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2d Session }

SENATE

{ REPORT
{ 104-392

LEGAL SERVICES REFORM ACT OF 1996

SEPTEMBER 30, 1996.—Ordered to be printed

Mrs. KASSEBAUM, from the Committee on Labor and Human Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1221]

The Committee on Labor and Human Resources, to which was referred the bill (S. 1221) to authorize appropriations for the Legal Services Corporation Act, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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I. PURPOSE

Created in 1974 to improve access to the civil justice system for the Nation's poor, the Legal Services Corporation ("LSC") distributes Federal funds to more than 300 local legal aid organizations. LSC has faced criticism over the past decade for straying from its primary purpose, which is to fund basic legal services for poor indi-

viduals, and instead engaging in numerous controversial activities, such as challenging welfare reform efforts, representing drug dealers when public housing authorities sought to evict them, and engaging in lobbying activities.

The purpose of the Legal Services Reform Act of 1996, S. 1221, is to improve the accountability and the effectiveness of the Legal Services Corporation and its grantees. S. 1221 will refocus LSC on its primary mission, which is to provide basic legal services to indigent American citizens. The committee envisions legal services recipients focusing on landlord-tenant disputes, employment claims, and domestic disputes involving child-custody and spousal abuse issues. LSC supporters claim there is a great need for these services.

In fact, LSC officials argue that on average, their program provides one lawyer for every 6,000 to 7,000 indigent clients. By comparison, for the rest of the population, there is an average of one lawyer for every 300 people.¹ Given this need for basic legal representation, the committee reauthorizes LSC with the expectation that it will focus its efforts on basic legal needs of the poor.

S. 1221 contains important restrictions on LSC activities. Many of these restrictions were enacted by Congress in 1996 through the annual appropriations process. Because those restrictions only apply for the current fiscal year, and because Congress has not reauthorized LSC since 1977, the committee believes it to be important to codify these restrictions permanently into law.

The Legal Services Reform Act prohibits LSC recipients from litigating redistricting cases, lobbying, or conducting training for political activities. In addition, LSC recipients may not undertake representation related to abortion, prisoners' rights cases, or cases involving aliens, unless the client was lawfully admitted to the United States.

The legislation also imposes important measures to improve LSC recipients' accountability. Under the bill, LSC lawyers must keep time sheets identifying the client and matter. LSC recipients must bid competitively for their contracts with the Federal Legal Services Corporation, and recipients must assure that non-LSC funds are subjected to the same restrictions imposed upon Federal LSC funds.

In sum, S. 1221 is designed to reform our Nation's system of legal assistance for low-income Americans. The bill contains important restrictions to refocus LSC and its grantees on its primary mission. In addition, the legislation will improve LSC's accountability, thereby increasing the quality of service for LSC clients.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The Legal Service Corporation is a "private nonmembership non-profit corporation"² created and funded by Congress for the purpose of providing "financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance."³ The LSC does not itself provide direct legal assistance to low-income Americans. Instead, it distributes funds to

¹The New York Times, Mar. 31, 1995.

²42 U.S.C. 2996b(a).

³Id.

local legal aid organizations for the purpose of assisting poor people in civil legal matters. Often, these organizations also receive funds from State or local governments, and from private sources.

In 1994, LSC funded more than 300 legal services programs throughout the 50 States, the District of Columbia, Guam, the Virgin Islands, Puerto Rico, and Micronesia.⁴ The legal services program handled roughly 1.7 million cases in that year.⁵ In 1994, grantees assisted with 50,000 child support cases; 375,000 housing matters; 52,000 spousal abuse cases; and 251,000 divorce cases. Attorneys supported with LSC funds attend to such basic legal needs as assisting veterans to obtain their benefits, helping victims of natural disasters to qualify for assistance, and advising low-income individuals on methods to deal with creditors to avoid bankruptcy.⁶

For some time, concerns have been raised about LSC and its grantees straying from their primary mission and undertaking political causes. Beginning in 1982, Congress added a series of appropriations riders to limit LSC's activities. Rep. McCollum sponsored a provision designed to ensure that LSC grantees were responsive to the needs of the local community.

In 1983, another package of LSC restrictions were enacted. Those provisions restricted LSC grantees from filing class actions suits against the government, purported to eliminate legislative lobbying and administrative advocacy, and curbed problematic training activity. Those provisions have been included in each spending bill since 1983.

Despite these restrictions, LSC has continued to be a controversial program. Alexander Forger, the current president of LSC, testified that "notwithstanding whether criticism is justified or not, we recognize that further restrictions are inevitable and probably necessary to restore the level of confidence that this program needs."⁷

One witness at the oversight hearing conducted by the Senate Committee on Labor and Human Resources complained that LSC attorneys continued to undertake political causes, such as opposing Proposition 187 (dealing with immigration). In addition, they continue to represent plaintiffs in cases that the vast majority of Americans do not support. For instance, LSC attorneys have opposed attempts by housing authorities to screen out violent criminals and drug dealers. They have represented prisoners in civil suits (regarding capping the prisoner population and segregating HIV prisoners), solicited clients in the agricultural industry, and supported a violent teenager in his attempt to gain custody of the child he fathered by rape when the child's custodians sought adoption.⁸

Concerns also were raised about LSC's accountability. According to one LSC critic, Federal accountability laws do not apply to the corporation's grantees. LSC attorneys do not keep time sheets, and auditors do not have access to client records to conduct proper au-

⁴"The Legal Services Corporation," CRS Report for Congress. Henry Cohen, July 5, 1996.

⁵Hearing of the Senate Committee on Labor and Human Resources, "the Future of the Legal Services Corporation," 104th Cong., 1st Sess., S. Hrg. 104-106, June 23, 1995, p. 25. (Hereinafter "Future of LSC," S. Hrg. 104-106).

⁶"Future of LSC," S. Hrg. 104-106, p. 25.

⁷"Future of LSC," S. Hrg. 104-106, p. 26.

⁸"Future of LSC," S. Hrg. 104-106, pp. 36-43.

dits. Finally, there are no reliable figures on the amount of money LSC attorneys spend on each case.⁹

Supporters of LSC agreed that some restrictions are appropriate. In addition to Mr. Forger's statement that "further restrictions are inevitable," a senior Democrat on the committee noted that he was willing to support restrictions on political activity.¹⁰ In addition, the primary sponsor of legislation to reauthorize the Legal Services Corporation in the House of Representatives, Rep. William McCollum, told the committee that he and Mr. Charles Stenholm believed there needed to be legislation to "institute major and significant forms to the Corporation."¹¹

Mr. McCollum testified:

Over the years, we have seen extensive abuses within the Legal Services Corporation by lawyers with their own political agendas actively recruiting clients, creating claims and advancing their own social causes. They have been involved in inappropriate lobbying, highly controversial issues like abortion litigation, and impact litigation in an attempt to socially engineer changes in our laws and rules.

It is for this reason that Mr. Stenholm and I [are introducing legislation] which calls for extensive reforms in the Legal Services Act. This bill will restore the very limited and appropriate Federal role in the delivery of legal services to the poor. At the same time, the bill enhances accountability and compliance for the restricted and limited activities of the Legal Services Corporation.¹²

The committee also heard testimony from a Missouri farmer, Robert DeBruyn, that it cost him \$100,000 in legal fees to settle what amounted to a landlord-tenant dispute brought by the Michigan Migrant Legal Assistance.¹³ He also testified that his industry has been targeted with:

client solicitation, union organizing and major class actions lawsuits whose real aim [was] to change and reinterpret Federal and State statutes and regulations, and change the entire ag labor scene. [He also] observe[d] LSC grantees openly lobbying Federal and State legislators and participating as migrant advocates or representatives in regulatory and advisory activities.¹⁴

Given these concerns, the committee believes that reforms are necessary to restore the public's confidence in the legal services program. At the same time, the committee concurs with the testimony of Reps. McCollum and Stenholm that LSC performs a valuable and legitimate function of improving low-income Americans' access to the legal system.

⁹"Future of LSC," S. Hrg. 104-106, pp. 36-43.

¹⁰"Future of LSC," S. Hrg. 104-106, p. 20.

¹¹"Future of LSC," S. Hrg. 104-106, p. 8.

¹²"Future of Legal Services," S. Hrg. 104-106, pp. 8-9.

¹³"Future of Legal Services," S. Hrg. 104-106, p. 60.

¹⁴"Future of Legal Services," S. Hrg. 104-106, p. 62.

III. LEGISLATIVE HISTORY AND COMMITTEE ACTION

On June 23, 1995, the Senate Committee on Labor and Human Resources held an oversight hearing, entitled "The Future of the Legal Services Corporation." The following witnesses presented testimony.

Hon. Warren Rudman, former U.S. Senator from New Hampshire;

Hon. George Gekas, a Representative from the State of Pennsylvania;

Hon. Charles Stenholm, a Representative from the State of Texas;

Hon. William McCollum, a Representative from the State of Florida;

Hon. Alexander Forger, president, Legal Services Corporation in Washington, DC;

Kenneth Boehm, director, National Legal and Policy Center in Vienna, VA;

Robert DeBruyn, president, DeBruyn Produce Co. of Zeeland, MI; and

Dean Kleckner, president, American Farm Bureau Federation of Washington, DC.

