

APPENDIX

REPORTS FROM 21 STATES IDENTIFY FEDERAL LEGAL SERVICES CORPORATION RESTRICTIONS AS A BARRIER TO JUSTICE

The reports cited below were written by state bar associations, court-established Access to Justice Commissions and state legal services planning bodies to evaluate the provision of legal services in a particular state and to document the impact of any shortcomings on unserved and underserved populations.

State commissions have found that the restrictions placed on organizations receiving federal Legal Services Corporation (“LSC”) funds:

- **Present “major barriers to justice for low-income persons . . .”** (Arkansas)
- **Prevent representation “in cases ranging from an illegal tenant lockout to consumer fraud, to civil rights enforcement.”** (New Hampshire)
- **Have a “negative impact,” “in actual practice (causing great inefficiencies in the way applicants for service must be processed and referred) and principle (denial of essential and fundamental legal assistance to some who need it).”** (New Jersey)
- **Are “major obstacles . . . for achieving ‘equal access’ for disfavored clients and politically unpopular cases.”** (Texas)
- **Limit programs’ “use of the most appropriate legal strategies to effectively represent low income clients with high priority legal needs.”** (Washington)

Excerpts from state reports:

1. Alaska

An Alaska state planning report discusses the problems created by the state’s dual program system. In 2000, Alaska Pro Bono Program, a new legal services program, was separated out of Alaska’s LSC-funded program, Alaska Legal services Corporation (“ALSC”), “primarily to free its pro bono attorneys from the LSC restrictions, which had impacted on ALSC’s advocacy in particularly unfortunate ways.”¹ Because of the restriction on non-LSC funds, each component of the state’s legal services delivery system has its own accounting, human resources management system, and case management system.²

2. Arkansas

According to the Center for Arkansas Legal Services, “federal funding cuts and restrictions on advocacy continue to present major barriers to justice for low-income persons in Arkansas.”³

3. California

The attorneys' fee award restriction is identified as particularly damaging by the California Legal Services Commission. Prior to the 1996 restrictions, LSC-funded organizations recovered \$1.75 million annually in attorneys' fees, and even having attorneys' fees as a "leveraged threat" helped in resolving problems for clients in the past. The Commission reports, "If this restriction were lifted, our state would immediately benefit."⁴

4. Georgia

In addition to mentioning that Georgia's growing poor population is putting a strain on the availability of affordable legal services, the state's Committee on Civil Justice finds that "[a]nother challenge arises because legal services providers are sometimes restricted in the types of cases they are authorized to handle," specifically citing LSC-funded organizations' inability to "initiate, participate, or engage in" class action lawsuits.⁵

5. Hawaii

A report from Hawai'i's Access to Justice Hui comments on the inadequacy of the civil legal services available to the state's incarcerated population, which grew 138 percent from 1990 to 2006. "Currently, ACLU of Hawai'i is the only legal service agency with the potential to assist the inmate population; however, due to their limited resources they only accept cases which would result in a larger impact on the overall corrections system" and cannot meet the "increased the need for individual legal assistance."⁶

Additionally, as one of its recommended "systematic changes," the report includes "increasing class action lawsuits to reduce illegal conduct against the poor."⁷ While several legal services providers operate in Hawaii, the Legal Aid Society of Hawai'i ("LASH"), which is LSC-funded and thus restricted, is by far the largest. LASH employs 39 of the state's 68.2 legal aid staff attorneys. The other 29.2 are spread across 12 fairly specialized organizations, leaving few legal aid attorneys to do the work that LASH is prohibited from doing.⁸

6. Idaho

Noting several of the groups of people unable to receive assistance from LSC-funded programs, in one state planning report, Idaho Legal Aid Services writes, "[t]here is a need to establish and/or support an entity or attorneys available to provide services to these populations."⁹ However, the report also comments that while the Idaho Justice Center was formed to handle LSC-prohibited work after the restrictions were enacted, "[t]he Center, although still in existence, is essentially inactive due to lack of resources."¹⁰

7. Illinois

In discussing gaps in current service and possible remedies, the Equal Justice Illinois Campaign recommends that privately funded entities be developed in order to utilize the advocacy tools no longer available to LSC-funded organizations, specifically class action lawsuits. "The three LSC-funded programs in Illinois . . . still engage in policy work and impact litiga-

tion within the limits set by the 1996 regulations, but they are barred from using many of the tools and strategies that had been most effective in the past.”¹¹

