

LAW JOURNAL FOR SOCIAL JUSTICE

SANDRA DAY O'CONNOR COLLEGE OF LAW
ARIZONA STATE UNIVERSITY

Volume XVIII

Fall

2023

CONTENTS

A Tale of Two Committees: Comparing Police Officer Standard and Training (POST) Bodies	<i>Nino C. Monea</i>	3
Leveraging Unauthorized Practice of Law Reform to Advance Access to Justice	<i>Cayley Balser, Erin Weaver, Stacy Rupprecht Jane, Gabriela Elizondo-Craig, Tate Richardson, and Antonio Coronado</i>	66
Prison Siting from an Environmental Justice Perspective: The Toxic Cycle of Mass Incarceration	<i>Jacqueline Cochrane</i>	113
Answering the Question of Intent in Structural Racism: A Tortious Framework for Establishing Intentional Discrimination in Environmental Justice	<i>Mai Rubin</i>	133
Educational Equality, Educational Adequacy: A Conjunction for the Future	<i>Esteban Ortiz</i>	155



Law Journal for Social Justice is supported by the Sandra Day O'Connor College of Law at Arizona State University. The *Law Journal for Social Justice* mailing address is: *Law Journal for Social Justice* C/O ASU College of Law N. 1st St., Phoenix, AZ, 85004. The *Law Journal for Social Justice* email address is: ljsjeic@gmail.com.

Subscription: *Law Journal for Social Justice* is an online journal. Editions are accessible through the URL: <https://lawjournalforsocialjustice.com>.

Copyright: © Copyright 2024 by *Law Journal for Social Justice*. All rights reserved except as otherwise provided.
Cite as 18 L.J. SOC. JUST. __ (2023)

LEVERAGING UNAUTHORIZED PRACTICE OF LAW REFORM TO ADVANCE ACCESS TO JUSTICE

**By: Cayley Balsler,¹ Erin Weaver,² Stacy Rupprecht Jane,³
Gabriela Elizondo-Craig,⁴ Tate Richardson,⁵ and Antonio Coronado^{6*}**

¹ Cayley Balsler, Professor of Practice, Service Impact Area Lead at Innovation for Justice, University of Arizona James E. Rogers College of Law and University of Utah David Eccles School of Business. She/her pronouns. In addition to holding a JD from the University of Arizona, Cayley holds MEd and EdS degrees in mental health counseling from the University of Florida and a BA in Psychology from Clemson University. She is a licensed attorney in Arizona and is a National Certified Counselor. Her multidisciplinary research interests focus on access to and integration of trauma-informed approaches within legal education and services. Cayley is indebted to the community members who share their time, lived-experience expertise, and energy with her to make this research possible.

² Erin Weaver, Post-graduate Fellow at Innovation for Justice, University of Arizona James E. Rogers College of Law and University of Utah David Eccles School of Business. She/her pronouns. Erin earned a BA from Loras College, an MA from the University of Denver, and a JD from the University of Arizona. She is passionate about ensuring everyone gets their fair and equitable day in court---with or without an attorney.

³ Stacy Rupprecht Jane, Associate Scholar, Director at Innovation for Justice, University of Arizona James E. Rogers College of Law and University of Utah David Eccles School of Business. She/her pronouns. Stacy's research focuses on the application of human-centered design and innovation to social justice issues including housing instability, financial security, domestic violence, and regulatory reform of the legal profession. She earned a BA from Trinity University and a JD from the University of Arizona. Stacy is passionate about democratizing the ability to know, use, and shape the law.

⁴ Gabriela M. Elizondo-Craig, JD, graduate of University of Arizona 2018 and University of Arizona James E. Rogers College of Law 2021, former Medical Debt Legal Advocates project lead. I would like to thank our community partners for the time and care that they provide to their communities on a daily basis and our lived-experience experts for sharing their stories with our research teams.

⁵ Tate Lindsey Richardson, Esq., graduate of University of Arizona 2018, and University of Arizona James E. Rogers College of Law 2022. Dedicated to the friends and family we made along the way.

⁶ Antonio M. Coronado, Project Lead at Innovation for Justice, University of Arizona James E. Rogers College of Law and University of Utah David Eccles School of Business. They/them/elle pronouns. Antonio is an interdisciplinary educator, legal storyteller, and cross-jurisdictional advocate committed to the liberatory work of realizing community-led justice. As a classroom facilitator and abolitionist, they are dedicated to practices of dreaming, disrupting, and radical reflection.

* The authors have contributed to Innovation for Justice ("i4J") research and design work in regulatory reform. i4J is a social justice innovation lab housed at both the University of Arizona James E. Rogers College of Law and the University of Utah David Eccles School of Business. The work of i4J would not be possible without the support of the community, including our research teams, community collaborators, and contributors.

ABSTRACT

Access to justice is a stated goal of regulatory reform efforts in Utah, Arizona, and over a dozen other jurisdictions considering change to the legal profession's practice of law. Absent from these legal service innovations, however, are models that prioritize, and not just acknowledge, the delivery of legal services for low-income community members. As decision-makers across the country begin to reconsider and reform the practice of law, there is both risk and opportunity. The risk: regulatory reform efforts may fall short of their potential, creating new service models that entrench old legal service problems into new regulation. The opportunity: to view regulatory reform from the outset as a chance to radically re-imagine the pathways for connecting all community members who are navigating civil justice needs with critical civil justice problem-solving.

Drawing on over four years of community-driven and trauma-informed research by Innovation for Justice, this Article explores several key factors that policymakers must consider to ensure that new regulatory structures maximize their liberatory potential for communities without re-embedding existing patterns of harm, inaccessibility, and injustice. Recorded data from lived experiences highlights the importance of including four categories of stakeholders in the design of novel regulation to the practice of law: community-based organizations, consumer communities, regulatory reform decision-makers, and design hubs. This Article concludes by looking to the collective future of legal innovation. If the legal profession is to meaningfully and structurally commit to increasing access to civil legal help, as many concede it must, these efforts must include 1) free, preventative civil legal problem-solving for those who face the largest social and financial barriers to accessing the civil legal system and 2) the intentional inclusion of diverse voices, including community-based organizations and consumers, at the outset of designing and implementing regulatory reform efforts.

INTRODUCTION

Historically, only lawyers—those individuals who earn a Juris Doctor (“J.D.”) degree, pass a bar exam, and pass a character and fitness exam—have been permitted to give legal advice.¹ Anyone else providing

Thank you for your many contributions to this work.

¹ MICHAEL HOULBERG & JANEY DROBINSKE, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., THE LANDSCAPE OF ALLIED LEGAL PROFESSIONAL PROGRAMS IN THE UNITED STATES 39-41 (2022), https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf; David See generally FREEMAN ENGSTROM, LUCY RICCA, GRAHAM

legal advice is at risk of violating the Unauthorized Practice of Law (“UPL”) restrictions of one or more jurisdictions.² In our current legal service ecosystem, the lawyers-only service model contributes to a status quo in which low-income community members receive inadequate or no legal help for 93% of their legal problems.³

While definitions differ, UPL generally refers to several distinct practices: 1) lay individuals engaging in the work of a lawyer, either in or outside of the courtroom; 2) a lawyer practicing law outside of the jurisdiction in which they are licensed; and/or 3) disbarred lawyers continuing to practice law.⁴ However, multiple states are engaging in regulatory reform and thereby changing the way in which they approach the practice of law and the demarcations of who is and is not authorized to provide legal advice. Arizona and Utah, for instance, have led this charge in the regulatory reform movement. In August 2020, the Supreme Court of Utah enacted significant changes to the regulations that govern the practice of law within the state.⁵ Arizona followed suit shortly afterward.⁶ These changes create pathways for new forms of legal services by modifying UPL restrictions and non-lawyer ownership of legal services. Other states are currently considering similar regulatory reforms and now look to Arizona and Utah as case studies, models, and early adopters.⁷

In these early days of regulatory reform to the practice of law, there is both risk and opportunity. The risk: regulatory reform efforts may fall short of their potential, creating new service models that entrench old legal service problems into new regulation. The opportunity: to view regulatory

AMBROSE & MADDIE WALSH, DEBORAH L. RHODE CTR. ON THE LEGAL PRO., LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE 13 (2022), <https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf>.

² ENGSTROM ET AL., *supra* note 1, at 15. Julian Moradian, *A New Era of Legal Services: The Elimination of Unauthorized Practice of Law Rules to Accompany the Growth of Legal Software*, 12 WM. & MARY BUS. L. REV. 247, 251 (2020) (citing Catherine J. Lanctot, *Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law*, 30 HOFSTRA L. REV. 811, 812 (2002) (stating that the Model Rules of Professional Conduct do not provide a standard definition for the practice of law; rather, they state, “the definition of the practice of law is established by law and varies from one jurisdiction to another.”)).

³ LEGAL SERVS. CORP., THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 48 (2022), <https://lsc-live.app.box.com/s/xl2v2uraitotbbzrhwtjlgioemp3myz1>.

⁴ Laurel A. Rigertas, *The Birth of the Movement to Prohibit the Unauthorized Practice of Law*, 37 QUINNIPIAC L. REV. 97, 103 (2018).

⁵ Utah Sup. Ct. Standing Ord. No. 15 (2020).

⁶ Ariz. Sup. Ct. Ord. No. R-20-0034 (2020).

⁷ *Unlocking Legal Regulation Knowledge Center*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., <https://iaals.du.edu/knowledge-center> (last visited Dec. 13, 2022).

reform from the outset as a chance to radically re-imagine the pathways for connecting *all* community members who are navigating civil justice needs with critical civil justice problem-solving.

In this Article, Innovation for Justice (“i4J”) shares findings and recommendations from four years of community-led research to provide a shared language and roadmap for fellow legal innovators who share our goal of leveraging unauthorized practice of law reform efforts to advance access to justice for low-income community members. This roadmap, in turn, will ensure that new regulatory structures maximize their liberatory potential for communities without re-embedding existing patterns of harm, inaccessibility, and injustice.

I. REGULATORY DEVELOPMENTS IN UTAH AND ARIZONA

Regulatory reform-based innovations in Utah are currently authorized and supervised by the Office of Legal Services Innovation, which houses a “regulatory sandbox” for legal innovation.⁸ The regulatory sandbox permits nonlawyers and novel legal technologies to engage in the provision of legal services through authorized entities.⁹ A range of entities in the state have been authorized to practice law in several service models across many service categories.¹⁰ These entities are classified depending on the amount of lawyer involvement in the entity: Low, Moderate, or High lawyer

⁸ *Who We Are*, OFF. OF LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/about/staff-list/> (last visited Jan. 13, 2020) (“The Legal Services Innovation Committee is an independent advisory Committee of the Utah Supreme Court made up of volunteer lawyers and nonlawyer experts. It is tasked with recommending entities for participation in the Legal Sandbox and proposing regulatory policies. It also directs the regulatory duties of the Office of Legal Services Innovation. The Innovation Office is tasked with regulating non-traditional legal entities and services. The Innovation Office, housed at the Utah State Bar, runs the day-to-day operations of the Office including initial assessments of entity applications, data submissions, and enforcement actions.”).

⁹ See OFF. OF LEGAL SERVS. INNOVATION, SANDBOX AUTHORIZATION PACKET (2021), <https://utahinnovationoffice.org/wp-content/uploads/2021/05/Auth-Packet-AAA.pdf>.

¹⁰ See OFF. OF LEGAL SERVS. INNOVATION, INNOVATION OFFICE MANUAL 31 (2021), <https://utahinnovationoffice.org/wp-content/uploads/2021/08/IO-Manual-Published-Aug.-25-2021.pdf> (explaining that “[t]here are currently 21 valid legal service category codes. 19 of the 21 service categories are permissible within the Sandbox” and that these service categories include: “Accident/Injury; Adult Care; Business; Criminal - Expungement Only; Discrimination; Domestic Violence; Education; Employment; End of Life Planning; Financial Issues; Healthcare; Housing [Rental]; Immigration; Marriage and Family; Military; Native American and Tribal Issues; Public Benefits; Real Estate; Traffic Citation.”); *Authorized Entities*, OFF. OF LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/authorized-entities/> (last visited Aug. 8, 2023) (noting that several Sandbox entities are authorized to provide legal services in more than one service category).

involvement.¹¹ All but one entity has been classified as a Low or Moderate Innovation, as most of the authorized entities provide services with a share of lawyer involvement.¹² As of June 2023, business concerns, veteran/military benefits, and immigration related issues together account for approximately 76% of the services provided by authorized entities.¹³ Overall, very few of the authorized nonprofit entities provide no-cost legal assistance to low-income populations.¹⁴

Utah has also created an exception to the authorization to practice law for Licensed Paralegal Practitioners (“LPPs”), which permits these trained individuals to assist clients in specific practice areas in which they are licensed.¹⁵ LPPs can be licensed to assist clients in certain family law matters, forcible entry and detainer, and debt collection matters as long as the debt amount at issue is not greater than that allowed to be processed in small claims court.¹⁶ While LPPs may engage in several actions on behalf of their clients, they may not appear in court for their clients.¹⁷ The state’s LPP curriculum provides for credentialing in the areas of family law, debt, and housing.¹⁸ While eleven of the state’s 26 LPPs provide assistance in family law, most do so through the law firms where they worked as paralegals.¹⁹

Arizona has similarly established licensure options for paraprofessionals without a J.D. degree, these being Licensed Paraprofessionals (“LPs”).²⁰ There are six possible pathways to LP licensure in Arizona, two of which are most relevant here: 1) an education-based pathway and 2) an experience-based pathway.²¹ LPs may become

¹¹ See OFF. OF LEGAL SERVS. INNOVATION, *supra* note 10, at 5.

¹² *Id.*

¹³ UTAH INNOVATION OFF., SANDBOX-ACTIVITY REPORT: JUNE 2023 5 (2023) https://utahinnovationoffice.org/wp-content/uploads/2023/07/Sandbox-Activity-Report_June-2023-2.pdf (noting that approximately 97% of services provided by authorized entities are classified as business, veteran/military benefits, immigration, end of life planning, accident/injury, marriage/family, or financial).

