

Protecting the rights of low income older adults



National Senior Citizens Law Center

2011 ANNUAL REPORT

NSCLC
National Senior Citizens Law Center



Chair's Perspective

As Board Chair this past year, I have watched with great pride as the National Senior Citizens Law Center impacted significant issues affecting low-income older adults. The elderly poor and their advocates nationwide have no more important champion working on their behalf.



Robert Johnson

For the first time in its 40-year history, the organization was recognized by Philanthropedia, a division of the online charity information service GuideStar, as a 2011 Top Non-Profit. NSCLC is one of only 13 national aging organizations recognized by experts in the field for its

outstanding work. This honor reflects well not only on NSCLC's effectiveness and impact, but also on its stability and outstanding leadership.

In addition, there were successes in each of the organization's three priority issue areas. Here are just some examples:

- **Health Care:** The U.S. Centers for Medicare and Medicaid Services looked to NSCLC for its expertise on the rights of dual eligibles and also adopted, under pressure from our team, a final rule improving access to translated materials for limited English proficient Medicare beneficiaries. Through litigation, the health team collaborated successfully with others to save adult day health care services from the budget axe in California.
- **Economic Security:** NSCLC staff provided unique insight into the ongoing debates about the future of Social Security and Supplemental Security Income and succeeded in securing class certification in *Clark v Astrue*, a case that restores Social Security and SSI benefits to over 100,000 seniors and people with disabilities who lost benefits because of an illegal policy.

- **Federal Rights:** The Federal Rights Project staff filed Supreme Court amicus briefs on several significant court access cases and played a major role in advocating for the constitutionality of the Affordable Care Act in amicus briefs submitted to various federal courts and as featured spokespeople in the media and in public forums held across the country.

NSCLC attorneys also continued to offer information, education and counsel to legal services advocates from all over the country through publications, webinars, phone and online requests as well as presentations at many conferences, seminars or forums.

Over the past year, the board has expanded with the addition of former U.S. Senator Fred Harris, Center for American Progress President Neera Tanden, and University of California Professor Carroll Estes. In addition, the board added new Litigation and Public Policy committees and strengthened its Development Committee.

NSCLC welcomed new Development Director Noris Weiss-Malvey and Borchard Law and Aging Fellow Evin Isaacson and, with heartfelt appreciation, said goodbye to Development Director Lynda Martin-McCormick, Staff Attorney Gene Coffey and Borchard Fellow Rachel Frazier.

NSCLC relies on the support of some of America's leading foundations to help to fulfill its mission. Individual donors who understand the importance of NSCLC's work are also an important source of support. The board and staff are grateful to all those who continue to recognize the value and significance of this organization.

Now more than ever we need an organization like the National Senior Citizens Law Center. Please join me in supporting NSCLC in 2012.

Executive Director's Message

Even as the ranks of the nation's elderly poor grow and their needs for quality health care and economic security explode, the programs they rely on are under constant attack.

Cuts to dozens of needed state programs are already underway and many of the cuts are illegal. Cuts to Medicare, Medicaid, Social Security and Supplemental Security Income (SSI) seem inevitable.

Federal programs, the aging network and private insurance plans all fail to provide services that are culturally and linguistically appropriate.

The Supreme Court could soon decide whether consumers have the right to sue state governments to obtain health care benefits. It could also decide to find the health reform law unconstitutional, which could have serious repercussions for seniors with limited income or resources.

As I've said many times before, interest groups in Washington and in state capitols have dozens of lawyers to represent them on issues like these. The elderly poor need lawyers on their side too.

In 2012, NSCLC will work, often in collaboration with other national legal and consumer groups, to fight for strengthening, not cutting federal health and income security programs. With the National Committee to Preserve Social Security and Medicare and others, for example, we will stand together in support of Social Security. At the same time, we will seek to fix problems such as the broken SSI appeals process and identify areas in which seniors with limited income and resources could be better protected.

As our health team did recently in joining with others to save the California Adult Day Health Care Services program, we will fight to keep such programs alive for the elderly poor.

As states are encouraged to move dual eligible individuals (those with both Medicare and Medicaid) into integrated care models, we will ensure strong consumer protection for them.

In 2011, we achieved victories on behalf of those with limited English proficiency. We remain committed to promoting language access to benefits programs in 2012.

NSCLC has a long history of opposing judicial activism. In that tradition, the Federal Rights Project continues its leading role in fighting challenges to the health reform law that are now before the Supreme Court. The Project has just submitted amicus briefs to the Court related to the legality of the individual mandate and the doctrine of severability.