Additional statements and materials were submitted by the Hon. Jamie Gorelick, deputy attorney general, U.S. Department of Justice; William Mellor, president and general counsel of the Institute for Justice in Washington, DC; and F. McCalpin, attorney at law at Lewis, Rice and Fingersh of St. Louis, MO.

On September 7, 1995, Senators Kassebaum and Jeffords introduced S. 1221, a companion bill to accompany H.R. 1806.

On June 26, 1996, the committee met in executive session to consider S. 1221.

Senator Kennedy offered an amendment, modified by Sen. Gorton, to permit LSC attorneys to use nonfederal funds to engage in self-help lobbying and to participate in administrative rulemaking. The Gorton modification would prohibit LSC from litigating private property disputes, such as water and fishing rights, when the Federal Government already represented the clients' interests. The amendment was approved (9-4).

YEAS	NAYS
Kennedy	Kassebaum
Jeffords	Coats
Gorton	Frist
Pell	Faircloth
Dodd	
Simon	
Harkin	
Mikulski	
Wellstone	

Senator Kennedy moved to reconsider his amendment, the motion to reconsider was agreed to by voice vote, and then Senator Kennedy withdrew his amendment.

Senator Kassebaum offered a technical amendment to change the date in the title of the bill from 1995 to 1996, which was approved by voice vote.

The committee then voted on final passage of the bill, which was approved (10–3).

YEAS	NAYS
Kassebaum	Coats
Jeffords	Frist
Gorton	Faircloth
Kennedy	
Pell	
Dodd	
Simon	
Harkin	
Mikulski	
Wellstone	

Not voting: Gregg, DeWine and Ashcroft.

IV. EXPLANATION OF BILL AND COMMITTEE VIEWS

The Senate Committee on Labor and Human Resources strongly supports the goals of the Nation's legal services program, which is to provide legal assistance to low-income individuals. There can be no doubt that a gap exists between the legal needs of the indigent and the current resources available, both public and private, to meet that need. The committee reaffirms its commitment to the legal services program.

The committee believes that the best way to improve the legal services program is to retain the current system's structure, which includes a Federal Legal Services Corporation that makes grants to local legal aid organizations. The committee rejects changing the program to a block grant to the States.

Maintaining a central, streamlined LDC structure provides a single administrative entity that the public and Congress may hold accountable for oversight of the program. In addition, the LDC inspector general will be more effective auditing LSC and its grantees than it would be if it were required to audit 50 separate programs under a block grant system.

Moreover, the committee believes that the block grant system would not be as efficient as the Federal corporation, which has a unified administrative structure. Senator Rudman testified before the committee that he didn't "see the States doing it [administering the legal services program through a block grant] so efficiently that they can get below the 3 percent administrative cost factor."¹⁵

Although opposed to abolishing the Legal Services Corporation or the Federal commitment to improving access of the poor to the American system of justice, the committee believes that significant reforms are necessary to restore public confidence in the program. S. 1221 is intended to depoliticize the legal services program, improve LSC accountability, and assure fairness for taxpayers who subsidize the program and defendants who are the subject of LSC-assisted litigation.

¹⁵"Future of LSC," S. Hrg. 104–106, p. 21.

DEPOLITICIZE LSC

The committee believes that if LSC is to survive, then it must not continue with business as usual. It must remain focused on its primary mission, which is to provide basic legal assistance to low-income Americans. The committee envisions LSC attorneys representing clients mainly in landlord-tenant disputes, consumer finance and family law issues.

To assist the corporation in that function, S. 1221 prohibits LSC attorneys from litigating redistricting cases. The committee believes that redistricting activities are inherently political, with both major political parties participating on a regular basis. No matter which side LSC took in the redistricting effort, it would undermine the important work that LSC attorneys do by contributing to the impression that LSC attorneys are “for” or “against” one of the political parties.

The legislation also prohibits LSC attorneys from engaging in lobbying, participating in rulemaking activities, or litigating abortion cases. Attempting to assist the poor through legislative advocacy may be a worthy goal, but the public certainly should not be forced to subsidized it. The committee believes that these are inappropriate activities for LSC attorneys, and such activities further undermine support for the legal services program.

S. 1221 also bans LSC attorneys from using nonfederal funds for any purpose prohibited by the LSC Act, as amended. There are two important justifications for this restriction. First, many legal services grantees currently receive funds from both public and private sources. Since the money is basically fungible, it would be difficult if not impossible to place restrictions only on the Federal funds. Second, the public cannot differentiate between LSC advocacy subsidized with public versus private funds. As a result, the public grows weary of watching LSC attorneys lobby legislators—even if that dismay might sometimes be misplaced.

ACCOUNTABILITY

S. 1221 also improves the accountability of the Legal Services Corporation and its grantees. First, the legislation requires LSC attorneys to maintain time sheets that specifically identify each matter and the time spent on the matter. These records must be accessible to the Federal inspector general and other government auditors with proper oversight responsibility for the LSC program.

In addition, the reauthorization requires LSC grantees to bid competitively for their grants. In the past, grantees enjoyed presumptive renewed funding each year without any consideration as to their past performance. Under the legislation approved by the committee, each grantee would be required to compete periodically with other service providers based on quality, service, and compliance with restrictions contained in this reauthorization. The committee believes that this competitive bidding process will enhance the quality of the legal services provided to eligible clients.

The legislation also holds LSC and its grantees to the same fraud, waste, and abuse prohibitions that apply to other Federal programs. In the past, LSC funds have been excluded from those

important protections once the funds were distributed to the local legal aid organizations. S. 1221 closes this loophole.

Finally, the legislation permits LSC to establish a series of demonstration programs of client copayments. Critics of the LSC program often claim that LSC attorneys pursue their own ideological agenda and simply use clients, who have invested very little in the process, to fulfill that agenda. The client copayment system is designed to assure that the client has invested something of himself or herself in the representation.

The committee intends the copayments to be modest. The copayments are not in any way intended to deter clients from pursuing their legitimate legal claims. The committee understands that eligible clients have limited means, and LSC must not establish a copayment amount that would render LSC legal assistance beyond the financial capacity of eligible clients.

FAIRNESS

S. 1221 restores fairness to taxpayers who subsidize the LSC program and defendants who are the subject of litigation initiated by LSC attorneys. In the past, there have been concerns raised that LSC attorneys represent incarcerated persons, drug dealers being evicted by public housing authorities, or other who have committed wrongdoing in our society. In the meantime, LSC claims that it lacks the resources to meet the legal needs of the poor. The committee believes that LSC must focus its resources on basic legal assistance to law-abiding citizens and avoid representing drug dealers and prisoners in civil cases.

S. 1221 prohibits LSC attorneys from filing class action suits against the government and limits their ability to challenge welfare reform initiatives. Legislators at the Federal, State, and local levels are responsible for establishing welfare policy, and LSC attorneys should not attempt to undermine those efforts through challenges in the legal system. At the same time, the committee recognizes that under S.1221, LSC attorneys may represent a client in an individual claim for welfare benefits.

Finally, the legislation prohibits LSC attorneys from seeking attorneys' fees from private defendants. The committee believes that those defendants who are sued by LSC-represented clients should not ordinarily be required to pay for the plaintiff's legal fees. Defendants pay Federal taxes, which subsidize the salaries of LSC attorneys. Defendants also pay for their own lawyers when they are sued by LSC-represented clients. And defendants are required to pay any monetary judgment that may result from the lawsuit. This is enough. Defendants should not also be required, as a matter of course, to pay for the LSC attorneys who represent the plaintiff.

In conclusion, the committee reaffirms its commitment to the legal services mission, which is to provide basic legal services to low-income Americans. The committee recognizes that the Federal Government cannot meet all of the legal needs of the poor. However, the committee believes that the program has served an important purpose and believes that the Federal program (along with private support) can fill a social need.

The committee believes that the reauthorizing LSC will strengthen and improve the LSC program. In addition, the restrictions and

accountability provisions will restore public confidence in the LCS's ability to deliver legal assistance.

V. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 18, 1996.

Hon. NANCY LANDON KASSEBAUM,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1221, the Legal Services Reform Act of 1996.

Enactment of S. 1221 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not 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: S. 1221.
2. Bill title: Legal Services Reform Act of 1996.
3. Bill status: As ordered reported by the Senate Committee on Labor and Human Resources on June 26, 1996.
4. Bill purpose: S. 1221 would reauthorize the Legal Service Corporation (LSC) from 1996 through 2000. It also would authorize the appropriation of such sums as may be necessary for a fund to pay a defendant's reasonable costs and attorney's fees. These fees would be paid when the plaintiff, assisted by a recipient of LSC funds, is involved with a violation of rule 11 of the Federal Rules of Civil Procedure.

The bill also would restrict the LSC's use of funds for cases involving abortions, aliens, redistricting, certain eviction proceedings, welfare reform, prisoner litigation, and the federal government under certain circumstances. It would prohibit the use of any LSC funds for lobbying for a change in government policy. Also, the bill would require that all LSC grants and contracts be awarded under a competitive bidding system. In addition, S. 1221 would institute other administrative and procedural changes at the LSC.

