studying PMBR since 2015 and has watched how it has evolved and succeeded in other countries. Studies relating to those programs are included in the Report. Of note, PMBR programs are not one-size-fits all. Jurisdictions may adopt the PMBR programs that best fit the needs of and circumstances in their jurisdiction.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Adoption of this joint Professional Regulation and Young Lawyers Division Resolution will demonstrate the ABA’s leadership role in this arena and its value to the profession and members through its commitment to bettering lawyers’ ethical and cost-effective delivery of legal services in a publicly protective way.
This is especially important in today’s legal services marketplace where more young lawyers are entering solo or small firm practice immediately upon licensure and need the tools and support that PMBR programs provide.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.
RESOLVED, That the American Bar Association reaccredits for an additional five-year term the following designated specialty certification program for lawyers:

Child Welfare Law program of the National Association of Counsel for Children of Denver, Colorado;

Family Trial Law program of the National Board of Trial Advocacy of Wrentham, Massachusetts; and

Criminal Trial Law program of the National Board of Trial Advocacy of Wrentham, Massachusetts.
EXECUTIVE SUMMARY

1. Summary of the Resolutions

The resolution grants reaccreditation to the Child Welfare Law program of the National Association of Counsel for Children, and the Family Trial Law and Criminal Trial Law programs of the National Board of Trial Advocacy.

2. Summary of the Issue the Resolution Addresses

To respond to a need to regulate certifying organizations, the House of Delegates adopted standards for accreditation of specialty certification programs for lawyers, and delegated to the Standing Committee the task of evaluating organizations that apply to the ABA for accreditation and reaccreditation. This Resolution satisfies the Standing Committee’s obligation to periodically review programs that the House of Delegates has accredited and recommend their further reaccreditation or revocation of accreditation.

3. Explanation of How Proposed Policy Position Will Address Issue

The recommendation addresses the issue by implementing previous House resolutions calling on the ABA to evaluate specialty certification organizations that apply for accreditation and reaccreditation.

4. Summary of Minority Views or Opposition

The Standing Committee on Specialization approved the proposed recommendation unanimously. No opposition has been identified.
RESOLVED, That the American Bar Association urges Congress and the United States Department of Education to collect data and prepare a report on: (1) how racism, poverty, and living in high crime communities psychologically impacts youth; and (2) the quality of in-school mental health services that are provided to youth experiencing mental health problems as a result of these stressors;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments and school districts to appropriate and allocate funds to in-school mental health services to identify and address mental health conditions related to racism, poverty, and living in high crime communities; and

FURTHER RESOLVED, That the American Bar Association urges local governments, school districts, boards, and commissions to review mental health policies and practices in schools to ensure that the mental health needs of youth living in poverty or high crime communities or experiencing race-based mental health illness are appropriately addressed.
EXECUTIVE SUMMARY

1. **Summary of Resolution.**
   
   This recommendation seeks to ensure that children who live in poverty, high crime communities, or experience race-based trauma receive the in-school mental health services needed to maintain or restore good health. It further urges federal, state, local, territorial, and tribal governments and school districts to appropriate and allocate funds to support this initiative.

2. **Summary of the Issue which the Resolution addresses.**
   
   Children living in poverty and high crime communities, as well as children of color who experience racism, often encounter multiple or prolonged traumatic events. This can greatly impact a child’s academic performance, social, emotional, and behavioral health, and overall ability to be successful both in and out of school. Unfortunately, due to various factors, many of these children do not get the mental health support that they need. Furthermore, research suggest that many of these children are disproportionately punished in school when mental health services and interventions may be more appropriate.

3. **An explanation of how the proposed policy position will address the issue.**
   
   Through additional research, governments and interested entities will gain a deeper appreciation of these issues, which ideally will result in evidence-informed policy decisions. This can include additional funding to train both teachers and health professionals in race-based trauma as well as in identifying symptoms of trauma. Finally, with appropriate in-school mental health services, student learning and overall-wellbeing will improve.

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.
RESOLVED, That the American Bar Association supports legislation creating the establishment of a program within the U.S. Copyright Office with authority to adjudicate copyright small claims as a lower-cost, less-time-consuming alternative to federal court litigation of copyright claims, provided that participation in the program is voluntary for all parties to the dispute, the claim is limited to seeking the types of monetary relief permitted by the Copyright Act (including statutory damages, actual damages, and disgorgement of profits) and excludes injunctive relief, and the monetary relief is no more than a maximum set in accordance with the legislation (“Copyright Small Claims Program”); and

FURTHER RESOLVED, That the American Bar Association supports, in principle, that such legislation and any Copyright Small Claims Program reflect appropriate procedures and requirements, including:

(a) Requiring that adjudicators in the Copyright Small Claims Program have experience with copyright law and training in resolution of disputes;
(b) Allowing claims and responses to be submitted electronically, and to the extent a proceeding may require a hearing, using videoconference and teleconference technology, rather than requiring personal appearances; and allowing but not requiring parties to be represented by an attorney;
(c) Allowing parties to bring counterclaims in a Copyright Small Claims Program proceeding;
(d) Authorizing the Copyright Office to adopt appropriate rules and procedures to prevent abuse of the Copyright Small Claims Program;
(e) Allowing adjudicators in the Copyright Small Claims Program to consult with the Register of Copyrights on general issues of law; and
(f) Permitting the Register of Copyrights to review decisions of adjudicators in the Copyright Small Claims Program in appropriate circumstances.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution addresses the reality that copyright owners with small infringement claims essentially have a right without a remedy and the related impact on public benefits of the copyright system. The costs of bringing a federal lawsuit significantly outstrips the value of their claims, and they cannot resort to state courts, since they can pursue copyright claims only in federal court. The Resolution supports legislation creating the establishment of a program within the U.S. Copyright Office with authority to adjudicate copyright small claims as a lower-cost, less-time-consuming alternative to federal court litigation of copyright claims, provided that participation in the program is voluntary for all parties to the dispute, the claim is limited to seeking the types of monetary relief permitted by the Copyright Act (including statutory damages, actual damages, and disgorgement of profits) and excludes injunctive relief, and the monetary relief is no more than a maximum set in accordance with the legislation (“Copyright Small Claims Program”), and supports such legislation including appropriate procedures and requirements, including those listed in the Resolution.

2. Summary of the Issue that the Resolution Addresses

Mindful of the problems of access and the reality of a right without a remedy for copyright owners with small claims, Congress requested the Copyright Office undertake a study concerning new remedies to address small copyright claims, observing that “the inability to enforce one’s rights undermines the economic incentive to continue investing in the creation of new works . . . and deprives society of the benefit of new and expressive works of authorship.” The resulting Copyright Office report documents “the challenges of resolving small copyright claims in the current legal system” and observes that the problem of enforcing modest-sized copyright claims “appears to be especially acute for individual creators,” and recommends the creation of a small claims tribunal within the Copyright Office.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The Resolution supports legislation creating the establishment of a Copyright Small Claims Program, and supports including in such legislation appropriate procedures and requirements, including those listed in the Resolution.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

No known opposition.
RESOLVED, That the American Bar Association supports an interpretation of the phrase “where the defendant has committed acts of infringement” in the patent venue statute, 28 U.S.C. § 1400(b), for cases involving infringement under 35 U.S.C. § 271(e)(2) by submitting Abbreviated New Drug Applications (“ANDA”), that includes all of the acts (i.e., makes, uses, offers to sell, sells or imports) that would constitute patent infringement under 35 U.S.C. § 271(a); and

FURTHER RESOLVED, That the American Bar Association supports an interpretation of the phrase “where the defendant has committed acts of infringement” in 28 U.S.C. §1400(b) such that venue in a patent infringement case involving an ANDA submission under 35 U.S.C. § 271(e)(2) is proper in a district in which the defendant who filed the ANDA submission is anticipated to commit acts of infringement.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution calls for the Association to adopt policy urging federal courts to interpret the clause “where the defendant has committed acts of infringement and has a regular and established place of business,” in the special venue statute, 28 U.S.C. § 1400(b) when applied to Abbreviated New Drug Application (ANDA) litigation under 35 U.S.C. § 271(e)(2) to mean a district in which the defendant who filed an ANDA application is anticipated to commit acts of infringement.

2. Summary of the Issue that the Resolution Addresses

This report addresses the question of venue for Abbreviated New Drug Application (“ANDA”) litigation purposes in light of the narrowed interpretation of patent venue under 28 U.S.C. § 1400(b) in TC Heartland, LLC v. Kraft Food Group Brands, LLC, 137 S.Ct. 1514 (2017). The Supreme Court held in that case that the state where a corporation “resides” is only the state where it is incorporated. Id. at 1520. This narrow interpretation of corporate residence has placed added emphasis on the remaining portion of § 1400(b), which permits venue to be laid in any jurisdiction “where the defendant has committed acts of infringement and has a regular and established place of business.” The ANDA context presents a unique uncertainty about the meaning of this clause because ANDA infringement suits often begin before the generic drug has been produced. The ANDA cause of action, 35 U.S.C. § 271(e)(2), makes it an “act of infringement to submit” certain drug applications for approval. Following TC Heartland, courts are divided regarding the meaning of “committed acts of infringement” in the context of an ANDA submission. Some courts have held that venue is appropriate in districts where future acts of infringement are anticipated to occur. Other courts have read the statute more restrictively, holding that venue is satisfied only where the ANDA submission was prepared and submitted, which would only be known to the ANDA filer.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The Resolution addresses this uncertainty by urging federal courts to interpret the clause “where the defendant has committed acts of infringement and has a regular and established place of business,” in the patent special venue statute, 28 U.S.C. § 1400(b), when applied to Abbreviated New Drug Application (ANDA) litigation under 35 U.S.C. § 271(e)(2) to mean a district in which the defendant who filed an ANDA application is anticipated to commit acts of infringement.” The Resolution urges courts to adopt this interpretation of the venue statute to provide venue predictability for parties, promote conservation of judicial resources, and align with the common and statutory meaning of infringement.
4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

We are aware of no ABA minority view or opposition.
RESOLUTION

1 RESOLVED, That the American Bar Association supports the principle that a patentee may recover compensatory damages under 35 U.S.C. § 284 for acts abroad that arise from domestic infringement of a patent pursuant to 35 U.S.C. § 271(f).
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution calls for the Association to adopt policy that supports the principle that a patentee may recover compensatory damages under 35 U.S.C. § 284 for acts abroad that arise from domestic infringement of a patent pursuant to 35 U.S.C. § 271(f).

2. Summary of the Issue that the Resolution Addresses

Congress passed Section 271(f) to abrogate the Supreme Court's decision in *Deepsouth* by creating a new type of domestic acts of infringement. Section 271(f) regulates domestic conduct, specifically the act of supplying unassembled components from the U.S. with the requisite intent, even though the statute contemplates and expressly mentions subsequent foreign activities. Once domestic liability is established, Section 284 provides for damages “adequate to compensate for the infringement.” The Federal Circuit’s application of the presumption against extraterritoriality to preclude lost profits arising from the subsequent foreign activity threatens to undercompensate the patentee and thus it was proper for the Supreme Court to reverse it.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The policy will provide Association support for Association *amicus* brief(s) or legislation relating to Section 271(f) to the extent future situations arise. The policy may also be relevant to other situations relating to patent infringement and compensatory damages for acts abroad.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

We are not aware of any ABA or non-ABA minority view or opposition.
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments, and the private sector, to recognize their obligation to address climate change and take action to achieve the following goals:

- Reduce U.S. greenhouse gas emissions to net zero or below as soon as possible, consistent with the latest peer-reviewed science, and
- Contribute the U.S. fair share to holding the increase in the global average temperature to the lowest possible increase above pre-industrial levels;

FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation that would:

- Utilize a broad range of legal mechanisms, including but not limited to market-based mechanisms and removal of legal barriers to reduction of greenhouse gas emissions, to achieve the goals set out above.
- Utilize a broad range of legal mechanisms to encourage and enable adaptation to climate change by federal, state, local, territorial, and tribal governments, and the private sector.
- Provide for a just transition for the people and places most dependent on the carbon economy.
- Recognize and incorporate sustainable development principles in reducing greenhouse gas emissions and adapting to climate change, in order to simultaneously promote economic development, social well-being, national security, and environmental protection;

FURTHER RESOLVED, That the American Bar Association urges the United States government to: (1) engage in active and constructive international discussions under the United Nations Framework Convention on Climate Change and its progeny, and (2) remain in, negotiate, or ratify treaties and other agreements to reduce greenhouse gas emissions and adapt to climate change; and
FURTHER RESOLVED, That the American Bar Association urges lawyers to engage in pro bono activities to aid efforts to reduce greenhouse gas emissions and adapt to climate change, and to advise their clients of the risks and opportunities that climate change provides.
EXECUTIVE SUMMARY

1. **Summary of the Resolution.**

The resolution urges federal, state, local, territorial, and tribal governments, and the private sector, to recognize their obligation to address climate change and take action to reduce U.S. greenhouse gas emissions to net zero or below as soon as possible, consistent with the latest peer-reviewed science, and to contribute the U.S. fair share to holding the increase in the global average temperature to the lowest possible increase above pre-industrial levels; urges the United States Government, state, territorial, and tribal governments, local governments, and the private sector to take a leadership role in addressing the issue of climate change; urges Congress to enact appropriate climate change legislation; urges the United States Government to engage in active international discussions to address climate change; urges lawyers to engage in pro bono activities to address climate change and urges them to advise their clients about the risks and opportunities in addressing climate change.

