

LEGAL AID ACT OF 1995

SEPTEMBER 21, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GEKAS, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2277]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2277) to abolish the Legal Services Corporation and provide the States with money to fund qualified legal services, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Legal Aid Act of 1995".

SEC. 2. LEGAL SERVICES CORPORATION

The Legal Services Corporation Act (42 U.S.C. 2996-2996l) is amended to read as follows:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Legal Aid Grant Act'.

"SEC. 2. DEFINITIONS.

"For purposes of this Act:

"(1) QUALIFIED LEGAL SERVICE PROVIDER.—

"(A) IN GENERAL.—The term 'qualified legal service provider' means—

“(i) any individual who is licensed to practice law in a State for not less than 3 calendar years, who has practiced law in such State not less than 3 calendar years, and who is so licensed during the period of a contract under section 4; or

“(ii) a person who employs or contracts with an individual described in clause (i) to provide qualified legal services.

Nothing in this subparagraph shall be interpreted to prohibit a qualified legal service provider from employing an individual who is not described in clause (i) to assist in providing qualified legal services.

“(B) NOT QUALIFIED.—No individual shall be considered, or employed by, a qualified legal service provider if such individual during the 10 years preceding the submission of a bid for a contract under section 4—

“(i) has been convicted of a felony; or

“(ii) has been suspended or disbarred from the practice of law for misconduct, incompetence, or neglect of a client in any State; or

if such individual has a criminal charge pending on the date of the submission of a bid for a contract under section 4. In determining whether to award a contract under section 4, a State may also consider, to the extent the State considers it relevant in evaluating the qualifications of an applicant, whether an applicant has been found in contempt of a court of competent jurisdiction in any State or Federal court or has been sanctioned under Federal Rule of Civil Procedure 11 or an equivalent State rule of procedure applicable in civil actions.

“(C) ADDITIONAL REQUIREMENTS.—No State may impose a requirement on an individual or person as a condition to bidding on a contract under section 4 or to being awarded such a contract which requirement is different from any other requirement of subparagraph (B).

“(2) QUALIFIED LEGAL SERVICES.—The term ‘qualified legal services’ means—

“(A) mediation, negotiation, arbitration, counseling, advice, instruction, referral, or representation, and

“(B) legal research or drafting in support of the services described in subparagraph (A),

provided by or under the supervision of a qualified legal service provider to a qualified client for a qualified cause of action.

“(3) QUALIFIED CLIENT.—The term ‘qualified client’ means any individual who is a United States citizen or an alien admitted for permanent residence who in the 3 months prior to seeking legal assistance from a qualified legal service provider had an income from any source which was equal to or less than the poverty line established under section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

“(4) QUALIFIED CAUSE OF ACTION.—

“(A) The term ‘qualified cause of action’ means only a civil cause of action which results only from—

“(i) landlord and tenant disputes, including an eviction from housing except an eviction where the prima facie case for the eviction is based on criminal conduct;

“(ii) foreclosure of a debt on a qualified client’s residence;

“(iii) the filing of a petition under chapter 7 or 12 of title 11, United States Code, or under chapter 13 of such title unless a petition of eviction has preceded the filing of such petition;

“(iv) enforcement of a debt;

“(v) an application for a statutory benefit;

“(vi) appeal of a denial of a statutory benefit on a statutory ground;

“(vii) child custody and support;

“(viii) action to quiet title;

“(ix) activities involving spousal or child abuse on behalf of the abused party;

“(x) an insurance claim;

“(xi) competency hearing;

“(xii) probate;

“(xiii) divorce or separation;

“(xiv) employment matters; or

“(xv) consumer fraud.

Additional causes of action qualify as a qualified cause of action if they arise out of the same transaction as a cause of action described in this subparagraph unless such additional causes of action are described in clause (i) of subparagraph (B).

“(B) Such term does not include—

“(i) a class action under Federal, State, or local law;

or

“(ii) any challenge to the constitutionality of any statute.

“(5) STATE.—The term ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States and includes any recognized governing body of an Indian Tribe or Alaskan Native Village that carries out substantial governmental powers and duties.

“SEC. 3. GRANTS.

“(a) GRANT AUTHORITY.—The Attorney General shall direct the Office of Justice Programs to make grants to States for the provision of qualified legal services and to insure compliance with the requirements of this Act. To receive a grant under this subsection a State shall make an application to the Attorney General. Such an application shall be in such form and submitted in such manner as the Attorney General may require.

“(b) POVERTY LINE.—Grants shall be made under subsection (a) to States in such proportion as the number of residents of each State which receive a grant who live in households having income equal to or less than the poverty line established under section 673(2) of the Community Services Block Grant Act (42 U.S.C.

9902(2)) bears to the total number of residents in the United States living in such households.

“(c) RETENTION OF GRANT FUNDS.—Each State may in any fiscal year retain for administrative costs not more than 5 percent of the amount granted to the State under subsection (a) in such fiscal year. The remainder of such grant shall be paid under contracts to qualified legal service providers in the State for the provision in the State of qualified legal services. If a State which has received a grant under subsection (a) has at the end of any fiscal year funds which have not been obligated, such State shall return such funds to the Attorney General.

“(d) REQUIREMENTS OF THIS ACT.—No State may receive a grant under subsection (a) unless the State has certified to the Attorney General that the State will comply with and enforce the requirements of this Act.

“(e) LIMITATION ON USE OF GRANT FUNDS.—None of the funds provided under subsection (a) shall be used by a qualified legal service provider—

“(1) to make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal or represent any party or participate in any other way in litigation, that is intended to or has the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census;

“(2) to attempt to influence the issuance, amendment, or revocation of any executive order, regulation, policy, or similar promulgation by any Federal, State, or local agency;

“(3) to attempt to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative, confirmation proceeding, or any similar procedure of the Congress of the United States or by any State or local legislative body;

“(4) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or anti-labor activities, boycotts, picketing, strikes, and demonstrations, including the dissemination of information about such policies or activities;

“(5) to participate in any litigation, lobbying, rulemaking or any other matter with respect to abortion;

“(6) to participate in any litigation or provide any representation on behalf of a local, State, or Federal prisoner;

“(7) to pay for any personal service, advertisement, telegram, telephone communication, letter, or printed or written matter or to pay administrative expenses or related expenses, associated with an activity prohibited in paragraph (1), (2), (3), (4), (5), or (6);

“(8) to solicit in-person any client for the purpose of providing any legal service; or

“(9) to pay any voluntary membership dues to any private or non-profit organization.

“(f) LIMITATION ON USE OF STATE FUNDS.—A State which receives a grant under subsection (a) and which also distributes State funds for the provision of legal services shall require that such State funds be used to provide qualified legal services to qualified

clients and shall impose on the use of such State funds the limitations prescribed by subsection (e).

“(g) ATTORNEYS’ FEES.—A qualified legal service provider of any qualified client or any client of such provider may not claim or collect attorneys’ fees from parties to any litigation initiated by such client.

“(h) EVASION.—Any attempt to avoid or otherwise evade the requirements of this Act is prohibited.

“(i) AUTHORIZATION OF APPROPRIATIONS.—For grants under subsection (a) there are authorized to be appropriated to the Attorney General \$278,000,000 for fiscal year 1996, \$250,000,000 for fiscal year 1997, 175,000,000 for fiscal year 1998, and \$100,000,000 for fiscal year 1999.

“SEC. 4. CONTRACTS.

“(a) IN GENERAL.—Each State which receives a grant under section 3(a) shall make funds under the grant available for contracts entered into for the provision of qualified legal services within the State.

“(b) BIDS.—

“(1) AUTHORITY.—The Governor of each State shall designate the authority of the State which shall be responsible for soliciting and awarding bids for contracts for the provision of qualified legal services within such State.

“(2) SERVICE AREA.—The authority of a State designated under paragraph (1) shall designate service areas within the State. Such service areas shall be the counties or parishes within a State but such authority may combine contiguous counties or parishes to form a service area to assure the adequate provision of qualified legal services.

“(3) NON-ENGLISH-SPEAKING CLIENTS.—If 5 percent or more of the population of qualified clients in a qualified legal service provider’s service area includes individuals whose household language is other than English, the qualified legal service provider shall include provision in the provider’s bid for satisfying the communication needs of that portion of such population.

“(c) AVAILABILITY OF FUNDS.—A State shall allocate grant funds for contracts for the provision of qualified legal services in a service area on the same basis as grants are made available to States under section 3(b).

“(d) CONTRACT AWARDS.—A State shall award a contract for the provision of qualified legal services in a service area to the applicant who is best qualified, as determined by the State, and who in its bid offers to provide, in accordance with section 5, the greatest number of hours of qualified legal services provided by lawyers or paralegals in such area. In determining which applicant is best qualified, a State shall consider the reputations of the principals of the applicant, the quality, feasibility, and cost effectiveness of plans submitted by the applicant for the delivery of qualified legal services to the qualified clients to be served, and a demonstration of willingness to abide by the restrictions of this Act.

“(e) FORM AND BILLING.—A State contract awarded under subsection (d) shall be in such form as the State requires. The contract shall provide for the rendering of bills supported by time records at the close of each month in which qualified legal services are pro-

vided. A State shall make payment to a qualified legal service provider at the contract rate only for hours of qualified legal services provided and supported by appropriate records. The contract rate shall be the total dollar amount of the contract divided by the total hours bid by the qualified legal service provider. A State shall have 60 days to make full payment of such bills.

“SEC. 5. REQUIREMENTS FOR THE PROVISION OF QUALIFIED LEGAL SERVICES UNDER A CONTRACT.

“(a) TERM.—The term of a contract entered into under section 4 shall be not more than 1 year.

“(b) MANNER OF PROVISION OF SERVICES.—A qualified legal service provider shall service the legal needs of qualified clients under a contract entered into under section 4 in a professional manner consistent with applicable law.

“(c) CASE FILES.—A qualified legal service provider shall maintain a qualified client’s case file, including any pleadings and research, at least until the later of 5 years after the resolution of client’s cause of action or 5 years after the termination of the contract under which services were provided to such client or as provided by the applicable code of professional responsibility.

“(d) TIME RECORDS.—A qualified legal service provider shall keep daily time records of the provision of services to a qualified client in one tenth of an hour increments identifying such client, the general nature of the work performed in each increment, and the account which will be charged for such work.

“(e) QUESTIONNAIRE.—Each qualified client shall be provided a self-mailing customer satisfaction questionnaire in a form approved by the authority granting the contract under section 4 which identifies the qualified legal service provider and is preaddressed to such authority.

“(f) ATTORNEY CLIENT PRIVILEGE.—Any qualified client who receives legal services other than advice or legal services provided by mail or telephone shall execute with respect to such services a waiver of attorney client and attorney work product privilege as a condition to receiving such service. The waiver shall be limited to the extent necessary to determine the quantity and quality of the service rendered by the qualified legal service provider and compliance with this Act. Such waiver shall not constitute a waiver as to other parties. The use of such waiver or any information obtained under such waiver for any purpose other than determining the quantity and quality of the service of a provider or compliance with this Act shall be strictly prohibited.

“(g) RECORDS OF QUALIFICATIONS.—A qualified legal service provider shall make and maintain records detailing the basis upon which the provider determined the qualifications of qualified clients. Such records shall be made and maintained for 3 years following the termination of a contract under section 4 for the provision of legal services to such clients.

“(h) AUDITS.—A qualified legal service provider shall consent to audits by the Attorney General, the General Accounting Office, or the authority which awarded a contract to such provider. Any such audit may be conducted at the provider’s principal place of business. Such an audit shall be limited to a determination of whether

such provider is meeting the requirements of this Act and the provider's contract under section 4.

“(i) **RECOVERY OF FEES.**—A contract shall provide for the recovery of reasonable attorneys' fees in any successful action brought to compel payment to a qualified legal service provider under a contract under section 4.

“(j) **TERMINATION AND RECOVERY OF FUNDS.**—The Attorney General, the Governor, or the authority which awarded a contract shall terminate a qualified legal service provider who is found to have committed a material violation of this Act. A material violation shall include involvement with any prohibited activity. A breach of contract by a qualified legal service provider shall entitle the Governor or the authority to terminate the contract, to award a new contract, and to recover any funds improperly expended by the provider, together with interest at the statutory rate in the State for interest on judgments. If such a breach was willful, the provider shall pay to the authority which awarded the contract an additional amount equal to one half of the amount improperly expended by the provider.”.

SEC. 3. TRANSITION AND EFFECTIVE DATE.

(a) **TERMINATION.**—The Legal Services Corporation shall terminate on the expiration of 6 months after the date of the enactment of this Act.

(b) **PENDING CASES.**—During the 6-month period after the termination of the Legal Services Corporation, the Attorney General may make funds available to grantees under the Legal Services Corporation Act to bring to a completion any legal action filed in a State or Federal court on or before the date of the enactment of this Act. The Attorney General shall use funds appropriated to the Attorney General under section 3(i) of the Legal Aid Grant Act to fund such grantees. Such funds for such purpose may not exceed 1 percent of the amount appropriated to the Attorney General under such section 3(i) for fiscal year 1996.

(c) **TRANSITION.**—Upon termination of such Corporation all assets, liabilities, obligations, property, and records employed directly or held or used primarily in connection with any function of the President of the Legal Services Corporation in carrying out legal services activities under the Legal Services Corporation Act shall be transferred to the Attorney General.

(d) **ACTION OF THE PRESIDENT.**—Notwithstanding any other provision of law, upon termination of the Legal Services Corporation the President of the Legal Services Corporation shall take such action as may be necessary—

(1) to assist the Attorney General in the initial undertaking of the Attorney General's responsibilities under the Legal Aid Grant Act; and

(2) to transfer to the Attorney General for use under the Legal Aid Grant Act all unexpended balances of funds appropriated for the purpose of carrying out legal services programs and activities under the Legal Services Corporation Act.

(e) **EFFECTIVE DATE.**—The amendment made by section 2 shall take effect on the date of the enactment of this Act.

SUMMARY AND PURPOSE

The "Legal Aid Act of 1995" (H.R. 2277) improves the delivery and accountability of legal services to the poor by establishing a new system which involves the states in the selection and oversight of individual providers.

The bill approved by the Committee on the Judiciary abolishes the Washington, D.C. based Legal Services Corporation in order to ensure that federal money authorized for the provision of legal services will be more directly applied to the legal needs of the poor. Under this Act, the Department of Justice will oversee the administration of grant money to the states; and the respective governors are charged with the responsibility of selecting local providers through a competitive bid process.

Due to the controversial history of the Legal Services Corporation Act, the Committee feels it necessary to imbue this new system with controls adequate to guarantee that the needs of the poor are truly met. The bill defines who is a qualified provider and an eligible client, and what constitutes a qualified cause of action that a provider may initiate. H.R. 2277 also restricts providers from engaging in conduct that would otherwise derogate from the goal of serving the poor.¹

The bill allows the Legal Services Corporation to continue only for a brief transitional period and requires upon its termination the transfer of its assets, liabilities, obligations, property, and records to the Attorney General. The Committee authorizes the Act for four years at \$278 million for FY 1996, \$250 million for FY 1997, \$175 million for FY 1998 and \$100 million for FY 1999. The Committee's intent is to scale down the federal commitment to legal services in order to prepare the States to assume responsibility for providing legal aid in cooperation with the Bar and the private sector.

BACKGROUND AND NEED FOR THE LEGISLATION

The Legal Services Corporation (LSC) is a private, not-for-profit, entity incorporated in the District of Columbia, designed to provide legal assistance to the poor in non-criminal proceedings. The Corporation itself does not provide this assistance, but merely forwards the money appropriated to it by Congress to individual grantees throughout the country.²

The Corporation's roots are in President Lyndon Johnson's War on Poverty. Originally established as the Office of Legal Services within the Office of Economic Opportunity, it was transformed into an independent corporation in 1974 by Public Law 93-355 (42 U.S.C. 2996 et seq). The LSC is governed by an eleven person board of directors appointed by the President with the advice and

¹The restrictions in H.R. 2277 are contained in Section 3(e) and are based upon those in H.R. 1806 and commonly referred to as the McCollum/Stenholm restrictions. However, similar restrictions have consistently been imposed by the Congress as provisions contained in appropriations legislation, and have also been proposed in legislation to reauthorize the Legal Services Corporation (H.R. 2644 [Bryant] 103rd Cong., and H.R. 2039 [Frank] 102nd Cong.). While, in general, these restrictions have been conceded as necessary by all sides in order to prevent grantees from engaging in inappropriate activities, debate has occurred on their specifics. See, Dissenting Views of Mr. McCollum, et al. to the report accompanying H.R. 2039, H.R. Rep. No. 102-476, 103rd Cong., 2nd Sess. (1992).

²The Corporation provides grants to basic field programs, state and national support centers and a variety of other recipients such as Native American and Migrant programs.

consent of the Senate. The LSC has been extremely controversial since its inception and despite several Congressional attempts, has not been reauthorized since 1980. Although its survival now depends solely upon the appropriations process, the Corporations budget has more than quintupled since its inception, from \$72 million in 1975 to \$400 million in 1995.³

Controversy has beset virtually every aspect of the LSC throughout its history. Despite a clear statutory requirement that all LSC board members be confirmed by the Senate, the program has become so politicized that the Senate confirmed only one board between 1982 and 1993.⁴ Throughout the past fifteen years, the LSC has been a continuing saga of partisan wrangling pitting an increasingly remote and isolated national board against far-flung and intractable grantees. As more and more grantee abuses came to light, the Congress became more active in attempting to supervise the entire system—only to find that the national board was poorly suited to respond to Congressional mandates. Having established a comfortable relationship with their funding source, the current grantees have enjoyed presumptive refunding, and, among other things, have successfully thwarted Congressional attempts to invigorate the system by instituting competition. When the LSC has tried to enforce congressionally imposed restrictions, it has been stymied by resistance from the very grantees it funds.⁵

Grantee abuses were detailed during the hearings of the Subcommittee on Commercial and Administrative Law and depict a program in need of considerable supervision. The expenditure of resources on class actions⁶ and constitutional challenges has meant that many poor have been left unattended because their needs, however urgent, were too prosaic. It is generally acknowledged that LSC programs provide assistance to less than 20 percent of the poor in this country. That figure becomes even more distressing when it is coupled with the fact that LSC money and manpower is liberally expended helping illegal aliens, prisoners, and those who public housing authorities and tenant associations have sought to evict for illegal drug activities.⁷

³The Corporation requested \$500 million for Fiscal Year 1995. Congress appropriated \$415 million and later rescinded \$15 million. The Corporation's FY 1996 request was for \$440 million.

⁴During this period, the board generally consisted of recess appointees who, due to lack of Senate confirmation, were without full authority to oversee the Corporation.

