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## Gun Law Stand Reveals Split In CBA

House of Delegates endorses group's involvement in Second Circuit case

Jay Stapleton, The Connecticut Law Tribune

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One thing became clear during the latest meeting of the Connecticut Bar Association's House of Delegates: No matter whether a topic is popular or controversial, some members are growing uncomfortable with the organization taking stands on social or political issues.

The House of Delegates voted 34-15 in favor of the CBA joining an amicus brief that will be submitted to the U.S. Court of Appeals for the Second Circuit in support of the constitutionality of Connecticut's recently approved firearms control measures. By all accounts, the debate on July 21 was thoughtful and the mood subdued, given the gravity of the matter — the state law was approved, after all, following the massacre of two dozen students at Sandy Hook Elementary School in December 2012.

"It reflected true professionalism on the part of everyone," CBA President Mark Dubois said of the discussion preceding the vote. "Despite having divergent beliefs on what was the right course for the CBA, the entire delegation treated each other with respect."

While some attorneys think the CBA should only get involved in public issues that promote "the good of the members and the courts," Dubois said, the CBA constitution indicates the association should be involved "in matters of social or societal concerns."

Still, in emails and law office hallway conversations, many voiced disapproval of the CBA joining the amicus, which is being prepared by the Brady Center To Prevent Gun Violence. Most of those who spoke out weren't against —or in favor—of the gun control law. Instead, many objected to the organization taking a position on such a divisive issue.

"I believe it's a mistake for the CBA to assert a legal position on an issue on which the membership is so divided," Gary Sheldon, a

partner with McElroy, Deutsch, Mulvaney & Carpenter, wrote in an email to fellow CBA members. "I suspect that this action by the CBA leadership will result in lost members and render the organization less diverse. Unfortunately, this may only serve to encourage further political advocacy."

Some, including Farmington lawyer Phil Dunn, said they would "vote with their feet" and leave the CBA as a result. "I quit the [American Bar Association] years ago as I do not like its politics," he wrote in an email to a House of Delegates member.

"It's a shame that a trade organization allows itself to be mired in political issues that have nothing to do with the practice of law," Dunn continued in the email, which was shared among CBA members. "The CBA is a trade organization for lawyers, nothing more, nothing less. It has now been hijacked by people with a political agenda. While your intentions may be excellent, the damage done to the CBA is significant. In fact, I have no desire to be a member of a satellite to the Brady Center. I will not be renewing my CBA membership when it expires."

This is the second time in two years that the CBA got involved in a controversial issue. In 2012, the association's Board of Governors voted to file an amicus brief in a Second Circuit case challenging the federal Defense of Marriage Act, which stopped same-sex couples from receiving a wide range of federal benefits. The case eventually made its way to the U.S. Supreme Court, where key portions of DOMA were declared unconstitutional.

This time around, the CBA leadership took steps to get the larger House of Delegates involved before committing the association to involvement in the Second Circuit case. Some House of Delegates members said they felt obligated to take steps to support the gun law, since they had voted to endorse the measure while the legislature was considering it. That included Emily Giancquinto, who said in an email to other members that she did not take her "yes" vote lightly.

Until days before the meeting, she said, "I was prepared to vote against joining the brief, despite my personal beliefs, due to the apparently devious nature of the issue," Giancquinto wrote. "My mind was changed, however, when I learned that in March 2013, in the aftermath of the Sandy Hook tragedy, that the House voted to support and lobby for legislation that would implement universal background checks for civilian gun purchases, ban the sale of assault/military style weapons to civilians, and ban the sale of high-capacity gun magazines."

And so, she said, many of the delegates who voted yes, considered "the CBA's prior position of support for the underlying legislation."

Furthermore, Giancquinto added: "The fact that 10 past CBA presidents sent the House a letter urging us to support the request to file an amicus brief ... while everyone is, of course, obligated to make up their own mind, the opinion of past presidents matters."

But others, including Thomas Gugliotti, thought it was not a good idea to go against the feelings of so many members.

"It's a fine line perhaps, deciding when the CBA should weigh in on something," said Gugliotti, one of six House of Delegate members who spoke before the vote. His vote against joining the amicus was based in large part on the fact that the gun control law will be staunchly defended by the Office of Attorney General.

"In this case, the CBA is going to add nothing to the legal skill of the brief; the amicus brief is going to be marvelously handled by the people doing it," Gugliotti said. "That tips the scale for me. When a large part of the membership says don't do it, then why do it?"

John Bonee III, another House of Delegates member who voted no, said that he's "already heard of three people resigning because of this. So many people are opposed to this because they feel the CBA is a professional organization representing professionals and the CBA should stay away from purely political issues, because they are divisive."

The request to join the amicus was made by the CBA's Human Rights and Responsibility Section. The amicus in the case known as *Shewv. Malloy* is due to be filed with the Second Circuit by Aug. 21.

In their legal challenge filed last year, the Connecticut Citizen's Defense League and the Coalition of Connecticut Sportsmen argue that the new law tramples on their right to bear arms and protect themselves.

Back in January, U.S. District Judge Alfred Covello dismissed the lawsuit. He said the state's expanded assault weapons ban and the restrictions on large-capacity magazines "does not effectively disarm individuals or substantially affect their ability to defend themselves." Part of the judge's reasoning was based on the fact that "a wide variety of non-assault weapons" are still available for protection and hunting under the law.

The plaintiffs quickly appealed to the Second Circuit. In June, attorneys general in 23 states —mostly in the West and South—joined the appellate challenge on behalf of Second Amendment advocates. In their own Second Circuit amicus, the AGs say their states have "a profound interest in protecting the fundamental rights of their citizens."

Several Connecticut attorneys who have represented gun owners have also weighed in against the CBA's involvement in the case. Among them is Rachel Baird, a Torrington solo who has handled cases on behalf of those whose firearms have been taken under court orders. "A threshold question ignored by the CBA's leadership," she wrote in a letter to CBA leaders, "is whether the CBA ethically should support one party over another in an appeal from a judicial decision written by one of its members, the Hon. Alfred V. Covello."

Also writing to the CBA was Scott Camassar, a North Stonington lawyer who had previously filed a legal challenge to the Connecticut law on behalf of the Disabled Americans For First Amendment Rights. That lawsuit has been dismissed. "The expanded 'assault weapons' ban was a knee-jerk, feel-good reactive measure that will never do anything to keep guns out of the hands of insane killers and otherwise benefit public safety," he wrote. "The CBA should not join the Brady Center's amicus brief."

The next step, said CBA president Dubois, is for the CBA Executive Committee to look over the briefs when they are drafted by the Brady Center "to make sure it doesn't contain anything that's going to give us shortness of breath," Dubois said.

In his email to CBA members, Dubois wrote that there "is really a dearth of law on the issues raised in *Shew*, and this case may help sharpen some previously fuzzy lines concerning the appropriate regulation of firearms." If the CBA "can lend its voice to the legal discussion," he continued, "that is well within its mandate."

Gugliotti, who serves on a committee currently reviewing the CBA constitution, said he expects further discussion to evolve in coming months over the rules governing CBA involving in issues that reach beyond the interest of promoting the professional lives of its members. "This issue has found its way onto the hit list of things we need to address," Gugliotti said. "That doesn't mean [the rules] will be changed or not changed. But it's certainly something we will be looking at."•

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