

**H. Thomas Wells, Jr.**  
President

**AMERICAN BAR ASSOCIATION**

321 North Clark Street  
Chicago, IL 60654-7598  
(312) 988-5109  
Fax: (312) 988-5100  
E-mail: [abapresident@abanet.org](mailto:abapresident@abanet.org)

June 3, 2009

The Honorable Alan B. Mollohan  
Chairman  
House Appropriations Committee  
Subcommittee on Commerce, Justice,  
Science and Related Agencies  
H-309, the Capitol  
Washington, DC 20515

The Honorable Frank R. Wolf  
Ranking Member  
House Appropriations Committee  
Subcommittee on Commerce, Justice,  
Science and Related Agencies  
1016 Longworth House Office Building  
Washington, DC 20515

Re: FY 2010 Funding for the Legal Services Corporation

Dear Mr. Chairman and Ranking Member Wolf:

On behalf of the American Bar Association (ABA), which has more than 400,000 individual lawyer members nationwide, I first thank you both for your long-standing commitment to the principal of equal access to the justice system for all Americans. We also appreciated the opportunity to discuss this important issue with many Subcommittee members during our recent "ABA Day in Washington" program.

Soon your Subcommittee will mark up the Commerce, Justice, Science and Related Agencies (CJS) appropriations bill for FY 2010. The ABA thanks Congress for increasing the Legal Services Corporation (LSC) budget to \$390 million for FY 2009. This is a significant step toward providing more adequate funding for a vital program that has been woefully underfunded for over two decades.

For FY 2010, the bipartisan LSC Board requested \$485.1 million in its continued effort to close the justice gap over the next several years. Yet, this is still far less than the amount appropriated in FY 1995, which would be about \$578 million in today's dollars, and even farther below the amount appropriated in FY 1981--\$749 million in today's dollars. Without continued incremental increases in federal funding, many more will be denied assistance in the future. President Obama in his FY 2010 budget request asked Congress to provide \$435 million for LSC.

In April, the presidents of every State Bar (plus the District of Columbia, the Virgin Islands and Puerto Rico) and the four major Bars of Color wrote the Subcommittee to request at least \$435 million for LSC. In addition, more than 53 Senators (including your colleagues from West Virginia and Virginia) signed a similar letter also supporting at least \$435 million for LSC for FY 2010. (Copies of both letters are attached.) **The ABA and individual lawyers nationwide join the State Bar presidents, your State colleagues and the Administration to request that the Subcommittee increase LSC's FY 2010 funding to at least \$435 million to help meet the urgent and expanding need for civil legal services.**

At the same time, the ABA believes that the recession, which has both squeezed the federal budget and increased the number of Americans in need of legal help, warrants a fresh look at ways that will, *without cost to the government*, significantly increase the amount of money available to provide legal aid to the poor. *In addition to* providing the requested \$45 million funding increase, the ABA strongly urges the Subcommittee to modify at least three measures that have been included in appropriations riders since 1995 that have impeded LSC in fulfilling its mission of providing basic legal services to qualified persons. Specifically, we request that the Subcommittee eliminate (1) the restriction that prevents recipients of LSC funding from freely utilizing – without being subject to federally imposed restrictions – state, local, private and other non-LSC funds to provide needed legal assistance to poor clients; (2) the restriction that prevents LSC recipient programs from obtaining statutorily permitted attorneys' fees; and (3) the restriction on class actions. These changes are sure to expand access to justice for low-income families without imposing unjustifiable costs on defendants.

The restriction on use of other non-LSC funds by local legal aid recipients of LSC funding greatly diminishes the ability of LSC-funded programs to raise other funds from state and local governments, charitable foundations and private individuals. The restriction prevents these other funders from giving money to LSC-funded programs because the funds often cannot be used as the donor intends. The restriction has created great inefficiency in the legal aid system across the nation; entirely new and separate local legal aid programs had to be created to accept non-LSC funds in order to facilitate the donor's intent. The result has created a situation where hundreds of thousands of dollars in limited resources are squandered on needless duplication.

The restriction barring recovery of statutorily authorized attorneys' fees further diminishes the scarce resources available to support civil legal aid programs. Perhaps more important, it eliminates a critical source of leverage in many cases, putting legal aid lawyers at a grave disadvantage in attempting to negotiate settlements for their clients.