5. Estimated cost to the Federal Government: Assuming the appropriation of the authorized amounts, CBO estimates that S. 1221 would result in additional discretionary spending totaling about \$1.1 billion over the 1997-2000 period. The bill would authorize spending in 1996 as well; however, this year's funding has already been provided (at the same level as authorized in the bill). Therefore, additional spending resulting from the bill is estimated to start in 1997. The following table summarizes the estimated budgetary effects of S. 1221.

[By fiscal years, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATION							
Spending Under Current Law:							
Budget authority ¹	278	.....	.....	.....	.....	.....	.....
Estimated outlays	294	33	.....	.....	.....	.....	.....
Proposed Changes:							
Estimated authorization level ² .....	.....	278	278	278	278	.....	.....
Estimated outlays .....	.....	245	278	278	278	33	.....
Spending Under S. 1221:							
Estimated authorization level ¹	278	278	278	278	278	.....	.....
Estimated outlays	294	278	278	278	278	33	.....

¹The 1996 level is the amount appropriated for that year.²The bill also authorizes appropriations for 1996, but this year's funding has already been enacted; so the bill would have no impact on 1996 spending.

The costs of this bill fall within budget function 750.

6. Basis of estimate: CBO assumes appropriation of the \$278 million per year authorized over the 1997–2000 period. S. 1221 also would authorize the appropriation of such sums as necessary to pay for the legal costs of the defendant when a recipient of an LSC grant violates certain rules. Such recipients are generally attorneys or legal-aid organizations. Similar violations have been found very rarely in the past. As a result, CBO expects that any amounts necessary for paying such defendants' legal costs would probably not be significant.

7. Pay-as-you-go considerations: None.

8. Estimated impact on State, local, and tribal governments: S. 1221 contains no intergovernmental mandates as defined in Public Law 104–4 and would have no impact on the budgets of state, local, or tribal governments.

9. Estimated impact on the private sector: S. 1221 contains no private-sector mandates as defined in Public Law 104–4.

10. Previous CBO estimate: On September 19, 1995, the CBO prepared a cost estimate for H.R. 2277, the Legal Aid Act of 1995, as ordered reported by the House Committee on the Judiciary on September 13, 1995. H.R. 2277 would abolish the Legal Services Corporation and replace it with block grants provided directly to the states to fund local legal aid programs. The estimated costs of H.R. 2277 are less than those of S. 1221 because funding authorized for grants by the House bill is less than the amounts authorized for the LSC by S. 1221.

11. Estimate prepared by: Federal cost estimate: Jonathan Womer and Susanne Mehlman. State and local government impact: Leo Lex. Private sector impact: Jay Noell.

12. Estimate approved by: Robert A. Sunshine (for Paul N. Van de Water, Assistant Director for Budget Analysis).

VI. REGULATORY IMPACT STATEMENT

The committee has determined that there will be no increase in the regulatory burden imposed by this bill.

VII. SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title.—The legislation may be cited as the “Legal Services Reform Act of 1996.”

Sec. 2. Findings.—Congress finds that there is a need to encourage equal access to justice through private and governmental efforts. To preserve the strength of the legal services program, efforts must be made to free the system from the influence of political pressures and to free the corporation and its grantees from lobbying and political activity.

Sec. 3. Authorization of appropriations.—Congress authorizes to be appropriated \$278 million for fiscal years 1996–2000.

Sec. 4. Prohibition on redistricting activity.—The legislation prohibits legal services attorneys from advocating, opposing, and representing any party with respect to legislative or judicial redistricting cases.

Sec. 5. Protection against theft and fraud.—The legislation deems taxpayer funds distributed through the Legal Services Corporation to be Federal funds for the purposes of Federal waste, fraud, and abuse statutes.

Sec. 6. Solicitation.—The legislation prohibits LSC attorneys from accepting employment from any nonattorney after giving in-person, unsolicited advice to such nonattorney that the nonattorney should obtain counsel or take legal action.

Sec. 7. Procedural safeguard for litigation.—The legislation prohibits LSC attorneys from pursuing litigation or engaging in precomplaint settlement negotiations against a defendant unless all plaintiffs have been identified by name and a statement of facts (signed by the plaintiffs) have been compiled upon which the complaint is based. Any federal court of competent jurisdiction may enjoin the disclosure of the identity of any plaintiff to prevent probable, serious harm to the plaintiff.

Sec. 8. Lobbying.—The legislation prohibits LSC attorneys from lobbying or attempting to influence any Federal, State, or local government's executive order or legislative proposal, except in the case where the order or proposal directly affects LSC.

The legislation also prohibits LSC attorneys from paying for any publicity or propaganda designed to influence any executive decision or legislative proposal. In addition, the bill prohibits grassroots lobbying, where LSC attorneys subsidize telegrams, telephone calls, or other printed matter designed to influence any decision or legislative proposal, including an authorization or appropriation directly affecting the funding of LSC attorneys.

Sec. 9. Timekeeping.—The legislation requires each LSC attorney to maintain records of the time spent on each matter, the type of matter handled, and the source of funds charged for the activity.

Sec. 10. Authority of local governing boards.—The board of directors of any nonprofit organization, receiving funds from LSC and chartered under State law to provide legal assistance to eligible clients, must establish specific priorities for the types of matters to which the staff of the nonprofit organization shall devote its time. The staff of the organization shall not undertake matters other than those delineated in the list of the organization's priorities.

Sec. 11. Regulation of nonpublic resources.—All nonfederal funds received by LSC (or its grantees) must be accounted for separately from LSC funds. Nonfederal funds (including interest on lawyers trust accounts) received by LSC (or its grantees) are subject to the same restrictions that apply to Federal funds.

Sec. 12. Certain eviction proceedings.—LSC attorneys may not defend a person being evicted by a public housing authority for the illegal sale or distribution of a controlled substance.

Sec. 13. Implementation of competition.—The legislation requires LSC to implement a competitive bidding system for LSC grants and contracts. The selection criteria shall include an understanding of the basic legal needs of eligible clients, the reputations of the principals of the applicant, the quality and cost effectiveness of the applicant, and a willingness to abide by the restrictions placed on the awarded grants and contracts.

Sec. 14. Powers, research and attorneys' fees.—The legislation abolishes LSC's regional resource centers, and prohibits LSC attorneys from claiming or collecting attorneys' fees from nongovernmental parties to litigation initiated by the client. If a Federal court or the president of LSC finds that an action by a plaintiff, assisted by LSC attorneys, violates the standards of rule 11 (of the Federal Rules of Civil Procedure), the court of LSC president shall award from an LSC fund all reasonable costs and attorneys' fees incurred by the defendant in defending the action.

Any attorneys' fees received by an LSC recipient must be transferred to LSC, which shall distribute the fees among its grantees for the purpose of providing direct delivery of legal assistance to the poor.

Sec. 15. Abortion.—The legislation prohibits LSC attorneys from participating in any litigation with respect to abortion.

Sec. 16. Class actions.—No LSC attorneys may bring a class action suit against the Federal, State, or local government, unless the governing body of the grantee expressly approves filing such an action and LSC attorneys determine that the government entity is not likely to change the policy or practice in question.

Sec. 17. Restrictions on use of funds for legal assistance to aliens.—The legislation prohibits LSC attorneys from providing legal assistance to any alien, unless the alien has been lawfully admitted for permanent residence, married to a U.S. citizen and filed for adjustment of status, or granted asylum by the Attorney General pursuant to law.

Sec. 18. Training.—LSC attorneys may not support or conduct training programs advocating political or labor activities, boycotts, or strikes.

Sec. 19. Copayments.—LSC shall undertake one or more demonstration programs to study the feasibility of using client copayments to assist in setting service priorities. Based on the results of those demonstration programs, LSC may adopt a permanent system of client copayments.

Sec. 20. Fee-generating cases.—LSC attorneys shall not provide legal assistance with respect to any fee-generating case, except for representation related to titles II and XVI of the Social Security Act.

Sec. 21. Welfare reform.—LSC attorneys shall not provide legal representation for any person or participate in any way in litigation involving an effort to reform a State or Federal welfare system. However, LSC attorneys may seek specific relief on behalf of a client where the relief does not involve an effort to amend or challenge existing law.

Sec. 22. Prisoner litigation.—LSC attorney shall not provide legal representation on behalf of any prisoner in a Federal, State, or local institution.

Sec. 23. Appointment of corporation president.—The legislation provides that the president of LSC shall serve at the pleasure of the President of the United States upon the advise and consent of the Senate.

Sec. 24. Evasion.—The legislation prohibits the use of alternative corporations to avoid or evade the provisions of the law.

Sec. 25. Pay for officers and employees of the corporation.—The legislation amends the compensation for officers and employees of LSC. Such officers and employees shall be compensated in an amount not to exceed the rate of Level III of the executive schedule specified in section 5314 of title 5 of the United States Code.

Sec. 26. Location of principal office.—The principal office of LSC shall be in the Washington, DC, metropolitan area.

Sec. 27. Definition.—The legislation amends the definition of “attorney-client privilege” in the LSC Act to assure that Federal auditors may conduct proper oversight of LSC and its grantees.

