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# Looking Beyond Lawyers to Bridge the Civil Access to Justice Gap

Petition for Redress of Grievances  
Pursuant to N.C. Const. Art. I, § 12,  
Policy Analysis, & Legislative Proposal

Feb. 2023



**North Carolina**  
**Justice for All Project**

# **LOOKING BEYOND LAWYERS TO BRIDGE THE CIVIL ACCESS TO JUSTICE GAP:**

Petition for Redress of Grievances Pursuant to N.C. Const. Art. I, § 12,  
Policy Analysis, & Legislative Proposal



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The North Carolina Justice for All Project (JFAP) is an advocacy group committed to expanding access to justice across the state. We strive to empower individuals by championing reform in the legal profession and educating the public, legal community, and other stakeholders on the pressing issues that greatly impact the lives of North Carolinians.

Our team comprises individuals from diverse backgrounds, including those with experience in family law and other areas of people law, public sector work, law enforcement, and victim advocacy. We are united by our personal experiences of trying to assist those caught in civil legal disputes with nowhere to turn. We witness firsthand the failures of the legal system and the ways in which justice is often only attainable for those who can afford it.

To address this crisis, we propose innovative policy alternatives and advocate for using professionals other than attorneys to serve the public effectively in certain areas of the law. We are committed to fighting for the millions of North Carolinians who cannot afford a lawyer, do not qualify for legal aid or pro bono services, and have nowhere to turn when they have a legal need. Join us in our mission to ensure justice is truly for all in North Carolina.

**S. M. Kernodle-Hodges, Co-Founder   Wake County**

**Alicia Mitchell-Mercer, Co-Founder   Mecklenburg County**

**Shawana Almendarez, Council Member   Cabarrus County**

**Morag Black Polaski, Council Member   Onslow County**

**Rachel Royal, Council Member   New Hanover County**

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## ACKNOWLEDGMENTS AND LIST OF APPENDICES

The appendices contain a collection of letters of support from esteemed champions of access to justice and highly regarded policy experts, both individuals and institutions. These letters testify to the validity of this policy analysis and the efficacy of the legislative proposals in this report. We are deeply grateful to the following individuals and organizations for their invaluable contributions of time and expertise that have helped shape this legislative proposal.

- Appendix A.** Access to Justice Ventures, by Natalie Anne Knowlton, Founder
- Appendix B.** American Bar Foundation, by Rebecca Sandefur, Ph.D., Professor at Arizona State University, Faculty Fellow
- Appendix C.** Brown & Associates, PLLC, Attorneys & Counselors at Law, by Donald M. Brown, Jr., Esq., Best-selling author, and former United States Navy JAG Officer
- Appendix D.** Colorado Equal Access to Justice Commission, by Elisa Overall (Emo), Esq., Executive Director
- Appendix E.** Constandinos “Deno” Himonas, Former Justice (2015-2022), Utah Supreme Court
- Appendix F.** Deborah L. Rhode Center on the Legal Profession at Stanford Law School; by Nora Freeman Engstrom, Ernest W. MacFarland Professor of Law and Co-Director; David Freeman Engstrom, LSVF Professor in Law and Co-Director; and Lucy Ricca, Director, Policy and Programs
- Appendix G.** Innovation for Justice, University of Arizona and University of Utah, by Stacy Butler, Director
- Appendix H.** Institute for the Advancement of the American Legal System (IAALS), by Michael Houlberg, Director of Special Projects
- Appendix I.** James J. Sandman, Distinguished Lecturer and Director of the Future of the Profession Lab, University of Pennsylvania Carey Law School, President Emeritus, Legal Services Corporation
- Appendix J.** National Center for Access to Justice (NCAJ) at Fordham Law School, by David Udell, Executive Director and Lauren Jones, Legal & Policy Director
- Appendix K.** National Federation of Paralegal Associations, by Josie A. Estes, President and Beth Bialis, RP, NYSCP, Director of Positions & Issues
- Appendix L.** Stephen R. Crossland, Esq., Chair, Limited License Legal Technician Board, Washington State Bar Association
- Appendix M.** United States Department of Justice Antitrust Division, by Maggie Goodlander, Deputy Assistant Attorney General

*The first duty of society is justice.*  
- Alexander Hamilton

## EXECUTIVE SUMMARY

The right to representation by counsel in a criminal proceeding is a fundamental right guaranteed by the U.S. Constitution. However, no such right exists in civil matters, where outcomes for self-represented litigants<sup>1</sup> (SRLs) can be similarly devastating. In many cases, meeting one's most basic needs is predicated upon fair and effective access to our civil justice system. Without access to justice, individuals cannot protest wrongdoing or hold decision-makers accountable for their actions.<sup>2</sup> Meaningful access to our civil justice system typically requires hiring a lawyer. Without legal counsel, it is nearly impossible to understand the complexities of North Carolina statutes, case law, procedural rules, and which of the 1,900 local rules and forms apply to an individual case.<sup>3</sup> The loss of a person's home, children, employment, income, and freedom frequently results from their lack of understanding.

There is a saying in the legal profession that a man who represents himself has a fool for a client. Unfortunately, when most people discover they need a lawyer, they also realize they cannot afford one. At that time, many also learn they are ineligible for legal aid or pro bono services. These individuals fall into the "Access to Justice Gap." The Access to Justice Gap is the difference between the civil legal needs of low-income (and increasingly, middle-income) Americans and the resources available to meet those needs.<sup>4</sup> Between 4.1 and 5.2 million of North Carolina's almost 10.4 million residents fall into the access to justice gap.<sup>5,6</sup> For these individuals, their only options are to stumble through the civil justice system alone or have their most basic needs go unmet.

Contributing to this crisis is N.C. Gen. Stat. § 84 (Unauthorized Practice of Law), also referred to as "UPL" statutes. In most states, including North Carolina, only attorneys can practice law.<sup>7</sup> Thus, these laws create a monopoly for lawyers. When someone not licensed to practice law provides services that only attorneys can perform, according to N.C. Gen. Stat.

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<sup>1</sup> Self-Represented Litigant: A person (party) who represents themselves in court, as opposed to being represented by an attorney. These parties are frequently referred to as pro se or pro per parties. However, not all legal needs are met through litigation. The preparation of estate planning documents or a post-separation agreement are common examples of legal services that do not necessarily require court intervention.

<sup>2</sup> United Nations. (n.d.). *Access to Justice*. United Nations and the Rule of Law. Retrieved December 12, 2022, from <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>

<sup>3</sup> NC Judicial Branch. (n.d.). *Local rules and forms*. NC Judicial Branch. Retrieved December 5, 2022, from <https://www.nccourts.gov/documents/local-rules-and-forms>

<sup>4</sup> Legal Services Corporation. (2017). *2017 Justice Gap Report*. Legal Services Corporation. Retrieved December 12, 2022, from <https://www.lsc.gov/our-impact/publications/other-publications-and-reports/2017-justice-gap-report>

<sup>5</sup> See *Estimating the Size of the "Missing Middle" Population in North Carolina* on page 20. According to Legal Service Corporation, 18.2 % of the population, or 1,859,610 residents, qualify for LANC. Between 2,213,150 (or 21.2%) to 3,319,725 (or 31.8%) of middle-income North Carolinians have unmet legal needs due to the cost of legal services. This totals 4,072,760 to 5,179,335 of the population.

<sup>6</sup> U.S. Census Bureau. (2020). U.S. Census Bureau QuickFacts: North Carolina. Retrieved December 28, 2022, from <https://www.census.gov/quickfacts/fact/table/NC/POP010220>; Note: Population is 10,439,388.

<sup>7</sup> North Carolina State Bar. (n.d.). *North Carolina State Bar. Unauthorized Practice of Law*. Retrieved November 5, 2022, from <https://www.ncbar.gov/bar-programs/unauthorized-practice-of-law/>



§84-8, they have committed a crime.<sup>8</sup>

While lawyers may be knowledgeable about the areas of law in which they specialize, they sometimes have a limited understanding of why people do not seek legal advice from a lawyer and, consequently, a limited understanding of the type of legal assistance needed by those who never consult a lawyer. They also infrequently have a comprehensive understanding of the types of legal assistance that Alternative Legal Advocates (ALAs) can provide.<sup>9</sup> Furthermore, attorneys generally do not inquire whether and to what extent the current laws make it difficult for vulnerable individuals to acquire the legal assistance they desperately need. In North Carolina, the voices of existing and potential users of legal services have yet to be invited into any serious conversations regarding unmet legal needs and the need for regulatory reform.

However, public service workers and advocates encounter individuals with unmet legal needs daily. Many community leaders, social workers, paralegals, law enforcement officers, court clerks, faith-based advocates, culturally-specific advocates, and others know from daily experience that the current civil justice system is failing. Additionally, judges routinely have a front-row seat to the many issues that arise with self-represented litigants. SRLs might fail to file necessary and complete documents or be unprepared to argue their case in the allotted time. They also frequently place judges in the difficult position of balancing fairness with impartiality, leaving unsuccessful litigants feeling bewildered and mistreated. These difficulties persist partly because the current regulatory structure prevents capable individuals from offering legal services to those who cannot afford to hire a lawyer. However, the current system also stifles innovation and restricts lawyers' ability to extend services in quantity and quality.

Although many lawyers do great work as advocates and experts in their field, there is no meaningful incentive to provide affordable services because they control the market in which they operate. As a result, the vast majority of the public is compelled to pay impossibly high prices or figure out how to resolve their legal problems alone. For many North Carolinians, the outcome of self-representation has irreversible and disastrous life-changing consequences.

N.C. Const. Art. I, § 18 states, in part, "... right and justice shall be administered impartially, without denial, discrimination, or delay." However, according to the 2016 Interim Report of the Public Trust and Confidence Committee (a committee of the former North Carolina Commission on the Administration of Law and Justice), 73% of North Carolina respondents did

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<sup>8</sup> North Carolina General Assembly. (2021). *Chapter § 84. Attorneys-at-Law. Article 1. Qualifications of Attorney; Unauthorized Practice of Law*. North Carolina General Assembly. Retrieved November 4, 2022, from [https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_84.html](https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_84.html)

<sup>9</sup> Alternative Legal Advocate (ALA) is an umbrella term for individuals or businesses that provide legal services as an alternative to a lawyer or traditional law firm, whether through licensing, a regulatory sandbox, or some other mechanism. The term Legal Practitioner (LP) refers to a specific category of ALA, where individuals other than a lawyer have a state-issued license to practice law in a limited capacity. The official name for LPs varies among the states that have adopted limited licensing programs.

not believe that most people could afford to file a lawsuit.<sup>10</sup> Moreover, 76% of poll respondents felt that those without legal representation are treated somewhat or much worse in court.<sup>11</sup> Substantial work is required to increase public confidence in equal access to the courts. The status quo has been insufficient to increase public trust.<sup>12</sup>

Changes to N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) would enable ALAs to offer meaningful services to the public, particularly those who cannot afford legal services as they currently exist. Reports from national organizations such as the American Bar Association<sup>13</sup> and the Legal Services Corporation,<sup>14</sup> as well as jurisdiction-specific reports such as the Legal Professionalism Committee Report<sup>15</sup> and North Carolina's 2021 Civil Legal Needs Assessment,<sup>16</sup> (all discussed in the complete policy analysis), provide abundant evidence of the legal profession's continuing ethical and market failures in being accessible to those in need of legal services. This is also a government failure because the government's current regulatory policies allow the harmful and unnatural monopoly on legal service delivery to continue.<sup>17</sup>

To improve our civil justice system, we examine the current policy set forth in N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) against four policy alternatives: (1) licensing legal practitioners (reducing fees for services); (2) liberalizing N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) for legal aid and pro bono services; (3) creating a legal regulatory sandbox; and (4) establishing a court navigator program. We further assess these five policies in terms of their capability of meeting the following four goals: economic efficiency, social equity, political feasibility, and legitimacy. As you consider the policy analysis and recommendations below, keep in mind that this writing is also a petition for redress of grievances. This crisis in access to justice is a crisis for our democracy, which we implore our lawmakers to remedy.<sup>18</sup>

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<sup>10</sup> North Carolina Commission on the Administration of Law & Justice. (2016). Interim Report: Public Trust and Confidence Committee. NC Judicial Branch, 4–4.

[https://www.nccourts.gov/assets/inline-files/Public-Trust-and-Confidence\\_interim-report\\_NCCALJ.pdf](https://www.nccourts.gov/assets/inline-files/Public-Trust-and-Confidence_interim-report_NCCALJ.pdf)

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> American Bar Association. (2016). *Report on the future of legal services in the United States*. American Bar Association. Retrieved November 13, 2022, from <https://www.srln.org/system/files/attachments/2016%20ABA%20Future%20of%20Legal%20Services%20-Report-Web.pdf>

<sup>14</sup> Legal Services Corporation. (2022). *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans April 2022*. Legal Services Corporation. Retrieved December 12, 2022, from <https://lsc-live.app.box.com/s/xl2v2uraiofbzrhwtjlg0emp3myz1>

<sup>15</sup> North Carolina Commission on the Administration of Law & Justice. (2017). *Legal Professionalism Committee Report*. NC Judicial Branch. [https://www.nccourts.gov/assets/documents/publications/nccalj\\_legal\\_professionalism\\_committee\\_report.pdf?GPC5PBORm.M41jldCYLhhfr70g0Mal6w](https://www.nccourts.gov/assets/documents/publications/nccalj_legal_professionalism_committee_report.pdf?GPC5PBORm.M41jldCYLhhfr70g0Mal6w)

<sup>16</sup> Center for Housing and Community Studies at UNC Greensboro. (2021). *In pursuit of justice - an assessment of the civil legal needs of North Carolina*. Center for Housing and Community Studies at UNC Greensboro. Retrieved November 5, 2022, from <https://chcs.uncg.edu/wp-content/uploads/2021/04/2021-NC-Legal-Needs-Assessment.pdf>

<sup>17</sup> Weimer, D. L. & Vining, A. R. (2017). Policy Analysis. In *Concepts and Practice*.

<sup>18</sup> Institute for the Advancement of the American Legal System. (2022). *The Landscape of Allied Legal Professional Programs in the United States*. University of Denver. Retrieved November 26, 2022, from [https://iaals.du.edu/sites/default/files/documents/publications/landscape\\_allied\\_legal\\_professionals.pdf](https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf)

*The most sacred of the duties of a government [is] to do equal and impartial justice to all its citizens.*

*- Thomas Jefferson*

## Introduction

When thinking about access to justice and the civil justice system, many people envision lawyers, judges, and courtrooms. However, the access-to-justice crisis transcends the legal system and its lawyers, impacting every human being to varying degrees. Amidst a growing problem of inequity and marginalization, access to justice remains severely constrained. Despite the valiant and tremendous efforts of private, legal aid, and pro bono attorneys, the fact remains that only some people with only some types of legal issues receive a just resolution.<sup>19</sup>

In addition, meaningful access to our civil justice system is systemically inequitable. According to Dr. Rebecca Sandefur, Professor at Arizona State University and Faculty Fellow at the American Bar Foundation, certain groups of people have more meaningful access to our civil justice system than others. For example, the affluent and the white typically have more meaningful access to our civil justice system than people of limited means and people of color.<sup>20</sup> Additionally, other populations are underserved, even relative to the larger population of low-income people needing civil legal services. These populations include veterans, seniors, people with disabilities, and Native Americans.<sup>21</sup> Despite this common knowledge, state leaders and lawyers, many of whom are one and the same, have yet to implement strategies outside the status quo to alleviate this crisis.

An increasing amount of evidence, which will be discussed below, shows that the help of an attorney is not needed to resolve every legal issue. When we place legal problems on a spectrum from relatively simple to highly complex, we begin to see a wide range of options for meeting the legal needs of those who desperately need help. When we focus on the future rather than the past, we can start to create a legal system accessible to the people it is meant to serve.

Although this legislative proposal may seem novel to some, the quest for regulatory change in the legal profession is not new. For decades, scholars and practitioners have disputed the effectiveness of the current regulatory structure of the practice of law, ranging from the restrictions on the Unauthorized Practice of Law (UPL) to the ethical constraints within which lawyers must operate. While all of these efforts are essential, for the crisis in access to justice to be fully resolved, we must look beyond lawyers, self-help centers, legal aid, and pro bono to meet the public's legal needs. We must take a fresh look at the access to justice crisis and be

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<sup>19</sup> Sandefur, R. (2019). Access to What. *Dædalus: Journal of the American Academy of Arts & Sciences*. <https://www.jstor.org/stable/48562963>

<sup>20</sup> *Id.*

<sup>21</sup> Center for Housing and Community Studies at UNC Greensboro. (2021). *In pursuit of justice - an assessment of the civil legal needs of North Carolina*. Center for Housing and Community Studies at UNC Greensboro. Retrieved November 5, 2022, from <https://chcs.uncg.edu/wp-content/uploads/2021/04/2021-NC-Legal-Needs-Assessment.pdf>



willing to evaluate and implement innovative solutions. Below is an analysis of some deficiencies in our legal system and recommendations for improving it.

## **Recent Reports on Civil Legal Needs**

### **The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans (2022)**

In April 2022, Legal Services Corporation (LSC), a 501(c)(3) nonprofit organization established by the United States Congress that provides funding for civil legal aid across the nation, released its most recent justice gap report.<sup>22</sup> The report stated that 92% of low-income Americans with civil legal issues received no legal assistance, and 74% of low-income households had at least one civil court incident in the preceding year.

### **An Assessment of the Civil Legal Needs of North Carolina (2021)**

Additionally, according to the North Carolina Equal Access to Justice Commission, in 2018, more than two million North Carolinians qualified for legal aid (those with incomes at or below 125% of the federal poverty line). In this low-income population, they noted that 71% of families would encounter at least one civil legal issue a year. Despite this, they estimated that an astounding 86% of these legal issues would go unresolved due to the inadequate resources available to legal aid providers. Moreover, they reported that civil legal issues affect fundamental human needs, including housing, health care, safety, economic stability, and family structure. Finally, they imparted that legal representation for domestic violence, divorce, child custody, housing, consumer protection, employment, veterans' benefits, and health is essential.<sup>23</sup>

With this understanding, in 2020, the Center for Housing and Community Studies at UNC Greensboro, the North Carolina Equal Access to Justice Commission, and the Equal Justice Alliance completed the first comprehensive civil legal needs assessment since 2003. Their report, *In Pursuit of Justice: An Assessment of the Civil Legal Needs of North Carolina, June 2021* ("North Carolina's 2021 Civil Legal Needs Assessment"), gives an overview of civil legal needs in North Carolina as well as the severity and kind of civil legal difficulties faced.<sup>24</sup> The report highlights a marked failure in meeting the civil legal needs of North Carolinians with modest incomes. According to legal service providers, there is not enough capacity to serve everyone.<sup>25</sup>

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<sup>22</sup> Legal Services Corporation. (2022). *Justice gap full report 2022*. Justice Gap Full Report. Retrieved November 13, 2022, from <https://lsc-live.app.box.com/s/xl2v2uraiotbbzrhwtjlgioemp3myz1>

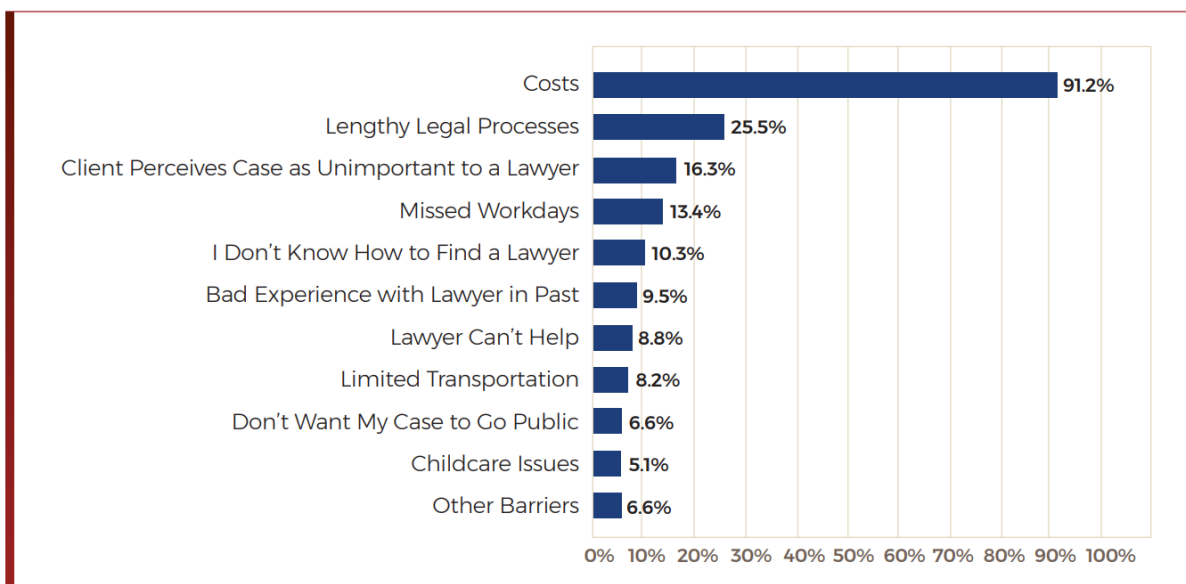
<sup>23</sup> North Carolina Equal Access to Justice Commission. (2021). NC Judicial Branch. Retrieved November 5, 2022, from <https://www.nccourts.gov/commissions/north-carolina-equal-access-to-justice-commission>

<sup>24</sup> Center for Housing and Community Studies at UNC Greensboro. (2021). *In pursuit of justice - an assessment of the civil legal needs of North Carolina*. Center for Housing and Community Studies at UNC Greensboro. Retrieved November 5, 2022, from <https://chcs.uncg.edu/wp-content/uploads/2021/04/2021-NC-Legal-Needs-Assessment.pdf>

<sup>25</sup> NC Judicial Branch. (n.d.). *About Equal Access to Justice Commission*. NC Judicial Branch. Retrieved December 3, 2022, from <https://www.nccourts.gov/commissions/north-carolina-equal-access-to-justice-commission/about-equal-access-to-justice-commission>

As discussed above, middle-income residents, who are ineligible for assistance due to their income level, are also among those with unmet needs.<sup>26</sup> According to the report, researchers asked respondents to name the greatest barriers. By far, the most frequent was costs, which 91.2% identified, as seen in Figure 1.<sup>27</sup>

**Figure 1 - Barriers to Seeking Assistance with Civil Legal Issues, 2020**



Nearly 1.7 million civil legal cases of 26 civil issue types during 2015–2019 underscore the needs of North Carolina's low-income communities.<sup>28</sup> More than half of all cases annually are housing-related, for summary ejections (46%) and foreclosures (10%).<sup>29</sup> Family-related civil legal issues accounted for about 30% of the total volume annually.<sup>30</sup> They included divorce (10%), domestic violence (9%), custody issues (5%), no-contact orders (3%), restraining orders (1%), and temporary custody orders (1%).<sup>31</sup> Note that the data for this report was collected from 2015 to 2019. Therefore, the statistics represented in the report constitute pre-pandemic numbers. The impact of the pandemic has exacerbated civil access to justice concerns. In the 2021 civil legal needs report, the areas of greatest legal need are outlined in Figure 2 and Figure 3 below.

**Figure 2 - 10 Most Prevalent Civil Case Types of the 26 Selected Case Types Statewide**

<sup>26</sup> Center for Housing and Community Studies at UNC Greensboro. (2021). In Pursuit of Justice - An assessment of the civil legal needs of North Carolina. *Center for Housing and Community Studies at UNC Greensboro*, 4–4. <https://chcs.uncg.edu/nc-legal-needs-assessment-2/>

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

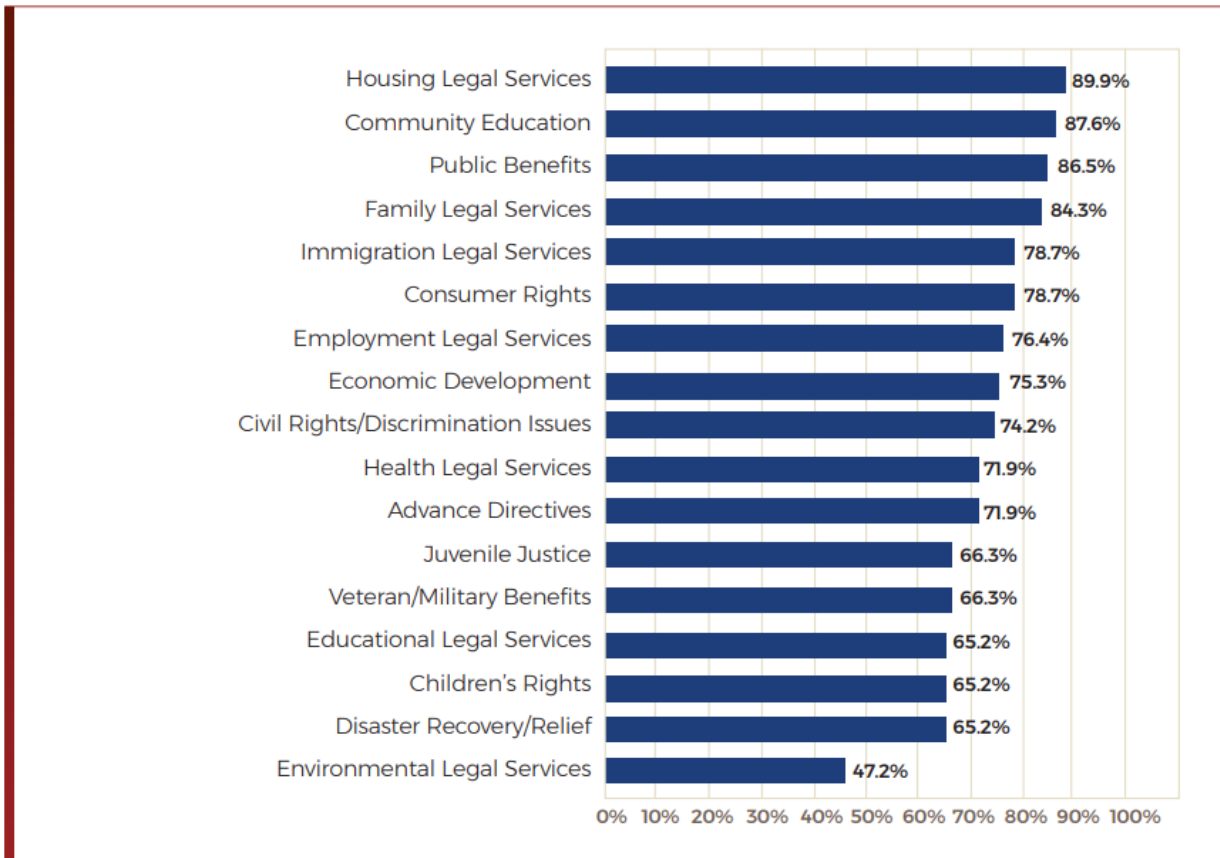
<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

Issue	District Court	Magistrate Court	Superior Court	Estate	Special Proceedings	Registration	Annualized Rate per 10,000
Summary Ejectment	2,871	167,175	-	-	-	-	169.2
Divorce	37,070	-	-	-	-	-	36.9
Collection on Account	35,931	-	952	-	-	-	36.7
Domestic Violence	32,651	-	-	-	-	-	32.5
Foreclosure	-	-	-	-	23,778	-	23.7
Custody	18,521	-	2	-	-	-	18.4
Findings and Order of Foreclosure	-	-	-	-	13,949	-	13.9
Permanent Civil No-Contact Order	9,329	-	-	-	-	-	9.3
Incompetency	-	-	-	-	4,922	-	4.9
Guardianship of the Person	-	-	-	3,478	-	-	3.5

Source: NC Administrative Office of the Courts (NCAOC), 2015-2019.

**Figure 3 - Top Needs Identified by Nonprofit Legal Aid Providers, 2020**



## Factors Contributing to the Access to Justice Crisis

On the outside of the United States Supreme Court building are the words, *Equal Justice Under Law*, which are meant to represent the guiding concept of the American legal system.



After over 225 years, the United States has yet to realize this principle.<sup>32</sup> Below are some factors contributing to the civil access to justice crisis in North Carolina. However, this list of factors is not exhaustive. For the sake of brevity, many factors, such as education and language barriers, were excluded from this analysis but nonetheless have an impact on the access to justice gap.

## **Knowledge Without Action: Complacency in the Legal Profession**

### ***Commission on the Administration of Law & Justice***

In 2015, former Chief Justice Mark Martin established the North Carolina Commission on the Administration of Law and Justice to thoroughly evaluate our judicial system and make recommendations for strengthening our courts within the existing administrative framework. The Commission was divided into five subcommittees to investigate different aspects of the justice system: (1) Civil Justice, (2) Criminal Investigation and Adjudication, (3) Legal Professionalism, (4) Public Trust and Confidence, and (5) Technology.<sup>33</sup>

The outstanding work of the Commission provided a starting point for dialogue between the Judicial Branch and the General Assembly to serve the people of North Carolina better and live up to the high standard of an effective and efficient judicial system. A series of reports detailing the Commission's final findings and recommendations were delivered to Chief Justice Martin and made public in the first few months of 2017.<sup>34</sup> This analysis focuses on the *Legal Professionalism Committee Report*.<sup>35</sup>

After more than a year of careful study, the Legal Professionalism Committee made several recommendations. First, it recommended the creation of a North Carolina Innovation Center and that it studies possible updates to N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) to address the changing nature of legal services. It also suggested studying proposed changes to the definition of the practice of law and the entities with authority to change that definition. Additionally, it recommended that the innovation center study whether North Carolina should license or certify any additional categories of legal service providers and, if so, address

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<sup>32</sup> Levi, J. G. & Rubenstein, D. M. (2019). Access to Justice. *Dædalus: Journal of the American Academy of Arts & Sciences*, 148(1). <https://www.jstor.org/stable/e48503434>

<sup>33</sup> NC Judicial Branch. (2017). *North Carolina Commission on the Administration of Law and Justice*. NC Judicial Branch. Retrieved December 7, 2022, from <https://www.nccourts.gov/commissions/north-carolina-commission-on-the-administration-of-law-and-justice#:~:text=The%20North%20Carolina%20Commission%20on,courts%20within%20the%20existing%20administrative>

<sup>34</sup> North Carolina Commission on the Administration Law & Justice. (2016). *Recommendations for strengthening the unified court system of North Carolina*. North Carolina Judicial Department. Retrieved November 13, 2022, from [https://www.nccourts.gov/assets/documents/publications/nccalj\\_final\\_report.pdf?VersionId=xahbJ\\_Q8O\\_XYD2w.I\\_GCrOoBeMSeDv2i](https://www.nccourts.gov/assets/documents/publications/nccalj_final_report.pdf?VersionId=xahbJ_Q8O_XYD2w.I_GCrOoBeMSeDv2i)

<sup>35</sup> North Carolina Commission on the Administration of Law & Justice. (2017). *Legal Professionalism Committee Report*. NC Judicial Branch. [https://www.nccourts.gov/assets/documents/publications/nccalj\\_legal\\_professionalism\\_committee\\_report.pdf?GPC5PBORm.M41jldCYLhhfr70g0Mal6w](https://www.nccourts.gov/assets/documents/publications/nccalj_legal_professionalism_committee_report.pdf?GPC5PBORm.M41jldCYLhhfr70g0Mal6w)

how these providers should be regulated.<sup>36</sup> The Commission dissolved in 2017. Although actions were taken on some of the excellent recommendations made by the Commission (e.g., e-filing court documents, Raise the Age), no meaningful action was taken on those recommendations.

