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Mauricio Vivero

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FROM “RENEGADE” AGENCY TO INSTITUTION OF JUSTICE: THE TRANSFORMATION OF LEGAL SERVICES CORPORATION

*Mauricio Vivero**

INTRODUCTION

At no time in recent history has the Legal Services Corporation (LSC) and the national legal services community been in a stronger political position. Today, LSC enjoys broad bipartisan support. Federally-funded legal services programs are part of civil justice coalitions in nearly every state.¹ Federal and state funding for legal services is rising again after many years of decline.² President Bush’s decision to support LSC’s budget request of \$329.3 million for Fiscal Year 2002 is a vivid example of how LSC has dispelled old myths about the work of local legal aid offices and has solidified support for the core mission of the national legal services program.³

The national legal services community is comprised of dedicated advocates for equal justice on behalf of the underserved. These public servants have invested considerable time, resources, and passion in advocating for more resources to carry on their work and opposing efforts to narrow the scope of their activities. They

* Mauricio Vivero is vice president for governmental relations and public affairs at Legal Services Corporation. From 1995 to 1997, he directed Grassroots Operations for the American Bar Association. He received his bachelors of arts from Florida International University and earned his law degree at Creighton University. The author would like to credit Eric Kleiman for his editorial contributions and Mark Freedman, Sarah Zaffina, April Whitney, and Dan Cox for their research assistance.

1. *See generally* LEGAL SERVS. CORP., BUILDING STATE JUSTICE COMMUNITIES: A STATE PLANNING REPORT FROM THE LEGAL SERVICES CORPORATION, 4-71 (2001) (discussing status of legal services in each state).

2. Since 1996, LSC’s federal appropriation has increased by \$51.3 million—from \$278 million in 1996 to \$329.3 in 2001. Currently, twenty six states provide direct funding for legal services including Arizona, Alaska, California, Colorado, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Vermont, Virginia, Washington, West Virginia, and Wisconsin. *See* PROJECT TO EXPAND RES. FOR LEGAL SERVS. A CHART OF SIGNIFICANT FUNDRAISING ACTIVITIES (2001), <http://abanet.org/legalservices/sclaidbody.html>.

3. OFFICE OF MGMT. AND BUDGET, FISCAL YEAR 2002: BUDGET OF THE UNITED STATES GOVERNMENT tbl. 5-6 (2001).

have done so despite being among the lowest-paid members of the legal profession.⁴ These efforts are an invaluable contribution to the preservation of federally funded legal services. This was especially true in the 1980s when President Reagan appointed an LSC Board of Directors whose stated mission was to eliminate the Legal Services Corporation.⁵

The election of the conservative Ronald Reagan catalyzed opponents of legal aid. They seized a handful of politically charged cases and argued that the corporation should be dissolved for promoting a "radical" political agenda.⁶ At the same time, Congress attempted to reduce LSC's funding and restrict the scope of its grantees' activities.⁷ These efforts were unsuccessful, but the partisan, often heated battles accompanying each congressional vote⁸ left their mark and foreshadowed an even greater fight ahead.⁹

In May 1992, the most serious effort to reform LSC took hold as members of the House debated bipartisan legislation reauthorizing the corporation.¹⁰ Numerous measures sought to restrict the scope of permissible activities engaged in by LSC-funded programs.¹¹

By the time of the Republican takeover of Congress in 1995,¹² it had become clear that LSC's very existence was threatened. In order to survive, its leaders would have to learn to work in a new political climate. In September 1995, Senator Phil Gramm (R-TX) summed up the core criticism of the legal services corporation on

4. See *What Lawyers Earn, Private Sector, Public-Interest Lawyers*, NAT'L L.J., Oct. 2, 2000 at A29.

5. See Linda E. Perle & Alan W. Houseman, CENTER FOR L. AND SOC. POL'Y., *THE LEGAL SERVICES CORPORATION: ITS FUNCTION AND HISTORY* 10-11 (1993).

6. See Ruth Marcus, *Future of Legal Services Corporation Will Hinge on Bush Nominees; Top Officials Lobby for Conservative Slate*, WASH. POST, Aug. 22, 1989, at A1.

7. On December 9, 1982, Rep. Sensenbrenner (R-WI) attempted to pass an amendment to reduce LSC funding from \$241 million to \$100 million dollars. 128 CONG. REC. HR6957 (1982). On July 17, 1986, Rep. Combest (R-TX) tried to pass an amendment withdrawing \$305.5 million dollars from LSC funding. 132 CONG. REC. H4583 (1986).

8. 132 CONG. REC. H4583 (1986); 128 CONG. REC. HR6957 (1982).

9. These battles culminated on July 23, 1996, when the House floor debated LSC's budget for the next year. See generally 142 CONG. REC. H8163-8164, H8183 (1996) (statements of Rep. Sheila Jackson-Lee, Rep. Nita Lowley, and Rep. Christopher Shay). But see Commerce, Justice, State and the Judiciary Appropriations and Related Agencies Appropriation Act, Fiscal Year 1992, H.R. 2608, 102d Cong., (1992), where Sen. Gramm (R-TX) sponsored an amendment to cut \$48.1 million from LSC's budget and transfer the funds to the FBI. 137 CONG. REC. S11,341 (1991).

10. 138 CONG. REC. H3127-30 (1992).

11. See H.R. 2039, 102d Cong. (1992); 138 CONG. REC. H2951-90 (1992); 138 CONG. REC. H3115-27 (1992).

12. KENNETH S. BAER, *REINVENTING DEMOCRATS* 231 (2000).

the Senate floor: "The Legal Services Corporation is a renegade agency which has spent a tremendous amount of resources promoting a political agenda."¹³

The 1996 LSC appropriations bill cut LSC's annual budget by \$122 million and imposed new restrictions on LSC funded programs.¹⁴ The 1996 changes mirrored the House proposals that had been defeated in 1992.¹⁵ This time, however, many legal services supporters accepted the restrictions as preferable to the alternative: the elimination of LSC. Compromise was seen as a necessary sacrifice to quell the intense conservative opposition fomented through years of partisan battles. Although the sacrifice came at a steep price for national equal justice efforts, LSC today is a stronger, more politically stable organization capable of helping more low-income people. This good standing is critical since federal dollars allocated by LSC constitute the largest single funding source for legal aid nationally.¹⁶ Indeed, current resources are only helping one in four eligible poor people with civil legal problems.¹⁷

Since 1995, the Legal Services Corporation has experienced near-death, a significant transformation, and a re-birth. The road from virtual extinction to bipartisan renewal is filled with lessons about LSC's reformed focus on more effective advocacy for the civil legal rights of poor Americans.

I. THE LONG ROAD TO BIPARTISAN SUPPORT

The 1990s began with partisanship in the House over federally funded legal services.¹⁸ When the House Judiciary Committee passed legislation reauthorizing LSC in 1991, several attempts were

13. 141 CONG. REC. S14,597 (daily ed. Sept. 28, 1995).

14. See Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996).

15. See *supra* notes 10-11 and accompanying text.

16. LEGAL SERVS. CORP., LSC FISCAL YEAR 2000 FACT BOOK 5 (2000) (on file with author). In 2000, the \$309.3 million in federal grants distributed to LSC-funded legal aid programs was more than four times as much as state funding, which amounted to \$71.9 million. Interest on Lawyers Trust Accounts (IOLTA) programs were the third-highest source of funding, distributing \$65.8 million to LSC-funded legal aid programs in 2000.

17. CONSORTIUM ON LEGAL SERVS. AND THE PUB., ABA LEGAL NEEDS AND CIVIL JUSTICE 27 (1994), <http://www.abanet.org/legalservices/sclaidresearch.html>.

