

NEW YORK
CITY BAR

2018



NEW YORK STATE LEGISLATIVE AGENDA

NEW YORK CITY BAR ASSOCIATION



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INTRODUCTION

The New York City Bar Association (the “City Bar”), which was founded in 1870, is an independent organization and professional home for over 24,000 members dedicated to facilitating and improving the administration of justice and to promoting reform of the law. The City Bar’s 160 committees generate dozens of reports over the course of each legislative session. Our **2018 New York State Legislative Agenda** represents only a portion of those positions. It focuses on issues that are relevant to the current legislative debate or of particular importance to the City Bar, as well as legislative proposals drafted by our committees.¹

Support efforts to bring meaningful and comprehensive ethics, voting, election law and rules reform to Albany

Ethics Reform. New York State must implement tougher ethics reforms aimed not only at investigating and prosecuting ethics violations, but also at preventing them. To that end, we support:

- Limitations on Legislators’ Outside Employment. The City Bar recommends a cap on income earned by legislators from outside employment, accompanied by a significant salary increase. Additional limits should be placed on the personal use of campaign funds, including a prohibition on the use of campaign funds to pay attorneys’ fees and costs associated with defending against investigations or prosecutions alleging violations of law that are not related to the candidate’s campaign, and a prohibition on the use of campaign funds for *any* household expenditures (such as clothing).²
- Reform of the Joint Commission on Public Ethics. The Joint Commission on Public Ethics (“JCOPE”) should be made into a truly independent and transparent ethics

¹ To further explore the agenda, please visit <http://www.nycbar.org/issue-policy/issue/new-york-state-legislative-agenda>. To learn more about all of our policy positions, visit <http://www.nycbar.org/issue-policy>.

² See <http://www2.nycbar.org/pdf/report/uploads/20072971-RestrictionsPersonalUseofCampaignFundsGovtEthicsReportFINAL4.12.16.pdf>.

commission to oversee executive and legislative conduct.³ Changes would include eliminating the ability of three commissioners of the same party and same branch as a person being investigated to block an investigation or issuance of findings, and requiring legislative ethics hearings to be conducted in public.

Voting. Voter participation in New York State has declined dramatically over the past half century and now stands near the bottom as compared to other states. Much of the reason for this state of affairs is attributable to the fact that New York has failed to take actions undertaken by other states to increase participation by making it easier to register to vote and to cast a ballot. The following reforms should be enacted to improve voter participation: (1) allow party registration up to 30 days before a primary election; (2) provide Election Day registration; (3) permit “no excuse” absentee voting; (4) provide for early voting; (5) make Election Day a work holiday; and (6) provide for felony re-enfranchisement.

Election Law Reform. The low rate of voter participation is also the result of an electoral system that heavily favors incumbents—giving them legislative control of the redistricting process, party control of the election mechanism, and restrictive ballot access for candidates. Coupled with weak campaign finance regulation, these factors make it exceptionally rare for an incumbent legislator to fail to get re-elected; many run without opposition in both the primary and general election.

- **Redistricting.** New York State took a meaningful but incomplete step toward reforming the redistricting process when it adopted a constitutional amendment on this subject, which voters approved in 2014. That provision, however, reserved to the Legislature the power to select members of the redistricting commission and to override its recommendations. The City Bar recommends tightening the existing provisions on redistricting by establishing a fully independent and non-partisan redistricting commission.
- **Board of Elections.** The current Board of Elections consists of four members, two Democrats and two Republicans, and most Board employees involved in the registration and election process are chosen by those two parties. That structure was the result of a previous reform that has had the unfortunate result of creating a body that is virtually always at an impasse and, therefore, unable to act effectively. The two-party system for Board members and employees should be abolished and the Board should become a five-member, non-partisan board. In addition, the Board should be provided with professional enforcement staff with appropriate powers.
- **Public Campaign Financing.** The City Bar supports establishing a system for public financing of elections, including public matching funds, to curb the influence of money in elections and help level the playing field for candidates. Additionally, campaign contribution limits should be significantly lowered, the LLC and soft

³ See <http://www2.nycbar.org/pdf/report/uploads/Hope-for-ICOPE-Report.pdf>.

money loopholes should be closed, and full public disclosure of sources for all campaign spending should be required.

