SMALL CLAIMS REFORM:
A MEANS OF EXPANDING ACCESS TO THE AMERICAN CIVIL JUSTICE SYSTEM

by James C. Turner and Joyce A. McGee[1]

INTRODUCTION

Every American should enjoy full access to the protections offered by the U.S. civil justice system. Unfortunately, this basic right is often denied to millions by civil court procedures and practices that are costly, Byzantine and hostile to ordinary citizens who need legal help. In fact, according to the American Bar Association, tens of millions of American households that need legal help are denied access to the civil justice system every year.[2]

One key method of improving citizen access to the civil justice system is through small claims courts. These courts – which use simplified procedures, require plain English, provide consumer aids and often prohibit lawyers – have tremendous promise as a means of empowering ordinary people to take charge of their own routine legal needs.

There are five key improvements that can enhance the current small claims systems in most states:

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[1] James Turner is the Executive Director and Joyce McGee is the Associate Counsel at HALT–*An Organization of Americans for Legal Reform.*

[2] See *Agenda for Access: The American People and Civil Justice – Final Report on the Implications of the Comprehensive Legal Needs Study*, Consortium on Legal Services and the Public, American Bar Association, Chicago, Illinois (1996).

- Raising small claims dollar limits to $20,000;
- Authorizing small claims judges to issue court orders, not just award money damages;
- Expanding small claims dispute resolution programs;
- Protecting non-lawyer litigants; and
- Creating user-friendly courts.[3]

Through small claims reform, accessibility to the U.S. civil justice system can be increased to meet the simple and routine legal needs of millions of Americans. Small claims courts simplify legal procedures, resolve disputes quickly and are much less expensive for the parties. These courts offer great promise as a means for opening the doors to the civil justice system for Americans who simply cannot afford to hire an attorney. Much reform is needed, however, to make small claims courts more accessible to the public and more user-friendly. Unfortunately, today small claims court systems in most states fail to meet these two basic goals that are indispensable in achieving a civil justice system that serves all Americans.

This article proposes a set of aggressive reforms for small claims courts nationwide. Some of the proposed reforms are quite ambitious and will take time to achieve, while others are simple ways to improve the quality of the small claims experience for legal

[3] HALT and citizen activists nationwide have begun to organize a campaign to educate legal consumers about their rights and to advocate for systemic reforms to promote fairness and democracy in our civil justice system. Increasing access, visibility and coverage of small claims courts is an integral part in this reform campaign that can offer meaningful legal protections to millions of low and moderate income Americans who are currently shut out of the system.

consumers. These proposals stem from a project launched in the Spring of 1998 by HALT–*An Organization of Americans for Legal Reform*.[4] The Small Claims Reform Project is a multi-year, national campaign to publicize the existence of and advantages available in small claims courts. In addition, HALT's Small Claims Reform Project seeks to educate legal consumers about their rights in small claims court and to advocate for systemic reforms.[5]

[4] HALT–*An Organization of Americans for Legal Reform* is a national nonprofit, public interest group of 50,000 members dedicated to helping Americans handle their legal affairs simply, affordably and equitably. Founded in 1978 by two Rhodes scholars, HALT pursues an aggressive education and advocacy program that challenges the legal establishment. HALT disseminates self-help legal resources – books, fact sheets and legal referrals – to thousands of legal consumers each year. In addition to the *Small Claims Reform Project*, HALT has developed the following projects to help make the civil justice system more accessible to all Americans: the *Freedom of Legal Information Project;* the *Legal Consumer Bill of Rights Project;* the *Lawyer Accountability Project;* the *Judicial Integrity Project;* and the *Legal Information Clearinghouse and Referral Network.* HALT is located at 1612 K Street, NW, Suite 510, Washington, DC 20006. More information about HALT can be obtained on the Internet at http://www.halt.org/.