18. During the House Judiciary Committee debate over reauthorization of LSC, Rep. McCollum proposed an amendment to mandate a system of competitive bidding for all LSC grants. The amendment was defeated 10 yeas, 23 nays, and 1 present vote. *LSC Reauthorization Bill Passes House Judiciary Committee Senate Appropriations Committee Includes \$350 Million for LSC*, PAG UPDATE (Nat'l Legal Aid and Defender Org., Washington, D.C.) July 17, 1991, at 1. An amendment offered by Rep.

made by supporters of a bipartisan "reform" bill to limit the scope of LSC-funded lawyers.¹⁹ Most of the amendments were defeated along party lines in committee.²⁰ On May 12, 1992, Democrat Charlie Stenholm of Texas and Republican Bill McCollum of Florida proposed the same restrictions when the full House took up the Legal Services Reauthorization Act of 1991.²¹ The legislators introduced a series of seven amendments that constituted the most sweeping contemplated congressional overhaul of LSC to date. Speaking on the House floor, Rep. McCollum accused LSC of attempting to "socially engineer change in our laws and rules."²² McCollum cited "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."²³ He and Rep. Stenholm introduced measures to limit class action lawsuits and prohibit involvement in fee-generating cases and cases involving abortion, political redistricting, and drug-related public housing evictions.²⁴ The amendments sought to proscribe most lobbying and rule-making activities, collection of attorneys' fees, training for political purposes, and solicitation of clients.²⁵ The measures also sought to implement competitive bidding for LSC service area contracts and apply federal waste, fraud, and abuse laws to LSC.²⁶ Seven recorded votes were taken by the full House of Representatives on a range of proposed restrictions.²⁷

George Gekas (R-PA), substituting the McCollum-Stenholm provision with a prohibition on "lobbying," was defeated by a vote of 11 yeas, 22 nays, and 1 present vote.

19. *Id.*

20. *Id.*

21. See H.R. 2039, 102d Cong. (1992); 138 CONG. REC. H3115-3135 (1992); 138 CONG. REC. H2990-2995 (1992) (containing the debate concerning the Legal Services Reauthorization Act of 1991).

22. 141 CONG. REC. E1220-23, E1220 (1995).

23. *Id.*

24. H.R. 1806, 104th Cong. (1995); 141 CONG. REC. E1220-23 (1995).

25. H.R. 1806, 104th Cong. (1995); 141 CONG. REC. E1220-21 (1995).

26. H.R. 1806, 104th Cong. (1995); 141 CONG. REC. E1220 (1995).

27. Representative McCollum's (R-FL) amendment to phase in competitive bidding and immediately equalize funding on a per capita basis was rejected 170-251. Rep. Stenholm's (D-TX) amendment barring LSC programs from collecting attorneys' fees from non-governmental defendants was rejected 178-240. Rep. Frank's (D-MA) substitute amendment applied restrictions on IOLTA. This amendment was proposed as a substitute for Rep. Gekas' (R-PA) amendment prohibiting LSC recipients from engaging in any lobbying or legislative advocacy, either directly or indirectly, regardless of the funding source. The amendment was adopted 222-196. Rep. McCollum's (R-FL) amendment applying LSC restrictions to private and other public funds was rejected 156-257. See Debate Concerning the Legal Services Reauthorization Act of 1991, 138 CONG. REC. H3115-35 (1992); 138 CONG. REC. H2990-95 (1992).

The votes were all close, but only two amendments passed: the ban on political redistricting cases and some restrictions on LSC-funded lobbying and rule-making.²⁸

Neither amendment became law because the Senate chose not to debate these issues in 1992.²⁹ Signs of discontent, however, were evident in the upper chamber. During the Senate appropriations debate for fiscal year 1992, Senator Gramm offered an amendment to reduce LSC's funding by \$48.1 million and transfer the money to the Federal Bureau of Investigation. Led by longtime legal services supporter Senator Warren Rudman (R-NH),³⁰ seventeen Republican senators coalesced to combat the proposed reduction and tabled Gramm's amendment.³¹ The fight in the House, coupled with the floor vote in the Senate, indicated growing momentum for change.

Republican gains in the 1994 mid-term elections put strident opponents of legal services in leadership positions in both the House and Senate.³² Republicans in both chambers were able to move towards eliminating several federal entities long despised by the conservative wing of the party, LSC among them.

Initial opposition came from special interest groups who saw the Republican takeover as a golden opportunity to fulfill long-standing policy objectives. The Christian Coalition's *Contract with the American Family* called for the end of federal funding for the Na-

28. 138 CONG. REC. H3115-35 (1992); 138 CONG. REC. H2990-95 (1992).

29. See Memorandum from the American Bar Association to Advocates for Legal Services (Feb. 3, 1995) (on file with author). "The bad news is that such steps are likely to happen any day now. In the last Congress, for example, Rep. John Kasich (R-OH) targeted LSC for total elimination in a broad budget-cutting package; Kasich now chairs the House Budget Committee. In the Senate, Sen. Bob Dole (R-KS) introduced a similar package which would have cut funding by 50%; Dole, of course, is now the Senate Majority Leader. So we anticipate one or more of the following may well occur in the next few weeks." *Id.*

30. See 137 CONG. REC. S14329-03 (1991) (containing Senate debate on Commerce, Justice, State and the Judiciary Appropriations and Related Agencies Appropriation Act, Fiscal Year 1992, H.R. 2608, 102d Cong. (1992)). The debate concerned a motion to table Sen. Gramm's (R-TX) amendment to cut \$48.1 million from LSC and transfer it to the FBI. The motion to table was adopted 73-26).

31. The Republican senators supporting LSC were Chafee (RI), Cochran (MS), Cohen (ME), Danforth (MO), Domenici (NM), Durenberger (MN), Gorton (WA), Hatfield (OR), Jeffords (VT), Kassebaum (KS), Lugar (IN), McCain (AZ), Packwood (OR), Rudman (NH), Specter (PA), and Stevens (AK). Senator Rudman was seen as the key Republican leader to preserve LSC's funding in the early '90s. "No one person has done more to preserve access to justice in the civil context than Mr. Rudman." *Senator Rudman Announces His Retirement*, PAG UPDATE (Nat'l Legal Aid and Defender Org., Washington, D.C.) Mar. 26, 1992, at 1.

32. Robin Toner, *73 Mr. Smiths, of the G.O.P., Go to Washington*, N.Y. TIMES, Jan. 8, 1995, §1, at 1.

tional Endowment for the Arts, the National Endowment for the Humanities, and LSC.³³ The arguments used by the Christian Coalition illustrated the old, and now largely irrelevant, debate about legal services. These arguments criticized LSC's effectiveness as a federal poverty program.³⁴ Further, they argued that federal funding to help poor people obtain divorces was harmful to society because "divorce is not helping our nation's poor break out of poverty."³⁵ That rhetorical approach completely backfired when Congress made clear in 1996 that fighting poverty was not LSC's mission. Rather, its purpose was to serve individuals with critical legal needs and ensure that the poor have access to our nation's system of justice.

Almost immediately after taking control of Congress, some Republicans, with an eye toward cutting the budget, focused on LSC.³⁶ On March 16, 1995, the House Budget Committee, chaired by John Kasich of Ohio, passed a resolution recommending the phase-out of all LSC funding.³⁷ The adoption of a phase-out plan by a congressional panel, although not binding on the House Appropriations Committee, sent a clear warning that the program would have to fight for its survival.³⁸ The committee action set the stage for a five-year battle in the House of Representatives over Legal Services funding. Senator James Inhofe (R-OK) encapsulated conservative opposition to LSC in a speech on the Senate floor:

33. Clearly, in 1995, LSC had a severe image problem. That is not to say, however, that all or even most of the attacks on the program were deserved or factually accurate. Many critics of LSC have used outrageous, false claims to advance their agenda to eliminate legal services. *See generally* BRENNAN CTR. FOR JUSTICE AT NYU SCH. OF LAW, HIDDEN AGENDAS: WHAT IS REALLY BEHIND ATTACKS ON LEGAL AID LAWYERS? (2001) (refuting arguments made by opponents of legal services).

