

December 14, 2023

Attn: Harriet Miers, Chair
Texas Access to Justice Commission
P.O. Box 12487
Austin, Texas 78711
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Re: Public Comment on the December 5, 2023 Report and Recommendations of The Texas Access to Legal Services Working Group; Considerations for Regulatory Reforms in Light of the 2023 Report: ALICE in the Crosscurrents: COVID and Financial Hardship in Texas

Dear Commissioners:

The North Carolina Justice for All Project (JFAP) is a non-profit advocacy association committed to expanding access to justice across the state of North Carolina. 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 is made up of 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 to. We witness firsthand the failures of the legal system and how justice is often only attainable for those who can afford an attorney.

To address this crisis, we propose innovative policy alternatives and advocate for the utilization of 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 and Americans across the country who cannot afford a lawyer, do not qualify for legal aid or pro bono services, and have no other options for representation or advice when they have a legal need.

We are writing to convey our strong endorsement of the initiatives aimed at bridging the access to justice gap in Texas. This includes authorizing Supreme Court-licensed (1) paraprofessionals to represent and assist low-income Texans with certain matters in certain areas of the law (e.g., family law, probate and estate, and consumer-debt law) and (2) Community

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Justice Workers to provide limited-scope representation in justice court cases under the supervision of an attorney working for a legal aid or other nonprofit entity. We are also writing to express concerns regarding the structure of your proposed programs and the population they are intended to serve.

Although we are writing from outside Texas, your state’s challenges and issues concerning civil access to justice are not dissimilar to those of other states, including our own. Every state nationwide is embroiled in similar civil access to justice crises, regardless of population size, makeup, or geographic location. Furthermore, issues related to civil justice often have far-reaching implications that extend beyond state borders. As such, Americans across the country benefit by working collaboratively to identify solutions and ensure all individuals in every state can access the legal resources and assistance they need.

As members of the legal community and advocates for civil access to justice, we have followed the progress in Texas toward providing a meaningful resource for civil legal needs to your citizens. We applaud your efforts. Many individuals and families simply cannot afford the high cost of legal services, leaving them vulnerable to many legal problems that impact housing, safety, economic stability, and family structure. This is especially true for marginalized communities, who often face barriers to accessing legal assistance.

Texas Profile

LSC-Eligible Population

<i>Estimate of eligible population</i>		<i>Annual Income Level for Eligibility</i>	
Eligible Pop	Percent Eligible	Single Person	Family of Four
5,179,080	17.9%	\$18,225	\$37,500

Population with household income below 125% Federal Poverty Guidelines, based on 2021 1-year American Community Survey estimates provided to LSC by the U.S. Census Bureau.

Income eligibility thresholds are 125% of the 2023 Federal Poverty Guidelines set by the U.S. Dept. of Health & Human Services.

We calculate, conservatively, that nearly 43% of the citizens in your state cannot afford legal assistance when they need it. Of course, this includes the low-income population. Texas's

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income cap for LSC-funded legal aid is \$18,225 for one person and \$37,500 for a family of four.¹ According to Legal Services Corporation, 5,179,080 Texans (or 17.9% of your nearly 29.53 million people) are eligible for legal aid services. While legal aid plays an essential role in helping low-income individuals access legal services, there are limitations to what they can provide.

Considerations for Regulatory Reforms in Light of the 2023 Report: ALICE in the Crosscurrents: COVID and Financial Hardship in Texas

Additionally, despite the significant legal needs of low-income individuals, a considerable number of middle-income families are also struggling to access affordable legal services. Unfortunately, there are few alternatives available to the middle-income population for assistance with legal disputes. With legal aid excluded as an option, well-meaning lawyers often suggest pro bono legal services as the solution. Unfortunately, while pro bono lawyers can make a valuable contribution to increasing access to justice, they cannot solve the access to justice crisis on their own. Pro bono services are typically provided by volunteer lawyers who offer brief advice and counsel, and while this can help some individuals who are unable to afford legal representation, it is not a sustainable solution for the millions of people who need extended service and cannot afford legal help. The access to justice crisis requires meaningful change, including regulatory reforms, to ensure that everyone has access to the legal help they need, regardless of their financial circumstances.