[5] HALT has supported legislative reforms that would increase small claims dollar limits in California (Assembly Bill 246 (1997) increase limit from ($5,000 to $7,500); New York (Assembly Bill 56 (2000) increase from $3,000 to $5,000); Texas (Senate Bill 55 (1999) from $5,000 to $10,000); Idaho (Senate Bill 1126 (1999) increase from $3,000 to $4,000); Indiana (House Bill 1021 (2000) increase from $3,000 to $10,000); Kansas (House Bill 2359 (2000) increase from $1,800 to $2,500); and Wisconsin (Assembly Bill No. 620 (2000) increase from $5,000 to $10,000). In 1999, HALT supported reform efforts led to the creation of a statewide small claims system in Virginia, and increases in small claims dollar limits in Michigan (House Bill 4103 (1999) from $1,750 to $3,000) and Louisiana (House Bill No. 944 (1999) from $2,000 to $3,000).

SMALL CLAIMS COURT SYSTEMS

Small claims courts developed in the United States in the early 1900s to address the basic problem that the existing justice system was too costly and timely for the "working man and tradespeople."[6] The primary goals of the original small claims courts were to reduce expense (fees and by eliminating the use of a lawyer), and to reduce delay by simplifying pleadings and eliminating procedural steps.[7] While small claims courts began to develop across the country, criticism of their effectiveness also developed. Critics of the small claims movement found the systems: (1) disadvantageous to defendants (early studies found that plaintiffs almost always won in small claims courts); (2) too rushed, which resulted in a disadvantage to inexperienced; (3) were handling issues too complex for such informal proceedings; (4) inadequate for collecting judgments; and (5) a conflict of interest when judges made efforts to mediate or settle claims.[8] Despite the criticism, small claims courts emerged as a viable alternative to the cumbersome and expensive general jurisdiction courts.

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[6] SUZANNE E. ELWELL, *The Iowa Small Claims Court: An Empirical Analysis*, 75 IOWA L. REV 433(1990); ARTHUR BEST, et al, *Peace, Wealth, Happiness, and Small Claims Courts: A Case Study*, 21 FORDHAM URB. L.J. 343, 346 (1994); JOHN C. RUHNKA & STEVEN WELLER, SMALL CLAIMS COURTS: A NATIONAL EXAMINATION 189-191 (1978).

[7] *See* BEST, *supra note* 6 at 346.

[8] *See* RUHNKA, *supra note* 6 at 5-6.

Today, the purpose of small claims is still to reduce cost and delay. Small claims courts work under rules that are less complex than the procedures of other trial courts.[9] Many small claims courts are using less legal jargon and are providing simple legal forms without technical language. Some courts require mediation prior to appearing before a judge in small claims court, while others offer dispute resolution programs as an alternative. Some courts even have advisors to assist people through the small claims process.[10] Because of their simplified procedures and plain language, small claims courts have potential for opening the door that has been shut to millions of Americans for resolving their legal affairs. More and more states are passing laws to increase the dollar limits for bringing a small claims matter.[11] Despite these advances, which have improved accessibility, much reform is still needed in small claims courts.

GENERAL GUIDELINES FOR SMALL CLAIMS COURTS

Small claims courts exist to resolve disputes expeditiously which involve a modest amount of money. Typically, the parties represent themselves. This process can prove to be advantageous because it saves people the time of a more lengthy and formal lawsuit, and it can save them money from not having to hire an attorney. While most states do not

[9] Theresa Meehan Rudy, *Small Claims Court Making You Way Through the System: A Step-By-Step Guide* (1990).

[10] In California, each county is required by law to have a Small Claims Advisory Program. The advisors help guide people through every stage of the small claims process.

prohibit parties from bringing an attorney to small claims courts, some courts absolutely prohibit it to keep the playing field level.

Most small claims courts require the person filing the complaint to only fill out a simple form.[12] Once the suit is filed, a hearing will usually be held within a short time. Most hearings do not take longer than fifteen minutes and a decision is either announced at the hearing or mailed within a few days.

The biggest limitations on small claims courts are the dollar limits and the types of cases that can be brought in small claims court. Most small claims courts do not handle domestic relations or landlord-tenant cases. The cases brought in small claims court are limited to only money damages, and low money damages at that. Once a case is heard in small claims court, most states do allow for an appeal (usually within a few of weeks of the decision).

The chart below summarizes the monetary jurisdictional limits and practices with respect to attorney participation in small claims courts across the nation.

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[11] See note 5, supra.

