

**Summary Of Statement Of Opposition To The Legal Services  
Reform Act Of 1990 ("The McCollum-Staggers-Stenholm Amendments")  
H.R. 5336, 101st Congress, Second Session**

Congress is again considering legislation intended to restrict the activities of legal services programs for the poor. The Section on Criminal Law and Individual Rights of the District of Columbia Bar strongly opposes passage of H.R. 5336, the Legal Services Reform Act of 1990, also known as the McCollum-Staggers-Stenholm Amendments. The Section views H.R. 5336 as an unnecessary and improper intrusion into the rights of recipients of Legal Services Corporation (LSC) funds to determine the priorities and needs of their low-income clients who so desperately need a full range of legal services.

H.R. 5336 is also of great concern to the Section because it threatens to restrict the activities of a large number of attorneys and programs located in the District of Columbia, serving clients both locally and nationally. Recipients of LSC funds in the District of Columbia include Neighborhood Legal Services, National Consumer Law Center, Food Research Action Center, National Health Law Program, National Housing Law Project, Migrant Legal Action Program, National Senior Citizen Law Center, Center on Social Welfare Policy and Law, National Veterans Legal Services Project, and Center for Law and Education. Moreover, H.R. 5336 threatens the autonomy of private funding sources for these programs by imposing onerous restrictions on LSC fund recipients' use of private funds, including funds provided by the District of Columbia Bar Foundation derived from the Interest on Lawyers Trust Accounts (IOLTA) program.

Many provisions now contained in H.R. 5336 were introduced and defeated in the House last year as amendments to the Legal Services Corporation Appropriations Act.

**STATEMENT OF OPPOSITION TO  
THE LEGAL SERVICES REFORM ACT OF 1990  
("THE MCCOLLUM-STAGGERS-STENHOLM AMENDMENTS")  
H.R. 5336, 101st Congress, Second Session**

**SECTION ON CRIMINAL LAW  
AND INDIVIDUAL RIGHTS  
OF THE DISTRICT OF COLUMBIA BAR**

September 28, 1990

Steering Committee,  
Criminal Law And Individual  
Rights Section Of The  
District of Columbia Bar

Blair G. Brown, Co-Chairperson  
Brenda V. Smith, Co-Chairperson  
Laurie B. Davis  
Ronald J. Davis  
Penelope F. Marshall  
Richard A. Seligman  
Rhonda R. Winston

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"The views expressed herein represent only those of the Section on Criminal Law and Individual Rights of the District of Columbia Bar and not those of the D.C. Bar or its Board of Governors."

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The Section's specific objections to the substantive provisions of H.R. 5336 follow:

Section 2, "Prohibition of Redistricting Activity", prevents recipients of LSC funds from using funds derived from any source to

represent poor people who are denied their fundamental rights to equal treatment under the Voting Rights Act.

Section 3, "Protection Against Theft and Fraud", unnecessarily applies a variety of federal civil and criminal statutes to funds provided to grantees and contractors by LSC. Most of these provisions already apply to LSC funds and the additional application of a private right of action under the False Claims Act would give disgruntled adversaries the ability to harass and intimidate LSC grantees who are seeking to assert client rights.

Section 4, "Solicitation", imposes a barrier between LSC attorneys and potential clients, using an outdated standard which is no longer in effect and which has been held by the United States Supreme Court to violate the First Amendment.

Section 5, "Procedural Safeguards For Agricultural Litigation", imposes on aggrieved agriculture workers procedural requirements not applicable to any other class of potential litigants. This section would also divert LSC staff and resources to the development of a new, nationwide system of alternative dispute resolution procedures, applicable only to farm workers.

Section 6, "Lobbying and Rulemaking", absolutely bars any communication by a legal services attorney with a state, local, or national administrative or legislative official on behalf of a poor client or in response to a request from a public official. Thus, poor people would be denied basic justice and their lawyers would not be able to speak for them before officials making decisions

affecting their access to such basic human needs as housing, food and health care.

