



DC Volunteer Lawyers Project
5335 Wisconsin Avenue, NW, Suite 440
Washington, DC 20015
Tel. (202) 885-5542
www.dcvlp.org

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THE CIVIL GIDEON: The Case for a Civil Right to Counsel

By Naomi Biden, Marla Spindel and Erin Torres

In the 1963 landmark case *Gideon vs. Wainwright*, the United States Supreme Court ruled that all criminal defendants have a fundamental Constitutional right to representation, regardless of their ability to afford it.¹ Today, in Washington, D.C. and across the nation, there is a growing movement to expand this right to apply to indigent litigants in civil cases.

In D.C., the demand for legal representation for low-income residents in civil cases is particularly significant. Indeed, national surveys approximate that 80% of low income citizens' legal needs in civil cases are unsatisfied; in D.C., studies estimate that 90% of its low-income residents' legal needs are unmet.² The main underlying cause is the growing economic divide between the rich and poor in the nation's capital. According to a 2015 report from the D.C. Fiscal Policy Institute, the wage gap in the District is widening.³ With respect to civil cases, a 2005 survey found that 98% of petitioners and respondents in the Domestic Violence Unit, 77% of plaintiffs in divorce/custody cases, and 98% of plaintiffs in child support/paternity cases, proceeded *pro se*.⁴ Moreover, this represents only a fraction of low-income residents in need of

¹ *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

² See DISTRICT OF COLUMBIA ACCESS TO JUSTICE COMMISSION, JUSTICE FOR ALL? AN EXAMINATION OF THE CIVIL LEGAL NEEDS OF THE DISTRICT OF COLUMBIA'S LOW-INCOME COMMUNITY 83 (Oct. 7, 2008), <http://www.dccaccesstojustice.org/files/CivilLegalNeedsReport.pdf> [hereinafter JUSTICE FOR ALL?].

³ See DC FISCAL POLICY INSTITUTE, REDUCING INEQUALITY, INCREASING OPPORTUNITIES FOR DC RESIDENTS: RECOMMENDATIONS TO THE NEW MAYOR AND DC COUNCIL 3 (2015) ("The District has always been a city of haves and have-nots, but the gaps are stretching close to a breaking point. While the top five percent of DC households have incomes over \$500,000, higher than the top earners in any major city, the poorest fifth of households live on average income under \$10,000.").

⁴ See JUSTICE FOR ALL?, *supra* note 2.

legal services because it only gauges those who decided to go to court.⁵ As such, socioeconomic factors push low-income citizens to act as *pro se* litigants, oftentimes to their detriment.

In addition to being unjust, the lack of access to civil legal services for low-income residents also adversely impacts the economy. Indeed, some economists estimate that every \$1 of public funds invested in legal services generates as much as \$4 in benefits.⁶ For instance, investing money to provide representation for low-income individuals in housing court saves a state money in emergency shelter services. This principle also applies to domestic violence (“DV”) victims and children at risk of abuse or neglect in their homes. Expanding legal services offered to low-income DV victims and at-risk children results in decreases in the numerous negative outcomes of DV and child abuse/neglect, thereby reducing state spending on medical and mental health services. Addressing these unmet legal needs is thus both morally responsible and financially prudent. Today, legal services providers and pro bono attorneys are the only source of civil litigation support for low-income D.C. residents. Expanding funding for civil legal services is imperative. Without them, low-income D.C. residents will continue to lack meaningful access to the justice system.

I. ABA Endorses a Civil Right to Counsel

A. ABA Resolution 112A

In 2006, the American Bar Association (ABA) unanimously adopted Resolution 112A. The resolution urges states to recognize the need for a civil right to counsel in basic human needs cases, defined as those that relate to shelter, sustenance, safety, health, and child custody. The

⁵ *Id.* at 84. (“[I]t is likely that the matters that actually make it into court represent only a fraction of the existing legal needs in the community. [T]he low-income community lacks knowledge about their legal rights[.] It is unlikely that those who do not know about their rights will ever go to court to seek resolution of a legal matter. Even those people who know about their rights and legal resources may be reluctant to bring matters to court without the advice or presence of counsel.”)

⁶ See JUSTICE FOR ALL?, *supra* note 2, at 2.

