

Reports from Eighteen States Have Identified Federal Restrictions as a Barrier to Justice

Here's what Access to Justice Commissions and justice planning reports have said about the restrictions placed on organizations receiving federal Legal Services Corporation funds.

1. Alaska

An Alaska state planning report discusses the problems faced by Alaska Pro Bono Program (APBP), a legal services program that was separated from Alaska's LSC-funded program, ALSC, in 2000 "primarily to free its pro bono attorneys from the LSC restrictions, which had impacted on ALSC's advocacy in particularly unfortunate ways."¹ However, soon after its creation, APBP experienced "unfortunate and inordinate management problems" and "drastically reduced" funding due to plummeting interest rates on APBP's main funding source, Interest On Lawyers Trust Accounts ("IOLTA"). The programs consequently were forced to restructure to "enable ALSC to recover some of the cost efficiencies which were lost when APBP was established as a separate program."² In 2002, "most pro bono work [came] back in-house to ALSC," and now, with two staff members and no physical office, APBP merely coordinates representation for cases that the LSC-funded organization is restricted from handling and generally cannot cover the costs of appeals or federal litigation.³

Each component of the state's legal services delivery system has its own accounting, human resources management system, and case management system and the report notes that while some organizational pieces cannot be joined given different areas of focus, "some consolidation of financial and fundraising services may be practicable."⁴

¹ Alaska Legal Services Corporation (ALSC) State Planning Self-Evaluation Report, 2002, p. 12, *available at*

http://www.google.com/url?sa=t&ct=res&cd=1&url=http%3A%2F%2Fwww.lri.lsc.gov%2Fstate_planning%2Fslfevals%2Fak_slfeval_02.pdf&ei=VOaFSN2eDqCi8QSN9sTkBQ&usg=AFQjCNF0MMaB6b51XO1Ou7BO8tunNIFmgg&sig2=qKb13PFDYa5zTOLS1XTp7A

² *Id.*, pp. 6-7

³ The Alaska Legal Services Corp. Turns 40: An Historical Timeline, Alaska Bar Association, *available at* <http://www.alaskabar.org/INDEX.CFM?ID=6398&makeback=true>; Alaska Pro Bono Program website, <http://www.alaskaprobono.org/index.htm>

⁴ Alaska Legal Services Corporation (ALSC) State Planning Self-Evaluation Report, 2002, p. 26, *available at*

http://www.google.com/url?sa=t&ct=res&cd=1&url=http%3A%2F%2Fwww.lri.lsc.gov%2Fstate_planning%2Fslfevals%2Fak_slfeval_02.pdf&ei=VOaFSN2eDqCi8QSN9sTkBQ&usg=AFQjCNF0MMaB6b51XO1Ou7BO8tunNIFmgg&sig2=qKb13PFDYa5zTOLS1XTp7A

2. Arkansas

According to the Center for Arkansas Legal Services, “federal funding cuts and restrictions on advocacy continue to present major barriers to justice for low-income persons in Arkansas.”⁵

3. California

The attorneys’ fee award restriction is identified as particularly damaging by the California Legal Services Commission. Prior to the 1996 restrictions, LSC-funded organizations recovered \$1.75 million annually in attorneys fees, and even having attorneys’ fees as a “leveraged threat” helped in resolving problems for clients in the past. The Commission reports, “If this restriction were lifted, our state would immediately benefit.”⁶

4. Georgia

In addition to mentioning that Georgia’s growing poor population is putting a strain on the availability of affordable legal services, the state’s Committee on Civil Justice finds that “[a]nother challenge arises because legal services providers are sometimes restricted in the types of cases they are authorized to handle,” specifically citing LSC-funded organizations’ inability to “initiate, participate, or engage in” class action lawsuits.⁷

5. Hawaii

A report from Hawai‘i’s Access to Justice Hui comments on the inadequacy of the civil legal services available to the state’s incarcerated population, which grew 138.13 percent from 1990 to 2006. “Currently, ACLU of Hawai‘i is the only legal service agency with the potential to assist the inmate population; however, due to their limited resources they only accept cases which would result in a larger impact on the overall corrections system” and cannot meet the “increased the need for individual legal assistance.”⁸

