



NEW YORK STATE BAR ASSOCIATION

FEDERAL LEGISLATIVE PRIORITIES

2022



# NEW YORK STATE BAR ASSOCIATION

We appreciate the opportunity to present the New York State Bar Association's legislative priorities for 2022. We respectfully request our Executive and Legislature consider our provisions that we believe will be imperative to ensure access to justice and the integrity of our justice system.

The New York State Bar Association (NYSBA) has been the voice of the legal profession in New York for more than 140 years. Our mission is to shape the development of law, educate and inform the public, and respond to the demands of our diverse and ever changing legal profession.

As we have experienced the past two years, we live in a fast-changing world with the State Legislature and Congress having to act quickly to respond to health, safety and political events. This document is intended to serve as a blueprint for NYSBA action for 2022, but we recognize the Association will need to be responsive to events and adjust priorities as necessary throughout the year. Flexibility may be critical. However the year develops, the Association will continue to be a staunch advocate for policies that promote our core values and mission to promote equal access to justice for all.

We welcome the opportunity to discuss these priorities with you.

## Specific Legislative Proposals:

### **Provide Greater Student Loan Relief for Attorneys and Non-Attorneys in Rural, Suburban and Urban Areas:**

More than 40 million Americans, mostly people under 35 years of age, have student loan debt. Covid-19 has exacerbated the financial challenges these individuals face. While Congress did provide relief, more needs to be done including extending the moratorium on payments, expanding the program to private loans, and providing targeted monetary relief in cases of economic hardship.

### **Support for the Legal Services Corporation (LSC):**

LSC is an independent non-profit corporation established by Congress in 1974 to provide financial support for civil legal aid to low-income Americans. LSC promotes equal access to justice by providing funding to 133 independent non profit legal aid programs. New York has seven LSC grantees: Legal Aid Society of Mid-New York, Legal Aid Society of Northeastern New York, Legal Assistance of Western New York, Legal Services NYC, Legal Services of the Hudson Valley, Nassau/Suffolk Law Services Committee, and Neighborhood Legal Services (Buffalo). LSC grantees serve low-income individuals, children, families, seniors, and veterans in 813 offices in every congressional district. It is critically important that Congress provide adequate funding for LSC in order to provide access to justice for those who need assistance.

### **Cannabis:**

As states seek to regulate adult use marijuana, the conflict with existing federal regulations hinders the ability of states to craft effective and legal policies. Congress should enact legislation that: (1) exempts from the Controlled Substances Act any production, distribution, possession, or use of marijuana carried out in compliance with state laws; (2) removes marijuana from Schedule 1 of the Controlled Substances Act; and (3) encourages scientific research into the efficacy, dose, administration, or side effects of commonly used and commercially available cannabis products in the US. These provisions were endorsed by the American Bar Association (ABA) in 2019.

### **Firearms and Mass Shootings:**

NYSBA convened a task force on Mass Shootings and Assault Weapons in an effort, based on available data, to understand the incidence and causes of mass shootings, to describe the role of assault-style weapons in them, and to make recommendations that offer a reasonable chance to reduce the number of mass shootings and casualties that result from them. The United States has more mass shootings and more casualties from mass shootings than any other developed country in the world. NYSBA believes lawyers have a special role to play in addressing gun violence in America. The non-partisan report makes the following recommendations for reasonable and common sense measures to address this national crisis, while remaining consistent with the Second Amendment:

1. Assault Weapons Ban.
2. Ban on large-capacity magazines that hold more than 10 rounds of ammunition.
3. Ban on Bump Stocks and other devices that effectively enable semi-automatic firearms to be fired in fully automatic mode.
4. Ban possession of "ghost guns" - firearms without a serial number.
5. Enact Universal Background Checks.
6. Extend the time for background checks to be completed before finalizing the sale of a firearm.
7. Require gun owners to have a license to purchase and possess .all types of firearms (state).
8. Expand the category of individuals who are prohibited from purchasing or possessing firearms.
9. Ensure all disqualifying events for gun ownership are reported to NICS.
10. Passage of Extreme Risk Protection Laws, aka Red Flag Laws.
11. Impose penalties for failure to notify the authorities of stolen or lost guns.
12. Impose penalties for unlocked and unsecured guns.
13. Federal funding for agencies to collect, maintain and analyze data on causes of mass shootings.

Additional information can be found here: <https://nysba.org/app/uploads/2020/11/12.-Final-Report-11.5.2020-Task-Force-on-Mass-Shootings-and-Assault-Weapons-With-cover-FINAL.pdf>

### **Legislative Reform to Address the Crisis in Immigration Representation:**

The condition of immigrants who face civil immigration detention, removal and likely permanent expulsion from the United States is often undermined by the lack of available competent counsel necessary to navigate the "labyrinthine character of modern immigration law." Without competent counsel in immigration proceedings, a vast majority of non citizens are ill-equipped to know where to turn for help or how to proceed in an immigration matter. The Association is committed to enactment of a statutory right to appointed counsel to ensure justice for that community of immigrants who are confronted with legal proceedings.

