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## Introduction

The Beacon Center of Tennessee is a nonprofit organization dedicated to providing free market solutions on public policy issues in Tennessee. Beacon urges this Court to reduce or eliminate Tennessee regulations prohibiting non-lawyer ownership of law firms and fee sharing with non-lawyers. These regulations stymy the ability of those in the legal field to provide needed services and are contrary to the long-held principle in Tennessee that individuals should be free to make their own economic decisions. *See Baugh v. Novak*, 340 S.W.3d 372, 382–83 (Tenn. 2011). By eliminating these regulations, this Court can unleash entrepreneurial ingenuity to increase both the quantity and quality of legal services available to Tennesseans.

## The Problem

The United States is experiencing an access-to-justice crisis. Our nation ranks 112 out of 143 countries in terms of the affordability of and access to the civil justice system. *WJP Rule of Law Index*, World Justice Project (2025), https://worldjusticeproject.org/rule-of-law-index/country/2025/United%20States/Civil%20Justice/. This crisis goes back several years. As one court observed, "studies suggest that as much as 80% of the legal needs of the poor and disadvantaged are not being met," in large part because "funding and resources for legal aid have dropped dramatically." *In re Amends. to Rule Regulating Fla. Bar 1-7.3.*, 175 So. 3d 250, 251 (Fla. 2015). This crisis encompasses "a significant portion" of non-indigent individuals who nonetheless "do not possess the means to afford full and rigorous representation of counsel." *Persels & Assocs., LLC v. Cap. One Bank, (USA), N.A.*, 481 S.W.3d 501, 506 (Ky. 2016).

As the Court has acknowledged in its request for comments, Tennessee has not been spared from these issues. Despite their best efforts, local legal services organizations cannot solve this problem on their own. Since there are only "1.6 legal aid attorneys for every 10,000 residents in poverty [in Tennessee], the tenth lowest ratio in the country," such organizations "turn away 50% of the people who reach out to them for help." *Democracy, the Justice Gap, and Preserving the Rule of Law*, Legal Aid Society of Middle Tennessee and the Cumberlands (June 26, 2024), https://las.org/democracy-the-justice-gap-and-preserving-the-rule-of-law/. As the Court also recognizes in its request for comments, this problem is made worse because Tennesseans who do not meet the requisite poverty threshold cannot receive services from legal aid organizations. The dearth of available legal services, rather

than being the inevitable consequence of unavoidable circumstances, stems from the government's policy choices.

The current regulatory framework artificially constrains the market for legal services and prevents innovative, affordable delivery models from emerging. According to Stanford Law professor David Freeman Engstrom, "[a] growing consensus among scholars…holds that" restrictions on non-lawyers taking an economic interest in legal service entities "wall off law firms from the technological, financial, and service innovations that have transformed almost every other part of the modern economy." David Freeman Engstrom et al., *Regulatory Innovation at the Crossroads: Five Years of Data on Entity-Regulation Reform in Arizona and Utah*, SLS Blogs (June 2, 2025), https://law.stanford.edu/2025/06/02/regulatory-innovation-at-the-crossroads-five-years-of-data-on-entity-regulation-reform-in-arizona-and-utah/. This negatively impacts consumers because modern legal practice requires substantial capital investment in technology, support staff, and infrastructure. Given that "modern litigation is expensive, . . . deep-pocketed wrongdoers can deter lawsuits from being filed if a plaintiff has no means of financing her or his case." *Lannan Found. v. Gingold*, 300 F. Supp. 3d 1, 19 (D.D.C. 2017) (quoting *Hamilton Cap. VII, LLC, I v. Khorrami, LLP*, No. 650791/2015, 2015 WL 4920281, at *5 (Sup Ct, Aug. 17, 2015)). Investment from outsiders would help "provide victims their day in court." *Id.*

**Reducing or Eliminating these Regulations Will Be Effective**

This makes reform of the subject restrictions to permit alternative business structures an important piece of the puzzle" for "solv[ing] the access to justice crisis." *Id.* Changing Tennessee rules to permit non-lawyer ownership of law firms and fee sharing would enable law firms to accumulate the capital necessary to invest in technology that can reduce costs and increase efficiency, expand into underserved rural and urban communities, develop more scalable service models for routine legal matters, and even compete with unauthorized providers who fill gaps left by the regulated profession. This would empower Tennessee firms to provide a greater range and higher quality of legal services to underserved individuals.

Similar changes have already been instituted or are being initiated in D.C., Arizona, Utah, and Washington state. Since 1991, Washington, D.C., with certain limitations, has permitted lawyers to partner with non-lawyers. *Comment on Proposed Changes to D.C. Rules Pertaining to Nonlawyer Owners in a Firm*, DC Bar (June 25, 2025), https://www.dcbar.org/news-events/news/comment-on-proposed-changes-to-d-c-rules-pertainin. Arizona has permitted non-lawyers to hold economic interests in law firms since 2021. Karen E. Rubin, *Non-Lawyer Ownership of Law Firms Is Trending – But Is it a Good Idea?*, Ohio Bar (March 22, 2021), https://www.ohiobar.org/member-tools-benefits/practice-resources/practice-library-search/practice-library/2021-ohio-lawyer/non-lawyer-ownership-of-law-firms-is-trending--but-is-it-a-good-idea. Utah created a "regulatory sandbox" in 2020 in which certain regulations are suspended to permit entities with non-lawyer investors or owners to provide legal services. *Id.* Washington state recently launched its "Entity Regulation Pilot Project," which will allow entities operated by non-

lawyers to apply to offer legal services. *Entity Regulation Pilot Project*, Washington State Bar Association (Jan. 9, 2026), https://www.wsba.org/about-wsba/entity-regulation-pilot.

