

NEW YORK
CITY BAR

2019



NEW YORK STATE LEGISLATIVE AGENDA

NEW YORK CITY BAR ASSOCIATION



2019 NEW YORK STATE LEGISLATIVE AGENDA

INTRODUCTION

The New York City Bar Association (City Bar), which was founded in 1870, is an independent organization and professional home for over 24,000 members whose mission is to equip and mobilize the legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest. The City Bar’s 160 committees generate dozens of reports over the course of each legislative session. Our **2019 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

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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>.

- *Enact Sentencing Reform Measures: “Safety Valve” proposal; Second Chance Amendment; Domestic Violence Survivors Justice Act; One Day to Protect New Yorkers Act; sentencing alternatives to prison*
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GOOD GOVERNMENT

Reform and Modernize New York's Voting System and Election Law

Voting Reform. Voter participation in New York has declined dramatically over the past half century and now stands near the bottom as compared to other states. New York has failed to take actions undertaken by other states to increase participation by making it less complicated to register to vote and to cast a ballot. The following reforms should be enacted to improve voter participation: (1) provide for early voting;² (2) permit “no excuse” absentee voting;³ (3) establish a single primary day;⁴ (4); allow party registration up to 30 days before a primary election; (5) provide Election Day registration; (6) make Election Day a work holiday; (7) provide for felony re-enfranchisement; and (8) permit instant run-off voting in municipal elections.⁵

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 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.

² See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-for-early-voting-in-new-york-state>.

³ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-for-a-no-excuse-absentee-voting-constitutional-amendment>.

⁴ See https://www2.nycbar.org/pdf/report/uploads/9_20072588-NewYorkPrimaryDay.pdf.

⁵ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/improving-opportunities-to-vote-in-new-york-state-assembly-hearing>.

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

Bring Meaningful and Comprehensive Ethics and Rules Reform to Albany

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

- New York State Government Integrity Commission. The City Bar has spent considerable time studying the efficacy of the current ethics enforcement structure which consists of the Joint Commission on Public Ethics (JCOPE) and the Legislative Ethics Commission (LEC) and has urged structural reform as well as a strenuous effort by JCOPE and the LEC to rise above the structural deficiencies.⁶ While JCOPE has been reasonably effective in the role of regulating lobbyists, subsequent experience has continued to show the necessity for structural reform in the area of ethics enforcement to allow the public a reasonable measure of confidence that ethics enforcement is taken seriously in Albany. The proposed Government Integrity Commission would combine the enforcement powers of JCOPE and the LEC into a single commission that would function much like the Commission on Judicial Conduct and have jurisdiction over misconduct and campaign finance laws for the legislative and executive branches of government. The Constitution must be amended so that the creation of a single entity with jurisdiction over the legislative and executive branches is beyond constitutional question.⁷
- Limit 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

⁶ See <http://www2.nycbar.org/pdf/report/uploads/Hope-for-JCOPE-Report.pdf>.

⁷ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-for-the-creation-of-a-nys-government-integrity-commission>.

of law that are not related to the candidate's campaign, and a prohibition on the use of campaign funds for household expenditures (such as clothing).⁸

Rules Reform. We encourage both houses of the Legislature to hold public discussions of their operating rules and ways they can be improved. 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.⁹

EQUALITY OF OPPORTUNITY AND EXPERIENCE

*Advance Criminal Justice Reform and Policies That Will Reduce Mass Incarceration*¹⁰

Eliminate or Reduce Unfair Financial Burdens of the Criminal Justice System. The City Bar urges reform of practices that unfairly penalize and burden indigent New Yorkers in the criminal justice system.

- **Bail Reform.** 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. We urge that any bail reform embody three core principles: (1) freedom before trial must be the norm, not the exception; (2) profit motivations must be removed from pretrial practices; and (3) race and wealth should not be factors in pretrial decisions.¹¹ 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

⁸ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/moving-backwards-on-reform-how-the-latest-amendments-to-restrictions-on-personal-use-of-campaign-funds-may-exacerbate-the-problem-of-misuse>.

⁹ See reports under the "Legislative Rules Reform" subject area here: <http://tinyurl.com/ybbger26>.

¹⁰ 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.