2. **Summary of the issue which the Resolution Addresses.**

Humans are contributing to climate change through emissions of greenhouse gases, principally carbon dioxide. Climate change presents significant risks to this and future generations. Climate change presents environmental risks, to be sure, but it also presents security, economic, and social risks. At the same time, the national and international response to climate change provides major opportunities for improving environmental quality, fostering economic growth and job creation, and enhancing domestic and global security. There is growing bipartisan agreement that climate change is a serious issue that requires further legal action at all levels of government and in private governance.

3. **Please Explain How the Proposed Policy Position Will Address the Issue.**

The proposed policy contained in the resolution will address this issue in four ways. First, it recommends that federal, state, local, territorial, and tribal governments, and the private sector, recognize their obligation to address climate change and to take action to reduce U.S. greenhouse gas emissions to net zero or below as soon as possible, consistent with the latest peer-reviewed science, and to contribute the U.S. fair share to holding the increase in the global average temperature to the lowest possible increase above pre-industrial levels. Second, the resolution recommends that Congress adopt appropriate climate change legislation. Third, it urges the United States Government to engage in active international discussions to address climate change. Fourth, the resolution encourages lawyers to engage in pro bono activities to address climate change and to advise their clients about the risks and opportunities in addressing climate change.
4. A summary of any minority views or opposition which have been identified. None.
RESOLVED, That the American Bar Association urges courts and lawyers to address the emerging ethical and legal issues related to the usage of artificial intelligence ("AI") including: (1) bias, explainability, and transparency of automated decisions made by AI; (2) ethical and beneficial usage of AI; and (3) controls and oversight of AI and the vendors that provide AI.
EXECUTIVE SUMMARY


The American Bar Association urges courts and lawyers to address the emerging ethical and legal issues related to the usage of artificial intelligence ("AI") including: (1) bias, explainability, and transparency of automated decisions made by AI; (2) ethical and beneficial usage of AI; and (3) controls and oversight of AI and the vendors that provide AI.

2. Summary of the issue which the Recommendation addresses.

Artificial intelligence promises to change the practice of law. There are many different ways that lawyers today are using AI to improve productivity and provide better legal services to their clients, and the usage of AI tools in the legal profession will only increase. It is essential for lawyers to be aware of (a) how AI can be used in their practices, including who their ethical duties apply to the use of AI, (b) the problem of bias in the development and use of AI, and (c) proper control and oversight of the use of AI by lawyers and their vendors.

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

The proposed policy position will increase understanding in the legal profession of the legal and ethical issues posed by the usage of AI.

4. A summary of any minority views or opposition which have been identified.

N/A
EXECUTIVE SUMMARY

1. Summary of the Resolution


2. Summary of the Issue that the Resolution Addresses

Business enterprises have tremendous potential both to advance developing economies and, in the process, to harm affected populations, particularly to the extent that business practices support corrupt governments directly or indirectly. This often means that business also has the influence and the opportunity to support human rights defenders who confront those governments and promote greater adherence to the rule of law. The Guidance that is the subject of the resolution provides an analytical and operational framework by which business, including legal counsel, can provide such support and, in so doing, enhance the human rights of affected populations while improving the overall business climate.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Building on February 2012 ABA policy endorsing the United Nations Guiding Principles on Business and Human Rights, the resolution endorses a framework for decision-making by business enterprises to support human rights defenders working to improve the rule of law “space” they share with business.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None received thus far.
RESOLUTION

RESOLVED, That the American Bar Association affirms that human dignity — the inherent, equal, and inalienable worth of every person — is foundational to a just rule of law; and

FURTHER RESOLVED, That the American Bar Association urges governments to ensure that “dignity rights” — the principle that human dignity is fundamental to all areas of law and policy — be reflected in the exercise of their legislative, executive, and judicial functions.
EXECUTIVE SUMMARY

1. Summary of the Resolution

   The resolution recognizes the inseparability of human dignity in all areas of law and policy (and not only those typically characterized as discrete “human rights” concerns), and urges governments to carry out their various functions in a manner consistent with this “dignity rights” principle.

2. Summary of the Issue that the Resolution Addresses

   As with “national security” or “fiscal policy” or myriad other areas of public concern, “human rights” often is thought of as a discrete set of legal and policy issues to be weighed against others. Properly understood, however, human rights forms the foundation of a just rule of law on which all other areas of democratic law- and policy-making are premised. The resolution therefore corrects the misperception by affirming the principle of “dignity rights,” which recognizes human dignity as a fundamental principle underlying a democratic rule of law across all areas of legal and policy concern.

3. Please Explain How the Proposed Policy Position Will Address the Issue

   Human dignity has existed since human beings have existed. What has changed in the decades since the end of World War II is the irrefutable and irreversible awareness that just laws do and must reflect human dignity. The ABA’s affirmation of human dignity as the foundation of rule of law, democracy, and the advancement of human rights in the United States would mark an important milestone in the ability of Americans to advocate for themselves — in the relationship between attorneys and their clients, in the language in which judges issue rulings, and in the foundation of constitutional rights.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

   None received thus far.
RESOLVED, That the American Bar Association urges the United States Government to enforce fully and consistently the Arms Export Control Act and the Foreign Assistance Act, particularly the human rights provisions thereof;

FURTHER RESOLVED, That the American Bar Association urges the United States Government to impose sanctions and other appropriate punitive measures against every person directly or indirectly responsible for the murder of journalist Jamal Khashoggi, and to seek their prosecution in proceedings that are consistent with international law; and

FURTHER RESOLVED, That the American Bar Association urges the Financial Action Task Force (FATF) to require that the Kingdom of Saudi Arabia address and resolve fully FATF’s concerns regarding the Kingdom’s failure to end terrorist financing emanating therefrom and the misuse of its anti-terrorism laws against non-terrorists, including lawyers, and that the Kingdom release all persons it has wrongfully detained, prior to granting the Kingdom membership in FATF.
EXECUTIVE SUMMARY

1. Summary of the Resolution

RESOLVED, That the American Bar Association urges the United States Government to enforce fully and consistently the Arms Export Control Act and the Foreign Assistance Act, particularly the human rights provisions thereof;

FURTHER RESOLVED, That the American Bar Association urges the United States Government to impose sanctions and other appropriate punitive measures against any and every person directly or indirectly responsible for the murder of journalist Jamal Khashoggi, and to seek their prosecution in proceedings that are consistent with international law;

FURTHER RESOLVED, That the American Bar Association urges the Financial Action Task Force (FATF) to require that the Kingdom of Saudi Arabia address and resolve fully FATF’s concerns regarding the Kingdom’s failure to end terrorist financing emanating therefrom and the misuse of its anti-terrorism laws against non-terrorists, and that the Kingdom release all persons it has wrongfully detained, prior to granting the Kingdom membership in FATF.

This resolution addresses specific legal and policy issues that bear on recent human rights abuses committed by the Kingdom of Saudi Arabia as part of its long record of such abuses. The resolutions urges actions that will address these recent abuses directly and, if implemented, carry significant potential impact on Saudi interests, which may have the effect of curbing the Kingdom’s malign behavior.

2. Summary of the Issue that the Resolution Addresses

The murder of the Saudi journalist, Jamal Khashoggi, in the Saudi consulate in Turkey, has drawn renewed attention to the Kingdom of Saudi Arabia’s poor human rights record. The Kingdom has a longstanding reputation as one of the world’s worst human rights abusers, including systematic misuse of its justice system to torture, imprison and execute those who advocate for democratic governance and the rule of law, including a number of lawyers.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The Kingdom of Saudi Arabia’s history of human rights abuse is intensifying, which demands a response both consistent and compliant with U.S. and international law. The U.S. Government has unique leverage with the Saudi Government, which it should exercise in defense of human rights and promotion of the rule of law. To the extent the ABA might influence the U.S. Government to undertake such action, it should do so.
4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None received thus far.
RESOLVED, That the American Bar Association urges legislatures and courts to define consent in sexual assault cases as the assent of a person who is competent to give consent to engage in a specific act of sexual penetration, oral sex, or sexual contact, to provide that consent is expressed by words or action in the context of all the circumstances, and to reject any requirement that sexual assault victims have a legal burden of verbal or physical resistance.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

The ABA urges legislatures and courts to define consent in sexual assault cases as the assent of a person who is competent to give consent to engage in a specific act of sexual penetration, oral sex, or sexual contact, to provide that consent is expressed by words or action in the context of all the circumstances, and to reject any requirement that sexual assault victims have a legal burden of verbal or physical resistance. Furthermore, the ABA urges all legislatures and courts to enact legislation or to adopt court rules that require judges in sexual assault cases in which consent is a disputed issue to specifically instruct juries that “the fact that a person did not resist, verbally or physically, to a specific act of sexual penetration, oral sex, or sexual contact does not mean that the person consented to that act.”

2. **Summary of the Issue that the Resolution Addresses**

Some jurisdictions and codes still assume a willingness to engage in sexual activity, even without any indication of consent absent significant resistance. The proposed definition of consent rejects that premise of willingness, and requires words or action to express a person’s willingness to engage in sexual activity.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

The proposed policy proposition addresses this issue by supporting a definition of consent that requires words or action to express a person’s willingness to engage in sexual activity, and cautions that the absence of verbal or physical resistance does not mean that the victim consented to the sexual act.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

n/a
RESOLVED, That the American Bar Association urges Congress to ensure that the health care delivered by the Indian Health Service ("IHS") is exempt from government shutdowns and federal budget sequestrations on par with the exemptions provided to the Veterans Health Administration;

FURTHER RESOLVED, That the American Bar Association urges Congress to enact advance appropriations legislation that would stabilize funding for IHS and provide funding that becomes available one year or more after the year of the appropriations act in which it is provided; and

FURTHER RESOLVED, That the American Bar Association encourages and supports legislation that:

1. addresses threats to the health and well-being of American Indian and Alaska Native people who tend to live in the most geographically remote and medically underserved parts of the United States;
2. avoids short-term continuing resolutions to fund the IHS budget;
3. ameliorates the harmful effects of federal budget sequestrations on IHS;
4. contributes to the fulfillment of the United States’ historic and unique federal trust responsibility owed to Indian tribes; and
5. provides sufficient, consistent, and predictable funding to support the basic health care needs of American Indian and Alaska Native people.
EXECUTIVE SUMMARY

1. Summary of the Resolution
This resolution urges Congress to ensure that the health care delivered by the Indian Health Service (HIS) is exempt from government shutdowns and federal budget sequestrations on par with the exemptions provided to the Veterans Health Administration, and to enact advance appropriations legislation that would stabilize funding for IHS and provide for advance appropriations.

2. Summary of the Issue that the Resolution Addresses
IHS is a division within the U.S. DHHS that receives an annual appropriation from Congress to provide direct medical and health services to over 2 million American Indian and Alaska Native people in the United States. IHS provides services directly through a network of hospitals, clinics, and health stations operated by IHS, and funds services provided at tribally operated health facilities.

This resolution seeks advance appropriations to allow federal programs to avert funding gaps and avoid short-term continuing resolutions that are enacted to prevent a funding gap from occurring until regular appropriations are completed or the fiscal year ends. When sequestration occurs, all nonexempt federal programs must be reduced by a uniform percentage. Congress may pass legislation to exempt certain federal programs from sequestrations and special rules to govern the sequestration of federal programs.

For several years, Indian tribes and tribal organizations have urged Congress to enact legislation providing IHS with advance appropriations to facilitate improved planning and provide for more efficient spending. Legislation authorizing advance appropriations for IHS would prevent federal funding gaps and avoid uncertainties associated with receiving funds through the enactment of short-term continuing resolutions. In addition, the enactment of legislation exempting IHS from federal budget sequestrations and legislation authorizing advance appropriations would provide equivalent status to IHS that currently is afforded to the Veterans Health Administration.

3. Please Explain How the Proposed Policy Position Will Address the Issue
This policy supports and encourages the enactment of legislation that would bring stability and certainty to the IHS budget by changing its funding to advance appropriations and providing an exemption from federal budget sequestrations. By adopting this Resolution, the ABA can promote the health, safety, and welfare of American Indian and Alaska Native people in the United States to the highest level.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified
No minority views or opposition have been identified.
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to enact legislation that:

1. Requires equal pay rates for employees of a different sex (which includes sexual orientation, gender identity, and gender expression), race or ethnicity who perform substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions;

2. Requires that a “bona fide factor other than sex” relied upon by an employer for pay disparities be job-related and consistent with business necessity;

3. Requires that any reasonable legitimate factor(s) relied upon by an employer for pay disparities account for the entire pay differential;

4. Requires employers to supply pay scales upon the request of an applicant;

5. Prohibits employers from seeking or relying upon an applicant’s salary history information;

6. Ensures the right of employees to discuss or inquire about their own or their co-workers’ wages;

7. Prohibits retaliation against employees who are claimants of, or witnesses to, an equal pay violation.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges Congress, the states, and territories to enact legislation that would provide stronger remedies and protections against pay discrimination on the basis of sex (including gender, gender identity, and gender expression), race and ethnicity to help overcome the persistent barriers that continue to impede the achievement of pay equity.