VIII. ADDITIONAL VIEWS OF SENATORS KENNEDY, PELL,
DODD, SIMON, HARKIN, MIKULSKI, AND WELLSTONE

Because S. 1221 reaffirms the commitment of the Congress to provide the poor with access to our Nation's system of justice through the Legal Services Corporation, we voted to report out the Legal Services Reform Act of 1996. The Federal legal services program is a vital part of the system of justice in this country and necessary to achieve the Constitution's great promise of equal justice under law. As Senator Rudman stated in his testimony before this committee: "Respect for the rule of law, and faith in our country's system of justice, cannot exist among people who have no meaningful access to our courts." On system of justice for the rich and a different one for the poor is untenable in a democracy.

Many provisions in S. 1221 are consistent with these fundamental premises of the LSC Act and will address perceived problems that have arisen in the administration of the program or at the local level since the last reauthorization in 1977. For example, LSC funds should be treated as Federal funds for the purpose of Federal criminal laws designed to outlaw theft and fraud. Local control should be strengthened by continuing the existing requirement that at least one-half of the membership of recipient governing bodies be appointed by the State or local bar association where the recipient is located. Experimentation with co-payments will help inform us about whether this approach improves client accountability. Timekeeping on cases and matters may well increase recipient accountability and efficiency. There is even some justification for insuring that class actions are brought after careful review by local program boards. Finally, prohibitions on redistricting and abortion will keep the program out of highly charged political controversies.

However, we have grave concerns about several provisions in S. 1221. In our view the funding levels authorized in the bill are too low to meet the critical need for civil legal services. Moreover, we believe it is a serious mistake and possibly unconstitutional to restrict the use of non-corporation funds provided by other funding sources. Finally, several other restrictions regarding the clients that can be represented and the types of cases and matters on which assistance can be provided are inconsistent with the basic notion that low-income persons who cannot afford legal assistance should have equal access to our justice system.

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 38,000,000 Americans live in households with incomes below the poverty level. During 1995, Legal Services Corporation recipients provided legal services to approximately 1,900,000 clients and closed over 1,700,000 matters. Serving these clients directly bene-

fitted nearly 5,000,000 persons, most of whom are women and children living in poverty.

Yet for all the clients served by corporation grantees, local programs are able to meet only a fraction of the demand for services. A survey of selected Legal Services recipients in the spring of 1993 revealed that nearly half of all people who actually apply for assistance are turned away due to lack of program resources to help them. 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 household faced situations that were serious enough to merit the attention of the civil justice system. However, nearly three-fourths of low-income people with legal needs do not get help in the civil justice system. As former Representative Guy Molinari stated when he testified before the House Appropriations Subcommittee 4 years ago in support of a budget request of \$525,000,000: "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."

In light of the overwhelming needs of legal services on the part of low-income Americans and the fact that LSC sustained a reduction of over 30 percent in 1996 to a funding level of \$278 million, it is essential that the authorized level for LSC exceed \$278 million. Federal funding for legal services is at a twelve year low, and the Legal Services Corporation was among the most hard-hit of all Federal programs. As a result of the \$278 million funding level, thousands of attorneys and paralegals were laid off, hundreds of neighborhood offices were closed and hundreds of thousands of clients in desperate need of services were turned away. Most of those affected by the cuts were women and children with routine, but critically important cases who will no longer have access to legal services.

We would hope that the full Congress would authorize "such sums as may be necessary" in order to give the appropriations committees the flexibility they need to adequately fund legal services. Without any increases in resources for the next four years, the Legal Services Corporation will be faced with a profoundly difficult choice: will LSC continue to fund programs to provide services throughout the country, albeit at an increasingly inadequate level of funding, or will it be forced to concentrate its resources in a limited number of locales to ensure that at least some communities have access to adequate legal services resources?

THE NEED FOR THE LEGAL SERVICES CORPORATION

The Legal Services Corporation, which has been in operation for 21 years, has been the primary vehicle for insuring that the poor are included in this nation's legal system. Despite substantial controversy and criticism from many quarters, the legal services program has enjoyed overwhelming support from the public, including the bar, the judiciary and the client community. To eliminate the Legal Services Corporation would be to bar most low-income Americans from access to the legal system.

It has been suggested that state or local governments and the private bar should be responsible for legal services for the poor or

could pick up the case load of the program. However, the experience of recipients indicates that there is little likelihood that the majority of States and municipalities, already hard-pressed to meet current budgetary demands, will take on the additional obligation of providing legal services if Federal funding is eliminated. In 1995, State and local funding to LSC-funded programs fell overall: small increases in State and local grants were offset by a decrease in IOLTA funding due to lower interest rates. Although some States and localities have begun initiatives to provide funds to local programs to help make up for reduced FY 1996 LSC grants, preliminary indications are that any increases in State and local support will offset only a small part of the cut in Federal funding. Moreover, if Congress shifts financial responsibility for many social programs to the States, the competing claims for limited resources may well result in further loss of support for legal services. In any regions of the country, especially in rural areas with a high concentration of poor people, it is likely that there would be little or no publicly-funded legal services available to the poor.

Nor is it realistic to expect that pro bono services from private attorneys can replace federally-funded legal services. Pro bono services are now at an all-time high, primarily because of the efforts of the organized bar, the corporation and local programs to involve private attorneys in the delivery of legal services. It is estimated that one-sixth of all legal services cases were handled by private attorneys in 1995. Every effort is being made at the national and local level to significantly increase both the number of attorneys participating and the level of voluntary services, as well as indirect financial support from the private bar. Nevertheless, even if the present level of Pro bono services were doubled or tripled, they would replace only a fraction of the services now being provided by legal services attorneys, which in the aggregate meet only a small percentage of the need of the increasing population of eligible clients.

Moreover, pro bono programs typically depend upon legal services attorneys for training and support and legal services funding for basic intake and referral. Elimination of the Corporation and its grantees would thus eliminate the essential structure through which most pro bono services are provided. Pro bono programs, no longer able to rely upon legal services for funding, training and support, and overwhelmed with ongoing cases, would find it impossible to take on new cases that in the past would have been handled by legal services programs. The courts would be faced with large numbers of individuals forced to proceed pro se. The result would be serious disruption in our judicial system, to say nothing of the personal and financial dislocation that would occur in an abrupt termination of corporation activities.

Replacing the funding of local legal services programs through LSC with a block grant system, as proposed in a bill reported out by the House Judiciary Committee, would be more costly and would reduce the efficiency of the system by requiring the addition of a new layer of bureaucracy at the state level. at the same time, it would eliminate the centralized system of accountability now provided by LSC. The delivery system funded through LSC already

has the advantages that would be presented by a block grant system.

WHAT LEGAL SERVICES PROGRAMS DO

Much of the controversy about the legal services program arises out of the work which is done by local legal services programs. Far too often, that work is totally mischaracterized. 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.¹ 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.² 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, recipients 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

¹ While legal services programs provide critical representation on disputes between individuals, they also ensure that government programs for the poor are operated within the rule of law and in a fair and equitable manner.

² Any objective review of the Legal Services Corporation Act, the 1977 amendments and the subsequent appropriations act provisions does not support the inference that Congress intended the legal services program to be limited solely to providing one-on-one, noncontroversial "day-to-day" legal services. (See Testimony of F. Wm. McCalpin before the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee on March 13, 1991 and Testimony of Michael Wallace, former Chair of the LSC Board under President Reagan, before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee on July 27, 1995.) The statement of Congressional purpose specifically spoke of continuing "the present vital legal services program" which, under OEO, often challenged the way private institutions and government at all levels treated poor people. Congress also recognized that legal services attorney should work to "assist in improving opportunities for low-income persons" and "must have full freedom to protect the best interests of these clients in keeping with * * * [professional responsibility] and the high standards of the legal profession." In keeping with these goals, the Act permitted class actions, appeals, administrative rulemaking, representation before legislative bodies on behalf of eligible clients and the full range of legal services otherwise available to paying clients of private attorneys. Congress recognized then as it should now that equal justice for poor people demands that legal representation not be restricted to conform to narrow partisan or ideological considerations.

also a factor in a significant percent of the 56,326 divorce and separation cases that resulted in a curt 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.³

CONTROVERSIAL CASES

The legal services program was acknowledged by virtually all of the witnesses before the committee to be a highly effective program. In fact, much of the criticism of legal services is the result of the program's success in a number of controversial cases. However, that controversy is inherent the adversary process; there are always at least two sides in every legal dispute, and if equal access to justice is to become a reality, the side of the indigents must be permitted an unfettered and effective voice.

In addition, critics not only object to the legal issues that programs handle, but to the manner in which non-controversial issues are addressed. Thus, there is no objection to representing an individual in an action to recover a security deposit, but is is deemed somehow inappropriate to advocate on behalf of a tenants' group to change the landlord-tenant law of a jurisdiction. We find that the rhetoric that colors this debate is ultimately meaningless. What one person or one community sees as pressing legal problem may be viewed by another as a matter of low priority. A person facing eviction clearly has a pressing problem that needs to be addressed, but a person who cannot find adequate, affordable housing, or who cannot rent an apartment or buy a house because of discrimination based on race, sex, or family size also has an overwhelming legal need.