¹¹ See http://documents.nycbar.org/files/BailReform_CorePrinciples.pdf.

notoriously problematic bail system.¹² Moreover, as reforms are being considered, 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.¹³

- Reexamine Mandatory Court Fees Imposed on Individuals Convicted of Criminal Offenses and Violations. When any person in New York is convicted of a crime or violation, the law requires that a judge impose certain mandatory surcharges and fees, regardless of an individual's ability to pay. The official goal of these surcharges and fees is to generate revenue, not to impose punishment. All proceeds from collection are deposited in the state treasury, making these fines and fees a 'regressive tax' on those who are often least able to pay. Being subjected to fines and fees causes long-term harms to indigent defendants, such as lost wages, damaged credit, and seizure of property. And regulations make it all but impossible for defendants who are incarcerated while subject to surcharges to discharge their debts. Given that the aims of the criminal justice system are in no way advanced by these mandatory surcharges and fees, the Legislature should simply abolish them for all those convicted of a crime or violation, or, at a minimum, restructure them to be imposed on a sliding scale consistent with an individual defendant's ability to pay. If the Legislature is unwilling to make these changes, the law should be amended to make it more equitable for indigent defendants. This includes: (1) allowing sentencing courts to waive fees which would result in hardship, and simplify the process by which courts can defer fees until after incarceratory terms are served; (2) excluding youthful offenders and those convicted only of violations from being subjected to any mandatory court fees; and (3) consolidating mandatory fees for individuals taking a single plea on multiple crimes.¹⁴

Enact Sentencing Reform Measures. 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:

- Create a "safety valve." This proposed legislation would give judges and prosecutors the ability to impose and recommend sentences that fall below statutory mandatory minimums in cases where there are substantial and compelling reasons, giving due regard to the nature of the crime, history and character of the defendant and his or her chances of successful rehabilitation, such that the imposition of a mandatory minimum sentence would result in a substantial injustice to the defendant and is not necessary for the protection of the public. Under mandatory minimum sentencing,

**CITY BAR
PROPOSAL**

¹² See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/recommendations-concerning-the-bail-bond-industry-in-the-state-of-new-york>.

¹³ See <http://www2.nycbar.org/pdf/report/uploads/20072490-BailLegislation.pdf>.

¹⁴ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/new-york-should-re-examine-mandatory-court-fees>.

mitigating factors - no matter how compelling - cannot be used to justify a sentence below the statutory minimum because prosecutors and judges have no flexibility to go below the statutory floor in plea negotiations or sentencing. This rigid sentencing structure leads to more people serving longer periods of incarceration which costs taxpayers more money and has not been shown to reduce recidivism.

**CITY BAR
PROPOSAL**

- Second Chance Amendment. Currently, New York Criminal Procedure Law 440.20 permits a defendant to make a motion to set aside a sentence on the grounds that it was unauthorized, illegally imposed or otherwise invalid as a matter of law. Although this provision offers an avenue for relief for some defendants, it does not permit a reduction of sentences that are valid but nonetheless excessive in light of the crime and the defendant's individual circumstances, including evidence of meaningful rehabilitation while serving the initial sentence. Any such claims regarding excessiveness can only be raised on direct appeal. The Second Chance Amendment is designed to give individuals serving sentences of 10 years or more (excluding certain crimes) who are more than two years away from scheduled Conditional Release the chance to prove, part way through their sentences, that they deserve a reduction in sentence. The amendment would allow a motion for reduction or modification of a sentence, only after the individual has served a specified portion of that sentence on the grounds that the sentence was greater than necessary to achieve the purposes of sentencing. It would allow the presentation of evidence regarding the individual's age, personal circumstances, and medical condition, as well as confinement record, including indicators of rehabilitation.
- Domestic Violence Survivors Justice Act. This bill would provide greater discretion to judges when sentencing defendants who are survivors of domestic violence.¹⁵
- One Day to Protect New Yorkers Act. This bill 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.¹⁶
- Sentencing alternatives to prison. Use of these alternatives, which include drug programs, mental health programs and job training programs, should be expanded.

¹⁵ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-in-support-of-the-domestic-violence-survivors-justice-act-which-would-give-greater-discretion-to-judges-when-sentencing-defendants-who-are-survivors-of-domestic-violence>.

¹⁶ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-in-support-of-the-one-day-to-protect-new-yorkers-act>.