¹⁴ *Id.*

¹⁵ *Licensed Paralegal Practitioner*, UTAH STATE CTS.: THE JUD. BRANCH OF UTAH, <https://www.utcourts.gov/en/about/miscellaneous/legal-community/lpp.html> (last visited Nov. 16, 2022).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 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, 1325 (2021).

¹⁹ HOULBERG & DROBINSKE, *supra* note 1, at 9; see generally Steinberg et al., *supra* note 18 (data from University of Utah Professor Anna Carpenter and Wesleyan University Professor Alyx Mark on file with author); see also *Licensed Paralegal Practitioner*, *supra* note 15.

²⁰ See OFF. OF LEGAL SERVS. INNOVATION, *supra* note 10, at 9.

²¹ *Id.* at 57-59.

licensed to practice in four key areas of law: 1) family law, 2) limited-jurisdiction civil, 3) limited jurisdiction criminal, and 4) narrow aspects of administrative law.²² As of August 2023, fifty-three LP applicants have passed both the core and subject-matter state examinations and forty-six have been admitted to the state bar.²³ Relatedly, Arizona has also authorized the creation of an Alternative Business Structures (“ABS”): “a business entity that includes nonlawyers who have an economic interest or decision-making authority in a firm”²⁴ To date, the Arizona Supreme Court has authorized thirty-nine ABS entities via Administrative Order.²⁵

While the Sandbox, LPP, LP, and ABS reforms have focused on market-driven innovations, Arizona and Utah have also authorized community-based advocacy initiatives that allow trained advocates to provide limited-scope legal services in certain areas of law.²⁶ Community-based advocacy initiatives permit modification of/exemption from UPL restrictions in order to allow trained individuals other than lawyers to provide legal services and legal advice.²⁷ Since 2019, i4J has been involved in the design, implementation, and evaluation of four such community-based advocacy Initiatives in Utah and Arizona.

i4J’s community-based advocacy Initiatives²⁸ function by “upskilling” individuals who are already in community-helping roles.²⁹ For i4J, this

²² ARIZ. CODE OF JUDICIAL ADMIN. § 7-210(F)(2)(a-d).

²³ See ARIZ. ADMIN OFF. OF THE CTS. (discussing as of August 2023, forty-two LPs in Arizona have been approved in family law, seven have been approved in civil law, for have been approved in criminal law, and Data provided by Arizona Supreme Court Administrative Office of the Courts, on file with author. As of the time of publication, 42 LPs in Arizona have been approved in family law, 7 have been approved in civil law, 4 have been approved in criminal law, and none have been approved in administrative law (on file with author). As of April 2023, the Juvenile Law certification is still under development (email on file with author). Data provided by Arizona Supreme Court Administrative Office of the Courts, on file with author. As of April 2023, the Juvenile Law certification is still under development, email on file with author.

²⁴ *Alternative Business Structures*, ARIZ. JUD. BRANCH, <https://www.azcourts.gov/cld/Alternative-Business-Structure> (last visited Jan. 4, 2023).

²⁵ See *Alternative Business Structures Program*, ABS DIRECTORY, <https://www.azcourts.gov/Portals/26/ABS%20Directory%2012-14-2022.pdf> (last updated Dec. 14, 2022).

²⁶ HOULBERG & DROBINSKE, *supra* note 1, at 5.

²⁷ *Id.*

²⁸ At the time of publication, i4J actively facilitates three community-based service Initiatives. These include: Licensed Legal Advocate Initiative (LLA), Medical Debt Legal Advocate Initiative (MDLA), and Housing Stability Legal Advocate Initiative (HSLA).

²⁹ See, e.g., *Reskilling Toolkit: Accelerating the Gears of Transformation*, U.S. OFF. OF PERS. MGMT., <https://www.opm.gov/policy-data-oversight/workforce-restructuring/reshaping/accelerating-the-gears-of-transformation/reskilling-toolkit.pdf> (last visited Aug. 10, 2023) (providing an example of how reskilling/upskilling models are applied in the organizational context).

means that advocates who are already interfacing with community members who experience the legal problem are trained to provide limited-scope legal advice within the course of that existing interaction. Legal training and state-level certification of advocates, as facilitated by i4J, serve as added tools that advocates might use within the course of their current position at a community-based organization (“CBO”).³⁰ The following subsections overview each of i4J’s Initiatives, spanning systems, states, and subject matters.

A. Domestic Violence Legal Advocate Initiative

In June 2020, the Arizona Supreme Court authorized the Domestic Violence Legal Advocate (“DVLA,” formerly the Licensed Legal Advocate or “LLA”) Initiative, which upskills trauma-informed lay legal advocates at a domestic violence (“DV”) service provider to provide “limited-scope legal advice to domestic violence survivors.”³¹ DVLAAs are able to assist survivors by: 1) providing limited-scope legal advice on urgent legal issues present during the initial intake; 2) providing limited-scope legal advice while a DV survivor is completing legal forms; 3) providing limited-scope legal advice while a survivor is preparing for a mediation or hearing; and 4) attending court with a survivor, with a seat at the survivor’s table to quietly advise and answer questions if asked by the court.³²

i4J continues to evaluate the outcomes of the DVLA Initiative through evaluation and direct engagement with the host site and through periodic

³⁰ *Engaging Community-Based Organizations*, U.S. DEP’T OF HEALTH & HUM. SERVS. (Feb. 26, 2021), https://aspr.hhs.gov/at-risk/Pages/engaging_CBO.aspx#:~:text=CBOs%20include%20but%20are%20not,food%20banks%20that%20work%20to (“Community-based organizations (CBOs) are public or private not-for-profit resource hubs that provide specific services to the community or targeted population within the community.”).

³¹ First authorized as the “Licensed Legal Advocate Initiative,” a name change that better reflects the scope and nature of this initiative is currently forthcoming in Arizona. *See* Ariz. Admin. Ord. 2020-88 (2020); INNOVATION FOR JUST., DESIGNING A NEW TIER OF CIVIL LEGAL PROFESSIONAL FOR DOMESTIC VIOLENCE SURVIVORS (2019) <https://static1.squarespace.com/static/60dcbec3c8e7ab3e5de9acbe/t/62bce8d9c8ca5f2ad28fffc4/1656547546090/LLA+Project+Brief.pdf> (describing how the Arizona Supreme Court’s authorization will help LLA domestic violence “survivors navigate the legal system to obtain child support, spousal maintenance, and fair and equitable property and debt divisions”); Ariz. Admin. Ord. 2023-21 (2023) (discussing that the Arizona Supreme Court has now authorized the Initiative for statewide expansion, with i4j working to launch the next cohort of LLA advocated by the end of 2023).

³² INNOVATION FOR JUST., REPORT TO THE ARIZONA SUPREME COURT TASK FORCE ON DELIVERY OF LEGAL SERVICES: DESIGNING A NEW TIER OF CIVIL LEGAL PROFESSIONAL FOR SURVIVORS OF DOMESTIC VIOLENCE 3-5 (2019), <https://law.arizona.edu/sites/default/files/Final%20Report%20with%20Appendices%20May%2024%202019.pdf>.

feedback from volunteer lawyer mentors affiliated with the Initiative. This Initiative is the first of its kind to adapt a state's UPL rules to train advocates already embedded in the social service field to give legal advice concurrently with their delivery of social services.³³

B. Medical Debt Legal Advocate Initiative

In May 2021 and August 2022, two Medical Debt Legal Advocate ("MDLA") Initiatives were authorized to train advocates to provide legal services to individuals experiencing medical debt in Utah.³⁴ The MDLA Initiative encompasses two separate Initiative programs: the Medical Debt Court Diversion Initiative and the Community Health Worker Medical Debt Advocate Initiative.³⁵ These two Initiatives will empower financial coaches and community health workers, respectively, at Utah community-based organizations to give limited-scope legal advice to community members experiencing medical debt before their debt becomes a lawsuit.³⁶ By assisting individuals in negotiating their medical debt before trial, MDLAs help increase the likelihood that individuals owe less and that extra costs associated with the debt collection court processes are avoided.

Since the MDLA Initiative's launch, the first cohort of MDLAs have completed their training and are providing services through their respective organizations. As of Fall 2023, a second cohort of MDLAs are completing the required training and are projected to start providing services by the close of the year.³⁷

³³ See Ariz. Admin. Ord. 2020-88 (2020); Ariz. Admin Ord. 2023-21 (2023).

³⁴ See generally OFF. OF LEGAL SERVS. INNOVATION, *supra* note 9; OFF. OF LEGAL SERVS. INNOVATION, AMENDED SANDBOX AUTHORIZATION PACKET HOLY CROSS MINISTRIES (2022), <https://utahinnovationoffice.org/wp-content/uploads/2022/09/Amended-Auth-Packet-Holy-Cross-8.22.pdf>.

³⁵ INNOVATION FOR JUST., ADVANCING LEGAL EMPOWERMENT FOR UTAHNS EXPERIENCING MEDICAL DEBT (2020), <https://static1.squarespace.com/static/60dcbec3c8e7ab3e5de9acbe/t/62d1b87458ac192336a449ff/1657911412325/MDLA+Project+Brief.pdf> (providing that the Medical Debt Court Diversion Initiative provides defendants with a medical debt legal advocate before a complaint is filed and the Community Health Worker Medical Debt Advocate Initiative empowers bilingual community health workers to provide upstream legal advice regarding medical debt on a variety of issues including insurance options and financial-aid applications. Community health workers will also be trained to negotiate settlements on their clients' behalf).

³⁶ See OFF. OF LEGAL SERVS. INNOVATION, *supra* note 9 at 3.

³⁷ A third MDLA Initiative was designed to train bachelor of social work students; that Initiative is on hold; results of prototype testing flagged challenges to embedding regulatory reform initiatives in higher education that need to be resolved through further research before the Initiative can be tested in the field.

C. Housing Stability Legal Advocate Initiative

In 2023, the Housing Stability Legal Advocate (“HSLA”) Initiative was authorized state-wide in Arizona and Utah through Administrative Order³⁸ and Standing Order,³⁹ respectively. Parallel to the previously discussed initiatives, the HSLA Initiative will train staff and volunteers at community-based organizations who already interact with individuals experiencing housing instability to provide limited-scope legal advice on landlord-tenant issues.

The HSLA Initiative is designed to upskill advocates in the nonprofit social services sector who already interact with people experiencing housing instability to problem-solve and spot a housing instability legal issue before it goes to court.⁴⁰ HSLAs will be trained to give legal advice to clients regarding their eviction cases, in addition to possible legal defenses to their case and post-judgment procedures.⁴¹

D. Community Justice Workers in Healthcare Initiative

The Community Justice Workers (“CJWs”) in Healthcare Initiative, in collaboration with University of Utah Health, explored innovative approaches to embedding civil justice problem-solving within a healthcare setting.⁴² The CJW model is designed to train people who already live and work in the West Valley City community of Utah to provide limited-scope civil legal advice to West Valley patients, with the goal of improving health outcomes.⁴³ Community justice workers could be community health workers, staff from area community-based organizations, or other

³⁸ See Ariz. Admin. Ord. 2023-19 (2023).

³⁹ See Utah Standing Ord. No. 16 (2023).

⁴⁰ See generally CAYLEY BALSER, RACHEL CRISLER & STACY BUTLER, INNOVATION FOR JUST., HOUSING STABILITY LEGAL ADVOCATE INITIATIVE: 2023 UPDATE (2023), https://docs.google.com/document/d/1G3QqXB8Y5nz4la_kRChxtBLJz3A_J3AodjiZ457PMvs/edit#heading=h.ch45y9gsdvvj (establishing that the HSLA Initiative enables community-based organizations who already interface with tenants at multiple different intervention points to provide free, holistic, trauma-informed, limited-scope legal advice to tenants experiencing housing instability, to supplement the various social services they already provide).

⁴¹ See *id.*

⁴² This Initiative is slightly different from other i4J regulatory reform Initiatives because it did not seek to address a predefined civil justice need but, instead, focused on collaborative opportunities to address one or more civil justice needs identified through community-based research.

⁴³ See generally INNOVATION FOR JUST., EMBEDDING REGULATORY REFORM-BASED CIVIL JUSTICE PROBLEM-SOLVING IN PATIENT CARE (2023), https://docs.google.com/document/d/1H56m_msHnwXxAhcVS-3Op9UCt_e9oxsx/edit?usp=sharing&ouid=110542258061871093043&rtpof=true&sd=true.

community members pursuing workforce development.⁴⁴ Further development of the CJWs in Healthcare Initiative continues in the 2023-2024 academic year.⁴⁵

II. OTHER STATE-LEVEL REGULATORY REFORM EFFORTS

Regulatory reform efforts in other states can be sorted into three categories: 1) *community-based advocacy initiatives* that are similar to i4J's DVLA, MDLA, HSLA, and CJWs in Healthcare models, 2) "*allied legal professional*" ("ALP") models similar to the LP and LPP programs in Arizona and Utah,⁴⁶ and 3) *alternative business structure* (ABS) efforts.

The following subsections explore each of these categories of reform, with a focus on the ways that they diverge from, overlap, and mirror those of Arizona and Utah.

A. Fellow Community-Based Advocacy Initiatives

Each of i4J's aforementioned initiatives are authorized through state supreme court Administrative Orders or the Utah Sandbox. In other jurisdictions, similar community-based advocacy initiatives have emerged, including:

- **Alaska** - The Supreme Court of the State of Alaska has adopted Bar Rule 43.5, authorizing the provision of certain legal services by nonlawyers, with lawyer supervision.⁴⁷ Alaska Legal Services Corporation (ALSC) began the Community Justice Worker program in 2019, and as of 2022 these Community Justice Workers may provide limited-scope legal help with the supervision of ALSC lawyers.⁴⁸
- **Delaware** - The Delaware Supreme Court adopted Rule 57.1, permitting nonlawyer advocates to give legal advice to tenants in

⁴⁴ *Id.* at 15.

