Mauricio R. Hernández (#020181)
mo@lawmrh.com
P.O. Box 7347
Goodyear, AZ 85338
Telephone: (623) 363-2649

IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of PETITION TO AMEND RULES 31, 32, 41, 42 (ERs 1.0-5.7), 46-51, 54-58, 60, 75 and 76, ARIZ. R. SUP. CT., and ADOPT NEW RULE 33.1, ARIZ. R. SUP. CT.	Supreme Court No. R-20 - 0034 COMMENT OPPOSING THE PETITION TO AMEND

Per Rule 28(D), Rules of the Supreme Court, the undersigned respectfully submits this Comment opposing the subject petition for the following reasons.

I. Some historical background.

This petition represents a second bite at a stale apple. It hearkens back over 20 years when "unbeknownst to many, if not the vast majority of Arizona practitioners,"[1] the State Bar of Arizona (SBA) Board of Governors created the *Task Force on the Future of the Profession* in

[1] Daniel J. McAuliffe, *Degrading the Core Values of the Profession*, Arizona Attorney 32, (October 2001) available at https://www.myazbar.org/AZAttorney/PDF_Articles/AZAT1001DanMDP_wAd.pdf

reputed response to "inquiries from Bar members."[2] The Task Force was directed to review changes to existing ethical rules that protected a lawyer's independent professional judgment by limiting the influence of nonlawyers on the attorney-client relationship.

The modifications eventually proposed affirmed lawyers continuing responsibility over nonlawyer ethical conduct. But they also embraced revisions to ER 5.4 to allow lawyers to practice in firms "in which nonlawyers have an ownership or equity interest."[3] Such nonlawyer partnerships and fee-sharing was referred to as multidisciplinary practices (MDPs).The Board approved the proposals although they were ultimately unrealized.

The recommendations two decades ago were grounded on two rationales. First, lawyer and nonlawyer "partnerships already exist in a sense in Arizona."[4] A "standing relationship with some other professional" was "akin to an MDP --- just without the sharing of fees."[5] Second was purported "client demand" for "one-stop shopping."[6] There was no apparent mention of aspirations to 'close the justice gap' or to improve 'access-to-justice' at that time.

These days client demand for one-stop shopping is no longer a reason in vogue. Nowadays the mission is to improve the public's access to justice. Consequently, old intentions are retooled for newer purposes. Hence upon the creation of Arizona's Legal Services Task Force (LSTF), its work was informed by *The American Bar Association Commission on the*

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[2] Chas Wirken and Lynda Shely, *Facing a New Millenium Alternative Firm Structures That Might Work For You*, Arizona Attorney 36, (October 2001) available at https://www.myazbar.org/AZAttorney/PDF_Articles/AZAT1001Chas_MDP.pdf

[3] McAuliffe, Op. cit. 32

[4] Wirken and Shely, Op. cit 36

[5] Ibid.

[6] Frederick M. Aspey, Don Bivens, John J. Bouma et al., *Letter to Task Force on the Future of the Profession*, State Bar of Arizona, September 20, 2001, also summarized in part, McAuliffe, Op. Cit 35

Future of Legal Services that "[m]ost people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need."[7]

Then as now, resistance to fee-sharing and partnerships with nonlawyers was strong. Most conspicuously, a commentary by the late Daniel McAuliffe, "Degrading the Core Values of the Profession" in October's 2001 *Arizona Attorney* featured the collective statement of 20 former SBA presidents endorsing McAuliffe's MDP opposition. Noting how proposed amendments did not require nonlawyers to belong to a regulated profession, McAuliffe even punctuated the "naiveté" that believed lawyers wouldn't partner with just any business. Sardonically, he observed, "Of course, one potential positive result of the Task Force's proposals would be the elimination from the vernacular of the odious phrase "ambulance chaser" to refer to members of the legal profession. Lawyers would no longer have to "chase ambulances"; they could own the ambulances in partnership with the ambulance drivers."[8]

