

SECONDS TO IMPACT?: REGULATORY REFORM, NEW KINDS OF LEGAL SERVICES, AND INCREASED ACCESS TO JUSTICE

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I

INTRODUCTION

A range of reforms to the way legal services may legitimately be produced and funded is underway around the United States. California, Arizona, and Utah have all moved to relax the rules about who can profit from the sale of legal services, which have historically restricted this to licensed lawyers.¹ Utah has, in addition, moved to release restrictions on who and what may provide legal services directly to the public, permitting service models that violate long-standing unauthorized practice of law provisions that have kept nonlawyer humans and software applications from providing legal advice and representation.²

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1. Maddie Hosack, *Arizona Carries Regulatory Reform Momentum Forward with Historic Vote*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (Sept. 22, 2020), <https://iaals.du.edu/blog/arizona-carries-regulatory-reform-momentum-forward-historic-vote> [<https://perma.cc/X8XM-4FRG>]; Zachariah DeMeola, *Utah Supreme Court Makes History with Vote to Establish Regulatory Sandbox*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (Aug. 17, 2020), <https://iaals.du.edu/blog/utah-supreme-court-makes-history-vote-establish-regulatory-sandbox> [<https://perma.cc/AC3K-B5DV>]; Sam Skolnik, *California Bar Trustees Move Toward New Regulatory 'Sandbox'*, BLOOMBERG L. (May 14, 2020, 5:50 PM), <https://news.bloomberglaw.com/us-law-week/california-bar-trustees-move-toward-new-regulatory-sandbox> [<https://perma.cc/Y44D-CQEX>].

2. DeMeola, *supra* note 1; Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public: Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587, 2587 (2013).

A key motivation for these changes is access to justice. For example, it was with “[t]he overarching goal of . . . improv[ing] access to justice”³ that Utah opted to create a “regulatory sandbox,” a controlled and monitored experimental regulatory space that relaxes rules about nonlawyer profit from legal services and unauthorized practice of law.

The ultimate measure of the success of this and other projects will be whether or not access to justice is, in fact, improved. Increased access would be a function of factors on both sides of the market. On the supply side, the newly permitted services would need to be discoverable, effective, and sustainable, and provide their services in fair and accurate ways. On the demand side, consumers would need to be interested in and able to actually use the new services, as no amount of affordable excellence has impact if it lies idle.

This paper explores a single question: assuming that innovation results in the offering of effective, competent services to consumers, how long will it take until those services actually change the landscape of access to justice?

Because Utah is the furthest along in reforms, we take it as a case study. We consider three structural factors that will shape the timing of reform’s impact. First, many observers believe considerable latent demand exists for legal services because many people currently experience justice problems for which they receive no assistance. How big is this to-date unrealized market for legal services? Second, what is the scale of newly permitted activity, and how fast might it grow? Third, even the most effective services have no impact if they are not used. How long will it take providers to adopt and consumers to start using newly permitted models of service production and delivery?

For present purposes, we focus on a very simple measure of access to justice: whether people and organizations with civil justice problems get some kind of legal assistance in handling them. Our analysis is meant to illustrate the factors to consider rather than precisely forecast a future. The assumptions we rely upon are many, but not implausible. The imprecision is unavoidable because of the unfortunate fact that there are little reliable data on civil justice in the United States.⁴ We illustrate three points: (1) Like Americans generally, Utahns experience a large number of justice problems for which they currently receive no legal service—in Utah, we estimate that this is on the order of over 2.4 million such problems each year.⁵ (2) To scale up to meet any substantial proportion of this need during the two-year initial window of Utah’s experiment, current provider activity would need to increase substantially, perhaps on the order of 240-fold from its current level.⁶ (3) It will likely be several years before these

3. Utah Supreme Court Standing Order No. 15 at 7 (effective Aug. 31, 2020), <http://www.utcourts.gov/utc/rules-approved/wp-content/uploads/sites/4/2020/08/REVISED-Utah-Supreme-Court-Standing-Order-No.-15.Redline.pdf> [<https://perma.cc/6CCF-YCTJ>].

