

November 25, 2025

Montana Supreme Court  
ATTN: Clerk of the Supreme Court  
215 N. Sanders Street, Room 323  
Helena, MT 59601

Re: Support for Montana Legal Services Association Petition to Adopt a Certified Lay Advocate Program, AF 11-0765

Dear Justices of the Montana Supreme Court:

As a native Montanan, former Fellow at the Deborah L. Rhode Center on the Legal Profession at Stanford Law School (the “Rhode Center”), and a current Visiting Assistant Professor at the University of Montana Alexander Blewett III School of Law,<sup>1</sup> I offer my wholehearted support for the Montana Legal Services Association’s (“MLSA”) petition to adopt a certified lay advocate program (the “Petition”).<sup>2</sup>

I reiterate the conclusions in the Rhode Center’s comment in support of the Petition: Namely, that all available research strongly suggests that trained nonlawyer service providers consistently provide competent, high-quality assistance to those in need of legal help.<sup>3</sup>

I write to provide additional insight into why Montana, in particular, will benefit from a justice worker program. I first describe the access-to-justice crisis facing Montana and, more generally, rural America. I then briefly explain how MLSA’s petition, if adopted, will directly address the root causes of that crisis, and in doing so, join the ranks of the growing number of justice worker programs that have found success across the country.

## **I. The Justice Gap in Rural America and Rural Montana**

Montana faces an access-to-justice crisis. Nearly half of all low-income Montanans have at least one civil legal problem that goes unaddressed.<sup>4</sup> In part, that is because pro bono legal service attorneys and organizations—constrained by limited funding and personnel—are unable to serve approximately 90% of those seeking help for high-stakes legal issues, including issues related to housing, domestic violence, and more.<sup>5</sup> As a result, Montanans across the state are forced to navigate complex legal proceedings alone (a daunting prospect), and many opt not to vindicate their

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<sup>1</sup> I provide my institutional affiliations for the purposes of identification only. The views expressed in this comment are my own.

<sup>2</sup> *In re* Request by Montana Legal Services Association to Adopt Rules Authorizing Certified Lay Advocates to Provide Limited Legal Services in Justice Courts and City Courts, No. AF 11-0765 (Mont. Sept. 15, 2025).

<sup>3</sup> Nora Freeman Engstrom, David Freeman Engstrom, & Natalie Anne Knowlton, *Comment re Montana Legal Services Association Petition to Adopt a Certified Lay Advocate Program*, DEBORAH L. RHODE CENTER ON THE LEGAL PROFESSION (Nov. 28, 2025).

<sup>4</sup> CARMODY & ASSOCS., *THE JUSTICE GAP IN MONTANA: AS VAST AS BIG SKY COUNTRY* 12 (2014).

<sup>5</sup> *Id.*

rights at all. Indeed, a 2014 report explained that more than three-quarters of low- or moderate-income Montanans declined to do anything in response to at least one of their civil legal problems.<sup>6</sup>

Montana’s access-to-justice crisis mirrors the crisis experienced across much of rural America.<sup>7</sup> Rural Americans—in addition to suffering disproportionately from “poverty, poor health outcomes, the opioid epidemic, educational deficits, and environmental degradation, among other challenges”—are highly likely to experience legal problems:<sup>8</sup> A recent survey found that 75% of rural households faced at least one civil legal problem in the previous year, with 23% experiencing more than six problems in the same period.<sup>9</sup> As in Montana, the vast majority of those legal problems go unaddressed. Surveys show that low-income rural Americans seek professional help for only 22% of their civil legal problems, and ultimately receive adequate help for just 14% of those problems.<sup>10</sup>

Domestic violence poses a particularly significant access-to-justice issue, both in Montana and in rural America more generally.<sup>11</sup> Survivors of domestic violence often face a host of legal issues: from the need to seek orders of protection, to keeping or securing housing, to maintaining employment, to fighting for custody of their children, and more.<sup>12</sup> Less than one in three recent survivors of domestic violence nationwide, however, seek help for substantial legal problems,<sup>13</sup> and ultimately, they receive help to resolve only 12% of those problems.<sup>14</sup> In rural America, those figures are almost certainly more dire: Domestic violence is more common in rural America than in metropolitan areas.<sup>15</sup> And, in rural America, survivors face limited access to support services, a dearth of available housing and shelters, lack of anonymity, transportation barriers, and more.<sup>16</sup> Montana legal service

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<sup>6</sup> *Id.* at 6.