II. No proof the changes will improve access to justice.

Earlier proponents of nonlawyer partnership and fee-sharing sought to amend ER 5.4. Under the umbrella of "innovation," petitioners this time want to dismiss it away as a vestige of "economic protectionism." "Innovation," they assure, **"may** help bridge the access-to-justice gap as lawyers, technology companies and others would be less constrained by an **artificial** restriction." [emphases added]

How times change. What 20 years ago was described a "core value"[9] of lawyer professionalism is now cloaked in contrivance, an *artificial* barrier. More to the point, though, is

[7] Task Force on the Delivery of Legal Services, Report and Recommendations, p. 6, October 4, 2019 available at https://www.azcourts.gov/cscommittees/Legal-Services-Task-Force and last accessed March 17, 2020 17:16 (MST)
[8] McAuliffe Op. cit. fn. 16 at 39.
[9] Ibid. at 32.

the question unasked. What commercial interest does a Legal Tech company, Big Four accounting concern, or private equity investor have in partnering with law firms to deliver legal services to the poor? Can free services be monetized? Frankly, it baffles to conceive that big accounting firms, hedge funds, and investment banks will be any more motivated than current providers to give away legal services or to bill at rates low enough for the working poor.[10] It's more plausible to say legal costs will not decrease via the tender mercies of nonlawyer equity investors.

Furthermore, it's also problematic to adopt as archetype the expanded delivery of medical care by non-physicians. Legal services are not life-critical medicine. Nor is there a legal services equivalent to Medicaid mainstream health care for the poor and low-income. Moreover, "legal services are very, very low on a poor person's shopping list. Food is higher. Shelter is higher. Clothing is higher. And even after all of those expenses are covered, lawyers should not be surprised to learn that a poor person might choose to allocate his resources in ways other than hiring a lawyer."[11]

There is, however, one similarity. If health care's lay investment schemes are grafted onto legal services, expect analogous risk of consumer harm. It happens in health care when non-healthcare business partners and investors prioritize profit over ethics.[12] Nonlawyer partnerships

[10] According to *Who Are the Working Poor Today?* as reported by the UC Davis Center for Poverty Research, "The "working poor" are people who spend 27 weeks or more in a year in the labor force either working or looking for work but whose incomes fall below the poverty level." Per 2016 data, poverty thresholds were $12, 486 for a single individual under age 65; $14,507 for a household of two people with a householder 65 years or older with no children; and $24,339 for a family of four with two children under age 18. https://poverty.ucdavis.edu/faq/who-are-working-poor-america Last accessed March 24, 2020 12:52 (MST)

[11] Jonathan R. Macey, *Mandatory Pro Bono: Comfort for the Poor or Welfare of the Rich* , 77 Cornell L. Rev. 1115, 117 (1992) Available at: https://scholarship.law.cornell.edu/clr/vol77/iss5/36 Asserting that "poor people do not hire lawyers because they use their limited resources to buy things that they value more than legal services."

[12] David Heath, USA Today, and Mark Greenblatt and Aysha Bagchi, Newsy, *Dentists under pressure to drill 'healthy teeth' for profit, former insiders allege, USA Today*, (March 19, 2020) available at

and investments can in the same manner adversely influence the ethical delivery of legal services. The difference from health care is order of magnitude. Harm to legal well-being isn't like injury to physical health.

The latest case in point is a *USA Today* news investigation of dental practices. Patient vulnerability heightens when a dentist "might be tempted to find ways to increase profit" because "private-equity firms often saddle their companies with heavy debt at junk-bond-caliber interest rates."[13]

Timelier still in our time of Coronavirus is an *Intercept* report[14] describing "bankers and investors who invest in health care companies" candidly discussing "on investor calls and during health care conferences about the opportunity to raise drug prices." The story discusses investment banks seeing a tremendous upside opportunity "to gain from billions of dollars in emergency spending on the pandemic."[15]

III. Alternative Business Structure (ABS) "compliance attorney" sufficient client protection?

In further testament to the triumph of hope over experience, proponents postulate that a policy and procedures manual assigned to a "compliance attorney" employed by their corporate client will certify ABS obligations to ABS lawyer clients. This is thin gruel of assurance.