4. AM. ACAD. OF ARTS AND SCIS., MEASURING CIVIL JUSTICE FOR ALL IV (2021), <https://www.amacad.org/sites/default/files/publication/downloads/2021-Measuring-Civil-Justice-for-All.pdf> [<https://perma.cc/66LK-BVE4>].

5. See *infra* notes 8–21 and accompanying text.

6. See *infra* notes 24–33 and accompanying text.

reforms achieve noticeable impacts on access to justice.⁷

II

UNMET NEED FOR LEGAL SERVICES

Estimating the size of currently unmet need for legal services is a challenging task. Not every unserved justice problem is a legal need, as people can sometimes successfully handle such problems on their own.⁸ Debates about access to justice typically assume that high income households and large organizations are already capable of acquiring legal services when they need or want them. The “justice gap” is believed to be a problem for low-income people, the middle class, and small businesses. Surveys exist that document the distribution of justice problems across populations and whether people currently receive legal assistance for those problems. In the United States, most such surveys focus on low-income groups, though a few represent entire populations of a community or state.

In 2019, the Utah Bar Foundation commissioned a survey of Utah households at 200% of the poverty line or below. Drawing on American Community Survey data, the study estimates that just over 800,000 Utahns, or about 25% of the state’s population, live in such households.⁹ In the study, 57% of low-income households reported at least one justice problem in the previous twelve months.¹⁰ As is a typical finding in this type of research, households with multiple problems contribute a large share of total problems: the 22% of low-income households that experienced three or more problems encounter 65% of all justice problems experienced by low-income people in Utah.¹¹ Based on the study, we estimate that these households experienced over 1,000,000 justice problems in 2018.¹²

7. See *infra* notes 34–42 and accompanying text.

8. Rebecca L. Sandefur & James Teufel, *Assessing America’s Access to Justice Crisis*, 11 U.C. IRVINE L. REV. 753, 755 (2021).

9. UTAH FOUNDATION, *THE JUSTICE GAP: ADDRESSING THE UNMET LEGAL NEEDS OF LOWER-INCOME UTAHNS 2–3* (Apr. 2020), https://www.utahbarfoundation.org/images/pdfs-doc/UBF_Justice_Gap_-_Full_Report.pdf [<https://perma.cc/P9A4-SFRJ>].

10. *Id.* at 21. Low-income Utahns report fewer justice problems than are discovered in most other surveys. For example, a recent World Justice Project survey of Americans at all income levels found that 66% reported at least one justice problem in the previous two years. WORLD JUST. PROJECT, *GLOBAL INSIGHTS ON ACCESS TO JUSTICE 108* (2019), <https://worldjusticeproject.org/sites/default/files/documents/WJP-A2J-2019.pdf> [<https://perma.cc/2F25-TX7Z>]. In contrast, the Legal Services Corporation 2017 study of the national population of people living at 125% of poverty or below found that 71% of respondents had at least one civil justice problem. LEGAL SERVS. CORP., *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*, <https://www.lsc.gov/justicegap2017> [<https://perma.cc/FV84-63VQ>].

11. Authors’ calculations from data presented in UTAH FOUNDATION, *supra* note 9, at 21.

12. Authors’ calculations from data presented in UTAH FOUNDATION, *supra* note 9, at 21 fig.18.

Number of justice problems	Percent of households reporting	Implied number of problems
0	43%	0
1	23%	184,158

Legal services providers that work with low-income populations gave assistance to 42,720 households during that same time period.¹³ If we assume that that help went to households with on average 1.5 problems, this implies that roughly 944,854 [=1,008,934-(42,720*1.5)] justice problems of the low-income population went unserved by legal aid providers.¹⁴

No similar data exist for the justice problem experiences of middle-income Utahns. In order to estimate how many justice problems this group experienced, we define people below the top 10% of the income distribution as “middle-income.” In Utah, 65% of the state’s population has incomes above 200% of poverty and below the top 10% of all incomes, or about 2,080,000 people.¹⁵ Average household size in Utah (3.1 people)¹⁶ is a bit larger than the national average (2.56 people),¹⁷ so this implies 670,968 middle-income households in the state of Utah.