Additionally, the report includes “increasing class action lawsuits to reduce illegal conduct against the poor” as one of its recommended “systematic changes.”⁹

6. Illinois

In discussing gaps in current service and possible remedies, the Equal Justice Illinois Campaign recommends that privately funded entities be developed in order to utilize the advocacy tools no longer available to LSC-funded organizations, specifically class action lawsuits. “The three LSC-funded programs in Illinois...still engage in policy work and

⁵ Center for Arkansas Legal Services, Forging New Standards of Excellence II: A Re-Examination of the Arkansas State Plan for the Delivery of Legal Services to the Poor, 1998, p. 5, *available at* http://www.lri.lsc.gov/sitepages/stpl/stpl_stplrpts.htm

⁶ California Legal Services Coordinating Committee, California State Justice Plan 2001: Response to LSC Program Letter 2000-1, 2001, p. 32, *available at* http://www.lri.lsc.gov/sitepages/stpl/stpl_selfevalrpts.htm

⁷ The Committee on Civil Justice, Addressing the Legal Needs of Georgia’s Poor, Oct. 2006, p. 39, *available at* http://www.gaccj.org/pdf/bar_journal.pdf

⁸ Achieving Access to Justice for Hawai‘i’s People, The Community Wide Action Plan: Ten Action Steps to Increase Access to Justice in Hawai‘i by 2010 and The 2007 Assessment of Civil Legal Needs and Barriers of Low- and Moderate-Income People in Hawai‘i, Nov. 2007, p. II-24, *available at* <http://www.hsba.org/resources/1/Documents/Access%20to%20Justice.pdf>

⁹ *Id.*, p. II-46

impact litigation within the limits set by the 1996 regulations, but they are barred from using many of the tools and strategies that had been most effective in the past.”¹⁰

The Campaign also suggests that new methods be developed to address the currently unmet legal needs of certain groups that are ineligible for LSC-funded organizations’ help, including immigrants. While the state’s three LSC-funded organizations’ offices are geographically well-distributed, covering distinct areas across the state and thus collectively able to serve clients statewide, non-LSC-funded legal services providers that direct services at LSC-ineligible cases, like those involving immigrants, are headquartered in urban centers and do not have the resources to establish regional offices. Because of the specialization of services required by the restrictions, “geography is a major impediment to the efficient delivery of legal services.”¹¹

The Campaign’s report also stresses the need to diversify funding for legal services programs because, “[w]hile LSC was intended to serve as a stable source of general operating funds for its grantee organizations, free from the vicissitudes of politics, this has not proven to be the case.” As is true with most states, LSC funding has been declining in Illinois, representing only 32 percent of the state’s legal aid funding in 2003.¹²

7. Michigan

A Michigan state planning report contains a section stating that the restrictions prevent Michigan legal services programs from ensuring a “full range of services” to all low-income people with legal problems. The report urges LSC to “ameliorate these over broad restrictions” and details how the class action, attorneys’ fee award and prisoner-related restrictions have prevented programs from meeting clients’ needs completely.¹³

8. Missouri

A state planning states: “Restrictions imposed by Congress on legal services providers are also barriers that need to be addressed. One of the most troublesome restrictions is the prohibition on legal services providers requesting or collecting attorney fees from opposing parties. The restriction on filing class actions suits removes one tool that all attorneys, other than those working for a legal services program, have at their disposal to help clients.”¹⁴

9. New Hampshire

A state planning report states describe the federal restrictions as “an additional challenge” for legal services providers. “For example, congressional restrictions on fee generating cases prevent legal services representation in cases ranging from an illegal tenant lockout to consumer fraud, to civil rights enforcement. Prohibitions on class actions,

¹⁰ The Legal Aid Safety Net: A Report on the Legal Needs of Low-Income Illinoisans, Feb. 2005, p. 170 and 181, available at <http://www.equaljusticeillinois.org/docs/LegalNeeds.pdf>