This year, we begin a monthly Webinar series as part of our ongoing effort to keep legal services advocates in our networks informed and better able to advise and help their clients. The series, our newsletters, frequent health and income network alerts as well as our new Web site and regular one-on-one contacts all combine to educate and counsel those on the front lines.

The need for strong advocacy on behalf of the elderly poor could not be more pressing. NSCLC, its partners in the legal and aging fields and thousands of dedicated advocates nationwide are bracing for a challenging year ahead.



Paul Nathanson



Health Care

NSCLC ensures that low-income older adults understand and have access to affordable health care benefits and that more people receive long-term care services at home.

To achieve its objectives, NSCLC's health team regularly uses administrative advocacy, providing information, policy insight and guidance to federal and state agencies on emerging issues. NSCLC selectively employs litigation, often in collaboration with other national or state-based consumer and legal organizations.

In 2011, NSCLC:

- **Preserved access to adult day health care for 35,000 Medi-Cal beneficiaries, ensuring that older adults and people with disabilities in California** are not forced into nursing homes (*Darling et al v Douglas*). In June, NSCLC joined with other legal services lawyers and filed a motion in Federal court for a preliminary injunction to stop elimination of the Adult Day Health Care Program as a Medi-Cal benefit. In November, we reached a settlement in the case which allowed many to retain home and community-based services in a new state program.
- **Provided expert guidance to policymakers and advocates on how to improve care for people with both Medicare and Medicaid (dual eligibles)** in new integrated models. NSCLC published a series of four issue briefs and held an equal number of Webinars on the topics covered in them. In July, 80 policymakers, advocates and others attended a NSCLC policy forum at the Kaiser Family Foundation in Washington, DC, that spotlighted the need for consumer protection.
- **Ensured that insurance plans translate more Medicare materials for those who have limited English proficiency** by enlisting a groundswell of comments to a proposed federal regulation. Urged by NSCLC to comment on a proposed federal regulation, nearly 150 consumers and advocates nationwide responded and the result was stronger rules for Medicare plans that serve millions of people with limited English proficiency.

NSCLC hosted a policy forum on ***Ensuring Consumer Protection for Dual Eligibles*** at the Kaiser Family Foundation in July. Panelists at the Washington, DC event included (from left to right): Center for Medicare Advocacy Attorney Patricia Nemore, NSCLC Deputy Director Kevin Prindiville, Medicare Medicaid Coordination Office Director Melanie Bella and SCAN Foundation President and CEO Bruce Chernof.



- **Created interest and action related to LGBT older adults' concerns about long-term care** with the release of a landmark report and Web-based video stories based on a Arcus Foundation-supported survey of LGBT seniors, providers and other caregivers. As a result, a Kentucky philanthropic group gave a grant to a nursing home ombudsman agency to train staff to be more in tune with issues gay residents encounter.



NSCLC co-sponsored a September *My Medicaid Matters* rally in the shadow of the U.S. Capitol. Here, former Staff Attorney Gene Coffey (kneeling) talks with other advocates.

In a series of papers on Medicaid payment for assisted living, NSCLC explored several issues including whether residents have a right to return after a hospitalization. At a Capitol Hill briefing in March, NSCLC's Eric Carlson urged states to enact more laws to protect assisted living residents and called for more federal oversight. The series was developed with support from the Commonwealth Fund.

NSCLC made great strides in bringing serious attention to language access issues. Early in the year, NSCLC prepared a study on Medicare plans that showed they were not posting translated materials. In November, Executive Director Paul Nathanson moderated a panel convened by NSCLC at the Grantmakers in Aging national conference, highlighting the importance of the

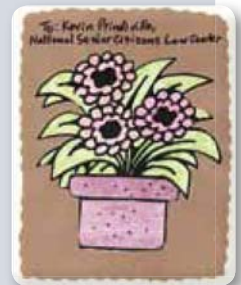
issue to the leading funders of aging projects. *Improving Language Access to Keep California Older Adults at Home; An Examination of the In Home Supportive Services (IHSS) Program*, funded by the California Endowment, was released in February and generated much discussion and debate in state policy circles.

NSCLC also joined with other California advocates in seeking a preliminary injunction to stop cuts to the In-Home Supportive Services (IHSS) program. A federal judge issued the injunction in early 2012.

NSCLC HELPS

A Heartfelt Thank You from Eskaton Adult Day Health Center

Billie attends Eskaton five days a week and would have required skilled nursing placement without the Adult Day Health Care (ADHC) program. Billie's daughter was not going to be able to hold down her job and care for Billie at home if the center closed. According to Eskaton ADHC Administrator Jill Yungling, without this unique program, many other participants would otherwise face premature entrance into a long-term care facility. Some 50 family, participants and staff from Eskaton ADHC of Carmichael, California personally signed a thank you card for NSCLC's work to save the state's adult day health care program.