Those who cannot qualify for free legal services and cannot afford a lawyer are frequently referred to as the “missing middle” because they are often disregarded.² To better understand the size of Texas’s “missing middle,” we estimated it using data from the United for ALICE Texas report and the U.S. Census Bureau. To address the “missing middle” in Texas and ensure legal services are more accessible and affordable, it is essential to consider the ALICE (Asset Limited, Income Constrained, Employed) population. As of 2021, 29% of Texas households were categorized as ALICE, earning a wage above the Federal Poverty Level (FPL) but insufficient to afford basic living expenses. This demographic, combined with those below

¹ Texas Profile. Legal Services Corporation. Retrieved December 14, 2023, from <https://www.lsc.gov/grants/our-grantees/texas-state-profile>

² Houlberg. (2022). *Allied Legal Professionals*. Institute for the Advancement of the American Legal System at University of Denver. Retrieved March 9, 2023, from <https://iaals.du.edu/projects/allied-legal-professionals>

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the poverty level, constitutes 43% of the state's households living below the ALICE Threshold. The ALICE Household Survival Budget for a family of four in Texas was \$60,660, significantly higher than the FPL of \$26,500. These figures demonstrate the substantial portion of Texas's population facing financial vulnerability. See the attached April 2023 report, *ALICE in the Crosscurrents: COVID and Financial Hardship in Texas*, attached as Appendix A.

Current regulatory reform proposals focusing on enhancing the affordability of legal services for individuals at or below 200% of the federal poverty guidelines will not address the needs of the "missing middle." This is because many ALICE households, while earning above the FPL, still struggle to meet basic needs due to their limited income. If the reforms continue to set a cap at less than 200% below the poverty guidelines, a significant number of ALICE households may not benefit, thereby overlooking a crucial segment of the population in dire need of affordable legal services.

In order to effectively bridge the access to justice gap, it's imperative that Texas's regulatory reforms expand their scope to include the ALICE population. This approach would ensure that a larger segment of the population, particularly those who are employed yet financially constrained, can access the legal services they need. Such an inclusive reform strategy would not only cater to the immediate legal needs of these households but also contribute to a more equitable and just legal system in Texas.

The legal system can be complex and intimidating, especially for those who are not familiar with its processes and procedures. As a result, many individuals are left with no choice but to navigate the system on their own without the guidance and support of a qualified legal professional. This can be particularly challenging for individuals who are low-income or otherwise marginalized, as they may face additional obstacles such as language barriers or a lack of legal knowledge.

However, with proper training and oversight, non-attorneys can provide valuable legal services to those who need them most. By allowing non-lawyers to provide limited legal services, such as document preparation and legal advice in specific areas, the legal system can become more accessible and inclusive for all Texans. Non-attorneys who have received the necessary training and support can help bridge the gap between the legal system and those who need to navigate it.

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You have the opportunity to empower individuals and families to meet their basic needs and protect their rights. This can mean the difference between a family having shelter or being homeless or being able to secure a fair settlement or custody arrangement. It can help prevent ongoing domestic violence and other forms of abuse by providing families with the legal tools to protect themselves. Additionally, it would help reduce the backlog of cases in the courts by providing assistance with legal paperwork and other matters.

The proposed regulatory reforms in Texas, aimed at relaxing Unauthorized Practice of Law (UPL) statutes to include community justice workers and paraprofessionals, might encounter significant opposition. However, evidence from other jurisdictions suggests that such reforms can effectively bridge the access to justice gap without causing public harm or unduly disrupting the legal market.

First, concerns regarding public harm have been largely unfounded in states like Utah and Arizona, where limited licensing models are established. Similarly, at the federal level, non-lawyer advocates have been effectively utilized in administrative proceedings in areas such as immigration and social security for many years. These examples indicate that appropriately trained and regulated non-lawyer professionals can provide valuable legal services without compromising public safety or service quality.

Second, the fear of competition from alternative legal service providers, as highlighted in the 2017 report by the National Center for State Courts and the American Bar Foundation, is overestimated. The access to justice gap predominantly affects those who cannot afford traditional legal services. Therefore, regulatory reform is unlikely to infringe upon the existing legal market. Instead, it expands access to legal services for a previously underserved demographic, enriching the legal ecosystem rather than competing with it. Moreover, it's important to remember that the legal profession's primary obligation is to serve the public interest, not to protect its own market share. The current UPL statutes, while well-intentioned, inadvertently restrict access to legal assistance for many individuals who could benefit from the services of non-lawyer professionals with relevant skills and experience.

While the reforms under consideration mark a significant step forward, they presently target a relatively narrow population segment. To truly address the access to justice gap, it is crucial to expand the scope of these reforms to include a broader range of Texans. This approach

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not only aligns with the core values of justice and fairness but also strengthens the legal framework by making it more inclusive and responsive to the needs of the community.

Finally, by pioneering these reforms, Texas can lead the way for other states, potentially catalyzing a nationwide movement toward greater legal inclusivity. Such a trend would contribute to a more equitable legal system nationwide, where access to necessary legal services is a reality for all, irrespective of their economic status.

We urge you to weigh these considerations and the transformative potential of these reforms on the lives of countless Texans. Thank you for the opportunity to share our perspective on this critical issue.

Respectfully,

S.M. Kernodle-Hodges

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