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CONGRESSIONAL RESTRICTIONS ON LEGAL AID ATTORNEYS: BURDENSOME OR NECESSARY?

by VALERIE URIBE

On Oct. 8, 2009, Rep. Robert Scott, D-Va., introduced the Civil Access to Justice Act of 2009 (CAJ Act).¹ The CAJ Act proposes to lift restrictions on the categories of clients and cases that the Legal Services Corporation (LSC) can take on.² The LSC is a non-profit organization that promotes equal access to justice and ensures that low-income Americans receive high quality legal assistance.³

The main purpose of the CAJ Act is to reauthorize the Act that regulates the LSC.⁴ The LSC has been operating without reauthorization since 1977.⁵ Additionally, the bill proposes to lift most of the restrictions limiting LSC services.⁶

WHAT ARE THE RESTRICTIONS?

The main restrictions on LSC funds include prohibitions on: lobbying government offices or legislative bodies except for in limited situations; representing people who are not U.S. citizens with few exceptions; litigating class action suits; and collecting attorneys' fees.⁷ Other restrictions limit soliciting clients in person, litigating abortion-related claims, redistricting activities, influencing the taking of the census, representing prisoners and representing people being evicted from public housing for criminal or drug charges.⁸

When some members of Congress sought to eliminate the LSC in 1995, legislators compromised in order to maintain it by creating limits on the categories of clients and cases that legal aid offices could handle.⁹ Since then, the restrictions have been annually attached to LSC appropriations bills.¹⁰ Critics of the LSC stated that the purpose of enacting these restrictions was to keep the LSC apolitical.¹¹

THE CIVIL ACCESS TO JUSTICE ACT

While the main purpose of the CAJ Act is to reauthorize the Act that regulates the LSC, the actual impact of reauthorization is much greater. The bill proposes to lift the restrictions prohibiting the collection of attorneys' fees, class-action lawsuits and lobbying with non-federal funds.¹² American Bar Association (ABA) President H. Thomas Wells Jr. states, "Proper reauthorization of LSC is decades overdue, and antiquated rules severely limit LSCs effort to help people in need."¹³

In order to ensure its passage, the CAJ Act maintains the prohibition on abortion-related litigation.¹⁴ It also limits who LSC-funded attorneys can represent, including prisoners challenging prison conditions and people convicted of illegal drug possession in public housing eviction proceedings.¹⁵

THE CURRENT DEBATE

Supporters of lifting the restrictions particularly criticize the restriction on representing clients in class action lawsuits due to the recent home foreclosure crisis.¹⁶ Helaine M. Barnett, President of the LSC, says “[m]any of the 137 nonprofit programs funded by LSC are increasingly involved in foreclosure cases, and they frequently involve allegations of predatory lending.”¹⁷ Supporters of lifting this restriction believe that class actions can be a powerful tool for challenging practices, such as predatory lending, that affect large numbers of homeowners.¹⁸ Diana White, Executive Director of Legal Assistance Foundation, notes, “We were better able to help people when our hands weren’t tied.”¹⁹

But some members of Congress are not convinced by these arguments. Critics of the CAJ Act argue that recipients often use federal funds to advance activist agendas, and that broad limitations are necessary to ensure that LSC funds are spent to meet the basic legal needs of the poor.²⁰ According to Rep. Trent Franks, R-Ariz., “[f]unding of a Legal Services outreach shouldn’t be allowed to try to make partisan legal battles. . . they should primarily focus on helping the underserved, those who can’t afford legal representation for themselves.”²¹

Additionally, Congress prohibited the use of non-LSC funds received from other sources such as federal, state, local and private funding.²² Critics argue that the prohibition against the use of non-LSC funds is necessary to avoid misuse of LSC funds.²³ For example, in New Jersey, where only 13 percent of the financing for legal services programs comes from the LSC, federal restrictions dictate how the remaining 87 percent of funding received from other sources may be spent.²⁴ Supporters of this restriction believe it is necessary in order to avoid the possibility of legal aid offices skirting LSC funding conditions by simply transferring the funds to non-LSC accounts.²⁵

WHY CHANGE IS NECESSARY

Individuals on both sides of the debate remain focused on how low-income individuals will be affected if some of the restrictions are lifted. While some restrictions were enacted to keep the LSC out of the political arena and to allow the LSC to focus on its mission of providing legal aid to the poor, other

restrictions tie the hands of legal aid offices as they attempt to help those most in need. Congress must weigh these concerns on each side of the debate when deciding whether the CAJ Act will have an overall benefit for low-income persons seeking legal assistance.

NOTES

- 1 *Rep. Scott Introduces the Civil Access to Justice Act of 2009; Rep. Robert C. "Bobby" Scott (D-VA)*, NEWS RELEASE CONGRESSIONAL DOCUMENTS AND PUBL'NS, Oct. 8, 2009.
- 2 Rhonda McMillion, *Congress Looks to Bolster the LSC as the Recession Raises Legal Worries for the Poor*, 95 A.B.A.J. 66, 66 (2009).
- 3 Press Release, Legal Servs. Corp., Senate Bill Would Provide \$400 Million in Funding to LSC (June 26, 2009) http://www.lsc.gov/press/pressrelease_detail_2009_T248_R17.php.
- 4 NEWS RELEASE, *supra* note 1.
- 5 *Id.*
- 6 *Id.*
- 7 McMillion, *supra* note 2.
- 8 *Id.*
- 9 Petition for Writ of Certiorari, *Legal Servs. Corp. v. Velazquez*, 1999 U.S. 603, 5 (No. 99-603).
- 10 Legal Servs. Corp., *supra* note 3.
- 11 *Id.*
- 12 *Id.*
- 13 McMillion, *supra* note 2.
- 14 NEWS RELEASE, *supra* note 1.
- 15 *Id.*
- 16 Editorial, *Another Kind of Foreclosure Crisis*, N.Y. TIMES, October 9, 2009.
- 17 *Rep. Steve Cohen Holds a Hearing on the Legal Services Corporation: Hearing Before the H. Comm. on the Judiciary, S. Comm. on Commercial and Admin. Law*, 111th Cong., 1st Sess. (2009) (statement of LSC President Helaine Barnett).
- 18 Editorial, *supra* note 16.
- 19 Telephone Interview with Diana White, Executive Director, Legal Assistance Found. of Metro. Chi. (Oct. 20, 2009).
- 20 Petition for Writ of Certiorari, *supra* note 9, at 48a.
- 21 *Rep. Steve Cohen Holds a Hearing on the Legal Services Corporation: Hearing Before the H. Comm. on the Judiciary, S. Comm. on Commercial and Admin. Law*, 111th Cong., 1st Sess. (2009) (statement of H. Rep. Trent Franks).
- 22 Legal Servs. Corp., *supra* note 3.
- 23 Petition for Writ of Certiorari, *supra* note 9, at 52a.
- 24 Editorial, *A Test for Equal Justice*, N. Y. TIMES, June 23, 2009.
- 25 Petition for Writ of Certiorari, *supra* note 9, at 52a.