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Cut Off & Cut Out*

Funding Shortfalls Force More Low-Income Families to Face Critical Legal Needs Alone

*The Brennan Center is continuing to solicit stories and statistics from civil legal aid providers on the impact of funding shortfalls. If you have information to share about your state or organization please contact Neeta Pal at nabanita.pal@nyu.edu or 646-292-8348.

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By Neeta Pal

Our nation's civil legal aid system is in crisis. The weak economy continues to send more low-income families into our overburdened court system without legal help. At the same time, Congress has cut back on federal funding in the latest spending compromise – and threatens to inflict deeper cuts in the next budget cycle. Making matters worse, these federal cuts occur against the backdrop of plummeting contributions from other sources of funds.

The federal spending compromise passed by Congress in April cuts funding for the Legal Services Corporation (LSC) – which in turn funds civil legal aid programs around the country – to \$404.2 million, amounting to a \$15.8 million or 3.8 percent cut. LSC grantees will bear the brunt of this cut over a concentrated six-month period. As a result, the actual cut absorbed by local programs will be about 5 percent.

After federal LSC grants, Interest on Lawyer Trust Account (IOLTA) programs – which pool interest from lawyers' trust accounts – are the largest source of revenue for civil legal aid programs across the country. In 2008, IOLTA revenue accounted for almost 13 percent of the income of the nonprofit civil legal aid programs that also receive funding from LSC. For non-LSC-funded organizations, IOLTA revenue is typically even more critical. IOLTA revenue has plummeted due to declining interest rates. In 2007, IOLTA income reached an all-time high of \$371.2 million nationally. That figure fell to \$284 million in 2008, a 25 percent drop. In 2009, income dropped a further 57 percent to \$124.7 million.¹

Calls for fiscal austerity threaten to destabilize legal aid services further. The House's budget resolution for fiscal 2012 calls for deep cuts in domestic spending that could translate

¹ Data supplied by the ABA Commission on IOLTA (on file with the Brennan Center).

into significant additional cuts to LSC's budget. Proposals under consideration in statehouses across the country would also roll back funding for civil legal services.

In contrast, President Obama's budget proposal for fiscal 2012, which recommends increasing LSC funding to \$450 million, recognizes that legal aid programs are at the front lines on the uphill road to economic recovery. Like other social service providers, civil legal aid offices assist individuals with problems borne of the recession such as obtaining unemployment insurance or intervening in family violence. LSC grantees need more resources than ever before to assist the growing number of Americans living close to poverty.

Recession's Impact Continues

The recession continues to exacerbate the legal needs that low income families face, straining the capacity of court systems to adequately address needs. The following are only some of the ways in which the economy is creating new legal needs.

- *Courts Face Pressure from Growing Numbers of Pro Se Litigants.* An American Bar Association survey of nearly 1,000 state judges in late 2009 shows that courtrooms are increasingly stretched thin by rising numbers of *pro se* litigants.² Sixty percent of judges surveyed reported that they observed fewer parties being represented by counsel. Sixty-two percent of judges surveyed stated that litigants without lawyers were negatively impacted by their lack of representation. Seventy-eight percent of judges surveyed also said that the court was negatively impacted when faced with unrepresented parties.
- *Foreclosures.* Foreclosure rates have increased over 380 percent since 2006, reaching record levels in 2010.³ In 2010, almost 2.9 million homes received foreclosure filings – a number that translates to one in 45 homes, or 2.23 percent of all homes in the United States.⁴ The Federal Reserve estimates that there will be 2.25 million foreclosure filings in 2011 and 2 million in 2012.⁵ The overwhelming majority of families facing the loss of their home continue to do so without legal representation.

² ABA COALITION FOR JUSTICE, REPORT ON THE SURVEY OF JUDGES ON THE IMPACT OF THE DOWNTURN ON REPRESENTATION IN THE COURTS (2010) *available at* <http://www.americanbar.org/content/dam/aba/migrated/JusticeCenter/PublicDocuments/CoalitionforJusticeSurveyReport.authcheckdam.pdf>.