⁵Terrance Wear, LSC's President from 1988 to 1990, has testified about his attempt to lower grant amounts to recipients who had disregarded Congressional prohibitions against engaging in abortion related litigation. He was sued by the errant grantees themselves, who utilized federal grant money earmarked for the poor to bring suit on their behalf. That litigation, which persisted for over three years, was eventually settled in support of the President's actions. Unfortunately, the court's ruling was moot since Congressional prohibitions like the one on abortion-related litigation have only been mandated through Appropriations bills which are only in effect for one year.

⁶Considerably alarming is the frequent use of class actions, a time-consuming and labor intensive form of litigation which the Committee has learned displaces resources that could be brought to bear on the immediate needs of individual poor people. In 1989 alone, for instance, the Corporation's records indicate that its grantees were involved in 1,759 class actions.

⁷Jodie Stearns, a farmer and attorney from Ohio, testified concerning inordinate expenditure of resources by a Legal Services grantee. She cited numerous examples, including: routine assignment of three or four attorneys to pretrial conferences; use of two or three lawyers, as well as a paralegal, for a simple deposition; flying three persons to Miami, Florida for depositions lasting three days; and staffing uncomplicated hearings with multiple attorneys. She also testified that Legal Services attorneys regularly represent illegal aliens under the Migrant Seasonal Agricultural Worker Protection Act and various other federal statutes. *Hearing on Reauthorization of the Legal Services Corporation before the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary, June 15, 1995, 104th Cong., 1st Sess. (1995).*

Considering the controversy engendered by LSC, reference to the Community Services Block Grant program is instructive, since both it and the Legal Services Corporation have common ancestry in the War on Poverty. One of the most significant programs authorized by the Economic Opportunity Act of 1964 was Community Action, sometimes referred to as Local Initiative or Section 221 of the Act. Under the auspices of the Office of Economic Opportunity (OEO), a network of approximately 900 local Community Action Agencies (CAA) were developed. Similarly, as noted earlier, the LSC began as the Office of Legal Services within the OEO.

At approximately the same time that the Legal Services Corporation was established as an independent entity, the OEO was renamed the Community Services Administration with the responsibility for ultimately administering not only the network of CAA's but also some 40 Community Development Corporations and a number of small categorical grant programs. In 1981, the Congress abolished the Community Services Administration and created the Community Services Block Grant program to be administered by an office within the Department of Health and Human Services.⁸ Today, fourteen years after the block granting of CSA, a history of incessant political rancor and ineffective administration within the Legal Services Corporation suggests the wisdom of adopting a similar approach for it.

The need for this legislation is clear. The Legal Services Corporation has been unauthorized since 1980, nearly *fifteen* years. Even if the Committee were not to suggest such an innovative course as that contained in H.R. 2277, it would be an abdication of its oversight responsibility to ignore reality and prolong this continuing neglect. The current state of the LSC makes this legislation all the more necessary if legal services to the poor are to become, in any respect, effective.

The concept of block granting legal services to the states is designed to focus the effort closer to the needs of the poor in several ways. First, it will facilitate a more specific identification of those needs because the authority that oversees the providers will be located within their respective states, an advantage of propinquity that no Washington entity could enjoy. Secondly, it will permit not only closer scrutiny of providers but also foster a better working relationship with them. During the past fifteen years, LSC's grantees and the Washington corporation have viewed each other with dis-

John Hiscox, of the Macon (Georgia) Public Housing Authority, testified that one tenant, after purchasing drugs within public housing premises, was arrested by police beyond its perimeter. Although he pled guilty to the drug offense, Legal Services attorneys represented him to prevent his eviction based on the argument that his arrest had occurred off public housing premises. As a result of involvement of Legal Services attorneys, Mr. Hiscox indicated that the annual cost of evictions had increased from \$9,000 in 1987 to \$90,000 in 1990. *Id.*

Harriet Henson, executive Director of Northside Tenants Reorganization in Pittsburgh, Pennsylvania testified that while visiting a tenant she witnessed the tenant's boyfriend engaging in a drug transaction on the premises. Because of Neighborhood Legal Services involvement in the matter, eviction of the tenant require two years of effort. *Id.*

Ken Boehm, former Director of Policy, Development and Communications for the Legal Services Corporation, referenced a class action suit brought by a Legal Services grantee. In the suit, which consumed more than four years, the Legal Services grantee represented prisoners who asserted that HIV positive patients should not be treated in a segregated medical ward, nor their infection revealed to the prison population. *Id.*

⁸Like many of the domestic policy changes that year, the Community Services Block Grant legislation was incorporated into the Omnibus Budget Reconciliation Act of 1981 (Pub. L. No. 97-35) (1981), of which it is technically title VI, Subtitle B.

trust which has often developed into, blatant hostility. It is envisioned that block granting this program will encourage the kind of cooperation from the local Bar and private sector that can only develop through concerns that are shared in an immediate and more local environment. The legislation's emphasis on local involvement is essential to its purpose; and is supported by recent trends in Congress which suggest that local governments will inevitably have to shoulder more, if not all, of the burden of providing an array of services to their poor residents.⁹

Although hearings conducted this summer by the Subcommittee on Commercial and Administrative Law identified numerous areas of abuse within the current system, Congress has been aware of problems with the Corporation for many years. Current appropriations riders restricting the activities of the Corporation or its grantees were developed in response to specific and widely held concerns; and many have been in effect, albeit unenforced since 1984.

Given this history, the Committee feels that the limitations in H.R. 2277 on the activities of providers, as well as those placed on the states, are clearly justified by the principle that what is past is prologue. The Committee intends to address the real and immediate needs of the poor and to discourage litigation which serves little purpose other than to pursue the ideological vindications of a particular political philosophy.

HEARINGS

The Subcommittee on Commercial and Administrative Law held three days of hearings concerning the reauthorization of the Legal Services Corporation. The hearings were held on May 16, 1995; June 15, 1995; and July 27, 1995.

The first hearing, convened on May 16, 1995, focused primarily on the Corporation and the current statute, and heard only from supporters of the current Corporation. Testimony was received from the following: Rep. Bill McCollum (R-FL); Rep. Charles W. Stenholm (D-TX); Rep. Paul McHale (D-PA); Rep. Ron Wyden (D-OR); Rep. Benjamin L. Cardin (D-MD); Abner J. Mikva, Counsel to the President, The White House; Jamie Gorelick, Deputy Attorney General, U.S. Department of Justice; John Carey, General Counsel, Federal Emergency Management Agency; Alexander D. Forger, President, Legal Services Corporation; Douglas F. Eakely, Chairman of the Board, Legal Services Corporation; Thomas F. Smegal, Jr., Member of the Board, Legal Services Corporation; and Ernestine P. Watlington, Member of the Board, Legal Services Corporation.

The second day of the hearings, conducted on June 15, 1995, focused on testimony from long-time critics of the Legal Services Corporation as well as one supportive witness, John McKay, Chairman of the Equal Justice Coalition. Testimony critical of the current Corporation and statute included statement from the following:

⁹Attorney witnesses before the subcommittee recognized the pro bono responsibility of the bar. However, debate on how best to encourage pro bono activities is warranted not only on the question of whether a too active role of government in providing legal services discourages such involvement, but also on the extent to which legal barriers exist that discourage volunteerism. See, Michael A. Bedke and Scott Jay Feder, "Good Samaritan Legislation," *Barrister* magazine, Spring 1995, which discusses the experience of the American Bar Association's Young Lawyers Division volunteer efforts on behalf of disaster victims.

Rep. Charles Taylor (R-NC); David Keene, American Conservative Union; Howard Phillips, Chairman, Conservative Caucus; Ken Boehm, Chairman, National Legal and Policy Center; Harry Bell, President, South Carolina Farm Bureau on behalf of the American Farm Bureau; Judy Mauch, Mauch Farms; Jodie Stearns, Esq., Mitchell, Stearns & Hammer; Stan Eury, North Carolina Grower's Association; Dan Gerawan, Gerawan Ranches; John McKay, Chairman, Equal Justice Coalition; Libby Whittley, Farm Business Coalition; John Hiscox, Director, Macon Housing Authority; Harriet Henson, Northside Tenants Reorganization; Zelma Boggess, Director, Charleston Housing Authority; and Michael Pileggi, Esq., Philadelphia Housing Authority.

The final hearing, held on July 27, 1995, focused on solutions to current problems facing the Legal Services Corporation and inadequacies of the current statute. With an eye toward drafting legislation, the subcommittee heard from the following: Rep. Howard L. Berman (D-CA); Rep. Robert K. Dornan (R-CA); Alan D. Bersin, U.S. Attorney for the Southern District of California on behalf of the Department of Justice; Thomas J. Madden, Esq., Former General Counsel, Law Enforcement Assistance Administration, Department of Justice; Rev. Fred Kammer, S.J., President, Catholic Charities, U.S.A.; Robert E. Adams, Executive Director, Legal Services of the Fourth Judicial District, South Carolina; Jack Martin, Vice President, the Ford Motor Company; Neal I. Hogan, General Counsel, Dublin Castle Group; Edouard R. Quatrevaux, Inspector General, Legal Services Corporation; Penny Pullen, Former Board Member of the Legal Services Corporation; Hon. Howard H. Dana, Former Board Member of the Legal Services Corporation; Terrance Wear, Former President of the Legal Services Corporation; and Mike Wallace, Former Chairman of the Legal Services Corporation.

Additional material was submitted by a number of individuals and organizations.

COMMITTEE CONSIDERATION

On September 13, 1995, the Committee met in open session and ordered reported the bill H.R. 2277, with amendments, by a vote of 18-13, a quorum being present.

VOTE OF THE COMMITTEE

Eight amendments were adopted by voice vote. These were: (1) an amendment by Mr. Bono to specifically include divorce or separation among the qualified causes of action under the Act; (2) an amendment by Mr. Watt to prohibit the use of any information gained pursuant to a waiver of the attorney/client privilege for any purpose other than determining the quantity or quality of the service of a provider or compliance with the Act; (3) an amendment by Mr. Hyde to include consumer fraud among the qualified causes of action under the Act; (4) an amendment by Mr. Watt to provide that states, in determining whether to award a legal services contract, may consider whether the applicant has been found in contempt of court or has been sanctioned under Rule 11 of the Federal Rules of Civil Procedure, rather than these being a bar to such an award; (5) an amendment by Mr. Reed reformulating the definition

of a qualified client; (6) of en bloc amendment by Mr. McCollum: (a) directing the Office of Justice Programs within the Department of Justice to administer the program under the Act; (b) prohibiting any attempt to evade provisions of the Act; (c) permitting states to consider the number of hours of service to be performed by paralegals as well as those to be performed by lawyers in awarding contracts; and (d) requiring providers to maintain case files for five years after termination of the contract or resolution of the cause of action, whichever is longer, or as provided by the applicable code of professional responsibility; (7) an amendment offered by Mr. McCollum directing states to consider several additional factors in determining to whom to award a legal services contract; (8) an amendment by Mr. Barr relating to the definition of qualified causes of action with respect to its inclusion of additional causes of action.

There were ten recorded votes (nine on amendments and one on final passage) during the Committee's consideration of H.R. 2277, as follows:

1. An amendment in the nature of a substitute by Mr. McCollum. Defeated 27 to 17.

YEAS	NAYS
Mr. McCollum	Mr. Hyde
Mr. Schiff	Mr. Sensenbrenner
Mr. Conyers	Mr. Gekas
Mrs. Schroeder	Mr. Coble
Mr. Frank	Mr. Smith (TX)
Mr. Schumer	Mr. Gallegly
Mr. Berman	Mr. Canady
Mr. Boucher	Mr. Inglis
Mr. Bryant (TX)	Mr. Goodlatte
Mr. Reed	Mr. Buyer
Mr. Nadler	Mr. Hoke
Mr. Scott	Mr. Bono
Mr. Watt	Mr. Heineman
Mr. Becerra	Mr. Bryant (TN)
Mr. Serrano	Mr. Chabot
Ms. Lofgren	Mr. Flanagan
Ms. Jackson-Lee	Mr. Barr

2. A motion by Mr. Sensenbrenner to reconsider the vote by which the McCollum amendment in the nature of a substitute was not agreed to. Defeated 17 to 18.

YEAS	NAYS
Mr. McCollum	Mr. Hyde
Mr. Schiff	Mr. Moorhead
Mr. Conyers	Mr. Sensenbrenner
Mrs. Schroeder	Mr. Gekas
Mr. Frank	Mr. Coble
Mr. Schumer	Mr. Smith (TX)
Mr. Berman	Mr. Gallegly
Mr. Boucher	Mr. Canady
Mr. Bryant (TX)	Mr. Inglis
Mr. Reed	Mr. Goodlatte

Mr. Nadler	Mr. Buyer
Mr. Scott	Mr. Hoke
Mr. Watt	Mr. Bono
Mr. Becerra	Mr. Heineman
Mr. Serrano	Mr. Bryant (TN)
Ms. Lofgren	Mr. Chabot
Ms. Jackson-Lee	Mr. Flanagan
	Mr. Barr

3. An amendment offered by Mr. Scott to provide that contracts be awarded to the best qualified applicant as determined by the State. Defeated 10 to 17.

YEAS	NAYS
Mr. Flanagan	Mr. Hyde
Mr. Conyers	Mr. Moorhead
Mr. Berman	Mr. Gekas
Mr. Boucher	Mr. Coble
Mr. Reed	Mr. Smith (TX)
Mr. Scott	Mr. Schiff
Mr. Watt	Mr. Gallegly
Mr. Serrano	Mr. Canady
Ms. Lofgren	Mr. Inglis
Ms. Jackson-Lee	Mr. Goodlatte
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Barr

4. An amendment offered by Mr. Watt to provide for continued legal services after the one-year contract term expired. Defeated 9 to 19.

YEAS	NAYS
Mr. Berman	Mr. Hyde
Mr. Boucher	Mr. Moorhead
Mr. Reed	Mr. Sensenbrenner
Mr. Nadler	Mr. McCollum
Mr. Scott	Mr. Gekas
Mr. Watt	Mr. Coble
Mr. Serrano	Mr. Smith (TX)
Ms. Lofgren	Mr. Schiff
Ms. Jackson-Lee	Mr. Gallegly
	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

5. An amendment offered by Mr. Berman to add "employment matters" to qualified causes of action. Adopted 15 to 11.

YEAS	NAYS
Mr. McCollum	Mr. Hyde
Mr. Canady	Mr. Moorhead
Mr. Goodlatte	Mr. Sensenbrenner
Mr. Hoke	Mr. Gekas
Mr. Flanagan	Mr. Smith (TX)
Mr. Conyers	Mr. Gallegly
Mr. Berman	Mr. Inglis
Mr. Boucher	Mr. Bono
Mr. Reed	Mr. Heineman
Mr. Nadler	Mr. Chabot
Mr. Scott	Mr. Barr
Mr. Watt	
Mr. Serrano	
Ms. Lofgren	
Ms. Jackson-Lee	

6. An amendment offered by Mr. Nadler making class action suits a qualified cause of action. Defeated 9 to 16.

YEAS	NAYS
Mr. Conyers	Mr. Hyde
Mr. Boucher	Mr. Moorhead
Mr. Reed	Mr. Sensenbrenner
Mr. Nadler	Mr. Gekas
Mr. Scott	Mr. Coble
Mr. Watt	Mr. Schiff
Mr. Serrano	Mr. Canady
Ms. Lofgren	Mr. Inglis
Ms. Jackson-Lee	Mr. Goodlatte
	Mr. Hoke
	Mr. Bono
	Mr. Heineman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

7. An amendment offered by Mr. Flanagan to increase the authorization for FY 1997 from \$141,000,000 to \$250,000,000. Adopted 14 to 13.

YEAS	NAYS
Mr. McCollum	Mr. Hyde
Mr. Schiff	Mr. Moorhead
Mr. Goodlatte	Mr. Sensenbrenner
Mr. Hoke	Mr. Gekas
Mr. Flanagan	Mr. Coble
Mr. Conyers	Mr. Gallegly
Mr. Reed	Mr. Canady
Mr. Nadler	Mr. Inglis
Mr. Scott	Mr. Bono
Mr. Watt	Mr. Heineman
Mr. Becerra	Mr. Bryant (TN)

Mr. Serrano
Ms. Lofgren
Ms. Jackson-Lee

Mr. Chabot
Mr. Barr

8. An amendment offered by Mr. Watt to allow legal service providers to collect attorneys' fees from parties to litigation. Defeated 14 to 16.

YEAS

Mr. Goodlatte
Mr. Flanagan
Mr. Conyers
Mrs. Schroeder
Mr. Berman
Mr. Boucher
Mr. Bryant (TX)
Mr. Reed
Mr. Nadler
Mr. Scott
Mr. Watt
Mr. Becerra
Mr. Serrano
Ms. Lofgren

NAYS

Mr. Hyde
Mr. Moorhead
Mr. Sensenbrenner
Mr. McCollum
Mr. Gekas
Mr. Coble
Mr. Schiff
Mr. Canady
Mr. Inglis
Mr. Buyer
Mr. Hoke
Mr. Bono
Mr. Heineman
Mr. Bryant (TN)
Mr. Chabot
Mr. Barr

9. An amendment offered by Mr. McCollum to extend the bill's authorization by two years (1998–1999). Adopted 18 to 13.

YEAS

Mr. Moorhead
Mr. McCollum
Mr. Schiff
Mr. Canady
Mr. Goodlatte
Mr. Flanagan
Mr. Conyers
Mrs. Schroeder
Mr. Schumer
Mr. Bryant (TX)
Mr. Reed
Mr. Nadler
Mr. Scott
Mr. Watt
Mr. Becerra
Mr. Serrano
Ms. Lofgren
Ms. Jackson-Lee

NAYS

Mr. Hyde
Mr. Sensenbrenner
Mr. Gekas
Mr. Coble
Mr. Smith (TX)
Mr. Gallegly
Mr. Inglis
Mr. Buyer
Mr. Hoke
Mr. Bono
Mr. Heineman
Mr. Bryant (TN)
Mr. Chabot

10. Vote on final passage on H.R. 2277. Adopted 18 to 13.

YEAS

Mr. Hyde
Mr. Sensenbrenner
Mr. McCollum
Mr. Gekas
Mr. Coble

NAYS

Mr. Conyers
Mr. Schumer
Mr. Berman
Mr. Boucher
Mr. Bryant (TX)

Mr. Smith (TX)	Mr. Reed
Mr. Schiff	Mr. Nadler
Mr. Gallegly	Mr. Scott
Mr. Canady	Mr. Watt
Mr. Inglis	Mr. Becerra
Mr. Goodlatte	Mr. Serrano
Mr. Buyer	Ms. Lofgren
Mr. Hoke	Ms. Jackson-Lee
Mr. Bono	
Mr. Bryant (TN)	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	

*Mr. Heineman indicated that if present he would have voted Yea.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) or rule X of the Rules of the House of Representatives are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) or rule XI of Rules of the House of Representatives, the Committee sets forth, with respect to H.R. 2277, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 19, 1995.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2277, the Legal Aid Act of 1995.

