

**THE IMPORTANCE OF FUNDING
FOR THE LEGAL SERVICES CORPORATION
FROM THE PERSPECTIVE OF THE CONFERENCE OF CHIEF JUSTICES
AND THE CONFERENCE OF STATE COURT ADMINISTRATORS**

Introduction

The Conference of Chief Justices (“CCJ”) was founded in 1949 to provide an opportunity for the highest judicial officers of the states to meet and discuss matters of importance in improving the administration of justice, rules and methods of procedure, and the organization and operation of state courts and judicial systems. For decades the Conference has made recommendations to bring about improvements in such matters. The CCJ membership consists of the highest judicial officers of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories of American Samoa, Guam and the Virgin Islands.

The Conference of State Court Administrators (“COSCA”) was founded in 1955 to assist state court administrators in the development of more just, effective, and efficient system of justice by providing a strong network for the exchange of information and methods to improve the operations of state courts. Like the CCJ, the COSCA has made many recommendations to bring about improvements in court organization and operations. Its membership consists of the top state court administrator in the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories of American Samoa, Guam and the Virgin Islands.

The Conferences have adopted a series of resolutions (in 2002, 2009, 2011, and 2012) in support of funding for the Legal Services Corporation (LSC). LSC is the largest single funder of civil legal services programs for poor people in the United States. It provides grants to 135 independent legal services programs with more than 900 offices serving every county in the 50 states, the District of Columbia, and every U.S. territory except American Samoa.

The Conferences’ most recent resolution in support of LSC funding, adopted on February 1, 2012, “reaffirms the importance of the federal Legal Services Corporation and calls upon all members of Congress to fulfill our nation’s promise of ‘Equal Justice Under Law,’ by restoring funding for the federal Legal Services Corporation to the level necessary to provide critically needed services to low-income and vulnerable Americans.” (A copy of the resolution is attached.) The “Whereas” clauses of the resolution explain the reasons for the Conferences’ commitment to adequate government support for LSC:

- “Equal justice and the fair administration of justice are cornerstones of our democracy and core functions of our national and state governments.”
- “The Preamble to our national Constitution declares it to be an express purpose of the federal government ‘to establish justice’ and we are a nation dedicated to ‘liberty and justice for all.’”
- “As a nation grounded in the rule of law, equal justice and the fair administration of justice have long transcended partisan difference with all Americans standing together in common commitment to these ideals.”
- “The promise of equal justice and our commitment to the rule of law are so fundamental to our way of life that it has long been the policy of the United States of America to promote these ideals beyond our national borders.”
- “When large segments of the American population are denied effective access to the justice system and are unable to assert and defend effectively important civil legal rights and prerogatives, public trust and confidence in the justice system itself is placed in jeopardy.”
- “During times of fiscal crisis, it is necessary that government focus on core functions, with the establishment and administration of justice being a core function of the federal government and this core function is furthered by ensuring the availability of civil legal aid for those otherwise unable to assert and defend important rights meaningfully within the justice system.”

The Current Need for Civil Legal Services

The population eligible for LSC-funded legal services has grown dramatically in recent years. Census Bureau data show that the LSC client-eligible population grew by 22.5 percent from 2005 to 2010 (the latest year for which Census Bureau data are available), from 49.3 million in 2005 to 60.4 million in 2010, an all-time high. Based on other Census Bureau data and formulas developed by the Brookings Institution, LSC estimates that the client-eligible population will reach 65.6 million in 2012 and 66.6 million in 2013, an increase of 17.3 million people, or 35.1 percent, since 2005.

The civil legal problems of low-income people involve essential human needs, such as protection from domestic abuse, safe and habitable housing, access to necessary health care, and family law issues including child custody actions. As Chief Justice Hunstein of Georgia has noted, “Equal access to justice contributes to healthy communities and a vibrant economy. No community thrives when people are homeless, children are out of school, sick people are unable to get health care, or families experience violence. Likewise, when a person’s legal problem is addressed in a timely and effective way, the benefit ripples out and helps that person’s family, neighbors, employer and community.”¹

¹ Hunstein, C., “Legal aid to poor can’t take more cuts,” *Atlanta Journal Constitution*, May 26, 2011

A number of studies in recent years have explored the extent of the difference between the level of civil legal assistance available to low-income people and the level that is necessary to meet their needs -- the “justice gap.” A 2009 study conducted by LSC showed that for every client served by an LSC-funded program, one person who seeks help is turned away because of insufficient resources.² As of 2009, almost one million cases (944,376³) per year were being rejected because programs lacked sufficient resources to handle them. That figure did not include the many people who do not reach an LSC-funded program to ask for help, for whatever reason.

