

CBA LPRC POSITION REQUEST FORM

The CBA Section of International Law **position request** is as follows:

- 1) Proposed legislative or regulatory concept:

Support the enactment of a state based alien tort claims act.

- 2) A plain language explanation and rationale for advancing this position:

This proposed bill closely tracks the federal Alien Tort Claims Act, which was enacted as part of the Judicature Act of 1789. This bill allows all people, not just aliens, a right of recovery. It is inappropriate to allow only aliens access to the courts under these circumstances.

The original Alien Tort Claims Act arose out of the inability of the Continental Congress to deal with violations of the Law of Nations. The Continental Congress passed a resolution calling upon the states to "provide expeditious, exemplary, and adequate punishment" for "the violation of safe conducts or passports, . . . of hostility against such as are in amity, . . . with the United States, . . . infractions of the immunities of ambassadors and other public ministers . . . [and] "infractions of treaties and conventions to which the United States are a party." 21 Journals of the Continental Congress 1136-1137 (G. Hunt ed. 1912).

The problem was exacerbated by a subsequent assault upon the Secretary of the French Legion in Philadelphia. Of all of the original states, only Connecticut passed such a statute.

The Alien Tort Claims Act has a significant connection with Connecticut because it was drafted by a Connecticut native, Oliver Ellsworth. The original draft of the federal bill is in his handwriting in the National Archives, Casto, Law of Nations 498. See generally W. Brown, The Life of Oliver Ellsworth (1905), cited in *Sosa v. Alvarez-Machain et al.*, 124 S. Ct. 2739; 159 L. Ed. 2d 718 (June 29, 2004).

According to Blackstone, originally there were only three such torts addressed by the criminal law of England:

1. violation of safe conducts;
2. infringement of the rights of ambassadors; and
3. Piracy.

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While a violation of safe conduct and infringement of the rights of ambassadors probably involved only aliens, piracy can involve anyone. New cases interpreting the Federal Alien Tort Claims Act make it clear torture would be covered under this statute as well. Since anyone can be tortured, anyone should be allowed to recover for being tortured.

This act requires such actions to have some relationship to Connecticut before a Connecticut court may exercise its jurisdiction. The permissible connections are:

1. One or more plaintiff resides in the State of Connecticut; or

2. One or more defendant resides in the State of Connecticut; or
3. The harm was felt within the State of Connecticut; or
4. One or more defendant was personally served within the State of Connecticut; or
5. The act in question took place within the State of Connecticut; or
6. International law confers universal jurisdiction to adjudicate the act in question; or
7. One or more defendant owns property located within the State of Connecticut.

Even if one or more of these connections exist, the court still may decline to hear the matter on forum non-conveniens grounds. This act is not intended to repeal or otherwise affect the doctrine of forum non-conveniens.

These requirements are intended to limit the jurisdiction of Connecticut courts to the constitutionally permissible standard of minimum contacts. Cases that have absolutely no connection with Connecticut should not be heard in Connecticut.

- 3) Is draft regulation, legislation or proposed bill included?

Attached.

- 4) What is the date of any legislative hearing, if known?

Not applicable

- 5) Was this position previously approved by the CBA? If so, when does/did it expire?

No.

- 6) Is the CBA section or committee seeking to join a previously approved CBA section or committee position?

No.

- 7) Potential or actual CBA opposition from another CBA section or committee?

None noted.

- 8) Strength of section position (including process and results of section vote taken on issue):

Our section is small, but the vote was unanimous. The material was circulated twice to the entire section, with no objections noted.

- 9) Fiscal impact (on the state): Minimal. The costs incurred for the potential additional lawsuits is minimal.

- 10) Are you seeking "fast-track" approval?¹ No.

¹ A "fast track" recommendation will be submitted to the House of Delegates (HOD) or Board of Governors (BOG) at its next scheduled meeting (or, if between meetings of the HOD or BOG and during the legislative session, to the Executive Committee),

and is warranted only when the Legislative Policy & Review Committee concludes that further analysis and study is unnecessary and where there is legitimate time pressure to address pending legislation.