

MEMORANDUM

TO: Members of the ABA House of Delegates;
Selected Officers of ABA Sections, Divisions and Committees;
Officers and Executive Council Members, National Conference of Bar Presidents;
Heads of Affiliated and Related Organizations; and
Executive Directors of State and Major Local Bar Associations

FROM: William H. Neukom

SUBJECT: ABA Legislative and Governmental Priorities for the Year 2008

DATE: March 17, 2008

I am writing to thank those of you who completed the survey I sent you on November 1, 2007, requesting your input concerning the Association's Legislative and Governmental Priorities for 2008. Approximately 33% of the bar leaders to whom the survey was sent returned their surveys. Your assistance was extremely important to the Board of Governors. During the ABA Midyear Meeting in Los Angeles, the Board considered the results of the survey along with other factors and adopted eleven Priorities for the 2008 Association year. A summary of the adopted Priorities is attached for your ready reference.

Issues that were not selected as Priorities will remain on the agenda for the Association's legislative program and continue to receive attention. However, the primary responsibility for implementing those issues will rest with the sponsoring entity. The Governmental Affairs Office (GAO) will continue to track, coordinate, and provide support with respect to those issues. As always, contact with members of Congress and other public officials, including written communications, need to be processed through the GAO.

cc: Neal R. Sonnett
Chair, Standing Committee on Governmental Affairs (SCGA)
Lillian B. Gaskin
Staff Director, SCGA, and Senior Legislative Counsel

**AMERICAN BAR ASSOCIATION
FEDERAL LEGISLATIVE AND GOVERNMENTAL PRIORITIES
FOR 2008**

Adopted by ABA Board of Governors February 2008

Access to Legal Education

The ABA urges law schools, state and local bar associations, and federal and state lawmakers to establish loan repayment assistance and loan forgiveness programs for law school graduates accepting low-paying, public interest employment. The ABA supports amending Section 125 of the IRC to allow the pre-tax payment of student loans through employee benefit plans. The ABA supports preservation of and full funding for the Thurgood Marshall Legal Educational Opportunity Program to help disadvantaged students obtain a legal education.

Access to Legal Services

The ABA supports a strong, well-financed Legal Services Corporation to provide civil legal services for the poor. The ABA opposes legislation that would limit the types of legal services made available to the poor, would dismantle the current effectively operating and locally controlled delivery system, or would reduce federal financial support. The ABA supports the reinstatement of the tax-preferred status of Section 120 group legal services benefits as an effective way to provide access to the justice system for lower-income and middle-income workers. The ABA urges the federal, state and local governments to take immediate steps to ensure the provision of sufficient funding for indigent defense services. The ABA supports the provision of legal assistance for low-income military personnel as a matter of right.

Anti-Terrorism and Preservation of Civil Liberties

The ABA urges that individuals detained as "enemy combatants" be afforded certain procedural rights such as access to counsel and the opportunity for meaningful judicial review of their status, including the right to petition for habeas corpus. The Association urges that military tribunals authorized to conduct trials of suspected terrorists be used only in limited circumstances, that the procedures for trials and appeals be governed generally by the Uniform Code of Military Justice, and that all defendants have the opportunity to receive the effective representation of civilian defense counsel. The ABA also opposes torture or other cruel, inhuman or degrading treatment of detainees in U.S. custody. The ABA urges that future electronic surveillance inside the United States for foreign intelligence purposes must comply with the Foreign Intelligence Surveillance Act. The Association urges Congress to adopt legislation that outlines procedures governing federal civil cases implicating the state secrets privilege.

Criminal Justice System Improvements and Protection of Rights

The ABA urges that Congress and the President seek to maintain a balance between support for stronger governmental power to protect public safety and for protecting the integrity of our justice system and maintaining our nation's individual liberties. The Association urges Congress to reject legislative proposals to restrict federal habeas corpus review of state criminal convictions, and supports expanded federal resources to assure that capital defendants receive adequate representation at trial and on appeal. The Association opposes the enactment of mandatory minimum sentences, and supports expanded reliance on alternatives to incarceration for non-violent offenders, including diversion programs for drug treatment and community placement. The Association supports federal legislation to expand availability of programs to support the successful re-entry of ex-offenders into the community and ameliorate the punitive effects of such collateral sanctions as the loss of jobs, housing, federal financial aid for higher education, and privacy. The Association supports a federal program to survey and to address the use of racial and ethnic profiling.

