



# Legal Services Corporation: Restrictions on Activities

(name redacted)

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## Summary

The Legal Services Corporation (LSC) is a private, nonprofit, federally funded corporation that helps provide legal assistance to low-income people in civil (i.e., non-criminal) matters. The primary responsibility of the LSC is to manage and oversee the congressionally appropriated federal funds that it distributes in the form of grants to local legal services providers, which in turn give legal assistance to low-income clients. The LSC appropriation for FY2009 is \$390 million. Since its inception, the legal services program has been controversial. Congress, through the LSC Act and various annual appropriation laws, has imposed many restrictions on activities of LSC-funded legal services programs. The Obama Administration and certain Congressional proposals would eliminate some of these restrictions.

Under current law, LSC-funded legal services programs may not: (1) engage in partisan litigation related to redistricting; (2) attempt to influence regulatory, legislative, or adjudicative action at the federal, state, or local level; (3) attempt to influence oversight proceedings of the LSC; (4) engage in litigation related to abortion; (5) engage in litigation related to school desegregation; (6) engage in litigation related to draft registration or desertion from the military; (7) initiate or participate in any class action suit; (8) represent certain categories of aliens, except that both LSC and non-LSC funds may be used to represent aliens who have been victims of domestic violence or child abuse; (9) conduct advocacy training on a public policy issue or encourage political activities, strikes, or demonstrations; (10) represent clients in eviction proceedings if the eviction was based on drug-related activities; (11) represent federal, state, or local prisoners; (12) participate in efforts to reform a federal or state welfare system; (13) solicit clients; or (14) engage in activities related to assisted suicide, euthanasia, or mercy killing.

The Obama Administration's FY2010 budget proposed that funding for the LSC be increased to \$435 million for FY2010 (which would exceed the previous all-time high level of \$400 million), and that LSC restrictions on class action suits and attorneys' fees be eliminated. H.R. 2847, the FY2010 appropriations bill from the House Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies (CJS), as passed by the House (on June 18, 2009) would have increased funding for the LSC to \$440 million for FY2010 and would have kept the current restrictions on LSC activities, except for the one relating to attorneys' fees. H.R. 2847, as passed by the Senate (on November 5, 2009), would have increased funding for the LSC to \$400 million for FY2010 and would have, in effect, allowed non-federal funds that are received by LSC-funded legal services programs to be used to pay for activities that are prohibited by the LSC, except for litigation involving abortion or prisoners. By contrast, the proposed Civil Access to Justice Act of 2009, S. 718, introduced by Senator Harkin (et al.) on March 26, 2009 (and the House companion bill H.R. 3764, introduced by Representative Robert "Bobby" Scott (et al.) on October 8, 2009), would increase LSC funding to \$750 million per year and remove most of the restrictions on activities performed by legal services programs that receive LSC funds.

P.L. 111-117, the consolidated appropriations for 2010 (enacted December 16, 2009), included a provision that appropriates \$420 million for the LSC for FY2010. P.L. 111-117 also continues existing limitations on the use of LSC funds (and non-LSC funds) except for the restriction on the ability of LSC-funded programs to claim and collect attorneys' fees.

This report provides background information on the LSC, presents some of the arguments for and against the imposition of the current restrictions on LSC funds, and provides information on when the restrictions were enacted. This report will be updated as warranted.

## **Contents**

Introduction .....	1
Debate Over Restrictions.....	2
Legislative History of Restrictions on LSC Activities .....	5
LSC Authorizing Legislation (P.L. 93-355; Enacted July 25, 1974).....	6
P.L. 96-68 (appropriations bill)—September 24, 1979 .....	7
P.L. 97-377 (appropriations bill)—December 21, 1982.....	7
P.L. 104-134 (appropriations bill)—April 26, 1996.....	7
P.L. 104-208 (appropriations bill)—September 30, 1996 .....	8
P.L. 105-12 (Assisted Suicide Funding Restriction Act of 1997)—April 30, 1997.....	8
P.L. 105-119 (appropriations bill)—November 26, 1997.....	8
P.L. 111-117 (appropriations bill)—December 16, 2009 .....	8
Conclusion.....	9

## **Contacts**

Author Contact Information .....	10
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## Introduction

