To amend the Legal Services Corporation Act to meet special needs of eligible clients, provide for technology grants, improve corporate practices of the Legal Services Corporation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

October 8, 2009

Mr. Scott of Virginia (for himself, Mr. Conyers, Mr. Cohen, Mr. Watt, Mr. Delahunt, Ms. Linda T. Sánchez of California, and Mr. Johnson of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Legal Services Corporation Act to meet special needs of eligible clients, provide for technology grants, improve corporate practices of the Legal Services Corporation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Civil Access to Justice Act of 2009”.

SECTION 2. FINDINGS.

Congress finds the following:
(1) It is crucial to provide equal access to the system of justice in the United States for all individuals, regardless of economic status.

(2) The Legal Services Corporation provides high quality civil legal assistance for persons who would otherwise be unable to afford legal assistance, and there is a need to continue the present vital legal services program.

(3) The amount of Federal resources made available to the Legal Services Corporation has been inadequate to provide individuals with the legal assistance that they need. Over half of all people who have applied for assistance from local programs funded through the Legal Services Corporation have been turned away in recent years. In many States, over 80 percent of individuals who need legal assistance do not receive the help they need.

(4) Congress must adequately fund Legal Services Corporation programs to preserve the strength of the programs.

(5) Providing legal assistance to those who face an economic barrier to adequate legal counsel serves justice and assists in improving opportunities for low-income persons.
(6) The availability of legal services has reaffirmed the faith of many people of the United States in a government of laws.

(7) To preserve its strength, the legal services program must be kept free from the influence of political pressures.

(8) Attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the applicable rules of professional responsibility and the high standards of the legal profession.

SEC. 3. AMENDMENTS TO STATEMENT OF FINDINGS AND DECLARATION OF PURPOSE.

Section 1001 of the Legal Services Corporation Act (42 U.S.C. 2996) is amended—

(1) by striking “1001.” and inserting “1001.(a)”;

(2) in paragraph (3), by striking “Act” and inserting “title”;

(3) in paragraph (6), by striking “Code of Professional Responsibility, the Canons of Ethics,” and inserting “applicable rules of professional responsibility”; and

(4) by inserting at the end the following:

“(b) Congress finds the following:
“(1) Participation of private lawyers in providing legal assistance to those unable to afford such assistance significantly enhances the overall system for providing legal services to the poor, and the Legal Services Corporation should continue to promote and support pro bono services and other forms of private bar involvement through its policies and regulations.”.

“(2) The highest court of each State should encourage pro bono service by lawyers by adopting aspirational guidelines, such as the American Bar Association Model Rule of Professional Conduct 6.1, ‘Voluntary Pro Bono Publico Services’, and by adopting mandatory reporting of voluntary pro bono service.”.

**SEC. 4. DEFINITIONS.**

Section 1002 of the Legal Services Corporation Act (42 U.S.C. 2996a) is amended—

(1) by striking paragraph (7) and inserting the following:

“(7) ‘staff attorney’ means an attorney who—

“(A) is employed by a recipient organized in whole or in part for the provision of legal assistance to eligible clients under this title; or
“(B) receives more than one-half of the attorney’s annual professional salary from the proceeds of a grant, contract, or other financial assistance from the Corporation to such recipient;”;

(2) in paragraph (8), by striking “the Trust Territory of the Pacific Islands, and any other territory or possession of the United States” and inserting “the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau;”; and

(3) by adding at the end the following:

“(9) ‘individual in poverty’ means an individual who is a member of a family (of 1 or more members) with an income at or below the poverty line; and

“(10) ‘poverty line’ means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), applicable to a family of the size involved.”.
SEC. 5. GOVERNING BODY.