During the hearings before this committee, for example, critics have portrayed legal services programs as engaging in activities which they claim have put agricultural growers out of business, resulted in high level fees for simple matters, and engaged in union organizing and client solicitation. Others have alleged that legal services seeks to protect drug dealers in public housing and prevent their evictions, implying as well that legal services is engaged in some kind of systematic campaign to preserve drug dealing in public housing.

What is common to all of these charges are (1) that none of these activities was prohibited today by the LSC Act or regulations or other law and (2) that in virtually every example that critics

³Indeed, as the General Counsel for the Federal Emergency Management Agency stated before the Subcommittee on Commercial and Administrative Law of the House Judiciary committee on May of 1995: "Legal Services organizations play a fundamental role in disaster recovery. Indeed, they are an important part of the of the comprehensive response and recovery approach that is composed of federal, state and local governments and community based organizations."

present, the “facts” as they are portrayed are wrong or terribly misleading.

For example, the charges involving migrant farmworkers representation have been studied and reviewed by both the American Bar Association and the Government Accounting Office. The American Bar Association study undertook a detailed examination of the complaints made by agricultural employers against migrant level services and concluded that there was no basis for the charges. (Study of Federally Funded Legal Aid for Migrant Farmworkers, American Bar Association Standing Committee on Legal Aid and Indigent Defendants (1993).) Specifically the study found that there is no evidence of any systematic problem migrant legal services providers bringing unsubstantiated or frivolous claims against agricultural employers and no evidence that legal services attorneys pursued unmeritorious claims.

The Government Accounting Office undertook an exhaustive study of migrant farmworker representation by LSC-funded programs beginning in 1989 and continuing through 1990. On September 24, 1990, GAO issued a lengthy 81-page report which concluded that it could find no support for the allegations that legal services attorneys used improper methods in representing migrant farmworkers. (Legal Services Corporation: Grantee Attorneys’ Handling of Migrant Farmworker Disputes with Growers (GAO/HRD-90-144) September, 1990.)

Similarly, contrary to the charges, no more than a handful of cases involve representation of actual drug dealers by legal services advocates. For example, the Legal Aid Society of New York City reported in April of 1995 the following figures:

The Legal Aid Society handles 33,000 cases annually, including 13,000 housing cases. They currently have only 12 pending cases involving drug-related evictions from New York City Housing Authority properties. Of those 12 cases, only one involved alleged drug activity by a Legal Aid client; one additional case involved drug activity in a client’s apartment, but not by the client. The other 10 cases involve alleged drug activity by a member of the client’s family that occurred in a place other than the client’s apartment.

Legal services programs do not represent drug dealers who threaten the safety of public housing tenants. Legal services become involved only where there is strong evidence that the tenant is personally innocent of any drug-related activity and would suffer serious harm if she and her family were evicted. In those cases, eviction from public housing would constitute a serious miscarriage of justice.⁴

PROHIBITED ACTIVITIES

Since the enactments of the Legal Services Corporation Act there have been various restrictions on what legal services could do.

⁴The Corporation and the Congress have both taking action to address whatever problems there are in legal services representation of drug-related public housing evictions. Pub. L. 104-134 and a new Corporation regulation prohibit representation of any person charged with drug dealing in a public housing eviction case. Section 12 includes an identical provision.

Since 1983, there has been very specific restrictions on the use of LSC funds for certain actions. And, effective on April 26, 1996, there are very specific restrictions on what any LSC recipient can do with any of its funds. Throughout all of these 21 years, there is virtually no evidence, and none has been provided in the hearings before the Labor and Human Resources Committee, that legal services attorneys violated restrictions imposed by law and regulation. Recipients have lived within the rules.

Critics claim that legal services engages in large numbers of controversial cases and suggests that these are prohibited. In fact, very few case types were actually prohibited until 1996. Virtually all of the cases that are used as illustrations of controversy are cases that are legal under the LSC Act and regulations. Of the list of "horror stories" that came before this Committee, none involved cases that were prohibited by the law. For example, many critics argued that class actions were prohibited, when in fact they were not prohibited until April 26, 1996. Others express horror that recipients contact legislators and serve on regulatory and advisory committees which were also not prohibited until 1996. Still others argue that recipients represented illegal aliens, not realizing that such representation was permitted with non-LSC funds until 1996.

Congress can decide what activities to prohibit. When it has done so, legal services has stayed within the letter and spirit of the law. There is general agreement, for example, that legal services should not provide representation in representation involving abortion, redistricting and drug-related evictions; or engage in grassroots lobbying, advocacy training or organizing. There is far less agreement, however, on (1) whether the non-LSC funds of recipients should be restricted; (2) whether legal services should be prohibited from taking fee-generating cases even when private attorneys are not available to take such cases; (3) whether a legal services program attorney should be able to comment on a proposed regulation which an agency asks the attorney to review or on which the agency seeks comments through a notice of proposed rulemaking; (4) whether a legal services attorney can represent an eligible client before a legislative body when that body is proposing to take action that directly affects that client's legal rights or responsibilities; (5) whether legal services should represent prisoners or others in civil cases; (6) whether legal services lawyers should be able to seek attorney's fees; (7) whether legal services should be able to represent an individual client adversely affected by a welfare reform proposal; and (8) whether the federal legal services program should have the capacity to provide training, technical assistance, support and information about poverty law developments.

MAJOR CONCERNS WITH S. 1221

In addition to the funding level that we believe is totally inadequate, we believe that the Senate should modify the bill with regard to the following provisions:

1. Use of non-LSC funds

With limited exceptions, Section 11 imposes the same restrictions on non-LSC funds that are imposed on LSC funds. The full Senate would be well advised to reconsider this decision and remove any

restrictions on such non-LSC funds. As Senator Rudman stated in testimony before this committee, the imposition on restrictions on non-LSC funds “would be a terrible mistake * * * (and) tread into dangerous constitutional waters.”

Already the restrictions on the use of non-LSC funds in the FY 1996 appropriations bill, Pub. L. 104–134 have resulted in the loss of other sources of funding for recipients, including state and local governmental funding. Continuing such a restriction in a reauthorization law would put severe limitations on the ability of state and local governmental agencies, including IOLTA programs, and private donors, including United Way agencies and foundations, to ensure that legal services they have identified as necessary to meet the full range of legal needs of poor people within their jurisdictions are available. Moreover, recipients would be prohibited from representing a significant number of clients who are today represented using private, public and IOLTA funds. Such clients include certain categories of legal aliens who do not fit within the narrow exceptions in the bill and defendants in proceedings that some states characterize as criminal, such as paternity or child support contempt actions.

While Congress should have the authority to determine how the funds it appropriates should be used, it should not be permitted to impose those determinations on the choices that other sovereign governmental entities and private donors wish to make with respect to their own funds. Moreover, Congress should encourage, rather than discourage, the creation of additional public funding sources for civil legal services and Federal-State cooperation to ensure the effective and efficient use of resources, rather than stimulate wasteful duplication of programs if public funders are forced to put their resources elsewhere in order to accomplish their purposes. Similarly, Congress should encourage private funding sources to provide additional resources for civil legal assistance and to collaborate with federally funded legal services programs to make critically needed services available in an effective and efficient way.

Any concern about fungibility of funds can be addressed by strict timekeeping requirements. In fact, the new timekeeping requirements will ensure that LSC funds are not used inappropriately to supplement or provide overhead for restricted activities that Congress has determined are inconsistent with the purposes of the LSC Act.

2. Fee-generating cases

Section 20 of the bill would prohibit recipients from providing legal assistance in all fee-generating cases which “would reasonably be expected to result in a fee for legal services from an award to an eligible party * * *” if the case had been undertaken by a private attorney. The only exception is for Social Security and SSI cases. The prohibition would apply even if: the fee that was anticipated was too small to attract a private attorney; private attorneys in the area do not handle the kind of case, regardless of the availability of a fee; or there are no private attorneys available in the area to handle the case. This is not current law and should not become so in the future.

If legal services recipients are prohibited from handling all fee-generating cases, there will be no attorneys who are available or willing and able to provide help to many of the poor people who need legal assistance. In many States, including Oregon, Texas and Florida among others, there are general fee-shifting statutes that provide a mechanism for attorneys' fees to be awarded in broad categories of civil cases, such as domestic relations, landlord tenant or consumer cases, or, as in Alaska, in virtually all civil cases. If this provision becomes law, legal services programs will be prohibited from providing representation to poor people in many of the kinds of routine, individual cases that constitute most of their case loads and that critics of legal services have suggested should be the mainstay of legal services practice. Moreover, many cases that involve poor people are nominally fee-generating, but in reality private attorneys are unwilling to handle the cases because the fees are likely to be too small or too speculative for a private attorney to undertake the representation. In many places, particularly rural America, even though a fee might be available in a particular case, there are simply no private attorneys available to handle the case.

