TESTIMONY

of

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President of the

AMERICAN BAR ASSOCIATION

for

Legal Services Corporation funding

before the

SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE

COMMITTEE ON APPROPRIATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

115th Congress

April 27, 2017
STATEMENT OF LINDA KLEIN, PRESIDENT, AMERICAN BAR ASSOCIATION
U.S. HOUSE APPROPRIATIONS SUBCMTE ON COMMERCE, JUSTICE & SCIENCE
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REQUEST: Chairman Culberson, Ranking Member Serrano, and Subcommittee Members, I am Linda Klein, President of the American Bar Association (ABA) and senior managing shareholder at the law firm Baker Donelson. I am submitting this statement today on behalf of the ABA, with over 400,000 members. The ABA recommends funding for the Legal Services Corporation (LSC) at $450 million.

The ABA has long been committed to the realization of “Equal Justice Under Law” in our country. We mobilize lawyers for pro bono events throughout the year, operate an ABA Center for Pro Bono, produce an annual award program for pro bono work, operate a free legal answers website for low-income individuals, established the Commission on the Future of Legal Services, and host, with our colleagues at the National Legal Aid and Defender Association, the annual Equal Justice Conference. To strengthen legal aid is to strengthen the rule of law.

THE FEDERAL ROLE IN EQUAL JUSTICE: The federal government has a definite role in promoting equal justice and justice for all, both otherwise known as access to justice. Equal justice is the very reason for the existence of this nation. Though the American colonies dutifully and repeatedly requested justice for all British subjects, “a long train of abuses and usurpations” ensued. Finally we revolted. The history of “Equal Justice Under Law,” as engraved in the frieze above the United States Supreme Court, is long and distinguished.

Equal justice underpins our U.S. Constitution’s principal goal to “establish justice”—a goal placed ahead of “domestic tranquility,” “common defense,” “general welfare,” and “the blessings of liberty.” Equal justice also underpins due process and equal protection in our 5th and 14th Amendments. Applying both criminally and civilly, to liberty and to property, to public and to private disputes, the goal is not equality of outcome, but rather equality before the law. In the Pledge of Allegiance, we pledge allegiance to our republic with “justice for all.” In the Declaration of Independence, we declare that “to secure these rights,” governments are instituted among men. Legal aid clients secure their rights through federal, state, and local law—not exclusively state and local law.

Funding for equal justice under federal law is a federal duty. The federal funding to promote equal civil justice is the funding for the Legal Services Corporation.

UNFUNDED MANDATE: Elimination of the federal funding for equal justice would necessarily foist unfunded mandates on states, tribes, and localities. The first chart at the end of my statement shows the areas of law in which legal aid attorneys practice. The second chart demonstrates that the federal government has passed hundreds of laws in these areas. Day in and day out, Legal Services Corporation-funded attorneys work with these laws to secure the federal rights of individuals unable to secure their rights for themselves.

Nonetheless, the Fiscal Year 2018 White House Budget Blueprint proposes to eliminate federal funding for LSC. Also, the Fiscal Year 2017 U.S.-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 budget report statement assumes that to ensure equal justice under law, governmental assistance to ensure legal representation is needed. U.S. Supreme Court Justice Neil Gorsuch recently embraced this understanding when in his
confirmation hearing he said: “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.”

Likewise, the late U.S. 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.

The federal government has legislated—has conferred rights and imposed 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. 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.

15.7% DOWN SINCE 2010, BUT SLIGHTLY UP RECENTLY: I want to thank the House subcommittee for 5.4%, 2.6%, and 2.6% increases over the previous three years, without FY2017 finally determined as of this writing. However, the FY’16 LSC appropriation is still 15.7% lower than it was in 2010 (in FY16 dollars), while the number of people qualifying for assistance is about 25% higher than it was in 2007. Compare also the FY16 funding of $385 million to LSC’s average appropriation of $663,944,870 (in FY’16-adjusted dollars) during the 1980s. LSC seriously needs an increase.

NEED: Furthermore, robust funding for the LSC is desperately needed because other funding sources have diminished since the country’s economic downturn. All states—except Alabama, Florida, and Idaho—now provide state-government funding for legal aid programs. However, as a lingering effect of the recession, in some states state funding is way down as a result of declines in filing fees supporting legal aid. Due to unusually low interest rates, revenue from Interest on Lawyers’ Trust Accounts (IOLTA) has also decreased approximately 80% nationally in the past nine years, causing their grants for legal aid programs to diminish by 68%.

Funding for the Legal Services Corporation has been a high priority issue for the ABA for four decades. The ABA has supported the provision of legal services to those who cannot afford them since establishing the Standing Committee on Legal Aid and Indigent Defendants (SCLAID) in 1920. Supreme Court Justice Lewis F. Powell, while serving as ABA President in 1964, called for a major expansion of the nation’s legal services, and the ABA worked closely with many others to achieve this goal, culminating in President Nixon's signing LSC into law in 1974.