### ***North Carolina State Bar's Issues Subcommittee on Regulatory Change***

The North Carolina State Bar is managed by a 61-member council of attorneys elected by other attorneys in their home communities. Three non-attorney council members are appointed by the governor and other elected authorities to represent the public's interests. The North Carolina State Bar states, “Protection of the public and protection of our system of justice are the objectives of regulation.”<sup>37</sup>

The North Carolina State Bar acknowledges that legal services are out of reach for low- and middle-income populations. Its Preamble to the Rules of Professional Conduct states, in part, the following:

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. ... A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who, because of economic or social barriers, cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest (27 N.C. Admin. Code 2.0.1, Preamble).<sup>38</sup>

To that end, in January 2020, the State Bar Council's Issues Subcommittee on Regulatory Change (“Subcommittee”) was created and charged with researching ongoing efforts in the United States and abroad to examine and propose potential changes to the regulatory structure of the legal profession, with an emphasis on how such changes might enhance access to justice.<sup>39</sup> The Subcommittee had the following purpose statement:

Several states have adopted or proposed substantial changes to the structure of legal practice and delivery of legal services. This subcommittee will review and discuss these

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<sup>36</sup> *Id.*

<sup>37</sup> North Carolina State Bar. (n.d.). *Who We Are*. North Carolina State Bar. Retrieved December 10, 2022, from <https://www.ncbar.gov/about-us/who-we-are>

<sup>38</sup> North Carolina State Bar. (n.d.). *Preamble: A Lawyer's Responsibilities*. North Carolina State Bar. Retrieved December 8, 2022, from <https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/01-preamble-a-lawyers-responsibilities/?ruleSearchTerm=client%20conflict>

<sup>39</sup> North Carolina State Bar. (2022). *Issues Subcommittee on Regulatory Change: Report and Recommendations*. North Carolina Justice for All Project. Retrieved November 25, 2022, from [https://www.ncjgap.org/\\_files/ugd/8a3baf\\_34171ca19f8346ccb0fb6b439fbfc7e9.pdf](https://www.ncjgap.org/_files/ugd/8a3baf_34171ca19f8346ccb0fb6b439fbfc7e9.pdf)

changes, with a focus on the actual impact these changes have had on lawyers and clients. We will consider how these changes may impact North Carolina and whether any of the changes should be considered for implementation in North Carolina. The subcommittee expects to issue one or more reports summarizing and assessing regulatory changes in other states. It does not plan to recommend specific changes for adoption by the Council.<sup>40</sup>

Between June 2020, and December 2021, the subcommittee held twelve meetings. Access to justice, generally understood to include both access to an adequate level of legal services and access to a fair and efficient legal system or settlement process, was the key issue in the subcommittee's investigation and subsequent debates. The subcommittee met regularly for approximately two hours per meeting to discuss specific regulatory change initiatives and to hear from experts across the United States and Canada on how to enhance the quality of legal services through new approaches. Subcommittee members, including the co-founders of the North Carolina Justice for All Project,<sup>41</sup> also heard updates concerning ongoing efforts to discuss and implement regulatory change in other jurisdictions.<sup>42</sup> During this period, the Subcommittee was confronted with the severity of the access to justice gap and resolved to make recommendations to alleviate the crisis despite their initial charge to only *study* these issues.

In January 2022, the Subcommittee published its report, *Issues Subcommittee on Regulatory Change: Report and Recommendations*.<sup>43</sup> The subcommittee recommended the following:

1. Pursue a Limited License for Nonlawyers/Paraprofessionals
2. Pursue a Regulatory Sandbox
3. Recommend a Court Navigator's Program to the Administrative Office of the Courts
4. Refrain from Pursuing Alternative Admission to the Bar at this Time<sup>44</sup>
5. Explore Necessary Changes to Permit Alternative Business Structures and Fee Sharing with Nonlawyers<sup>45</sup>
6. Explore the Possible Liberalization of the Unauthorized Practice of Law Statutes

The Subcommittee's only *unanimous* vote was to recommend that the State Bar Council pursue the development and eventual implementation of a separate license for qualified nonlawyers to

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<sup>40</sup> North Carolina Bar Association. (2021). *Limited licensing proposal – Watch the presentation to the State Bar on March 23, 2021*. NCBarBlog. Retrieved December 8, 2022, from

<https://ncbarblog.com/pd-limited-licensing-proposal-watch-the-presentation-to-the-state-bar-on-mar-23-2021/>

<sup>41</sup> Co-Founders of the North Carolina Justice for All Project, Alicia Mitchell-Mercer and S.M. Kernodle-Hodges, were appointed to the Subcommittee after their presentation on March 23, 2021.

<sup>42</sup> North Carolina State Bar. (2022). *Issues Subcommittee on Regulatory Change: Report and Recommendations*. North Carolina Justice for All Project. Retrieved November 25, 2022, from [https://www.ncjfab.org/\\_files/ugd/8a3baf\\_34171ca19f8346ccb0fb6b439fbfc7e9.pdf](https://www.ncjfab.org/_files/ugd/8a3baf_34171ca19f8346ccb0fb6b439fbfc7e9.pdf)

<sup>43</sup> *Id.*

<sup>44</sup> This policy alternative is excluded from the analysis.

<sup>45</sup> This policy alternative is excluded from the analysis.



provide legal services. According to the report, the subcommittee was “persuaded, in part, by the presentation of the North Carolina Justice for All Project that proposed a license structure for paralegals and other nonlawyers to provide limited legal services based upon successful qualification through rigorous education and examination standards.”<sup>46</sup>

On July 21, 2022, after nearly 18 months of study by the Issues Subcommittee on Regulatory Change, the North Carolina State Bar created a standing Access to Justice Committee to study further the Subcommittee's recommendations.<sup>47</sup> The new Access to Justice Committee held its first meeting on October 19, 2022, and will, purportedly, meet four times a year. It has the following charge:

Access to Justice Committee. It shall be the duty of the Access to Justice Committee to study and to recommend to the council programs and initiatives that respond to the profession's responsibility, set forth in the Preamble to the Rules of Professional Conduct, to ensure equal access to our system of justice for all those who, because of economic or social barriers, cannot afford or secure adequate legal counsel.<sup>48</sup>

Despite the creation of this new Access to Justice Committee, the North Carolina State Bar has indicated at several meetings that they do not want to pursue initiatives that require legislative approval. Most recently, at an Executive Committee meeting on October 20, 2022, they mentioned that they “don't necessarily want to go to the legislature right now; if anything, it's just what can we do within the confines of these walls or with the help of the Chief Justice.”<sup>49</sup> Since regulatory reform requires action by the state legislature, it does not appear that the North Carolina State Bar intends to actively pursue any policy alternatives that require a change to N.C. Gen. Stat. § 84 (Unauthorized Practice of Law).

Notwithstanding the above charge, the 2017 recommendations made by the Legal Professionalism Committee of the North Carolina Commission on the Administration of Law and Justice, instituted by Chief Justice Mark Martin (2014-2019), and the 2021 recommendations made by the North Carolina State Bar's Issues Subcommittee on Regulatory Change, the legal profession has not taken meaningful action to mitigate the access to justice gap. Instead, the status quo seems to be to protect the profession,<sup>50</sup> advocate for more government funding of legal

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<sup>46</sup> North Carolina State Bar. (2022). *Issues Subcommittee on Regulatory Change: Report and Recommendations*. North Carolina Justice for All Project. Retrieved November 25, 2022, from [https://www.ncjfbp.org/files/ugd/8a3baf\\_34171ca19f8346ccb0fb6b439fbfc7e9.pdf](https://www.ncjfbp.org/files/ugd/8a3baf_34171ca19f8346ccb0fb6b439fbfc7e9.pdf)

<sup>47</sup> North Carolina State Bar. (2022). *July 2022 Quarterly Meeting - Executive Committee*. YouTube. Retrieved December 6, 2022, from <https://www.youtube.com/watch?v=OYljLcUxfg0> (Timestamp: 1:04:15)

<sup>48</sup> North Carolina Justice for All Project. (2022). *Limited license proposal*. North Carolina Justice for All Project. Retrieved December 8, 2022, from <https://www.ncjfbp.org/updates>

<sup>49</sup> North Carolina State Bar. (2022). *Oct 20, 2022, Quarterly Meeting - State Bar Council*. YouTube. Retrieved December 6, 2022, from <https://www.youtube.com/watch?v=EAKZb0WCh5w&t=2652s> (Timestamp: 44:02)

<sup>50</sup> Christensen, B. F. (1980). The Unauthorized Practice of Law: Do Good Fences Really Make Good Neighbors-Or Even Good Sense? *American Bar Foundation Research Journal*, 5(2), 159–216. <http://www.jstor.org/stable/827980>

aid,<sup>51</sup> and encourage more pro bono work for those in need.<sup>52</sup> While we certainly do not disagree about the importance of legal aid and pro bono services, these options alone are insufficient to resolve the access to justice crisis. Below are several other factors contributing to this crisis.

## **Limitations of Legal Aid of North Carolina (LANC) and Other Legal Aid Providers**

A second factor impacting the access to justice crisis involves the limited resources of Legal Aid of North Carolina. Legal aid workers deal with some of society's most fundamental problems. They are overwhelmed with heavy caseloads. They take on the emotional burden of their clients' problems. They bear the psychological toll of unpredictable funding and job security. While the legal aid program is not perfect, workers continue to provide people, whom the civil justice system often disregards, with a sense of dignity and self-worth. It is often because of their hard work that justice becomes a reality.

In 2019, 18.2% of North Carolina's population (1,859,610 people) were eligible for LANC services.<sup>53,54</sup> LANC employs 250 lawyers and 525 staff members and serves over 40,000 people yearly.<sup>55</sup> In addition, there is only one legal aid attorney for every 8,000 North Carolinians who qualify for legal services, compared to one private attorney for every 358 North Carolinians.<sup>56</sup> LANC (2018) reports that, even when income requirements are met, it can only serve one in 10 households due to insufficient financial and human resources. COVID-19 has only worsened these outcomes.<sup>57</sup>

Unfortunately, legal aid is not an option for many people who need legal help. To qualify for Legal Aid of North Carolina's (LANC) services, an individual's income must be less than \$16,100 for an individual and \$33,125 for a family of four. Income eligibility thresholds are 125% of the 2021 Federal Poverty Guidelines set by the U.S. Dept. of Health & Human Services.<sup>58</sup> To put this in perspective, currently, under the Fair Labor Standards Act (FLSA),

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<sup>51</sup> Rawlings, R. (2017, June 1). *NCBA Opposes Legal Aid Funding Cuts - North Carolina Bar Association*. North Carolina Bar Association. Retrieved December 23, 2022, from <https://www.ncbar.org/news/ncba-opposes-legal-aid-funding-cuts/>

<sup>52</sup> North Carolina Bar Association. (n.d.). *Pro Bono Committee - North Carolina Bar Association*. North Carolina Bar Association. Retrieved December 23, 2022, from <https://www.ncbar.org/members/communities/committees/pro-bono/>

<sup>53</sup> Legal Aid of North Carolina. (2018). *2018 Annual Report*. Legal Aid of North Carolina. Retrieved November 5, 2022, from [https://www.ncifap.org/files/ugd/8a3baf\\_b73a664e63bc4993b8a440a08427f737.pdf](https://www.ncifap.org/files/ugd/8a3baf_b73a664e63bc4993b8a440a08427f737.pdf)

<sup>54</sup> Based on 2019 1-year American Community Survey estimates provided to Legal Services Corporation by the U.S. Census Bureau.

<sup>55</sup> Legal Aid of North Carolina. (n.d.). *Jobs - Legal Aid of North Carolina*. Legal Aid of North Carolina. Retrieved December 5, 2022, from <https://legalaidnc.org/jobs/>

<sup>56</sup> North Carolina Equal Access to Justice Commission. (2021). *North Carolina Equal Access to Justice Commission*. NC Judicial Branch. Retrieved November 5, 2022, from <https://www.nccourts.gov/commissions/north-carolina-equal-access-to-justice-commission>

<sup>57</sup> Legal Aid of North Carolina. (2018). *2018 Annual Report*. Legal Aid of North Carolina. Retrieved November 5, 2022, from [https://www.ncifap.org/files/ugd/8a3baf\\_b73a664e63bc4993b8a440a08427f737.pdf](https://www.ncifap.org/files/ugd/8a3baf_b73a664e63bc4993b8a440a08427f737.pdf)

<sup>58</sup> Legal Services Corporation. (2022). *North Carolina State profile*. Legal Services Corporation. Retrieved November 5, 2022, from <https://www.lsc.gov/grants/our-grantees/north-carolina-state-profile>

employers are required to pay \$7.25 an hour, which comes to about \$15,080 annually. Therefore, one cannot qualify for legal aid unless their income is near minimum wage.

### Limitations of Pro Bono Legal Services

A third factor is the issue of pro bono legal services. Pro bono attorneys are noble and critical, sharing many of the same characteristics as legal aid providers. However, they cannot resolve the indisputably large access to justice crisis alone. In 2016, Gillian Hadfield, Director at Schwartz Reisman Institute for Technology and Society at the University of Toronto, analyzed this data in detail.<sup>59</sup> These were the findings:

According to legal needs surveys conducted at the state level in 2016, 62 percent of households in America have at least one legal problem and, on average, have three total. So, if you take into consideration that there are 125 million households in the U.S., that means there are roughly 232.5 million legal problems in the U.S. at any given time.<sup>60</sup>

Next, Hadfield looked at what it would cost to fix all these problems. The average hourly rate of a noncorporate lawyer is \$200–\$250. Therefore, at \$200 an hour (on the conservative side of this range), it would cost \$46.5 billion to provide just one hour of legal help to all the households in America currently facing legal problems. If every single one of the 1.3 million licensed lawyers in the U.S. were to take on all these problems, they'd each have to put in 180 pro bono hours (about 1.5 months of work). The current average amount of pro bono hours is 55, but that is among the 52 percent who provided such services in 2016—a far cry from the 100 percent participation rate we would need to address these problems fully.<sup>61</sup>

The need for legal services is too great to be met only through pro bono work, and the reason is not that attorneys do not care or are unwilling to help. It is a systemic issue. While lawyers donating part of their time to help those of limited means is honorable and should continue, the public would fare better if they also had access to a market where they could negotiate for the needed services. Many would be better served by using the services of, for example, a licensed legal practitioner,<sup>62</sup> rather than relying on a lawyer's pro gratis services. The latter may volunteer hours for brief advice and counsel. However, pro bono attorneys are rarely available to see a matter through from inception to conclusion, particularly in family law and immigration matters, which can take years and are the two highest needs in the state, according

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<sup>59</sup> Hadfield, G. K., & Heine, J. (2015). Life in the Law-Thick World: The Legal Resource Landscape for Ordinary Americans. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.2547664>

<sup>60</sup> DeMeola, Z. (2019). *Pro bono work should be encouraged and celebrated, but much, much more is needed*. Institute for the Advancement of the American Legal System at University of Denver. Retrieved November 5, 2022, from <https://iaals.du.edu/blog/pro-bono-work-should-be-encouraged-and-celebrated-much-much-more-needed>

<sup>61</sup> *Id.*

<sup>62</sup> The term Legal Practitioner (LP) refers to a specific category of ALA, where individuals other than a lawyer have a state-issued license to practice law in a limited capacity. Note also that the official name for LPs varies among the states that have adopted limited licensing programs.

to the 2021 Civil Legal Needs Assessment.

Furthermore, legal practitioners that would be licensed to practice in specific practice areas, such as family law, would be more knowledgeable in that area than a well-meaning lawyer who volunteers their time but knows little about family law. Many paralegals who would be appropriate as legal practitioners have years of expertise in the field and are frequently required to complete specific family law courses and examinations that lawyers are not. Furthermore, expanding the number of legal service providers expands the pool of prospective pro bono volunteers available to serve the public.

### **Limited Options for the “Missing Middle”**

A fourth factor is the lack of alternatives available to the middle-income population in case of a legal dispute. Many members of the middle-income population do not have enough disposable income to afford a lawyer when they have a legal problem and do not meet the low-income requirements to receive free legal assistance. This population is frequently referred to as the “missing middle” because it is often disregarded.<sup>63</sup>

The North Carolina 2021 Civil Legal Needs Assessment notes, on page 37, the following:

For those who are turned away based on income eligibility, the alternatives are not good. One respondent identified this as an underserved subpopulation. “That middle income group of 200% to 400% of the federal poverty level, folks who don't qualify for legal aid but also can't pay a \$10,000 retainer ... they're out of luck.” So, when we asked our informants what they do with applicants whom they must turn away because of income ineligibility, we were met with pessimism. One mentioned the Lawyer Referral Service of the North Carolina Bar Association, saying “the service is extremely limited, there's only a few hundred attorneys who are even members of that service and they don't cover a wide range of practice areas, and to be quite honest, I'm not sure that they can handle the volume of referrals that come their way.” Some organizations keep internal referral lists, but they don't yield better results. One lawyer told us, “We have a referral list. A lot of times I feel bad using it. It's like pointing to another overwhelmed nonprofit or direct services group that may not have a whole lot more bandwidth than we do.” A lawyer summarized the access problem: “So we do see that gap as far as just people needing representation and ... not having the money to pay a private attorney five figures....”<sup>64</sup>

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<sup>63</sup> Houlberg. (2022). *Allied Legal Professionals*. Institute for the Advancement of the American Legal System at University of Denver. Retrieved December 3, 2022, from <https://iaals.du.edu/projects/allied-legal-professionals>

<sup>64</sup> Center for Housing and Community Studies at UNC Greensboro. (2021). In Pursuit of Justice - An assessment of the civil legal needs of North Carolina. *Center for Housing and Community Studies at UNC Greensboro*, 3–3. <https://chcs.uncg.edu/nc-legal-needs-assessment-2/>



## *Estimating the Size of the “Missing Middle” Population in North Carolina*

As discussed above, Legal Aid of North Carolina's (LANC) income cap for legal assistance is \$16,100 for one person and \$33,125 for a family of four.<sup>65</sup> While the legal need at this level is significant, many more have annual earnings above that income cap and cannot afford a lawyer. An article titled *Why Do Blue States Keep Prioritizing Lawyers Over Low-Income Americans?* noted that “with full-price lawyers as their only option, and even inexperienced lawyers charging more than \$300 per hour, most Americans are priced out of the market for legal help.”<sup>66</sup>

To better understand the size of North Carolina's “missing middle,” we estimated it using data from several sources. As of April 1, 2020, North Carolina's population was 10,439,388.<sup>67</sup> Of this population, 53% were considered middle-income,<sup>68</sup> with incomes ranging from \$24,840 to \$120,447.<sup>69</sup> Median income was \$60,768.<sup>70</sup> The American Bar Association and the Institute for the Advancement of the American Legal System report that 40% to 60% of middle-income legal needs go unmet nationally.<sup>71,72</sup> Using this information, it is calculated that between 2,213,150 (or 21.2%) to 3,319,725 (or 31.8%) of North Carolinians have unmet legal needs due to the cost of

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<sup>65</sup> Legal Services Corporation. (2022). *North Carolina State profile*. Legal Services Corporation. Retrieved November 5, 2022, from <https://www.lsc.gov/grants/our-grantees/north-carolina-state-profile>; Note: Those with incomes at or below 125% of the federal poverty line.

<sup>66</sup> Stanford Law School. (2022). *Why Do Blue States Keep Prioritizing Lawyers Over Low-Income Americans?* | Stanford Law School. Stanford Law School. Retrieved January 6, 2023, from <https://law.stanford.edu/2022/10/18/why-do-blue-states-keep-prioritizing-lawyers-over-low-income-americans/>

<sup>67</sup> U.S. Census Bureau. (2020). U.S. Census Bureau QuickFacts: North Carolina. Retrieved December 28, 2022, from <https://www.census.gov/quickfacts/fact/table/NC/POP010220>; Note: Population is 10,439,388.

<sup>68</sup> Bennett, Fry, & Kochhar. (2020). *Are you in the American middle class? Find out with our income calculator*. Pew Research Center. Retrieved December 25, 2022, from <https://www.pewresearch.org/fact-tank/2020/07/23/are-you-in-the-american-middle-class/>

<sup>69</sup> Young, A. (2021). *What income level is considered middle class in your state?* USA Today. Retrieved December 25, 2022, from <https://www.usatoday.com/story/news/nation/2021/10/18/you-considered-middle-class-your-state-based-your-income/8499080002/>. The U.S. government does not have an official definition for what constitutes middle-class, but a commonly used measure (developed by Pew Research Center) defines a household to be “middle class” if its income is between two-thirds and twice the median household income. For these figures, the bottom and upper limits of the three middle-income quintiles were adjusted for state-level cost of living using regional price parity (RPP) data from the Bureau of Economic Analysis for 2019.

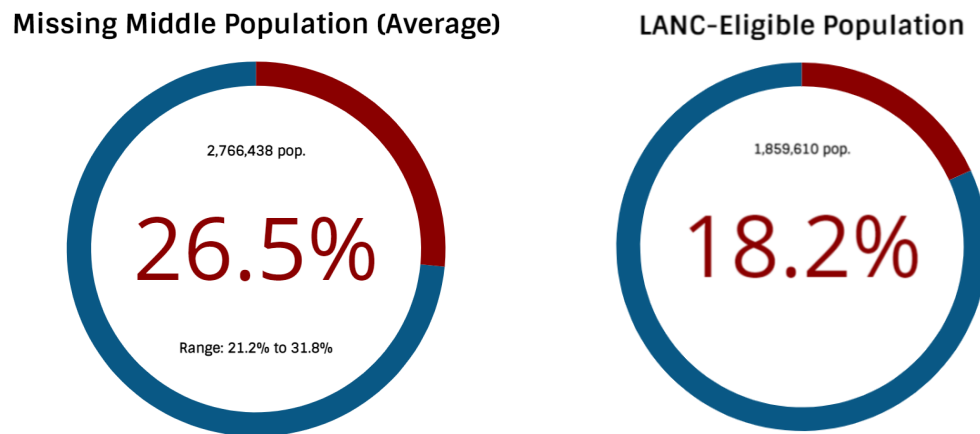
<sup>70</sup> Economic Policy Institute. (2021). *Household incomes have fallen since 2019 despite growth in workers & earnings*. Economic Policy Institute. Retrieved December 26, 2022, from <https://www.epi.org/blog/household-incomes-have-fallen-since-2019-despite-growth-in-workers-earnings/>. Note: EPI analysis of 1-year American Community Survey income and earnings data.

<sup>71</sup> Wills, L. (2017). *Access to Justice: Mitigating the Justice Gap*. Access to Justice: Mitigating the Justice Gap. Retrieved December 25, 2022, from <https://www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/practice/2017/access-to-justice-mitigating-justice-gap/>

<sup>72</sup> Houlberg, M. H. & Kauffman, B. (2022). *IAALS' comment in support of the Colorado licensed legal paraprofessionals program*. Institute for the Advancement of the American Legal System at the University of Denver. Retrieved December 10, 2022, from <https://iaals.du.edu/blog/iaals-comment-support-colorado-licensed-legal-paraprofessionals-program>

legal services. This is an average of 2,766,438, or 26.5% of the population. As seen in Figure 4, this population is even larger than the population that qualifies for free legal services from Legal Aid of North Carolina. Many in this population have the ability to pay something for legal services but not the high rates attorneys charge.<sup>73,74</sup>

**Figure 4 - Comparing Population Eligible for LANC with Missing Middle**



**Note:** The Missing Middle cannot afford a lawyer when they have a legal problem and do not meet the low-income requirements to receive free legal assistance.

## Legal Deserts

A fifth factor is the issue of legal deserts. A legal desert is a geographic area with less than one lawyer for every 1,000 residents. There are 30,000 attorneys in North Carolina. According to the 2022 ABA Profile of the Legal Profession, North Carolina has 2.0–2.9 attorneys per 1,000 people.<sup>75</sup> Below are some facts related to North Carolina, as provided by the North Carolina State Bar, in response to a public records request.

- 48 of North Carolina's 100 counties qualify as a “legal desert.”
- Lawyers are largely concentrated in urban counties.
- 46.7% of active, in-state North Carolina lawyers are in two counties (Wake and Mecklenburg).
- 63% of active, in-state North Carolina lawyers are in five counties (Wake, Mecklenburg, Guilford, Durham, and Forsyth).

<sup>73</sup> Donaldson, R. (2015). Law By Non-Lawyers: The Limits to Limited License Legal Technicians Increasing Access to Justice. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2673017>

<sup>74</sup> Crossland, S. R., & Littlewood, P. C. (2018). Washington 's Limited License Legal Technician Rule and Pathway to Expanded Access for Consumers. *Dickinson Law Review*, 122(3), 861–861. <https://ideas.dickinsonlaw.psu.edu/cgi/viewcontent.cgi?article=1043&context=dlr>

<sup>75</sup> American Bar Association. (2022). *2022 ABA profile of the legal profession*. American Bar Association. Retrieved December 6, 2022, from [https://www.americanbar.org/news/reporter\\_resources/profile-of-profession/](https://www.americanbar.org/news/reporter_resources/profile-of-profession/)

There is a concentration of attorneys in Wilmington, Mecklenburg County, the Research Triangle, and the Triad. However, in 10 of North Carolina's 100 counties, there are fewer than 10 attorneys.<sup>76</sup> Note that the data on lawyer population by county likely overstates the number of active lawyers practicing in a particular county. This is because many retired or non-practicing lawyers in legal desert counties maintain an active license despite closing their practices.

The lack of options in these counties further aggravates the access to justice crisis. Some factors impacting legal deserts include the high cost of law school and a general preference for living in metropolitan areas. For example, the American Bar Association and AccessLex Institute estimate that the typical law school graduate will have amassed over \$130,000 in debt from educational loans.<sup>77</sup> Many new graduates of law school find that their annual income falls short of their overall loan obligations, so graduates are lured, in part, to urban areas because higher salaries tend to be offered there. Additionally, law school graduates generally find working in metropolitan areas more attractive than working in rural or economically depressed areas—the same areas designated as legal deserts. Some factors driving younger lawyers to metropolitan areas include the prestige of working at a more prominent firm, access to high-speed internet (e.g., Netflix, Hulu), proximity to shopping and entertainment options, other conveniences (e.g., Amazon, food delivery), and housing shortages.<sup>78</sup> On December 16, 2022, the North Carolina State Bar's Subcommittee Studying Legal Deserts acknowledged that law schools confirm graduates are remiss to even move to areas such as Winston-Salem. They prefer, instead, to settle in areas such as Raleigh or Charlotte.<sup>79</sup>

There have been many discussions in the legal community concerning options for alleviating legal deserts in North Carolina. For example, during a presentation by Margaret Sauer, Director of the DHHS Office of Rural Health, at a *Subcommittee Studying Legal Deserts* meeting on December 16, 2022, Sauer indicated that medical professionals in rural areas typically need two jobs to make ends meet. She suggested this option for attorneys willing to practice in rural areas.<sup>80</sup> She also indicated that the medical field leverages other medical professionals (i.e., nurse practitioners) to fill in some of their Health Professional Shortage Areas (HPSA) and asked the Subcommittee whether paralegals were an option to address their legal

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<sup>76</sup> Stell, C. (2022). *Legal deserts: A threat to justice in rural North Carolina*. Lawyers Mutual Insurance Company. Retrieved November 5, 2022, from <http://www.lawyersmutualnc.com/risk-management-resources/articles/legal-deserts-a-threat-to-justice-in-rural-north-carolin>

<sup>77</sup> American Bar Association & AccessLex Institute. (2021). *Student debt: The holistic impact on today's young lawyer*. American Bar Association. Retrieved December 6, 2022, from [https://www.americanbar.org/content/dam/aba/administrative/young\\_lawyers/2021-student-loan-survey.pdf](https://www.americanbar.org/content/dam/aba/administrative/young_lawyers/2021-student-loan-survey.pdf)

<sup>78</sup> North Carolina State Bar. (2022, December 16). *Subcommittee Studying Legal Deserts*. YouTube. Retrieved December 17, 2022, from <https://youtu.be/DewX-Fc2X8M>

<sup>79</sup> North Carolina State Bar. (2022, December 16). *Subcommittee Studying Legal Deserts*. YouTube. Retrieved December 17, 2022, from <https://youtu.be/DewX-Fc2X8M?t=2640> (Timestamp: 44:00)

<sup>80</sup> North Carolina State Bar. (2022, December 16). *Subcommittee Studying Legal Deserts*. YouTube. Retrieved December 17, 2022, from <https://youtu.be/DewX-Fc2X8M?t=547> (Timestamp: 9:00)

deserts.<sup>81</sup> One Subcommittee member informed Sauer that “there are no lawyer mid-levels. So you made reference earlier to, you know, these people who do this that lawyers typically do, so we don't have mid-levels, we don't have PAs, we don't have nurse practitioners—that's a whole 'nuther discussion that's occurring at the state bar, but we don't have that.”<sup>82</sup> Experts concur that the shortage of rural attorneys is unlikely to improve over the next decade.<sup>83</sup>

## Technology

### *Access to Technology*

A sixth factor is the issue of technology. Despite the undeniable importance of technology in supporting access to justice, there are key factors to consider, such as the availability of technology and the expectation of access to that technology. According to the North Carolina Department of Information Technology, at least 1.1 million out of 4.032 million households in North Carolina lack access to high-speed internet due to a lack of funds, education, or both.<sup>84</sup> Self-represented parties without internet access are also unlikely to have access to other types of technology, such as printers and scanners. These problems undermine the accessibility of programs intended to close the access to justice gap. Without internet access, for example, it is impossible to use tools such as eCourts Guide & File (a free online program that assists users in drafting court documents for specific types of cases).

### *Limitations of Technology*

Additionally, there are other types of limitations even when self-represented parties have access to computers and the internet. For example, the North Carolina Equal Access to Justice Commission gave a presentation on eCourts Guide & File on February 19, 2021. Between September 2020 (when the system became available) and the date of their report, the Commission reported 20,000 users. Four thousand users completed the interview process to generate documents. The Commission noted a drop of 80% between the number of users and the number of completed interviews and explained that eCourts Guide & File nudges users to seek legal advice when forms do not meet their legal needs.

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<sup>81</sup> North Carolina State Bar. (2022, December 16). *Subcommittee Studying Legal Deserts*. YouTube. Retrieved December 17, 2022, from <https://youtu.be/DewX-Fc2X8M?t=1507> (Timestamp: 25:10)

<sup>82</sup> North Carolina State Bar. (2022, December 16). *Subcommittee Studying Legal Deserts*. YouTube. Retrieved December 17, 2022, from <https://youtu.be/DewX-Fc2X8M?t=2879> (Timestamp: 48:00)

<sup>83</sup> Stell, C. (2022). *Legal deserts: A threat to justice in rural North Carolina*. Lawyers Mutual Insurance Company. Retrieved November 5, 2022, from <http://www.lawyersmutualnc.com/risk-management-resources/articles/legal-deserts-a-threat-to-justice-in-rural-north-carolin>

<sup>84</sup> North Carolina Department of Information Technology. (2022). *North Carolina's Broadband Vision – Closing the Digital Divide*. Division of Broadband and Digital Equity. Retrieved December 11, 2022, from <https://www.ncbroadband.gov/media/249/open>

Although some users were likely curious about the new system without needing its services, a drop-off of 16,000 users may mean many people need additional support even when they have access to technology. For example, legal technology like Guide & File does not conduct a *what-if* analysis or Monte Carlo simulation and instruct people on what actions to take given the infinite number of potential variables involved in their cases. Individuals frequently still need an experienced human brain to help them research legal questions, draft persuasive arguments, prepare for trial, and negotiate settlements. Given that information, we must consider technology's limitations in addressing the access to justice crisis.

### ***Legal Advocacy and Technology***

Also, there are many situations where human-to-human interactions would be difficult to replicate through technology. For example, in an N.C. Gen. Stat. § 50B (Domestic Violence) or child custody action, self-represented parties would benefit from having someone to help them understand the legal process, clarify and prioritize their legal goals, and help them temper their desired outcomes with reasonable expectations, especially when they are emotionally distraught. Furthermore, some people prefer to speak with a live person. Not everyone trusts technology in the same way they do humans. While scalable technological innovations in the legal field are essential, they are not a silver bullet for our access to justice problem. One-to-one interactions remain important in *people law*.

### **North Carolina's Literacy Rates**

A seventh factor is adult literacy rates. When taking a holistic view of individuals in the access to justice gap, the issue of functional literacy becomes extremely important. Functional literacy is the collection of practical skills required to read, write, and perform mathematics for real-world applications so that individuals can operate successfully in their communities.<sup>85</sup> North Carolina has a 13.6% functional *illiteracy* rate.<sup>86</sup> That means roughly 1 in 7 people in North Carolina struggle to read and comprehend well enough to advocate effectively for themselves, particularly before a court or tribunal. Many individuals struggle with receptive and expressive language skills and other concerns that impact effective communication. These barriers make it difficult to adequately articulate their legal position even with the best technology.