Section 7, "Timekeeping", mandates detailed case-by-case accounting of time by funding source which would threaten to require legal services programs to spend more time keeping records than providing services and would produce far more detailed information than is necessary or could be productively utilized by recipients or LSC.

Section 8, "Authority of Local Governing Boards", gives local legal services boards the authority to select or veto individual clients to be represented by the program staff. This section not only makes the attorney board members vulnerable to inappropriate pressures, but also raises serious ethical questions of interference with the independent professional judgment of the legal services attorneys who provide the services and who have an attorney-client relationship with program clients.

Section 9, "Regulation of Nonpublic Resources", prohibits recipients of LSC funds from using private funds (including IOLTA funds provided by bar associations and bar foundations) and nonfederal government funds for any purpose restricted under the Legal Services Corporation Act for LSC funds. This amendment would seriously interfere with the ability of private concerns to direct how funds provided to legal services programs will be used.

Section 10, "Prohibition Of Drug-Related Representation", prevents legal services programs from representing poor people in eviction proceedings in which they have been accused, even falsely,

of being involved in drug-related activities. This section would also deny representation even to family members of those who are accused.

Section 11, "Implementation of Competition", requires that all LSC grants and contracts to represent the poor be awarded by competitive bidding. This provision ignores the fact that previous attempts to select law firms that represent the poor in criminal matters through competitive bidding often results in higher cost and poorer quality services.

Section 12, "Attorney Accountability", proposes to permit the LSC to punish employees who violate program policies, rather than leaving such decisions where it rightfully belongs -- in the hands of supervisors and local boards. This section also proposes to hold attorney supervisors vicariously responsible for ethical violations by program attorneys. Decisions about the serious issue of ethical violations should be made only by local courts and local disciplinary boards.

Section 13, "Attorney's Fees", prevents LSC programs which successfully represent poor plaintiffs from obtaining attorney's fees from private defendants who have violated their client's rights. This provision creates a second class justice system for poor clients, denying them fee awards available by law to all other litigants. It also contravenes the intent of Congress in enacting such laws as the Civil Rights Attorneys Fees Award Act created to expand the availability of counsel to pursue civil rights cases and to deter other illegal conduct. This section also permits the

award of attorney's fees to a defendant, to be paid by LSC and the legal service program, using a standard applicable only to plaintiffs represented by LSC funded attorneys and not other litigants. This provision will deter legal services programs from initiating reasonable, good faith litigation on behalf of their clients. It will also deplete the LSC funds available for the provision of legal services, diverting them to payment of fee awards. Making a party's entitlement to, or a responsibility for, a fee award dependent on the identity of the party attorneys is unfair and unprecedented.

Section 14, "Abortion", applies an absolute bar on abortion litigation provided in the current appropriations rider to representation conducted using funds from any source. This section discriminates against poor women by depriving them of legal services related to abortion regardless of the funding source.

Section 15, "Class Actions", requires the governing body to approve any class actions. This section interferes with the professional judgement of legal services staff in violation of accepted ethical rules of conduct.

Section 16, "Restrictions On Use Of Funds For Legal Assistance To Aliens", incorporates current restrictions on alien representation contained in the appropriations rider. This restriction would be applied for the first time to activities funded by non-LSC sources of funds.

Section 17, "Training", applies restrictions on training contained in the appropriations rider to funds received from any source.

Section 18, "Co-payments", requires LSC to undertake demonstration projects requiring copayments by clients and gives LSC the authorization to adopt a system of co-payments. This provision could restrict access of poor clients to legal services in cases affecting their most basic needs.

Many provisions now contained in H.R. 5336 were introduced and defeated in the House last year as amendments to the Legal Services Corporation Appropriations Act. The Section On Criminal Law and Individual Rights of the District of Columbia Bar strongly urges members of Congress to again defeat the efforts to curtail legal services to the poor contained in H.R. 5336.