



American Board of Trial Advocates™

ABOTA Resolutions

(rev. 2018)

1. Right to Trial - Loser Pay All

The American Board opposes the British rule of “Loser Pay All” as an economic prohibition to access to the court system. (March 22, 1986)

2. Caps on Pain and Suffering Damages

The American Board opposes any legislative attempt to place mandatory limits on a jury award of pain and suffering damages. Such an attempt is viewed as interfering with the right to trial by jury. (March 22, 1986)

3. Caps on Attorney Fees

The American Board opposes any legislative attempt to place mandatory caps or limits on attorney fees, both plaintiff and defense. (March, 22, 1986)

4. Federalization of State Causes of Action

The American Board opposes any federal preemption of existing state causes of action. (April 4, 1987)

5. Frivolous Actions or Defenses

The American Board condemns frivolous actions or defenses or other proceedings which are totally and completely without merit or maintained for the sole purpose of harassing an opposing party. (September 26, 1987)

6. Additur/Remittitur

The American Board favors the doctrines of additur and remittitur which, when fairly applied, allow the courts to increase or decrease a jury verdict with an option for a new trial to be allowed to the party adversely affected. (September 26, 1987)

7. Structured Settlements

The American Board favors voluntary resolution of lawsuits by structured settlements, however opposes mandatory structured settlements by legislation. (September 26, 1987)

8. No-Fault Legislation

The American Board opposes no-fault legislation as an invasion of the right to trial by jury. (March 19, 1988)

9. Diversity Jurisdiction

The American Board opposes any congressional attempt to eliminate diversity jurisdiction in the federal courts. (September 10, 1988 / April 20, 1990)

10. Caps on Non-Economic Damages

The American Board opposes any attempt to place mandatory limits on a jury award for non-economic damages. (September 10, 1988 / March 28, 1992)

11. Jones Act Cases

The American Board opposes the abolishment of Jones Act cases. (April 21, 1990)

12. FELA Cases

The American Board opposes any attempt to abolish FELA cases. (April 21, 1990)

13. Mandatory Alternative Dispute Resolution

The American Board opposes any mandatory alternative dispute resolution. ABOTA supports non-binding, voluntary ADR. (April 21, 1990)

14. Peer Review and Approval for Suit

The American Board opposes any legislation or any court rule requiring peer review and approval before suit. (March 28, 1992)

15. Arbitrary Damages Limits in Certain Types of Cases (e.g. Obstetrical Negligence)

The American Board opposes any arbitrary damage limits in any case. (March 28, 1992)

16. Complex - Sophisticated Professional Juries

The American Board opposes the use of juries not composed of randomly selected juror laypersons from the venue of the court. (March 28, 1992)

17. Lawsuit Affidavits in Professional Liability Cases

The American Board supports the use of affidavits in all professional negligence cases as a method to reduce unmeritorious lawsuits. (March 28, 1992)

18. Attorney Television Advertising

Resolved, the American Board of Trial Advocates deems appropriate for members the use of the name 'American Board of Trial Advocates' or 'ABOTA' in the following instances: business letterheads, business cards, firm brochures, and resumes or curriculum vitae. This does not include newspapers or commercial printings, 'yellow page' directories, radio or television advertisements." (September 23, 1989 / September 21, 1996 / April 10, 1999)

19. Dollar Amounts Claimed in Lawsuits

The American Board supports legislation or court rules restricting lawsuits from stating other than "claims in excess of jurisdictional limits." (March 28, 1992)

20. Use of Annuity Amounts in Settlement Press Conferences

The American Board supports prohibiting the use of annuity amounts in settlement press conferences. (March 28, 1992)

21. Insurance Companies Roles in Frivolous Suits

The American Board states that paying nuisance settlements amounts to lawyers prosecuting frivolous lawsuits and encourages continued frivolous lawsuits. Thus insurance companies should be encouraged to use the jury system to resolve non-meritorious cases. (March 28, 1992)

22. Direct Client Solicitation

The American Board is opposed to any form of direct solicitation of clients, whether through the use of the mails, telephone, telegrams or any form of direct written or oral communications. (September 11, 1993)

23. Contingency Fee Resolution

The American Board favors the use of voluntary Contingency Fee contracts. Moreover, the American Board favors resolution of fee disputes on a case-by-case basis. (September 17, 1994)

24. U.S. Air Collision

The American Board deplores, as unprofessional and contrary to public interest, unsolicited contact by lawyers with victims of disasters. (September 17, 1994)

