

TESTIMONY OF HILARIE BASS, PRESIDENT, AMERICAN BAR ASSOCIATION
in support of the
LEGAL SERVICES CORPORATION
APRIL 27, 2018

U.S. HOUSE APPROPRIATIONS SUBCOMM. ON COMMERCE, JUSTICE, SCIENCE

REQUEST: Chairman Culberson, Ranking Member Serrano, and Subcommittee Members, I am Hilarie Bass, President of the American Bar Association (ABA) and Co-President of Greenberg Traurig law firm. I submit this statement today on behalf of approximately 400,000 members of the ABA. The ABA has long been committed to the realization of “Equal Justice Under Law” in our country, establishing our Standing Committee on Legal Aid and Indigent Defendants in 1920. U.S. Supreme Court Justice Lewis F. Powell, while serving as ABA President in 1964, understood the need to provide legal services, later culminating in President Nixon signing the LSC Act into law in 1974. The ABA recommends restoring Legal Services Corporation (LSC) funding, which has been cut sharply since FY2010, to at least the inflation-adjusted FY2010 level of \$482 million. LSC appropriations have not yet even returned to the FY2010 unadjusted level of \$420 million, let alone kept up with inflation.

CONTENT: This testimony delves into the need for and the beneficiaries of LSC funds and addresses some of the latest challenges. Following that, the testimony flows into the proper role of the federal government in achieving equal justice under law and in helping to secure federal rights. Next, I address the downturn in funding over the past decade and the resultant rank of the United States in the global assessment of access to justice. Finally, I review the Legal Services Corporation’s efficacy, LSC’s utility to Congress’ constituent services, and support for LSC.

NEW JUSTICE GAP STUDY: We acknowledge, in the wake of the 2017 Justice Gap Report, that an even better trajectory for achieving the pledge of justice for all could be accomplished with the Legal Services Corporation requested budget of \$564.8 million.

In June of 2017, the University of Chicago’s NORC provided data analysis regarding the unmet civil legal needs of low-income Americans. The survey of more than 2,000 adults living in low-income households (at or below 125% of the Federal Poverty Level) updated two previous reports. According to the Report, “Eighty-six percent of the civil legal problems faced by low-income Americans in a given year receive inadequate or no legal help.”

Specifically, LSC Board Chair John G. Levi points out: “Low-income seniors, for example, received inadequate or no professional help for 87% of their civil legal problems. For low-income rural residents, the number was 86%, while for low-income veterans or other military personnel, the number was 88%.”

DISASTERS: On April 5, 2018, Colorado State University, whose Meteorologist Phil Klotzbach and other experts are viewed as the nation's top seasonal hurricane forecasters, released their hurricane predictions for 2018’s June through November hurricane season. They predict 14 named tropical storms, of which 7 will become hurricanes—above the average of 12 and 6.

By comparison, for 2017, Colorado State forecasters predicted formation of 11 tropical storms, 4 of which would become hurricanes. In reality, 17 tropical storms formed and 10 became hurricanes.

Last year the committee commendably included \$15 million in supplemental funding for LSC to provide services to victims of fire and hurricane disasters. We hope the committee will keep a close eye on 2018 disasters and if circumstances require will provide supplemental funds for LSC disaster services again this year.

Disasters have a severe and disproportionate impact on the poor, resulting in a sharp increase in the need for legal help. As LSC points out, “In the immediate wake of a disaster or crisis, disaster-related legal issues follow a common pattern. Survivors often need help obtaining copies of important documents such as birth certificates, driver’s licenses, and Social Security cards to apply for or restore benefits and supports. The need for adequate housing is generally a major issue for survivors of most disasters. In addition, low-income and other vulnerable people who need housing after an emergency are more susceptible to scams and price gouging. With families experiencing even more stressors than before, there is also an increase in the need for more legal information on core areas of practice for legal aid, such as public benefits, domestic violence prevention, consumer law, and fraud prevention.”

In response to these disaster concerns, the Legal Services Corporation has formed a Disaster Task Force comprising LSC grantees, business leaders from LSC’s Leaders’ Council, emergency management experts, and other stakeholders to improve disaster relief coordination, comprehensiveness, and effectiveness nationwide.

OPIOIDS: Legal services for custody, guardianship, and adoptions have become paramount in light of the opioid epidemic. The need for kinship care — or a family member caring for a child of a relative — is a significant result of the crisis.

In Harrison County, West Virginia, an advocate reports that she primarily sees grandparents raising grandchildren, who are often informally placed in their care due to neglect by the addicted parents. “Grandparents aren’t really aware of the kinds of benefits that can come from establishing formal legal custody in court,” Courtney Crowder told the Exponent Telegram. “Medical treatment and school enrollment are two barriers that come with not having legal custody of a child. As well, grandparents can receive benefits through the Department of Health and Human Resources. That can be really helpful for grandparents, especially those who are living on a fixed income and probably didn’t plan on raising three extra kids,” Crowder said.

In response to these opioid concerns, the Legal Services Corporation has formed an Opioid Task Force, co-chaired by LSC Board Members Victor Maddox and Robert Grey, and comprising LSC grantees, leaders from LSC’s Leaders’ Council, healthcare experts, and other social services providers and stakeholders to educate government leaders and the public about the legal issues raised by the opioid crisis in areas such as healthcare, family law, domestic violence, child and elder abuse, and housing. The task force will, among other things, highlight the critical role legal aid programs play in helping low-income people address these issues.

With the opioid crisis placing heavy new burdens on legal aid, a commensurate increase in funding for LSC grantees should be appropriated.

THE FEDERAL ROLE IN EQUAL JUSTICE: The federal government has a definite role in promoting equal justice and justice for all.