⁴⁵ See INNOVATION FOR JUST., COMMUNITY JUSTICE WORKERS IN PATIENT CARE: A COLLABORATION BETWEEN INNOVATION FOR JUSTICE AND UNIVERSITY OF UTAH HEALTH 5 (2023), https://docs.google.com/document/d/1CD2SuRTFV0-4NmZs12q74RBPQfR1Ftwa-csHcwS26_I/edit?usp=sharing.

⁴⁶ Because each state has a different term for their Allied Legal Professional, i4J is using ALP across states and programs within this article for consistency. See HOULBERG & DROBINSKE, *supra* note 1, at 4-6 (outlining the requirements and terms for Allied Legal Professionals, such as Licensed Paralegal Professionals (UT), used in each state.

⁴⁷ Alaska Ord. No. 1994 (2022).

⁴⁸ *Community Justice Worker Program*, ALASKA LEGAL SERVS. CORP., <https://www.alsc-law.org/community-justice-worker-program/> (last visited Jan. 13, 2023).

eviction court. These Qualified Tenant Advocates are supervised by legal aid agencies in Delaware.⁴⁹

- **New York** - In New York, the nonprofit *Upsolve* created “a free legal advice program for low-income New Yorkers facing debt collection lawsuits.”⁵⁰ The state attorney general’s enforcement of UPL laws currently prohibits *Upsolve* from providing these services, and *Upsolve* has filed a complaint challenging enforcement. Despite an initial ruling in *Upsolve*’s favor, the case is currently on appeal by the state to the Second Circuit. Twenty-three “empirical scholars who study the legal profession, the provision of legal services across jurisdictions, and people’s interaction with the legal system” have issued their support for the district court’s initial decision, and they have filed an Amicus Brief with the Second Circuit containing empirical support for *Upsolve*’s program.⁵¹

B. Other Allied Legal Professional Programs

ALP programs in other states, similar to the LP and LPP programs in Arizona and Utah, permit modification of/exemption from UPL restrictions in order to allow individuals other than lawyers to provide legal services and legal advice. These programs are generally authorized through a jurisdiction’s bar or highest court.

- **Colorado** - The Colorado Supreme Court authorized an LLP program in March 2023.⁵² These LLPs will be authorized to practice in family law, providing help to clients with divorce, custody, and protection orders.⁵³
- **Connecticut** - Connecticut is developing a proposal for a limited legal advocate program.⁵⁴

⁴⁹ *Delaware to Allow Non-Lawyer Representation for Tenants in Eviction Cases*, NAT’L LOW INCOME HOUS. COAL. (Feb. 14, 2022), <https://nlihc.org/resource/delaware-allow-non-lawyer-representation-tenants-eviction-cases>.

⁵⁰ Sara Merken, *Nonprofit sues N.Y. AG over practice rules in bid to provide free legal advice*, REUTERS (Jan. 25, 2022), <https://www.reuters.com/legal/legalindustry/nonprofit-sues-ny-ag-over-practice-rules-bid-provide-free-legal-advice-2022-01-25/>.

⁵¹ See Brief for Law Professors in Support of Plaintiff-Appellees and Affirmance, *Upsolve, Inc. v. James*, (2d Cir. 2023), *petition for cert filed* (No. 22-1345).

⁵² *Colorado Supreme Court Approves Licensed Legal Paraprofessionals*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (Apr. 5, 2023), <https://iaals.du.edu/blog/colorado-supreme-court-approves-licensed-legal-paraprofessionals>.

⁵³ *Id.*

⁵⁴ HOULBERG & DROBINSKE, *supra* note 1, at 13-14.

- **Minnesota** - The Minnesota Supreme Court ordered the implementation of its LP program in September 2020; 23 LPs have been trained as of November, 2022.⁵⁵
- **New Hampshire** - The New Hampshire legislature passed a bill providing for a two-year initiative program to allow for limited legal services provided by paraprofessionals; this program began in January 2023 and is limited to courts in three cities.⁵⁶
- **New Mexico** - The New Mexico Supreme Court created a committee to develop recommendations for a licensed legal technician program in July 2020.⁵⁷
- **New York** - New York is working to implement a program that will allow social workers to provide limited-scope legal services.⁵⁸
- **North Carolina** - The Subcommittee on Regulatory Change of the North Carolina Bar has recommended that the State Bar Council pursue development and implementation of a license for “qualified nonlawyers to provide legal services.”⁵⁹
- **Oregon** - The Oregon Supreme Court authorized a licensed paralegal program in July 2022.⁶⁰ Licensure to provide limited services in housing and family law is set to begin in January 2024.⁶¹
- **South Carolina** - South Carolina is developing the South Carolina Certified Paralegals Program which will allow voluntarily certified paralegals to provide some legal services.⁶²

⁵⁵ *Id.* at 10-11; *see also Roster of Approved Legal Paraprofessionals*, MINN. JUD. BRANCH, <https://mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/LPPP-Roster-of-Approved-Legal-Paraprofessionals.pdf> (last updated July 14, 2023) (indicating thirty-one LPs since its update in July).

⁵⁶ HOULBERG & DROBINSKE, *supra* note 1, at 11; N.H. REV. STAT. ANN. § 311:1-a (2022) (authorizing paraprofessionals to provide services in courts in Manchester, Franklin, and Berlin).

⁵⁷ HOULBERG & DROBINSKE, *supra* note 1, at 14.

⁵⁸ *Id.* at 15.

⁵⁹ *See Issues Subcommittee on Regulatory Change: Report and Recommendations*, N.C. STATE BAR (Jan. 2022), https://www.ncjfp.org/_files/ugd/8a3baf_e6fe61abff614570a7c73eaf98342f07.pdf.

⁶⁰ HOULBERG & DROBINSKE, *supra* note 1, at 12.

⁶¹ *Oregon Licensed Paralegals*, OR. STATE BAR, <https://www.osbar.org/LP/index.html> (last visited Aug. 2, 2023).

⁶² HOULBERG & DROBINSKE, *supra* note 1, at 16; *Paralegal Certification*, S.C. BAR, <https://paralegal.sctbar.org/> (last visited Aug. 10, 2023).

- **Texas** - The Texas Supreme Court recently requested an examination and modification of existing rules in order to allow paraprofessionals to provide limited legal services.⁶³
- **Vermont** - The Vermont Bar Association has formed a Joint Commission on the Future of Legal Services which has recommended the expansion of the role of paralegals working under the supervision of a licensed lawyer.⁶⁴
- **Washington** - The Washington Supreme Court adopted the Limited License Legal Technician (“LLLT”) program in 2012.⁶⁵ Ninety-one LLLTs were trained and licensed before the program was sunset; these LLLTs may continue to provide services to the public.⁶⁶
- **Washington, D.C.** - Finally, the Washington, D.C. courts have established a Civil Legal Regulatory Reform Task Force to obtain input from stakeholders regarding the potential creation of a Specially Licensed Legal Professional Program.⁶⁷

Several states, including California, Florida, and Illinois, have opted to not pursue ALP programs at this time.⁶⁸

C. Alternative Business Structure Efforts

Similar to Arizona’s ABS program, a few jurisdictions are exploring regulatory reform strategies related to the nonlawyer ownership of legal services:

- **California** - California has made efforts to establish a regulatory sandbox, but those efforts are currently on hold.⁶⁹

⁶³ *Legal Innovation Regulatory Survey: Texas*, AM. BAR ASS’N (Nov. 21, 2022), <http://legalinnovationregulatorysurvey.info/2022/11/texas/>.

⁶⁴ HOULBERG & DROBINSKE, *supra* note 1, at 17.

⁶⁵ *Id.* at 8.

⁶⁶ *Id.*

⁶⁷ See *Civil Legal Regulatory Reform Task Force of the District of Columbia Courts*, DIST. OF COLUMBIA CTS. (July 19, 2023), https://www.dccourts.gov/sites/default/files/2023-07/Administrative%20Order%20-Legal%20Reg%20Reform%20AO%207-19-2023%20%28final%29%20%28003%29_0.pdf.

⁶⁸ HOULBERG & DROBINSKE, *supra* note 1, at 17-19.

⁶⁹ Stephanie Francis Ward, *California bill signed into law restricts state bar sandbox proposal*, ABAJ. (Sept. 21, 2022, 1:42 PM), <https://www.abajournal.com/news/article/california-bill-signed-into-law-restricts-state-bar-sandbox-proposals> (stating that in California, both nonlawyer ownership of law firms and paralegals performing certain legal services were proposed by the State Bar of California, but in September of 2022 the governor “signed a bill requiring legislative approval for regulatory sandbox spending.”).

- **Connecticut** - Connecticut is contemplating ABS through the Connecticut Bar Association's Advancing the Legal Industry through Alternative Business Models subcommittee of the State of the Legal Profession Task Force.⁷⁰
- **Florida** - Florida has a limited ABS exception. The Florida Supreme Court amended Rule 4-5.4, now allowing not-for-profit legal service providers to organize as corporations. Additionally, not-for-profit legal services providers can allow "nonlawyers to serve on their boards of directors."⁷¹

It is worth noting that Utah's regulatory sandbox initially began as an ABS mechanism,⁷² though new applications to this framework have been halted at this time.

Absent from the aforementioned legal service innovations are service models that do more than tinker around the edges of the legal services market. The following section of this article documents the widespread need and opportunity for non-market-driven innovations in states' regulatory reform of UPL.

III. THE NEED FOR NON-MARKET OPPORTUNITIES IN EMERGING REGULATORY REFORM

Some of the stated goals of regulatory reform include 1) access to justice, 2) encouraging innovation, and 3) improving access to legal services/affordability of legal services.⁷³ Here, "access to justice" refers to the ability of individuals to receive some kind of legal assistance in handling

⁷⁰ HOULBERG & DROBINSKE, *supra* note 1, at 13.

⁷¹ Mark D. Killian, *Court Amends Rules to Allow Legal Service Providers to Organize as a Corporation*, FLORIDA BAR (June 3, 2022), <https://www.floridabar.org/the-florida-bar-news/court-amends-rules-to-allow-legal-service-providers-to-organize-as-a-corporation/>.

⁷² Steve German, *What Attorneys Should Know When Starting an Alternative Business Structure Law Firm* (June 30, 2023, 8:00AM), <https://www.forbes.com/sites/forbesbusinesscouncil/2023/06/30/what-attorneys-should-know-when-starting-an-alternative-business-structure-law-firm/?sh=15d774115946>; *see Re: Office of Legal Services Innovation Update*, SUP. CT. OF UTAH 2 (Jan. 16, 2023), https://drive.google.com/file/d/19WP7g2XAkUkMaV5Pw_QFTNSLspl6ZcRz/view.

⁷³ *See THE UTAH WORK GRP. ON REGUL. REFORM, NARROWING THE ACCESS-TO-JUSTICE GAP BY REIMAGINING REGULATION 1-2* (2019), <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/itr-22-footnote-1.pdf>; *see also ARIZ. SUP. CT., TASK FORCE ON THE DELIVERY OF LEGAL SERVICES: REPORT AND RECOMMENDATIONS 6-10* (2019), <https://www.azcourts.gov/Portals/74/LSTF/Report/LSTFReportRecommendationsRED10042019.pdf?ver=2019-10-07-084849-750>.

legal problems.⁷⁴ Regulatory reform has the potential to meet that goal through reforming unauthorized practice of law restrictions that prevent anyone but a lawyer from providing legal assistance. With regulatory reform, states can authorize legal service providers other than lawyers and expand the number of authorized legal service providers available for those who need them.⁷⁵

As states look to Utah, Arizona, and other early adopters of regulatory reform, it is critical that those driving change position the justice needs of their community as a North Star without losing sight of the current failed state of the legal services ecosystem. Regulatory reform is being considered by courts across the U.S. because of the staggering failure of current legal service offerings to meet the needs of consumers. “BigLaw” is rising, and the People’s Lawyer is disappearing. The “PeopleLaw” sector of the legal profession has been declining since the mid-1970s; this sector shrank by nearly \$7 billion between 2007 and 2012.⁷⁶ In fact, nearly 70% of the legal industry in 2017 served businesses while only 25% of the industry served people.⁷⁷ The inadequacy and unavailability of legal services for low-income Americans has been well-documented.⁷⁸ However, the lack of legal services also affects middle-class Americans: between 40 and 60% of middle class legal needs are not being met by currently existing legal services.⁷⁹

These market-based statistics alone demonstrate that consumers cannot afford, or do not see value in purchasing, legal services. But reforming legal regulations to allow new market-driven services potentially ignores a gaping legal need among low-income Americans. Fifteen percent, or approximately 50 million Americans, live in households below 125% of the poverty threshold.⁸⁰ Seventy-four percent of low-income households have experienced at least one civil legal problem within the past year; 62% of households experienced at least two civil legal problems; 39% of households experienced at least five civil legal problems; and 20% of

⁷⁴ Rebecca L. Sandefur, Thomas M. Clarke & James Teufel, *Seconds to Impact?: Regulatory Reform, New Kinds of Legal Services, and Increased Access to Justice*, 84 L. CONTEMP. PROBS. 69, 70 (2021).

⁷⁵ *Id.* at 74.

⁷⁶ Bill Henderson, *Legal Services Landscape Report (058)*, LEGAL EVOLUTION (July 22, 2018), <https://www.legalevolution.org/2018/07/legal-market-landscape-report-058/>.

⁷⁷ Bill Henderson, *Eight updated graphics on the US legal services market (285)*, LEGAL EVOLUTION (Jan. 23, 2022), <https://www.legalevolution.org/2022/01/eight-updated-graphics-on-the-us-legal-services-market-285/#more-16759>.

⁷⁸ LEGAL SERVS. CORP., *supra* note 3, at 31-32.

⁷⁹ Kathryn Graham, *Increasing Access to Legal Services for the Middle Class*, 33 GEO. J. LEGAL ETHICS 537, 537 (2020).

