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March 9, 2023

The Honorable Rob Wagner, President of the Senate  
The Honorable Dan Rayfield, Speaker of the House  
Oregon State Legislature  
900 Court St. NE  
Salem, Oregon 97301

Re: SB 306 Public Hearing: Modifies statutes to allow for nonattorney associate members of the Oregon State Bar to practice law in certain scope of practice.

Dear Senators and Representatives of the Oregon State Legislature:

We are writing to express our support for SB 306, which would modify statutes to allow nonattorney associate members of the Oregon State Bar to practice law in a limited scope. This change is necessary to provide legal assistance to the large number of Oregonians who cannot afford traditional attorneys fees.

Although we are writing from outside Oregon, your state's challenges and issues concerning civil access to justice are not dissimilar to those of other states. Every state across the nation is embroiled in a similar civil access to justice crisis, regardless of population size, population makeup, or geographic location. Furthermore, issues related to civil justice often have far-reaching implications that extend beyond state borders. As such, Americans across the country benefit by working collaboratively to identify solutions and ensure all individuals in every state can access the legal resources and assistance they need.

As members of the legal community and advocates for civil access to justice, we have followed the progress in Oregon toward providing a meaningful resource for civil legal needs to your citizens. We applaud your efforts. Many individuals and families simply cannot afford the high cost of legal services, leaving them vulnerable to many legal problems that impact housing, safety, economic stability, and family structure. This is especially true for marginalized communities, who often face systemic barriers to accessing legal aid.

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## LSC-Eligible Population

<b>Estimate of Eligible Population</b>		<b>Annual Income Level for Eligibility</b>	
<b>Eligible Pop</b>	<b>Percent Eligible</b>	<b>Single Person</b>	<b>Family of Four</b>
616,760	14.9%	\$16,100	\$33,125

Population with household income below 125% Federal Poverty Guidelines, based on 2019 1-year American Community Survey estimates provided to LSC by the U.S. Census Bureau.

Income eligibility thresholds are 125% of the 2021 Federal Poverty Guidelines set by the U.S. Dept. of Health & Human Services.

We calculate, conservatively, that nearly 42.4% of the citizens in your state cannot afford legal assistance when they need it. Legal Aid Services of Oregon's income cap for legal assistance is \$16,100 for one person and \$33,125 for a family of four.<sup>1</sup> According to Legal Services Corporation, 616,760 Oregonians (or 14.9% of your nearly 4.2 million people) are eligible for legal aid services. Legal aid organizations are non-profit entities that provide free or low-cost legal services to individuals who cannot afford traditional legal representation. While they play an essential role in helping low-income individuals access legal services, there are limitations to what they can provide.

One of the main limitations is funding. Legal aid organizations rely on grants, donations, and other sources of funding to operate. As a result, their resources are limited, and they cannot serve everyone who qualifies for their services. This can result in long waiting lists or limited services, which can be frustrating for those who are in need of legal assistance. Additionally, legal aid organizations may have specific eligibility criteria that limit the types of cases they can take on. For example, they may focus on certain areas of law, such as housing or employment, and may not be able to provide assistance for other types of legal issues. Furthermore, legal aid organizations may be restricted in the scope of services they can provide. For instance, they may be unable to provide representation in complex or high-stakes legal matters. In such cases, clients may need to seek out a private attorney, which may not be feasible due to financial constraints.

Despite the significant legal needs of low-income individuals, a considerable number of middle-income families are also struggling to access affordable legal services. Many of these families earn above the threshold for free legal services, which is \$16,100 for an individual and \$33,125 for a family of four, but still cannot afford the high cost of hiring a private attorney. An

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<sup>1</sup> Legal Aid Services of Oregon Program Profile. (n.d.). Legal Aid Services of Oregon Program Profile. (n.d.). Legal Services Corporation. Retrieved March 9, 2023, from <https://www.lsc.gov/grants/our-grantees/legal-aid-services-oregon-program-profile>

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article titled *Why Do Blue States Keep Prioritizing Lawyers Over Low-Income Americans?* noted that “with full-price lawyers as their only option, and even inexperienced lawyers charging more than \$300 per hour, most Americans are priced out of the market for legal help.”<sup>2</sup> Lack of representation leaves low and middle-income populations vulnerable to exploitation, intimidation, and unfair treatment in legal proceedings.