¹¹ *Id.*, pp. 53 and 60

¹² *Id.*, pp. 170, 10, and 127

¹³ The State Bar of Michigan, The Michigan State Bar Foundation & The Legal Services Association of Michigan, Michigan State Planning Report, Sept. 1998, pp. 27-28, available at http://www.lri.lsc.gov/sitepages/stpl/stpl_stplrpts.htm

¹⁴ Coordination Committee for Legal Services and Related Pro Bono Program, State Plan for Missouri, 1998, p. 6, available at http://www.lri.lsc.gov/sitepages/stpl/stpl_stplrpts.htm

representation and rule making in legislative proceedings also ended services customarily provided to clients by LSC funded programs in New Hampshire for nearly twenty-five years.”¹⁵

10. New Jersey

Despite the “degree of coordination and structured collaboration” among New Jersey’s legal services providers that “is not matched elsewhere,” a state planning report strongly emphasizes the “negative impact” of the “discouraging and constricting” restrictions “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 report envisions a system in which “restrictions based upon negative views toward certain categories of clients, or certain types of legal problems or situations” are not imposed on legal services work.¹⁶

In its discussion of the strengths of the current legal services system, the report notes that the New Jersey State Bar Association has worked against restrictions on legal services, and that New Jersey Legal Services, “not encumbered by the myriad LSC restrictions,” can lobby on issues concerning low-income people’s legal problems. The report finds that “major challenges” still include “[f]inding new, more efficient approaches for addressing on a broader scale recurrent, repetitious and costly legal problems and case types, including adequate representational capacity in alternative forums, such as the legislature and administrative agencies,” forums in which LSC-funded organizations’ activities currently are restricted.¹⁷

11. New Mexico

Along with ensuring increased federal LSC funding, New Mexico’s Access to Justice Commission recommends the “removal of Congressional restrictions on LSC recipients,” stating, “The Commission should actively support any efforts by the National Legal Aid and Defender Association (NLADA) to remove or modify selected restrictions on LSC funds.”¹⁸

12. North Carolina

A report by the Legal Services Planning Council describes how the restrictions related to representing immigrants greatly affect the ability of Legal Aid of North Carolina’s “Farmworker Unit” to serve all migrant farmworkers in the state. Specifically, the report identifies the ban on class actions as negatively affecting the representation of H-2A (temporary foreign agricultural) workers in North Carolina, as it states that challenging

¹⁵ State Planning Report of the New Hampshire Legal Services Community, Oct. 1998, p. 3, *available at* http://www.lri.lsc.gov/sitepages/stpl/stpl_stplrpts.htm

¹⁶ Legal Services of New Jersey, Justice for All 2000: A Master Plan for Legal Services in New Jersey 1999-2001, Sept. 1998, pp. 7 and 12, *available at* http://www.lri.lsc.gov/sitepages/stpl/stpl_stplrpts.htm

¹⁷ *Id.*, pp. 8 and 10-11

¹⁸ State Plan for Providing Civil Legal Aid to Low Income New Mexicans, Access to Justice Commission, May 2007, p. 30, *available at* <http://www.nmbar.org/Attorneys/ATJ/2007StatePlanforProvidingCivilLegalAidtoLowIncomeNewMexicans.pdf>

“illegal but widespread practices” among employers without a class action is “impossible.”¹⁹

13. Oklahoma

In its assessment of the systems’ weaknesses, the Oklahoma Bar Association states that because of “institutional barriers or LSC restrictions,” some client groups are “especially under-served,” identifying nursing home residents, the mentally ill, juveniles, incarcerated persons with civil problems, and undocumented aliens as examples.²⁰

14. Pennsylvania

A 1998 Pennsylvania state planning report highlights the disparity between LSC funding amounts and the ultimate percentage of total legal services’ funds that falls under the federal restriction. In 1998, Pennsylvania legal services organizations received 37 percent of the funding from LSC; however, 17 LSC-funded organization received “substantial amounts of other funding,” and thus “a total of 75 percent of the legal services funding in Pennsylvania is *de facto* restricted in this way.” It is suggested that funding be reallocated to “un-restrict” services so that “residents everywhere in the state, and/or special client populations that currently need unrestricted services but are not covered by an unrestricted program would be covered.”²¹

