
Colorado Bar Association President's Message to Members

Taking a Stand—The CBA and Politics

by Elizabeth A. Starrs



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Our recent participation in the “Vote No 40” campaign made me think about the CBA’s involvement in political issues—what it has been and what it should be. My research on this subject involved reviewing the minutes of CBA Board of Governors and Executive Council meetings, contacting the American Bar Association, reading past issues of *The Colorado Lawyer*, and talking with several former CBA Presidents. I also have had the assistance of CBA Executive Director Chuck Turner, CBA Assistant Executive Director Dana Collier Smith, and CBA Director of Legislative Relations Michael Valdez in this endeavor.

The original CBA Bylaws stated the following as the CBA’s mission:

to advance the science of jurisprudence, promote the administration of justice, encourage legal education, record the history of the profession, *secure legislation*, stimulate good relations among the members of the profession, and preserve “the honor and dignity of the bar” and “its proper position in the community.”¹ (Emphasis added.)

In the beginning, there also was a prohibition against the CBA taking any partisan political action.² However, at some point before 1971,³ our bylaws were amended to remove this interdiction and, for the past twenty-five years, we have had a lobbyist to represent the CBA’s position before the Colorado Legislature.

CBA Lobbying History

Before 1980, the CBA had independent contractors who would lobby for us on various issues. In the early 1980s, we hired Kathy O’Rourke as our first full-time lobbyist. Then, in 1988, Tom McMillen was hired as our Director of Legislative Relations. Michael Valdez came on board in 1993, and continues to serve as the CBA Director of Legislative Relations.

Legislative Policy Committee

The CBA Legislative Policy Committee (LPC), which was established in the late 1970s, continues to meet weekly during the legislative session and monthly during the rest of the year.⁴ Here are two examples of the LPC’s involvement in political issues.

- In 1991, with the assistance of the CBA Director of Legislative Relations, the Mineral Law Section successfully worked toward the passage of a law clarifying royalty interests in mineral or geothermal resources in Colorado.⁵

- In 1992, the CBA sponsored five bills. These bills dealt with special districts, public trustees, notice of litigation concerning real property (*lis pendens* recordation), joint ventures, and a recodification of the Colorado Corporation Code.⁶

Amendment 2

All of this seems innocuous enough; but then, in 1992, along came Amendment 2. This was a hot-button issue among Colorado voters that led to the landmark case of *Romer v. Evans*.⁷ What made the issue controversial was the group that was targeted—gays and lesbians. Amendment 2 would have prohibited homosexual citizens from seeking legislation that would protect them on the basis of sexual orientation.

Surprisingly, however, there was less controversy among CBA members on the access to justice and constitutional aspects of the amendment. The \$64,000 question, of course, was this: What, if anything, should the CBA do about Amendment 2? Members of the CBA had strong feelings on both sides of the debate. Eventually, the Board of Governors decided, among other things, to take a position against Amendment 2 and to write and file an *amicus* brief in the name of the CBA.

Task Force on Controversial Decisions

In the wake of Amendment 2, the “Task Force on Controversial Decisions” was appointed. It was directed to review the existing procedure for making “official” CBA decisions and, if necessary, to recommend changes.⁸ In its report of July 18, 1992, the task force concluded that:

The CBA Bylaws and the published policies, procedures and guidelines of the Association provide a satisfactory matrix for making any decisions the CBA may face. They do not guarantee unanimous acceptance of the “official” CBA position on any given issue. That’s too much to expect. No changes are recommended by the Task Force.⁹

The CBA proceeded apace and, following the guidelines and policies set forth by the task force, took a vigorous position against Amendment 12 in 1994. The “Election Reform” and Recall of Judges amendment was defeated.

In 1995, CBA President Phil Figa devoted a President’s Message to the matter of the CBA taking positions on political issues.¹⁰ In the article, Figa, who is now a U.S. District Court Judge, argued that in “grayer” situations, when ambiguous issues arise, we should:

- 1) Determine that the issue is not clearly inappropriate;
- 2) Have sufficient facts regarding the issue;
- 3) Believe that the position to be taken would be supported by an informed membership;
- 4) Believe that the issue is of general significance to lawyers; and
- 5) Believe that the position taken by the CBA will have an impact on the outcome.¹¹

I agree with this analysis. I would add, however, that we should be aware of our leadership role in Colorado and consider whether, as the organized Bar, we *must* take a position on an issue, regardless of its controversy, because it is related to our stated mission.