Existing evidence suggests that middle-income households experience different types of justice problems from low-income households, but are not necessarily less likely to encounter such problems. For example, the American Bar Association’s 1994 national study of the legal needs of the public found that 47% of households below 125% of the federal poverty line were experiencing at least one justice problem, while 52% of middle-income households were.¹⁸ The average number of problems experienced by low-income households was 0.9, while the average number for middle-income households was 1.0.¹⁹ Using this average to estimate the number of middle-income justice problems in Utah produces an estimate of 670,968 justice problems experienced by this group. No evidence exists for how many of these problems received a legal service in Utah. In the 1994 national survey, 29% of the justice problems reported by low-income

2	12%	192,165
3	9%	216,185
4	5%	160,137
5	3%	120,103
6	2%	96,082
7	1%	56,048
8		64,055
9		72,062
Total	100%	1,008,934

13. See UTAH FOUNDATION, *supra* note 9, at 23 fig.22.

14. This assumes that the only source of service to the low-income population is organizations that provide service for free but other research suggests that low-income households also purchase legal services from the private practice bar. AM. BAR. ASS’N., CONSORTIUM ON LEGAL SERVS. & THE PUBLIC, REPORT ON THE LEGAL NEEDS OF THE LOW- AND MODERATE-INCOME PUBLIC 29 (1994).

15. See UTAH FOUNDATION, *supra* note 9, at 1.

16. *Id.* at 2.

17. U.S. CENSUS BUREAU, CHANGES IN HOUSEHOLD SIZE, CURRENT POPULATION SURVEY, ANN. SOC. & ECON. SUPPLEMENTS fig. HH-6 (2021), <https://www.census.gov/content/dam/Census/library/visualizations/time-series/demo/families-and-households/hh-6.pdf> [<https://perma.cc/EQP4-TYFU>].

18. See AM. BAR ASS’N., *supra* note 14, at 8.

19. *Id.* at 9.

people received some kind of legal service, either from a lawyer, a hearing body, or both. The comparable figure for middle-income households was 39%.²⁰ Thus, assuming that Utah's middle-income households are similar to those in the 1994 ABA study, we can estimate that 409,290 problems of middle-income people went unserved.

Even less information is available on the justice problems of small businesses. The range of problems experienced by such organizations in the United States is not known, but it probably centers around financial and employment issues and contract disputes, as well as taxes and real and intellectual property. In Utah, there are 277,140 small businesses, which account for 99.3% of all companies in the state.²¹ A 2015 survey of small enterprises (those with fewer than fifty employees) in the United Kingdom found these organizations experienced an average of thirteen justice problems.²² Notwithstanding the complications of measurement and definition, the general point is that justice issues are common for small business. Making the conservative assumption that Utah's small businesses encounter an average of five justice problems per year, that is 1,385,700 [=277,140*5] problems. We have no direct information on how many of these problems receive legal services of some type. The United Kingdom study cited above reported that 23.4% of small organizations' "most recent" problems involved assistance by an "independent advisor/representative/support service."²³ Of course not all of these services were legal services; for example, accountants offer tax advice, human resources professionals advise on personnel policies, and so forth. If Utah's small businesses are broadly similar, we would expect that small businesses experienced at least 1,061,446 [= (1-.234)*1,385,700] problems every year that receive no service.

Combining these three quantities, we can then estimate that low- and middle-income people and small businesses in Utah experience over 2.4 million civil justice problems every year that receive no legal services of any type. On the back of the envelope that we are scribbling on here, that is 79% of all civil justice problems experienced by these groups. While these numbers are quite stark, they are also consistent with other research.²⁴

20. *Id.* at 21.

