

WOMEN'S ISSUES

WOMEN'S ISSUES POSITIONS IN BRIEF

Support of measures, which hold marriage to be an economic partnership with a presumption of equality between the spouses.

Opposition to measures that contain a presumption of joint custody of children.

Support for equity in employment laws and practices and equal pay for jobs of comparable worth.

Support of measures to reduce the incidence and effects of domestic violence.

WOMEN AND THE LAW

The 1979 LWNYS Convention adopted a study, Women and the Law, which focused on some of the laws in New York State that affect women. Because of the complexity of the issues, the study was divided into two parts: (1) marriage and divorce; and (2) child custody, insurance, pensions and credit.

WOMEN AND THE LAW

Statement of Position

As announced by the State Board, March 1981

The LWNYS believes that marriage is an equal economic partnership. Marital property (property acquired during a marriage) is presumed to belong equally to each spouse. Separate property (as defined in the Equitable Distribution Law {EDL}) remains separate.

During an ongoing marriage, each partner is entitled to participate equally in decisions with regard to marital property, e.g., to spend, to bequeath, to use as a basis for credit.

Couples wishing to end their marriage should be able to divorce by mutual agreement following a waiting period. Fault grounds should be retained as an option for the blameless spouse because proof of fault on the part of one spouse may influence a more favorable settlement for the blameless spouse. This part of the League position is not applicable as fault is not a criterion considered under the EDL for marital property distribution.

In distribution of marital property at divorce, the presumption of equality should prevail. If adjustment is required, the criteria in the EDL should be used.

With regard to maintenance (alimony), the League supports measures to achieve a standard of living as nearly equal as possible for each spouse. Recognition should be given to the contribution of each spouse (as breadwinner and/or homemaker) and to loss of potential earning power by the spouse who had stayed at home during the marriage. Maintenance (alimony) should be awarded according to the criteria in the EDL.

WOMEN AND THE LAW - Statement of Position
As announced by the State Board, March 1981 (continued)

The League supports stronger measures to achieve prompt payment of child support and/or maintenance (alimony) payments. However, neither support payments nor visitation rights should be used as enforcement measures. It should not be possible to withhold support payments because visitation has been withheld nor should the reverse be true. Children should not be used as reward or punishment in adult battles.

In laws governing intestacy (dying without a will), the League supports measures to incorporate the principle of marital property so that one-half of the marital property is recognized as belonging to the surviving spouse and therefore not part of the estate. The remainder of the estate should be divided in such a way that the surviving spouse would receive more than the one-third of the estate presently allotted by law.

In 1990, a major divorce reform bill was introduced that provided equal economic distribution, permanent maintenance, and no fault divorce as a cause. The League supported this legislation as it provided for the needs of women and children on a more equal basis. After much debate, this bill failed to be reported out of committee. In 1991 legislation was introduced that would offer greater financial remuneration to surviving spouses. Despite League lobbying efforts, no action was taken in the legislature.

Between the early 1990s and 2006, no legislation was introduced to deal with divorce reform. However, in 2006 the Women's Bar Association of New York State study on no-fault divorce renewed debate of this issue in the legislature. In 2007, the Assembly Judiciary Committee introduced a draft study bill on no-fault divorce. The New York State Board Association, Women's Bar Association of New York State, and several women's organizations, including the League, began informal coalition round table meetings to educate and discuss further refining no-fault divorce legislation. It is anticipated that this legislation will become a priority in the 2008 legislative session.

Each year since 1982, legislation to ensure equal rather than equitable distribution of marital property has been introduced in the state Assembly. Again, in the 1995 legislative session, the LWVNYS supported an equal distribution bill, which passed the Assembly but was not taken up by the Senate. Responding to 1995 LWVNYS convention delegates, support was given to legislation that would provide that attorney fees for the nonmonied spouse be awarded. Passage in the Assembly was achieved, but the bill was not taken up in the Senate. Each legislative year, passage of this legislation by the Assembly is pro forma, but there continues to be no action by the state Senate.

CHILD SUPPORT/CUSTODY

In the 1998 legislative session, the state League supported legislation sponsored by Senator Saland that established an expedited procedure for obtaining child support orders. The LWVNYS has long supported stronger measures to achieve the prompt payment of child support believing the most effective way to do this is to streamline the process. Unfortunately at the end of the 1998 legislative session, this legislation was caught in a political battle. That battle continues. The League will continue to champion this initiative.