34. CHRISTIAN COALITION, CONTRACT WITH THE AMERICAN FAMILY 31 (1995).

35. *Id.*

36. *See* Memorandum from the American Bar Association to LSC Supporters (May 4, 1995) (on file with author). On March 7, 1995 the Senate passed a Defense Department Supplemental Appropriations Bill that cut \$15 million for LSC's Fiscal Year 1995 budget. H.R. 1158, 104th Cong. (1995); 141 CONG. REC. H4050 (1995). On Mar. 16, 1995, the House passed midyear spending cuts including a \$5.84 million reduction to LSC's fiscal year 1995 budget. H.R. 1158, 104th Cong. (1995); 141 CONG. REC. H3576 (1995). On April 10, 1995, President Clinton signed into law HR 889, a Defense Department Supplemental Appropriations Bill, which included a \$15 million cut to LSC's Fiscal Year 1995 budget. *See* Emergency Supplemental Appropriations And Rescissions For The Department Of Defense To Preserve And Enhance Military Readiness Act of 1995, Pub. L. No. 104-6, 109 Stat. 73 (1995).

37. *See* Naftali Bendavid, *Budget Cutters Set Sights on LSC*, LEGAL TIMES, Mar. 27, 1995 at 1, 18-19.

38. *Id.*

[I] really believe the Legal Services Corporation was conceived as a part of the Great Society program, understandably, perhaps, at the time, to offer legal services to the poor. However, over a period of years it has turned into an agency that is trying to reshape the political and legal and social fabric of America.³⁹

Senator Bob Dole (R-KS) went a step further, contending that LSC had “become . . . the instrument for bullying ordinary Americans to satisfy a liberal agenda that has been repeatedly rejected by the voters The impoverished individual who has run-of-the-mill, but important, legal needs is shunted aside by Legal Services lawyers in search of sexy issues and deep pockets.”⁴⁰ In its March 1995 budget plan, the House Budget committee wrote, “[T]oo often, lawyers funded through LSC grants have focused on political causes and class action lawsuits rather than helping poor Americans solve their legal problems.”⁴¹ While LSC statistics on annual caseloads contradict this view,⁴² the congressional opposition awakened legal services to a long-neglected image problem. LSC’s depiction as a crusading liberal entity put the national legal services program in a tenuous political position. Responding to the Budget Committee’s de-funding plan, LSC Board Chairman Douglas Eakeley declared, “This will probably be the greatest struggle the program has ever faced.”⁴³

Appropriators in the House also moved quickly to cut LSC’s funding. Rep. Harold Rogers (R-KY), chairman of the House Appropriations Subcommittee, the subcommittee that funded legal services, told LSC officials on May 24, 1995, that his committee would not be able to fund all the agencies within its jurisdiction given the “current political climate.”⁴⁴ Chairman Rogers embraced the House Budget Committee proposal for the elimination of

39. 141 CONG. REC. S14524 (Sept. 28, 1995) (statement of Sen. Inhofe).

40. 141 CONG. REC. S14605 (Sept. 28, 1995) (statement of Sen. Dole).

41. Bendavid, *supra* note 37, at 1, 18-19.

42. In 1978, more than eighty-five percent of all LSC-funded cases were related to either consumer issues; housing and family law; or government benefits and employment law. In 1991, the same categories (in addition to health law and juvenile issues) accounted for more than eighty-eight percent of all cases. In 2000, the same categories comprised more than eighty-four percent of all cases. Legal Services Corporation Recipient Case Service Reporting Data (CSR Data). LEGAL SERVS. CORP., LSC 1979 ANNUAL REPORTS 15 (1980) (on file with author); LEGAL SERVS. CORP., LSC 1991 ANNUAL REPORT 8 (1992) (on file with author); LEGAL SERVS. CORP., LSC FISCAL YEAR 2000 FACT BOOK 10 (2000) (on file with author).

43. Bendavid, *supra* note 37 at 18-19.

44. Mauricio Vivero, ABA Director of Grassroots Operations, Memorandum to Advocates for Legal Services, at 2 (May 26, 1995) (on file with author).

LSC.⁴⁵ On July 19, 1995, the House Appropriations Committee voted to cut LSC's budget from \$400 million in the 1995 fiscal year to \$278 million in 1996.⁴⁶

On July 25, 1995, the House approved the \$278 million LSC committee figure for the 1996 fiscal year and simultaneously passed most of the restrictions on LSC-funded programs that had been proposed by Stenholm, McCollum, and others.⁴⁷ Chairman Rogers summarized the House action as follows:

[W]e reduced the Legal Services Corporation by one-third to \$278 million. We impose real restrictions to end abuses by the LSC. As an interim step, while the authorization process gears up, the bill imposes restrictions on what LSC-funded lawyers can do, including: requiring a competitive bidding process for those local grants; timekeeping requirements on the local field agencies; independent auditing, so Congress knows how funding is spent; prohibitions on representing cases on redistricting, lobbying, class action suits against the government, prisoner litigation, representation of drug dealers; and subject LSC grantees to Federal waste, fraud and abuse standards.⁴⁸

The greatest threat to LSC's survival came on September 29, 1995, when the Senate debated a proposal by Senator Gramm, chairman of the Appropriations Subcommittee that funds LSC. The proposal called for eliminating LSC and replacing it with \$210 million in block grants to states.⁴⁹ By a vote of 60-39, the Senate rejected the abolition of LSC and adopted a compromise measure sponsored by Senator Pete Domenici (R-NM).⁵⁰ The compromise proposed cutting LSC's 1996 budget by \$60 million and imposing new activity restrictions similar to those adopted by the House earlier that year.⁵¹

45. *Id.*

46. H.R. 104-196, 104th Cong. (1995).

47. 141 CONG. REC. H7615 (1995).

48. 141 CONG. REC. H7615 (1995) (statement of Rep. Rogers).

49. 141 CONG. REC. S14607 (1995) (statement of Sen. Gramm). "The Legal Services Corporation is eliminated by the Senate bill, and only \$210 million are earmarked for the Office of Justice Programs to pay for the block grant program the bill would establish." 141 CONG. REC. S14607 (1995) (statement of Sen. Kennedy) (speaking on Gramm's proposal to abolish LSC).

50. 141 CONG. REC. S14537 (1995) (summarizing the Domenici Legal Services Amendment; "The amendment restores the Legal Services Corporation, provides \$340 million in funding for fiscal year 1996 and adopts House Appropriations restriction on use of funds. Appropriate offsets will be found throughout the appropriations bill.").

51. *Id.*

After a long and grueling negotiations process between Congress and the Clinton Administration, including the longest government shutdown in U.S. history,⁵² Congress approved the \$278 million House budget figure for LSC in 1996.⁵³ The massive 30.5% funding cut was the largest annual budget reduction since LSC's creation in 1974.⁵⁴ These funding cuts devastated an already resource-deficient legal services community, forcing the closure of more than a hundred legal aid offices across the country.⁵⁵ In addition, LSC-funded programs had to eliminate 685 attorneys and 300 paralegals from their staffs, forcing already overworked advocates to take even bigger caseloads.⁵⁶ The budget reduction shrank the national legal services workforce to approximately 4200 lawyers (a fourteen percent cut) and 1650 paralegals (a fifteen percent cut).⁵⁷ The urgent funding crisis spawned by congressional displeasure sparked a re-examination of how to most effectively advocate for the legal needs of the poor.

The paradigm shift toward greater acceptance of budget cuts in 1996 was in order to prevent the alternative, the outright elimination of LSC. In 1992, the Stenholm-McCollum proposals were opposed by many as measures that would severely cripple access to justice for the poor.⁵⁸ However, by 1996, a more severe set of restrictions were considered necessary, even welcome, in the fight to save the legal services program.⁵⁹ On May 16, 1995, Rep. Stenholm noted the irony of the about-face:

The reforms Bill [McCollum] and I have proposed in the past are now viewed as the leading alternative to either the status quo or Chairman Kasich's plans [for elimination]. I am pleased to report that I have already had very positive meetings with the same individuals and organizations who just a few years ago

52. Jerry Grey, *Democrats Reject a Plan to Return Federal Workers*, N.Y. TIMES, Dec. 30, 1995, at A1.

53. See OFFICE OF MGMT. AND BUDGET, FISCAL YEAR 1996: BUDGET OF THE UNITED STATES GOVERNMENT (1995).

54. See LEGAL SERVS. CORP., 25TH ANNIVERSARY ANNUAL REPORT 7-17 (1998-1999).

55. *LSC Testimony Before the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies*, 105th Cong. 6 (1996) (statement of Douglas Eakeley, chairman of LSC).