Resolution was based on the ABA’s consensus that “despite 130 years of legal aid in the United States, existing resources have proven inadequate to fulfill the promise of equal justice for all.”⁷ It delineates how state and federal constitutional principles, common law antecedents, and policy considerations all support a right to counsel in civil matters.

1. *“State and Federal Constitutional Principles Support a Civil Right to Counsel”*

The Supreme Court has interpreted the “fundamental fairness” requirement of the Due Process Clause to require court-appointed counsel to litigants in cases where a physical liberty is at stake, which to date has been defined by the Court to be present in criminal cases.⁸ While the Court has not gone so far as to guarantee counsel to parents in civil proceedings, it has recognized that “perhaps the oldest of the fundamental liberty interests recognized by this Court” is the “interest of parents in the care, custody and control of their children.”⁹

Moreover, there is growing recognition by state supreme courts that losing the right to shelter or raise one’s children is a due process violation on par with being wrongly imprisoned. Specifically, the Maine and Oregon Supreme Courts have ruled that, in accordance with the constitutional right to due process, their state governments must provide parents access to free counsel in dependency/neglect cases. In Alaska, the state supreme court ruled that free counsel must be provided to an indigent party in a child custody case if the opposing party has access to free counsel. In addition, the California Supreme Court declared a due process right to counsel

⁷ See AM. BAR ASS’N, REPORT TO THE HOUSE OF DELEGATES, RESOLUTION 112A 3 (Aug. 7, 2006), *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_06A112A.aut_hcheckdam.pdf [hereinafter Resolution 112A].

⁸ *Gideon v. Wainwright*, 372 U.S. 335, 339 (1963).

⁹ *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

for defendants in paternity cases¹⁰ and an equal protection right for prisoners in civil court cases.¹¹

2. “*Common Law Antecedents Support a Right to Counsel in Civil Matters*”

Resolution 112A explains how common law has a long history of according indigent litigants a right to counsel in civil cases. English courts appointed attorneys for such litigants as far back as the 13th century and many American colonies carried on this tradition. The continuation of this common law tradition attests to the importance of the principle.¹²

3. “*Policy Considerations Support Recognition of a Civil Right to Counsel*”

Resolution 112A argues that navigating the American justice system is difficult; without the proper training and knowledge, it is impossible for a *pro se* litigant to have a fair chance at successfully arguing his or her case in court. Thus, if a litigant lacks counsel, his or her chance of a successful outcome decreases, regardless of the validity of the claim. Furthermore, judges in cases in which one side lacks representation are tasked with the challenge of fairly ruling on a case where the facts are not fairly presented. This effectively inhibits the court from properly performing its role. Justice cannot be served when the process of seeking it is inherently unjust.¹³

Additionally, academics have pointed out that by denying indigent litigants access to counsel, some states have made “poverty a suspect class.”¹⁴ The role of the American justice system is to protect the rights of all citizens. By denying some citizens access to counsel because

¹⁰ *Salas v. Cortez*, 24 Cal.3d 22, 593 P.2d 226 cert. den. 444 U.S. 900 (1979).

¹¹ *Payne v. Superior Court*, 17 Cal.3d 908 (1976).

¹² See Resolution 112A, *supra* note 7, at 6-7.

¹³ See *id.* at 10 (“Whether cast as a constitutional imperative or a policy finding compelling a legislative remedy, when litigants cannot effectively navigate the legal system, they are denied access to fair and impartial dispute resolution, the adversarial process itself breaks down and the courts cannot properly perform their role of delivering a just result.”).

¹⁴ *Id.* at 8.

of socioeconomic status, we deny them effective access to the courts and thus the protection of their rights.