In 1999, another measure was introduced by Governor Pataki and the Office of Child Support and Enforcement that contained the excellent provision of increasing the pass through from \$50 to \$100 to welfare recipients. Currently, the state government offers a \$50 pass through to encourage cooperation from non-custodial parents to make child support payments when their families are on public assistance. Families on public assistance are allowed to keep the first \$50 of the child support money thus increasing their monthly income. The rest of the money goes to the government to compensate for public assistance payments. The pass through encourages Mothers to identify the fathers of their children while fathers are encouraged to make payments when they directly benefit their children. Raising the pass through will increase this cooperation.

This initiative, too, was caught in a political battle between the Assembly and the governor's office.

The League has been recognized as a leader on child support reform, representing NYS in a regional meeting in 1999 with federal government staff to discuss and address common problems across the region.

CHILD SUPPORT/CUSTODY

Statement of Positions

As announced by the State Board, June 1981

CUSTODY OF CHILDREN

In determining the custody of minor children, the League opposes the presumption of joint custody. We believe that the best interests of the child should be the primary consideration; joint custody is, certainly, one option.

The best interests of the child should include the following considerations:

- 1) principal care giver—the parent who has borne the primary responsibility for caring for the child;
- 2) degree of interest shown in the child by each parent; and
- 3) preference of the child (maturity of the child is to be taken into consideration).

INSURANCE

The League of Women Voters believes that gender should be eliminated from the factors that are used to set insurance rates and benefits. The use of gender penalizes women unfairly most often, but in a few cases penalizes men. We do not object to the use of other factors, which are gender-neutral such as age, occupation, personal health and accident history, smoking, etc.

Dependent spouses who lose their insurance coverage through the loss of a wage earner by death or divorce should be able to convert the wage earner's accident and health insurance contracts to their own without increase of premium or loss of coverage.

CHILD SUPPORT/CUSTODY**Statement of Positions****As announced by the State Board, June 1981 (continued)**

We also believe that disability insurance should be available to homemakers at reasonable rates, so that they will receive income when they are injured and cannot perform their household duties.

PENSIONS

The League believes that gender should not be used as a criterion in establishing pension rates and benefits. We recognize there are problems with pensions that are created by different typical work patterns of men and women. Changes are needed in eligibility for pensions benefits, and consideration should be given to earlier pension eligibility and shorter vesting periods.

Also, allowance should be made for breaks in service for child-rearing, just as for military service, and accrued pension credits must be protected so that vested interest is not lost.

All pension plans should provide automatically for survivor's benefits. The worker can waive the survivor provision, but the spouse must be notified and give written acceptance of this waiver.

CREDIT

In accordance with our position which holds marriage to be an equal economic partnership with marital property belonging to each spouse, the League believes that credit should be extended to homemakers based on marital property (which includes spouse's income) as well as on a homemaker's own separate property.

In 1982, the League supported, successfully, the passage of an amendment to the New York Civil Rights Law to include gender in the kinds of discrimination that are prohibited.

Since the 1982 legislative session, the League has lobbied successfully to prevent the passage of legislation that requires a presumption of joint custody in determining custody for minor children. In 1996 and 1997, League testimony opposing the presumption of joint custody (shared parenting) was given at Senate and Assembly sponsored hearings. The League also lobbied successfully to prevent pensions from being excluded from the Equitable Distribution Law.

In the 1994 and 1995 legislative sessions, the League supported legislation to require courts to consider evidence of domestic violence in child custody proceedings. In both years, the bill was passed in the Assembly but not taken up by the Senate. After three years of League lobbying, in 1996 legislation was signed into law requiring state Family Court judges to consider domestic violence as a factor in child custody cases.

At the very end of the 2000 session, legislation was introduced changing the term "joint-custody" to "shared custody." This was an effort by the Father's Rights Organization to make the joint custody

legislation more “legislator friendly.” The League lobbied extensively with Children and Family Committee members and the bill was held late in the committee during that session. No action was taken in the 2001 session.

During the 2002-2003 sessions the League lobbied behind the scenes to hold “joint custody” legislation in the Assembly Children and Families Committee. Joint custody legislation has not been brought up in the State Senate.

Each session that involves an election year, the issue of shared custody becomes controversial legislation. In 2006, the Father’s Rights Organization used a familiar tactic to them, of threatening members of the Assembly Children and Families Committee. The League, again working deep behind the scenes to protect the League, was able to hold this legislation in committee by a vote of 15-1. Both democrats and republicans received death threats following their committee vote. It is anticipated that as long as the Father’s Rights Organization continues this type of advocacy legislators will be adverse to addressing shared custody.