[12] For example, in California you need only fill out a few lines on a sample form to initiate a small claims lawsuit. This process is tremendously different from the formalistic requirements in other courts for initiating a lawsuit.

Summary of Small Claims Practices

State	Small Claims Monetary Limit	Attorney Allowed
Alabama	$3,000	yes
Alaska	$7,500	yes
Arizona	$7,500	yes
Arkansas	$5,000	no
California	$5,000	no, unless attorney representing self
Colorado	$5,000	no, unless full-time employee of partnership or corporation and other side has attorney
Connecticut	$2,500	yes; required for corporations
Delaware	$15,000	yes
District of Columbia	$5,000	yes; required for corporations
Florida	$5,000	yes
Georgia	$5,000	yes
Hawaii	$3,500	yes, except in landlord-tenant cases; with court permission, attorney may represent party if no fee is charged
Idaho	$3,000	no

Illinois	$5,000	yes, except Cook County “Pro Se” branch; required for corporations
Indiana	$3,000 ($6,000 Marion County)	yes
Iowa	$4,000	yes
Kansas	$1,800	If one party uses an attorney (or is one), all other parties may have an attorney.
Kentucky	$1,500	yes
Louisiana	$3,000	yes
Maine	$4,500	yes
Maryland	$2,500	yes
Massachusetts	$2,500	yes
Michigan	$3,000	no
Minnesota	$7,500; $4,000 with commercial plaintiff	yes, only with court permission; required for corporations
Mississippi	$2,500	yes
Missouri	$3,000	yes
Montana	$3,000	no, unless all sides are represented by an attorney
Nebraska	$2,100	no
Nevada	$3,500	yes
New Hampshire	$2,500	yes

New Jersey	$2,000	yes
New Mexico	$5,000	yes; required for corporations
New York	$3,000	yes; required for corporations
North Carolina	$3,000	yes
North Dakota	$5,000	yes
Ohio	$3,000 (Municipal Court); $5,000 (County Court)	yes; a corporation may proceed through an officer or employee, but may not cross-examine, argue or advocate except through an attorney
Oklahoma	$4,500	yes, but attorneys are limited to charging no more than ten percent of judgment in uncontested cases.
Oregon	$4,500	no, unless court gives consent
Pennsylvania	$5,000 (Municipal Court); $8,000 (District or Justice Court)	yes; required for corporations
Rhode Island	$1,500	yes; required for corporations, except close corporations
South Carolina	$2,500	yes
South Dakota	$4,000	yes
Tennessee	$15,000 (in	yes

	counties of more than 700,000 population; $25,000 (in suit to recover personal property)	
Texas	$5,000	yes
Utah	$5,000	yes
Vermont	$3,500	yes
Virginia	$1,000	no, unless bringing own suit
Washington	$2,500	no, unless court consents
West Virginia	$5,000	yes; required for collection agents
Wyoming	$3,000 (Small Claims Court); $7,000 (County Court)	N/A

The small claims information summarized in this chart reflects changes through December of 1999. Detailed information is compiled and updated on HALT's Internet website, http://www.halt.org.

A SAMPLING OF RECENT SMALL CLAIMS REFORM EFFORTS

Legislative Proposals

In New York State, legislation to raise the small claims dollar limits from $3,000 to $5,000 was favorably reported by the Assembly Rules Committee last year for the first time ever. In California, legislation that would have raised the dollar limits for California small claims courts from $5,000 to $7,500 passed both chambers of the state legislature only to be vetoed by then-Governor Wilson in 1998. In Indiana in May of 1999, Governor Frank O'Bannon signed into law a bill that raised the dollar limit in small claims court in Allen County from $3,000 to $6,000. In Michigan in May of 1999, Governor John Engler signed into law a bill that raised the dollar limit in small claims court in Michigan from $1,750 to $3,000. In Louisiana in May of 1999, Governor Mike Foster signed into law a bill that raised the dollar limit in small claims courts in Louisiana from $2,000 to $3,000.[13]

Creation of a Statewide Small Claims System in Virginia

One of the last states to embrace small claims, Virginia opened a small claims court in every District Court in the Commonwealth in 1999. A survey completed by HALT in the summer of 1999 showed that all 125 District Courts were in compliance with the new

[13] See note 5, supra.

law.[14] Although some of the new small claims courts had been up and running for several months by mid-1999, most had not been in operation for very long but were already handling a substantial volume of matters. Overall, the survey confirmed that the new Virginia small claims courts have already become a valuable tool for the public in resolving simple legal matters.