2. Summary of the Issue that the Resolution Addresses

Despite the fact that the federal Equal Pay Act (and many state equal pay laws) have been on the books for over 50 years, pay discrimination and the overall gender wage gap continue to persist, taking a tremendous toll on women, families, and communities as a whole. For women of color, who experience intersecting forms of discrimination, the pay gap is even worse. The lost income from the pay gap means that women and people of color are less able to build assets, which contributes to the equally dismal gender and racial wealth gap and higher rates of poverty. It is therefore critical that legislation be passed, and existing laws strengthened, to better address the many contributors to the gender and race wage gaps that continue to persist.

3. Please Explain How the Proposed Policy Position Will Address the Issue

As set forth in the companion report, the proposed policy urges enactment of laws which provides important protections that go beyond existing federal and, in many cases, state equal pay laws.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None identified.
RESOLVED, That the American Bar Association recognizes the constitutionality of the Indian Child Welfare Act, 25 U.S.C. §§1901-63 ("ICWA") and its accompanying regulations, specifically that:

1. ICWA establishes a political, not racial, classification that serves a compelling governmental interest.
2. ICWA does not violate the non-delegation doctrine, because tribes retain their authority to regulate child welfare.
3. ICWA does not commandeering the states, because it is permissible to impose obligations on state courts to enforce federal prescriptions; and

FURTHER RESOLVED, That the American Bar Association recognizes both the unique government-to-government relationship between the United States and tribes and the trust responsibility owed by the United States to tribes.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution supports the constitutionality of the Indian Child Welfare Act (ICWA), specifically in reference to *Brackeen v. Zinke* (appealed to the Fifth Circuit as *Brackeen, et. al. v. Bernhardt, et. al.*).

2. Summary of the Issue that the Resolution Addresses

The *Brakeen et. al. v. Zinke, et. al.* decision ruled that ICWA and its regulations of “Final Rules” were unconstitutional. Due to such a ruling, it sets dangerous precedent for tribes to not have legal authority in protecting American Indians/Alaska Natives children and their families. Additionally, this will further disavow tribes’ independent status and ability to rule as political entities.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposed policy proposition will allow the ABA to act in support of ICWA, which would extend to tribal jurisdiction over a stronger child welfare system and its goals for recognizing ethnic disproportionality.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

No minority views or opposition have been identified.
RESOLVED, That the American Bar Association urges the U.S. Department of Justice to retain—as a minimum threshold—existing policy protections, as codified at 28 C.F.R. § 50.10 (2016), that limit federal law enforcement in obtaining information from, or records of, members of the news media, and that limit federal law enforcement in questioning, arresting, or indicting members of the news media.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges the U.S. Department of Justice to retain—as a minimum threshold—existing policy protections, as codified at 28 C.F.R. § 50.10 (2016), that limit federal law enforcement in obtaining information from, or records of, members of the news media, and that limit federal law enforcement in questioning, arresting, or indicting members of the news media.

2. Summary of the Issue that the Resolution Addresses

The current DOJ news media policy, adopted in 2013, revised in 2015, and codified at 28 C.F.R. § 50.10 (2016), treats the use of certain law enforcement tools against members of the news media as “extraordinary measures.” Accordingly, the policy establishes high standards for the use of subpoenas, court orders, and warrants to obtain information from or about members of the news media, requiring approval by the Attorney General and notice to the targeted parties, with carefully curtailed exceptions. These requirements represent a careful effort to balance the needs of law enforcement with the right of the press to inform civil society; protecting national security with fostering government accountability; and administering justice with promoting open public debate. Any attempts to loosen these requirements would upset this balance, undermining the news media’s ability to gather information from confidential sources and chilling their newsgathering efforts in covering topics of public concern.

In 2017, the DOJ announced that it was considering drastic changes to the news media policy. According to recent news reports, the DOJ is still considering loosening the policy’s notice requirements, citing investigation delays and national security leaks. The DOJ has quietly been working on a revision to its guidelines and is considering (1) lowering the standards prosecutors must meet before requesting a subpoena of news media records; and (2) loosening or eliminating the negotiation and notice requirements. Each of these changes would chill core First Amendment-protected activities by members of the media.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Adoption of this policy will allow the ABA to urge the Department of Justice to retain—as a minimum threshold—existing news media policy protections, as codified at 28 C.F.R. § 50.10 (2016).
4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

No minority views or opposition have been identified, except for the new Department of Justice policy to which the resolution is addressed.
RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to enact legislation or regulations that require all law enforcement entities to meet training standards related to sexual orientation and gender identity similar to those developed by California’s Commission on Police Officer Standards and Training (POST) under California’s AB 2504 (September 30, 2018).
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution advocates for the requirement of all law enforcement agencies to adopt regulations similar to the standards set by the Commission on Police Officer and Standard Training (POST).

2. Summary of the Issue that the Resolution Addresses

This Resolution seeks to elevate standards of training for law enforcement agencies to preserve their function of upholding fairness and equality in providing protection for all. In the effort to do so, police officers should be required to receive specific training on sexual orientation and gender identity to adequately serve their role of providing support and protection for all communities.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This resolution will be used by the ABA in its advocacy efforts, and by ABA members who wish to engage with members of Congress and other legislative bodies to support the interests expressed in this resolution., in coordination with the Governmental Affairs Office.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None identified
RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments not to impose upon medical facilities and healthcare providers that offer reproductive health services to women, licensing or other regulatory requirements that are not medically necessary or that have the purpose or effect of burdening women’s access to such services.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
The ABA urges federal, state, local, territorial, and tribal governments to refrain from imposing upon reproductive healthcare providers requirements that are not medically necessary or have the purpose or effect of burdening women’s access to such services.

2. **Summary of the Issue that the Resolution Addresses**
The resolution addresses the obstacles that women face in obtaining reproductive health services due to restrictive and unnecessary requirements. Increasingly, states have enacted laws and regulations that make it more difficult to access services on the pretext of protecting women’s health, while scientific data does not support the health-related rationale for these restrictions.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**
This proposed policy would address this issue by allowing the ABA to lobby in opposition to unnecessary requirements that serve no medical purpose but make it unduly burdensome for women seeking reproductive health care and to file amicus briefs in litigation on the same subject.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**
No minority views or opposition have been identified.
RESOLVED, That the American Bar Association urges federal, state, local, territorial and
tribal governments to adopt and enforce fair lending laws and other federal and state laws
targeting unfair or deceptive acts or practices to address discrimination in vehicle sales
and financing markets;

FURTHER RESOLVED, That the American Bar Association urges Congress to amend
the Equal Credit Opportunity Act, 15 U.S.C 1691, to require documentation and collection
of the applicant’s race, gender and national origin for vehicle credit transactions, through
applicant voluntary self-identification using disaggregated racial and ethnic categories,
made available through a Demographic Information Addendum, or some equivalent
measurement;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local,
territorial, and tribal legislatures and governmental agencies to adopt laws and policies
that promote the adoption of an enhanced nondiscrimination compliance system for a
vehicle loan, or reduce dealer discretion by placing limits on dealer markup, or eliminate
dealer discretion to mark up interest rates by using a different method of dealer
compensation, such as a flat fee for each transaction;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local,
territorial and tribal governments to adopt legislation requiring the timely notice and
disclosure of pricing of add-on products by dealers on each vehicle through reasonable
means, such as a pricing sheet and/or website prominently displayed and available at its
location, before a consumer negotiates to purchase a vehicle; and

FURTHER RESOLVED, That the American Bar Association encourages state, local,
territorial and tribal bar associations to offer educational programming and materials to
lawyers and consumers to help them understand and navigate purchases and financing
of vehicles, and understand consumers’ legal rights with respect to such purchases and
loans.
1. **Summary of the Resolution**

The resolution urges Congress to amend the Equal Credit Opportunity Act to require documentation and collection of the applicant’s race, gender or national origin for non-mortgage credit transactions specifically for vehicle transactions; it urges Congress and all state, local, territorial, and tribal legislative bodies and governmental agencies to adopt laws and policies that require an enhanced nondiscrimination compliance system for a vehicle loan or consider reducing dealer discretion by placing limits on dealer markup and to adopt legislation requiring the timely notice and disclosure of pricing of add-on products by dealers on each vehicle through reasonable means before a consumer negotiates to purchase a vehicle; and encourages education of lawyers and consumers about purchases and financing of vehicles and consumers’ legal rights to such purchases and loans.

2. **Summary of the Issue that the Resolution Addresses**

The resolution addresses the highly discriminatory practices and impacts to many consumers of color, gender, national origin, and low-income, that arise in auto lending and sale of auto add-on products. Consumers are burdened with interest-rate markups on loans that have no relation to their credit-risk, and often relate to prejudices and discriminatory actions. The resolution also addresses the issue of insufficient data available on credit applicants to identify potential discriminatory impact. Such data is currently collected in the home mortgage market and this resolution would place the one trillion-dollar auto lending market on similar footing. Finally, the resolution addresses the lack of timely notice and transparency in the auto lending market, particularly in the pricing of add-on products, which is unacceptable when it represents the third largest consumer debt in America.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

This policy will reaffirm the ABA’s commitment to ensuring the enforcement of fair lending laws to protect against discrimination, strengthen consumer protections in the auto lending and sale market, and promote economic justice. It will assist the work of consumer advocates, lawmakers, and public and private attorneys who diligently work to provide a fair and transparent economic market for all consumers, regardless of race, color, gender, national origin, or economic position.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

At the federal level, various legislators have taken opposing viewpoints on the powers of the Consumer Protection Financial Bureau and whether expressions of policy articulated by the CFPB should be subject to congressional rule making
authority. As noted in the report, Congress approved Public Law 115-172, May 21, 2018, which invoked the Congressional Review Act to disapprove CFPB Bulletin 2013-02 (March 21, 2013), which provided guidance on the use of discretion in dealer interest markup rates. The CFPB Rulemaking Agenda, Fall 2018, indicates that the CFPB is reexamining the requirements of the ECOA concerning the disparate impact doctrine in light of recent supreme court cases.

Internal to the ABA, the Business Law Section has indicated it does not support the resolution.
RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to enact legislation recognizing and promoting the human right to a basic income; and

FURTHER RESOLVED, That the American Bar Association urges all levels of government to recognize in both policy and resource allocation the human right to a basic income.
EXECUTIVE SUMMARY

1. Summary of the Resolution

In reaffirmation of the ABA’s commitment to preserving and protecting human rights, this resolution urges the United States government, and governments around the world to promote the human right to a basic income by increasing the funding, development and implementation of basic income strategies to prevent infringement of this right.

The accompanying report summarizes several policies that would allow for citizens to obtain a basic income, defined as the income needed for a person to afford housing, food and other fundamental life necessities. The intent behind the report is to lay out options that may be acted upon to realize the human right of basic income for all. These options include federal, state, and local minimum wage laws, living wages as well as a “universal basic income” and federal job guarantee. The report does not favor one option over another and acknowledges that it will likely be a combination of two or more of these strategies that will achieve this goal.

2. Summary of the Issue that the Resolution Addresses

The United States has long struggled to establish a decent standard of living for all. In times of great economic dislocation and technological change, such as the Great Depression that came in the wake of the second industrial revolution, that national commitment becomes increasingly critical. Nearly 75 years later, not only have these rights yet to be realized at any point for all Americans, another wave of economic dislocation partially fueled by leaps in information and other technologies have impoverished almost half the nation and put the vast majority at economic risk.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Through encouraging governments to prioritize establishing policies consistent with the human right to income, the effects of the economic changes felt by too many Americans can be mitigated or reversed. By crafting legislation and creating programs to advance a basic income, individuals can afford necessities like food, clothing, and housing for themselves and their families. This combats domestic abuse, and homelessness and the myriad of other factors created by economic dislocation and disadvantages.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

No minority views or opposition have been identified.
RESOLVED, That the American Bar Association encourages all federal, state, tribal, territorial, and local court systems, in conjunction with state, territorial, tribal and local bar associations, to carefully review their cellphone policies, so as to balance the security risks posed by cellphone use with the needs of litigants to ensure meaningful access to our judicial system, especially to those who are self-represented;

FURTHER RESOLVED, That the American Bar Association opposes cellphone policies that impose undue burdens on litigants, particularly those who are self-represented, lower income, disabled, and/or seeking emergency access to the courts; and

FURTHER RESOLVED, That the American Bar Association opposes cellphone policies or procedures that force litigants to leave their cellphones in unsecure locations outside the courthouse or to pay a fee for storage at a location outside the courthouse.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges courts, as well as their respective bar associations, to carefully review their policies on use and admittance of cellphones in courthouses, to ensure meaningful access to our judicial system, balancing the security risks posed by cellphone use with the needs of litigants, and in particular, those who are self-represented or of lower income.