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.
- Pass 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.¹⁷

Create a System for the Production, Distribution and Adult Non-medical Use of Marijuana in New York

The City Bar supports efforts to create a system for the production, distribution, and adult non-medical use of marijuana.¹⁸ Marijuana prohibition is a costly and ineffective policy that has not succeeded in eliminating marijuana use. The failed policy has devastated families and communities, eroded respect for the law, and strained police-citizen relations. Accordingly, the City Bar supports state and federal legislative and policy changes that reduce or eliminate criminalization of marijuana and that permit, tax, and regulate the production, distribution, and adult use of marijuana. The City Bar has endorsed the Marijuana Regulation and Taxation Act as a model for how New York could adopt a marijuana regulatory scheme¹⁹ and offers the following key provisions as essential for inclusion in any comprehensive and effective marijuana regulation policy: (1) provide for the sealing or expungement of marijuana convictions; (2) reinvest tax revenue into research, education and those communities most impacted by prohibition; and (3) create a market system that allows for fair access. Any marijuana regulation system should reverse, not exacerbate, inequities, and seek to ensure that individuals and communities that have been harmed historically by enforcement be given fair access to the market and its economic benefits and relief from criminal convictions.

¹⁷ See <http://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-in-support-of-the-fair-access-to-education-act>.

¹⁸ See <https://www.nycbar.org/member-and-career-services/committees/marijuana-legalization-and-regulation>.

¹⁹ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-marijuana-legalization-marihuana-regulation-and-taxation-act>.

Promote Comprehensive Reproductive Health Policies and Sexual Education

Comprehensive Sexual Education. While New York mandates health education for all students, there is no requirement for sex education. It is up to each local school district to decide whether to provide students additional sex education instruction and what that education might entail. A sex education program can only be considered comprehensive when it is medically accurate, age-appropriate, free from bias, and includes information about contraception in addition to abstinence. A program that contains all of these elements is the most effective way to help young people learn relationship and decision-making skills, postpone intercourse, reduce their number of sexual partners, decrease their chance of facing an unintended pregnancy, and reduce their chance of contracting a sexually transmitted infection. Comprehensive sex education is also an important tool in confronting and avoiding sexual harassment, sexual assault and teen dating violence. New York should establish an age-appropriate sex education grant program to ensure all school districts have the resources necessary for these important courses.²⁰

Access to Contraception. First approved by the FDA over 50 years ago, contraception has transformed the cultural landscape in the United States. By providing women the tools and agency to determine whether and when to have children, contraception has been a catalyst for women's equal participation in our political and educational institutions as well as the paid workforce. While the State has taken great strides to increase access to contraception in recent years, the City Bar urges the Legislature to close current coverage gaps by: (1) requiring insurers to cover any contraception that a health care provider recommends for a woman without a co-payment, (2) providing that women can access 12 months of contraception at one time (which reduces the likelihood of an unintended pregnancy), and (3) fully including and covering emergency contraception.²¹

Reproductive Health Act. New York should enact legislation that will uphold the principles of individual liberty and privacy enunciated in *Roe v. Wade*, 410 US 113 (1973).²² *Roe* and its progeny recognize the importance of ensuring that women are 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.

²⁰ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/womens-agenda-reproductive-health-and-healthy-relationships-2019-nys-executive-budget>.

²¹ *Id.*

²² See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/updated-report-in-support-of-the-reproductive-health-act>.

Maternal Mortality Review Board. The United States experiences a disproportionately high rate of maternal mortality, with New York ranked 30th among the states in maternal death rate. Poor women and women of color are victims of maternal mortality at far higher rates than are their affluent and white counterparts. The City Bar supports establishing a Maternal Mortality Review Board which would review maternal mortality, analyze their causes and disseminate strategies for reducing the risks of maternal mortality. This board is necessary both as a means to improve health outcomes for New York’s female population and to rectify the economic and racial disparities in those outcomes. It is critical that such a board be created using the national best practices on maternal mortality reviews that have already been established across the country and that it operate with strong confidentiality protections.²³

Enact the Gender Expression Nondiscrimination Act (GENDA)

Although New York State’s Human Rights Law prohibits discrimination based on sex and sexual orientation, these categories do not explicitly and adequately protect individuals who are discriminated against because of their actual or perceived gender identity or expression, such as transgendered persons. The City Bar supports the passage of the Gender Expression Nondiscrimination Act (GENDA) which adds “gender identity and expression” to the list of categories protected under various statutes prohibiting discrimination by the state and/or in employment, education, housing, and public accommodations. While Governor Cuomo has issued an executive order directing the State Division on Human Rights to issue regulations interpreting the Human Rights Law as prohibiting discrimination on the basis of gender identity or expression, they may be vulnerable to judicial interpretation and can be rescinded by future governors. Enactment of GENDA remains a key step in protecting transgender and gender non-conforming people in their employment and housing, and protecting their safety, so that they can enjoy the financial and social stability necessary to become fully integrated and productive members of their communities.²⁴