Taking a Stand

The CBA has approximately 16,000 members and a budget of more than \$3 million. We are a voluntary organization. This gives us the flexibility to take positions on political issues, unconstrained by being an arm of the state. In other words, we have influence; but what good is influence if we don't use it to further the CBA's core values and expressed purpose?

We must not avoid tackling a subject that, like Amendment 2, is very controversial and divisive, when it involves a basic legal issue. In the case of Amendment 2, it was about access to justice. Amendment 12 was an assault on campaign and election process, including judges. Amendment 40 was a direct attack on the independence of the judiciary.

Military Commissions Act

At its meeting on March 2, 2007, the LPC considered a request of the Bill of Rights Committee that the CBA sponsor a resolution that the Colorado General Assembly (1) oppose any provision or application of the Military Commissions Act that violates the U.S. and Colorado Constitutions; and (2) urge the U.S. Congress to fully restore *habeas corpus* by repealing certain portions of the Military Commissions Act. The decision of the LPC was to defer this request for a few weeks so some revisions could be made to the proposed resolution and it could be more carefully compared to the resolution the ABA House of Delegates adopted in February 2007.

The Executive Council

On March 13, the CBA Executive Council (EC) conferred regarding the Bill of Rights' Committee's request that the CBA sponsor the revised resolution. After extensive discussion, it was decided that we would not sponsor this resolution. However, we did agree to write a letter to U.S. Senators Ken Salazar and Wayne Allard, and to the Colorado delegation in the U.S. House of Representatives, reaffirming our support for *habeas corpus*.

The EC also was asked to address the scope of the task force we created to analyze and make recommendations to the Board of Governors as to the CBA's position on legislation seeking to revise our system of judicial performance reviews and other ballot initiatives in 2008 concerning the judiciary. Stacy Carpenter will chair the task force and will report on its findings to the Board of Governors in May.

Conclusion

After reviewing this aspect of CBA history, and having directly participated in the process during the past year, I have concluded that there is no need for changes to our policies or procedures. I believe the 1992 Report of the Committee on Controversial Decisions was exactly right. Making decisions on whether the CBA should take a stand on issues of the day will always involve serious consideration and good judgment.

People do listen to the CBA and to lawyers. We must have the courage to participate in the debate of important issues. When the appropriate procedure and process have been followed, the leadership must be prepared to see the debate through to its resolution.

To date, the CBA has shown strength in its resolve. I trust we will continue to do so in the future.

NOTES

1. Grundman, "The Early History of the Colorado Bar Association 1898-1938," 14 *The Colorado Lawyer* 7 (Jan. 1985).

2. CBA Bylaws, Art. 1, § 2 (1898). The CBA Bylaws are accessible online at <http://www.cobar.org> (click on "About the CBA," "Governance," and "Policy and Procedure Manual").

3. The Minutes for the meetings of the CBA Board of Governors and Executive Council prior to 1971 are very difficult to search.

4. I discussed the composition and guidelines for our current Legislative Policy Committee in my January President's Message. See Starrs, "Looking Back, Looking Forward—Leadership and Beyond," 36 *The Colorado Lawyer* 5 (Jan. 2007).

5. Erisman and Ebner, "Grant or Reservation of Royalty Interests in Colorado: Senate Bill 91-34," 20 *The Colorado Lawyer* 1193 (June 1991).

6. "Bar News," 21 *The Colorado Lawyer* iv (Jan. 1992).

7. *Romer v. Evans*, 517 U.S. 620 (1996). For a thorough discussion of the Amendment 2 issue, see Koncilja, "CBA President's Message to Members: Amendment 2 Goes to the U.S. Supreme Court," 24 *The Colorado Lawyer* 751 (April 1995).

8. The Task Force was chaired by Jim Moran. John Breit, Wiley Daniel, Steve Harhai, Don MacDonald, Pat Tisdale, and Laura Vogelgesang were members.

9. Report of the Task Force on Controversial Decisions (July 18, 1992) at 4.

10. Figa, "Courting Controversy: When Should the State Bar Association Take Positions?" 24 *The Colorado Lawyer* 2129 (Sept. 1995).

11. *See id.* ■