From 2007 to 2010, nine states⁴ conducted large-scale, survey-based studies to determine the kinds of legal needs experienced by low-income residents and the extent to which those needs were being met. All of the studies found:

- On average, low-income households experience from 1.3 to 3.0 legal needs per year.
- Only a small fraction of the legal problems experienced by low-income people (less than one in five) is addressed with the help of an attorney. Even among the problems considered to be most serious by the households experiencing them, most are not addressed with the help of a lawyer.
- Those who seek help from legal aid programs represent only a fraction of the low-income people who need civil legal assistance. People with legal problems frequently do not understand that they need legal help, do not know where to turn for help, or may not know they are eligible for legal aid. Other barriers, such as geographical distance and isolation, low literacy, physical or mental disability, limited English proficiency, culture and ethnic background, and apprehension about the courts and the legal system also pose impediments.

Findings reported in nine statewide legal needs studies conducted between 2000 and 2005 were consistent with the 2007-2010 studies.

The Impact on State Court Systems When Large Numbers of Litigants Are Unrepresented

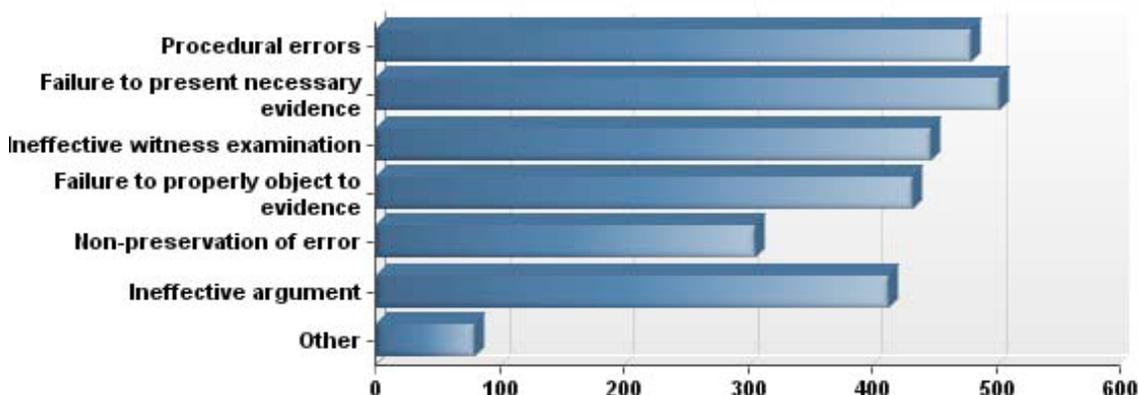
Trial judges across the country report that the current economic downturn not only caused a spike in the number of unrepresented litigants in civil cases (especially with respect to housing foreclosure, domestic relations, and consumer disputes), but also negatively impacted the parties themselves and the courts. In a survey of trial judges from thirty-seven states, Puerto Rico, and one Native American Court, more than 60 percent of the respondents reported that unrepresented litigants failed to present necessary evidence, committed procedural errors, were ineffective in witness

² Legal Services Corporation, “Documenting the Justice Gap in America – The Current Unmet Civil Legal Needs of Low-Income Americans” (2009)

³ The count did not include people who were denied services because they were financially or otherwise ineligible, because services were prohibited by LSC restrictions, or because their case was determined to have insufficient legal merit to proceed. Nor were cases in which a program made a referral to another program with an expectation that the other program would provide substantial representation included in the count.

⁴ Virginia, Utah and Wisconsin (2007); Nevada (2008); Alabama, Georgia and New Jersey (2009); Montana and New York (2010).

examination, and were unable to proffer enforceable orders to the court.⁵ This chart shows the types of reported party error.