Unfortunately, there are few alternatives available to the middle-income population in case of a legal dispute. With legal aid excluded as an option, well-meaning lawyers often bring up pro bono legal services. Unfortunately, while pro bono legal services can make a valuable contribution to increasing access to justice, they cannot solve the access to justice crisis on their own. Pro bono services are typically provided by volunteer lawyers who offer brief advice and counsel, and while this can help some individuals who are unable to afford legal representation, it is not a sustainable solution for the millions of people who cannot access legal help. The access to justice crisis requires systemic change, including regulatory reforms, to ensure that everyone has access to the legal help they need, regardless of their financial circumstances.

Those who cannot qualify for free legal services and cannot afford a lawyer are frequently referred to as the “missing middle” because they are often disregarded.<sup>3</sup> To better understand the size of Oregon’s “missing middle,” we estimated it using data from several sources. According to the U.S. Census Bureau, Oregon’s population estimate as of July 1, 2022, was 4,240,137.<sup>4</sup> Of this population, the Pew Research Center reports that 55% were considered middle-income,<sup>5</sup> with incomes ranging from \$27,684 to \$134,239.<sup>6</sup> Further, the American Bar

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<sup>2</sup> Stanford Law School. (2022). *Why Do Blue States Keep Prioritizing Lawyers Over Low-Income Americans?* | Stanford Law School. Stanford Law School. Retrieved March 9, 2023, from

<https://law.stanford.edu/2022/10/18/why-do-blue-states-keep-prioritizing-lawyers-over-low-income-americans/>

<sup>3</sup> Houlberg. (2022). *Allied Legal Professionals*. Institute for the Advancement of the American Legal System at University of Denver. Retrieved March 9, 2023, from

<https://iaals.du.edu/projects/allied-legal-professionals>

<sup>4</sup> U.S. Census Bureau QuickFacts: Oregon. (n.d.). Census Bureau QuickFacts.

<https://www.census.gov/quickfacts/OR>

<sup>5</sup> Are you in the American middle class? Find out with our income calculator. (2020, July 23). Pew Research Center.

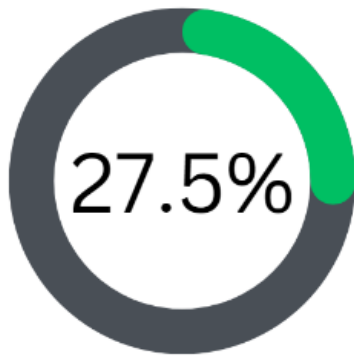
<https://www.pewresearch.org/fact-tank/2020/07/23/are-you-in-the-american-middle-class/>

<sup>6</sup> Young, A. (2021). *What income level is considered middle class in your state?* USA Today. Retrieved March 9, 2023, from

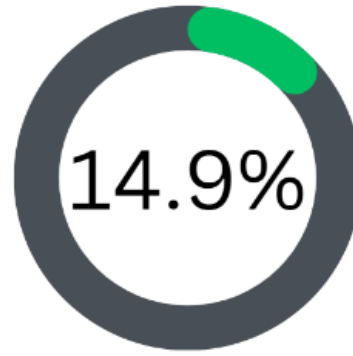
<https://www.usatoday.com/story/news/nation/2021/10/18/you-considered-middle-class-your-state>

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Association and the Institute for the Advancement of the American Legal System report that 40% to 60% of middle-income legal needs go unmet nationally.<sup>7,8</sup> Using this information, it is calculated that between 932,830 (or 22%) to 1,399,245 (or 33%) of Oregonians have unmet legal needs due to the cost of legal services. This is an average of 1,166,038 people or 27.5% of your population. As seen below, this population is even larger than the population that qualifies for free legal services from Legal Aid Services of Oregon. Many in this population have the ability to pay something for legal services but not the high rates attorneys charge.<sup>9,10</sup>



**Oregon's Missing Middle Population**  
1,166,038 people



**Oregon's LSC-Eligible Population**  
616,760 people

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[-based-your-income/8499080002/](#). The U.S. government does not have an official definition for what constitutes middle-class, but a commonly used measure (developed by Pew Research Center) defines a household to be "middle class" if its income is between two-thirds and twice the median household income.