⁸⁰ LEGAL SERVS. CORP., *supra* note 3, at 22.

households experienced at least 10 civil legal problems.⁸¹ Thirty-five percent of low-income households experienced a civil legal problem that overall “substantially impacted” their lives.⁸² These substantial impacts arise from a variety of problems: 54% of low-income Americans who reported a substantial impact on their lives reported a housing legal problem, 52% reported a family and safety problem, and 42% reported a consumer issue problem, and 30% reported a healthcare problem.⁸³

While a large percentage of low-income Americans experienced a civil legal problem within the last year, only 19% sought legal help for these problems.⁸⁴ Thirty-three percent of low-income Americans sought legal help for family and safety problems, while 22% sought legal help for housing help, 14% sought legal help for consumer issues, and 13% sought legal help for health care problems.⁸⁵

The current systems in place are inadequate to provide legal aid to all of the Americans who are experiencing a legal problem.⁸⁶ All licensed lawyers are encouraged to engage in *pro bono* work every year, though this expectation is not nearly enough to adequately address the legal needs for all Americans experiencing a civil legal need. As estimated by the Institute for the Advancement of the American Legal System, it would take 180 hours of *pro bono* work from each licensed lawyer to provide only one hour of legal assistance to every household experiencing a civil legal problem.⁸⁷

In the current justice-needs ecosystem, more than market-driven innovation is needed. In order to facilitate access to justice, innovation must be encouraged to improve access to legal services by including the justice needs of the low-income population in the design of regulatory reform. This includes authorizing new service models that can serve those needs through non-market-driven innovation.

⁸¹ *Id.* at 32.

⁸² *Id.* at 37.

⁸³ *Id.* at 38.

⁸⁴ *Id.* at 44 (reporting that 25% sought legal help for problems that substantially impacted their lives).

⁸⁵ *Id.* at 45.

⁸⁶ *See id.* at 48 (stating that 92% of low-income Americans do not get any or enough legal help for the problems that have substantially impacted their lives).

⁸⁷ Zachariah DeMeola, *Pro Bono Work Should Be Encouraged and Celebrated, But Much, Much More is Needed*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (Oct. 18, 2019), <https://iaals.du.edu/blog/pro-bono-work-should-be-encouraged-and-celebrated-much-much-more-needed>; *see also* INNOVATION FOR JUSTICE, REPORT TO ARIZONA’S LP AND UTAH’S LPP PROGRAM TO ADVANCE HOUSING STABILITY 30 (2022), <https://docs.google.com/document/d/1j-K2L1FOm6lFkXKkSZ89MeEumuFeGtuBQJ2-8ocTx5w/edit>.

A. Positioning Legal Help Where It Is Most Wanted and Needed

The current system governing the ability to provide legal services falls short in three ways: 1) there are too few individuals trained and authorized to help; 2) the legal help comes too late in the process; and 3) the legal services are too far separated from other services that the individuals experiencing a legal issue need to adequately address the problem. As previously explained, *pro bono* hours will not fix the access to justice problem faced by so many Americans. While training more lawyers may seem like an option to address the problem, the number of applicants and applications to law schools has begun to dip over the past couple of admission cycles. As of the end of October 2022, the number of law school applications reported by the Law School Admission Council was down 16.2% when compared to the same time in the 2022 application cycle.⁸⁸ This decline might suggest a decreasing interest in formal legal training, a reality that threatens the viability of any plan to “out-lawyer” the justice gap.

Furthermore, when individuals actually seek assistance for their legal problems, it can be too late to adequately address the issue before adverse consequences occur. As our years of community-led research have illustrated,⁸⁹ the odds often weigh in favor of an individual or organization filing a lawsuit in many types of civil cases, such as medical debt collection.⁹⁰ However, many individuals experiencing a civil legal need do not realize that they are experiencing a problem until the legal consequences begin to affect them.⁹¹ Ultimately, Americans are not seeking the available legal help until it is too late.

In most jurisdictions, the legal assistance available to individuals navigating a legal problem is too separate and too siloed from the other services needed to adequately address the issue. For many civil legal problems, individuals typically seek help from social services and other

⁸⁸ Susan Krinsky, *Early Trends in the 2023 Admission Cycle*, LSAC (Nov. 2, 2022), <https://www.lsac.org/blog/early-trends-2023-admission-cycle> (providing that further analysis of admission trends revealed the 2023 cycle is also down 12.8% from the 2021 application cycle).

⁸⁹ See generally BALSER ET AL., *supra* note 40.

⁹⁰ See generally INNOVATION FOR JUST., DECEMBER 2020 INTERIM REPORT: LEVERAGING THE UTAH SANDBOX TO ADVANCE LEGAL EMPOWERMENT FOR UTAH COMMUNITY MEMBERS EXPERIENCING MEDICAL DEBT (2020), https://docs.google.com/presentation/d/1Zkpb_Sq-xbmTFGQrs5nApmi9IBoa46flWHTg7Zp4DXo/edit#slide=id.gb29913e6ba_0_133.

⁹¹ See Rebecca L. Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 U. ARK. LITTLE ROCK L. REV. 721, 725 (2015).

organizations that are not trained or authorized to give legal advice.⁹² In order to receive all of the services needed to adequately address a civil legal problem, individuals generally must seek out several different organizations, a dynamic that puts them at risk of re-traumatization or disengagement in their journey across organizations, contacts, and systems.⁹³ These negative effects might be combated through the diversification of options for the provision of legal advice. Under such a model, the individuals experiencing a civil legal problem might be able to visit fewer organizations in their journey to justice. Regulatory reform presents the opportunity to position legal aid directly where there is legal need, ensuring that communities do not have “too many doors” standing between them and the resolution of their problem.⁹⁴

B. The Justice Awareness Gap

It must be recognized that regulatory reform efforts continue to emerge in the context of a broader socio-economic problem—namely, that 1) individuals typically do not identify legal problems as legal in nature and that 2) low-income community members typically do not seek help from lawyers, even when aware that their problem is legal. As prior scholarship has noted, many Americans are more likely to do nothing than seek help when faced with a legal problem.⁹⁵ One reason for this trend is that individuals typically do not realize that their problem is legal in nature.⁹⁶ Rather, they believe that the situations they find themselves in are simply “bad luck/part of life,” “part of God’s plan,” or that their problems are “private” and should not be shared with third parties.⁹⁷ These community members—individuals experiencing civil legal problems without recognizing that their problem is legal—can be said to be in the “justice awareness gap.” Those in this category of need will never be served by traditional legal service models that assume consumers will seek out legal assistance.

By focusing on market-driven innovation, regulatory reform efforts run the risk of failing to reach those in both the justice and “justice awareness gaps.” This, in turn, misses the opportunity to radically re-consider who can and who should receive access to legal education and help from our

⁹² See BALSER ET AL., *supra* note 40, at 26-27.

⁹³ See *id.* at 27.

⁹⁴ See *id.*

⁹⁵ Kathryn M. Young, *What the Access Crisis Means for Legal Education*, 11 U.C. IRVINE L. REV. 811, 814-15 (2021).

⁹⁶ *Id.* at 814.

⁹⁷ Sandefur, *supra* note 91, at 725 (providing that only 9% of legal problems were described as “wholly or partially” legal in nature).

institutions. The nonprofit sector, including community-based organizations, has the potential reach and proximity to the problem to re-anchor the drive of innovation. As evidenced by recent mapping efforts in Alaska, expanding the number of pathways to civil justice problem solving has the potential to radically multiply the entry points and likelihood of consumers accessing legal services.⁹⁸ Additionally, community-based organizations potentially interface with consumers at an earlier point in the timeline of their civil legal needs (i.e., the rent “eats first,” so community members experiencing housing instability may likely go to a food pantry before a housing lawyer). These organizations, then, work as a network of resources to offer what is referred to as “continuum-of-care,” or wrap-around services that UPL restrictions have typically siloed legal services from.

Regulatory reform strategies that permit nonlawyer ownership of legal services and modify UPL restrictions are generally believed to invite the changemaking that communities most need. This assumption includes the anticipated investment of organizations in new forms of legal services, the perceived regulatory space for novel and life-saving innovation, and the creation of new service models that leverage local economies to meet basic legal needs through technology and triaging efforts by nonlawyers. But what about the consumer who simply *does not think* of legal services as a solution or who will not be able to afford legal services, whether that cost is \$500 or \$2000?

i4J’s research explores whether *that* consumer—an individual in the current legal ecosystem who either does nothing, attempts self-help, or goes unserved because of the limited resources of legal aid—could be helped by non-market-driven legal service innovation. Specifically, our work seeks to build the bench of those in the nonprofit social service sector equipped to engage in preventative civil justice problem-solving.

⁹⁸ STACEY MARZ, MARA KIMMEL & MIGUEL WILLIS, ALASKA CT. SYS. ACCESS TO JUST. COMM., ALASKA’S JUSTICE ECOSYSTEM: BUILDING A PARTNERSHIP OF PROVIDERS 7-8, 28 (2017), <https://drive.google.com/file/d/1LPtHFvUq4On3cAw2aKAV-c93Q7nny974/view?pli=1> (In Alaska, researchers found that if the pathway to civil justice problem-solving included legal services, social services, medical services, and information services providers, there would be approximately 1,500 possible entry points of legal aid for consumers. These increased entry points would act as a “force multiplier” that “more efficiently and appropriately connects people to the resources they need.”).

IV. I4J'S RESEARCH FOCUS: FOUR STAKEHOLDERS CENTRAL TO COMMUNITY-LED REGULATORY REFORM

Researchers have speculated that librarians, social workers, organizers, counselors, and navigators might become a new nonlawyer sector.⁹⁹ Early adopters of the regulatory reform pathways in Arizona and Utah, however, do not support this hypothesis. One possible explanation for the limited reach of emerging innovations is that regulatory reform decision-makers have been lawyers and judges from within the legal service monopoly they are tasked with reforming.¹⁰⁰ Membership of the Arizona Innovating Legal Services Task Force, for instance, included five judges and justices and thirteen individuals who are lawyers or who otherwise work within the court system.¹⁰¹ In Utah, the state's regulatory sandbox was designed by approximately thirteen lawyers, with additional input in design and implementation from two researchers, two court administrators, and a city council member.¹⁰² Similarly, four of the five Board Members of the Office of Legal Services Innovation in Utah have legal training and/or experience.¹⁰³

To date, the outside voices of nonlawyers have not been widely included in the design and implementation of regulatory reform strategies. But “[i]nnovation requires deep knowledge[]” and unique perspectives of the problems facing communities.¹⁰⁴ The judges and lawyers who have called for regulatory reform are to be commended for their willingness to embrace change, but their relation to and assets in the conversation are limited; they bring the “deep knowledge” to the table. To serve the access to justice goals of regulatory reform, the lived experiences and perspectives of those who are historically and systematically excluded from the current system need to be included for the lived knowledge and expertise they bring to this work. Regulatory reform decision-makers should be listening to the voices of nonlawyers, consumers, and community-based organizations when making

⁹⁹ Marc Lauritsen, Nikole Nelson, David Udell, Matthew Burnett & Maura Kelly, *Presentation at LSC's Innovations in Tech Presentation at LSC's Innovations in Technology Conference 2020: Changing the Unauthorized Practice of Law Rules in More than a Few Ways, Now* (Jan. 16, 2020), <https://lscitc2020.sched.com/event/Y07f/changing-the-unauthorized-practice-of-law-rules-in-more-than-a-few-ways-now>.

¹⁰⁰ See Lauren Sudeall, *The Overreach of Limits on “Legal Advice”*, YALE L. R. F. 637, 643 (2022) (providing that protectionism has insulated the legal profession from serving the public's legal needs).

¹⁰¹ *Task Force on Delivery of Legal Services*, ARIZ. JUD. BRANCH, <https://www.azcourts.gov/Portals/74/LSTF/MemberList011019LSTF.pdf?ver=2019-01-10-100147-403> (last visited Nov. 17, 2022).

¹⁰² Recollection of the author.

¹⁰³ *Who We Are*, UTAH OFF. OF LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org/about/staff-list/> (last visited Nov. 17, 2022).

¹⁰⁴ GILLIAN K. HADFIELD, *RULES FOR A FLAT WORLD* 223 (2016).

decisions on what reforms to make to the rules governing the provision of legal services.

To remediate the siloing that occurs when evaluating and addressing the access to justice crisis, i4J research intentionally centers four key stakeholder categories in the design of new legal regulation: 1) *community-based organizations*, or resource hubs that are public or private nonprofits that provide services to a targeted population within the community; 2) *consumers*, or people experiencing one or more civil justice problem(s); 3) *regulatory reform decision-makers*, generally state Supreme Courts, State Bar Associations, and lawyers who are part of commissions making recommendations to both courts and bar associations; and 4) a *design hub*, or a research and design neutral who can gather information on legal need(s) from the first three stakeholders with the goal of synthesizing the potentially divergent goals of these three stakeholders into effective new legal service models.

These key stakeholders interface at various opportunity spaces in the system of civil justice problem-solving. Consumers are interacting with community-based organizations when they are experiencing problems and seek help. Regulatory reform decision-makers interact with both consumers and community-based organizations by making decisions about the regulation of legal services, including whether community-based organizations can provide legal advice and to what extent. The actions of decision-makers, in turn, impact both consumers and community-based organizations by dictating where and who can provide legal advice. The design hub acts as the link connecting these stakeholders. They interface with community-based organizations, consumers, and regulatory reform decision-makers in this work; they centralize data and communication between stakeholders and they work to design replicable, scalable innovative service models. The design hub brings key stakeholders together to create systems that are more equitable and informed by the multiple, different experiences of consumers and community-based organizations.

A. Community-based Organizations¹⁰⁵

Community-based organizations often engage with under-represented populations before “human problems” become “legal problems.” These organizations are well-positioned to provide upstream preventative civil legal problem-solving in permissive regulatory environments for several reasons. First, community-based organizations want to give legal advice to their clients if their employees have been trained adequately in this area. Community members already ask individuals at community-based

¹⁰⁵ See *infra* Part V(A).

organizations legal questions; training is needed to ensure that clients are being given proper information. Second, community-based organizations have the capacity to give legal advice to their clients within their existing client interaction structure. In this model, legal training is seen as another skill set for their employees. Third, community-based organizations are frustrated with the siloing of services. Community members do not usually experience justice needs without other related, intersecting needs. Community-based organizations are typically unable to help clients with their justice needs. This forces clients to engage many different services to get their needs met, increasing the risk of re-traumatization and disengagement. Fourth, community-based organizations are interested in creating educational pathways and providing more services to their clients. These organizations see legal training as an important additional resource for their staff.

