

# Comments on: Report and Recommendations of the Texas Access to Legal Services Working Group

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Responsive Law thanks the Texas Access to Justice Commission for the opportunity to present these comments. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its consumers. We urge the Commission to expand the scope of its proposal to allow Texans across the income spectrum greater access to legal help.

Submitted to the  
**Texas Access to Justice Commission**  
December 15, 2023

## **When Paying for Legal Services, We're All "Low Income"**

The Commission is charged with proposing reforms that would "address the civil justice gap and expand access to justice for low-income Texans."<sup>1</sup> The justice gap, however, extends nearly to the highest economic strata—far above 200 percent of the federal poverty level.

At the median Texan income, a person has to work for a whole week to pay for two hours of a lawyer's time. Even a person in the top 10% of Texas earners has to work nearly a full day to pay for one hour of a lawyer's services.<sup>2</sup> Of course, most legal matters require more than

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<sup>1</sup> Supreme Court Letter, October 24, 2022, [https://www.texasatj.org/sites/default/files/2022\\_10%20ATJC%20Referral%20Letter%20%281%29.pdf](https://www.texasatj.org/sites/default/files/2022_10%20ATJC%20Referral%20Letter%20%281%29.pdf). Retrieved December 15, 2023.

<sup>2</sup> Calculations were made by dividing annual household salaries (from the Census data presented in the Working Group's report) by 4000 hours (assuming a two-earner household) to find hourly pay, applying a 20% effective tax rate (combining federal income tax and FICA), then dividing this into the median Texas lawyer billing rate of \$300/hour (from <https://www.clio.com/resources/legal-trends/compare-lawyer-rates/tx/>). Salaries are actually for the 52nd percentile (\$37,500/year, 20 hours of

an hour of work, so the justice gap likely extends up to the richest 5-10% of Texans.

Since the justice gap extends to nearly the entirety of Texas, it makes little sense to restrict solutions to those that bridge only part of the gap. Legal services under current regulations are priced more like a Lamborghini than a Ford. Just as nearly all of are too poor to afford a Lamborghini, when it comes to being able to afford legal help, we're all "low income." Furthermore, allowing new models of legal service providers to help a broader population will help the poorest more than a system that requires providers to have a focus on low-income clients.

### **Expanding the Scope of Allowable Programs Will Encourage a Greater Proliferation of New Service Providers**

Restricting new legal service providers to those serving those with the least ability to pay provides little incentive for innovative companies to bring services to market. However, permitting new providers who serve a broad range of customers will catalyze entrepreneurs who see an opportunity to serve an underserved market through innovation.

As an illustration of this principle, the auto assembly line didn't make cars instantly accessible to the masses. About five years after the introduction of the assembly line, only about 25% of US households owned a car, but within 15 years that figure reached nearly 50%, and today is over 90%. However, an early mandate to focus on making cars primarily for the poorest Americans would have given Henry Ford no incentive to launch the assembly line.<sup>3</sup>

The most likely result of restricting the scope of innovative legal services is that only a handful of businesses will find it economically viable to provide services under this new model. As a result, scope restrictions intended to help the poorest Texans will end up helping no Texans.

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work), and 89th percentile (\$100,000/year, 7.5 hours of work) of single-earner households, which were the nearest data points available.

<sup>3</sup> <https://oldurbanist.blogspot.com/2013/02/was-rise-of-car-ownership-responsible.html>, retrieved December 15, 2023.

### **Allowing Non-Lawyer Ownership is a Necessary Condition for Making Legal Help Affordable**

Allowing non-lawyer ownership is a necessary condition to fill the gap in providing adequate legal help. Just as H&R Block and TurboTax have made navigating the tax code widely accessible and affordable on a national scale, a mass-market law firm could allow millions of people to affordably and accessibly navigate the legal system. The economies of scale that can only be achieved by outside investment would bring down the costs of legal services. And Texas is a large enough market to make these economies of scale more effective than in Arizona or Utah.

Almost every law firm providing services to middle-income individuals and small businesses on issues such as family law, employment law, housing, and basic corporate and business law is a small business of no more than a dozen attorneys. A large statewide firm specializing in these issues could provide standardized training to the attorneys it works with, perform quality control on services offered to clients, and let lawyers focus on practicing law rather than finding clients, maintaining trust accounts, and collecting fees.

