



MAJOR LEGISLATION OF INTEREST TO LAWYERS †

**111th Congress
(Jan. 4, 2009 - Dec. 22, 2010)**

Contents

| | | | |
|--------------------------------------|----|----------------------------------|----|
| Administrative Law..... | 2 | Housing/Homelessness..... | 20 |
| Alternative Dispute Resolution..... | 2 | Immigration Law..... | 21 |
| Antitrust Law..... | 3 | Intellectual Property Law..... | 23 |
| Business Law..... | 3 | International Law..... | 23 |
| Children/Families..... | 6 | International Trade..... | 25 |
| Civil Rights/Constitutional Law..... | 8 | Legal Education..... | 25 |
| Courts/Judiciary..... | 9 | Legal Research..... | 26 |
| Criminal Law..... | 12 | Legal Services..... | 27 |
| Elder Law..... | 16 | Military Law..... | 28 |
| Election Law..... | 16 | National Security..... | 30 |
| Environmental Law..... | 17 | Tax Law..... | 32 |
| Health Law..... | 17 | Tort and Insurance Practice..... | 32 |

* ABA testified or submitted statement or letter to Congress or federal agency.

◆ ABA legislative and governmental priority during the 111th Congress, including issues encompassed in broad priorities.

† This chart includes issues on which the ABA House of Delegates or Board of Governors has approved association policy, unless otherwise noted.



| Subject | Description and Status | ABA Position |
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| <h2>Administrative Law</h2> | | |
| *Administrative Conference of the United States (ACUS) | <p>P.L. 111-8, omnibus fiscal year 2009 appropriations legislation enacted 3/11/09, and P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, both included \$1.5 million for ACUS, an agency that has been revived after being terminated in 1995 for budget reasons. Under P.L. 111-8, ACUS was expected to use 50 percent of fiscal year 2009 carryover balances to fund fiscal year 2010 operating expenses, and funds will remain available until 9/30/11. P.L. 111- 322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including ACUS, at fiscal year 2010 funding levels through 3/4/11. The House Judiciary Committee hosted a roundtable discussion in April 2009 and a House Judiciary subcommittee held a hearing to discuss future study topics for ACUS. The Senate confirmed the nominations of Paul R. Verkuil to be ACUS chairman and of the council members. ACUS held a plenary session in December 2010 and approved a recommendation providing guidance to federal agencies regarding consultation with state and local governments and consideration of state interests in rulemakings that may result in the preemption of state law.</p> | <p><i>Supports reauthorization and funding for ACUS.</i></p> |
| <h2>Alternative Dispute Resolution</h2> | | |
| *International Commercial Arbitration | <p>H.R. 1020 and S. 931 would have amended the Federal Arbitration Act to invalidate any predispute arbitration agreement if it requires arbitration of an employment, consumer or franchise dispute or a dispute arising under any statute intended to protect civil rights. H.R. 1020 would have altered Chapter 1 of Title 9 of the U.S. Code (also known as the Federal Arbitration Act), while S. 931 would have added a new Chapter 4 to Title 9. A House Judiciary subcommittee discharged H.R. 1020. S. 931 was referred to the Senate Judiciary Committee.</p> | <p><i>No position on the overall legislation, but developed several technical amendments to preserve the benefits of international commercial arbitration, including establishing a new Chapter 4 of Title 9 rather than altering Chapter 1.</i></p> |
| *Ombudsman – Patents Pilot Program | <p>The U.S. Patent and Trademark Office (USPTO) announced in April 2010 the establishment of a one-year Patents Ombudsman Pilot Program to provide patent applicants, attorneys and agents assistance with application-specific issues, including concerns regarding stalled applications.</p> | <p><i>Supports USPTO’s effort. Maintains that ombuds offices should comply with the ABA Standards for the Establishment and Operation of Ombuds Offices.</i></p> |



| Subject | Description and Status | ABA Position |
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| <h2>Antitrust Law</h2> | | |
| <p>*Leegin Decision/ Resale Price Maintenance</p> | <p>S. 148 and H.R. 3190 would have effectively overturned the 2007 Supreme Court decision in <i>Leegin Creative Leather Products Inc. v. PSKS Inc.</i>, 551 U.S. 877 (2007), which overruled a 96-year-old precedent that vertical agreements between a supplier and its distributor or retailer on the minimum resale prices for the supplier's products are per se violations of Section 1 of the Sherman Act. The Senate Judiciary Committee approved S. 148. The House Judiciary Committee approved H.R. 3190.</p> | <p><i>Supports the Leegin decision and opposes legislation that would effectively overturn the decision.</i></p> |
| <p>◆*McCarran-Ferguson Act</p> | <p>S. 1681 and H.R. 3596 would have partially repealed the insurance industry's antitrust exemption under the McCarran-Ferguson Act for health insurers and medical insurance issuers. The House Judiciary Committee amended H.R. 3596 to include a limited number of "safe harbor" exceptions for certain pro-competitive conduct and approved the bill. H.R. 3952, the House-passed version of comprehensive health care reform, included the provisions as approved by the House Judiciary Committee. The Senate Judiciary Committee held a hearing on S. 1681, but McCarran-Ferguson provisions were not included in H.R. 3590, the Senate-passed version of comprehensive health care reform. No McCarran-Ferguson provisions were included in the final version of health care reform, P.L. 111-148 (H.R. 3590), enacted 3/23/10.</p> | <p><i>Supports repeal of the McCarran-Ferguson exemption and replacing it with a series of safe harbors to make clear that certain types of conduct by insurers are pro-competitive and beneficial to the American economy. Supports the provisions of H.R. 3596, as approved by the House Judiciary Committee and incorporated into H.R. 3952, the House-passed health care reform bill.</i></p> |
| <h2>Business Law</h2> | | |
| <p>◆*Attorney Regulation/Consumer Financial Protection Bureau</p> | <p>Title X of P.L. 111-203 (H.R. 4173), financial regulatory reform legislation enacted 7/21/10, includes a broad practice-of-law exclusion that specifically states that the newly created Consumer Financial Protection Bureau (CFPB) will have no supervisory or enforcement authority over lawyers engaged in the practice of law who are in an attorney-client relationship with consumer clients (except to the extent that the new law simply transfers current federal regulatory authority from existing agencies to the new Bureau).</p> | <p><i>Supports language exempting lawyers engaged in the practice of law from the expanded regulatory powers of the CFPB.</i></p> |



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| ◆*Attorney-Client Privilege/Employee Legal Rights – Government Waiver Policies | S. 445 and H.R. 4326, both known as the Attorney-Client Privilege Protection Act, would have prohibited any federal agency from pressuring companies to waive their attorney-client privilege, work product or specified employee legal protections, or to consider any voluntary waiver by companies when assessing whether companies are cooperating during investigations of corporate wrongdoing. S. 445 was referred to the Senate Judiciary Committee. H.R. 4326 was referred to the House Judiciary Committee. | <i>Supports comprehensive federal legislation like the Attorney-Client Privilege Protection Act; also supports the adoption of a presidential executive order applying the basic reforms instituted in 2008 by the Justice Department to all federal agencies to preserve attorney-client privilege, work product and employee legal protections.</i> |
| ◆*Attorney Regulation/Mortgage Modification Rules | The Federal Trade Commission’s (FTC) final “Mortgage Assistance Relief Services” (MARS) Rule, issued in November 2010, exempts the vast majority of practicing lawyers who help consumer clients renegotiate their mortgages or avoid foreclosure from all of the burdensome federal regulations in the rule, including a ban on advance, hourly and non-contingent fees. A proposed Department of Housing and Urban Development (HUD) rule, issued under the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act), would include lawyers who help clients to negotiate or renegotiate their residential mortgages under the definitions of “loan originator” or “third-party loan modification specialist,” thereby subjecting the lawyers to the extensive registration and licensing requirements of the SAFE Act. | <i>Supports broad attorney exemption in final FTC MARS Rule and urges inclusion of a similar exemption in the HUD SAFE Act Rule.</i> |
| ◆*Bankruptcy – Attorney Liability and Regulation | Draft legislation would repeal provisions in P.L. 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) that require consumer bankruptcy lawyers to certify the accuracy of the debtor’s bankruptcy schedules; certify the debtor’s ability to make future payments under reaffirmation agreements; and identify and advertise themselves as “debt relief agencies” subject to numerous burdensome regulations. The Supreme Court upheld the applicability of BAPCPA’s debt relief agency provisions to consumer bankruptcy lawyers in its 3/8/10 decision in <i>Milavetz v. United States</i> , 559 U.S. ____ (2010), but provided helpful guidance for those lawyers by specifically listing many examples of permitted attorney advice. | <i>Supports repeal of the BAPCPA attorney liability provisions and filed an amicus brief in the Milavetz case challenging certain aspects of the statute’s debt relief agency provisions.</i> |