2. Summary of the Issue that the Resolution Addresses

Courts’ policies on cellphone use and admittance to courthouses vary widely. Policies banning use and/or admittance of cellphones to courthouses is an access to justice issue because, on the one hand, there are legitimate security reasons to disallowing such use, while on the other, bans can harm the legitimate needs of litigants, disproportionately affecting those who are self-represented or of lower income.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The Resolution will urge courts, as well as their respective bar associations, to carefully review their policies on use and admittance of cellphones in courthouses, to ensure meaningful access to our judicial system, balancing the security risks posed by cellphone use with the needs of litigants, and in particular, those who are self-represented or of lower income.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.
RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal governments and other public entities involved in the current opioid litigation to use proceeds from settlements of the litigation to address the harm resulting from the epidemic directly, by:

1. (1) expanding treatment services for opioid use disorder,
2. (2) creating additional transitional and extended housing programs to support those in treatment,
3. (3) fostering community social service resources and harm-reduction/overdose prevention efforts,
4. (4) furthering research on treatment and enhancing education and training of healthcare professionals,
5. (5) educating patients and the public on the use and misuse of opioids,
6. (6) reducing the stigma associated with having an opioid use disorder, and
7. (7) improving healthcare infrastructure, especially at the community level, so as to increase the capacity of healthcare professionals to treat patients with opioid use disorder.
EXECUTIVE SUMMARY

1. Summary of the Resolution.

The Resolution urges states, counties, tribes and local governments to enact legislation to ensure that any proceeds that they receive from the current opioid litigation be used for remedying the harm resulting from the opioid epidemic.

2. Summary of the Issue that the Resolution Addresses.

The United States faces an opioid crisis of epidemic proportions that will require many tens of millions of dollars to remedy the harm to the public resulting from the epidemic. Over one thousand lawsuits primarily brought by states, counties, tribes and local governments have been filed. Past experience with the tobacco litigation suggests that in the absence of governmental commitment to spending the proceeds on remedying the resulting harm, much of the money will be spent for purposes unrelated to the epidemic, which will inevitably lead to insufficient resources to provide the care required by the millions of people affected by the epidemic.

3. Please Explain How the Proposed Policy Position will Address the Issue?

The Resolution would encourage governmental entities to commit to using the proceeds of the litigation for the purpose of remedying the harm caused by the epidemic through (1) expanding treatment services for opioid use disorder, (2) creating additional transitional and extended housing programs to support those in treatment, (3) fostering community social service resources and harm-reduction/overdose prevention efforts, (4) furthering research on treatment and enhancing education and training of healthcare professionals, (5) educating patients and the public on the use and misuse of opioids, (6) reducing the stigma associated with having an opioid use disorder, and (7) improving healthcare infrastructure, especially at the community level, so as to increase the capacity of healthcare professionals to treat patients with opioid use disorder.


No minority views or opposition have been identified.
RESOLVED, That the American Bar Association urges Congress to amend the Ethics in Patients Referrals Act of 1989, Section 1877 of the Social Security Act, 42 U.S.C. § 1395nn (commonly known as the “Stark Law”), to make changes to (a) clarify the application of the Stark Law and (b) address concerns of physicians and other healthcare providers that new alternative payment and delivery models promoted by the Centers for Medicare & Medicaid Services and other payers may result in violations of the Stark Law;

FURTHER RESOLVED, That the American Bar Association urges Congress to amend the Stark Law to remove the statutory prohibition against payment for services furnished pursuant to a compensation arrangement that failed to meet an exception to the Stark Law solely due to non-compliance with technical requirements of the statute;

FURTHER RESOLVED, That the American Bar Association urges Congress to amend the Stark Law to clarify the requirement that compensation must be consistent with fair market value, and to provide that a valuation from a nationally recognized healthcare appraiser or valuation consultant shall create a rebuttable presumption of fair market value for purposes of the Stark Law;

FURTHER RESOLVED, That the American Bar Association urges Congress to amend the Stark Law to provide greater clarity and consistency in the application of the prohibition on compensation arrangements that vary with or take into account the volume or value of physician referrals; and

FURTHER RESOLVED, That the American Bar Association urges Congress to adopt a statutory exception under the Stark Law for compensation paid under an alternative payment arrangement meeting specified requirements in order to encourage the adoption of collaborative healthcare delivery models without concerns of violating the Stark Law.
1. **Summary of the Resolution.**

The Resolution urges Congress to enact legislation to amend the Ethics in Patients Referrals Act of 1989 (commonly known as the Stark Law) to modernize the law and encourage the adoption of value-based payment arrangements and other coordinated care arrangements that will lower costs to the Medicare program and improve the quality of services to its beneficiaries.

2. **Summary of the Issue that the Resolution Addresses.**

The Resolution would eliminate or reduce the penalties for certain technical violations of the Stark Law that do not reasonably present a risk of fraud and abuse in the modern physician payment context, especially given the proliferation of alternative and value-based payment arrangements. The proposed legislative amendments would further simplify compliance with the Stark Law, keeping in step with other recent regulatory changes and Centers for Medicare and Medicaid Services policy initiatives towards reduction of unnecessary regulatory burdens.

3. **Please Explain How the Proposed Policy Position Will Address the Issue?**

The Resolution would propose amendments to the existing Stark Law legislation including those that would (i) alleviate regulatory burdens associated with self-disclosure of certain Stark Law technical violations, (ii) simplify determinations of fair market value in transactions subject to the Stark Law, and (iii) eliminate certain technical issues associated with compensation “determined in a manner that takes into account the volume or value of referrals.”

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified.**

No minority views or opposition have been identified.
RESOLVED, That the American Bar Association recognizes children and parents have legal rights to family integrity and family unity;

FURTHER RESOLVED, That the American Bar Association urges legal professionals, courts, and relevant state agencies to mitigate the trauma and long-term harm that can result from separation from parents and other primary caregivers;

FURTHER RESOLVED, That the American Bar Association supports the use of prevention services, including legal services, to ensure children’s safety without the need for removal from a parent or caregiver;

FURTHER RESOLVED, That the American Bar Association recognizes government action may intentionally interfere with rights to family integrity when necessary for the child’s health, safety, and well-being, provided that procedural protections are applied, including access to high quality legal representation for children and parents;

FURTHER RESOLVED, That the American Bar Association urges federal authorities seeking to separate a child from a parent to protect the child’s health, safety, or well-being to engage state or tribal child protection authorities, which have exclusive jurisdiction to take such action under state and federal statutory law; and

FURTHER RESOLVED, the American Bar Association urges, state, local, territorial, and tribal authorities to ensure family connectedness is safely maintained and supported with parents and kin during the pendency of the child welfare case if children cannot safely remain with their parents or other primary caregivers and must enter the custody of a state or tribe. The definition of kin in such circumstances should include relatives and unrelated persons with significant relationships to the child or family the children or youth identify as individuals with whom they want to remain connected. Additionally, child welfare agency staff, attorneys, and judges should:
a) Identify kin and ensure they are notified and engaged within 30 days of removal and throughout the life of the case. Family search and engagement efforts should seek not only kin resources as placement options, but as other types of long-term connections;

b) Prioritize placement with kin, including relatives, former caregivers, or close family friends;

c) Help children maintain important family connections and support, through regular family time and a presumption of unsupervised visitation unless the court finds that unsupervised visitation is not in the child’s best interests;

d) Tailor services and assistance to address the unique needs of kinship foster families, while still working toward the goal of safe reunification with parents where that is the case goal;

e) Seek to facilitate placing siblings together in the same foster home, absent a court finding of a safety or well-being concern, and allow regular and meaningful visitation between siblings when that is not possible. The definition of “sibling” should include those connected through one or more common parents and those connected through shared living arrangements, including those formed through foster home placements;

f) Support youth who may age out of the foster care system rather than achieve permanency by developing a network of positive adult connections (including their parents, if the youth wish) that serve as a support network while the youth are part of the child welfare system that can be maintained after the youth leave the system; and

g) Include family members, including parents and caregivers, in development of the service plan and critical treatments for youth in foster care.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution recognizes children and parents have legal rights to family integrity and family unity. Relatedly, the Resolution urges the legal community to work to mitigate the trauma to children and families that separation causes and supports the use of prevention services to ensure children’s safety without the need for removal. The Resolution confirms that state actors may interfere with family integrity when necessary for a child’s health and safety, and outlines important procedural protections for children and parents and jurisdictional requirements when removal is necessary.

The Resolution further urges maintenance of family connectedness if a child does need to enter foster care. Specifically, the Resolution calls for prompt identification, notification, and engagement of the kin of a child in foster care; prioritization of placement of the child with kin; unsupervised visitation between parents and children in foster care, unless a court finds that unsupervised visitation is not in the child’s best interest; support for kinship foster families; maintained of sibling connections; positive adult connections for youth who may age out of foster care; and family involvement in the service plan and treatment of youth in foster care.

2. Summary of the Issue that the Resolution Addresses

Promising practices and recent developments in the child welfare field call for development of this Resolution, which centers on family integrity and family connection. First, federal litigation challenging family separation at the U.S. Border has brought with it an increased focus on applying child welfare laws and principles in federal litigation across the country, including the substantive and procedural rights of children and parents to family integrity. Second, 2018 child welfare legislation titled the Family First Prevention Services Act (P.L. 115-123) changed child welfare funding structures and emphasized the overall importance of children’s connections to family, including birth parents, kin, siblings, and foster families. Third, the federal government recently updated the Child Welfare Policy Manual of the U.S. Department of Health and Human Services to allow states to use federal funding to pay part of the cost of providing children and parents with legal counsel in child welfare/dependency cases. This change recognizes high quality child and parent legal representation protects children and parents’ substantive and procedural due process rights and produces better long-term outcomes for families, including shorter time to permanency (e.g., reunification, guardianship or adoption).
All three developments are unified around a theme of promoting family integrity and family connection for children and youth. Although the ABA has existing policy supporting children’s rights in a variety of contexts, it lacks policy addressing children and youth’s interests in family integrity and family connection.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

This resolution addresses the gap identified by urging that:

- Children and parents have legal rights to family integrity and family unity;
- The legal community and state agencies should work to mitigate the trauma resulting from children’s separation from parents;
- Prevention services, including quality legal representation services, can ensure children’s safety without removing them from their families;
- Government may interfere with children and parents’ rights to family integrity when necessary for the child’s health or safety; and
- When children are in foster care, family connections should be safely maintained and supported with parents, kin, and siblings during the pendency of the case.

This Resolution seeks to inform attorneys and judges in the child welfare and other legal fields of these important developments related to family integrity and family connectedness and provide guidance on effective implementation of the several intertwined practices and concepts.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

None have been identified
RESOLVED, That the American Bar Association supports reasonable and necessary legislation and related regulations to detect and combat money laundering and terrorist financing that would:

(a) require every domestic business entity to designate either (i) a responsible individual who significantly participates in the control or management of the entity, or (ii) a records contact individual with responsibility for obtaining, maintaining, and taking reasonable measures to verify applicable beneficial or record ownership information for the entity, or both, and

(b) provide law enforcement agencies with timely access to adequate, accurate, and timely information regarding the entity’s responsible individual, or the entity’s applicable beneficial or record ownership, or both, in response to a valid subpoena, summons, or warrant; and

FURTHER RESOLVED, That the American Bar Association urges that any legislation and related regulations to detect and combat money laundering and terrorist financing be consistent with the following fundamental principles:

(1) constitutional rights and legitimate confidentiality interests must be protected;

(2) appropriate due process must be provided;

(3) the collection, maintenance, and verification of applicable responsible individual, beneficial ownership, or record ownership information must be an obligation of the entity;

(4) any definition of and reporting threshold for beneficial ownership must be clear, reasonable, and not unduly burdensome;
information concerning an entity’s responsible individual, beneficial
ownership, or record ownership, as applicable, should only be available to:
(i) law enforcement agencies promptly, but only in response to a valid
subpoena, summons, or warrant; and
(ii) financial institutions, but only with the consent of the entity and subject
to confidentiality protections when appropriate;

all types of business entity structures, including corporations and limited
liability companies, should generally be subject to the same requirements,
with appropriate exemptions or variations to recognize differences in entity
forms, risk levels, existing regulatory obligations, or other factors;

any penalties for noncompliance must be calibrated to reflect the nature and
degree of the noncompliance; and

any new requirements must not undermine the attorney-client privilege, the
confidentiality of lawyer-client communications, or the confidential lawyer-
client relationship.
EXECUTIVE SUMMARY

1. Summary of Resolution.

This Resolution provides that the American Bar Association supports reasonable and necessary measures to detect and combat money laundering and terrorist financing. This Resolution also supports legislation and related regulations that would require every domestic business entity to designate either (i) a responsible individual who significantly participates in the control or management of the entity or (ii) a records contact individual with responsibility for obtaining, maintaining, and taking reasonable measures to verify applicable beneficial or record ownership information for the entity, or both, and then provide law enforcement agencies with timely access to information regarding the entity’s responsible individual, beneficial ownership, and/or record ownership in response to a valid subpoena, summons, or warrant. Further, this Resolution provides that any legislation and related regulations to detect and combat money laundering and terrorist financing must be consistent with the eight fundamental principles outlined in this Resolution.