### **Measuring the Demand for Legal Services**

An eighth factor is the inability to accurately assess all aspects of legal need. Measuring the demand for legal services is more complex than defining the need because most individuals will not seek legal assistance due to other systemic issues, such as the expense of court, the inconvenience of legal proceedings, or a lack of knowledge about available options. These civil

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<sup>85</sup> United Nations Educational, Scientific and Cultural Organization. (n.d.). *Glossary*. Unesco IIEP Learning Portal. Retrieved December 13, 2022, from <https://learningportal.iiep.unesco.org/en/glossary/f>

<sup>86</sup> World Population Review. (2022). *U.S. Literacy Rates by State 2022*. World Population Review. Retrieved December 11, 2022, from <https://worldpopulationreview.com/state-rankings/us-literacy-rates-by-state>



legal needs will remain unfulfilled unless a significant regulatory change occurs to compensate for the limited resources available to legal aid and pro bono providers.<sup>87</sup>

## Current Policy: A Combined Market and Government Failure

N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) has a stranglehold on the delivery of legal services, which is reflected in the access to justice issue, and limits new routes to accessible legal services, leaving consumers with few options.<sup>88</sup> With limited exceptions, anyone other than an attorney who provides legal services engages in the unlicensed practice of law and is subject to punishment, regardless of whether their services genuinely benefit consumers.<sup>89</sup> Moreover, as discussed previously, while legal aid services and pro bono work are essential to addressing the issue of access to justice, they alone are insufficient.

Professional groups often seek protection from open market competition by lobbying for laws and regulations that provide them an advantage. They contend that competition is healthy in *other* fields but not in theirs. They lobby for rules and laws ostensibly to safeguard the public against ineptitude. For many, the end goal is protecting their trade, and they can succeed for as long as they have the government's support. In a free market, consumers' decisions determine what products or services are in demand. However, when one group is permitted to limit competition, its members reap the benefits while the rest of society pays a high price.

Given the legal industry's privileged position in shaping legislation, it is not surprising that lawyers remain one of the last professions to maintain a monopoly. The legal industry has established internal obstacles against competition through UPL regulation and Rule 5.4 Professional Independence of a Lawyer.<sup>90</sup> These laws, as written, protect attorneys from the competition of unlicensed individuals who may have some legal expertise, but they do not protect the public. In light of the access to justice crisis and considering the economics and ethics involved, we conclude that there is no justification for keeping N.C. Gen. Stat. § 84

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<sup>87</sup> Legal Services Corporation. (2017). *2017 Justice Gap Report*. Legal Services Corporation. Retrieved December 12, 2022, from <https://www.lsc.gov/our-impact/publications/other-publications-and-reports/2017-justice-gap-report>

<sup>88</sup> Institute for the Advancement of the American Legal System. (2022). *The Landscape of Allied Legal Professional Programs in the United States*. University of Denver. Retrieved November 26, 2022, from [https://iaals.du.edu/sites/default/files/documents/publications/landscape\\_allied\\_legal\\_professionals.pdf](https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf)

<sup>89</sup> North Carolina General Assembly. (2021). *Chapter § 84. Attorneys-at-Law. Article 1. Qualifications of Attorney; Unauthorized Practice of Law*. North Carolina General Assembly. Retrieved November 4, 2022, from [https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_84.html](https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_84.html)

<sup>90</sup> North Carolina State Bar. (n.d.). *Law Firms and Associations: Rule 5.4 Professional Independence of a Lawyer*. North Carolina State Bar. Retrieved December 31, 2022, from <https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-54-professional-independence-of-a-lawyer/>; When compared to other developed nations, the United States ranks 109th in terms of its citizens' ability to obtain legal representation. Issues are compounded by Rule 5.4, which prohibits lawyers from sharing profits with "nonlawyers," either as business partners or investors. In effect, it hinders legal firms from embracing innovation and raising the equity capital necessary to expand and sustain their companies, forcing smaller firms to rely on debt and post-tax income. It leaves small business owners vulnerable to legal action without the means to hire a lawyer. Also, self-represented litigants, who are otherwise ordinary people, suffer as a result.

(Unauthorized Practice of Law), as written, in place.

## Common Arguments Against Regulatory Reform

Unauthorized practice of law statutes are primarily based on the belief that no one can help another person with a legal problem until they have completed three years of law school and passed the bar exam. To put it another way, the law in North Carolina presumes that the only way to obtain the knowledge necessary to assist others with legal problems is to attend law school and memorize the subset of law assessed on bar exams. This is an unreasonable assumption.

Law school alumni may be familiar with several legal areas but still need guidance when handling issues independently. For example, family law is one of the most significant areas of legal need. Many attorneys establish successful family law practices after taking only one family law class as an elective in law school.<sup>91</sup> However, since family law is not a required course in law school and is not among the core subjects tested on the bar examination, numerous other lawyers pass the bar exam and set up family law practices utilizing only the information they gained in a bar review course on family law.<sup>92</sup> In fact, according to the National Conference of Bar Examiners, the new bar exam, debuting in 2026, will no longer cover conflict of laws, family law, trusts and estates, or secured transactions.<sup>93</sup>

Once an attorney begins practicing law, they typically focus on a specific area. Studying the law in depth at law school is important, but it is also not absolutely necessary in every circumstance. Just as much may be learned about the law outside of law school as in it. In fact, until the 1930s, law school was not required in most jurisdictions. The vast majority of lawyers instead acquired their craft through apprenticeship. Many successful lawyers, including everyone from Abraham Lincoln and John Marshall to Clarence Darrow and Robert Storey, Sr., pursued apprenticeships. Additionally, California, Vermont, Virginia, and Washington offer full lawyer apprenticeship programs. When complete, lawyers can practice in any area of law.

### Public Harm? Prove it.

One common argument against regulatory reform is public harm—the concern that unqualified and dishonest actors might exploit the poor if UPL laws were relaxed. Even though the current system offers *no* protection to those currently harmed, such as the large population

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<sup>91</sup> North Carolina State Bar. (2022). An Interview with Our New President—Marcia H. Armstrong. *North Carolina State Bar Journal*, 27(4), 5–5. <https://www.ncbar.gov/media/730721/journal-27-4.pdf>

<sup>92</sup> Knowlton, N. A. (2021). *IAALS' comment in support of the proposed Oregon Legal Paraprofessional licensing program*. Institute for the Advancement of the American Legal System at the University of Denver. Retrieved December 5, 2022, from <https://iaals.du.edu/blog/iaals-comment-support-proposed-oregon-legal-paraprofessional-licensing-program>

<sup>93</sup> National Conference of Bar Examiners. (n.d.). *NCBE Publishes Preliminary Content Scope Outlines for New Bar Exam*. National Conference of Bar Examiners. Retrieved January 13, 2023, from <https://www.ncbex.org/news/ncbe-publishes-preliminary-content-scope-outlines/>

that faces legal crises without any legal assistance,<sup>94</sup> opponents of these new pathways and new providers will point to the dangers these innovations could bring and the potential harm to the public. Nevertheless, studies show that the number of complaints concerning harm filed in every other jurisdiction where the policy alternatives we analyzed have been tried is less than or equal to those against lawyers.<sup>95</sup>

For example, in January 2021, Dave Byers, the Administrative Director of Arizona Courts, reported to the North Carolina State Bar's Issues Subcommittee on Regulatory Change ("Subcommittee") that Arizona had had legal document preparers (LDPs) for more than 15 years.<sup>96</sup> He said they are making a difference in Arizona and that there are LDPs he would like to clone because of their impact on their communities.<sup>97</sup> Dave Byers also said that the LDP program has been so successful in Arizona that they would begin *licensing* Legal Paraprofessionals in Spring 2021 (and they did).<sup>98</sup> Legal Paraprofessionals have more autonomy than LDPs in that they can appear in court, among other things.<sup>99</sup> Moreover, Byers informed the Subcommittee that Arizona modeled its program on Ontario's Licensed Paralegal program, which began in 2007, and that Ontario's 3,700 active paralegals and 38,000 active lawyers are *thriving*.<sup>100</sup> Ontario confirmed the relative success of their program on March 23, 2021.<sup>101</sup>

Additionally, the Licensed Paralegal Practitioner (LPP) program was established as a standalone legal profession in Utah in 2015, with the primary objectives of helping Utah's growing number of self-represented litigants and establishing a niche for a new type of legal practitioner. The LPP program at the Utah State Bar has expanded gradually but steadily since it first began offering a licensing exam in 2019.<sup>102</sup> Per the last inquiry in December 2022, Utah reports no complaints regarding harm concerning their LPPs.

Moreover, despite Washington's highly controversial and politicized reasons for

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<sup>94</sup> Legal Services Corporation. (2022). *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans April 2022*. Legal Services Corporation. Retrieved December 12, 2022, from <https://lsc-live.app.box.com/s/xl2v2urajotbbzrhwtjlgj0emp3myz1>

<sup>95</sup> Knowlton, N. A. & DeMeola, Z. (2021). *California lawmakers ignore data in calls to restrict the expansion of legal services*. Institute for the Advancement of the American Legal System at the University of Denver. Retrieved December 6, 2022, from <https://iaals.du.edu/blog/california-lawmakers-ignore-data-calls-restrict-expansion-legal-services>

<sup>96</sup> North Carolina State Bar. (2021). *January 26, 2021, Meeting of the NC State Bar - Subcommittee Studying Regulatory Change*. YouTube. Retrieved December 6, 2022, from <https://www.youtube.com/watch?v=BlNS5GT1Usw> (Timestamp: 7:30)

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> Arizona Judicial Branch. (n.d.). *Legal paraprofessionals questions & answers*. Arizona Judicial Branch. Retrieved December 5, 2022, from <https://www.azcourts.gov/accesstolegalservices/Questions-and-Answers/lp>

<sup>100</sup> North Carolina State Bar. (2021). *January 26, 2021, Meeting of the NC State Bar - Subcommittee Studying Regulatory Change*. YouTube. Retrieved December 6, 2022, from <https://www.youtube.com/watch?v=BlNS5GT1Usw> (Timestamp: 40:32)

<sup>101</sup> North Carolina State Bar. (2021). *March 23, 2021, Meeting of the Subcommittee Studying Regulatory Change*. YouTube. Retrieved December 6, 2022, from <https://www.youtube.com/watch?v=6uPuwsfOFYc>

<sup>102</sup> Hill, S. (2021). Why Attorneys Should Embrace LPPs. *Utah Bar Journal*, 34(2), 44–46. [https://www.ncjap.org/\\_files/ugd/8a3baf\\_8cec605fdaad4779a2a4a83800b3c63c.pdf](https://www.ncjap.org/_files/ugd/8a3baf_8cec605fdaad4779a2a4a83800b3c63c.pdf)

sunsetting its limited licensing (called “Limited License Legal Technician” or “LLLT”) program,<sup>103</sup> harm has never been named as a reason for the Washington Supreme Court to sunset its program. In fact, in 2021, even after Washington decided to sunset its LLLT program, the Stanford Center on the Legal Profession called Washington's program a success and made recommendations for other states considering licensing programs.<sup>104</sup>

Finally, there is no outcry of harm at the federal court level in areas where ALAs are permitted to represent clients. For example, an accredited representative is a non-attorney who has demonstrated to the Department of Justice that they have enough education and experience in immigration law to provide immigration legal services.<sup>105</sup> As another example, an individual can have a non-attorney representative assist with Social Security Administration claims. The representative, if approved, may even accept money in advance if the money is held in a trust or escrow account.<sup>106</sup>

### ***Practicing Law? Tax Preparers, Insurance Agents, and Real Estate Agents***

Additionally, consider other industries with professionals who are arguably *practicing law*. The U.S. Tax Code is one example of an area of law that is highly complex and requires extensive study to comprehend fully. Nevertheless, North Carolina is one of more than forty states that does not require a license for independent tax preparers, many of whom put out a shingle during tax season despite having no official education or experience in understanding the 74,000 pages of U.S. Tax Code, federal tax regulations, and official tax guidance. Many are trained in an approximately 60-hour course to file legal documents (i.e., tax returns), both state and federal.<sup>107</sup> If the tax return is too complex, the option exists to retain a CPA—also unlicensed. If needed, an individual also has the option to seek the assistance of a tax attorney.

Consider real estate agents. In North Carolina, per N.C. Gen. Stat. § 93A-4(a), individuals must complete a 75-hour prelicensing course before applying for a license. They must pass an exam and find a sponsor but do not need a college education. Afterward, they must complete three postlicensing courses within 18 months of initial licensure to retain eligibility to

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<sup>103</sup> Madsen, B. (2020). *Washington Supreme Court Votes to Sunset the Limited License Legal Technicians Program*. Washington State Bar Association. Retrieved December 13, 2022, from [https://www.wsba.org/docs/default-source/licensing/lllt/2020-06-05-dissent.pdf?sfvrsn=980217f1\\_7](https://www.wsba.org/docs/default-source/licensing/lllt/2020-06-05-dissent.pdf?sfvrsn=980217f1_7)

<sup>104</sup> Solomon, & Smith. (2021). *The Surprising Success of Washington State's Limited License Legal Technician Program*. Stanford Law School. <https://law.stanford.edu/publications/the-surprising-success-of-washington-states-limited-license-legal-technician-program/>

<sup>105</sup> U.S. Department of Justice. (2016). *Recognized Organizations and Accredited Representatives Roster by State and City*. Recognized Organizations and Accredited Representatives Roster by State and City | EOIR | Department of Justice. Retrieved December 15, 2022, from <https://www.justice.gov/eoir/recognized-organizations-and-accredited-representatives-roster-state-and-city>

<sup>106</sup> Social Security Administration. (2022). *Your Right to Representation*. Social Security Administration. Retrieved December 15, 2022, from <https://www.ssa.gov/pubs/EN-05-10075.pdf>

<sup>107</sup> H&R Block. (2022). *Online Income Tax Preparation Course*. H&R Block Tax Preparation Company. Retrieved December 5, 2022, from <https://www.hrblock.com/corporate/income-tax-course/>

actively engage in real estate brokerage.<sup>108</sup> Each postlicensing course must consist of a minimum of 30 instructional hours. Although there is much discussion within the real estate industry about how to avoid violating UPL statutes, as a practical matter, a realtor can *practice law* by choosing, filling out, and even supplementing standardized forms. They also frequently draft contracts for residential real estate, the most significant purchase most people will ever make. While doing their job, they are held to a standard of care like an attorney. If any layperson were to complete court forms for a self-represented litigant by choosing, filling out, and supplementing standardized forms, it would undoubtedly be considered a violation of the current UPL statutes.

Finally, insurance agents interpret contracts regularly and advise their clients accordingly. The agent also determines the potential risks associated with an entity or individual and specifies what appropriate coverages are available in the marketplace. Based on information collected from their clients, agents can bind their companies to risk, issue endorsements, and do other things that could be considered the practice of law.

The bottom line is that certain domains of the law can be learned and applied relatively easily. Drafting many legal documents can be done successfully by someone with less than three years of law school, as paralegals and other professionals discussed above are already doing. These professionals do not have a law license, and public harm has not been an issue.

## Concerns About Creating “Second-Rate Legal Help”

### *Available Options: A Lawyer or No Help at All*

An argument leveraged against licensing legal practitioners, in particular, is that it would give the impression of trying to appease those in the access to justice gap with a second-tier professional—something less than an attorney.<sup>109</sup> However, there is no literature or data to support that the public feels this way in any of the states where limited licensing presently exists. There are, instead, many reasons to believe that the public would embrace legal practitioners. For example, a 2020 public opinion survey completed in Arizona indicated that the public would welcome assistance from someone who is not a lawyer.<sup>110</sup> Further, there are plenty of examples in other professions. No one quibbles over a local tax preparer not being a tax attorney or CPA. No one scoffs at a realtor who is not a contract lawyer. There is also no general outcry from the public that medical care is inadequate when they are treated by a nurse practitioner instead of a

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<sup>108</sup> North Carolina Real Estate Commission. (n.d.). *Postlicensing FAQ's*. Postlicensing FAQ's. Retrieved December 14, 2022, from <https://www.ncrec.gov/Education/PostFAQ#:~:text=What%20are%20the%20Postlicensing%20courses,Law%2C%20Rules%20%26%20Legal%20Concepts>.

<sup>109</sup> North Carolina State Bar. (2020, September 2). *NC State Bar - Committee to Study Regulatory Reform*. YouTube. Retrieved December 13, 2022, from <https://www.youtube.com/watch?v=JPuDXoPw5Ag> (Timestamp: 1:51:14)

<sup>110</sup> Arizona Supreme Court Task Force on the Delivery of Legal Services. (2020). State of Arizona Public Opinion Survey. *Arizona Supreme Court*. <https://www.azcourts.gov/Portals/215/Documents/Opinion%20Poll%20Results.pdf?ver=2020-03-06-113334-443>



medical doctor.

A person in danger of drowning off the coast of North Carolina would not turn down the assistance of a skilled swimmer because they are waiting for the expertise of the U.S. Coast Guard. When a person is drowning, they want help from whoever has the knowledge and skill to assist them. Right now, the only options for many drowning North Carolinians are an attorney they cannot afford or nothing.

Moreover, notwithstanding the penalties imposed by N.C. Gen. Stat. 84 (Unauthorized Practice of Law), a significant number of individuals receive legal counsel from family and friends, and many times terrible legal counsel. The problem, then, is not in providing the public with the option to select a qualified and more cost-effective alternative legal service provider but in denying them any other choice. While it is unlikely that a client's experience will be successful every time (an unachievable bar that no lawyer has cleared), it is safe to assume that the vast majority of legal matters will be resolved to everyone's satisfaction and that many more people will have access to legal services at significantly reduced costs than they do now.

### **Public Harm and Second-Rate Legal Help Are Pretexts for Two Unfounded Concerns**

In the end, opposition to regulatory reform that would relax the unauthorized practice of law (UPL) statutes to mitigate the ever-widening access to justice gap is based on one of two major concerns. Either lawyers lack faith in the public's intelligence and agency as individuals, or they lack confidence in their own abilities to thrive in a competitive market. Both perspectives are unfounded. According to a report published by the National Center for State Courts and the American Bar Foundation, fear of competition from alternative legal service providers is a nonissue since those in the access to justice gap cannot afford lawyers' services anyway.<sup>111</sup> But, even if competition were a legitimate concern, the legal profession exists to protect the public, not itself. Further, taking away an individual's choice does not protect them. It is unjustifiable paternalism and an unwarranted interference on the liberties of people who can make their own decisions since it undermines their ability to live as they choose so long as they do not interfere with the rights of others. The above examples of law-adjacent professions show that N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) does not protect the public. Instead, these laws hinder the public from working with ALAs who want to help but have not gone through the process of becoming a lawyer.

## **An Overview of Alternative Policies**

Other organizations and states have begun developing various ALA programs to assist those who cannot afford a lawyer. Some states have modified their UPL statutes to permit ALAs to perform limited services in specific areas of the law. The programs that have been established

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<sup>111</sup> Clarke, T., & Sandefur, R. L. (2017). Preliminary Evaluation of the Washington State Limited License Legal Technician Program. *SSRN Electronic Journal*, 6–6. <https://doi.org/10.2139/ssrn.2949042>

and those still in the planning stages have each been designed with a slightly different framework to meet the requirements of their respective jurisdictions. We analyzed four regulatory change initiatives, previously set forth above, in other jurisdictions to determine whether a particular concept a) had the potential to increase access to justice and b) would not lead to public harm.

### **Policy Alternative #1: License Legal Practitioners (Reducing Fees for Services)**

A legal practitioner is a professional with specific education and experience, licensed to provide limited legal services in specific practice areas. This professional is often compared to a nurse practitioner in the medical field. Legal practitioners are not lawyers, but they can provide more affordable, limited legal advice and create legal documents for clients in certain areas of law. In some states, like Arizona, they can also appear in court.<sup>112</sup> If the legal issue requires work beyond the legal practitioner's scope of practice, the legal practitioner must advise clients to seek the advice of an attorney.

In considering this policy alternative, paralegals, unlicensed law school graduates, and other qualified professionals could offer limited legal services. First, we envision licensing paralegals. A paralegal is qualified by education, training, or work experience and performs substantial legal work under the direction and supervision of an attorney. Many of the tasks lawyers do, paralegals do as well. Some paralegal responsibilities include case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney. Paralegals might also represent clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

In May 2021, the Bureau of Labor Statistics (BLS) reported 12,630 paralegals and legal assistants employed throughout North Carolina.<sup>113</sup> Although we are not suggesting that newly certified paralegals are appropriate for licensure, the North Carolina State Bar reports that there are more than 3,600 North Carolina Certified Paralegals (NCCPs). While the six law schools in North Carolina are concentrated in the Triad and Triangle regions, the North Carolina State Bar Paralegal Certification website lists 38 paralegal programs at educational institutions throughout the state.<sup>114</sup> To graduate, most programs involve courses in legal research, contract law, torts,

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<sup>112</sup> Institute for the Advancement of the American Legal System. (2022). *The Landscape of Allied Legal Professional Programs in the United States*. University of Denver. Retrieved November 26, 2022, from [https://iaals.du.edu/sites/default/files/documents/publications/landscape\\_allied\\_legal\\_professionals.pdf](https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf). Note: “Two of the four active states, Arizona and Minnesota, allow their ALPs to fully represent their clients in court. State committees recommending full representation include California, Connecticut, and New Hampshire.”

<sup>113</sup> U.S. Bureau of Labor Statistics. (2022). *North Carolina - May 2021 OEWS state occupational employment and wage estimates*. U.S. Bureau of Labor Statistics. Retrieved December 5, 2022, from [https://www.bls.gov/oes/current/oes\\_nc.htm](https://www.bls.gov/oes/current/oes_nc.htm)

<sup>114</sup> North Carolina State Bar. (2022). *Passing Exam Rate*. North Carolina State Bar - Paralegal Certification. Retrieved December 27, 2022, from

wills and estate planning, ethics, family law, criminal law, and real estate law.

Second, we envision licensing law school graduates with a Juris Doctor degree. The North Carolina State Bar governs the Student Practice Certification Rule, formerly known as the 3L Practice Rule, which allows law students, after meeting certain requirements, to obtain practical experience in the practice of law under the supervision of a licensed attorney.<sup>115</sup> However, if a law school graduate were to fail the North Carolina State Bar exam, they could no longer take advantage of that Rule and would be prohibited from practicing law.

North Carolina's overall bar exam passage rate is 68%.<sup>116</sup> The North Carolina Board of Law Examiners reports that between 2010 and 2020, nearly 7,000 applicants took the state bar exam and did not pass. For law school students who graduate with a notoriously heavy debt load, this would provide a needed opportunity to work in the legal profession while helping the public with their legal needs. Additionally, although we have yet to research this topic thoroughly, states like New York are also considering licensing law-adjacent service providers and community workers such as social workers.<sup>117</sup>

Some of the areas of practice potentially appropriate for legal practitioners and voted on by the North Carolina State Bar Issues Subcommittee on Regulatory Change, discussed above, include family law (unanimous pass), landlord-tenant law (unanimous pass), housing/homeowner issues (split vote pass; 11-1); immigration (split vote pass; 8-5);<sup>118</sup> elder law (split vote pass; 8-3); healthcare (split vote pass; 9-2); income maintenance (split vote pass; 9-3); consumer rights (split vote pass; 8-4); employment legal services (split vote pass; 7-5); and veteran/military benefits (split vote pass; 9-3).<sup>119</sup> These practice areas were chosen for discussion and a vote because they had the greatest legal need, as reflected in the report, *In Pursuit of Justice: An Assessment of the Civil Legal Needs of North Carolina, June 2021*.<sup>120</sup>

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<https://www.nccertifiedparalegal.gov/passing-rate/?fbclid=IwAR0LVehL1H7dHII1vFXFGCW0Vnv94uS0VTy7XFUT8nz1cUc2ZplkMR11zUk>

<sup>115</sup> North Carolina State Bar. (2021). .0203 Eligibility. 27 N.C.A.C. CHAPTER 1C - SECTION .0200. Retrieved January 11, 2023, from <https://www.ncbar.gov/for-lawyers/governing-rules-of-the-state-bar/0203-eligibility/>

<sup>116</sup> National Conference of Bar Examiners. (2022, November). *Bar Exam Results by Jurisdiction*. National Conference of Bar Examiners. Retrieved December 3, 2022, from <https://www.ncbex.org/statistics-and-research/bar-exam-results/>

<sup>117</sup> Moran, L. M. (2021). New York may license social workers to handle some legal tasks. *ABA Journal*. <https://www.abajournal.com/web/article/new-york-may-license-social-workers-to-handle-some-legal-tasks>

<sup>118</sup> “The subcommittee questioned whether immigration matters should be included, as well as whether the limited license would actually authorize practice in this area of federal law. The subcommittee's vote in favor of inclusion remains, but a subsequent working group should explore this issue further.”

<sup>119</sup> North Carolina State Bar. (2022). *Issues Subcommittee on Regulatory Change: Report and Recommendations*. North Carolina Justice for All Project. Retrieved November 25, 2022, from [https://www.ncjap.org/\\_files/ugd/8a3baf\\_34171ca19f8346ccb0fb6b439fbfc7e9.pdf](https://www.ncjap.org/_files/ugd/8a3baf_34171ca19f8346ccb0fb6b439fbfc7e9.pdf)

<sup>120</sup> Center for Housing and Community Studies at UNC Greensboro. (2021). *In pursuit of justice - an assessment of the civil legal needs of North Carolina*. Center for Housing and Community Studies at UNC Greensboro. Retrieved November 5, 2022, from <https://chcs.uncg.edu/wp-content/uploads/2021/04/2021-NC-Legal-Needs-Assessment.pdf>

Many of these practice areas, including family, landlord-tenant, estate planning, probate, debtor-creditor, administrative law, and expungements, are also identified in a comprehensive document, *Proposal for a Limited Practice Rule to Narrow North Carolina's Access to Justice Gap*, submitted to the North Carolina Supreme Court and the North Carolina State Bar by the North Carolina Justice for All Project in January 2021.<sup>121</sup> In particular, more resources for areas like expunctions would significantly improve individuals' prospects of being self-supporting.<sup>122</sup>

### ***Current and Pending Programs***

In November 2022, the Institute for the Advancement of the American Legal System at the University of Denver (IAALS) published a report, *The Landscape of Allied Legal Professional Programs in the United States*.<sup>123</sup> According to Michael Houlberg, Director of Special Projects, the goals of the study were to explain why many jurisdictions have started creating a new tier of legal service providers (called "Allied Legal Professional" or "ALP" in the report) and to identify the similarities and differences between each. Houlberg further explained that when creating their own program, many states start by researching the programs already in place in other states. This paper is meant to be utilized by states considering developing their own ALP program to get insight into what such programs entail and the rationale behind many of the decisions made by other states.<sup>124</sup>

The first section summarizes the access to justice crisis now confronting the United States of America. Second, the report specifies which states have implemented programs and which have plans for instituting such initiatives in the near future. The report then breaks down each critical component of an ALP framework, discussing how and why certain states' programs and plans vary. Finally, the article discusses the benefits and challenges of the current state programs.<sup>125</sup> The states with activity in this area are shown below in Figure 5.

### **Figure 5 - Map of State Activity Provided by IAALS**<sup>126</sup>

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<sup>121</sup> Mitchell-Mercer, A. & Kernodle-Hodges, S. M. (2021). *Proposal for a limited practice rule to narrow North Carolina's access to justice gap*. North Carolina Bar Association. Retrieved December 8, 2022, from <https://ncbarblog.com/wp-content/uploads/2021/03/Justice-for-All-Proposal-for-Limited-Practice-Rule-to-Supreme-Court-and-North-Carolina-State-Bar-Final.pdf>

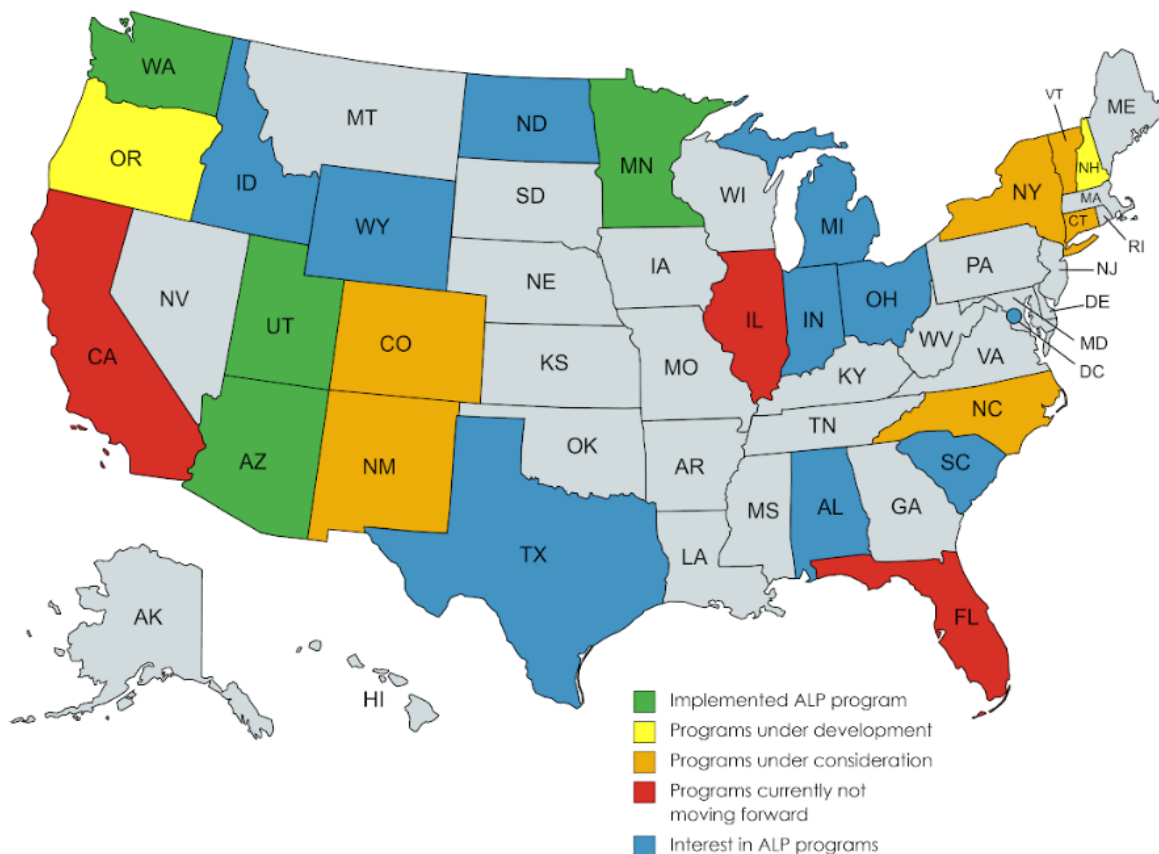
<sup>122</sup> Center for Housing and Community Studies at UNC Greensboro. (2021). *In pursuit of justice - an assessment of the civil legal needs of North Carolina*. Center for Housing and Community Studies at UNC Greensboro. Retrieved November 5, 2022, from <https://chcs.uncg.edu/wp-content/uploads/2021/04/2021-NC-Legal-Needs-Assessment.pdf>

<sup>123</sup> Institute for the Advancement of the American Legal System. (2022). *The Landscape of Allied Legal Professional Programs in the United States*. University of Denver. Retrieved November 26, 2022, from [https://iaals.du.edu/sites/default/files/documents/publications/landscape\\_allied\\_legal\\_professionals.pdf](https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf)

<sup>124</sup> Houlberg. (2022). *Allied Legal Professionals*. Institute for the Advancement of the American Legal System at University of Denver. Retrieved December 3, 2022, from <https://iaals.du.edu/projects/allied-legal-professionals>

<sup>125</sup> Institute for the Advancement of the American Legal System. (2022). *The Landscape of Allied Legal Professional Programs in the United States*. University of Denver. Retrieved November 26, 2022, from [https://iaals.du.edu/sites/default/files/documents/publications/landscape\\_allied\\_legal\\_professionals.pdf](https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf)

<sup>126</sup> Note: This map was provided by Michael Houlber, Director of Special Projects at IAALs on January 24, 2023. You can see an interactive map on their website, which provides detailed information about the status in each state



## Policy Alternative #2: Liberalizing N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) for Legal Aid and Pro Bono Services

As discussed above, the definition of "practicing law" is outlined in N.C. Gen. Stat. § 84 (Unauthorized Practice of Law). While liberalizing UPL statutes can mean many different things, for purposes of our policy analysis, we considered whether it would benefit the public to relax the current statutory structure and prohibitions on the practice of law for those *not* acting for financial or personal gain. We believe that liberalizing N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) could create more opportunities for the non-lawyer workforce of pro bono, legal aid, and other advocacy programs to serve more people.