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| ◆* Debt Settlement Consumer Protection | S. 3264 would have imposed a number of new burdensome federal regulations on lawyers providing “debt settlement services” to consumer clients. Language including a broadened attorney exemption was offered as an amendment to the Senate version of financial regulatory reform legislation. The proposed amendment was withdrawn and was not part of the final law, P.L. 111-203 (H.R. 4173), enacted 7/21/10. | <i>Opposed the original attorney regulation provisions in S. 3264; supported the expanded attorney exemption in the proposed amendment to H.R. 4173 and similar changes to S. 3264, but supports further refinements to both proposals.</i> |
| *Financial Reform | P.L. 111-203 ((H.R. 4173), financial regulatory reform legislation enacted 7/21/10, establishes numerous broad financial regulatory reforms, protects consumers and investors, consolidates banking regulatory agencies, protects against systemic risk and regulates the over-the-counter derivatives market. Also see Attorney Regulation/Consumer Financial Protection Bureau . | <i>No position on overall legislation, but recommended a number of refinements consistent with the ABA’s eight reform principles, and supports broad practice-of-law exclusion in Title X of the final bill.</i> |
| ◆*Incorporation Transparency | S. 569 and H.R. 6098, seeking to ensure that persons who form corporations disclose the beneficial owners of those corporations, would have federalized state incorporation practices; created a new class of financial institutions known as formation agents, likely to include lawyers, that would have been subject to enhanced anti-money-laundering requirements; and potentially imposed suspicious activity reporting (SAR) requirements on the legal profession. The Senate Homeland Security and Governmental Affairs Committee held hearings on S. 569. H.R. 6098 was referred to the House Financial Services Committee. | <i>Opposes.</i> |
| ◆*Red Flags Rule | P.L. 111-319 (S. 3987), enacted 12/18/10, effectively exempts all practicing lawyers from the Federal Trade Commission’s “Red Flags Rule” under the Fair and Accurate Credit Transactions Act of 2003 (FACTA) that requires creditors to develop programs identifying, detecting and responding to the warning signs of identity theft. The FTC had interpreted a broad definition of “creditor” to include attorneys. Prior to enactment of legislation, the ABA filed suit against the FTC in the U.S. District Court for the District of Columbia on 8/27/09, and the judge granted the ABA’s motion for summary judgment on 10/29/09 against the FTC’s applying the rule to lawyers. The FTC appealed the ruling to the U.S. Court of Appeals for the D.C. Circuit and delayed enforcement of the rule for the third time for all entities until 1/1/11. The ABA presented its oral argument in the case on 11/15/10. | <i>Opposes application of the FTC “Red Flags Rule” to lawyers.</i> |



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| <h2>Children/Families</h2> | | |
| Adoption Assistance Appropriations | <p>P.L. 111-117 (H.R. 3288) fiscal year 2010 consolidated appropriations legislation enacted 12/16/09, included \$39.5 million for adoption incentives, \$12.953 million for adoption awareness, \$26.3 million for adoption opportunities, and \$20 million for innovative approaches for foster care. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including adoption assistance programs, at fiscal year 2010 funding levels through 3/4/11.</p> | <i>Supports efforts to encourage adoption.</i> |
| *Child Abuse Prevention and Treatment Act (CAPTA) | <p>P.L. 111-320 (S. 3817), enacted 12/20/10, reauthorizes CAPTA, the Family Violence Prevention and Services Act, the Child Abuse Prevention and Treatment and Adoption Reform Act and the Abandoned Infants Assistance Act for five years. P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, included \$26.535 million for child abuse state grants, \$29 million for child abuse discretionary activities, and \$41.779 million for community-based child abuse prevention. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including child abuse prevention programs, at fiscal year 2010 funding levels through 3/4/11.</p> | <i>Supports.</i> |
| *Domestic Violence – Legal Assistance Program | <p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, included \$41 million for the Legal Assistance for Victims Grant Program, which awards grants for funding and training attorneys to represent survivors of domestic violence, dating violence, sexual assault and stalking in a wide range of increasingly complex legal matters, and \$3 million for court training and improvement. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including the domestic violence legal assistance program, at fiscal year 2010 funding levels through 3/4/11.</p> | <i>Supports increased funding and establishment of a National Domestic Violence Volunteer Attorney Network.</i> |
| *Every Child Deserves a Family Act | <p>H.R. 3827 and H.R. 4806 would have promoted permanency for children waiting in foster care by removing sexual orientation, gender identification and marital status as bars to child placement decisions when the placement is in the best interest of the child. Both bills were referred to the House Ways and Means Committee. There was no comparable Senate legislation.</p> | <i>Supports.</i> |



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| *Foster Youth Financial Security | H.R. 6192 would have required states to determine Social Security eligibility of all foster children and provide for the conservation of the funds in dedicated accounts that the youth can access when leaving care. H.R. 6193 would have required states to take certain steps to assist foster children making the transition to independent living and would have authorized grant funds for a national coalition or consortium focused on the needs of transitioning youth. Both bills were referred to the House Ways and Means Committee. There was no comparable Senate legislation. | <i>Supports.</i> |
| *Fostering Connections to Success and Increasing Adoptions Act | A House Ways and Means subcommittee held a series of oversight hearings on implementation of P.L. 110-351, the Fostering Connections to Success and Increasing Adoptions Act of 2008, the first major overhaul of the foster care system since 1997. The Administration for Children and Families in the Department of Health and Human Services issued a request for comments in July 2010 to gather information for the development of new regulations for the Adoption and Foster Care Analysis and Reporting system that reflect requirements enacted by the 2008 act. | <i>Supports the act and recommends attention be focused on provisions ensuring continuity in the education of children in the foster care system.</i> |
| Promoting Safe and Stable Families (PSSF) | P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, included \$408 million for PSSF. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains funding for most of the federal government, including PSSF, at fiscal year 2010 funding levels through 3/4/11. | <i>Supports.</i> |
| *Residential Treatment of Youth | H.R. 911 would have required residential programs for teens to uphold certain standards and would have allocated resources for enforcement to prevent child abuse and neglect in facilities for teens. The House passed H.R. 911 and sent the bill to the Senate, where it was referred to the Senate Health, Education, Labor and Pensions Committee. There was no comparable Senate legislation. | <i>Supports.</i> |



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| <h2>Civil Rights/Constitutional Law</h2> | | |
| ◆*Civil Rights Tax Relief | S. 1360 and H.R. 3035 would have amended the Internal Revenue Code of 1986 to exclude from gross income non-economic damages received as judgments on settlements of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims. S. 1360 was referred to the Senate Finance Committee. H.R. 3035 was referred to the House Ways and Means Committee. | <i>Supports.</i> |
| *Discrimination – Sexual Orientation/ Gender Identity | S. 1584 and H.R. 3017 would have made employment discrimination based on sexual orientation or gender identity illegal in federal, state and local governments as well as in private companies with more than 15 employees. The Senate Health, Education, Labor and Pensions Committee held a hearing on S. 1584. The House Education and Labor Committee held a hearing on H.R. 3017. See also Military Law – Don’t Ask, Don’t Tell. | <i>Supports.</i> |
| ◆*Fair Pay Restoration – <i>Ledbetter</i> Decision | P.L. 111-2 (S. 181), enacted 1/20/09, overruled the Supreme Court decision in <i>Ledbetter v. Goodyear Tire and Rubber Co.</i> , 550 U.S. 618 (2007), by clarifying that the statute of limitations for claims of pay discrimination runs from each paycheck reflecting the improper disparity, no matter how long ago the original act of alleged discrimination occurred. | <i>Supports.</i> |
| *Native Hawaiian Self-Determination | S. 1011 and H.R. 2314 would have allowed Native Hawaiians to choose a political framework that could be recognized by the federal government and would support an indigenous governing entity for Native Hawaiians within the state of Hawaii. The Senate Indian Affairs Committee held hearings and approved S. 1011. The House passed H.R. 2314. | <i>Supports.</i> |
| *Reporters’ Shield | S. 448 and H.R. 985 would have codified a federal shield law for journalists to protect them from federally compelled disclosure of confidential sources of information under specified conditions. The House passed H.R. 985. The Senate Judiciary Committee approved S. 448 after amending the bill to reflect a bipartisan compromise reached by key senators and the White House. | <i>Supports the compromise proposal.</i> |



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| ♦*Paycheck Fairness Act | S. 3772 and H.R. 12 would have updated the Equal Pay Act of 1963 to prohibit an employer from paying unequal wages to male and female workers who perform jobs under similar work conditions that require substantially equal skill, effort and responsibility, unless there is a legitimate reason for the pay differential. The legislation also would have prohibited employer retaliation against employees who share salary information with their coworkers. The House passed H.R. 12 separately and as part of H.R. 11, legislation that included the Lilly Ledbetter Fair Pay Act (see Fair Pay Restoration entry above). While the Senate passed the Lilly Ledbetter Fair Pay Act provisions that became P.L. 111-2, the Senate failed to invoke cloture and proceed to a vote on S. 3772, which was identical to the House-passed version of the Paycheck Fairness Act. | <i>Supports.</i> |
| *Tribal Justice | P.L. 111-211 (H.R. 725), enacted 7/27/10, reauthorizes the Indian Tribal Justice Technical and Legal Assistance Act of 2000 and the Indian Tribal Justice Act of 1993, which provide funding through the Justice Department and the Interior Department for criminal and legal assistance and the development and continuing operation of tribal justice systems. Provisions also strengthen protection and assistance for victims of gender-based violence by providing funding for legal assistance as well as training and education about gender-based violence and the needs of victims. | <i>Supports.</i> |

Courts/Judiciary

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| *Administrative Law Judges (ALJs) | On 12/24/09, the president issued an executive order providing a 1.5 percent pay increase and locality pay adjustments for ALJs for 2010. On 12/29/10, the president issued an executive order maintaining ALJ pay and locality pay adjustments for 2011 at 2010 levels. H.R. 2850 would have provided enhanced retirement benefits for ALJs. H.R. 2850 was referred to the House Oversight and Government Reform Committee. There was no comparable Senate legislation. | <i>Supports fair and adequate compensation, including the same increase in basic pay as provided to the General Schedule, locality payments, and enhanced retirement benefits for ALJs.</i> |
| Cameras in the Courtroom | S. 657 and H.R. 3054 would have authorized presiding judges to permit media coverage of federal appellate and district court proceedings and would have directed the U.S. Judicial Conference to promulgate advisory and mandatory guidelines with regard to media coverage. S. 446 would have permitted the televising of Supreme Court proceedings. The Senate Judiciary Committee approved S. 657 and S. 446. H.R. 3054 was referred to the House Judiciary Committee. | <i>Supports continuation of the debate on televising federal court proceedings and urges the U.S. Judicial Conference to authorize further experimentation with electronic media coverage.</i> |



