

116TH CONGRESS
2D SESSION

H. RES. 960

Recognizing the right to counsel in civil proceedings.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2020

Mr. KENNEDY (for himself, Mrs. BROOKS of Indiana, Mr. COHEN, Mrs. DINGELL, Ms. JAYAPAL, Ms. LEE of California, Ms. OMAR, Mr. RASKIN, Ms. SCHAKOWSKY, Mr. SCOTT of Virginia, Mr. SERRANO, Mr. UPTON, Ms. TLAIB, Ms. KUSTER of New Hampshire, and Mr. NADLER) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Recognizing the right to counsel in civil proceedings.

Whereas the justice system in the United States depends on fair and equal access to the courts as a fundamental right in a democratic society;

Whereas the first line of the United States Constitution identifies “establish Justice” as a purpose of the Constitution;

Whereas, in criminal proceedings involving imprisonment, the United States Constitution guarantees a lawyer for anyone unable to afford one in order to ensure fairness and equal treatment;

Whereas engraved in stone above the entrance to the United States Supreme Court reads “Equal Justice Under Law”;

Whereas Chief Justice of the Supreme Court of Texas and president of the Conference of Chief Justices Nathan Hecht has said “justice for only those who can afford it is neither justice for all nor justice at all”;

Whereas civil proceedings often determine issues involving basic human needs, including shelter, custody of children, safety from abuse, health, and sustenance;

Whereas the American Bar Association, which is the largest voluntary association of legal professionals in the world, has long urged the Federal Government and State and territorial governments to provide legal counsel as a matter of right at public expense to low-income individuals in adversarial proceedings involving basic human needs, including shelter, sustenance, safety, health, and child custody, as determined by each jurisdiction;

Whereas individuals without lawyers face difficult and often insurmountable barriers to obtaining justice in the courts;

Whereas courts attempting to provide justice to individuals without lawyers often cannot obtain vital information necessary for making fully informed decisions on the merits;

Whereas the 2017 Justice Gap Report published by the federally funded Legal Services Corporation found that at least 71 percent of low-income households experience a civil legal problem, including problems regarding domestic violence, veterans’ benefits, disability access, evictions, housing conditions, and health care;

Whereas the 2017 Justice Gap Report found that low-income individuals in the United States received inadequate or no legal help for 86 percent of their civil legal problems;

Whereas millions of individuals in the United States cannot afford to hire a lawyer, including approximately 94,000,000 individuals with family incomes below 200 percent of the Federal poverty guidelines (as defined by the Department of Health and Human Services);

Whereas assistance programs support less than 1 civil legal aid attorney per 10,000 individuals with an income under 200 percent of the Federal poverty guidelines;

Whereas countless studies have shown that programs that provide attorneys to low-income individuals produce fairer outcomes, promote public confidence in the justice system, facilitate greater judicial efficiency, and save taxpayer dollars;

Whereas a 2015 report titled “The Landscape of Civil Litigation in State Courts” published by the National Center for State Courts found that only 26 percent of defendants have an attorney;

Whereas the Conference of Chief Justices and the Conference of State Court Administrators resolved in 2015 to “support the aspirational goal of 100 percent access to effective assistance for essential civil legal needs”;

Whereas self-represented litigants face significantly worse outcomes in court, including that—

(1) in Montgomery County, Maryland, domestic violence victims without lawyers are almost three times more likely than those with lawyers to drop their cases before obtaining final protection;

(2) in Maricopa County, Arizona, judges take, on average, less than a minute to hear eviction proceedings involving unrepresented tenants, with judgments overwhelmingly favoring landlords;

(3) in Wisconsin, Social Security Disability claimants with representation succeed up to 70 percent of the time while unrepresented claimants succeed only 30 to 55 percent of the time; and

(4) nationwide, only 14 percent of defendants in debt collection proceedings have attorneys (compared with 99 percent of plaintiffs) and defendants with an attorney are significantly more likely to prevail (including 10 times more likely to prevail in Virginia);

Whereas investing in civil legal aid provides enormous cost savings to States, including that—

(1) in 2016, Florida saved \$60,400,000 by providing civil legal services, including \$2,900,000 in avoided costs of emergency shelter, \$50,600,000 in avoided foreclosure costs, and \$6,900,000 in avoided costs associated with domestic violence;

(2) for every \$1 spent on civil legal aid for housing cases in Massachusetts in 2014 the Commonwealth saved \$2.69 on other services, including emergency shelter, health care, foster care, and law enforcement, and by providing legal services to survivors of domestic violence, Massachusetts saved \$2 for each \$1 spent that year;

(3) in 2011, a \$53,600,000 investment in civil legal services in Pennsylvania created 2,643 jobs and yielded \$594,000,000 in income and cost savings for residents, including a \$25,000,000 savings in emergency shelter costs and an influx of \$118,000,000 in Social Security benefits for low-income residents; and

(4) in 2008, civil legal aid in Missouri helped 130 low-income families avoid homelessness, saving the State \$1,500,000 in emergency shelter costs, and that aid provided representation in domestic violence proceedings that saved the State \$2,200,000 in avoided costs, including costs relating to medical care for injuries, police resources, and counseling for affected children;