### Current Programs

**Delaware.** In January 2022, the Delaware Supreme Court adopted a new rule permitting qualified non-lawyer tenant advocates to represent residential residents in eviction cases. Rule 57

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here: Houlberg. (2022). *Allied Legal Professionals*. Institute for the Advancement of the American Legal System at University of Denver. Retrieved December 3, 2022, from <https://iaals.du.edu/projects/allied-legal-professionals>



of the Supreme Court has long enabled the representation of landlords and landlord companies in eviction proceedings by non-lawyer agents, but not tenants. Rule 57.1 permits authorized tenant advocates to prosecute or defend eviction actions, engage in settlement negotiations, file pleadings and other documents, and present before the Justice of the Peace Court with the approval of their residential tenant-client. Qualified tenant advocates will be taught by one of Delaware's three legal aid agencies and will be supervised by a Delaware legal aid attorney.<sup>127</sup>

**Alaska.** The Alaska Supreme Court adopted Rule 43.5 (Waiver to Engage in the Limited Practice of Law for Non-Lawyers Trained and Supervised by Alaska Legal Services Corporation) on December 1, 2022. This rule establishes guidelines for *non-lawyers* to help low-income Alaskans with certain legal matters.<sup>128</sup> To qualify, the person must have completed the required training provided by Alaska Legal Services Corporation on the Rules of Professional Conduct, including, but not limited to, conflicts of interest, confidentiality, the duty of candor, the substantive area of law in which the person will practice, and appropriate tribunal procedures.<sup>129</sup> The person must also be supervised by and engage in the limited practice of law exclusively for Alaska Legal Services Corporation full-time.<sup>130</sup>

### **Policy Alternative #3: Regulatory Sandbox**

A regulatory sandbox is a policy instrument that allows for the provision of novel models or services to test their marketability and impact to influence future policy-making.<sup>131</sup> The financial services sector was the first to employ the sandbox tool since it is a highly regulated business facing substantial technological breakthroughs that do not fall under the standard laws (e.g., cryptocurrency). This concept may seem familiar. Governor Roy Cooper signed into law H624, the North Carolina Regulatory Sandbox Act of 2021 (Sandbox Act), which established what is known as a *regulatory sandbox* program to encourage innovation in the development of FinTech and InsurTech products to be offered to consumers.<sup>132</sup> The legal industry, a traditionally highly regulated sector in which the market and, in particular, services driven by technology are outpacing the traditional regulatory approach, can also benefit from the sandbox model.

### **Current Programs**

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<sup>127</sup> Delaware Supreme Court. (2022). *Delaware Supreme Court announces adoption of new Supreme Court Rule 57.1 to allow non-lawyer representation of residential tenants in eviction actions*. Delaware Courts. Retrieved December 7, 2022, from <https://courts.delaware.gov/forms/download.aspx?id=133348>

<sup>128</sup> Alaska Judiciary. (2022). *Alaska Bar rules*. Alaska Court System. Retrieved December 7, 2022, from <https://public.courts.alaska.gov/web/rules/docs/bar.pdf>

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> Utah Office of Legal Services Innovation. (n.d.). *What we do*. Utah Supreme Court. Retrieved December 5, 2022, from <https://utahinnovationoffice.org/about/what-we-do/>

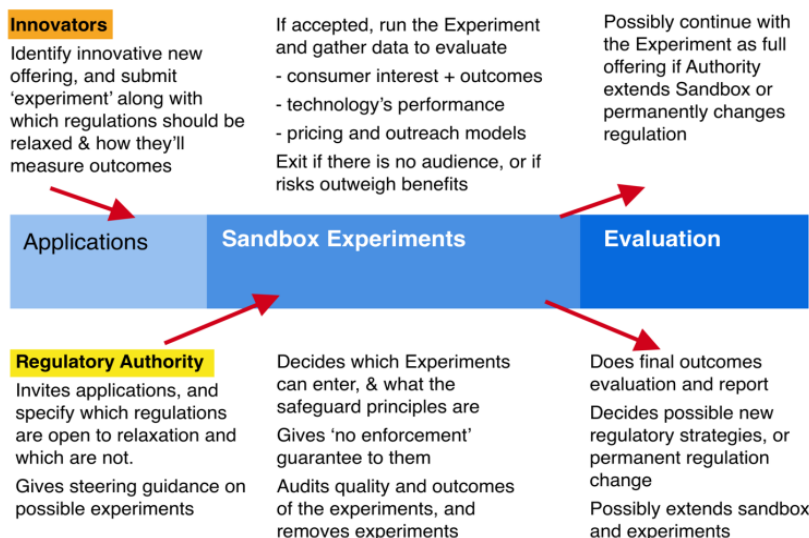
<sup>132</sup> North Carolina General Assembly. (2021). *Chapter 169. North Carolina Regulatory Sandbox*. North Carolina General Assembly. Retrieved December 10, 2022, from [https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_169.html](https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_169.html)

According to the Utah Office of Legal Services Innovation, sandboxes provide looser rules, more data, and better policymaking.<sup>133</sup> An example is Utah's Regulatory Sandbox, created in August 2020. In a *Legal Regulatory Sandbox*, non-attorneys could control and invest in law companies, and rules limiting who can provide legal services would be less stringent.<sup>134</sup> The goal would be to provide consumers access to a well-developed, high-quality, innovative, inexpensive, and competitive market for legal services.<sup>135</sup> This goal would guide the creation and management of a sandbox.

While there are many sandboxes across the nation in the categories of financial technology, blockchain, insurance technology, agriculture technology, digital medical technology, energy technology, property technology, and general sandboxes, Utah is the only state that has a *Legal Regulatory Sandbox*.<sup>136,137</sup> A process graphic explaining how Utah's Legal Regulatory sandbox functions can be found in Figure 6.<sup>138</sup>

**Figure 6 - A Regulatory Sandbox Model (Utah)**

### A Regulatory Sandbox Model



<sup>133</sup> Utah Office of Legal Services Innovation. (n.d.). *What we do*. Utah Supreme Court. Retrieved December 5, 2022, from <https://utahinnovationoffice.org/about/what-we-do/>

<sup>134</sup> North Carolina Advocates for Justice. (2022). *Our legal deserts*. North Carolina Advocates for Justice. Retrieved December 5, 2022, from <https://www.ncaj.com/news/our-legal-deserts>

<sup>135</sup> *Id.*

<sup>136</sup> Mississippi Center for Public Policy. (2021). *Regulatory "sandbox" reforms advance across the nation*. Mississippi Center for Public Policy. Retrieved December 6, 2022, from <https://mcpolicy.org/regulatory-sandbox-reforms-advance-across-the-nation/>

<sup>137</sup> Utah State Legislature. (2022). *Regulatory sandbox program amendments*. Utah State Legislature. Retrieved December 7, 2022, from <https://le.utah.gov/~2022/bills/static/hb0243.html>; Despite 2022 legislation consolidating Utah's regulatory sandboxes, Utah's *legal* regulatory sandbox will not consolidate with the other sandboxes in Utah as those are regulated by the Legislature and the practice of law is under the Utah Supreme Court.

<sup>138</sup> Utah Office of Legal Services Innovation. (n.d.). *What we do*. Utah Supreme Court. Retrieved December 5, 2022, from <https://utahinnovationoffice.org/about/what-we-do/>

Notably, Arizona skipped the formation of a regulatory sandbox and, instead, eliminated Rule 5.4 in 2020, paving the way for an *alternative business structure* (ABS) option, which went into effect in 2021 and is permanent.<sup>139</sup>

#### **Policy Alternative #4: Court Navigators**

Trained and supervised court navigators aid unrepresented parties by providing them with general information and moral support, guiding them through the process of obtaining and completing court forms, assisting them in maintaining an organized case file, connecting them with interpreters and other services, and outlining what to expect and the roles of each person in court. Similarly, court navigators accompany self-represented litigants to court. These court navigators are not permitted to make legal arguments in court. However, they may sit with the self-represented party and answer the judge's factual questions.<sup>140</sup> Such a program in North Carolina would be highly beneficial for victims of domestic violence, parties in eviction cases, and other types of self-represented litigants. The program's design would determine whether it would require a change to current UPL statutes to be viable.

#### **Current Programs**

According to the report, *Nonlawyer Navigators in State Courts: An Emerging Consensus*, as of 2019, twenty-three initiatives in 15 states and the District of Columbia were identified and assessed in this review of the present national landscape.<sup>141</sup> An updated list of programs was published in August 2022.<sup>142</sup> The study outlines the aspects of the program and provides advice for its development and implementation. The programs use *navigators* who work within a courthouse to offer self-represented litigants (SRLs) person-to-person help.<sup>143</sup> Navigators in the study are individuals who do not have full legal credentials and training (i.e., a law license) and assist SRLs with fundamental civil legal difficulties. Their work does not fall under the purview of the attorney-client privilege, and they receive training through an academic program.<sup>144</sup>

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<sup>139</sup> Arizona Supreme Court. (2022). *Alternative business structure*. Arizona Judicial Branch. Retrieved December 9, 2022, from <https://www.azcourts.gov/cld/Alternative-Business-Structure>

<sup>140</sup> New York State Unified Court System. (2017). *NYC Housing Court: Court Navigator Program - Volunteer Opportunities*. New York City Housing Court. Retrieved December 7, 2022, from <https://www.nycourts.gov/courts/nyc/housing/rap.shtml>

<sup>141</sup> McClymont, M. (2019). *Report: Nonlawyer navigators in state courts: An emerging consensus*. Self-Represented Litigation Network. Retrieved December 7, 2022, from <https://www.srln.org/system/files/attachments/Final%20Navigator%20report%20in%20word-6.11.hyperlinks.pdf>

<sup>142</sup> McClymont, M. (2019). *Appendix revised program contact list*. Self-Represented Litigation Network. Retrieved December 7, 2022, from [https://www.srln.org/system/files/attachments/Revised%20Contact%20List%20-%20August%202022\\_0.pdf](https://www.srln.org/system/files/attachments/Revised%20Contact%20List%20-%20August%202022_0.pdf)

<sup>143</sup> Sandefur, R. L. & Clarke, T. M. (2016). Roles beyond Lawyers: Summary, Recommendations and Research Report of an Evaluation of the New York City Court Navigators Program and Its Three Pilot Projects. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2949038>

<sup>144</sup> New York State Unified Court System. (2017). *NYC Housing Court: Court Navigator Program - Volunteer Opportunities*. New York City Housing Court. Retrieved December 7, 2022, from <https://www.nycourts.gov/courts/nyc/housing/rap.shtml>

## **Methodology and Analysis of Policy Alternatives**

The formulation, adoption, and implementation of the four policy alternatives discussed above were evaluated using a Goals and Alternatives Matrix (GAM) and a Political Feasibility Analysis. The policy alternatives include (1) licensing legal practitioners (reducing fees for services); (2) liberalizing N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) for legal aid and pro bono services; (3) creating a legal regulatory sandbox; and (4) establishing a court navigator program. The GAM is a tool that facilitates the process of prioritizing these policy alternatives objectively and transparently. This requires a multigoal solution analysis to facilitate choice-making with a focus on policy alternatives expected to produce meaningful solutions to mitigate the access to justice crisis. Political feasibility is the extent to which stakeholders and the general public will support a policy choice. The political feasibility analysis briefly discusses the possibility of support or opposition from key stakeholder groups.

### **Goals and Alternatives Matrix (GAM)**

Given the presence of multiple objectives, as part of the GAM, we have integrated a multigoal solution analysis that: (1) identifies impact categories for the relevant objectives; (2) projects the impact that each alternative would have on the achievement of each objective; (3) assigns a quantitative and/or qualitative value to the projected impacts; (4) evaluates the alternatives in light of the objectives; and (5) facilitates our recommendations.

The four policy alternatives are outlined in Table 1 in Appendix N with four goals: economic efficiency, social equity, political feasibility, and legitimacy. Although each of these goals is important, we believe that economic efficiency, in particular, merits consideration as a social good, not only because it correlates quite well with general welfare but also because it is frequently undervalued in the deliberations of representative governments. Table 1 summarizes the policy options and goals, with policy options along the x-axis and goals for evaluating them along the y-axis. As reflected in Table 1, all four policy alternatives are better than the status quo, except in terms of political feasibility (discussed below). However, we emphasize that these are just estimates of how well each choice would achieve the specified goals based on the available information. The best policy alternative may change depending on how the reader values the considerations above. Nonetheless, the comparisons allow us to make reasonably educated guesses about possible outcomes. Below is a discussion of some of our findings.

### **Economic Impact Analysis**

When we think about the economic impact of access to justice, we tend to focus on the benefits to the legal service provider and the client, both tangible and intangible. However, there is an economic benefit to the entire state of North Carolina in providing access to legal services for low- and middle-income individuals. These benefits include both revenue and cost savings.

### ***Economic Benefit: Revenue to NC Community College and UNC Systems***

One economic benefit is the revenue potential from education and training programs that would assist in bringing new service providers to market, such as legal practitioners. If data is used to guide the development of new academic programs, they will meet the public's legal needs and attract more students. By developing new academic programs or modernizing existing ones that support access to justice initiatives, the North Carolina Community Colleges System and the University of North Carolina System could better serve students, communities, and industries. Increased enrollment due to these unique programs could be marketed to both in-state and out-of-state students and produce revenue for the state.

### ***Economic Benefit: Cost Savings to Local and State Economies***

A second economic benefit would be cost savings to the state and local economies due to the advocacy of legal service providers. When people receive legal services, there is less need for support from homeless shelters, temporary housing programs, government welfare programs, and community programs. The funds saved can be directed to others in need.<sup>145</sup>

According to the North Carolina Equal Access to Justice Commission's 2012 report, *A 108% Return on Investment: The Economic Impact to the State of North Carolina of Civil Legal Services*,<sup>146</sup> legal aid providers generated \$16,857,503 in cost savings through client representation, including domestic violence prevention, eviction prevention, and foreclosure avoidance. The economic impact of legal services across the state, including direct, indirect, and cost savings, was \$48,775,276. In 2012, for every dollar spent on legal services from all funding sources, \$2.08 was returned to the economy. Specifically, for every dollar the state spent on legal services, roughly \$10 was returned to the economy. The return on the state's investment in legal services provided by the three organizations detailed in the report was 108%. This report supports our position that each policy alternative discussed above can potentially have a substantial but variable positive economic impact.

### ***Analogous Estimation of Program Costs for Each Policy Alternative***

While this information is also included in Table 1, we wanted to address program costs specifically. Because the policy alternatives would be novel to North Carolina, estimating is used to assess the below programs' costs. The analogous estimating technique below uses information from similar programs to establish a cost estimate based on the data available. Expert judgment is needed to confirm the data's reusability. For example, different state programs may offer varying scopes of services and commit varying degrees of funding and human resources.

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<sup>145</sup> Irvine, M. L. (2012). *A 108% return on investment: The economic impact to the state of North Carolina of civil legal services in 2012*. North Carolina Equal Access to Justice Commission. Retrieved December 7, 2022, from [https://www.nccourts.gov/assets/inline-files/NC-EAJC-econ-report.pdf?0daVXrz00PXJodiPeG\\_Hvjuh2r8Ei7G](https://www.nccourts.gov/assets/inline-files/NC-EAJC-econ-report.pdf?0daVXrz00PXJodiPeG_Hvjuh2r8Ei7G)

<sup>146</sup> *Id.*



**Legal Practitioner Programs.** In Washington and Utah, state bar associations fund similar programs independently. The Washington State Bar Association (WSBA) allocated less than \$200,000 annually to their LLLT program, representing less than one-tenth of one percent of the WSBA's budget.<sup>147,148</sup> In contrast, the Utah State Bar spends slightly more than \$100,000 annually on its LPP program.<sup>149</sup> In Arizona, the Supreme Court funds their program.<sup>150</sup> Ideally, these programs will eventually be self-sustaining and paid for by the fees from the licensing programs themselves.<sup>151</sup>

For comparison, the NC State Bar's *proposed* budget for total operating costs were \$9.5 million 2021.<sup>152</sup> The North Carolina State Bar Board Of Paralegal Certification 2021 proposed budget reflected \$241,250.00 in revenue and 255,288.67 in expenses for 2021. Page 2 of the Executive Director's Notes states that The North Carolina State Bar Board Of Paralegal Certification is financially self-sufficient.

**Liberalization of UPL Programs (for Legal Aid and Pro Bono Services).** The Delaware and Alaska programs were approved in January and December 2022, respectively. No data was immediately available online to show the cost of these programs. A public records request was sent to each state requesting this information. As of the date of this report, no information responsive to this request has been received.

**Regulatory Sandbox Programs.** A recent study on the cost of running a sandbox across industries noted a wide range in the financial resources dedicated, with figures ranging from \$25,000 to over \$1 million. This disparity may be attributed to the fact that some jurisdictions, but not all, included the salary of staff members dedicated to the sandbox. Most responders utilized monies from their core budgets, and just one jurisdiction indicated that application fees

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<sup>147</sup> Houlberg. (2022). *Allied Legal Professionals*. Institute for the Advancement of the American Legal System at University of Denver. Retrieved December 3, 2022, from <https://iaals.du.edu/projects/allied-legal-professionals>

<sup>148</sup> Washington State Bar Association. (2022). *Fiscal Year 2022 Budget*. Washington State Bar Association. Retrieved January 26, 2023, from

[https://www.wsba.org/docs/default-source/about-wsba/finance/fy-2022.pdf?Status=Master&sfvrsn=dcdb13f1\\_5](https://www.wsba.org/docs/default-source/about-wsba/finance/fy-2022.pdf?Status=Master&sfvrsn=dcdb13f1_5)

<sup>149</sup> Utah State Bar. (2022). *FY23 FINAL Budget Based on Unaudited Actual Results through 3/31/22*. Utah State Bar. Retrieved December 20, 2022, from

[https://www.utahbar.org/wp-content/uploads/USB\\_2022-23BudgetWorkbook.pdf](https://www.utahbar.org/wp-content/uploads/USB_2022-23BudgetWorkbook.pdf)

<sup>150</sup> Arizona Supreme Court. (2022). Thomson Reuters® Westlaw. Arizona Court Rules. Retrieved January 13, 2023, from

[https://govt.westlaw.com/azrules/Document/N7A1F16F269F311ECA74C8B291E70EBC8?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/azrules/Document/N7A1F16F269F311ECA74C8B291E70EBC8?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

<sup>151</sup> On page 2 of the Stanford evaluation of Washington's program, it says, "Over 200 students were in the LLLT pipeline when the court chose to sunset the program, with interest increasing. At the time of sunset, the LLLT Board had proposed expanding the program to two new practice areas, and reducing the experiential requirement to 1500 hours. Based on those changes, the Board's model was reasonable in suggesting that the program would be on track to become self-sustaining by 2029."

<https://law.stanford.edu/wp-content/uploads/2021/04/LLLT-White-Paper-Final-5-4-21.pdf>

<sup>152</sup> North Carolina State Bar. (2021). The North Carolina State Bar Statement of Revenues and Expenditures 2021 Proposed Budget. NCJFAP Google Drive. Retrieved January 26, 2023, from

[https://drive.google.com/drive/folders/1DLafFJuDtyEtTuLN3cs4cVt2q057UIe6?usp=share\\_link](https://drive.google.com/drive/folders/1DLafFJuDtyEtTuLN3cs4cVt2q057UIe6?usp=share_link)

were levied to access the sandbox.<sup>153</sup>

A public records request was sent to Utah's judiciary requesting budgetary information. According to Susan Crismon, the Executive Director of the Office of Legal Services Innovation, Utah's Legal Sandbox does not have any set budget or documents to provide. It has received approximately \$350,000 in grants from sources such as the William and Flora Hewlett Foundation and the State Justice Institute to fund the startup and initial operations of the Office through 2023.<sup>154</sup> The judiciary is still working on long-term funding and where the Office will ultimately be housed and expects to know more in 2023.

Concerning North Carolina's InsurTech and FinTech Sandbox,<sup>155</sup> both the North Carolina Office of State Budget & Management (OSBM) and the Chair of the Innovation Council report that no funding was associated with the Sandbox when the bill passed. Also, the General Assembly did not include specific funding in the most recent budget bill outlined in the Joint Conference Committee Report dated June 28, 2022.<sup>156</sup>

**Court Navigator Programs.** Due to the fundamental differences in program structure amongst the many existing programs, it is difficult, if not impossible, to utilize available data from other programs to estimate the cost of a court navigator program in North Carolina. Existing programs vary significantly concerning a wide range of characteristics, including but not limited to: the size of the program; the number of volunteers, non-profit workers, and paid staff members; the type of entity overseeing the program; the collaborative network responsible for administering the program; the territory and population served; the scope of the work performed; the areas of the law addressed; and many others. Additionally, according to Mary E. McClymont, Senior Fellow, Justice Lab, Georgetown Law, these programs are funded in myriad ways, including through federal, state, and local organizations like AmeriCorps, private foundations, state bars, courts, and others.<sup>157</sup> Therefore, we do not attempt to extrapolate the costs associated with the available programs across the nation for programmatic implementation

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<sup>153</sup> Appaya & Jenik. (2000, January 1). *Running a sandbox may cost over \$1m, survey shows*. Consultative Group to Assist the Poor. Retrieved December 9, 2022, from <https://www.cgap.org/blog/running-sandbox-may-cost-over-1m-survey-shows>

<sup>154</sup> Utah Legislature. (2021). *Governor's Office of Planning and Budget Federal and Non-Federal Funds Report September 14, 2021*. Utah Legislature. Retrieved December 21, 2022, from <https://le.utah.gov/interim/2021/pdf/00002856.pdf>

<sup>155</sup> North Carolina General Assembly. (2021). *Chapter 169. North Carolina Regulatory Sandbox*. North Carolina General Assembly. Retrieved December 10, 2022, from [https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_169.html](https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_169.html)

<sup>156</sup> North Carolina General Assembly. (n.d.). *Joint Conference Committee Report on the Current Operations Appropriations Act of 2022*. House Bill 103. Retrieved December 13, 2022, from [https://webservices.ncleg.gov/ViewNewsFile/61/JointConferenceCommitteeReport\\_2022\\_06\\_28\\_final](https://webservices.ncleg.gov/ViewNewsFile/61/JointConferenceCommitteeReport_2022_06_28_final)

<sup>157</sup> McClymont, M. (2019). *Report: Nonlawyer navigators in state courts: An emerging consensus*. Self-Represented Litigation Network. Retrieved December 7, 2022, from <https://www.srln.org/node/1403/reportnonlawyer-navigators-state-courts-emerging-consensus-mcclymont-2019>

in North Carolina. Instead, we provide a few cost examples from the District of Columbia,<sup>158</sup> California,<sup>159</sup> New Hampshire,<sup>160</sup> and suggest reviewing McClymont's (2019) report, *Nonlawyer Navigators in State Courts: An Emerging Consensus, A survey of the national landscape of nonlawyer navigator programs in state courts assisting self-represented litigants*, specifically the section subheaded *C. Program funding and structural support* (pp. 29-31).<sup>161</sup> We requested budgetary information regarding New York's Court Navigator program and are still awaiting a response.<sup>162</sup>

## Evaluating Additional Characteristics of the Policy Alternatives

### *Comparing Legal Practitioners and Liberalizing UPL For Legal Aid and Pro Bono Services*

Due to its potential to reach a larger segment of the population than legal aid and pro bono services,<sup>163</sup> licensing Legal Practitioners is the top-ranked option in terms of direct public impact. The widespread consensus is that monopolies are detrimental to competition and economic growth. A concentration of market power among attorneys creates high prices for consumers. Furthermore, less innovation, quality declines, and price increases routinely result from this form of monopoly in the market.<sup>164</sup> Licensing Legal Practitioners would give the public access to a new legal service provider that would charge less than an attorney.

Liberalizing UPL statutes for legal aid and pro bono would also do well in terms of economic efficiency because it would give those providers greater autonomy in offering services to the public without violating UPL statutes. For example, a paralegal or other support staff working for legal aid or volunteering in pro bono services could offer limited legal advice without direct oversight by a lawyer. Since there is only one legal aid attorney for every 8,000 North Carolinians eligible for legal services, this could result in more efficient representation

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<sup>158</sup> District of Columbia Courts. (2022). *District of Columbia Courts FY 2022 Budget Justification*. District of Columbia Courts. Retrieved December 16, 2022, from <https://www.dccourts.gov/sites/default/files/matters-docs/FY-2022-Budget-Justification.pdf>

<sup>159</sup> State of California. (2020). *Budget change proposal: Court navigator program*. California Department of Finance. Retrieved December 7, 2022, from [https://esd.dof.ca.gov/Documents/bcp/2021/FY2021\\_ORG0250\\_BCP3365.pdf](https://esd.dof.ca.gov/Documents/bcp/2021/FY2021_ORG0250_BCP3365.pdf)

<sup>160</sup> DeWitt, E. (2022, September 21). *State seeks \$6.4 million in COVID-relief money to build up court access services*; New Hampshire Bulletin. Retrieved December 16, 2022, from <https://newhampshirebulletin.com/briefs/state-seeks-6-4-million-in-covid-relief-money-to-build-up-court-access-services/>

<sup>161</sup> McClymont, M. E. (2019). *Nonlawyer Navigators in State Courts: An Emerging Consensus A survey of the national landscape of nonlawyer navigator programs in state courts assisting self-represented litigants*. *National Center for State Courts*, 29–31. [https://www.ncsc.org/\\_data/assets/pdf\\_file/0024/53691/Justice-Lab-Navigator-Report-6.11.19.pdf](https://www.ncsc.org/_data/assets/pdf_file/0024/53691/Justice-Lab-Navigator-Report-6.11.19.pdf)

<sup>162</sup> Note: From [FOIL@nycourts.gov](mailto:FOIL@nycourts.gov) on Jan. 26, 2023. Please be advised that we require additional time to complete our response to your FOIL request dated Dec. 20, 2022. We will provide you with a status update on or before February 23, 2023, if we have not completed our response by then.

<sup>163</sup> See Figure 4, p. 21.

<sup>164</sup> Doris, Á. D. (2021). *Do monopolies actually benefit consumers?* The University of Chicago Booth School of Business. Retrieved December 3, 2022, from <https://www.chicagobooth.edu/review/do-monopolies-actually-benefit-consumers>

since lawyers in those organizations do not have the bandwidth to address every legal question or need personally.<sup>165</sup>

### ***Legal Regulatory Sandbox***

A legal regulatory sandbox is promising due to its ability to facilitate one-to-many innovations that could result in the scalability of legal services delivery. For example, Utah's legal regulatory sandbox was approved in August 2020.<sup>166</sup> Thirty new companies existed in Utah's legal regulatory sandbox as of September 2021. "Data from the report indicates that these innovative providers are meeting a spectrum of needs, including end-of-life planning (19.6%), business-related matters such as intellectual property, contracts and warranties, and entity incorporation (22.3%), and marriage and family (15.0%). Other types of legal services currently available via the sandbox include education, real estate, domestic violence, and immigration."<sup>167</sup> There have been over 3,000 requests for legal assistance from over 2,500 unique individuals. Over 550 legal services are now provided entirely by software, illustrating the importance of technological advancements.

However, the sandbox ranked below licensing Legal Practitioners and liberalizing N.C. Gen. Stat. § 84 for legal aid and pro bono workers. This is primarily because it is less certain what innovations might result from a legal regulatory sandbox that could directly benefit those in the access to justice gap.<sup>168</sup> Additional considerations when ranking the regulatory sandbox include the cost, access-to-technology issues addressed above, and the need for many with legal problems to have broader-scale representation.

### ***Court Navigator Program***

The Court Navigator program, based on the program in New York, scores high in political feasibility and legitimacy because the concept is likely to be well-supported as it can be staffed with volunteers, and the judiciary is likely to favor it.<sup>169</sup> Additionally, it is unlikely to see significant resistance since it does not create competition for lawyers. However, services are limited to providing legal information and documents inside the court building, and volunteers

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<sup>165</sup> North Carolina Equal Access to Justice Commission. (2021). *North Carolina Equal Access to Justice Commission*. NC Judicial Branch. Retrieved November 5, 2022, from <https://www.nccourts.gov/commissions/north-carolina-equal-access-to-justice-commission>

<sup>166</sup> DeMeola. (2020, August 17). *Utah Supreme Court Makes History with Vote to Establish Regulatory Sandbox* | IAALS. IAALS. Retrieved December 3, 2022, from <https://iaals.du.edu/blog/utah-supreme-court-makes-history-vote-establish-regulatory-sandbox>

<sup>167</sup> Cornett & DeMeola. (2021). *Data from Utah's sandbox shows extraordinary promise, refutes fears of harm*. Institute for the Advancement of the American Legal System at University of Denver. Retrieved December 3, 2022, from <https://iaals.du.edu/blog/data-utahs-sandbox-shows-extraordinary-promise-refutes-fears-harm>

<sup>168</sup> Henderson, B. (2019). *Human capital for one-to-many legal solutions*. Legal Evolution. Retrieved December 3, 2022, from <https://www.legalevolution.org/2019/11/human-capital-for-one-to-many-legal-solutions-126/>

<sup>169</sup> Committee on Nonlawyers and the Justice Gap. (2014, December). *Navigator Snapshot Report December 2014*. New York State Court Navigator Program. Retrieved December 3, 2022, from <http://nylawyer.nylj.com/adgifs/decisions15/022415report.pdf>

are prohibited from providing legal advice. For the public, the help of a court navigator would be beneficial but more limited than that of a legal practitioner or those who may be offering services under a more liberalized regulatory structure.

### **Political Feasibility Analysis**

Many factors influence whether stakeholders would be amenable to the four policy alternatives described above. No study can clearly determine if the diverse stakeholders involved will be amenable to reform, particularly since each of them will be affected differently and may have distinct or even opposing views on the best way to address the access to justice crisis. Stakeholders may include the public, government agencies, partner agencies, lawyers and judges, paralegals, educators, social workers, evaluators, technical specialists, and many others. Each stakeholder may evaluate these policy alternatives using different standards and criteria that reflect their positions, interests, and assumptions. While we have completed an extensive internal analysis of the various stakeholders in North Carolina, below we briefly address the known and likely positions of major stakeholders.

#### ***Public Officials, Subject Matter Experts, and Community Partners***

We have solicited information (e.g., statistical data and potential social, educational, and cultural perspectives) from public officials, subject matter experts, and community partners in developing this report. Many of these stakeholders have provided a letter addressed to the North Carolina General Assembly substantiating the findings in our report. As detailed in the numerous letters attached to the Appendices, many individuals and policy and research institutions have a vested interest in assisting the various civil justice systems across the United States in achieving outcomes that are fair and accessible to all. While they may have no official standing concerning policy decisions in North Carolina, they speak for groups disadvantaged by their socio-economic status, their position as a minority in society, or the interests of legal professionals and paraprofessionals. These are commonalities that affect all states, and North Carolina is not unique in terms of the issues we have asked them to address.

Additionally, many of these individuals and organizations administer resources related to regulatory reform. As subject-matter experts with extensive programmatic knowledge and formal and informal connections to different stakeholder groups, they are remarkable in their ability to assist in understanding and developing regulatory reform initiatives. These stakeholders can also aid in understanding the potential economic impacts of the policy alternatives being considered and the legal landscape around the potential policy alternatives.

#### ***Judicial Officials***

Moreover, we anticipate some support from judges with experience managing self-represented (pro se) dockets. Self-represented litigants who have poorly drafted documents



or who misunderstand court orders may find themselves at a disadvantage. Judges have empathy for self-represented litigants but are hesitant to deviate from standard court processes to avoid giving the impression that they favor self-represented litigants over parties represented by lawyers.<sup>170</sup> Therefore, judges may be amenable to regulatory reform that assists self-represented litigants and makes their work less cumbersome.

### ***Private Practice Lawyers***

We anticipate that many attorneys will oppose any regulatory reform that they feel will increase competition in the legal industry.<sup>171</sup> Of the policy alternatives addressed above, the Court Navigator program will likely draw the least concern from the attorney population because this policy alternative does not necessarily require a statutory change to N.C. Gen. Stat. § 84 or to relax UPL prohibitions. Despite the reservations of the attorney population, however, the vast majority of community groups and members of the general public are likely to regard these policy solutions favorably because they will increase access to legal services.

### ***Legal Aid and Pro Bono Providers***

Further, based on activities in other states, such as California, we expect that some interest groups that provide legal aid through non-profits may oppose regulatory reform that they fear may result in competition for funding from state legislatures.<sup>172</sup> Due to past budget cuts and limited funding, there may be a concern that legal aid providers will be viewed as requiring even less funding if another, less expensive category of legal service provider becomes available through one of these policy alternatives. The legal aid community is most likely to view court navigators and the liberalization of UPL for their workers as the more favorable policies of the proposed policy alternatives.