"NSCLC knows the law inside and out in their specialties. They have a broad perspective on what is happening in other states that makes our cases stronger."

—Joelen Gates, Connecticut Legal Services

Economic Security

NSCLC seeks to preserve, strengthen, expand and improve access to programs such as Social Security and Supplemental Security Income (SSI) that provide income security to millions of older adults and people with disabilities.

The income team uses administrative or legislative advocacy to achieve its objectives, providing briefs, reports and information that seek to improve income security programs. It effectively uses litigation to change administrative policies that have illegally impoverished many of the nation's elderly.

In 2011, NSCLC:

- **Released a widely discussed policy issue brief on the Cost of Living Adjustment (COLA) that showed how the proposed chained CPI would adversely affect those with low incomes.** NSCLC's analysis showed coalition partners and policymakers how the change would hurt beneficiaries, calling a chained CPI a "stealth benefit cut." It proposed the Experimental Price Index for the Elderly (CPI-E) as an alternative.
- **Ensured that a larger nationwide class was certified in an important Social Security case.** Some 100,000 people could be part of a nationwide class in NSCLC's successful challenge to the Social Security Administration's policy of suspending or denying Social Security and Supplemental Security Income (SSI) benefits whenever someone had an outstanding warrant for an alleged violation of probation or parole.
- **Published a series of SSI policy issue briefs and reports on how the program needs drastic modernization** and how processes such as appeals must be reformed to operate the program more effectively and responsively. NSCLC also called for increasing the resource limit and adjustments to increase the Federal Benefit Rate from its current sub-poverty level of \$674 a month.

"We rely on a national organization like NSCLC for cutting edge information on cases like that of [Tony] Gonzales and how to take appropriate action on behalf of our clients."

—Ellen Mendoza, Legal Aid Services of Oregon.
Gonzales participated as a plaintiff
in the *Clark v Astrue* case.

NSCLC Executive Director Paul Nathanson moderated a panel on language access that included Global Policy Solutions President and CEO Maya Rockeymore at the 2011 Grantmakers in Aging Conference.



- **Played a key role in the fight to keep SSI for elderly refugees** who lost their benefits because of Congressional indifference. While the issue is still pending, NSCLC in collaboration with other advocates, was able to garner Senate support to continue benefits for some 5,000 older adults. The bill remains stalled in the House.

With the assistance of Borchard Fellow Rachel Frazier, NSCLC's Gerald McIntyre produced a number of policy issue briefs and reports on Social Security and SSI that were used by advocates who participated with NSCLC in the Strengthen Social Security campaign sponsored by Social Security Works.



“It’s important to have ground troops, but you need someone who is expert and responds quickly to your questions. Thank goodness for NSCLC.”

—Megan Wall, St. John’s County Legal Aid

NSCLC HELPS

Tony Gonzales

Tony Gonzales, a full-blood Apache from New Mexico, grew up in an orphanage and with his mother, until he dropped out of high school. He made his way to California and fell into a criminal life. In 1988, he was sentenced to Federal prison for seven years. When he was released, he went to school and worked as a welder and then as a drafter. However, after he retired, a 1965 warrant from his first run-in with the law for “joy-riding” caused him to lose his Social Security benefits. “The record was so old, no one knew it existed,” said Attorney Ellen Mendoza of Legal Aid Services of Oregon. “He had gone from being a bad guy to a good guy and then got a kick in the gut.” Gonzales, who was a plaintiff in the *Clark v Astrue* case that NSCLC and several others successfully argued in the U.S. Court of Appeals (2nd Circuit), saw his benefits reinstated.



Federal Rights

NSCLC has a long history of opposing judicial activism and keeping the courts open for justice. In that tradition, the Federal Rights Project continues its leading role in fighting serious and potentially dangerous challenges to the health reform law in the courts.

In 2011, the project:

- **Fought for the constitutionality of the Affordable Care Act** through speaking out in public forums, in blogs and articles and in the national media. Policy Counsel Simon Lazarus debated other leading experts on the issue at the Brookings Institution, George Mason University Law School and at forums in Denver, CO and elsewhere. He wrote several blogs for the American Constitutional Society (ACS) and *Slate* and articles for the *National Law Review* and *Ohio State Law Review* and was quoted frequently in *The New Republic*, *Politico*, *The Hill* and other national news media throughout the year. In addition, NSCLC drafted and filed several amicus briefs on the health reform law as the cases in the states worked their way to the Supreme Court.
- **Defended the right of Medicaid beneficiaries to use the courts** to challenge illegal benefit cuts in a case heard by the Supreme Court in October (*Douglas v ILC*). Directing Attorney Rochelle Bobroff worked with attorneys handling the appeal and also authored blogs for the ACS and was quoted in media articles on the case saying that the Court “could shut courthouse doors to the poor.”

