

**Testimony of New York State Bar Association President Kathleen M. Sweet, Esq.**

*Submitted to the Joint Legislative Fiscal Committees on  
Governor Kathy Hochul's 2026–2027 Executive Budget Proposal*

Chairs Krueger and Pretlow, and the Honorable Members of the Joint Committees:

On behalf of the New York State Bar Association (NYSBA), the nation's largest voluntary state bar association, I thank you for the opportunity to present testimony on the Governor's 2026–2027 Executive Budget. We value our long-standing partnership with the Legislature and appreciate your continued attention to issues affecting due process, the administration of the courts, and the fair and effective delivery of justice for all New Yorkers.

As the Governor has observed, this Budget is advanced during a period of both fiscal strength and uncertainty. While New York's prudent fiscal management has built constancy, federal instability and rising costs are placing increased strains on the justice system that is relied upon by millions of our fellow New Yorkers.

My testimony focuses on ensuring that investments in public safety, legal representation, and court infrastructure are preserved and strengthened in a manner consistent with constitutional obligations and long-standing legislative intent. I offer these views to highlight areas of support, identify concerns with certain budget provisions, and call attention to missed opportunities that the Legislature has the ability—and responsibility—to address.

*Interest on Lawyer Account (IOLA) Fund*

Forty years ago, State lawmakers joined NYSBA, to create the IOLA Fund to help low-income New Yorkers facing legal problems that challenged their most fundamental needs, while fighting for justice. These funds are not taxpayer dollars. Rather, the IOLA fund is the pooled interest paid on lawyers' trust accounts- interest generated without taxing the public and at no cost to lawyers or their clients. Despite not emanating from the State's coffers, the dollars must be appropriated. As currently proposed, the Executive Budget does not grant IOLA the allocation needed to meet the need. We respectfully request that the Legislature fully fund IOLA.

*Indigent Legal Services Fund (ILSF)/ PPGG Part FF*

More than two decades ago, New York State amended the State Finance Law to establish the ILSF with the goal of "real improvements in the quality of the public defense system in New York."<sup>1</sup> The maintenance and expansion of this program is vital for those seeking access to justice in our state. It is critical to NYSBA's mission. As proposed in Part FF of the Governor's Public Protection & General Government ("PPGG") Art. VII bill (S.9005/A.10005), hundreds of millions of dollars would be diverted from the Indigent Legal Services account to the general fund. NYSBA is steadfast in its opposition to any diversion or sweep of the Indigent Legal Services Fund for purposes unrelated to public defense. The ILSF was created to bring about real improvements in the quality of public defense services in New York, and its purpose is clearly enumerated in State Finance Law §98-b. Diverting funds from ILSF would weaken the public defense infrastructure, undermine constitutional mandates and disproportionately harm rural communities and underserved urban populations. NYSBA respectfully urges the Legislature to reject any attempt to sweep or divert these funds and

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<sup>1</sup> Chap. 62, 2003 Biennium, 227th Reg. Sess. (NY. 2003) p. 55, line 50

reaffirm its commitment to justice by ensuring that the ILSF Fund is used only as intended to strengthen indigent defense services.

### *Assigned Counsel & Attorneys for the Child*

We recognize recent efforts by the Executive and the Legislature to increase compensation for assigned counsel and attorneys for the child (18-b counsel). One-time corrections are, however, not sufficient. The absence of a statutory mechanism for regular, statewide rate review and adjustment for 18-b counsel rates continues to threaten equal access to counsel across the state.<sup>2</sup>

18-b attorneys are at the heart of the justice system. They serve individuals at moments of extraordinary vulnerability- indigent criminal defendants, children, and families in crisis. Without predictable, sustainable funding tied to economic realities, New York risks renewed shortages of qualified counsel, and the resulting delays erode public confidence in the justice system. We urge the Legislature to enact a permanent mechanism for fee increases comparable to the framework used for prosecutors, the judiciary, and comparable to federal rates for such attorneys, consistent with the language of S.3636 (Bailey) or A.2682 (Magnarelli).

### *Right to Counsel and Access to Justice*

Guaranteed right-to-counsel protections for vulnerable populations, including children and families involved in child protective investigations, tenants facing eviction, and immigrants navigating complex removal proceedings are a constitutional and moral imperative. We urge the Legislature to advance policies to ensure that New York remains a leader in advancing access to justice for all.

