

WOMEN'S ISSUES/SOCIAL POLICY

WOMEN'S ISSUES/SOCIAL POLICY 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.

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.

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 got 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, got 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.

WOMEN AND THE LAW
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.

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.

WOMEN AND THE LAW**Statement of Positions****As announced by the State Board, June 1981 (continued)**

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 homemakers 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.

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, 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.

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 funding pool to cover pay equity adjustment; the set-asides represent one percent of the gross payroll in 1986-87 and 1987-88. In the 1995 Governor's Executive budget proposal, the Office of Sexual Harassment Issues was threatened with elimination. In view of its effectiveness as a unit within the Division of Human Rights, the League opposed such action. Joining others who argued, persuasively, against funding cuts, the League worked to assure that the unit would remain a separate entity. Funding was restored by the legislature.

The League has long supported the passage of legislation that would implement a state policy of compensating employees equally for work of comparable value. Although the State responded by making pay equity adjustments to employees in state service between 1987 and 1990, no legislation has been passed to require that employees be compensated equally for work of comparable value. There is need for legislation that requires that this issue to be reexamined for those in state service and extends pay equity to all those in the broader public sector including cities, counties, and school districts.

Pay equity bills have consistently passed the State Assembly since 1998. Much of the credit goes to Women on the Job Task Force, who drafted the initial pay equity bills and founded the New York State Pay Equity Coalition (NYSPEC). The League is a key member of the New York State Pay Equity Coalition (NYSPEC). Despite the fact that the pay equity bills are consistently passed

by the Assembly and have Republican sponsorship in the Senate they are bottled up in Senate committees.

2003 saw political progress in the visibility of this issue:

- In 2003, the NYS Assembly passed the pay equity bill package without debate on April 14 just in time for Pay Equity Day. Besides the Pay Equity Day fanfare, they also organized a roundtable to help announce the passage of these bills.
- NYSPEC mounted a campaign to get our State Legislators to "Take the Pay Equity Pledge." The pledge indicates that the legislator signing will support pay equity legislation. Senator Paterson (the Democratic minority leader in the Senate) has promoted the pledge and every Democratic Senator has signed a pledge to support new laws guaranteeing fair pay for work of comparable worth. A list those who have taken the pledge is on the Women on the Job Taskforce website and other NYSPEC organization websites.
- A NYSPEC supported bill moved out of Senate Committee, but it is not a pay-equity bill. This bill amends the Executive law to direct the NYS Division of Human Rights to establish rules that permit complaints alleging unlawful discriminatory practices to be filed as class actions. While we are happy to see this bill move because it will help with enforcement of weak State equal-pay laws, it does not, in anyway, stop the systematic underpayment of job titles and occupations where women and minorities predominate.

Legislative Proposals for 2004

The New York State Pay Equity Coalition (NYSPEC) is proposing two pieces of legislation to advance fair pay for women and minorities working in NYS. The first of these will provide for pay equity in the public sector while the second will permit employees in the private sector to assess whether their salaries comply with existing federal and State equal-pay for equal-work laws.

After a review of gender and race based pay inequities in NY State, those representing NYSPEC member organizations at an October 2003 meeting decided upon a revised strategy because pay practices in the public and private sectors are quite different. In the public sector, because wages and salaries are public information, employees can ascertain whether they are receiving equal pay for equal work. In the private sector many employers do not disclose salaries and some require their employees to keep their salaries secret, even terminating those who reveal their salaries or attempt to obtain salary information from others. Thus, NYSPEC is proposing two bills upon which they will focus their primary energies.

Proposed Public Sector Bill – NYSPEC representatives will work to draft a bill to apply exclusively to the public sector (the State, cities, counties, school districts etc.) roughly modeled on the NYS Fair Pay Bill currently in the NYSPEC bill package. Some public sectors, for instance NY State, have already taken steps to achieve pay equity in their compensation practices. This bill would give public employers the tools and impetus to adopt and maintain practices which will achieve equal pay between male and female dominated job titles so as to assure that those working in stereotypically female job titles (a substantial number of whom are men) will receive pay equity.

Proposed Private Sector Bill – A significant step in the advancement of the principles of **equal pay for equal work** (individuals doing exactly the same work as opposed to pay equity between job titles) in the private sector would be to enable employees to obtain salary information, without fear of reprisal. NYSPEC representatives will work to draft a bill to allow employees to seek and obtain salary and wage information from their employer or other employees without fear of retaliation. This bill will be modeled after Sections 754 and 755 of the 2003 NYS Fair Pay bill. In summary, we are proposing a separate bill addressing the availability of wage and salary information for employees in the private sector. This bill will help to make federal and State equal-pay for equal-work laws enforceable for the vast number of women and minorities who work in the private sector.

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 was established in 1984, and, with League support, funding legislation was passed.

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. 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 that “. . . 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 be afforded to all victims of battering.

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The League continued during the 2000-2001 session to advocate for legislation which would redefine a “family.” Although passed both sessions by the Assembly, this legislation was again not addressed in either session by the Senate.

The LWVNYS joined as an 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 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 attending regional meetings and lobbying on several initiatives. Using the League's national position on violence prevention, we supported the Anti-Stalking legislation. (*Impact On Issues*, 2002-2004, p. 66, LWVUS) 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 conducted 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 on 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. This bill was passed by the Assembly 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 legislation expanding the definition of family in the Family Court Act and Criminal Procedure Law. 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. We continue to monitor the success of the provision.

In 2003, the Legislature passed a number of measures, which were supported by the League, to further safeguard domestic violence victims and their children. Ch. 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. Ch. 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").

POSITION OF THE LWVUS
Action taken under this position by LWVNYS

RATIFICATION OF THE EQUAL RIGHTS AMENDMENT

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. (*Impact on Issues, 2002-2004, pp. 52-53*)

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 which 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.