The Legal Services Corporation (LSC) is a private, nonprofit, federally funded corporation that helps provide legal assistance to low-income people in civil (i.e., non-criminal) matters. The primary responsibility of the LSC is to manage and oversee the congressionally appropriated federal funds that it distributes in the form of grants to local legal services providers, which in turn give legal assistance to low-income clients in all 50 states, the District of Columbia, the U.S. territories of American Samoa, Guam, and the Virgin Islands, the Commonwealth of Puerto Rico, and Micronesia (including the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, and Palau).<sup>1</sup>

The LSC does not provide legal services directly. Rather, it funds local legal services providers/programs. Legal services providers/programs may include nonprofit organizations that have as a purpose the provision of legal assistance to eligible clients, private attorneys, groups of private attorneys or law firms, state or local governments, and certain sub-state regional planning and coordination agencies. During 2008, the LSC funded 137 legal services programs in 918 offices.

Although the authorization of appropriations for the LSC expired at the end of FY1980, the LSC has operated for the past 29 years by virtue of annual appropriations laws. The LSC was funded at \$390 million for FY2009 (P.L. 111-8) and is currently funded at \$420 million for FY2010 (P.L. 111-117).

Since its inception, the legal services program has been controversial, and Congress has imposed restrictions on activities of LSC-funded legal services programs. Debate existed from the start among policymakers as to whether the LSC's role should be similar to that of its predecessor,<sup>2</sup>

### LSC Attorneys May Not:

- engage in partisan litigation related to redistricting;
- attempt to influence regulatory, legislative, or adjudicative action at the federal, state, or local level;
- attempt to influence oversight proceedings of the LSC;
- engage in litigation related to abortion;
- engage in litigation related to school desegregation;
- engage in litigation related to draft registration or desertion from the military;
- initiate or participate in any class action suit;
- represent certain categories of aliens, except that both LSC and non-LSC funds may be used to represent aliens who have been victims of domestic violence or child abuse;
- conduct advocacy training on a public policy issue or encourage political activities, strikes, or demonstrations;
- represent clients in eviction proceedings if the eviction was based on drug-related activities;
- represent federal, state, or local prisoners;
- participate in efforts to reform a federal or state welfare system;
- solicit clients; or
- engage in activities related to assisted suicide, euthanasia, or mercy killing.

**Note:** P.L. 111-117 eliminated the provision that prohibited LSC attorneys from claiming or collecting attorneys' fees.

<sup>1</sup> For basic information on the LSC, see CRS Report RL34016, *Legal Services Corporation: Background and Funding*, by (name redacted).

<sup>2</sup> The federal government has administered a program of legal services for the poor since 1966. Originally, the program was administered through the Office of Economic Opportunity (OEO), a now-defunct agency that had led the War on Poverty in the mid-1960s. In 1971, President Nixon proposed establishment of a separate corporation to deliver legal services to insulate the program from political pressure. In his special message to the Congress on May 5, 1971, proposing the establishment of a Legal Services Corporation, President Nixon stated that the legal services program (continued...)

namely, using lawsuits and other means to resolve broad underlying difficulties of the poor, or whether the focus should be more narrowly defined to addressing small, specific situations. Although there is widespread agreement that individuals who cannot afford an attorney should have their “day in court,”<sup>3</sup> many observers contend that federal dollars should not be used to promote broad social causes.

## Debate Over Restrictions

Proponents of reducing the number of restrictions on the LSC argue that the restrictions deny those represented by LSC-funded attorneys access to basic legal tools, such as claiming court-ordered attorneys’ fee awards<sup>4</sup> and participating in class actions that are available to all other litigants.<sup>5</sup> They contend that their adversaries grossly exaggerate their activist activities, they claim that they spend the vast majority of their time providing assistance to poor individuals who are trying to resolve family issues such as divorce and separation, custody and visitation, and domestic abuse, or housing issues such as eviction.<sup>6</sup> Some LSC advocates also counter that class action suits are an efficient and effective way to represent clients who face a common problem and to resolve the legal problems of large numbers of persons in similar situations.<sup>7</sup>

Opponents of reducing the number of restrictions on the LSC argue that without the restrictions LSC attorneys in far too many instances would seek the flamboyant social cause-oriented class action cases, rather than cases that address the urgent, routine, day-to-day legal needs of low-income individuals. They maintain that LSC attorneys, prior to the restrictions, were abusing their statutory directive by pursuing a liberal agenda.<sup>8</sup> Some fear that hundreds of legal services

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*“has not been without travail. Much of the litigation initiated by legal services has placed it in direct conflict with local and State governments. The program is concerned with social issues and is thus subject to unusually strong political pressures. Even though surrounded by controversy, this program can provide a most effective mechanism for settling differences and securing justice within the system and not on the streets.”*

<sup>3</sup> Most of the cases handled by LSC are resolved through advice and referral. In 2007, only about 13% of cases were resolved in court, primarily because they involved family law issues (e.g., protective orders, child support, etc.) in which court action was required by state law.