PAY EQUITY

EMPLOYMENT IN NEW YORK STATE

Statement of Position

As announced by the State Board, November 1982

The League of Women Voters of New York State supports state policies for both public and private sectors of employment to ensure equal pay for equal work and equally evaluated jobs, to encourage affirmative action in hiring and promotion practices and to eliminate sexual harassment.

To achieve equal access and opportunity of employment for women throughout New York State, the League believes it is necessary to educate the public about existing laws and procedures, to improve the enforcement of laws and to fund these efforts adequately.

The League of Women Voters of New York State supports state legislation and regulations that will establish greater equity in wage compensation for comparable jobs. Comparable worth of jobs should be determined by gender-neutral criteria such as responsibility, effort, skill, education and experience required, and the working conditions.

The League has long supported the passage of legislation that would implement a state policy of compensating employees equally for work of comparable value. Over 20 years ago, in the spring of 1985 the League became a member of the New York State Committee for Pay Equity, which worked to further the principle of equal pay for jobs of comparable worth and to close the gap of wage discrimination. The state agreed in 1986 to a one-time-only funding pool to cover pay equity adjustment for state employees. The set-asides represented one percent of the gross payroll in 1986-87 and 1987-88.

In the absence of legislation, however, there has been no reexamination of pay equity for those in state service and no extension of pay equity to all those in the private and broader public sector including cities, counties, and school districts.

Pay equity bills have consistently passed the State Assembly since 1998. The League, as a key member of the New York State Pay Equity Coalition (NYSPEC), which includes Women on the Job, American Association of University Women (AAUW), National Organization for Women (NOW), Business and Professional Women (BPW), New York State United Teachers (NYSUT), United University Professors (UUP), United Public Service Employees Union (UPSEU), Service Employees International Union (SEIU) and District Council 37. This coalition has played an important role in pushing for legislative passage of pay equity reform. Despite the fact that the pay equity bills are consistently passed by the Assembly and have had Republican sponsorship in the Senate, these bills continue to be stalled in the Senate.

In October of 2003, the League and its coalition partners met and decided to concentrate efforts on legislation to create the NYS Fair Pay Act. The Fair Pay Act is strongly written enforceable

legislation, which would provide for equal pay for jobs of comparable worth in both the public and private sectors.

Passage of the NYS Fair Pay Act will:

- Require that job titles where people of color and/or women predominate receive equal pay with comparable job titles. Pay equity (equal pay for comparable work) makes salary comparisons between job titles within an employer. Jobs disproportionately held by women and people of color have traditionally been undervalued and paid less than comparable jobs with the same level of skill and responsibility.
- Allow employees to voluntarily share salary information without fear of being fired or reprimanded for disclosing information or asking about pay. *The vast majority of workers are employed in the private sector where salaries can be kept secret and employees can be fired for sharing salary information.* Without this information, it is impossible for employees to know whether they are being paid fairly. Passage of the NYS Fair Pay Bill will enable private sector employees to share salary information, without fear of reprisal, in order to establish whether they are receiving equal pay for equal work.

In preparation for legislative advocacy in 2006, our coalition partners UUP and NYSUT passed **resolutions** at their Assemblies to make pay equity an important part of their lobbying package.

The League, along with its coalition partners, met with both minority and majority leaders, the result was action by the Democratic Minority which responded to NYSPEC's "Take the Pay Equity Pledge" campaign. At that time, every Democratic Senator also signed the pledge to support new laws guaranteeing fair pay for work of comparable worth.

Also in 2006, the coalition met with then-candidate Eliot Spitzer who expressed knowledge of and support for pay equity.

During the 2007 legislative session, representatives of NYSPEC's member organizations were able to secure sponsorship by the Senate of the "same as" Assembly Fair Pay Act. Although a recently elected democrat (minority in the Senate), Senator Johnson was felt to be an appropriate sponsor because of possible democratic takeover of the republican Senate in 2008.

In June 2007, following the U.S. Supreme Court's May 29, 2007 Ledbetter v. Goodyear Tire and Rubber Company decision, the League and its coalition partners held a press conference. This press event was held to make clear the increased importance of the New York State Fair Pay Act given the loss of the Federal Equal Pay protections. In conjunction with the Press Conference, petitions were delivered to the offices of Governor Spitzer, Assembly Speaker Sheldon Silver, and Senate Majority Leader Joseph Bruno urging passage of the Fair Pay Legislation. This opportunity also led to a meeting with the Assistant Counsel to the Governor to discuss this issue.