The current law permitted fee-generating cases pursuant to LSC guidelines has worked very well in practice and has permitted legal services programs to handle those potentially fee-generating cases that the private bar will not or cannot take. This committee has heard no complaints about unfair competition from the organized bar or private attorneys generally. On the contrary, the private bar has vigorously opposed previous proposals to change the fee-generating cases provisions.

3. Representation before administrative and legislative bodies

Section 8 prohibits all lobbying and rulemaking activity. 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, who are, in many instances, the only advocates who can effectively represent the views of poor people. During the 1980s, Congress succeeded in crafting a set of restrictions on legislative and administrative advocacy to correct the alleged abuses of the legal services community. Those restrictions 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. Otherwise we who make the laws are cutting ourselves off from the best information available about how those proposals would affect poor people. In addition, we firmly believe that legal services providers should be able to advocate before legislative and administrative agencies with respect to proposals to provide nonfederal funding for legal services for the poor, especially in light of the diminishing Federal resources provided under the committee bill.

4. Prohibition on attorneys' fees

The proposed prohibition in section 14(c) on claiming or collecting attorneys' fees from non-governmental parties in litigation would eliminate an important source of additional funds to support the provision of legal services to the poor and 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. Under the bill, private defendants who have willfully violated the rights of poor plaintiffs will have much less incentive to settle those cases if they know they can evade significant punishment for their illegal actions since they are no longer threatened with payment of attorneys' fees. It ensures that private parties remain largely unaccountable for violations of poor people's rights, even though the judiciary, Congress or State legislatures have found their actions to be illegal.

5. Representation of prisoners

Section 22 prohibits all litigation on behalf of prisoners. While there may be compelling arguments to be made to prohibit representation in cases involving class actions challenging prison conditions, a complete ban on individual representation in civil cases would not only deny prisoners access to critical legal services which they may need, but it would also create particular problems in some cases. For example, a lawyer could be representing a tenant in an eviction and face a situation where the tenant was put in jail for an unrelated offense, such as drunk driving. Under this provision the lawyer would have to stop representation on the eviction.

6. Welfare reform

Section 21 seeks to prohibit all representation involving welfare reform, excepts for representation of an individual seeking specific relief from a welfare agency where such relief does not involve a challenge to existing law. We do not believe this provision should become permanent law without clarification that individual clients can be represented in order to protect their statutory or constitutional rights. Unless such clarification is made in the language, this prohibition will deny poor children and families access to our system for resolving disputes and undermine the fundamental purpose of the legal services program.

7. No provision for training and support services

Prior to 1996, the Corporation funded 16 national support centers and a support effort in each state, as well as training programs, a National Clearinghouse and other support activities. These entities are no longer funded. However, section 14(b) would eliminate the authority of the corporation to fund training, technical assistance, support and the provision of information about poverty law developments. This proposed change is a mistake. It is critically important that LSC have the authority to provide support services. Front-line attorneys 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.

BARBARA A. MIKULSKI.
CHRISTOPHER J. DODD.
PAUL WELLSTONE.
TED KENNEDY.
TOM HARKIN.
CLAIBORNE PELL.
PAUL SIMON.

ADDITIONAL VIEWS OF SENATOR SIMON

In spite of the fact that sixty Senators (including a majority of the Senate Labor and Human Resources Committee) voted to fund the Legal Services Corporation at \$340 million for FY 1996, S. 1221 authorizes funding of only \$278 million for fiscal years 1996–2000. To remedy this disparity, I intended to offer a floor amendment that would have authorized \$340 million of LSC funding for FY96, and would have authorized “such sums as are necessary” for fiscal years 1997–2000.

It does not make sense to tie the appropriators’ hands with an authorization lower than the funding level that sixty Senators voted for during this Congress. As for the “out years,” we should leave the appropriate level of funding to future Congresses, who will be best positioned to fund the Legal Services Corporation at levels appropriate to future circumstances.

Procedural concerns aside, \$278 million is an insufficient appropriation for the Legal Services Corporation. The \$278 million appropriation for the LSC in FY96 already represents a 30 percent cut in funding from the FY95 level, leaving LSC funding at a twelve-year low. Under these cuts, three hundred to four hundred local legal service offices will be closed, and many of those that remain open will be able to provide only very limited services.

In response to these budget cuts, LSC offices around the Nation have been forced to cut staff and services to the bone. LSC now projects that it will have provided services to 1.5 million fewer people in FY96 than it did in FY95. Most of the people affected by these cuts will be lower-income individuals with routine yet critically important cases.

When the Legal Service Corporation was established, its goal was to provide all low-income Americans with at least “minimum access” to legal services. The sponsors of the authorizing legislation defined that goal as requiring one lawyer per five thousand low-income people. Today, unfortunately, that ratio has fallen to less than one lawyer for every ten thousand low-income people.

It is true that pro bono services by private attorneys have expanded in response to the recent LSC budget cuts, but even if every private attorney in the United States provided fifty hours of pro bono services per year, it would not make up for the loss of services and expertise that have been caused by the thirty percent reduction in LSC funding during the 104th Congress.

We should not be cutting essential legal services for low-income individuals when more Americans now live in poverty than at any time in the past thirty years.

In 1971, one supporter said of the Legal Services Corporation:

Here each day the old, the unemployed, the underprivileged and the largely forgotten people of our nation may seek help. Perhaps it is an eviction, a marital conflict, re-

possession of a car or a misunderstanding over a welfare check—each problem may have a legal solution. These are small claims in the nation's eye, but they loom large in the hearts and lives of poor Americans.

These words, spoken by President Richard Nixon, remain as true today as they were at the time he signed the bipartisan legislation that brought the Legal Services Corporation into existence. We should not continue to chip away at funding for this important program until nothing is left but a demoralized remnant. Instead, we should continue the tradition of bipartisan support that has distinguished the history of the Legal Services Corporation.

PAUL SIMON.

IX. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (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):

* * * * *

LEGAL SERVICES REFORM ACT OF 1995

* * * * *

LEGAL SERVICES CORPORATION ACT

* * * * *

[SEC. 1001. Statement of findings and declaration of purpose

[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 vial 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 its 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.]

SEC. 1001. The Congress finds the following:

(1) There is a need to encourage equal access to the system of justice in the United States for individuals seeking redress of grievances.

(2) There is a need to encourage the provision of high quality legal assistance for those who would otherwise be unable to afford legal counsel.

(3) Encouraging the provision of legal assistance to those who face an economic barrier to legal counsel will serve the ends of

justice consistent with the purposes of the Legal Services Corporation Act.

(4) It is not the purpose of the Legal Services Corporation Act to meet all the legal needs of all potentially eligible clients, but instead to be a catalyst to encourage the legal profession and others to meet their responsibilities to the poor and to maximize access of the poor to justice.

(5) For many citizens the availability of legal services has reaffirmed faith in our government of laws.

(6) To preserve its strength, the legal services program must be made completely free from the influence of political pressures and completely free of lobbying and political activity.

(7) There are over 2,000 non-profit organizations advocating on behalf of the poor throughout the United States and it is not appropriate for funds regulated under the Legal Services Corporation Act to be expended lobbying for or against positions taken by those groups.

(8) Attorneys providing legal assistance must protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canon of Ethics, and the high standards of the legal profession.

* * * * *

SEC. 1010 Financing

[(a) AUTHORIZATION OF APPROPRIATIONS.—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.]

(a) There are authorized to be appropriated for the purposes of carrying out the activities of the Corporation—

- (1) \$278,000,000 for fiscal year 1996,*
- (2) \$278,000,000 for fiscal year 1997,*
- (3) \$278,000,000 for fiscal year 1998,*
- (4) \$278,000,000 for fiscal year 1999, and*
- (5) \$278,000,000 for fiscal year 2000.*

* * * * *

SEC. 1007(b) [(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):]

(1) to provide legal assistance with respect to any fee-generating case, except that this paragraph does not preclude representation of otherwise eligible clients in cases in which the client seeks benefits under titles II or XVI of the Social Security Act;

* * * * *

[(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;]

(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, or demonstrations, including the dissemination of information about such policies or activities, except that this paragraph 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, to advise any eligible client as to the nature of the legislative process, or to inform any eligible client of the client's rights under any statute, order, or regulation;

* * * * *

[(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 conviction of such individual or institution;]

[(9) (8) 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) (9) 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[.]; [or]

[(11) (10) to—

(A) advocate or oppose, or contribute or make available any funds, personnel, or equipment for use in advocating or opposing, any plan or proposal, or

(B) 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[.];

(11) to provide legal representation for any person or participate in any other way in litigation, lobbying, or rulemaking involving efforts to reform a State or Federal welfare system, except that this paragraph does not preclude a recipient from representing an individual client who seeking specific relief from a welfare agency where such relief does not involve an effort to amend or otherwise challenge existing law; or

(12) to provide legal representation in litigation on behalf of a local, State, or Federal prisoner.

For purposes of paragraph (1), the term “fee-generating case” means any case which if undertaken on behalf of an eligible client by an attorney in private practice may reasonably be expected to result in a fee for legal services from an award to a client from public funds, from the opposing party, or from any other source.