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| ◆* Equal Access to Justice for the Military | S. 357 and H.R. 569 would have eliminated an inequity in current law by permitting court-martialed servicemembers who face dismissal, discharge or lengthy confinement to petition for review by U.S. Supreme Court even if denied review by the Court of Appeals for the Armed Forces. S. 357 was referred to the Senate Judiciary Committee. A House Judiciary subcommittee held hearings and approved H.R. 569. | <i>Supports.</i> |
| Federal Rules – Statutory Deadlines | P.L. 111-16 (H.R. 1626), enacted 5/7/09, simplifies provisions to provide predictability and uniformity to the current process of calculating court deadlines. | <i>No position on specific legislation, but supports courts improvement efforts.</i> |
| ◆Inspector General – Judiciary | S. 220 and H.R. 486 would have established a statutory Office of Inspector General for the judiciary for the purpose of conducting investigations of matters pertaining to the judicial branch, including possible judicial misconduct. S. 220 also would have provided for investigations by the inspector general of alleged judicial misconduct by justices of the U.S. Supreme Court. S. 220 was referred to the Senate Judiciary Committee. H.R. 486 was referred to the House Judiciary Committee. | <i>Opposes any congressional proposal that would create an Office of Inspector General for the judiciary with broad investigative powers and close ties to Congress.</i> |
| ◆*Judgeships | S. 1653 and H.R. 3662 would have authorized a total of 69 new permanent and temporary federal judgeships (12 for appellate courts and 57 for district courts). S. 1653 was referred to the Senate Judiciary Committee. H.R. 3662 was referred to the House Judiciary Committee. | <i>Supports additional judgeships to meet the growing caseloads in the federal courts.</i> |
| ◆*Judicial Compensation | P.L. 111-8 (H.R. 1105), omnibus fiscal year 2009 appropriations legislation enacted 3/11/09, allowed federal judges to receive a 2.8 percent cost-of-living adjustment (COLA) for 2009, retroactive to 1/1/09, by waiving Section 140 of P.L. 97-92, which stipulates that no judicial COLA can take effect without specific authorization by Congress. Federal judges did not receive a COLA in 2010 and will not receive one in 2011. S. 2725 would have repealed Section 140, linked judicial COLAs to General Schedule (GS) COLAs, and authorized judges to receive the national average locality adjustment for GS employees as part of their yearly COLA. S. 2725 was referred to the Senate Judiciary Committee. There was no comparable House legislation. | <i>Supports legislation to substantially increase the compensation of federal judges, to repeal Section 140, to ensure regular COLAs, and to provide for periodic review of judicial salary levels.</i> |
| Judicial Impeachment | On 3/11/10, the House voted to impeach U.S. District Judge G. Thomas Porteous Jr. on charges of lying and corruption. On 12/8/10, the Senate found Judge Porteous guilty on four articles of impeachment, removing him from his appointment to the federal bench in Louisiana, denying him a federal pension, and barring him from holding federal office in the future. | <i>Supports the impeachment process.</i> |



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| ◆*Judicial Selection/ Vacancies | President Obama invited the ABA Standing Committee on the Federal Judiciary back into the pre-nomination vetting process for all federal judicial nominees to the lower courts. During the Bush administration, the Standing Committee conducted evaluations of nominees on a post-nomination basis. During the 111 th Congress, the Senate confirmed Circuit Judge Sonia Sotomayor and Solicitor General Elena Kagan as Associate Justices of the Supreme Court. There were a total of 105 nominations (2 Supreme Court, 25 court of appeals, 78 district court), of which 62 were confirmed (2 Supreme Court, 16 court of appeals and 44 district court). Forty-three nominations were returned to the White House at the end of the Congress. At adjournment, there were 90 vacancies. | <i>Supports prompt filling of judicial vacancies and urges selection of individuals of racial and ethnic diversity at all levels of the federal bench. Supports pre-nomination consultation between the president and the Senate and the use of bipartisan advisory nominating commissions.</i> |
| Pleadings Standard | S. 1504, S. 4054 and H.R. 4115 would have nullified the effect of the Supreme Court decisions in <i>Bell Atlantic v. Twombly</i> , 550 U.S. 544 (2007) and <i>Ashcroft v. Iqbal</i> , (No. 07-1015, May 2009), which some claim establish a tough, new standard for assessing the adequacy of a complaint under Rule 12(b)(6), (c) or (e) of the Federal Rules of Civil Procedure. S. 1504 and H.R. 4115 would have circumvented the Rules Enabling Act and attempted to return to the standard in existence prior to 2007. S. 4054 would have overruled the Supreme Court decision but allowed the rulemaking process to develop an alternative standard. S. 1504 and S. 4054 were referred to the Senate Judiciary Committee, which held a hearing on the issue. A House Judiciary subcommittee held hearings on the issue and on H.R. 4115. | <i>No position on whether the decisions establish a new standard rather than interpret the old one. Supports adherence to the process established by Congress under the Rules Enabling Act to alter the federal rules of procedure. ABA president appointed a Task Force on Federal Pleadings Standards to study the issue and develop recommendations.</i> |
| ◆*Sunshine in Litigation Act | S. 537, H.R. 1508 and H.R. 5419 would have circumvented the Rules Enabling Act to restrict the authority of the federal courts regarding protective orders under Rule 26(c) of the Federal Rules of Civil Procedure. H.R. 1508 and H.R. 5419 were referred to the House Judiciary Committee, and a House Judiciary subcommittee held a hearing on H.R. 1508. S. 537 was referred to the Senate Judiciary Committee. | <i>Opposes the bills because they unnecessarily and unwisely would restrict the courts' authority under Rule 26(c) and would circumvent the Rules Enabling Act.</i> |



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| Criminal Law | | |
| *Alternatives to Incarceration | The U.S. Sentencing Commission approved alternatives to incarceration as one of its top priorities for 2009 as a response to the exploding U.S. prison population and the fact that policies resulted in lengthy prison sentences for a large range of non-violent offenses. Based on recommendations from the commission, the federal sentencing guidelines were amended in 2010 to provide judges with greater discretion to impose non-prison sentences based on offense level and criminal history. | <i>Supports broad expansion of alternatives to incarceration.</i> |
| *Criminal Background Checks | H.R. 5300 would have improved criminal records checks requested by employers by implementing steps to improve the accuracy and reliability of criminal record information maintained by the Federal Bureau of Investigation. H.R. 5300 was referred to the House Judiciary Committee. There was no comparable Senate legislation. | <i>Supports.</i> |
| *Death Penalty Representation | H.R. 3986 would have broadened federal habeas corpus review of death penalty appeals. A House Judiciary subcommittee held a hearing on the impact of federal habeas corpus limitations on death penalty appeals and on attorney representation in death penalty appeals. H.R. 3986 was referred to the House Judiciary Committee. There was no comparable Senate legislation. The Department of Justice (DOJ) issued a request for comments on a final rule issued in December 2008 to implement certification procedures for states seeking to qualify for expedited federal habeas corpus review procedures in capital cases provided under Section 507 of the USA PATRIOT Improvement and Reauthorization Act of 2005. Following the comment period, DOJ removed the December 2008 final rule in November 2010 and is expected to issue new regulations. | <i>Opposes efforts to restrict access to the federal courts through habeas corpus by persons convicted of state criminal offenses. Has developed the ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases. Submitted comments to the DOJ expressing concerns about the December 2008 final rule on certification procedures.</i> |
| *Felony Voting Disenfranchisement | S. 1516, H.R. 59, H.R. 3335 and H.R. 3576 would have secured the federal voting rights of persons who have been released from incarceration. The House bills were referred to the House Judiciary Committee, where a subcommittee held a hearing on H.R. 3335. S. 1516 was referred to the Senate Judiciary Committee. | <i>Supports.</i> |
| *Gang Violence Prevention/Youth Promise Act | S. 435 and H.R. 1064 would have supported community-based efforts to prevent youth from entering the justice system through implementation of evidence-based strategies proven to reduce youth violence and delinquency. The House Judiciary Committee approved H.R. 1064. S. 435 was referred to the Senate Judiciary Committee. | <i>Supports.</i> |



| Subject | Description and Status | ABA Position |
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| *Gun Violence—D.C. Gun Laws | S. 160, a bill to provide the District of Columbia with full voting representation in the House, was amended by the Senate to include language to repeal the District’s ban on semi-automatic weapons, eliminate the city’s registration for most guns, and drop criminal penalties for possessing an unregistered firearm in the District. The Senate passed the amended version of S. 160. The Senate actions stalled H.R. 157, the House version of the D.C. voting rights bill approved by the House Judiciary Committee that did not include the gun-related provisions. | <i>Supports stronger efforts to implement and enforce existing gun control laws at all levels of government. Oppose repeal of the ban on semi-automatic weapons.</i> |
| *Hate Crimes | P.L. 111-84 (H.R. 2647), defense authorization legislation enacted 10/28/09, includes provisions broadening federal hate crimes laws to cover crimes based on the victim’s gender, sexual orientation or disability. The new law includes a six-month mandatory minimum sentencing provision in the case of assault resulting in bodily injury against members of the Armed Forces on account of their status as servicemembers. | <i>Supports hate crimes legislation, but opposes the mandatory minimum sentence provision in the new law.</i> |
| ◆*Indigent Defense Funding | P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, included \$977.7 million for the federal judiciary’s defender services programs, increasing the hourly compensation level for panel attorneys in non-capital cases from \$110 to \$125 and the capital panel attorney hourly rate from \$175 to \$178. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including defender services programs, at fiscal year 2010 funding levels through 3/4/11. S. 3842 would have increased opportunities for state indigent defense programs to receive federal funding and authorized DOJ to provide technical assistance and training to state indigent defense providers. The bill was referred to the Senate Judiciary Committee. There was no comparable House legislation. A House Judiciary subcommittee held a hearing on the crisis that states are facing in providing legal representation to indigent defendants in criminal cases. The Justice Department sponsored a national conference in February 2010 on indigent defense issues and established an Access to Justice Initiative to coordinate with judges and lawyers across the country with the goal of finding ways to help people who cannot afford a lawyer. | <i>Supports increased federal funding for indigent defense at the federal and state levels.</i> |
| ◆* Juvenile Justice | S. 678 and H.R. 6029 would have reauthorized and improved the Juvenile Justice and Delinquency Prevention Act by focusing on strengthening the four core requirements of the act, improving conditions of confinement for juveniles, and expanding the role of the Office of Juvenile Justice and Delinquency Prevention in providing technical assistance and training to states. The Senate Judiciary Committee approved S. 678. H.R. 6029 was referred to the House Committees on Judiciary, and Education and Labor. | <i>Supports.</i> |