2. Summary of the issue which the Resolution addresses.

At its 2003 Midyear Meeting and 2008 Annual Meeting, the ABA adopted Resolutions 03M104 and 08A300, respectively. Resolution 03M104 was adopted in response to efforts by the FATF to develop and promote AML policies at the national and international levels, including potential new lawyer obligations that could undermine the confidential lawyer-client relationship. Resolution 08A300 was adopted in response to legislation that had been introduced in the United States Congress that would have required those who form business entities to document, verify, and make available to law enforcement authorities the record and beneficial ownership of those business entities. Resolution 08A300 also urged that the regulation of those involved in the formation of business entities should remain a matter of state and territorial law and urged Congress to refrain from enacting legislation that would regulate lawyers in the formation of business entities and to defer to the states and territories.

That proposed 2008 legislation was not enacted, but since 2008 there have been a variety of proposals requiring the disclosure of certain identifying information for certain owners of U.S. business entities. As a result of Resolutions 03M104 and 08A300, the ABA has opposed all Federal legislation requiring the disclosure of beneficial ownership information for U.S. business entities.

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

This Resolution is to update and supplement Resolutions 03M104 and 08A300, and other existing ABA policies. It is expected that there will continue to be significant debate among many constituencies regarding proposals requiring the disclosure of information concerning the beneficial owners of U.S. business entities, and the nature of the provisions ultimately adopted (if any) cannot be accurately predicted at this time. Rather
than attempting to address the provisions of particular proposals as they are introduced, this Resolution takes the approach of adopting a series of fundamental principles that any legislation or regulation must satisfy while preserving a degree of flexibility in the application of those principles to particular proposals. Those fundamental principles are described in this Report. This Resolution allows the ABA to respond as appropriate to future legislative and regulatory proposals and will enable the ABA to engage in constructive dialog around those proposals.

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

Although the proponents of this Resolution are not aware of formal opposition to the Resolution, the National District Attorneys Association has expressed concerns regarding the subpoena, summons, or warrant requirements contained in the Resolution.
RESOLVED, That the American Bar Association urges the United States and other countries to take measures in response to any crimes committed against the Rohingya by the Burmese military. Specifically:

1) The U.S. Secretary of State should make a public determination on crimes committed against the Rohingya;

2) The United States should impose targeted sanctions against Burmese military (known as Tatmadaw) officials under the Global Magnitsky Human Rights Accountability Act (“Global Magnitsky Act”) and the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act (“JADE Act”), and the U.S. Secretary of State should designate Tatmadaw officials under the Department of State, Foreign Operations, and Related Programs Appropriations Act of 2019 (“Appropriations Act”);

3) The United States should invoke tools of economic pressure to demand access for humanitarian aid in the Rakhine State and an end to serious human rights against the Rohingya and other minority groups;

4) The United Nations Security Council should refer the crimes committed by Burma – including suspected genocide, crimes against humanity, and war crimes – to the International Criminal Court and the United States should signal its support for such a referral;

5) The United States should continue to provide humanitarian aid to support needs on the ground in Bangladesh as well as particular challenges of children and women and girls, and encourage other countries to do the same;

6) The United States and other countries should engage with the Government of Bangladesh to remove barriers and inefficiencies in relation to providing humanitarian assistance; and

7) The United States and other countries should help ensure that repatriation of the Rohingya is safe, voluntary, and dignified; and that repatriation agreements consider views of the Rohingya and human rights protections, including the recommendations of the Rakhine Advisory Commission prior to repatriation.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution recommends a number of measures for action by the United States and other countries to address the Rohingya refugee crisis including: issuing a public determination on crimes committed against the Rohingya; imposing targeted sanctions against Burmese military officials; utilizing tools of economic pressure to ensure access for humanitarian aid and an end to serious human rights abuses against the Rohingya and other minority groups; referring the crimes committed by the Rohingya to the International Criminal Court; continuing to provide humanitarian aid; engaging with the Burmese government to remove barriers to humanitarian assistance; and ensuring safe and voluntary repatriation of the Rohingya.

2. Summary of the Issue that the Resolution Addresses

Over a million Rohingya Muslims live, or until recently did live, in Burma. They have constituted a minority of the Burmese population for centuries, with a long history of being persecuted by Burma’s Buddhist majority. Through decades of military rule, and especially during the last three years, that persecution has become systematic and widespread. In 2016-2017, the persecution of the Rohingya accelerated. The Tatmadaw and local Buddhist extremists looted and burned down Rohingya villages, engaged in mass killings of civilians, raped Rohingya women and girls, and forced the widespread displacement of the Rohingya population. As a result, over 700,000 Rohingya people have fled or been driven out of Rakhine State and have taken shelter in neighboring Bangladesh as refugees.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The resolution recommends actions be taken by the U.S. government that would advance four objectives: (1) accountability for the perpetrators of the atrocities committed against the Rohingya; (2) pressure the Burmese Government to take action to end the serious human rights abuses committed against the Rohingya; (3) provide needed assistance to the Rohingya refugees; and (4) ensure a sustainable, long-term solution to the crisis. Toward these ends, we have seven specific recommendations identified above in the “Summary of the Resolution.”

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

We are aware of no opposition to the resolution.
RESOLVED, That the American Bar Association urges the Department of Justice to amend 8 C.F.R. §1003.1(h) to include, following formal rulemaking, standards and procedures governing the process by which the Attorney General may certify cases to himself or herself.

FURTHER RESOLVED, That the applicable standards should include procedures for (a) notice to the public of the Attorney General’s intent to certify a case to himself or herself; (b) identification of the specific legal questions the Attorney General intends to review; (c) an opportunity for public comment and briefing prior to issuance of any final decision, and (d) release of underlying decision(s) in the case; and

FURTHER RESOLVED, That the American Bar Association urges the Attorney General to exercise such certification authority sparingly, and only to review decisions issued by the Board of Immigration Appeals in the ordinary administrative appeal process rather than as a mechanism to pre-empt full administrative agency review or to address questions not at issue in the case prior to certification.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   Amend 8 C.F.R. §1003.1(h) and establish, through rulemaking, standards and procedures for the Attorney General certification process. Include procedures for a) notice and intent of the Attorney General to certify a case, b) opportunity for public comment and briefing prior to issuance of the final decision, c) identification of the specific legal questions the Attorney General intends to review, and d) release of underlying decisions at issue. The Attorney General should exercise certification authority sparingly, and only to review decisions issued by the Board of Immigration Appeals in the ordinary administrative appeal process.

2. **Summary of the Issue that the Resolution Addresses**

   The Attorney General is empowered to *sua sponte* refer Board of Immigration Appeals ("BIA") decisions to himself and independently re-adjudicate them. For the last half of a century Attorney Generals have traditionally used the referral power sparingly. However, Attorneys General in the current administration have referred several BIA decision for review, substantially rewriting immigration law in the process. These developments have highlighted the need for regulations delineating the standards and procedures for such referrals. Moreover, the referral power should be used sparingly, and only to review decisions issued by the Board of Immigration Appeals in the ordinary administrative appeal process.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

   Developing established standards and procedures for the Attorney General certification process will ensure predicableability, allow for adequate input from the affected parties and the public, and enhance fairness and due process.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

   There are no minority views of which we are aware.
RESOLVED, That the American Bar Association urges the Department of Justice to amend 8 C.F.R. §§ 1003.1(d)(2)(i)(G) and 1003.38(b) to expressly provide a good cause exception to the strict thirty day deadline for filing an appeal to the Board of Immigration Appeals for pro se appellants; and

FURTHER RESOLVED, That even absent such amendment, in cases where a detained or pro se respondent orally reserves appeal on the record in Immigration Court, the Board should establish a presumption that a subsequent Notice of Appeal be deemed timely filed so long as it is received at the Board within a reasonable time, notwithstanding the expiration of the thirty day filing deadline.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   
   The Department of Justice, through the Executive Office of Immigration Review, should create a presumption to extend the filing of an appeal to the Board of Immigration Appeals for *pro se* applicants and allow a good cause exception to the strict thirty day deadline.

2. **Summary of the Issue that the Resolution Addresses**
   
   The timelines for filing appeals with the BIA can be restrictive for petitioners in detention or without representation, particularly given that the BIA deems a motion as filed only once it is received by the Board, rather than observing the "mailbox rule." This rule can be confusing and unduly burdensome for detained or unrepresented applicants.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**
   
   Allowing discretion to relax the deadline for submission of an appeal will aid unrepresented and detained petitioners in exercising their right of appeal in a meaningful way.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**
   
   There are no minority views of which we are aware.
RESOLVED, That the American Bar Association urges the Executive Office for Immigration Review (EOIR) to expedite complete implementation of an integrated, system-wide electronic filing and case management system nationwide, with adequate funding from Congress;

FURTHER RESOLVED, That the Association urges Congress and the Department of Justice to create or restore docket management tools – including administrative closure, termination of proceedings, and reasonable continuances – that enable immigration judges to balance the need for prompt adjudications with the rights of respondents to achieve just outcomes. Such tools should be utilized particularly in cases involving vulnerable populations, including unaccompanied children and individuals experiencing mental illness, and otherwise as justice requires;

FURTHER RESOLVED, That the American Bar Association urges EOIR to increase its efforts to hire immigration judges and Board of Immigration Appeals members from diverse professional backgrounds, including practitioners with experience representing non-citizens and individuals reflecting a broad mix of racial, ethnic, gender and gender identity, sexual orientation, disability, religious and geographically diverse backgrounds;

FURTHER RESOLVED, That the American Bar Association urges the Department of Homeland Security to restore the use of prosecutorial discretion by both officers and attorneys to reduce the number of Notices to Appear served on and enforced against noncitizens who should not be priorities for removal, including those who: 1) are prima facie eligible for relief from removal; 2) veterans and members of the U.S. armed forces; 3) long-time lawful permanent residents; 4) minors and elderly individuals; 5) individuals present in the U.S. since childhood; 6) pregnant or nursing women; 7) victims of domestic violence, trafficking, or other serious crimes; 8) individuals who suffer from a serious mental or physical disability; and 9) individuals with serious health conditions; and
FURTHER RESOLVED, That the American Bar Association urges EOIR to amend 8 C.F.R. §1003 subpart G, the Professional Conduct Practitioners--Rules and Procedures, to authorize civil monetary contempt penalties to be imposed by immigration judges against both removal defense and government trial attorneys and establish criteria for when such penalties can be applied.
EXECUTIVE SUMMARY

1. Summary of the Resolution

EOIR should implement an electronic filing system for the immigration courts nationwide. Congress and DOJ should create or restore specified docket management measures in order to achieve improved efficiency and fairness in the adjudication of immigration cases. EOIR should also increase its efforts to hire immigration judges and Board Members from diverse backgrounds. DHS should restore the use of prosecutorial discretion and not pursue removal against individuals who merit special care and consideration. EOIR should amend 8 C.F.R. §1003 subpart G, the Professional Conduct Practitioners--Rules and Procedures, to allow for civil monetary contempt authority to be imposed by immigration judges against both removal defense and government trial attorneys and establish criteria for when such penalties can be applied.

2. Summary of the Issue that the Resolution Addresses

EOIR should establish an electronic filing system as expeditiously as possible to improve the overall functioning of the immigration courts. Executive orders and policies that reshuffle immigration judges' dockets without input or reference to the status of any other pending matters are disruptive and counterproductive to the independence of the courts and the administration of justice. Non-diversified hiring threatens fairness and due process in immigration courts.

In contrast to prior enforcement and discretion parameters, ranking enforcement priorities in order of importance, recent administration and DHS policies prioritize virtually all undocumented or unlawful immigrants for removal, which increases the overall case backlog and undermines fairness and efficiency in the adjudication system. The Department of Justice has recognized the need for Immigration Judges to be able to “control their courtrooms and protect the adjudicatory system from fraud and abuse.”

3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposal supports the more ideal operation of the immigration adjudication system by enabling tools that will result in efficiency, professionalism, and fairness.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

There are no minority views of which we are aware.
RESOLVED, That the American Bar Association supports a range of mechanisms through which an individual who is not subject to mandatory detention under the Immigration and Nationality Act may obtain release from immigration detention including bond, parole, and release on recognizance or under an order of supervision;

FURTHER RESOLVED, That in light of the Attorney General’s recent decision in Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019), which reversed longstanding precedent by eliminating the authority of Immigration Judges (effective July 15, 2019) to grant bond to certain asylum-seekers even after they have established a credible fear of persecution or torture, the American Bar Association urges Immigration and Customs Enforcement (“ICE”) to utilize the critically important alternative of humanitarian parole as a basis for release from custody; and

FURTHER RESOLVED, That the Association urges the Department of Homeland Security to:

(a) codify the core requirements of ICE’s 2009 Parole Directive into regulation;

(b) ensure that the 2009 Parole Directive remain in full force and effect prior to or in the absence of such codification;

(c) conduct regular training programs for new and experienced ICE officers to reinforce their familiarity with and understanding of the factors set forth in the Parole Directive that support release from custody; and

(d) conduct prompt parole determinations for all asylum-seekers who have passed a Credible Fear interview and grant parole to those who have established their identities, who pose no threat to national security or public safety and who do not present a significant flight risk.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   The resolution recommends that the Department of Homeland Security (“DHS”) seek codification of the core requirements of the 2009 Parole Directive into regulation. However, at a minimum, DHS should ensure that the 2009 Parole Directive remains in full force and is followed. ICE should a) conduct parole determinations as a matter of course for asylum-seekers who have passed a credible fear screening and b) grant parole where asylum-seekers have established their identities, community ties, lack of flight risk and the absence of any threat to national security, public safety, or persons. DHS also should provide training programs for ICE officers regarding the relevant factors for consideration when making parole decisions. Finally, DHS should implement a policy to allow the discretion to grant parole without payment of a bond and provide guidance ICE officers to consider ability to pay when a bond is required for release.