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SEC. 1005 (a) APPOINTMENT OF PRESIDENT; OUTSIDE COMPENSATION OF OFFICERS PROHIBITED; TERMS.—**[The Board shall]** *The President, by and with the advice and consent of the Senate, shall appoint the president of the Corporation, who shall serve at the pleasure of the President* 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]** *as the President 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] by the President. All officers shall serve at the pleasure of the Board.*

* * * * *

(d) COMPENSATION.—Officers and employees of the Corporation shall be compensated at rates determined by the Board, but not in excess of the rate level **[V]** *III* of the Executive Schedule specified in section **[5316]** *5314* of title 5, United States Code.

* * * * *

(h) *For purposes of sections 286, 287, 641, 1001, and 1002 of title 18, United States code, the Corporation shall be considered to be a department or agency of the United States Government.*

(i) *For purposes of sections 3729 through 3733 of title 31, United States Code, the term “United States Government” shall include the Corporation, except that actions that are authorized by section 3730(b) of such title to be brought by persons may not be brought against the Corporation, any recipient, subrecipient, grantee, or contractor of the Corporation, or any employee thereof.*

(j) *For purposes of section 1516 of title 18, United States Code—*

(1) *the term “Federal auditor” shall include any auditor employed or retained on a contractual basis by the Corporation,*

(2) *the term “contract” shall include any grant or contract made by the Corporation, and*

(3) *the term “person”, as used in subsection (a) of such section, shall include any grantee or contractor receiving financial assistance under section 1006(a)(1).*

(k) Funds provided by the Corporation under section 1006 shall be deemed to be Federal appropriations when used by a contractor, grantee, subcontractor, or subgrantee of the Corporation.

(l) For purposes of section 666 of title 18, United States Code, funds provided by the Corporation shall be deemed to be benefits under a Federal program involving a grant or contract.

* * * * *
SEC. 1007 * * *
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(i) Any recipient, and any employee of a recipient, who has given in-person unsolicited advice to a nonattorney that such nonattorney should obtain counsel or take legal action shall not accept employment resulting from that advice, or refer that nonattorney to another recipient or employee of a recipient, except that—

(1) an attorney may accept employment by a close friend, relative, former client (if the advice given is germane to the previous employment by the client), or person whom the attorney reasonably believes to be a client because the attorney is currently handling an active legal matter or case for that specific person;

(2) an attorney may accept employment that results from the attorney's participation in activities designed to educate non-attorneys to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by a qualified legal assistance organization;

(3) without affecting that attorney's right to accept employment, and attorney may speak publicly or write for publication on legal topics so long as such attorney does not emphasize the attorney's own professional experience or reputation and does not undertake to give individual advice in such speech or publication; and

(4) if success in asserting rights or defenses of a client in litigation in the nature of class action is dependent upon the joinder of others, an attorney may accept, but shall not seek, employment from those contacted for the purpose of obtaining that joinder.

(j)(1) No recipient or employee of a recipient may file a complaint or otherwise pursue litigation against a defendant unless—

(A) all plaintiffs have been specifically identified, by name, in any complaint filed for purposes of litigations, except to the extent that a court of competent jurisdiction has granted leave to protect the identity of any plaintiff; and

(B) a statement or statements of facts written in English and, if necessary, in a language which the plaintiffs understand, which enumerate the particular facts known to the plaintiffs on which the complaint is based, have been signed by the plaintiffs (including named plaintiffs in a class action), are kept on file by the recipient, and are made available to any Federal department or agency that is auditing the activities of the Corporation or any recipient, and to any auditor receiving Federal funds to conduct such auditing, including any auditor or monitor of the Corporation.

Other parties shall have access to the statement of facts referred to in subparagraph (B) only through the discovery process after litigation has begun.

(2) No recipient or employee of a recipient may engage in precomplaint settlement negotiations with a prospective defendant unless—

(A) all plaintiffs have been specifically identified, except to the extent that a court of competent jurisdiction has granted leave to protect the identity of any plaintiff; and

(B) a statement of statements of facts written in English and, if necessary, in a language which the plaintiffs understand, which enumerate the particular facts known to the plaintiffs on which the complaint will be based if such negotiations fail, have been signed by all plaintiffs (including named plaintiffs in a class action), are kept on file by the recipient, and are made available to all prospective defendants or such defendants' counsel, to any Federal department or agency that is auditing the activities of the Corporation or any such recipient, and to any auditor receiving Federal funds to conduct such auditing, including any auditor or monitor of the Corporation.

(3)(A) Subject to subparagraph (B), any Federal district court of competent jurisdiction, after notice to potential parties to litigation referred to in paragraph (1) or to negotiations described in paragraph (2) and after an opportunity for a hearing, may enjoin the disclosure of the identity of any potential plaintiff pending the outcome of such litigation or negotiations, upon the establishment of reasonable cause to believe that such an injunction is necessary to prevent probable, serious harm to such potential plaintiff.

(B) Notwithstanding subparagraph (A), the court shall, in a case in which subparagraph (A) applies, order the disclosure of the identity of any potential plaintiff to counsel for potential defendants upon the condition that counsel for potential defendants not disclose the identity of such potential plaintiff (other than to investigators or paralegals hired by such counsel), unless authorized in writing by such potential plaintiff's counsel or the court.

(C) In a case in which paragraph (1) applies, counsel for potential defendants and the recipient or employee counsel of the recipient may execute an agreement, in lieu of seeking a court order under subparagraph (A), governing disclosure of the identity of any potential plaintiff.

(D) The court may punish as a contempt of court any violation of an order of the court under subparagraph (A) or (B) or of an agreement under subparagraph (C).

(4) Any funds received from a defendant by a recipient on behalf of a class of eligible clients shall be placed in an escrow account until the funds may be paid to such clients. Any such funds which are not disbursed to clients within one year of the date on which such funds were received shall be returned to the defendant.

(k)(1) No funds made available by or through the Corporation may be used for defending a person in a proceeding to evict that person from a public housing project if the person has been charged with the illegal sale or distribution of a controlled substance and if the eviction proceeding is brought by a public housing agency because the illegal drug activity of that person threatens the health or

safety of other tenants residing in the public housing project or employees of the public housing agency.

(2) As used in this subsection—

(A) the term “controlled substance” has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(B) the terms “public housing project” and “public housing agency” have the meanings given those terms in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a).

(1)(1) All grants and contracts awarded by the Corporation for the provision or support of legal assistance to eligible clients under this title shall be awarded under a competitive bidding system.

(2) Rights under sections 1007(a)(9) and 1011 shall not apply to the termination or denial of financial assistance under this title as a result of the competitive award of any grant or contract under paragraph (1), and the expiration of any grant or contract under this title as a result of such competitive award shall not be treated as a termination or denial of refunding under section 1007(a)(9) or 1011.

(3) For purposes of this subsection, the term “competitive bidding” means a system established by regulations issued by the Corporation which provide for the award of grants and contracts on the basis of merit to persons, organizations, and entities described in section 1006(a) who apply for such awards in competition with others under promulgated criteria. The Corporation shall ensure that the system incorporates the following:

(A) The competitive bidding system shall commence no later than one year after the date of enactment of this provision and all previously awarded grants and contracts shall be set aside and subjected to this system within one year thereafter.

(B) All awards of grants and contracts made under this system shall be subject to periodic review and renewed with the opportunity for others to compete for the award, and in no event shall any award be granted for a period longer than 5 years.

(C) Timely notice or the submission of applications for awards shall be published in periodicals of local and State bar associations and in at least one daily newspaper of general circulation in the area to be served by the award recipient.

(D) The selection criteria shall include but not be limited to the demonstration of a full understanding of the basic legal needs of the eligible clients to be served and a demonstration of the capability of serving those needs; the reputations of the principals of the applicant; the quality, feasibility; and cost effectiveness of plans submitted by the applicant for the delivery of legal assistance to the eligible clients to be served; a demonstration of willingness to abide by the restrictions placed on those awarded grants and contracts by the Corporation; and, if an applicant has previously received an award from the Corporation, the experiences of the Corporation with the applicant.

(E) No previous recipient of an award of a grant or contract may be given any preference.

(m)(1) The Corporation shall define service areas and funds available for each service area shall be on a per capita basis pursuant to the number of poor people determined by the Bureau of the Cen-

sus to be within that area. Funds for a service area may be distributed by the Corporation to one or more recipients as defined in section 1006(a).

(2) The amount of the grants from the Corporation and of the contracts entered into by the Corporation under section 1006(a)(1) shall be an equal figure per poor person for all geographic areas, based on the most recent decennial census of population conducted pursuant to section 141 of title 13, United States Code, regardless of the level of funding for any such geographic area before the enactment of the Legal Services Reform Act of 1995.

(3) Beginning with the fiscal year beginning after the results of the most recent decennial census have been reported to the President under section 141(b) of title 13, United States Code, funding of geographic areas served by recipients shall be redetermined, in accordance with paragraph (2), based on the per capita poverty population in each such geographic area under that decennial census.

(n) No funds made available to any recipient from any source may be used to participate in any litigation with respect to abortion.