While community-based organizations are willing and capable of providing important legal services to the community, several barriers stand in their way. These barriers include: 1) concern about liability; 2) opposition from legal professionals; 3) potential conflict with ethical codes for some helping professions if permitted to provide concrete legal advice; and 4) the time, education requirements, and financial cost of ALP training are too high. Reducing the time and cost barriers associated with change, however, may increase participation in regulatory reform opportunities.

B. Consumers¹⁰⁶

For the purposes of this research, “consumers” particularly refers to under-represented populations that are currently only served by legal aid organizations or who qualify for and need free civil legal services in the current legal market. These consumers are woefully underserved due to lack of legal aid and *pro bono* assistance.¹⁰⁷ Regulatory reform decision-makers often cite their concerns for consumer protection and need to prevent consumer harm in the design of new legal service models.¹⁰⁸ But regulatory reform decision-makers who are judges and lawyers may bring assumptions to the table about who can safely provide legal services and the risk that consumers who are currently excluded from services entirely are willing to bear. This article seeks to question and upend these assumptions.

¹⁰⁶ See *infra* Part V(B).

¹⁰⁷ LEGAL SERVS. CORP., *supra* note 3, at 48.

¹⁰⁸ Lucy Ricca & Graham Ambrose, *The High Highs and Low Lows of Legal Regulatory Reform*, STAN. L. SCH. BLOGS: LEGAL AGGREGATE (Oct. 17, 2022), <https://law.stanford.edu/2022/10/17/the-high-highs-and-low-lows-of-legal-regulatory-reform-333-2/>.

In i4J's experience, consumers trust an individual who has legal training but not a formal law degree more than they trust a lawyer as their legal advocate. Consumers see finding a lawyer as a waste of time and money, and lawyers are viewed as being out of touch with the communities they serve. Second, consumers are more likely to try to solve their problems independently rather than seeking assistance from a lawyer. Third, consumers want legal advice from a social worker. In fact, when consumers are experiencing housing instability they trust social workers almost as much as they trust their friends and family when they are experiencing certain legal problems. Fourth, consumers are comfortable speaking with advocates about many justice needs. Fifth, consumers want the same person to help them throughout the problem-solving process. Such a model is not available in the current market-driven legal ecosystem. Sixth, consumers want easily-digestible information specific to their situation. Finally, consumers want upstream intervention rather than waiting until the problems become court-involved.

C. Decision-makers¹⁰⁹

Regulatory reform requires amendment to the existing rules governing the profession. For this reason, any changemaking in service of communities requires the endorsement of decision-makers with the authority to change those rules. Two separate mechanisms of change have been explored: state supreme court-driven change and state bar-driven change.¹¹⁰ Change in Utah and Arizona has been driven by the supreme courts. Other states, like California and Florida, have attempted to implement reforms through working groups that were formed by their respective state bar association.¹¹¹ Following a deeply troubling report on the California State Bar and the representational dangers permitted by the state, the California legislature passed a new law that limited the State Bar's ability to pursue regulatory reform efforts.¹¹² This legislation also halted any further exploration of ALP licensing in California.¹¹³

i4J's early experiences in this work suggest that regulatory reform is most successful when it is championed by state judicial leadership. However, judges and lawyers who design regulatory reform structures without nonlawyer input run the risk of embedding new barriers and

¹⁰⁹ See *infra* Part V(C).

¹¹⁰ ENGSTROM ET AL., *supra* note 1, at 17-18.

¹¹¹ *Id.* at 18.

¹¹² Joyce E. Cutler, *California Restrains State Bar From Expanding Nonlawyer Practice*, BLOOMBERG LAW, (Sept. 19, 2022, 6:03 A.M.), <https://news.bloomberglaw.com/business-and-practice/california-restrains-state-bar-from-expanding-nonlawyer-practice>.

¹¹³ Ricca & Ambrose, *supra* note 108.

obstacles for community-based organizations and consumers. In Utah, for example, the state's sandbox application process was not designed for community-based organizations, making it difficult for these organizations to be authorized to provide legal services to the community. The current design of ALP programs assumes that applicants have a paralegal education and experience or have the time, money, and flexibility to complete the course work, experiential requirements, and certification exam. The current landscape of innovations primarily consists of market-driven options, the likes of which can pose problems for community-based organization participation in regulatory reform opportunities. It is important for decision-makers to include other, historically excluded perspectives in the design and implementation of innovations. This ensures that community-based stakeholders have the opportunity to provide feedback on the feasibility of eligibility, training, certification, ethics, and discipline requirements associated with regulatory reform.

D. A Design Hub¹¹⁴

Across our work, a design hub can best be understood as an organization well-versed in design and systems thinking research methodologies that is engaged with communities as co-creators of new and innovative approaches to solving legal problems. By bridging sectors and siloes, the design hub uses an interdisciplinary approach to advance changemaking. In the present article and research, i4J played the role of design hub, but any state considering regulatory reform should consider partnering with a research and design neutral that can serve in this capacity.

Such a role would necessarily include gathering legal need information from the first three stakeholders and helping synthesize the potentially divergent goals of these stakeholders into effective new legal service models. The use of a design hub can help bridge the gap between the other three stakeholders in four ways. First, the design hub can gather information as a trusted intermediary across sectors. Second, it can synthesize information and ensure goals of varied stakeholders are accounted for. Third, the design hub can trouble-shoot the design and implementation of regulatory reform efforts. Finally, the design hub may engage law students in building new regulatory reform efforts, as future leaders of innovative efforts and members of the profession.

V. I4J'S RESEARCH AND DESIGN APPROACH

i4J's interdisciplinary research teams conduct action-based, community-engaged research that exposes inequalities in the legal system

¹¹⁴ See *infra* Part VI.

and creates new, replicable strategies for legal empowerment using design and systems thinking research methodologies. i4J's design and systems thinking framework engages in problem identification and problem-solving through a highly visual, five-part iterative design process: empathize, define, ideate, prototype, and test. This process is, then, layered with systems thinking strategies and practiced across our work.¹¹⁵

i4J's two-pronged design and systems thinking approach seeks to position community at the center of the design process as solution co-creators.¹¹⁶ This aim is reinforced with trauma-informed practices that are responsive to the needs of low-income populations experiencing civil justice problems.¹¹⁷ i4J recognizes that interactions with legal service providers and the justice system can be traumatizing and utilizes trauma-informed practices when engaging with all community members.¹¹⁸ i4J's trauma-responsive work¹¹⁹ includes mitigating re-traumatization to the extent possible. Re-traumatization occurs when someone experiences the symptoms of the traumatic event after the event has concluded. Re-traumatization can create or worsen trauma symptoms.¹²⁰ i4J's work is guided by the understanding that "legal advocates have a duty to align our work to uplift the voices and demands of those who don't have a seat at the table."¹²¹ Our methodology is further rooted in the concept that it is not the

¹¹⁵ See BALSER ET AL., *supra* note 40, at 28 (containing more information about i4J's application and design systems thinking methodologies); INNOVATION FOR JUST., *supra* note 43, at 41-45 (same).

¹¹⁶ *Case Studies*, DESIGN KIT, <https://www.designkit.org/case-studies.html> (last visited Dec. 4, 2022).

¹¹⁷ See Cayley Balser, *Trauma-Informed Practices at Innovation for Justice (ij4)*, INNOVATION FOR JUST., <https://www.innovation4justice.org/updates/trauma-informed-practices-at-i4j> (last visited Oct. 1, 2023) (discussing i4J's implementation of trauma-informed practices in the classroom and within the community).

¹¹⁸ These trauma-informed practices include, but are not limited to: recognizing that anyone can experience a traumatic event and have varying reactions to that event; minimizing the risk of re-traumatization through creating a safe environment and supporting control, choice, and autonomy; collaborating with community members throughout the entire initiative; showing organizational commitment to trauma-informed care; and discussing secondary trauma and self-care strategies with all research team members throughout the research process.

¹¹⁹ As used in this article, "trauma-responsive" refers to the implementation of trauma-informed practices.

¹²⁰ See Balser, *supra* note 117 (providing more information about re-traumatization and how i4J is implementing trauma-informed practices in the classroom and within the community).

¹²¹ Allyssa Victory & Janani Ramachandran, *Call to Action: The Need for Community Lawyering*, ALAMEDA CNTY. BAR ASS'N (Mar. 18, 2021), <https://www.acbanet.org/2021/03/18/call-to-action-the-need-for-community-lawyering/>.

lawyer's role to lead change, but rather to "assist the communities that do to reach their goals."¹²²

Since 2019, i4J has been leveraging the unauthorized practice of law reform opportunities in Arizona and Utah to design and implement new legal service models grounded in community-based advocacy and partnerships with community-based organizations. As previously explored, these Initiatives are in various stages of implementation and evaluation.¹²³

VI. RESEARCH QUESTIONS AND FINDINGS

Over the course of four years designing, building, and testing non-market driven legal service models with and for low-income community members, i4J's research and center of inquiry has targeted three of the key stakeholders identified above: community-based organizations, consumers, and decision-makers. These research questions, and the key findings from our research, are summarized in the subsections that follow.

A. Community-based organizations

Creating opportunity for community-based organizations to leverage unauthorized practice of law reform is only a worthwhile endeavor if they want to be a part of a new frontier of civil legal help for low-income community members. To explore the interest and needs of this stakeholder, this research focused on three research questions.

iii. Research Question 1. Are community-based organizations aware of regulatory reform opportunities?

Community-based organizations are generally not aware of regulatory reform opportunities. Most of i4J's research in this area has focused on the awareness of ALP programs in Arizona and Utah. In the instances in which community-based organizations have heard of ALP programs, they are not familiar with the requirements or scope of authorization after certification.¹²⁴ At the start of each i4J regulatory reform Initiative, the research team engages with many stakeholders, including community-based organizations, which work in the system. These conversations center around explaining the project, often including education about regulatory reform vehicles and the scope of possibility

¹²² *Id.*

¹²³ See *i4J's Service Impact Area Initiatives*, INNOVATION FOR JUST., <https://www.innovation4justice.org/work/service> (last visited Oct. 1, 2023) (providing more information about i4J's community-based advocacy initiatives).

¹²⁴ See BALSER ET AL., *supra* note 40, at 42-44.

when leveraging those vehicles. This is often new information for the community-based organizations and requires further explanation.

While most of i4J's research in this area has focused on awareness of ALP programs, most community-based organizations are also unaware of the ways they could leverage Utah's regulatory sandbox. As discussed in the regulatory reform decision-makers section of this report, the sandbox application process is confusing for community-based organizations. Additionally, i4J has often observed that community-based organizations are overburdened, under-resourced, do not have the capacity to complete the arduous sandbox application process, and struggle to keep up with the data reporting requirements.

iv. Research Question 2. Do community-based organizations want to give legal advice to their clients?

Community-based organizations see the opportunity to provide legal advice in-house as a valuable solution to the current challenges caused by the siloing of legal services. Justice needs and health needs intersect and impact each other, but are often treated in silos.¹²⁵ Typically, consumers have to go to many different services to get their needs met, often when the event that precipitated these needs was a singular incident. This process of having to explain one's situation to multiple providers over and over increases the risk of consumer re-traumatization.¹²⁶ The current siloing of services requires consumers to interact with multiple providers to problem-solve, which in turn leads to consumer disengagement with the justice system.¹²⁷ Consumers often prioritize housing, financial, and health needs over civil justice problem-solving, meaning that if they have to seek legal services somewhere beyond where they are already going for help, it often does not happen.¹²⁸

One interviewee for i4J's CJWs in Healthcare Initiative expressed their frustration with the siloing of services, saying that "social service providers are all doing really incredible work, but are not legally empowered to assist clients with these needs."¹²⁹ Community-based organizations desire more coordination between service providers— both legal and nonlegal— to

¹²⁵ Interview with Salt Lake Cty. cmtty. member (Sept. 2, 2022) (transcript on file with author).

¹²⁶ See generally Negar Katirai, *Retraumatized in Court*, 62 ARIZ. L. REV. 81 (2020) (discussing more information about re-traumatization as a barrier to justice).

¹²⁷ Interview with Salt Lake Cty. cmtty. member (Sept. 10, 2022) (transcript on file with author).

¹²⁸ *Id.*

¹²⁹ *Id.*

streamline and meet consumer needs in a helpful and efficient way.¹³⁰ One staff member of a community-based organization expressed frustration with unauthorized practice of law restrictions. During an interview for i4J's Housing Stability Legal Advocate Initiative they said, "it is difficult to explain the eviction process without giving legal advice and getting into potential jeopardy."¹³¹

Community-based organizations want to give legal advice to their clients, with adequate training. The ability to give legal advice to clients that community-based organizations are already serving is a strong incentive for participation in advocate training.¹³² People are already asking community-based organizations legal questions, and staff would like training to properly advise clients.¹³³ Knowledge from legal training can seamlessly fit into services that community-based organization staff are already providing to consumers.¹³⁴ However, community-based organizations have stressed the necessity that this training be manageable and not take significant time away from their existing duties.¹³⁵ Community-based organizations indicated that proper training would assuage their fear of providing the wrong information.¹³⁶ They also expressed desire for any legal training to have the standard markers of credibility (e.g., an accompanying certificate, endorsement by a university or the state, etc.).¹³⁷

Community-based organizations have the capacity to give legal advice to their clients within their existing client interaction structure. i4J learned from community health workers in Utah that their interactions with clients are long enough to provide legal advice and that many of their clients would benefit from legal advice.¹³⁸ They see this training and certification as a way of furthering their community health worker skills, and this certification would help them provide more complete services.¹³⁹

Community-based organizations are interested in creating educational pathways and providing more services to their clients. One

¹³⁰ Interview with Utah cmtty.-based org. staff member (Sept. 10, 2020) (transcript on file with author).

¹³¹ See BALSER ET AL., *supra* note 40, at 42-44.