2. **Summary of the Issue that the Resolution Addresses**

   DHS can enhance due process through appropriate parole and bond policies that offer noncitizens individualized assessments of flight risk and danger to the community. However, in recent years, practitioners who have worked in the field for more than ten years confirmed that ICE has been denying more parole applications, even for asylum-seekers who meet the criteria in the 2009 parole directive and would have been paroled in prior years. Practitioners have also observed that ICE increasingly relies on onerous or intrusive conditions of release, including unreasonably high bond amounts. Given the Attorney General’s recent decision in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), as of July 15, 2019, parole will be the only way for asylum-seekers to be released from detention after passing a credible fear interview but before the completion of their removal proceedings. It is therefore crucial that ICE follows consistent and transparent standards when considering parole applications.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

   The proposal would reestablish the criteria for granting parole and provide guidance to make parole more widely available for urgent humanitarian reasons, significant public benefit, and when no security or flight risk is present.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

   There are no minority views.
RESOLVED, That the American Bar Association urges the U.S. Circuit Courts of Appeals to establish or expand pro bono programs to provide *pro bono* representation to *pro se* appellants in immigration cases.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Several of the United States Circuit Courts of Appeals—most notably the Ninth and Second Circuits—have developed formal programs to provide pro bono counsel to pro se parties with meritorious or complex appeals, including immigration appeals. These programs serve to increase pro bono representation and allow the Circuit Courts to make more effective, well-reasoned, and fair decisions. This Resolution encourages other Circuit Courts to examine and adopt similar programs to increase representation for pro se litigants in immigration-related appeals.

2. Summary of the Issue that the Resolution Addresses

Representation plays a critical role in ensuring due process, fairness, and efficiency in immigration proceedings; however, there is no right to counsel at government expense in immigration proceedings, and most non-citizens are unable to secure representation. This resolution encourages other Circuit Courts to examine and adopt pro bono programs to increase representation for pro se litigants in immigration-related appeals.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The ABA supports the appointment of counsel at federal-government expense to represent all indigent persons in removal proceedings, and, if necessary, to advise such individuals of their right to appeal to the federal Circuit Courts of Appeals. Until this goal is achieved, the proposal would help to increase representation for pro se litigants in immigration appeals.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

There are no minority views of which we are aware.
RESOLVED, That the American Bar Association encourages Congress and the Department of Justice to amend laws and regulations to ensure that noncitizens who have the statutory right to seek judicial review of orders of removal in the circuit courts of appeal are able to exercise that right without relinquishing the benefits or protections granted during their administrative immigration proceedings. Specifically, the Association urges:

(1) that Congress amend 8 U.S.C. §1252(b)(3)(B) and applicable regulations to establish an automatic stay of removal of a final administrative decision of the Board of Immigration Appeals until either (a) the expiration of the thirty-day period for filing a Petition for Review in the Court of Appeals having jurisdiction; or (b) a ruling by the Circuit Court on a motion for a stay of removal pending disposition of the appeal, whichever is earlier; and

(2) that the Department of Justice amend 8 C.F.R. §1240.26(i), which provides for automatic termination of a grant of voluntary departure upon the filing of a petition for review in the Court of Appeals, and to allow that the period of voluntary departure granted by the Board of Immigration Appeals, if any, should be stayed during any period of judicial review and reinstated following the decision of the Circuit Court.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Access to review of immigration cases by the federal judiciary is essential to ensure consistency, fairness, and due process in the administration of our nation’s immigration system. However, barriers to obtaining judicial review remain. A petition seeking review must be filed—and the circuit court must grant—a separate motion for stay of removal. Without such motion and approval, the removal order will become final and the petitioner could be removed from the U.S. during the pendency of the appeal. Additionally, voluntary departure is terminated upon filing a petition for review, which may deter individuals from exercising their right to seek judicial review.

2. Summary of the Issue that the Resolution Addresses

Once an order of deportation or removal from the Board of Immigration Appeals becomes administratively final, it is immediately enforceable, absent a stay from the court of appeals; there is no automatic stay of removal during the pendency of the appeal and ICE may remove the petitioner immediately. While a noncitizen is legally entitled to pursue a petition for review from abroad, once a noncitizen has been involuntarily removed to his or her home country, the right to pursue an appeal is often moot for practical purposes. The automatic termination of voluntary departure and the absence of an automatic stay of removal or deportation upon the filing of a petition for review with the circuit court are part of the statutory barriers that prevent meaningful judicial review of immigration decisions. This is critical for those whose case involves a threat of persecution or torture; there is no adequate remedy if they have been deported, tortured, or killed by the time the circuit court issues a ruling.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The recommendations would provide balance for the right of a noncitizen to appeal in a way that is meaningful against the government's legitimate interest in the finality of litigation.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

There are no minority views of which we are aware.
RESOLVED, That the American Bar Association approves the following paralegal education programs: Southwestern Community College, Paralegal Studies Program, Chula Vista, CA; Del Mar College, Paralegal Studies Program, Corpus Christi, TX and South University, Richmond, Legal Studies Program, Richmond, VA;

FURTHER RESOLVED, That the American Bar Association reapproves the following paralegal education programs: Faulkner University, Legal Studies Program, Montgomery, AL; South University, Montgomery, Legal and Paralegal Studies Program, Montgomery, AL; California State University, Paralegal Studies Program, Los Angeles, CA; University of San Diego, Paralegal Program, San Diego, CA; Kapi‘olani Community College, Paralegal Program, Honolulu, HI; Kankakee Community College, Paralegal/Legal Assistant Studies Program, Kankakee, IL; Midstate College, Paralegal Studies Program, Peoria, IL; Anne Arundel Community College, Paralegal Program, Arnold, MD; Macomb Community College, Legal Assistant Program, Warren, MI; Inver Hills Community College, Paralegal Program, Inver Grove Heights, MN; Bergen Community College, Paralegal & Legal Nurse Consultant Programs, Paramus, NJ; Hofstra University, Paralegal Studies Program, Hempstead, NY; Fayetteville Technical Community College, Paralegal Technology Program, Fayetteville, NC; Methodist University, Legal Studies Program, Fayetteville, NC; South College, Legal Studies/Paralegal Studies Program, Asheville, NC; Chattanooga State Community College, Paralegal Studies Program, Chattanooga, TN; and Southwest Tennessee Community College, Paralegal Studies Program, Memphis, TN;

FURTHER RESOLVED, That the American Bar Association withdraws the approval of the following paralegal education programs: Brightwood College, Paralegal Studies Program, Nashville, TN; Ferris State, Legal Studies Program, Big Rapids, MI; National American University, Paralegal Studies Program, Minneapolis, MN; South University, Paralegal Studies/Legal Studies Program, Cleveland, OH; Pennsylvania College of Technology, Legal Assistant/Paralegal Program, Williamsport, PA; National American University, Paralegal Studies Program, Sioux Falls, SD; University of Tennessee Chattanooga, Legal Assistant Studies Program, Chattanooga, TN; and Utah Valley University, Paralegal Studies Program, Orem, UT at the request of the institutions; and
FURTHER RESOLVED, That the American Bar Association extends the terms of approval until February 2020 Mid-Year Meeting of the House of Delegates for the following paralegal education programs: American River College, Legal Assisting Program, Sacramento, CA; De Anza College, Paralegal Studies Program, Cupertino, CA; University of California, Riverside, Paralegal Studies Program; Riverside, CA; West Los Angeles College, Paralegal Studies Program, Culver City, CA; Community College of Aurora, Paralegal Program, Denver, CO; University of Hartford, Paralegal Studies Program, West Hartford, CT; Wesley College, Legal Studies Program, Dover, DE; Miami Dade College, Paralegal Studies Program, Miami, FL; Illinois Central College, Paralegal Program, Peoria, IL; South Suburban College, Paralegal/Legal Assistant Program, South Holland, IL; Ball State University, Legal Studies Program, Muncie, IN; Louisiana State University, Paralegal Studies Program, Baton Rouge, LA; Bay Path University, Legal Studies Program, Longmeadow, MA; Lansing Community College, Paralegal Program, Lansing, MI; Hamline University, Paralegal Program, St. Paul, MN; Winona State University, Paralegal Program, Winona, MN; New Hampshire Technical Institute, Paralegal Studies Program, Concord, NH; Atlantic Cape Community College, Paralegal Studies Program, Mays Landing, NJ; Rowan College at Burlington County, Paralegal Program, Pemberton, NJ; Rowan College at Gloucester County, Paralegal Program, Sewell, NJ; Union County College, Paralegal Studies Program, Cranford, NJ; Truckee Meadows Community College, Paralegal/Law Program, Reno, NV; Hilbert College, Legal Studies/Paralegal Program, Hamburg, NY; LaGuardia Community College, Paralegal Studies Program, Long Island, NY; Schenectady County Community College, Paralegal Studies Program, Schenectady, NY; Westchester Community College (SUNY), Paralegal Studies Program, Valhalla, NY; Meredith College, Paralegal Program, Raleigh, NC; Lakeland Community College, Paralegal Studies Program, Kirtland, OH; Peirce College, Paralegal Studies Program, Philadelphia, PA; Roger Williams University, Paralegal Studies Program, Providence, RI; Trident Technical College, Paralegal Program, Charleston, SC; Florence-Darlington Technical College, Paralegal Program, Florence, SC; Roane State, Paralegal Studies Program, Harriman, TN; El Centro College, Paralegal Studies Program, Dallas, TX; Lone Star College, Paralegal Studies Program, Houston, TX; San Jacinto College, Paralegal Program, Houston, TX; Texas A&M University Commerce, Paralegal Studies Program, Commerce, TX; American National University, Paralegal Program, Salem, VA; Northern Virginia Community College, Paralegal Studies Program, Alexandria, VA; Highline College; Legal Studies Program, Des Moines, WA; Lakeshore Technical College, Paralegal Program, Cleveland, WI; and Milwaukee Area Technical College, Paralegal Program, Milwaukee, WI.
EXECUTIVE SUMMARY

Submitting Entity: Standing Committee on Paralegals
Submitted By: Chris S. Jennison, Chair

1. Summary of the Resolution

This Resolution recommends that the House of Delegates grants approval to 3 programs, grants reapproval to 17 paralegal education programs, withdraws the approval of 8 programs at the requests of the institutions, and extends the term of approval to 42 paralegal education programs.

2. Summary of the issue which the Resolution Addresses

The programs recommended for approval and reapproval in the enclosed report meet the Guidelines for the Approval of Paralegal Education Programs. The programs recommended for withdrawal of approval in the enclosed report have requested that approval be withdrawn.

3. Please Explain How the Proposed Policy Position will address the issue

The programs recommended for approval, reapproval, and withdrawal of approval in this report have followed the procedures required by the Association and are in compliance with the Guidelines for the Approval of Paralegal Education Programs.

4. Summary of Minority Views

No other positions on this resolution have been taken by other Association entities, affiliated organizations or other interested group.
RESOLUTION

1 RESOLVED, That the American Bar Association approves the Principles and Guidelines on the Election Process for Officers of the Association as amended August 2019.
1. **Summary of the Resolution**

   The Recommendation proposes revisions to the *Principles and Guidelines on the Election Process for Officers of the Association*.

2. **Summary of the Issue that the Resolution Addresses**

   Members are concerned about the effect of early commitments on the election process and the role of the Nominating Committee.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

   The proposed resolution revises the current *Principles and Guidelines on the Election Process for Officers of the Association* to address both concerns.