56. *Id.*

57. *Id.*

58. See 138 CONG. REC. H3127-34 (1992).

59. On March 7, 1991, Rep. McCollum and Rep. Charles Stenholm (D-TX), introduced the Legal Services Reform Act of 1991, H.R. 1345, designed to impose restrictions on the activities of LSC grantees. 137 CONG. REC. H1472 (1991).

strongly opposed the McCollum-Stenholm reforms as being too draconian.⁶⁰

The staunch conservative opposition to LSC became apparent in 1996. A group of House Republicans wrote to House Majority Leader Dick Armey in March calling for adherence to a three-year phase-out plan that would eliminate LSC by 1998.⁶¹ In their letter to Rep. Armey, the House members echoed Senator Gramm's depiction of LSC:

[A]fter lengthy negotiations last year, we reached an agreement to fund the LSC at no more than \$278 million for Fiscal Year 1996, \$141 million for Fiscal Year 1997, and \$0 for Fiscal Year 1998 Every additional dollar that we appropriate is another dollar that the LSC has to continue engaging in politically motivated litigation, such as challenging the constitutionality of welfare reform and blocking public housing developments from evicting drug dealers Experience has shown that legal services lawyers will exploit the smallest of loopholes to flout the will of Congress and pursue their radical agenda.⁶²

For the next five years, actions in the House continued to threaten LSC. In his capacity as appropriations chairman, Rep. Rogers implemented phase two of Rep. Kasich's three-year phase-out plan. Rogers cut LSC's annual appropriation to \$141 million.⁶³ From 1996 until the summer of 2001, the Appropriations Committee approved no more than \$141 million for LSC.⁶⁴ Each year, however, the Committee's request was rejected, and LSC's funding was increased by amendment on the House floor.⁶⁵ During this

60. *Hearing on the Reauthorization of Legal Servs. Corp. Before the House Judiciary Subcommittee on Commercial and Administrative Law*, 104th Cong (1995) (statement of Rep. Charles Stenholm (D-TX)).

61. Letter from Fifteen Conservative Congressmen to Majority Leader Dick Armey, (Mar. 20, 1996) (on file with author).

62. *Id.*

63. The Fiscal Year 1997 Fox-Mollohan amendment restored LSC funding after it was cut to \$141 million in the House Appropriations Committee. The amendment passed 247-179 in the House with fifty-six Republican votes. 142 CONG. REC. H8189 (1996). The Fiscal Year 1998 vote was 246-176, 143 CONG. REC. H7868 (1997); for Fiscal Year 1999 it was 255-170, 144 CONG. REC. H7105 (1998); and for Fiscal Year 2000, as the Serrano-Ramstad-Delahunt amendment, it was 242-178, 145 CONG. REC. H6983 (1999). In Fiscal Year 2001, the restorative amendment passed by voice vote, an unprecedented display of bipartisan support for LSC. 146 CONG. REC. H4969-77 (2000).

64. See Bill Maxwell, *GOP Has Hard Heart in Legal Aid for the Poor*, ST. PETERSBURG TIMES, Aug. 27, 2000, at 1D (noting consistent attempts by the GOP to cut LSC's funding since 1995).

65. See *supra* note 63.

five-year period, the debate in the House reflected the lingering mistrust of LSC by certain Republicans, but also demonstrated the growing bipartisan coalition that supported the "reformed" LSC as an agency committed to addressing the basic legal problems of the poor.⁶⁶

In 1997, Chairman Rogers reminded LSC officials testifying before his Appropriations Committee of the Corporation's precarious political status: "We labored hard last year over LSC and what to do with it and how to do it. The restrictions and reforms that came out were a product of the Authorizing committees in the House and Senate and Appropriations committees in the House and Senate. And even then, it barely squeaked by."⁶⁷

II. EMBRACING THE NEW VISION

Leaders at LSC realized the ramifications of the new Congress even before the 1996 budget and restrictions debate. In 1995, LSC began to lay the seeds of a new partnership with Congress.⁶⁸ Anticipating the inevitable passage of activity restrictions, the LSC board of directors began amending its regulations to ensure compliance with the impending policy changes. Then LSC president Alex Forger and other LSC officials made clear that board action was motivated by the pending mandate from Congress.⁶⁹ Speaking before the LSC board in December 1995, Forger declared, "So there is no definite action with respect to what our bill will ultimately look like, except we anticipate that most of the restrictions that are in there will continue to be in the final bill."⁷⁰ On June 25, 1995, the LSC board of directors adopted a resolution requiring all grantees to adopt new timekeeping requirements.⁷¹ The board also moved to begin implementing changes to LSC's regulations con-

66. *Id.*

67. *Hearing on Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1998 Before the House Comm. On Appropriations*, 105th Cong. 28 (1997).

68. See *infra* notes 69-104 and accompanying text.

69. "A lot of people don't understand that we are not doing this just on our own, that we're responding to the Congress." Transcript from LSC Operations and Regulations Committee (Dec. 17, 1995) (unpublished manuscript, on file with author) (quoting F. Wm. McCalpin, an LSC Board member).

70. LSC Board of Directors, Transcript from Meeting 16 (Dec. 18, 1995) (unpublished manuscript, on file with author).

71. "Be it therefore resolved, that the Board of the Corporation will require all grantees, by January 1, 1996, to maintain records of time spent on each case or matter and to maintain a recordkeeping system that discloses the sources of funds to be charged for each case or matter." Resolution of the Legal Services Corporation Board of Directors Regarding Timekeeping (June 25, 1995).

cerning a new system of competition for grants, certain housing cases, and class actions.⁷² Eager to show Congress that LSC was ready to forge a true partnership, the Board implemented most of the activity restrictions immediately after Congress acted on them.⁷³ At its July 20, 1996, meeting, the LSC Board adopted fourteen emergency interim regulations implementing most of the proposed congressional restrictions that would become law the following year.⁷⁴

LSC's compliance was met with a mix of anger and resignation in the legal services community.⁷⁵ Media rumors circulated that LSC had agreed to a quid pro quo in return for guarantees of continued funding, but Forger rebutted such assertions, explaining that LSC had fought activity restrictions for as long as was politically tenable.⁷⁶ Many progressive congressional leaders and legal services advocates who had long opposed restrictions came to understand the political reality of 1996. Senator Ted Kennedy (D-MA) said, "[S]ome restrictions are necessary to ensure support for the program . . . [Accepting restrictions] would correct the harsh injustice of the committee bill and enable [LSC] to continue its important work."⁷⁷ Senator Pete Domenici (R-NM), one of the principal authors of the 1996 legislation, agreed, saying, "While some may not like these restrictions, they are necessary . . . to protect LSC from negative perceptions of those who wish to see its termination."⁷⁸

Alan Houseman, director of the Center for Law and Social Policy and a leading scholar on legal services, tried to convey to his peers how close their federal support had come to vanishing outright:

Congress failed to eliminate LSC only because an effective lobbying and media effort made it possible for a loose bipartisan coalition of "moderate" Republicans and "blue dog" Democrats to come together and join with other traditional Democrats to

72. Resolutions of the LSC Board of Directors concerning "Class Actions, Competition, and Certain Eviction Proceedings." (June 25, 1995).

73. The LSC Board wasted no time in implementing the policy changes in HR2076. See *supra* notes 55-57 and accompanying text.

74. *Id.*

75. See Michelle Stevens, Editorial, *High Price of Justice*, CHI. SUN-TIMES, Sep. 30, 1996, at 31.

76. Alexander Forger, Letter to the Editor, LEGAL TIMES, Feb. 3, 1997, at 27 ("The specter of our corporation sitting at the bargaining table trading off constitutional rights for life is pure fantasy. In fact, we fought both our budgetary restrictions and the restrictions in the limited forums to which we were invited.").

77. 142 CONG. REC. S14,607 (1995).