| Subject | Description and Status | ABA Position |
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| ◆*Mandatory Minimum Sentencing | <p>More than 60 bills were introduced that included provisions for new or enhanced federal mandatory minimum sentences. A House Judiciary subcommittee held a hearing on over-criminalization of conduct and over-federalization of criminal law, including the topic of mandatory minimum sentencing. P.L. 111-84 (H.R. 3647), defense authorization legislation enacted 10/28/09, includes a six-month mandatory minimum sentencing provision in the case of assault resulting in bodily injury against members of the Armed Forces on account of their status as servicemembers. The U.S. Sentencing Commission held a hearing on federal mandatory sentences. Also see Sentencing Disparities – Cocaine.</p> | <p><i>Opposes mandatory minimum sentences.</i></p> |
| ◆National Criminal Justice Commission | <p>S. 714 and H.R. 5143 would have established a National Criminal Justice Commission to conduct a comprehensive review for the first time in 40 years of federal, state and local criminal justice systems in the United States and propose recommendations for legislative reform. The House passed H.R. 5143. A Senate Judiciary subcommittee held a hearing on S. 714 and the full committee amended and approved the bill.</p> | <p><i>Supports.</i></p> |
| *Prison Phone System Contracting Reform | <p>H.R. 1133 would have amended the Federal Communications Act of 1934 to require the Federal Communications Commission (FCC) to prescribe rules regulating inmate telephone service rates that would assure that there is a reasonable opportunity for prison and jail inmates to maintain telephonic communication with the free community and that telephone services in the corrections setting are offered with an appropriate range of options at the lowest possible rates. A House Energy and Commerce subcommittee held a hearing on the bill. The FCC issued a request for comments on issues related to prisoner telephone services. There was no comparable Senate legislation.</p> | <p><i>Supports the legislation and encourages the FCC to establish a comprehensive fair and final resolution of issues related to prisoner telephone services.</i></p> |
| *Prison Rape | <p>The National Prison Rape Elimination Commission completed a five-year study and released its recommendations in June 2009. The recommendations are under consideration by the U.S. attorney general as he develops mandatory standards for the prevention of and punishment for the crime of rape in federal prisons and state correctional institutions that receive federal funds. Proposed standard RE-2 seeks to ensure appropriate redress within the requirements of the Prison Litigation Reform Act of 1996 that prisoners exhaust the administrative grievance system or forfeit their right to bring a lawsuit.</p> | <p><i>Supports the recommendations, but prefers that prisoners be allowed to file a lawsuit prior to exhausting the administrative grievance process.</i></p> |
| *Recidivism Reduction | <p>H.R. 2829 would ensure prompt access to supplemental security income, Social Security disability and Medicaid benefits for persons released from prison. The bill was referred to the House Committees on Ways and Means, and Energy and Commerce. There was no comparable Senate legislation.</p> | <p><i>Supports.</i></p> |



| Subject | Description and Status | ABA Position |
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| *Racial Disparities in the Justice System | S. 495 and H.R. 1412 would have established a five-year pilot program in 10 federal districts, under the supervision of the U.S. attorney general, to establish advisory groups to study and determine the extent of racial and ethnic disparity in the various stages of the criminal justice system, make reports on the results of their findings, and make specific recommendations to help eliminate racial and ethnic discrimination and unjustified racial and ethnic disparities. The Department of Justice has undertaken a comprehensive review of the role of racial disparities in the federal justice system. S. 495 was referred to the Senate Judiciary Committee. H.R. 1412 was referred to the House Judiciary Committee, and a House Judiciary subcommittee held a hearing on the issue. | <i>Supports.</i> |
| *Racial Profiling | S. 1498 and H.R. 3617, federal highway funding legislation, included provisions to extend authorization of appropriations for numerous programs, including a grant program established in 2005 for states that have enacted and are enforcing laws prohibiting the use of racial profiling in the enforcement of state laws regulating the use of federal-aid highways and are maintaining public records in this area. The Senate Environment and Public Works Committee approved S. 1498. The House passed H.R. 3617. | <i>Supports.</i> |
| ◆*Second Chance Act | P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, included \$100 million for programs authorized by the Second Chance Act (P.L. 110-199), which provides grants to states and localities so they can provide coordinated assistance to help prepare inmates and ex-offenders to successfully return to their communities. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most federal programs, including Second Chance Act grants, at fiscal year 2010 funding levels through 3/4/11. | <i>Supports.</i> |
| ◆*Sentencing Disparities – Cocaine | P.L. 111-220 (S. 1789), enacted 8/3/10, reduces the 100-1 federal sentencing disparity between powder and crack cocaine offenses to 18-1 and eliminates the mandatory minimum sentence for simple possession of crack cocaine. A temporary emergency amendment to the federal sentencing guidelines went into effect 11/1/10 to implement the new law. | <i>Supports eliminating the disparity in cocaine sentencing.</i> |



| Subject | Description and Status | ABA Position |
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Elder Law

***Elder Justice**

P.L. 111-148 (H.R. 3590), comprehensive health care reform legislation enacted 3/23/10, includes Elder Justice Act provisions to: authorize \$400 million a year in funding dedicated to adult protective services; ensure training for staff at long-term care facilities and support for the Long-Term Care Ombudsman Program; establish an Elder Justice Coordinating Council and an Advisory Board on Elder Abuse, Neglect and Exploitation; provide grants for centers to develop forensic expertise in elder abuse, neglect and exploitation; and establish a national program of background checks for persons seeking employment in nursing homes and other long-term care facilities.

Supports.

***Nursing Home Arbitration**

S. 512 and H.R. 1237 would have amended Chapter 1 of Title 9 of the U.S. Code (also known as the Federal Arbitration Act) to provide that a pre-dispute arbitration agreement between a long-term care facility and a resident (or anyone acting on the resident's behalf) shall not be valid or specifically enforceable. S. 512 was referred to the Senate Judiciary Committee. A House Judiciary subcommittee discharged H.R. 1237, but the full committee did not consider the bill.

Supports the goals of the legislation, but recommends that the provisions be enacted as a new Chapter 4 of the Title 9 or as a separate statute outside the Federal Arbitration Act.

◆*Social Security Administration (SSA) – Disability Determination Process

P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, included \$11.4 billion for Limitation on Administrative Expenses for the SSA and also designated that from this amount not less than \$273 million may be used for conducting continuing disability reviews and redeterminations of eligibility under SSA's disability programs. An additional \$485 million was provided for these continuing disability reviews and redeterminations of eligibility through a discretionary cap adjustment. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including SSA, at fiscal year 2010 funding levels through 3/4/11.

Supports intensive efforts of the SSA commissioner to reduce the backlog in SSA disability claims. Supports the increased SSA administrative funding to reduce the backlog.

Election Law

◆*D.C. Voting Rights

S. 160 and H.R. 157 would have established the District of Columbia as a congressional district for representation in the House and also would have provided a new House seat for Utah, the state that would be next in line, according to the 2000 Census, to receive an additional seat. The Senate passed S. 160 after attaching an amendment to repeal the District's ban on semiautomatic weapons, eliminate the city's registration for most guns, and drop criminal penalties for possessing an unregistered firearm in the District. The House Judiciary Committee approved H.R. 157, but further action was stalled in light of the Senate gun amendment.

Supports securing voting representation in Congress for citizens of the District of Columbia.



Subject

Description and Status

ABA Position

Environmental Law

Global Climate Change

Numerous bills were introduced to address the means and mechanisms for a federal response to climate change issues, including H.R. 2454, S. 1462 and S. 1733. These bills sought to create clean energy jobs, promote clean energy technology, and reduce greenhouse emissions. The House passed H.R. 2454. The Senate Energy and Natural Resources Committee approved S. 1462. The Senate Environment and Public Works Committee approved S. 1733.

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

Oceans and Fisheries Reform

H.R. 21, broad ocean governance legislation, would have established a formal national oceans policy; reorganized the National Oceanic and Atmospheric Administration (NOAA) to formally establish it as part of the Department of Commerce and define its mission; and established a National Oceans Advisor, a Committee on Ocean Policy, a Council of Advisors on Oceans Policy, and a coordinated management regime for activities in federal waters. H.R. 21 was referred to the House Science and Technology Committee and the House Natural Resources Committee, where a subcommittee held a hearing on the bill. There was no comparable Senate legislation.

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

Health Law

***AIDS Funding/Prevention**

P.L. 111-87 (S. 1793), enacted 10/30/09, reauthorized the Ryan White Comprehensive AIDS Resources Emergency Act through fiscal year 2013. P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, included \$2.29 billion for the Ryan White program and \$5.8 billion for international programs to fight HIV/AIDS and related diseases. The act also removed a federal funding ban to allow federal funds to be used on syringe-exchange programs designed to stop the spread of diseases among intravenous drug users, except in locations "that local public health or law enforcement agencies determine to be inappropriate." P.L. 111-322 (H.R. 3802), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including AIDS funding, at fiscal year 2010 funding levels through 3/4/11. Also see **International Law – HIV Visa Ban**.