(o) No funds made available to any recipient from any sources may be expended to provide legal assistance for or on behalf of any alien unless the alien is present in the United States and is—

(1) an alien lawfully admitted for permanent residence as defined in section 101(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20));

(2) an alien who is either married to a United States citizen or is a parent or an unmarried child under the age of 21 years of such a citizen and who has filed an application for adjustment of status to permanent resident under the Immigration and Nationality Act, and such application has not been rejected;

(3) an alien who is lawfully present in the United States pursuant to an admission under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157, relating to refugee admissions) or who has been granted asylum by the Attorney General under such Act;

(4) an alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); or

(5) an alien to whom section 305 of the Immigration Reform and Control Act of 1986 applies, but only to extent that the legal assistance provided is that described in that section. An alien who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 11553(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity shall be deemed to be an alien described in paragraph (3).

(p) The Corporation shall undertake one or more demonstration projects in order to study the feasibility of using client copayments to assist in setting the service priorities of its programs. Based on those projects and such other information as it considers appro-

priate, the Corporation may adopt a permanent system of client co-payments for some or all of its programs of legal assistance.

* * * * *

SEC. 1007(a)(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.]

(5) *ensure that no funds made available to recipients are used at any time, directly or indirectly—*

(A) *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 body, or State proposals made by initiative petition or referendum, except to the extent that a governmental agency, a legislative body, a committee, or a member thereof is considering a measure directly affecting the recipient or the Corporation;*

(B) *to pay for any publicity or propaganda intended or designed to support or defeat legislation pending before the Congress or State or local legislative bodies or intended or designed to influence any decision by a Federal, State, or local agency;*

(C) *to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence any decision by a Federal, State, or local agency, except when legal assistance is provided by an employee of a recipient to an eligible client on a particular application, claim, or case, which directly involves the client's legal rights or responsibilities and which does not involve the issuance, amendment, or revocation of any agency promulgation described in subparagraph (A);*

(D) *to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device intended or designed to influence any Member*

of Congress or any other Federal, State, or local elected official—

(i) to favor or oppose any referendum, initiative, constitutional amendment, or any similar procedures of the Congress, any State legislature, any local council, or any similar governing body acting in a legislative capacity,

(ii) to favor or oppose an authorization or appropriation directly affecting the authority, function, or funding of the recipient or the Corporation, or

(iii) to influence the conduct of oversight proceedings of a recipient or the Corporation; or

(E) to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device intended or designed to influence any Member of Congress or any other Federal, State, or local elected official to favor or oppose any Act, bill, resolution, or similar legislation; and ensure that no funds made available to recipients are used to pay for any administrative or related costs associated with an activity prohibited in subparagraph (A), (B), (C), (D), or (E);

* * * * *

SEC. 1008(b)(1) Authority to require recordkeeping; access to records. 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.

(2) *The Corporation shall require each recipient to maintain records of time spent on the cases or matters with respect to which that recipient is engaged in activities. Pursuant to such requirements, each employee of such recipient who is an attorney or paralegal shall record, by the name of the case or matter, at the time such employee engages in an activity regarding such case or matter, the type (as defined by the Corporation) of case or matter, the time spent on the activity, and the source of funds to be charged for the activity.*

* * * * *

SEC. 1007(c)(1) Recipient organizations. 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)] (A) 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 (enacted July 25, 1974) has a majority of persons who are not attorneys on its policy-making board to continue such a non-attorney majority under the provisions of this title, and [(2)] (B) 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.

(2) *The board of directors of any nonprofit organization that is—*

(A) *chartered under the laws of one of the States, a purpose of which is furnishing legal assistance to eligible clients, and*

(B) *receiving funds made available by or through the Corporation,*

shall set specific priorities pursuant to section 1007(a)(2)(C) for the types of matters and cases to which the staff of the nonprofit organization shall devote its time and resources. The staff of such organization shall not undertake cases or matters other than in accordance with the specific priorities set by its board of directors, except in emergency situations defined by such board. The staff of such organization shall report, to the board of directors of the organization on a quarterly basis and to the Corporation on an annual basis, all cases undertaken other than in accordance with such priorities. The Corporation shall promulgate a suggested list of priorities which boards of directors may use in setting priorities under the paragraph.

(3) *Funds appropriated for the Corporation may not be used by the Corporation in making grants or entering into contracts for legal assistance unless the Corporation ensures that the recipient is either—*

(A) *a private attorney or attorneys,*

(B) *State and local governments or substate regional planning and coordination agencies which are composed of substate areas whose governing board is controlled by locally elected officials, or*

(C) *a qualified nonprofit organization chartered under the laws of one of the States—*

(i) *a purpose of which is furnishing legal assistance to eligible clients, and*

(ii) *the majority of the board of directors or other governing body of which is comprised of attorneys who are admitted to practice in one of the States and are approved to serve on such board or body by the governing bodies of State, county, or municipal bar associations the membership of which represents a majority of the attorneys practicing law in the locality in which the organization is to provide legal assistance.*

The approval described in subparagraph (B)(ii) may be given to more than one group of directors.

* * * * *

SEC. 1010[(c) NON-FEDERAL FUNDS.—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 In-

dian 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.】

(c)(1) Any non-Federal funds received by the Corporation, and any funds received by any recipient from any source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Corporation funds. Any funds so received, including funds derived from Interest on Lawyers Trust Accounts, may not be expended by recipients for any purpose prohibited by this title or the Legal Services Reform Act of 1995. The Corporation shall not accept any non-Federal funds, and any recipient shall not accept funds from any source other than the Corporation, unless the Corporation or the recipient, as the case may be, notifies in writing the source of such funds that the funds may not be expended for any purpose prohibited by this title or the Legal Services Reform Act of 1995.

(2) Paragraph (1) shall not prevent recipients from—

(A) receiving Indian tribal funds (including funds from private nonprofit organizations for the benefit of Indians or Indian tribes) and expending them in accordance with the specific purposes for which they are provided; or

(B) using funds received from a source other than the Corporation to provide legal assistance to a client who is not an eligible client if such funds are used for the specific purposes for which such funds were received, except that such funds may not be expended by recipients for any purpose prohibited by this title or the Legal Services Reform Act of 1995 (other than any requirement regarding the eligibility of clients).

* * * * *

SEC. 1006(a) POWERS OF NONPROFIT CORPORATION; ADDITIONAL POWERS.—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, corporations, 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;】

(ii) State and local governments or substate regional planning and coordination agencies which are composed of substate areas whose governing board is controlled by locally elected officials; and

(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 the 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.】

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【(f) HARASSMENT; MALICIOUS ABUSE OF LEGAL PROCESS. 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) awarding 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.】

(f)(1) A recipient, or any client of such recipient, may not claim or collect attorneys' fees from nongovernmental parties to litigation initiated by such client with the assistance of such recipient.

(2) The Corporation shall create a fund to pay defendants or clients under paragraph (3). In addition to any other amounts appropriated to the Corporation, there is authorized to be appropriated to such fund for each fiscal year such sums as may be necessary.

(3) If a Federal court has found an action commenced by a plaintiff with the assistance of a recipient involves a violation of rule 11 of the Federal Rules of Civil Procedure, or if the president of the Corporation finds that an action commenced by a plaintiff with the assistance of a recipient in any court involves a violation of the standards of rule 11, or was commended for the purpose of retaliation or harassment, the president of the Corporation shall, upon application by the defendant, award from the Fund all reasonable costs and attorneys' fees incurred by the defendant in defending the action.

(g)(1) The Board within 90 days after the date of the enactment of the Legal Services Reform Act of 1995, shall issue regulations to provide for the distribution of attorneys' fee received by a recipient, in accordance with paragraph (2).

(2) Such fees shall be transferred to the Corporation and the Corporation shall distribute such fees among its grantees for the direct delivery of legal assistance, except that, subject to approval by the Corporation—

(A) a recipient shall not be required to transfer fees or other compensation received as a result of a mandated court appointed;

(B) a recipient may retain reasonable costs customarily allowed in litigation against an unsuccessful party; and

(C) a recipient may retain the actual cost of bringing the action, including the proportion of the compensation of each attorney involved in the action which is attributable to that action

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SEC. 1006(d)(5) **[No]** (A) Subject to subparagraph (B), 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.

(B) No recipient or employee of a recipient may bring a class action suit against the Federal Government or any State or local government unless—

(i) the governing body of the recipient has expressly approved the filing of such an action;

(ii) the class relief which is the subject of such an action is sought for the primary benefit of individuals who are eligible for legal assistance under this title; and

(iii) before filing such an action, the project director of the recipient determines that the government entity is not likely to change the policy or practice in question, that the policy or practice will continue to adversely affect eligible clients, that the recipient has given notice of its intention to seek class relief, and that responsible efforts to resolve without litigation the adverse effects of the policy or practice have not been successful or would be adverse to the interest of the clients.

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SEC. 1003(b) PRINCIPAL OFFICE; AGENT FOR SERVICE OF PROCESS. The Corporation shall maintain its principal office in the **[District of Columbia]** Washington D.C. metropolitan area 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.

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EVASION

SEC. 1013. Any attempt, such as the creation or use of “alternative corporations”, to avoid or otherwise evade the provisions of this title or the Legal Services Reform Act of 1995 is prohibited.

SEC. **[1013]** 1014 * * *

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SEC. **[1014]** 1015 * * *

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