Rules Reform. We encourage both houses to hold public discussions of their operating rules and ways they can be improved, in a manner that takes into account the public's interest in having a Legislature that is transparent, deliberative and accountable to the citizens of the state. We urge the adoption of new rules that will: (1) limit legislators to serving on a maximum of three committees in any given time period; (2) require committee members to be physically present to have their votes counted; (3) require that all bills must be accompanied with the appropriate fiscal and issue analysis before receiving a vote and that all bills voted out of committee be accompanied by committee reports showing the work of the committee on the bill; (4) mandate a 'mark-up' process for all bills before they are voted out of committee; (5) explicitly provide each committee with control over its own budget; and (6) institutionalize conference committees, so that when bills addressing the same subject have been passed by both chambers, a conference committee will be convened at the request of the prime sponsor from each chamber or the Speaker and Majority Leader.⁴

Advance criminal justice reform and policies that will reduce mass incarceration⁵

Eliminate or Reduce the Financial Conditions of Pretrial Release. The City Bar joins in the growing chorus of organizations and elected officials in supporting bail reform in New York State. As long as New Yorkers who have not been convicted of any crime are jailed simply because they are too poor to pay bail, the need for reform is undeniable. Judges should be encouraged to use all facets of the current bail system to reduce unnecessary incarceration and should set bail amounts only after taking into account an individual's ability to pay. The successful use of charitable bail bonds, credit card bail, and supervised release programs have already illustrated the efficacy of alternative, non-commercial bail practices.⁶ We further recommend the elimination of for-profit commercial bail bonds in New York. The use of for-profit bail bonds is on the rise in New York, and their continued use creates discriminatory standards of release in New York's notoriously problematic bail system.⁷

Enact Comprehensive Sentencing Reform. We support efforts to review New York's sentencing laws and reform them in a way that is fair and effective while also maintaining public safety:

⁴ See reports under the "Legislative Rules Reform" subject area here: <http://tinyurl.com/ybbger26>.

⁵ See "Mass Incarceration: Where Do We Go From Here?" to learn more about the issues discussed in this section. Available at http://documents.nycbar.org/files/mass_incarceration_where_do_we_go_from_here.pdf.

⁶ See <http://www2.nycbar.org/pdf/report/uploads/20072490-BailLegislation.pdf>.

⁷ See http://s3.amazonaws.com/documents.nycbar.org/files/201744-BailBondIndustryNYS_FINAL_4.26.17.pdf.

- Repeal or reduce mandatory minimum sentencing provisions where possible and reduce the sentences recommended by sentencing guidelines and similar laws for non-violent offenses.
- Pass the Domestic Violence Survivors Justice Act, which would provide greater discretion to judges when sentencing defendants who are survivors of domestic violence.⁸
- Pass the One Day to Protect New Yorkers Act, which would reduce the maximum sentence for class A misdemeanor offenses from one year to 364 days, thereby mitigating the disproportionate consequences facing immigrant New Yorkers—including lawfully present permanent residents (green card holders), asylees, and victims of domestic violence – who may face deportation for a single minor conviction.⁹
- Expand the sentencing alternatives to prison including drug programs, mental health programs and job training programs.

Support Programs and Policies that Allow Incarcerated Individuals to Successfully Reenter Society.

- Expand the availability of rehabilitative services, including counseling and educational opportunities, during and following incarceration so that individuals can successfully reenter society and avoid recidivism.
- Seal or expunge criminal records in certain circumstances so that individuals do not face the kinds of collateral consequences that create virtually insurmountable barriers to successful reentry into their communities.
- Advance legislation that would help those with criminal records find employment, such as a statewide “Fair Chance Act” and a uniform “Certificate of Rehabilitation” in lieu of the current Certificates of Relief from Disabilities and Good Conduct.
- The Fair Access to Education Act, which would prevent discrimination in the college admission process for individuals previously convicted of one or more criminal offenses.¹⁰

⁸ See <http://www2.nycbar.org/pdf/report/uploads/DVSurvivorsJusticeDVReportFINAL6.16.11.pdf>.