Opponents of eliminating ownership restrictions have cited the importance of protecting lawyers' professional independence. But these restrictions are not a good means of protecting that value. Lawyers' professional independence is already protected by other provisions of the Rules of Professional Conduct. Additionally, the frequent argument that non-lawyers would exercise improper influence over lawyers in their employ simultaneously overstates and understates lawyers' ethical propriety. It assumes that lawyers are saints with no possible motivation to exercise undue pressure on subordinate lawyers to act against their clients' best interests (e.g., padding of hours, pressure to settle a contingency-fee case). At the same time, it assumes that lawyers have so little commitment to their professional obligations that they would ignore all their obligations to their clients if pressured by a non-lawyer employer.

### **The Current System of Regulation Has Exacerbated the Justice Gap While Early Data About Regulatory Reform Is Positive**

The current legal services model has done more to expand the justice gap than to close it. Modern restrictions on unauthorized practice of

law were born a century ago, leading to an explosion in the scope of services that may only be provided by lawyers.<sup>4</sup> This hundred-year experiment has proven that a regulatory system that prohibits non-lawyer ownership and non-lawyer assistance is a disaster for consumers.

As outlined in the first section of these comments, most of the public cannot afford the cartel prices of legal help under current regulation. And, despite its monopoly over the provision of legal assistance, the bar has done very little to serve those who can't afford lawyers' services. The legal industry in Texas has annual revenue of about \$30 billion.<sup>5</sup> Yet, Texas's only requirement that any of this money go to the underserved is that each lawyer pay a \$65 annual legal services fee, half of which is dedicated toward civil legal aid.<sup>6</sup> And Texas lawyers averaged only about 25 annual hours of pro bono work each.<sup>7</sup> These data demonstrate the failure of the current regulatory system to close the justice gap, and the need for lawyers to get out of the way of others who might do so.

Other jurisdictions that have adopted regulatory reforms have shown positive results. In England and Wales, a study found that non-lawyer will-writing specialists drafted wills of comparable quality to those drafted by solicitors and did so at a lower price.<sup>8</sup> And in Utah, while the legal regulatory sandbox has only been active for

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<sup>4</sup> Barlow F. Christensen, "The Unauthorized Practice of Law: Do Good Fences Really Make Good Neighbors-Or Even Good Sense?", *American Bar Foundation Research Journal*, Vol. 5, No. 2 (Spring, 1980) at p. 189 et seq.

<sup>5</sup> IBIS World, "Law Firms in Texas – Market Research Report", <https://www.ibisworld.com/us/industry/texas/law-firms/12515/>, retrieved 12/15/2023.

<sup>6</sup> Texas State Bar Act Section 81.054

<sup>7</sup> Texas lawyers provide 2.5 million hours of pro bono service each year per <https://www.texasatj.org/pro-bono> and there are approximately 100,000 lawyers in the state.

<sup>8</sup> IFF Research, *Research Report: Understanding the Consumer Experience of Will-writing Services* (2011). Retrieved from <https://www.sra.org.uk/globalassets/documents/consumer-reports/lsb-will-writing-reports.pdf> on December 15, 2023.

three years, it has provided over 66,000 legal services with a mere nine(!) consumer complaints.<sup>9</sup>

### **Conclusion**

The justice gap in Texas extends well beyond the poorest Texans; nearly all Texans are unable to afford legal help. Regulatory reform that focuses only on the poorest Texans won't solve the larger access to justice crisis and is likely to fail its intended beneficiaries. The best way to increase access to legal help for all Texans is for lawyers who have failed to meet the needs of the underserved to get out of the way of those who want to do so. We urge the Commission to recommend the licensure of paralegals and to loosen restrictions on nonlawyer ownership to include those who would provide service to any Texan who currently can't currently afford legal help.

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<sup>9</sup> Utah Innovation Office Activity Report, October 2023. Retrieved from <https://utahinnovationoffice.org/wp-content/uploads/2023/11/2023.10-Public-Report-.pdf> on December 15 2023.