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The National Right to Counsel Act: A Congressional Solution to the Indigent Defense Crisis

Cara H. Drinan

University of Columbus School of Law

This article proposes a new piece of federal legislation designed to address the nationwide crisis in indigent defense services, The National Right to Counsel Act (“NRTCA”). The centerpiece of this proposed legislation is a private cause of action in federal court that allows indigent defendants to seek equitable relief for pre-trial Sixth Amendment violations. I make this proposal in three steps. First, I argue that Congress needs to take legislative action to solve the nationwide crisis in indigent defense services. The habeas system, currently the primary relief valve to police Sixth Amendment violations, simply is not set up for the task of vindicating the *Gideon* right to counsel. Second, I argue that Congress has the practical ability and constitutional authority to enact the kind of legislation I propose. In fact, if Congress were to enact a piece of legislation like the one I describe in this section, it would do so with greater empirical support than in some past instances of civil rights enforcement action. Finally, I recognize that if Congress were to pursue a piece of legislation like the one I propose, it will almost certainly invite criticism, but I maintain that the likely challenges are surmountable. In sum, a cause of action for pre-trial indigent defendants in federal court, such as the NRTCA, offers several practical advantages: 1) it is cost-free to the federal government on an annual basis; 2) it provides a long-term incentive for states to reform and maintain their reform, which many states have struggled to do; and 3) it is respectful of federalism, in that it allows each state the opportunity to select its own system for the delivery of public defense services.