

## Testimony on: Vermont House Bill 545

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Testimony to the  
**House Committee on  
Judiciary**

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Consumers for a Responsive Legal System (“Responsive Law”) thanks the Committee for the opportunity to present its testimony on House Bill 545. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible and accountable to the people.

**We urge the passage of the bill, increasing the dollar limit for small claims court from \$5,000 to \$10,000.** Raising the small claims dollar limit to \$10,000 will benefit thousands of ordinary residents of Vermont and the administration of justice as a whole. The small claims court system gives ordinary people a genuine opportunity to resolve lower dollar-value disputes without the expense of a lawyer. Since it is neither practically nor economically feasible to bring such claims in Superior Court, increasing the small claims dollar limit to \$10,000 will significantly expand the number of litigants realistically able to resolve their disputes.

### **The Average Low-Dollar Dispute Cannot Be Feasibly Resolved In Superior Court.**

Bringing any kind of suit in Superior Court requires a lawyer. The average pro se plaintiff does not have the procedural knowledge necessary to even bring a civil suit, let alone to successfully litigate one. Without a lawyer, the ordinary Vermonter is likely to see even his meritorious case dismissed on the pleadings. If his complaint survives, he must then navigate the unfamiliar intricacies of motions practice, discovery, and evidence rules. In the end, he is almost certain to be out of court before he even sees the inside of a courtroom.

Retaining a lawyer, however, is often neither simple nor cost-effective. Potential litigants with claims valued at less than \$25,000 often have difficulty even finding a lawyer willing to take their case. Those who do retain one are quickly confronted with the economic reality that even if they ultimately prevail in court, they are unlikely to see anything but a fraction of their recovery, and may well find themselves in even greater debt.

The average take-home pay in Vermont is \$40,292.<sup>1</sup> The average person must therefore work an entire week in order to pay for only three hours of a lawyer's time, assuming an hourly billing rate of \$300. In cases that involve less than \$25,000, it is unlikely that this expense can be recouped, even if the claim ultimately prevails. A plaintiff who recovered \$10,000 in court would owe the *entire* \$10,000 in attorney's fees after only 33 ½ billed hours. In other words, if a lawyer worked on the case for only two weeks, and billed only 3 ½ hours a day, Monday to Friday, a complete victory in court would result in the plaintiff entitled to \$0 *and owing his lawyer \$500*. Absent a complete victory, of course, he would owe even more. A non-prevailing plaintiff, or a plaintiff who obtains only a partial recovery, must pay the same \$10,500 lawyer's bill, only with fewer resources with which to do so. Defendants face an even more dire situation. Assuming the same two-week \$10,000 claim litigation, and a lawyer who works no more than 3 ½ hour days, a victorious defendant's *best outcome* is to emerge from litigation owing his lawyer \$10,500. Of course, if the defendant is found at all liable he will owe even more.

Small- or medium-value litigants are rarely able to take advantage of alternative billing arrangements, such as contingency fees. The same cases that, with hourly billing, are economically unfeasible for the client are, with a contingency fee arrangement, economically unfeasible for the lawyer. Under a 30% contingency arrangement, a lawyer who spends more than *10 hours* on a \$10,000 claim is working at a loss, even if completely victorious.<sup>2</sup> No lawyer, no matter how confident in the merits of a case, can be certain at the outset that only 10 hours will be required. Finally, the average low-to medium-value claimant is not sufficiently indigent to qualify for legal services assistance,<sup>3</sup> nor is his claim sufficiently exceptional to

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<sup>1</sup> U.S. Bureau of Economic Analysis, "Table SA51-53, Disposable personal income summary," <http://www.bea.gov/iTable/iTable.cfm?reqid=70&isuri=1&acrdrn=4>, accessed January 10, 2014.

<sup>2</sup> Assuming a standard \$300 hourly billing rate.

<sup>3</sup> In Vermont, civil legal assistance is available through the Vermont Legal Aid Poverty Law Project, and generally requires an income level at or below 200% of the federal poverty level, which in 2012 was a mere \$11,490 for an individual. Vermont Legal Aid, "Poverty Law Project" <http://www.vtlegalaid.org/our-projects/poverty-law-project/>, accessed January 10, 2014.

displace the default American rule that each party pays his own lawyer. Although fee-shifting provisions are applicable in certain limited cases, these provisions generally require specific factors that cannot be guaranteed at the outset of litigation.<sup>4</sup>

**The Current Small Claims Limit Is Below the National Average, and Leaves Many Litigants Without Any Legal Forum**

In contrast to Superior Court, small claims courts are quick, efficient, and use simplified procedures that do not require specialized legal training to understand.<sup>5</sup> Claimants can litigate and obtain relief without incurring the expense of hiring a lawyer. Opponents may contend that small claims court deprives litigants of full due process protections. Litigants with claims too small to afford a lawyer, however, currently enjoy no due process whatsoever as they are economically prohibited from litigating their claims at all. The procedural protections afforded small claims litigants are, in any case, far more expansive than those reasonably available to pro se litigants in Superior Court.<sup>6</sup> Accordingly, for individuals and small businesses with lower-value claims, small claims courts are often the only practically and economically feasible legal forum.

Unfortunately, in Vermont, small claims courts are limited to claims of \$5,000 or less. Because many potential claims that exceed this value are still too small to be economically feasible in Superior Court, many potential claimants are trapped in a legal no-man's land, with no opportunity to have their claims adjudicated. HB 545 frees those with claims of \$10,000 or less from this no-man's land, empowering them to fairly and efficiently litigate and resolve their claims. HB 545 will also have broad systemic benefits. Allowing more cases to be adjudicated in small claims court will reduce the burden placed on Superior Courts by pro se litigants unfamiliar with legal procedures. It will also reduce the need for donated legal services,

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<sup>4</sup> A small-value tort or contract claimant who relies on fee-shifting not only runs an enormous risk, but in the run-of-the-mill case, is likely to be disappointed and left with a multi-thousand-dollar lawyer's bill.

<sup>5</sup> Small Claims procedure is intended to provide "a simple, informal, and inexpensive procedure" for resolving disputes. 12 V.S.A. §5531

<sup>6</sup> See, e.g., *id.* at § 5532 (describing the pleading requirements); § 5533(b) (describing the "concise, nontechnical" forms provided by the clerk).

allowing more pro bono services to be directed to low-income litigants with more complex claims in Superior Court.

Vermont's current \$5,000 limit is not only below the national average, but contrary to the growing trend of other states. In just the last few years, Wisconsin, Oregon, California, and Minnesota increased their limits to \$10,000, and in August of last year, Minnesota's limit rose again to \$15,000. Today, fully half of the states have limits higher than \$5,000; fifteen have limits of \$10,000 or more, including Pennsylvania (\$12,000), Delaware (\$15,000), and Tennessee (\$25,000).

### **In Conclusion**

Given these circumstances, there is a clear need for an increase in the small claims limit. But an increased limit of even \$10,000 will leave many Vermonters in the cold. Claimants seeking relief for greater than \$10,000 but less than \$25,000 will be unable to take their case to small claims, nor will their case justify the expense of an attorney. *Our only reservation about HB 545 is that it doesn't go far enough. A small claims court limit of \$25,000 would do much more to provide the people of Vermont effective access to the legal system.*

In an economic climate in which four out of five people cannot afford a lawyer, additional barriers should not be placed between people and the legal system that is intended to adjudicate their disputes. Providing a lawyer to all who have legal problems may be beyond our means, but we can at least expand the availability of a forum for those who cannot afford a lawyer to fairly resolve their disputes. **On behalf of the users of the legal system, we urge the Committee to support this legislation.**