<sup>7</sup> Nearly half of Montanans reside in “rural” areas, making Montana the fifth most rural state in the nation. *State-level Urban and Rural Information for the 2020 Census and 2010 Census*, U.S. CENSUS BUREAU, [https://www2.census.gov/geo/docs/reference/ua/State\\_Urban\\_Rural\\_Pop\\_2020\\_2010.xlsx](https://www2.census.gov/geo/docs/reference/ua/State_Urban_Rural_Pop_2020_2010.xlsx) (reporting that Montana’s rural population is 46.6% of its 1,084,000 residents). “[I]n rural regions and on Indian reservations, the prospects of finding cell-phone service, mass transportation, or any avenue to legal advice are shockingly dim.” Martha Minow, *Access to Justice*, 2 AM. J. OF L. & EQUITY 293, 300 (2022).

<sup>8</sup> Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Danielle M. Conway, & Hannah Haksgaard, *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15, 18–19 (2018).

<sup>9</sup> LEGAL SERVICES CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 55 (2022).

<sup>10</sup> *Id.*

<sup>11</sup> See generally Lisa R. Pruitt, *Place Matters: Domestic Violence and Rural America*, 23 WISC. J. OF L., GENDER, & SOC’Y 347 (2008) (describing domestic violence-related issues in rural America).

<sup>12</sup> Casey Chiappetta, *Reducing Domestic Violence and Improving Outcomes for Children: Funding Civil Legal Aid to Maximize Impact*, 57 FAM. CT. REV. 465, 465 (2019).

<sup>13</sup> LEGAL SERVICES CORP., *supra* note 9, at 55.

<sup>14</sup> *Id.* (reporting that surveyed recent survivors of domestic violence “did not receive any or enough legal help for 88% of substantial [legal] problems”).

<sup>15</sup> See Pruitt, *supra* note 11, at 348–49 (“[I]n 2003, arrests for crimes against family member were four times higher in rural places than the largest metropolitan areas.”); Corinne Peek-Asa, Anne Wallis, Karisa Harland, Kristen Beyer, Penny Dickey, & Audrey Saftlas, *Rural Disparity in Domestic Violence Prevalence & Access to Resources*, 11 J. WOMEN’S HEALTH 1743 (2011) (“61.5% of isolated rural women reported four or more events of physical violence in the past year compared with 39.3% of urban women. More than 30% of isolated rural women reported severe to very severe physical violence compared with 10% of urban women.”).

<sup>16</sup> See Pruitt, *supra* note 11, at 358 (“A number of the factors that set intimate abuse in rural places apart from the phenomenon in urban areas are spatial in one way or another. These include geographic and social isolation, lack of anonymity, the more entrenched nature of rural patriarchy, severe economic disadvantage, lack of social services, and

providers have long identified unmet legal need when it comes to those experiencing domestic violence.<sup>17</sup>

Native American communities—including those in Montana—similarly face particularly challenging issues when it comes to accessing justice. While staggeringly little empirical research has been conducted regarding access to justice in Indian Country,<sup>18</sup> jurisdictional and cultural barriers are known to complicate Native Americans’ and Alaska Natives’ ability to seek legal assistance.<sup>19</sup> Montana’s Native American population, in particular, has been identified as lacking adequate access to legal services.<sup>20</sup>

## II. Why No Justice?

Why this unmet need for legal services? Simply put, because there aren’t enough accessible, qualified, and trusted legal service providers.