21. U.S. SMALL BUS. ADMIN. OFF. OF ADVOCACY, 2018 SMALL BUSINESS PROFILE: UTAH 1 (2018), <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-UT.pdf> [<https://perma.cc/N45Q-B3ES>].

22. ROBERT BLACKBURN, JOHN KITCHING & GEORGE SARIDAKIS, THE LEGAL NEEDS OF SMALL BUSINESS: AN ANALYSIS OF SMALL BUSINESSES' EXPERIENCE OF LEGAL PROBLEMS, CAPACITY AND ATTITUDES 21 (2015).

23. *See id.* at 50 tbl.5.1 (stating that the survey results indicated that 15.3% of small businesses sorted out their most recent problem with help from these service providers and 8.1% relied on these service providers to sort out the problem for their business).

24. PASCOE PLEASENCE, 'LEGAL NEED' AND LEGAL NEEDS SURVEYS: A BACKGROUND PAPER 9 (2016), https://namati.org/wp-content/uploads/2016/11/OSJI-Legal-Needs-Surveys-Background-Materials-1-An-Introduction-to-Legal-Needs-Surveys-1-v3.6-2016-06-22-web_Pascoe.pdf [<https://perma.cc/AEQ3-323K>]; Rebecca L. Sandefur, *Access to What?*, 148 DÆDALUS, Winter 2019, at 49–55.

In this exploration, our measure of access to justice is a very simple one: does a justice problem receive a legal service of any kind—advice, representation, advocacy? Since the most common level of service received at present appears to be *no service*, any assistance at all would be an important change and, as we will discuss below, would indicate a breakthrough of existing barriers. While the ultimate goal may well be the one stated by the Conference of Chief Justices, “100 percent meaningful access to justice,”²⁵ in practice such a goal would be achieved in stages—for example, a 20% reduction in unmet need, then a 50% reduction, and so forth.

II

NEWLY PERMITTED ACTIVITY

One way to facilitate access to justice is to expand the number of authorized legal service providers. Based on our case study of Utah, current provider activity would need to increase significantly to make a noticeable impact. However, increases in the number of entities offering legal services do not guarantee that such services will actually be used, as many people fail to even recognize that their problems call for legal assistance.²⁶

A. Current Scale of Activity

Utah’s legal services regulatory sandbox opened in August 2020 as a two-year pilot project.²⁷ At this writing, Utah has approved twenty-two providers to offer legal services.²⁸ All but one are small organizations, and the large organization operates through a small local staff. Current monthly case volumes for these entities are in the single or double digits: all sandbox entities combined had offered services to address fewer than 500 legal problems. If existing organizations scaled up to serve an average of 500 problems per month, that would generate a total of 11,000 services each month, or 132,000 services per year. If each service involves treating a single justice problem, scaling up to 132,000 services per year would mean serving about 5.5% of our estimate of the current volume of unserved justice problems in Utah. If each service involved an average of two problems, that would mean serving about 11% of the current volume unserved.

Achieving even these modest impacts would require an increase in the current scale of sandbox activity on the order of sixty-fold. If the goal is to make

25. CONFERENCE OF CHIEF JUSTICES, RESOLUTION 3: EXPANDING MEANINGFUL ACCESS TO JUSTICE FOR ALL 2 (2018), https://ccj.ncsc.org/__data/assets/pdf_file/0011/23510/01312018-expanding-meaningful-access-to-justice-for-all.pdf [<https://perma.cc/S7QH-45QU>].

26. REBECCA L. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 14 (2014).

27. UTAH CTS., *Supreme Court Regulatory Reform—Revised—Effective August 31, 2020* (Sept. 1, 2020), <http://www.utcourts.gov/utc/rules-approved/2020/09/01/supreme-court-regulatory-reform-revised-effective-august-31-2020/> [<https://perma.cc/M2E5-JCUC>].