<sup>4</sup> A general practice of law is for the winning parties to ask the court to require the other side to pay court costs and attorneys’ fees. Many commentators maintain that countering trial delays by opposing counsel with a reminder that if they lose they will not only have to change the rule or policy but that they will also have to pay attorneys’ fees is a legal strategy (i.e., leverage) that is not available to LSC-funded attorneys (pursuant to annual appropriation laws, starting with P.L. 104-134). Some observers also point out that the prohibition against accepting attorneys’ fees also reduces the resources that potentially could have been available to LSC-funded legal services programs to provide more aid to low-income persons. In other words, they contend that during these times of tight budgets, attorneys’ fees could be a significant source of funding for many LSC-funded programs.

<sup>5</sup> Brennan Center for Justice (New York University School of Law), “Restricting Legal Services: How Congress Left the Poor With Only Half a Lawyer,” 2000. Also see Statement of Rebekah Diller (deputy director) before the U.S. Senate Committee on the Judiciary, May 22, 2008.

<sup>6</sup> *The Congressional Digest*, vol. 60, no. 5, “Controversy Over the Federal Legal Aid Program,” May 1981. See also Brennan Center for Justice (New York University School of Law), “Restricting Legal Services: How Congress Left the Poor With Only Half a Lawyer,” 2000.

<sup>7</sup> American Civil Liberties Union (ACLU), “Upsetting Checks and Balances: Congressional Hostility Toward the Courts in Times of Crisis,” November 1, 2001, p. 46-47.

<sup>8</sup> *The Congressional Digest*, vol. 60, no. 5, “Controversy Over the Federal Legal Aid Program,” May 1981. See also John Carlisle, “Legal Services Unleashed,” *The American Spectator*, special report, April 3, 2009.

attorneys would unleash a barrage of lawsuits in the nation's federal and state courts to advance a liberal political agenda if the restrictions were not in place.<sup>9</sup>

The authorizing statute (P.L. 93-355) of the LSC contains restrictions against lobbying, political activities, class actions except under certain conditions, and cases involving abortion, school desegregation, and draft registration or desertion from the military. Additional restrictions have been included in annual appropriations laws over the years. However, it was the 1996 appropriations law that stipulated that the restrictions were to apply to all LSC activities, not just those funded by LSC appropriations.<sup>10</sup> This meant that all of the resources of a LSC-funded legal services programs, whether they came from the LSC appropriation, other federal funds, state or local appropriations, state Interest on Lawyers' Trust Account (IOLTA) programs, contracts, private donations, foundation grants or other funding sources, were subject to the same restrictions as LSC funds.<sup>11</sup> Some attorneys claimed that this provision in effect enabled Congress to restrict the work of attorneys working for the poor far beyond the scope of the federal appropriation.<sup>12</sup> Others referred to the restriction as the "program integrity" restriction, and claimed that the limit on the use of non-LSC funds is crucial. They asserted that because most, if not all, LSC grantees (i.e., legal services programs) receive money from private or other government sources, without the "program integrity" rule, the other restrictions would be rendered virtually meaningless because grantees could simply claim that they are using non-LSC money.<sup>13</sup> Although more theoretical than practical, it is important to mention the proviso that LSC-funded legal services programs can provide some of the restricted activities if they do so through a legally and physically separate entity. Such an undertaking is viewed by most legal services programs as too expensive to contemplate.