Seventy-eight percent of the judges reported that the increase in unrepresented litigants negatively impacted the effectiveness and efficiencies of the courts. Despite the cutting of court budgets, more staff time was required to assist unrepresented parties. In the absence of a fair presentation of relevant facts, court procedures are slowed, backlogs of other court cases occur, and judges can confront the challenge of maintaining their impartiality while preventing injustice. Clearly frontline judges are telling us that the adversarial foundation of our justice system is all too often losing its effectiveness when citizens are deprived of legal counsel in cases with stakes involving family, shelter, and livelihood.

The Economic and Societal Benefits of Providing Civil Legal Services

A growing body of research on the economic impact of providing civil legal services consistently demonstrates significant economic benefits for communities and states. These benefits accrue both from savings to state and local governments and from spending by clients of child support and other monies obtained with the help of legal counsel.

Studies in a number of states have examined the economic impact of providing legal services to low-income people. Following are examples of awards to clients and savings to states attributable to the availability of civil legal services to low-income individuals:

- Florida - A study estimated savings to the state of \$4.24 million in avoided costs related to domestic violence and homelessness prevention in 2008.⁶

⁵ ABA Coalition for Justice, “Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts,” (2010).

⁶ Florida Tax Watch, “The Economic Impact of Legal Aid Services in the State of Florida” (2010)

- Massachusetts - Clients obtained \$10.4 million in unemployment benefits, rent relief, damages, reduced utility bills, and child support payments during 2011. During the same period, the state saved an estimated \$11.3 million because of the prevention of homelessness and \$3.9 million in medical and court costs by preventing further assaults on victims of domestic violence.⁷
- Missouri - In 2008, estimated savings of \$1.5 million due to prevention of homelessness and \$2.2 million savings in avoided costs related to domestic abuse.⁸
- Nebraska - Legal aid clients obtained a total of \$2,511,052 in parental child support, alimony, unemployment and other non-federal awards in 2007.⁹
- New York - New analyses project savings of \$201 million attributable to civil legal services – \$84.9 million in avoidable medical, mental health and other costs through prevention of domestic violence, and \$116.1 million because of prevention of evictions and homelessness.¹⁰
- Pennsylvania - Total savings of \$23 million during 2004-2008 resulting from civil legal services for victims of domestic abuse.¹¹
- Texas – More than \$16 million in awards from non-federal sources, such as parental child support, housing and employment cases and workers’ compensation, accrued to clients in 2007.¹²
- Virginia - Clients gained \$8.1 million in parental child support payments, unemployment benefits, and judgments during fiscal year 2010-11. The state also realized \$2.9 million in savings related to homelessness prevention and avoided costs related to domestic violence.¹³

Further economic benefits cited in several of the state reports, but not quantified, include: savings from crime prevention and law-enforcement assistance; savings from keeping children in school whose attendance would otherwise have been interrupted by homelessness and/or domestic abuse; efficiencies in the courts made possible by legal aid assistance to clients and self-represented litigants; and tax revenues from jobs preserved as a result of legal aid employment cases.

In addition to providing significant economic benefits, civil legal services also provide a variety of other societal benefits. A significant body of work shows that access to civil legal assistance can

⁷ Massachusetts Legal Assistance Corporation, “Civil Legal Aid Yields Economic Benefits to Clients and to the Commonwealth: Some Benefits from FY11 Advocacy” (2012)

⁸ Missouri Legal Aid Network, “Investing in Justice, Strengthening Communities - How Everyone in Missouri Benefits from Funding for Legal Aid” (2009)

⁹ Rod Feelhaver & Jerome A. Deichert, “The Economic Impact of Legal Aid of Nebraska 2007” (2008)

¹⁰ The Task Force to Expand Access to Civil Legal Services in New York, “Report to the Chief Judge of the State of New York” (2011)

¹¹ Pennsylvania IOLTA Board, “Results of the Pennsylvania Access to Justice Act” (2009)

¹² Texas Access to Justice Foundation, “The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential” (2009)

¹³ Legal Services Corporation of Virginia, “Report to the Commonwealth and the General Assembly FY 2010-2011” (2012)

prevent domestic violence, prevent eviction and homelessness, promote family reunification and reduce the time children spend in foster care, and improve clients' health.¹⁴