⁹ See <http://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-in-support-of-the-one-day-to-protect-new-yorkers-act>.

¹⁰ See <http://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-in-support-of-the-fair-access-to-education-act>.

Support the Judiciary's 2018-19 Budget Request, including adequate funding for civil legal services

The City Bar supports the 2018-19 Judiciary Budget Request, including its inclusion of funding for civil legal services. This budget will allow the Chief Judge to implement the laudable goals of the Excellence Initiative and to help ensure equal access to justice for low income New Yorkers facing housing, consumer debt and other legal problems pertaining to the essentials of life. Adequately funded legal services help domestic violence victims, senior citizens, and the formerly incarcerated seeking reentry into society, as well as other vulnerable individuals and families. For every dollar invested in civil legal services, the State of New York receives more than ten dollars in economic benefits as a result of reduced social services and other public expenditures, as well as an inflow of federal benefits. Providing counsel to these needy New Yorkers also contributes to the overall efficiency of court proceedings and helps to secure a more just result. Civil legal services provide an essential safety net to those New Yorkers most at risk and limits hardships that are often more burdensome on government in the long run.

Promote comprehensive reproductive health policies

Reproductive Health. New York should enact legislation that will uphold the principles of individual liberty and privacy enunciated in Roe v. Wade, 410 US 113 (1973).¹¹ Roe and its progeny recognize the importance of ensuring that women will be able to make reproductive decisions appropriate for their individual circumstances, in consultation with their doctors and without interference from the state. The City Bar will continue our support of legislation which recognizes a woman's fundamental right to make decisions regarding her reproductive health, and makes a clear affirmative statement that all New Yorkers have the right to use, or refuse, contraceptives and that all New York women have the right to carry a pregnancy to term or to terminate a pregnancy.

Access to Contraception. The City Bar urges the Legislature to support legislation and policy initiatives to give oral contraceptives over-the-counter ("OTC") status.¹² Beyond the critical role that contraception plays in supporting women's ability to participate equally in the social, political and economic life of our nation, there are sound scientific and medical bases for making oral contraceptives available without a prescription. The prescription requirement bars access to these medications for many women and puts those women at greater risk of unintended pregnancies and poor health outcomes.

¹¹ See <http://s3.amazonaws.com/documents.nycbar.org/files/2017166-ReproductiveHealthAct.pdf>.

¹² See <https://www2.nycbar.org/pdf/report/uploads/20072992-OvertheCounterContraceptionScienceLawSexLawletter232016state.pdf>.

Provide that communications between a consumer of legal services and a legal referral service or lawyer referral service be deemed privileged

Along with the New York State Bar Association, the City Bar supports amending the New York Judiciary Law to provide that communications between a consumer of legal services and a legal referral service or lawyer referral service (collectively “LRS”) be deemed to be privileged on the same basis as those provided by law for communications between attorney and client.¹³ This privilege could be waived only by the consumer of legal services. The law currently establishes immunity from civil action for an LRS that provides a referral without charge and as a public service, without malice, and in the reasonable belief that such referral was warranted; however, the statute does not contain a confidentiality provision. The proposed amendment will resolve any potential question about the confidentiality of communications between the 18 LRS’s in New York and the hundreds of thousands of people who rely on them for help.

Enact the Uniform Voidable Transactions Act, which would modernize New York’s laws related to fraudulent conveyances

The City Bar supports enactment of the Uniform Voidable Transactions Act (the “UVTA”), promulgated by the Uniform Law Commissioners in 2014.¹⁴ The UVTA would replace the current provisions in Article 10 (§§ 270-281) of the Debtor and Creditor Law, which are based on the Uniform Fraudulent Conveyance Act (the “UFCA”), which was enacted in New York in 1925. The UVTA provides remedies available to creditors injured by what traditionally have been referred to as “intentional” or “constructive” fraudulent conveyances or transfers—property transferred or obligations incurred (a) by a debtor with actual intent to hinder, delay or defraud its creditors or (b) for less than fair consideration by an insolvent or undercapitalized debtor. New York’s Fraudulent Conveyance Law has not been updated significantly in 90 years and is based on a “model” statute promulgated in 1918. Only New York and Maryland retain the UFCA. The proposed legislation would modernize the New York statute to reflect 100 years of developments in commercial law, legal terminology and practice and resolve many open questions under the UFCA. It would also bring New York’s law in line with Federal law and the law of most states; current inconsistencies lead to confusion and disparate results depending on what law is applied while also fueling costly litigation over choice-of-law issues.