28. OFF. OF LEGAL SERVS. INNOVATION, *Approved Applications*, <https://sandbox.utcourts.gov/approved> [<https://perma.cc/C2DT-G9ZA>].

a noticeable impact on access to justice, such as to serve a third of currently unserved needs, scale would need to increase much more dramatically. Indeed, the entities in the sandbox would need to increase service output by between around 240-fold—if each service treats an average of two problems—and 480-fold—if each treats one problem. The necessary increase is likely actually even larger, as these calculations assume that the new services would recruit new clients who are not using traditional services, rather than draw current legal services users from existing providers. If the new services were cheaper or otherwise superior to traditional services, we would expect the latter—that is, that current clients of lawyers would move to the new providers. It is also possible that new services might emerge to address types of legal issues that are not explored in current research on civil legal needs.

While increases of this size are certainly possible over periods of decades, they are unlikely to manifest in a two-year pilot window.

B. Pace of Adoption

Just because services exist does not mean people will use them. A classic example from the legal context is a simple will. These are inexpensive—a few hundred dollars—and can greatly ease the financial and social transitions necessary after someone’s death. Lawyers and many document preparation services already exist to assist people in creating wills. Yet, most Americans do not have wills.²⁹

New services can reach consumers in two ways. One is through their adoption by existing service providers that consumers already work with. Several current entrants to Utah’s sandbox are traditional legal services providers seeking to scale their capacity and expand their market share by offering services through nonlawyer humans and software.³⁰ As a profession, lawyers are not among the most open to innovation, so the spread of these new models may be slow.³¹ Other sectors are similar. For example, research on the diffusion of innovation in health care finds that the translation of a new idea into an adopted clinical practice typically takes seventeen years.³²

29. Megan Doherty Bea & Emily S. Taylor Poppe, *Marginalized Legal Categories: Social Inequality, Family Structure, and the Laws of Intestacy*, 55 *LAW & SOC’Y REV.* 252, 254 (2021).

30. See OFF. OF LEGAL SERVS. INNOVATION, *supra* note 28 (listing approvals for companies in the sandbox).

31. Clio, a provider of practice management software, produces fascinating annual reports that demonstrate empirically how little progress has been made toward the adoption of productivity-enhancing technology and practices by the kinds of smaller law firms that provide most of the legal services consumed by people and small businesses. For example, Clio is the source for the notorious finding that lawyers put in an average of only 2.2 billable hours per day because they spend their time inefficiently performing tasks that other people and computer programs could be performing on their behalf. See CLIO, *LEGAL TRENDS REPORT 5* (2016), <https://files.clio.com/marketo/ebooks/2016-Legal-Trends-Report.pdf> [<https://perma.cc/2A22-3LXN>].

32. See Zoë Slotte Morris, Steven Wooding & Jonathan Grant, *The Answer is 17 Years, What is the Question: Understanding Time Lags in Translational Research*, 104 *J. OF THE ROYAL SOC’Y OF MED.* 510, 510 (2011) (“It is frequently stated that it takes an average of 17 years for research evidence to reach clinical practice.”).

The other way consumers can access new services is to discover them directly and recognize them as potentially useful for the concrete problems they confront. An interesting argument from contemporary research on consumer behavior is that consumption of new goods and services spreads faster today than in the past. For example, it took roughly seventy years for 90% of American households to have landline telephones, but less than two decades for 90% to have a cell phone.³³ While this example may be striking on its face, it is more nuanced: cell phones, internet use, and social media permit new kinds of behavior, but they are also all ways of engaging in behaviors—phone conversations, news consumption, connecting with friends and family—that were already well-established parts of ordinary life before the introduction of new modalities for doing the same things.