³ Press Release, RealtyTrac, *Record 2.9 Million U.S. Properties Receive Foreclosure Filings in 2010 Despite 30-Month Low in December* (Jan. 12, 2011), <http://www.realtytrac.com/content/foreclosure-market-report/record-29-million-us-properties-receive-foreclosure-filings-in-2010-despite-30-month-low-in-december-6309>.

⁴ *Id.*

⁵ CONGRESSIONAL OVERSIGHT PANEL, A REVIEW OF TREASURY'S FORECLOSURE PREVENTION PROGRAMS 10 (2010), *available at* <http://cop.senate.gov/documents/cop-121410-report.pdf> (citing Sarah Bloom Raskin, member, Bd. of Governors of the Fed. Reserve System, Remarks at the National Consumer Law Center's Consumer Rights Litigation Conference, Boston, Mass., Problems in the Mortgage Servicing

- *Domestic Violence.* Organizations that provide support for victims of domestic violence have reported more requests for help during the recession. Domestic violence-related calls to a Palm Beach/Treasure Coast (Florida) hotline providing crisis intervention rose 83 percent between 2006 and 2010.⁶ The National Domestic Abuse Hotline, headquartered in Austin, Texas, documented a 21 percent increase in calls from the third quarter of 2007 to the third quarter of 2008.⁷ Police departments across the nation are also reporting a spike in domestic violence. In 2009, Philadelphia saw a 67 percent increase in domestic homicides – 35 more cases than 2008 – prompting the police commissioner to institute protocol changes for handling emergency calls.⁸ The police department in Hingham, Massachusetts, also reported a similar increase, with the number of domestic violence cases up 62 percent between October 2008 and February 2009.⁹
- *Unemployment.* In March 2011, the overall unemployment rate was 8.8 percent, down from 9.7 percent in March 2010 but still up significantly from pre-recession levels of 4.4 percent in March 2007.¹⁰ There were 118,523 initial claims for unemployment insurance filed in March 2011.¹¹
- *Food Stamps.* The average number of people receiving federal Supplemental Nutrition Assistance benefits every month jumped from 26.5 million in 2007¹² to 44.1 million in January 2011.¹³ As applications rise, so too does the number of people who need legal help making their way through the process in order to feed their families.

Industry, at 2 (Nov. 12, 2010), *available at*

<http://www.federalreserve.gov/newsevents/speech/bloomraskin20101112a.pdf>).

⁶ Palm Beach/Treasure Coast 211, *Domestic Violence Calls Increasing With Bad Economy*, Press Release (2010) *available at*: <http://news.211pbtc.org/press/domesticviolence.pdf>

⁷ Malavika Jagannathan, *Domestic Abuse Shelters, Hot Lines See Increase in Calls*, Green Bay Press Gazette, Jul. 22, 2009.

⁸ Ian Urbina, *Philadelphia to Handle Abuse Calls Differently*, N.Y. TIMES, Dec. 30, 2009, <http://www.nytimes.com/2009/12/31/us/31philadelphia.html?partner=rss&emc=rss>.

⁹ Maria Cramer, *Economy fuels rise in crime, policy say*, Boston Globe, Mar. 10, 2009, http://www.boston.com/news/local/massachusetts/articles/2009/03/10/economy_fuels_rise_in_crime_policy_say/.

¹⁰ See Bureau of Labor Statistics, U.S. Department of Labor, Economic News Release, Selected Unemployment Indicators, Seasonally Adjusted, *available at*

<http://www.bls.gov/news.release/empst.t10.htm>; Bureau of Labor Statistics, U.S. Department of Labor, Unemployment Rate in March 2007, *available at* <http://www.bls.gov/opub/ted/2007/apr/wk2/art01.htm>.

¹¹ See Bureau of Labor Statistics, Department of Labor, Table 1. Mass layoff events and initial claimants for unemployment insurance, February 2006 to January 2010, seasonally adjusted, Economic News Release, *available at* <http://bls.gov/news.release/pdf/mmls.pdf>.

¹² U.S. Dept. of Agriculture, Supplemental Nutrition Assistance Program Average Monthly Participation Data (data as of Mar. 31, 2011), *available at* <http://www.data.gov/raw/2083>.

¹³ U.S. Dept. of Agriculture, Supplemental Nutrition Assistance Program Monthly Data, (data as of Mar. 31, 2011), *available at* <http://www.fns.usda.gov/pd/34SNAPmonthly.htm>.