25. Honesty and Accountability

ABOTA opposes the amendment of the rules of evidence, the rules of civil procedure and the rules of criminal procedure without subjecting proposed changes to the vigorous scrutiny of the usual and customary procedures of the Judicial Conference of the U.S. Supreme Court. (January 21, 1995)

26. Conduct of Attorneys, Including Fees

ABOTA supports full disclosure, pursuant to the Rules of Professional Conduct, as to all matters related to attorneys' fees but opposes Federal attempts to regulate the conduct of attorneys, including fees, which should be left to the individual States. (January 21, 1995)

27. Right of Access

ABOTA opposes legislation which seeks to limit the right of access to the courts. (January 21, 1995)

28. Diversity

It has been and continues to be the policy of the American Board of Trial Advocates that membership be open to all qualified persons of diverse backgrounds, without regard to age, color, ethnicity, gender, national origin, race, religion, sexual orientation, disability, or handicap. (September 21, 1996)

29. Compensation for Federal and State Judges and Justices

ABOTA urges the restoration of compensation levels to their past equivalent, in terms of real income, and changing the procedure for adjusting future compensation of Justices and Judges of the United States. (May 10, 1997)

30. ERISA Immunity Shield

ABOTA endorses congressional opposition to the ERISA immunity shield protecting HMO's and other managed care providers in medical malpractice litigation. (November 8, 1997)

31. Y2K

ABOTA opposes proposed Y2K legislation pending in Congress because it federalizes traditional state causes of action; alters obligations and remedies on contracts already in existence; blurs the existing distinction between contract and tort law and some versions of the legislation take away the power of a civil jury to make factual determinations damages. (April 10, 1999)

32. Italian Air Mishap

ABOTA urges the United States Congress to reinstate compensation as imposed for victims' families of the air mishap in Italy. (May 19, 1999)

33. Judicial Salaries

ABOTA recommends to the United States Congress and the legislatures of the various states that there be laws enacted to increase the funding of the judicial systems generally, and that specifically, there be increased salaries paid to those who serve as judges. (April 8, 2000)

34. Multidisciplinary Practice

ABOTA resolves to oppose efforts to change the ethical rules governing the practice of law to allow the sharing of ownership, control, and legal fees of law practices with non-lawyers (i.e., multidisciplinary practices, or “MDP”). (January 29, 2000/July 1, 2000)

35. Vacancies in the Federal Judiciary

The American Board of Trial Advocates recognizes that the present extraordinary number of vacancies on the Federal bench impedes the people’s rights to justice and trial by jury as guaranteed by the 7th Amendment to the United States Constitution. We urge the President and each member of the U.S. Senate to cooperate and expeditiously fill the present vacancies in the federal judiciary. (January 19, 2002)

36. Objective Peer Evaluation of Federal Judicial Candidates

The American Board of Trial Advocates (ABOTA) believes objective peer evaluations of the professional qualifications of federal judicial candidates by the ABA Standing Committee on Federal Judiciary (the Committee), based on criteria of professional competence, integrity and judicial temperament, contribute a valuable perspective to the process of choosing and confirming federal judges; further, in performing evaluations the Committee provides an important public service that has helped ensure the high quality of our Federal Judiciary and has earned the respect and confidence of both the legal community and the public. ABOTA therefore urges the President and the Senate to carefully consider evaluations of the professional qualifications of federal judicial nominees conducted by the Committee. (January 19, 2002)

37. Continued Federal Funding for the State Justice Institute

The American Board of Trial Advocates urges the Administration and Congress to maintain federal support for the State Justice Institute. The American Board of Trial Advocates urges Congress to fund the operations of the State Justice Institute at adequate and reasonable levels to enable it to carry out its mandate to award federal grants to improve the administration and quality of justice in state courts. The American Board of Trial Advocates supports the State Justice Institute’s request for an appropriation of \$13.55 million for Fiscal Year 2003. (January 18, 2003)

38. Health Act of 2003 (S. 607)

The legislation currently pending in the U.S. Senate commonly known as the HEALTH (“Help Efficient, Accessible, Low-Cost, Timely Healthcare) Act of 2003 violates eight of ABOTA’s resolutions. The bill violates the patient’s 7th Amendment right to a jury determination

of the damages in a case. We also oppose federal preemption of the tort systems of the fifty states. Since 1987, ABOTA has opposed this concept. Each state should be left to decide what tort rules are best for its citizens. ABOTA strongly recommends the U.S. Senate reject this proposed legislation. Specific ABOTA resolutions the HEALTH Act of 2003

violate are:

Resolution 2: Caps on Pain and Suffering Damages, passed March 1986

Resolution 3: Caps on Attorney Fees, passed March 1986.