Supports funding for HIV/AIDS prevention efforts and the global strategy of the World Health Organization for the worldwide prevention and control of AIDS. Supports removal of the federal funding ban for preventative syringe exchange programs.



| Subject | Description and Status | ABA Position |
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| *Advance Directives/ End-of-life Counseling | <p>S. 1150 and H.R. 2911 sought to improve end-of-life care by offering strategies to improve consumer and provider education, establishing advance care planning as a basic element of patient care, ensuring electronic access to advance directives, strengthening hospice care, and translating patients' wishes into viable and portable medical orders as exemplified by Physicians' Orders for Life-Sustaining Treatment (POLSTs). S. 1150 was referred to the Senate Finance Committee. H.R. 2911 was referred to the House Judiciary, Energy and Commerce, and Ways and Means Committees. H.R. 3962, comprehensive health care legislation passed by the House, included provisions to provide Medicare coverage for a voluntary consultation between enrollees and practitioners to discuss advance care planning issues every five years or more frequently if there are changes in a patient's health. The Senate version of health care reform did not include the provisions, and they were not part of the final legislation, enacted 3/23/10 as P.L. 111-148 (H.R. 3590). A final physician-payment rule issued 11/29/10 by the Centers for Medicaid and Medicare Services, set to go into effect 1/1/11, would have allowed Medicare to cover voluntary advance care planning as part of a patient's annual wellness visit. On 1/10/11, the rule was amended to remove coverage of voluntary advance care planning.</p> | <p><i>Supports enactment of legislation to improve end-of-life care and supported inclusion of the advance care planning coverage in the rule.</i></p> |
| Biomedical Research/ Stem Cell Research | <p>In March 2009, the president issued an executive order revoking previous executive orders that had limited federal funding of research involving human embryonic stem cells. He also instructed the director of the National Institutes of Health (NIH) to issue guidelines for the support and conduct of responsible, scientifically worthy human stem cell research, including human embryonic stem cell research, to the extent permitted by law. NIH issued the guidelines in July 2009, and announced the first 13 human embryonic stem cell lines for use in NIH-funded research under the new guidelines in December 2009. S. 3766 and H.R. 4808 would have amended the Public Health Service Act to provide for human stem cell research, including human embryonic stem cell research, and for other purposes. S. 3766 was referred to the Senate Health, Education, Labor and Pensions Committee. H.R. 4808 was referred to the House Energy and Commerce Committee.</p> | <p><i>Supports continuation of biomedical research involving embryonic stem cells that is undertaken with accepted scientific research safeguards against misuse.</i></p> |
| *Children's Health Insurance | <p>P.L. 111-3 (H.R. 2), enacted 2/4/09, extends and improves the State Children's Health Insurance Program (SCHIP), a program jointly financed by the federal and state governments to provide health insurance to uninsured low-income children.</p> | <p><i>Supports.</i></p> |



| Subject | Description and Status | ABA Position |
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| ◆*Comprehensive Health Care Reform | P.L. 111-148 (H.R. 3590), the Patient Protection and Affordable Care Act enacted 3/23/10, and P.L. 111-152 (H.R. 4872), the Health Care and Education Reconciliation Act of 2010 enacted 3/30/10, overhaul the nation's health care system to provide health insurance coverage for approximately 32 million more Americans. | <i>Supports legislation that would provide access to quality health care for every American regardless of the person's income.</i> |
| *Domestic Violence – Health Insurance Discrimination | P.L. 111-148 (H.R. 3590), comprehensive health care reform legislation enacted 3/23/10, includes provisions prohibiting discrimination in insurance plans based on health status, including evidence of insurability for conditions arising out of acts of domestic violence. | <i>Supports enactment of legislation to provide that no person or entity can deny insurance benefits solely on the basis of the applicant's status as a victim of domestic violence.</i> |
| Indian Health Care Improvement | P.L. 111-148 (H.R. 3590), comprehensive health care legislation enacted 3/23/10, permanently reauthorizes the Indian Health Care Improvement Act and makes major changes and improvements in the requirements for health care programs and services for Indians and Alaska Natives. | <i>Supports.</i> |
| *International Family Planning | On 1/23/09, the president rescinded the "Mexico City policy," which banned the receipt of U.S. family planning assistance funds by foreign nongovernmental organizations that use their own funds to provide abortion-related services, including counseling and referrals, or to advocate or conduct public education campaigns relating to abortion. The Senate Appropriations Committee attached an amendment to statutorily repeal the policy to S. 1434, fiscal year 2010 State Department appropriations legislation. The repeal provision was not included in the final consolidated fiscal year 2010 appropriations legislation, P.L. 111-117 (H.R. 3288), enacted 12/16/09. | <i>Supports repeal of the "Mexico City policy."</i> |
| ◆*Mental Health Parity and Addiction Equity Act | P.L. 111-148 (H.R. 3590), comprehensive health care reform legislation enacted 3/23/10, requires health plans to apply the same level of treatment benefits to substance abuse and mental health disorders as they do to other medically necessary care. | <i>Supports provisions for parity of substance abuse disorder benefits in all health plans.</i> |



| Subject | Description and Status | ABA Position |
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| *U.N. Population Fund (UNFPA) | <p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$55 million for the UNFPA to be used for specific activities relating to women’s health and clarifies that the UNFPA does not fund, provide or support abortion services. The new law specifically prohibits the use of UNFPA funds for a country program in the People’s Republic of China. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including UNFPA, at fiscal year 2010 funding levels through 3/4/11.</p> | <p><i>Supports UNFPA funding as critical to fighting the HIV/AIDS crisis.</i></p> |
| <h2>Housing/Homelessness</h2> | | |
| *Homeless Assistance | <p>P.L. 111-22 (S. 896), mortgage relief legislation enacted 5/20/09, includes provisions amending and reauthorizing the McKinney-Vento Homeless Assistance Act. The new law expands the Department of Housing and Urban Development’s definition of homelessness to include those who will lose their housing in 14 days and those fleeing domestic violence. P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$65 million for the Education for Homeless Children and Youth (EHCY) program and \$116 million for Runaway and Homeless Youth Act (RHYA) programs. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most federal programs, including the EHCY and RHYA programs, at fiscal year 2010 levels through 3/4/11. P.L. 111-275 (H.R. 3219), veterans’ benefits legislation enacted 10/13/10, includes a one-year reauthorization for the Homeless Veterans Reintegration Program and authorizes additional funding dedicated to homeless women veterans and their children.</p> | <p><i>Supports efforts to address homelessness, including inclusion in the definition of “homeless persons” individuals who lack a fixed regular adequate nighttime residence, including those who due to loss of housing, economic hardship, or similar reasons are sharing the housing of others or living in motels, hotels or camping grounds. Supports increased funding for the EHCY and RHYA programs. Supports homelessness assistance provisions in P.L. 111-275.</i></p> |
| Housing Choice Voucher Program | <p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$18.184 billion for all tenant-based Section 8 activities under the Tenant-based Rental Assistance Account, including various voucher programs. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including voucher programs, at fiscal year 2010 funding levels through 3/4/11. H.R. 3045 would have, among other things, authorized a funding formula for annual renewal of Section 8 housing vouchers, created homeownership opportunities for families in Section 8 and public housing programs, and expanded voucher assistance. The House Financial Services Committee approved H.R. 3045. There was no comparable Senate legislation.</p> | <p><i>Supports full and adequate funding for public housing programs that provide rental assistance for low-income families.</i></p> |



| Subject | Description and Status | ABA Position |
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| National Housing Trust Fund | The president recommended \$1 billion in his fiscal year 2010 and 2011 budget proposals to launch the National Housing Trust Fund (NHTF), established in 2008 as part of P.L. 110-289, housing and recovery legislation. No funding was approved during the 111 th Congress, but the Department of Housing and Urban Development published proposed regulations in October 2010 to implement NHTF. | <i>Supported creation of the trust fund, provided that at least half of the units made available through the fund are available to the very poor and remain affordable for a prolonged period of time; and that trust fund funding is not in lieu of other major federal housing programs.</i> |
| Immigration Law | | |
| ◆*Comprehensive Immigration Reform | Numerous immigration-related bills were introduced during the 111 th Congress, and Senate and House Judiciary and Homeland Security Committees held hearings on a variety of immigration issues, including employer verification programs, detention, and state and local law enforcement. There was no action on a comprehensive overhaul of the immigration system. | <i>Supports comprehensive legislation that provides for new legal channels for future workers, a path to legal status for much of the undocumented population currently residing in the United States, family- and employment-based visa backlog reduction, and enhanced border security.</i> |
| ◆*Detention Standards | S. 1550, S. 1594, H.R. 1215, H.R. 4321 and H.R. 4470 would have set forth provisions regarding procedures and standards applicable to aliens detained in Department of Homeland Security custody and the conditions of their detention. Provisions include new detention standards, fair and humane treatment, access to telephones and legal assistance, procedures governing detainee transfers, access to medical care, alternatives to detention, and reporting of detainee deaths. S. 1550 and S. 1594 were referred to the Senate Judiciary Committee. H.R. 1215, H.R. 4321 and H.R. 4470 were referred to the House Judiciary Committee and House Homeland Security Committee. A House Homeland Security subcommittee held a hearing on immigration detention issues. | <i>Assisted in the development of detention standards that went into effect in 2001 and supports regulations for the standards to ensure consistent implementation. Opposes mandatory detention and supports increasing programs to provide alternatives to detention for those in the civil immigration system.</i> |



| Subject | Description and Status | ABA Position |
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| ◆*DREAM Act | S. 729 and H.R. 5281, the Development, Relief and Education for Alien Minors Act (DREAM Act), would have authorized the cancellation of removal and adjustment of status of certain immigrant students who are long-term U.S. residents and who entered the United States as children. S. 729 was referred to the Senate Judiciary Committee. The House passed H.R. 5281. The Senate failed to invoke cloture to move to consideration of the House-passed bill. | <i>Supports providing noncitizens who reside in the United States and who demonstrate significant ties to this country with an opportunity to acquire lawful permanent residence.</i> |
| ◆*HIV Visa Ban | The Department of Health and Human Services and Centers for Disease Control and Prevention issued a final rule 11/2/09 removing HIV infection from the list of “communicable disease[s] of public health significance” that prevent individuals who are not U.S. citizens from entering the United States. | <i>Supports the removal of HIV status as a bar for immigration visitors, asylees and refugees.</i> |
| ◆*Legal Representation and Due Process | H.R. 1651 would have established a right for an alien to file a motion to reopen a case in removal proceedings if the alien can demonstrate that counsel or a certified representative provided deficient performance. There was no comparable Senate legislation. S. 577 and H.R. 1992 would have made it a federal offense for any individual to knowingly and falsely represent that they are an attorney or an accredited representative in any matter arising under federal immigration law; required immigration judges to warn immigrants about the unauthorized practice of immigration law during removal proceedings, and provided outreach to the immigrant community to help prevent fraud. H.R. 1651 and H.R. 1992 were referred to the House Judiciary Committee. S. 577 was referred to the Senate Judiciary Committee. | <i>Supports legal immigration that includes due process safeguards in immigration and asylum adjudications and judicial review of such decisions. Supports set of recommended improvements in the immigration courts resulting from a comprehensive study of the system commissioned by the ABA.</i> |
| ◆*Refugee Protection Act | S. 3113 would have eliminated the one-year time limit for filing asylum claims and, in the area of detention, would have provided for prompt and reviewable parole determination, full implementation and enforcement of detention standards, and secure alternatives to detention for individuals who are eligible. The Senate Judiciary Committee held a hearing on the bill. There was no comparable House legislation. | <i>Supports.</i> |
| ◆*Unaccompanied Immigrant Children | H.R. 1215 would, among other things, have required the secretary of Homeland Security to provide protections for unaccompanied alien children and other vulnerable populations, including live training for all personnel who come into contact with unaccompanied alien children. H.R. 1215 was referred to the House Judiciary Committee. There was no comparable Senate legislation. | <i>Supports appointment of counsel at government expense to unaccompanied children in immigration proceedings.</i> |