¹³² See generally *Id.*

¹³³ See generally *id.*

¹³⁴ See generally *id.*

¹³⁵ See generally INNOVATION FOR JUST., INTERIM CURRICULUM REVIEW: LICENSED LEGAL ADVOCATE PILOT, FALL 2022 (2022), <https://docs.google.com/document/d/1mGzOMeW0zRjVBXMrRkkqjA2wPSe5pT5rEP12FBKoty8/edit?usp=sharing>; BALSER ET AL., *supra* note 40.

¹³⁶ See generally INNOVATION FOR JUST., *supra* note 90; BALSER ET AL., *supra* note 40.

¹³⁷ See generally INNOVATION FOR JUST., *supra* note 90.

¹³⁸ *Id.*

¹³⁹ *Id.*

community-based organization staff member in Utah said, “any way you can open doors for people is powerful. Such as educational pathways.”¹⁴⁰ When asked about limited-scope legal training for landlord-tenant issues, one staff member at a community-based organization said it “would be a great added resource for agency staff that are faced with these situations all the time who are not comfortable with providing that advice or have to refer them out to legal aid.”¹⁴¹ In Utah, university and professional organizations are exploring various educational pathways specifically for community health workers.¹⁴² This exploration of opportunities includes providing legal training through university courses or via continuing education requirements for certification.¹⁴³

v. Research Question 3. What barriers limit community-based organizations’ ability to leverage regulatory reform opportunities?

Concern about liability is a barrier to community-based organizations leveraging regulatory reform opportunities. One of the most-identified barriers to community-based organizations’ ability to leverage regulatory reform is the concern about liability. Some of the common questions that organizations have in discussions of regulatory reform include: Who would be responsible for malpractice insurance? Who would be willing to insure nonlawyers providing legal advice? What standard would advocates be held to – that of a lawyer or that of their existing role? What happens if the advocate provides the wrong information?¹⁴⁴

Community-based organizations also expressed concerns about overstepping the bounds of certification, and desire specific modules within training to explain the scope of legal services they would be authorized to provide.¹⁴⁵

Providing concrete advice is in conflict with ethical codes for some helping professions, many of whom are employed at community-based organizations. To date, similar duties and obligations as lawyers have been

¹⁴⁰ INNOVATION FOR JUST., LEVERAGING REGULATORY REFORM TO ADVANCE ACCESS TO JUSTICE: JANUARY 2023 DRAFT 48 (2023), https://docs.google.com/document/d/1064M_OpQwgm7CFBqIkiv9A0W_nh6QvSTr_KL_G5wc1hw/edit.

¹⁴¹ See INNOVATION FOR JUST., EXPANDING ARIZONA’S LP AND UTAH’S LLP PROGRAM TO ADVANCE HOUSING STABILITY 43 (2022), <https://docs.google.com/document/d/1j-K2L1FOm6lFkXKkSZ89MeEumuFeGtuBQJ2-8ocTx5w/edit>.

¹⁴² See generally INNOVATION FOR JUST., *supra* note 43.

¹⁴³ *Id.*

¹⁴⁴ See generally INNOVATION FOR JUST., *supra* note 90; BALSER ET AL., *supra* note 40.

¹⁴⁵ See INNOVATION FOR JUST., *supra* note 140, at 48.

applied to individuals providing legal services who are not lawyers.¹⁴⁶ However, this is not always compatible with other professions' ethical codes. For example, the Rules¹⁴⁷ conflict with social workers' code of ethics in two main areas: confidentiality and giving advice.¹⁴⁸ The Rules prohibit breaking confidentiality, with few exceptions.¹⁴⁹ In contrast, the National Association of Social Workers (NASW) code of ethics allows for more confidentiality exceptions, and imposes more comprehensive mandatory reporting requirements on social workers.¹⁵⁰ Further, the role of a legal service provider necessitates giving advice to achieve the desired case outcome. This conflicts with the NASW Standard for self-determination – where social workers help clients to identify and clarify goals, while allowing clients to determine their best course of action. It is generally accepted that this standard does *not* include providing advice about courses of action to take.¹⁵¹

The conflict between ethical codes and professional rules must be reconciled before this service model is implemented, so both service provider and consumer will know the scope of services.¹⁵² As communities know best, “[a]nyone doing this type of [housing] advocacy would need to know when they have to say, ‘I don’t know’ and direct them to a lawyer.”¹⁵³

The time, education requirements, and financial costs of ALP training and certification are too high. Community-based organization leadership expressed concerns about having enough staff and time within work schedules to participate in training.¹⁵⁴ ALP eligibility assumes prior traditional legal experience such as paralegal training or higher-education-based legal education. In contrast, social service providers have a range of

¹⁴⁶ See INNOVATION FOR JUST., *supra* note 32 (providing an example of creating rules for advocates who are not lawyers).

¹⁴⁷ “Rules” refers to the American Bar Association’s (A.B.A.) Model Rules of Professional Conduct (2009).

¹⁴⁸ For a more in-depth examination of these challenges, see Brigid Coleman, *Lawyers Who Are Also Social Workers: How to Effectively Combine Two Different Disciplines to Better Serve Clients*, 7 WASH. U. J. L. & POL’Y 131 (2001).

¹⁴⁹ MODEL RULES OF PRO CONDUCT r. 1.6 (AM. BAR ASS’N 2020) (providing that exceptions include permissive, not mandatory, exceptions).

¹⁵⁰ NAT’L ASS’N SOC. WORKERS, CODE OF ETHICS (2021) (explaining that mandatory reporting includes suspected child and vulnerable person’s abuse).

¹⁵¹ Coleman, *supra* note 148, at 144 (“A social worker’s goal is not to give advice to his clients but rather to help his clients think and act for themselves.”).

¹⁵² Some possible ways to reconcile include explicitly stating what rule or code takes precedent in which situation within authorizing documents, with input from ethics experts in both law and social work.

¹⁵³ BALSER ET AL., *supra* note 40, at 44. While this quote is from i4J’s research around housing instability, this sentiment has been echoed by consumers, community-based organizations, and legal professionals throughout all i4J regulatory reform Initiatives.

¹⁵⁴ *Id.*

education experience: 21.7% have a high school diploma or equivalent, 34.7% have some college experience, 22.9% have a college degree, and 12.8% have an advanced degree.¹⁵⁵ While many community-based organization staff interviewed in the development of i4J Initiatives had at least an associate's degree, no community-based organization staff had substantive legal experience. The training time commitment and cost were the next greatest concerns. Community-based organization staff could not dedicate a full-semester of work while working a full-time job in the public sector. The costs of the programs were also seen as large barriers: between 25% and 27% of social service providers providing individual and family services earn an income below 200% of the federal poverty guidelines.¹⁵⁶

i4J's DVLA Initiative was the first of i4J's Initiatives to identify the barrier that time-intensive training presents to community-based organizations who wish to train advocates. i4J worked with DVLA's to balance their lives as working professionals, navigating the needs of their job while still providing enough training for them to confidently provide competent legal advice to the consumers they interact with. Creating the training online offered flexibility for advocates to participate in the Initiative, and the inclusion of an in-person meet-up allowed the advocates to ask questions and receive in-person feedback about their training.¹⁵⁷ The DVLA Initiative's authorization through Administrative Order allowed for more flexibility in design, in contrast to other i4J Initiatives that attempted to leverage other already-existing regulatory reform mechanisms such as ALP programs or the Utah Sandbox.

Reducing the time and cost barriers may increase community-based organization participation in regulatory reform opportunities. If cost, education, and experience requirements were reduced, a majority of community-based organizations that i4J spoke with would be interested in participation in training and enthusiastic about such a program.¹⁵⁸ As our years of research have demonstrated, there is evidence of engagement and collaboration among community health workers, and a desire to create more education pathways for workforce development, more broadly.¹⁵⁹ The executive director of one community-based organization told i4J: "if the training were free, both staff and volunteers would take it. Volunteers

¹⁵⁵ HYE JIN RHO, HAYLEY BROWN & SHAWN FREMSTAD, CTR. FOR ECON. AND POL'Y RSCH., A BASIC DEMOGRAPHIC PROFILE OF WORKERS IN FRONTLINE INDUSTRIES 7 (2020), <https://cepr.net/wp-content/uploads/2020/04/2020-04-Frontline-Workers.pdf>.

¹⁵⁶ *Id.* at 8. This statistic includes those providing food, housing, and emergency services to communities.

¹⁵⁷ INNOVATION FOR JUST., *supra* note 32, at 10.

¹⁵⁸ *See generally* BALSER ET AL., *supra* note 40.

¹⁵⁹ *See generally* INNOVATION FOR JUST., *supra* note 43.

always are looking [sic] to do more help, and this would be a nice thing to offer to staff.”¹⁶⁰

B. Consumers

Embedding new forms of preventative civil-justice problem-solving within community-based organizations is only a worthwhile endeavor if consumers want to receive civil legal help from said organizations and view these organizations as trusted intermediaries. To explore the interest and needs of consumers as stakeholders, this research focused on three research questions.

i. Research Question 1. Will people experiencing civil legal issues trust someone with legal training but not a JD as their legal advocate?

Consumers trust someone with legal training but no JD more than they trust a lawyer as their legal advocate. Consumers think engaging with the justice system is pointless, and that “lawyers are for rich people.”¹⁶¹ Consumers view interacting with lawyers as time consuming, expensive, and intimidating.¹⁶² One individual who has previously experienced housing instability told i4J that finding legal help “will probably just be a waste of time and money. I know lawyers are expensive, and I wouldn’t even know where to go.”¹⁶³ Consumers don’t think that lawyers look like or understand the community.¹⁶⁴ Consumers want a safe and supportive venue for expressing their concerns and learning how to successfully navigate their justice issues. They are excited about advocates who know the systems and would be able to provide direction about resources and what to do next.¹⁶⁵

When consumers were surveyed as part of the HSLA Initiative design, 66.7% of respondents were interested in receiving legal advice from an advocate, compared to only 16.7% interested in receiving legal advice from a lawyer.¹⁶⁶ This is consistent with other responses across i4J service model design efforts, including MDLA and CJWs in Healthcare Initiatives.¹⁶⁷ Consumers already ask community-based organizations legal questions,

¹⁶⁰ BALSER ET AL., *supra* note 40, at 43.

¹⁶¹ Interview with Salt Lake Cty. cmtty. member (Sept. 6, 2022) (transcript on file with author).

¹⁶² See INNOVATION FOR JUST., *supra* note 140, at 55.

¹⁶³ BALSER ET AL., *supra* note 40, at 33.

¹⁶⁴ See generally INNOVATION FOR JUST., *supra* note 43.

¹⁶⁵ See generally BALSER ET AL., *supra* note 40.

¹⁶⁶ *Id.*

¹⁶⁷ See generally INNOVATION FOR JUST., *supra* note 35; INNOVATION FOR JUST., *supra* note 43; INNOVATION FOR JUST., *supra* note 135.

indicating that consumers are comfortable with these services and would like them to also help with legal problems. When experiencing housing instability, consumers trust social workers almost as much as they trust friends and family when they are experiencing a problem, followed by places of worship next, and lawyers last.¹⁶⁸

Consumers are more likely to try to solve problems on their own than seek help from a lawyer. In both CJWs in Healthcare and HSLA Initiative design, consumers reported preferring to solve problems on their own instead of seeking help from a lawyer. One consumer who participated in an HSLA Initiative interview said, “I like to solve these issues by myself. Because, you know, you seek legal help. That’s like more money, you know, you’re spending more money for someone to help you.”¹⁶⁹ Similarly, when asked how likely they were to seek help from various people, surveyed Utah consumers said they were more likely to try to handle the problem themselves instead of contacting a lawyer.

Consumers are comfortable speaking with advocates about a wide range of justice needs. When surveyed, 69 Utah consumers were asked whether they would be comfortable speaking with a CJW¹⁷⁰ about specific justice needs. These consumers indicated that they were most comfortable speaking with a CJW about housing issues. Disability insurance was the second-highest need that Utah consumers reported being comfortable speaking to a CJW about. Consumers indicated that they were less comfortable seeking help from a CJW for issues of health insurance and custody, separation, or divorce issues. Finally, these Utahns stated that they were least comfortable approaching a CJW for help with financial issues, including debt, and domestic violence.¹⁷¹

Early evaluations of the DVLA Initiative indicate that consumers trust DVLA and find them to be helpful. While the evaluation is still ongoing, data from exit surveys in the DVLA Initiative indicate that the majority of consumers who interact with a DVLA report positive, helpful interactions. One consumer said that she felt like the DVLA she worked with “was very detailed, knowledgeable, and kind”¹⁷² and that the DVLA

¹⁶⁸ See generally BALSER ET AL., *supra* note 40.

¹⁶⁹ *Id.* at 33.

¹⁷⁰ A Community Justice Worker, in this prototype, is someone in the community who is not a lawyer but has been trained to provide legal advice and problem-solving help on specific issues. To learn more about this proposed service model, see INNOVATION FOR JUST., *supra* note 43.

¹⁷¹ See *id.* These responses were a result of an online survey, where participants were not speaking with a person and minimal context was provided about the relationship between the participant and the prototype service provider. Further research about the impact of familiarity and relationship on comfortability is recommended.

¹⁷² See INNOVATION FOR JUST., *supra* note 135, at 6.

“was incredibly understanding about the situation.”¹⁷³ Another respondent said that the DVLA “was pleasant and very knowledgeable. She stressed important points to remember and that helped a lot.”¹⁷⁴ One consumer emphasized that the DVLA’s patience and kindness “helped a lot.”¹⁷⁵ Additionally, consumers reported that “the support at any given time was much appreciated”¹⁷⁶ and that the DVLA’s were “helpful”¹⁷⁷ and “amazing.”¹⁷⁸

ii. Research Question 2. What will effectively nudge consumers to engage with advocates who have legal training but not a JD?