Resolution 4: Federalization of State Causes of Action, passed April 1987.

Resolution 7: Structured Settlements, passed September 1987.

Resolution 10: Caps on Non-Economic Damages, passed September 1988, March 1992.

Resolution 15: Arbitrary Damages Limits in Certain Types of Cases, passed March 1992.

Resolution 26: Conduct of Attorneys, Including Fees, passed January 1995.

Resolution 27: Right of Access, passed January 1995. (April 26, 2003)

39. Mandatory Arbitration Provision

WHEREAS, the 7th Amendment of the U.S.

Constitution preserves the right to trial by jury in civil cases at common law and;

WHEREAS, mandatory binding arbitration of disputes impinges upon that right to a jury trial and should not be enforced unless all parties thereto have agreed;

RESOLVED that the Congress of the United States enact legislation requiring that the party seeking to enforce any mandatory binding arbitration provision bears the burden of proving by clear and convincing evidence that the provision was adopted by all parties knowingly, voluntarily and intentionally; and be it further

RESOLVED that the officers and representatives of the American Board of Trial Advocates be, and they hereby are authorized and directed to take any and all necessary action to effectuate the purposes of this resolution.

(October 4, 2003)

40. Minimum Trial Requirement for Judges

BE IT RESOLVED, that the American Board of Trial Advocates does hereby recommend to the Attorney General of the United States and to the Judiciary Committee of the United States Senate, that any candidate or nominee for appointment to the office of Judge of the United States District Court or the United States Court of Appeals be required to have had extensive experience trying cases before juries, in the

opinion of this body no less than ten such trials, as a condition to such appointment; and be it further resolved, that the officers of the American Board of Trial Advocates are authorized and directed to take whatever action is appropriate as necessary to effect the purposes of this resolution. (Oct. 16, 2004)

41. 7th Amendment Summit

WHEREAS: On March 31 through April 2, 2005, a Summit of trial lawyers, judges, law professors, members of multiple legal organizations, including the American Board of Trial Advocates, Federation of Defense & Corporate Counsel, Academy of Rail Labor Attorneys, ABA Tort & Trial Practice Section, Association of Trial Lawyers of America, Association of Defense Trial Attorneys, Defense Research Institute, International Society of Barristers, National Center for State Courts, International Society of Trial Lawyers, American College of Trial Lawyers, Trial Lawyers for Public Justice, and the Federal District Judges Association and other interested participants were convened

to consider the issue: “The American Jury Trial — Do We Allow Its Death or Lead Its Rebirth”

WHEREAS:

There is concern that the American jury system is threatened in the federal courts and in the state courts and more on the civil side than on the criminal, but threatened nonetheless.

THEREFORE, BE IT RESOLVED, THAT:

We reaffirm our confidence in and commitment to the American jury system, the 7th Amendment right to trial by jury, and state constitutional provisions providing a right to trial by jury; and We reaffirm our confidence in and commitment to the independence of America’s judiciary and our third branch of government, and ABOTA hereby commits to preserve and improve the right to trial by jury in civil cases. We urge a task force be created to further develop this effort and ABOTA hereby commits to protect the independence of America’s judges and our third branch of government. (August 13, 2005)

42. Resolution: Readily Available Jury Trials to Civil Litigants at Government Expense

WHEREAS:

The civil jury trial represents an integral and essential component of the American justice system which is protected by the 7th Amendment.

BE IT RESOLVED:

That both the federal and state governments have a duty to make jury trials readily available to civil litigants at government expense. The interests of justice are ill served by assessing jury costs against litigants. (April 4, 2009)

43. Medicare Liens

WHEREAS the Constitution of the American Board of Trial Advocates dedicates the American Board to promoting the efficient administration of justice for the benefit of the general public and;

WHEREAS plaintiffs, defendants, and the courts recognize the important role the judicial process plays in determining and providing proper reimbursement under the Medicare Secondary Payer statute for sums paid by Medicare for causally related medical care in claims involving personal injuries or wrongful deaths and;

WHEREAS the courts and all parties, including Medicare, have an abiding interest in the prompt review of Medicare

expenditure information in order to efficiently resolve and reimburse Medicare Liens;

THEREFORE, BE IT RESOLVED THAT: Within sixty days of plaintiff’s notification to Medicare that a claim has been resolved or within thirty days of any subsequent request after the initial notification, whichever is later, Medicare shall provide the parties the amount Medicare claims to be subject to lien together with an itemization of the amounts expended and the treatments rendered. Thereafter, within fifteen days of the plaintiff’s notification to Medicare of the amount of attorneys’ fees and costs incurred, Medicare shall provide to the parties the claimed lien reimbursement amount. (Oct. 9, 2010)