| Subject | Description and Status | ABA Position |
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| <p>*Uniting Families</p> | <p>S. 424 and H.R. 1024 would have amended the Immigration and Nationality Act to eliminate discrimination in the immigration laws by permitting permanent same-sex partners of U.S. citizens and lawful permanent residents to obtain lawful permanent resident status in the same manner as spouses of U.S. citizens and lawful permanent residents. The Senate Judiciary Committee held a hearing on S. 424. The House bill was referred to the House Judiciary Committee.</p> | <p><i>Supports.</i></p> |
| <h2>Intellectual Property Law</h2> | | |
| <p>Patent and Trademark Office (USPTO) Funding</p> <p>*First-Inventor-To-File Rule</p> | <p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$1.887 billion for the USPTO to be derived from patent user fees. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including the USPTO, at fiscal year 2010 funding levels through 3/4/11. During Senate Judiciary Committee markup of S. 515, patent reform legislation that the committee approved, the committee tabled an amendment that would have prevented diversion of USPTO fees by ensuring that all fee revenue collected by the USPTO would be made available to the office for its use in providing services for which the fees were paid.</p> <p>S. 515 and H.R. 1260, patent reform legislation, included provisions to institute the “first-inventor-to-file” rule to replace the current “proof-of-invention” system. The Senate Judiciary Committee approved S. 515. The House Judiciary Committee held a hearing on H.R. 1260.</p> | <p><i>Opposes diversion of patent user fees to fund other programs.</i></p> <p><i>Supports the proposed “first-inventor-to-file” rule.</i></p> |
| <h2>International Law</h2> | | |
| <p>Darfur</p> <p>*Human Rights Council</p> | <p>P.L. 111-117 (H.R. 3288), fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$414 million to support the United Nations (U.N.) peacekeeping mission in Sudan and \$101.6 million to Sudan and East Chad for humanitarian aid. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including aid to Sudan and East Chad, at fiscal year 2010 funding levels through 3/4/11.</p> <p>The United States was elected in May 2009 to a seat on the U.N. Human Rights Council after the Obama administration reversed the Bush administration’s stand against creation of the council in 2006 as a replacement for the Human Rights Commission.</p> | <p><i>Urges the U.S. government to take all necessary and proper actions to end the ongoing atrocities (including genocide, crimes against humanity, and war crimes) in Darfur.</i></p> <p><i>Supports U.S. membership on the Human Rights Council, which despite its shortcomings is an important institution for monitoring and addressing human rights abuses throughout the world.</i></p> |



| Subject | Description and Status | ABA Position |
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| ◆*International Criminal Court (ICC) | <p>In November 2009, the United States attended as an observer to the Assembly of States Parties for the first time since the ICC was set up in 2002. H. Con. Res. 97 would have called on the president to support U.N. Security Council referrals of situations involving genocide, war crimes, and crimes against humanity to the ICC, to cooperate with investigations and prosecutions conducted by the ICC, and to participate as an observer at meetings of the Assembly of States Parties. H. Con. Res. 97 was referred to the House Foreign Affairs Committee. There was no comparable Senate legislation. H.R. 5341 would have expressed the sense of Congress that the United States should not ratify the Rome Statute, which established the ICC, and that the president and secretary of State should not take actions that could legitimize the ICC. H.R. 5341 was referred to the House Foreign Affairs Committee. There was no comparable Senate legislation.</p> | <p><i>Urges that the United States accede to the Rome Statute and expand and broaden interaction with the ICC.</i></p> |
| ◆*International Affairs Budget – Rule of Law | <p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes a total of \$48.8 billion for funding the international affairs account, including: \$1.7 billion for membership in international organizations, including the United Nations; \$1.38 billion for the U.S. Agency for International Development; \$2.1 billion for international peacekeeping activities, and \$120 million for the Democracy Fund. During debate on S. Con. Res. 13, the Senate’s fiscal year 2010 budget resolution, the Senate adopted an amendment to restore \$4 billion in proposed cuts to the international affairs budget before passing the resolution. H.R. 2410, State Department reauthorization legislation as passed by the House, would have authorized appropriations as may be necessary to pay all U.S. arrearages to the United Nations, lifted the statutory cap on U.S. payment of assessed dues for peacekeeping expenses for three years, and required the president to submit a plan to implement previous legislation calling for the United States to resume paying its assessments to the United Nations at the beginning of each calendar year.</p> | <p><i>Supports funding for organizations and programs that assist in the establishment of the rule of law abroad. Supports congressional appropriation of funds for the full and prompt payment of arrears owed by the United States to the United Nations for general and peacekeeping assessments.</i></p> |
| *International Violence Against Women Act | <p>S. 2982 and H.R. 4594 would have created new institutional authorities, responsibilities and funding for fighting violence against women and girls around the world. Key elements included legal assistance in civil and criminal cases, training and education for law enforcement about gender-based violence and the needs of victims; efforts to foster a multidisciplinary and community approach to serving victims and ending gender-based violence, and establishment of mechanisms to ensure that perpetrators are held accountable. The Senate Foreign Relations Committee and a House Foreign Affairs subcommittee held hearings on the issues. The Senate Foreign Relations Committee approved S. 2982. The House bill was referred to House Committees on Foreign Affairs, and Armed Services.</p> | <p><i>Supports enactment of an international violence against women act.</i></p> |



| Subject | Description and Status | ABA Position |
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| <p>◆*Treaties</p> | <p>A Senate Judiciary subcommittee held a hearing on the Convention on All Forms of Discrimination Against Women (CEDAW). H. Res. 22 would have expressed the sense of the House that the Senate should ratify CEDAW. H. Res. 22 was referred to the House Foreign Affairs Committee. There was no action on several other treaties supported by the ABA, including the Convention on the Law of the Sea, the American Convention on Human Rights, and the Convention on the Rights of the Child.</p> | <p><i>Supports ratification of the treaties.</i></p> |
| <h2>International Trade</h2> | | |
| <p>*Free-Trade Agreements</p> | <p>During the 110th Congress, a vote was indefinitely postponed on the pending FTAs that the United States has negotiated with Colombia and South Korea. The U.S. Trade Representative requested comments in July 2009 on various issues concerning the pending agreements. There was no action on either FTA during the 111th Congress.</p> | <p><i>No position on the economic merits of the pending FTAs, but the ABA submitted comments supporting the Rule of Law contributions made by FTAs such as those negotiated with Colombia and South Korea. Supports appropriate access for U.S. lawyers to the legal services markets of key trade partners.</i></p> |
| <p>*Trade Officials – Conflict of Interest</p> | <p>Several members of the House sent a letter to the Government Accountability Office (GAO) requesting a report on former government officials who advise foreign interests, suggesting that it may be inappropriate, or even unethical, for former trade officials to represent foreign interests, or even domestic interests involved in the import trade or the distribution of imported products. The GAO report, released in July 2009, recommended that Congress enhance efforts for implementation of the Foreign Agents Registration Act. No legislation was introduced.</p> | <p><i>Recommends that Congress not impose on trade officials post-employment proscriptions that are more severe than those imposed on other government officials.</i></p> |
| <h2>Legal Education</h2> | | |
| <p>◆*Council on Legal Education Opportunity (CLEO)/Thurgood Marshall Program</p> | <p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, included \$3 million for the Thurgood Marshall Legal Educational Opportunity Program, which is administered by CLEO and provides assistance to low-income minority or disadvantaged students to help them gain access to and complete their legal studies. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including the Thurgood Marshall program, at fiscal year 2010 funding levels through 3/4/11.</p> | <p><i>Supports the Thurgood Marshall program.</i></p> |



| Subject | Description and Status | ABA Position |
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| ◆*Loan Forgiveness and Repayment Assistance | <p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, included funding for two student loan repayment programs enacted last year part of P.L. 110-315, Higher Education Act reauthorization: \$5 million for the Legal Assistance Repayment Program for student loan repayment assistance for civil legal assistance lawyers and \$10 million for the John R. Justice Prosecutors and Defenders Incentive Act for student loan repayment assistance for lawyers employed as federal and state prosecutors and public defenders. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including loan repayment programs, at fiscal year 2010 funding levels through 3/4/11. P.L. 111-152 (H.R. 4872), health care and education reconciliation legislation enacted 3/30/10, eliminated the role of private companies in the federal student loan process and modified the income-based repayment (IBR) system. S. 3219 and H.R. 5043 would have granted dischargeability of private student loans for those who have made good faith efforts to repay education debts yet have had to declare bankruptcy because of the current economic downturn and low-hiring job market. A House Judiciary subcommittee approved H.R. 5043. S. 3219 was referred to the Senate Judiciary Committee.</p> | <p><i>Supports loan repayment assistance programs for law school graduates accepting low-paying, public interest law employment. Supports IBR system modifications. Supported S. 3219 and H.R. 5043.</i></p> |
| Legal Research | | |
| *Law Library of Congress | <p>H.R. 2728 would have designated the Law Library of Congress as the National Law Library, provided additional funding, and established the William Orton Law Library Support Program to provide enhanced or special services and programs and allow the Librarian of Congress to carry out the programs through agreements with other government and private entities, including the ABA. The House passed H.R. 2728. There was no comparable Senate legislation. P.L. 111-68 (H.R. 2918), the final fiscal year 2010 appropriations statute for the legislative branch enacted 10/1/09, included \$439.8 million for the Library of Congress, which encompasses funding for the Law Library and language specifically allocating \$700,000 for Global Legal Information Network (GLIN). P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including the Library of Congress, at fiscal year 2010 funding levels through 3/4/11.</p> | <p><i>Supports full funding for the Law Library of Congress to allow for enhancement of services, including electronic development, reclassification and cataloguing.</i></p> |