Legal aid clients secure their rights through federal, state, and local law—not exclusively state and local law. Thus, funding for equal justice under federal law is a federal duty. The federal role in promoting equal civil justice *is* funding the Legal Services Corporation.

UNFUNDED MANDATE: Elimination of federal funding for equal justice would necessarily foist unfunded mandates on states, tribes, and localities. Day in and day out, Legal Services Corporation-funded attorneys work with these federal laws to secure the federal rights of individuals unable to secure their rights for themselves.

Nonetheless, the Fiscal Year 2019 White House Budget Blueprint proposes to eliminate federal funding for LSC. In addition, the Fiscal Year 2018 House Budget Committee-passed budget report stated: “It is the duty of State and local governments to provide legal services to those individuals unable to provide it for themselves.” That statement assumes that to ensure equal justice under law, governmental assistance to ensure legal representation is needed, yet it would saddle only states, tribes, and localities with the burden.

The federal government legislates—conferring rights and imposing duties—in all areas important to the lives of our citizens. Justice for all certainly requires access to legal representation in these myriad areas of federal law. For example, don’t destitute veterans deserve equal justice? Funding for equal justice under federal law cannot be shouldered by state and local governments as an unfunded mandate. The federal government should contribute its fair share. That can only be accomplished through funding the Legal Services Corporation.

FUNDING FOR LSC IS 15% DOWN SINCE 2010: I want to thank the House subcommittee for the recent increase in funding for LSC. That increase will permit LSC to serve more needy clients. Nevertheless, the FY18 LSC appropriation of \$410,000,000 is still 15% lower than it was in FY10 (the FY10 appropriation would be \$482 million in FY18 dollars). At the same time, the number of people qualifying for assistance is about 25% higher than in 2007. Compare also the FY17 funding to LSC’s average appropriation of \$719,730,870 (in FY18-adjusted dollars) during the 1980s. LSC funding needs restoration in these good economic times when unemployment is low, the stock market is high, and the 302A total spending level is commensurately high pursuant to the Bipartisan Budget Act of 2018.

IOLTA REVENUES DOWN: Furthermore, robust funding for the LSC is desperately needed because other funding sources have diminished since the country’s economic downturn. Over 10 years, from peak returns in 2007 to the most recent 2016 data, low interest rates and principal balances have caused a decrease by about 77% in Interest on Lawyers’ Trust Accounts (IOLTA) funds that go to legal aid offices.

RANKING: As discussed above, 86% of all eligible people seeking legal aid services are turned away or receive inadequate legal services due to lack of resources—an impediment seriously hamstringing justice in our legal system. That’s why the 2017-18 World Justice Project, which Justice Gorsuch cited in his confirmation hearings, ranked the United States 26th of 102 countries in its Rule of Law Index for civil justice access, behind the Czech Republic, St. Lucia, and the United Arab Emirates. Funding bolsters accessibility. LSC is the nation’s largest civil legal aid provider: nearly 900 LSC-funded legal aid offices serve every Congressional district in the U.S.

COST-BENEFIT: The American Bar Association collects dozens of statewide studies of the cost-benefit impact of legal aid. All studies show a big positive impact:
http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_f_or_access_to_justice/atj_commission_self-assessment_materials1/studies.html.

For example, Community Services Analysis LLC published a 2015 report regarding the return on investment of civil legal aid services in the State of Alabama. The report reveals, “For every \$1 invested in Alabama Legal Aid during the year, the citizens of Alabama receive \$8.84 of immediate and long-term financial benefits.”

CONSTITUENT SERVICE: Legal Aid offices in every corner of the country regularly assist constituents referred by congressional offices and their district staff. Civil legal aid is a constituent service performed in every state and congressional district in the country, complementary to and often at the request of your own constituent services staff. Key beneficiaries of legal aid services include: 1. Veterans; 2. Older Americans; 3. Rural Americans; 4. Domestic violence survivors; 5. Women, constituting 70% of clients; and 6. Natural-disaster victims.

U.S. SUPREME COURT SUPPORT: The late Supreme Court Justice Antonin Scalia stated, at the 40th anniversary of the Legal Services Corporation: “I’m here principally...*to represent the support of the Supreme Court and I’m sure all of my colleagues for the LSC...* The American ideal is not for some justice; it is, as the Pledge of Allegiance says, ‘Liberty and justice for all’ or as the Supreme Court pediment has it, ‘Equal Justice.’ I’ve always thought that’s somewhat redundant. Can there be justice if it is not equal? Can there be a just society when some do not have justice? Equality, equal treatment is perhaps the most fundamental element of justice. So, this organization pursues the most fundamental of American ideals, and it pursues equal justice in those areas of life most important to the lives of our citizens.” [Emphasis added.]

U.S. Supreme Court Justice Neil Gorsuch, a former legal clinic volunteer, embraced access to justice for all in his confirmation hearing: “It’s a fact that too few people can get lawyers to help them with their problem... I do think access to justice in large part means access to a lawyer. Lawyers make a difference. I believe that firmly.” In his 2016 law journal article “Access to Affordable Justice,” Justice Gorsuch wrote: “Legal services in this country are so expensive that the United States ranks near the bottom of developed nations when it comes to access to counsel in civil cases.”

POLLING: 82% of those surveyed believe it is important to ensure everyone has access to civil legal help or representation, according to polling by Voices for Civil Justice (<https://voicesforciviljustice.org/wp-content/uploads/Lake-Tarrance-Expanding-civil-legal-aid-2013.pptx3.pdf>).

CONCLUSION: As the economy revives, LSC funding should also revive. Down 15% from 2010 (in FY18 dollars) and with 25% more people qualified for legal aid, LSC seriously needs funding restored at least to the FY2010 level. Given LSC’s excellent benefit/cost ratio and with 82% supporting access to civil legal help, we encourage you, to heed constituents’ views. ###