Consumers want the same person to help them throughout the problem-solving process. Consumers want help at the first sign of a problem and feel that continuity of service is critical. When asked to rank what is most important to them when seeking help, every respondent experiencing housing instability selected “working with the same person until the problem is solved (not having to work with multiple people).”¹⁷⁹ They want a person who is there to help them “throughout the entire process” so that things don’t get lost between steps.¹⁸⁰ This continuity would also increase and align with trauma-informed practices, because it would reduce the number of times a consumer has to risk re-traumatization by explaining their situation to siloed service providers.¹⁸¹ When it isn’t possible for the same person to help throughout the process, warm handoffs between providers are more desirable than providing resources that the consumer must contact themselves.¹⁸² Consumers also prioritize speaking to a real person, as opposed to using technology, when problem-solving their justice issue.¹⁸³

Consumers want assurances that their advocate is properly trained and certified. Consumers want to know that the person providing services completed the requisite training for certification and is providing

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ See INNOVATION FOR JUST., *supra* note 140, at 59.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ BALSER ET AL., *supra* note 40, at 40.

¹⁸⁰ *See id.*

¹⁸¹ *See generally* INNOVATION FOR JUST., *supra* note 35; INNOVATION FOR JUST., *supra* note 43; Katirai, *supra* note 126.

¹⁸² *See generally* INNOVATION FOR JUST., *supra* note 43.

¹⁸³ *See generally* INNOVATION FOR JUST., *supra* note 40.

information and advice that the consumer can trust and rely on.¹⁸⁴ When asked about what advocate qualifications are important, Utah consumers ranked “hours of experience” as most important, followed by references from certified experts. Third was recommendations from someone they know, fourth was number of outside certifications, and least important was training at a recognized university.¹⁸⁵ Consumers want to know that their advocate knows the extent of their training and accompanying limitations—they expect a referral when services are outside the scope of what the advocate is authorized to provide.¹⁸⁶

Representation is very important to consumers when seeking legal services. Consumers want to seek services from legal advocates who look like the consumers to whom they are providing services; they prefer individuals who understand their experiences and are trusted members of their community.¹⁸⁷ On a scale of 1-5 (with “5” indicating high levels of agreement and “1” indicating high disagreement), the average response of 20 survey participants was 4.5, that the provider speaks the same language as the consumer.¹⁸⁸ This is especially important in diverse areas. For example, shared language between consumer and service provider emerged across three distinct rounds of community engagement in i4J’s CJWs in Healthcare Initiative in West Valley City, Utah. In a city where over 100 languages are spoken and that is home to a vibrant, diverse community who experience many civil justice needs, this finding cannot be overstated.¹⁸⁹

iii. Research Question 3. What types of legal advocate services are most important to people experiencing civil justice issues?

Regardless of scope of service, trauma-informed care should be the standard when providing services. Generally, people who are experiencing a civil justice need are dealing with some of the worst moments of their lives. Further, interacting with the civil justice system can be a trauma experience, regardless of what is going on in the consumer’s life outside of court involvement. One individual who had previously experienced housing instability shared: “the psychological impact of being

¹⁸⁴ See generally *id.*; INNOVATION FOR JUST., *supra* note 35.

¹⁸⁵ See generally INNOVATION FOR JUST., *supra* note 43.

¹⁸⁶ See *id.* This is also important to community-based organization staff who may become advocates as well as the current bench and bar including regulatory reform decision makers.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Civil justice needs data on file with the author; see generally BALSER ET AL., *supra* note 40; see also *Health + Innovation + Impact*, UNIV. OF UTAH: W. VALLEY, <https://westvalley.utah.edu/> (last visited Jan. 13, 2023).

in survival mode still has effects to this day.”¹⁹⁰ In a different interview, a community-based organization staff member explained the importance of consistency when interacting with someone experiencing housing instability: “we need to be alongside the person because they are traumatized and they can’t really do it alone, so you need to be with them going through this.”¹⁹¹

To date, all i4J regulatory reform Initiatives have incorporated a trauma-informed practice module. This seems to be the exception, rather than the rule, when innovative service models are proposed and authorized. Out of all states that have active and proposed ALP programs, only California required that every ALP complete additional trauma-informed practice training.¹⁹² However, it must be noted that California is no longer moving forward with their paraprofessional program.¹⁹³ Minnesota, meanwhile, requires trauma-informed training for ALPs working on child and domestic abuse cases.¹⁹⁴

Consumers want upstream intervention, before problems become court-involved. Consumers experiencing housing instability want help at the first sign of a problem, as soon as they think they might miss a rent payment.¹⁹⁵ People experiencing medical debt want the opportunity to speak with an advocate as soon as they receive a medical bill, especially if they know they will not be able to pay it in full.¹⁹⁶ Even when a specific justice need is not identified, consumers still want upstream intervention. Out of 69 surveyed Utah consumers, 30 indicated that they would like problem-solving help with a legal issue when the problem begins interfering with their daily life.¹⁹⁷ Participants felt that this timing “seem[ed] to be the most appropriate use of resources,”¹⁹⁸ that this “is when [they] would be the most stressed out and need help,”¹⁹⁹ and that they “wouldn’t want to bother [anyone] unless it interfere[d] with [their] life.”²⁰⁰ Additionally, consumers identified this timing as the point at which the problem “is no longer ignorable”²⁰¹ and “it would become more difficult to manage”²⁰² and they

¹⁹⁰ BALSER ET AL., *supra* note 40, at 33.

¹⁹¹ *Id.* at 45.

¹⁹² HOULBERG & DROBINSKE, *supra* note 1, at 44.

¹⁹³ *Id.* at 18.

¹⁹⁴ *Id.* at 45.

¹⁹⁵ *See generally* BALSER ET AL., *supra* note 40.

¹⁹⁶ *See generally* INNOVATION FOR JUST., *supra* note 35.

¹⁹⁷ *See* INNOVATION FOR JUST., *supra* note 43, at 80.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

“would need more help.”²⁰³ 24 out of 69 surveyed Utah consumers indicated it would be most helpful to be contacted even further upstream, when they think it might become a problem.²⁰⁴ Participants felt that this timing “would give ... the most control over the situation,”²⁰⁵ would be “before things get out of hand,”²⁰⁶ would “prevent the worst from happening,”²⁰⁷ and that it would be “best to receive help before it becomes a bigger problem.”²⁰⁸ Further, consumers told the research team that it’s “better to solve the problem early on”²⁰⁹ and problem-solve whether “what was becoming a stress factor was a real issue.”²¹⁰

Consumers have different priorities for what types of legal advocate services are most important depending on the legal issue.

DVLA scope: DVLA’s are authorized to assist domestic violence (DV) survivors by giving legal advice on urgent legal needs during initial intake, giving legal advice during completion of forms, giving legal advice about case preparation, and having a quiet seat at the table when consumers go to court hearings. Consumers, family law judges, law professors, and practitioners provided feedback on the DVLA scope of service. Findings from those feedback interviews included that “[DVLA’s] should identify both legal and emotional issues and the type of help that [consumers] need to navigate the legal process.”²¹¹ It was suggested that DVLA’s should have a seat at the table during hearings “because as someone who would prepare the [consumers] for the hearings, they would be well-equipped to assist them during the hearings.”²¹² The DVLA Initiative was “designed to fill the specific legal knowledge gaps of DV lay legal advocates.”²¹³ This training was designed to supplement the real-world experience that the lay advocates already have, not to provide them with a JD-level of comprehensive legal training.²¹⁴

MDLA scope: The MDLA Initiatives have varying intervention points to meet the needs and desires of a wide range of consumers and other stakeholders. Consumers expressed a desire for CHW’s to do all negotiations with healthcare providers, but want to take a more active role and

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ INNOVATION FOR JUST., *supra* note 32, at 6.

²¹² *Id.*

²¹³ *Id.* at 9.

²¹⁴ *Id.*

collaborate with their advocate during negotiations with creditors. The court diversion Initiative is focused on intervention further downstream from CHW intervention, but still seeks to problem-solve before the complaint is filed. At this stage in the medical debt journey, consumers want help from an advocate navigating the system, filing documents, preparing for court, and finding and accessing other legal resources.²¹⁵ Accordingly, MDLAs scope of service can include assisting with insurance coverage, Medicaid, billing, negotiating payment plans, financial assistance programs and debt management, fees, court procedure, settlement, garnishment, and bankruptcy options. However, the MDLA curriculum is modular, allowing the community-based organizations participating in the MDLA Initiative to customize their advocates' learning for offering either upstream or court-adjacent legal help.

HSLA scope: Consumers experiencing housing instability want to work with an advocate when it comes to completing legal paperwork, negotiating with landlords, and planning next steps for problem-solving their housing situation.²¹⁶ Consumers are more confident in an advocate's ability to prepare legal paperwork for them than they are in their own ability to prepare legal paperwork.²¹⁷

Given what i4J learned from consumers when designing the HSLA Initiative, the proposed scope of the Initiative has five parts: first, community-based organizations issue-spot for housing instability at intake and know the scope and limits of their authorization as a legal advocate. Issue spotting at intake is often before consumers recognize that their housing problem is also a legal problem, and allows for consumer-desired upstream intervention. Second, HSLAs will help tenants problem-solve before a housing issue goes to court. This continues the issue-spotting process, and adds providing legal advice and negotiating with landlords on behalf of tenants. Third, HSLAs give legal advice to tenants about engaging with the civil legal system. HSLAs will be positioned to advise consumers who have received an eviction notice about the process and timeline, completion of forms, and the potential value of interacting with the civil legal system during the eviction case. Fourth, HSLAs will be trained to identify viable defenses and assist tenants in asserting those defenses. Last, HSLAs would be able to assist tenants after eviction. This includes identifying any potential appeals, navigating any debt collection actions that result from the eviction suit, and aiding in finding housing.²¹⁸

²¹⁵ See generally INNOVATION FOR JUST., *supra* note 35.

²¹⁶ See BALSER ET AL., *supra* note 40, at 49-52.

²¹⁷ *Id.* at 50.

²¹⁸ *Id.* at 49-50 (explaining that in some states, like Utah, the debt collection case is a continuation of the eviction case, where most consumers do not know that they have to

C. Regulatory Reform Decision-Makers

Successful regulatory reform efforts in Arizona and Utah were launched by the Supreme Courts of each respective state. By contrast, failed efforts to stand up regulatory reform in California through the State Bar seem to suggest that regulatory reform is likely going to be most successful when it is designed and implemented by state court leaders. For this stakeholder, the goal of increasing access to affordable legal services must be balanced against the responsibility of consumer protection. Regulatory reform decision-makers are charged with ensuring that the people and technologies that provide legal help in a new legal services frontier are properly trained, that consumers are not harmed by these new forms of legal services, and that regulatory oversight is in place to monitor for consumer harm. Recent scholarship sets out a useful framework for these regulatory considerations.²¹⁹ In addition to the above-mentioned components of regulatory structure, i4J's research focused on three research questions.

i. Research Question 1. Are regulatory reform decision-makers considering non-market-driven innovation in the design and implementation of regulatory reform?

i4J's early experiences in Arizona and Utah suggests that regulatory reform decision-makers are *not* considering non-market-driven innovation when designing and implementing regulatory reform, but that they are open to changing that. ALP programs and the Utah sandbox present barriers and challenges specifically for community-based organizations trying to leverage the mechanisms for non-market-driven services.

The Utah sandbox application process was not designed for community-based organizations. As i4J has recorded across our advocacy Initiatives, Utah's sandbox application process is confusing for community-based organizations who are seeking authorization in five key areas.²²⁰ First, the required disclosure language for entities that are not law firms is geared

update their address with the court after they leave their housing, and therefore do not receive important court communications about the debt collection action).

²¹⁹ See generally THOMAS CLARKE & LUCY RICCA, STAN. L. SCH., A FRAMEWORK FOR DESIGNING AND IMPLEMENTING LEGAL REGULATION, (2022), <https://law.stanford.edu/wp-content/uploads/2022/07/SLS-CLP-Regulatory-Reform-Full-Report-7.25-FINAL.pdf>.

²²⁰ These areas were identified through i4J's work assisting community-based organizations in drafting Sandbox applications for the Medical Debt Legal Advocate Initiative. These applications were prepared between January and April 2021, when the September 20, 2020 and March 22, 2021 versions of the Sandbox manual were available. The Sandbox is actively engaged in ongoing iteration and improvement of its processes and forms.

towards a for-profit model. The references to “ownership” and “company” in the required disclosure to consumers is confusing because community-based organizations often have several funding sources and typically do not consider themselves to be “owned.”

Second, the use of the words “business,” “corporate,” and “company” in the sandbox application’s Confirmation of Eligibility section is confusing for community-based organization applicants because they do not have business motives, but want to answer the questions fully and accurately. Community-based organizations generally do not have traditional business structures or relationships and have expressed concern about the time it could take to list all donors, grant funding, or government funding sources. There is confusion about whether company or business relationships are encompassed in the structure of a 501(c)(3) nonprofit, and anxiety about whether questions were answered correctly based on the community-based organization’s interpretation of “business,” “corporate,” and “company.”

Third, the risk category for sandbox projects is currently determined by the level of lawyer involvement. However, the distinction between nonlawyers with lawyer involvement and nonlawyers without lawyer involvement is unclear because the relevant language describing “involvement,” while encouraging innovation by being open-ended, is largely focused on software and technology-based regulatory reform projects – not community based involvement. Because lawyer involvement reduces the risk categorization and has corresponding differences in reporting requirements, resolving this uncertainty early is important for community-based organizations considering the sandbox. Organizations who seek to make an informed decision about the resources they will need to commit to a sandbox proposal will greatly benefit from this regulatory clarification.

Fourth, understanding Utah’s sandbox reporting requirements is important for community-based organization applicants, who often have existing case management systems and are concerned that employees will be burdened with having to duplicate work. Community-based organizations who are considering entering Utah’s sandbox face challenges including limited funding, personnel, and time vis-a-vis the community’s need for services/existing caseloads. While they recognize that leveraging the sandbox’s opportunity for new legal service models has great potential to benefit the communities they serve, interested community-based organization applicants are concerned about ensuring they understand the reporting obligations should the service model they propose be authorized. They want to be able to streamline data entry so that the employees who are working directly with the consumers can meet the organization’s existing case management requirements and the sandbox’s reporting requirements

in one submission at the end of each session. They also seek processes that allow them to pull sandbox-required data from their systems in just one click for stipulated monthly submissions. Organization's concerns about the difference between with- and without-lawyer involvement heightened their concerns about how much data reporting might burden their staff because of the differences in risk categorization.