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https://www.usatoday.com/in-depth/news/investigations/2020/03/19/dental-chain-private-equity-drills-healthy-teeth-profit/4536783002/ Detailing allegations and concerns that can come about via the trend of private equity investors owning dental groups. Ethics can be compromised "to meet aggressive revenue targets or risk being kicked out of the chain."

[13] Ibid.

[14] Lee Fang, *Banks Pressure Health Care Firms to Raise Prices on Critical Drugs, Medical Supplies for Coronavirus,* The Intercept, March 19, 2020, Available at https://theintercept.com/2020/03/19/coronavirus-vaccine-medical-supplies-price-gouging/ Last Accessed March 21, 2020 17:43 (MST).

[15] Ibid.

As is, corporate lawyers engaged with client legal and business interests already encounter conflicts in their roles and obligations.[16] Ethics can be compromised.[17] "There are potential negative consequences for speaking up, as well as for complying. It can feel like a 'lose-lose'. . . Do we go along to get along or do we resist?"[18] Odds are an ABS "compliance attorney" monitoring non-lawyer business investors will run into even greater challenges to stay conflict-free and independent.

IV. The likelihood of triggering separation of powers concerns.

Per the petition, the ABS is not itself entitled to practice law. Will a new court rule permitting direct ABS regulation of persons who have never been lawyers invade the legislature's inherent power to regulate industry and business to protect Arizonans' health, safety, and general welfare?

Does eliminating ER 5.3 impermissibly expand the Court's authority over nonlawyers beyond *Smart Indus. Corp. Mfg. v. Superior Court In and For County of Yuma*, 179 Ariz. 141, 876 P.2d 1176 (Ariz. App. 1994)? In *Smart*, the Court acknowledged the reach of lawyer ethical

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[16] See, for example, Michael Aprahamian, *Ethics Bear Traps for In-House Counsel*, Foley & Lardner, LLP, November 19, 2015, Available at https://www.foley.com/-/media/files/insights/events/2010/11/business-litigation-2010-unlocking-successful-stra/files/ethics-bear-traps-for-inhouse-counsel/fileattachment/ethicsbeartrapforinhousecounsel.pdf last accessed March 25, 2020, 10:56 (MST)

[17] Eric Sigurdson, *General Counsel and In-House Legal as Corporate Conscience: an evolutionary crossroads in the age of disruption,* Sigurdson Post, June 29, 2017 Available at http://www.sigurdsonpost.com/2017/06/29/general-counsel-and-in-house-legal-as-corporate-conscience-an-evolutionary-crossroads-in-the-age-of-disruption/#_ftn11 last accessed March 23, 2020 13:21 (MST) citing at footnote 11: Ben Heineman, *Heineman on Wells Fargo: Where Were the Lawyers*?, Harvard Kennedy School: Belfer Center for Science and International Affairs, October 12, 2016; Paul Lippe, *Volkswagen: Where were the lawyers*?, ABA Journal, October 13, 2015; David Mowry, *Really, VW? Part One: the big question of the Volkswagen scandal – where were the lawyers?,* Above the Law, September 30, 2015; Ashby Jones, *Where Were the Lawyers*?, Wall Street Journal, January 2, 2007; Alice Woolley, *The Volkswagen Scandal: When We Ask, 'Where Were the Lawyers?' Do We Ask the Wrong Question?*, Slaw, September 30, 2015; Constance Bagley, Mark Roellig, Gianmarco Massameno, *Who Let the Lawyers Out: Reconstructing the Role of the Chief Legal Officer and the Corporate Client in a Globalizing World*, U. of Pennsylvania Journal of Business Law, Vol. 18:2, page 419, 2016 ("the flagrant disregard for the law by multiple companies across diverse industries prompted Judge Sporkin to ask, "Where were the lawyers?").