15. Texas

A state Delivery Plan for Civil Legal Services states: “For those who truly believe in the concept of ‘equal justice for all,’ a state system for the delivery of legal services to the poor must contain adequate resources for the representation of clients who are ineligible for federally-funded legal services and for those eligible but whose legal needs cannot be met by the LSC grantees due to restrictions. Unfortunately, there are major obstacles in Texas for achieving “equal access” for disfavored clients and politically unpopular cases.” The report finds that “Texas needs an unrestricted source of funds that will allow any indigent person full access to the system of justice without limitations or exceptions.”²²

In its report, the Texas Access to Justice Commission stresses the need to resolve the “dual dilemma” of inadequate funding and restrictions on legal services programs.²³

16. Virginia

A state planning report identifies providing low-income people “access to a full range of services” as a primary goal and lists encouraging the removal of restrictions at a national

¹⁹ North Carolina Legal Services Planning Council, North Carolina Statewide Legal Needs Assessment, 2003, p. 49, https://www.legalaidnc.org/Public/Participate/Legal_Services_Community/Planning_Council/NC%20Statewide%20Needs%20Assessment%2003%2024%2003.pdf

²⁰ Oklahoma Bar Association, Oklahoma State Legal Services Plan, 1998, p. 9, available at http://www.lri.lsc.gov/sitepages/stpl/stpl_stplrpts.htm

²¹ *Id.*, pp. 40-41

²² Texas Steering Committee, The 1998 Texas Plan: Planning for the Delivery of Civil Legal Services in Texas, Sept. 1998, pp. 32-33, available at http://www.lri.lsc.gov/sitepages/stpl/stpl_stplrpts.htm

²³ Self Evaluation Report for Texas Access to Justice Community in Response to LSC Program Letter 2000-7, Feb. 2003, pp. 4, 10, 11, and 19, available at http://www.lri.lsc.gov/sitepages/stpl/stpl_selfevalrpts.htm

level as the first strategy for accomplishing this goal. The report also recommends that each program monitor the federal restrictions' impact on clients and develop a plan for helping all clients gain access to an attorney with "an appropriate range of legal options."²⁴

17. Washington

In a study of the implementation of regional access to justice plans, the Washington Access to Justice Commission identifies, in almost every region of the state, a dearth of services available for those who are ineligible for state or federally funded legal services due to restrictions, and finds the restrictions to be "highly problematic obstacles to access to justice." At least in one region, the study also found a lack of coordination between various legal services organizations, suggesting the need perhaps for one regional system to serve all clients. "Planners also noted that confusion still exists regarding how the legal aid entities relate to each other."²⁵

The Commission states, "federal and state legislative restrictions continue to significantly limit the Alliance [for Equal Justice]'s ability to provide access and a full range of civil legal services to all low income communities by excluding certain classes of clients from publicly funded legal assistance, and limiting the Alliance's use of the most appropriate legal strategies to effectively represent low income clients with high priority legal needs."²⁶

18. West Virginia

A state planning report states: "No firm, group or organization now provides widely available access to the legal system, or even information, except the LSC funded programs which are limited by the various LSC regulations on client eligibility, reporting and subject restrictions. A large number of needs of low income people remain unmet because of limited funding for non-LSC programs and restrictions on LSC programs."²⁷

²⁴ Legal Services Corporation of Virginia, Virginia Civil Legal Services Delivery System Planning Report 1998, Dec. 1998, pp. 19, 31, and 34, available at http://www.lri.lsc.gov/sitepages/stpl/stpl_stplrpts.htm

²⁵ Implementation Update Report of the [Washington] State Plan adopted in May 2006 by the Access to Justice Board by the Access to Justice Board's State Plan Oversight Committee (SPOC), May 2008, pp. 9 and 32, available at <http://www.wsba.org/atj/spocimplementationupdatereport.pdf>

²⁶ *Id.*

²⁷ West Virginia LSC State Planning Report – 1998, 1998, p. 24, available at http://www.lri.lsc.gov/sitepages/stpl/stpl_stplrpts.htm