Fifth, the required risk assessment category that a consumer might "purchase an unnecessary or inappropriate legal service" is also confusing for community-based organization applicants who do not propose to charge for their legal advice or services. Community-based organizations that serve low-, middle-income, and minority communities may have concerns about charging consumers even marginal fees for their legal services. Instead, they can offer free legal services and fund their personnel and operations costs through grant or donor funding. By doing so, organizations then would be positioned to emphasize the low- to no-cost nature of providing said services to communities when assessing the risk that a proposed service model may pose to their target population.

The design of ALP programs assumes that the applicant has a paralegal education and legal experiential background, or has the time, financial means, and work flexibility to complete the course work, experiential requirements, and a certification exam. As mentioned above, the education and experience requirements for ALP programs are too arduous for most staff at community-based organizations to undertake.²²¹ Additionally, ALP programs are inherently a market-driven approach. They exist to create a group of legal professionals who are a step above paralegals and will charge for services, but at a lower rate than fully licensed lawyers. An often-cited reason for the steep education and experience requirements of ALP programs is consumer protection. However, there is a glaring absence of empirical evidence in the literature and fieldwork demonstrating that more education and experience mitigates consumer harm.²²²

Courts are generally receptive to changes that make space for non-market-driven innovation. In both Arizona and Utah, the Supreme Courts have been willing to collaborate with i4J to make space for authorizing non-

²²¹ See HOULBERG & DROBINSKE, *supra* note 1, at 7-19 (providing a comprehensive list of existing and contemplated ALP programs around the country).

²²² See KYLE SWEETLAND & DICK M. CARPENTER III, INST. FOR JUST., RAISING BARRIERS, NOT QUALITY: OCCUPATIONAL LICENSING FAILS TO IMPROVE SERVICES 2-3 (2022), <https://ij.org/wp-content/uploads/2022/10/Raising-Barriers-Not-Quality-10142022-WEB-REVISED.pdf> (indicating that occupational licensing is more likely to increase barriers instead of increasing the quality of service provided).

market-driven service models.²²³ The Arizona Supreme Court has authorized the DVLA Initiative through administrative order, and is working with i4J on an expansion cohort. Similarly, i4J's HSLA Initiative was authorized in Arizona also through administrative order.²²⁴ Throughout the creation of the MDLA Initiative, i4J worked with Utah sandbox leadership to support community-based organizations through the application process. While challenges were identified, sandbox leadership has continued to work with i4J seeking feedback on usability and ways to mitigate those challenges. Sandbox leadership wants to see more community-based organizations enter the sandbox and are working towards lowering the barriers for entry to make that happen.²²⁵

The HSLA initiative was initially designed as an expansion of ALP programs in both Arizona and Utah. Ultimately, it was decided in both states that rewriting the rules to accommodate lessening the educational and experiential burdens for ALPs was too steep. However, both states acknowledged that barriers exist to ALP certification, and they are committed to seeing the initiative succeed through other regulatory reform mechanisms.²²⁶

ii. Research Question 2. What practical limitations do regulatory reform decision-makers face in designing and implementing regulatory reform to include non-market-driven innovation?

When regulatory reform decision-makers are judges and lawyers, they bring assumptions about who can safely provide civil legal services. Because of the long tradition of legal service monopolies with only lawyers authorized to provide legal advice, decision-makers have used lawyers as the baseline for evaluating the potential consumer harm associated with new service models.²²⁷ However, this is not an accurate baseline for two reasons. First, there is no empirical evidence of lawyers

²²³ Alaska Ord. No. 1994 (2022) (stating that in addition to Arizona and Utah, Alaska has recently authorized a UPL waiver for nonlawyer advocates supervised by Alaska Legal Services Corporation).

²²⁴ Utah Standing Order No. 16 (effective Mar. 9, 2023); Ariz. Admin. Order 2023-19 (Jan., 18, 2023).

²²⁵ As of October 2022, The Office of Legal Services Innovation is creating focus groups to solicit feedback about the application process in an effort to make it more user-friendly, less cumbersome, and increase engagement with community-based organizations and other nonlawyer service models.

²²⁶ HSLA is poised to proceed through the Sandbox in Utah, and through Administrative Order in Arizona.

²²⁷ See ENGSTROM ET AL., *supra* note 1, at 10-18 (discussing entity-based and individual-based regulation).

and consumer harm.²²⁸ The recourse that consumers have for subpar legal services is to file a complaint with the state bar association in a lawyer's respective jurisdiction or to bring a malpractice suit. Both of those options presume that the consumer knows how to contact the state bar or has the expendable capital to pursue court action against the lawyer. Second, lawyers are not the right baseline for comparative evaluation of new service models for the low-income community, as the current status quo for low-income consumers is self-representation, not lawyers. In a regulatory reform landscape, low-income consumers are not choosing between a lawyer and an advocate – they are choosing between navigating the system with an advocate or alone.²²⁹ Comparing advocate outcomes to lawyer outcomes is not indicative of the reality for low-income consumers, and should not be the measuring standard.

Regulatory reform decision makers must consider consumer harm and are not currently including the consumer perspective. Recognition of low-income civil justice needs has largely been anecdotal during policy creation. Outside, nonlawyer voices are generally not included in the process until the public comment period, and few members of the public engage in the process.²³⁰ Commissions and task forces created by state courts to make recommendations about regulatory reform are generally made up of lawyers, with minimal involvement from nonlegal professions, and rarely including consumer perspectives.²³¹ In addition, consumer risk must be balanced against the reality of the unmet civil legal needs in the

²²⁸ Rebecca Haw Allensworth, *The hypocrisy of lawyer licensing: Are we using the profession's bad apples to bridge the access-to-justice gap?*, STAN. L SCH. (May 12, 2023) (noting that the draft was prepared for the "New Voices in Access to Justice" conference) (on file with author).

²²⁹ See LEGAL SERVS. CORP., *supra* note 3, at 48 (stating that 92% of low-income Americans receive inadequate or no civil legal assistance).

²³⁰ Data provided by the Office of Professional Competence, State Bar of California, indicates that during California's public comment period, comments were received from 760 lawyers (73% of whom opposed regulatory reform) and 32 members of the public. See Memorandum to ATILS Task Force on Staff Summary of Outreach and Public Input (Oct. 2, 2019) (on file with author). The Arizona Supreme Court involved the public when implementing their LP program through an open comment period. However, they did not specifically seek feedback from community-based organizations or consumers about capacity and desire.

²³¹ See, e.g., REGUL. INNOVATION WORKING GRP. COMM'N TO REIMAGINE FUTURE N.Y. COURTS, REPORT AND RECOMMENDATIONS OF THE WORKING GROUP ON REGULATORY INNOVATION 5-7 (2020), https://www.nycourts.gov/LegacyPDFS/publications/RWG-RegulatoryInnovation_Final_12.2.20.pdf; Task Force on Delivery of Legal Services, LSTF, <https://www.azcourts.gov/Portals/74/LSTF/MemberList011019LSTF.pdf?ver=2019-01-10-100147-403> (last visited Nov. 17, 2022).

U.S.²³² Asking consumers the level of harm that they are willing to risk would be beneficial when making decisions about threshold level of risk acceptability.

Regulatory reform decision makers are navigating uncharted waters with limited court resources for design and implementation. Courts leading the way in adopting regulatory reform are creating pathways to new service models that will require evaluation and iteration. However, advancing these new regulatory reform efforts must be balanced with the many other demands on the courts' time and staff capacity. Creating ABS, ALP, and/or sandbox structures also requires staffing and funding to administer these new programs. Moreover, those who serve on task forces and committees charged with developing these new programs are volunteering their time on the task force or committee and balancing that with other work commitments.

iii. Research Question 3. What tools and strategies can assist regulatory reform decision-makers in diversifying perspectives in the design and implementation of regulatory reform to allow for non-market-driven innovation?

Include community-based organizations in design and implementation so they can provide feedback on the feasibility of eligibility, training, certification, ethics, and discipline requirements associated with regulatory reform. Regulatory reform building blocks for nonlawyer service providers include eligibility, training (including continuing legal education), certification, ethics and discipline. Giving community-based organizations and consumers a seat at the table during design and implementation helps ensure that these building blocks are equitable and inclusive.

Eligibility: Community-based organizations can inform decisions about what level of education and experience community-based advocates can realistically bring to the work of justice-making. This creates an opportunity space for courts to realistically, instead of arbitrarily, supplement the existing real-world experience that community-based organization staff already possess.

Training and Continuing Legal Education: Community-based organizations can inform decisions about what level of training they have capacity for. Additionally, they are able to provide information about what they have already learned through work experience. Consumers can weigh in on the types of services they really want and need to help limit the scope

²³² See generally LEGAL SERVS. CORP., *supra* note 3, at 7-10 (discussing the unmet civil legal needs in the United States).

of community-based organization advocate services. Years of i4J research have shown that community-based organizations are interested in Continuing Education (CE) opportunities. DVLAAs have asked to be included in bar association Continuing Legal Education (CLE) and CE activities and the continued mentoring of lawyers. Prototype test data from MDLA and HSLA Initiatives are consistent, with participants reporting increased comfortability with providing limited-scope legal services when there are opportunities for further training and updates after initial certification.²³³

Certification: Building the certification process to include non-market-driven models out of the gate can save time and re-design energy later. In i4J's research in Arizona and Utah, establishing community-based advocacy models has required problem-solving to retro-fit the existing regulatory reform processes, codes, rules, and forms to make them accessible for nonprofit services. This work could be avoided in future regulatory reform jurisdictions by including consumers and community-based organizations at the outset.

Ethics and Discipline: Lawyer ethical rules assume fee for service. The administrative orders authorizing i4J's DVLA and HSLA Initiatives include a code of conduct that is adapted to fit nonprofit legal services. This was done by redlining each line of the existing code to fit the proposed service models. Additionally, ethical rules applied to lawyers assume that they are only acting as a lawyer and do not have another ethical code by which they must abide. When designing training and certification for community-based advocates, special attention must be paid to potential ethical conflicts based on the advocate's existing role in the community.²³⁴ Thoughtful, critical consideration and problem-solving of these ethical code conflicts prior to authorization may increase community-based organization staff interest in leveraging regulatory reform opportunities.

VII. THE ROLE OF THE DESIGN HUB

This research was initially designed to better understand the needs and capacities of the three aforementioned stakeholders, but additional findings emerged over the course of this work regarding the value that a design hub can bring to systems-level changemaking. While i4J is an example of a design hub housed in a university setting, any entity that is not involved in the direct provision of legal services or the regulation of the legal profession could serve as a capacity-building design hub.

²³³ See generally INNOVATION FOR JUST., *supra* note 35; BALSER ET AL., *supra* note 40.

²³⁴ While many exist, one example of this is the conflict between the Model Rules and the National Association of Social Workers Code of Ethics.

The design hub has three main functions. First, the design hub engages in information gathering as a trusted intermediary. To do this successfully, leaders in the design hub must first build trust within the community. This begins through thoughtful engagement of existing leaders in the community who are subject matter experts and serve the target population. The design hub's role is to help bring diverse perspectives together, not to assert its agenda onto a community. Second, the design hub synthesizes the information gathered from diverse perspectives into a comprehensible narrative. Where old problem-solving methods are limited by information existing in silos, the design hub is positioned to make new connections and reimagine the system by identifying the forces that are inhibiting or promoting the outcomes in question. Third, the design hub trouble-shoots the design and implementation of regulatory reform efforts as they play out in the real world.²³⁵ Beyond these functions, the design hub helps to build the bench of future regulatory reform thought-leaders, innovators who will be embedded in various positions and capacities in the field with subject matter expertise on regulatory reform.²³⁶

CONCLUSION

When states consider adopting regulatory reform, they should be guided by actionable data and community-engaged research in order to invest in the most promising and impactful UPL experiments. If those experiments are successful, it increases the likelihood that other states will consider regulatory change as an effective tool in deepening the reach of access to justice efforts. As a field, the threshold issue of clarifying the goals of regulatory reform must be addressed first. If the primary aim is to increase access to civil legal help, does that include free, preventative civil legal problem-solving for those who face the largest social and financial barriers to accessing the civil legal system? Assuming that is true, it is crucial to include diverse voices, including community-based organizations and consumers, at the outset of designing and implementing regulatory reform efforts.

²³⁵ By gathering feedback from community-based organizations and presenting that feedback to decision-makers, the design hub can serve to further the access to justice goals of regulatory reform by decreasing barriers to entry for community-based organizations. Where regulatory reform is based on administrative provisions, the design hub can play a role in reviewing and redlining those provisions to help decision-makers iterate and improve in ways that allow community-based organizations to more easily integrate into these new opportunities.

²³⁶ This is most easily done in University settings, where students from the legal and adjacent disciplines are first forming their perspectives on the role of lawyers and legal professionals.

Creating permissive regulatory environments which relax UPL restrictions to allow for roles beyond lawyers will not, in-and-of-itself, expand legal services for low-income consumers. Intention must precede innovation. Community-based organizations see the value in empowering their clients with legal help and legal advice, but they feel powerless to provide that help not only because UPL prevents them from doing so, but also because they have no legal training. States considering regulatory reform should prioritize partnerships with legal educators and re-think who has access to legal education with the goal of democratizing that access. It's *law* school, not *lawyer* school, after all.

Thoughtfully and intentionally engaging diverse perspectives improves the process for both those seeking to participate in regulatory reform opportunities and the consumer communities that regulatory reform seeks to serve. While states and regulatory reform decision-makers may not have the capacity to take these steps directly, a design hub can serve as a neutral capacity-building intermediary guided by these goals. Legal designers can help build the bench of future professionals by training law students, communities, and allied professionals in taking a leading role in changing the tide of the provision of legal services. As community-based advocates know, the work of tomorrow begins today.