Statement of

The Honorable Russ Feingold

United States Senator
Wisconsin
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Senate Judiciary Committee Hearing
"Closing the Justice Gap: Providing Civil Legal Assistance to Low-Income Americans"
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Mr. Chairman, I commend you for holding this hearing on such an important topic. Access to civil justice is one of the most significant challenges facing low-income Americans today. The interests at stake in civil cases can be just as compelling as the interests at stake in a criminal case, and representation by counsel is just as important to vindicating those interests. Yet people accused of committing crimes are guaranteed access to a lawyer, while people who must go to court to secure housing, health care, or custody of a child may be left to fight their way through the system on their own.

We have not fulfilled our responsibility to protect low-income Americans' access to the civil justice system. In real terms, federal legal aid funding in this country has fallen sharply over the past twenty-five years. The United States now spends far less per person on legal aid than other industrial democracies. Moreover, federal funding is available only for people who earn less than 125% of the Federal Poverty Guidelines. That means a family of four with a household income of $27,000 would be considered too wealthy to qualify for assistance.

Just as troubling, Congress has placed politically motivated restrictions on the types of cases that legal aid organizations may handle, the categories of people who are eligible for representation, and the ability of legal aid lawyers to recoup fees. These restrictions effectively bar the courthouse doors to low-income Americans in cases where those same doors remain wide open to the wealthy and the privileged.

The effect of underfunding and politically motivated restrictions on the availability of legal services is predictable. Currently, there is only one legal services attorney for every 6,861 low-income persons. The American Bar Association has found that less than 30% of the serious legal needs of the indigent in this country are being met, and the Legal Services Corporation has determined that at least 80% of people who are eligible for LSC services do not have access to those services when they need them.

The effect of the lack of legal services on the ability to obtain justice is equally predictable. In a study of domestic violence cases in Baltimore, 83% of those who had counsel were able to secure a protective order to shield them from further violence, compared with only 32% of those who were unrepresented. In the immigration context, immigrants are four to six times more likely to obtain asylum - which is often a matter of life and death for the immigrant - if they are represented by counsel. And these disparities are felt most by women and minorities, since they are more likely to be poor.

The costs of this lack of access are borne by all of us. When people become homeless because they didn't have lawyers to help secure housing, society pays to shelter them. When they face legal barriers to obtaining basic health care, society pays for care in the emergency room. When a parent loses custody of a child for lack of legal representation, society pays for foster care. More fundamentally, the moral standing of our society is weakened when civil justice is dispensed based on the ability to pay.

The American Bar Association unanimously adopted a resolution in 2006 urging federal and local governments to provide legal counsel to low-income persons as a matter of right in civil cases involving basic human needs such as shelter, sustenance, safety, health, or child custody. Some states have already taken steps in this direction. The

federal government should not lag behind. When it comes to basic needs and rights, we should ensure that low-income people in this country have access to civil justice on the same terms as wealthy Americans. Only if we do so can we truly have a system of "equal justice under the law."