



**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 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 "Margaret Goodlander". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

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