RESOLVED, That the American Bar Association condemns the federal government shutdowns, which impaired our legal system and undermined the rule of law, and calls for an immediate and permanent end of the shutdown.

FURTHER RESOLVED, That the American Bar Association calls upon the President of the United States and Congress to refrain, now and in the future, from allowing the federal budget process to injuriously impact the proper functioning of the federal judiciary and the rule of law.
The federal government has been in a partial shutdown since December 22, 2018, the longest shutdown in our country’s history. Over 800,000 government employees are not being paid; many have been furloughed from their jobs, while others – deemed essential – are working without pay. Many of these dedicated workers are faced with the prospect of being unable to meet their rent and mortgage payments, while others are turning to food banks for assistance. Government contractors are not being paid, food inspections by the Food and Drug Administration and the Department of Agriculture have been suspended, and aircraft safety inspectors have been deemed “nonessential” and have been furloughed. The cost to the economy, the threat to our security and the suffering and anxiety for countless people cannot be overstated.

As officers of the court, and as attorneys, we have a particular concern as to the impact the shutdown has on our justice system. To date, the courts have been able to maintain operations by relying on court fees, according to the Administrative Office of the Courts.1 However, court-appointed lawyers who represent indigent defendants are not being paid and hiring is being deferred.2 Investigators and experts hired by federal public defenders similarly are not being paid.3 And the courts are running out of money; it is estimated that if the shutdown continues, the courts will be unable to maintain current operations.4 Court employees will work without pay, and many expect to be furloughed. Civil cases will be put on hiatus.5

While the courts have managed to remain operational thus far, the shutdown has greatly affected the operations of agencies closely connected to the courts. The Justice Department’s funding has lapsed; the department has requested courts to postpone civil cases in which the department is a party.6 None of the employees in the U.S. Attorney’s offices are being paid.7 The General Services Administration, which manages the courthouses, has reduced operations.8 In New York City, the District Court for the

[2] Id.
[5] Id.
[6] Id.
[8] Id.
Southern District of New York has restricted the hours when criminal defendants can make initial appearances due to reduced staffing for the U.S. Marshals Service.\(^9\)

The federal courts supervise nearly 250,000 individuals on probation and defendants awaiting trial. Due to the shutdown, there are fewer pretrial service and probation officers available to supervise these individuals.

In already-backlogged immigration courts, the shutdown is having a significant, deleterious impact. There are more than 800,000 immigration cases pending, and most of these courts are now closed. Because of the volume of cases that must now be rescheduled, it is estimated that many will have to wait until 2022 and 2023 before their cases can be heard.\(^{10}\)

We are deeply concerned about the grave dangers the shutdown poses to the administration of justice. The judiciary is an independent branch of the government and must not be deprived of its ability to function because of issues unrelated to its operations.

The federal court system is the citadel charged with insuring proper administration of justice and our nation’s adherence to the rule of law. Operations of the federal courts – and, indeed, justice for all Americans -- should not and must not be subject to the vagaries of politics. We call upon Congress and the White House to take such immediate steps as are necessary for the judiciary to be funded sufficiently so that it can continue to meet its constitutional duties.

Respectfully Submitted,

Michael Miller
President, New York State Bar Association

January, 2019

\(^9\) Kaplan, \textit{supra} note 1.

1. **Summary of Resolution.**

The resolution calls for the immediate end to the federal government shutdown which is damaging the American justice system and undermining the rule of law.

2. **Approval by Submitting Entity.**

This resolution was approved by the New York State Bar Association House of Delegates on January 18, 2018.

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

No.

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

The ABA has a long history supporting adequate funding for the federal judiciary to meet its constitutional duties and provide meaningful access to justice. The following are some examples of that history:

**August 2013 Resolution 10C**

RESOLVED, That the American Bar Association urges all federal, state, territorial, and local legislative bodies and governmental agencies to adopt laws and policies that ensure full and adequate court funding.

FURTHER RESOLVED, That the American Bar Association adopts the *Principles for Judicial Administration* (and commentary), dated August 2013 and recommends it as appropriate guidance for those states desiring to establish principles for judicial administration in their efforts to restructure court services and secure adequate court funding.

**February 2013 Resolution 10A**

RESOLVED, That the American Bar Association urges federal elected officials, as they consider deficit reduction for fiscal year 2013 and beyond, to maintain the ability of individuals, as well as business and other organizations, to have access to justice by assuring that (1) the federal courts receive funding adequate to permit them to perform their constitutional functions effectively and efficiently, and (2) the Legal Services
Corporation receives funding to meet the needs of our country’s most vulnerable individuals who are eligible for services provided by the nation’s legal service providers.

August 9-10 2004 (Resolution number unavailable)
RESOLVED, The American Bar Association urges Congress and the Administration to fund the Federal Judiciary, recognizing competing fiscal demands, at levels sufficient to enable the Courts to fulfill their separate Constitutional and statutory duties; and

FURTHER RESOLVED, That in order to avert a funding crisis in Fiscal Year 2005, at a minimum the Federal Judiciary should be provided appropriations sufficient to maintain their current level of services in order to avoid further staff and operational cutbacks at a time when court workload continues to grow.

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

As of the initial submission of this resolution, the partial government shutdown had been in effect for more than three weeks. The federal courts had estimated that after January 25, 2019 they will need to reduce operations. A three-week funding bill was enacted on Friday, January 25, 2019 and the prospect of a further shutdown looms which would seriously impair the federal judiciary from meeting its constitutional duties.

6. Status of Legislation. (If applicable.)

A three-week funding bill was enacted on Friday, January 25, 2019.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates:

It is anticipated that the resolution would be communicated to the Executive and Legislative branches of government.

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

None.


N/A

10. Referrals.

National Association of Bar Executives
National Conference of Bar Presidents
Conference of State Bars
11. **Contact Name and Address Information. (Prior to the meeting.)**

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12. **Contact Name and Address Information. (Who will present the report to the House.)**

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EXECUTIVE SUMMARY

1. Summary of the Resolution.

The resolution calls for the immediate end to the federal government shutdown which is damaging the American justice system and undermining the rule of law.

2. Summary of the issue which the Resolution addresses.

The current government shutdown is impairing the operation of federal courts and the Department of Justice, leaving pending cases in limbo and delaying available judicial remedies for those in need.

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

An end to the shutdown will enable the Department of Justice and the federal courts to resume full operation.

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

None.