Consumption of legal services is different. Most Americans do not use legal services of any type for most of their civil justice problems. The most common reason Americans do not seek legal services for legal problems is that they do not understand their problems to have legal aspects and fail to recognize that legal help can potentially improve their situations.³⁴ Services like RocketLawyer and LegalZoom help people complete documents for the types of problems people are already most likely to recognize as legal³⁵—for example, formally legal actions like divorce and wills, leases, and other types of contracts. But consumers are less likely to see the legal dimensions of other types of issues, such as problems with employment, insurance, pensions and other benefits, and the like.³⁶ So the adoption of new types of legal services by the public must overcome the barrier of consumers recognizing that they might benefit from such services *at all*, regardless of whether services are traditional or innovative.

In addition to barriers of discovery, consumers can be confused about what new services are and can do. Two authors of this paper studied nonlawyer “Navigators” in debt and eviction courts and certified, limited scope independent paralegals working family cases. Consumers had difficulty discovering that these services existed and were unsure how they were different from lawyers. Confusion about what these new kinds of roles could and could not do extended even beyond the general public to court staff and traditional attorneys whose work brought them into contact with these new kinds of providers.³⁷

33. W. Michael Cox & Richard Alm, *You Are What You Spend*, N.Y. TIMES (Feb. 10, 2008), <https://www.nytimes.com/2008/02/10/opinion/10cox.html> [<https://perma.cc/Z3YU-ZS8R>].

34. Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 443–44 (2015).

35. Pascoe Pleasence, Nigel Balmer & Stian Reimers, *What Really Drives Advice Seeking Behaviour? Looking Beyond the Subject of Legal Disputes*, 1 OÑATI SOCIO-LEGAL SERIES, no. 6, 2011, at 10 fig.3.

36. *Id.*

37. See REBECCA L. SANDEFUR & THOMAS M. CLARKE, ROLES BEYOND LAWYERS: SUMMARY, RECOMMENDATIONS AND RESEARCH REPORT OF AN EVALUATION OF THE NEW YORK CITY COURT NAVIGATORS PROGRAM AND ITS THREE PILOT PROJECTS 44 (2016) (noting inadequate communication about the Navigators program left confusion among court staff and other legal providers); see also THOMAS M. CLARKE & REBECCA L. SANDEFUR, PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 9 (2017) (noting those in

III

WHERE AND WHEN MIGHT WE SEE IMPACT?

Expanded access to justice in the form of greater access to legal services could have effects across a wide range of outcomes and sectors. Two groups of actors likely to experience the earliest impacts are courts and the public. Nonetheless, the ultimate extent of such impacts remains to be seen with time.

A. Where Would Access to Justice Impacts Appear?

State and municipal courts—where most of the legal issues experienced by people and small businesses that become court cases are heard—currently struggle to handle a high volume of unrepresented litigants. On top of being unrepresented, these litigants may have received no assistance at all in preparing documents, arguments, or evidence necessary to pursue their cases. If reforms permit new forms of representation, these could reduce the number of unrepresented litigants that courts must deal with. New forms of advice and other services could also better prepare people for representing themselves, reducing the burdens on court staff. In some case types, for example debt collection, many jurisdictions observe that a majority of the targets of such lawsuits default, failing to respond to claims of debt or appear at scheduled hearings.³⁸ New services permitted under regulatory reforms could enhance the capacity of people to participate in their own cases. Greater access to legal services could increase the caseloads of courts as more people become able to pursue formal legal resolutions to legal problems; however, it could also reduce caseloads as greater access to legal expertise leads to the prevention and resolution of justice problems before they become court cases.

Americans currently experience a high volume of civil justice problems—situations that have civil legal aspects, raise civil legal issues, and have consequences shaped by the civil law.³⁹ Most of these issues currently receive no assistance from a legal expert. Most of these issues are not filed with courts or other kinds of hearing bodies. Many people lose the protection of important rights and face hardships—for example, lost income, lost housing, damage to their health—because they do not get assistance with civil justice problems.⁴⁰ Access to effective assistance with these very common problems would be of

similar roles in Washington State encountered confusion among clients about what their proper role was).

