



Update from Washington

Linda A. Lipsen

CEO, AMERICAN ASSOCIATION FOR JUSTICE

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On-line safety for children

ALSO: PROPOSED CHANGES TO FEDERAL RULES

This month, the Energy and Commerce Committee advanced two landmark pieces of legislation aiming to protect children online. The Children's Online Privacy Protection Act 2.0 (COPPA 2.0) and the Kids Online Safety Act (KOSA) limit the ability of online platforms to collect and store children's data, mandate increased privacy settings and parental controls, and impose a Duty of Care to strengthen children's online safety and privacy protections.

Twenty-four hours before the markup, changes were made to the legislation, and concerns were raised on both sides of the aisle about those changes. While both bills were passed out of committee, congressional leadership noted that changes will be necessary to strengthen those protections and pass the legislation in both chambers.

At this point in the legislative calendar, there is limited time in which to move these bills before the scheduled recess for the end of this month, but due to the groundswell of support for both bills, movement is possible. Congress needs to pass a short-term funding plan to keep the government open beyond September 30. Once they recess, they are not expected back until the week after Election Day.

Judges

Despite the log jam on government funding, there continues to be positive movement on the confirmation of professionally and demographically diverse judges to the federal bench. As of this writing, the number of Senate-confirmed judges during the Biden administration is 210, outpacing the three prior administrations by this point in their first four years.

The total number of trial lawyers confirmed to the federal bench is 29, and there are four others awaiting confirmation. Of the Biden nominees who have been confirmed:

- 42.4% are professionally diverse
- 58% are people of color
- 62.8% are women

We anticipate that post-election, confirmations will continue in order to fill approximately three dozen remaining vacancies.

Federal rules

AAJ closely monitors proposed amendments to the federal civil, appellate, bankruptcy, and evidence rules, and advocates for rules that protect the rights of injured people. Last month, the U.S. Judicial Conference published two proposed amendments for formal comment:

- **FRAP 29 – Brief of an Amicus Curiae** – The proposed amendments are intended to provide additional information to courts. Under the proposed amendments, a party may file an amicus only with leave of court (consent by parties would no longer be permitted), and further disclosures are required between an amicus and parties, as well as non-parties.
- **FRE 801(d)(1)(A) – Prior Inconsistent Statements** – The amendment would significantly expand the current hearsay exemption to provide broader admissibility of prior inconsistent beyond statements previously made under oath at a formal proceeding. The proposal echoes a 2014 change to Rule 801(d)(1)(B), which provides that all prior *consistent* statements are admissible as substantive evidence, as well as to rehabilitate the testifying declarant (subject to Rule 403).

AAJ encourages members to review these proposals and submit comments by February 17, 2025, at 11:59 p.m. EST. To learn more, visit our Federal Rules

landing page. For more information, contact Sue Steinman or Kaiya Lyons.

AAJ issues in the news

AAJ's communications team works strategically to educate members of the media and the public about the work trial lawyers do on behalf of their clients.

Axios published an excellent story about forced arbitration that highlights clients' stories and the related bills we are monitoring related. This issue was also the focus of a Slate Money podcast episode.

After the container ship Dali struck Baltimore's Francis Scott Key Bridge, AAJ supported the introduction of a bill to address the Limitation of Liability Act (LOLA), which limits a ship owner's liability for damages to the value of the ship, regardless of the amount of actual damages. AAJ has been posting about how this act leaves families without justice.

We continue to fight to hold conglomerates accountable for failing to warn Americans about cancer risks associated with their products. One of our staff attorneys is featured in this podcast, explaining AAJ's work and this battle for justice.

We're also tracking ballot proposals such as the one in Nevada, where Uber is trying to cap contingency fees in civil cases.

Your ongoing support makes our work in these critical areas possible. Our goal is to provide this broad advocacy in addition to supporting you with tools to enhance your practices and succeed for your clients. AAJ will continue to fight for access to justice for your clients and will keep you informed on important developments. I welcome your input at advocacy@justice.org.