B. Model Access Act and Basic Principles

Building on Resolution 112A, in 2010 the ABA released the Model Access Act, which serves as a resource for states considering the implementation of civil rights to counsel program. It is divided into five sections: (1) legislative findings regarding the right to civil representation; (2) definitions and scope for each of the categories for which the act is intended; (3) the scope of the right to public legal services; (4) a state access board to administer the program; and (5) a state access fund that provides funding for the program.¹⁵ The ABA also released the Basic Principles for a Right to Counsel in Civil Legal Proceedings, which outlines the conditions necessary for the successful implementation of civil right to counsel systems in the United States. The goal of the Principles is to promote the implementation of programs and legislation supporting low-income citizens' right to counsel in civil court.¹⁶

C. ABA's Coalition for Justice Findings Support Civil Right to Counsel

In 2010, the ABA's Coalition for Justice surveyed trial judges from 37 states, Puerto Rico, and one Native American court and produced the "Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts". The study found that providing representation for unrepresented litigants increases the efficiency of the Court process because it reduces the time court personnel spend explaining the process to unrepresented litigants and ultimately results in more cases being decided on the merits.

¹⁵ See MODEL ACCESS ACT (REVISED) § 1(F) (2010).

¹⁶ See AM. BAR ASS'N, REPORT TO THE HOUSE OF DELEGATES, ABA BASIC PRINCIPLES FOR A RIGHT TO COUNSEL IN CIVIL LEGAL PROCEEDINGS, RESOLUTION 105 (REVISED) 1 (Aug. 2010), *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_105_revised_final_aug_2010.authcheckdam.pdf.

D. ABA Child Custody and Adoption Pro Bono Project

In January of 2001, the ABA established the Child Custody and Adoption Pro Bono Project (“Project”). The purpose of the Project was to increase the availability of pro bono legal services for children involved in “divorce, adoption, guardianship, unmarried parent, and civil protective order cases.”¹⁷ The Project concluded in 2008 with seven recommendations to improve representation for children in custody cases:

- Recommendation 1. The quantity of representation of children in private custody cases should increase.
- Recommendation 2. Programs should work to improve the quality of representation of children in private custody cases.
- Recommendation 3. The judiciary should be more involved in improving representation for children in private custody cases.
- Recommendation 4. Law schools should participate in the representation of children in private custody cases.
- Recommendation 5. Mental health expertise and assistance should be brought into the representation of children in private custody cases.
- Recommendation 6. Law firms should provide representation to children in private custody cases and assistance to children’s law programs.
- Recommendation 7. Government agency assistance and funding should increase for representing children in private custody cases.

II. **Current State Laws Recognizing a Right to Civil Counsel**

A. Right to Counsel in Civil Neglect Proceedings

The Child Abuse Prevention and Treatment Act requires all states as the District of Columbia receiving federal child abuse prevention and treatment funding to provide children in abuse or neglect cases with representation.¹⁸ Correspondingly, forty states and the District of Columbia have a categorical right to counsel for parents in abuse/neglect/dependency cases, eight have a discretionary right to appointment of counsel, and in three states the right to

¹⁷ ENHANCING THE REPRESENTATION OF CHILDREN IN PRIVATE CUSTODY CASES: RESOURCES AND LESSONS LEARNED FROM THE ABA CHILD CUSTODY AND ADOPTION PRO BONO PROJECT, ABA STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE AND THE ABA FAMILY LAW SECTION 8 (2008), *available at* https://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/project_final_report.pdf.

¹⁸ 42 U.S.C. § 5106.

appointment is qualified. Federal law also requires the appointment of counsel for Native American parents and children in abuse/neglect/termination of parental rights proceedings.¹⁹

B. Counsel in Custody Proceedings

The right to counsel in custody proceedings encompasses those of the child and the parents or custodians. Two states provide for a categorical right to counsel in custody cases. Oregon law requires the appointment of counsel for a child in custody cases upon the child's request; the court also may appoint counsel for a child *sua sponte* or on the motion of a party.²⁰ A reasonable fee for an attorney so appointed may be charged against one or more of the parties or as a cost in the proceeding, "but may not be charged against funds appropriated for public defense services".²¹ New York provides for a categorical right to counsel in private custody cases for "the parent of any child seeking custody or contesting the substantial infringement of his or her right to custody of such child, in any proceeding[.]"²²

Twenty-six states and Washington D.C. have a discretionary appointment of counsel system for children in custody cases, and three states have discretionary appointment of counsel for parents in such cases.²³ Payment for these discretionary appointments vary from state to state. Washington, D.C. permits judges to appoint counsel for a child or parent in these cases, but there is no payment methodology; rather, the court relies on pro bono and legal services providers to represent these litigants. In Maryland, a court may appoint counsel to children in custody, visitation, and support proceedings.²⁴ Counsel appointed to a minor by a Maryland court is

¹⁹ See Indian Child Welfare Act, 25 U.S.C. § 1912.