38. Megan Leonhardt, *Debt collectors are leveraging the court system more than ever—and this may have significant consequences for Americans*, CNBC (May 12, 2020), <https://www.cnbc.com/2020/05/11/debt-collectors-are-leveraging-the-courts-more-than-ever-before.html> [https://perma.cc/HYJ2-3PN5].

39. Sandefur & Teufel, *supra* note 8, at 766 (suggesting tens of millions of Americans face civil justice problems regularly).

40. AM. ACAD. OF ARTS AND SCIS., *Why a Major Initiative for Access to Civil Justice is Needed Now*, in CIVIL JUSTICE FOR ALL 6, (2020), <https://www.amacad.org/publication/civil-justice-for-all> [https://perma.cc/8PB9-8N4N].

tremendous benefit to the public.

B. When Would Courts Notice?

It is difficult to know how big any changes in workload and case flow would need to be in order for courts to notice them. Courts would probably not notice if a few more people had access to legal services, but they might notice if part of their workflow began to change substantially—for example, if default rates began to drop. Utah’s 2019 “justice gap” study found that debt collection lawsuits were an eye-popping 62% of all civil court cases, in which respondents—those against whom claims of unpaid debt are alleged—had no representation in 98% of cases.⁴¹ Even in Utah’s small claims courts, respondents suffer default judgments at least 70% of the time.⁴² If 70% of respondents defaulted in the roughly 57,000 debt collection cases filed in Utah District Courts in 2020,⁴³ there would be 39,900 defaults. As such, courts might notice a 10% reduction in default rates since that is almost 4,000 extra people showing up in court to respond to debt claims. Courts would very likely notice a one-third reduction in default rates—over 13,000 extra people showing up to respond to debt claims. Recall that Utah’s sandbox entities are currently offering less than 150 services per month in total across many areas of law, of which debt is only one. Without a sea change in activity in the sandbox, it would take a long time for these services offered to affect a measure such as Utah’s debt collection default rate.

C. When Would We Expect the Public to Notice?

Most of the civil justice problems of the public do not become court cases, so changes in court activity would provide a very incomplete picture of increased access to legal services.⁴⁴ One straightforward way to learn about public consumption of legal services is to ask people directly, through surveys. Unfortunately, the United States’ longstanding failure to invest in civil justice data infrastructure makes this difficult. Unlike for other issues of public benefit and policy—such as high school dropout, college completion, unemployment, and access to health insurance—there is no regular series of surveys that would allow us to compare public experience with justice problems before and after the

41. UTAH FOUNDATION, *supra* note 9, at 4. This pattern is true nationally. See THE PEW CHARITABLE TRUSTS, HOW DEBT COLLECTORS ARE TRANSFORMING THE BUSINESS OF STATE COURTS 14 fig.8 (2020), (showing that across seven different jurisdictions the vast majority of debt claims were litigated without counsel for consumers).

42. NAT’L CTR. FOR STATE CTS., IMPACT OF THE UTAH ONLINE DISPUTE RESOLUTION (ODR) PILOT PROGRAM: FINAL REPORT 10 fig.3 (2020), https://www.ncsc.org/__data/assets/pdf_file/0025/57823/NCSC-UT-final-2020.pdf [<https://perma.cc/P2V8-M8FQ>].

43. See UTAH DISTRICT COURTS: FY2020 CASE TYPE BY COURT: STATEWIDE TOTAL (2020), <https://www.utcourts.gov/stats/files/2020FY/district/0-Statewide.pdf> [<https://perma.cc/GG4A-XB4F>]. An additional unknown number of debt collection cases were filed in small claims courts.

44. Sandefur, *supra* note 34, at 448 (“The most recent U.S. national survey, from the early 1990s, found that 24% of situations were taken to attorneys, and 14% involved courts.”).

implementation of regulatory reform.⁴⁵

The most readily available information about public contact with new services will be from regulatory reform agencies themselves. For example, Utah's sandbox collects a range of information on a regular basis from participating entities, including the number of services offered by service area—for example, family, end of life planning, financial.⁴⁶ As our discussion above indicates, it will be some time before these new projects achieve a level of production that could have significant impact on currently unmet legal need.