Available data shows the outcomes of these reforms have been positive. A Stanford Law School study finds that, roughly five years after the reforms were put in place in Arizona and Utah, innovations to business structures and technology have been spurred with the benefits redounding to consumers. David Freeman Engstrom et al., *Legal Innovation After Reform: Five Years of Data on Regulatory Change* 2–3, 20–32 (Stan. Law Sch. 2025), https://law.stanford.edu/wp-content/uploads/2025/06/SLS_CLP_LegalInnovation_REPORT_v5.pdf. Notably, lawyers continue to play a significant role in these new types of entities, thus "mitigating concerns that 'corporate' practice of law will sideline lawyers or forego their unique ethical training, perspective, and obligations." *Id.* at 3, 26–27. Publicly accessible information concerning consumer complaints and disciplinary action in Utah and Arizona provide "little to no evidence of harm" stemming from these regulatory changes. *Id.* at 3, 32–33. Accordingly, were Tennessee to reduce or eliminate rules prohibiting non-lawyers from taking an economic interest in the provision of legal services, we can reasonably expect access to justice to improve with minimal negative side effects.

**Reducing or Eliminating these Regulations Is Consistent with Fundamental Legal Principles**

Importantly, such rule changes would also place Tennessee's regulatory framework on a sounder legal footing, more in line with Tennessee and American constitutional principles. The legal legitimacy of regulations prohibiting non-lawyer ownership of law firms and fee sharing with non-lawyers is suspect because such regulations infringe (1) on the freedom of contract held by attorneys, clients, and non-lawyers and (2) on the associational rights of attorneys and clients.

The regulations at issue restrict the freedom of contract of attorneys, clients, and non-lawyers seeking to enter into agreements in which non-lawyers take a financial interest in law firms or legal services. Tennessee recognizes the freedom of contract in "statutory and case law" and as "an inherent part of the right of liberty and the right of property." *Baugh*, 340 S.W.3d at 383 (citing 21 Steven W. Feldman, *Tennessee Practice: Contract Law and Practice* § 1:6, at 17 (2006); *State ex rel. Astor v. Schlitz Brewing Co.*, 104 Tenn. 715, 746 (1900)). Though the prevailing view of this Court is that "[t]he freedom of contract must give way to the preservation of the public health, safety, morals, or general welfare," the access to justice crisis and the previously discussed probable benefits of permitting greater freedom of contract in the legal field weigh in favor of reducing or eliminating existing barriers, not upholding the status quo. *Id.* (citing *State v. Greeson*, 174 Tenn. 178, 186 (1939)).

The subject regulations also impinge on the freedom of association under the First Amendment to the U.S. Constitution because they restrict the right of attorneys and clients to organize with others in matters that involve the exercise of expression and petitioning the courts. The First Amendment includes "a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the

redress of grievances, and the exercise of religion." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984). Clients, for their part, have a right to petition the courts for redress. *United Mine Workers of Am., Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 221–22 (1967). As for attorneys, the U.S. Supreme Court has recognized lawyers can engage in a constitutionally protected act of associational expression by engaging in a "kind of cooperative, organizational activity," such as litigating for the purpose of advancing "beliefs and ideas." *In re Primus*, 436 U.S. 412, 438 n.32 (1978) (citing *Nat'l Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 430 (1963); *Nat'l Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958)). Despite this, the Court declined to recognize a similar protection when the attorney is motivated by commercial interests. *Id.* (discussing *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978)).

Following this ruling, however, the Court's views on commercial speech appear to be shifting. The Court stated that "the degree of First Amendment protection is not diminished merely because . . . speech is sold rather than given away." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 756 n.5 (1988) (citation omitted). Justice Thomas expressed skepticism on the commercial versus non-commercial speech dichotomy, stating "I doubt whether it is even possible to draw a coherent distinction between commercial and noncommercial speech," and "I do not see a philosophical or historical basis for asserting that 'commercial' speech is of 'lower value' than 'noncommercial' speech." *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 575 (2001) (Thomas, J., concurring); *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 533 (1996) (Thomas, J., concurring). Views denigrating commercial or professional speech are also in tension with a premise acknowledged in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*—that one's right to her own personal expression can be implicated when providing goods and services to customers for money. *See* 584 U.S. 617, 633 (2018). Accordingly, regulations like those in question significantly restrict the ability of attorneys and clients to engage in constitutionally protected associational activities.

## Conclusion

The Court should reduce or eliminate regulations prohibiting non-lawyer ownership of law firms and fee sharing. Doing so will both increase the quantity and improve the quality of legal services available to Tennesseans. And it will allow our state to make significant headway in solving the access to justice crisis.