The Campaign also suggests that new methods be developed to address the currently unmet legal needs of certain groups that are ineligible for LSC-funded organizations’ help, including immigrants. While the state’s three LSC-funded organizations’ offices are geographically well-distributed, covering distinct areas across the state and thus collectively able to serve clients statewide, non-LSC-funded legal services providers that direct services at LSC-ineligible cases, like those involving immigrants, are headquartered in urban centers and do not have the resources to establish regional offices. Because of the specialization of services required by the restrictions, “geography is a major impediment to the efficient delivery of legal services.”¹²

The Campaign’s report also stresses the need to diversify funding for legal services programs because, “[w]hile LSC was intended to serve as a stable source of general operating funds for its grantee organizations, free from the vicissitudes of politics, this has not proven to be the case.”¹³ As is true with most states, LSC funding as a proportion of total funding for legal services has been declining in Illinois, representing only 40 percent of the state’s legal aid funding in 2007.¹⁴

8. Maryland

Discussing the statewide provision of legal services, the Legal Aid Bureau (“LAB”) of Maryland reports that “due to LSC restrictions, it is unable to assist prisoners meaningfully and unable to assist most immigrants at all.”¹⁵ The report explains that immigrant populations are going underserved in the state because only a few non-LSC funded programs exist that “focus resources on immigrants/low-English capability persons.” None of these programs, the report notes, are able to provide the full range of legal services that LAB offers.¹⁶

9. Michigan

A Michigan state planning report asserts that the restrictions prevent Michigan legal services programs from ensuring a “full range of services” to all low-income people with legal problems. The report urges LSC to “ameliorate these over broad restrictions” and details how the class action, attorneys’ fee award and prisoner-related restrictions have prevented programs from meeting clients’ needs completely.¹⁷

Detailing “examples of restrictions that low income advocates have identified as interfering with full services to clients,” the report states:¹⁸

Class Actions. There are many relatively routine civil disputes that can only be handled efficiently through the procedural tool of class actions. Under the current restrictions, LSC-funded programs cannot efficiently litigate these claims. The results are that claims may be litigated in a very inefficient manner (for the courts, the clients, and for all the parties) or that the legitimate claims of low income consumers cannot be raised . . .¹⁹

Attorneys' Fees. Under Michigan law, a nominal fee applies to every case handled in Michigan courts . . . There are other cases (e.g., under Fair Housing statutes or consumer protection laws) where congressional policy clearly favors fee-shifting and where prohibiting low income clients from raising a fee claim significantly undermines an LSC-funded program's ability to adequately represent the client . . . [B]ecause an LSC program is prohibited from raising the fee claim, the client is punished—their claim is now worth less than congress intended when it passed the law . . . The fee provision places legal services attorneys in a terrible ethical bind: it is ethically difficult to accept this type of case, because the value of the case to the client is significantly diminished if the client is represented by an LSC-funded program; it is ethically difficult to reject the case because, as a practical matter, no other counsel is available to the client.²⁰

Claims on Behalf of Prisoners. While this prohibition might appear to be aimed at prisoners' rights cases, the reality is that there has been little or no prisoners' rights litigation filed by Michigan programs for many years. Most claims on behalf of 'prisoners' historically handled by Michigan programs are priority cases in family law or housing law areas where an eligible client is incarcerated for a short period of time for reasons not directly related to the civil legal case . . . The effect of this restriction is that vulnerable clients with compelling civil cases that fit directly within traditional legal services' case priorities are left without counsel as they face a court hearing.²¹

10. Minnesota

Prior to the 1996 restrictions, Mid-Minnesota Legal Assistance ("MMLA") used to deliver services for Central Minnesota Legal Services ("CMLS"), an LSC-funded entity, in a sub-contract arrangement. However, a state planning report details that, "[s]ince over 83 percent of MMLA's funds were non-LSC, and since MMLA's other funders did not share Congress's support of the restrictions, MMLA's board declined to let a minority stakeholder control all of MMLA's activities." The MMLA/CMLS contract was terminated.²²

