

Resolution 6
Urging the United States Congress to Consider State Policies and Principles of Federalism with Regard to the Governance of State-Chartered Business Corporations

WHEREAS, the Conference of Chief Justices, in fulfilling its leadership role for state judicial systems, has traditionally taken positions to defend against proposed policies that threaten principles of federalism or that seek to preempt proper state court authority; and

WHEREAS, both Houses of the U.S. Congress, in an effort to address the causes of the current financial and economic crises facing our country, are considering legislative proposals, such as the Shareholder Bill of Rights Act of 2009 (S. 1074) and the Shareholder Empowerment Act of 2009 (H.R. 2861) to create uniform national mandates with respect to the governance of publicly traded corporations, including the manner in which shareholders nominate and elect corporate board members, shareholder approval of executive compensation, "golden parachute" compensation of departing executive officers, qualification standards for board chairpersons, and the establishment of corporate risk committees; and

WHEREAS, many state-chartered, publicly traded business corporations are governed in accordance with long-established state policy, as provided in both statutory and common law; and

WHEREAS, legislative proposals to federalize the regulation of important features in corporate business governance may disrupt many sound business policies created by state statutes; and

WHEREAS, the above-described legislative proposals, if enacted, would adjust in significant ways important, well-functioning corporate business policies in the states;

NOW, THEREFORE, BE IT RESOLVED that the Conference urges that legislation, such as S. 1074 and H.R. 2861, that implicates principles of federalism or seeks to preempt proper state court authority be amended to respect the role of states in governing state business practices and state court authority; and

BE IT FURTHER RESOLVED that the Conference urges the U.S. Congress to ensure that: (1) during its consideration of measures to address the causes of the current financial and economic crises facing our country, the relevant committees and subcommittees of both Houses of Congress take reasonable steps to obtain meaningful and timely input from appropriate branches and agencies of state governments in the development of business regulatory policies that have federalism or separation-of-powers implications; and (2) a federalism assessment of proposed legislation regulating corporate business governance be included in every Congressional committee and conference report.

Adopted as proposed by the CCJ/COSCA Government Affairs Committee at the CCJ/COSCA Annual Meeting in August 2009.