Section 1004 of the Legal Services Corporation Act (42 U.S.C. 2996c) is amended—

(1) in subsection (a), in the third sentence—

(A) by striking “Effective with respect to appointments made after the date of enactment of the Legal Services Corporation Act Amendments of 1977 but not later than July 31, 1978, the” and inserting “The”;

(B) by striking “and” after “shall be ap-pointed so as to include eligible clients,”; and

(C) by inserting “, and to include at least 1 individual with financial or audit experience” before the period; and

(2) in subsection (b)—

(A) by striking “, except that five of the members first appointed, as designated by the President at the time of appointment, shall serve for a term of two years”; and

(B) by striking the third and fourth sentences;

(3) in subsection (d), by striking “President shall select from among the voting members of the board a chairman, who shall serve for a term of three years. Thereafter the”;

(4) by striking subsection (f);
(5) by redesignating subsections (g) and (h) as (f) and (g), respectively; and

(6) in subsection (f), as redesignated by this section, by striking “, of any executive committee of the Board, and of any advisory council established in connection with this title” and inserting “or of any committee of the Board”.

SEC. 6. OFFICERS AND EMPLOYEES.

(a) Elimination of Personal Pronoun.—Section 1005(b)(1) of the Legal Services Corporation Act (42 U.S.C. 2996d(b)(1)) is amended by striking “as he” and inserting “as the president of the Corporation”.

(b) Maximum Pay.—Section 1005(d) of the Legal Services Corporation Act (42 U.S.C. 2996d(d)) is amended—

(1) by striking “level V” and inserting “level III”; and

(2) by striking “5316” and inserting “5314”.

SEC. 7. IMPROVEMENTS OF LEGAL SERVICES CORPORATION CORPORATE GOVERNANCE AND INTERNAL PRACTICES.

Section 1006 of the Legal Services Corporation Act (42 U.S.C. 2996e) is amended—

(1) in subsection (a)—
(A) in paragraph (2), by inserting “subject to subsection (g)” before the semicolon; and

(B) in paragraph (3)(A), by striking “except that broad general legal or policy research unrelated to representation of eligible clients may not be undertaken by grant or contract,”;

(2) in subsection (b)—

(A) in paragraph (3), by striking “as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association” and inserting “as established in the applicable rules of professional responsibility or other laws of the State or other jurisdiction where the attorney practices law”; and

(B) in paragraph (5), by striking the last sentence; and

(3) by adding at the end the following:

“(g)(1) The Corporation shall establish a protocol for the receipt of donations under subsection (a)(2).

“(2) In order for the Corporation to use any Federal funds for representational activities of the Corporation, not including non-representational activities that primarily involve Corporation staff, the appropriations Act through which the funds are made available shall specifically per-
mit the use of the funds for such activities. Any solicitation of a donation of funds for expenses for which Federal funds may not be used under this title shall be approved in advance by the Board. In addition, a budget for the use of such donated funds shall be approved by the Board, before the Corporation incurs such an expense.

“(3) The Corporation may not advance Federal funds, in anticipation of receiving a donation under subsection (a)(2), to pay for an expense.

“(h)(1) The Board shall establish and maintain an audit committee, a finance committee, and a governance and performance review committee.

“(2) The Corporation shall establish and implement a continuity of operations plan, to prepare for disasters and emergencies.

“(3) The Corporation shall—

“(A) establish an adequate internal control structure and procedures for financial reporting; and

“(B) not later than 1 year after the date of enactment of the Civil Access to Justice Act of 2009, and annually thereafter, conduct an assessment of the effectiveness of the internal control structure and procedures.

“(i)(1) The Corporation shall adopt comprehensive training standards and develop appropriate training mate-
rial to ensure that recipients are able to provide comprehensive and appropriate training for executive directors, supervisors, and attorneys employed by recipients and board members of recipients. Such training standards and materials shall address training concerning—

“(A) restrictions applicable to the activities of attorneys employed by the recipient involved; and

“(B) appropriate use of Federal funds.

“(2) In developing training standards and materials for the training described in paragraph (1), the Corporation—

“(A) is encouraged to address training concerning the representation of victims of domestic violence; and

“(B) may coordinate activities with the American Bar Association Commission on Domestic Violence.

“(3) The Corporation shall provide financial assistance, in such amounts as the Corporation may determine to be appropriate, to recipients, to enable the recipients to provide the training described in paragraph (1).”.