²⁰ Or. Rev. Stat. Ann. § 109.072(4) and (5).

²¹ See *id.*

²² N.Y. Fam. Ct. Act § 262(a)(v); see N.Y. Surr. Ct. Proc. Act § 407(1)(a)(iv).

²³ *Status Map*, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL (last visited Nov. 10, 2016), <http://civilrighttocounsel.org/map>.

²⁴ Md. Code Fam. Law § 1-202.

entitled to compensation from one or both parents.²⁵ Similarly, Virginia courts may, in their discretion, appoint counsel in civil cases to any resident unable to pay the fees and costs of litigation.²⁶ The costs of litigation and attorney's fees may be paid from the costs recovered from the opposite party.²⁷ In other states, costs and fees of the appointed attorney are borne by the applicable state, county or court.²⁸

C. Counsel in Other Basic Human Needs Cases

Across the United States, the right to counsel in other basic human needs cases varies widely. While no state provides for a *categorical* right to counsel in these cases, in seventeen states, courts exercise discretionary power to appoint counsel in these types of cases.²⁹ Seven states provide for a qualified right to counsel for civil litigants.³⁰ Of the seven states that provide for a qualified right to appointment of counsel, a slight majority provide for a court appointed attorney to litigants with disabilities.

III. State Civil Right to Counsel Pilot Projects

Across the country, pilot projects involving the civil right to counsel have been conducted, are still in operation, or will soon be initiated. The pilot projects represent efforts on behalf of the legal community to assess the feasibility and impact of providing civil counsel to low income U.S. citizens in areas involving basic human needs. These projects demonstrate the multitude of benefits of providing civil legal services to those who do not have the ability to pay.

²⁵ *Lapides v. Lapides*, 50 Md. App. 248, 437 A.2d 251 (1981).

²⁶ See Va. Code Ann. § 17.1-606.

²⁷ See *id.*

²⁸ See Ark. Code Ann. § 9-13-101(e)(4); Cal. Fam. Code § 3153(b); Colo. Rev. Stat. § 14-10-116(3)(a); Conn. Gen. Stat. § 46b-231(m)(10); Idaho Code Ann. § 32-704(4); Iowa Code § 598.12(5); Mich. Comp. Laws § 722.24(4); Mont. Code Ann. § 40-4-205(4); Neb. Stat. § 42-358(1); Tex. Fam. Code § 107.015(c); Wash. Rev. Code § 26.09.110.

²⁹ See *id.* These states are New York, Virginia, South Carolina, Kentucky, Tennessee, Indiana, Michigan, Wisconsin, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, Arizona, Utah, and Montana.

³⁰ See *id.* These states are New Jersey, Pennsylvania, Maryland, West Virginia, Minnesota, Oregon, and Washington.

A. Washington D.C. Pilot Projects

1. *Housing Right to Counsel Pilot Project*

Last year in Washington D.C., Legal Aid, Bread for the City, and Legal Counsel for the Elderly launched the Housing Right to Counsel Pilot Project (Housing Pilot Project).³¹ Through partnerships with pro bono attorneys from multiple D.C. law firms, the Housing Pilot Project provides counsel to tenants of subsidized housing who would otherwise not be able to afford representation. It is funded by a grant of over \$300,000 from the D.C. Bar Foundation using money appropriated by the D.C. City Council.³² The Housing Pilot is a response to the rising rate of homelessness and the declining supply of affordable housing in D.C. Indeed, of the 34,000 eviction cases filed in 2015, a mere five to ten percent of tenants were able to afford or access legal counsel.³³

2. *Child Support Community Legal Services Project*

The Child Support Community Legal Services Project, established in 2011, aims to provide services to parents at the Child Support Resource Center of the D.C. Superior Court's Child Support and Paternity Branch. It is jointly operated by Legal Aid and Bread for the City and receives funding through a grant from the D.C. Bar Foundation.³⁴

B. Boston Bar Association Civil Right to Council Housing Pilots

In 2007, the Boston Bar Association convened a Task Force on Expanding the Right to Counsel (BBA Task Force). Its report, *Gideon's New Trumpet*, emphasized the need for expanding the civil right to counsel in Massachusetts and recommended nine pilot projects, in

³¹ See Jeffrey Leon, *No Access, No Justice*, DC BAR, (May 2016), <https://www.dcbar.org/bar-resources/publications/washington-lawyer/articles/may-2016-access-to-justice.cfm>.

