



Restoring Legal Aid for the Poor

Our Nation Needs a Robust Legal Services Corporation

By Rebekah Diller

Thirty years ago, President Jimmy Carter observed: “Ninety percent of our lawyers serve 10 percent of our people. We are overlawyered and underrepresented.”¹ Due to persistent attacks on the Legal Services Corporation, the cornerstone of the nation’s efforts to promote equal justice, this statement rings truer than ever today. Every year, 1 million cases are turned away from LSC-funded offices due to funding shortages.² Study after study finds that 80 percent of the civil legal needs of low-income people go unmet.

The United States suffers from a severe justice gap that prevents families from moving out of poverty and threatens the stability of our court system. The inability to obtain legal help has devastating consequences. Seniors lose homes to subprime mortgage lenders after a lifetime of payments. Domestic violence victims are unable to obtain protection from the courts. Children become homeless because their families are evicted. The justice gap persists and grows worse because of chronic underfunding of the Legal Services Corporation and extreme and ill-conceived federal restrictions placed on the legal aid programs that receive LSC funds.

The crisis traces back to a concerted effort by the Heritage Foundation and other conservative bastions to deny low-income people access to the courts by destroying LSC. In *Mandate for Leadership*, the conservative agenda published on the eve of Ronald Reagan’s first term in 1981, the Heritage Foundation called for LSC’s wholesale destruction. Barring its complete demise, Heritage argued for steep budget cuts and the imposition of broad restrictions through LSC appropriations riders. Today, the justice gap persists in large part due to the success of these efforts.

The value in real dollars of LSC’s appropriation has declined dramatically since its high-water mark in 1980. In fiscal year 1980, Congress allocated \$300 million to LSC, which at the time was seen as the level sufficient to provide a minimum level of access to legal aid in every county, although not enough to actually meet all the serious legal needs of low-income people.³ To keep up with that level, LSC would need to receive about \$765 million today. To begin to reverse this decline, LSC should receive, at least, the \$495.5 million it is expected to request for fiscal 2010.



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The capacity of people to secure meaningful access to the courts is also impeded by the extreme and ill-conceived funding restrictions imposed on LSC-funded legal aid programs in 1996. First, Congress restricted LSC clients from using the full range of legal tools available to clients of all other lawyers, such as participating in class actions and seeking court-ordered attorneys' fee awards.⁴ Second, Congress made all undocumented immigrants, certain categories of legal immigrants, and people in prison ineligible for LSC-funded services.⁵ Finally, Congress imposed an extraordinarily harsh poison pill restriction on LSC-funded programs that extends the federal funding restrictions to cover the non-LSC funded activities of LSC recipients.

As a result, more than \$450 million from state and local governments, private donations, and other non-LSC sources is restricted under the same terms as the LSC funds.⁶ All of these restrictions should be removed, starting with the poison pill "restriction on state, local, and private funds" that encumbers all the money possessed by LSC recipient programs from all sources other than LSC. The restriction on state, local, and private funds is virtually unprecedented, and immediately should be excised from the next LSC appropriations rider.

Although government commonly restricts the activities it finances with its own funds, it almost never restricts the activities that private organizations conduct with their own non-federal dollars. This poison pill restriction deprives countless Americans of needed legal services, including those Americans who live in communities that could obtain urgently needed protection from widespread predatory lending practices if legal services lawyers could bring class actions that are needed to stop the patterns of abuse. By encumbering the money contributed by state and local governments, the poison pill goes even further, preventing these important institutional bodies from becoming full partners in the effort to close the justice gap.

About the author

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Endnotes

- 1 Deborah Rhode, *Access to Justice: Connecting Principles to Practice*, 17 *Georgetown Journal of Legal Ethics* (17) (2004): 369, 371 (quoting President James E. Carter, Remarks at the 100th Anniversary Luncheon of the Los Angeles County Bar Association (May 4, 1978), in 64 A.B.A. J. 840, 842 (1978)).
- 2 Legal Services Corporation, "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans 2", (2005).
- 3 *Ibid.*
- 4 Omnibus Consolidated Rescissions & Appropriations Act of 1996, Pub. L. No. 104-134, § 504(a), 110 Stat. 1321, 1321-53 to -56. Congress has carried forward these restrictions each year by incorporating them in the annual appropriations rider for LSC.
- 5 *See id.* at 1321-55 to -56.
- 6 Legal Services Corporation, "Fact Book 2006," at 14 (2007), available at <http://www.rin.lsc.gov/Rinboard/2006FactBook.pdf>.