

# Proposed Resolutions

Submitted by the Human Rights Committee  
Of the Minnesota State Bar Association

May 6, 2005

\*No recommendation presented herein represents the policy of the Minnesota State Bar Association until it shall have been approved by the Assembly. Informational reports, comments, and supporting data are not approved by their acceptance for filing and do not become part of the policy of the Minnesota State Bar Association unless specifically approved by the Assembly.\*

## **(1) Resolution: That the MSBA should address the increasing attacks on the Judiciary.**

Whereas basic information about the legal framework of our republic and the inter-relationship of its three-branches is being ignored or distorted as part of an attack on the judiciary; and

Whereas these attacks are increasing in severity and threaten the foundations of our system of government; and

Whereas action consistent with MSBA members' oath to defend the Constitution has never been more timely,

NOW THEREFORE, in exercise of its public education function, the MSBA will

1) give priority to communicating that an independent judiciary and independent judicial oversight of legislative and executive actions are key, non-negotiable components of our constitutionally established three-branch federal and state government;

2) join the public discourse in defense of the federal and state judiciary's free exercise of its vital role under the constitution of the United States; and

3) direct its Council, between meetings of the Assembly, to monitor developments, identify legislative or executive branch initiatives to undermine the proper role of the federal and state judiciary, and report these developments to the Assembly, to the MSBA membership, and to the public

### **Report:**

This report is submitted pursuant to Article §6.1(d) and Article §14.1, in support of the above resolution.

- (a) The issue of a fair and impartial judiciary is germane to the business of the Human Rights Committee of the MSBA because the need for a balanced three-branch government is vital to protecting human rights within the United States. The mission of the Human Rights Committee is to make recommendations to the MSBA in the area of human rights, which includes advising the MSBA about protecting the rights of a wide scope of persons who could be injured by continued assaults on the judiciary and the erosion of a fair and balanced judiciary.
- (b) The Human Rights Committee has approved this resolution by a majority of the quorum, through an electronic vote, as allowed by §11.2.6 on April 22, 2005. There were 19 votes in support of the resolution.
- (c) Currently, there is no position of the MSBA that is contrary to this resolution.
- (d) To the best of our knowledge at this time there is no similar issue pending consideration on the agenda of the Assembly.
- (e) No recommendation presented herein represents the policy of the Minnesota State Bar Association until it shall have been approved by the Assembly. Informational reports, comments, and supporting data are not approved by their acceptance for filing and do not become part of the policy of the Minnesota State Bar Association unless specifically approved by the Assembly.

The Human Rights Committee believes that the MSBA should adopt the resolution regarding the Judiciary in light of the current political climate. The purpose our committee saw in supporting this resolution was to make certain the role of the judiciary as an equal part of our three-branch government was not threatened by political maneuvering in light of disagreeable decisions. Our committee believes that fair, impartial judges are critical to the defense of human rights in our community and that the current attacks being made on the judiciary could result in the erosion of that fairness which is a cornerstone of our government system.

The reasons for this resolution are to assert that as attorneys, the members of the MSBA support an independent judiciary which has an equal role as the third branch of the government, asserting that political motivations should not undermine the role of the judiciary as a check on the powers of the other two branches of government as intended by the Constitution. The purpose of this resolution, going forward, would be for the MSBA to have an established position of supporting an independent judiciary with an equal role in government, should attacks continue. At this time, we do not foresee this resolution resulting in action that would require expenditures. It is possible that in the future, if bills were proposed, the adoption of this resolution would require time and energy lobbying against proposed legislation.

Designated Spokesperson: Emily Good, Chair MSBA Human Rights Committee (612) 341-3302 x.122

**(2) Resolution: That the MSBA should affirm the legal commitment to civil liberties.**

Resolution of the Minnesota State Bar Association

A resolution affirming the Minnesota State Bar Association's commitment to the civil freedoms guaranteed under the Constitutions of the U.S. and Minnesota.