³² See *Pilot Projects*, National Coalition for a Civil Right to Counsel, http://civilrighttocounsel.org/highlighted_work#PilotProjects (last visited Nov. 21, 2016).

³³ See Leon, *supra* note 45.

³⁴ See *id.*

areas including juvenile, family, immigration, and housing law.³⁵ Of the nine recommended projects, two housing pilots were selected; one in district court and one in housing court. The pilots received funding from the Massachusetts Attorney General to offer free legal representation to low income tenants in eviction cases. Pilot cases were selected based on the expected impact legal representation would have on the outcome.³⁶

After the pilots concluded in 2011, the Task Force produced a report that detailed the goals, structure, conclusions, and potential implications of the pilots. In the district court, tenants who received full legal representation were twice as successful in maintaining possession and five times more likely to have rent waived or receive monetary awards, as those who did not. A further critical insight from the court pilot was that tenants who received full legal representation required less court appearances and were less likely to have contested hearings. The results in the housing court were less pronounced but nonetheless demonstrated that providing full legal representation substantially lowered tenants' risk of eviction and subsequent homelessness.³⁷ In 2013, the Task Force received funding for another round of housing pilots aimed at gathering further data on the subject of the right to counsel in eviction cases.

C. California Pilot Projects

1. *Sargent Shriver Civil Counsel Act Pilot Projects*

California is home to one of the most extensive civil right to counsel initiatives in the country. In 2011, the Judicial Council of California selected seven pilot projects, implemented across the entire state, that provide representation to low-income Californians at or below 200%

³⁵ See THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES AND HOMELESSNESS PREVENTION: A REPORT ON THE BBA CIVIL RIGHT TO COUNSEL HOUSING PILOTS, BOSTON BAR ASSOCIATION TASK FORCE ON THE CIVIL RIGHT TO COUNSEL 2 (March 2012), <http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>.

³⁶ See *id.* at 2.

³⁷ See *id.* at APPENDIX A 5.

of the federal poverty level. The pilot projects are administered by the Administrative Office of the Courts and operated by legal services organizations in collaboration with local courts. The pilots are funded through the Sargent Shriver Civil Counsel Act, AB 590. The Act allocates \$9.5 million a year towards their operation through January 1, 2017. On June 27, 2016, the California Legislature passed Senate Bill 843, which extends funding for the pilot programs indefinitely.³⁸

The selected pilot projects are as follows:

- Bar Association of San Francisco Voluntary Legal Services Program, Superior Court of San Francisco County: **Child Custody Pilot Project**
- Greater Bakersfield Legal Assistance, Superior Court of Kern County: **Housing Pilot Project**
- Legal Aid Society of San Diego, Superior Court of San Diego County: **Housing Pilot Project and Child Custody Pilot Project**
- Legal Aid Society of Santa Barbara County, Superior Court of Santa Barbara County: **Housing Pilot Project and Probate Guardianship Pilot Project**
- Legal Services of Northern California, Superior Court of Sacramento County and Superior Court of Yolo County: **Housing Pilot Project**
- Los Angeles Center for Law and Justice, Superior Court of Los Angeles County: **Child Custody/Domestic Violence Project**
- Neighborhood Legal Services of Los Angeles County, Superior Court of Los Angeles County: **Housing Pilot Project**

The Administrative Office of the Courts conducted a study aimed at determining the effectiveness and continued need for the pilot programs, which found that they served over 20,000 low income people, most of whom were female minorities with children. The data for cases involving representation in child custody proceedings showed that they resulted in more settlements, fewer continuances, and fewer trials.³⁹

³⁸See *Sargent Shriver Civil Counsel Act*, CALIFORNIA COURTS: THE JUDICIAL BRANCH OF CALIFORNIA, <http://www.courts.ca.gov/15583.htm> (last visited Nov. 13, 2016).