Both restrictions offend basic principles of federalism. They require independent legal aid programs to act in ways that are contrary to the expressed desires of state and local governments, local individuals and charities and state fee-recovery statutes. While it is understandable that the federal government dictate what can be done with federal funds, it is unacceptable for the federal government to tell local public service programs what they can do with other funds. Furthermore, states have, in their own sovereign wisdom, chosen to permit fee-shifting in certain situations and have therefore structured an appropriate balance between parties operating within their justice systems. Federal interference denies states the right to determine how their justice systems should operate.

The ABA has longstanding policy favoring a legal aid system that does not interfere with poor persons' full access to the courts or deny advocacy that is available to others in our society. Removal of these two restrictions will be a modest step toward adjusting the legal aid system so that it once again can approach the promise of ensuring equal access to justice for all.

The President's budget request asks Congress to eliminate these two restrictions and also recommends lifting the restriction on LSC-funded programs using federal funds to file class actions. The ABA strongly believes that class actions should be available to low income victims of unscrupulous practices. Should eliminating this restriction prove controversial, we urge the

Letter to Chairman Mollohan

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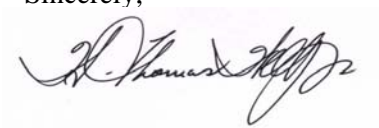
June 3, 2009

Subcommittee to consider compromise language that would enable groups of similarly targeted poor people to effectively and efficiently obtain justice in the courts.

Finally, in addition to working with Congress to oversee and more appropriately fund LSC, the ABA provides information and resources to strongly encourage and assist private lawyers to provide free legal services to persons of limited means. While individual lawyers cannot be expected to fulfill the government's obligation of ensuring access to the legal system for all, the ABA's 2008 study "*Supporting Justice II: A Report on the Pro Bono Work of America's Lawyers*" (released February 2009) shows that 73 percent of respondents, representing a broad range of practice settings including small and large firms, provide *pro bono* services to persons of limited means and to organizations that address the needs of persons of limited means. These attorneys spend an average of 41 hours a year on their *pro bono* cases. Many lawyers perform *pro bono* work working with the local legal aid program or through the local bar associations. The LSC, through its funding of private attorney involvement programs, provides the infrastructure and central coordinating resource that undergirds a major portion of the *pro bono* efforts of private lawyers nationwide.

We appreciate your support for the funding request, and we look forward to working with you to increase access to justice for all, including ways to address how these particular restrictions can be removed from future appropriations bills. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Thomas Wells, Jr.", written over a light pink rectangular background.

H. Thomas Wells, Jr.

cc:

Members, House CJS Appropriations Subcommittee

# NATIONAL CONFERENCE OF BAR PRESIDENTS

*The organization of the nation's present, past and future bar leaders*

• c/o AMERICAN BAR ASSOCIATION • DIVISION FOR BAR SERVICES • 321 N. CLARK STREET, FLOOR 20TH • CHICAGO, IL 60610-4714  
(312) 988-5353 FAX: (312) 988-5492

Contact: Julie M. Strandlie, ABA Governmental Affairs Office,  
202-662-1764; [jstrandlie@staff.abanet.org](mailto:jstrandlie@staff.abanet.org)

April 21, 2009

The Honorable Alan B. Mollohan  
Chairman, Subcommittee on  
Commerce, Justice and Science  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Frank R. Wolf  
Ranking Member, Subcommittee on  
Commerce, Justice and Science  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Mollohan and Representative Wolf:

As Presidents of State and Territorial Bar Associations and National Bars of Color, we urge your Subcommittee to increase Legal Services Corporation (LSC) funding in the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies bill. We support the bipartisan effort to close the justice gap in America and respectfully request that Congress provide LSC with at least \$435 million for FY 2010.

Thanks to your efforts and strong bipartisan support, Congress provided a much-needed \$40 million increase for FY 2009 over the FY 2008 level of \$350 million. That increase will help thousands of the most vulnerable Americans get access to critical legal assistance in matters where their home, their safety and their independence are at stake.

This year, we are asking Congress to provide another increase of at least \$45 million, from \$390 million to \$435 million, as the next step toward closing the justice gap and meeting the critical need that exists today because of the rise in foreclosures and unemployment and resulting loss of medical care. Today, 51 million Americans (including 18 million children) qualify for federally funded legal assistance. The 2005 LSC Justice Gap study reported that one in every two individuals who qualified for and actually sought assistance from LSC-funded programs was denied help because of lack of resources. Since 2006, one million more Americans now qualify for legal aid; the justice gap has grown and is likely to continue to grow this year as our country struggles to emerge from the current economic crisis. At the same time demand for help has increased, other major sources of funding for legal aid (including state appropriations, private giving and Interest on Lawyer Trust Account revenues) are declining or under severe stress.

