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**MAYOR BLOOMBERG DISCUSSES INNOVATIONS TO IMPROVE AND
STRENGTHEN OUR LEGAL SYSTEM**

The following is the text of Mayor Bloomberg's remarks as prepared for the keynote address at the New York State Bar Association's Presidential Summit

“Good afternoon. First, let me welcome you all to New York City – birthplace of four judges on the U.S. Supreme Court and two on American Idol! We hope you’re enjoying our City, and spending lots of money while you’re here. We could certainly use the tax revenues. I also hope that you’re all staying warm. Earlier this week, I noticed it was so cold that the lawyers had their hands in their own pockets. I promise I’ll stop there with the lawyer jokes. I’ve found the real problem with lawyer jokes is that lawyers don’t think they are funny, and the non-lawyers don’t think they’re jokes.

“I want to thank the State Bar Association for inviting me. I’m sure that some of the discussion this week has centered on the tough economic realities our state and nation still face, and how the legal profession can adapt to them. We’re having the same discussions in City government, too. Tough times require innovative new thinking. And that means stepping back, looking at the big picture, and asking some basic questions. We’re doing that in every area of government – and we’re finding new ways of doing business that are more effective, and more cost-efficient.

“For instance, we’re consolidating our back office operations, our vehicle fleets, our human resources operations, and our IT systems. We’re tackling pension and health care costs that we can no longer afford. We’re proposing major reforms to our civil service and procurement laws, which would allow us to save us money and serve the public more effectively. In these and many other areas, we are looking at the status quo and saying: How can we do it better? And we are asking leaders in every industry to help us. That’s why I’m here today – to ask you to help us find new ways to make the law fairer to litigants and taxpayers – and to make it more supportive of the economic growth we need, not just in New York City, but all across the State.

“The New York State Bar Association has a proud history of putting the broad public interest above any narrow special interest and of serving as an incubator for innovative legal ideas.

(more)

In 1925 this organization was instrumental in pushing for the Federal Arbitration Act, a fundamental step in giving New York and all American businesses added flexibility to innovate and grow. In the 1990s, this bar association played a key role in the development of New York's commercial courts and helped to keep our state and our businesses competitive in the globalizing economy. So now I want to enlist your help again – to ask you to think about how we can use our law to secure our health, our freedom, and our ability to take the risks that we will need to pull our country out of these difficult economic times.

“I am not a lawyer, but as a mayor and business owner I have seen both the promise – and the problems – of our legal system. I have seen how the law can spur innovation and promote justice – and also how it can undermine growth, subvert fairness, and breed cynicism. I certainly don't have all of the right answers, but I do think I've got a lot of the right questions. And today, I'd like to present you with four of them. First, how can we use our legal system to promote a culture of innovation rather than a culture of fear? Second, how can we make tort outcomes more predictable and fair? Third, how can we resolve more disputes without litigation? And fourth how can government use laws and regulations to spur economic and social progress?

“So let's start with innovation. We have all seen how the fear of litigation has forced people to act defensively. Just take health care. Fear of litigation too often makes doctors afraid to choose the best treatment options, and so they over prescribe drugs, tests, and surgeries, which lead to unnecessary treatments. For example, the number of women receiving C-sections is rising with doctors now performing 50 percent more than are medically necessary. This fear of litigation drives up the cost of health care, and it can lead to a shortage of doctors in certain specialty fields – as we see Upstate. In Western New York, a recent survey found that 91 percent of emergency departments had to transfer patients to another hospital in 2009 because of lack of coverage in a necessary specialty. New York was one of just nine states to receive a failing grade from the American Medical Association for our medical malpractice environment. So the question we must ask ourselves is: How can we remove the straightjacket our law is placing on our doctors and instead use the law to improve our treatment options and our health?