78. *Id.*

preserve funding for the program. However, the moderate support from both parties that was needed to form a majority to preserve the program was premised on substantial "reforms."⁷⁹

III. DEFENDING THE WILL OF CONGRESS

In January 1997, two major lawsuits challenging the congressional reforms were filed within a week of one another.⁸⁰ LSC was suddenly asked to defend limits on the scope of legal representation offered by its grantees. It was a watershed moment for LSC and the defining test of its newly laid partnership with Congress. House leaders made clear that how LSC handled the court challenges would be carefully monitored to gauge their fidelity to the enforcement of restrictions still opposed by many in legal aid. Speaking before the House Appropriations Subcommittee on Commerce, State, Justice and the Judiciary, Chairman Rogers bluntly stated:

[Y]our supporters in the Congress are watching you very carefully to see if you are not only defending those restrictions but defending them with zeal and enthusiasm. Because they want to believe, some of them would want to believe, that you will defend them with one arm tied behind your back, all the while winking at the judge. I am saying that not in the literal sense. So I guess we want to see how intent you are on defending the restrictions, which you probably don't like. Well, it is not probably, I know you don't like them, but nevertheless, they are the will of the Congress and written into law. So I guess we want you to roll up your sleeves and show us your scar. Are you really with us on this?⁸¹

LSC answered resoundingly in the affirmative.⁸² LSC Chairman Douglas Eakeley embraced the opportunity to defend its regula-

79. Alan W. Houseman, *Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice For All*, 17 YALE L. & POL'Y REV. 369, 377-78 (1998).

80. *Velazquez v. Legal Servs. Corp.*, 985 F. Supp. 323, (E.D.N.Y. 1997), *aff'd in part, rev'd in part*, 164 F.3d 757 (2d Cir. 1999), *aff'd*, 529 U.S. 1052 (2001); *Legal Aid Soc. v. Legal Servs. Corp.*, 981 F. Supp. 128, (D. Haw. 1997), *aff'd in part, vacated in part*, 145 F.3d 1017 (9th Cir. 1998).

81. *Hearing on Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1998 Before the House Comm. on Appropriations*, 105th Cong. 28 (1997).

82. Chairman Eakeley stated, "We remain firmly committed to implementing the will of Congress, and will decide upon the legal strategy we deem best suited to defend the funding framework Congress has enacted." *LSC Testimony Before the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies*, 105th Cong. 6 (1997) (statement of Doug Eakeley, chairman of LSC). LSC retained the law firm of Covington & Burlington in *Legal Aid Soc. of Hawaii* and

tions and demonstrate LSC's new commitment to skeptical legislators. Eakeley offered a full-throated defense of Congress's right to restrict the activities of federally funded legal aid programs.⁸³ LSC's arguments included a strong defense of one of the most controversial restrictions—a restriction prohibiting LSC-funded attorneys in welfare cases from making constitutional challenges to the welfare reform laws passed in August 1996.⁸⁴

In *Legal Aid Society v. Legal Services Corp.*,⁸⁵ LSC defended the congressional restrictions codified into its internal regulations governing grantee activity. When the United States District Court for the District of Hawaii voiced constitutional qualms, LSC's board of directors moved quickly to address its concerns before the case reached the appellate level and revised its regulations accordingly.⁸⁶ Satisfied with the response, the district court upheld the constitutionality of all LSC regulations applicable to the 1996 congressional reforms.⁸⁷ When the decision was appealed, LSC again defended Congress's will.⁸⁸ The United States Court of Appeals for the Ninth Circuit upheld the district court's ruling in its entirety.⁸⁹

*Legal Services Corp. v. Velazquez*⁹⁰ examined the constitutionality of those LSC regulations in United States District Court for the Eastern District of New York.⁹¹ Just as LSC had done in *Legal Aid Soc. of Hawaii*, it successfully argued that all regulations relating to

Kronish, Lieb, Weiner & Hellman, LLP in *Velazquez*. The firms took each case pro bono, but LSC paid for research, travel, and other expenses. LSC spent a total of \$154,359.71 to successfully defend congressional restrictions at the trial and appellate level.

83. *Id.*

84. *Id.*

85. *Legal Aid Soc. v. Legal Servs. Corp.*, 145 F.3d 1017 (9th Cir. 1998).

86. LSC reviewed and modified its implementing rules to address the concerns raised in *Legal Aid Society* by eliminating the restrictions on transfers of non-LSC funds and creating an alternative avenue for expression through use of such funds in other organizations so long as the LSC recipients maintain objective integrity and independence from anyone engaged in restricted activities. *Legal Aid Soc. of Haw.*, 145 F.3d at 1023. Part 1610-Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity, 62 Fed. Reg. 27695 (1997).

87. *Legal Aid Soc.*, 145 F.3d at 1023.

88. *Id.*

89. *Id.*

90. *Velazquez*, 531 U.S. 533 (2001).

91. See generally Laura K. Abel and David S. Udell, *If You Gag the Lawyers, Do You Choke the Courts? Some Implications for Judges When Funding Restrictions Curb Advocacy by Lawyers on Behalf of the Poor*, 29 FORDHAM URB. L.J. (2002) (discussing effects of limitations placed on LSC on litigants and judges).

activity restrictions were constitutional.⁹² However, on appeal, the Second Circuit overturned the ban on welfare reform challenges as a First Amendment violation.⁹³ The Supreme Court granted certiorari on *Velazquez* and heard oral arguments on October 4, 2000.⁹⁴ LSC opened its case by forcefully arguing in favor of Congress's authority to restrict how federal legal aid dollars are spent:

In appropriating funds for distribution to legal aid organizations, Congress has chosen to subsidize bread-and-butter legal services for individuals seeking benefits under existing welfare laws (so-called "suits for benefits"), but not broad-ranging litigation that challenges reform of the welfare laws Although LSC lawyers cannot take on representations designed to *change* welfare laws, they are free to help clients obtain welfare benefits to which they are entitled under the *existing* welfare laws. *This is precisely the type of representation that falls within LSC's mandate to provide free legal services to the poor.*⁹⁵

The Supreme Court ultimately agreed with the Second Circuit's decision and, in a 5-4 decision, struck down the welfare prohibition on First Amendment grounds. Justice Anthony Kennedy was the key swing vote.⁹⁶ Nonetheless, LSC had demonstrated to Congress its good faith even when its legal position was opposed by most of the national legal services community.⁹⁷ The Supreme Court denied certiorari on challenges to all of the other restrictions, demon-

92. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 547 (2001); *Legal Aid Soc.*, 145 F.3d at 1024.

93. *Velazquez v. Legal Servs. Corp.*, 164 F.3d 757, 759 (2d. Cir 1998). The court held that the restriction prohibiting local recipients of LSC funds from challenging the validity of existing welfare laws was unconstitutional. The limitation on representation of an individual client seeking specific relief from a welfare agency, which prohibits any such representation from involving an effort to amend or otherwise challenge existing law, is not valid and may not be enforced or given effect. Hence, an individual client seeking relief from a welfare agency may be represented by a recipient without regard to whether the relief involves an effort to amend or otherwise challenge existing welfare reform law. It is important to note that in accordance with the opinion of the Supreme Court, the general restriction on initiating legal representation or participating in lobbying or rulemaking involving an effort to reform a federal or state welfare system remains in effect. Accordingly, actions which are prohibited under §1639.3 and not specifically excepted as part of the representation of an individual eligible client seeking relief from a welfare agency continue to be prohibited. *Velazquez*, 531 U.S. at 540, 549.

94. *Velazquez*, 531 U.S. at 533.

95. Petitioner's Opening Brief at 2-7, *Velazquez v. Legal Servs. Corp.*, 531 U.S. 533 (2001) (Nos. 99-603, 99-960) (emphasis added).

96. *Velazquez*, 531 U.S. at 537.