[18] Ibid. at fn 71.

rules over nonlawyer conduct was limited. Nonlawyers can be regulated but only by disciplining the lawyers that are supposed to be overseeing their conduct.

Arizona commentators have opined about the tensions that characterize inter-branch relations between a legislature with an "anti-lawyer bias"[19] and the judicial branch. The inter-branch differences have scarcely varied over recurring[20] legislative forays[21] into what's been deemed the court's "final-word authority."[22]

Observes Arizona legal scholar Ted Schneyer, "the challenge for the court is to recognize the limits of its authority . . . in order to maintain the legitimacy of exercising that authority when appropriate. What are those limits?"[23] Accordingly, those tasked with finessing these limits face

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[19] Jonathan Rose, *Unauthorized Practice of Law in Arizona: A Legal and Political Problem that Won't Go Away* (2002). Ariz. St. L.J., Vol. 34, 585, 610, (2002). Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1422122

[20] In the past 7 years alone, Arizona House Members John Allen and more lately Anthony Kern have tried to statutorily strengthen public protections and reclaim First Amendment speech and association rights of Arizona's lawyers. For a more current 'incursion' see SB 1426 introduced during the 54th Legislature 2nd Regular Session 2020 by Sen. David Farnsworth. It seeks to amend Title 32, Section 32-201. *Attorneys; complaints; discipline; right to jury, hearings; prohibitions; perjury* declaring among provisos, "Judges may not exert undue influence in the form of coercive control over the legal profession." Available at https://www.azleg.gov/legtext/54leg/2R/bills/SB1426P.pdf and https://legiscan.com/AZ/bill/SB1426/2020 and last accessed March 24, 2020 14:44 (MST)

[21] Last year, HCR 2006 was introduced by Rep. Fillmore asserting, "The supreme court may not infringe on the authority of the legislature or the people to enact otherwise constitutional substantive, procedural and evidentiary laws or to carry out any other matter under the constitution. The authority to enact substantive, procedural and evidentiary laws is not a power inherent in the judiciary but is a legislative power inherent in the legislature and the people." See *Arizona: Proposed constitutional amendment restricts Supreme Court's rulemaking power, allow legislative control*, Gavel to Gavel, available at http://gaveltogavel.us/2019/01/15/arizona-proposed-constitutional-amendment-restricts-supreme-courts-rulemaking-power-allow-legislative-control/ last accessed March 24, 2020 14:29 (MST) And also available at: https://www.azleg.gov/legtext/54leg/1R/bills/HCR2006P.htm

[22] Ted Schneyer, *Who Should Define Arizona's Corporate Attorney-Client Privilege?: Asserting Judicial Independence Through the Power to Regulate the Practice of Law*, 48 Ariz. L. Rev. 419 (2006). Adding further to the examination of "The same is true of the regulation of law practice, but there the court has sometimes insisted on final-word authority for itself on the basis of little more than tradition, at least when power to define the unauthorized practice of law ("UPL") is at stake. The legitimacy of Arizona Supreme Court decisions allocating the final word in those areas of overlapping authority is always suspect, because the court becomes the arbiter of its own power vis-à-vis the legislature." at 420.

[23] Ibid.

a daunting job. In attempting to safeguard ABS lawyer clients, can they avoid triggering an inter-branch dispute?

V. Following Washington's model means repeating their missteps.

If petitioners want to close the justice gap for low-income Arizonans, modeling Arizona's proposed Limited License Legal Practitioner (LLLP) Program on Washington's struggling Limited License Legal Technician (LLLT) Program is the wrong approach. Since implementation 8 years ago, a search of the Washington Bar's LLLT Legal Directory shows no more than 43 LLLTs. Only 37 are "Active" and they're concentrated in the greater Seattle-Tacoma area.[24] The other 6 include 4 "Inactive," 1 "Voluntarily Resigned," and 1 "Suspended."