Enactment of H.R. 2277 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.
Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2277.
2. Bill title: Legal Aid Act of 1995.
3. Bill status: As ordered reported by the House Committee on the Judiciary on September 13, 1995.
4. Bill purpose: H.R. 2277 would abolish the Legal Services Corporation (LSC) and replace it with block grants provided directly to the states to fund local legal aid programs. The bill would authorize appropriations to the Attorney General of \$278 million for fiscal year 1996, \$250 million for fiscal year 1997, \$175 million for fiscal year 1998, and \$100 million for fiscal year 1999. The bill also would establish eligibility criteria for receiving legal services and the type of cases for which legal aid would be available.

5. Estimated cost to the Federal Government: For purposes of this estimate, CBO assumes that the amounts authorized by the bill would be appropriated for each fiscal year and that outlays would reflect the historical spending patterns of similar grant programs. CBO also estimates that it would cost the federal government about \$3 million in direct spending in fiscal year 1996 to terminate the LSC. This cost would cover severance pay and other administrative costs for eliminating the Corporation. Finally, CBO estimates that the Department of Justice could incur additional expenses for administering this new grant program; however, we do not expect that any additional costs would be significant. The following table summarizes the estimated budgetary impact of H.R. 2277.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Spending Subject to Appropriations						
Spending under current law:						
Budget authority ¹	415					
Estimated outlays	413	50				
Proposed changes:						
Authorization level		278	250	175	100	
Estimated outlays		70	168	236	185	104
Spending under H.R. 2277:						
Authorization level ¹	415	278	250	175	100	
Estimated outlays	413	120	168	236	185	104
Direct Spending						
Termination expenses:						
Estimated budget authority		3				
Estimated outlays		3				

¹ The 1995 level is the amount actually appropriated.

The costs of this bill fall within budget function 750.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-

you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of H.R. 2277 would increase direct spending by \$3.3 million in fiscal year 1996 to cover costs for terminating the LSC. The following table shows the estimated pay-as-you-go impact of this bill.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998
Change in outlays	0	3	0	0
Change in receipts	(¹)	(¹)	(¹)	(¹)

¹ Not applicable.

- 7. Estimated cost to State and local governments: None.
- 8. Cost comparison: None.
- 9. Previous CBO estimate: None.
- 10. Estimate prepared by: Susanne S. Mehlman.
- 11. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2277 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill—Short title

Section 1 of the Bill, H.R. 2277, sets forth its short title as “The Legal Aid Act of 1995.”

Section 2 of the bill—Legal Services Corporation

Section 2 of H.R. 2277 provides that the “Legal Services Corporation Act” (42 U.S.C. 2996–29961) is repealed and replaced with the “Legal Aid Grant Act.” The provisions of the “Legal Aid Grant Act” are described in the section-by-section which follows.

Section 1 of the act—Short title

Section 1 provides a short title for the proposed Act which is the “Legal Aid Grant Act.”

Section 2 of the act—Definitions

Section 2 of the Act redefines the essential parties to the legal services contract and grant process. Current parties to that process include the Legal Services Corporation as the grantor, the Legal Services grantee, and an eligible client. New definitions set forth in Section 2 define those terms as the state, the qualified legal service provider, and the qualified client. Section 2 further defines a qualified case of action under the Act and a qualified legal service.

Section 2(1)(A) of the Act defines a “qualified legal service provider” to be any individual who is licensed to and who has practiced law in a state for not less than 3 years or a person (to include corporations, partnerships or limited liability companies) who em-

employs or contracts with an individual (who is licensed to and who has practiced law in a state for not less than three years). The Committee's intent in so defining qualified providers is to encourage additional providers to become involved in the process of furnishing legal aid and to encourage lawyers who are engaged in an ongoing private practice to incorporate legal services into their practice.¹⁰ Section 2(1)(B) clearly disqualifies some persons from becoming qualified legal service providers, including any individual, who during the ten years prior to submitting a bid for a contract under the Act has been convicted of a felony, or disbarred from the practice of law for misconduct, incompetence or neglect of a client. This section also prohibits anyone from bidding on a legal services contract if any criminal charge against that individual is pending on the date of submission of a bid. Consistent with the provisions of Section 2(1)(A), the acts of the officers, directors, partners and employees of a corporation, partnership or limited liability company are attributed to the entity and will be considered determinative in disqualifying any person from bidding for or receiving a contract under this Act.

The Committee adopted an amendment that encourages the states to consider two additional factors as potential disqualifiers regarding an applicant for a contract under this Act. Consequently, Section 2(1)(B) permits states to specifically consider whether or not an applicant has ever been found in contempt of any state or federal court, or, whether or not the applicant has ever been sanctioned pursuant to Federal Rule of Civil Procedure 11 or an equivalent state rule regarding false pleadings or pleading in bad faith.

The Committee's intent with regard to these disqualifiers is to encourage members of the Bar in good standing, who have a reputation of respect for the courts, judges and legal process, to make application to provide legal services. It is the Committee's intent to discourage from application under this Act members of the Bar who have on several occasions been found in contempt of court or sanctioned under Civil Rule 11 or its state equivalent or whose professional experience exemplifies disrespect for the Bar, the judiciary or the legal process. It is the Committee's intent to prohibit states from awarding contracts to applicants whose professional record or reputation would indicate any proclivity toward the disqualifying factors set forth in Section 2(B).

Section 2(1)(C) of this Act prohibits the states from imposing any additional requirements on individuals or persons as conditions to either bidding on a contract or being awarded a contract under this Act. It is the Committee's intent to impose uniform requirements upon all the states with regard to these minimal standards; and to preclude the states from imposing any different requirements. It is also the Committee's design to encourage lawyers who have not previously been involved in legal services to make application for, and participate in providing legal aid to the poor. Consequently, the Committee's minimum requirements and disqualifiers to bid-

¹⁰ An problem inherent in the current LSC program is that the same grantees, or legal service providers, have been receiving federal funding to provide these services for over a decade. It is the Committee's hope that competitive bidding as required under section 4 of this Act together with this definition of a qualified provider will encourage new and different participants to provide legal services under this Act.

ding upon or receiving a contract under this Act are intentionally tailored neither to benefit current grantees of the LSC nor to create a disadvantage for lawyers who have no specific experience in representing the poor.¹¹

Section 2(2) of the Act defines the term “qualified legal services” to mean: mediation, negotiation, arbitration, counseling, advice, instruction, referral, or representation; and legal research or drafting in support of such services. Section 2(2) also requires that such services be provided either by a qualified legal service provider or under the supervision of a qualified provider; and on behalf of a qualified client for a qualified cause of action as defined under this Act. This definition is intended to be a general description of the types of services a provider is authorized to provide to a qualified client. However, this description of the types of services is intended to be exclusive. The specific subject matter prohibitions and restrictions set forth in Sections 2(4) and 3(e) further limit the scope of “qualified legal services.”

Section 2(3) of the Act defines the term “qualified client” to mean any individual who is a U.S. citizen or alien admitted for permanent residence who is the three months prior to seeking legal assistance under this Act had an income from any source which was equal to or less than the poverty line established under the Community Services Block Grant Act. This definition is significant to the Committee’s aim through this legislation to confine the use of federal funds to the representation of U.S. citizens or permanent resident aliens and to prohibit such funds from being used in the representation of illegal aliens applicants for residence or temporary residents.

The current LSC board acknowledged in testimony before the Committee this year, that despite the ever growing annual funding for the Corporation, it still only represents twenty percent of poor U.S. citizens.¹² Considering that the current LSC grantees are permitted to and do frequently represent individuals who are not U.S. citizens,¹³ this twenty percent figure becomes even more disturbing. It is the Committee’s aim to increase the percentage of U.S. citizens and permanent resident aliens represented by legal service lawyers. Since that the goal requires a definition that excludes temporary agricultural workers and illegal aliens from legal services representation, this provision facilitates that result. The term “qualified client” is further defined to require that an eligible client be at or below the poverty level for a minimum of three months prior to seeking federally funded legal assistance. This provision is significant when compared to current law, which allows for the rep-

¹¹ For example, a state which attempts to impose a requirement that the successful bidder, under this Act, be one who is able to show substantial experience in poverty law would directly contradict the Committee’s intention regarding this provision.

¹² LSC proponents also acknowledged to our Committee that LSC offices turn away hundreds of needy clients every day. Hearing on Reauthorization of the Legal Services Corporation before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary, May 16, 1995, 104th Cong. 1st Sess. (1995) (testimony of Deputy Attorney General Jamie Gorelick).

¹³ Congressman Barr referred to several such cases during Subcommittee hearings in which Legal Services attorneys represented illegal aliens, including: *National Center for Immigrants Rights, Inc., et. al. v. Immigration and Naturalization Service*, 743 F.2d 1365 (1984), and *Recardo Davila-Bardales v. Immigration and Naturalization Service*, 27 F.3d 1 (1st Cir. 1994). Hearing Subcomm. on Commercial and Administrative Law, House Comm. on the Judiciary, May 16, 1995, 104th Cong., 1st Sess. (1995).

resentation of any individual whose income is equal to 125 percent of the poverty line and has no specific time frame to determine such income level. Additionally, the definition in section 2(3) specifically includes income from any source. In contrast, for the purpose of the definition of an eligible client, current LSC regulations exclude entire categories of sources of income.

Section 2(4) of the Act defines a “qualified cause of action” by setting forth a finite list of specific causes of action that shall be considered as qualified under this Act. It is the Committee’s intent in establishing this list to prioritize the expenditure of time and resources of legal service providers in a way that will allow them to assist the greatest number of eligible clients with legal needs that are most urgently required.¹⁴ The dismal statistic provided by the current LSC Board of the Committee which indicates that the Corporation currently serves only twenty percent of the poor, would appear capable of improvement when considered in conjunction with the fact that scarce LSC resources have been used to represent illegal aliens in deportation proceedings, drug dealers against eviction from public housing authorities, and convicted prisoners in various civil proceedings.¹⁵

It is the intent of the Committee to prohibit this panoply of adventuresome and politically oriented causes of action in order to focus the legal service lawyer’s time and work product on the immediate concerns of qualified and law abiding U.S. citizens and permanent resident aliens. While the Committee acknowledges that the types of causes permitted under Section 2(4) may be more mundane than the class of cases which an unfettered lawyer might choose, it is the Committee’s intent to prohibit the use of federal funds to finance these less practical types of representatives that LSC grantees have heretofore engaged in with the support of federal dollars.

The types of representation prioritized in the list set forth in Section 2(4) include only civil causes of action resulting only from the specific descriptions of clauses (i) through (xv). Legal service providers are enjoined to avoid accepting cases where law enforcement agencies, district attorney’s offices, or other agencies are able to provide adequate service. The causes set out in section 2(4) clause (i) include those arising from landlord and tenant disputes and are intended to cover all such actions except for the representation of a tenant where either a public entity or private citizen has instituted an eviction proceeding based upon criminal activity. It is the Committee’s design to explicitly exclude authority for legal service providers to represent a tenant in any eviction proceeding who is either personally involved in, responsible for, or who knowingly allows his or her dwelling to be used for, criminal activity.

Section 2(4), clause (ii) provides authority for legal service providers to represent eligible clients in any foreclosure proceedings regarding the client’s residence. Clause (iii) authorizes providers to

¹⁴The most recent data made available to the Committee by the LSC indicates that the types of representation prioritized in Section 2(4) comport with the most frequently provided types of services that current eligible clients have sought. *Legal Services Corporation Fact Book—1990 Cases Closed, by type of Legal Problem (1991)*.

¹⁵*Hearing on Reauthorization of Legal Services*, Subcom. on Commercial and Administrative Law of the House Comm. on the Judiciary, July 17, 1995, 104th Cong. 1st Sess. (1995) (testimony of Terrance Wear, Mike Wallace, Penny Pullen and Neal Hogan).

become involved in bankruptcy-related representation regarding Chapters 7 and 12 of title 11 of the U.S. Code; and in Chapter 13 proceedings with the caveat that no Chapter 13 representation is authorized if a petition for eviction of the client has preceded such filing. Testimony to the Committee has indicated that current LSC grantees frequently advise their clients, in order to delay an otherwise inevitable eviction, to file a petition in bankruptcy in Chapter 13. The filing of such a petition ensures that a landlord or a public housing authority cannot move forward in an eviction proceeding for at least 90 days after the date of filing. It is the Committee's intent to prohibit legal service lawyers from frustrating an otherwise legitimate proceeding in eviction through the misuse of the bankruptcy courts.

Clause (iv) of section 2(4) provides authority for qualified providers to represent clients regarding the enforcement of any debt. Clauses (v) and (vi) of section 2(4) allow providers to represent eligible clients who apply for any statutory benefit to which they are specifically entitled under State or Federal law; and to further represent clients in appellate proceedings regarding the denial of such benefits. It is significant that clause (vi) limits a provider's representation of an appeal regarding the denial of a statutory benefit. Since clause (iv) of section 2(4)(B) of this Act excludes from the term "qualified cause of action" any challenge to the constitutionality of any statute, clause (vi) of section 2(4)(A) is consistent in restricting appellant representation only to the denial of a benefit on a statutory ground.

Clause (vii) of section 2(4)(A) provides authority for a qualified provider to represent a qualified client in a child custody or child support action. This has proven in the past to be an important legal service for the poor, and, the Committee intends that it will continue to be a priority under this Act. Clause (viii) of section 2(4)(A) provides for representation in actions to quiet title, which is intended to provide a wide array of representation regarding legitimate and fraudulent transactions surrounding real property.

Clause (ix) of section 2(4)(A) authorizes providers to represent individuals who are victims of spousal or child abuse. In the past, this type of representation by legal service lawyers has been decisive in protecting the rights of abused women and children; the Committee intends for such representation to continue to be a priority. It is significant that the Committee has limited such representation to the abused party. It is the Committee's design to avoid a legal services lawyer/client relationship like that which has arisen under the current program where an LSC lawyer represented the abusing party under such circumstances.¹⁶ It is also the Committee's intent by including the prefatory language, "activities involving" in clause (ix) to ensure that divorce-related representation be provided in conjunction with spousal or child abuse cases.

Clauses (x)(xi)(xii)(xiii)(xiv) and (xv) of section 2(4)(A) provide authority to qualified providers under this Act to represent qualified clients on matters involving insurance, competency hearings, pro-

¹⁶In re: Involuntary Termination of E.C.C. to Baby Girl V.H., No. 92-1253 (Northhampton County, Penn. Feb. 28, 1995).

bate, divorce, employment matters and consumer fraud cases. These are all types of representation that legal services lawyers have been called upon in the past to provide for the poor, and the Committee intends that they will continue to be a priority.

Finally, section 2(4)(B) includes certain catchall language at the end of the enumerated list of qualified causes of action to authorize additional causes of action which are not specifically set out in clauses (i)–(xv) of section 2(4)(A), if they arise out of the same transaction as a cause of action specified in clauses (i)–(xv) of section 2(4)(A). It is the Committee’s design through this language to be flexible and to authorize full representation of qualified clients for actions directly involving those causes specified in section 2(4)(A)(i)–(xv). However, it is also the Committee’s intent that this catchall language not be abused as a loophole by a qualified provider to allow their involvement in representation that is clearly beyond causes directly relevant and arising directly from the actions prioritized in section 2(4)(A)(i)–(xv). It is additionally the Committee’s intent, as the wording of this catchall provision indicates, to preclude this language from being used to circumvent other prohibitions and restrictions set forth in this Act.

Section 2(4)(B) makes explicitly clear that the term “qualified cause of action” does not include any class action under Federal, State or local law or any challenge to the constitutionality of any statute. This clarification is critical to the Committee’s intent in prioritizing the qualified causes of action authorized in section 2(4)(A). The purpose in specifying qualified causes of action is to prioritize a provider’s use of limited time and resources. Class actions and constitutional challenges are explicitly excluded pursuant to section 2(4)(B) due to the fact that the complexity of those actions necessarily consume inordinate time and resources of legal services lawyers to the detriment of unserved eligible clients.¹⁷ Testimony before the Committee this year overwhelmingly implored the Committee to disallow class actions and constitutional challenges to statutes.

Finally, section 2(5) defines the term “State” with the traditional statutory language which includes the District of Columbia and the several U.S. territories. However, section 2(5) also provides that an authority pursuant to the bill for the purposes of receiving grant money, shall be the recognized governing body of an American Indian tribe or an Alaskan native village that carried out substantial governmental powers and duties. This language regarding native Americans was included in light of the fact that while many native Americans have in the past required legal services, they do not recognize state governments as sovereigns. Therefore, pursuant to section 2(5), grants may be made directly to the governing body of an Indian tribe or Alaskan native village.

¹⁷Some have argued that class actions represent only a small percentage of current LSC cases. However, the most recent data available to the Committee from the Corporation indicates that 1,759 class actions were litigated by Legal Service grantees in 1989. H.R. Rep. No. 102–476, 102nd Cong., 2nd Sess. (1992). The Committee has concluded that this type of resource drain is a luxury that Legal Services providers cannot afford in today’s budgetary climate.