Small Claims Advisor Program

California's innovative Small Claims Legal Advisor Program requires each county to provide individual assistance and free advice to small claims litigants. This program employs advisors who help people through the small claims process by helping them prepare for trial, providing them with informational materials, referring them to other appropriate agencies and programs (particularly mediation programs, if available), and by acting as their guides and teachers. The California Small Claims Legal Advisor Program was established by law and is funded from small claims filing fees. While this program does work to increase accessibility, it has experienced some difficulty in meeting an increasing caseload for small claims courts. Similarly, this promising program, which has proved to be extremely helpful to people coming through the small claims process, has suffered from under funding and under staffing in many locations.

[14] See Code of Virginia, §§ 16.1.76-113 and 122.1-122.7.

Dispute Resolution Programs

In the District of Columbia, a mandatory alternative dispute resolution program is applied to all civil actions in Superior Court, including small claims. This innovative diversion program thus attempts to redirect small disputes out of the court system and into the hands of mediators. Very few states have mediation as an option in the small claims court system.

ADDITIONAL REFORMS TO ENHANCE SMALL CLAIMS SYSTEMS

Each year, tens of millions of low and moderate income households nationwide need legal help, but are denied access to the civil justice system.[15] Most of these Americans are shut out of the civil justice system simply because they can not afford to hire a lawyer to help resolve their legal problem. As a result, the legal needs of tens of millions of Americans go unaddressed each year due to inaccessibility and high cost. A civil justice system that hopes to serve all Americans must promote innovations that increase accessibility for citizens of limited means and begin to serve their needs. Small claims reform is one way to help address this enormous gap. Currently though, small claims courts are not living up to their potential, with many in dire need of reform to even begin to help close the accessibility gap.

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[15] *See Agenda for Access: The American People and Civil Justice–Final Report on the Implications of the Comprehensive Legal Needs Study*, Consortium of Legal Services and the Public, American Bar Association, Chicago, Illinois (1996).

What follows are a set of reforms developed through HALT's *Small Claims Reform Project.* As mentioned above, some are more ambitious than others, but each suggestion can independently offer an opportunity to increase accessibility to the civil justice system.

Raise the monetary jurisdictional limits for small claims courts to $20,000

In most states and the District of Columbia, "small claims" procedures have been limited to extremely low dollar amounts, in the greater Washington metropolitan area ranging from a low of $1,500 in Virginia to a high of $5,000 in Maryland and the District.[16] As a result, Americans who can not afford to hire an attorney, and have claims that are more than the small claims dollar limitation, are effectively shut out of the legal system.

Raising these small claims dollar limits is a critical first step in opening up the system. While the ultimate goal of a $20,000 limit may require some incremental steps,

[16] See Code of Virginia, §§ 16.1.76 -113 and 122.1-122.7; Code of Maryland, Courts and Judicial Proceedings Article, §§ 4-405, 6-403; Chapter 13, District of Columbia Code §11-1321. These extremely low small claims amount in controversy limits are mirrored in those of other major jurisdictions nationwide, *e.g.,* Michigan ($3,000) Michigan Compiled Laws Annotated §§ 600.8401 - 600.8427, 8401-8427; New York ($3,000) Consolidated Laws of New York Annotated, Uniform Justice Court Act, §§ 1801-1814; Illinois ($2,500) Illinois Compiled Statutes: Ch. 735, §§ 5/1-104 and 5/2-416; Florida ($2,500) Florida Rules of Court: Small Claims Rules 7.010-7.341; Texas ($5,000) Texas Code Annotated,§§ 28.001-055; and California ($5,000) Annotated California Codes, Code of Civil Procedure, §§ 116.110 - 116.950.
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achieving that kind of increase would be the most meaningful reform to increase consumer access to the small claims system.