³⁹ See REPORT TO THE LEGISLATURE ON SHRIVER CIVIL COUNSEL ACT, JUDICIAL COUNCIL OF CALIFORNIA 13 (Jan. 2016), available at <http://www.courts.ca.gov/documents/shriver-20151214-materials.pdf>.

2. *San Francisco Right to Civil Counsel Pilot Program*

The city of San Francisco made expanding the civil right to counsel a priority. In 2012, the Board of Supervisors of the City and County of San Francisco passed an ordinance establishing “a right to counsel city.” In October of 2012, a one year right to civil counsel pilot program was initiated to expand the provision of free legal services for low income city residents facing eviction. The city contracted with the Justice and Diversity Center of the Bar Association of San Francisco (JDC) to administer the program, and the Board of Supervisors of the City and County of San Francisco provided funding.⁴⁰

During the year in which the project operated, 3,581 eviction cases were filed in the city of San Francisco. The JDC offered full scope legal services in 117 cases and limited scope representation in 691 cases. An assessment of the value of the legal services provided through the pilot program revealed that full scope representation increased the likelihood of a positive outcome for clients, and even limited scope representation greatly improved the chances of a positive outcome for low income tenants facing eviction. At the conclusion of the program, approximately 609 residents who were the recipients of free representation through this program avoided homelessness. The San Francisco Right to Civil Counsel Pilot Program Documentation Report estimated that the potential savings from these residents averting homelessness was approximately \$1,096,200, the cost of providing emergency shelter.

⁴⁰ See SAN FRANCISCO RIGHT TO CIVIL COUNSEL PILOT PROGRAM DOCUMENTATION REPORT, JOHN AND TERRY LEVIN CENTER FOR PUBLIC SERVICE AND PUBLIC INTEREST STANFORD LAW SCHOOL 4 (May 2014), <http://sfbos.org/sites/default/files/FileCenter/Documents/49157-San%20Francisco%20Right%20to%20Civil%20Counsel%20Pilot%20Program%20Documentation%20Report.pdf>.

D. Iowa ‘Longer Term Influence of Civil Legal Services on Battered Women’ Pilot Project

In 2014, the University of Iowa and Iowa Legal Aid began a two-year program that provided counsel for women involved in protection order, custody, child support, and marriage dissolution cases. The pilot project was funded by the National Institute of Justice Office of Justice Programs, U.S. Department of Justice. The study aimed to assess how the psychological well-being, safety, and financial self-sufficiency of women in metro and non-metro areas of Iowa were impacted by the receipt of civil legal services. The results from the pilot demonstrate that receipt of civil legal services decreased re-victimization, improved women’s safety, and increased psychological well-being and economic self-sufficiency over time.⁴¹

E. Mississippi Parental Representation Pilot Projects

In Mississippi, pilot programs that provide representation to low-income parents in child welfare cases are operating in four counties. The pilots are funded by the Casey Family Programs and their aim is to improve the outcomes for children and families in child welfare cases.⁴²

F. New York City Family Unity Immigration Representation Pilot Project

In 2013, New York City approved a pilot project aimed at providing representation to immigrants in removal proceedings. The project was granted \$500,000 in 2013 and New York City committed another \$4.9 million in June of 2014. The program was developed after Second Circuit Judge Robert Katzmann commissioned a study on ways to provide counsel in

⁴¹ See CAROLYN COPPS HARTLEY & LYNETTE M. RENNER, THE LONGER-TERM INFLUENCE OF CIVIL LEGAL SERVICES ON BATTERED WOMEN 11 (May 2016) (unpublished report, submitted to U.S. Department of Justice), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/249879.pdf>.