For one, lawyers are scarce. Rural areas are often “legal deserts”—rural communities that severely lack access to attorneys.<sup>21</sup> Montana is littered with legal deserts: In 2020, nearly half of Montana’s fifty-six counties had five or fewer practicing attorneys.<sup>22</sup> Several counties had no attorneys at all: Petroleum, Meagher, and Golden Valley Counties—with a collective population of 3,249 Montanans—lacked a single attorney between them.<sup>23</sup> As a result, individuals seeking legal

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inadequate and sometimes ill-informed legal actors.”); *Violence and Abuse in Rural America*, RURAL HEALTH INFORMATION HUB, <https://www.ruralhealthinfo.org/topics/violence-and-abuse> (last visited Nov. 24, 2025) (describing similar factors).

<sup>17</sup> CARMODY & ASSOCS., *supra* note 4, at 13 (identifying family law cases, including those involving domestic violence, as “the most common legal need”).

<sup>18</sup> Kristen Matoy Carlson, *Access to Justice in the Shadow of Colonialism*, 59 HARV. C.R.-C.L. L. REV. 69, 114 (2024) (describing the need for more robust empirical inquiry).

<sup>19</sup> In particular, numerous studies suggest that Native American and Alaska Native survivors of domestic violence may be particularly unlikely to seek help. *See, e.g.*, Brittany Wenniserfiostha Jock, Gail Dana-Sacco, Joyell Arscott, Meredith E Bagwell-Gray, Emily Loerzel, Teresa Brockie, Gwendolyn Packard, Victoria M O’Keefe, Catherine E McKinley, Jacquelyn Campbell, “*We’ve Already Endured the Trauma, Who is Going to Either End that Cycle or Continue to Feed It?*”: *The Influence of Family and Legal Systems on Native American Women’s Intimate Partner Violence Experiences*, 3 J. INTERPERSONAL VIOLENCE 21 (2022) (describing cultural factors that may discourage Native survivors from seeking legal intervention); Mary G. Findling, Logan S. Casey, Stephanie A. Fryberg, Steven Hafner, Robert J. Blendon, John M. Benson, Justin M. Sayde, Carolyn Miller, *Discrimination in the United States: Experiences of Native Americans*, 54 HEALTH SERVS. RSCH. 1431 (2019) (reporting that “one in five Native Americans reported avoiding interactions with the legal system because they fear unfair treatment”); MATTHEW FLETCHER, AM. CONST. SOC’Y, ADDRESSING THE EPIDEMIC OF DOMESTIC VIOLENCE IN INDIAN COUNTRY BY RESTORING TRIBAL SOVEREIGNTY 1 (2009) (describing jurisdictional issues that compound legal issues related to domestic violence in Indian Country).

<sup>20</sup> *See* CARMODY & ASSOCS., *supra* note 4, at 27–29 (identifying Native Americans as a population facing a justice gap).

<sup>21</sup> Michelle Paxton, *Preventing Legal Deserts in Our Rural Communities*, AM. BAR ASS’N (Nov. 14, 2023) (describing legal deserts).

<sup>22</sup> ABA PROFILE OF THE LEGAL PROFESSION, AM. BAR ASS’N 6 (2020) (listing twenty-seven Montana counties in which there were five or fewer attorneys).

<sup>23</sup> *See id.*; *see also* U.S. Census Bureau, *County Population Totals and Components of Change: 2020-2024: Montana*, <https://www2.census.gov/programs-surveys/popest/tables/2020-2024/counties/totals/co-est2024-pop-30.xlsx> (listing Montana county populations as of April 2020).

help often face the prospect of long, expensive travel—travel that prevents many from seeking assistance at all.<sup>24</sup>

Even where lawyers are present, however, they often cost too much. In 2014, Montanans reported that a lack of money was the number one reason they declined to seek legal assistance.<sup>25</sup> Indeed, most Americans lack funds to cover a \$500 emergency expense,<sup>26</sup> making it impossible to hire an attorney that charges significantly more than that.<sup>27</sup> Given the significant percentage of Montanans living below or very near the federal poverty line,<sup>28</sup> it is highly unlikely that even an infusion of attorneys to rural areas would provide sufficient legal help.