For example, a Michigan homeowner hires a plumber to fix a leaking pipe in his kitchen. Unfortunately, while welding the leak, the plumber starts a fire that causes $6,000 in damage to the homeowner's kitchen. The plumber refuses to pay for repairing the damaged kitchen. Michigan limits small claims to those of $3,000 or less, so the homeowner can only seek half of the real damages in small claims court. And if the homeowner can find an attorney who will agree to file a formal law suit against the plumber for this modest amount of damages, the attorney's fees will eat up any recovery above the $3,000 he could get through a small claims proceeding. Thus, the low small claims dollar limit creates a major gap in our civil justice system that effectively denies our Michigan homeowner, and millions of other Americans, a forum that can deal fully with their modest legal needs.

In addition, the unreasonably low dollar limits exclude many small disputes over common consumer goods from small claims courts. As reported by the American Bar Association Journal, Colorado's $5,000 limit is high enough to cover a dispute over a Les Paul Elegant Gibson Guitar, while Michigan's $1,500 limit is only high enough to cover a mink and leather reversible jacket, and Tennessee's nationwide high limit of $15,000 would extend small claims procedures to a dispute over a 1999 Dodge Caravan.[17] As the costs of

[17] ABA Journal, "Pumping Up Small Claims: Reformers seek 20K court limits — with no lawyers," December 1998.

consumer goods increase, these limits need to keep pace to take full advantage of small claims procedures.

By simply raising the small claims dollar limits, millions of Americans would no longer be shut out of the system, but would have an alternative available to them to resolve their legal disputes. As a result, accessibility would be greatly increased. Because small claims courts are guided by statutes, this type of reform will have to take place with the help of legislators in support of small claims reform. While the ultimate goal of $20,000 is ambitious considering the extremely low dollar limits that are currently in effect in some jurisdictions, it is the single reform that can most strengthen our small claims system even if it can only be achieve through a series of incremental increases.

Authorize small claims courts to grant injunctive relief

In most states, small claims courts can only award money damages; they cannot issue court orders that require someone to do something, or to "cease and desist" from actions that have violated the rights of others. This limitation means that many small disputes between neighbors or over contract rights cannot be dealt with in a 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 that they have won. Empowering these same judges to handle cases and problems that require a court order would greatly improve the small claims system.

What this means is that many simple disputes are not brought to small claims courts because they involve remedies the judge is incapable of giving. For example, a small dispute between neighbors that is based on a nuisance often may not be resolved with an award of money damages. However, a simple order requiring one person to stop doing something that is against the law may be all that is needed.

Similarly, many small disputes over contracts cannot be heard in small claims courts, because the remedies typically sought are specific performance or determinations about whether a contract exists or not. Unfortunately, these simple disputes are currently excluded from the small claims arena.

The lack of injunctive authority in small claims courts also means that small claims court judges often cannot help people collect a judgment that they have won. As a result, even those who secure money damages through the small claims process end up having to collect their judgment through other court proceedings with their attendant delays and unnecessary complexity.

The solution to these gaping loopholes in small claims jurisdiction over simple disputes is straightforward; small claims judges should be fully empowered to handle cases and disputes that require a court order. This would further open the doors to the civil justice system for many Americans who do not resolve these simple disputes in other courts because of time and cost. In addition to opening the doors to more types of disputes, this reform would also improve the quality of consumer service by the small claims system.

Expand small claims alternative 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. As discussed above, the District of Columbia has recently implemented an innovative "diversion" program that tries to redirect disputes, including small claims, out of the court system and into an alternative dispute resolution program. Such diversion programs tailored to small claims courts offer a third significant reform that will help legal consumers receive better service from the system. While some small claims courts offer mediation services as an option before getting to a hearing, not enough do. This is an important reform for the kind of parties who will have to maintain a relationship after the dispute is long resolved.

Mediation is an alternative that should be available to each and every party who comes to small claims court. Dispute resolution programs typically have people specially trained in mediation to help focus the issues in dispute and to guide the parties to an amicable resolution. Mediation can be an extremely rewarding process and has many benefits the adversarial system does not offer. For example, before going to a hearing in small claims to present a case, each party would meet individually with a mediator and then in one session with all parties involved. Sometimes, the mediation process can take several

sessions. However, mediation is a good way to avoid some of the lasting antagonisms that are produced by court fights.