Whereas every State has enacted legislation to guarantee counsel for some types of civil proceedings, most commonly child welfare and mental health proceedings, but the reach of these laws is very limited;

Whereas a few States, counties, and cities throughout the United States have sought to address unmet civil legal needs by guaranteeing attorneys for individuals who cannot afford them in proceedings affecting basic human needs, including that—

(1) since 1975, the State of New York has provided a right to appointed counsel for individuals living below 250 percent of the Federal poverty guidelines in critical family law proceedings, including proceedings related to adoption, child custody, and domestic violence;

(2) since 2009, California has funded the provision of attorneys in several counties for individuals living below 200 percent of the Federal poverty guidelines in proceedings involving basic human needs, including housing and family law proceedings;

(3) since 2008, Wyoming has provided a right to appointed counsel for unrepresented individuals subject to civil commitment proceedings for mental illness;

(4) in 2017, New York City enacted legislation to provide a right to counsel by 2022 for all tenants subject to eviction who are living at or below 200 percent of the

Federal poverty guidelines and appropriated funds to guarantee, in some areas of the city, the provision of full legal assistance to income-eligible tenants and brief consultation services to all other tenants;

(5) in 2017 and 2018, the District of Columbia and Newark, New Jersey, respectively, began appropriating funding to provide legal counsel in eviction proceedings for individuals who live below 200 percent of the Federal poverty guidelines, with Newark, New Jersey providing legal counsel as a matter of right;

(6) in 2018, the San Francisco Mayor's Office of Housing and Community Development began providing \$5,800,000 to 10 nonprofit law firms to implement the voter-approved ballot measure to guarantee representation for all tenants facing eviction in the city;

(7) in 2019, Los Angeles County, California, provided funding for pilot projects to provide legal assistance in eviction proceedings for individuals living below 80 percent of the median income in rent-burdened ZIP Codes;

(8) in 2019, the Cleveland City Council established a right to legal services provided through city-funded legal aid programs for all tenants in eviction proceedings who have children and live at or below 100 percent of the Federal poverty guidelines; and

(9) in 2019, the Philadelphia City Council established a right to legal services provided through city-funded legal aid programs for all tenants in eviction proceedings who live at or below 200 percent of the Federal poverty guidelines;

Whereas access to free legal representation has successfully helped low-income individuals in the United States preserve the necessities of life, including that—

(1) in New York City, during the first year of a city-funded program to provide counsel in eviction proceedings, 84 percent of the tenants who received a lawyer remained in their homes (21,955 individuals in 7,847 households); and

(2) during the first 5 years of California's Sargent Shriver Civil Counsel Act, adopted in 2009, 10 pilot projects served nearly 27,000 individuals in proceedings involving the loss of their homes, child custody disputes, or the urgent need for a family guardianship or conservatorship, with housing services alone affecting over 73,000 household members; and

Whereas the unprecedented health and economic crises caused by the COVID-19 pandemic are compounding and intensifying the legal needs of low-income individuals, including that—

(1) millions more individuals and families will become eligible for legal assistance through legal aid programs due to lost jobs, furloughed employees, and medical debt;

(2) more than 30,000,000 individuals filed for unemployment benefits during the period beginning on March 15, 2020, and ending on April 25, 2020;

(3) millions of individuals are unable to make rent or mortgage payments and are at risk of, or are facing, eviction or foreclosure proceedings;

(4) according to an analysis of over 13,000,000 housing units nationwide conducted by the National Multifamily Housing Council, 31 percent of tenants failed to pay rent during the first 5 days of April 2020, compared with 18 percent of tenants who failed to pay rent during the same period in 2019;

(5) according to a survey completed in St. Louis, Missouri, 45 percent of renters do not have enough money in savings to pay rent for even a single month;

(6) police departments across the United States are seeing dramatic increases in reports of domestic violence while, as of April 10, 2020, over 90 percent of individuals are subject to stay-at-home orders; and

(7) a survey of the requests for legal assistance received by Legal Services Corporation grantees during the last two weeks of March 2020, compared with the requests received during the same time period in 2019, showed that—

(A) Legal Services of Vermont had a 50-percent increase in requests for legal assistance;

(B) Legal Aid of Arkansas had a 13.2-percent increase in overall requests for legal assistance and a 50-percent increase in requests for housing-related cases; and

(C) Montana Legal Services had a 30-percent increase in demand for legal aid, with most cases involving evictions, domestic violence, consumer debt, and unemployment benefits: Now, therefore, be it

1 *Resolved*, That the House of Representatives finds
2 that—

3 (1) the lack of counsel for low-income individ-
4 uals in civil proceedings diminishes the justice sys-
5 tem in the United States;

6 (2) to effectively and efficiently address the na-
7 tional crisis described in paragraph (1), there must
8 be a right to counsel in the civil justice system for

1 cases involving basic human needs, including health,
2 safety, family, shelter, or sustenance; and

3 (3) the Federal Government shares the burden
4 with, and should support, State and local efforts to
5 guarantee the right to counsel in the civil justice
6 system and reduce the justice gap by providing
7 counsel in appropriate civil proceedings without cost
8 for low-income individuals.

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