11. Missouri

A state planning report states:

Restrictions imposed by Congress on legal services providers are also barriers that need to be addressed. One of the most troublesome restrictions is the prohibition on legal services providers requesting or collecting attorney fees from opposing parties. The restriction on filing class actions suits removes one tool that all attorneys, other than those working for a legal services program, have at their disposal to help clients.²³

12. New Hampshire

A state planning report describes the federal restrictions as “an additional challenge” for legal services providers. Congressional restrictions on seeking attorneys’ fee awards “prevent legal services representation in cases ranging from an illegal tenant lockout to consumer fraud, to civil rights enforcement.” The report also notes that prohibitions on class actions, and representation in rule making and legislative proceedings “ended services customarily provided to clients by LSC funded programs in New Hampshire for nearly twenty-five years.”²⁴

13. New Jersey

Despite the “degree of coordination and structured collaboration” among New Jersey’s legal services providers that “is not matched elsewhere,” a state planning report strongly emphasizes the “negative impact” of the “discouraging and constricting” restrictions “in actual practice (causing great inefficiencies in the way applicants for service must be processed and referred) and principle (denial of essential and fundamental legal assistance to some who need it).” The report envisions a system in which “restrictions based upon negative views toward certain categories of clients, or certain types of legal problems or situations” are not imposed on legal services work.²⁵

In its discussion of the strengths of the current legal services system, the report notes that the New Jersey State Bar Association has worked against restrictions on legal services, and that New Jersey Legal Services, “not encumbered by the myriad LSC restrictions,” can lobby on issues concerning low-income people’s legal problems. The report finds that “major challenges” still include “[f]inding new, more efficient approaches for addressing on a broader scale recurrent, repetitious and costly legal problems and case types, including adequate representational capacity in alternative forums, such as the legislature and administrative agencies,” forums in which LSC-funded organizations’ activities currently are restricted.²⁶

14. New Mexico

A report by the New Mexico’s Access to Justice Commission lists funding state legal services priorities as its first funding goal: “Highest priority should be given to obtaining state goals for the system.”²⁷ However, the federal restriction on non-LSC funds ensures that state goals cannot govern the use of all funds, nor can they govern the use of just state-appropriated funds. The federal government’s application of the restrictions to the entire pool of money received by LSC grantees ensures that state goals cannot take precedence.

Along with increased federal LSC funding, the Commission recommends the “removal of Congressional restrictions on LSC recipients” and states that the Commission “should actively support any efforts by the National Legal Aid and Defender Association (NLADA) to remove or modify selected restrictions on LSC funds.”²⁸

15. North Carolina

A report by the Legal Services Planning Council describes how the restrictions related to representing immigrants greatly affect the ability of Legal Aid of North Carolina’s “Farmworker

Unit” to serve all migrant farmworkers in the state. Specifically, the report identifies the ban on class actions as negatively affecting the representation of H-2A (temporary foreign agricultural) workers in North Carolina, as it states that challenging “illegal but widespread practices” among employers without a class action is “impossible.”²⁹

16. Oklahoma

In its assessment of the legal services system’s weaknesses, the Oklahoma Bar Association states that because of “institutional barriers or LSC restrictions,” some client groups are “especially under-served,” identifying nursing home residents, the mentally ill, juveniles, incarcerated persons with civil problems, and undocumented aliens as examples.³⁰

17. Pennsylvania

A 1998 Pennsylvania state planning report highlights the disparity between LSC funding amounts and the ultimate percentage of total legal services’ funds that falls under the federal restriction. In 1998, Pennsylvania legal services organizations received 37 percent of the funding from LSC; however, 17 LSC-funded organization received “substantial amounts of other funding,” and because of the federal restriction on non-LSC funds, “a total of 75 percent of the legal services funding in Pennsylvania is *de facto* restricted in this way.” The report suggests that funding be reallocated to “un-restrict” services so that “residents everywhere in the state, and/or special client populations that currently need unrestricted services but are not covered by an unrestricted program would be covered.”³¹ (Today, even with non-LSC funds going to unrestricted legal services providers, the LSC restrictions encumber the \$25.6 million that LSC-funded Pennsylvania programs receive from non-LSC sources.³²)

18. Texas

A state plan for the delivery of civil legal services states:

For those who truly believe in the concept of ‘equal justice for all,’ a state system for the delivery of legal services to the poor must contain adequate resources for the representation of clients who are ineligible for federally-funded legal services and for those eligible but whose legal needs cannot be met by the LSC grantees due to restrictions. Unfortunately, there are major obstacles in Texas for achieving ‘equal access’ for disfavored clients and politically unpopular cases.³³

The delivery plan finds, “Texas needs an unrestricted source of funds that will allow any indigent person full access to the system of justice without limitations or exceptions.”³⁴

In a self evaluation report, the Texas Access to Justice Commission stresses the need to resolve the “dual dilemma” of inadequate funding and restrictions on legal services programs.³⁵

19. Virginia

A state planning report identifies providing low-income people “access to a full range of services” as a primary goal and lists encouraging the removal of restrictions at a national level as the first strategy for accomplishing this goal.³⁶ The report also recommends that each program monitor the federal restrictions’ impact on clients and develop a plan for helping all clients gain access to an attorney with “an appropriate range of legal options.”³⁷

20. Washington

In a study of the implementation of regional access to justice plans, the Washington Access to Justice Commission identifies, in almost every region of the state, a dearth of services available for those who are ineligible for state or federally funded legal services due to restrictions. The Commission finds the restrictions to be “highly problematic obstacles to access to justice.”³⁸ “Planners also noted that confusion still exists regarding how the legal aid entities relate to each other.”³⁹

The Commission states:

. . . federal and state legislative restrictions continue to significantly limit the Alliance [for Equal Justice]’s ability to provide access and a full range of civil legal services to all low income communities by excluding certain classes of clients from publicly funded legal assistance, and limiting the Alliance’s use of the most appropriate legal strategies to effectively represent low income clients with high priority legal needs.⁴⁰

21. West Virginia

A state planning report states:

No firm, group or organization now provides widely available access to the legal system, or even information, except the LSC funded programs which are limited by the various LSC regulations on client eligibility, reporting and subject restrictions. A large number of needs of low income people remain unmet because of limited funding for non-LSC programs and restrictions on LSC programs.⁴¹

¹ Alaska Legal Services Corporation, *State Planning Self-Evaluation Report*, at 12 (2002), available at http://www.lri.lsc.gov/state_planning/slfevals/ak_slfeval_02.pdf.

² *Id.* at 26.

³ Center for Arkansas Legal Services, *Forging New Standards of Excellence II: A Re-Examination of the Arkansas State Plan for the Delivery of Legal Services to the Poor*, at 5 (1998), available at http://www.lri.lsc.gov/state_planning/stateplans/AR604061.pdf.

⁴ California Legal Services Coordinating Committee, *California State Justice Plan 2001:Response to LSC Program Letter 2000-1*, at 32 (2001), available at http://www.lri.lsc.gov/state_planning/

slfevals/ca_slfeval_01.pdf.