To provide better service, court systems that already have dispute resolution programs should extend them to small claims, and those that don't should create such programs for their small claims courts. Most people are unaware that such programs exist and small claims is another avenue for reaching parties who could benefit greatly from a dispute resolution program.

Protect nonlawyer litigants

Many Americans avoid the civil justice system because solving their legal problems is not worth dealing with lawyers and legalese. Many small claims courts already offer simplified procedures that are stripped of most legal jargon, but the most intimidating factor – the prospect of facing a hostile lawyer – often remains.

Over the last two decades, reform advocates have stressed the importance of excluding lawyers from small claims courts. As the National Center for State Courts reported in a 1978 study:

> Judges in the courts prohibiting attorneys at trial were almost unanimous in saying they would not want attorneys at small claims trials. Their general view was that attorneys would not add enough of value to the process of arriving at a just decision to justify the additional time the trial would take and the added expense.... In addition, many judges felt laymen could understand the trial process more easily if lawyers were not present, since lawyers often used legal magic words – objecting, demurring, claiming heresy, and so forth

– which tended (either intentionally or inadvertently) to confuse nonlawyer litigants.[18]

The idea of arguing a case against an attorney is very intimidating to the average lay person, who lacks the formal education and experience of lawyers. While many small claims courts already offer simplified procedures that are stripped of most legal jargon, they still allow attorneys in small claims court. The prospect of facing a hostile lawyer is present in most states.

Some states currently do have restrictions that only allow attorneys if both sides are represented by one, but the majority allow full attorney representation in small claims procedures. The simple reform of banning lawyers from small claims court would protect nonlawyer litigants from facing hostile lawyers in small claims court, and help keep the playing field level for all litigants who wish to take advantage of the simplified procedures in these courts.

Create user-friendly small claims courts

Americans also avoid courts that operate on "bankers hours," require special forms, and tell consumers they're on their own. One way to correct this problem is through small claims courts that are user-friendly and accessible to the public.

[18] Ruhnke, J. C., *et al*, *Small Claims Court: A National Examination*, National Center for State Courts: 1978, pp. 24-25.

Many small claims courts are not user-friendly because they do not have hours that are convenient, their forms are too difficult and complex, and they leave consumers without any guidance as to how to deal with their small claims case. In addition, many Americans are shut out of the small claims system due to language barriers, and the inability of court personnel to communicate in languages other than English.

Most Americans have no idea where to begin in filing a suit in small claims. As a result, people are not adequately informed of the options available to them to resolve their legal matters. Many believe they have no other choice if they can not afford to hire an attorney to resolve their legal disputes. Many are also not aware of their rights. Even people who are aware of small claims courts as an alternative to handling simple legal matters are not comfortable bringing suit.

Expanding small claims hours, implementing innovations such as the California Small Claims Legal Advisor Program, and increasing staff resources, are straightforward reforms that can greatly enhance the usefulness of small claims courts.

CONCLUSION

Although state lawmakers have expanded the reach of small claims courts in recent years, progress has been slow and incremental. These courts have long since proven to be invaluable not only as a means of expeditiously resolving small disputes that few, if any, attorney would accept, but also as a means of reducing the caseloads in state courts of

general jurisdiction. Shouldn't the legal community make better use of the unique advantages of these specialized courts?

The five simple and straightforward reforms we have outlined above provide a blueprint for doing so. Raising small claims jurisdictional limits to $20,000, authorizing injunctive relief by these courts, expanding alternative dispute resolution programs, protecting non-lawyer litigants and creating user-friendly courts are reforms that build on the most successful small claims innovations across the nation.

They should not occasion controversy, and their adoption would greatly increase the accessibility of the civil justice system to the millions of Americans who are now excluded from it. Especially in a time of shrinking resources for improving legal services to Americans of limited means, small claims reform stands out as an inexpensive and effective way to help empower these neglected Americans.

Those in the legal community who share our commitment to a civil justice system that truly serves all Americans should join the reform efforts to expand and improve small claims courts. It really can make a difference.