Section 3 of the act—Grants

Section 3(a) of the Act provides certain guidelines to the states with regard to applying of grant money and for its use. Section 3(a) makes clear that the Attorney General of the United States shall direct the Office of Justice Programs in the Department of Justice to make grants to the states for the purpose of providing qualified legal services. Section 3(b) provides that grants shall be made pursuant to this section to the states in such proportion as the number of poverty line residents of each state bears to the total number of such residents in the U.S. Section 3(b) is significant in that it ensures that the money made available pursuant to this Act will be proportioned amongst the states pursuant to the poverty line which will require that more federal money be provided to the states with the greatest number of poor residents. Section 3(c) requires that states retain not more than 5 percent of any grant provided by the Attorney General for administrative costs. The Committee allowed each state to retain up to 5 percent of its grant money for administrative costs to comport with an identical provision in the Community Services Block Grant Act, which was passed by Congress in 1981.¹⁸

Section 3(d) provides that each state which applies for a grant certify to the Attorney General that it will comply with and enforce the requirements of this Act. This provision is significant in requiring any state which receives a grant pursuant to this Act to certify to the U.S. Attorney General that it will not only comply with, but enforce the requirements of this Act. It is the Committee's intent through section 3(d) to require the states to actively monitor qualified providers with whom they contract in order to enable the state to enforce all the restrictions and prohibitions set forth in this Act. This state certification, coupled with current Federal law regarding block grants, is intended to ensure dual state and federal enforcement of this Act.¹⁹

Section 3(e) imposes significant restrictions on a qualified provider's use of federal grant money should it receive a contract from the state to provide such services. These restrictions are similar to those found in past appropriations riders which have funded the Legal Services Corporation, and to restrictions found in the Commerce, State, Justice Appropriations legislation which passed the House on July 26, 1995. The restrictions of section 3(e) prohibit the use of federal funds: in any litigation regarding redistricting; for Executive branch or regulatory lobbying; for any legislative lobbying of the Congress or any state or local legislative body; to conduct

¹⁸Critics of the legal aid block grant concept argue that allowing 5 percent administrative costs for the States is prohibitive considering there are 50 different states. Furthermore, they contend that the current LSC only expends 3 percent of its Federal money on administrative costs. However, the LSC has acknowledged that the 3 percent figure for administrative costs of the Corporation relates only to the administrative costs of the Corporation's headquarters in Washington and not to the various 15 or 20 percent administrative costs incurred by the 323 different grantees of the Corporation which are financed with Federal money. Consequently, it is the Committee's estimate that even if all 50 states retained the maximum 5% allowed, the aggregate figure for administrative costs for legal services would be substantially less than under the current Corporation .

¹⁹It is important to note the State's certification to enforce the provisions of this Act in conjunction with the Department of Justice regulations that currently require the Justice Department to enforce all provisions of Federal Grants and Cooperative Agreements with State and Local governments. *28 C.F.R. Ch. 1 (7-1-94 Edition) Part 66-Uniform Administrative Requirements for Grants in Cooperative Agreements to State and Local Governments.*

training programs for political activities or labor or antilabor activities; to participate in any litigation or lobbying with respect to abortion or to participate in any litigation or representation on behalf of any prisoner. Section 3(e) also prohibits the solicitation by any qualified provider of any client for the purposes of providing legal services. Section 3(e) also prohibits the use of federal funds to pay any voluntary membership dues to any private or nonprofit organization.²⁰ It is the Committee's design with regard to the restrictions set forth in section 3(e) to absolutely prohibit any activities set forth therein; and it is expected that pursuant to section 5(j) of this Act, a state would terminate a qualified provider who is found to have breached any of these prohibitions.

Section 3(f) of the Act limits a participating state's use of its own funds expended for the provision of legal services to the restrictions set forth in this Act. A fundamental problem with the current LSC Act is the complete lack of authority it provides the Corporation to account for the federal money which the Corporation oversees. There is no requirement that LSC grantees maintain any record regarding the specific clients served, the nature of the services provided, or the funds which pay for any particular legal services. Consequently, there is no way to prevent the illicit use of non-federal funds by LSC grantees.

The LSC contends that non-federal funds may be utilized to circumvent federal restrictions on LSC activities because they are private funds and therefore not subject to federal oversight.²¹ The fungibility of Federal, state and private funds prevents effective oversight of federal funds to LSC grantees by Congress and is frequently proffered as an excuse by the LSC board for not disciplining grantees who violate attempted congressional mandates. While the Committee does not find it constitutionally sound to limit the use by qualified providers of purely private funds, it has pursuant to section 3(f) limited the use of such state funds. The Committee provides an incentive to the states to apply the same restrictions to state funds as apply to federal funds. In return for the states' consent to the restrictions of this Act, federal funds are provided for legal services in the states.

Section 3(g) of the Act prohibits a qualified provider and qualified client from claiming or collecting attorneys fees from parties to any litigation initiated by such client. It is the Committee's intent through this Act to encourage the private Bar to participate in the representation of the poor. The Committee has concluded that if attorneys fees are available to a client regarding any particular cause if action, it will be attractive to a private sector lawyer. Considering the fact that legal services lawyers represent only 20 percent of the poor, and so many eligible clients are refused representation, the Committee has concluded that legal service lawyers should not be put in a position to be competing with the private Bar for clients.

²⁰ In prohibiting the use of Federal funds to pay for voluntary membership dues to any private or nonprofit organization, the Committee intends to allow requisite State bar membership dues to be paid with federal funds and recognizes those as nonvoluntary membership dues; however, it explicitly intends to prohibit the use of federal funds to pay for any other organizational dues which are not essential to a lawyer's legal authority to practice law.

²¹ See Hearing on Reauthorization of the Legal Services Corporation, *supra*, (testimony of Alexander Forger).

Section 3(h) sets forth language which was adopted by amendment during the Committee's consideration of the bill. Section 3(h) is intended to prohibit any attempt by any qualified provider or client to avoid or, in any way, evade the requirements and restrictions of this Act. While such language may, when considered with other provisions of this Act, appear redundant; the Committee has concluded that a twenty year history of LSC grantees' deliberate evasion of congressional restrictions warrant this additional provision.

Section 3(i) of the Act designates the dollar amounts authorized to be appropriated for this Act. The original text of H.R. 2277 provided funding of \$278 million for FY 1996 and \$141 million for FY 1997; however, the Act as amended by Committee provides for \$278 million for FY 1996, \$250 million for FY 1997, \$175 million for FY 1998 for \$100 million for FY 1999. It is the Committee's intent to encourage a phasing out of federal participation in legal services; and to encourage state and local governments and private organizations to become more active in funding legal services for the poor.

Section 4 of the act—Contracts

Section 4(a) of the Act requires each state which receives funds under this Act to make such funds available for contracts pursuant to a competitive bid process throughout the state. Section 4(b)(1) requires the governor of each state to designate an authority of the state to administer the legal aid program, and to solicit and award bids for the provision of legal services within the state. Section 4(b)(2) requires the state authority to divide the state into service areas to ensure the availability of adequate legal services for the poor throughout the state.

Section 4(b)(3) requires a bidder for a contract with a state whose service area includes a client population which is at least five percent non-English speaking demonstrate the ability to satisfy the communication needs of that population. The current LSC Act contains a similar provision; however, it imposes no population percentage requirement. It is the Committee's intent through section 4(b)(3) to encourage special attention for non-English speaking eligible client populations regarding legal services, and to do so through a uniform standard which will apply to all states. This requirement may be satisfied by bilingual staff, paid translators or volunteer translators.

Section 4(c) requires states which receive money pursuant to this Act to provide funds throughout that state to its service areas on the same basis as grants are made available to the states pursuant to section 3(b) of this Act. Section 3(b) of this Act references the Community Block Grant Act (42 U.S.C. 9902(2)). The Committee intends through this provision to require the states to make federal money proportionally available, through the bidding process, to service areas in the state in a manner that ensures that the poorest service areas receive the greatest percentage of federal money.

Section 4(d) of the Act requires the states to award contracts for the provision of qualified legal services to the applicant who is best qualified, as determined by the state, and who in its bid offers to provide the greatest number of hours of legal services to qualified

clients. It is the Committee's intention through section 4(d) to require a state to award the contract to an applicant who prevails on both prongs of this two prong test: (1) who is best qualified according to the state, and (2) who bids to provide the greatest number of hours. Section 4(d) further provides that a state, in determining which applicant is best qualified, shall consider, among other things, the reputation of the principals of the applicant, the quality, feasibility and cost-effectiveness of the bidder's plan and a demonstration of willingness to abide by the restrictions of this Act. It is the Committee's intention through this provision to encourage persons who have not previously acted as LSC grantees to become involved in the provision of legal services to the poor. It is not the Committee's intention to tilt the scales in favor of or against existing legal service providers.

Section 4(e) is critical to understanding the significance of the requirements of section 4(d). Section 4(e) requires that contractors under this Act only be paid for hours of service rendered, only at the contract rate, and only if such services are substantiated by attorney's time records (billable hours) and additional client-specific documentation. Section 4(e) mandates that the contract rate be determined by dividing the total dollar amount of the contract awarded by the number of hours bid by the applicant (pursuant to subsection 4(d)). This language is critical to the Committee's fundamental intent to establish a cost-effective and accountable legal services delivery system.

Clearly, the Committee's requirement in section 4(d) that a state contract with the highest bidder is paramount to the cost-effective control inherent in section 4(e)'s contract rate formula. If they are not encouraged through this competitive bid process to bid the greatest number of hours the bidder is capable of providing, then the contract rate will not produce the most cost-effective provision of qualified legal services for the poor.²² The Committee intends for the states to determine who amongst the highest bidders is otherwise best qualified. However, it is not the Committee's intent to allow a state to utilize the "best qualified" test to undermine the Act's aim to award contracts to the most cost-effective bidder. Finally, section 4(e) requires a state to make full payment for bills rendered by qualified providers to the state within sixty days.

Section 5 of the act—Requirements for the provision of qualified legal services under a contract

Section 5(a) of the Act provides that the term of a contract under Section 4 shall be no longer than one year. The Committee recognizes that the Act provides for a limited period of authorization and intends that states should be in a position to assume the responsibility to provide legal services when that period of authorization expires. Contracts of longer than one year would not facilitate the assumption of that responsibility, nor would they encourage the

²² For example, if a contract is advertised for a specific service area at \$200,000 and one applicant bids to provide 1,000 hours of legal services and another applicant bids to provide 2,000 hours, then the first applicant, pursuant to section 4(e) would be paid at a rate of \$200 per hour, while the second applicant would be paid at \$100 per hour. Pursuant to this Act that is the only rate at which a provider may be paid once the terms of the contract are agreed upon.

competitive process, particularly at the outset of an innovative program as envisioned by this Act.

Section 5(b) requires qualified legal service providers to discharge their responsibilities under a contract in a professional manner consistent with applicable law. The Committee intends that this section should be interpreted to require that all providers under this Act comply with all applicable state Bar ethics rules.

Section 5(c) requires that providers maintain case files on qualified clients, which shall include all pleadings and research, for five years after the resolution of the client's cause of action. The Committee believes that it is important that records be available for as long as practicable which document the provider's relationship with the client in order to verify the provision of quality legal services. The bill, as introduced, provided that case files be kept for three years; however, the Committee adopted an amendment extending that period to five years—evidencing its strong interest in insuring quality legal services.

Section 5(d) requires legal services providers to maintain daily time records documenting their provision of qualified legal services. These records must be in increments of one-tenth of an hour and must identify the relevant client, the general nature of the work performed and the account charged for such work. Timekeeping has long been proposed by those seeking to improve the quality of legal service provided by Legal Services Corporation grantees, and has been identified by them as one of the major obstacles in guaranteeing that current grantees adhere to federal restrictions. The Committee believes that this provision is critical to the goal of providing an accountable delivery system for legal services.

Section 5(e) provides that qualified clients shall be given questionnaires to encourage them to assess the quality of the services which they received, in order to assist the administrative authority in its supervisory role. Section 5(f) provides that qualified clients who receive in person legal services shall be required to execute a waiver with respect to such services of their attorney/client and attorney work product privilege as a condition to receiving such services. The waiver is intended to facilitate the determination of the quality and quantity of such service, as well as compliance with the Act, and is limited to such purpose. It does not constitute a waiver as to other parties and its use for any other purpose is prohibited.

The Committee has concluded that such a waiver is essential if accountability of the provider is to be maintained. The Committee notes that in the past, grantees have interposed claims of attorney/client privilege to withhold even routine client information which is necessary for even the most cursory of monitoring functions.²³ The Committee also notes that similar waivers of confidentiality of otherwise privileged information are required in other instances by the Federal government to protect the integrity and promote the effectiveness of federal programs.²⁴

Section 5(g) requires legal service providers to make and maintain records indicating the basis upon which they determined the

²³ See, "Legal Services Corporation: Grantee Attorneys' Handling of Migrant Farmworker Disputes With Growers", Report of the General Accounting Office, September 1990 (GAO/HRD 90-144)

²⁴ 42 U.S.C. 1320c-9.

eligibility of qualified clients. The records must be maintained for three years following the termination of a contract. The Committee intends to insure the integrity of the program developed under the Act and feels that this can only be accomplished by the retention and availability of such information to those supervising it.

Section 5(i) requires that contracts entered into with legal service providers shall provide for the recovery of reasonable attorneys' fees in a successful action brought to compel payments to the provider under the contract. The Committee believes that a provider who has been forced to resort to an action to compel payment from a state should be compensated for its attorneys' fees when such actions are successful.

Section 5(j) requires that the Attorney General, the Governor of the respective state, or the authority which awarded a contract to terminate a qualified legal service provider who is found to have committed a material violation of this Act. A material violation shall include, but is not limited to, involvement with any prohibited activity. The requirement that this power be exercised underscores how strongly the Committee a material violation of this Act. A material violation shall include, but is not limited to, involvement with any prohibited activity. The requirement that this power be exercised underscores how strongly the Committee feels that providers must adhere to the structure and strictures of this Act. The Committee also acknowledges that the contract which the provider has entered into with the respective state authority may contain additional requirements binding the provider. Section 5(j) provides that a breach of this contract by a provider shall entitle the Governor or the authority to terminate the contract, to award a new contract, and to recover any funds improperly expended by the provider with interest. If the breach was willful, the provider is required to pay to the authority awarding the contract, an additional amount equal to one half the amount improperly expended by the provider. This is intended as an additional enforcement incentive.

Section 5(h) requires a qualified legal service provider to consent to audits by the Attorney General, the General Accounting Office and the authority which awarded its contract. The audit may be performed at the provider's principal place of business and is to be limited to a determination of whether the provider is meeting the requirements of this Act and the contract. The Committee intends not only to insure the efficiency of the program but also to emphasize the maintenance of its federal character relative to the application of federal criminal laws to those who would misuse funds provided under this Act.²⁵

Section 3 of the bill—Transition and effective date

Section 3(a) of H.R. 2277 provides that the Legal Services Corporation shall terminate six months after the date of enactment of this Act. Section 3(b) of the bill provides that the Attorney General may make funds available to grantees who were funded under the LSC Act in order to complete court actions which were filed prior

²⁵It is the Committee's understanding and intention that all contractors under this Act will be considered federal contractors and, therefore, subject to all federal statutes and laws. See, *U.S. v. Faulks*, 905 F.2d 928 (1990); *U.S. v. Littriello*, 866 F.2d 713 (1989); *U.S. v. Johnson*, 596 F.2d 842; *U.S. v. Scott*, 784 F.2d 787 (1986) cert. den. 476 U.S. 1145 (1986).

to the date of enactment of this Act. The funds available to the Attorney General for this purpose must come from funds authorized under the Act, however, they may not exceed one percent of the amount appropriated under Section 3 of the Act for fiscal year 1996.

Section 3(c) of the bill provides that upon the Corporation's termination, all assets, liabilities, obligations, property, and records relating to its activities shall be transferred to the Attorney General. Section 3(d) provides that upon termination of the Corporation, its President shall take whatever action is necessary to assist the Attorney General in undertaking her new responsibilities under the Act, and transfer to her all unexpended funds which have been appropriated to the Corporation for the purpose of carrying out its activities. Section 3(e) of the bill provides that the Legal Aid Grant Act shall take effect on the date of enactment.

AGENCY VIEWS

The Administration was represented during the hearings by the Honorable Abner Mikva, Counsel to the President; Deputy Attorney General Jamie Gorelick and John Carey, General Counsel, Federal Emergency Management Agency.

In addition, the following letter with attachments was received from the Honorable Abner Mikva and U.S. Attorney General Janet Reno.

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, September 11, 1995.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: By this letter and its Appendix we want to convey the Administration's vigorous opposition to H.R. 2277, the Legal Aid Act of 1995. We urge the Committee, in the strongest terms possible, to reject this proposed legislation.

Against the 21-year success of the Legal Services Corporation in delivering a broad array of needed legal services to poor and low-income citizens throughout the country at levels of economy, efficiency, and effectiveness rarely realized in either public or private management, the Legal Aid Act of 1995 would:

- (i) dismantle the well-tested and extraordinarily efficient and effective Legal Services Corporation grants to, and management of, some 300 legal services providers across the nation, and substitute for that system a wholly untested block grant structure to be managed by the Department of Justice and operated through the States;
- (ii) disqualify from eligibility for legal services entire categories of poor and low-income people;
- (iii) disallow from federally funded services many critical causes of action ranging from adoption to constitutional challenges; and
- (iv) set an appropriations course to end federally funded legal services.

To so narrow the availability and scope of publicly funded legal services, and to scrap a successful system and replace it with a yet-

to-be-developed set of both federal and state bureaucracies, is shortsighted. The Legal Aid Act of 1995 makes a mockery of the essential American principle "Equal Justice Under Law." If enacted, the bill will mean for millions the loss of effective, community based legal services and the certainty of continuing and aggravated problems that will cost us dearly in other ways down the line.

We urge you, Chairman Hyde, for these reasons and others detailed in the accompanying Appendix, to oppose this bill and lead the Committee to reject it.

Sincerely,

JANET RENO,
Attorney General.
ABNER MIKVA,
Counsel to the President.

APPENDIX

I. BACKGROUND

Approximately 50% of all low-income households today face at least one problem having a legal dimension. The legal problems low-income people most frequently face include housing problems, family and domestic matters, credit and creditor problems, problems concerning benefits conferred by law, and health and health care-related problems.

Low-income people, however, are very often denied access to justice because they cannot afford legal help. Nearly three-fourths of the low-income people with legal needs do not get help in the civil justice system—not because the Legal Services Corporation is functioning poorly, or because it has diverted its resources to matters other than direct client representation—but simply because the entire civil justice system is overburdened.

When Congress passed the Legal Services Authorization Act in 1974 it was responding to a clear need and acknowledging that a large part of society was barred from effective access to the legal system. For the last 21 years the Corporation has directly channeled federal funding to nonprofit legal services programs serving indigent persons whose rights need protecting. There are more than 300 of these programs nationwide, operating from nearly 12,000 neighborhood law offices.

Corporation programs operate through small, community-based and locally staffed offices headed by independent boards that include members of the local bar and other representative quarters of the community. These offices are available to low-income people in every county of every state, and function as law firms tailored to meet the needs of each community, and the people who staff these offices develop expertise and accumulate institutional and community knowledge that cannot be replaced.

The management of the Corporation is a model for efficient and effective public funding. Only 3% of the Corporation's budget is spent on administrative functions; the remaining 97% is channeled directly to the community-based legal service providers for the delivery of legal services to people in need. This extraordinary ratio

of administrative costs to program funding leaves very little room for improvement.

Legal Services Corporation providers nationwide handle over 1.7 million cases each year, improving the lives of families and the quality of life in their communities. Program providers help families secure safe housing, prevent illegal evictions, and protect clients' health, educational, and employment rights. Approximately 33% of all legal services program cases involve issues of family law; 22% involve protection of housing rights; and more than 75% involve or directly affect the rights of children.