The low-income and disadvantaged Americans who depend on LSC-funded legal aid organizations include people facing wrongful foreclosure of their homes due to predatory lending and other consumer fraud; women and children victimized by domestic violence; veterans denied the benefits our country promised them; and many other vulnerable members of our communities. Whether these people have access to the legal help they need could mean the difference between shelter and homelessness; medical assistance and unnecessary physical suffering; food on a family's table and hunger; economic stability and bankruptcy; productive work and unemployment. The failure to resolve their basic legal issues causes even greater hardship for them and often leads to their reliance on other government programs.

Bar Presidents' Letter  
April 21, 2009

LSC currently funds 137 local programs serving every county, state and Congressional District in the United States and its territories. These local programs provide direct services to approximately one million constituents who struggle to get by on incomes below or near the poverty line.

The bipartisan LSC Board requested \$485.1 million for FY 2010 in its attempt to close the justice gap over the next several years. Without continued incremental increases in federal funding, many more will be denied assistance in the future. We request your support to increase LSC funding to at least \$435 million to help meet this urgent need.

Thank you for your consideration of this request.

Sincerely,

M. Joe Crosthwait, Jr.  
National Conference of Bar  
Presidents

Rodney R. Wegener  
National Association of Bar  
Executives

J. Mark White  
Alabama State Bar

Mitchell A. Seaver  
Alaska Bar Association

Edward F. Novak  
State Bar of Arizona

Rosalind M. Mouser  
Arkansas Bar Association

Andrew T. Hahn, Sr.  
National Asian Pacific American  
Bar Association

Holly J. Fujie  
The State Bar of California

William E. Walters  
Colorado Bar Association

Livia D. Barndollar  
Connecticut Bar Association

Allen M. Terrell, Jr.  
Delaware State Bar Association

Ralph P. Albrecht  
The Bar Association of the  
District of Columbia

John G. White, III  
The Florida Bar

Jeffrey O. Bramlett  
State Bar of Georgia

Rai Saint Chu  
Hawaii State Bar Association

Ramona Romero  
Hispanic National Bar  
Association

Dwight E. Baker  
Idaho State Bar

Jack Carey  
Illinois State Bar Association

R. William Jonas, Jr.  
Indiana State Bar Association

Dan A. Moore  
Iowa State Bar Association

Thomas E. Wright  
Kansas Bar Association

Barbara D. Bonar  
Kentucky Bar Association

Elizabeth Erny Foote  
Louisiana State Bar Association

Virginia E. Davis  
Maine State Bar Association

Katherine Kelly Howard  
Maryland State Bar Association

Edward W. McIntyre  
Massachusetts Bar Association

Edward H. Pappas  
State Bar of Michigan

Michael J. Ford  
Minnesota State Bar Association

H. Rodger Wilder  
The Mississippi Bar

Thomas M. Burke  
The Missouri Bar

Chris D. Tweeten  
State Bar of Montana

Rodney G. Moore  
National Bar Association

Heather Dawn Thompson  
National Native American Bar  
Association

Robert M. Hillis  
Nebraska State Bar Association

Bruce Beesley  
State Bar of Nevada

Bar Presidents' Letter  
April 21, 2009

Ellen L. Arnold  
New Hampshire Bar Association

Peggy Sheahan Knee  
New Jersey State Bar  
Association

Henry Arthur Alaniz  
State Bar of New Mexico

Bernice K. Leber  
New York State Bar Association

Charles L. Becton  
North Carolina Bar Association

John B. McMillan  
North Carolina State Bar

David S. Maring  
State Bar Association of North  
Dakota

Gary J. Leppla  
Ohio State Bar Association

Jon K. Parsley  
Oklahoma Bar Association

Gerry Gaydos  
Oregon State Bar

C. Dale McClain  
Pennsylvania Bar Association

Arturo L. Hernandez  
Puerto Rico Bar Association

Victoria M. Almeida  
Rhode Island Bar Association

Flo Lester Vinson  
South Carolina Bar

Roxanne Giedd  
State Bar of South Dakota

George T. Lewis  
Tennessee Bar Association

Harper A. Estes  
State Bar of Texas

Nathan D. Alder  
Utah State Bar

Douglas L. Molde  
Vermont Bar Association

Pamela Lynn Colon  
Virgin Islands Bar Association

Manuel A. Capsalis  
Virginia State Bar

John D. Epps  
Virginia Bar Association

Mark A. Johnson  
Washington State Bar  
Association

Dwane L. Tinsley  
West Virginia State Bar

Diane S. Diel  
State Bar of Wisconsin

Richard L. Lavery  
Wyoming State Bar

May 12, 2009

The Honorable Barbara Mikulski  
Chairwoman, Subcommittee on  
Commerce Justice and Science  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