Current Funding for Civil Legal Services

The Decline in LSC Funding

LSC's funding declined from \$420 million in FY 2010, to \$404 million in FY 2011, to \$348 million in FY 2012—a reduction of \$72 million, or 17 percent. *In inflation-adjusted dollars, LSC's FY 2012 appropriation is an all-time low for LSC funding.*

Dramatic Decline in IOLTA Funding

Another major source of funding for civil legal services programs, Interest on Lawyers Trust Accounts (IOLTA), has declined dramatically in recent years as interest rates have plummeted to record-low levels. In 2008, LSC-funded programs received \$111.8 million in IOLTA funding. In 2009 that amount dropped to \$84.9 million, in 2010 it fell to \$67.9 million, and in 2011 it fell even further, to \$60.8 million. This decrease in a major source of funding is affecting virtually all civil legal services programs, both those funded by LSC and others.

Chief Justices and Chief Judges Are Working to Promote State Funding for Civil Legal Services, but Budget Pressures Have Caused Many States to Reduce Funding

State appropriations for LSC-funded programs provided \$130.3 million in revenue in 2010. In 2011, that number fell by 5.7 percent, to \$122.8 million. Chief justices and chief judges in a number of states are working to promote state funding for civil legal services, and they have met with some success in some states, notably New York and Texas. But in many states, budget pressures have resulted in reductions in state appropriations for civil legal services.

The Effects of Recent Reductions in Funding at LSC-Funded Programs

At the end of 2011, LSC conducted a survey of its grantees to assess the impact of funding reductions on their operations. The survey showed that, including anticipated layoffs in 2012, LSC grantees project a total loss of 1,226 full-time employees between December 31, 2010 and 2012. This includes 582 attorneys, 250 paralegals, and 394 support staff.

Based on these staffing projections, LSC estimates that, nationwide, 81,000 fewer low-income Americans will receive assistance from the programs it funds during 2012 than received assistance during 2011.

¹⁴ Abel, L. and Vignola, S., "Economic and Other Benefits Associated With the Provision of Civil Legal Aid," *Seattle Journal for Social Justice* (Fall/Winter 2010)

LSC-funded programs project closing 24 offices, many of them in rural areas, by the end of 2012. Office closings in rural areas often require clients to travel significantly greater distances to a legal aid office, and the additional time and expense involved can further impede access to justice.

The Conferences' Perspective on the Importance of Robust LSC Funding

The Conferences' resolutions on funding for the Legal Services Corporation reflect the following perspectives on the importance of adequate financial support from the federal government:

- “Bipartisan congressional action in the late 1990s formed the foundation for an enduring national consensus regarding the focus and value of the work underwritten by the federal Legal Services Corporation and ensured that the work of federally funded legal aid providers is focused on the individual needs of low income people facing the most significant civil legal problems that affect basic human needs such as: family preservation, safety and economic security; protection of housing and other essential property rights; and ensuring governmental accountability in disputes involving essential benefits and services to which low income people have a legal claim.”
- “Ensuring equal justice is a joint federal and state responsibility, and in recent years many states have invested substantially in the core civil legal aid infrastructure funded through the federal Legal Services Corporation, and reduction and/or withdrawal of federal funding would fundamentally undermine the vitality and effectiveness of state-based legal aid delivery systems and adversely affect civil judicial operations.”
- “The civil legal aid system in every state is a model public-private partnership and . . . investments in programs funded through the federal Legal Services Corporation effectively leverage complementary legal assistance through the efforts of volunteer attorneys.”
- “The Conference of Chief Justices has repeatedly affirmed the importance of the federal Legal Services Corporation, declaring ‘continued operation of the Legal Services Corporation [as] essential to the guarantee of equal justice and to the efficient operation of the courts,’ . . . calling for ‘increased federal funding on a continuing basis for [the federal] Legal Services Corporation to better meet the demand for legal services and to ensure access to justice for all,’ . . . and again calling on Congress to support increased funding for LSC ‘to provide critically needed services to low-income Americans.’”

The Conferences' Request

The Conferences request that Congress restore funding for LSC to at least \$404 million for Fiscal Year 2013. The Conferences are sensitive to the fiscal challenges facing the federal government. This amount would return LSC to the funding level it was at in Fiscal Year 2011 and establish an essential funding base that can be built upon as the nation's economy improves.