DOMESTIC VIOLENCE

DOMESTIC VIOLENCE

Statement of Position

As announced by the State Board, June 1983

Domestic violence is a serious crime but because of the special relationship between the parties, the League of Women Voters of New York State believes that it should be possible to bring such cases in Criminal and Family Court.

Special training should be required for judges, police officers, medical personnel, attorneys, social workers, court personnel and others likely to have contact with perpetrators or victims of domestic violence. Both the victim of a violent act and the person who commits it need special services to break this pattern. The LWVNYS recognizes that the person who resorts to abuse of an individual needs help and therefore supports existing prevention and treatment programs and the creation of new programs as means of reducing domestic violence. Services such as shelters, counseling, legal services and hot lines are also needed to provide for the safety of the victims of domestic violence because of the ever present physical and psychological danger to them.

Programs to reduce the incidence and effects of domestic violence should be funded by a combination of public and private funds.

The League supported legislation in 1983, which set up a trust fund with state revenues to fund programs that contravene domestic violence. The Children and Family Trust Fund established in 1984 was passed with League support. Funding for this trust fund was passed the following year also with League support.

The League lobbied vigorously for the Family Protection and Domestic Violence Intervention Act of 1994. Passed by the legislature and signed into law, this measure provided much needed comprehensive domestic violence reform. The League position allowed us to support critical provisions in the legislation such as: individuals' ability to bring cases in either civil or criminal court, mandatory arrest for perpetrators of domestic violence, law enforcement, and judicial training.

At the 1995 LWVNYS convention, delegates supported editorial changes in the domestic violence position that reflects the changes made by the Family Protection and Domestic Violence Intervention Act in allowing cases to be brought in both the Criminal and Family courts. The original language read "... to bring such cases to **either** the Criminal or Family Court." The position now reads "... to bring such cases in Criminal **and** Family Court." Another change in the position's wording was from "... spouse ..." to "... individual ..."

In lobbying for the Family Prevention and Domestic Violence Intervention Act, the LWVNYS found that our position limited action to violence perpetrated against spouses. Recognizing that domestic violence is not limited to spouses, but rather occurs between many individuals in an intimate or formerly intimate relationship regardless of marital status, the League has lobbied for a broader

interpretation in statute of the definition of “family” with respect to the incidence of domestic violence. Proposed legislation would address the realities of domestic violence and the League concern that safety is afforded to all victims of battering.

The League has lobbied for the redefinition of family. The Assembly has passed the legislation each time, but the bill never gets out of the judiciary committee of the State senate.

In 1994, delegates to the LWVUS convention adopted by concurrence a position on Violence Prevention (**LWVUS Impact on Issues 2006-2008, p. 76**), based on work done by a number of state and local Leagues.

The LWVNY joined as Amicus Curiae in the Nussbaum v. Steinberg case, which was filed on February 6, 1995. In that case, Hedda Nussbaum sought money damages from Joel Steinberg for extensive physical and psychological injuries he inflicted upon her between 1978 and 1987.

Steinberg moved for summary judgment because almost all of the events alleged occurred more than one year before the action was commenced and as such were time-barred by CPLR 3211(a)(5). The Nussbaum brief opposed this action on the basis that CPLR 208 allows a tolling of the one-year tort statute of limitations upon her qualifying incapacity. This case would set a precedent for women to bring suit against an abuser notwithstanding the one-year statute of limitations based on proven diminished capacity. The League joined in support of Hedda Nussbaum believing that the case presents important issues concerning a battered woman's right to civil redress.

In 1996 and 1997, League supported time limit exemptions for domestic violence victims receiving public assistance. According to survey results released by the National Organization for Women Legal Defense Fund, in some areas 60%-80% of welfare recipients have been victims of domestic violence as adults.

In 1998-99, the League worked closely with the NYS Coalition Against Domestic Violence. Using the League's national position on violence prevention, we supported the Anti-Stalking legislation. (**LWVUS Impact on Issues 2006-2008, p. 76**). This bill would define stalking as a separate crime in the Penal Code adding stiffer penalties than were previously imposed for the crimes of menacing and harassing. The League believed the current laws against stalking were inadequate and placed women at risk. New York was the only state without a specific crime of stalking. The menacing and harassing statutes were rarely prosecuted and conduct that constitutes behavior commonly identified by the public as “stalking” was poorly defined in the statutes. Inconsistent definitions and law enforcement, judicial, and jury misinterpretations resulted in increased freedom for stalkers to perpetuate their intolerable behavior.