“The low hanging fruit is malpractice reform. After Texas enacted malpractice reform, the shortage of doctors they had long suffered from disappeared. And can you guess which state the most doctors came from? You got it – New York. Reforming our medical malpractice laws would help drive down costs, improve care, and improve access to doctors. But it's not the only step we can take to achieve those goals. We ought to think more broadly and creatively about how we can actively promote better outcomes between doctors and patients. One option to consider is special health courts – because we've seen how effective specialty courts can be in other settings. The drug courts that members of this Association helped pioneer, led by John Feinblatt, who is now my Chief Policy Advisor and Criminal Justice Coordinator, have been a big success. They've helped end the cycle of addiction and crime by getting more people into treatment, while also lowering the amount taxpayers have to spend on incarceration costs and saving future victims from preventable crimes. We could achieve the same kind of benefits with health courts, where judges trained in medical cases are able to hire independent experts, reject frivolous suits, and encourage early settlements.

“We should also consider following the lead of many other states and require that all medical malpractice claims be initially submitted to a panel of neutral experts. This idea would

dramatically cut down on the number of frivolous suits that are unrelated to any medical error. And for many malpractice suits, we should examine whether the traditional lawsuit model is even appropriate. Certain classes of claims, such as those arising from cerebral palsy or birth defects, are such painful cases. And they often lead to arbitrary and unfair verdicts. Why not instead experiment with alternatives like a no-fault system where payments depend on injury, not fault? This would compensate families evenly and fairly without the expense and delays of litigation, and would remove the powerful disincentive for new doctors to become OB/GYNs.

“I do not pretend that these are perfect solutions. But they are steps we could take to use our law to directly improve our health. And I was glad to hear the President say last night that he’s looking at a variety of ways to improve health outcomes and decrease health costs, including medical malpractice reform to rein in frivolous lawsuits. I’m sure that this group could come up with other ideas. But I think we all ought to be able to agree that it’s time to find new solutions that will stop the exodus of our state’s doctors, and relieve some of the costs that are making health care so expensive.

“The second question I’d like you to consider today is: How can we make our tort outcomes more predictable, more equitable, and fairer? Litigation was designed to promote fairness, but today, civil litigation is more like the lottery: a few people get a windfall of cash, but most lose out. New York City alone pays out almost half a billion dollars a year in tort claims, up from just \$20 million in 1978. Half a billion dollars is enough to keep our public libraries running for an entire year – or hire some 7,500 teachers! At a time when we are looking at major layoffs of teachers, we have a responsibility to bring these costs under control.

“I’ll give you two quick examples of how bad it is: We had to pay out millions to the pedestrians who were injured when a driver high on drugs sped through an intersection and swerved to avoid a sanitation truck. The City was deemed to be less than a quarter responsible. Still, because of the tort laws, the City had to pay the full amount! And then there’s the case where we paid millions to a taxi driver who drove into a bus. The jury determined it was mostly the driver’s own fault, but under the law the City had to pay \$2 million anyway. It’s an affront to taxpayers! The City should not be held liable and forced to pay huge sums in cases where it is not primarily at fault.

“The size of judgments, and the fact that they can be recovered even when the plaintiff is at fault, has helped drive a huge increase in tort payments. But those payments are going to a lucky few, while the vast majority get absolutely nothing. Across the country, the system costs \$200 billion a year, but it’s driven by huge awards that are going to a tiny fraction of those injured. The arbitrariness is even worse for governments, since juries tend to see them as bottomless pits of money. Of course, the City should pay in cases where it is primarily at fault, but judgments in those cases would not amount to anywhere near the half billion dollars a year we currently pay. That money comes straight out of your taxes and siphons funds away from the programs we need most. I know we’re capable of coming up with a better, smarter, and more innovative way to administer justice – because we’ve done it before in other areas of law. Under this Association’s leadership, we created specialized commercial courts where trained judges with expertise in business law are able to oversee disputes. By fostering an environment where problems are settled consistently and conveniently, New York encourages more businesses to invest here. And the effect has been pronounced. When global businesses choose the laws they want to govern their contracts, New

York law is by far the top choice among American states and the second most common choice in the world.

“I agree with former Chief Judge Judith Kaye, and many of you, who have suggested we take advantage of our position by making New York City the international arbitration capital of the world. We also need to repeat the success of our commercial courts in tort and other areas of law. In fact, as the practice of law becomes increasingly specialized, we must ask ourselves whether it still makes sense for most judges to be generalists. The third question I’d like you to consider today is: How we can resolve more disputes outside of the courts – so we can improve outcomes for more people? The system has become so expensive that many of the people most in need of representation enter court without it: 99 percent of tenants in eviction cases in New York City go unrepresented, as do 99 percent of borrowers in consumer credit cases and 97 percent of parents in child support matters.