## **Summary of Alternatives, Recommendations, and Rationale**

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<sup>170</sup> Gray, C. (2007). Reaching out or Overreaching: Judicial Ethics and Self-Represented Litigants. *J. Nat'l Ass'n Admin. L. Judiciary*, 27(1). <https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1082&context=naali>

<sup>171</sup> Knowlton, N. A. (2022). *Will Governor Newsom kill California State Bar efforts to explore regulatory innovation?* Institute for the Advancement of the American Legal System at the University of Denver. Retrieved November 26, 2022, from

<https://jaals.du.edu/blog/will-governor-newsom-kill-california-state-bar-efforts-explore-regulatory-innovation>

<sup>172</sup> Legal Aid Association of California, Asian Americans Advancing Justice – Asian Law Caucus, Bet Tzedek Legal Services, Centro Legal de la Raza, Coalition of California Welfare Rights Organizations, Community Legal Aid SoCal, East Bay Community Law Center, Elder Law and Disability Rights Center, Eviction Defense Collaborative, Family Violence Appellate Project, Harriett Buhai Center for Family Law, Legal Aid at Work, Legal Aid Foundation of Los Angeles, Legal Aid Society of San Bernardino, Legal Services of Northern California, Inc., LevittQuinn Family Law Center, Los Angeles Center for Law and Justice, Neighborhood Legal Services of Los Angeles County, Public Counsel, . . . Western Center on Law & Poverty. (2022). *Western Center on Law & Poverty*. Western Center on Law & Poverty. Retrieved November 26, 2022, from <https://wclp.org/wp-content/uploads/2022/02/CPPWG-Report-and-Recommendations-Legal-Services-General-Comment-010722.pdf>

As discussed above, initiatives adopted in other states include: (1) licensing legal practitioners (reducing fees for services); (2) liberalizing N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) for legal aid and pro bono services; (3) creating a legal regulatory sandbox; and (4) establishing a court navigator program. Each of these innovations may require changes to N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) to relax the monopoly on legal services.

None of these four alternatives to the current policy will solve the access to justice crisis alone. Therefore, to do the greatest good, we recommend concurrently exploring two policy alternatives: 1) liberalizing N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) for legal aid and pro bono support personnel *not* acting for financial or personal gain, and 2) licensing legal practitioners.<sup>173</sup> Implementing both options concurrently would have the most significant positive impact on the access to justice gap.

### **Recommendation #1: Liberalizing N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) for Legal Aid and Pro Bono Services**

Legal Aid and pro bono service providers would be granted waivers from the unauthorized practice of law statutes. These waivers would allow support personnel to provide limited legal services on specific civil legal issues to clients who qualify. The waivers would be granted only to those who complete the required training in ethics and the substantive area in which the legal aid or pro bono services are offered. Legal aid and pro bono providers would provide all necessary supervision and oversight.

Liberalizing N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) for legal aid and pro bono services would benefit more of those who already qualify for legal aid and pro bono services under the strict income cap guidelines, particularly since legal aid presently lacks the resources to assist everyone who qualifies for services. Support personnel could supplement existing attorney staff and pro bono attorney efforts in several areas of law, including domestic violence, housing, consumer protection, government benefits, health care, and more.

### **Recommendation #2: License Legal Practitioners (Reducing Fees for Services)**

Licensing legal practitioners would make legal services more affordable to those who can neither qualify for legal aid or pro bono services nor afford an attorney. Licensing legal practitioners would also provide the following added benefits:

- Improved outcomes for legal matters where food, clothing, shelter, and family stability are impacted to help preserve the family structure, positively impact the economy, and provide social stability.
- Advocacy and moral support during a legal crisis where people fear the court system

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<sup>173</sup> Houlberg. (2022). *Allied Legal Professionals*. Institute for the Advancement of the American Legal System at University of Denver. Retrieved December 3, 2022, from <https://jaals.du.edu/projects/allied-legal-professionals>

- and may not engage otherwise.
- Assistance for those who lack or struggle with technology, completing court forms, and understanding state and local rules.
- Assistance for clients with physical disabilities and other special needs who might have difficulty accessing the court system.

Moreover, legal practitioners could help reduce the strain on the court system by reducing dismissals and do-overs caused by insufficient legal filings and delays and continuances due to people who do not understand state and local procedures or processes. Court staff and judges frequently have to make tough judgments about how much they can do to aid parties without attorneys.<sup>174</sup> This would improve judicial economy.

When considering the impact of legal practitioners on the access to justice gap, whether the impact is medium or high depends on whether they are permitted to represent clients at hearings. The impact would be higher if the scope of practice included representing clients at certain hearings. This would require education and training in witness examination, trial advocacy, and other sections of N.C. Gen. Stat. § 8C-1. The impact would be lower if representing clients in court were prohibited. The General Assembly might also consider a multi-tiered system where some legal service providers are limited to completing legal documents. In contrast, as Arizona has done, other legal service providers would be permitted to represent clients in court depending on their education and training. Note that the scope of representation varies among the existing limited licensing programs in other states, with Arizona leading the way in these tiered innovations.

### *A Case Study: Lessons Learned from the Medical Profession*

If regulatory reform of the legal profession seems like a herculean task, consider the history of nurse practitioners. During the 1950s and 1960s, when medical specialization was at its peak, there was an extreme scarcity of family physicians in the United States. As in the legal field, rural communities were impacted most by this development. Physicians who had previously opted not to subspecialize began collaborating with registered nurses with clinical expertise to better fulfill the unique healthcare requirements of children and their families.<sup>175</sup>

Over time, there was an agreement among nursing leaders across the nation that nurses were experienced and informed about the healthcare requirements of children and families. This resulted in a concurrent increase in their functions and responsibilities. In 1965, one of these pioneers, Loretta Ford, collaborated with a physician, Henry Silverman, to establish the first

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<sup>174</sup> North Carolina Commission on the Administration of Law & Justice. (2017). *Legal Professionalism Committee Report*. NC Judicial Branch.  
[https://www.nccourts.gov/assets/documents/publications/nccalj\\_legal\\_professionalism\\_committee\\_report.pdf?GPC5PBORm.M41jldCYLhhfr70g0Mal6w](https://www.nccourts.gov/assets/documents/publications/nccalj_legal_professionalism_committee_report.pdf?GPC5PBORm.M41jldCYLhhfr70g0Mal6w)

<sup>175</sup> Kaiser Permanente. (n.d.). *Our history*. Kaiser Permanente. Retrieved December 6, 2022, from <https://about.kaiserpermanente.org/who-we-are/our-history>

training program for nurse practitioners. The University of Colorado's curriculum emphasized family health, disease prevention, and health promotion.<sup>176</sup>

Not surprisingly, the initial implementation of the Nurse Practitioner (NP) program was met with opposition. Ford, Silver, and their students encountered resistance from nurses and doctors who feared that the designation *Nurse Practitioner* was deceptive and would be misunderstood by the public and the medical community. Professionals in the healthcare industry were concerned that NPs lacked the qualifications to give medical treatments that physicians typically administer without supervision.<sup>177</sup>

Throughout the 1970s and 1980s, nurse practitioners worked to legitimize their profession. The absence of a licensing procedure and training and advancements in healthcare placed pressure on nurse practitioners to demonstrate their skills and overall contribution to healthcare. During this time, nurse practitioners documented patient satisfaction and developed criteria and standards of practice. Using evidence-based studies, they also monitored the increase in the availability of primary care to people across the nation.<sup>178</sup> As time passed, nurse practitioners became a more essential and valuable component of health care, and they began to seek economic and professional recognition. More than eleven nurse practitioner organizations were founded in the United States between 1973 and 1985. Through these organizations, nurse practitioners earned credentials and complied with federal regulations and reimbursement policies by taking certification exams.<sup>179</sup>

The creation of the Council of Primary Care Nurse Practitioners by the American Nurses Association in 1974 helped strengthen the nurse practitioners' role. In 1979, there were roughly 15,000 nurse practitioners in the United States.<sup>180</sup> The National Council of State Boards of Nursing had also established Registered Nurse certification as the prerequisite for obtaining an advanced degree in nursing. In 1985, only six years later, the American Academy of Nurse Practitioners was founded.<sup>181</sup> Although the scope of practice for nurse practitioners varies by state, as of October 2022, 27 states and two U.S. territories had a full scope of practice, 13 states and two U.S. territories had a reduced scope of practice, and 11 states had a restricted scope of practice.<sup>182</sup> As of May 2021, there were more than 234,690 nurse practitioners in the United

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<sup>176</sup> University of Rochester School of Nursing. (n.d.). *Nurse practitioner programs*. University of Rochester School of Nursing. Retrieved December 6, 2022, from <https://son.rochester.edu/academics/masters/np/index.html>

<sup>177</sup> Simmons University. (2014). *History of nurse practitioners in the United States*. Simmons University. Retrieved December 6, 2022, from <https://online.simmons.edu/blog/history-nurse-practitioners/>

<sup>178</sup> *Id.*

<sup>179</sup> Nursing Network. (n.d.). *Frances Cheeks Jennings, Women's health nurse practitioner*. The Florida Nursing History Project. Retrieved December 6, 2022, from <https://fnhxp.nursingnetwork.com/page/21811-frances-cheeks-jennings-women-s-health-nurse-practitioner>

<sup>180</sup> Simmons University. (2014). *History of nurse practitioners in the United States*. Simmons University. Retrieved December 6, 2022, from <https://online.simmons.edu/blog/history-nurse-practitioners/>

<sup>181</sup> *Id.*

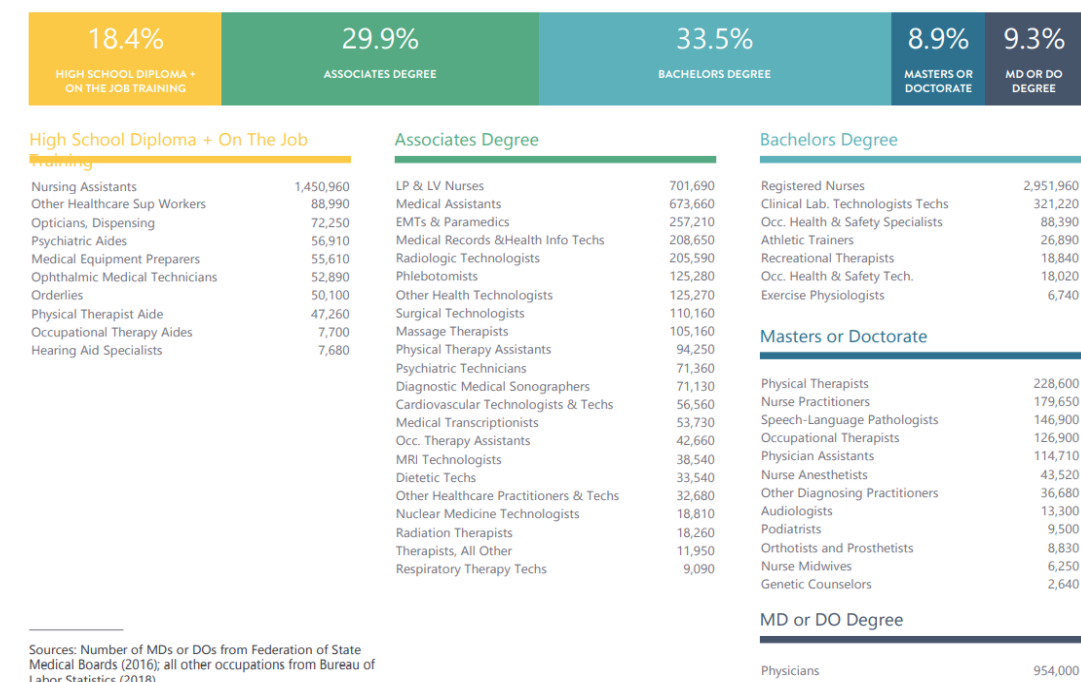
<sup>182</sup> American Association of Nurse Practitioners. (2022). *State Practice Environment*. AANP. Retrieved January 13, 2023, from <https://www.aanp.org/advocacy/state/state-practice-environment>

States.<sup>183</sup>

While the push for recognition of the Nurse Practitioner profession was hard fought, today, it is easy to see the benefit of Nurse Practitioners. An individual can see a less expensive nurse practitioner for many medical needs, such as family health, gerontology, pediatric health, and acute care. An individual can see a medical doctor or specialist if the issue is beyond a nurse practitioner's scope. Access to alternative service providers allows specialization, but it also gives the public varying options, some of which are more financially viable.

However, the healthcare field has not stopped there. A wide range of medical and mental health providers can aid the sick and support mental health. In the mental health sector, there are psychologists and psychiatrists, but there are also psychoanalysts, psychiatric nurses, psychotherapists, counselors, therapists, and social workers. While in the legal profession, 9 in 10 legal providers are lawyers, in the medical field, 8 in 10 medical providers are *not* licensed doctors (i.e., nurse practitioners, physician assistants, phlebotomists).<sup>184</sup> Further, the stratification (or spectrum) of the medical profession extends across varying levels of education and experience, as seen in Figure 7 below.<sup>185</sup>

**Figure 7 - Healthcare Workers' Career Paths Along the Educational Spectrum**



<sup>183</sup> U.S. Bureau of Labor Statistics. (2022). *Nurse practitioners*. U.S. Bureau of Labor Statistics. Retrieved December 6, 2022, from <https://www.bls.gov/oes/CURRENT/oes291171.htm>

<sup>184</sup> Henderson, W. D. (2020). *The future of legal services*. Institute for the Advancement of the American Legal System at University of Denver. Retrieved December 6, 2022, from [https://iaals.du.edu/sites/default/files/documents/publications/william\\_henderson\\_future\\_legal\\_services\\_speaker\\_series\\_presentation.pdf](https://iaals.du.edu/sites/default/files/documents/publications/william_henderson_future_legal_services_speaker_series_presentation.pdf)

<sup>185</sup> *Id.*



In contrast, in legal services, there are only two clear career paths related to substantive law, and only one can offer legal services directly to the public. This system is inefficient and not cost-effective.<sup>186</sup> To quote Camille Stell, President and CEO of Lawyers Mutual Consulting & Services, "Where are all the other resources that our citizens need to deal with problems that impact their lives in no less devastating ways than sickness? Where can they turn?"<sup>187</sup>

As one last point, the medical and legal fields have many similarities but also some differences. The medical field as a whole is not necessarily a good example of frugality and low costs. This is primarily due to factors that drive up outlays. For example, there are a variety of usage and billing requirements from numerous payers that necessitate a substantial administrative workforce for billing and reimbursement.<sup>188</sup> As another example, the medical technology and pharmaceutical industries all seek to profit from medical care, and often all at the same time, for an individual procedure, driving up costs.<sup>189,190</sup> However, it is generally accepted that obtaining medical treatment from a nurse practitioner is less costly than receiving the same care from a physician.<sup>191</sup> Legal practitioners could do for the legal profession what nurse practitioners have done for over 50 years in the medical industry.

### **Additional Recommendation for Legislative Study and Pilot Program**

We realize licensing legal practitioners is a radical departure from the current policy. It might be politically challenging to implement, given the potential opposition expected from the attorney population, since some have already indicated they view this type of regulatory reform as an attack on their profession. Therefore, we are including two more recommendations.

We recommend that the North Carolina General Assembly conduct a legislative study to verify the feasibility of the suggested policy alternatives. Representatives of the North Carolina Justice for All Project would welcome the opportunity to participate in this process. Additionally, experimentation and proof of concept are crucial to innovation. Many argue that no innovation

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<sup>186</sup> Henderson, W. D. (2020). *The future of legal services*. Institute for the Advancement of the American Legal System at University of Denver. Retrieved December 6, 2022, from [https://jaals.du.edu/sites/default/files/documents/publications/william\\_henderson\\_future\\_legal\\_services\\_speaker\\_series\\_presentation.pdf](https://jaals.du.edu/sites/default/files/documents/publications/william_henderson_future_legal_services_speaker_series_presentation.pdf)

<sup>187</sup> Stell, C. (2022). *Legal deserts: A threat to justice in rural North Carolina*. Lawyers Mutual Insurance Company. Retrieved November 5, 2022, from <http://www.lawyersmutualnc.com/risk-management-resources/articles/legal-deserts-a-threat-to-justice-in-rural-north-carolina>

<sup>188</sup> Chernew, M., & Mintz, H. (2021). Administrative Expenses in the US Health Care System. *JAMA*, 326(17), 1679. <https://doi.org/10.1001/jama.2021.17318>

<sup>189</sup> Morgan, S. G., Bathula, H. S., & Moon, S. (2020). Pricing of pharmaceuticals is becoming a major challenge for health systems. *BMJ*, l4627. <https://doi.org/10.1136/bmj.l4627>

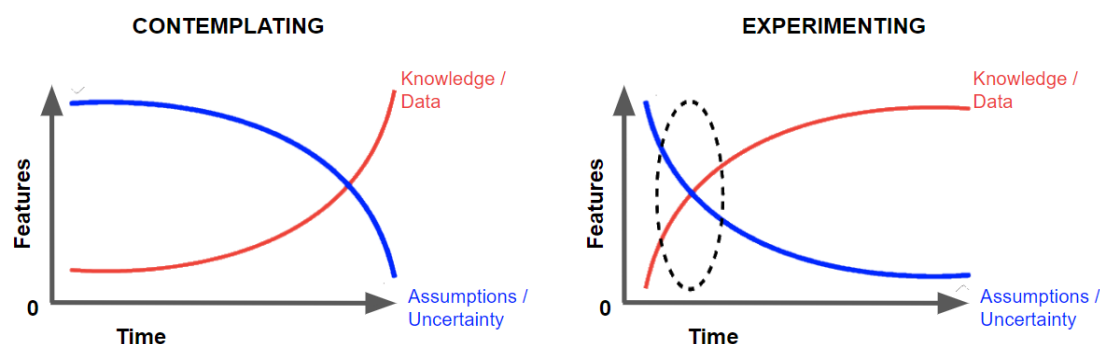
<sup>190</sup> Norbeck T. B. (2013). Drivers of health care costs. A Physicians Foundation white paper - second of a three-part series. *Missouri medicine*, 110(2), 113–118.

<sup>191</sup> Razavi, M., O'Reilly-Jacob, M., Perloff, J., & Buerhaus, P. (2020). Drivers of Cost Differences Between Nurse Practitioner and Physician Attributed Medicare Beneficiaries. *Medical Care*, 59(2), 177–184. <https://doi.org/10.1097/mlr.0000000000001477>

exists without them. Therefore, if the state legislature were inclined to license legal practitioners, we recommend a pilot program to collect data and periodically evaluate outcomes.

Many states with newly established legal practitioner programs are collecting data as they go along. These states have accepted that making an idea or concept into reality has thousands of variables that cannot always be figured out by discussing it around a table. Experimenting with a pilot program would allow the collection of meaningful data early in the process when it is still possible to make incremental improvements to the program without incurring high costs. As shown in Figure 8 below, the earlier state leaders begin to experiment and collect information, the faster the uncertainty is reduced.<sup>192</sup> Doing *nothing* is a considerably more significant threat to North Carolinians than experimenting with safeguards in place to determine how we can improve the civil justice system.

**Figure 8 - Discussing & Planning vs. Experimenting & Executing**



*Note.* Graphs created by JFAP and inspired by *The Service Innovation Handbook* by Lucy Kimbell.

## Conclusion

Through this writing and pursuant to N.C. Const. Art. I, § 12, the members of the North Carolina Justice for All Project have brought the above grievances to the General Assembly for redress. Because each policy alternative has the potential to narrow the access to justice gap for different segments of the population, ideally, all four policy options analyzed above would be implemented to fully capitalize on the opportunities for resolving the access to justice crisis. The crisis of access to justice is acute and persistent, requiring treatment as though it were an uncontained wildfire needing every available resource. North Carolinians need the support of private lawyers, paralegals, pro bono lawyers, legal aid providers, legal practitioners, court navigators, sandboxes, legal support centers, alternative dispute resolution programs, scalable technological innovations, streamlined local rules, and standardized, easy-to-understand forms.

<sup>192</sup> The UN Refugee Agency. (2017). *Why there's no innovation without experimentation*. UNHCR Innovation Service. Retrieved December 6, 2022, from <https://www.unhcr.org/innovation/why-theres-no-innovation-without-experimentation/>

However, state leaders must begin somewhere, and of the four policy alternatives presented, (1) licensing legal practitioners (reducing fees for services), and (2) liberalizing N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) for legal aid and pro bono services are potentially the most pragmatic and least expensive options.

It is our ethical and moral duty to seek justice and defend the oppressed. The first Chief Justice of the United States, John Jay, once said, “Justice is indiscriminately due to all, without regard to numbers, wealth or rank.” Access to justice is a question of democracy, fundamental human rights, and economic efficiency. We have viable options to address the access to justice crisis. The greatest barrier is addressing an entrenched bureaucracy that is reluctant to re-examine whether what has always been done presently makes sense for the people. Regulatory reform would support social and environmental welfare while increasing market openness. A pilot program for both policy alternatives that includes mechanisms for public input and transparency would help increase the legitimacy (public trust), fairness, equality, efficiency, and effectiveness of our legal market and civil justice system. We trust you will agree that making legal representation more accessible to North Carolinians is good for our communities and the administration of justice as a whole.

*Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.*  
*James Madison, Federalist No. 51*

For questions or comments concerning  
this report, please contact the author:

**Alicia Mitchell-Mercer**

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**North Carolina**  
**Justice for All Project**

[advocacy@ncjap.org](mailto:advocacy@ncjap.org)

[www.ncjap.org](http://www.ncjap.org)



January 31, 2023

North Carolina General Assembly  
Legislative Building  
16 West Jones Street  
Raleigh, NC 27601

RE: In Support of the Recommendations Set Forth in the North Carolina Justice for All *Petition for Redress of Grievances Pursuant to N.C. Const. Art. I, § 12, Policy Analysis & Legislative Proposal*

Dear Members of the North Carolina General Assembly:

I am writing in support of the twin policy recommendations outlined in the North Carolina Justice for All Project (JFAP) *Petition for Redress of Grievances Pursuant to N.C. Const. Art. I, § 12, Policy Analysis & Legislative Proposal* [hereinafter *Petition*].

For more than 15 years, I conducted empirical research on access to justice issues at the University of Denver-based Institute for the Advancement of the American Legal System (IAALS). Much of this work has focused on the experience of self-represented litigants, including empirical research that directly engaged these litigants. One of these efforts included a multidisciplinary workshop in Raleigh, in partnership with the North Carolina Judicial Branch and the North Carolina Equal Access to Justice Commission.

The other piece of my work—at IAALS and now through my company, Access to Justice (A2J) Ventures—focuses on regulatory innovation. I have studied and advised state regulatory reform efforts and have closely watched the evolution of these programs. I have deep familiarity with the business and service models operating across states under new regulatory approaches.

Informed by my research and that of others, and my experience working with states on regulatory innovation, I am writing in strong support of the following recommendations contained in the *Petition*:

1. Liberalize the state statute on the unauthorized practice of law (N.C. Gen. Stat. § 84) for legal aid and pro bono services
2. Implement a Licensed Legal Practitioners program

I believe the North Carolina General Assembly is uniquely positioned to carry these recommendations forward. As a representative body that speaks and acts on behalf of the public in North Carolina, the General Assembly can appropriately assess reform recommendations under consideration by a self-regulating legal profession.



## **I. An Access to Justice Crisis That Is Worsening Under Traditional Solutions**

The term “justice gap” does not even begin to reflect the human costs of this problem.

The numbers of people navigating the courts in North Carolina and elsewhere without legal help are astounding. A 2022 Legal Services Corporation (LSC) report, *The Justice Gap*, found that low-income Americans did not receive any or enough legal help for 92% of their civil legal problems. Aside from being shockingly high, this number is shocking for another reason: it has gone *up* from 86% in the prior study released in 2017.

### ***Limitations of Traditional Access to Justice “Solutions”***

One thing is for sure: in the five years between studies, there have been countless calls to increase funding to staff legal aid services and other traditional “solutions” as a means through which to bridge the justice gap. Yet here we are. Looking back even further, for well over half a century, subsidized legal services providers have been advocating for the rights of people and families living in poverty. But still, here we are. Traditional models of attorney-driven subsidized services have not, despite their rich history, made a demonstrable dent in the access to justice problem. The level of unmet legal needs is not even holding steady; it is getting *worse*.

Attorneys alone cannot reverse the course we are on. If they could, they would have by now. If they could, we would not be creeping dangerously close to a reality where 99% of legal needs remain unmet. This is not an indictment on the many dedicated attorneys—public and private—doing their best to serve as many people as possible. The problem is structural. The lawyer monopoly on nearly everything and anything that might constitute the practice of law has a stranglehold on the public—and not just those living in poverty.

### ***Dangers of Making Access to Justice a Low-Income Issue***

It is reasonable to assume that low-income populations cannot afford the high costs of attorney services. The cost of accessing traditional legal services is simply prohibitive for many people. But the converse—the assumption that people who are above technical poverty guidelines can afford an attorney—is erroneous, and dangerous.

In the 2022 LSC *The Justice Gap* study, just under half (45%) of low-income respondents felt confident in their ability to find a lawyer they could afford. The numbers rise to 59% and 73% for those between 125% and 400% of the Federal Poverty Guidelines (FPG) and for those at or above 400% of the FPL; respectively. That 41% of individuals living between 125% and 400% of the FPG, and one out of four at or above 400% of the FPG, were not confident they could find an affordable attorney highlights the dangers of assuming that access to justice is only a low-income issue, with “low-income” being defined arbitrarily at some static figure.

It is hard to imagine how a family of four with an annual household income of \$40,000 is better able to afford an attorney than a family at \$33,125. Or consider a “more affluent” person with an annual income of \$60,000 but who holds \$200,000 in student loan debt and \$100,000 in medical debt. We all have a friend or family member who is in this situation. Defining access to justice as

only a low-income issue is too simplistic. Income does not equate to wealth. It does not account for the myriad ways in which an individual's unique financial circumstances renders vital legal help inaccessible.

## **II. Worsening Problems Call for New Solutions**

It is critical that we diversify the legal profession.

A tiered service provider model is the gold standard in industries outside of law. As the *Petition* details, the great learned profession most analogous to law—medicine—has substantially diversified its professional workforce. Today, the idea that one would (or even could) see a surgeon for a routine physical would be met with laughter. Yet in law, we expect a divorcing couple with no children, limited marital assets, and no joint property to consult the same tier of provider as would handle a mass tort case. This makes for great career flexibility for attorneys but is a terrible model for consumers.

Attorneys and consumers would benefit from the introduction of new providers in the profession who can handle some subset of tasks traditionally reserved for licensed attorneys. The twin recommendations presented in the *Petition* would set the stage for a new legal services ecosystem that can extend critical legal services to low-income *and* middle-class consumer segments.

### **A. Increasing Access to Justice for *Low-Income* North Carolinians by Reforming N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) for Legal Aid & Pro Bono Services**

Subsidized legal services providers are on the frontlines of the access to justice problem. Day in and day out, these providers serve as many people as they logistically can. Importantly, these attorneys also must turn away scores of people who badly need legal help. Allowing legal aid and pro bono providers to train a non-lawyer workforce to undertake discrete legal tasks, under supervision, will extend the reach of existing services. And in doing so, this would decrease the substantial number of North Carolinians who must hear that there is no option available to them.

### **B. Increasing Access to Justice for *Low- and Middle-Income* North Carolinians by Licensing Legal Practitioners (Reducing Fees for Services)**

In this provider ecosystem, Legal Practitioners sit between the new non-lawyer providers detailed in Section II.A. and licensed attorneys. The model detailed in the *Petition* appropriately adjusts for an expanded scope of practice by mandating a more robust legal education. The *Petition's* proposal envisions this as a market-based solution, but with these providers operating under a fee schedule that is less expensive than that of an attorney, the otherwise Missing Middle legal consumers will finally have an option for affordable legal advice.

### **III. The North Carolina General Assembly's Commitment to Regulatory Innovation**

The North Carolina General Assembly is no stranger to regulatory innovation, particularly the evolution of N.C. Gen. Stat. § 84. The access to justice community closely followed as *LegalZoom.com v. North Carolina State Bar* unfolded in the Wake County Superior Court. The provisions in the Consent Judgment that later became part of N.C. Gen. Stat. § 84-2.2 were a welcome and measured response amidst reactions in other states that overlooked the interests of the public in favor of market incumbents. This new exemption provides valuable guidance and opportunity for providers who have since entered the North Carolina legal services market to deliver legal information.

Due to the rapidly deteriorating state of access to justice, it is time, again, to revisit the constraints of the state's unauthorized practice of law statute. Laws are designed to evolve with the needs of the public, as the North Carolina General Assembly recognized with *LegalZoom*. In the spirit of ensuring that the legal profession is serving—literally, not figuratively—the needs of the public, I strongly urge the General Assembly to redefine the practice of law to allow trained and qualified non-attorney providers to assist legal aid and pro bono organizations (by amending N.C. Gen. Stat. § 84) and to assist legal consumers (by licensing Legal Practitioners).

Thank you in advance for your consideration of these issues. And thank you for your service representing and advocating for the interests of North Carolinians above all.



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Natalie Anne Knowlton

Founder of Access to Justice Ventures, LLC  
[naknowlton@a2jventures.com](mailto:naknowlton@a2jventures.com)



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



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February 6, 2023

The Honorable Phil Berger  
President Pro Tempore – N.C. Senate  
16 West Jones Street  
Raleigh, NC 27601

The Honorable Tim Moore  
Speaker – N.C. House of Representatives  
16 West Jones Street  
Raleigh, NC 27601

Re: Letter of Support Regarding *Looking Beyond Lawyers to Bridge the Civil Access to Justice Gap Petition for Redress of Grievances Pursuant to N.C. Const. Art. I, § 12, Policy Analysis, & Legislative Proposal, Feb. 2023*

Dear Senator Berger, Speaker Moore, and distinguished Senators and Representatives:

I hope this letter finds you well.

I am writing to express my support of two policy recommendations proposed by the North Carolina Justice for All Project (JFAP) in their legislative proposal, *Looking Beyond Lawyers to Bridge the Civil Access to Justice Gap Petition for Redress of Grievances Pursuant to N.C. Const. Art. I, § 12, Policy Analysis, & Legislative Proposal, Feb. 2023* (hereinafter “JFAP Legislative Proposal”). Specifically, I support the following two policy alternatives: (1) licensing legal practitioners (reducing fees for services) and (2) liberalizing N.C. Gen. Stat. § 84 (Unauthorized Practice of Law) for legal aid and pro bono services.

To provide some background, I am from Plymouth, North Carolina, and I received my B.A. from the University of North Carolina at Chapel Hill and my J.D. from Campbell Law School. I spent five years as a military attorney in the Navy JAG Corps and practiced law as a JAG Officer in California, Washington D.C., and in private practice in North Carolina and South Carolina. I have been a member of the North Carolina and South Carolina bars for over 35 years. Additionally, I have been the owner of my small firm in Charlotte, North Carolina, for 24 years, focusing primarily on civil litigation.

The Honorable Phil Berger  
President Pro Tempore – N.C. Senate  
The Honorable Timothy Keith Moore  
Speaker – N.C. House of Representatives  
16 West Jones Street  
Raleigh, NC 27601  
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A significant portion of my practice includes family law, estate planning, and probate. While practicing in these areas for many years, I have witnessed unfortunate barriers to accessing legal services and the resulting outcomes. I have first-hand knowledge of the types of civil legal problems individuals and families face and the impact on their lives when they have nowhere else to turn to for help. As is the case in our criminal courts, in the civil arena, and especially in family law matters, many citizens need basic legal services but often can't afford counsel.

This is especially true in this most recent inflationary spiral, where many single moms and other hard-working North Carolinians have to scrape by just to put groceries on the table. I was in Harris Teeter the other day, shocked to see the price of eggs starting at \$6.00 a carton. I don't know where they are now, but that was a stunner. And, of course, we know what's happening with gasoline prices and nearly every other consumer good, especially since the beginning of 2021.

#### FINDINGS FROM AN ASSESSMENT OF THE CIVIL LEGAL NEEDS OF NORTH CAROLINA - JUNE 2021

Through my own experiences, some personal and some professional, I've always had a basic understanding of access to justice concerns. However, I only recently became aware of the severity of the access to justice crisis in North Carolina. In 2021, the NC Equal Access to Justice Commission, the Equal Justice Alliance, and UNC Greensboro's Center for Housing and Community Studies produced the report, *An Assessment of the Civil Legal Needs of North Carolina - June 2021* (hereinafter "NC Civil Legal Needs Assessment").

The study provided comprehensive information concerning civil legal needs in North Carolina by analyzing how various factors such as race, gender, age, and disability impact the nature and extent of civil legal problems faced by North Carolina residents. I was not surprised that my practice areas were among the greatest civil legal needs for low- and middle-income individuals and families.