| Subject | Description and Status | ABA Position |
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| ◆*Group Legal Services | S. 825 and H.R. 1423 would have restored, permanently authorized and eliminated the dollar limitation for Section 120 of the Internal Revenue Code of 1986, which before expiring on 6/30/92 allowed employers to offer on a pre-tax basis group legal services benefits to their employees. S. 825 was referred to the Senate Finance Committee. H.R. 1423 was referred to the House Ways and Means Committee. | <i>Supports group legal services benefit plans as a way to increase access to the justice system for low- and middle-income Americans by allowing individuals and families to address legal issues before they become significant problems. Supports permanent authorization of Section 120.</i> |
| ◆*Interest on Lawyers' Trust Accounts (IOLTA) | P.L. 111-343 (H.R. 6398), enacted 12/29/10, ensures that IOLTA funds are fully insured under the Transaction Account Guarantee (TAG), a special insurance program created by the Federal Deposit Insurance Corporation in 2008. IOLTA had been covered under the TAG program since its inception, but P.L. 111-203 (H.R. 4173), financial regulatory reform legislation enacted 7/21/10, did not include IOLTA in the definition of covered accounts when it mandated the TAG program by statute. The new law corrects this oversight. | <i>Supports TAG coverage of IOLTA accounts to provide that interest from these accounts continues to be channeled to programs providing civil legal aid to the poor.</i> |
| ◆*Legal Services Corporation | P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, included \$420 million (a \$30 million increase) for the LSC and eliminates the restriction on collection of statutorily authorized attorneys' fees. The new law also included \$5 million for a new loan repayment assistance program for legal assistance attorneys. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including the LSC, at fiscal year 2010 funding levels through 3/4/11. S. 718 and H.R. 3764 would have reauthorized the LSC, lifted several of the restrictions on LSC-funded programs, and provided additional resources for special needs of eligible clients, technology grants and improved governance practices. S. 718 was referred to the Senate Health, Education, Labor and Pensions Committee. H.R. 3764 was referred the House Judiciary Committee, and a House Judiciary subcommittee held a hearing on LSC. The LSC Board of Directors, now operating with all 11 confirmed members, announced that James J. Sandman, general counsel for the D.C. Public Schools, has been selected to be the new LSC president. | <i>Supports the reauthorization and adequate funding of the LSC to increase the effectiveness and efficiency of the delivery of legal services to the poor.</i> |



| Subject | Description and Status | ABA Position |
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| ◆*Medical-Legal Partnerships (MLPs) | <p>S. 3668 and H.R. 5961 would have authorized \$10 million to establish a demonstration program for medical-legal partnerships, which bring legal aid services into medical settings to provide patients with legal help to address conditions that lead to poor health. S. 3668 was referred to the Senate Health, Education, Labor and Pensions Committee. H.R. 5961 was referred to the House Energy and Commerce Committee. H.R. 3962, the House-passed version of comprehensive health care reform, contained a provision that would have required the secretary of Health and Human Services to establish a nationwide demonstration project for MLPs to assist patients navigating health-related programs and activities. The Senate-passed version of health care reform, H.R. 3590, did not include this provision, and the provision was not in the final health care reform law, P.L. 111-148 (H.R. 3590), enacted 3/30/10.</p> | <p><i>Supports medical-legal partnerships to integrate lawyers in a health care setting to help patients navigate the complex legal system.</i></p> |
| Military Law | | |
| *Don't Ask, Don't Tell | <p>P.L. 111-321 (H.R. 2965), enacted 12/22/10, provides for repeal of the "Don't Ask, Don't Tell" policy that bans openly gay people from serving in the U.S. military. The new law requires that the repeal will be effective 60 days after the secretary of Defense has received the Defense Department's (DoD) comprehensive review on the implementation of the repeal, and the president, the Defense secretary and the chairman of the Joint Chiefs of Staff certify that DoD has prepared the necessary policies and regulations and that implementation of the policies and regulations is consistent with the standards of military readiness and effectiveness, unit cohesion and military recruiting and retention.</p> | <p><i>Supports.</i></p> |
| *Homeless Veterans | <p>P.L. 111-275 (H.R. 3219), veterans' benefits legislation enacted 10/13/10, includes a one-year reauthorization for the Homeless Veterans Reintegration Program. The new law also authorizes additional funding for programs dedicated to homeless women veterans and their children to provide grants for job training, counseling, placement services and child care. Numerous bills were introduced in both the Senate and House to address the issue of homeless veterans. S. 1547, S. 2760, H.R. 2735 and H.R. 2760 would have amended Title 38, United States Code, and the United States Housing Act of 1937 to enhance and expand the assistance provided by the Department of Veterans Affairs and the Department of Housing and Urban Development to homeless veterans and veterans at risk of homelessness. The Senate Veterans' Affairs Committee and the Senate Banking, Housing and Urban Affairs Committee held hearings on the issue. A Veterans' Affairs subcommittee held hearings and approved H.R. 2760.</p> | <p><i>Supports development of comprehensive, systemic approaches to address the special needs of homeless veterans within civil and criminal court contexts and through programs that connect veterans to appropriate housing, treatment and services. Urges development of Veterans Treatment Courts following specific principles.</i></p> |



| Subject | Description and Status | ABA Position |
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| ◆Legal Services for the Military | Draft legislation supporting pro bono legal services for low-income active-duty servicemembers and their dependents was circulated but not acted upon in the 111 th Congress. The draft is expected to be introduced as legislation early in the 112 th Congress. | <i>Supports legislation that promotes the provision of legal services to veterans and members of the Armed Forces to assist them in obtaining the full range of health care, benefits and services to which they are lawfully entitled, and to make the provision of legal assistance mandatory for low-income military families.</i> |
| *Military Child Custody | P.L. 111-84 (H.R. 2647), fiscal year 2010 defense authorization legislation enacted 10/28/09, included provisions requiring the Secretary of Defense to report on child custody cases in which deployment of a servicemember was an issue and on measures taken to assist servicemembers in avoiding child custody disputes. A problem provision concerning child custody determination for military spouses was removed during the conference committee on H.R. 2647 and was not included in P.L. 111-383 (H.R. 6523), the final version of fiscal year 2011 defense authorization legislation enacted 1/7/11. The Defense Department child custody report, released in May 2010, concluded that effective legislation at the state level, not federal legislation, more appropriately addresses the issue. | <i>Opposes federal legislation that would create a federal-question jurisdiction in child custody cases, including cases involving servicemember parents, and urges states to enact legislation prohibiting denial of child custody to a servicemember based solely on absence due to military deployment.</i> |
| *Servicemembers Civil Relief Act (SCRA) Enforceability | P.L. 111-275 (H.R. 3219), veterans' benefits legislation enacted 10/13/10, amends the SCRA to allow the U.S. attorney general to bring a civil suit in any U.S. federal district court against any violator of the SCRA. The act also codifies a private right of action to persons aggrieved by a violation of the act and authorizes recovery of reasonable costs and attorneys' fees. | <i>Supports.</i> |



Subject

Description and Status

ABA Position

National Security

◆*Anti- Torture

The president issued an executive order 1/22/09 prohibiting torture by ensuring that any individual in the custody of or under the effective control of any officer, employee or other agency of the U.S. government is not subjected to any interrogation technique or approach that is not authorized by the *Army Field Manual*. He also ordered the closure of detention facilities operated by the Central Intelligence Agency and prohibited rendition to other countries where individuals may be subjected to torture. A Cabinet-level Special Interagency Task Force on Interrogation and Transfer Policies, which reviewed interrogation guidelines and U.S. policies regarding the practice of rendition, issued its recommendations in August 2009. Those recommendations led to the creation of a new interrogation unit housed in the Federal Bureau of Investigation and overseen by the National Security Council.

Condemns any use of torture or other cruel, inhuman or degrading treatment upon persons within the custody or under the physical control of the U.S. government (including its contractors), and supports establishment of uniform standards for interrogation that adhere to the Army Field Manual and abide by the Geneva Conventions. Opposes the practice of extraordinary rendition.

◆*Guantánamo

The president issued an executive order 1/22/09 directing the closure of the U.S. detention facility in Guantánamo Bay, Cuba, as soon as practicable. In November 2009, the Obama administration announced that it would pursue prosecution in federal court in Manhattan of 9/11 mastermind Khalid Sheikh Mohammed and four other co-conspirators held at Guantánamo Bay. Those plans were withdrawn. The Guantánamo Review Task Force, in a report issued 1/22/10, concluded that, of the 196 detainees then in the facility, about 35 should be prosecuted in federal or military courts, nearly 50 should be detained without trial, and about 110 could be transferred to other countries. P.L. 111- 383 (H.R. 6523), fiscal year 2011 defense authorization legislation enacted 1/7/11, includes a provision prohibiting the use of Defense Department funds to transfer Guantánamo detainees into the United States for any reason, including prosecution. In a signing statement accompanying the bill, the president said the provision represents a dangerous and unprecedented challenge to critical executive branch authority to determine when and where to prosecute Guantánamo detainees based on the facts and the circumstances of each case and national security interests.