⁴² See Jimmie E. Gates, *Youth courts attorney pilot programs search for funding*, THE CLARION-LEDGER (Jan. 2, 2015), <http://www.clarionledger.com/story/news/2015/01/02/youth-courts-attorney-pilot-programs-search-funding/21195437/>.

immigration removal proceedings.⁴³ The study recommended the creation of a pilot program and offered a model for the first program of its kind, an institutionally provided universal representation system of counsel for immigrants in deportation proceedings. An ABA article on the project reported that prior to its implementation, 60 percent of detained New Yorkers proceeded without representation.⁴⁴ The pilot project now provides all detained immigrants in New York City with legal representation. Prior to the project's commencement, the success rate for unrepresented detainees in immigration court in New York City was three percent. The success rate of project attorneys as of December 2015 was 69 percent. The enormous success of the project has inspired similar pilot projects to be established in California and New Jersey.

G. Wisconsin Representation to DV Victims Pilot Project

In Wisconsin, the Access to Justice Commission collaborated with partners in Winnebago County to develop a pilot project aimed at providing legal counsel to litigants in family law cases involving domestic violence. The Director of State Courts Office gave Christine Ann Domestic Abuse Services \$100,000 to pay private attorneys to represent victims of domestic violence in court. The funding comes from STOP funds originally awarded to the Director of State Courts Office. STOP, which stands for Services, Training, Officers, Prosecutors, is a federally funded grant program pursuant to the Violence Against Women Act. The pilot project began operating in September of 2015 and is expected to serve over 100 victims over the course of eighteen months. By evaluating court outcomes of cases involved in the project, the state will be able to study the cost and effectiveness of civil counsel in domestic violence cases.⁴⁵

⁴³ STUDY GROUP ON IMMIGRANT REPRESENTATION, ACCESSING JUSTICE II: A MODEL FOR PROVIDING COUNSEL TO NEW YORK IMMIGRANTS IN REMOVAL PROCEEDINGS: NEW YORK IMMIGRANT REPRESENTATION STUDY REPORT: PART II 5 (Dec. 2012), available at http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf.

⁴⁴ See *id.* at 1.

⁴⁵ See *More Help is on the Way for DV Victims in Winnebago County*, WISCONSIN ACCESS TO JUSTICE COMMISSION (July 27, 2015), <http://wisatj.org/more-help-for-dv-victims-in-winnebago-county-is-on-the-way>.

IV. State Civil Right to Counsel Proposed Legislation

In 2016, over two dozen bills establishing or expanding a right to counsel in civil cases were introduced in state legislatures across the country.⁴⁶ Significantly, the DC City Council is currently considering legislation aimed at expanding a civil right to counsel in housing cases. The Expanding Access to Justice Act of 2016 (Justice Act) was introduced by Councilmembers McDuffie, Evans, Bonds, and Silvermanis.⁴⁷ The legislation calls for publically funded representation for D.C. residents at or below 200 percent of the federal poverty line in cases where eviction, housing code violations, and rental subsidy program issues are involved.⁴⁸ Introduced in September of 2016, the Justice Act is currently pending before the City Council. It has received near unanimous support and sponsorship from councilmembers. The sponsors have yet to specify where the funds would be obtained and what the cost would be. The bill reflects the overall goal of Councilmembers McDuffie, Evan, Bonds, and Silvermanis to provide a civil right to counsel to indigent litigants in all civil cases involving fundamental rights.⁴⁹

The most comprehensive civil right to counsel legislation currently being considered in this country is a bill that would amend the administrative code of the city of New York to provide legal counsel for low-income eligible tenants who are subject to eviction, ejection, or foreclosure proceedings.⁵⁰ The bill would require the Office of Civil Justice to: (1) identify organizations eligible to provide legal services for eligible individuals; (2) develop a plan for

⁴⁶ See *2016 Civil Right to Counsel Bills*, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL, http://civilrighttocounsel.org/legislative_developments (last visited Dec. 5, 2016).

⁴⁷ B21-0879, Expanding Access to Justice Act of 2016, D.C. Council Period 15 (introduced Sept. 20, 2016), available at <http://lims.dccouncil.us/Download/36413/B21-0879-Introduction.pdf>.

⁴⁸ See *id.* §1-102 (c).

⁴⁹ See *Id.* at 1 (One goal of the Justice Act is “[t]o move toward a right to counsel for low-income eligible individuals or groups in civil cases involving fundamental human needs through the creation of civil right to counsel projects[.]”)