97. Among the numerous organizations who filed in support of the respondent *Velazquez* were the following: the American Civil Liberties Union, the Association of the Bar of the City of New York, the Association of Legal Aid Attorneys, the Chil-

strating that LSC's courtroom advocacy had helped preserve the will of Congress. In a press release issued after the ruling, LSC summarized the holding in *Velazquez* by stating, "The Court did not strike down any other Congressional restriction imposed by the Congress in 1996 [T]his decision will have no impact on the vast majority of work done by LSC-funded programs."⁹⁸

Velazquez and its forerunner also laid bare a long-standing debate over the real meaning of the LSC Act and the Corporation's *raison d'être*. At the heart of this debate was whether or not LSC was created as a poverty program, much as its antecedent program, the Office of Economic Opportunity, was intended to be. One of the subtexts to LSC's argument in *Velazquez* was the important philosophical distinction between an organization seeking to provide the poor with access to justice and one seeking to address and root out systemic causes of poverty. Even among legal services advocates, considerable differences of opinion exist on this question. Alan Houseman summarized the competing visions in 1995:

[There are] varying perspectives within legal services about what the program is and should be. Many legal staff members view legal services as a social services program that provides necessary help but has no real political content; it is a job to be done as best as one can within the "helping" framework. Others view legal services as an advocate to enhance and protect the interests of the poor: to some it means using lawyers in courts and before legislative and administrative bodies to achieve social and economic justice for poor persons; still others view legal services as a means to empower the poor to act on their own behalf and help change their lives and the conditions under which they live and work.⁹⁹

Since 1996, LSC has been unequivocal in defining its role. The Corporation has cast itself as an institution of justice, committed to providing eligible clients with a voice in the eyes of the law through nuts-and-bolts legal representation.¹⁰⁰ For this interpretation, LSC draws on language from the Corporation's 1974 authorizing legislation. The LSC Act states, "There is a need to provide equal access to the system of justice in our Nation for individuals who seek re-

dren's Defense Fund, the Legal Aid Society of New York City, and the Legal Counsel for the Elderly, Inc.

98. Press Release, Mauricio Vivero, Statement on *Velazquez* Decision, (Feb. 28, 2001), www.lsc.gov/pressr/releases/010228pr.htm.

99. Alan Houseman, *Political Lessons: Legal Services for the Poor—A Commentary*, 83 GEO. J.L., 1669, 1689 (1995).

100. See Legal Services Corporations Mission Statement, www.lsc.gov.

dress of grievances; [and] there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel”¹⁰¹ The closest the Act comes to addressing poverty specifically is the following statement: “[P]roviding legal assistance to those who face an economic barrier to adequate counsel will serve best the ends of justice and assist in improving opportunities for low-income persons consistent with the purposes of this Act.”¹⁰² By focusing on its specified mission of providing access to justice to those with economic barriers, LSC programs can help ameliorate poverty—this is in contrast to the inverse proposition, that fighting poverty will promote justice.

IV. NEW MESSAGE OF ADVOCACY

In the summer of 1996, the House floor debate on LSC demonstrated how popular LSC could be when tied to the basic, non-controversial legal work done by advocates.¹⁰³ Congressional leaders from both parties went to the floor to support this mission: Rep. Constance Morella (R-MD) noted that LSC provides “critical legal assistance” to women and children who are victims of domestic violence, “assuring that they are not trapped in a violent relationship by helping to get protection orders.”¹⁰⁴ Rep. Sheila Jackson-Lee (D-TX) noted that “Legal Services lawyers help poor people with wage claims, discrimination, termination, unlawful termination and unemployment claims.”¹⁰⁵ Rep. Chris Shays (R-CT) said, “I believe Americans should have access to the courts, no matter how much money they make. I think a mother should be able to seek child support in the courts, if necessary, regardless of income. I think a tenant should be able to sue for decent housing, regardless of income.”¹⁰⁶

By the spring of 1997, the message of “reform” and nuts-and-bolts legal representation was taking hold. In an April 23, 1997 letter to Chairman Rogers, twenty-seven House Republicans stated:

Last year, the House voted to preserve the Legal Services Corporation, incorporating a number of important reforms designed to ensure that the focus of the program is on meeting the day-to-

101. 42 U.S.C. § 2996 (2001).

102. *Id.*

103. 142 CONG. REC. H8149-8215 (1996).

104. 142 CONG. REC. H8166 (1996) (statement of Rep. Morella).

105. 142 CONG. REC. H8149, 8263 (1996) (statement of Rep. Jackson-Lee).

106. 142 CONG. REC. H8149, 8183 (1996) (statement by Rep. Shays).

day needs of low-income Americans. Two legal challenges have been brought against LSC for enforcing congressional restrictions on non-federal funds. We are convinced that LSC is vigorously defending these challenges and ensuring that all of its grantees are in full compliance with the law.¹⁰⁷

The board's decision to hire a Republican, John McKay of Seattle, as president of LSC and to select a former ten-term Republican congressman, John Erlenborn of Illinois, as vice chairman of the Board (later McKay's successor as LSC president)¹⁰⁸ showed that the agency was serious about executing a vision of legal services that could achieve strong bipartisan support. Beginning in 1997, LSC management strategically focused its legislative and public affairs activities to support the changes made by Congress and to re-educate opponents of the program about the basic legal services provided by federal grantees to millions of low-income persons.¹⁰⁹ LSC's reformed focus was an acknowledgment that federally funded legal services do not exist in a political vacuum. LSC leaders concluded that clients would ultimately be best served by cultivating good will and support from members of Congress in both parties. Houseman keenly observed, "The political context is critical to understanding what legal services can and cannot do. The program must be viewed through the prism of political reality" ¹¹⁰

The new message was not inspired by what LSC lawyers could no longer do, but by focusing on critical, basic legal assistance provided every day by advocates across the country. By stripping away LSC's ability to fund "controversial" cases, collect attorney's fees, and file class actions, Congress reaffirmed the importance of the day-to-day work of legal services programs in protecting victims of domestic violence, securing child support for single parents, protecting seniors from housing scams, and helping veteran's re-

107. Letter from Twenty Seven House members to Harold Rogers, Chairman, House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, (Apr. 23, 1995) (on file with author).

108. McKay was hired as president by LSC in May 1997. Erlenborn was named board vice chair in January 1997 and succeeded McKay as president in July 2001. Press Release, LSC, Former Rep. John N. Erlenborn Named LSC President: Board Chooses Current Vice Chair to Succeed Departing McKay (May 29, 2001), <http://www.lsc.gov/pressr/releases/010529pr.htm>.

109. See John McKay, *Federally Funded Legal Services: A New Vision of Equal Justice Under Law*, 68 TENN. L. REV., 101, 111 (2000) (discussing how financial and logistical obstacles impede LSC's purpose).

110. Houseman, *supra* note 99 at 168.

ceive medical and disability benefits.¹¹¹ Today, LSC grantees close more than a million cases annually relating to domestic violence, child custody and visitation rights, evictions, access to health care, bankruptcy, unemployment and disability claims, and other non-controversial individual cases arising out of the everyday problems of low-income Americans.¹¹²

In many ways, the difference between the old and the new is one of message. LSC-funded lawyers have always primarily focused on the basic legal problems of America's poor. In 1978, more than eighty-five percent of all LSC-funded cases were related to either consumer issues; housing and family law; or government benefits and employment law.¹¹³ In 1991, the same categories (in addition to health law and juvenile issues) accounted for more than eighty-eight percent of all cases. In 2000, the same categories comprised more than eighty-four percent of all cases.¹¹⁴

LSC's annual statistics on grantee caseloads show that the work seen as objectionable by some in Congress never represented a significant percentage of the work performed by legal services lawyers.¹¹⁵ Prior to enactment of the new congressional restrictions, for example, litigated cases involving prisoners' rights totaled 680 and represented less than .05% of all LSC cases for 1995.¹¹⁶ In June 1996, LSC reported 630 active class actions lawsuits and 2993 cases involving representation of aliens not eligible for assistance under the new restrictions. Together, these cases represented less than one percent of all LSC cases for 1996.¹¹⁷

111. See Legal Servs. Corp., Budget Request for Fiscal Year 2001 3 (2000) (unpublished manuscript, on file with author).

112. LSC Fiscal Year 2001 Background Information and Talking Points (Summer 2000) (on file with author). This corporate message has been consistently used by LSC to explain the work of programs from 1997 to the present.