In May of this year the Deputy Attorney General testified before one of your Subcommittees to the continuing need for a strong and independent Legal Services Corporation. Judge Mikva also testified to that need, based on his observations from legislative bodies for nearly 20 years and from the federal bench for an additional 15 years. In July Alan Bersin, the United States Attorney for the Southern District of California, also testified to the important role the Corporation plays in law enforcement.

II. THE ILL-CONCEIVED PROVISIONS OF H.R. 2277

Against this backdrop of legal needs and the Corporation's extraordinary record of service and efficiency, the provisions of H.R. 2277 are badly flawed.

a. The system of block grants

We are very strongly opposed to the bill's system of block grants to be administered by unknown state entities.

First, this proposal would not save money. The bill would allow each state to retain as an administrative fee 5 percent of each federal grant it processes. Currently, however, only 3 percent of the Corporation's budget is spent on administrative functions with the remainder going directly to the delivery of legal services. The Corporation involves a staff of approximately 125 experienced people and operates at an exceptionally high level of economy, efficiency and effectiveness. None of these important and rarely achieved goals would be served by dissolving this small, experienced and specialized group and providing for a larger fee to be charged by the states.

Second, jeopardizing the well-established system of neighborhood law offices with experienced attorneys trained to meet local legal needs would be extremely wasteful. To disrupt the current, proven structure for providing legal services to the poor and replace it with an as-yet undeveloped system that by its very nature would involve or create a new layer of bureaucracy in each of the fifty states would decrease both the quality and quantity of legal services available to the poor and the working poor. Years of institutional knowledge and expertise would be lost.

Third, the bill's provisions for individual contracts obtained by bids risk the result of second-class justice. Because it appears that only individual may bid on these contracts, low-income persons will lose the benefit of the expertise developed by local legal services offices over the last 21 years. The critical function of these local offices as magnets, or clearinghouses, would also be destroyed, thwarting the approximately 130,000 attorneys nationwide engag-

ing in *pro bono* activities each year but needing a mechanism to do so. Similarly, the bill's proposed contracts are for a short duration—on year—which presents the very real danger of lack of continuity in representation and disruption to pending cases.

Fourth, the involvement of state governmental units in the administration of legal services for private persons would present the inevitable potential for conflicts of interest. Legal providers would hesitate to represent clients whose cases, while highly meritorious, challenge a flawed law or governmental practice. A provider whose funding could be terminated for advancing a legitimate claim on behalf of his or her client is put in an unfair position.

Finally, oversight would not be improved. This Committee has for 20 years very capably overseen the operations of the Corporation. To delegate this important function to unspecified state bureaucracies with no experience in such oversight simply is not responsible.¹

B. The Justice Department's administration of the grant program

We are also very strongly opposed to the provision that the Department of Justice administer the grant system.

First, this system would not increase efficiency or save money. As stated above, the Corporation consumes only 3% of its budget on administrative expenses. The bill allows states to withhold 5% of all grant amounts as administrative expenses; this amount is in addition to the increased costs the Justice Department would incur in overseeing this program, and that the public would have to bear.

Second, involvement in the delivery of legal services to poor and low-income people is outside the scope of, and fundamentally inconsistent with, the primary mission of the Justice Department. The Department's primary responsibilities are criminal and civil law enforcement directly and exclusively in the interests of the United States and its constituent executive branch agencies. Even indirect involvement in the litigation of private interests has never been the job of the Department.

Third, the independent and exclusive mission of the Corporation is an important aspect of its professionalism and effectiveness for its clients. Access to independent legal advice and services is the essence of the civil justice equality we are trying to achieve, and that goal is best achieved by a single-purpose entity such as the Corporation.

Fourth, it makes no sense to federalize, or involve state governments in, functions relating to the network of legal services programs that operate so efficiently and effectively at the community level. At a time when the Justice Department is grappling with so many issues pertaining to law enforcement, public safety and justice reform, and is trying to consolidate functions and simplify its operations, the addition of a substantial and wholly unrelated administrative task would be inconsistent with the goal shared by all agencies—reducing size and doing more with less.

¹ Further, because the bill provides for a 50 percent decrease in funding from 1996 to 1997 and no funding for 1998, states may lack the incentive to create permanent, efficient offices to administer these grants.

C. Limitations and restrictions on the provision of legal services

The bill so severely limits all aspects of representation that the fundamental concept of a lawyer having the independence to zealously represent his or her client would simply not apply to the bill's supposed beneficiaries. The following examples, while not comprehensive, are among the most troubling in the bill:

1. Limitations on a State's use of its own money

One of the bill's most misguided provisions dictates that if a state receives grant money from the federal government and also distributes its *own* funds to legal service providers the state must require that only "qualified clients," as defined under the federal bill, receive "qualified legal services," again as defined under the bill, pursuant to the bill's laundry list of restrictions limiting the uses of federal grant money. In other words, the federal government restricts in the bill the rights of all 50 states to spend their own money as they wish in funding legal services, including actions between two residents of a given state—or between that state and one of its citizens—in a case pending in that state's own courts.

This extraordinary provision is overreaching and inconsistent with the underlying idea that states are capable of regulating the administration of the legal affairs of their citizens with greater efficiency and wisdom than the Corporation's community-based offices. While the thrust of the bill appears to be to provide states with *more* discretion and *more* authority, the logic behind this provision limiting state authority is difficult to fathom.

2. "Qualified" clients

The bill dramatically limits those who may even apply for legal services, excluding entire categories of now-eligible people who are the most likely to be in need. Its definition of a "qualified client"—a client who is eligible to receive legal assistance from a provider—is limited to United States citizens and certain aliens admitted for permanent residence. This definition would unconscionably deprive many legally-admitted, low-income aliens of access to the civil justice system while they are lawfully in the United States.

3. "Qualified" causes of action

The bill's listing of "qualified" causes of action which may be funded by grant money is not only very small but, most extraordinarily, excludes a number of commonly brought and long-eligible claims such as paternity, adoption, foster care, guardianship, hiring discrimination and wage claims, as well as actions to protect the rights of the physically disabled. Clients with legal problems that do not fit neatly into a predesignated pigeonhole are foreclosed from representation, no matter how meritorious their cases.²

Equally offensive is the *specific exclusion* of "any challenge to the constitutionality of any statute." This limitation is illogical and unjustifiable; it should be the right of every citizen and legal immigrant to have meaningful access to the protection of the Constitu-

²Further, even within the context of this limited set of eligible cases the bill restricts attorneys representing poor and low-income persons from engaging in numerous, perfectly legal activities on their behalf.

tion regardless of his or her financial means. Under the bill, if a state were to pass a statute denying a particular group due process or equal protection, or blurring the line between church and state or limiting free speech, low-income persons would be denied the constitutional protections they are due and that are available to those with money.³

4. Attorneys fees

The bill anomalistically provides that legal service providers may not, under any circumstances, collect attorneys fees from parties in litigation initiated by their clients. Thus in the case of a state statute that automatically awards fees to prevailing plaintiffs as part of an enforcement mechanism, or a state court judge who seeks to award discretionary attorneys fees against a private attorney for engaging in frivolous conduct wasting the court's time and that of a publicly-funded legal services provider, the provider is barred from accepting the compensatory award. This provision again treads, without reason, on state practice.

D. The appropriation ceiling

Finally, the bill imposes for fiscal years 1996 and 1997 increasingly lower ceilings—\$278 million and \$141 million respectively—on future appropriations for the grant program. This is yet another indication of the sponsors' not-so-secret intent to terminate federally funded legal services altogether. This year's appropriation of \$400 million, while far greater than the 1996 and 1997 authorizations provided in H.R. 2277, fell far short of the funding truly needed. If the Committee is serious about legal services, however their delivery is structured, any reauthorization bill should simply authorize the appropriation of such sums as may be necessary rather than impose an artificial ceiling.

CONCLUSION

For the reasons outlined above, the Administration vigorously opposes passage of H.R. 2277, the Legal Aid Act of 1995, and respectfully urges the Committee to defeat it and to reauthorize the Legal Services Corporation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

³Indeed, if a pending case were to have a constitutional issue injected by an opponent or late-arriving third party, an attorney funded with grant money would be placed in the ethical bind of having to forego the assertion of a meritorious defense or withdraw from the case leaving his or her client to attempt a *pro se* defense.

LEGAL SERVICES CORPORATION ACT

[TITLE X—LEGAL SERVICES CORPORATION ACT

[STATEMENT OF FINDINGS AND DECLARATION OF PURPOSE

[SEC. 1001. The Congress finds and declares that—

[(1) there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances;

[(2) there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program;

[(3) providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice and assist in improving opportunities for low-income persons consistent with the purposes of this Act;

[(4) for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws;

[(5) to preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures; and

[(6) attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession.

[DEFINITIONS

[SEC. 1002. As used in this title, the term—

[(1) “Board” means the Board of Directors of the Legal Services Corporation;

[(2) “Corporation” means the Legal Services Corporation established under this title;

[(3) “eligible client” means any person financially unable to afford legal assistance;

[(4) “Governor” means the chief executive officer of a State;

[(5) “legal assistance” means the provision of any legal services consistent with the purposes and provisions of this title;

[(6) “recipient” means any grantee, contractee, or recipient of financial assistance described in clause (A) of section 1006(a)(1);

[(7) “staff attorney” means an attorney who receives more than one-half of his annual professional income from a recipient organized solely for the provision of legal assistance to eligible clients under this title; and

[(8) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States

【ESTABLISHMENT OF CORPORATION

【SEC. 1003. (a) There is established in the District of Columbia a private nonmembership nonprofit corporation, which shall be known as the Legal Services Corporation, for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance.

【(b) The Corporation shall maintain its principal office in the District of Columbia and shall maintain therein a designated agent to accept service of process for the Corporation. Notice to or service upon the agent shall be deemed notice to or service upon the Corporation.

【The Corporation, and any legal assistance program assisted by the Corporation, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of the Internal Revenue Code of 1954 and as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code. If such treatments are conferred in accordance with the provisions of such Code, the Corporation, and legal assistance programs assisted by the Corporation, shall be subject to all provisions of such Code relevant to the conduct of organizations exempt from taxation.

【GOVERNING BODY

【SEC. 1004. (a) The Corporation shall have a Board of Directors consisting of eleven voting members appointed by the President, by and with the advice and consent of the Senate, no more than six of whom shall be of the same political party. A majority shall be members of the bar of the highest court of any State, and none shall be a full-time employee of the United States. Effective with respect to appointments made after the date of enactment of the Legal Services Corporation Act Amendments of 1977 but not later than July 31, 1978, the membership of the Board shall be appointed so as to include eligible clients, and to be generally representative of the organized bar, attorneys providing legal assistance to eligible clients, and the general public.

【(b) The term of office of each member of the Board shall be three years, except that five of the members first appointed, as designated by the President at the time of appointment, shall serve for a term of two years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified. The term of initial members shall be computed from the date of the first meeting of the Board. The term of each member other than initial members shall be computed from the date of termination of the preceding term. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term. No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

【(c) The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States.

[(d) The President shall select from among the voting members of the board a chairman, who shall serve for a term of three years. Thereafter the Board shall annually elect a chairman from among its voting members.

[(e) A member of the Board may be removed by a vote of seven members for malfeasance in office or for persistent neglect of or inability to discharge duties, or for offenses involving moral turpitude, and for no other cause.

[(f) Within six months after the first meeting of the Board, the Board shall request the Governor of each State to appoint a nine-member advisory council for such State. A majority of the members of the advisory council shall be appointed, after recommendations have been received from the State bar association, from among the attorneys admitted to practice in the State, and the membership of the council shall be subject to annual reappointment. If ninety days have elapsed without such an advisory council appointed by the Governor, the Board is authorized to appoint such a council. The advisory council shall be charged with notifying the Corporation of any apparent violation of the provisions of this title and applicable rules, regulations, and guidelines promulgated pursuant to this title. The advisory council shall, at the same time, furnish a copy of the notification to any recipient affected thereby, and the Corporation shall allow such recipient a reasonable time (but in no case less than thirty days) to reply to any allegation contained in the notification.

[(g) All meetings of the Board, of any executive committee of the Board, and of any advisory council established in connection with this title shall be open and shall be subject to the requirements and provisions of section 552b of title 5, United States Code (relating to open meetings).

[(h) The Board shall meet at least four times during each calendar year.

[OFFICERS AND EMPLOYEES

[SEC. 1005. (a) The Board shall appoint the president of the Corporation, who shall be a member of the bar of the highest court of a State and shall be a non-voting ex officio member of the Board, and such other officers as the Board determines to be necessary. No officer of the Corporation may receive any salary or other compensation for services from any source other than the Corporation during his period of employment by the Corporation, except as authorized by the Board.

[(b)(1) The president of the Corporation, subject to general policies established by the Board, may appoint and remove such employees of the Corporation as he determines necessary to carry out the purposes of the Corporation.

[(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Corporation or of any recipient, or in selecting or monitoring any grantee, contractor, or person or entity receiving financial assistance under this title.

[(c) No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly

benefits such member or pertains specifically to any firm or organization with which such member is then associated or has been associated within a period of two years.

[(d) Officers and employees of the Corporation shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5, United States Code.

[(e)(1) Except as otherwise specifically provided in this title, officers and employees of the Corporation shall not be considered officers or employees, and the Corporation shall not be considered a department, agency, or instrumentality, of the Federal Government.

[(2) Nothing in this title shall be construed as limiting the authority of the Office of Management and Budget to review and submit comments upon the Corporation's annual budget request at the time it is transmitted to the Congress.

[(f) Officers and employees of the Corporation shall be considered officers and employees of the Federal Government for purposes of the following provisions of title 5, United States Code: subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Corporation shall make contributions at the same rates applicable to agencies of the Federal Government under the provisions referred to in this subsection.

[(g) The Corporation and its officers and employees shall be subject to the provisions of section 552 of title 5, United States Code (relating to freedom of information).

[POWERS, DUTIES, AND LIMITATIONS

[SEC. 1006. (a) To the extent consistent with the provisions of this title, the Corporation shall exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (except for section 1005(o) of title 29 of the District of Columbia Code). In addition, the Corporation is authorized—

[(1)(A) to provide financial assistance to qualified programs furnishing legal assistance to eligible clients, and to make grants to and contracts with—

[(i) individuals, partnerships, firms, corporation, and nonprofit organizations, and

[(ii) State and local governments (only upon application by an appropriate State or local agency or institution and upon a special determination by the Board that the arrangements to be made by such agency or institution will provide services which will not be provided adequately through nongovernmental arrangements),

for the purpose of providing legal assistance to eligible clients under this title, and (B) to make such other grants and contracts as are necessary to carry out the purposes and provisions of this title;

[(2) to accept in the name of the Corporation, and employ or dispose of in furtherance of the purposes of this title, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise; and

[(3) to undertake directly, or by grant or contract, the following activities relating to the delivery of legal assistance—

[(A) research, except that broad general legal or policy research unrelated to representation of eligible clients may not be undertaken by grant or contract,

[(B) training and technical assistance, and

[(C) to serve as a clearinghouse for information.

[(b)(1)(A) The Corporation shall have authority to insure the compliance of recipients and their employees with the provisions of this title and the rules, regulations, and guidelines promulgated pursuant to this title, and to terminate, after a hearing in accordance with section 1011, financial support to a recipient which fails to comply.

[(B) No question of whether representation is authorized under this title, or the rules, regulations or guidelines promulgated pursuant to this title, shall be considered in, or affect the final disposition of, any proceeding in which a person is represented by a recipient or an employee of a recipient. A litigant in such a proceeding may refer any such question to the Corporation which shall review and dispose of the question promptly, and take appropriate action. This subparagraph shall not preclude judicial review available under applicable law.

[(2) If a recipient finds that any of its employees has violated or caused the recipient to violate the provisions of this title or the rules, regulations, and guidelines promulgated pursuant to this title, the recipient shall take appropriate remedial or disciplinary action in accordance with the types of procedures prescribed in the provisions of section 1011.

[(3) The Corporation shall not, under any provision of this title, interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association (referred to collectively in this title as “professional responsibilities”) or abrogate as to attorneys in programs assisted under this title the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction. The Corporation shall insure that activities under this title are carried out in a manner consistent with attorneys’ professional responsibilities.

[(4) No attorney shall receive any compensation, either directly or indirectly, for the provision of legal assistance under this title unless such attorney is admitted or otherwise authorized by law, rule, or regulation to practice law or provide such assistance in the jurisdiction where such assistance is initiated.

[(5) The Corporation shall insure that (A) no employee of the Corporation or of any recipient (except as permitted by law in connection with such employee’s own employment situation), while carrying out legal assistance activities under this title, engage in, or encourage others to engage in, any public demonstration or picketing, boycott, or strike; and (B) no such employee shall, at any time, engage in, or encourage others to engage in, any of the following activities; (i) any rioting or civil disturbance, (ii) any activity which is in violation of an outstanding injunction of any court of competent jurisdiction, (iii) any other illegal activity, or (iv) any in-

tentional identification of the Corporation or any recipient with any political activity prohibited by section 1007(a)(6). The Board, within ninety days after its first meeting, shall issue rules and regulations to provide for the enforcement of this paragraph and section 1007(a)(5), which rules shall include, among available remedies, provisions, in accordance with the types of procedures prescribed in the provisions of section 1011, for suspension of legal assistance supported under this title, suspension of an employee of the Corporation or of any employee of any recipient by such recipient, and, after consideration of other remedial measures and after a hearing in accordance with section 1011, the termination of such assistance or employment, and deemed appropriate for the violation in question.

[(6) In areas where significant numbers of eligible clients speak a language other than English as their principal language, the Corporation shall, to the extent feasible, provide that their principal language is used in the provision of legal assistance to such clients under this title.

[(c) The Corporation shall not itself—

[(1) participate in litigation unless the Corporation or a recipient of the Corporation is a party, or a recipient is representing an eligible client in litigation in which the interpretation of this title or a regulation promulgated under this title is an issue, and shall not participate on behalf of any client other than itself; or

[(2) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, except that personnel of the Corporation may testify or make other appropriate communication (A) when formally requested to do so by a legislative body, a committee, or a member thereof, or (B) in connection with legislation or appropriations directly affecting the activities of the Corporation.

[(d)(1) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

[(2) No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

[(3) Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

[(4) Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment for use in advocating or opposing any ballot measures, initiatives, or referendums. However, an attorney may provide legal advice and representation as an attorney to any eligible client with respect to such client's legal rights.

[(5) No class action suit, class action appeal, or amicus curiae class action may be undertaken, directly or through others, by a staff attorney, except with the express approval of a project director of a recipient in accordance with policies established by the governing body of such recipient.