One possible explanation offered for the underwhelming roll-out[25] is the imposition of "excessively restrictive educational qualifications that work against creating an affordable alternative to attorneys."[26] (The same might be said of law schools of their high tuition costs and the resulting constraint on new lawyer capacity to provide affordable services)

To its credit, the LSTF acknowledged "Making regulatory requirements that are too onerous will make the new tier unattractive and cost-prohibitive to both participants and users."[27]

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[24] Ibid. But specifically see map at https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians/lllt-directory

[25] "It essentially took more than two years to develop the framework . . . before applicants could be accepted into the educational training program." See Stephen R. Crossland & Paula C. Littlewood, *Washington's Limited License Legal Technician Rule and Pathway to Expanded Access for Consumers*, 122 Dick. L. Rev.859 (2018). Available at:https://ideas.dickinsonlaw.psu.edu/dlr/vol122/iss3/5

[26] Debra L. Rhode and Jason Solomon, Letter to Justice Lee Smalley Edmon, Chair, California Task Force on Access Through Innovation of Legal Services (ATILS), State Bar of California, page 3, September 23, 2019, at https://www-cdn.law.stanford.edu/wp-content/uploads/2019/09/CA-bar-letter-on-ATILS-reccs.pdf last accessed March 17, 2020 16:38 (MST) (on file with author) Rhode and Solomon are Director and Executive Director, respectively, of the Stanford Center on the Legal Profession and they cautioned California "should be careful not to make the same mistake that Washington has made thus far with its limited legal license technicians." They fault the Washington Bar who controls the licensing process for these "excessively- restrictive" LLLT qualifications.

[27] Task Force on the Delivery of Legal Services, Report and Recommendations, Op. Cit. p. 41.

But by copying costly required training, examination, continuing education, liability insurance, and even mandatory bar membership, Petitioners cross the same inauspicious terrain.

More purposefully, the LSTF should have quantified its access to justice assumptions with meaningful contemporaneous research. The opportunity certainly presented itself. Remarkably missing from their report was any reference to perhaps the only relevant empirical study presently available.

The year before the LSTF began its work, Rebecca M. Donaldson's *Law by Non-Lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice* was opportunely published in the *Seattle Law Review*.[28] Donaldson's research would have provided credibly-sound information to ground LSTF's counterfactual hypotheses about its LLLP proposal.[29] In short, Donaldson found:

> that the LLLT model is not designed to increase access to justice for those from low-income populations. This conclusion is based on first-hand interviews with the architects of the model as well as on original surveys and interviews conducted with the first two cohorts of LLLTs and LLLT Candidates. LLLTs and Candidates expect to keep their pricing schemes high enough to bring in a sustainable revenue stream, intend to work primarily through traditional legal service delivery models at law firms and as solo practitioners, and overall do not report highly salient motivation to target low-income clientele relative to their other motivations for becoming an LLLT. From all of this, we do not have reason to believe that low-income legal consumers will better access justice through the current LLLT model.[30]

[28] 42 Seattle U. L. Rev. 1 (2018) Available at https://digitalcommons.law.seattleu.edu/sulr/vol42/iss1/2/

[29] Washington's LLLTs were originally conceived to assist low-income Washingtonians. Arizona's petitioners repeat the same declaring "The purpose of creating this new tier of licensed legal service provider is to fill a gap that exists between medium- and low-income individuals needing legal services and the cost of securing those services from the traditional legal market." See Petition p. 4. As discussed infra, Washington's hope met reality.

[30] Ibid. at 2.

What else was missed by not objectively studying Washington? For example, as a percentage of the monthly net take-home pay of the bottom income quintile of Washingtonians, have LLLTs so far made legal services more affordable for the poor and low income?[31]

Also predating the LSTF and bolstering Donaldson's findings is Justice Steven González's dissent from the Washington Supreme Court May 1, 2019 Order to expedite more LLLT Program amendments. Justice González disagreed with the rush to implement and the departure from original goals.