SEC. 8. PILOT LOAN REPAYMENT ASSISTANCE PROGRAM.

Section 1006 of the Legal Services Corporation Act, as amended by section 7, is further amended by adding at the end the following:
“(j)(1) The Corporation shall promote recruitment and retention of highly qualified staff members for all recipients, through the Pilot Loan Repayment Assistance Program established by the Corporation in 2005 or other programs, as the Corporation determines to be appropriate.

“(2) If funds are appropriated for any such staff recruitment and retention program for each of the 5 full fiscal years following the date of enactment of the Civil Access to Justice Act of 2009, in the fifth year, the Corporation shall submit to Congress a report on the impact of such program on the recruitment and retention of highly qualified staff for recipients.

“(3) Nothing in paragraph (2) prevents the Corporation from continuing such recruitment and retention programs for longer than 5 years, if such program is effective in the recruitment and retention of highly qualified staff and funds are appropriated for such program.”.

SEC. 9. PROHIBITED USE OF FUNDS.

Section 1006 of the Legal Services Corporation Act, as amended by section 8, is further amended by adding at the end the following:

“(k)(1)(A) No prohibited purposes provision shall be considered to cover recipient funds from any source other than the Corporation, except as provided in paragraph (3).
“(B) No prohibited purposes provision shall be considered to cover Federal funds awarded under this title, except as provided in this title.

“(2)(A) In this subsection, the term ‘prohibited purposes provision’ means a provision of this title, or any other Federal law, that contains text stating that funds of a recipient may not be expended for a purpose prohibited by this title or another Federal law.

“(B) The term includes any Federal law that incorporates by reference a provision that contains text described in subparagraph (A) and is a provision of—

“(i) the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998;

“(ii) the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996; or

“(iii) another Federal law.

“(3) No non-Federal funds may be used by a recipient to participate in any litigation with respect to abortion.”.

SEC. 10. CONSTRUCTION.

Section 1006 of the Legal Services Corporation Act, as amended by section 9, is further amended by adding at the end the following:
“(l) No provision of law, other than an amendment to this title, shall be considered to supersede or modify this title unless the provision refers specifically to this subsection.”.

SEC. 11. GRANTS AND CONTRACTS.

Section 1007 of the Legal Services Corporation Act (42 U.S.C. 2996f) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking “and with the Governors of the several States”;

(ii) in subparagraph (B)—

(I) in clause (i), by striking “liquid”; and

(II) in clause (iv), by striking “, which may include evidence of a prior determination that such individual’s lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation; and” and inserting a semicolon;

(B) by striking paragraphs (8) and (9);

(C) by redesignating paragraphs (10) and (11) as (9) and (10), respectively;
(D) by inserting after paragraph (7) the following:

“(8) ensure that funds appropriated under this title for basic field programs shall be distributed on the basis of a system of competitive bidding, in accordance with Legal Services Corporation regulations, and shall be allocated so as to provide—

“(A) except as provided in subparagraphs (B) and (C), an equal figure per individual in poverty for all geographic areas, as determined on the basis of the most recent decennial census of population conducted pursuant to section 141 of title 13, United States Code (or, in the case of the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, the Commonwealth of the Northern Mariana Islands, Alaska, Hawaii, and the United States Virgin Islands, on the basis of the adjusted population counts historically used as the basis for such determinations);

“(B) an additional amount for Native American communities that received assistance under the Legal Services Corporation Act for fiscal year 2009, so that the proportion of the funds appropriated to the Legal Services Cor-
poration for basic field programs for fiscal year 2010 that is received by the Native American communities shall be not less than the proportion of such funds appropriated for fiscal year 2009 that was received by the Native American communities; and

“(C) an amount for representation of migrant and seasonal farm workers.”; and

(E) in paragraph (9), as redesignated by this subsection, by striking “the Canons of Ethics and Code of Professional Responsibility of the American Bar Association” and inserting “applicable rules of professional responsibility”; (2) in subsection (b)—

(A) by striking paragraph (8) and inserting the following:

“(8) to participate in any litigation with respect to abortion;”;

(B) in paragraph (10), by striking “or” after the semicolon;