4. **A Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

   None to date.
RESOLUTION

RESOLVED, That the Association policies set forth in Attachment 1 to Report 400A, dated August 2019, are archived and no longer considered to be current policy of the American Bar Association and shall not be expressed as such.;

FURTHER RESOLVED, That policies which have been archived may be reactivated at the request of the original sponsoring entities. If the original sponsoring entities no longer exist, requests may be brought to the Secretary to be placed on a reactivation list for action by the House of Delegates. Such reactivated policies shall be considered current policy for the Association and shall be expressed as such; and

FURTHER RESOLVED, That the Board of Governors may act to reactivate policies when the House of Delegates is not in session.
Attachment 1
Policies to be Archived

5. Grant approval, reapproval to several paralegal education programs
   February 2009
   Standing Committee on Paralegals

8. Reaccredits the Juvenile Law - Child Welfare Program
   February 2009
   Standing Committee on Specialization

27. Deleting of Standard 104 from Standards for Approval of Law Schools
    August 2009
    Section of Legal Education and Admission to the Bar

28. Grant approval, reapproval and extension of paralegal education programs
    August 2009
    Paralegals

31. Grant reaccreditation to the Family Law Trial Advocacy Civil Law Trial
    August 2009
    Standing Committee on Specialization

54. Guidance in patenting decisions
    August 2009
    Section of Intellectual Property Law
5. Grant approval, reapproval to several paralegal education programs
   February 2009
   Standing Committee on Paralegals (Report 100-09MY100)

   RESOLVED, That the American Bar Association grants approval
to John F. Kennedy University, Legal Studies Department, Pleasant Hill, CA;
Delaware Technical and Community College, Legal Assistant/Paralegal
Technology Program, Georgetown, DE; College of Lake County, Paralegal
Studies Program, Grayslake, IL; Salt Lake Community College, Paralegal
Program, Salt Lake City, UT; and Madison Area Technical College, Paralegal
Program, Madison, WI.

   FURTHER RESOLVED, That the American Bar Association
reapproves the following paralegal programs: University of Alaska Fairbanks,
Paralegal Studies Program, Fairbanks, AK; Lamson College, Paralegal Program,
Tempe, AZ; Coastline Community College, Paralegal Studies Program, Fountain
Valley, CA; El Camino Community College, Paralegal Studies Program,
Torrance, CA; Fremont College fka Western College of Southern California,
Paralegal Studies Program, Cerritos, CA; Pasadena City College, Paralegal
Studies Program, Pasadena, CA; University of California Santa Barbara,
Paralegal Professional Certificate Program, Goleta, CA; Nova Southeastern
University, Paralegal Program, Fort Lauderdale, FL; Vincennes University,
Paralegal Program, Vincennes, IN; University of Louisville, Paralegal Studies
Program, Louisville, KY; Minnesota State University Moorhead, Paralegal
Department, Moorhead, MN; University of Montana Missoula, Paralegal Program,
Missoula, MT; College of Saint Mary, Paralegal Studies Program, Omaha, NE;
Brookdale Community College, Paralegal Studies Department, Lincroft, NJ;
Fairleigh Dickinson University, Paralegal Studies Department, Madison, NJ;
Middlesex County College, Paralegal Studies Program, Edison, NJ; Berkeley
College of New York City, Paralegal Studies Program, New York, NY; Genesee
Community College, Paralegal/Legal Assistant Program, Batavia, NY; Mercy
College, Paralegal Studies Program, Dobbs Ferry, NY; Queens College,
Paralegal Studies Program, Flushing, NY; Sinclair Community College, Paralegal
Program, Dayton, OH; Central Pennsylvania College, Paralegal Studies
Program, Summerdale, PA; Technical College of the Low Country, Paralegal
Program, Beaufort, SC; and University of Memphis, Paralegal Studies Program,
Memphis, TN.

   FURTHER RESOLVED, That the American Bar Association extends the
terms of approval until the August 2009 Annual Meeting of the House of Delegates
for the following programs: Auburn University Montgomery, Paralegal Education
Program, Montgomery, AL; University of Arkansas Ft. Smith, Legal
Assistant/Paralegal Program, Ft. Smith, AR; Cerritos Community College,
Paralegal Program, Norwalk, CA; Cuyamaca College, Paralegal Studies Program,
El Cajon, CA; Miramar College, Legal Assistant Program, San Diego, CA; Mount
San Antonio College, Paralegal Studies Program, Walnut, CA; San Francisco State University, Paralegal Studies Program, San Francisco, CA; Santa Ana College, Legal Assistant Program, Santa Ana, CA; University of California Irvine, Paralegal Certificate Program, Irvine, CA; University of California, UCLA Ext., Attorney Assistant Training Program, Los Angeles, CA; University of LaVerne, Legal Studies Program, LaVerne, CA; West Valley College, Paralegal Program, Saratoga, CA; Arapahoe Community College, Paralegal Program, Littleton, CO; Pikes Peak Community College, Paralegal Program, Colorado Springs, CO; Norwalk Community College, Legal Assistant Program, Norwalk, CT; Widener University Law Center, Paralegal Studies Program, Wilmington, DE; Georgetown University Paralegal Studies Program, Washington, District of Columbia; Broward College fka Broward Community College, Legal Assistant Program, Pembroke Pines, FL; Seminole Community College, Paralegal/Legal Assisting Program, Sanford, FL; South University, Paralegal/Legal Studies Program, West Palm Beach, FL; Athens Technical College, Paralegal Studies Program, Athens, GA; South University, Paralegal/Legal Studies Program, Savannah, GA; Kirkwood Community College, Legal Assistant Program, Cedar Rapids, IA; Northwestern Business College, Institute of Legal Studies, Chicago, IL; Roosevelt University, Paralegal Studies Program, Chicago, IL; Southern Illinois University, Paralegal Studies Program, Carbondale, IL; William Rainey Harper College, Paralegal Studies Program, Palatine, IL; Daymar College Owensboro Campus, Paralegal Studies Program, Owensboro, KY; Eastern Kentucky University, Paralegal Programs, Richmond, KY; Morehead State University, Paralegal Program, Morehead, KY; Western Kentucky University, Paralegal Studies Program, Bowling Green, KY; Herzing College, Legal Assisting/Paralegal Studies Program, Kenner, LA; Tulane University, Paralegal Studies Program, New Orleans, LA; Oakland Community College, Paralegal Program, Farmington Hills, MI; Oakland University, Paralegal Program, Rochester, MI; Avila University, Paralegal Program, Kansas City, MO; Missouri Western State University, Legal Assistant Program, St. Joseph, MO; Webster University, Legal Studies Program, St. Louis, MO; Mississippi University for Women, Paralegal Studies Program, Columbus, MS; Central Piedmont Community College Cato Campus, Paralegal Studies Program, Charlotte, NC; Metropolitan Community College, Legal Assistant Program, Omaha, NE; Cumberland County College, Paralegal Studies Program, Vineland, NJ; Mercer County Community College, Paralegal Program, Trenton, NJ; Montclair State University, Paralegal Studies Program, Upper Montclair, NJ; Long Island University Brooklyn Campus, Paralegal Studies Program, Brooklyn, NY; Nassau Community College, Paralegal Program, Garden City, NY; New York University, Institute of Paralegal Studies, New York, NY; Suffolk County Community College, Paralegal Studies Program, Selden, NY; Capital University Law School, Paralegal Program, Columbus, OH; Chancellor University fka David N. Myers University, Paralegal Education Program, Cleveland, OH; Columbus State Community College, Legal Assisting Program, Columbus, OH; Lake Erie College, Legal Studies Program, Painesville, OH; RETS College fka RETS Technical Center, Legal Assistant/Paralegal Program, Centerville, OH; University of Cincinnati Clermont, Paralegal Technology Program, Batavia, OH; University of Toledo,
Paralegal Studies Program, Toledo, OH; Rose State College, Legal Assistant Program, Midwest City, OK; University of Oklahoma Law Center, Legal Assistant Education, Norman, OK; Central Carolina Technical College, Legal Assistant/Paralegal Program, Sumter, SC; Greenville Technical College, Paralegal Program, Greenville, SC; Midlands Technical College, Paralegal Program, Columbia, SC; Orangeburg-Calhoun Technical College, Paralegal Program, Orangeburg, SC; Kaplan Career Institute fka Southeastern Career College, Paralegal Studies Program, Nashville, TN; South College, Paralegal Studies Program, Knoxville, TN; Lee College, Legal Assistant Program, Baytown, TX; Utah Valley University fka Utah Valley State College, Paralegal Studies Program, Orem, UT; J. Sargeant Reynolds Community College, Paralegal Studies Program, Richmond, VA; Edmonds Community College, Paralegal Program, Lynnwood, WA; Chippewa Valley Technical College, Paralegal Program, Eau Claire, WI; Northeast Wisconsin Technical College, Paralegal Program, Green Bay, WI; Western Technical College fka Western Wisconsin Technical College, Paralegal Program, LaCrosse, WI; and Marshall Community and Technical College, Legal Assistant Program, Huntington, WV.

8. Reaccredits the Juvenile Law-Child Welfare Program
February 2009
Standing Committee on Specialization (Report 104-09MY104)

RESOLVED, That the American Bar Association reaccredits the following
designated specialty certification program for lawyers: Juvenile Law – Child
Welfare program of the National Association of Counsel for Children of Denver,
Colorado.

FURTHER RESOLVED, That the American Bar Association extends the
accreditation of the following designated specialty certification program for lawyers
until the adjournment of the next House of Delegates meeting: Family Law Trial
Advocacy program of the National Board of Trial Advocacy, a division of the
National Board of Legal Specialty Certification of Wrentham, Massachusetts.

27. Deleting of Standard 104 from Standards for Approval of Law Schools
August 2009
Legal Education and Admission to the Bar (Report 100-09AM100)

FURTHER RESOLVED, That the American Bar Association urges Congress
to amend the SCRA, (i) to clarify that a private right of action exists under the
SCRA, pursuant to which servicemembers or covered dependents may bring civil
suits, independently or in conjunction with Department of Justice enforcement
actions, for damages or injunctive relief arising from violations of the SCRA, and
(ii) to provide that a prevailing plaintiff in such an action may recover reasonable
attorney's fees.
RESOLVED, That the American Bar Association House of Delegates concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in deleting from the Standards for Approval of Law Schools Standard 104, Seek to Exceed Requirements, and Interpretation 104-1.

28. Grant approval, reapproval and extension of paralegal education programs
   August 2009
   Standing Committee on Paralegals (Report 101-09AM101

   RESOLVED, That the American Bar Association grants approval to Wilmington University (New Castle and Dover Campuses), Legal Studies Program, New Castle, DE.

   FURTHER RESOLVED, That the American Bar Association reapproves the following paralegal programs: Miramar College, Paralegal Program, San Diego, CA; Seminole Community College, Legal Assistant/Paralegal Program, Sanford, FL; Northwestern College (f/k/a Northwestern Business College) (Naperville, Chicago and Bridgeview Campuses), Institute for Legal Studies, Chicago, IL; Kirkwood Community College, Paralegal Studies Program, Cedar Rapids, IA; Tulane University (Uptown and Elmwood Campuses), Paralegal Studies Program, New Orleans, LA; Missouri Western State University (f/k/a Missouri Western State College), Legal Assistant Program, St. Joseph, MO; Mercer County Community College, Paralegal Program, Trenton, NJ; Long Island University Brooklyn Campus, Legal Studies Institute, Brooklyn, NY; Nassau Community College, Paralegal Program, Garden City, NY; Suffolk County Community College (Ammerman and Grant Campuses), Paralegal Studies Program, Selden, NY; Capital University Law School, Paralegal and Legal Nurse Consultant Programs, Columbus, OH; Lake Erie College, Legal Studies Program, Painesville, OH; Midlands Technical College (Airport and Beltline Campuses), Paralegal Program, Columbia, SC; Orangeburg-Calhoun Technical College, Paralegal/Legal Assistant Program, Orangeburg, SC; Northeast Wisconsin Technical College, Paralegal Program, Green Bay, WI (and additional location at Fox Valley Technical College, Appleton, WI); and Marshall Technical and Community College, Legal Assistant Program, Huntington, WV.

   FURTHER RESOLVED, That the American Bar Association withdraws the approval of Avila University, Paralegal Program, Kansas City, MO, and Central Texas College, Paralegal Studies Program, Killeen, TX, at the requests of the institutions, as of the adjournment of the August 2009 Annual Meeting of the House of Delegates.