New York should enact a right to counsel for children and families; legal advice and protection should be guaranteed for juveniles as well as parents and caretakers who are the subject of investigations by child protective services.<sup>3</sup> Currently there is no legal requirement to notify a child's parent or caretaker of their right to consult with an attorney, their right to refuse to disclose personal information about their family, or their right to refuse to allow a caseworker to conduct a search of their home without a court order. As a result, many parents and caregivers are unaware of their rights. As children often have only a limited, if any, understanding of their legal rights, the need for legal counsel before questioning is vital. S.551(Brisport)/A.1234 (Walker) and S.878-B (Bailey)/A.2620-B (Hevesi) are consistent with these policies, and we urge the Legislature to incorporate this language in their one-house budget proposals.

Supporting the right to counsel for immigrants will benefit all New Yorkers, and we urge the Legislature to include in their one-house budget proposals and the final budget language that is consistent with A. 270 (Cruz). Our 2019 review of publicly available data as well as field research conducted by members of the NYSBA Committee on Immigration Representation makes it undeniable that new policies have continued to impede immigrants' access to counsel and to justice. New York State's diverse geography, uneven distribution of service providers, and overly concentrated funding streams pose significant challenges for immigration attorneys throughout the state, as well

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<sup>2</sup> Report and Recommendations of the Committee on Families and the Law Racial Justice and Child Welfare (Adopted by the House of Delegates on April 2, 2022) 27. <https://nysba.org/wp-content/uploads/2022/03/Committee-on-Families-and-the-Law-April-2022-approved.pdf>

<sup>3</sup> New York State Bar Association Report and Recommendations of the Committee on Families and the Law Racial Justice and Child Welfare, approved by the House of Delegates on April 2, 2022. 28. (<https://nysba.org/app/uploads/2022/03/Committee-on-Families-and-the-Law-April-2022-approved.pdf>)

as the communities seeking access to their services.<sup>4</sup> Immigrants have never been at a greater risk of deportation. It is more crucial than ever that New York State advance policies that promote freedom, fairness, and family unity. Supporting the right to counsel for all who face the risk of deportation and federal detention, will do that.

The right to counsel for low-income tenants in housing defense proceedings is also essential. In 2008, NYSBA noted the reasons for providing counsel are similar in eviction cases and in foreclosure cases, and include: 1) the importance of decent housing to families (as recognized by the New York State Constitution), the difficulty of replacing it once it is lost, 2) the adversarial nature of Housing Court proceedings, 3) the complicated nature of the substantive law and procedures, 4) the power imbalance between landlords and lenders with legal representation, and tenants and homeowner/borrowers without counsel, and 5) numerous studies show that representation in eviction cases is often the difference as to whether tenants can stay in their homes.<sup>5</sup> We strongly urge the legislature to include in their one-house budget proposals and the final budget language consistent with A.4669(Solages)/S.6772(Jackson).

The Executive Budget reflects an understanding that affordability, housing stability, and public safety are interconnected. Ensuring access to counsel is not only a matter of fairness, but also a proven mechanism to reduce system-wide costs and backlogs, prevent unnecessary family disruption, and promote community stability.

#### *Safeguarding Elections from Deceptive Artificial Intelligence/ PPGG Part R*

In the current political environment and given the risks associated with emerging technologies, New Yorkers should be provided with facts before heading to the voting booth. NYSBA supports Part R of the Governor's PPGG Art. VII bill (S.9005/A.10005), which would amend the Election Law to prevent voter suppression and deception in elections by prohibiting the use of misleading or deceptive AI content in campaigns. In 2013, the New York State Bar Association studied ways to combat voter deception, and recommended increased penalties for deceptive campaign practices.<sup>6</sup> More recently, NYSBA's Task Force on Artificial Intelligence produced a report highlighting the need to further study regulating these technologies to prevent fraud and abuse.<sup>7</sup> PPGG Part R strikes the correct balance in amending Election Law to protect New Yorkers from disinformation campaigns.

#### *Statutory Caps on Non-Economic Damages/ TED Part EE*

NYSBA has long opposed statutory caps on non-economic damages in tort actions.<sup>8</sup> The tort system is designed to make victims whole by compensating not only for economic losses but also real but intangible harms such as

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<sup>4</sup> New York State Bar Association Special Committee on Immigration Representation on the Need for Access to Counsel in Immigration Proceedings in New York, approved by the House of Delegates on June 15, 2019. 1. (<https://nysba.org/app/uploads/2020/02/Agenda-Item-8-Immigration-Representation.pdf>)

<sup>5</sup> Report from the President's Committee on Access to Justice entitled "*Toward a Right to Counsel in Civil Cases in New York State*". (Approved by the House of Delegates on November 1, 2008) 8. <https://nysba.org/wp-content/uploads/2021/10/PCAJ-Final-Resolution-November-2008.pdf>