113. See LEGAL SERVS. CORP., 1978 ANNUAL REPORT 8 (1979) (on file with author).

114. LEGAL SERVS. CORP., LSC FISCAL YEAR 2000 FACT BOOK 5, 11 (2000) (on file with author).

115. Letter from John Meyer, LSC Director of Information Management to author (Oct. 10, 2001) (on file with author). The chart below illustrates the vast reduction of prisoners' rights cases handled by LSC from 1995 to 1998.

Year	Total Cases	Total Prisoner Rights Cases	Litigated Prisoners Rights Cases
1995	1,657,795	10,374	680
1996	1,425,953	2,280	160
1997	1,457,000	1,385	43
1998	1,300,317	786	7

116. *Id.*

117. *Id.*

Today, legal services lawyers can continue to file more than ninety-eight percent of the types of cases allowed prior to 1996.¹¹⁸ LSC-funded lawyers are allowed to represent low-income clients in cases covering most evictions; federal housing; bankruptcy; collections and repossessions; consumer debt and fraud; warranties and utilities; family law matters (such as child support, domestic violence, custody, visitation, divorce, paternity establishment, foster care, termination of parental rights, and child welfare); elderly and disability advocacy; migrant and Native American cases; employment discrimination; and wage claims and unemployment insurance.¹¹⁹ Some legal scholars have incorrectly concluded that LSC funded attorneys may not engage in “advocacy before legislative and administrative tribunals.”¹²⁰ This is false. LSC-funded lawyers may advocate before administrative tribunals when representing a client’s particular interests, such as his or her individual government benefits. They can also respond to requests for information from legislative bodies and participate in rule-making with non-LSC funds.¹²¹

Professor Deborah Rhode of Stanford University has argued that “LSC funded programs have tailored caseloads to address opponents concerns.”¹²² The facts are clear that yearly caseloads have remained relatively constant over the years.¹²³ Case types eliminated by the new congressional restrictions have had little impact on LSC-funded programs’ day-to-day work. Rhode further argues that “restrictions hobble the ability of legal services lawyers to address the causes as well as the symptoms of poverty.”¹²⁴ Pro-

118. See CTR. L. SOC. POL’Y, WHAT CAN AND CANNOT BE DONE: REPRESENTATION OF CLIENTS BY LSC-FUNDED PROGRAMS 2 (2001).

119. *Id.* at 2-3. Other types of cases handled are income maintenance and benefits cases, including Medicaid, food stamps, Temporary Assistance for Needy Families, Supplemental Security Income, Social Security Administration, and Veterans Benefits; education; health care, including Medicare; juvenile; individual rights, including mental health; and cases for certain aliens.

120. Deborah Rhode, *Access to Justice*, 5 FORDHAM L. REV. 1797 (2001).

121. Restrictions on Lobbying and Certain Other Activities, 45 C.F.R. § 1612 (2000). This final rule revises the Legal Services Corporation’s regulation on lobbying, rulemaking and other restricted activities. It prohibits recipients from engaging in agency rulemaking, legislative lobbying activity, or advocacy training. The final rule also implements statutory exceptions that permit recipients to use non-LSC funds to comment on public rulemaking, respond to requests from legislative and administrative bodies, and engage in efforts to encourage state and local governments to make funds available for recipient activities.

122. Rhode, *supra* note 120 at 1796.

123. See *supra* note 42.

124. Rhode, *supra* note 120 at 1797.

fessor Rhodes misses the point: LSC is not an institution created to “address the causes” of poverty. Rather, the authorizing legislation and subsequent congressional mandate of 1996 directed LSC to focus on providing legal assistance to help solve the basic legal problems of the poor, not to end poverty. No references to fighting poverty can be found in the LSC Act.¹²⁵ LSC is not a poverty program; it is a justice program.¹²⁶ In testimony before the House in February 1997, LSC board chair Douglas Eakeley acknowledged Congress’s intent that non-LSC funded programs handle broader poverty-fighting efforts:

Congress reaffirmed the federal government’s interest in providing representation for individuals facing legal problems who would otherwise be unable to afford assistance, but agreed that federal funds should go to programs that handle individual cases, while broader efforts to address the problems of the client community should be left to entities that do not receive federal funds.¹²⁷

By focusing on the basic and comprehensive legal work performed daily by LSC-funded lawyers, advocates are enlisting new allies to support LSC and building strong coalitions to support the work of legal services. In 1995, for example, a group of general counsels from some of America’s largest corporations placed the following advertisement in the *Wall Street Journal*: “For more than 30 years, federally funded legal services have promoted an ordered society, the peaceful resolution of disputes, and equally important, confidence by low-income Americans in our system of Justice Legal services helps million of poor Americans with basic legal problems.”¹²⁸ The broad campaign to refine LSC’s approach to advocacy solidified support from a broad swath of business, religious, senior citizen, legal, and judicial groups. Each of these groups counted among their core constituencies individuals who relied on the legal help afforded by LSC-funded offices. Among those en-

125. See 42 U.S.C. § 2996 (2001).

126. “Properly structured and supervised as it can be, this is a fundamentally conservative program, one which facilitates the peaceful resolution of disputes in our society and reinforces the rule of law.” 142 CONG. REC. H8178 (daily ed. July 23, 1996) (statement of Rep. Fox). “Access to the legal system is more than a matter of equal justice. It is also a key ingredient in maintaining a civil society based on the rule of law.” 142 CONG. REC. at H8180 (1996) (statement of Rep. Skaggs).

127. *LSC Testimony Before the House Appropriations Subcomm. on Commerce, Justice, State, the Judiciary, and Related Agencies*, 105th Cong. 3 (1997) (statement of Douglas Eakeley, chairman of LSC).

128. Advertisement, *Justice for the Poor is Good Business*, WALL ST. J., Sept. 29, 1995 at A2.

dorsing the redefined LSC mission were Catholic Charities; the Interdenominational Network; the American Association of Retired Persons; the American Society on Aging; the National Council of Senior Citizens; the Conference of Chief Justices; attorney generals in twenty six states; former U.S. Attorneys General Nicholas deB. Katzenbach, William Rogers, Ramsey Clark, Elliott Richardson, Edward Levi, Griffin Bell, and Benjamin Civiletti; the American Bar Association; forty-six state bar associations; the United Conference of Mayors; the American Legion; and the United Auto Workers.¹²⁹

The new focus of advocacy efforts has made it easier to educate the general public and non-legal organizations about the value of local programs. The tactic of briefing members of Congress and other key decision-makers about the “basic, critical legal problems” of poor people has been effective, in part, because it directly linked the needs of constituents from each congressional district to the work performed by legal services programs. In a memorandum to state and local bar associations in February 1995, Robert Evans, head of the American Bar Association’s Washington D.C. office, wrote: “It is obvious there has been a sea change in the political climate in Washington and that we need to approach members of Congress with a message that will resonate with them now.”¹³⁰ On May 18, 2000, the new message was noted by twenty House Republicans, who stated in a letter to Chairman Rogers that “LSC is our government’s vital link between our disadvantaged constituents and meaningful access to the courts.”¹³¹

Two surveys conducted subsequent to congressional passage of the 1996 restrictions indicated that public opinion strongly favors

129. ABA Internal Memorandum, *Sampling of Support for Equal Justice*, (July 25, 1995) (on file with author).

130. Memorandum from Robert D. Evans, ABA Director of Government Affairs, to Advocates for Legal Services (Feb. 3, 1995) (on file with author). The ABA launched a major grassroots campaign to preserve federal funding for LSC in February 1995. The ABA effort was successful in mobilizing thousands of lawyers to lobby Congress on legal services issues. The ABA SCLAID committee had the central role designing and promoting the ABA Campaign to Preserve LSC. Many ABA leaders played important roles and special recognition should be given to Doreen Dodson, Hon. Laurie Zelon, Jon Ross, Howard Dana, Esther Lardent, John Robb, Martha Barnett, Roberta Cooper Ramo, and Bob Stein. *See* LSC Fiscal Year 2001 Background Information and Talking Points (Summer 2000) (on file with author).