No position on the closing of Guantánamo. Supports the prosecution in Article III federal courts of detainees charged with criminal law violations, unless the attorney general certifies that prosecution cannot take place before such courts. Supports release and resettlement of all detainees at Guantánamo who are not considered "enemy combatants."



| Subject | Description and Status | ABA Position |
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| ◆*Lawyers Representing Guantánamo Detainees | <p>Section 1037 of H.R. 5136, a House-passed fiscal year 2011 defense authorization bill, would have required the Department of Defense (DoD) inspector general (IG) to conduct a 90-day investigation of the lawyers who represented Guantánamo detainees for whom there is a reasonable suspicion that they have engaged in any conduct or practice that interferes with the operations at Guantánamo, violated any law or DoD policy, or generated any "material risk to a member of the U.S. Armed Forces." The provisions were not included in the final defense authorization legislation, enacted as P.L. 111- 383 (H.R. 6523), on 1/7/11.</p> | <i>Opposes.</i> |
| ◆*Military Commissions Act | <p>The president issued an executive order 1/22/09 imposing a moratorium on military commission trials for those detained at Guantánamo Bay and designated as "enemy combatants." P.L. 111-84 (H.R. 2647), defense authorization legislation enacted 10/28/09, replaced the Military Commissions Act (MCA) of 2006 with the MCA of 2009. ABA-supported improvements include the exclusion of statements obtained by coercion, torture or cruel, inhuman or degrading treatment. The new law also requires the secretary of Defense to prescribe regulations for the appointment and performance of defense counsel in capital cases, and the conference report stated that appropriate consideration should be given to the <i>ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases</i>. Despite improvements, the new MCA still falls short of ABA policy standards. The Defense Department released the new <i>Manual for Military Commissions</i> in April 2010.</p> | <i>Urges that military commissions comply with the Universal Code of Military Justice to provide detainees the rights afforded in courts-martial and comply fully with international treaty obligations.</i> |
| ◆*State Secrets Privilege | <p>S. 417 and H.R. 984 would have established standards for federal courts to apply to resolve claims involving the state secrets privilege, which is asserted to shield sensitive national security information from disclosure in civil litigation. S. 417 was referred to the Senate Judiciary Committee. The House Judiciary Committee amended and approved H.R. 984. In September 2009, the Department of Justice (DOJ) announced its standards for future invocation of the privilege. The new policy establishes a standard for invocation similar to the judicial standard of review in pending bills and provides for a more stringent internal review process and greater accountability.</p> | <i>Supports DOJ guidance as an important first step, but maintains that enactment of legislation is still necessary to affirm the role of federal courts in reviewing claims of privilege in camera and to establish a uniform, rigorous standard of judicial review.</i> |



| Subject | Description and Status | ABA Position |
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| ◆*USA PATRIOT Act/ Foreign Intelligence Surveillance Act | <p>P.L. 111-118 (H.R. 3326), fiscal year 2010 Defense Department appropriations legislation enacted 12/19/09, included a 60-day extension for the “library,” “roving wiretaps” and “lone wolf” provisions of the USA PATRIOT Act that were scheduled to expire at the end of 2009. P.L. 141 (H.R. 3961), enacted 2/27/10, extends the provisions through 2/28/11. S. 1692, S. 4048 and H.R. 3845 would have extended these expiring provisions through 2013. The House Judiciary Committee approved H.R. 3845. The Senate Judiciary Committee amended and approved S. 1692. In December 2010, the Justice Department announced that it is implementing several key oversight and civil liberties provisions from the Senate committee’s reported version of S. 1692.</p> | <p><i>Urges Congress to conduct a thorough review of executive branch powers under the USA PATRIOT Act and to conduct regular oversight of the government’s use of FISA.</i></p> |
| Tax Law | | |
| Internal Revenue Service (IRS) Funding | <p>P.L. 111-117 (H.R. 3288), consolidated fiscal year 2010 appropriations legislation enacted 12/16/09, includes \$12.1 billion for the IRS. P.L. 111-322 (H.R. 3082), continuing fiscal year 2011 appropriations legislation enacted 12/22/10, maintains most of the federal government, including the IRS, at fiscal year 2010 funding levels through 3/4/11.</p> | <p><i>Supports adequate IRS funding for enforcement and compliance functions.</i></p> |
| ◆Tax Simplification | <p>There was no action on the numerous broad tax simplification bills introduced during the 111th Congress. P.L. 111-312 (H.R. 4853), a tax package enacted 2/17/10, includes a two-year patch designed to prevent an additional 25 million taxpayers from paying the Alternative Minimum Tax (AMT). H.R. 240 would have repealed the personal AMT. S. 722, a broad tax reform measure, would have established a permanent AMT exemption at 2009 levels and indexed that exemption level for inflation in future years. H.R. 240 was referred to the House Ways and Means Committee. S. 722 was referred to the Senate Finance Committee. A Task Force on Tax Reform established by the president issued its recommendations in August 2010.</p> | <p><i>Supports simplification of the tax laws, including repeal of the individual AMT or modification to ensure that the AMT applies only to high-income individuals.</i></p> |
| Tort and Insurance Practice | | |
| Contingency Attorneys’ Fees | <p>During debate on H.R. 3590, comprehensive health care reform legislation, the Senate rejected a proposed amendment that would have limited the amount of fees that attorneys representing a plaintiff in a medical malpractice liability action could receive. No provisions concerning contingency attorneys’ fees were included in the final version of health care reform legislation, enacted 3/23/10 as P.L. 111-148 (H.R. 3590).</p> | <p><i>Opposes caps on attorneys’ fees.</i></p> |



| Subject | Description and Status | ABA Position |
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| ◆*Alternatives to Medical Malpractice Litigation | P.L. 111-148 (H.R. 3590), comprehensive health care reform legislation enacted 3/23/10, includes a provision making states eligible for grants to test alternatives that emphasize patient safety, disclosure of health care errors, and early resolution of disputes. As directed by the president, the secretary of Health and Human Services (HHS) launched a new demonstration initiative through its Agency for Health Care Research and Quality (AHRQ) to award grants to states and health care systems to allow them to test programs aimed toward patient safety and medical liability reform. | <i>Opposes caps on damages. Endorses use of voluntary alternative dispute mechanisms that are entered into after a dispute has arisen. Supports pilot programs on “near misses” reporting of medical errors and state apology legislation. Participated in AHRQ National Advisory Council meetings to develop new grant program.</i> |
| Federal Office of Insurance | P.L. 111-203 (H.R. 4173), financial regulatory reform legislation enacted 7/21/10, includes provisions to establish a Federal Insurance Office in the Treasury Department to monitor the insurance industry and to report to Congress on the global reinsurance market and how to modernize and improve the system of insurance regulation in the United States. | <i>Supports.</i> |
| *Feres Doctrine | S. 1347 and H.R. 1478, its House companion, would have repealed the <i>Feres</i> Doctrine to allow members of the Armed Forces and their families to sue the military for negligent medical care during their service. The bill would have prohibited claims arising out of the combatant activities of the Armed Forces in times of armed conflict. Following a hearing, a House Judiciary subcommittee amended and approved H.R. 1478, which was then amended and approved by the full committee. S. 1347 was referred to the Senate Judiciary Committee. | <i>Supports.</i> |
| *Interstate Health Insurance Compacts | P.L. 111-148 (H.R. 3590), comprehensive health care reform legislation enacted 3/23/10, includes provisions allowing the formation of interstate health insurance compacts by the secretary of Health and Human Services, in consultation with the National Association of Insurance Commissioners, to assist in the structuring of interstate relationships, regulating private activity that transcends state lines, and furnishing government services on a regional basis. | <i>Urges Congress to ensure that provisions concerning administrative procedures and judicial review for compact agencies are consistent with certain fundamental administrative law norms.</i> |



| Subject | Description and Status | ABA Position |
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| ◆*Medical Professional Liability | S. 45 and S. 1734 would have preempted state medical liability laws and imposed federal standards, including a cap on non-economic damages. S. 45 was referred to the Senate Health, Education, Labor and Pensions Committee. S. 1734 was referred to the Senate Judiciary Committee. During consideration of H.R. 3200, a comprehensive health care reform proposal, the House Energy and Commerce Committee rejected a proposed amendment to cap pain and suffering awards and preempt state medical malpractice laws. | <i>Opposes caps on pain and suffering awards and federal preemption of state medical malpractice law, but supports certain changes at the state level.</i> |
| ◆Medicare Secondary Payer Act | H.R. 2641 and H.R. 4796, similar legislation, would have amended Section 1862 of the Social Security Act to provide certainty and efficiency in the Medicare set-aside process for workers' compensation settlements. The bills were referred to the House Ways and Means Committee and the House Energy and Commerce Committee. There was no comparable Senate legislation. | <i>Supports.</i> |
| National Flood Insurance Program | P.L. 111-250 (S. 3418), enacted 9/30/10, extends the National Flood Insurance Program (NFIP) for one year through 9/30/11 and continues the authority of the administrator of the Federal Emergency Management Agency to finance the program, which provides assistance to 5.5 million families and businesses. | <i>Supports reauthorization of NFIP and urges specific changes that should be made to the program to put it on a sound actuarial basis.</i> |

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2011 Congressional Schedule 112th Congress - First Session

| Senate | | House | |
|----------------------------|-----------------------|----------------------------|-----------------------|
| Convenes | Jan. 5 | Convenes | Jan. 5 |
| State of the Union Message | Jan. 25 | State of the Union Message | Jan. 25 |
| State Work Period | Feb. 21-25 | District Work Period | Jan. 31-Feb. 4 |
| State Work Period | March 21-25 | District Work Period | Feb. 21-25 |
| State Work Period | April 18-29 | District Work Period | March 21-25 |
| State Work Period | May 30-June 3 | District Work Period | April 18-29 |
| State Work Period | July 4-8 | District Work Period | May 16-20 |
| State Work Period | Aug. 8-Sept. 5 | District Work Period | June 6-10 |
| State Work Period | Sept. 26-30 | District Work Period | June 27-July 4 |
| State Work Period | Oct. 7-10 | District Work Period | July 18-22 |
| State Word Period | Oct. 24-28 | District Work Period | Aug. 8-Sept. 5 |
| | | District work Period | Sept. 26-30 |
| | | District Work Period | Oct. 17-21 |
| | | District Work Period | Nov. 7-11 |
| | | District Work Period | Nov. 21-25 |
| Target Adjournment | TBA | Target Adjournment | Dec. 8 |



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