[(6) Attorneys employed by a recipient shall be appointed to provide legal assistance without reasonable compensation only when such appointment is made pursuant to a statute, rule, or practice applied generally to attorneys practicing in the court where the appointment is made.

[(e)(1) Employees of the Corporation or of recipients shall not at any time intentionally identify the Corporation or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

[(2) Employees of the Corporation and staff attorneys shall be deemed to be State or local employees for purposes of chapter 15 of title 5, United States Code, except that no staff attorney may be a candidate in a partisan political election.

[(f) If an action is commenced by the Corporation or by a recipient and a final order is entered in favor of the defendant and against the Corporation or a recipient's plaintiff, the court shall, upon motion by the defendant and upon a finding by the court that the action was commenced or pursued for the sole purpose of harassment of the defendant or that the Corporation or a recipient's plaintiff maliciously abused legal process, enter an order (which shall be appealable before being made final) award reasonable costs and legal fees incurred by the defendant in defense of the action, except when in contravention of a State law, a rule of court, or a statute of general applicability. Any such costs and fees shall be directly paid by the Corporation.

[GRANTS AND CONTRACTS

[SEC. 1007. (a) With respect to grants or contracts in connection with the provision of legal assistance to eligible clients under this title, the Corporation shall—

[(1) insure the maintenance of the highest quality of service and professional standards, the preservation of attorney-client relationships, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to eligible clients;

[(2)(A) establish, in consultation with the Director of the Office of Management and Budget and with the Governors of the several States, maximum income levels (taking into account family size, urban and rural differences, and substantial cost-of-living variations) for individuals eligible for legal assistance under this title;

[(B) establish guidelines to insure that eligibility of clients will be determined by recipients on the basis of factors which include—

[(i) the liquid assets and income level of the client,

[(ii) the fixed debts, medical expenses, and other factors which affect the client's ability to pay,

[(iii) the cost of living in the locality, and

[(iv) such other factors as relate to financial inability to afford legal assistance, which may include evidence of a prior determination that such individual's lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation; and

[(C) insure that (i) recipients, consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such assistance, taking into account the relative needs of eligible clients for such assistance (including such outreach, training, and support services as may be necessary), including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems (including elderly and handicapped individuals); and (ii) appropriate training and support services are provided in order to provide such assistance to such significant segments of the population of eligible clients;

[(3) insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas;

[(4) insure that attorneys employed full time in legal assistance activities supported in major part by the Corporation refrain from (A) any compensated outside practice of law, and (B) any uncompensated outside practice of law except as authorized in guidelines promulgated by the Corporation;

[(5) insure that no funds made available to recipients by the Corporation shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, or State proposals by initiative petition, except where—

[(A) representation by an employee of a recipient for any eligible client is necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities (which shall not be construed to permit an attorney or a recipient employee to solicit a client, in violation of professional responsibilities, for the purpose of making such representation possible); or

[(B) a governmental agency, legislative body, a committee, or a member thereof—

[(i) requests personnel of the recipient to testify, draft, or review measures or to make representations to such agency, body, committee, or member, or

[(ii) is considering a measure directly affecting the activities under this title of the recipient or the Corporation.

[(6) insure that all attorneys engaged in legal assistant activities supported in whole or in part by the Corporation refrain, while so engaged, from—

[(A) any political activity, or

[(B) any activity to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with an election (other than legal advice and representation), or

[(C) any voter registration activity (other than legal advice and representation);

[(7) require recipients to establish guidelines, consistent with regulations promulgated by the Corporation, for a system for review of appeals to insure the efficient utilization of resources and to avoid frivolous appeals (except that such guidelines or regulations shall in no way interfere with attorneys' professional responsibilities);

[(8) insure that recipients solicit the recommendations of the organized bar in the community being served before filling staff attorney positions in any project funded pursuant to this title and give preference in filling such positions to qualified persons who reside in the community to be served;

[(9) insure that every grantee, contractor, or person or entity receiving financial assistance under this title or predecessor authority under this Act which files with the Corporation a timely application for refunding is provided interim funding necessary to maintain its current level of activities until (A) the application for refunding has been approved and funds pursuant thereto received, or (B) the application for refunding has been finally denied in accordance with section 1011 of this Act; and

[(10) insure that all attorneys, while engaged in legal assistance activities supported in whole or in part by the Corporation, refrain from the persistent incitement of litigation and any other activity prohibited by the Canons of Ethics and Code of Professional Responsibility of the American Bar Association, and insure that such attorneys refrain from personal representation for a private fee in any cases in which they were involved while engaged in such legal assistance activities.

[(b) No funds made available by the Corporation under this title, either by grant or contract, may be used—

[(1) to provide legal assistance (except in accordance with guidelines promulgated by the Corporation) with respect to any fee-generating case (which guidelines shall not preclude the provision of legal assistance in cases in which a client seeks only statutory benefits and appropriate private representation is not available);

[(2) to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person charged with a misdemeanor or lesser offense or its equivalent in an Indian tribal court;

[(3) to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction;

[(4) for any of the political activities prohibited in paragraph (6) of subsection (a) of this section;

[(5) to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the board interests of a majority of the public;

[(6) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political

activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients;

[(7) to initiate the formation, or act as an organizer, of any association, federation, or similar entity, except that this paragraph shall not be construed to prohibit the provision of legal assistance to eligible clients;

[(8) to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution.

[(9) to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities; or

[(10) to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior corresponding law.

[(c) In making grants or entering into contracts for legal assistance, the Corporation shall insure that any recipient organized solely for the purpose of providing legal assistance to eligible clients is governed by a body at least 60 percent of which consists of attorneys who are members of the bar of a State in which the legal assistance is to be provided (except that the Corporation (1) shall, upon application, grant waivers to permit a legal services program, supported under section 222(a)(3) of the Economic Opportunity Act of 1964, which on the date of enactment of this title has a majority of persons who are not attorneys on its policy-making board to continue such a nonattorney majority under the provisions of this title, and (2) may grant, pursuant to regulations issued by the Corporation, such a waiver for recipients which, because of the nature of the population they serve, are unable to comply with such requirement) and at least one-third of which consists of persons who are, when selected, eligible clients who may also be representatives of associations or organizations of eligible clients. Any such attorney, while serving on such board, shall not receive compensation from a recipient.

[(d) The Corporation shall monitor and evaluate and provide for independent evaluations of programs supported in whole or in part under this title to insure that the provisions of this title and the bylaws of the Corporation and applicable rules, regulations, and guidelines promulgated pursuant to this title are carried out.

[(e) The president of the Corporation is authorized to make grants and enter into contracts under this title.

[(f) At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly, and shall notify the Governor, the State bar association of any State, and the principal local bar associations (if there be any) of any community, where legal assistance will thereby be initiated, of such grant, contract, or project. Notification shall include a reasonable description of the grant application or proposed contract or project and request comments and recommendations.

[(g) The Corporation shall provide for comprehensive, independent study of the existing staff-attorney program under this Act and, through the use of appropriate demonstration projects, of alternative and supplemental methods of delivery of legal services to eligible clients, including judicare, vouchers, prepaid legal insurance, and contracts with law firms; and, based upon the results of such study, shall make recommendations to the President and the Congress, not later than two years after the first meeting of the Board, concerning improvements, changes, or alternative methods for the economical and effective delivery of such services.

[(h) The Corporation shall conduct a study on whether eligible clients who are—

[(1) veterans,

[(2) native Americans,

[(3) migrants or seasonal farm workers,

[(4) persons with limited English-speaking abilities, and

[(5) persons in sparsely populated areas where a harsh climate and an inadequate transportation system are significant impediments to receipt of legal services.

have special difficulties of access to legal services or special legal problems which are not being met. The Corporation shall report to Congress not later than January 1, 1979, on the extent and nature of any such problems and difficulties and shall include in the report and implement appropriate recommendations.

[RECORDS AND REPORTS

[SEC. 1008. (a) The Corporation is authorized to require such reports as it deems necessary from any grantee, contractor, or person or entity receiving financial assistance under this title regarding activities carried out pursuant to this title.

[(b) The Corporation is authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or the terms and conditions upon which financial assistance was provided.

[(c) The Corporation shall publish an annual report which shall be filed by the Corporation with the President and the Congress. Such report shall include a description of services provided pursuant to section 1007(a)(2)(C) (i) and (ii).

[(d) Copies of all reports pertinent to the evaluation, inspection, or monitoring of any grantee, contractor, or person or entity receiving financial assistance under this title shall be submitted on a timely basis to such grantee, contractor, or person or entity, and

shall be maintained in the principal office of the Corporation for a period of at least five years subsequent to such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Corporation may establish.

[(e) The Corporation shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the Federal Register at least 30 days prior to their effective date all its rules, regulations, guidelines, and instructions.

[AUDITS

[SEC. 1009. (a)(1) The accounts of the Corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

[(2) The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

[(3) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Corporation.

[(b)(1) In addition to the annual audit, the financial transactions of the Corporation for any fiscal year during which Federal funds are available to finance any portion of its operation may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

[(2) Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audit; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Corporation shall remain in the possession and custody of the Corporation throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts, financial records, reports, files, papers, or property for a longer period under section 117(b) of the Accounting and Auditing Act of 1950 (31 U.S.C. 67(b)).

[(3) A report of such audit shall be made by the Comptroller General to the Congress and to the President, together with such recommendations with respect thereto as he shall deem advisable.

[(c)(1) The Corporation shall conduct, or require each grantee, contractor, or person or entity receiving financial assistance under this title to provide for, an annual financial audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Corporation.

[(2) The Corporation shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, or person or entity, which relate to the disposition or use of funds receive from the Corporation. Such audit reports shall be available for public inspection, during regular business hours, at the principal office of the Corporation.

[(d) Notwithstanding the provisions of this section or section 1008, neither the Corporation nor the Comptroller General shall have access to any reports or records subject to the attorney-client privilege.

FINANCING

[SEC. 1010. (a) There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation, \$90,000,000 for fiscal year 1975, \$100,000,000 for fiscal year 1976, and such sums as may be necessary for fiscal year 1977. There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation \$205,000,000 for the fiscal year 1978, and such sums as may be necessary for each of the two succeeding fiscal years. The first appropriation may be made available to the Corporation at any time after six or more members of the Board have been appointed and qualified. Appropriations for that purpose shall be made for not more than two fiscal years, and shall be paid to the Corporation in annual installments at the beginning of each fiscal year in such amounts as may be specified in Acts of Congress making appropriations.

[(b) Funds appropriated pursuant to this section shall remain available until expended.

[(c) Non-Federal funds received by the Corporation, and funds received by any recipient from a source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds; but any funds so received for the provision of legal assistance shall not be expended by recipients for any purpose prohibited by this title, except that this provision shall not be construed to prevent recipients from receiving other public funds or tribal funds (including foundation funds benefiting Indians or Indian tribes) and expending them in accordance with the purposes for which they are provided, or to prevent contracting or making other arrangements with private attorneys, private law firms, or other State or local entities of attorneys, or with legal aid societies having separate public defender programs, for the provision of legal assistance to eligible clients under this title.

[(d) Not more than 10 percent of the amounts appropriated pursuant to subsection (a) of this section for any fiscal year shall be

available for grants or contracts under section 1006(a)(3) in any such year.

【SPECIAL LIMITATIONS

【SEC. 1011. The Corporation shall prescribe procedures to insure that—

【(1) financial assistance under this title shall not be suspended unless the grantee, contractor, or person or entity receiving financial assistance under this title has been given reasonable notice and opportunity to show cause why such action should not be taken; and

【(2) financial assistance under this title shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the grantee, contractor, or person or entity receiving financial assistance under this title has been afforded reasonable notice and opportunity for a timely, full, and fair hearing, and, when requested, such hearing shall be conducted by an independent hearing examiner. Such hearing shall be held prior to any final decision by the Corporation to terminate financial assistance or suspend or deny funding. Hearing examiners shall be appointed by the Corporation in accordance with procedures established in regulations promulgated by the Corporation.

【COORDINATION

【SEC. 1012. The President may direct that appropriate support functions of the Federal Government may be made available to the Corporation in carrying out its activities under this title, to the extent not inconsistent with other applicable law.

【RIGHT TO REPEAL, ALTER, OR AMEND

【SEC. 1013. The right to repeal, alter, or amend this title at any time is expressly reserved.

【SHORT TITLE

【SEC. 1014. This title may be cited as the “Legal Services Corporation Act”.]

SECTION 1. SHORT TITLE.

This Act may be cited as the “Legal Aid Grant Act”.

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) QUALIFIED LEGAL SERVICE PROVIDER.—

(A) IN GENERAL.—*The term “qualified legal service provider” means—*

(i) any individual who is licensed to practice law in a State for not less than 3 calendar years, who has practiced law in such State not less than 3 calendar years, and who is so licensed during the period of a contract under section 4; or

(ii) a person who employs or contracts with an individual described in clause (i) to provide qualified legal services.

Nothing in this subparagraph shall be interpreted to prohibit a qualified legal service provider from employing an individual who is not described in clause (i) to assist in providing qualified legal services.

(B) NOT QUALIFIED.—No individual shall be considered, or employed by, a qualified legal service provider if such individual during the 10 years preceding the submission of a bid for a contract under section 4—

(i) has been convicted of a felony; or

(ii) has been suspended or disbarred from the practice of law for misconduct, incompetence, or neglect of a client in any State; or

if such individual has a criminal charge pending on the date of the submission of a bid for a contract under section 4. In determining whether to award a contract under section 4, a State may also consider, to the extent the State considers it relevant in evaluating the qualifications of an applicant, whether an applicant has been found in contempt of a court of competent jurisdiction in any State or Federal court or has been sanctioned under Federal Rule of Civil Procedure 11 or an equivalent State rule of procedure applicable in civil actions.

(C) ADDITIONAL REQUIREMENTS.—No State may impose a requirement on an individual or person as a condition to bidding on a contract under section 4 or to being awarded such a contract which requirement is different from any other requirement of subparagraph (B).

(2) QUALIFIED LEGAL SERVICES.—The term “qualified legal services” means—

(A) mediation, negotiation, arbitration, counseling, advice, instruction, referral, or representation, and

(B) legal research or drafting in support of the services described in subparagraph (A),

provided by or under the supervision of a qualified legal service provider to a qualified client for a qualified cause of action.

(3) QUALIFIED CLIENT.—The term “qualified client” means any individual who is a United States citizen or an alien admitted for permanent residence who in the 3 months prior to seeking legal assistance from a qualified legal service provider had an income from any source which was equal to or less than the poverty line established under section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(4) QUALIFIED CAUSE OF ACTION.—

(A) The term “qualified cause of action” means only a civil cause of action which results only from—

(i) landlord and tenant disputes, including an eviction from housing except an eviction where the prima facie case for the eviction is based on criminal conduct;

(ii) foreclosure of a debt on a qualified client's residence;

- (iii) the filing of a petition under chapter 7 or 12 of title 11, United States Code, or under chapter 13 of such title unless a petition of eviction has preceded the filing of such petition;
- (iv) enforcement of a debt;
- (v) an application for a statutory benefit;
- (vi) appeal of a denial of a statutory benefit on a statutory ground;
- (vii) child custody and support;
- (viii) action to quiet title;
- (ix) activities involving spousal or child abuse on behalf of the abused party;
- (x) an insurance claim;
- (xi) competency hearing;
- (xii) probate;
- (xiii) divorce or separation;
- (xiv) employment matters; or
- (xv) consumer fraud.

Additional causes of action qualify as a qualified cause of action if they arise out of the same transaction as a cause of action described in this subparagraph unless such additional causes of action are described in clause (i) of subparagraph (B).

(B) Such term does not include—

- (i) a class action under Federal, State, or local law;
- or
- (ii) any challenge to the constitutionality of any statute.

(5) *STATE*.—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States and includes any recognized governing body of an Indian Tribe or Alaskan Native Village that carries out substantial governmental powers and duties.

SEC. 3. GRANTS.

(a) *GRANT AUTHORITY*.—The Attorney General shall direct the Office of Justice Programs to make grants to States for the provision of qualified legal services and to insure compliance with the requirements of this Act. To receive a grant under this subsection a State shall make an application to the Attorney General. Such an application shall be in such form and submitted in such manner as the Attorney General may require.

(b) *POVERTY LINE*.—Grants shall be made under subsection (a) to States in such proportion as the number of residents of each State which receive a grant who live in households having income equal to or less than the poverty line established under section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) bears to the total number of residents in the United States living in such households.

(c) *RETENTION OF GRANT FUNDS*.—Each State may in any fiscal year retain for administrative costs not more than 5 percent of the amount granted to the State under subsection (a) in such fiscal year. The remainder of such grant shall be paid under contracts to

qualified legal service providers in the State for the provision in the State of qualified legal services. If a State which has received a grant under subsection (a) has at the end of any fiscal year funds which have not been obligated, such State shall return such funds to the Attorney General.

(d) *REQUIREMENTS OF THIS ACT.*—No State may receive a grant under subsection (a) unless the State has certified to the Attorney General that the State will comply with and enforce the requirements of this Act.

(e) *LIMITATION ON USE OF GRANT FUNDS.*—None of the funds provided under subsection (a) shall be used by a qualified legal service provider—

(1) to make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal or represent any party or participate in any other way in litigation, that is intended to or has the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census;

(2) to attempt to influence the issuance, amendment, or revocation of any executive order, regulation, policy, or similar promulgation by any Federal, State, or local agency;

(3) to attempt to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative, confirmation proceeding, or any similar procedure of the Congress of the United States or by any State or local legislative body;

(4) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or anti-labor activities, boycotts, picketing, strikes, and demonstrations, including the dissemination of information about such policies or activities;

(5) to participate in any litigation, lobbying, rulemaking or any other matter with respect to abortion;

(6) to participate in any litigation or provide any representation on behalf of a local, State, or Federal prisoner;

(7) to pay for any personal service, advertisement, telegram, telephone communication, letter, or printed or written matter or to pay administrative expenses or related expenses, associated with an activity prohibited in paragraph (1), (2), (3), (4), (5), or (6);

(8) to solicit in-person any client for the purpose of providing any legal service; or

(9) to pay any voluntary membership dues to any private or non-profit organization.

(f) *LIMITATION ON USE OF STATE FUNDS.*—A State which receives a grant under subsection (a) and which also distributes State funds for the provision of legal services shall require that such State funds be used to provide qualified legal services to qualified clients and shall impose on the use of such State funds the limitations prescribed by subsection (e).

(g) *ATTORNEYS' FEES.*—A qualified legal service provider of any qualified client or any client of such provider may not claim or collect attorneys' fees from parties to any litigation initiated by such client.