<sup>6</sup> NYSBA Special Committee on Voter Participation Final Report, January 2013, <https://nysba.org/wp-content/uploads/2020/02/SpecialCommitteeOnVoterParticipationFinalReport.pdf>

<sup>7</sup> Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence, April 2024, <https://nysba.org/wp-content/uploads/2022/03/2024-April-Report-and-Recommendations-of-the-Task-Force-on-Artificial-Intelligence.pdf>

<sup>8</sup> Report of the Task Force to Consider Tort Reform Proposals Regarding the Civil Justice Reform Act, April 1999, <https://nysba.org/wp-content/uploads/2023/02/7.pdf>

pain, suffering, and loss of enjoyment of life. Capping non-economic damages discriminates against those who suffer the most severe injuries, and weakens deterrence by shifting the full cost of tortious conduct away from wrongdoers and onto victims and society. NYSBA cautions the Governor and Legislature to consider carefully in their budget deliberations the greater impact of capping damages, especially as the Legislature considers Part EE of the Governor's Transportation, Economic Development, and Environmental Conservation Art. VII bill (S.9008/A.10008).

### *Stopping Illegal Homegrown Guns/ PPGG Part C*

The New York State Bar Association supports Part C of the Governor's PPGG, which further regulates the manufacture and circulation of ghost guns. NYSBA has long supported sensible, evidence-based gun safety measures at the state and federal levels. In particular, the Association advocated for increased restrictions in this area since 2020, recommending support for legislation designed to prevent the manufacture, sale, and transport of ghost guns.<sup>9</sup> Today 3-D printing technology has advanced to the point where functional firearms can be reliably produced, or component parts can be easily replicated. The ability to "print" critical firearm components, including parts that can be used to modify existing weapons and, in some cases, facilitate automatic fire, presents current and evolving public safety challenge that demands a prompt and coordinated and technically informed response. The Governor's proposals—requiring 3-D printers to incorporate software safeguards that block the printing of firearms and other illegal modifications; increasing penalties for the dissemination of instructions for manufacturing weapons; requiring manufacturers to design firearms in ways that prevent unlawful modification; and dedicating additional resources to enforcement and oversight—reflect a comprehensive and pragmatic approach to addressing these risks.

### *Supporting Justice in Rural and Underserved Communities*

NYSBA strongly supports continued funding and expansion of attorney loan forgiveness and retention programs for district attorneys and indigent legal services attorneys and strongly encourages its inclusion in the final budget. The dearth of attorneys in large geographic regions of the State constitutes a true access-to-justice crisis.<sup>10</sup> Student debt remains a significant barrier to legal service careers generally in underserved but especially in rural shortage areas. Expanding eligibility periods and reimbursement levels for existing programs will help stabilize the justice workforce. NYSBA urges the Legislature to expand loan forgiveness and retention programs for public service attorneys so that the goal of ensuring that all New Yorkers have meaningful access to legal representation is achievable.

### *Conclusion*

In closing, the New York State Bar Association urges the Legislature to view this year's Budget through the lens of access to justice, constitutional integrity, and the long-term strength of New York's legal system. The proposals discussed here—whether preserving the integrity of the Indigent Legal Services Fund, ensuring fair and sustainable compensation for assigned counsel, expanding right-to-counsel protections, safeguarding elections from deceptive artificial intelligence, resisting caps on non-economic damages, addressing emerging

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<sup>9</sup> New York State Bar Association, Report of the Task Force on Mass Shootings and Assault Weapons (Approved by the House of Delegates on November 7, 2020) 10. <https://nysba.org/wp-content/uploads/2020/02/Final-Report-11.5.2020-Task-Force-on-Mass-Shootings-and-AssaultWeapons-With-cover-FINAL-HOD-approval-and-staff-memos-deleted.pdf>

<sup>10</sup> Report and Recommendations of the Task Force on Rural Justice, *Interventions to Ameliorate the Access-to-Justice-Crisis in Rural New York*, April 2020, [Report-Task-Force-on-Rural-Justice-April-2020-.pdf](#)

public safety threats posed by illegal firearms, or supporting the justice workforce in rural and underserved communities—are vital to just, equitable, and secure communities.

We stand ready to partner with you to ensure that the final budget reflects these critical priorities.

If you have questions or need any additional information, please contact me or NYSBA's Director of Government Relations, Matthew Pennello, at [mpennello@nysba.org](mailto:mpennello@nysba.org) or via telephone at (518) 487-5748.

Thank you.