¹³ See http://s3.amazonaws.com/documents.nycbar.org/files/2017128-LRSAttyClientPrivilege_FINAL_4.21.17.pdf.

¹⁴ See http://s3.amazonaws.com/documents.nycbar.org/files/20073132-UVTABillMemo_Commercial&Bankruptcy_FINAL_10.6.16.pdf.

Amend the Arts and Cultural Affairs Law to re-incentivize art authenticators and restore integrity to art transactions in New York

The City Bar supports legislation which addresses certain deficiencies in provisions of the New York Arts and Cultural Affairs Law: namely, the absence of protections under the law for authenticators in rendering independent, good-faith opinions about the authenticity, attribution and authorship of works of fine art.¹⁵ An increasingly hostile, litigious environment has raised insurance costs and created levels of risk that have driven people from the field. While in the course of rendering opinions authenticators are often sued to call into question their findings. Although experts nearly always prevail under the law, the costs of vindication are great: thousands of hours and dollars spent on legal defense. Even carrying liability insurance (which can be particularly burdensome to an individual authenticator) does not always guarantee protection. The proposed legislation defines with clarity that segment of the art market that should be encouraged to practice its profession, and provides a mechanism through which authenticators can do so and thereby promotes legitimate commerce in New York's thriving art market.

Reform and modernize the administration of class actions in New York's courts by amending Article 9 of the Civil Practice Law and Rules

The City Bar supports amending Article 9 of the Civil Practice Law and Rules to reform and modernize the administration of class actions in New York's courts.¹⁶ In 1975, New York enacted its current Article 9 for class actions, but the statute has not been materially changed since. Generally, the amendments would: (1) permit class certification for actions demanding a statutory penalty or minimum measure of recovery; (2) amend language which disfavors class actions against governmental entities; (3) adopt language stating that motions for class certification be made "at an early practicable time" rather than within 60-days; (4) provide guidance with specified factors to be considered in appointing class counsel; and (5) provide a more flexible notice provision concerning discontinuance, dismissal or compromise of the class action. The City Bar believes the proposed amendments are appropriate to improve the administration of class actions and to continue to restore New York to a leadership role in commercial litigation.

¹⁵ See <http://s3.amazonaws.com/documents.nycbar.org/files/20072498-SupportedAmendmentstoAuthenticityOpinions.pdf>.

¹⁶ See <https://www2.nycbar.org/pdf/report/uploads/20073069-CPLRArt9ClassActionsBillReportFINAL4.11.16.pdf>.

Modernize New York’s public procurement construction laws to provide public owners with a wider variety of procurement and delivery modes, as necessary and appropriate, to reduce costs, speed delivery and improve quality and safety

The City Bar has extensively reviewed the statutory scheme for New York’s built environment, focusing primarily on those laws that regulate construction for public projects. The result of this review is clear: New York needs to address its outdated, inefficient and inflexible built environment laws.¹⁷ The American Bar Association’s Model Procurement Code for Public Infrastructure Procurement (“MCPIP”) provides an excellent basis for statutory language. With the MCPIP as a foundation, the state should convene a reform commission that brings all related stakeholders to the table to establish a new procurement code that is both modern and reflective of New York State’s particular history and construction markets. By modernizing its public construction procurement laws, New York can best allocate and protect its significant investments on the horizon.

To further explore the 2018 New York State Legislative Agenda and learn about the related reports and legislation, please visit our agenda webpage at <http://www.nycbar.org/issue-policy/issue/new-york-state-legislative-agenda>.

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¹⁷ See <http://www.nycbar.org/member-and-career-services/committees/construction-law-committee/built-environment-series-recap-and-materials>.