- *Unpaid Wages.* More and more among the working poor are seeking legal help to obtain unpaid wages, as employers fail to pay the promised amount or pay less than minimum wage. Construction, restaurant and janitorial workers have a greater chance of experiencing wage theft, especially if they are not proficient in English. In 2009, the District of Columbia's Office of Wage-Hour saw a 20 percent increase in the number of workers seeking help to recover stolen wages since 2008.¹⁴ In March 2010, the Legal Aid Society of Cleveland reported that wage theft cases had tripled in the past year.¹⁵

Programs Hit Hard Across the Country

Against the backdrop of such pressing needs, funding shortfalls from state, federal and private sources have resulted in layoffs, salary reductions, and elimination of specific programs or entire legal aid offices. Below is a round-up of the impact in various states.

Arizona

- In January 2011, Southern Arizona Legal Aid closed its Santa Cruz Office after 25 years of serving clients. Santa Cruz residents seeking legal assistance will now have to travel 60 miles to Tucson.¹⁶

Cook County/Chicago

- Poverty rose substantially between 2000 and 2009 in Chicago and the surrounding suburbs. As of 2009, there were 211,000 more people living below 150 percent of the poverty level.¹⁷
- Funding from the Illinois Equal Justice Foundation, which distributes money appropriated by the state for civil legal services, fell by 50 percent in 2009.¹⁸

¹⁴ N.C. Aizenman, *Immigrants vulnerable as recessions spurs more bosses to shortchange workers*, The Washington Post, Mar. 17, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/16/AR2010031604369.html?sid=ST2010031604466>.

¹⁵ Olivera Perkins, *More workers being cheated out of wages, experts say*, The Plain Dealer, Mar. 13, 2010, http://www.cleveland.com/business/index.ssf/2010/03/more_workers_being_cheated_out.html.

¹⁶ Manuel C. Coppola, *Southern Arizona Legal Aid shut down in SCC*, Nogales International, Jan. 7, 2011, <http://www.nogalesinternational.com/articles/2011/01/07/news/doc4d273075cc44e910862856.txt>

¹⁷ CHICAGO BAR FOUNDATION, *LEGAL AID IN COOK COUNTY: A REPORT ON BASIC TRENDS IN NEED, SERVICE AND FUNDING 4* (2010), available at http://www.chicagobarfoundation.org/images/stories/About-Us/publications__research/2010_legal_aid_report.pdf.

¹⁸ *Id.* at 6.

- In 2009, limited resources allowed Cook County’s legal aid hotline (Coordinated Advice and Referral Program for Legal Services or CARPLS) to only respond to one-third of the nearly 120,000 incoming calls.¹⁹
- Programs reporting to the Chicago Bar Foundation have reported that specific legal problems are on the rise: between 2002 and 2009, offices addressed nearly 14,000 more consumer-related programs and 30,000 more family law problems.²⁰

Florida

- In 2010, the number of cases represented by staff attorneys at Legal Services of Greater Miami (LSGMI) rose 16 percent; cases brought for information and referral services rose 27 percent.²¹
- LSGMI has had to reduce staff size due to declining funding. In 2012, LSGMI will have 30 attorneys on staff, down from 35 in 2010, assuming no further cuts in federal funding.²²

Georgia

- In fiscal year 2010-2011, IOLTA funding for the Georgia Legal Services Program (“GLSP”) dropped 50 percent, by approximately \$700,000. Cuts in state appropriations during the same time period resulted in a \$120,000, or 10 percent, reduction in funding for GLSP.²³
- Georgia’s state legislature is considering an \$80,000 cut to the Judicial Council’s domestic violence services funding, of which GLSP receives \$51,000 a year. The cut, which would amount to \$25,000 for the remainder of the fiscal year, would prevent GLSP from representing 64 clients in domestic violence cases.²⁴
- Since 2009, GLSP has stopped representing cases in a number of categories – including family law, employment discrimination, worker compensation, and with some exceptions, immigration – in order to respond to a rising number of recession-

¹⁹ *Id.* at 4.

²⁰ *Id.* at 14.