WHEREAS, the Minnesota State Bar Association has a distinguished history of protecting the civil liberties of Minnesotans; and

WHEREAS, the Federal Government has enacted laws, executive orders, military orders and justice department directives in response to terrorism, including the USA PATRIOT Act and the Homeland Security Act; and

WHEREAS, the Minnesota State Bar Association believes that some liberties guaranteed under the Constitutions of the United States and Minnesota are now directly threatened by some provisions these federal laws, executive orders, military orders and justice department directives.

NOW, THEREFORE, BE IT RESOLVED, that the Minnesota State Bar Association

1. Declares and affirms that laws, executive orders, military orders and justice department directives that contain provisions which weaken judicial review risk infringement upon the civil liberties established in the Constitution of the United States of America;
2. Affirms that the United States Constitution, including the Bill of Rights, is the ultimate legal authority when it conflicts with laws, executive orders, military orders and justice department directives;
3. Urges Congress and appropriate officials in the federal government to repeal or sunset the provisions of the laws, executive orders, military orders and justice department directives that violate civil liberties under the U.S. Constitution and Bill of Rights; and
4. Affirms Minnesota's policy on racial profiling as codified by Minnesota Statute Section 626.8471.
5. Transmit a copy of this resolution to the
  - a) U.S. President,
  - b) U.S. Attorney General,
  - c) U.S. Homeland Security Department Secretary,
  - d) Presiding Officers of the Minnesota Senate and House of Representatives,

- e) Minnesota Attorney General,
- f) Minnesota Governor, and
- g) Minnesota Congressional Delegation.

**Report:**

This report is submitted pursuant to Article §6.1(d) and Article §14.1, in support of the above resolution.

- (a) The issue of protecting civil liberties is germane to the business of the Human Rights Committee of the MSBA because such protection is vital to protecting human rights within the United States. The mission of the Human Rights Committee is to make recommendations to the MSBA in the area of human rights, which includes advising the MSBA about protecting the rights of a wide scope of persons who could be injured by continued assaults on their civil rights, particularly people who may not always have a voice in government.
- (b) The Human Rights Committee has approved this resolution by a majority of the quorum, through an electronic vote, as allowed by §11.2.6 on April 22, 2005. There were 18 votes in support of the resolution.
- (c) Currently, there is no position of the MSBA that is contrary to this resolution.
- (d) To the best of our knowledge at this time there is no similar issue pending consideration on the agenda of the Assembly.
- (e) No recommendation presented herein represents the policy of the Minnesota State Bar Association until it shall have been approved by the Assembly. Informational reports, comments, and supporting data are not approved by their acceptance for filing and do not become part of the policy of the Minnesota State Bar Association unless specifically approved by the Assembly.

This resolution affirms the Minnesota State Bar Association's commitment to constitutional civil freedoms in the face of laws, executive orders, military orders and justice department directives enacted by the federal government in response to terrorism. The Minnesota State Bar Association is concerned that these federal laws, executive orders, military orders and justice department directives weaken judicial review and risk infringement upon constitutionally protected civil liberties. The resolution affirms that the federal and state constitutions are the ultimate legal authorities when they conflict with laws, executive orders, military orders and justice department directives.

The resolution urges Congress and appropriate officials in the federal government to repeal or sunset the provisions of the laws, executive orders, military orders and justice department directives that violate civil liberties. Additionally, the resolution affirms Minnesota's policy on racial profiling as codified by Minnesota Statute Section 626.8471, because while carrying out the important task of enforcing laws against terrorist activity

some enforcement officers may inappropriately use the new laws to investigate, stop, search or arrest non-terrorist members of Arab, Hispanic and African ethnic groups.

Because this resolution is a tool to inform the government about the concerns of the Minnesota State Bar Association a copy of this resolution will be transmitted to the following officials: U.S. President, U.S. Attorney General, U.S. Homeland Security Department Secretary, Presiding Officers of the Minnesota Senate and House of Representatives, Minnesota Attorney General, Minnesota Governor, and Minnesota Congressional Delegation.

Designated Spokesperson: Emily Good, Chair MSBA Human Rights Committee (612) 341-3302 x.122