THE JUDICIARY AND THE FAIR, EFFECTIVE ADMINISTRATION OF JUSTICE

Support the Judiciary’s 2019-20 Budget Request, Including Adequate Funding for Civil Legal Services

The City Bar supports the 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

²³ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-for-the-creation-of-a-maternal-mortality-review-board-in-nys>.

²⁴ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-supporting-the-gender-expression-nondiscrimination-act-genda>.

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.

Enact the Uniform Voidable Transactions Act, which would Modernize New York's Laws Related to Fraudulent Conveyances

CITY BAR
PROPOSAL

The City Bar supports enactment of the Uniform Voidable Transactions Act (UVTA), promulgated by the Uniform Law Commissioners in 2014.²⁵ 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 (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.

Reform and Modernize the Administration of Class Actions in New York's Courts

CITY BAR
PROPOSAL

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.²⁶ In 1975, New York

²⁵ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-in-support-of-the-enactment-of-the-uniform-voidable-transactions-act-in-new-york>.

²⁶ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/proposed-amendments-to-article-9-of-the-civil-practice-law-and-rules-to-reform-and-modernize-the-administration-of-class-actions-in-nys-courts>.

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.

Re-incentivize Art Authenticators and Restore Integrity to Art Transactions in New York

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PROPOSAL

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.²⁷ 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.

BUSINESS AND COMMERCIAL PRACTICE AREAS

Extend Common Interest Privilege to Business Transactions

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PROPOSAL

The City Bar supports revisions to New York’s statute on the attorney-client privilege in order to protect the sharing of privileged communications between parties with a common legal interest without regard to whether litigation is pending or reasonably anticipated. This proposal is in response to the New York Court of Appeals ruling in *Ambac Assurance Corporation v. Countrywide Home Loans*, 27 N.Y.3d 616 (2016) which found that the common interest doctrine extends only to communications related to pending or anticipated litigation, and not those relating to transactional matters. This change in the law will

²⁷ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-on-legislation-to-help-re-incentivize-art-authenticators-and-restore-integrity-to-art-transactions-in-new-york>.

encourage candid collaboration between such parties and, in turn, facilitate compliance with the law.²⁸

Support Long-Established Practices of Business-to-Business Arbitration Proceedings

The City Bar opposes legislation that would change New York's regulation of business-to-business arbitration proceedings in a way which would disrupt long-established arbitration practices and could introduce considerable uncertainty in the resolution of numerous business-to-business disputes in New York. In particular, we urge the Legislature to support a central pillar of New York arbitration law, i.e., that parties get to decide the contours of their own arbitration process. To the extent policymakers seek to address concerns regarding disparate bargaining power in arbitration, such as in the context of adhesion contracts between companies and consumers, or employment matters, those situations can and should be addressed in a way that does not disrupt decades of New York jurisprudence promoting party autonomy in business-to-business arbitration.²⁹

No Automatic Consent to Jurisdiction by Foreign Businesses Registering to Do Business in New York

The City Bar opposes legislation which would provide that a foreign corporation's application for authority to do business in New York constitutes consent to jurisdiction of the courts of this state and a surrender of such application constitutes withdrawal of such consent. The legislation is being advanced as a way to provide certainty regarding personal jurisdiction over foreign entities, which has been disrupted by recent court cases. The City Bar believes that the policy rationales for the proposed legislation should be subject to further debate. The rationale for the legislation does not seem to justify the potential conflicts with the Due Process and Commerce Clauses of the U.S. Constitution. These constitutional issues are already being litigated in New York and other courts, and it would be prudent to await further judicial clarification before enacting such legislation.³⁰

To further explore the 2019 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>

²⁸ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/proposed-amendments-to-new-york-civil-practice-laws-and-rules-4503a1-regarding-communications-of-common-interest>.

²⁹ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/opposition-to-proposed-changes-to-nys-business-to-business-arbitration-proceedings>.

³⁰ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-on-legislation-regarding-consent-to-jurisdiction-by-foreign-businesses-authorized-to-do-business-in-new-york>.