Some commentators contend that the restrictions prevent LSC attorneys from helping many low-income persons in urgent need of assistance. The current recession, along with a variety of problems such as consumer fraud, domestic violence, and flawed housing practices,<sup>14</sup> have resulted in some policymakers supporting increased funding and fewer restrictions on the LSC.<sup>15</sup>

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<sup>9</sup> John Carlisle, "Legal Services Unleashed," *The American Spectator*, special report, April 3, 2009. See also Rael Jean Isaac, "Illegal Services—When Congress passed restrictions on the Legal Services Corporation, the LSC call in its lawyers," *National Review*, vol. 49, March 24, 1997, p. 42-45, and p. 60.

<sup>10</sup> Although the LSC is the largest single source of funding for the civil legal services system in the United States, it is not the only source of funding. Local legal services programs supplement their LSC grants with funds from a variety of governmental and private sources. Non-LSC funding sources include state and local grants; state Interest on Lawyers' Trust Accounts (IOLTAs) programs; federal programs such as the Title XX Social Services Block Grant, the Older Americans Act, the Violence Against Women Act, and Community Development Block Grants; and private grants from entities such as the United Way, foundations, and national, state, and local bar associations. In addition, private attorneys accept referrals to provide legal services to the poor, primarily through LSC-funded pro bono programs. In 2007, LSC funding accounted for about 42% of the \$844.4 million spent in the U.S. for civil legal services for the poor.

<sup>11</sup> Alan Houseman and Linda Perle, "Restrictions on Providing a Full Range of Services," Memorandum to Peter Edelman, February 6, 2009. [http://www.law.stanford.edu/display/images/dynamic/events\\_media/Houseman\\_Perle\\_LSC\\_Restrictions\\_Memo.pdf](http://www.law.stanford.edu/display/images/dynamic/events_media/Houseman_Perle_LSC_Restrictions_Memo.pdf)

<sup>12</sup> American Civil Liberties Union (ACLU), "Upsetting Checks and Balances: Congressional Hostility Toward the Courts in Times of Crisis," November 1, 2001, p. 47.

<sup>13</sup> John Carlisle, "Legal Services Unleashed," *The American Spectator*, special report, April 3, 2009.

<sup>14</sup> P.L. 106-185 (Civil Asset Forfeiture Reform Act of 2000; enacted April 25, 2000) included a provision whose purpose is to ensure that an indigent individual whose primary residence is subject to civil forfeiture is represented by an LSC attorney in such civil action.

<sup>15</sup> Some advocates of eliminating the restrictions on LSC activities contend that the opportunity to stop the fraudulent practices of some lenders in the mortgage market was missed because legal services programs were prohibited from lobbying and filing class action suits. They assert that civil legal aid attorneys serve as a detection and warning system (continued...)

During a recent hearing on the LSC, Representative Alan Mollohan, chairman of the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies (CJS), made the following statement:

The ongoing recession is driving more and more Americans below the poverty thresholds that establish eligibility for legal aid services. This growing population of eligible clients is confronted with legal needs that are increasing in both number and complexity. Many clients face the prospect of foreclosure or foreclosure-related eviction. With job losses increasing, there are more clients needing assistance gaining access to food stamp benefits, unemployment compensation or Medicaid services. There is also substantial evidence that economic distress increases family distress, including divorce and domestic violence. All of these factors are driving up demand for legal aid services at precisely the same time that the supply of those services is dwindling. Legal aid providers across the country have been forced to make significant budget cuts due to state government deficits and diminishing charitable and private support.<sup>16</sup>

The House-passed CJS Appropriations bill (H.R. 2847) would increase funding for the LSC to \$440 million in FY2010 (an increase of \$50 million over current year funding) and would keep the current restrictions on LSC activities, except for the one relating to attorneys' fees. According to the House report on H.R. 2847:

A general provision in Title V of the bill revises the administrative provision in order to permit grantees to pursue the recovery of attorneys' fees when recovery is permitted or required under Federal or State law. The Committee believes that this action will level the playing field between legal aid attorneys and their counterparts in the private sector and provide a potentially crucial source of additional revenue to legal aid providers in a year in which state and private funding sources are decreasing.<sup>17</sup>

The Senate-passed CJS Appropriations bill (H.R. 2847) would increase funding for the LSC to \$400 million in FY2010 (an increase of \$10 million over current year funding). The Senate-passed version of the bill would also continue existing limitations on the use of federal funds, except that it would eliminate the restrictions on the use of non-federal funds except in litigation involving abortion and cases involving prisoners.<sup>18</sup> The bill will go to conference to resolve the differences between the House and Senate versions of the bill. P.L. 111-117, the consolidated

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for problems plaguing low-income communities. They note that as the people most familiar with the legal problems of the communities in which they work, often they are the first to learn of new legal abuses occurring in those communities. They point out that historically, civil legal aid lawyers were the ones who spoke out and prompted change when the police refused to respond to domestic violence calls, when foster care agencies placed children in unsafe foster homes, and when local employers repeatedly failed to pay the minimum wage. Source: Laura K. Abel (Brennan Center for Justice—New York University), "Lawyers for the Poor Muzzled in Subprime Mess," *The Nation*, January 16, 2008.