> I cannot join the court's decision today. Any decision to expand the scope of the Limited License Legal Technician (LLLT) program requires careful evaluation of the program's sustainability, its potential benefits, and establishment of a methodology that will both ensure adherence to rules of professional conduct and ensure adequate client protection. We have the opportunity to do this as we are undertaking a comprehensive review of the structure of the Bar. Ironically, the majority fundamentally changes the LLLT program when, at the same time, we have required the Board of Governors to defer action on any proposed bylaw amendments concerning the role of LLLTs in the governance of the bar. Because the majority's ill-advised decision is a mistake and because it becomes effective on publication, I respectfully dissent.
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> **The LLLT program was conceived as an effort to address the unmet civil legal needs of low-income Washingtonians.** We ultimately determined that the area that needed most attention was family law and that assistance with preparing orders and assisting individuals with filling out forms would make a significant difference. **It did not take long to realize that the business model adopted by the LLLT program was incompatible with meeting the needs of low-income individuals and so the program shifted to becoming a moderate means effort.** Without any evidence of success, the program has begun expanding the scope of legal services that LLLTs are allowed to provide.
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> LLLTs were never meant to legally advocate on behalf of a client. The majority's hasty decision fundamentally alters the role of LLLTs, allowing LLLTs to immediately begin negotiating with opposing counsel, attending depositions, and appearing and responding to questions from the court without adequate legal training. Moreover, there is no training

[31] Sensitive to the criticism that LLLTs who charge $100 to $150 per hour are no more affordable than lawyers in serving the legal needs of poor and low-income individuals, program defenders now absolve that failing by saying, "that the program was created to solve access for only those with incomes between $75,000 and under $100,000." See Mary Juetten, *The limited legal license technician is the way of the future of law,* ABA Journal, December 8, 2017, Available at https://www.abajournal.com/news/article/the_limited_license_legal_technician_story_start_with_why last accessed March 25, 2020 (on file with author).

> for judges or attorneys to accommodate this significant and immediate expansion of authority.
> Further, even with this expansion, I have serious doubts that the LLLT program is financially sustainable for the Bar or provides a sustainable practice area for LLLTs themselves. It is entirely possible that we could tweak the program into financial sustainability, but we have been presented with no business plan or other meaningful evidence of how that might be done in a way that protects the public. Until the evidence supports a conclusion that the program can be sustainable without harm to the public, I am opposed to expanding its scope. The significant financial burden of the LLLT program on the Washington State Bar Association is not justified without a showing that there exists a sustainable business plan allowing LLLTs to meet the population's unmet legal needs. We must address the issue of unmet legal needs, but we must do it wisely and carefully.[32] [emphasis added]

Will disadvantaged Arizonans come up short like Washington's poor? It's likely. Without a business plan and quantifiable metrics, sunny hope is no substitute for substance. Before approving one more UPL-exempted category of nonlawyers to ostensibly help the low-income, prudent heed should be taken of Justice González plea for "meaningful evidence."

What's more, there's nothing innovative about doubling down on existing protectionist barriers.[33] Epitomizing this, for the first time in State Bar of Arizona (SBA) history, nonlawyers will be required to join. Should nonlawyers even have standing to join a mandatory bar?

More alarmingly, to presently propose impinging the liberty interests of a new class of mandatory entrants seems ill-timed and ill-considered. Why enlarge further Arizona's mandatory bar bureaucracy by conscripting nonlawyer "affiliate members" while lawyers elsewhere are prosecuting spirited First Amendment challenges to reclaim their constitutional rights?[34]

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[32] *In the Matter of Proposed Amendments to APR 28 – Limited Practice Rule for Limited License Legal Technicians*, Order No. 25700-A-1258, May 1, 2019, González , J. (dissenting) Available at https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/25700-A-1258.pdf

[33] Milton Friedman criticized the state-level "governmentally created and supported monopoly" run under rules requested by and established for the competition-limiting benefit of members of the regulated industry, See Milton Friedman, *Capitalism and Freedom*, University Of Chicago Press, (1962) and also see *Milton Friedman - Who Benefits from Licensing?* https://www.youtube.com/watch?v=8q71hrwUcu0