Health Care Law

The ABA opposes preemption of the state medical liability law and caps on pain and suffering awards and opposes the creation of a system that requires injured patients to utilize "health courts" which deny injured patients a right to a trial by jury or full compensation for injuries caused by medical negligence. It supports proposed "Patients' Bill of Rights" legislation which would amend ERISA so that it no longer would preempt various state health care liability laws. The ABA supports legislation to provide for certainty, predictability, and efficiency to the Medicare set-aside process in Workers' Compensation cases. The ABA supports repeal of the McCarran-Ferguson exemption which exempts the insurance industry from certain federal antitrust laws and replacing the exemption with legislation providing for certain safe harbors. The ABA supports balancing protection of an individual's private health records with medically necessary disclosures. The ABA supports insurance coverage for substance abuse treatment and related illnesses and conditions.

Immigration

The ABA supports legal immigration based on family reunification and employment skills, due process safeguards in immigration and asylum adjudications, and judicial review of such decisions. The ABA also supports the appointment of counsel at government expense for unaccompanied children in immigration proceedings, the restoration of public benefits to legal immigrants and refugees, and improving the wages, working conditions and legal status of farmworkers in the United States. The ABA opposes laws that require employers and persons providing education, health care, or other social services to verify citizenship or immigration status.

Independence of the Judiciary

The ABA opposes legislative initiatives that erode the judicial process (including curtailment of the jurisdiction of the federal courts in constitutional cases) or infringe upon the separation of powers between Congress and the courts. The ABA supports adequate funding for the federal judiciary, including an immediate and substantial increase in federal judicial compensation, and the prompt filling of judicial vacancies.

Independence of the Legal Profession

The ABA believes that primary regulation and oversight of the legal profession should continue to be vested in the court of highest appellate authority of the state in which the attorney is licensed. The ABA opposes federal laws or regulations that would interfere with state rules protecting the confidential attorney-client relationship, including: the application of financial institution "privacy protection" provisions of the Gramm-Leach-Bliley Act to attorneys; bankruptcy law provisions that impose new liability and regulations on bankruptcy debtor attorneys; and federal government policies that pressure companies and other organizations to waive attorney-client privilege and work-product protections, or to take certain punitive actions against employees such as not paying their attorneys' fees, as a condition for obtaining credit for cooperation during investigations. The ABA opposes legislation called the "Lawsuit Abuse Reduction Act" to amend federal and state rules of civil procedure with respect to, among other things, Rule 11 sanctions.

Rule of Law – Global

The ABA supports adequate funding for domestic and international agencies that promote the rule of law, including the prompt payment of U.S. assessments to the United Nations for its regular and peacekeeping expenses. The ABA supports ratification of certain international treaties, including the UN Convention Against Corruption, the Convention on the Law of the Sea, the Rome Statute for an International Criminal Court, the Convention on the Elimination of Discrimination Against Women, and the Convention on the Rights of the Child.

Tax Simplification

The ABA supports simplification of the tax laws to the maximum extent possible, consistent with basic equity, efficiency and the need for revenue, so that such laws can be easily understood and complied with by the taxpayers and fairly and consistently administered and enforced by the Treasury Department.

Youth at Risk

The Association supports federal legislation to provide funding to strengthen state programs that provide services to youth at risk and to state courts to help them address legal problems of vulnerable youth at risk, including support for programs to assure that youth are afforded full legal rights through any relevant court process and that they are represented by counsel. The ABA urges that Congress reauthorize the Juvenile Justice and Delinquency Prevention Act, and

that Congress and the states provide greater resources for juvenile crime prevention, end reliance on prosecution of juvenile status offenses, support programs to assist youth aging out of the foster system, and enact new legislation to regulate private residential treatment facilities.