²¹ Telephone Interview with Marcia Cypen, Executive Director, Legal Services of Greater Miami (May 12, 2011).

²² *Id.*

²³ Email from Phyllis Holmen, Executive Director, Georgia Legal Services Program (April 22, 2011).

²⁴ Vicky O. Kimbrell, *A little can go a long way to aid domestic violence victims*, Atlanta Journal Constitution, February 16, 2011.

related cases dealing with unemployment benefits, food stamps and health care coverage.²⁵

Idaho

- Idaho Legal Aid Services, which receives 60 percent of its funding from LSC, will cut staff hours in nine of its offices as a result of \$250,000 lost in LSC funding.²⁶ The state legislature failed to approve a court filing fee measure to offset the federal cutback.²⁷ As a result of such funding shortages, which will force Idaho Legal Aid Services to close on certain days and operate for limited hours, the program estimates that it will only be able to serve one out of every five people seeking help.²⁸

Iowa

- Responding to rising need, Iowa Legal Aid closed a total of 23,786 cases in 2010, up from 13,796 in 2006.²⁹
- In the current state legislative session, the House has proposed to reduce state funding for civil legal services – currently at \$1.93 million –by 50 percent, while the Senate has proposed a \$150,000 reduction. In 2010, Iowa Legal Aid instituted a hiring freeze, leaving five support staff positions vacant, in order to accommodate funding shortfalls.³⁰

Maine

- Pine Tree Legal Assistance estimates that the \$64,000 it lost in LSC funding in fiscal 2011 will force it to turn away 125 families who need help.³¹ By the end of 2011, Pine Tree Legal Assistance will have eliminated seven staff positions.³²

²⁵ Email from Phyllis Holmen, Executive Director, Georgia Legal Services Program (April 22, 2011).

²⁶ John Miller, *Legal non-profit to shutter offices amid money woes; bill stalls amid Farm Bureau opposition*, Daily Journal, May 12, 2011, <http://www.dailyjournal.net/view/story/665c74923514458bb0a6325cdbfae5e4/ID--Legal-Aid-Cutbacks/>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Telephone Interview with Pat McClintock, Deputy Director, Iowa Legal Aid (April 20, 2011).

³⁰ *Id.*

³¹ Tom Porter, *Maine Legal Services Providers Decry Federal Budget Cuts*, Maine Public Broadcasting Network, Apr. 27, 2011, <http://www.mpbn.net/Home/tabid/36/ctl/ViewItem/mid/3478/ItemId/16166/Default.aspx>.

³² Telephone Interview with Nan Heald, Executive Director, Pine Tree Legal Assistance (May 18, 2011).

Maryland

- Since 2009, nine out of 11 Maryland Legal Aid Bureau offices have reported a 15 percent increase in caseloads. Consumer law and foreclosure cases are particularly on the rise.³³
- Maryland saw a 70 percent drop in IOLTA income between fiscal year 2008 and 2010 (from \$6.7 million to approximately \$2 million). In response, the state legislature passed a measure in 2010 that directed money generated through increased court fees to civil legal services.³⁴

Massachusetts

- Since 2008, Massachusetts legal aid offices have reported a 40 percent rise in demand for legal assistance. Some Massachusetts Legal Assistance Corporation (MLAC) funded programs have lost 33 percent of their staff since fiscal year 2008. In the same time period, MLAC has reduced its grants by 55 percent.³⁵

Minnesota

- Proposed budgets for 2012 and 2013 in the state legislature would cut funding for civil legal services significantly. The Senate proposes a 6.4 percent cut for each year and the House proposes an 8 percent cut in 2012 and a 25 percent in 2013. The House's proposal adds up to a \$3 million reduction over two years, which is a quarter of the state's appropriations for legal aid programs.³⁶

Nebraska

- A drop in IOLTA income in 2010 forced Legal Aid of Nebraska to eliminate seven staff positions. Compared to \$515,000 generated in 2007, Legal Aid anticipates only \$40,000 to \$50,000 from IOLTA income in 2011. As a result of such funding shortfalls, Legal Aid now serves approximately 10 percent fewer clients.³⁷

³³ Telephone Interview with Joe Surkiewicz, Communications Director, Maryland Legal Aid Bureau (April 20, 2011).