According to the study, North Carolina's population has grown and diversified in the past two decades, with the white population increasing by 22%, the African American population rising by 27%, the Asian population growing by 163%, and the Hispanic population growing by 158%. The state's educational attainment was just below the national average, with 87.8% of adults completing high school or a GED and 31.3% holding a bachelor's degree or higher.

The state's median household income was nearly \$10,000 lower than the national average, significantly varying across the state. In 2018, 249,340 individuals lived in subsidized housing, and 14.1% of households received food stamps/SNAP. Moreover, 20.7% of homeowners and

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44.1% of renters were cost-burdened, spending over 30% of their income on housing-related expenses.

In North Carolina courts, over 1.7 million civil legal cases of 26 different issue types were recorded between 2015 and 2019, amounting to 340,761 cases annually. Of the 366,356 civil legal cases in the state annually, less than 1% are handled in superior court, 40% in district court, 45% by magistrates, and the rest primarily through special proceedings. Over half of the cases are housing-related, with 46% being summary ejectments and 10% being foreclosures.

Family-related civil legal issues account for 30% of the cases, including divorce, domestic violence, custody issues, and others. Family law, particularly custody proceedings, was the area with the highest unmet legal needs, followed by immigration. The study highlights the significant shortfall in fulfilling legal needs for North Carolinians, particularly those with low incomes. These cases highlight the legal needs of North Carolina's communities.

In 2019, eight civil legal organizations in the state reported impacting over 93,692 individuals and closing over 33,805 cases, preventing 1,897 evictions, 284 foreclosures, and serving 2,111 veterans. The organizations reported that their clients were mostly non-white, with 40.0% being African American, compared to 21.4% of the state's population. However, the demand for civil legal services far outweighs the available resources, and residents often struggle to access them.

## REMEMBERING THE MIDDLE-INCOME POPULATION

While the report focused primarily on low-income individuals and families, middle-income individuals often struggle to have their civil legal needs met because the cost of hiring a lawyer can be prohibitively expensive, and they may not qualify for free legal assistance. This group of people earns too much to qualify for free legal services provided to low-income individuals through organizations like Legal Aid of North Carolina but cannot afford the fees charged by private attorneys. Additionally, legal services can be complex, and navigating the legal system can be challenging, making it difficult for middle-income individuals to advocate for themselves effectively. Many civil legal issues go unrepresented and unresolved, affecting their personal and financial well-being.

My experience has shown that middle-income individuals who do not meet the criteria for legal aid but cannot afford a legal retainer are particularly affected. However, although the cost of attorney's fees can be impossible for some, a significant portion of middle-income individuals can typically afford to pay *something* for legal services. Over the years, I've had plenty of middle-income clients request sliding scale payments, deeply discounted rates, or payment plans.

The Honorable Phil Berger  
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Often, we attempt to take on pro bono cases. But unfortunately, when we are only one firm, that is not enough to cover the gap.

In my opinion, there are far more middle-income citizens out there in need than can be accommodated, even with the best intentions of lawyers who occasionally offer special-situation reduced rates and pro bono services. All this tells me that a significant population would benefit immensely from a more affordable legal services delivery model to complete discreet legal tasks.

Like many other small-firm attorneys, I have strived to make a positive impact throughout my career. Over the years, I have written off hundreds of thousands of dollars in legal fees and provided pro bono representation to hundreds of clients. I think it's fair to say that to remain financially viable, most law firms can only afford to take on a certain percentage of reduced-fee/pro bono cases. Unfortunately, when my office must direct folks to legal aid organizations or lawyer referral services, it is often on my mind that they may still struggle to find the assistance they need.

## LICENSING LEGAL PRACTITIONERS

This is why licensing legal practitioners, such as they do with the Utah Licensed Paralegal Practitioner (LPP) program, is so important. LPPs can fill the gap and provide affordable legal services to middle-income individuals who often can't afford private attorney fees and don't qualify for free legal services for low-income individuals. This helps ensure that individuals in the middle-income group have access to quality legal representation, at least in certain defined areas, for their civil legal needs, promoting fairness and equality in the legal system. As I understand them, these types of programs have also been adopted by several other states in addition to Utah and have shown positive results.

## MY EXPERIENCE WORKING WITH PARALEGALS

Throughout my 35-year career, I have mentored many talented paralegals. After some training and under my supervision, many have displayed an exceptional ability to independently draft legal documents and complete assigned tasks to a high standard, requiring minimal input from me. Their work has often only needed minor stylistic adjustments before being signed off by me as the supervising attorney. I firmly believe that with the proper training and education, paralegals and other community advocates can play a crucial role in addressing the shortage of legal services in certain areas, thus increasing access to justice for the general public. Access to a network of legal practitioners offering limited-scope representation would greatly benefit those needing legal assistance.



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## RELAXING UNAUTHORIZED PRACTICE OF LAW (UPL) STATUTES FOR LEGAL AID ORGANIZATIONS

Additionally, I understand that the current UPL statutes limit the effectiveness of Legal Aid of North Carolina (LANC) and other pro bono organizations by restricting their ability to utilize the full potential of their non-lawyer staff. This is a hindrance to their efforts to serve those in need. By loosening UPL regulations, these organizations can better tap into the expertise of their non-lawyer staff, thereby increasing their capacity to provide vital legal services to those in need. This could be done at a nominal cost to taxpayers by changing N.C. Gen. Stat. § 84, and giving these organizations some autonomy to create appropriate training programs, as we now see in Alaska and Delaware.

## TAKING ACTION IS IMPORTANT TO THE PEOPLE OF NORTH CAROLINA

I understand the North Carolina State Bar has been examining regulatory reform for several years, but to date, little real progress has been made. I'm not sure why. I suppose some may believe that these types of programs will negatively impact lawyers' business models and revenue streams. But I don't see it that way. I see this as filling a gap for folks who could not or would not walk into the lawyer's offices, to begin with. Perhaps some may be concerned about public harm caused by legal practitioners who have not been to a law school performing limited legal services. But there is no evidence to suggest this, at least not in the states where these programs have been tried. Therefore, I don't see that as a worry.

By analogy, we have nurse practitioners and physician assistants who can prescribe medication, like a medical doctor, but wouldn't be licensed to perform heart or brain surgeries. We also have therapists and counselors who would not be licensed to provide psychiatric services. Likewise, the roles carved out for these folks would be limited to more basic legal tasks that are often considered perfunctory. There's no concern that they would be licensed to perform highly complex litigation matters or tax matters, nor would they infringe on, in any appreciable way, the practice areas of most lawyers in this state, in my opinion.

In fact, the JFAP Legislative Proposal and other supporting letters show that public harm has been nearly non-existent in other states where reform has already been implemented. The states where legal practitioner programs are underway include Washington, Arizona, Minnesota, and Utah. As I understand them, many of these programs were modeled after Ontario's Licensed Paralegal program, which has been around for about 15 years. Additionally, Arizona had Legal Document Preparers (LDPs) practicing law for 15 years before they started licensing legal practitioners a couple of years ago to appear in court in that state. I understand that many other states, like Texas and South Carolina, are also exploring these types of regulatory reform as well.

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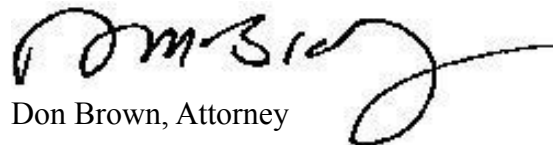
So, despite opposition perhaps from some bar leaders and lawyers in areas such as family law and estate planning over competition and potential public harm, our professional obligation as legal practitioners, according to the Rules of Professional Conduct, requires us to support all efforts to address the shortage of legal services. This is a way to do just that. The way I look at it, this proposal is a way to help a lot of people, a lot of middle-income people, without spending a lot of public money and without any meaningful negative impact on lawyers and the legal profession in this state since this is a population that cannot afford traditional legal fees.

I urge you to explore the far-reaching benefits of the recommendations outlined in the JFAP Legislative Proposal. Their request for the North Carolina General Assembly to establish a legislative committee and pilot program to support a proof of concept for these proposals seems very reasonable to me. More importantly, these changes have the potential to make a real difference in the lives of those seeking legal assistance and finding it nowhere else.

We've got nothing to lose by trying this approach.

I would be delighted to answer any questions or address any concerns you may have. Please feel free to reach out to me anytime. Thank you for your time and consideration.

Best regards,

A handwritten signature in black ink, appearing to read "Don Brown", with a long, sweeping horizontal line extending to the right.

Don Brown, Attorney

DMB:tg



## COLORADO ACCESS TO JUSTICE COMMISSION

1290 Broadway, Ste. 1700

• Denver, CO 80203

• 720.306.1022

February 3, 2023

The Honorable Timothy Keith Moore  
Speaker – N.C. House of Representatives  
16 West Jones Street  
Raleigh, NC 27601

The Honorable Phil Berger  
President Pro Tempore – N.C. Senate  
16 West Jones Street  
Raleigh, NC 27601

Dear Members of the North Carolina General Assembly,

I am the Executive Director of the Colorado Access to Justice Commission, and I am writing to submit unequivocal support for the North Carolina Justice for All Project proposal to implement a Licensed Legal Paraprofessional (LLP) program.

The lack of legal representation in civil matters that involve basic human needs like housing, employment, custody, and protection against domestic abuse, is well researched and documented.<sup>1</sup> So, too, are the disparate outcomes between *pro se* litigants and those who benefit from legal representation.<sup>2</sup> Yet only a small fraction of those who cannot afford an attorney will seek and receive full legal-aid assistance.<sup>3</sup>

Across the nation, momentum continues to build toward the common-sense programmatic solution of mid-level professional licensure in the legal profession, much like that of the medical and other professions. At present, sixteen programs similar to the LLP program proposed by the North Carolina Justice for All Project are in varying stages of implementing such programs.<sup>4</sup>

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<sup>1</sup> Nat'l Ctr. for State Cts., Family Justice Initiative: The Landscape of Civil Litigation in State Courts IV (2015) [https://www.ncsc.org/data/assets/pdf\\_file/0015/25305/civiljusticereport-2015.pdf](https://www.ncsc.org/data/assets/pdf_file/0015/25305/civiljusticereport-2015.pdf).

<sup>2</sup> Gillian K. Hadfield and James Heine, Life in the Law-Thick World: The Legal Resource Landscape for Ordinary Americans 37 (2015), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2547664](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2547664).

<sup>3</sup> Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* 28 (2017) <https://www.lsc.gov/our-impact/publications/other-publications-and-reports/2017-justice-gap-report>.

<sup>4</sup> Michael Houlberg and Janet Drobinske, The Landscape of Allied Legal Paraprofessional Programs in the United States 7 (2022) [https://iaals.du.edu/sites/default/files/documents/publications/landscape\\_allied\\_legal\\_professionals.pdf](https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf).



## COLORADO ACCESS TO JUSTICE COMMISSION

1290 Broadway, Ste. 1700

• Denver, CO 80203

• 720.306.1022

As the Institute for the Advancement of the American Legal System (IAALS) noted in its most recent survey of these programs, due consideration should be dedicated to admissions and regulatory requirements, and grievance processes, and program costs.<sup>5</sup> However, the existing data and the longstanding history of success in the medical field support this type of programmatic shift to expand access to fair and equal outcomes at a time of great need.

As legislator, you serve a uniquely vital role as you contemplate your support of the LLP program proposal. When our justice system is inaccessible, unusable, or unfair, it undermines public confidence in our government's institutions and indeed in democracy itself. I urge you to embrace this opportunity to build greater equity into North Carolina's justice system so it may better deliver on its promise to deliver justice for all.

Sincerely,

A handwritten signature in black ink, appearing to read "Elisa Overall", is written over a light blue horizontal line.

Elisa Overall  
Executive Director  
Colorado Access to Justice Commission

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<sup>5</sup> *Id.* at 48-51.

January 24, 2023

Re: Expanding Access to Justice in North Carolina

Members of the North Carolina General Assembly:

I write to express my support for the innovations under your consideration pursuant to a policy analysis and legislative proposal directed toward bridging the access-to-justice gap in the state of North Carolina. Specifically, the North Carolina Justice for All Project (JFAP) has recommended that the North Carolina General Assembly amend N.C. Gen. Stat. §84 (Unauthorized Practice of Law) to allow Licensed Legal Practitioners to provide limited legal advice. This request also includes a proposal to relax the unauthorized practice of law statute for legal aid organizations and pro bono service providers so they can better leverage non-attorney staff to serve more clients within the providers' funding constraints. While these proposals alone will not solve the access-to-justice crisis, they are most certainly two steps forward.

My optimism stems from my work in this space as a Justice of the Utah Supreme Court. Prior to my retirement from the Court in March 2022, I spearheaded the Utah judiciary's efforts to tackle the access-to-justice crisis in our state. As part of those efforts, my colleagues and I took a studied approach to the crisis and its possible solutions. During that process, we came to understand the enormous scope of the unmet legal needs confounding everyday Utahns and small businesses. One analysis we undertook showed that, in 93% of the civil claims in our adult courts (small claims and district) in our most populous judicial district, one or both parties were unrepresented throughout the entirety of the matter. This was no surprise because debt collection cases represent such a large swath of civil case filings.

We also came to understand the potential presented by authorizing trained and experienced non-lawyer advocates to offer legal advice. To this end, the Utah Supreme Court authorized trained and experienced paralegals to provide legal advice, without lawyer oversight, in the areas of family law, debt collection, and landlord/tenant disputes. We selected these areas in line with data that show they are hugely underserved by lawyers.

It is important to note that while the inclusion of licensed legal practitioners is a positive step, it is not a panacea. It will take time for these practitioners to become widely available and established in the field. As previously mentioned, the introduction of licensed legal practitioners is a significant and positive development toward addressing the access-to-justice crisis. North Carolina should follow in the footsteps of states like Utah, which have taken action to empower such practitioners.

Sincerely,



Deno Himonas

[dhimonas@wsgr.com](mailto:dhimonas@wsgr.com)



## Appendix F

February 1, 2023

Dear Members of the North Carolina General Assembly:

We write to strongly support the policy recommendations proposed by the North Carolina Justice for All Project: licensing non-lawyer legal practitioners and relaxing rules governing unauthorized practice of law (UPL). These recommendations reflect thoughtful and serious attention to one of this country's most pernicious crises: the civil justice gap. Not only will the policy recommendations help address the justice gap in North Carolina, they will establish North Carolina among a growing group of states leading thoughtful reform of outdated and excessive restrictions. We urge you to implement these reforms to help millions of North Carolinians who currently lack access to meaningful legal help.

The severity of the justice gap in North Carolina is sobering. More than two-thirds of low-income families in North Carolina experience at least one civil legal problem in a given year. Yet, of these legal needs, the overwhelming majority—a staggering 86%—are not met.<sup>1</sup> And the problem is getting worse, not better. Indeed, all indications are that the legal ramifications of multiple pandemic-exacerbated issues, including rising household debt, a surge in evictions, and a possible uptick in family problems, are only beginning to ripple through North Carolina's courts.

North Carolinians want legal help. But they're not getting it. Citizens seek two things they aren't receiving: advice and advocacy. Advice helps consumers solve problems through issue-specific information; advocacy helps consumers solve problems through the actions of a proxy. When seeking formal assistance with civil justice problems, nearly two-thirds of consumers want advice, while nearly half want advocacy.<sup>2</sup> The overwhelming majority of studies present a clear consensus that advocacy—whether from lawyers or nonlawyer advocates—significantly increases a litigant's chance of success as compared to self-representation.<sup>3</sup>

By dint of their training, lawyers are first-rate problem-solvers. But lawyers do not have a monopoly over the skills and knowledge needed to help North Carolinians address certain legal problems. And, critically, North Carolina simply does not have enough lawyers at affordable fees to help those in need. The two proposals recommended by the North Carolina Justice for All Project—licensing non-lawyer legal practitioners and liberalizing N.C. General Statute Section 84 (Unauthorized Practice of Law)—directly target this gap. In particular, licensing paraprofessionals will create new lower cost legal service providers in areas of high need for middle-class North Carolinians and will ensure quality of legal service through carefully tailored licensing and oversight requirements. The proposal to liberalize the UPL ban will enable nonprofit legal aid and pro bono organizations to

<sup>1</sup> IN PURSUIT OF JUSTICE: AN ASSESSMENT OF THE CIVIL LEGAL NEEDS OF NORTH CAROLINA, N.C. EQUAL ACCESS TO JUSTICE COMM'N & N.C. EQUAL JUSTICE ALLIANCE 3 (2021).

<sup>2</sup> Rebecca L. Sandefur, *Legal Advice from Nonlawyers*, 16 STAN. J. C.R. & C.L. 283, 293 (2020). Some wanted both, which is why the numbers add up to more than 100%.

<sup>3</sup> Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact*, 80 AM. SOC'L REV. 909, 922-24 (2015).

offer more free services to more low-income North Carolinians using trained and supervised nonlawyer expert staff.

## **Licensed Paraprofessionals Will Help Consumers**

Licensing independent paraprofessional advocates will make a significant impact for people with justice needs. The takeaway from decades of independent and rigorous research across multiple jurisdictions is that trained non-lawyer advocates do a very good job in providing advocacy before courts and other tribunals. Nonlawyers have been found to be effective advocates in domestic violence proceedings, in housing courts, and in child welfare proceedings.<sup>4</sup> Consumers are not the only beneficiaries; as a recent study of lay domestic violence advocates noted, judges see benefits as well.<sup>5</sup> In Ontario, which has allowed independent paralegals since 2007 and in which over 10,600 licensed paralegals operate, consumers report high satisfaction with the services received.<sup>6</sup> In the U.S., lay representatives *already* represent people in certain administrative agencies and specialized courts, including, for example, unemployment benefits appeals, labor grievance arbitration, some state workers' compensation tribunals and tax courts, Social Security appeals, the United States Patent Office, and immigration courts. And they generally perform as well as or better than lawyers.<sup>7</sup>

Numerous states are recognizing that, by licensing independent legal paraprofessionals, they can help millions of people unable to pay the high and usually indeterminate fees needed to hire an attorney. Utah and Arizona both have programs licensing independent paraprofessionals; Minnesota, Oregon, New Mexico, and Colorado are all moving toward similar regulation.<sup>8</sup>

## **Relaxing the Ban on UPL Will Allow More Poor People to Get Help**

Relaxing the broad ban on the unauthorized practice of law (UPL) in this narrow context—to permit legal aid and pro bono organizations more flexibility in serving their communities—will help the poorest North Carolinians. Legal aid and pro bono service providers are already equipped with the professional and interpersonal skills that consumers want and need. These organizations are embedded in the communities they serve. They know the substantive law. They know what's at stake.

The relaxation of UPL rules for this narrow band of service-providers will help close the justice gap for those communities by permitting more providers to offer limited legal assistance under supervision. Although nearly 2 million North Carolinians are eligible for legal aid services, there is a

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<sup>4</sup> For an effective recap of the research, see Nora Freeman Engstrom, *Effective Deregulation: A Look Under the Hood of State Civil Courts*, JOTWELL LEGAL PRO. (Oct. 31, 2022),

<https://legalpro.jotwell.com/effective-deregulation-a-look-under-the-hood-of-state-civil-courts/>.

<sup>5</sup> Jessica K. Steinberg, Anna E. Carpenter, Colleen F. Shanahan & Alyx Mark, *Judges and the Deregulation of the Lawyer's Monopoly*, 89 Fordham L. Rev. 1315, 1338 (2021) (quoting one judge as observing that the advocates “take the weight off of us.”).

<sup>6</sup> L. SOC'Y ONTARIO, LAW SOCIETY OF ONTARIO 2021 ANNUAL REPORT (2022),

<https://lawsocietyontario.azureedge.net/media/lso/media/annualreport/documents/statistics-licensee-2021.pdf>; Lisa Trabucco, What Are We Waiting For? It's Time to Regulate Paralegals in Canada, 35 Windsor Yearbook on Access to Justice 149, 171 (2018).

<sup>7</sup> Sandefur, Legal Advice from Nonlawyers, at 304-05.

<sup>8</sup> Washington's program was sunsetted by the state supreme court in 2020. A study performed by the Rhode Center found that the actual drivers for the termination of the program were primarily political. JASON SOLOMON & NOELLE SMITH, THE SURPRISING SUCCESS OF WASHINGTON STATE'S LIMITED LICENSE LEGAL TECHNICIAN PROGRAM, DEBORAH L. RHODE CENTER ON THE LEGAL PROFESSION (2021).

dearth of legal help—currently in North Carolina, there is only one legal aid attorney for every 8,000 citizens in need.<sup>9</sup> UPL liberalization at legal aid organizations will get to the heart of this shortage—and it will free up valuable talent already within these organizations to provide real, meaningful, experience-supported assistance.

## Public Protection Favors These Proposals

Those who object to the above common-sense reforms often invoke the specter of consumer harm or the regulatory aim of “public protection.” These are important aims, and we share concern for how regulatory changes might affect public access to, and success in, the justice system. But these concerns actually *support* the changes proposed by the Justice for All Project.

As we explain above, independent paraprofessionals represent clients in the United States in numerous administrative agencies and specialized courts—and, thanks to recent regulatory reform, they represent clients *throughout* Arizona and Utah. They represent clients in Ontario where, as noted, more than 10,600 independent paralegals provide legal advice.<sup>10</sup>

Research indicates that, in circumstances similar to the ones proposed here, both the quality of outcomes and numbers of complaints for nonlawyer advocates are as good as, or even better than, lawyers.<sup>11</sup> One recent Stanford study, for instance, surveyed the landscape of new legal service providers in Utah and Arizona. The report concluded that, though it is still early, reform efforts there don’t appear to pose a substantial risk of consumer harm.<sup>12</sup> Moreover, in comparing non-lawyer advocates to bona fide J.D.s, however, it is important not to suggest a false choice. In reality, most low-income citizens are not choosing between a lawyer and a non-lawyer—they are choosing between the help of a lawyer they cannot afford and no help at all.

As a result, the “public protection” or consumer harm rationale cuts the other way. In preventing more affordable options from coming onto the market, we harm the public by forcing them to handle legal problems on their own. In other words, status quo hurts consumers. Unable to afford an attorney, citizens give up trying to solve their legal problems at all. The possible risks to consumers of reform include a worse outcome than the next best alternative, failure to exercise a legal right, overpaying or purchasing unnecessary legal services. But the balance of risks of harm is significantly greater in a world *without* realistic, affordable alternatives to lawyers.

Failure to initiate these reforms would continue to harm the public by preventing more affordable options from entering the legal services market.

## Expectations Should Be Modest

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<sup>9</sup> IN PURSUIT OF JUSTICE: AN ASSESSMENT OF THE CIVIL LEGAL NEEDS OF NORTH CAROLINA, N.C. EQUAL ACCESS TO JUSTICE COMM’N & N.C. EQUAL JUSTICE ALLIANCE 3 (2021).

<sup>10</sup> L. SOC’Y ONTARIO, LAW SOCIETY OF ONTARIO 2021 ANNUAL REPORT (2022), <https://lawsocietyontario.azureedge.net/media/lso/media/annualreport/documents/statistics-licensee-2021.pdf>

<sup>11</sup> This is true in all but the most complex cases. Deborah Rhode, *Professional Integrity and Professional Regulation: Nonlawyer Practice and Nonlawyer Investment in Law Firms*, 39 HASTINGS INT’L & COMPAR. L. REV. 111, 115 (2016) (citing HERBERT KRITZER, LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK (1998); Sandefur, *Legal Advice from Nonlawyers*, at 305 (quoting and citing study by Genn and Genn)).

<sup>12</sup> DAVID FREEMAN ENGSTROM ET AL., LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE 7 (2022), <https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf>.

Enacting the North Carolina Justice for All Project's proposals would be an important step in closing the justice gap in North Carolina. Yet we should not overstate the potential for change. Our expectations must be modest and realistic. First, it may be difficult for paraprofessionals in rural areas to build sustainable practices, although this concern might be mitigated in part by the opening of legal aid and pro bono service to UPL. Moreover, paraprofessionals are best suited to certain kinds of consumers and areas of law. As a recent British Columbia report on a similar program put it: "The problem faced by the justice system, to which the licensed paralegal initiative directs itself, is that a large portion of the public (a) experience serious, difficult to resolve, legal problems, and want help from a professional, (b) have some money to spend, but (c) are not getting help from lawyers."<sup>13</sup> Family law is an excellent example of an area that meets these criteria—with many unrepresented consumers who are able to pay for legal services, so long as affordable, on critical issues affecting their lives.

In other areas, it may be more difficult to establish models for serving consumers. For example, the one place in North America where paraprofessionals are providing representation in housing cases is in Ontario. And the best available data indicates that paraprofessionals there overwhelmingly represent landlords, and they rarely represent tenants.<sup>14</sup> So we should not expect tenants facing eviction will start hiring paraprofessionals in large numbers. This is why the Justice For All Project's proposal on liberalizing the rules around UPL for legal aid and pro bono organizations is a key complement to the paraprofessional licensing proposal.

## Conclusion

These two proposals are terrific first steps toward closing the justice gap. The United States has one of the most restricted legal services market in the world, and our citizens are increasingly harmed by the lack of affordable, accessible sources of legal help. Through approving the proposals presented by the North Carolina Justice for All Project, licensing legal practitioners and liberalizing N.C. General Statute Section 84 (Unauthorized Practice of Law), North Carolina can lead in putting its citizens first. We urge the General Assembly to approve it as soon as possible.

Sincerely,

Nora Freeman Engstrom, Ernest W. MacFarland Professor of Law and Co-Director, Deborah L. Rhode Center on the Legal Profession

David Freeman Engstrom, LSVF Professor in Law and Co-Director, Deborah L. Rhode Center on the Legal Profession

Lucy Ricca, Director, Policy and Programs, Deborah. L. Rhode Center on the Legal Profession

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<sup>13</sup> L. Soc'y BRITISH COLUMBIA, LICENSED PARALEGAL TASK FORCE REPORT § 8, p. 4, <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2020LicensedParalegalTaskForceReport.pdf>.

<sup>14</sup> David Wiseman, "Paralegals and Access to Justice For Tenants: A Case Study," in *The Justice Crisis: The Cost and Value of Accessing Law* (Jacobs & Farrow eds. 2020).



[info@innovation4justice.org](mailto:info@innovation4justice.org)

[www.innovation4justice.org](http://www.innovation4justice.org)

## Appendix G

January 25, 2023

Dear Members of the North Carolina General Assembly:

Innovation for Justice supports the North Carolina Justice for All Project's efforts to advance regulatory reform of the legal profession in North Carolina.

Innovation for Justice (i4J), housed at the University of Arizona James E. Rogers College of Law and the University of Utah David Eccles School of Business, is a social-justice-focused legal innovation lab that designs, builds, and tests disruptive solutions to the justice gap. As the first and only cross-discipline, cross-institution, cross-jurisdiction legal innovation lab in the nation, i4J is intentionally and uniquely positioned to lead the identification, design, and launch of disruptive legal innovation across three impact areas: service, system and structure. i4J's action-driven research in its service impact area leverages regulatory reform of the legal profession to equip non-lawyer community advocates in the nonprofit sector to provide limited scope legal advice to low-income community members.

Since 2019, i4J has been leveraging the regulatory reform opportunities in Arizona and Utah to design and implement new legal service models grounded in community-based advocacy and partnership with community-based organizations. i4J has designed three pilot programs to implement these new legal service models: the Licensed Legal Advocate Pilot (LLA), the Medical Debt Legal Advocate Pilot (MDLA), and Housing Stability Legal Advocate Pilot (HSLA). These pilots are in various stages of implementation and evaluation.

Arizona's Access to Justice Commission's 2020 annual report states that "for every 3 people in Arizona who realize they have a legal problem and contact legal aid, 2 must be turned away because of a lack of resources." Utah Bar Foundation's 2020 Justice Gap Report found that only 10% of Utahns experiencing any kind of legal problem received help from legal aid. Pro bono services cannot meet the need either. Nationally, only 20% of attorneys are providing at least 50 pro bono hours per year, as ABA Model Rule 6.1 recommends, and 20% of attorneys had never undertaken any pro bono service. Regulatory reform strategies which allow



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non-lawyer ownership and unauthorized practice of law will purportedly invite investment in new forms of legal services, drive innovation, and create legal service models that leverage economies of scale to meet basic legal needs through technology and non-lawyers triaging legal needs and providing legal advice. Regulatory reform is a critical step in increasing access to justice.

Sincerely,

Stacy Butler, Director





INSTITUTE *for the* ADVANCEMENT  
*of the* AMERICAN LEGAL SYSTEM



UNIVERSITY of  
DENVER

## Appendix H

February 1, 2023

Members of the North Carolina General Assembly  
16 W Jones St.  
Raleigh, NC 27601

Dear Members of the North Carolina General Assembly:

### **Re: Looking Beyond Lawyers to Bridge the Civil Access to Justice Gap – Letter of Support**

On behalf of IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, please accept this letter of support to the North Carolina Justice for All Project in their Petition for Redress of Grievances Pursuant to N.C. Const. Art. I, § 12, Policy Analysis, & Legislative Proposal.

IAALS is a national, independent research center dedicated to continuous improvement of the civil justice system. Over the past year, IAALS has researched the landscape of licensed legal practitioner programs across the country—including evaluations of their successes and limitations—and published our findings in [\*The Landscape of Allied Legal Professional Programs in the United States\*](#). Building on this research, IAALS convened a group of experts to create recommendations and best practices for a national approach that states can use when developing new and existing programs, which will be published in a report later this year.

Based on the extensive work IAALS has done on this topic, we emphatically support this legislative proposal's recommendation to license legal practitioners. To date, four states have active programs, two states are in the process of implementing approved programs, and 10 other states have created a proposal for licensing legal practitioners. But it is more than just about who is implementing a program—it is about why. As the Justice for All Project notes, pro bono and legal aid service providers are unable to keep up with the demand for legal services. Liberalizing the Unauthorized Practice of Law statute for legal aid and pro bono services, akin to Delaware's and Alaska's recently adopted programs, will most definitely increase their reach and should be implemented, but this still leaves millions of people with inadequate avenues for legal help. Legal practitioners can and would help bridge that gap. Data gathered

from Washington's LLLT program shows that legal practitioners charge about half of what attorneys charge, around \$160 per hour.<sup>1</sup> In Utah, their licensed paralegal practitioners (LPPs) report charging between \$70 and \$175 per hour, with retainers from \$750 to \$1,500.<sup>2</sup> This is a substantial and essential decrease in cost given the average cost of a divorce runs between \$15,000 and \$20,000, up 6.2% from the previous year.<sup>3</sup> They are able to charge these lower rates because the cost of their programs are substantially less expensive than law school. Utah LPPs, for example, report total licensure costs to be around \$1,500 to \$5,000, which includes their education, exams, application, and other licensing fees.<sup>4</sup> With over 70% of both civil<sup>5</sup> and family<sup>6</sup> law cases having at least one party that is self-represented, legal practitioners could help meet the needs of many lower- and middle-class people who would otherwise be unrepresented.

Importantly, this decrease in cost does not include a decrease in competency. Data from both Washington's and Minnesota's legal practitioner programs showcase that they are just as, if not more, competent to assist clients with their legal matters. In Washington, data shows that LLLTs emerge from their training with a uniquely focused expertise in their area, making them particularly equipped to provide legal help in family law cases.<sup>7</sup> And in Minnesota, the attorneys that supervised legal paraprofessionals reported them to be "careful, serious, and excellent," having no complaints with their performance in or outside of the courtroom.<sup>8</sup>

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<sup>1</sup> JASON SOLOMON & NOELLE SMITH, STAN. CTR. ON THE LEGAL PROFESSION, THE SURPRISING SUCCESS OF WASHINGTON STATE'S LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 20 (2021), <https://law.stanford.edu/wp-content/uploads/2021/04/LLLT-White-Paper-Final-5-4-21.pdf>.

<sup>2</sup> Ashton Ruff, Anna E. Carpenter & Alyx Mark, Utah's Licensed Paralegal Practitioner Program: Preliminary Findings and Feedback from Utah's First LPPs (unpublished manuscript) (on file with author).

<sup>3</sup> Serah Louis, *The price of a divorce is rising 'from every angle' as all parties involved contend with higher costs—here's how much you could be billed for a break-up this year*, MONEYWISE (Jan. 6, 2023), <https://moneywise.com/a/ch-apple/cost-of-divorce>.

<sup>4</sup> Ruff, Carpenter & Mark, *supra* note 2.