“In a speech to this association earlier this week, our good friend Jonathan Lippman pointed out that only 20 percent of civil legal needs of low-income individuals are being met today. And because of this, many New Yorkers are not raising claims and defenses available to them. The system may be impartial, but it certainly isn’t fair. Not when unrepresented borrowers and tenants are forced to plead their cases against banks and landlords that can afford expert legal representation.

“A panel commissioned by Chief Judge Lippman recently concluded that part of the solution to the inequities in our housing, consumer credit, and family cases is to increase funding for legal services attorneys. But in many of these cases, the government is the ultimate defendant. So we are essentially funding people to sue us. Now, instead of spending money to have citizens sue us, wouldn’t it make more sense not to fight at all and to spend that money on programs to keep tenants in houses, keep borrowers from defaulting, and provide services to families? Considering that our system is so expensive that more than half of every dollar spent goes to litigation costs, we could do twice as much if we cut out the middleman and focused directly on helping our citizens.

“We made some real progress in that direction a couple of years ago when we worked with the State to help more homeowners avoid foreclosure. At our urging, the State passed a law that provided homeowners facing foreclosure access to a settlement conference. Because of that law – and because of the lawyers in this organization who volunteered their time to represent homeowners in their settlement conferences, 23,000 more homeowners in New York State had the opportunity to meet face-to-face with their lenders in 2010 than did in 2009. In New York City, this meant an additional 12,230 homeowners had the ability to negotiate with their banks in good faith towards keeping their homes. That just shows you what can be accomplished when government works together with the legal community to meet some of our toughest challenges! It would be easy to sit back and say that nothing can ever change in our legal system – that the problems are endemic and impossible to solve. But it’s just not true. So my fourth question today is: How can government use laws and regulations as tools to spur economic and social progress?

“One great answer to that question is New York City’s recent work with brownfields – land that has been polluted with industrial contaminants and can’t be developed without a clean-up. New York City is home to thousands of acres of brownfields. For decades, these sites have lain fallow.

Plenty of developers wanted to clean and redevelop them, but were reluctant to do so because the City and State liability for clean-up was too unpredictable and potentially costly. To solve this problem, the City adopted a local law creating a brownfield cleanup program, and then reached an agreement with the State, to provide liability protection to developers willing to undertake the cleanup. The result is that the New York City-run brownfield program is now thriving. In fact, six projects totaling more than \$120 million in new construction have applied to our program in the last two months alone. But not all government rules and laws meet with this kind of success. And sometimes, they are the obstacle to it. Excessive regulations can discourage investment and growth, and frustrate people to no end, especially when decades of regulations pile up on top of each other.

“The solutions of yesterday do not always address the problems of tomorrow. So instead of just adding layers, we need to modernize and revisit our laws. In that spirit, last week President Obama ordered many federal agencies to conduct a systematic review of existing business regulations, in an effort to remove outdated regulations that stifle job creation and make our economy less competitive. Our administration is also conducting a broad review of our regulatory rules – to identify outdated provisions that are holding us back. And I would invite everyone here to help us with that process. If you have an idea, we want to know about it.

“Getting the right balance in our laws is always a difficult business, and there is almost constant need for recalibration. The goal is not to stop all lawsuits. People who say we need to close the door to litigants misunderstand the problem. We need to work together in a way that helps doctor and patient, landlord and tenant, and government and citizen. This will require creativity, it will require flexibility, and it will require putting the long-term interests of our state above any short-term gains for ourselves. But then, this Bar Association has a history of placing the interests of the state above the interests of its members.

“You are professional innovators and problem-solvers. Clients come to you and ask you to address wrongs and right them. And you do it, because you believe in the power of the law to promote fairness and create a more just world. Today, as we look for every possible way to strengthen our state as we rebound from this punishing economic recession, I am asking you to apply those talents to promoting our collective economic future. As the longest-existing voluntary bar association in the country, you have a proud history of fighting for our citizens, our jobs, and our State, and today, I ask you to join with me and fight once more.”

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