<sup>16</sup> U.S. Congress, Hearing on the Legal Services Corporation, statement of Chairman Alan Mollohan, House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, April 1, 2009.

<sup>17</sup> U.S. Congress. House. Commerce, Justice, Science, and Related Agencies Appropriations Bill, 2010, to accompany H.R. 2847 (111<sup>th</sup> Congress, 1<sup>st</sup> Session), H.Rept. 111-149, June 12, 2009, p. 163.

<sup>18</sup> The Senate report (S.Rept. 111-34, June 25, 2009, p. 143) deletes section 504(d) of P.L. 104-134. This section prohibits legal services programs that are funded partly by LSC funds from using non-federal (e.g., state, local, or private) funds to pay for activities that are prohibited by the LSC. However, S.Rept. 111-34 also stipulates that no funds (federal or non-federal) can be used for activities specified in section 504(a)(14) or section 504(a)(15) of P.L. 104-134 (respectively, these two sections pertain to abortion litigation and litigation involving persons incarcerated in a federal, state, or local prison).

appropriations for 2010 (enacted December 16, 2009), included a provision that appropriates \$420 million for the LSC for FY2010. P.L. 111-117 also continues existing limitations on the use of LSC funds (and non-LSC funds) except for the restriction on the ability of LSC-funded programs to claim and collect attorneys' fees.

By contrast, the proposed Civil Access to Justice Act of 2009, S. 718, introduced by Senator Harkin (et al.) on March 26, 2009 (and the House companion bill H.R. 3764, introduced by Representative Robert "Bobby" Scott (et al.) on October 8, 2009), would reauthorize the LSC for six years, increase funding to \$750 million per year (for each of the fiscal years FY2010 through FY2015), remove most of the restrictions on activities performed by legal services programs that receive LSC funds,<sup>19</sup> and revise the governance of the LSC. In his introduction of the bill, Senator Harkin said:

Unfortunately, as the economy continues to wane, those needing legal assistance increase. Yet, the Federal commitment to legal services and LSC is not as effective as it needs to be. LSC has not been authorized since 1981, and since 1995 Congress has slashed funding for legal services for the poor, from \$415 million to \$350 million in fiscal year 2008, with only a recent increase to \$390 million for fiscal year 2009. Further, severe restrictions on LSC funded attorneys impede the ability of legal aid attorneys to provide the most meaningful legal representation to low-income Americans. The result is that access to justice and quality representation has become far from a reality for too many of our citizens.<sup>20</sup>

On June 17, 2009, speaking in opposition of funding the LSC, Representative Hensarling stated: "... it's a program that's been unauthorized since 1980, reported instances of waste, fraud and abuse. And should we actually be taxing taxpayers to force them to subsidize their neighbors to turn around and sue them? I don't think so." He asserted that there are other options for providing legal services to the poor, such as pro bono law firms and lawyers that work on contingent fees.<sup>21</sup>

The following section provides information on when the current restrictions were first enacted. (See box on page 1 for a list of the current restrictions.)

## **Legislative History of Restrictions on LSC Activities**

Generally speaking, Democrats and other advocates of the LSC have consistently argued that the poor should receive the same range of legal assistance through the LSC that is available to those who could afford to hire private attorneys. By contrast, Republicans generally have asserted that LSC attorneys should deal with the day-to-day needs of the poor and should be barred from dealing with controversial political issues.

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<sup>19</sup> S. 718 would eliminate LSC restrictions related to attorneys' fees, lobbying with non-federal funds, and class action suits (if the class action is based on established law). It would modify the restriction pertaining to public housing evictions so that LSC-funded legal services programs could serve persons who have been acquitted of drug-related charges or against whom such charges were dropped. It would modify the restriction related to inmates of federal, state, and local prisons so that services could be provided to prisoners trying to successfully re-enter society. In addition, the bill would eliminate all restrictions on the use of non-LSC funds with the exception of cases related to abortion.