(h) *EVASION.*—Any attempt to avoid or otherwise evade the requirements of this Act is prohibited.

(i) *AUTHORIZATION OF APPROPRIATIONS.*—For grants under subsection (a) there are authorized to be appropriated to the Attorney General \$278,000,000 for fiscal year 1996, \$250,000,000 for fiscal year 1997, 175,000,000 for fiscal year 1998, and \$100,000,000 for fiscal year 1999.

SEC. 4. CONTRACTS.

(a) *IN GENERAL.*—Each State which receives a grant under section 3(a) shall make funds under the grant available for contracts entered into for the provision of qualified legal services within the State.

(b) *BIDS.*—

(1) *AUTHORITY.*—The Governor of each State shall designate the authority of the State which shall be responsible for soliciting and awarding bids for contracts for the provision of qualified legal services within such State.

(2) *SERVICE AREA.*—The authority of a State designated under paragraph (1) shall designate service areas within the State. Such service areas shall be the counties or parishes within a State but such authority may combine contiguous counties or parishes to form a service area to assure the adequate provision of qualified legal services.

(3) *NON-ENGLISH-SPEAKING CLIENTS.*—If 5 percent or more of the population of qualified clients in a qualified legal service provider's service area includes individuals whose household language is other than English, the qualified legal service provider shall include provision in the provider's bid for satisfying the communication needs of that portion of such population.

(c) *AVAILABILITY OF FUNDS.*—A State shall allocate grant funds for contracts for the provision of qualified legal services in a service area on the same basis as grants are made available to States under section 3(b).

(d) *CONTRACT AWARDS.*—A State shall award a contract for the provision of qualified legal services in a service area to the applicant who is best qualified, as determined by the State, and who in its bid offers to provide, in accordance with section 5, the greatest number of hours of qualified legal services provided by lawyers or paralegals in such area. In determining which applicant is best qualified, a State shall consider the reputations of the principals of the applicant, the quality, feasibility, and cost effectiveness of plans submitted by the applicant for the delivery of qualified legal services to the qualified clients to be served, and a demonstration of willingness to abide by the restrictions of this Act.

(e) *FORM AND BILLING.*—A State contract awarded under subsection (d) shall be in such form as the State requires. The contract shall provide for the rendering of bills supported by time records at the close of each month in which qualified legal services are provided. A State shall make payment to a qualified legal service provider at the contract rate only for hours of qualified legal services provided and supported by appropriate records. The contract rate shall be the total dollar amount of the contract divided by the total hours bid by the qualified legal service provider. A State shall have 60 days to make full payment of such bills.

SEC. 5. REQUIREMENTS FOR THE PROVISION OF QUALIFIED LEGAL SERVICES UNDER A CONTRACT.

(a) *TERM.*—The term of a contract entered into under section 4 shall be not more than 1 year.

(b) *MANNER OF PROVISION OF SERVICES.*—A qualified legal service provider shall service the legal needs of qualified clients under a contract entered into under section 4 in a professional manner consistent with applicable law.

(c) *CASE FILES.*—A qualified legal service provider shall maintain a qualified client's case file, including any pleadings and research, at least until the later of 5 years after the resolution of client's cause of action or 5 years after the termination of the contract under which services were provided to such client or as provided by the applicable code of professional responsibility.

(d) *TIME RECORDS.*—A qualified legal service provider shall keep daily time records of the provision of services to a qualified client in one tenth of an hour increments identifying such client, the general nature of the work performed in each increment, and the account which will be charged for such work.

(e) *QUESTIONNAIRE.*—Each qualified client shall be provided a self-mailing customer satisfaction questionnaire in a form approved by the authority granting the contract under section 4 which identifies the qualified legal service provider and is preaddressed to such authority.

(f) *ATTORNEY CLIENT PRIVILEGE.*—Any qualified client who receives legal services other than advice or legal services provided by mail or telephone shall execute with respect to such services a waiver of attorney client and attorney work product privilege as a condition to receiving such service. The waiver shall be limited to the extent necessary to determine the quantity and quality of the service rendered by the qualified legal service provider and compliance with this Act. Such waiver shall not constitute a waiver as to other parties. The use of such waiver or any information obtained under such waiver for any purpose other than determining the quantity and quality of the service of a provider or compliance with this Act shall be strictly prohibited.

(g) *RECORDS OF QUALIFICATIONS.*—A qualified legal service provider shall make and maintain records detailing the basis upon which the provider determined the qualifications of qualified clients. Such records shall be made and maintained for 3 years following the termination of a contract under section 4 for the provision of legal services to such clients.

(h) *AUDITS.*—A qualified legal service provider shall consent to audits by the Attorney General, the General Accounting Office, or the authority which awarded a contract to such provider. Any such audit may be conducted at the provider's principal place of business. Such an audit shall be limited to a determination of whether such provider is meeting the requirements of this Act and the provider's contract under section 4.

(i) *RECOVERY OF FEES.*—A contract shall provide for the recovery of reasonable attorneys' fees in any successful action brought to compel payment to a qualified legal service provider under a contract under section 4.

(j) TERMINATION AND RECOVERY OF FUNDS.—The Attorney General, the Governor, or the authority which awarded a contract shall terminate a qualified legal service provider who is found to have committed a material violation of this Act. A material violation shall include involvement with any prohibited activity. A breach of contract by a qualified legal service provider shall entitle the Governor or the authority to terminate the contract, to award a new contract, and to recover any funds improperly expended by the provider, together with interest at the statutory rate in the State for interest on judgments. If such a breach was willful, the provider shall pay to the authority which awarded the contract an additional amount equal to one half of the amount improperly expended by the provider.

DISSENTING VIEWS

We cannot support HR. 2277, a bill that eviscerates a 30-year federal commitment to civil legal assistance to the poor. Without a federal program, millions of low-income Americans will lose access to our civil justice system. This we cannot support. Nor should the Congress of the United States.

Equal justice is a fundamental principle of our democratic society. The Constitution, its Preamble, the Bill of Rights and our Pledge of Allegiance all echo the founding fathers' intent to establish justice, assure due process and equal protection under the law, and promote liberty and justice for all. One system of justice for the rich and a different one for the poor is untenable in a democracy. As the Legal Services Corporation's first president Thomas Ehrlich stated: "All citizens are required to live under the law, regardless of their wealth or poverty; all citizens are entitled to use the law as well. If they are not able to do so, the substantive rights to which the law entitles them are a sham, and the legal system is dangerously skewed."

The alternative proposed by HR 2277—a limited, state run funding program that provides, at best, fragmented services in a few types of cases through lawyers whose hands are tied—will not achieve equal justice. The defects in this bill cannot be corrected by amending HR 2277 because its approach is fundamentally flawed. HR 2277 does not ensure that services continue to be available throughout the country, a goal of the Legal Services Corporation Act that has largely been achieved. Nor does HR 2277 provide legal services in numerous types of cases where civil legal assistance is critical. The lawyers receiving funds under this bill will be unable to practice law for the poor as they would practice for those who can afford to pay an attorney. Finally, there is limited accountability for expenditure of federal funds and no responsibility to ensure that services provided are of high quality. Ironically, and contrary to the fundamental principles of federalism, this bill attempts to restrict what a state can do with its own funds.

I. BACKGROUND

A. NEED FOR LEGAL SERVICES TO THE POOR

The need for legal services for the poor could not be clearer, and the need has never been greater than it is today. More than 39,000,000 Americans live in households with incomes below the poverty level. According to the recent American Bar Association Comprehensive Legal Needs Study on the legal needs of low and moderate income persons, nearly half of low-income households faced problems that merited the attention of the civil justice system. However, nearly three-fourths of low-income people with legal needs do not get help. As former Representative Guy Molinari stat-

ed when he testified before the House Appropriations Subcommittee two years ago: "We can argue about the amount of unmet need; but I don't think there is any dispute about the fact that there is a very substantial amount of people out there who are, in fact, in need of civil legal services."

B. HISTORY OF THE LEGAL SERVICES PROGRAM

The first legal aid society was established in New York City in 1876. Slowly, other such societies were formed. However, as the number of poor persons increased and their legal problems grew more complex, legal aid societies could not begin to meet the needs of the poor in those jurisdictions where they existed, nor were there consistent sources of financial support for civil legal assistance in most areas of the country.

In 1973, President Nixon called for the establishment of an independent nonprofit corporation—not a Federal or State agency—to provide financial support for legal assistance in civil proceedings or matters to persons financially unable to afford legal assistance. He stressed the need for a program with independence and freedom to exercise professional judgment. He remarked that "legal assistance for the poor is one of the most constructive ways to help them help themselves. * * * that justice is served far better and differences settled more rationally within the system than on the street. * * * [and that it was] time to make legal services an integral part of our judicial system."

In 1974, Congress responded and passed—with bipartisan support—the Legal Services Corporation Act of 1974 (P.L. 93-355), which created a private, nonmembership, nonprofit corporation whose main purpose was to provide financial support to civil legal services programs for assistance to those persons unable to afford legal services. The Corporation is not a department, agency, or instrumentality of the Federal Government and was established to be independent of the Executive Branch so that legal assistance would be insulated from partisan pressures and would be delivered based on locally determined priorities and the independent professional judgment of the legal services attorneys and other providers. The Corporation, however, was accountable to Congress through the process of periodic reauthorization and annual appropriations.

C. STRUCTURE OF THE LEGAL SERVICES CORPORATION AND ITS RECIPIENTS

The Corporation is governed by an 11-member Board of Directors appointed by the President with the advice and consent of the Senate. No more than six members may be from the same political party, and none may be Federal government employees. A majority of the Board must be members of the bar of the highest court of a State, and at least two must be eligible clients.

The Board oversees a staff of less than 110 employees who administer and oversee a legal services delivery system that employs 11,000 lawyers, paralegals and support staff. Only 3% of the Corporation's budget is spent on administrative functions. The remaining 97% is channeled directly to the communities where legal services are delivered to people in need.

The Corporation does not directly represent clients; rather it provides funds to local programs to support their provision of legal services. With only a few historical exceptions, funding on a local level has been through a single recipient in a geographic service area, although separate Native American and migrant farmworker programs were determined to be necessary to address their unique and special legal problems. At the end of fiscal year 1994, there were 323 legal services programs throughout the 50 States, the Virgin Islands, the District of Columbia, Puerto Rico and Micronesia. They operated over 1200 community-based law offices in every county in the country.

Each program sets its own priorities for services based on an assessment of client needs and available resources in the local community. Reliance on locally determined policies rather than nationally set priorities has been a hallmark of the legal services program and a major reason for its continued success.

D. DELIVERY OF LEGAL SERVICES

1. What legal services programs do

Of the 1,686,313 cases closed by legal services programs in 1994, only 8 percent were litigated and only one-tenth of one percent were class actions. The other matters were handled outside the courtroom through counseling, negotiation and other means. The representation provided to poor persons was in a variety of categories of cases:

On a national basis, family matters made up 33.2 percent of total closed cases, consisting of adoption, custody, divorce, support, parental rights, spouse abuse and other family-related matters.

Income maintenance and housing matters comprised 16 and 22.2 percent, respectively.

Consumer matters made up 10.6 percent, consisting of contracts, warranties, credit matters, debt collection and sales practices, as well as public utilities and energy-related issues.

Education, juvenile, health, individual rights, and employment matters constituted 10.5 percent.

Miscellaneous matters, such as tort defense, tribal matters, wills, and auto licenses, made up the remaining 7.5 percent.

As is clear from these figures, the vast majority of cases handled by legal services programs do address the basic legal needs of poor people. These cases often represent matters of grave crisis for individual clients and their families, such as the loss of a family's home or its only source of income or the break-up of the family itself. Left unresolved, such problems can cost society far more than the costs of legal services to help address them.

Obtaining child support from absent parents, for example, can prevent single parents and their children from being forced to turn to welfare to meet their needs. In 1994, LSC attorneys handled over 50,000 child support cases.

Spousal abuse causes not only individual suffering, but enormous societal costs as well. In 1994, legal services recipients handled 52,000 cases in which individuals sought legal protection from violent spouses. Domestic violence was also a factor in a significant

percent of the 56,326 divorce and separation cases that resulted in a court decision.

Legal services programs have helped individuals from falling into dependency by resolving employment disputes, by saving small family farms, by preventing the loss of the car that the client needed to drive to work or the equipment needed to earn a livelihood. They have helped young people remain in school and get access to job training programs. They have helped veterans suffering from Agent Orange and post-traumatic stress disorder. They have protected vulnerable elderly people from consumer fraud. They have provided assistance to victims of hurricanes in Florida, floods in the Midwest, earthquakes in California and the bombings in Oklahoma City. Indeed, as the General Counsel for the Federal Emergency Management Agency stated before this Committee in May: "Legal Services organizations play a fundamental role in disaster recovery. Indeed, they are an important part of the comprehensive response and recovery approach that is composed of federal, state and local governments and community based organizations."

2. What legal services cannot do

The LSC Act, appropriations provisions and LSC regulations contain a number of explicit prohibitions and restrictions on the activities of legal services programs. Recipients cannot provide representation in criminal, redistricting, abortion, school desegregation, military and selective service cases. Only U.S. citizens and legal aliens can be represented. Class actions can only be brought after other approaches to settling the problem have been exhausted and only with the explicit approval of the project director under guidelines issued by the local boards of directors. Grassroots lobbying, advocacy training and organizing are prohibited. Representation before legislative bodies is limited to communicating about a client's problem only after all administrative and judicial remedies have been exhausted and with approval of the project director under guidelines adopted by the program's board. Corporation funds cannot be used for self-held lobbying. Recipients cannot participate in any way on constitutional amendments, referendums and ballot initiatives. Recipient staff cannot engage in voter registration or partisan political activity and staff attorneys cannot seek partisan elected office.

There is virtually no evidence, and none has been provided in the hearings before this committee, that legal services attorneys are violating the current restrictions imposed by law and regulation. The so-called "horror stories" dredged up by critics are riddled with factual inaccuracies. Recipients are living within the rules. Monitoring by LSC staff appointed during the Reagan Administration never produced any systemic evidence that the Act and regulations were being violated.

Congress can decide what activities to prohibit. When it has done so, legal services has stayed within the letter and spirit of the law.

It is one thing to argue for additional prohibitions; it is entirely another to claim that legal services should be dismantled because recipients engage in activities that Congress had not prohibited.

3. Staffing

Most legal services programs rely primarily on staff attorneys and paralegals to provide legal representation to the program's clients. In 1994, the last year for which statistics are available, legal services programs employed approximately 4793 full-time (or full-time equivalent) attorneys and 1934 paralegals. These talented and committed people have developed expertise and accumulated institutional and community knowledge that cannot be replaced. They work at low salaries under often difficult conditions. In 1994, the average entry level salary for a legal services attorney was \$25,337, in comparison to \$34,295 for an entry-level attorney in the Department of Justice and more than \$80,000 in many major law firms.

4. Private attorney involvement

Since the beginning of the legal services program there has been a steady increase in the involvement of private attorneys in the delivery of legal services to the poor. Today, at least 12.5% of a recipient's annual basic field grant must be devoted to private attorney involvement activities.

The Deputy Attorney General described in her testimony the critical role of local recipients which "serve as a hub, and a magnet, for marshaling pro bono legal services by private bar members." These efforts involve private attorneys through organized *pro bono* programs, contracts, reduced-fee panels, referral lists, *judicare* and other locally-determined arrangements. More than 130,000 lawyers are registered as volunteer attorneys in organized pro bono programs. Last year, they handled over 250,000 cases. In addition to coordinating and increasing the involvement of private attorneys in the delivery of pro bono legal services, legal services recipients also provide valuable training to bar members so they can handle additional cases under the auspices of the pro bono program or on their own. By providing a framework and a mechanism through which non-program legal providers can channel their efforts, local legal services programs provide fertile ground for private bar and local community involvement.

II. PROGRAMS WITH THE JUDICIARY COMMITTEE BILL

A. ELIMINATION OF THE LEGAL SERVICES PROGRAM

The Committee bill is designed to both abolish the Legal Services Corporation and phase out, over a period of four years, the federal commitment to fund legal services for the poor. We do not believe that states or the private bar will be able to fill this gap.

The federal program began precisely because certain states failed to address the legal needs of their low income resident. The American commitment to equal access to justice should not be dependent on where an individual lives, anymore than on income.

Most pro bono activity is dependent on the existence of an integrated network of legal services providers that are available to screen clients for eligibility, develop cases, make referrals of clients to appropriate and willing private lawyers, provide training and co-counseling assistance on complex poverty law issues, as well as keep track of cases and generally administer the pro bono programs. Even assuming pro bono services could continue in the vac-

uum created by dismantling the current system, it is simply unrealistic to presume that enough pro bono private attorney time could be made available to make up for the loss of more than 6,000 attorneys and paralegals who now devote their full-time energies to servicing the legal needs of the poor.

While IOLTA (interest on lawyer's trust accounts) now yields approximately \$100 million per year to support legal services, the program has reached its outer limits of expansion and will be constrained by the vagaries of low interest rates, high bank fees and unpredictable variations in the business cycle. IOLTA is not an elastic resource, and cannot be readily increased to make up for a loss of federal funds. In addition, many states are eyeing IOLTA as a possible source of funding to meet other pressing needs, e.g. to fund the courts or support criminal defense representation.

As we will detail below, this bill will limit the providers who can provide civil legal services, eliminate funding for key components of the delivery system, impose artificial limitations on the clients who can be served and the services that can be provided, and inflict far more restrictions and prohibitions on activities than are necessary to ensure the delivery of high quality, professional representation. The funding mechanism proposed will cause huge administrative costs without any provision for effective accountability and no provision for review and oversight of quality. States will have their own funds severely limited if they accept any federal funds, thus further impeding the ability to provide a full range of civil legal assistance to the poor. The competitive bidding system proposed will not work and will only result in poor quality representation at higher costs. For these and other reasons, this bill will work against ensuring that civil legal services continues to be available to our nation's poor.

Of course, both within the Congress and without, some will support this bill as merely a cynical and disingenuous ploy. There are people in this nation who believe that poor people deserve only the legal representation they can pay for, and there are others who simply do not wish poor people to have representation at all where that representation is likely to impinge on the prerogatives and privileges of special interests. In our view, justice is not served when such views prevail.

B. LIMITATIONS ON PROVIDERS

While the Subcommittee Chairman stated at the Committee mark-up that existing legal services programs would be eligible because nonprofit corporations are considered to be "persons" under the law, five other provisions in the bill will create significant barriers to participation both for legal services programs and for other lawyers and law firms.