131. *See* Letter from Representatives Jim Ramstad, Bob Franks, Christopher Shays, Mike Castle, Lincoln Diaz-Balart, Judy Biggert, Connie Morella, among others, to Chairman Harold Rogers (May 18, 2000) (on file with author).

the new approach to legal services.¹³² Research commissioned by the National Legal Aid & Defender Association and the Open Society Institute in 1999¹³³ revealed that eighty-nine percent of the public supports legal aid for the indigent. Eighty-three percent supports it even when it is taxpayer-funded. Poll analysis also reported that the “clients and cases that garner the greatest support relate to child abuse, denial of Medicare benefits, domestic violence, and denial of veterans’ benefits.”¹³⁴ A Harris poll commissioned by LSC in 1999 reported similar results.¹³⁵ Eighty percent of respondents supported federally funded civil legal assistance for domestic violence victims, while eighty-one percent supported federal legal aid for seniors victimized by fraud.¹³⁶ The support transcended party affiliation and political philosophy; a majority of Republicans (54%), Democrats (76%), and Independents (66%) surveyed said they supported federal legal aid. A majority of conservatives (55%), moderates (72%), and liberals (74%) also said that they supported these programs.¹³⁷ The high level of support was also reflected by the mainstream press, which has repeatedly affirmed the importance of federally funded legal services.¹³⁸

CONCLUSION

Advocating for a well-funded, independent LSC focused on the basic, day-to-day legal needs of poor Americans is a noble position. Only by staying faithful to this mandate can LSC continue to build trust with Congress, the administration, and the American public,

132. LEGAL SERVS. CORP., THE HARRIS POLL: LOW-INCOME LEGAL ASSISTANCE QUESTIONS (1999) (on file with author).

133. Developing a National Message for Civil Legal Services: Analysis of National Survey and Focus Group Research (May 2000), <http://www.nla.org>; A National Message for Civil Legal Aid (Nov. 2000), <http://www.nlada.org>.

134. BONNIE ALLEN, NATIONAL STUDY SHOWS STRONG PUBLIC SUPPORT FOR CIVIL LEGAL SERVICES 1 (2000) (on file with author).

135. LEGAL SERVS. CORP., *supra* note 132.

136. *Id.*

137. *Id.*

138. Editorials and news features endorsing legal aid have appeared in papers around the country. See, e.g., *A Gain for Equal Justice* L.A. TIMES, Mar. 9, 2001, at B8; *Bill McCollum's Bad Law*, ORLANDO SENTINEL, Dec. 2, 1990, at G2; Douglas Eakeley, *Keeping the Court Doors Open*, LEGAL TIMES, Dec. 26, 1994, at 25; *Freeing Legal Services* TENNESSEAN, Mar. 4, 2001, at B7; *Justice for All*, SALT LAKE TRIB., Aug. 26, 2001 at E1; *Justice for All, Except the Poor*, HARTFORD COURANT, Sept. 17, 1995 at B2; *Justice in Jeopardy*, CONCORD MONITOR, Sept. 13, 1995, at A19; *Legal Standing for the Poor*, S. F. CHRON., Mar. 2, 2001, at A26; *Not Again*, NAT'L L.J., Apr. 3, 1995, at A20; *The Poor Need Lawyers Too*, BOSTON GLOBE, July 26, 1992, at 62; *Showdown for Legal Services*, N.Y. TIMES, Sept. 15, 1995, at A34; Michele Stevens, *Poor Losing Access to Legal Aid*, CHI. SUN-TIMES, Sept. 17, 1995, at 27.

while maintaining the credibility needed to educate federal policy-makers on the need for increased funding and the impact of the 1996 restrictions.¹³⁹ In his budget request to Congress for Fiscal Year 2002, President Bush noted, "For millions of Americans, LSC-funded legal services is the only resource available to access the justice system."¹⁴⁰ The President has further stated:

The Legal Services Corporation has been entrusted with the vital mission of providing free legal assistance to low-income individuals in civil cases. I support this mission and believe that the LSC can play a valuable role in ensuring that poor families are not treated unfairly and illegally by landlords, creditors and others merely because they cannot afford legal representation.¹⁴¹

The President deserves credit for endorsing the consensus reached by Congress while rejecting the idea that providing legal services for low-income Americans is not a federal responsibility. President Bush's support effectively ended the annual battle in the House of Representatives over LSC and its funding. In the summer of 2001, the House Appropriations Committee adopted LSC's full budget request for the first time since 1995—and it was approved without so much as a word of opposition in either chamber of Congress.¹⁴²

The congressional embrace of an organization targeted for elimination a few years ago has not gone unnoticed. On June 16, 2001, for example, Senator Mike DeWine (R-OH), a sometimes critic of LSC, proclaimed, "There's broad support for the idea that we have to provide legal services for the poor."¹⁴³ Representative George Gekas (R-PA), who pushed for LSC's elimination in the mid-1990s, told National Public Radio in February 2001, "I do not believe that

139. It is widely acknowledged that Congress did not have a full debate concerning the impact of the restrictions before enacting them in 1996. As the federal entity in charge of administering the national legal services program, the LSC Board has adopted plans to establish a mechanism to study the restrictions and report back to Congress. *See* Transcript of LSC Board Meeting 130-32 (Sept. 18, 2000) (on file with author).

140. PRESIDENT GEORGE W. BUSH, BUDGET REQUEST TO CONGRESS FOR FISCAL YEAR 2002, at 74 (2001).

141. Jeffrey Ghannam, *Going Head-to-Head*, A.B.A. J., Oct. 2000, at 42, 48.

142. *See* 147 CONG. REC. H4815-39 (2001).

143. Elizabeth A. Palmer, *Legal Services Corporation's Future Appears Secure as the Agency's GOP Detractors Concede*, 60 CONG. Q. WKLY., 1442 (2001).

there is the capability of rounding up votes for those who oppose Legal Services to ever, ever come close to extinguishing it."¹⁴⁴

Providing poor citizens with access to civil justice will always provoke debate and opposition. During the congressional debate of 1995, John Asher, director of Colorado Legal Services said, "The only thing less popular than a poor person these days is a poor person with a lawyer."¹⁴⁵ Today, in contrast, LSC and the national legal services community have reached a point where a majority understands that low-income Americans must have a voice in the eyes of the law if our justice system is to have credibility.

The value of the new political attitude toward federally funded legal services cannot be underestimated. Resisting change to the legal services program and ignoring criticism from congressional conservatives literally brought LSC to the edge of extinction. Adopting a bipartisan vision of legal services, LSC has forged a new alliance with the political leadership in Washington. This alliance has made it possible for LSC to reduce the damage of the 1996 budget cuts and to leverage its newfound credibility into important gains for its clients.

In this time of national crisis, the federal government's resources are appropriately focused on the fight against terrorism and on ensuring the safety of U.S. citizens. Combined with a continued soft economy, the federal budget will show little or no increase in support for domestic discretionary programs such as LSC.¹⁴⁶ Only by continuing to partner with Congress and the administration can legal services advocates hope to one day reach out to everyone lacking access to the civil justice system. The leadership of the national legal services community should continue to affirm and support the core mission of LSC-funded programs—to "serve individual clients with particular legal needs."¹⁴⁷ Building upon this national consensus is the best approach to securing the resources needed to fulfill

144. Elizabeth Amon, *Bush Holds the Line on Aid to Poor*, NAT'L L.J., Apr. 23, 2001, at A1

145. Robert Pear, *With Welfare Changes Looming, Legal Aid For Poor Grows Scarce*, N.Y. TIMES, Sept. 5, 1995, at A1.

146. On September 10, 2001, the Office of Management and Budget issued a memo advising all federal agencies to revise downward their Fiscal Year 2003 requests. "Your target is five percent of the Fiscal Year 2003 discretionary amount requested by the President for your agency in the Fiscal Year 2002 budget." See Memorandum from Mitchell Daniels, Director of OMB to the Heads of Executive Departments and Agencies (Sept. 10, 2001) (on file with author).

147. LEGAL SERVS. CORP., *SERVING THE CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS, A SPECIAL REPORT TO CONGRESS 1* (2000).

LSC's congressional charter and stay true to its reaffirmed purpose: "providing legal assistance to those who face economic barriers to adequate legal counsel."¹⁴⁸

148. 42 U.S.C. § 2996(3) (2001).