<sup>20</sup> *Congressional Record*, Senate, Remarks of Senator Harkin on S. 718, March 26, 2009, p. S3916.

<sup>21</sup> *Congressional Record*, House, Amendment No. 6 to H.R. 4287 offered by Representative Hensarling, p. H6936-H 6937.



The legislation authorizing the LSC was signed by President Nixon in 1974. During the Ford Administration, the LSC was reauthorized through FY1980. During the 1980s there were several attempts by the Reagan Administration to abolish the LSC. Although the George H.W. Bush Administration did not try to eliminate the LSC or drastically cut its funding, it supported more restrictions on the LSC. During the early years of the Clinton Administration the LSC reached its highest funding level of \$400 million; however, funding was reduced significantly in 1996 due to pressure from a majority Republican Congress to reduce LSC funding and impose more restrictions on the types of permissible LSC activities. According to many sources, imposing restrictions on LSC activities was the compromise that enabled the LSC to continue to exist.<sup>22</sup> During the George W. Bush Administration funding for the LSC gradually increased and several more restrictions on LSC activities were imposed. The Obama Administration has proposed that funding for the LSC be increased to \$435 million for FY2010, and that LSC restrictions on class action suits and attorneys' fees be eliminated. P.L. 111-117, the consolidated appropriations for 2010 (enacted December 16, 2009), included a provision that appropriates \$420 million for the LSC for FY2010 (which exceeds the previous all-time high level of \$400 million). P.L. 111-117 also continues existing limitations on the use of LSC funds (and non-LSC funds) except for the restriction on the ability of LSC-funded programs to claim and collect attorneys' fees.

The LSC Act and various annual appropriation laws contain restrictions on activities in which recipients of LSC funds may engage, and on types of cases in which LSC-funded legal services providers/programs may provide legal representation.<sup>23</sup>

### **LSC Authorizing Legislation (P.L. 93-355; Enacted July 25, 1974)<sup>24</sup>**

The LSC was the result of a bipartisan agreement between members of Congress who supported the predecessor OEO legal services program and those who opposed the OEO program. Supporters of the predecessor OEO program maintained that law reform through the use of litigation, lobbying, and community organization was the most effective approach to obtain social justice for poor people. However, opponents maintained that OEO legal services program efforts in cases pertaining to integration, abortion, and union organizing had generated significant controversy. P.L. 93-355 authorized an independent, national nonprofit organization to oversee provision of legal services to the nation's poor (i.e., the LSC), while simultaneously refocusing legal services advocacy toward basic representation of individual clients and away from law reform by prohibiting LSC funds to be used for lobbying, and policy advocacy.<sup>25</sup>

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<sup>22</sup> Alan W. Houseman, "Civil Legal Assistance for the 21<sup>st</sup> Century: Achieving Equal Justice for All," Center for Law and Social Policy, May 1998, pp. 10-11, [https://www.policyarchive.org/bitstream/handle/10207/13767/civil\\_legal\\_assistance\\_for\\_the\\_21st\\_century.pdf?sequence=1](https://www.policyarchive.org/bitstream/handle/10207/13767/civil_legal_assistance_for_the_21st_century.pdf?sequence=1).

<sup>23</sup> The LSC Act can be found at 42 U.S.C. §2996 et seq.; the restrictions can be found at 42 U.S.C. §2996e and §2996f. The LSC regulations can be found at 45 C.F.R. Part 1600 et seq.

<sup>24</sup> The public laws listed below indicate the first time the restriction was included in law. Subsequent legislation also included the previously mentioned restrictions. LSC restrictions have been renewed every year since 1996. However, many of the appropriation bills that included provisions related to the LSC are not mentioned in this report because they did not include new restrictions.

<sup>25</sup> Alan W. Houseman and Linda E. Perle, "Securing Equal Justice For All: A Brief History of Civil Legal Assistance in the United States," Center for Law and Social Policy, revised January 2007, pp. 19-22, <http://www.clasp.org/admin/site/publications/files/0158.pdf>. Also see Michael B. Wallace, "Out of Control: Congress and the Legal Services Corporation," American Enterprise Institute for Public Policy Research (AEI studies 485), 1989, pp. 169-173.