(C) in paragraph (11), by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:

“(12) to provide legal assistance with respect to litigation relating to prison conditions on behalf of
any individual who is incarcerated in a Federal, State, or local prison, except that nothing in this paragraph prohibits the use of funds made available by the Corporation for litigation related to an incarcerated individual’s ability to reenter society successfully;

“(13) to provide legal assistance with respect to the defense of an individual in a proceeding to evict such individual from a public housing project if—

“(A) the individual has been convicted in a criminal proceeding with the illegal sale or distribution of a controlled substance; and

“(B) the eviction proceeding is brought by a public housing agency because the illegal drug activity of the individual threatens the health and safety of another tenant residing in the public housing project or an employee of the public housing agency; or

“(14) to provide legal assistance for, or on behalf of an alien, unless the alien—

“(A) is present in the United States and the alien—

“(i) is described in subparagraph (A), (B), (C), (D), (E), or (F) of section 504(a)(11) of the Departments of Com-
merce, Justice, and State, the Judiciary,
and Related Agencies Appropriations Act,
1996, as enacted by section 101 of the
Omnibus Consolidated Rescissions and Ap-
propriations Act of 1996 (Public Law 104–
134; 110 Stat. 1321–54);

“(ii) is lawfully present as a result of
withholding of deportation pursuant to
former section 243(h) of the Immigration
and Nationality Act, withholding or restric-
tion of removal pursuant to section
241(b)(3) of the Immigration and Nation-
ality Act (8 U.S.C. 1231(b)(3)), or with-
holding of removal under the Convention
Against Torture pursuant to the regulation
of the Secretary of Homeland Security
codified on the date of the enactment of
the Civil Access to Justice Act of 2009 at
8 C.F.R. 208.16(c) and the regulation of
the Attorney General codified on such date
at 8 C.F.R. 1208.16(c);

“(iii)(I) has been battered or sub-
jected to extreme cruelty or was a victim
of sexual assault or trafficking in the
United States; or

“(iv) has a child present in the United States who, without the active participation of the alien—

“(I) has been battered or subjected to extreme cruelty or was a victim of sexual assault or trafficking in the United States; or

“(II) qualifies for nonimmigrant status described in section 101(a)(15)(U) of the Immigration and Nationality Act;

“(v) has been a victim of trafficking or is a family member of such a victim and is eligible for protection and assistance under section 107 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105);

“(vi) is an evacuee from, or victim of, a major disaster or an emergency designated by the President pursuant to the Robert T. Stafford Disaster Relief and
Emergency Assistance Act (42 U.S.C. 5121 et seq.) or by an appropriate State or local official, and the alien’s need for legal assistance from the Corporation is related to the alien’s status as such an evacuee or victim;

“(vii)(I) has been declared dependent on a juvenile court located in a State or has been legally committed to, or placed under the custody of, an agency or department of a State by such a court; and

“(II) has been deemed eligible by such a court for long-term foster care due to abuse, neglect, or abandonment;

“(viii) is under 18 years of age, is unaccompanied by a parent or legal guardian, and is in the custody of the Secretary of Homeland Security or Health and Human Services; or

“(ix) is authorized to work in the United States or is otherwise lawfully present in the United States;

“(B) is a member of a cross-border Indian Tribe who is—
“(i) an American Indian born in Canada referred to in section 289 of the Immigration and Nationality Act (8 U.S.C. 1359); or

“(ii) a member of the Texas Band of Kickapoo Indians referred to in the Texas Band of Kickapoo Act (25 U.S.C. 1300b–11 et seq.);

“(C) is—

“(i) indigent; and

“(ii) seeking relief under the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, pursuant to the International Child Abduction Remedies Act (42 U.S.C. 11601 et seq.); or

“(D) is a citizen of—

“(i) the Commonwealth of the Northern Mariana Islands;

“(ii) the Federated States of Micronesia;

“(iii) the Republic of the Marshall Islands; or

“(iv) the Republic of Palau.”;
(3) by striking subsection (c) and inserting the following:

“(c) In making grants or entering into contracts for legal assistance, the Corporation—

“(1) shall ensure that any recipient organized solely for the purpose of providing legal assistance to eligible clients is governed by a body (referred to in this subsection as a ‘board’) at least 50 percent of which consists of attorneys who are members of the bar of a State in which the legal assistance is to be provided (except that the Corporation may grant, pursuant to regulations issued by the Corporation, a waiver of such requirement for recipients which, because of the population the recipients serve, are unable to comply with such requirement);

“(2) shall ensure that any attorney, while serving on such board, shall not receive compensation from a recipient for such service;

“(3) shall ensure that at least one-third of a recipient’s governing body consists of individuals who are, when selected, eligible clients who also may be representatives of associations or organizations of eligible clients; and

“(4) shall ensure that at least 1 board member is designated as a liaison to the bar association of
the State described in paragraph (1) for pro bono promotion and coordination.”;

(4) in subsection (d), by adding at the end the following: “The Corporation shall ensure that the monitoring and evaluation activities described in this subsection are carried out in a manner that is consistent with the applicable rules of professional responsibility for the jurisdiction in which the recipient is being monitored, and shall take reasonable steps to avoid imposing undue burden or expense on the recipient.”;

(5) by striking subsections (g) and (h); and

(6) by adding at the end the following:

“(h) The Corporation shall require all attorneys and paralegals employed by a recipient to maintain records of time spent on each case or matter supported in whole or in part with funds provided under this title.”.

SEC. 12. TECHNOLOGY GRANTS.

Section 1007 of the Legal Services Corporation Act (42 U.S.C. 2996f), as amended by section 12, is further amended—

(1) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(2) by inserting after subsection (b) the following:
“(c) In making a grant or entering into a contract under this section, the Corporation may provide that a portion of the funds provided under the grant or contract may be used to acquire and develop information technology to promote full access to high-quality, efficient legal representation and materials for self-representation.”.

SEC. 13. AUDITS.

Section 1009 of the Legal Services Corporation Act (42 U.S.C. 2996h) is amended—

(1) by striking subsection (c) and inserting the following:

“(c) The Corporation shall require an audit of each recipient in accordance with generally accepted auditing standards and shall require that the recipient prepare a report that includes—

“(1) the financial statements of the recipient, including an unbiased presentation of the recipient’s financial position and the results of the recipient’s financial operations, in accordance with generally accepted accounting principles; and

“(2) a description of internal control systems of the recipient that provide reasonable assurance that the recipient is managing funds, from all sources, in compliance with Federal law.”; and
(2) in subsection (d), by striking all that follows
the comma and adding “the Corporation, the Com-
troller General of the United States, and the Cor-
poration’s Inspector General shall not have access to
any information in documents, reports, or records
that is confidential under the applicable rules of pro-
fessional responsibility or that is subject to the at-
torney-client privilege.”.

SEC. 14. FINANCING.

Section 1010 of the Legal Services Corporation Act
(42 U.S.C. 2996i) is amended—

(1) in subsection (a), by striking the first 3 sen-
tences and inserting the following: “There are au-
thorized to be appropriated for the purpose of car-
rying out the activities of the Corporation
$750,000,000 for each of fiscal years 2010 through
2015.”;

(2) in subsection (c)—

(A) by striking the semicolon after “dis-
tinct from Federal funds” and inserting a pe-
riod;

(B) by striking “but any funds so received
for the provision of legal assistance shall not be
expended by recipients for any purpose prohib-
ited by this title, except that this” and inserting
“This”;

(C) by striking “or” after “to prevent re-
cipients from receiving other public funds” and
inserting “, private funds,”; and

(D) by inserting after “(including founda-
tion funds benefitting Indians or Indian
tribes)” the following: “, or any other funds re-
ceived from a source other than the Corpora-
tion”; and

(3) by adding at the end the following:
“(e) For purposes of other programs that have Fed-
eral funds matching requirements, funds received by a re-
cipient from the Corporation shall not be considered to
be Federal funds for the purpose of determining whether
those funds may be used as non-Federal matching funds.”