CONSTITUENT SERVICE: Legal Aid offices in every corner of the country regularly assist constituents referred by Congressional offices and their field staff. The need for legal aid is near an all-time high. Civil legal aid is a constituent service performed in every state and congressional district in the country, complementary to your own constituent services. There is
an opportunity for legal aid programs to work more closely with your constituent services
staffers to help constituents resolve their legal matters, thus potentially alleviating the need for
other federal program funds. The local legal aid programs help people at or below 125 percent of
federal poverty levels—this year, $11,880 for an individual and $24,300 for a family of four. The
most recent data from the U.S. Census Bureau show that over 95.2 million Americans—one in
three—qualified for civil legal aid at some point in 2014.

**RANKING:** Dozens of studies show that 50-80 percent of all eligible people seeking legal aid
services are turned away due to lack of resources. That impediment seriously hamstrings justice
in our legal system. As a result, in 2015 the World Justice Project ranked the United States 65th
of 102 countries in its Rule of Law Index for civil justice access, behind Moldova, Zimbabwe,
and Venezuela. Consider a few examples of how funding increases bolster accessibility. LSC is
the largest provider of civil legal assistance to low-income Americans. LSC grants fund legal aid
programs operating in each of county and territory of the United States. 884 legal aid offices
receive LSC funding.

**AREAS OF HELP:** As noted in the appended chart, legal aid helps clients with health concerns,
consumer and finance matters, family law, obtaining an education, individual rights, income
maintenance, juvenile law, tribal law, employment, disability, housing matters like foreclosures
and evictions, and more.

**BENEFICIARIES:** Several groups in particular are beneficiaries of legal aid services: 1.
Veterans returning from war, 2. Older Americans, 3. Rural Americans, 4. Domestic violence
survivors, 5. Women, constituting nearly 70% of clients, and 6. Natural-disaster victims.

Veterans and families, such as over 1.6 million U.S. troops who have served in Iraq and
Afghanistan since 2001, receive legal aid for consumer issues, employment, family law,
homelessness, and benefits for service-related injuries that can take months or years to obtain.

Older Americans often need help as victims of financial fraud. Additionally, seniors commonly
have housing issues. Nationally, housing issues account for 28% of LSC grantees’ total caseload.
Last year LSC aided over half a million people with housing issues nationally.

Rural Americans oftentimes have difficulty obtaining needed legal assistance. The Legal
Services Corporation is working to ensure those rural areas have a means of accessing legal aid
where it is more difficult to obtain. LSC grantees are sometimes the only means by which low-
income citizens living in more remote areas can receive legal aid. In 2016 LSC commenced a
Rural Summer Legal Corps.

Domestic violence is a focus of LSC-funded agencies. In 2015, LSC grantees provided legal
assistance to more than a quarter million (286,000) domestic violence victims and family
members. Over one third of all U.S. women and one quarter of all U.S. men have been subjected
to rape, physical violence, or stalking by an intimate partner. Legal aid is effective in addressing
those problems. 83% of victims with an attorney obtained a court order to protect against the
threat of violence versus 32% of victims without an attorney.

Women often gain assistance with the most frequent type of case: family law issues. More than
one third of all cases deal with family law matters such as domestic violence, custody, and
guardianship for children without parents.

Disaster victims receive immense benefits from LSC’s work. LSC provided storm-related legal
assistance for hurricane victims, including help with improper evictions, identity verification,
denial or inadequate reimbursement of insurance claims, delays in repairs, and home repair scams. Each year natural disasters throw thousands into poverty, create extensive legal entanglements, and can overwhelm legal aid programs.

**COST-BENEFIT:** In March 2015 the Tennessee Bar Association published a new report entitled “Economic Impact of Civil Legal Aid Organizations in Tennessee.” The report reveals $11.21 of economic benefit per dollar invested. Preventing foreclosure is a measureable public good, providing a 2-to-1 return. Preventing domestic violence saves a victim the trauma and costs of “medical treatment, counseling, police protection, and other support,” valued at over $10,000 per victim per year. The savings for the communities alone merit the cost; so do the direct client and family benefits. On top of the community savings and direct client and family benefits, the well-recognized economic multiplier effect guarantees value for LSC funding.

Dozens of statewide studies all show the same result. The American Bar Association collects these impact studies on the following webpage: [http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/atj_commission_self-assessment_materials1/studies.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/atj_commission_self-assessment_materials1/studies.html).

**CONCLUSION:** As the economy revives, LSC funding should also revive. Down 15.7% from 2010 (in FY16 dollars) and with 25% more people qualified for legal aid, LSC is in serious need of an increase.

Given LSC’s excellent benefit/cost ratio and exemplary management and accountability for federal funds, we encourage you, while still considering the fiscal issues the country faces, to fund this meritorious program at $450 million. ###