Since its inception, Congress has imposed restrictions on the activities of LSC attorneys. The authorizing statute (P.L. 93-355) contains restrictions against lobbying, political activities, class actions (except under certain conditions), and cases involving abortion, school desegregation, and draft registration or desertion from the military.

### **P.L. 96-68 (appropriations bill) — September 24, 1979**

A provision that prohibited LSC funds from being used to assist any alien in the United States with regard to immigration, exclusion, deportation, or expulsion matters was first included in P.L. 96-68.

### **P.L. 97-377 (appropriations bill) — December 21, 1982**

The prohibition against using LSC funds to assist aliens was modified so that LSC funds could be used to help certain categories of resident aliens (i.e., immigrants) who were lawfully present in the United States. This modified provision was first included in P.L. 97-377.

### **P.L. 104-134 (appropriations bill) — April 26, 1996**

P.L. 104-134 made numerous changes to the LSC. In 1996, the LSC was still a very contentious topic of debate. The LSC had been unauthorized for many years, which resulted in controversial issues surrounding the LSC being addressed through the inclusion of a number of administrative provisions in annual appropriations acts. In 1995, the House had adopted a budget resolution that assumed that the funding for the LSC would be cut by one-third for FY1996, two-thirds for FY1997, and eliminated thereafter. Many members of Congress concluded that to prevent the elimination of the LSC they would have to accept significant budget cuts to the LSC and more restrictions on LSC activities.<sup>26</sup> The political compromise that was reached preserved the LSC, but reduced its funding, changed the way in which LSC funds were distributed, imposed additional restrictions on the use of LSC funds,<sup>27</sup> and also stipulated that non-LSC funds received by individual legal services programs were subject to the same restrictions as LSC funds. The compromise did not include the reauthorization of the LSC.

P.L. 104-134 included provisions that prohibited *any* funds received by LSC legal services providers/programs to be used for (1) efforts related to redistricting; (2) attempts to influence regulatory, legislative or adjudicative action at the federal, state, or local level; (3) grassroots lobbying; (4) attempts to influence oversight proceedings of the LSC; (5) class action suits; (5) representation of certain categories of aliens; (6) conducting advocacy training on a public policy issue or encouraging political activities, strikes, boycotts or demonstrations; (7) claiming or collecting attorneys' fees; (8) litigation related to abortion; (9) representation of federal, state, or local prisoners; (10) efforts to reform a federal or state welfare system; (11) representation of clients in eviction proceedings brought by a public housing agency if the eviction was based on drug-related activities;<sup>28</sup> and (12) solicitation<sup>29</sup> of clients.

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<sup>26</sup> Mauricio Vivero, "From "Renegade" Agency to Institution of Justice: The Transformation of Legal Services Corporation," *Fordham Urban Law Journal*, vol. XXIX, no. 3, February 2002, p. 1325-1333.

<sup>27</sup> P.L. 104-134 recodified some of the previous restrictions and added some new restrictions.

<sup>28</sup> Section 504(a)(17) of P.L. 104-134 stipulates that LSC-funded legal services programs may not defend a person in a (continued...)

P.L. 104-134 also mandated that LSC-funded providers/programs must establish priorities, and staff must agree in writing not to engage in activities outside these priorities. Moreover, P.L. 104-134 prohibited the LSC from receiving nonfederal funds, and legal services providers/programs are prohibited from receiving non-LSC funds, unless the source of funds is told in writing that these funds may not be used for any activities prohibited by the LSC Act or the appropriations law pertaining to the LSC.

### **P.L. 104-208 (appropriations bill)— September 30, 1996**

The prohibition against using LSC funds to assist certain categories of aliens was modified to allow both LSC and non-LSC funds to be used to represent aliens who have been victims of domestic violence or child abuse. This modification was first added by P.L. 104-208.

### **P.L. 105-12 (Assisted Suicide Funding Restriction Act of 1997)— April 30, 1997**

A provision that prohibited LSC funds from being used for activities related to assisted suicide, euthanasia, or mercy killing was first added by P.L. 105-12.