44. Expedited Jury Trials

WHEREAS, ABOTA recognizes that the number of civil cases in the United States actually tried to a jury is rapidly decreasing and that litigation costs and delays are a major contributor to the reduction in the number of civil jury trials, and

WHEREAS, ABOTA recognizes that several states have adopted expedited jury trial programs which provide for streamlined pretrial procedures and abbreviated jury trials in many civil cases in an effort to thereby reduce the cost and time involved, yet preserving the civil jury system in this Country,

It is therefore, RESOLVED, that ABOTA supports the concept of streamlined pretrial procedures and expedited jury trials and that ABOTA, through its leaders and members, should support existing expedited jury trial programs and encourage the adoption of similar programs throughout all jurisdictions. (Jan. 14, 2012)

45. Preservation of an Independent Judiciary

WHEREAS the 7th Amendment to the United States Constitution guarantees the right to trial by jury in civil cases as an integral and essential component of the national justice system; and

WHEREAS an efficient and effective judicial branch of

government is both essential and fundamental to the success and perpetuation of the American form of government; and

WHEREAS liberty, justice and public confidence require a judiciary enabled to meet its responsibilities in a system of governance constrained by checks and balances; and

WHEREAS withholding the funds necessary for the courts to protect the people and their rights through the rule of law undermines the guarantees of access to justice contained in the Constitutions of the United States and of the several States.

WHEREAS constitutional rights do not vary with the rise and fall of budgets, and the protections afforded the rights of the people through the judicial branch are not contingent on transitory political judgments regarding the popularity of raising or lowering taxes or on tactical decisions about periodic budget deficits; now, therefore be it

RESOLVED that the Congress and the legislatures of the respective states must adequately and fully fund the federal and state judicial branches of government so that the rights and access to justice guaranteed by the Constitutions are preserved and be it further

RESOLVED that the members of the American Board of Trial Advocates be and they are hereby encouraged to take any and all necessary action to effectuate the purposes of this resolution. (March 21, 2012)

46. Judiciary Fairness and Impartiality

WHEREAS, ABOTA is a national association of experienced lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the United States Constitution.

AND

WHEREAS, all parties to any legal dispute have the right to fairness and impartiality on the part of the judiciary,

NOW THEREFORE, BE IT RESOLVED that the National Board of the American Board of Trial Advocates urges every member to advance the concepts of fairness and impartiality by speaking publicly on the issue whenever possible.

ABOTA hereby adopts the following statement: Fair and impartial courts accountable to the constitution and the laws, not to politicians, ideologies or special interests, best safeguard our individual rights and liberties. Unfettered access to justice preserves the rule of law upon which our nation was founded and has flourished. (October 6, 2012)

47. Attorney Conducted Voir Dire

WHEREAS the 7th Amendment to the United States Constitution guarantees the right to trial by jury in civil

cases as an integral and essential component of our justice system.

WHEREAS the parties in a civil case have the right to a fair and impartial Jury.

WHEREAS the attorneys are the most knowledgeable about the facts and the issues to be decided in the case. WHEREAS the attorneys are aware of the potential prejudice and bias issues in the case.

WHEREAS the existence of challenges for cause and peremptory challenges is an important safeguard in the judicial process that allows the parties to eliminate potentially prejudiced or biased prospective jurors.

WHEREAS the parties have a strong interest in getting information necessary to the intelligent exercise of their challenges for cause and peremptory challenges.

RESOLVED that the American Board of Trial Advocates supports the right of the parties to have their lawyer involved in voir dire.

RESOLVED that the trial courts should permit a reasonably extensive examination of prospective jurors by the attorneys so that the parties have a basis for an intelligent exercise of the right to challenge.

RESOLVED that the officers and representatives of the American Board of Trial Advocates be and are hereby authorized and directed to take any and all necessary action to effectuate the purposes of this resolution.

(October 12, 2013)

48. Arbitration Fairness Act of 2013

WHEREAS the Arbitration Fairness Act of 2013, SB 878 and HR 1844, declares, in summary, that no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of an employment, consumer, antitrust or civil rights dispute; now, therefore, be it

RESOLVED the American Board of Trial Advocates (ABOTA) supports the Arbitration Fairness Act of 2013, SB 878 and HR 1844 and urges the President of ABOTA to inform the bills' sponsors of ABOTA's support. (January 24, 2015).