# FEDERAL LEGISLATIVE PRIORITIES FOR 2022

## Sealing Records of Criminal Conviction:

The general trend within the criminal justice reform movement has been toward facilitating productive reentry into the social fabric for ex-offenders. The collateral consequences of criminal convictions are numerous and profound, perpetuating a cycle of unemployment and disenfranchisement which can lead to recidivism. As of January 2018, 41 states, including New York, have some form of record sealing or expungement in place. However, there is still no federal law that allows for those convicted of federal crimes to seek the sealing of their criminal records. Federal law should allow those convicted of non-violent federal offenses to petition the court to have records of their conviction sealed.

## Violence Against Women Act Reauthorization:

VAWA has been reauthorized three times, each serving as an important opportunity for Congress to expand and enhance the tools and initiatives combating these forms of gender-based violence. The last reauthorization, VAWA 2013, enhanced measures to combat trafficking in persons, and to address sex trafficking. The impact of VAWA legislation over a quarter of a century has been transformative, directly impacting the lives of countless survivors of domestic violence, sexual assault, stalking and dating violence. VAWA lapsed in 2018, and reauthorization efforts in 2019 failed, leaving many critical programs unfunded. Congress cannot repeat this missed opportunity to enhance protections for survivors of gender-based violence.

## Equality Act:

H.R. 5, also known as the Equality Act, would expand the protected category of “sex” to include “sexual orientation and gender identity” and provide additional protections within the new expanded category. It would bar discrimination in employment, public schools, housing, credit opportunities, juries, and federally funded programs on the basis of sex, gender identity, and sexual orientation. It also would prohibit discrimination in places of public accommodation, restaurants, entertainment venues, retail stores, transportation services, health-care facilities, and funeral homes. Additionally, individuals could not be denied access to shared facilities, such as bathrooms and locker rooms, in accordance with their gender identity. The New York State Bar Association proudly supports H.R. 5, because “[e]very person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love” (see Section 1, 1/20/21 Biden Executive Order).

## Modernizing Policing at Key Stages:

We are at a crisis point with policing in the United States. Harmful policing practices are resulting in misconduct that disproportionately impacts Black people and a culture that allows these practices to continue unchecked. Policing needs to be brought into the 21st century by improving policing at every stage, from hiring to discipline. The Association supports:

- Creating a national registry to track problem officers to bolster police accountability and prevent problem officers from moving from one department to another.
- Prohibiting profiling based on race and religion and mandating training on profiling.
- Banning chokeholds, carotid holds and no-knock warrants.
- Requiring the use of federal funds to ensure use of body cameras.
- Amending the prosecution standard for police from “willfulness” to “recklessness” and reforming qualified immunity.
- Requiring stronger data reporting on police use of force.

Additional information can be found here: <https://nysba.org/app/uploads/2021/06/Report-by-the-Task-Force-for-Racial-Injustice-and-Police-Reform-FINAL-with-HOD-wording-on-cover.pdf>

## Voting Rights:

The right to vote is a fundamental value guaranteed by the United States Constitution. It establishes a benchmark for public participation and must be protected and preserved. The New York State Bar Association supports measures that increase voter participation and inclusion of all communities; prevent discriminatory voting practices anywhere in the United States; and protect access to the ballot and the sanctity of the vote.

## General Policy Positions:

### Support for the Legal Profession:

A core mission of the New York State Bar Association is to represent the interests of the legal profession. In that regard, the Association will work to protect the independence of the judiciary, enhance access to the courts, promote affirmative legislative proposals that benefit the profession, and oppose those proposals that would burden it. The Association will work to ensure that attorneys are able to protect their clients’ interests and effectively engage in the practice of law.

### Support for States’ Authority to Regulate the Tort System:

Laws covering the area of civil justice are truly the province of state legislatures, the judiciary, and voters. For over 200 years the authority to promulgate “tort law”, including law relating to liability for medical errors, has rested with the states, which have the experience and expertise with these matters. The federal government should leave it to the states to determine how best to provide access to the courts for the injured to exercise their right to seek compensation for their injuries and to make reasonable adjustments to the system.

### Integrity of the Justice System:

At all levels of government, an independent, well-functioning judicial system, accessible to all, is a bedrock principle of our democracy. The courts, more than any other arm of government, are the bulwark of liberty. Congress should provide appropriate funding to ensure fully functioning courts that will provide equal access to justice for all.

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