³⁴ *Id.*

³⁵ Lonnie Powers, *Tied to the Railroad Track Once Again: The Perils of Legal Aid Funding*, Non Profit Quarterly, February 23, 2011.

³⁶ Patrick Thorton, *Proposed Minnesota budget leaves courts untouched, cuts civil legal aid*, Minnesota Lawyer, Mar. 25, 2011.

³⁷ Email from Dave Pantos, Executive Director, Legal Aid of Nebraska (May 11, 2011).

New Jersey

- According to a report by the Poverty Research Institute of Legal Services of New Jersey (LSNJ), nearly 2 million residents lived at 200 percent of the federal poverty level as of 2009 – up 150,000 people from 2008.³⁸
- In 2007, LSNJ received \$73 million in state funding and had 720 employees; by 2009, state funding dropped to \$54 million,³⁹ with LSNJ staff shrinking to below 500 at the end of 2010.⁴⁰ LSNJ's president and general counsel predicted that offices would serve 11,000 fewer clients as a result of an additional \$9.7 million cut in state appropriations in 2010.⁴¹
- In 2010, LSNJ regional offices across the state laid off staff in multiple rounds: Northeast New Jersey Legal Services, Northwest Jersey Legal Services and Ocean Monmouth Legal Services together laid off 49 employees.⁴² South Jersey Legal Services projected downsizing its 95-person staff by 27 employees at the end of 2010.⁴³
- New Jersey has experienced one of the greatest drops in IOLTA income in the nation. In 2007, LSNJ received \$40.2 million from IOLTA accounts. In 2010, IOLTA generated income had fallen nearly 78 percent to \$8.9 million.⁴⁴

New York

- The state budget for 2011-2012 eliminated a \$15 million Foreclosure Prevention Services Program, which provided critical support for housing counselors and legal

³⁸ LEGAL SERVICES OF NEW JERSEY POVERTY RESEARCH INSTITUTE, POVERTY BENCHMARKS 2011: ASSESSING NEW JERSEY'S PROGRESS IN COMBATING POVERTY 8 (2011) available at <http://www.lsnj.org/PDFs/budget/Benchmarks2011.pdf>.

³⁹ Colin Asher, *Recession and State Budget Cuts Force Hudson County's Legal Services Office to Do More with Less*, Jersey City Independent, Oct. 8, 2010, <http://www.jerseycityindependent.com/2010/10/08/recession-and-state-budget-cuts-force-hudson-countys-legal-services-office-to-do-more-with-less/>.

⁴⁰ Deena Yellin, *Free legal aid to poor dwindles after state funding cuts*, The Record, Jul. 18, 2010, http://www.northjersey.com/news/98654849_State_budget_cuts_force_legal_aid_group_to_limit_free_services.html?c=y&page=1.

⁴¹ *Id.*

⁴² Charles Toutant, *Cash Squeezed Legal- Services Offices Make Major Cuts*, N.J. Law Journal, Aug. 27, 2010, http://www.law.com/jsp/article.jsp?id=1202471151215&CashSqueezed_Legal_Services_Offices_Make_Major_Cuts&slreturn=1&hbxlogin=1.

⁴³ *Id.*

⁴⁴ Chris Megerian, *Legal Services of N.J. fighting to help the poor overcome a growing barrier to justice*, N.J. Star-Ledger, Apr. 17, 2011, http://blog.nj.com/perspective/2011/04/legal_services_of_nj_fighting.html.

aid attorneys assisting homeowners with foreclosure.⁴⁵ The state legislature also rejected the request of New York's chief judge to expand civil legal services by \$25 million, instead cutting that appropriation in half.