Nor can pro bono support from existing lawyers close Montana’s justice gap. First, while MLSA and a handful of other pro bono legal providers offer high-quality, life-changing legal services to Montanans in need, they lack the requisite resources to tackle the access-to-justice crisis: In 2013, for instance, less than half of the individuals who sought legal help from MLSA were found eligible to receive services.<sup>29</sup> And, given its constrained resources, MLSA found itself able to assist only 45% of those eligible individuals—resulting in less than a quarter of those who sought help actually receiving any.<sup>30</sup> And, while members of the Montana Bar perform laudable pro bono services, these services have proven insufficient to combat the state’s access-to-justice crisis.<sup>31</sup>

Finally, cultural factors can prevent Montanans from seeking legal help. Rural residents can be reluctant to trust outsiders or authority figures who are perceived as lacking an understanding of the local way of life.<sup>32</sup> So too can a strong belief in self-reliance discourage rural Americans from accessing legal help, particularly from strangers:<sup>33</sup> Evidence suggests that older Montanans, in particular, hesitate to seek legal help out of a desire not to share “personal issues” with individuals

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<sup>24</sup> CARMODY & ASSOCS., *supra* note 4 at 17–18 (reporting that that travel costs prevented low-income Montanans from traveling long distances to obtain legal services).

<sup>25</sup> *Id.* at 12 (“Money is the number one barrier to getting legal help.”).

<sup>26</sup> Lorie Konish, *63% of Workers Unable to Pay a \$500 Emergency Expense, Survey Finds*, CNBC (Aug. 31, 2023), <https://www.cnbc.com/2023/08/31/63percent-of-workers-are-unable-to-pay-a-500-emergency-expense-survey.html> (reporting that 63% of surveyed American workers reported lacking \$500 to pay an emergency expense).

<sup>27</sup> CARMODY & ASSOCS., *supra* note 25 at 13 (noting, for example, that the cost of a lawyer’s assistance in obtaining a temporary order of protection can exceed \$1,000, and that family law cases can range from \$4,000 to \$20,000).

<sup>28</sup> Barbara Wagner, *Understanding the Working Lives of the Not-so-Rich and Famous*, MONTANA ECONOMY AT A GLANCE 3 (2019), <https://lmi.mt.gov/docs/Publications/EAG-Articles/0219-Not-So-RichAndFamous.pdf>

<sup>29</sup> CARMODY & ASSOCS., *supra* note 4, at 13.

<sup>30</sup> *Id.*

<sup>31</sup> While members of the Montana Bar provide considerable pro bono services each year, it is insufficient to meet the legal needs of all Montanans. *See, e.g.*, MONT. SUPREME COURT, ANNUAL PRO BONO REPORT (2022) (reporting that Montana attorneys provided 140,934 hours of free or low-cost legal services in 2021); CARMODY & ASSOCS., *supra* note 4 at 3 (“Despite their best efforts, [MLSA’s] attorneys, the pro bono attorneys who work with MLSA, and the workers in the Court Help Program are able to assist less than one in ten of the Montanans who need help with their legal problems.”).

<sup>32</sup> LEGAL SERVICES CORP., JUSTICE WHERE WE LIVE: PROMISING PRACTICES FROM RURAL COMMUNITIES 62 (2025).

<sup>33</sup> *Id.*

they do not know.<sup>34</sup> Some Native American residents of Montana’s reservations, too, have voiced a disinclination to seek help from non-Native service providers.<sup>35</sup>

In sum, the causes of rural Montana’s access-to-justice crisis are multifaceted. Of course, there is a dearth of attorneys in Montana’s most rural areas but, given high attorney fees and cultural realities, even increasing the number of attorneys would probably not ensure that quality legal services are available to those who need them. Instead, we need a new legal service delivery model.