<sup>5</sup> PAULA HANNAFORD-AGOR ET AL., NAT'L CTR. FOR STATE COURTS, THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS 31 (2015), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0015/25305/civiljusticereport-2015.pdf](https://www.ncsc.org/_data/assets/pdf_file/0015/25305/civiljusticereport-2015.pdf).

<sup>6</sup> PAULA HANNAFORD-AGOR ET AL., NAT'L CTR. FOR STATE COURTS & INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., FAMILY JUSTICE INITIATIVE: THE LANDSCAPE OF DOMESTIC RELATIONS CASES IN STATE COURTS 20 (2018), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0018/18522/fji-landscape-report.pdf](https://www.ncsc.org/_data/assets/pdf_file/0018/18522/fji-landscape-report.pdf).

<sup>7</sup> See SOLOMON & SMITH, *supra* note 1, at 12.

<sup>8</sup> STANDING COMM. FOR LEGAL PARAPROFESSIONAL PILOT PROJECT, MINN. SUPREME COURT, INTERIM REPORT AND RECOMMENDATIONS TO THE MINNESOTA SUPREME COURT (2021), <https://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/Administrative-Interim-Report-and-Recommendations-from-the-Standing-Committee-for-LPPP.pdf>.

The access to justice crisis is real and is getting worse. As citizens are denied justice, not only are their lives being irreparably harmed, but their faith in the justice system is eroding away. The Justice for All Project is advocating for changes that will help resolve this crisis and restore faith in our system. These changes are supported by research and the innovation of other states around the country who are leading the way in solving this crisis. We urge North Carolina to join in this important work to ensure justice for all.

Sincerely,

Michael Houlberg  
Director of Special Projects  
IAALS

**About IAALS**

*IAALS identifies and researches issues in the legal system; convenes experts, stakeholders, and users of the system to develop and propose concrete solutions; and then goes one step further to empower and facilitate the implementation of those solutions so as to achieve impact. We are a nonpartisan organization that champions people-first reforms to the legal system and the legal profession. Since its inception in 2006, IAALS has been steadfast in working to end the access to justice crisis and alleviate the insurmountable burden this inflicts on everyday citizens. This work has taken a variety of forms, from working together with self-represented litigants and judicial officers to develop significant, feasible family court reform; being a national leader and advocate on unbundled legal services; researching and proposing effective consumer debt reform alongside the National Center for State Courts; and most recently working to grow and standardize the role of allied legal professionals (legal practitioners).*



Future of the Profession  
**INITIATIVE**

February 1, 2023

North Carolina General Assembly  
Legislative Building  
16 West Jones Street  
Raleigh, NC 27601

Re: Making the Civil Legal System Work for the People of North Carolina

To the Honorable Members of the North Carolina General Assembly:

I write to express my strong support for the Petition for Redress of Grievances Pursuant to N.C. Const. Article I, Section 12 filed by the North Carolina Justice for All Project (NCJAP).

The petition asks the General Assembly to revise N.C. Gen. Stat. § 84 (governing the Unauthorized Practice of Law) to permit the licensing of trained, regulated professionals who are not lawyers to provide some legal services that only lawyers can currently provide. The proposal would expand access to critical legal services in a manner analogous to the way the health care system works, where consumers' medical needs are addressed not solely by doctors, but by nurse practitioners, physician's assistants, medical technicians, and pharmacists as well.

My views are based on my experience with the civil legal system in the United States. I am currently Distinguished Lecturer and Director of the Future of the Profession Lab at the University of Pennsylvania Carey Law School. I am also President Emeritus of the Legal Services Corporation (LSC), the United States' largest funder of civil legal aid for low-income people; I served as President of LSC from 2011 to 2020. I practiced law with the international, Washington-based firm of Arnold & Porter for thirty years and was the firm's Managing Partner for a decade. I am a past President of the 110,000-member District of Columbia Bar and a former General Counsel of the District of Columbia Public Schools. I chaired the American Bar's Association's Task Force on Legal Needs Arising from the COVID-19 Pandemic.

I have seen in my career how the civil legal system works for the privileged and the wealthy. For them, it works reasonably well. I have also seen how that same system flat-out fails tens of millions of low- and middle-income people every year. For them, the system is unaffordable, inaccessible, and does not allow them to assert their legal rights effectively. The system

protects the exclusive franchise of lawyers to provide legal services at the expense of serving the needs everyday individuals.

NCJAP's petition aims to make the civil legal system reflect the just, proper, and rightful interests of the people of North Carolina.

## **I. The Civil Legal System Is Not Meeting the Needs of the Public.**

By every measure, the civil legal system is not meeting the civil legal needs of everyday people. "Civil legal needs" include matters relating to housing (protection from unlawful evictions and foreclosures), family stability (child custody, child support, guardianships, and adoptions), personal safety (protection against domestic violence), and economic subsistence (access to unemployment insurance, protection against unlawful debt-collection practices). Numerous studies have documented the magnitude of public's unmet civil legal needs. I am not aware of a single study that has found the system to be working well.

Consider these facts:

- According to *In Pursuit of Justice: An Assessment of the Civil Legal Needs of North Carolina*, issued by the North Carolina Equal Access to Justice Commission and the Equal Justice Alliance in June 2020, 86 percent of the civil legal needs of low-income families who are financially eligible for legal aid go unmet. The resources available for civil legal aid providers are inadequate to meet the needs of those who qualify.
- Legal aid is available only for the very poor. Income-eligibility caps generally limit legal aid to people with incomes no greater than 200 percent of the Federal Poverty Guidelines. In 2023, that means an individual with an income greater than \$29,160 is ineligible for legal aid. But the high cost of lawyers' services means that even middle-class people with incomes well above that cutoff cannot get the legal help they need.
- The types of matters for which people need the most help involve housing and family law – particularly evictions, foreclosures, domestic violence, and child custody. These are high-stakes matters.
- The National Center for State Courts estimates that both parties have lawyers in only 24 percent of civil cases in state courts, where about 95 percent of civil cases are heard. In more than three-quarters of civil cases, at least one party is struggling to navigate a legal system that is incomprehensible to them – a system created by lawyers, for lawyers, and built on the assumption that everybody has a lawyer.
- The World Justice Project's Rule of Law Index ranks the countries of the world every year on their compliance with various indicators of the rule of law. One indicator is the affordability and accessibility of civil justice. On that measure, the United States

currently ranks 115<sup>th</sup> of 140 countries. Among the 43 wealthiest countries in the world, the United States ranks 43<sup>rd</sup>.

## **II. Limitations on the Unauthorized Practice of Law Constrict the Supply of Helpers to Assist the Public with Their Civil Legal Needs.**

Our current civil legal system was designed for a world that ceased to exist sometime in the last century – a world in which the vast majority of civil litigants had lawyers. Our rules for regulating the legal system have not adapted to the profound changes that have caused an explosion in self-represented parties since at least 1975.

By limiting the providers of legal services to the monopoly of lawyers, N.C. Gen. Stat. § 84 is contributing to, not ameliorating, a failure in the market for legal services. It is constricting the supply of helpers who might assist North Carolinians with their civil legal needs. Prohibiting *anyone* who is not a lawyer from providing legal services consigns those who need legal advice but cannot afford a lawyer to getting no help at all. The current system has let the perfect become the enemy of the good: our preference for a lawyer for everyone has left a substantial percentage of the population on their own to try to deal with a legal system that is complex, confusing, and arcane. Compelling people who cannot afford a lawyer to play by the rules of a system designed only for those who can is not justice. It is wrong.

N.C. Gen. Stat. § 84 has resulted in a dysfunctional market. Those to whom the statute has granted a monopoly to serve the market for legal services – lawyers – are leaving a significant portion of the market with no service at all. That is bad regulation.

## **III. Other States Have Permitted Professionals Who Are Not Lawyers to Provide Some Legal Services.**

Other states are leading the way in expanding the supply of professionals authorized to help people with their civil legal problems. Utah, Arizona, Oregon, and Alaska, for example, have recently created licensing programs that allow trained and regulated professionals who are not lawyers to provide specified services in some kinds of cases – typically cases involving housing and family law, where the stakes are high and so many people do not have lawyers. More states are considering similar initiatives. These new licensing systems require that licensees meet rigorous educational and experience requirements and subject licensees to regulatory oversight. These safeguards protect the public against potentially incompetent or unethical service providers.

North Carolina need not start from scratch in designing a system to permit well-trained, competent, ethical, and regulated professionals who are not lawyers to provide some legal services. Existing models in other states provide blueprints for North Carolina to consider making its civil legal system serve the public better.



#### **IV. The Process for Revising N.C. Gen. Stat. § 84 Should Provide a Meaningful Opportunity for Public Input.**

In considering a revision of N.C. Gen. Stat. § 84, the General Assembly should provide a meaningful opportunity for public input. The legal system belongs to the people, not to lawyers. The people are perfectly capable of speaking for themselves in identifying what they want and need and what is in the public interest.

For too long, lawyer regulation has been left exclusively to lawyers. It has been conducted in the private councils of the bar, in meetings and hearings the public cannot find, with “public comment” solicited on court and bar websites that few members of the public are likely to access. Not surprisingly, lawyers overwhelmingly dominate proceedings to consider reforms to regulation of the profession. Also not surprisingly, lawyers tend to oppose relaxing restrictions on the unauthorized practice of law. They almost always couch their opposition in terms of protecting the public. But when the public has a meaningful opportunity to have input into the very same proposals, they tend to favor them by supermajorities. The public needs to be engaged and heard from on matters of such importance to them.

#### **V. NCJAP’s Petition Is About the Most Important Function of Government – Ensuring Justice.**

The Petition before you is intended to make North Carolina’s legal system work for the public. It is about good government. It is about good constituent service.

The founders of our Nation and the framers of the Constitution of the United States emphasized over and over again that their first and most important goal was justice. Alexander Hamilton wrote, “The first duty of society is justice.” Thomas Jefferson wrote, “The most sacred of the duties of government is to do equal and impartial justice to all its citizens.” James Madison wrote in Federalist No. 51, “Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.” *The very first line of the Constitution identifies justice as a premier national goal:* “We the People of the United States, in order to form a more perfect union, establish justice . . . .” The framers cited establishing justice as their goal even before they mentioned providing for the common defense or ensuring domestic tranquility. Their ordering was no accident.

NCJAP's Petition presents a very thoughtful and reasonable proposal for improving justice in North Carolina. I urge you to grant the petition and amend N.C. Gen. Stat. § 84.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "James J. Sandman", with a long horizontal flourish extending to the right.

James J. Sandman  
Distinguished Lecturer and  
Director of the Future of the Profession Lab

David Udell  
Executive Director

February 1, 2023

Members of the North Carolina General Assembly  
Legislative Building  
16 West Jones Street  
Raleigh, NC 27601

Re: LOOKING BEYOND LAWYERS TO  
BRIDGE THE CIVIL ACCESS TO JUSTICE  
GAP: Petition for Redress of Grievances  
Pursuant to N.C. Const. Art. I, § 12, Policy  
Analysis & Legislative Proposal

Dear Assembly Members:

We are writing in support of the legislative petition, referenced above, that would respond to North Carolina's Justice Gap by establishing a pilot project to authorize and test two models of service that would: a) license legal practitioners to provide designated legal services at reduced fees, thereby providing needed assistance to people with moderate financial means, and b) authorize legal practitioners under the guidance of nonprofit civil legal aid organizations and pro bono initiatives to provide designated legal services at no charge, thereby providing needed assistance to low-income individuals.

### **The National Center for Access to Justice at Fordham Law School**

The National Center for Access to Justice ("NCAJ") is a non-profit organization based at Fordham University School of Law that brings rigorous research and analysis to the task of expanding access to justice – the ability of people to learn about their rights, assert their legal claims and defenses, and obtain a fair resolution under the rule of law. See "What is Access to Justice" in NATIONAL CENTER FOR ACCESS TO JUSTICE, <https://ncaj.org/what-access-justice>. NCAJ advocates for policies such as requiring provision of counsel, promoting use of plain language in courts, assuring quality interpreting and translating services, providing notice of the right to accommodations for disabilities, and deploying innovative technologies such as e-filing. To that end, NCAJ collects, analyzes and publishes data, researches and writes reports, convenes experts, and engages with reformers and regulators, including through formal comment on proposed regulatory and legislative reform.

Our flagship project, the Justice Index, analyzes and ranks states on their adoption of expert-endorsed best policies for access to justice. See "State Scores and Rankings" in *Justice*

*Index*, NATIONAL CENTER FOR ACCESS TO JUSTICE, <https://ncaj.org/state-rankings/2021/justice-index>. NCAJ's state by state comparisons are used by reformers, officials, members of the public, and other stakeholders as factors that inform debate and help lead to changes in policy. Among the criteria contained in the Justice Index, NCAJ compiles an attorney access index that ranks the states on: i) number of civil legal aid lawyers per 10,000 poor, ii) progress toward adopting selected best laws for pro bono legal services, and iii) progress toward recognizing categorical civil rights to counsel. *See Attorney Access*, NATIONAL CENTER FOR ACCESS TO JUSTICE, <https://ncaj.org/state-rankings/justice-index/attorney-access>.

In recognition of the fact that many people have no prospect of obtaining legal help from lawyers (despite the changes brought about by ongoing reform efforts), NCAJ also supports responsible initiatives to reconsider the scope and sweep of states' Unauthorized Practice of Law rules to ensure that these laws, which are intended to protect the public from harm, do not instead operate to keep people from receiving the help they need. We chaired the subcommittee of the New York City Bar that authored *Narrowing the "Justice Gap: Roles for Nonlawyer Practitioners (2013)*, a report recommending changes in the UPL laws. We co-authored *New Roles for Non-Lawyers to Increase Access to Justice (2014)*, an article reviewing landscape of UPL laws and calling for change in the laws. We also wrote *Working With Your Hands Tied Behind Your Back: Non-Lawyer Perspectives on Regulatory Reform (2021)*, a report on the views of social services providers on how UPL rules interfere with people's efforts to address their legal needs, and *UPL Enforcement in California: Protection or Protectionism (2022)*, a report on the views of non-lawyer practitioners who the California Bar had commanded to "cease-and-desist" engaging in the alleged unauthorized practice of law.

## Discussion

In the Justice Index, NCAJ's researchers found that North Carolina has fewer than 1 full time attorney per 10,000 low income people in the state, establishing the state's ranking as 25<sup>th</sup> among all states, DC, and Puerto Rico in this regard. When this finding is considered alongside the state's performance on other benchmarks that track each state's pro bono laws and civil right to counsel laws, North Carolina's ranking slips to 49<sup>th</sup>. With this awareness, it is easy to appreciate that innovative legislation aimed at meeting the legal needs of North Carolina residents offers an important opportunity for the state to take needed steps forward.

More specifically, the proposed bills would authorize a pilot project to test the performance of two valuable proposals: the first with its promise of low cost services for people of moderate means, the second with its plan to allow nonlawyer practitioners to work in legal aid and pro bono organizations providing assistance to the poor. Critics routinely raise concerns about the potential harm of proposals that would make changes in state UPL laws. But, in this instance, the plan to introduce the proposals in the context of a pilot project is a safeguard that neutralizes the familiar critique, altering the dialogue. The reliance on a pilot project would allow for evaluation and improvement of the tested models in the earliest phases of their implementation, assuring safest deployment, and offering opportunity (otherwise unavailable) to learn about their effects.

NCAJ respectfully urges Members to consider that North Carolina would not be acting in isolation here. Similar changes are underway and being evaluated in other parts of the country. A recent report, “The Landscape of Allied Legal Professional Programs in the United States,” INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (NOV. 2022), [https://iaals.du.edu/sites/default/files/documents/publications/landscape\\_allied\\_legal\\_professionals.pdf](https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf), catalogues emerging models of “Allied Legal Professionals” in the states. See also Aeberle Coe, “Where 5 States Stand on Nonlawyer Practice of Law Regs,” LAW360 (Feb. 5, 2021), <https://www.law360.com/access-to-justice/articles/1352126/where-5-states-stand-on-nonlawyer-practice-of-law-regs>.

Arizona and Utah offer examples of new models coupled with evaluation. Arizona is testing a limited license for “legal paraprofessionals” (“LPs”) who provide an array of legal services and advice historically offered only by lawyers. The LPs in Arizona must meet eligibility requirements (including skills and subject-matter examinations), satisfy education and experience combination requirements, and follow a code of conduct. See “News Release”, Arizona Supreme Court Administrative Office of the Courts, Arizona Supreme Court Leads Nation in Tackling Access to Justice Gap with New Tier of Legal Services Providers (December 9, 2021), <https://www.azcourts.gov/Portals/201/120921LSP.pdf>; see also *Legal Paraprofessional Program*, ARIZ. CTS, <https://www.azcourts.gov/Licensing-Regulation/Legal-Paraprofessional-Program>. Similarly, Utah is operating a “regulatory sandbox” in which an office of the Utah Supreme Court reviews and approves (or denies) applications for the experimental provision of legal services (including by nonlawyers) that would otherwise be prohibited under Utah’s UPL laws. See *What We Do*, OFF. OF LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/about/what-we-do/>.

The new programs are proving to be successful without having introduced significant issues of safety. In *Legal Innovation After Reform: Evidence from Regulatory Change*, the authors found: “few reported complaints against service providers in Arizona or Utah,” and explained that “Data and information reported by Utah and Arizona regulators indicate that authorized entities do not appear to draw a substantially higher number of consumer complaints, as compared to their lawyer counterparts. In particular, Utah’s June 2022 data reported one complaint per 2,123 services delivered, and Arizona has received no complaints. This is generally on par with the number of complaints lodged against lawyers.” DAVID FREEMAN ENGSTROM, LUCY RICCA, GRAHAM AMBROSE, & MADDIE WALSH, *LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE* 7, Stanford Law School Deborah L. Rhode Center on the Legal Profession (Sept. 27, 2022), <https://law.stanford.edu/publications/legal-innovation-after-reform-evidence-from-regulatory-change/>.

## Conclusion

At NCAJ we recognize that lawyers perform an essential role in our society. That is why NCAJ calls for increased support for the civil legal aid bar, strengthened pro bono representation, and expansion of civil rights to counsel. But, also, and at the same time, we support responsible innovation and change – accompanied by careful evaluation – that has the potential to empower people to obtain the legal help they need from individuals, not lawyers, who are prepared and

qualified to help. For all these reasons, we support the proposals introduced by the Justice for All Project that are pending before the North Carolina General Assembly.

Respectfully,

s/

David Udell  
Executive Director

Lauren Jones  
Legal & Policy Director



David Udell  
Executive Director

February 1, 2023

Members of the North Carolina General Assembly  
Legislative Building  
16 West Jones Street  
Raleigh, NC 27601

Re: LOOKING BEYOND LAWYERS TO  
BRIDGE THE CIVIL ACCESS TO JUSTICE  
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Respectfully,

s/

David Udell  
Executive Director

Lauren Jones  
Legal & Policy Director

Stephen R. Crossland, Esq., Chair  
Limited License Legal Technician Board  
Washington State Bar Association  
[steve@crosslandlaw.net](mailto:steve@crosslandlaw.net)

February 10, 2023

The Honorable Phil Berger, President Pro Tempore  
North Carolina Senate  
16 West Jones Street  
Raleigh, NC 27601

The Honorable Tim Moore, Speaker  
North Carolina House of Representatives  
16 West Jones Street  
Raleigh, NC 27601

Re: North Carolina Justice for All Project Proposal  
A Review of the LLLT Program in the State of Washington

Dear Members of the North Carolina General Assembly:

I have reviewed the legislative proposal and policy analysis submitted to you by the North Carolina Justice for All Project. I am writing to give you my perspective as Chair of the Limited License Legal Technician (LLLT) Program in the State of Washington. We were the first limited licensing program in the United States and the second in North America after the Law Society of Ontario. I wanted to share my experience as a lawyer in Washington with the access to justice crisis and our LLLT program.

There is a serious problem facing societies and communities that rely on the “rule of law” to manage the rights and responsibilities of people who live within those societies and communities. That problem is that many, a significant number, of people can not afford, or for other reasons, have access to someone to assist them in navigating their rights and responsibilities in a “rule of law” world. For the most part, this problem is created by a lack of the availability of services that provide legal advice or legal services to assist people in attempting to navigate the “rule of law” system of governance. Traditionally, we rely on lawyers (people who are licensed by a jurisdiction) to provide those much-needed legal services. Lawyers never have met the need for legal services and never will meet the need legal services!

Over the decades and perhaps centuries in the United States, there have been attempts to “bridge the gap” and provide “legal services” to those who can’t otherwise afford them or otherwise access them. I will spare the reader with the multitude of efforts over the years and

over the world to “bridge the gap”. I will focus on an effort in the state of Washington to develop a license to allow people who do not have a juris doctor degree from a law school to provide legal services to those who cannot afford them or for other reasons, including geographical location, to obtain needed legal services.

It was the goal of the effort in the state of Washington to “to serve and protect the legal services consuming public with qualified and regulated legal services at a price the consumer can afford”. In 2012, in order to accomplish this goal, the Washington State Supreme Court created the Limited License Legal Technician Board (LLLTB) and directed it to develop a limited license to deliver legal services in designated areas of the practice of law. The Supreme Court suggested in it’s Order that the initial area of family law might be an appropriate area to begin the delivery of limited legal services. The LLLTB spent three years defining services in family law that a Limited License Legal Technician (LLLT) could provide and then developed a curriculum that would assure that those taking the classes would be properly trained to deliver the authorized legal services. The LLLTB also devised a test that would assure that the students were in fact competent to provide the authorized legal services. In addition, to protect the public, the LLLTB recommended that LLLT’s be held to the same “standard of care” as lawyers, the same “rules of professional conduct” as lawyers and unlike lawyers, would be required to carry malpractice insurance in order to further protect the public.

The first LLLT license was issued in June, 2015 with a ceremony held in the courtroom of the Washington State Supreme Court with most of the Supreme Court Justices present. The LLLT’s were issued a license to practice law with limitations as defined by the Supreme Court. In the ensuing years the Washington State Bar Association (WSBA) made LLLT’s members of the WSBA and authorized them to sit on the governing board of the WSBA.

The LLLT concept was not universally revered by some lawyers, particularly some lawyers who practiced family law. As a result of tension within the bar association, the Supreme Court chose to “sunset” the LLLT license in 2020 giving the reasons that it was expensive and didn’t attract the interest in those desiring to become LLLT’s.

I will attempt to give some information in response to those concerns by the Court and also my views on the success of the idea and some lessons learned along the way.

If “success” is defined by having LLLT’s “to serve and protect the legal services consuming public with qualified and regulated legal services at a price the consumer can afford”, then the license is an unqualified success!! There are over 70 licensed LLLTs. At the time that the license was “sunset” there were over 300 students in the “pipeline”. The “pipeline” is defined as those who were in some stage of the 3 year education and experience process to be prepared to take the examination and become licensed. The education consists of two years of



“core classes” which are generally taught through an approved paralegal program. The third year of classes consist of education in the defined practice area, in Washington at the time that was family law.

These licensed LLLT’s are employed either on their own or in conjunction with a law firm. The reports are that they are very busy and are compensated, and are providing legal services at a price lower than lawyers charge in the same market place. In over six years of being licensed there has only been one complaint filed over the services of a LLLT that has resulted in potential discipline.

Judges who have had the occasion to have LLLT’s in their courtroom have for the most part been appreciative of the assistance that LLLT’s can provide and have found that their courtrooms are better able to process cases that previously were pro se litigants who were uniformly unprepared and unqualified. With the assistance of LLLT’s cases are processed more effectively and efficiently.

One of the lessons learned is that we should have been collecting data to support our goal and conclusion that the LLLT’s “serve and protect the public with qualified and regulated legal services at a price the consumer can afford”. The National Center for State Courts (NCSC) began a study in Washington but had to discontinue because they were unable to access the information through the state’s data base. It is my understanding that inability to access information has been resolved and we are hopeful that the NCSC might resume its study. In the meantime, the LLLTB is engaged in collecting data.

Another thing that we might have done differently would be to advertise the license to the consuming public. This was made difficult since Washington was the only jurisdiction that offered this license and it was the first of its kind. Therefore, it was a bit tenuous to offer and represent to the public an idea that had not been tested and proven. However, we feel it now is “tested and proven” and other jurisdictions who chose to follow the LLLT path will not have that hesitation.

The Supreme Court suggested as one of the reasons for “sunsetting” the license as being expense. The Supreme Court delegated authority and responsibility to administer the license to the WSBA. The WSBA annually allocated \$200,000 to support the LLLTB in its efforts to develop the license and eventually to administer the over seventy licenses. Only during one fiscal year did the LLLTB exceed its budget. It was the intention of the LLLTB that the LLLT license would be self-supporting through its license fees. At the time of the sunseting it was projected by the LLLTB that the license would be self-supporting in 4 years. It should also be noted that the LLLT budget represents less than .001% of the WSBA annual budget.

Once the license was producing licensed LLLT's the barriers began to dissolve. The goal was to have LLLT education programs situated throughout the state of Washington in as many of the thirty-nine counties as possible. This would allow LLLT's to be trained and licensed in their communities and to provide legal services to another underserved population which are consumers living in rural parts of the state that do not have access to lawyers. The cost of the three-year education is less than \$15,000 which is obviously considerably less than obtaining a Juris Doctor degree from a law school. There are few barriers to the license, especially if the education can be provided statewide. Until statewide education is available, the model involves having existing education programs provide the classes in "real time" to students who are remote to the learning center.

I have been chair of the LLLTB for most of it's 10 years. I am proud of the license in Washington and believe it is accomplishing what we set out to accomplish, "to serve and protect the legal services consuming public with qualified and regulated legal services at a price the consumer can afford". I am hopeful that in time that the license will be restored in Washington state. In the meantime, I am excited to see many other jurisdictions around North American investigating and implementing concepts to accomplish what we have set out to accomplish in Washington. I think Colorado and Oregon are implementing licenses that closely resemble Washington state, but other jurisdictions, including North Carolina, are pursuing concepts that will improve the ability of the consuming public to have the necessary services that they need to assist them in navigating the complicated legal system we have created just to allow them to enjoy their legal rights.

Respectfully submitted,

Stephen R. Crossland, Esq., Chair  
Limited License Legal Technician Board  
[steve@crosslandlaw.net](mailto:steve@crosslandlaw.net)



**U.S. Department of Justice**

Antitrust Division

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*RFK Main Justice Building*

*950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001*

February 14, 2023

North Carolina General Assembly  
Legislative Building  
16 West Jones Street  
Raleigh, NC 27601

Dear Honorable Members of the North Carolina General Assembly:

On behalf of the Antitrust Division of the United States Department of Justice (the “Division” or the “Antitrust Division”), I am pleased to comment on the policy recommendations proposed by the North Carolina Justice for All Project in its petition.<sup>1</sup>

The petition details an acute civil justice crisis in North Carolina, in which a substantial portion of the state’s population cannot afford access to critical legal services. It traces the roots of the crisis to, among other things, a shortage of affordable and accessible providers in the marketplace for legal services. In particular, the petition addresses the restrictions imposed by North Carolina’s unauthorized practice of law statute, N.C. Gen. Stat. § 84, which generally prohibits any person who is not an attorney from “performing any legal service for any other person, firm or corporation, with or without compensation” and makes clear that violators “shall be guilty of a Class 3 misdemeanor.”<sup>2</sup> To address the civil justice crisis, the North Carolina Justice for All Project recommends that the North Carolina General Assembly explore two core policy recommendations: (1) amending N.C. Gen. Stat. § 84, including by expanding opportunities for legal aid and pro bono services; and (2) allowing qualified practitioners who are not attorneys to earn a license to offer limited legal services.

Taken together, the policy recommendations would help to promote and protect competition in the market for legal services by expanding the pool of available service providers. While there is an appropriate role for certain qualification requirements to protect the public’s interest in effective legal representation, unduly broad restrictions on the practice of law impose

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<sup>1</sup> See North Carolina Justice for All Project, *Looking Beyond Lawyers to Bridge the Access to Justice Gap: Petition for Redress of Grievances Pursuant to N.C. Const., Art. I, Policy Analysis, Legislative Proposal* (Feb. 2023).

<sup>2</sup> N.C. Gen. Stat. § 84-2.1.

significant competitive costs on consumers and workers and impede innovation. These recommendations could therefore benefit consumers and workers alike, including by securing lower costs, enabling more choice in the delivery of legal-related services, and lifting barriers to employment. They would promote important innovations in the delivery of legal services to our communities. And, as explained below, the experiences of federal agencies, states, and other countries show that these benefits are achievable. For these reasons, the Antitrust Division commends the North Carolina Justice for All Project for its thoughtful analysis and policy recommendations and looks forward to reviewing any related bills that ultimately are introduced to the North Carolina legislature.

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The mission of the Antitrust Division is to enforce the federal antitrust laws, which help ensure economic opportunity and fairness by promoting free and fair competition. As the United States Supreme Court has long recognized, “[t]he heart of our national economic policy long has been faith in the value of competition.”<sup>3</sup> For this reason, our antitrust laws are “as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.”<sup>4</sup> Free and fair competition produces lower prices for consumers. It safeguards consumer choice. It protects workers in securing and maintaining fair wages and good working conditions. And it fuels innovation that is essential to the American dream.

Federal antitrust prohibitions have existed in statutes dating back to 1890. But states, including North Carolina, have maintained *constitutional* prohibitions on monopoly power since the very beginning of our republic. North Carolina’s Constitution, adopted in December 1776, makes clear that “monopolies are contrary to the genius of a free state and shall not be allowed.”<sup>5</sup> And the North Carolina Supreme Court has reaffirmed that professional licensing restrictions cannot constitute “the creation of a monopoly or special privileges” and instead must be “an exercise of the [state’s] police power for the protection of the public against incompetents and impostors.”<sup>6</sup> Simply put, justifications for restraints on the delivery of legal services must be rooted in the protection of the public and not in the protection of lawyers from competition.<sup>7</sup>

Because of the importance of legal services to consumers, our economy, and our democracy, the regulation of the practice of law has been an area of interest for the Antitrust

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<sup>3</sup> *Standard Oil Co. v. FTC*, 340 U.S. 231, 248 (1951).

<sup>4</sup> *United States v. Topco Associates, Inc.*, 405 U.S. 596, 610 (1972).

<sup>5</sup> N.C. Const. Art. 1 Sec. XXIII (1776), [https://avalon.law.yale.edu/18th\\_century/nc07.asp](https://avalon.law.yale.edu/18th_century/nc07.asp); see also Alexandra K. Howell, *Enforcing A Wall of Separation Between Big Business and State: Protection from Monopolies in State Constitutions*, 96 NOTRE DAME L. REV. 859, 871-78 (2020) (discussing history of North Carolina’s constitutional prohibition on monopolies).

<sup>6</sup> *State v. Call*, 121 N.C. 643, 28 S.E. 517, 517 (1897); see also *Cap. Associated Indus., Inc. v. Stein*, 922 F.3d 198, 202 (4th Cir. 2019) (upholding challenge under N.C. Const. art. I, § 34 to statutory restriction on the practice of law by corporations, N.C. Gen. Stat. § 84-5, on the grounds that it constitutes a “reasonable” restraint with a “substantial relationship to public welfare”).

<sup>7</sup> Cf. *Lowell Bar Ass’n v. Loeb*, 52 N.E.2d 27, 31 (Mass. 1943) (“The justification for excluding from the practice of law persons not admitted to the bar is to be found, not in the protection of the bar from competition, but in the protection of the public.”).

Division for decades. The Division has long argued that consumers generally benefit from competition between lawyers and non-lawyers in the provision of a wide range of services.<sup>8</sup> Although the “practice of law” is largely regulated at the state level, the United States Supreme Court has made clear that federal antitrust law generally applies to the legal profession.<sup>9</sup> Consistent with these principles, the Antitrust Division has brought its own enforcement actions under the federal antitrust laws and obtained injunctions against unreasonable restraints in the marketplace for legal services, including unreasonable restraints on competition between lawyers and non-lawyers.<sup>10</sup> The Division has also obtained injunctions against anticompetitive restrictions imposed on the delivery of legal services and anticompetitive activities by bar associations.<sup>11</sup> And the Division regularly files statements of interest and amicus briefs in litigation by other parties.<sup>12</sup>

The Division also regularly shares its expertise by evaluating the likely competitive effects of restrictions on the practice of law in in public comments and in letters responding to requests from relevant stakeholders, including state legislatures, federal agencies, bar associations, and international organizations.<sup>13</sup> Restrictions on the delivery of legal services, the

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<sup>8</sup> See, e.g., Letter from the Fed. Trade Comm’n and the U.S. Dep’t of Justice to the Task Force of the Model Definition of the Practice of Law, American Bar Ass’n, *Comments on the American Bar Association’s Proposed Model Definition of the Practice of Law* (Dec. 20, 2002), <https://www.justice.gov/sites/default/files/atr/legacy/2008/03/26/200604.pdf> (reaffirming that consumers generally benefit from lawyer-non-lawyer competition); Letter from the Fed. Trade Comm’n and the U.S. Dep’t of Justice to the Kansas Bar Ass’n, *Comments on Proposed Definition of the Practice of Law* (Feb. 4, 2005), <https://www.justice.gov/atr/comments-kansas-bar-associations-proposed-definition-practice-law> (same); Letter from the Fed. Trade Comm’n and the U.S. Dep’t of Justice to the Montana Supreme Court, *Comments on Proposed Revisions to the Rules on the Unauthorized Practice of Law* (Apr. 17, 2009), <https://www.justice.gov/atr/comments-proposed-revisions-rules-unauthorized-practice-law> (same).