⁵⁰ See N.Y. S. S02061B, 2015-2016, Reg. Sess. (N.Y. 2015), available at http://assembly.state.ny.us/leg/?default_fld=&bn=S02061&term=2015&Summary=Y&Actions=Y&Text=Y&Votes=Y.

providing such services; (3) establish procedures for monitoring such provision; and (4) annually review the performance of the providers. The bill would also ensure the designation of a legal organization to represent an eligible individual upon request from the individual, a judge, or a designated organization. The Office of Civil Justice would provide the designated organizations with fair compensation to promote high quality representation. Anyone in New York City facing eviction or foreclosure with an income of less than twice the federal poverty line would be covered. According to a report by the City Bar Association, more than 80 percent of all housing court cases each year would qualify.⁵¹ Mayor Bill de Blasio has already committed \$62 million in the current fiscal year to provide legal help for low-income tenants. The results of this initial effort have been tremendously positive. New York City has experienced the lowest eviction rates in a decade with evictions decreased by eighteen percent last year, from 26,857 in 2014 to 21,988 in 2015.⁵²

V. Conclusion

The justice system in the United States of America should provide fair and equal access to justice to all citizens in all cases involving a basic human need, not just to those citizens able to afford it. The ABA Model Access Act found that “[n]ationally, on average, only one legal aid attorney is available to serve 6,415 low-income individuals. In comparison, there is one private attorney providing legal services for every 429 individuals in the general population.”⁵³ The inability of low-income American citizens to afford legal representation to defend their rights in

⁵¹ See *A Right to a Lawyer to Save Your Home*, NEW YORK TIMES (Sept. 23, 2016), available at <http://www.nytimes.com/2016/09/23/opinion/a-right-to-a-lawyer-to-save-your-home.html?mwrsm=Email&r=0>.

⁵² See *id.*

⁵³ MODEL ACCESS ACT § 1(B) (2010) (citing Legal Services Corporation, Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans 1 (Sept. 2009)), available at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_104_revised_final_aug_2010.authcheckdam.pdf.

civil court is an injustice that the legal community can no longer afford to ignore. All of the legislation and pilot projects outlined in this report demonstrate both the feasibility and efficacy of implementing a civil right to counsel in areas concerning a basic human need. Significantly, the civil right to counsel housing project in Washington D.C. represents one necessary step in the right direction. However, there are thousands of D.C. residents who still lack equal access to justice and are at risk of losing their homes, their children, or their residency status. Providing funding to ensure access to justice in basic human needs cases should be prioritized in this country and especially in the District where the gap in access to justice for low income residents is particularly significant.

For questions or additional information on this paper, please contact DCVLP Special Counsel Marla Spindel at mspindel@dcvlp.org or 202-885-5542.

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About the Authors:

Naomi Biden is an intern with the DC Volunteer Lawyers Project. She graduated from the University of Pennsylvania in 2016 with a B.A. in International Relations, writing a senior thesis on how globalization impacts women's status in the workforce in India. Ms. Biden plans to attend law school, where she hopes to continue to work on gender equality issues.

Marla Spindel is a co-founder of the DC Volunteer Lawyers Project. Prior to founding DCVLP, Ms. Spindel was selected to serve on the Superior Court's Attorney Panel for the Counsel for Child Abuse and Neglect (CCAN), which provides attorneys to represent foster children as guardians ad litem. Ms. Spindel served as Managing Attorney of DCVLP's Child Advocacy Practice for 9 years, where she oversaw the representation of more than 400 children as guardians ad litem in disputed custody cases in DC Superior Court. Ms. Spindel currently serves as DCVLP Special Counsel, primarily working on child welfare advocacy and legal ethics issues. She graduated from Cornell University with a B.A. in Government, and George Washington University Law School with honors.

Erin Torres is a DCVLP law fellow, working in both its Domestic Violence and Child Advocacy Practices. She graduated summa cum laude from St. Edward's University in Austin, Texas, majoring in Religious Studies with a focus on the Hebrew Bible and Christian theology. Ms. Torres was twice awarded Outstanding Student in Religious Studies and Outstanding Student in Art History. She was a member of St. Edward's chapter of the Theta Alpha Kappa National Religious Studies Honors Society and the Alpha Chi National College Honor Society. Ms. Torres graduated from the George Washington University Law School in May 2016.