The Honorable Richard Shelby  
Ranking Member, Subcommittee on  
Commerce Justice and Science  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

Dear Chairwoman Mikulski and Senator Shelby:

**We write in support of an increase in Legal Services Corporation funding to at least \$435 million in the Fiscal Year 2010 Commerce, Justice, Science, and Related Agencies Appropriations Act.**

Thanks to your efforts and strong bipartisan support, the Omnibus Appropriations Act provided the Corporation with \$390 million for FY 2009, a much-needed increase over the FY 2008 level of \$350.5 million. Yet this is still far less than the amount appropriated in FY 1995, which would be about \$578 million in today's dollars, and even farther below the amount appropriated in FY 1981--\$749 million in today's dollars.

Therefore, we are requesting the Subcommittee provide a further increase of at least \$45 million as the next step toward closing the "justice gap" and meeting the greater need that exists today because of the economic crisis, which has increased the number of foreclosures, the numbers of the unemployed, and the number of individuals and families who now qualify for federally funded legal aid. We understand that the President will also request \$435 million for FY 2010, and the bipartisan Board of the Corporation has recommended \$485.1 million.

Today, 51 million Americans, including 18 million children, qualify for federally funded legal assistance. The 2005 "Justice Gap" study reported that one in every two individuals who qualified for and sought assistance from LSC-funded programs was denied assistance because of lack of resources. Since 2006, one million more Americans now qualify for legal aid. The justice gap has clearly grown and is likely to continue to grow as our country struggles to emerge from the serious recession. Other major sources of funding for legal aid, including state appropriations, private giving and Interest on Lawyer Trust Account revenues are declining or are under severe stress. Each year, tens of thousands of low-income individuals and families are denied access to justice because of the shortfall in these funds.

The Corporation's grantees focus on providing basic legal services, in accord with the intent of Congress that these federal funds should be used to resolve day-to-day legal problems of individual low-income clients. The Corporation currently funds 137 local programs serving every state, county, and Congressional District in the United States and its territories. These local programs provide direct services to approximately one million constituents struggling to get by on incomes below or near the poverty line. Beneficiaries include men, women and children, survivors of local and national disasters, the working poor, veterans, family farmers, and persons with disabilities. Their legal problems involve family relationships (including domestic violence and child custody), housing, health care, employment, and other basic needs. Our failure to resolve these issues causes even greater hardship for these persons.

Without continued increases in federal funding, many more of our most vulnerable citizens will be denied assistance in the future. **We urge you, therefore, to fund the Legal Services Corporation at no less than \$435 million for the coming fiscal year to help meet this critical need.**

Thank you for your consideration of our request.

Sincerely,

Ed Kennedy  
Tom Harkin  
Debbie Stabenow  
Max Baucus  
Mark Begich

Phil Hartung  
Olympia Snowe  
J. Ohm  
Baucarb  
John Cornyn



Bob Carey, Jr.

Chris DoM

John F. King

Jack O'Neil

Sherrill Brown

Jim Kirk

Jim Test

Ben Carli

Jay Ruppel

Tom Kramer

Kristen E. Gillibrand

Carl Swin

Jeff Bond

Jim

Gene McCasill

Deanne Shaker

Ann Feingold

Robert Menezy.

Herb Kohl

Dorothy Feinstein

Amy Klobuchar

Chuck Sch

Mark Udall

Frank R. Lautenberg

Janet K. Kaska

Jim Johnson

Patrick Leahy

John Sununu

Bill Nelson

Von Ullrich

Mark W. Warner

Bob Anderson

Blanche L. Lincoln

Maria Cantwell

Patty Murray

Jeffrey A. Merkley

Roland W. Burris

Jin Webb

Mark R. Womers

Kay R. Hazan

Wm F. B. J

Barb Bak

Mary Gandhi