   FURTHER RESOLVED, That the American Bar Association extends the terms of approval until the February 2010 Midyear Meeting of the House of Delegates for the following programs: University of Alaska Anchorage, Paralegal Certificate Program, Anchorage, AK; Auburn University Montgomery, Paralegal Education Program, Montgomery, AL; University of Arkansas Ft. Smith, Legal
Assistant/Paralegal Program, Ft. Smith, AR; Pima Community College, Paralegal/Legal Assistant Program, Tucson, AZ; Cerritos Community College, Paralegal Program, Norwalk, CA; Cuyamaca College, Paralegal Studies Program, El Cajon, CA; Mount San Antonio College, Paralegal Studies Program, Walnut, CA; MTI College, Paralegal Studies Program, Sacramento, CA; San Francisco State University, Paralegal Studies Program, San Francisco, CA; Santa Ana College, Paralegal Studies Program, Santa Ana, CA; University of California Irvine, Paralegal Certificate Program, Irvine, CA; University of California UCLA Ext., Attorney Assistant Training Program, Los Angeles, CA; University of LaVerne, Legal Studies Program, LaVerne, CA; West Valley College, Paralegal Program, Saratoga, CA; Pikes Peak Community College, Paralegal Program, Littleton, CO; Norwalk Community College, Legal Assistant Program, Norwalk, CT; Widener University Law Center, Paralegal Studies Program, Wilmington, DE; Georgetown University, Paralegal Studies Program, Washington, DC; Broward Community College, Legal Assistant Program, Pembroke Pines, FL; Edison State College, Paralegal Studies Program, Fort Myers, FL; Florida Community College at Jacksonville, Legal Studies Institute, Jacksonville, FL; South University, Paralegal/Legal Studies Program, West Palm Beach, FL; Athens Technical College, Paralegal Studies Program, Athens, GA; South University, Paralegal/Legal Studies Program, Savannah, GA; Loyola University Chicago, Institute for Paralegal Studies, Chicago, IL; Roosevelt University, Paralegal Studies Program, Chicago, IL; Southern Illinois University, Paralegal Studies Program, Carbondale, IL; William Rainey Harper College, Paralegal Studies Program, Palatine, IL; Daymar College, Paralegal Studies Program, Owensboro, KY; Eastern Kentucky University, Paralegal Program, Richmond, KY; Morehead State University, Paralegal Program, Morehead, KY; Sullivan University, Paralegal Studies Program, Lexington, KY; Western Kentucky University, Paralegal Studies Program, Bowling Green, KY; Herzing College, Legal Assisting/Paralegal Studies Program, Kenner, LA; Elms College, Paralegal and Legal Studies Program, Chicopee, MA; Community College of Baltimore County, Legal Assistant Program, Baltimore, MD; Oakland Community College, Paralegal Program, Farmington Hills, MI; Oakland University, Paralegal Program, Rochester, MI; Webster University, Legal Studies Program, St. Louis, MO; Mississippi University for Women, Paralegal Studies Program, Columbus, MS; Metropolitan Community College, Legal Assistant Program, Omaha, NE; Central Piedmont Community College, Cato Campus, Paralegal Studies Program, Charlotte, NC; Fayetteville Technical Community College, Paralegal Technology Program, Fayetteville, NC; Cumberland County College, Paralegal Studies Program, Vineland, NJ; Montclair State University, Paralegal Studies Program, Upper Montclair, NJ; Long Island University C. W. Post Campus, Paralegal Program, Brookville, NY; New York University, Institute of Paralegal Studies, New York, NY; Chancellor University (f/k/a David N. Myers University), Paralegal Education Program, Cleveland, OH; College of Mount St. Joseph, Paralegal Studies Program, Cincinnati, OH; Columbus State Community College, Legal Assisting Program, Columbus, OH; RETS College, Legal Assisting/Paralegal Program, Centerville, OH; University of
Cincinnati Clermont, Paralegal Technology Program, Batavia, OH; University of Toledo, Paralegal Studies Program, Toledo, OH; Rose State College, Legal Assistant Program, Midwest City, OK; University of Oklahoma Law Center, Legal Assistant Education, Norman, OK; Bucks County Community College, Paralegal Studies Program, Newtown, PA; Community College of Philadelphia, Paralegal Studies Program, Philadelphia, PA; Central Carolina Technical College, Legal Assistant/Paralegal Program, Sumter, SC; Greenville Technical College, Paralegal Program, Greenville, SC; South University, Paralegal/Legal Studies Program, Columbia, SC; Kaplan Career Institute, Paralegal Studies Program, Nashville, TN; Pellissippi State Technical Community College, Paralegal Studies Program, Knoxville, TN; South College, Paralegal Studies Program, Knoxville, TN; Lee College, Legal Assistant Program, Baytown, TX; Texas State University, Legal Studies Program, San Marcos, TX; Utah Valley University (f/k/a Utah Valley State College), Legal Studies Program, Orem, UT; J. Sargeant Reynolds Community College, Paralegal Studies Program, Richmond, VA; Edmonds Community College, Paralegal Program, Lynnwood, WA; Chippewa Valley Technical College, Paralegal Program, Eau Claire, WI; and Western Technical College (f/k/a Western Wisconsin Technical College), Paralegal Program, LaCrosse, WI.

31. Grant reaccreditation to the Family Law Trial Advocacy Civil Law Trial August 2009 Standing Committee on Specialization (Report 104-09AM104)

RESOLVED, That the American Bar Association reaccredit the following designated specialty certification program for lawyers: Business Bankruptcy, Consumer Bankruptcy, and Creditors’ Rights programs of the American Board of Certification of Cedar Rapids, Iowa. Family Law Trial Advocacy, Civil Law Trial Advocacy and Criminal Law Trial Advocacy program of the National Board of Legal Specialty Certification of Wrentham, Massachusetts. Estate Planning Law program of the Estate Law Specialist Board of Cleveland, Ohio. DUI Defense Law program of the National College for DUI Defense, Inc. of Montgomery, Alabama.


RESOLVED, That the American Bar Association supports the existing principle that laws of nature, physical phenomena, and abstract ideas are not patentable, even if they are new and non-obvious.

FURTHER RESOLVED, That the American Bar Association supports application by the Supreme Court of the United States of the common-law tradition of incremental development of jurisprudential doctrine for determining patent-eligible subject matter under 35 U.S.C. § 101.
FURTHER RESOLVED, That the American Bar Association opposes formulations by courts of tests to determine patent-eligible subject matter under 35 U.S.C. § 101 in a manner that articulates fixed and specific requirements that adversely affect yet-to-be conceived but deserving inventions in emerging or unknown technologies.

FURTHER RESOLVED, That the American Bar Association opposes a requirement that a process be explicitly tied to a particular machine or apparatus, or transform a particular article into a different state or thing (i.e., the "machine-or-transformation" test), in order to be eligible for patenting under 35 U.S.C. § 101, but favors, in principle, an evenly applied and more generalized subject-matter bar on claims that would preempt the use of an abstract idea, thereby better effectuating the broad statutory grant of patent eligibility under 35 U.S.C. § 101 and Supreme Court precedent declining to limit that grant, while ensuring the unfettered use of abstract ideas.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution archives Association policies that are 10 years old or older. A policy that is archived is not rescinded. It is retained for historical purposes, but cannot be expressed as a current position of the ABA.

2. Summary of the Issue which the Recommendation Addresses

The archiving project, mandated by the House of Delegates in 1996, will improve the usefulness of the catalogued Association positions on issues of public policy. Many of the Association's positions were adopted decades ago and are no longer relevant or effective.

3. An Explanation of How the Proposed Policy will Address the Issue

The archiving project will allow the Association to pursue primary objectives by focusing on current matters. It will prevent an outdated ABA policy from being cited in an attempt to refute Association witnesses testifying on more recent policy positions.

4. A Summary of Any Minority Views or Opposition Which Have Been Identified

None at this time.
RESOLUTION

RESOLVED, That the Association policies adopted in 1999 which were previously considered for archiving but retained as set forth in Attachment 1 to Report 400B dated August 2019, are archived and no longer considered to be current policy of the American Bar Association and shall not be expressed as such;

FURTHER RESOLVED, That policies which have been archived may be reactivated at the request of the original sponsoring entities. If the original sponsoring entities no longer exist, requests may be brought to the Secretary to be placed on a reactivation list for action by the House of Delegates. Such reactivated policies shall be considered current policy for the Association and shall be expressed as such; and

FURTHER RESOLVED, That the Board of Governors may act to reactivate policies when the House of Delegates is not in session.
3. ERISA
   February 1999
   Health Law Section

4. Goal IX
   February 1999
   Commission on Disability Rights

13. Phase Out
    February 1999
    Section of Taxation

14. Guaranteed Payments
    February 1999
    Section of Taxation

15. Value Added Tax
    February 1999
    Section of Taxation

16. Partnership Items
    February 1999
    Section of Taxation

17. Senior Outreach Projects
    February 1999
    Young Lawyers Division

23. Specialty Certification Programs for Lawyers
    August 1999
    Standing Committee on Specialization

24. Re-Accreditation
    August 1999
    Standing Committee on Specialization
3. ERISA
   February 1999
   Health Law Section (Report 106-99MY106)

   RESOLVED, That the American Bar Association supports enactment of federal legislation to amend the federal Employee Retirement Income Security Act (ERISA) to allow causes of action to be brought in the state and territorial courts against employer-sponsored health care plans under state and territorial health care liability laws.

4. Goal IX
   February 1999
   Commission on Disability Rights (Report 108-99MY108)

   RESOLVED, That the American Bar Association amends the Association's Goal IX to state: To promote full and equal participation in the legal profession by minorities, women and persons with disabilities., That the American Bar Association amends the Association's Goal

13. Phase Outs
    February 1999
    Section of Taxation (Report 104A-99M-99MY104A)

    RESOLVED that the American Bar Association recommends to the Congress that:

    (i) it repeals section 68 and subsection 151 (d)(e) of the Internal Revenue Code of 1986, which phaseout itemized deductions and personal exemptions if an individual taxpayer has adjusted gross income over a given threshold, and

    (ii) it replaces the revenue currently raised by subsection 151(d)(3) and section 68 with adjustments to the explicit tax rates in the tax brackets of section 1 (a)-(d) to raise the same amount of revenue, distributed in substantially the same way among tax brackets.

14. Guaranteed Payments
    February 1999
    Section of Taxation (Report 104B-99MY104B)

    RESOLVED that the American Bar Association recommends to the Congress that it repeal section 707(c) of the Internal Revenue Code of 1986 ("Code"), which provides that, to the extent determined without regard to the income of the partnership, payments to a partner for services or for the use of capital will be treated for certain purposes as though made to a person who is not a member of the partnership
15. Value Added Tax  
February 1999  
Section of Taxation (Report 104C-99MY104C)

RESOLVED, That the following resolutions adopted by the ABA House of Delegates in February 1986 are rescinded:

RESOLVED, That it is the position of the American Bar Association that if the Congress of the United States should impose a value added tax of general application (Whether denominated as a Business Transfer Tax or otherwise), it should:

(i) employ the tax credit method of avoiding duplication of tax; i.e. the tax due on goods and services sold should be diminished by a credit for VAT paid on purchases; and
(ii) levy the tax at a single uniform rate, with a zero rate for exports and certain necessities, and as few exemptions as possible.

FURTHER RESOLVED, That whether the Business Transfer Tax such as S.1102 now proposed for consideration in the Congress employs the tax credit method referred to above or the subtractive method (tax levied on sales receipts less selected expenses), the Section is authorized to render technical assistance to the staffs of Congressional members and committees, and to the U.S. Treasury and Internal Revenue Service, with respect to the Business Transfer Tax and its variants.

FURTHER RESOLVED, That the Section of Taxation is authorized following consultation with such Sections as the President may specify to urge on the proper committees of Congress provisions that achieve the results stated in the first resolution above.

16. Partnership Items  
February 1999  
Section of Taxation (Report 104-99MY104D)

RESOLVED that the American Bar Association recommends to the Congress that it:

(i) Simplify section 702(a) of the Internal Revenue Code of 1986, by substituting a requirement that each partner shall take into account separately his distributive share of any partnership item which, if separately taken into account by any partner, would result in an income tax liability for that partner different from that which would result if that partner did not take the item into account separately; and
(ii) repeal section 702(c), which provides that, in any case where it is necessary to determine the gross income of a partner, a partner shall include his distributive share of the gross income of the partnership.

17. Senior Outreach Projects
   February 1999
   Young Lawyers Division Report (112A-99MY112A)

   RESOLVED, That the American Bar Association encourages state, local, and territorial bar associations, and affiliated state, local, and territorial bar young lawyer organizations, to establish and implement Senior Outreach Projects to provide free legal services to homebound senior citizens without sufficient means to hire counsel.

23. Specialty Certification Programs for Lawyers
   August 1999
   Standing Committee on Specialization Report 107-99AM107

   RESOLVED, That the American Bar Association amends Section 5 of the Standards for Accreditation of Specialty Certification Programs for Lawyers to extend the period of accreditation from three years to five years, as follows:

   SECTIONS: ACCREDITATION PERIOD AND RE-ACCRREDITATION

   5.01 Initial accreditation by the Association shall be granted for five years.

   5.02 To retain Association accreditation, a certifying organization shall be required to apply for re-accreditation prior to the end of the fifth year of its initial accreditation period and every fifth year thereafter. The organization shall be granted re-accreditation upon a showing of continued compliance with these Standards.

24. Re-Accreditation
   August 1999
   Standing Committee on Specialization (Report 114-99AM114)

   RESOLVED, That the American Bar Association re-accredit the following designated specialty certification programs for lawyers:

   Business Bankruptcy, Consumer Bankruptcy and Creditors' Rights programs of the American Board of Certification of Alexandria, Virginia; Civil Trial Advocacy and Criminal Trial Advocacy programs of the National Board of Trial Advocacy of Boston, Massachusetts.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution archives Association policies adopted in 1999 which were previously considered for archiving but retained. A policy that is archived is not rescinded. It is retained for historical purposes, but cannot be expressed as a current position of the ABA.

2. Summary of the Issue Which the Resolution Addresses

The archiving project, mandated by the House of Delegates in 1996, will improve the usefulness of the catalogued Association positions on issues of public policy. Many of the Association’s positions were adopted decades ago and are no longer relevant or effective.

3. An Explanation of How the Proposed Policy will Address the Issue

The archiving project will allow the Association to pursue primary objectives by focusing on current matters. It will prevent an outdated ABA policy from being cited in an attempt to refute Association witnesses testifying on more recent policy positions.

4. A Summary of Any Minority Views or Opposition Which Have Been Identified

None at this time.