- 5 The Committee on Civil Justice, *Addressing the Legal Needs of Georgia's Poor*, at 39 (Oct. 2006), available at http://www.gaccj.org/pdf/bar_journal.pdf.
- 6 Hawai'i Justice Foundation et al., *Achieving Access to Justice for Hawai'i's People, The Community Wide Action Plan: Ten Action Steps to Increase Access to Justice in Hawai'i by 2010 and The 2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People in Hawai'i*, at II-24 (Nov. 2007), available at <http://www.hsba.org/resources/1/Documents/Access%20to%20Justice.pdf>
- 7 *Id.* at II-46.
- 8 *Id.* at II-35.
- 9 Idaho Legal Aid Services, Inc., *Idaho's State Plan and Self Evaluation*, at 18 (Jun. 2002), available at http://www.lri.lsc.gov/state_planning/slfevals/id_slfeval_02.pdf.
- 10 *Id.* at 21.
- 11 The Chicago Bar Foundation et al., *The Legal Aid Safety Net: A Report on the Legal Needs of Low-Income Illinoisans*, at 170 and 181 (Feb. 2005), available at <http://www.equaljusticeillinois.org/docs/LegalNeeds.pdf>.
- 12 *Id.* at 53 and 60.
- 13 *Id.* at 127.
- 14 Legal Services Corporation, *Fact Book 2007*, at 9 (June 2008), available at <http://www.lsc.gov/pdfs/factbook2007.pdf>.
- 15 Legal Aid Bureau, Inc., *Response to Program Letter 2000-7*, at 6 (Aug. 2002), available at http://www.lri.lsc.gov/state_planning/slfevals/md_slfeval_02.pdf.
- 16 *Id.* at 7.
- 17 The State Bar of Michigan, The Michigan State Bar Foundation & The Legal Services Association of Michigan, *Michigan State Planning Report*, at 27-29 (Sept. 1998), available at http://www.lri.lsc.gov/state_planning/stateplans/MI423110.pdf.
- 18 *Id.* at 27.
- 19 *Id.* at 27-8.
- 20 *Id.* at 28-9.
- 21 *Id.* at 29.
- 22 *Minnesota State Planning Self-Evaluation Report*, at 30-31 (Sept. 2001), available at http://www.lri.lsc.gov/state_planning/slfevals/mn_slfeval_02.pdf.
- 23 *Coordination Committee for Legal Services and Related Pro Bono Program, State Plan for Missouri*, at 6 (1998), available at http://www.lri.lsc.gov/state_planning/stateplans/MO526020.pdf.
- 24 *State Planning Report of the New Hampshire Legal Services Community*, at 3 (Oct. 1998), available at http://www.lri.lsc.gov/state_planning/stateplans/NH130010.pdf.
- 25 Legal Services of New Jersey, *Justice for All 2000: A Master Plan for Legal Services in New Jersey 1999-2001*, at 7 and 12 (Sept. 1998), available at http://www.lri.lsc.gov/state_planning/stateplans/NJ331016.pdf.
- 26 *Id.* at 8 and 10-11.

- 27 *State Plan for Providing Civil Legal Aid to Low Income New Mexicans*, Access to Justice Commission, at 28 (May 2007), available at <http://www.nmbar.org/Attorneys/ATJ/2007StatePlanforProvidingCivilLegalAidtoLowIncomeNewMexicans.pdf>.
- 28 *Id.* at 30.
- 29 North Carolina Legal Services Planning Council, *North Carolina Statewide Legal Needs Assessment*, at 49 (2003), available at https://www.legalaidnc.org/Public/Participate/Legal_Services_Community/Planning_Council/NC%20Statewide%20Needs%20Assessment%2003%2024%2003.pdf.
- 30 Oklahoma Bar Association, *Oklahoma State Legal Services Plan*, at 9 (1998), available at http://www.lri.lsc.gov/state_planning/stateplans/OK737056.pdf.
- 31 Pennsylvania State Planning Steering Committee, *The Action Plan for a Statewide Integrated Legal Services Delivery System*, at 40-4 (1998), available at www.lri.lsc.gov/state_planning/stateplans/PA339131.pdf.
- 32 Legal Services Corporation, *Fact Book 2007*, at 10 (June 2008), available at <http://www.lsc.gov/pdfs/factbook2007.pdf>.
- 33 Texas Steering Committee, *The 1998 Texas Plan: Planning for the Delivery of Civil Legal Services in Texas*, at 32 (Sept. 1998), available at http://www.lri.lsc.gov/state_planning/stateplans/TX744116.pdf.
- 34 *Id.* at 33.
- 35 *Self Evaluation Report for Texas Access to Justice Community in Response to LSC Program Letter 2000-7*, at 10 (Feb. 2003), available at http://www.lri.lsc.gov/state_planning/slfevals/tx_slfeval_03.pdf.
- 36 Legal Services Corporation of Virginia, *Virginia Civil Legal Services Delivery System Planning Report 1998*, at 19 (Dec. 1998), available at http://www.lri.lsc.gov/state_planning/stateplans/VA447081.pdf.
- 37 *Id.* at 14.
- 38 Access to Justice Board State Plan Oversight Committee, *State Plan Implementation Update Report*, at 32 (May 2008), available at <http://www.wsba.org/atj/committees/spocimplementationupdate.pdf>.
- 39 *Id.* at 9.
- 40 *Id.* at 32.
- 41 *West Virginia LSC State Planning Report – 1998*, at 24 (1998), available at http://www.lri.lsc.gov/state_planning/stateplans/WV449020.pdf.