### III. MSLA’s Petition

MLSA’s Petition increases the supply of qualified, trusted legal service providers available to rural Montanans—in doing so, striking at the root causes of the state’s access-to-justice crisis. As the Rhode Center’s comment emphasizes, non-lawyer legal service providers, including community justice workers (“CJWs”), have consistently proven to be an effective means of improving key legal services in jurisdictions across the nation and the world.<sup>36</sup> Montana will be no exception.

Indeed, CJWs are particularly well-suited to Montana’s rural context. First, CJWs’ services will be free and accessible, significantly increasing the accessibility of legal advice for low- and middle-income Montanans. Second, CJWs will be drawn from the communities they serve, and embedded within trusted local institutions like the YWCA of Missoula, Safe Harbor of Lake County, and the Red Bird Woman Center.<sup>37</sup> Their local presence will minimize the need for expensive travel seeking legal advice. And, CJWs will serve as a source of trusted advice for their fellow community members, providing comfort and a shared background that outsiders (including outsider-lawyers) simply cannot.

In addition, the program’s rigorous training standards will help to ensure that CJWs provide high-quality, consistent legal advice. CJWs will be required to complete interactive courtroom simulations, pass a certification exam, and receive ongoing mentorship from a dedicated CJW Project Attorney.<sup>38</sup> So too will CJWs be trained subject matter experts (initially, in domestic violence law, and eventually expanding out into housing and consumer law),<sup>39</sup> and they will also be trained to identify complex matters requiring referral to licensed attorneys.<sup>40</sup> These combined safeguards protect clients while expanding access to high-quality representation. Indeed, study after study has shown that trained non-lawyer subject matter experts consistently provide services comparable to—or better than—generalist attorneys who lack specialized expertise.<sup>41</sup>

Finally, this model builds on demonstrated successes. In Montana, and as detailed by the Petition, MLSA’s Tribal Advocacy Incubator Project (TAIP) has laid a strong foundation for

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<sup>34</sup> CARMODY & ASSOCS., *supra* note 4, at 28.

<sup>35</sup> *Id.*

<sup>36</sup> See Engstrom et al., *supra* note 3 (compiling evidence).

<sup>37</sup> Petition, *supra* note 2, ¶ 4.

<sup>38</sup> Petition, *supra* note 2, ¶ 8.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> See Engstrom et al., *supra* note 3 (compiling evidence).

expanded CJW programs.<sup>41</sup> The Petition also mentions Alaska’s enormously successful CJW program, which has proven particularly effective in combatting the rural access-to-justice crises.<sup>42</sup> Founded in 2022, Alaska’s program trains CJWs to help Alaskans with a variety of legal issues, including SNAP benefits, Indian Child Welfare cases, domestic violence issues, wills and consumer debt issues.<sup>43</sup> By the end of 2024, more than 200 community justice workers had been trained to provide legal advice to clients, and CJWs were serving nearly four cases for each case handled by a volunteer attorney.<sup>44</sup> Given the similarities between Alaska and Montana—chief among them, remote, rural communities and a significant Indigenous American population—there is significant reason to believe that a CJW program will find similar success in Montana.<sup>45</sup>

More broadly, should the Court adopt the petition, it will join the growing number of states that have adopted justice worker reforms tailored to meet the needs of their citizens. The Supreme Courts of Arizona,<sup>46</sup> Delaware,<sup>47</sup> Utah,<sup>48</sup> and Hawaii,<sup>49</sup> for example, have all approved justice worker programs. And numerous other states are exploring similar avenues to permit licensed, non-lawyer legal service providers to provide targeted legal services to individuals in need.<sup>50</sup>

In conclusion, I strongly urge the Montana Supreme Court to adopt MLSA’s certified lay advocate program. The evidence is clear: Montana faces a severe access-to-justice crisis, particularly in rural communities where traditional legal aid cannot meet the overwhelming demand. A justice

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<sup>42</sup> Petition, *supra* note 2, ¶ 3; see also NIKOLE NELSON, ALASKA LEGAL SERVICES CORPORATION: MOVING BEYOND LAWYER-BASED SOLUTIONS WITH COMMUNITY JUSTICE WORKERS, <https://lsc-live.app.box.com/s/4m9rcenmeu46uxvqe4d4gko0s528pu3t> (last visited Nov. 24, 2025) (describing the program’s successes).