Previous attempts were made by the Legislature to address some forms of stalking by including stalking behavior in the Penal Code under menacing and harassment. However, it was poorly defined and left a very important loophole—stalkers needed to use a weapon or dangerous instrument to be prosecuted for more serious offenses. The Anti-Stalking legislation was combined with a clinic access bill, also supported by the League. The Assembly passed this bill in the final hour of the regular

session. This agreed-to legislation was passed by the Senate later in the year, signed by the governor and took effect December 1, 1999.

Other measures supported by the League in 1998-99 included lowering the evidentiary threshold for the proof of physical and serious physical injury and continued to lobby for legislation expanding the definition of family in the Family Court Act and Criminal Procedure Law (as noted above).

The HIV/partner notification bill supported under the League's position on health care contained a section on domestic violence, thanks to the League. As a result of the League's active involvement, we participated at a NYS Health Department conference designed to establish protocols for the domestic violence provision in the HIV/partner notification law and wrote a critique of the draft protocols when they were issued. In 2007, legislation was introduced, passed by the legislature, and signed by the Governor, which would require an **indicted** rape suspect, **before conviction**, to submit to an HIV testing. The victim would then be notified as to this suspects HIV status.

In 2003, the Legislature passed a number of measures, which were supported by the League, to further safeguard domestic violence victims and their children. Chapter 579 of the Laws of 2003 increased the maximum duration of orders of protection issued by a family court from one to two years. The duration of orders of protection where aggravating circumstances exist was increased from the current maximum of three years to five years. In addition, violation of a valid order of protection will constitute aggravating circumstances. Currently, victims of domestic violence who need continued protection must return to court to extend the order when it expires. This measure will help victims by giving the court greater discretion to issue orders of protection for longer periods of time. Chapter 261 of the Laws of 2003 extended the law that allows domestic violence victims to go to family court at night to obtain orders of protection without the abuser being present ("ex parte").

The League in conjunction with local and state Domestic Violence Coalitions has continued to lobby for legislation to protect and make it safer for victims of these crimes. Bills signed in the 2006 and 2007 legislative sessions included the following:

- Eliminates the statute of limitations on first degree rape, first degree criminal sexual act, first degree aggravated sexual abuse and first degree course of sexual conduct against a child.
 - Requires the Supreme Court to assign counsel to indigent people in divorce cases for issues in Family Court such as family offense, custody, and child support. This does not apply to the divorce action.
 - Allows protection of companion animals to be added to an order of protection issued in a criminal court or family court.
 - Extends the maximum length of criminal court orders of protection.
 - Amends the penal law regarding sexual contact with a child to eliminate the lower penalty when the sexually abused child is closely related to the perpetrator
 - Prohibits an insurance company from disclosing to the person against whom an order of protection was issued the address and telephone number of the insured victim.
 - Directs the NYS Office of Children and Family Services to facilitate the establishment of Child Advocacy Centers to serve child victims of sexual assault and serious physical abuse.
 - Relates to termination of a residential lease by victims of domestic violence.

- Authorizes an experimental program in which orders of protection filed and entered by the family courts of certain counties (Erie, Onondaga, Nassau, New York, Westchester, Richmond, Kings and Albany) shall be transmitted electronically.
- Provides for revocation or ineligibility for firearms license or surrender thereof for willful violation of order of protection involving physical injury.

In addition to the League's advocacy for expanded access to Family Court by redefining the definition of family, two other important bills have passed the state Assembly, but are still pending Senate consideration. The first bill is Prohibition of Employment Discrimination and the other is Prohibition of Housing Discrimination against victims of Domestic Violence. The League will continue to lobby on these issues.

RATIFICATION OF THE EQUAL RIGHTS AMENDMENT

POSITION OF THE LWVUS

Action taken under this position by LWNVNS

United States Constitution

Delegates to the League's national convention in May 1972 voted to support the Equal Rights Amendment (ERA) to the U. S. Constitution and to add to the national League social policy position a specific reference to equal rights regardless of sex. Although New York and 35 other states ratified the federal amendment, the needed 38 were not gained by the June 30, 1992 deadline. (**LWVUS Impact on Issues, 2006-2008, p. 57**)

New York State Constitution

In 1975 after playing a leading role in obtaining second passage of an Equal Rights Amendment to the state Constitution, the League and a statewide coalition unsuccessfully campaigned for voter approval in the general election. Strong nationwide opposition succeeded in defeating it. In 1984, Governor Mario Cuomo submitted an ERA to the legislature. The League was among the organizations working in support of the amendment that passed easily in the Assembly but was not considered in the Senate. A positive result of that unsuccessful effort was the emergence of a strong network of organizations that has continued to meet and work for issues important to women.