

February 6, 2023

Dear Members of the North Carolina General Assembly,

I write in support of the legislative proposal from the North Carolina Justice for All Project (NCJFAP). By way of introduction, let me explain my connection to these issues.

I am an academic sociologist who produces world-leading research on access to civil justice and the role that traditional and nontraditional legal services can play in expanding and equalizing it. My work has been funded by the American Bar Foundation, International Development Research Centre, JPB Foundation, National Science Foundation, Open Society Foundations, and Public Welfare Foundation. Currently, I am Professor in and Director of the Sanford School of Social and Family Dynamics at Arizona State University and Faculty Fellow at the American Bar Foundation (ABF), an independent, non-partisan research organization focused on the study of law and legal processes. At the ABF, I founded and lead the access to justice research initiative. Since receiving my PhD from the University of Chicago, I have written and spoken extensively on empirical research about access to civil justice to a range of audiences in the US and abroad, including at the United States Department of Justice, the Ninth Circuit Judicial Conference, and convenings at the World Bank and the OECD. I have served on a number of commissions exploring new ways to improve access to justice in the US and globally, including with the American Bar Association, the American Academy of Arts and Sciences, the OECD, and the World Bank. I co-chaired a project at the American Academy of Arts and Sciences to improve the collection and use of data about civil justice in the United States. In 2013, I was The Hague Visiting Chair in the Rule of Law; in 2015, I was named Champion of Justice by the National Center for Access to Justice; in 2018, I was named a MacArthur Fellow for my development of a new evidence-based approach to access to justice for low-income people. In 2020, my research and contributions to access to justice were recognized with the National Center for State Court's Warren E. Burger Award.

America faces a civil justice crisis. The best social science suggests that Americans experience 150 *million* to 250 *million* new civil justice issues each year. These include the families involved in the three and a half to four million evictions filed each year and the millions of workers having their wages garnished for debt. It includes the over eight million people living in rental housing that is unsafe or unhealthy, trying to get the rats out and the hot water in, and the two and half million grandparents raising their grandchildren, trying to get them enrolled in school and connected to medical care. As many of 120 million of these civil justice problems each year go unresolved. Americans around the country and up and down the income scale experience these issues, but these problems fall most heavily on people of color and those with low incomes. Civil legal aid lawyers currently turn away at least as many people as they serve, because they do not have the resources to serve them. And the people who seek legal aid are the tip of an enormous iceberg: most civil justice issues do not get taken to lawyers, nor do they become court cases. Our current models fail to respond to this crisis of enormous need.

The legislative proposal from NCJFAP responds to a critical insight about America’s access to justice crisis: Lawyers, as solution to the justice gap, have failed to scale for over sixty years. There are more lawyers than ever – the size of the US legal profession has grown four-fold since the 1970s – yet, the unmet need is greater than ever. The problem is, clearly, not simply a need for more lawyers.

The NCJFAP proposal offers a range of routes through which North Carolina might authorize different kinds of *community justice workers*. Community justice workers can provide, effective, competent, culturally appropriate, accessible assistance for many of the justice issues that people experience, including those encountered by low-income people and families. There is tremendous potential here, as a robust body of research shows.

In the United States, people who are not lawyers already represent people facing a range of civil justice issues, most often in areas of federal law: authorized nonlawyers represent people in social security and unemployment cases, in immigration matters, and in other contexts such as some state tax courts. Research suggests that people are happy to work with these nonlawyer advocates, and that these advocates’ work can be just as good – just as competent, just as effective – or better than the work of lawyers.

In other jurisdictions, such as England, people who are not lawyers have for many years been able to provide legal advice to clients, whether as part of fee-for-service arrangements or as part of the work of nonprofit organizations such as Citizens Advice. There are excellent studies of this work. Here again, we see that appropriately trained and specialized nonlawyers can be as effective or more effective than attorneys. Independent audits of the legal work of lawyers and nonlawyers have found that the two groups of justice workers are equally likely to be competent in their work. Interestingly, legal workers who are not attorneys are six times more likely to have their legal work rated “excellent” compared to the work of attorneys. The reason for this is that nonattorney justice workers specialize in specific areas and problems of law and thus develop a deep and focused expertise within their scope of practice.

In the United States, there are a range of efforts to expand community justice worker practice, not simply by enlarging the labor force but by empowering these workers to be able to do work that is more useful and impactful. For example, the Alaska Supreme Court this year approved a waiver to unauthorized practice of law regulations that will allow Alaska Legal Services to train and supervise nonattorney community justice workers who live throughout Alaska’s many remote communities, communities where no attorney lives or even visits. Upsolve, a nonprofit that assists people in filing for simple bankruptcy, has successfully sued the State of New York so that it can work with a South Bronx pastor to train his parishioners to help each other and their neighbors to understand and respond to justice issues around debt. Upsolve won the first round of litigation, and the case is currently on appeal in the United States Second Circuit. In Delaware, the legislature has taken action on a key inequality in landlord-tenant law: In the past, landlords were permitted to employ nonlawyers to represent them, but tenants were required to represent themselves or find an attorney. Delaware corrected this by permitting registered agents to appear in court on both sides of an eviction case. For the past two years, the Supreme Court of Utah has been operating the world’s first legal services regulatory sandbox. Sandboxes are a regulatory space where traditional rules can be relaxed in an environment where consumer protection is monitored in real time. The organizations practicing in Utah’s sandbox offer a range of different kinds of services. Among these are domestic violence service providers, who are now authorized to give legal advice to the people

and families they serve. Over 30,000 services have been delivered in Utah's sandbox, with strong evidence that these services can be delivered safely and effectively by people who are not traditional attorneys.

In summary, the research evidence indicates the tremendous potential of community justice workers specialized, trained, and authorized to do limited legal work. These workers can help to bridge the justice gap by expanding the capacity of legal aid and other legal services organizations, not just in terms of people power, but in terms of true *access*, because these new services can offer linguistically and culturally appropriate helpers to Americans facing potentially life-altering civil justice issues.

America's democracy rests on the rule of law. The rule of law rests on the capability of ordinary people to use the laws that are meant to order basic aspects of our lives: making a living, having a place to live, being able to care for those dependent on us. America's current crisis is that people are often not able to access the law at all. Community justice workers can be a powerful tool in aiding people and communities in responding to critical issues in their lives. I therefore strongly support NCAJP's proposal, and would be happy to discuss further the research evidence that supports their ideas.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'R' followed by a long, sweeping horizontal line that ends in a small dot.

Rebecca L. Sandefur
Professor and Director, Sanford School of Social and Family Dynamics, Arizona State University
Faculty Fellow, American Bar Foundation