- **Ensured that a state agency can bring suit in Federal court** in a victory for the supremacy of federal law. The case involved whether a state agency, the Virginia Office for Protection and Advocacy (VOPA), could bring suit to compel state officials in charge of state-run mental hospitals to release medical records for an investigation into possible abuse and neglect. Bobroff was lead author and counsel of record for the amicus brief joined by AARP and other groups.

The Project also filed an amicus brief in *CompuCredit v Greenwood*. The Supreme Court was asked to overturn a 9th Circuit decision supporting the plaintiff’s right to sue a credit repair organization. The organization argued that consumers only have a right to arbitration, not to sue and that the statutory requirement to notify consumers of their right to sue does not necessarily convey the right.

In another “friend of the court brief” (*Center for Special Needs Trust Administration v Okon*), NSCLC and AARP asked a federal appeals court to strike down South Dakota’s Medicaid eligibility changes on the grounds that its Department of Human Services did not follow federal law that is designed to provide opportunity to comment on proposed changes.

Instead of issuing regulations, the Centers for Medicare and Medicaid Services relied on a letter to set policy that excluded people over age 65 from benefits.



Financials

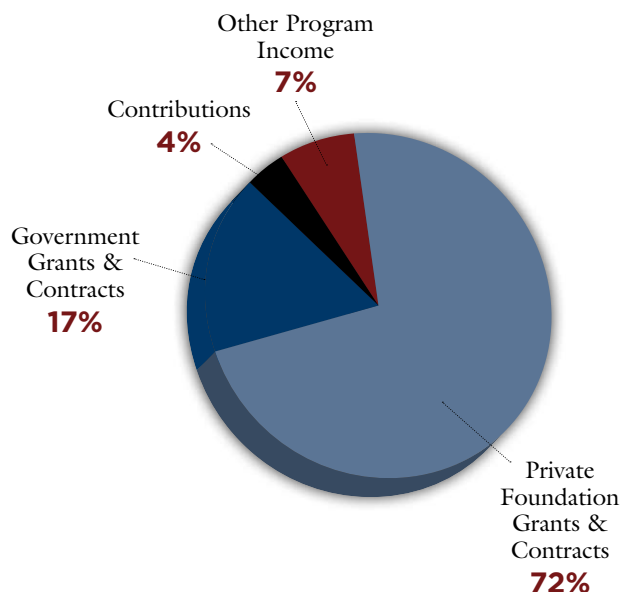
In the fiscal year ended on June 30, 2011, NSCLC received revenue amounting to \$2,716,134 and incurred expenses amounting to \$2,131,734, resulting in net income of \$584,400. Temporarily restricted net assets, which represent grant funds received to support programs in future fiscal years, increased by \$747,126, to a total of \$1,650,128. Unrestricted net assets decreased by \$162,727, to a total of \$177,070. Total net assets at the end of the year amounted to \$1,827,198.

Private foundation and government grants continued to be the principal support for NSCLC's programs, providing 89% of total revenue. Contributions, publication sales, attorneys fees, and other income provided the other 11% of total revenue.

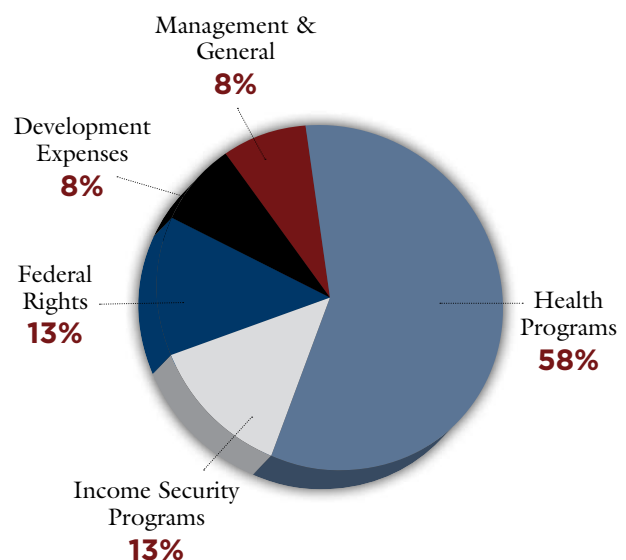
Program services as a whole comprised 84% of NSCLC's expenditures; management and general expenses 8%; and development expenses 8%.

Full audited financial statements for fiscal year 2011 with comparisons to 2010 are available on NSCLC's Web site.

FY2011 Revenues By Category



FY2011 Expenses By Category



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