June 8, 2012

The Honorable Joseph Lieberman  The Honorable Susan Collins
Chairman             Ranking Member
Committee on Homeland Security and Committee on Homeland Security and
Governmental Affairs  Governmental Affairs
United States Senate  United States Senate
Washington, D.C. 20510 Washington, D.C. 20510

Dear Chairman Lieberman and Ranking Member Collins:

On behalf of the American Bar Association (ABA), I write to express our serious concern over provisions included in S. 1789, the 21st Century Postal Service Act, and H.R. 2146, the Digital Accountability and Transparency Act, that appear to severely restrict government employees’ attendance at meetings and conferences held by associations and other nongovernmental organizations. We are aware of the legitimate objective of bringing greater control and accountability to public expenditures for agency-sponsored events – as highlighted by the widespread condemnation of the GSA conference earlier this year. Nonetheless, we believe that these provisions would have unintended and unforeseeable, highly negative consequences for government agencies, associations and other organizations, and the public.

With over 400,000 members, the ABA is the largest voluntary professional association in the world. As the national voice of the legal profession, the ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public. The ABA, through its various entities, hosts more than one hundred conferences and meetings per year and is a leading provider of continuing legal education programs for attorneys around the country.

As drafted, Section 501 of S. 1789 and Section 308 of H.R. 2146 include provisions that:

Define “conference” as a meeting “sponsored by 1 or more agencies, 1 or more organizations that are not agencies, or a combination of such agencies or organizations.”

Provide that “No federal agency may expend funds on more than a single conference sponsored or organized by an organization during any fiscal year, unless the agency is the primary sponsor and organizer of the conference.”

With no definition of “organization” provided, the language in the first paragraph above would presumably include any association, corporation, nongovernmental entity, educational institution, or other organized group. The language in the second paragraph may be interpreted
such that if an agency employee participates in an event sponsored by an association or other organization, no other employees of that agency may attend (at government expense) any other event held by that association or organization for the remainder of the fiscal year.

Taken together, these provisions could virtually halt agency employee participation in a significant number of events that provide invaluable and unique opportunities for education, consultation, skills training, outreach and other activities by government agency lawyers and other employees that clearly advance the interests of the government.

The ABA has long stressed the importance of encouraging and facilitating participation by all executive branch employees, both lawyer and nonlawyer, in professional associations. Towards that end, the ABA Board of Governors adopted a resolution in August 1991 opposing proposed limitations and restrictions on the ability of executive branch employees to participate in professional associations. Subsequently, the ABA adopted additional policy in August 1998 expressing its belief that “it is in the government’s and the legal profession’s interests, and that it would enhance the work of bar associations, to have government lawyers at all levels—federal, state, territorial, tribal and local, including those in judicial positions—participate in professional development and justice system improvement activities sponsored and conducted by bar associations.”

The government and its employees, the public, and associations and other organizations all benefit from the kind of professional interchange fostered at relevant conferences and meetings. Employees’ ongoing contact with their peers in the scientific, technical, and legal communities can serve to improve knowledge, update skills, and otherwise enhance professional development; it also creates a sense of professional connection and support that improves morale and directly benefits the government as employer. In addition, the public benefits when these organizations, whose positions on public policy initiatives may have an impact on legislative and executive decision makers, reflect the insights and experience of members who work in government as well as in the private sector. These benefits accrue to both the government and the public when regulatory and enforcement agencies can utilize association meetings and conferences to reach out to affected parties with explanations of developments, requirements, and expectations from the agencies’ perspectives.

The private bar clearly benefits from the participation of government attorneys in conferences and meetings as well. Government attorneys provide the private bar with the government’s perspective on a myriad of important topics, as well as a better understanding of how the government conducts its business. These interactions also provide the government with an additional means of communicating its perspective on issues of concern to the legal community, as well as an opportunity to foster an open and vigorous exchange of views with private sector lawyers, judges, and academics on matters of law and public policy.

The substantive work of the ABA and the many state, local, and specialty bar associations around the country—including development of reports and publications, continuing legal education programs, trainings, and other conferences and events—covers almost all areas of interest to government lawyers: criminal justice and law enforcement, national and homeland security, tax, antitrust, litigation, military law, alternative dispute resolution, banking, securities,
consumer protection, energy, environment, public contracts, administrative law, disability, civil rights, constitutional law, and many more. Government lawyers should be encouraged, not discouraged, from taking advantage of the many educational and professional-development opportunities provided by the ABA and other bar and professional associations.

Once again, we do not question the intent of these provisions in seeking to ensure the responsible use of limited government resources. However, the language as approved in both bills is overly and unnecessarily broad. It will undermine, not serve, the interests of government agencies and the public.

The ABA strongly urges you to ensure that the relevant provisions in S. 1789 and H.R. 2146 are either revised or deleted before any further action is taken on these bills, and that no similar language is included in any other pending legislation.

If you have any questions or would like to meet to discuss this issue further, please contact ABA Governmental Affairs Director Thomas M. Susman at (202) 662-1765 or Senior Legislative Counsel Kristi Gaines at (202) 662-1763.

Thank you for your consideration of our views.

Yours truly,

Wm. T. (Bill) Robinson III
President

cc: Members of the Senate Committee on Homeland Security and Governmental Affairs