First, under Section 2, paragraph (1) of HR 2277, providers who bid for legal services contracts from the States are subject to minimal requirements. The Committee bill imposes no requirement that providers have any knowledge of legal needs of poor people or any past experience in delivering the kinds of services to be provided under the contract. It does not take into account conflicts of interest that may exist between a particular bidder and the clients who would be served under the contract. Under subparagraph (C),

States are not permitted to impose additional requirements on providers as a condition of bidding or awarding grants. The process could easily become a patronage mill for well connected attorneys.

Under Section 4(e), the Committee bill requires that states use a system of cost reimbursable contracts under which they have 60 days to make reimbursements. Such a system will limit the entities that are likely to bid for the contracts and make it almost impossible for a new entity without substantial outside funding to submit a bid, since it would have no funds to hire, equip and pay staff to deliver the services for which reimbursement would be sought. An existing recipient without a large fund balance or private resources would have difficulty supporting the staff to provide services under a contract until the invoices are paid.

Section 5(a) establishes a one year limitation on contracts with no expectations or assurance of refunding. This limitation will make it even more unlikely that many will bid on these contracts, since they would not provide any reliable source of income and support in the long term. If the demand for services is higher than expected and funds run out before the end of the contract term, the provider has nowhere to turn for money to complete pending cases and to meet the legal needs of eligible clients for representation in new matters. In order to meet their ethical obligations to clients with pending cases, providers would have to finish the representation without further compensation, or seek to extract fees from clients who are, by definition, too poor to pay for legal services. Clients with new problems would have to find pro bono help on their own or wait until the next year's contract is awarded to get help.

Section 5(j) includes no meaningful protections for providers against wrongful termination of contracts. If the state or the Attorney General determines that a legal services provider has violated the Act, the state can terminate the contract, recover funds determined to have been spent improperly and assess attorneys' fees and damages against the provider. The bill provides no hearing rights or appeal. There is no protection for attorneys or programs that, in the course of zealously representing their poor clients, offend the state or powerful private interests.

Finally, Section 5(h) requires providers to consent to audits by the Attorney General, GAO and the authority which awarded the contracts, presumably the state, tribe or Native Alaskan Village. Few private attorneys or law firms are likely be willing to take these funds for a one year contract if to do so would subject their practices to so many potential disruptive and intrusive audits. This is especially true in light of the fact that the bill includes no time limit on the period beyond the end of the contract term during which a former provider would continue to be subject to audit.

C. LIMITATIONS ON FUNDING FOR MIGRANTS AND SUPPORT SERVICES

Under HR 2277 there is no funding designated for support services or migrant representation.

1. Migrant programs

In 1980, the Corporation completed a study of access problems of migrant farmworkers as well as other groups required by Section 1007(h) of the LSC Act. That study found that (1) migrant workers

encounter special barriers which severely restrict their ability to access legal assistance through the regular basic field programs and (2) that migrants face specialized legal problems which are very different from those ordinarily faced by basic field clients. As a result, LSC continued and expanded the existing system of specialized migrant legal services programs because it was the most efficient and effective way to overcome these special access barriers and address the specialized legal needs of migrants.

Unless there is funding designed for migrant farmworkers or additional changes in the legislation, it will be very difficult for states to set up a migrant legal services program. In addition to the access barriers and special legal problems which make it difficult to deliver legal services to migrants through a general delivery system, the funding formula used to determine populations to be served does not work for migrants. Because migrant labor camps are often extremely inaccessible, migrant farmworkers have been historically undercounted in the Census. Perhaps more important, they are included in Census only in the area where they happen to be when the count is taken. Since, by definition, migrant farmworkers move from place to place to follow the harvest, the area where they were counted is unlikely to be where they are when their legal problems arise, so no money would be available for their representation in the area where it is needed. While states would not be precluded from funding a migrant program to deliver services in counties where there are large concentrations of migrant farmworkers, it is very unlikely that states would fund such a program from their limited state allocations particularly where migrants are only in the county during brief periods during the year.

2. Support services

Currently, the Corporation funds 16 national support centers and a support effort in each state, as well as training programs, a National Clearinghouse and other support activities. With reduced funds, there will be changes in support. However, particularly if new attorneys with limited poverty law expertise are going to be delivering services in the future, it is critically important that some funding be available for support services. Such front-line attorneys will need expert advice and assistance, experienced guidance and timely and current information in a cost-effective manner on critical poverty law matters that such attorneys confront as they provide advice and representation to their clients. No provision is made in the bill for such critical services. Moreover, because of the restrictions on the use of other state funds found in Section 3(f), H.R. 2277 could be interpreted to eliminate any discretion for states to use any other funds for support activities. Such an outcome would be a terrible mistake.

In order to remedy these problems, the bill should specify that support services, such as training, technical assistance and clearinghouse activities, could be funded. H.R. 2277 should also permit both states and the Attorney General to set aside funds for funding of a migrant program. In addition H.R. 2277 should clarify that states can use their own funds for funding of migrant programs and support services.

D. LIMITATION ON CLIENTS WHO CAN BE SERVED

Section 2, paragraph (3) of the Committee bill permits providers to serve only those individual citizens and permanent resident aliens whose incomes are equal to or less than the poverty line. Under the current LSC Act and regulations, a client whose income is equal to or less than 125% of the poverty line is eligible for services and exceptions can be made under certain circumstances for poor people whose incomes are marginally higher. Many of those people whose incomes are slightly above the poverty line are members of the working poor, whose full-time, minimum wage jobs do not provide sufficient income to raise them out of poverty. Thus, under the Committee bill, many poor people now served by the legal services program would be ineligible for service and would have to forego representation or pay for it out of their already inadequate wages. Also, under H.R. 2277, both state and federal funds are restricted to fund services only to citizens and permanent resident aliens, leaving many aliens who are in this country legally—such as refugees—and who were previously served by legal services programs with either state or federal funds without access to legal representation.

Finally, H.R. 2277 does not permit the provision of legal assistance to any group or entity, such as a tenant association or an alliance of small businesses in a community, that might need legal help to rid a building of drug dealers or to encourage investment and job creation in a community. Activities such as these can often do more to improve living conditions for poor people in a community than individual representation on the kinds of matters envisioned under the Committee bill.

E. LIMITATIONS ON SERVICES PROVIDED AND CASES BROUGHT

The majority has identified a range of cases brought by current recipients of LSC funds that it finds offensive and characterizes to be abuses. Not content to prohibit the cases that it finds offensive, the majority has taken an extreme position in this bill, by limiting legal services providers to a narrow range of fifteen permissible case types (“qualified causes of action”) found in Section 2, paragraph (4) and ten permissible activities (“qualified legal services”) that can be undertaken on behalf of poor clients, found in Section 2, paragraph (2). Additional causes of action can only be brought if they “arise out of the same transaction as” one of the qualified causes of action. There is no comparable mechanism to permit any other activities that may be necessary to address the legal needs of poor clients.

The fact that at mark-up the Committee voted to add several additional case types to the list of qualified causes of action, merely illustrates what is fundamentally wrong with the approach contained in the Committee bill. No list formulated in Congressional offices can begin to catalog the myriad of legal problems faced by poor people throughout the country in their everyday lives. What sense does it make to allow Legal Services to probate a will but not to help a poor person prepare a will? Adoption, paternity, refinancing a home or family farm are among the excluded cases. This list could be expanded ten-fold and would still exclude an enormous

range of critical problems that can only be addressed through legal representation. By adopting an approach that identifies what is permissible and excludes everything else, HR 2277 substitutes the judgment of Congress about what is important for that of the local communities where the needs are felt and confronted every day. It completely eliminates local control over allocation of resources and eliminates any ability to deal with locally identified needs and priorities.

F. PROHIBITIONS ON THE USE OF GRANT FUNDS

In addition to identifying those causes of action that are permissible, the Committee bill includes two lists of actions and activities that are explicitly prohibited under the Act. While the members of the minority may quarrel with the specific items included in those lists, we firmly believe that, rather than limiting the program to particular services and cases, the appropriate approach to deal with perceived abuses of the legal services program is to specifically prohibit those activities that Congress finds offensive, as is done in Section 2, paragraph (4)(B) [class actions and constitutional challenges] and Section 3(e), subsections (1) through (9) [redistricting, administrative advocacy, legislative advocacy, public policy advocacy training, abortion, prisoner representation, solicitation and payment of voluntary membership dues to any private organization].

However, we do have serious reservations and objections to some of the particular prohibitions as well as concerns about the actual language used.

1. Prohibiting constitutional claims

H.R. 2277 as introduced specifically excluded any challenge to the constitutionality of any statute, a provision that unconscionably would deny low income Americans the protections of the Constitution. Although members of the minority proposed an amendment that would have removed this prohibition, the substitute language that was adopted by the Committee does not fully address the issue and may invite confusion.

2. Class action ban

We believe the total ban on class actions is unreasonable. Unlike HR 1806, the McCollum-Stenholm bill, which permits a program to bring class actions under certain narrow conditions, HR 2277 bans all class actions under any circumstances. However, many legal problems of the poor, just like those of the affluent, are better resolved by proceeding as class actions. A class action is merely a procedural device to seek a legal remedy for many individuals who are in the same situation. Instead of doing it in many lawsuits, all of the plaintiffs join together to file one lawsuit—which makes litigation more cost effective and efficient. It does not change what the plaintiffs have to prove to prevail. Under the rules of all state and federal courts, the court closely supervises and controls the class action process from beginning to end.

3. Representation before administrative and legislative bodies

We also object to the total ban on legislative and administrative advocacy found in Section (3)(e), subsections (2), (3) and (7). We firmly believe that as legislators and administrators revise and craft complex laws, regulations and policies that affect poor people, they should have the benefit of the knowledge and expertise of legal services providers. During the 1980s, Congress succeeded in crafting a set of restrictions on legislative and administrative advocacy that have worked effectively to ensure that legal services advocates speak for their clients and not for themselves when they advocate before Congress, state legislatures and administrative agencies. At the very least, legal services advocates should be permitted to respond to requests of agency officials and elected representatives for information about the proposals they are considering—advice that proved invaluable to FEMA disaster relief efforts, according to testimony received by the Committee.

4. Training

Section 3, paragraph (4), the public policy advocacy training provision, is subject to an interpretation that would preclude the expenditure of both federal and state funds for routine training activities. Unlike HR 1806 and current training prohibitions, HR 2277 makes no exception for training of attorneys and paralegals. Because the provision bans the dissemination of information about particular public policies, it could be interpreted to prevent dissemination of information about current laws or regulations, which have been defined in the past by LSC as “particular public policies.” While we presume that the Committee did not have this in mind, the language needs to be clarified to avoid an unintended result.

G. ROLE OF THE ATTORNEY GENERAL AND THE STATES

Under HR 2277 the administration of this program would be parceled out to the Justice Department, more than 50 state and territorial governments, as well as countless tribal governments and Alaskan Native American Villages. No provision is made to ensure that a system is set up to monitor for compliance or to ensure the quality and effectiveness of legal services delivery. No guaranty is included that federally funded legal services would continue to exist in every jurisdiction across the country.

HR 2277 permits a state to refuse its allocation of federal funds, either because it does not wish to provide for legal services or, more likely, it does not wish to undertake administrative responsibility for the program, accept funds that are so restricted or restrict its own state legal services funds. If a State refuses federal funds, poor people in that state will be denied the benefit of federally supported legal services. In some states, where other resources are not available, this may result in no legal services at all being available to poor people.

HR 2277 would require the creation of hundreds of new State, tribal and Native Village bureaucracies to administer each jurisdiction's program, and allots up to five percent, rather than the current three percent, to run them. The Committee bill also gives the

Justice Department's Office of Justice Programs new administrative and compliance responsibilities, but provides no new resources to pay for them. The Bill assigns no responsibility and creates no mechanism for evaluating the quality or effectiveness of legal services delivery and provides for termination of contracts only for violations of the Act. The Committee bill thus transforms a streamlined and efficient administrative structure into a complex array of separate bureaucracies that together will eat up far more than the five percent allocated in the bill. Inevitably, the increased administrative costs will be borne either by the taxpayers of each jurisdiction that is involved in the program, including the federal taxpayers who support the Justice Department, or by poor people because the amount of funds available for direct delivery of legal services will be further reduced. And HR 2277 cannot guarantee that the services it supports are high quality and effective.

While the Committee bill gives compliance authority to both the States and the Justice Department, it is not at all clear how accountability for the use of both federal and state legal services funds will be monitored and enforced. For example, can the Justice Department look at the compliance of individual contracts or just actions of States? Does the Department of Justice have authority to second-guess compliance determinations made by States? Does the Attorney General really have the authority to terminate an individual contract, as the bill seems to suggest? Is there any basis on which the Attorney General can refuse to provide a funding allocation to a State?

While it is clear that states have the authority to solicit bids, select providers and award contracts, their discretion is severely limited by restrictive language in the legislation including: (1) the restrictions on what services and cases can be funded; (2) the limitation on the selection of providers to the criteria stated in the Act; and (3) the prohibition on states from taking into consideration additional criteria that might be needed to address particular state or local concerns.

H. LIMITATIONS ON THE USE OF STATE LEGAL SERVICES FUNDS

Perhaps the greatest and most outrageous restriction on a state's discretion under this bill is limitation imposed on the use of a state's own legal services funds.

If a State takes the federal legal services funds provided under HR 2277, its own state legal services funds may then only be used to fund the same limited "qualified legal services" on behalf of the same limited pool of "qualified clients" subject to all of the same prohibitions that are contained in the bill and apply to federal funds. Under the language of the Committee bill, these limitations could even be read to apply to all state legal services funds, even if those funds go to providers who do not also receive federal funds provided under the bill! Thus, if a State agrees to take its allocation of federal funds, it could be effectively tainting all of its own legal services funds with the same restrictions that apply to federal funds allocated to that State, regardless of who uses those funds. If the bill were to be interpreted in this way, the only way for a State to avoid the federal restrictions would be to refuse to take the federal funds. Clearly, poor people in those states that do not take

the federal funds will suffer a severe diminution in the resources otherwise available to assist them with their legal needs. This result is not mere speculation. Several governors have already stated that they would not take the funds under these constraints.

The Committee has overreached with this provision far beyond what can be justified by reference to any need to ensure that federal funds not be used to subsidize improper activity. Clearly Congress has the right to restrict the use of federal funds by any state or contractor. But no other block grant proposal prohibits states from using their own funds in any manner they wish. Congress should not restrain a state from funding a program to provide legal services when that program receives no federal support. If the provision is read in this way, it flies in the face of current efforts to give the states more room for innovation and creativity in meeting local needs. The purpose appears to be a transparent effort to simply prevent poor people from exercising their rights under the Constitution and the laws of this country, and the effect will be that far fewer resources will be available to protect and enforce those same legal rights.

I. COMPETITIVE BIDDING

Under the Committee bill, states would use a system of competitive bidding to award one year contracts. The system encourages low cost over other factors related to quality and effectiveness,¹ and permits the use of political patronage in awarding contracts. The bill does not permit the consideration of actual or potential conflicts of interest in deciding who is to be awarded contracts to provide service. Because the bill does not require providers to have any experience with or knowledge of poverty law or legal services to the poor, the system permits funding of relatively inexperienced individual attorneys, law firms or corporate entities. The short terms discourage the development of expertise in poverty law issues.

Because the Committee bill requires a new competition each year, the system will be in constant state of chaos, guaranteeing that poor people will be ill-served and that precious resources will be wasted as states are forced to run constant solicitation, bidding and contract award processes. And after the first six months, the bill makes no provision for transition or completion of pending cases when a new provider is awarded a contract at the conclusion of a contract term.

¹ Without significant changes, HR 2277 will encourage the very problems which have arisen in bidding for contract defense services. Testimony provided by Robert L. Spangenberg, a nationally recognized expert on indigent criminal defense services, in Hearings before the Subcommittee on Administrative Law and Governmental Relations (May 9 and 3, 1990, pp. 89-118), pointed out that in contract defense bidding initial low-ball bids were the norm. Over time, costs rose substantially and the quality of representation significantly deteriorated. In fact, under the contract system, the costs rose to a level that exceeded both that of the public defender and assigned counsel. In addition, the most qualified and experienced practitioners dropped out of the system and were ultimately replaced by recent law graduates and marginally competent criminal attorneys. Instability among providers increased, resulting in the dismantlement of effective public defender programs (which later had to be reinstated because they proved to be more effective and efficient providers than the contractors that had replaced them.) Funding sources experienced substantial administrative costs necessary to process the bids and to negotiate the contracts. Finally, in a number of states, the courts held the contract defense bidding system unconstitutional. See, e.g., *State of Arizona v. Smith*, 140 Ariz. 355 (1984).

J. WAIVER OF ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGE

Under the Committee bill, clients who receive more than advice services by mail or telephone, would be required to execute a waiver of the attorney-client and attorney work product privilege as a condition to receiving such services. The waiver would be limited to the extent required to determine quantity, quality of service and compliance with Act, and the waiver could not be used by third parties. However, the waiver would permit a state agency or the Justice Department to review client files, even if the United States or the state were the defendant in a case. The limitations contained in the bill provide no real protection against misuse.

The Committee bill presumes that a client can waive the attorney work-product privilege. However, that privilege belongs to the attorney, and is not the client's to waive. It was created to ensure that justice was served by encouraging lawyers to engage in full and thorough preparation of client's cases. It protects from discovery a lawyer's thoughts, theories, impressions and strategies, as well as the specific documents, letters, interview notes, memoranda and other tangible items that are assembled in the course of representation. Obviously, it does not protect documents that have been filed in court or are otherwise a matter of public record.

The minority believes that in most instances compliance with the requirements of a contract and the Act can be ensured without access to confidential documents and information that either the client or the lawyer would have protected.

K. PROHIBITION ON ATTORNEYS' FEES

Under HR 2277 legal services providers would be prohibited from claiming or collecting attorneys' fees from parties in litigation with any of the providers' clients. Under the language of the bill, this prohibition could be read to apply not just to clients whose legal services are covered by the contract, but to all of the provider's private clients as well. Such a restriction would eliminate an important source of additional funds to support the provision of legal services to the poor. In addition, it would undermine one of the primary purposes of the fee-shifting statutes, i.e., to punish wrongdoers who have violated the rights of persons protected under the statutes. Assuming that the prohibition does apply to all of an attorney's practice, it would also be a significant disincentive to private attorneys who might otherwise be inclined to seek contracts to handle cases on behalf of the poor.

In closing, we urge our colleagues to reject HR 2277. As Attorney General Janet Reno and Counsel to the President Abner Mikva wrote to the Committee:

The Legal Aid Act of 1995 makes a mockery of the essential American principle "Equal Justice Under Law." If enacted, the bill will mean for millions the loss of effective, community based legal services and the certainty of continuing and aggravated problems that will cost us dearly in other ways down the line.

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