[34] See "Mandatory Bar Challenges," State Bar of Texas website listing litigation in Louisiana, Oklahoma, Oregon, Michigan, North Dakota, Texas, and Wisconsin available at

VI. The LSTF's work was inordinately time-limited, insufficiently inclusive, and fragmentarily collaborative.

Petitioners submit their proposals founded on the LSTF's work while acknowledging "the number and complexity of topics the task force was charged with addressing and the limited time it had to explore those topics."[35] Counterintuitively and notwithstanding the LSTF's mere 9-month time period involving 8 general meetings, the petition nonetheless proposes the most far-reaching generational changes ever to Arizona legal practice.

What's more, though the LSTF included 20 notable appointees it was insufficiently inclusive and incompletely collaborative. The LSTF was composed mostly of distinguished members of the judiciary, experienced court administrators, eminent Arizona law school academics, large law firm partners, former SBA leaders, a small firm representative, medium-size law firm participants, and a public member. It is easy to discern the expectations of these diverse stakeholders, including those hoping to ameliorate the challenges of ill-prepared self-represented parties; to impose new pedagogically-based licensing requirements; to grow a regulatory bureaucracy; or to tap new capital investment sources. But what of other easily ascertainable interested parties and their collaborative input?

Notably absent was full LSTF representation of 4 important stakeholders: sole practitioners, legal aid advocates, legal document preparers, and law students. Sole practitioners[36]

https://www.texasbar.com/Content/NavigationMenu/McDonald_et_al_v_Longley_et_al1/default.htm last accessed 12:44 (MST) March 18, 2020.

[35] Task Force on the Delivery of Legal Services, Report and Recommendations, Op. Cit. p. 2.

[36] Sole practitioner participation would have also had another significant benefit, i.e., the opportunity to rebut the petition's astonishing 'absence of evidence is evidence of absence' pseudologic. See Petitioner's nonfactual assertions, "The Task Force concluded that licensing nonlawyers to provide limited legal services will not undermine the employment of lawyers for several reasons. First, the legal needs targeted for LLLPs involve routine, relatively straight-forward, high volume but low-paying work that lawyers rarely perform, if ever. Second, lawyers could team with LLLPs to provide complementary services, thereby increasing business opportunities for lawyers.

who represent a substantial part of Arizona's active lawyers were not chosen to serve. Given the LSTF's starting focus on family law, an experienced family practice solo appointee could have brought firsthand practical insights of client challenges; problem solution-sets; and invaluable reality-checks. Legal aid advocates could have kept single-minded focus on tackling Arizona's poor and low-income legal needs. Seasoned certified legal document preparers could have supplied deeper understandings of what's worked and what still needs fixing. And likewise, law students could have imparted their ideas and concerns about the transformational initiatives under consideration that will impact their anticipated legal careers. Moreover, given their significant investment of time, toil, and treasure[37] they indisputably have strong reliance interests.

Presentations to two workgroups by "subject matter experts,[38] legal practitioners, and other stakeholders"[39] do not compensate for leaving out these concerned parties, particularly when deciding final recommendations. Just as importantly, omitting the contributions of those 4 stakeholder groups undercuts badly the petition's claim of "**extensive** review, fact-finding and analysis of the changing consumer legal market." [emphasis added]

Moreover, to date no jurisdiction that allows certified nonlawyers to provide limited legal services has reported any diminution in lawyer employment. While some lawyers may prove instinctive skeptics on this issue, **the Task Force was not able to find empirical evidence that lawyers are at risk of economic harm** from certified LLLPs who provide limited legal services to clients with unmet legal needs." at p. 33. [emphasis added]

[37] Law School Costs, LST Dashboard, Law School Transparency, https://data.lawschooltransparency.com/costs/debt-income/?scope=schools accessed March 17, 2020, 09:35 (MST) (on file with author).