<sup>43</sup> AMERICAN BAR FOUNDATION, RESEARCH BRIEF: ANALYSIS OF THE SOCIAL AND ECONOMIC IMPACT OF THE ALASKA COMMUNITY JUSTICE WORKER PROGRAM (2021-2025) 2 (2025).

<sup>44</sup> *Id.*

<sup>45</sup> For more on Alaska’s CJW program, see AMERICAN BAR FOUNDATION, *supra* note 43.

<sup>46</sup> In 2020, the Arizona Supreme Court partnered with access-to-justice organizations and approved the Domestic Violence Legal Advocate Initiative to “train[] and certify[] lay advocates at community-based organizations to provide trauma-informed, limited-scope legal advice to DV survivors as Domestic Violence Legal Advocates.” INNOVATION 4 JUSTICE, EXPANDING LEGAL ADVICE & ASSISTANCE FOR DOMESTIC VIOLENCE SURVIVORS 1 (2024). The program has since expanded to train lay advocates in housing stability. *Certified Community Legal Advocates*, AZ COURTS, <https://www.azcourts.gov/cld/Legal-Advocates> (last visited Nov. 24, 2025). There are currently 31 lay advocates providing services to Arizonans in need. *Id.*

<sup>47</sup> In June 2022, the Delaware Supreme Court approved rule reforms to permit trained “Qualified Tenant Advocates” to represent tenants in eviction proceedings. Molly McPheeters, *Qualified Tenant Advocates*, DELAWARE COMBINED CAMPAIGN FOR JUSTICE (June 30, 2022), <https://delawareccj.org/qualified-tenant-advocates/>.

<sup>48</sup> In 2021, the Utah Supreme Court approved a community justice worker program. Cayley Balsler & Stacy Rupprecht Jane, *The Diverse Landscape of Community-Based Justice Workers*, IAALS (Feb. 22, 2024), <https://iaals.du.edu/blog/diverse-landscape-community-based-justice-workers>. Initially founded to help with domestic violence issues, the justice worker program has since expanded to offer legal services related to housing stability and medical debt. COMMUNITY JUSTICE ADVOCATES OF UTAH, <https://www.cjau.org/> (last visited Nov. 24, 2025).

<sup>49</sup> In 2023, the Hawaii Supreme Court approved the “Rural Paternity Advocate Pilot Project,” to assist individuals navigating sensitive family law issues in court. *Rural Paternity Advocate Program*, HAWAII STATE JUDICIARY, <https://www.courts.state.hi.us/rural-paternity-advocate-pilot-project-third-circuit> (last visited Nov. 24, 2025).

<sup>50</sup> See INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., BUILDING BRIDGES: GUIDELINES FOR CREATING RECIPROCITY BETWEEN ALLIED LEGAL PROFESSIONAL PROGRAMS 3–5 (2025) (compiling allied legal professional programs, including programs for licensed paralegals and limited license legal technicians, that have been adopted in states across the country).

worker program offers a practical, research-backed solution that can quickly expand the availability of legal assistance to low-income Montanans facing critical civil legal issues. By creating this pathway for trained nonlawyer advocates to provide limited legal services under appropriate supervision, the Court will take a meaningful step toward fulfilling the promise of equal justice under law for all Montanans.

Sincerely,

A handwritten signature in black ink, appearing to read "Brianne Holland-Stergar". The signature is fluid and cursive, with the first name "Brianne" being the most prominent part.

Brianne Holland-Stergar

Visiting Assistant Professor

University of Montana Alexander Blewett III School of Law