- Legal Services of New York City (LSNY) projected laying off six or seven lawyers and paralegals as a result of \$701,411 lost from the FY11 LSC cut.⁴⁶ The Legal Aid Society of Mid-New York anticipated eliminating two staff attorney positions that would amount to turning away 400 cases.⁴⁷
- In a report to the state's chief judge, the Task Force to Expand Civil Legal Services found that 47 percent of low-income New Yorkers experience at least one legal problem over the course of a year.⁴⁸ In a separate survey, 90 percent of civil legal services providers reported an increase in unemployed individuals seeking assistance.⁴⁹

Pennsylvania

- Despite burgeoning demands for civil legal services, Pennsylvania Legal Aid Network today employs 266 lawyers, down from 358 attorneys employed twenty two years ago.⁵⁰

Rhode Island

- Rhode Island Legal Services was on the verge of laying off 13 paralegals in February 2011,⁵¹ many with language skills critical for communicating with Spanish- and Portuguese-speaking clients.⁵² Layoffs were ultimately avoided when the union representing legal aid attorneys agreed to a reduced work week and corresponding pay cut.⁵³

⁴⁵ Michael DeMasi, *Cuomo vetoes pay for foreclosure preventions services*, The Business Review, Apr. 13, 2011, http://www.bizjournals.com/albany/morning_call/2011/04/cuomo-vetos-pay-for-foreclosure.html.

⁴⁶ Brendan Pierson, *New York Legal Aid Groups Brace for Life After Cuts in LSC Funds*, N.Y. Law Journal, Apr. 14, 2011, http://www.law.com/jsp/nylj/PubArticleNY.jsp?id=1202489869058&New_York_Legal_Aid_Groups_Brace_for_Life_After_Cuts_in_LSC_Funds&slreturn=1&hbxlogin=1.

⁴⁷ *Id.*

⁴⁸ TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF N.Y. 11 (2010) available at <http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>.

⁴⁹ *Id.* at 12.

⁵⁰ Data supplied by Pennsylvania Legal Aid Network (on file with Brennan Center).

⁵¹ Gregory Smith, *R.I. Legal Services facing layoffs*, Providence Journal, Feb.1, 2011, http://www.projo.com/news/courts/content/Legal_Services_Layoffs_02-01-11_8DM8QNO_v50.19c7148.html.

⁵² Telephone Interview with Chas Walker, Elected Organizer, SEIU, (February 13, 2011).

⁵³ *Id.*

Texas

- After receiving a \$20 million boost from the state legislature in 2009 to meet growing demands from the economic recession, proposed appropriations for 2011 would cut funding by \$23 million. In the past two years, 600,000 more Texans have become income eligible for legal aid.⁵⁴ The legislature is currently considering a bill to raise funding for civil legal services through increased court filing fees.

Virginia

- In 2008, the state's nine legal aid organizations turned away one person for every client they served; in 2011, programs have to turn away two eligible clients for every one that they serve.⁵⁵ The Legal Services Corporation of Virginia reports that organizations are beginning to lay off staff as a result of the fiscal 2011 reduction in LSC funding.⁵⁶

Wisconsin

- The Governor's proposed budget for fiscal years 2011-2013, under consideration in the legislature, would eliminate the state's entire appropriation – \$2.6 million in annual funding – for civil legal services.⁵⁷ The Governor's budget redirects revenue that is generated through a court filing fee and administered through the Wisconsin Trust Account Foundation (WisTAF) to other state programs such as law enforcement communication systems, crime victim notification programs, and court interpreters.⁵⁸ For Legal Action of Wisconsin, a LSC-funded organization and a WisTAF grantee, the proposal would amount to an annual loss of \$1.3 million in funding, forcing the program to lay off lawyers and paralegals and to reduce services.⁵⁹

⁵⁴ Sommer Ingram, *Advocates: Texas budget slashes legal aid for poor*, Houston Chronicle, Feb. 16, 2011, <http://www.hayscountymocrats.org/advocates-texas-budget-slashes-legal-aid-for-poor/>.

⁵⁵ Kristen Green, *Legal aid chapters facing 4% cut*, Richmond Times-Dispatch, Apr. 16, 2011, <http://www2.timesdispatch.com/news/2011/apr/16/TDMET02-legal-aid-chapters-facing-4-cut-ar-976115/>.

⁵⁶ *Id.*

⁵⁷ Telephone Interview with Deedee Rongstead, Development Director, Legal Action of Wisconsin, (Apr. 25, 2011).

⁵⁸ Jack Zemlicka, *Massive cuts proposed for legal service providers*, Wisconsin Law Journal, Mar. 10, 2011, <http://wislawjournal.com/blog/2011/03/10/massive-cuts-proposed-for-legal-service-providers/>.

⁵⁹ *Id.*