<sup>9</sup> See *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 791 (1975) (holding that activities of state and county bars were not exempt from the Sherman Act on the grounds that “[t]he fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members”); see also *Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46 (1990) (*per curiam*) (holding that a market allocation agreement between competing providers of bar review courses violated the Sherman Act).

<sup>10</sup> See, e.g., *United States v. N.Y. County Lawyers Ass’n*, No. 80 Civ. 6129 (S.D.N.Y. 1981) (prohibiting county bar association from restricting the trust and estate services that corporate fiduciaries could provide in competition with attorneys); *United States v. Allen County Bar Ass’n*, Civ. No. F-79-0042 (N.D. Ind. 1980) (enjoining county bar association that had restrained title insurance companies from competing in the business of certifying titles); *United States v. County Bar Ass’n*, No. 80-112-S (M.D. Ala. 1980).

<sup>11</sup> See *United States v. Am. Bar Ass’n*, 934 F. Supp. 435, 435 (D.D.C. 1996); *Nat’l Society of Prof’l Engineers v. United States*, 435 U.S. 679 (1978); *United States v. Am. Inst. of Architects*, 1990-2 Trade Cas. (CCH) i/69,256 (D.D.C. 1990); *United States v. Soc’y of Authors’ Reps.*, 1982-83 Trade Cas. (CCH) i/ 65,210 (S.D.N.Y. 1982).

<sup>12</sup> See, e.g., Brief *Amicus Curiae* of the United States of America and the FTC in *In Re William E. Paplauskas, Jr.*, No. SU-2018-161-M.P. (Sept. 17, 2018); Brief *Amicus Curiae* of the United States of America and the FTC in On Review of ULP Advisory Opinion 2003-2 (July 28, 2003); Brief *Amicus Curiae* of the United States of America in Support of Movants Kentucky Land Title Ass’n *et al.* in *Ky. Land Title Ass’n v. Ky. Bar Ass’n*, No. 2000-SC- 000207-KB (Feb. 29, 2000).

<sup>13</sup> See, e.g., Comment of the Antitrust Division of the Department of Justice, Docket Nos. PTO-P-2022-0027- 0001, PTO-P-2022-0032-0001 (Jan. 31, 2023), <https://www.justice.gov/atr/page/file/1567941/download>; Submission of the United States to the Competition Committee of the Organisation for Economic Cooperation and Development, *Disruptive Innovations in Legal Services* (June 13, 2016); Letters from the Justice Department and the FTC to the Committee on the Judiciary of the New York State Assembly (Apr. 27, 2007 and June 21, 2006); Letter from the Justice Department and the FTC to the Task Force to Define the Practice of Law in Massachusetts, Massachusetts Bar Ass’n (Dec. 16, 2004). For the Division’s letters regarding the practice of law, see U.S. DEP’T OF JUSTICE,

Division has argued, should be limited to activities in which (1) specialized legal skills are required such that there is an implicit representation of authority or competence to practice law; and (2) a relationship of trust or reliance exists.<sup>14</sup> While there are circumstances in which the public interest requires certain restrictions, as a general matter, the antitrust laws require that restrictions on competition are both necessary to prevent significant consumer harm and narrowly drawn to minimize its anticompetitive impact.<sup>15</sup> For that reason, the Division has advocated for the elimination of undue restrictions on competition between lawyers and non-lawyers that are not necessary to address legitimate and substantiated harms to consumers or are not sufficiently narrowly drawn to minimize anticompetitive effects.<sup>16</sup>

For example, the Division joined the Federal Trade Commission in strongly supporting a 2016 proposal to expand to N.C. Gen. Stat. § 84 in the context of interactive software that generates legal documents.<sup>17</sup> The proposal was ultimately adopted with the enactment of N.C. Gen. Stat. Ann. § 84-2.2, which exempts certain providers of interactive legal software from the practice of law, provided that the interactive software provider adhere to specific requirements outlined in the statute.<sup>18</sup> For reasons set forth in more detail below, the principles expressed in the Division's 2016 letter apply with equal force to the present proposal, which similarly seeks to expand access to legal services for North Carolina consumers.

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Competition in the market for legal services takes place across a number of dimensions, including price, availability, timeliness, convenience, payment mechanisms, quality, and the provision of related services. Today this market is undergoing significant shifts, particularly in light of regulatory changes that are underway or under consideration in more than a dozen states across the country – from Utah to New Hampshire and from Arizona to Delaware.<sup>19</sup>

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*Comments to States and Other Organizations*, <https://www.justice.gov/atr/comments-states-and-other-organizations> (last updated Jan. 9, 2023).

<sup>14</sup> Letter from the Fed. Trade Comm'n and the U.S. Dep't of Justice to the Hawaii State Judiciary, *Comments on Proposed Definition of the Practice of Law* (Jan. 25, 2008), <https://www.justice.gov/atr/comments-proposed-definition-practice-law>.

<sup>15</sup> See *FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447, 459 (1986).

<sup>16</sup> See, e.g., Letter from the Fed. Trade Comm'n and the U.S. Dep't of Justice to the Task Force of the Model Definition of the Practice of Law, American Bar Ass'n, *Comments on the American Bar Association's Proposed Model Definition of the Practice of Law* (Dec. 20, 2002), <https://www.justice.gov/sites/default/files/atr/legacy/2008/03/26/200604.pdf> (reaffirming that consumers generally benefit from lawyer-non-lawyer competition in the provision of certain legal-related services); Letter from the Fed. Trade Comm'n and the U.S. Dep't of Justice to the Kansas Bar Ass'n, *Comments on Kansas Bar Association's Proposed Definition of the Practice of Law* (Feb. 4, 2005), <https://www.justice.gov/atr/comments-kansas-bar-associations-proposed-definition-practice-law> (same); Letter from the Fed. Trade Comm'n and the U.S. Dep't of Justice to the Montana Supreme Court, *Comments on Proposed Revisions to the Rules on the Unauthorized Practice of Law* (Apr. 17, 2009), <https://www.justice.gov/atr/comments-proposed-revisions-rules-unauthorized-practice-law> (same).

<sup>17</sup> See Fed. Trade Comm'n and U.S. Dep't of Justice, Letter to the Honorable Bill Cook re: HB 436 (June 10, 2016), <https://www.justice.gov/atr/file/866666/download>.

<sup>18</sup> See N.C. Gen. Stat. Ann. § 84-2.2

<sup>19</sup> See INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, *THE LANDSCAPE OF ALLIED LEGAL PROFESSIONAL PROGRAMS IN THE UNITED STATES* (Nov. 2022), [https://iaals.du.edu/sites/default/files/documents/publications/landscape\\_allied\\_legal\\_professionals.pdf](https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf); DAVID



Unduly broad restrictions on the practice of law impose significant competitive costs on consumers, workers, and innovation. Taken together, the policy recommendations the North Carolina Justice for All Project is encouraging the General Assembly to consider would help to promote and protect competition in the market for legal services by expanding the pool of available service providers. These recommendations could benefit consumers by lowering costs and increasing access to more providers of legal-related services. They could benefit workers by lifting restrictive barriers to employment. And they could promote important innovations in the delivery of legal services to our communities.

Expanding the pool of providers who may compete in the market for legal services in North Carolina will reduce costs for North Carolina consumers seeking legal assistance. Lawyers have priced legal services out of reach for large swaths of American consumers, including in North Carolina. Last year, the Legal Services Corporation reported that low-income Americans did not receive adequate legal assistance with 92% of their civil legal needs.<sup>20</sup> In North Carolina, recent studies suggest that 86% of the civil legal needs of low-income families who are financially eligible for legal aid go unmet.<sup>21</sup> And in more than 75% of civil cases in courts across America, at least one side is unrepresented.<sup>22</sup> The percentage of unrepresented litigants is even higher in certain proceedings, including in eviction and debt-collection in which more than 90% of defendants are unrepresented.<sup>23</sup> These statistics underscore the strong public need for greater access to assistance with legal services.

As the petition details, the cost-saving effects of expanding the pool of eligible service providers are readily observed in states that have implemented similar programs.<sup>24</sup> In King County, Washington, for example, lawyers charge between \$300 and \$375 per hour while licensed service providers who are not lawyers bill around \$160 per hour.<sup>25</sup> In North Carolina, where the average solo practitioner or small-firm lawyer charges \$247 an hour, a lower-cost option would be beneficial to consumers.<sup>26</sup> The cost effectiveness of non-lawyer legal services,

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FREEMAN ENGSTROM ET AL., LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE (2022), <https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf>.

<sup>20</sup> LEGAL SERVICES CORPORATION, *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans* (Apr. 2022), <https://justicegap.lsc.gov/resource/2022-justice-gap-report/>.

<sup>21</sup> See N.C. EQUAL ACCESS TO JUSTICE COMM'N AND N.C. EQUAL JUSTICE ALLIANCE, IN PURSUIT OF JUSTICE: AN ASSESSMENT OF THE CIVIL LEGAL NEEDS OF NORTH CAROLINA (Apr. 2021), <https://chcs.uncg.edu/wp-content/uploads/2021/04/2021-NC-Legal-Needs-Assessment.pdf>.

<sup>22</sup> Nat'l Center for State Courts, *Civil Justice Initiative: The Landscape of Civil Litigation in State Courts* 31-32 & Table 11 (2015), [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0020/13376/civiljusticereport-2015.pdf](https://www.ncsc.org/__data/assets/pdf_file/0020/13376/civiljusticereport-2015.pdf).

<sup>23</sup> See INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, THE LANDSCAPE OF ALLIED LEGAL PROFESSIONAL PROGRAMS IN THE UNITED STATES 3 (Nov. 2022), [https://iaals.du.edu/sites/default/files/documents/publications/landscape\\_allied\\_legal\\_professionals.pdf](https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf).

<sup>24</sup> See North Carolina Justice for All Project, *Looking Beyond Lawyers to Bridge the Access to Justice Gap: Petition for Redress of Grievances Pursuant to N.C. Const., Art. I, Policy Analysis, Legislative Proposal* 18 (Feb. 2023) (noting that the average rate of a non-corporate lawyer nationwide in 2016 was \$200-250 per hour). In comparison, LLPs in Utah charge \$75-\$175 per hour. See Letter from Michael Houlberg, Director of Special Projects, Institute for the Advancement of the American Legal System, to the North Carolina General Assembly (Feb. 1, 2023).

<sup>25</sup> Jason Solomon & Noelle Smith, *The Surprising Success of Washington State's Limited License Legal Technician Program* 20 (2021), <https://law.stanford.edu/wp-content/uploads/2021/04/LLLT-White-Paper-Final-5-4-21.pdf>.

<sup>26</sup> Susan Kostal, *Solo and Small Firm Hourly Rates: Winners and Losers, by State and Practice Area*, Attorney at Work (Jan. 3, 2022), <https://www.attorneyatwork.com/solo-and-small-firm-lawyer-hourly-rates/>.

as well as the potential for these services to exert downward pricing pressure on legal services offered by lawyers, will likely result in cost savings to consumers in North Carolina.

In addition to expanding consumer choice, broadening the pool of legal service providers would protect consumers from the often-harmful consequences of being forced to handle legal problems on their own. In particular, it would allow more North Carolina consumers seeking legal assistance – who might otherwise be forced to forego legal representation altogether – in the ability to secure assistance from lower-cost non-lawyer service providers. This is particularly important at a moment in which an alarming percentage of civil cases across America involve unrepresented individuals.<sup>27</sup> The benefits stemming from increased access to service providers would likely be particularly pronounced in these areas and others have been identified as areas of great civil legal needs in North Carolina.<sup>28</sup>

Alongside harm to consumers, undue restrictions on the practice of law undermine opportunities for many workers. In contrast, allowing adequately-trained service providers who are not lawyers to offer certain legal services will spur job creation. This is not theoretical – the formation of a limited licensing program in Ontario has already created more than 10,000 jobs for Canadian workers.<sup>29</sup> Expanding the pool of service providers in North Carolina’s legal services market would likewise allow for workers across North Carolina to access a new labor market and promote competition within labor markets.<sup>30</sup>

Finally, as the Antitrust Division has repeatedly recognized, service providers who are not attorneys have long performed a wide range of legal-related services in a variety of federal, state, and international proceedings to the benefit of consumers.<sup>31</sup> With respect to federal proceedings, as the U.S. Supreme Court explained that “despite protests of the bar, Congress in enacting the Administrative Procedure Act refused to limit the right to practice before the administrative agencies to lawyers.”<sup>32</sup> As a result, advocates who are not licensed lawyers have been permitted to appear in a wide range of adjudicative proceedings before dozens federal agencies for decades.<sup>33</sup> For example, advocates who are not licensed lawyers have been

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<sup>27</sup> See *supra* notes 22 & 23.

<sup>28</sup> See NORTH CAROLINA EQUAL JUSTICE ALLIANCE, CIVIL LEGAL NEEDS ASSESSMENT (Mar. 30, 2021), <https://ncequaljusticealliance.org/assessment/>.

<sup>29</sup> L. Soc’y ONTARIO, LAW SOCIETY OF ONTARIO 2021 ANNUAL REPORT (2022), <https://lawsocietyontario.azureedge.net/media/lso/media/annualreport/documents/statistics-licensee-2021.pdf>.

<sup>30</sup> The Antitrust Division has recently advocated for the relaxing of restrictions to facilitate labor market competition in other contexts. See Comment of the Antitrust Division of the Department of Justice, Docket Nos. PTO-P-2022-0027-0001, PTO-P-2022-0032-0001 (Jan. 31, 2023), <https://www.justice.gov/atr/page/file/1567941/download> (“Relaxing requirements for eligibility to the design patent bar could increase economic opportunities for practitioners by allowing them to access a new labor market for the provision of their professional services. In contrast, overbroad restrictions that are not limited to those necessary to ensure patent quality can needlessly restrict worker opportunity and hinder competition in those labor markets.”).

<sup>31</sup> See generally Fed. Trade Comm’n and U.S. Dep’t of Justice, Letter to the Honorable Bill Cook re: HB 436 at 5-6 & n.20 (June 10, 2016) (citing examples).

<sup>32</sup> *Sperry v. Florida ex rel. Fla. Bar*, 373 U.S. 379, 388 (1963); see 5 U.S.C. § 555(b) (“A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel, or, if permitted by the agency, by *other qualified representative*.”) (emphasis added).

<sup>33</sup> See REPORT FOR THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, REGULATION OF REPRESENTATIVES IN AGENCIES ADJUDICATIVE PROCEEDINGS 10-13 (Dec. 2022), <https://www.acus.gov/sites/default/files/documents/Cohen%20Final%20Report%20December%202021%20GY%20>

expressly authorized to practice before the U.S. Patent and Trademark Office “from its inception” in 1836 and “during prolonged congressional study of unethical practices before the Patent Office, the right of nonlawyer agents to practice before the Office went unquestioned, and there was no suggestion that abuses might be curbed by state regulation.”<sup>34</sup> Accredited non-attorney advocates represent individuals in immigration proceedings before immigration judges and the Board of Immigration Appeals.<sup>35</sup> Likewise, “[i]n any hearing or other proceeding before the [U.S.] Department of Agriculture, the parties may appear in person or by counsel *or by other representative*.”<sup>36</sup> The same is true in proceedings before the U.S. Social Security Administration,<sup>37</sup> the U.S. Department of Veterans Affairs,<sup>38</sup> the National Labor Relations Board,<sup>39</sup> the U.S. Department of Labor,<sup>40</sup> the Securities and Exchange Commission,<sup>41</sup> the Federal Energy Regulatory Commission,<sup>42</sup> the U.S. Department of the Treasury,<sup>43</sup> and many others.

The Division likewise is encouraged by other states’ efforts to facilitate consumer access to lower-cost legal providers, including in Utah, Arizona, Minnesota, Alaska, Delaware, and New Hampshire.<sup>44</sup> The same is true of innovations in the delivery of legal services that have been pioneered and advanced by our international partners. For example, service providers who are not attorneys have served as advocates in a variety of cases in Canada since the 1960s, as mentioned above, today more than 10,600 licensee paralegals are market participants in Ontario.<sup>45</sup> Likewise, both the United Kingdom and Australia have led efforts to advance regulatory reforms designed to make legal-related services more affordable and accessible.<sup>46</sup>

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formatted.pdf; HERBERT M. KRITZER, LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK 11 (1998) (“[B]y one count, as of 1994, nonlawyers can appear as advocates before thirty-eight federal agencies.”).

<sup>34</sup> *Sperry*, 373 U.S. 379 at 388.

<sup>35</sup> 8 C.F.R. §§ 292.1; 292.2; *see Al Roumy v. Mukasey*, 290 F. App’x 856, 861 & n.2 (6th Cir. 2008).

<sup>36</sup> 29 C.F.R. § 1.26(a) (emphasis added).

<sup>37</sup> 20 C.F.R. §§ 404.1705(b); 416.1505(b)102.177(a).

<sup>38</sup> 38 C.F.R. § 14.629(b).

<sup>39</sup> 29 C.F.R. § 102.177(a).

<sup>40</sup> 29 C.F.R. § 18.22(b)(2).

<sup>41</sup> 15 C.F.R. § 201.102(b).

<sup>42</sup> 18 C.F.R. § 385.2101(a).

<sup>43</sup> Tax Regulations, § 10.2(b), CCH Standard Federal Tax Reporter, paragraph 6027C; *Grace v. Allen*, 407 S.W.2d 321 (Tex. Civ. App. 1966) (holding that federal rights conferred by Treasury Department to practice before it cannot be impinged upon by state in their efforts to protect citizens from unskilled and unethical practitioners of law).

<sup>44</sup> *See* INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, THE LANDSCAPE OF ALLIED LEGAL PROFESSIONAL PROGRAMS IN THE UNITED STATES (Nov. 2022),

[https://iaals.du.edu/sites/default/files/documents/publications/landscape\\_allied\\_legal\\_professionals.pdf](https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf); Nora

Freeman Engstrom, *Effective Deregulation: A Look Under the Hood of State Civil Courts*, JOTWELL LEGAL PRO. (Oct. 31, 2022),

<https://legalpro.jotwell.com/effective-deregulation-a-look-under-the-hood-of-state-civil-courts/>.

<sup>45</sup> *See supra*, note 29.

<sup>46</sup> *See* DAVID FREEMAN ENGSTROM ET AL., LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE 16-17, 19-22 (2022), <https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf>.

Christopher Decker, *Reform and “Modernisation” of Legal Services in England and Wales: Motivations, Impacts and Insights for the OECD PMR Indicators*, ORG. FOR ECON. COOP. & DEVELOPMENT (Nov. 2021),

[https://www.oecd.org/competition/reform/Reform-and-modernisation-of%20legal-services-in-England-and-](https://www.oecd.org/competition/reform/Reform-and-modernisation-of%20legal-services-in-England-and-Wales.pdf)

[Wales.pdf](https://www.oecd.org/competition/reform/Reform-and-modernisation-of%20legal-services-in-England-and-Wales.pdf); Australia Law Reform Commission, *The Future of Law Reform: A Suggested Program of Work 2020-25* (Feb. 12, 2019), <https://www.alrc.gov.au/publication/the-future-of-law-reform-2020-25/>

These existing models reinforce that in the absence of evidence of legitimate and substantiated harms to consumers, restraints on competition in the market for legal services should be narrowly tailored to avoid unnecessarily limiting competition. And the definition of the practice of law should be limited to activities in which (1) specialized legal skills are required such that there is an implicit representation of authority or competence to practice law; and (2) a relationship of trust or reliance exists.

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The Antitrust Division commends the North Carolina Justice for All Project for its thoughtful analysis and policy recommendations and looks forward to reviewing any related bills that ultimately are introduced to the North Carolina legislature.

Sincerely,

A handwritten signature in black ink, appearing to read "Maggie Goodlander". The signature is fluid and cursive, with a large initial "M" and a stylized "G".

Maggie Goodlander  
Deputy Assistant Attorney General  
Antitrust Division  
U.S. Department of Justice

Table 1: Goals and Alternatives Matrix (GAM)		Policy Alternatives				
Goals	Impact Category	Current Policy (0) (Status Quo)	Policy Alternative 1 (Licensing Legal Practitioners) Fee Structure	Policy Alternative 2 (Liberalization of the Practice of Law for Legal and Pro Bono Service Providers) No-Fee Structure	Policy Alternative 3 (Creating a Legal Regulatory Sandbox)	Policy Alternative 4 (Creating a Court Navigator Program)
<b>Goal A: Economic efficiency</b>	<b>Cost</b>	Legal Services Corporation's 2022 civil justice gap report reveals that low-income Americans receive no or inadequate legal help for 92% of all their substantial civil legal problems. When individuals do not receive legal services, there is an increased need for support from homeless shelters, temporary housing programs, government welfare programs, and community programs, which impacts local and state economies. While it is difficult to quantify the cost to the public due to legal needs <i>not</i> being met, the NC Equal Access to Justice Commission's 2012 report, <i>A 108% return on investment: The economic impact to the state of North Carolina of civil legal services in 2012</i> , found that the economic impact of legal services across the state, including direct, indirect, and cost savings, was \$48,775,276. Therefore, we surmise that the current policy, which restricts the amount of legal help that can be provided to low-income North Carolinians, is costing the public millions of dollars each year. See footnote 146.	The Washington State Bar Association (WSBA) allocated less than \$200,000 annually to their LLLT program. The Utah State Bar spends slightly more than \$100,000 annually on its LPP program (Houlberg, 2022). See footnotes 147-149.	The Delaware and Alaska programs were approved in January and December 2022, respectively. No data was immediately available that reflects the cost of these programs. A public records request was sent to each state's judiciary requesting this information. As of the date of this report, no information has been received.	A recent study noted figures from \$25,000 to over \$1 million. This disparity may be attributed to the fact that some jurisdictions, but not all, included the salary of staff members dedicated to the sandbox. Most responders utilized monies from their core budgets, and just one jurisdiction indicated that application fees were levied to access the sandbox. See footnote 153.	These programs are so varied and have so many different characteristics that it is very difficult to compare them. Instead, we suggest reviewing McClymont's (2019) report, <i>Nonlawyer Navigators in State Courts: An Emerging Consensus</i> . A survey of the national landscape of nonlawyer navigator programs in state courts assisting self-represented litigants, specifically the section subheaded C. Program funding and structural support (pp. 29-31). See footnote 161.
	<b>Positive Impact on Taxpayers</b>	<b>Low.</b> The status quo results in dismissals and do-overs as a result of insufficient legal filings, delays, and continuances caused by pro se litigants who do not understand state and local rules and procedures, resulting in increased waste. Waste has a cost, and taxpayers bear this cost. Additionally, when legal needs are not met due to waste or other factors, many litigants have no alternative but to turn to government-based programs for services related to housing, child support, medical care, and the like.	<b>Medium.</b> When people receive legal services at a cost they can afford, there is less need for support from homeless shelters, temporary housing programs, government welfare programs, and community programs funded by taxpayers. Money saved can be directed to others in need.	<b>Medium.</b> When people have more options to receive legal assistance from existing free legal service providers and pro bono projects, there is less need for support from homeless shelters, temporary housing programs, government welfare programs, and community programs funded by taxpayers. Money saved can be directed to others in need.	<b>Low.</b> Innovations from the regulatory sandbox could result in technology or other services that can help make the court process more efficient and accessible. However, innovations coming out of the regulatory sandbox that would decrease the burden on taxpayers are difficult to quantify since the services that would be available through the sandbox are impossible to predict.	<b>Medium to High.</b> While court navigators cannot help with substantive legal issues, they can help unrepresented litigants by providing general information and moral support, helping them access and complete court forms, assisting them with keeping paperwork in order, accessing interpreters and other services, and explaining what to expect and the roles of each person in court. While these Court Navigators cannot address the court on their own, they can respond to factual questions asked by the judge. This results in better economic efficiency within the court system, potentially reducing costs to taxpayers who fund the court system. Whether the impact is medium or high depends on whether court navigator programs are created as a statewide initiative or as localized programs. If it were created only in larger counties, the impact would be less than if all counties were incorporated into the project, including the state's rural areas that are most impacted by legal deserts. See footnote 140.
<b>Goal B: Social Equity</b>	<b>Positive Impact on Consuming Public</b>	<b>Low.</b> The status quo has led to a critical situation of exclusion and inequality. Today, only a select few receive legal redress for their legal issues, and only certain types of cases are heard in court. Also, there is a systemic disparity in who has access to resources; the wealthy and the white tend to have more opportunities than the poor and persons of color (Caplan et al., 2019).	<b>High.</b> Provide an opportunity for consumers to have representation at a cost they can afford, resulting in more equitable outcomes in certain areas of civil litigation and other matters. Those who cannot access legal representation are those who suffer the greatest inequity in our court systems.	<b>Medium.</b> In 2019, Legal Aid of North Carolina (LANC) reported to the Legal Services Corporation (LSC) that over 1.8 million North Carolinians were eligible for LANC services. However, there is only one legal aid attorney for every 8,000 North Carolinians who qualify for their services, so only 40,000 of the 1.8 million are served each year. Liberalizing the practice of law could create more opportunities for the public to receive legal advice from pro bono organizations, legal aid centers, and other law-adjacent service providers. These providers could leverage more of their non-lawyer workforce to offer a broader scope of legal services at low or reduced rates. This could allow more consumers to have representation, resulting in more equitable outcomes in civil litigation and other matters. Those who cannot access legal representation suffer the greatest inequity in our court systems because the public does not understand state and local rules and procedures. Since these providers would not necessarily represent clients in court, the impact would be medium. See footnotes 53-56.	<b>Low.</b> Innovations from the regulatory sandbox could result in technology or other services that can help make the court process more efficient and accessible to those who typically have limited access to support. However, it is difficult to predict what entities might enter a regulatory sandbox or what types of services they might offer that would mitigate the access to justice gap.	<b>Medium to High.</b> Provide an opportunity for consumers to have in-courtroom assistance and help with forms, resulting in more equitable outcomes in civil litigation and other matters. Those who cannot access legal support suffer inequity in our court systems. Whether the impact is medium or high depends on whether court navigator programs are created as a statewide initiative or as localized programs. If it were created only in larger counties, the impact would be less than if all counties were incorporated into the project, including the state's rural areas that are most impacted by legal deserts.

## Appendix N - Table 1 Goals and Alternatives Matrix (GAM) / Multigoal Solution Analysis

Table 1: Goals and Alternatives Matrix (GAM)		Policy Alternatives				
Goals	Impact Category	Current Policy (0) (Status Quo)	Policy Alternative 1 (Licensing Legal Practitioners) Fee Structure	Policy Alternative 2 (Liberalization of the Practice of Law for Legal and Pro Bono Service Providers) No-Fee Structure	Policy Alternative 3 (Creating a Legal Regulatory Sandbox)	Policy Alternative 4 (Creating a Court Navigator Program)
<b>Goal C: Political Feasibility</b>	<i>NC General Assembly and NC Supreme Court</i>	<b>High.</b> Presently in place.	<b>Medium.</b> Large potential for gains, but it requires radical change. Licensing legal practitioners offers excellent potential for high reward versus any risk. Experimenting with legal practitioners in the free market would provide meaningful data, allowing incremental changes to a program to improve outcomes without high costs. Concerning a topic that is infrequently addressed, North Carolina's overall bar exam pass rate is 68% (National Conference of Bar Examiners, 2022). In the last 10 years, based on a response to a public records request submitted to the North Carolina Board of Law Examiners by the North Carolina Justice for All Project, nearly 7,000 graduates from Juris Doctor programs have taken and failed the state bar exam between 2010 and 2020. Unlicensed law school graduates, along with paralegals and other qualified professionals, could practice law on a limited basis, giving them a career in their chosen field while helping the public with their legal needs. This may be attractive to state leaders, law schools, and lawyers.	<b>Medium.</b> Large potential for gains, but it requires radical change. Liberalizing the practice of law would allow pro bono organizations, legal aid centers, and potentially other law-adjacent service providers to leverage more of their non-lawyer workforce to offer more legal services at no cost without violating unauthorized practice of law (UPL) statutes. Since the North Carolina General Assembly has gradually reduced funding to Legal Aid of North Carolina, liberalizing the unauthorized practice of law statutes could give them more autonomy to meet the needs of their clients.	<b>Medium.</b> Governor Cooper signed into law H624, the North Carolina Regulatory Sandbox Act of 2021 ("Sandbox Act"), which established what is known as a "regulatory sandbox" program to encourage innovation in the development of FinTech and InsurTech products to be offered to consumers. Although the Sandbox has yet to be funded, there seems to be an appetite for regulatory reform.	<b>High.</b> This program benefits all parties, including judges, and does not result in competition with lawyers. However, the cost of the program to the state depends largely on the scope of services, how it is staffed, its geographical reach, whether it can be funded by grants, and many other factors. Still, judges are likely to see the benefit of it. For example, in a 2014 assessment of the New York State Court Navigator Program, three judges who had overseen the program participated in individual interviews; two of these judges presided over cases staffed by Navigators for almost four months each in the Bronx Civil Court and one judge has continuously overseen the Housing Court part in Brooklyn. All judges and the one court attorney who participated in the interviews were unanimous that the program has benefited litigants and the court. Litigants who Navigators accompanied reported uniformly that they were more comfortable, less stressed, and better able to provide the court with the information needed. One of the judges stated that the Navigator program should be considered a "necessary" component that should be expanded. All of the judges noted that Navigators had never spoken out in court unless asked a direct question by the judge. See footnote 169.
<b>Goal D: Legitimacy</b>	<i>Public Trust in the Civil Justice System</i>	<b>Low.</b> The public's view of systematic prejudice in our courts is supported by evidence from a number of quantitative empirical research studies. Persons of lower and middle incomes are often priced out of the system's purported justice because of the cost of legal representation. N.C. Const. Art. I, § 18 states, "[a]ll courts shall be open; every person injured in his lands, goods, person, or reputation shall have recourse via due process of law; and right and justice shall be administered impartially, without denial, discrimination, or delay." However, according to the 2016 Interim Report of the Public Trust and Confidence Committee (a committee of the North Carolina Commission on the Administration of Law and Justice), the majority of respondents (73 percent) do not believe that most people can afford to file a lawsuit. Moreover, 76% of poll respondents felt that those without legal representation are treated somewhat or much worse in court. Therefore, it appears that a substantial amount of work is required to increase public confidence in equal access to the courts and that the status quo is insufficient to increase public trust. See footnote 10.	<b>High.</b> Persons of lower and middle incomes are often priced out of the system's purported justice because of the cost of legal representation. Licensing legal practitioners provides a way for individuals to have an accessible alternative in seeking help for legal remedies.	<b>Medium.</b> Legal aid and pro bono providers could leverage more of their non-lawyer workforce to offer a broader scope of legal services at low or reduced rates resulting in more help for the public and increased trust in the legal system. The impact, however, would still only be felt by those who qualified for legal aid or pro bono services, leaving much of the public needing to acquire fee-based legal help.	<b>Low.</b> Innovations that come out of the sandbox will be offered by businesses within the sandbox rather than the legal system as we see with public defenders, for example. Consumers would likely place these innovations in a separate mental account from the civil justice system, thus public trust as a result of this policy alternative is likely to remain unchanged.	<b>High.</b> Persons of lower and middle incomes are often priced out of a legal system where having a lawyer gives you a much greater chance of prevailing in your case. Nonetheless, this policy alternative provides a way for individuals to have support in seeking legal remedies. Since it would be provided openly and publicly by the judicial system inside of courthouses, it can potentially increase public trust in the court system. An opt-out choice architecture could ensure that pro se (or in pro per) parties have automatic access to court navigators unless they specifically request to opt out and pursue their case without any assistance.