[38] Unfortunately, a cursory review of the Task Force on the Delivery of Legal Services meeting agendas reveals the "subject matter experts" in the main were *not* disinterested contributors. Indeed, their thinking hallmarked the Petition. For examples, the Task Force received input from Chris Rampenthal, Legal Zoom; Indiana Law Professor William Henderson a supporter of non-lawyer investment and non-lawyership partnership; the Institute for the Advancement of the American Legal System(IAALS)advocates of lawyer regulation rule changes; and local attorney Mark Lassiter, author of "The End of Law Firms? Rethinking Legal Services Delivery in the 21st Century."

[39] Task Force on the Delivery of Legal Services, Report and Recommendations, Op. cit. p. 2,

When "expanding the universe of legal professionals" means changing the rules to add even more UPL-exempted legal services it would seem advisable to include all concerned parties. As it is, Rule 31(d)'s existing 31 UPL exemptions are already quite extensive. It's little wonder, then, that new proposals to add even more UPL-exempted categories only furthers the dawning apprehension among Arizona's lawyers that "If everyone's a lawyer --- no one is."[40]

Finally and parenthetically, the time for objectively assessing other relevant programs is overdue. In 2003, another UPL exemption was sliced out to certify legal document preparers (CLDPs). At the time, the CLDP program was not intended to close a justice gap. It was meant to close a different gap, that of unregulated legal services by nonlawyers.[41]

In the succeeding 17 years CLDP's have marketed their services on both access and affordability, especially when compared to lawyers. What impact have CLDPs had on legal access and affordability?[42] Have CLDPs had any effect on improving delivery of legal services to Arizona's disadvantaged? Are CLDPs quantifiably helping to meet the needs of moderate-income consumers?

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[40] This observation astutely comes by way of a valued colleague who prefers anonymity. It is, however, reminiscent of Dash's argument from the 2004 Pixar animated film, "The Incredibles." The film is about a family of undercover superheroes. Chafing over parental imposed inability to use his super powers, young Dash has the following exchange with Helen, his mother. Dash argues, "You always say 'Do your best', but you don't really mean it. Why can't I do the best that I can do?" Helen responds, "Right now, honey, the world just wants us to fit in, and to fit in, we gotta be like everyone else. "But Dad always said our powers were nothing to be ashamed of, our powers made us special," Dash replies. Helen answers, "Everyone's special, Dash." And he mutters in reply, "Which is another way of saying no one is." *The Incredibles* (Pixar Animation Studios 2004) Dash's selected quotes can be found at "Spencer Fox: Dashiell 'Dash' Parr," IMDB at https://www.imdb.com/title/tt0317705/characters/nm1714016 last accessed March 17, 2020, 15:29 (MST) (on file with author).

[41] Ernest Calderon, *Progress on Shutting Down UP*L, President's Message, Arizona Attorney, p. 6, November 2002.

[42] This is not so clear from anecdotal evidence proffered by colleagues with respect to the alleged sometimes higher cost of immigration or bankruptcy document preparation through CLDPs compared to lawyers practicing in those fields. Absent disinterested empirical research these claims are frequently dismissed as symptomatic of protectionist bias. Compare https://www.azstatewideparalegal.com/rates/ and https://familytrust4you.com/compare-prices/ with and https://phoenix.craigslist.org/evl/lgs/d/need-an-llc-let-an-experienced-business/7090223789.html (websites last accessed March 17, 2020, 15:52 (MST) (copies on file with author).

Relatedly, the petition notes the SBA's implementation of "a web-based "Find A Lawyer" program "connecting those with legal needs to lawyers willing to do the work pro bono or at an affordable cost." Are there any metrics to date to assess if "Find A Lawyer" has expanded pro bono services?[43]

VII. Conclusion.

For the foregoing reasons this petition should be denied.

Respectfully submitted 30th day of March 2020.

By /s/ Mauricio R. Hernández
Mauricio R. Hernández (#020181)

[43] For a counter perspective of "Find A Lawyer," see Mauricio Hernandez, *How not to address legal needs of the public*, The Record-Reporter, p. 3, January 20, 2017 (copy on file with author)