



Update from Washington

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AAJ lobbyists successfully fought tax on litigation funding

REPUBLICATIONS ALSO SOUGHT 10-YEAR PROTECTION FOR AI INDUSTRY
IN STATE LEGISLATURES

AAJ secured two hard-fought victories at the start of the month, which removed two provisions from the president's tax bill that would have been extremely harmful to trial lawyers and their clients.

One provision was a punitive tax on litigation financing that would have created an undue burden on trial lawyers and could have cut off access to justice for their clients. Even for those lawyers who do not use third-party litigation funding, the required tax withholding responsibilities were hugely burdensome.

All lawyers need access to capital to pursue cases on behalf of their clients. The purpose of the provision was to end litigation – plain and simple. The Senate Parliamentarian struck the third-party litigation funding provision from the reconciliation bill before it went to the floor for a vote.

The second provision was a 10-year moratorium on state legislative and regulatory actions on artificial intelligence (AI). This language was included in the original legislation that passed the House. Its inclusion in the Senate bill was controversial, and on July 1, the Senate overwhelmingly rejected the proposed AI liability moratorium, voting 99 to 1 to remove it from the bill. Neither the AI provision nor the tax provision was included in the Senate's final tax package.

The legislation went back to the House, and the final version of the budget reconciliation approved by Congress and signed into law by the president, H.R. 1, *does not* contain either harmful provision.

This success for the ongoing pursuit of justice was accomplished by AAJ's Public Affairs, State Affairs, and Communications teams, AAJ officers, our state TLA partners, AAJ key persons with congressional relationships, and a number of allied groups.

The proponents of these two provisions include the insurance industry, Big Tech, tort "reform" organizations, Uber, and the U.S. Chamber. We anticipate that these damaging ideas will

resurface during this Congress, and we will be ready.

Legal Affairs: Federal rules

AAJ closely monitors proposed amendments to the federal civil, appellate, criminal, and evidence rules, and advocates for rules that protect the rights of injured people.

In June, the Committee on Rules of Practice and Procedure ("Standing Committee") approved final versions of proposed amendments to rules governing amicus curiae briefs and the hearsay exemption for prior inconsistent statements:

- **FRAP 29 – Brief of an Amicus Curiae:** After receiving unanimous pushback during the public comment period, the final amended rule retains the party-consent option for non-governmental amicus filers and removes proposed language related to redundancy among amicus briefs that would have unduly burdened courts and litigants. The amendment also imposes new disclosure requirements related to amici's financial ties to parties and nonparties.
- **FRE 801(d)(1)(A) – Prior Inconsistent Statements:** The amendment clarifies that prior inconsistent statements of a testifying witness are admissible regardless of whether they were made under oath at a formal proceeding.

The Standing Committee also approved nine proposed amendments to be published for a six-month public comment period beginning in August. These include:

- **FRCP 7.1 – Corporate Disclosures:** Would expand disclosure obligations for "business organizations" and make it easier to discover the true owner of an LLC to better aid judicial transparency and conflict checks.
- **FRCP 41(a) – Voluntary Dismissal:** Would make it easier to dismiss one or more claims without dismissing an entire case and clarify that only current parties must sign stipulations of dismissal.
- **FRCP(b)(1) – Service of Subpoena:** Would make it easier to serve a subpoena, increasing acceptable methods of service

and invalidating local rules limiting service to hand delivery.

- **FRCP 45(c) & 26(a)(3)(A) – Subpoena for Remote Testimony:** Would clarify that courts can subpoena witnesses to testify remotely, correcting the Ninth Circuit's ruling in *In re Kirkland*.
- **FRCP 81(c) – Post-Removal Jury Demands:** Would protect jury trial rights in removed cases and clarify when a new demand is required.
- ***NEW* FRE 707 – Machine-Generated Evidence:** Would create a new rule applying FRE 702 standards to machine-generated output when no expert testimony is offered.
- **FRE 609(a)(1)(B) – Impeachment by Evidence of Criminal Convictions:** Would tighten the standard for admitting prior convictions, requiring that probative value substantially outweigh prejudice.
- **FRAP 15(d) – Review or Enforcement of an Agency Order:** Would eliminate a procedural trap that made some petitions for review untimely following agency rehearing requests.
- **CR 17 – Subpoena Authority:** Would modernize rules governing subpoena power of criminal defendants over third parties and could be relevant to plaintiffs in related civil cases.

Legal Affairs: Amicus curiae update

AAJ's Amicus Curiae program is a critical part of our advocacy efforts to ensure that access to justice, right to trial by jury, and public policy arguments are rigorously supported in federal and state courts. AAJ amicus briefs are often filed jointly with state trial lawyer associations. In 2025, AAJ has filed 17 briefs from January through July 8.

Diaz-Roa v. Hermes Law, P.C. (2d Cir. 24-3223) – On July 3, AAJ joined Public Justice, the National Women's Law Center, and the National Employment Lawyers Association in support of a survivor of workplace sexual harassment, urging the Second Circuit to affirm a lower court ruling that the plaintiff's entire case is subject to arbitration exception established by the EFAA.