In sum, the courts and the public will likely be the first to experience the effects of expanded access to justice. But it will take some time to determine whether unmet need for legal services has been materially reduced. The impact of these reforms on access to justice will take several years to manifest, and observers must be patient enough to allow the necessary time to pass before drawing conclusions about whether the promise of these efforts was borne out.

IV

CONCLUSION

Legal services regulatory reform offers new ways to create and deliver legal services that can potentially extend access to justice to people and groups long excluded from enjoying the protections of their own laws. As our discussion here shows, the volume of service provided in Utah's sandbox over the next few years is likely to be quite small relative to Utah's access to justice needs. It will take some time for observers to be able to understand the relationship between access to justice and regulatory change. The need for patience may be particularly acute in a small state with a small legal services market, but it is likely necessary for all currently contemplated reform projects.⁴⁷

Enthusiasm for these legal market liberalization reforms indicates hope and optimism not only for impacts on access to justice, but also for changes to activities like lawyer advertising and fee-sharing between lawyers and nonlawyers. But whatever the outcome of interest, current expectations also reflect what some call the “planning fallacy,” on the part of both the designers of the new regulatory schemes and the participants in them. People typically

45. See AM. ACAD. OF ARTS AND SCIS., *supra* note 4, at 2 (noting clear data on civil justice issues has yet to emerge).

46. Office of Legal Services Innovation, Innovation Office Manual, <https://utahinnovationoffice.org/wp-content/uploads/2021/04/Innovation-Office-Manual.pdf> [<https://perma.cc/5TX7-2BL9>].

47. For context, a recent independent evaluation of the impacts of reforms to rules about nonlawyer ownership in the much larger market of England and Wales concluded that “the full impacts of the reforms will not be visible for some time.” CTR. FOR STRATEGY & EVALUATION SERVS., IMPACT EVALUATION OF SRA'S REG. REFORM PROGRAMME: A FINAL REPORT FOR THE SOLIC. REG. AUTHORITY 39 (2018), <https://www.sra.org.uk/globalassets/documents/sra/research/abs-evaluation.pdf?version=4a1ac2> [<https://perma.cc/6K4G-RNNY>].

dramatically underestimate the resources, like time, required to achieve change.⁴⁸ Market-based, government and philanthropic funding practices often encourage the planning fallacy by limiting support for innovative efforts to twelve to thirty-six months. A key to overcoming the planning fallacy is recognizing the unrealistic aspects of the original plan and creating a more realistic plan that more accurately recognizes resource needs and potential obstacles.⁴⁹ We offer this Article as a step toward that more realistic plan.

Although regulators cannot control all of the factors driving growth in innovative activities, they can meaningfully influence many. As regulators, the agencies that design and administer these reforms cannot direct the flow of applications and activity, but they can make sure the pipes run clean. They can implement standardized, predictable review processes that are timely and transparent. They can find ways to create the capacity to process a high volume of applications and monitor the performance of many entities. To meet substantial parts of latent demand, some or many of these new entities would need to offer services at larger scale and lower cost, which will require many more nonlawyer providers, whether human or software-based. Regulators can signal their openness to these truly innovative models by approving those that are consistent with principles of consumer protection.

Decades of trying to solve America's access to justice crisis with a patchwork of poorly funded legal aid, lawyer pro bono, and other philanthropy provide a clear track record of failure. While regulatory reform offers tremendous opportunities to open up access to justice, understanding the impacts of these changes will require patience.

48. Roger Buehler, Dale Griffin, & Johanna Peetz, *The Planning Fallacy: Cognitive, Motivational, and Social Origins*, in 43 *ADVANCES IN EXPERIMENTAL SOC. PSYCH.* 1, 1 (M. P. Zanna & J. M. Olson eds., 2010).

49. *Id.* at 45–46, 54.