<sup>7</sup> Wills, L. (2017). *Access to Justice: Mitigating the Justice Gap*. Access to Justice: Mitigating the Justice Gap. Retrieved March 9, 2023, from <https://www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/practice/2017/access-to-justice-mitigating-justice-gap/>

<sup>8</sup> Houlberg, M. H. & Kauffman, B. (2022). *IAALS' comment in support of the Colorado licensed legal paraprofessionals program*. Institute for the Advancement of the American Legal System at the University of Denver. Retrieved March 9, 2023, from <https://iaals.du.edu/blog/iaals-comment-support-colorado-licensed-legal-paraprofessionals-program>

<sup>9</sup> Donaldson, R. (2015). Law By Non-Lawyers: The Limits to Limited License Legal Technicians Increasing Access to Justice. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2673017>

<sup>10</sup> Crossland, S. R., & Littlewood, P. C. (2018). Washington's Limited License Legal Technician Rule and Pathway to Expanded Access for Consumers. *Dickinson Law Review*, 122(3), 861–861. <https://ideas.dickinsonlaw.psu.edu/cgi/viewcontent.cgi?article=1043&context=dlr>

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**Note:** The Missing Middle cannot afford a lawyer when they have a legal problem and do not meet the low-income requirements to receive free legal assistance.

The legal system can be complex and intimidating, especially for those who are not familiar with its processes and procedures. As a result, many individuals are left with no choice but to navigate the system on their own, without the guidance and support of a qualified legal professional. This can be particularly challenging for individuals who are low-income or otherwise marginalized, as they may face additional obstacles such as language barriers or a lack of legal knowledge.

However, with proper training and oversight, nonattorneys can provide valuable legal services to those who need them most. By allowing non-lawyers to provide limited legal services, such as document preparation and legal advice in specific areas, the legal system can become more accessible and inclusive for all Oregonians. Nonattorneys who have received the necessary training and support can help bridge the gap between the legal system and those who need its services.

You have the opportunity to empower individuals and families to meet their basic needs and protect their rights. This can mean the difference between a family having shelter or being homeless or being able to secure a fair settlement or custody arrangement. It can help prevent ongoing domestic violence and other forms of abuse by providing families with the legal tools to protect themselves. Additionally, it would help reduce the backlog of cases in the courts by providing assistance with legal paperwork and other matters.

There may be significant opposition to the proposed regulatory reform that would relax the unauthorized practice of law (UPL) statutes. However, we would like to comment on this matter by presenting evidence that supports the importance of limited licensing for nonattorney associate members of the Oregon State Bar.

Opposition to regulatory reform surrounding limited licensing of non-lawyers is often based on two primary concerns: public harm and competition. However, both of these concerns can be addressed when examining the evidence. First, there is no evidence of public harm in states where limited licensing has been implemented, such as in Utah and Arizona, or at the federal level where non-lawyer advocates are used in administrative proceedings such as immigration and social security. Second, according to a 2017 report published by the National Center for State Courts and the American Bar Foundation,<sup>11</sup> fear of competition from alternative

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<sup>11</sup> Clarke, T., & Sandefur, R. L. (2017). Preliminary Evaluation of the Washington State Limited License Legal Technician Program. *SSRN Electronic Journal*, 6–6.  
<https://doi.org/10.2139/ssrn.2949042>

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legal service providers is unfounded since those in the access to justice gap cannot afford lawyers' services anyway. Regulatory reform would not threaten the legal profession's market position but, instead, provide access to legal services to those who are currently priced out of the market.

In the end, even if competition were a legitimate concern, it is important to remember that the legal profession exists to protect the public, not itself. Further, existing Unauthorized Practice of Law statutes do not protect the public and, instead, hinder individuals from working with nonattorney associate members of the Oregon State Bar who have or can develop the skills and experience to help but have not become licensed lawyers.

As legal professionals committed to promoting access to justice, limited licensing for nonattorney associate members of the Oregon State Bar is a crucial step forward. This change will help close the access to justice gap and provide legal assistance to those who most need it. We understand the potential opposition to this proposal, but we urge you to consider the positive impact this change could have on the lives of many Oregonians.

Additionally, by championing limited licensing, Oregon sets an example for other states to follow. As more states adopt this approach, it can create a domino effect that leads to greater access to justice for individuals across the country. This can ultimately lead to a more just and equitable legal system for all Americans, where everyone has access to the legal services they need to protect their rights and interests.

Thank you for considering our opinion on this matter.

Sincerely,

***Alicia Mitchell-Mercer and S.M. Kernodle-Hodges***

North Carolina Justice for All Project