49. Legislative Branch Imposing Restrictions on Judicial Funding

WHEREAS the United States Constitution and the Constitutions of the States recognize the judicial branch as an equal and independent branch of government; and WHEREAS legislatures have attempted to tie funding the judiciary in exchange for legislative control over how the judiciary uses funds; and

WHEREAS the judiciary, as an equal and independent branch of government, must have the right to control the use of its funds as it sees fit in order to avoid being placed in a position where the judiciary must bargain away the court's autonomy with the legislature in order to secure adequate and sufficient resources to ensure the proper operation of the courts at all levels;

now, therefore, be it
RESOLVED that the Congress and the legislatures of the respective states must adequately and fully fund the federal and state judicial branches of government without imposing restrictions on how the judicial branch uses its funding so that the judiciary as a co-equal branch of the government is preserved. (January 24, 2015).

50. Urging the United States Senate to Reject H.R. 1215 and any Similar Legislation

Our Nation's Founders insisted that this Nation guarantee the right to trial by jury in civil cases. The Seventh Amendment to the Constitution of the United States of America achieved that noble purpose. The American Board of Trial Advocates is devoted to the continuing fulfillment of the promise of the Seventh Amendment; and

The American Board of Trial Advocates is a unique trial lawyer organization as its membership is balanced between plaintiff and defense attorneys who have all shown proficiency as civil trial lawyers by having tried at least 10 civil jury trials to verdict. There are more than 7,600 members, with chapters in every state; and To fulfill its mission, ABOTA has studied many proposed bills and has adopted many resolutions urging Congress and the federal executive branch to respect constitutional principles of federalism, separation of powers, and the states' traditional role as the primary source of tort and contract law.

The United States House of Representatives on June 29, 2017, adopted H.R. 1215 to create uniform national rules, substantive and procedural, with respect to "health care lawsuits" in both state and federal courts.

The Bill violates many resolutions that ABOTA has adopted including:

Resolution 2: ABOTA opposes any legislative attempt to cap pain and suffering damages. (1986)

Resolution 3: ABOTA opposes any legislative attempt to cap attorneys' fees. (1986)

Resolution 4: ABOTA opposes any legislative attempt to federalize states causes of action such as for medical malpractice. (1987)

Resolution 10: ABOTA opposes any legislative attempt to cap non-economic damages. (1988/1992)

Resolution 14: ABOTA opposes any attempt requiring peer review and approval before suit. (1992)

Resolution 15: ABOTA opposes any legislative attempt to limit damages in specific types of cases. (1992)

Resolution 27: ABOTA opposes any legislative attempt to limit a party's access to the courts. (1995)

Resolution 38: ABOTA opposes the HEALTH Act of 2003, which contained many of the same provisions as are contained in HR 1215. (2003)

H.R. 1215 proposes to federalize in significant ways many laws and practices established by state law, and would expressly nullify certain state statutes, rules, decisions and constitutional guarantees.

The foregoing legal practices have been determined since our country's founding by state law that is better situated than the federal government to determine the rights and duties of patients and healthcare providers. NOW, THEREFORE, BE IT RESOLVED that ABOTA urges the United States Senate to reject H.R. 1215 and any similar legislation, and to continue to permit State law to be the governing law in medical negligence cases. (October 16, 2017)

51. Employment Arbitration Provisions

Consistent with ABOTA's previous Resolutions concerning arbitration, the American Board of Trial Advocates strongly encourages all of its members to refrain from including in their employment contracts with clients and employees any provision for mandatory arbitration to resolve disputes under such employment contracts unless such provision is requested by the client or employee with full understanding such mandatory arbitration provision may/will eliminate the client's or employee's right to trial by jury as a means for resolving any dispute. (August 4, 2018)

52. Support of Civil Legal Services for the Indigent

WHEREAS, the federal government secures federal rights and has a constitutional objective to establish justice;

WHEREAS, in the interest of justice for all and equal justice under law, it is important for everyone to have access to civil legal help;

WHEREAS, a key federal role in establishing justice is funding civil legal services for the indigent through the Legal Services Corporation;

WHEREAS, the late Justice Antonin Scalia emphasized in speeches on the 40th anniversary of the Legal Service Corporation, "This organization pursues the most fundamental of American ideals, and it pursues equal justice in those areas of life most important to the lives of our citizens," and "We salute the lawyers who have dedicated their careers to justice. For without access to quality representation there is no justice;"

NOW, THEREFORE, BE IT RESOLVED THAT THE AMERICAN BAR ASSOCIATION AND AMERICAN BOARD OF TRIAL ADVOCATES support and are

committed to working with public officials and other concerned entities for the restoration of funding for the Legal Services Corporation. (October 13, 2018)