

Statement of

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In Support of
Massachusetts Senate Bill 1109

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I thank the members of the Committee for the opportunity to submit this testimony in support of Senate Bill 1109. I would also like to thank Senator Panagiotakos for introducing this critical legislation. HALT is a nonpartisan, nonprofit public interest group with more than 50,000 members, including 1,500 in Massachusetts. HALT pursues an ambitious education and advocacy program that challenges the legal system to improve access and accountability and reduce costs in the civil justice system. HALT supports SB 1109 as an important step toward increased access to the civil justice system for all residents of Massachusetts.

Each year, tens of millions of low- and moderate-income households nationwide need legal help, but are denied access to the civil justice system. These Americans are shut out of the civil justice system simply because they cannot afford to hire a lawyer to help resolve their legal problem. Open and accessible small claims courts offer one way to address the enormous gap in access to justice that exists between those in upper income brackets and those with average or lower incomes. HALT strongly supports the increase in the small claims jurisdictional limit in SB 1109, which will help reduce the disparity in access to justice.

Small claims courts, because they offer simplified procedures, require plain English, provide consumer aids and sometimes prohibit lawyers, hold tremendous promise as a means of empowering ordinary Americans to handle their routine

legal needs. Unfortunately, this promise is not being fulfilled in many states across the country, including Massachusetts. The current jurisdictional limit on small claims in Massachusetts is a mere \$2,000, the fourth lowest limit of all states. HALT believes that a limit of \$20,000 is more appropriate, considering the dollar value of typical consumer problems that could easily be resolved in small claims court.

HALT understands that the \$20,000 mark is an ambitious goal that will require incremental steps to achieve. SB 1109 is an excellent stride in the right direction. By bringing Massachusetts' small claims jurisdictional limit up to \$5,000, the state would match the national median jurisdictional limit of \$5,000. Massachusetts' western neighbor, New York, recently made a similar first step when both chambers of the state's legislature passed a bill, which Governor George Pataki signed in October 2003, to increase the small claims jurisdictional limit in most of the state to \$5,000.

To illustrate the need for higher small claims cutoffs, consider an example of someone denied access to the system. Suppose a homeowner in Worcester hires a plumber to replace a pipe in her basement, only to come home the next day to find a foot of water on the floor because the plumber did not properly install the new pipe. The cost to repair all the damage from the botched job is \$6,000. The plumber, unfortunately, refuses to pay for the repair costs and is not returning the homeowner's calls.

The homeowner, having been rebuffed in her efforts to settle the dispute amicably, is forced to take the plumber to court to pay for the damage he caused. However, her \$6,000 loss exceeds the current limit of \$2,000 to bring a small claims case in Massachusetts. To bring a small claims case, she would have to reduce her claim by two-thirds so that she could bring her claim below the limit.

Suing in District Court is not a viable option for her because the complicated procedures used by those courts would require her to hire an attorney. For a case like hers, worth \$6,000, the attorney fees would easily exceed the restitution money she would collect if she won.

This scenario is far too common. Many Americans are stranded in a legal no-man's land because their routine legal problems have a dollar value above the state's ceiling on small claims, yet they cannot afford to hire an attorney for such a simple matter. These people are effectively shut out of the legal system.

SB 1109 would reduce the breadth of this no-man's land in which consumers are stuck due to the lack of an appropriate forum to resolve their simple disputes. By raising the limit of small claims jurisdictions to \$5,000, Massachusetts would make small claims procedures available to a wider range of everyday disputes that ordinary citizens frequently face.

HALT urges Massachusetts to build on the progress presented in SB 1109 by considering further reforms to address the problem of limited access to small claims courts. In the hypothetical case of our Worcester homeowner, the \$5,000 limit on the small claims actions would still force her to give up \$1,000 of her claim or go to the prohibitive and unnecessary expense of hiring an attorney to resolve this simple consumer problem.

To achieve real reform, HALT believes that the small claims dollar limit should be raised to \$20,000 – about the average price of a new car. While purchasing a new vehicle is an important financial decision for most people, it is not one for which they consult an attorney or other outside expert. Similarly, Massachusetts residents who are seeking resolution to their legal problems should not need the expertise when those problems are of equal value.

A recent HALT study (Attachment 2) alleviated a chief fear over raising jurisdictional limits. Court administrators in several states have raised the understandable concern that higher dollar limits would produce an onslaught of new cases, straining the system to its breaking point. The HALT analysis used data from small claims courts across the nation over the last 18 years to study the effects on caseloads after a jurisdictional increase. The HALT report put forth conclusive evidence that a jurisdictional limit increase very rarely leads to a larger caseload. According to the study, in most cases of dollar limit increases, the caseloads do not change at all and the average increase in caseload was only 5.4 percent.

As the advantages of small claims courts with less restricted access become clear, many states have recently moved to increase the jurisdictional limits on their small claims courts. In the last year, New York, Maryland, California, Indiana and Utah have all shown a commitment to reforming their state's small claims courts.

HALT's Small Claims Reform Project has suggested a number of reforms that should be implemented to reform small claims courts nationwide. In addition to raising dollar limits, these reforms are:

- (1) **Providing assistance with collecting judgments.** Once people have entered the small claims system, the biggest problem they face is collecting a judgment if they win their case. Massachusetts law already provides small claims courts some power to enforce judgments and to set up installment plans. Such procedures need to be expanded and made mandatory so that a small claims victory is not a Pyrrhic one.
- (2) **Authorizing small claims judges to issue court orders.** In most states, small claims courts can only award money damages. Small claims courts cannot issue court orders that require someone to "cease and desist" from actions that harm others. This limitation means that many small disputes between neighbors or over contract rights cannot be dealt with in small claims court. The lack of the ability to issue court orders also means that small claims judges often cannot help people collect a judgment they have won. Fully empowering small claims judges to handle cases and problems that require a court order is a major reform that would improve consumer service within the small claims system.
- (3) **Expanding small claims dispute resolution programs.** Because many small claims involve disputes between neighbors, partners and others who know each other, and who often must co-exist in the future, the exclusive reliance on a court-based, adversarial system can actually make matters worse in the long run. Mediation and other alternative dispute resolution methods are one way to avoid some of the lasting antagonisms that are produced by court fights. The District of Columbia has implemented an innovative "diversion" program that tries to redirect small disputes out of the court system. Such diversion programs tailored to small claims courts offer a significant reform that will help legal consumers receive better service from the system.
- (4) **Making small claims courts user-friendly.** Americans also avoid courts that operate on "bankers hours," require special forms, and tell consumers they are on their own. One way to correct this problem is through small claims courts that are user-friendly and accessible to the public. A final reform would establish small claims courts with longer hours of operation and weekend hours, require the use of plain language forms for easy-to-resolve matters, and provide in-person assistance to consumers at the courts.

HALT is deeply concerned by the current denial of access to the justice system that many Massachusetts residents face. While we applaud this

legislation's effort to correct this situation, HALT urges Massachusetts to take further action to resolve this problem in the future. With appropriate reform, Massachusetts small claims courts can meet their potential to offer a suitable forum for those currently stuck outside of the system to handle their simple legal needs. Thank you again for considering HALT's testimony concerning this vital legislation.

