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Public Comment in Support of the Utah Supreme Court's Proposal on Regulatory Reform

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The National Center for Access to Justice (NCAJ) is an independent, non-profit organization dedicated to making the justice system fairer and more accessible to everyone. We use research and data to identify and promote effective policy solutions to access to justice problems.

We stand in emphatic support of proposed Standing Order 15, which would establish a “regulatory sandbox” in which to test and evaluate innovative models for the delivery of legal services. We also support the proposed repeal of Rule 5.4 and its replacement with draft Rules 5.4A and 5.4B, as changes that are necessary to implement the Standing Order. These reforms will put Utah at the forefront of efforts to find new solutions to this country’s access to justice crisis, at a moment when this kind of national leadership is more urgently needed than ever.

Lawyers and legislators have made serious efforts over the years to expand access to legal representation, but the dismal reality is that most Americans still don’t get the help they need to confront their legal problems. Legal aid is a drop in the bucket next to the scale of unmet need in poor communities. Many people don’t understand that their problems are legal in nature or amenable to favorable judicial intervention. Even people who might scrape together the money to hire a lawyer often choose not to, because the financial costs can be every bit as onerous as a bad day in court. The result is that people either end up going it alone, disarmed and disadvantaged, when confronting legal problems, or they simply don’t go at all, missing out on chances to vindicate their rights in court. People then lose their homes, their paychecks, their children and even their freedom—and all too often those outcomes could have been avoided with good legal advice and other assistance.

At NCAJ, we understand the value and importance of legal representation to individuals and communities facing legal problems. We have long been active in support of efforts to increase access to counsel, including by strengthening legal aid, increasing attorney pro bono requirements, and expanding the civil right to counsel. It is precisely because of those efforts that we share the Utah Supreme Court’s understanding that lawyers alone will never be able to

solve the access to justice crisis in this country. Utah, like the rest of the nation, needs to identify safe, effective models of legal services delivery that are non-traditional and have the potential to empower people who will never have lawyers, but who need help to be able to enforce their rights and protect their interests

We believe that to succeed, reforms must enable people to rely on individuals who do not have JDs, but who are able to use the law effectively to help others. Utah has already embraced this core idea by creating the new Licensed Paralegal Practitioner program.

The regulatory sandbox envisioned under Standing Order 15 will allow room to expand on the idea in innovative ways. We hope that Utah will embrace approaches that empower qualified non-JDs to do more with the law, and without assuming a need to create expensive new credentials. In Washington State, Limited License Legal Technicians (LLLTs) have delivered high-quality family law services for several years now to people who might otherwise be priced out of the market for legal help. The only cautionary tale we see there, is that the state's extraordinarily rigorous credentialing requirements may have throttled the program's growth and limited its potential reach. Indeed, Washington's Supreme Court recently announced its intention to sunset the program— justifying the move largely by pointing to its slow and limited expansion.

Many frontline advocates know the law and are well positioned to provide some kinds of legal help with the right support and regulation. This could make all the difference for people who would otherwise be likely to receive no legal help at all. We think that approach— democratizing the law and giving people more freedom to get help from qualified people they know and trust— holds the most promise in putting unrepresented litigants on a more equal footing under the law.

Opponents of reform have at time caricatured these calls for change as reckless, or insisted they will bring an end to the profession of law. But fears of consumer harm are often rooted in the straw man vision of a chaotic, unregulated marketplace where incompetent laypeople and scam artists prey upon unsophisticated consumers. And while as champions of legal representation we believe in the essential role of lawyers in our society, we also recognize that the defense of the profession must not be so expansive as to eliminate the real-world opportunity for people to protect and defend their rights. The choices are inevitably complex, and we certainly agree that concern and caution are warranted. Care must be taken to ensure that reforms provide for robust regulation, protect consumers of legal services from harm and maintain the integrity and strength of the legal profession. Standing Order 15 is rooted in a clear understanding that a main virtue of the regulatory sandbox model is to reduce risk by requiring close monitoring and rigorous evaluation.

The simple truth is that we don't yet know what some of the best and most effective models will look like. The only way to find out is to allow space for innovation and experimentation that existing rules largely preclude. We believe and expect that Utah's vision of a regulatory sandbox model will strike the right balance between the imperative to allow space for new models for access to justice to develop, grow and improve, and the need for robust regulatory oversight to protect the public from harm.

Finally, it has to be emphasized that these ideas have never been more urgent. The economic catastrophe COVID-19 has unleashed upon this country has thrown millions of people out of work and into precarious situations. The sad reality is that this will translate into a wave of unmet legal need as many Americans struggle with unpaid debts and medical bills, face eviction from their homes, and struggle with other newfound legal woes. We have a moral duty to ensure that people get the help they need to know their rights, protect them, and get a meaningful day in court. America's access to justice crisis is about to assume terrifying new proportions, and we can only hope that other states will follow Utah's example in taking such determined steps to solve it.