### **P.L. 105-119 (appropriations bill)— November 26, 1997**

Among other things, this law incorporated previous restrictions on LSC activities by reference to P.L. 104-134 and also made some modifications to some of the 1996 restrictions. All subsequent annual appropriations bills that include LSC-related provisions incorporate the restrictions on LSC-funded activities by reference to this law (P.L. 105-119) and/or P.L. 104-134.

### **P.L. 111-117 (appropriations bill)— December 16, 2009**

P.L. 111-117, the consolidated appropriations for 2010, included a provision that appropriates \$420 million for the LSC for FY2010. P.L. 111-117 also continues existing limitations on the use of LSC funds (and non-LSC funds) except for the restriction on the ability of LSC-funded programs to claim and collect attorneys' fees.

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(...continued)

proceeding to evict the person from a public housing project if (1) the person has been charged with the illegal sale or distribution of a controlled substance, and (2) the eviction proceeding is brought by a public housing agency because the illegal drug activity of the person threatens the health or safety of another tenant residing in the public housing project or employee of the public housing agency.

<sup>29</sup> Federal regulations (Title 45 U.S. Code, part 1638) state that the purpose of the restriction is to ensure that LSC-funded legal services programs do not solicit clients. The regulations clarify that providing information regarding legal rights and responsibilities and advertising the program's services are not considered solicitation.

## Conclusion

Although polls indicate majority support for the existence of, and federal funding for, the non-profit provision of legal assistance to the poor,<sup>30</sup> determining the appropriate funding level of the LSC and agency/program parameters remains an issue.

According to 21 state justice commissions,<sup>31</sup> restrictions placed on programs receiving LSC funds adversely affected many low-income persons. The justice commission in New Jersey asserted that the restrictions have a “negative impact,” “in actual practice (causing great inefficiencies in the way applicants for service must be processed and referred) and principle (denial of essential and fundamental legal assistance to some who need it).” The Texas commission maintained that the restrictions are “major obstacles ... for achieving ‘equal access’ for disfavored clients and politically unpopular cases.”<sup>32</sup>

Some commentators contend that “access to justice” for poor people is inherently unequal when it is subject to restrictions that are not imposed on clients who can afford to pay for their attorneys.<sup>33</sup> Others assert that “access to justice” for the poor is a fallacy because LSC is unable to meet the demands of the current eligible low-income population.<sup>34</sup> They assert that eliminating the restrictions on LSC activities would only widen the gap of unmet need. Many in the legal services community are supporting proposals that would both increase LSC funding and eliminate some of the restrictions on LSC activities. Others opposed to providing any funding for the LSC contend that the LSC has been unauthorized since 1980 for legitimate reasons. They maintain that instead of increasing the national debt by spending \$440 million on the LSC, other non-federal resources are more appropriate sources of funding for legal services programs for the poor.<sup>35</sup>

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<sup>30</sup> In a 2009 Harris poll commissioned by the American Bar Association, 83% of the survey respondents agreed that it is essential that a non-profit provider of legal services is available to assist those who could not otherwise afford legal help. Also, 68% of respondents said they support federal funding to help Americans who need legal resources and advice when they are in crisis.

<sup>31</sup> Access to Justice Commissions have been created by many states as a strategy for developing and implementing initiatives designed to expand access to and enhance the quality of justice in civil legal matters for low-income people.

<sup>32</sup> Brennan Center for Justice (New York University School of Law), “Reports from 21 States Identify Federal Legal Services Corporation Restrictions as a Barrier to Justice,” May 8, 2009.

<sup>33</sup> Brennan Center for Justice (New York University School of Law), “Letter to OMB Asks President Obama to Change Administration’s Stance on Legal Services Restrictions,” January 30, 2009.

<sup>34</sup> A 2005 report indicated that only about 20% of persons eligible for LSC-funded services actually had access to those services when they needed them. (Source: Legal Services Corporation, “Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans,” September 2005, p. 18.) Note: LSC-funded legal services programs may not provide services to persons who have income above 125% of the federal poverty guidelines. According to the Census Bureau, in 2007, approximately 50 million persons had income below 125% of the poverty level.

<sup>35</sup> *Congressional Record*. House. Amendment No. 6 to H.R. 4287 offered by Representative Hensarling, p. H6936-H 6937.

## **Author Contact Information**

(name redacted)  
Specialist in Social Policy  
/redacted/@crs.loc.gov, 7-....

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