

# Bringing Justice Online: Why Arizona Should Transition Its Civil and Family State Courts to an Online Platform

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## I. INTRODUCTION

Maria stood outside her apartment, where she lived with her three young children, scanning the packet of papers just handed to her by the process server. Although each page was littered with words and phrases she did not understand, the few she did comprehend made it clear that she was being sued by her credit card company. Maria had never been sued before nor had she ever heard of the Maricopa County Justice Court. But more importantly, this lawsuit was unexpected. Maria made most of her minimum payments, and she thought the credit card company had agreed to defer her missed payments when she spoke with them over the phone a few months earlier.

A half hour later, Maria put down the complaint and service packet and reached for her smartphone. While not sure how to handle or defend this lawsuit, she knew from the papers that she had to respond to it within twenty days by submitting an “answer.” Browsing the Maricopa County Justice Court website took time, but she eventually found a how-to packet for completing the answer form. When the long pages of rules confused her, she skipped to the answer form at the end. It asked her which allegations of the complaint she admitted, which allegations she denied, and whether she had any additional information to provide. Lost at what to write and knowing that she lacked the time to attend court, Maria sighed and picked up the papers. She dropped them into the trash can.

Months passed before Maria’s boss at the fast-food restaurant where she worked notified her that her paycheck would be reduced because of a wage garnishment. Maria was not surprised, but as she sat on her bus ride home, she began to cry. As a single mother, she wanted to provide the best for her family. Now Maria wondered whether she could pay their monthly bills. And although she didn’t think the credit card company’s collection and garnishment practice was fair, she didn’t have the time or know-how to fight

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it. But it didn't matter; she knew it was too late. Like millions of other self-represented litigants throughout the country, Maria's access to justice was limited by the complex, in-person, and traditional proceedings of a brick-and-mortar courthouse.

This Comment will argue that Arizona should leverage the short-term changes caused by COVID-19 and permanently transition all civil and family court proceedings, except for jury trials, to an online platform to create a more accessible and effective court system for self-represented litigants. Part II summarizes the access-to-justice gap and explains why a physical courthouse and in-person proceedings create barriers to justice. Part III provides examples of the potential of online courts by looking at platforms and online court services in jurisdictions across the world. Part IV.A presents a proposal to operate an online court in Arizona that manages civil and family cases from end to end. Part IV.B defends this proposal by responding to objections and concerns. Finally, Part V briefly concludes by returning to Maria and noting how her access to justice improves with an online court.

## II. THE PROBLEM: ACCESS TO JUSTICE

Throughout the United States, millions of Americans encounter civil legal problems but cannot afford help or advance their legal rights. This access-to-justice gap will not be resolved by traditional legal services or existing reform efforts. Because a physical courthouse inherently inhibits access to justice, effective reform requires the use of modern tools—namely, the internet—to transition the court system onto an accessible, online platform.

### A. *No Access: Too Many Americans Cannot Afford Justice*

The access-to-justice gap disconnects Americans across the country from their legal system, and those bearing the brunt of this failure are some of society's most vulnerable populations. Approximately one in five Americans have a family income below 125% of the Federal Poverty Level, and most of these Americans come from diverse racial backgrounds.<sup>1</sup> Of these low-income Americans, 6.4 million are seniors, 1.7 million are veterans, 10 million live in rural areas, and 11.1 million have a disability.<sup>2</sup>

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1. See LEGAL SERVS. CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 16, 18 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> [<https://perma.cc/AD5V-EREY>]. The Federal Poverty Level is a measure of income used to determine eligibility for certain federal programs. See *id.*

2. *Id.* at 19.

Low-income Americans regularly encounter a host of challenging civil legal needs. Seventy-one percent of these households experienced at least one civil legal problem in the past year, and more than half faced two.<sup>3</sup> These civil legal problems are not trivial and often relate to critical challenges like losing a home, handling debt, or managing a health condition; indeed, 70% of low-income Americans reported that their civil legal problem significantly affected their lives.<sup>4</sup>

The United States has failed to provide its citizens, low-income Americans in particular, with access to justice. Because it struggles to provide its citizenry with access to justice in civil legal matters, the United States is ranked 109 out of 128 countries for the affordability of civil justice—in the bottom quartile *behind* developing nations like Cameroon, Afghanistan, and Nicaragua.<sup>5</sup> This ranking likely reflects the fact that 86% of the civil legal problems faced by low-income Americans receive either inadequate legal assistance or none at all.<sup>6</sup>

Still, the United States' struggle to provide its citizens with access to justice is not limited to low-income families. The time-consuming and expensive nature of civil litigation often significantly outweighs the monetary value of most cases filed in local state court—denying most litigants justice by pricing them out of the court system.<sup>7</sup> As a result, over 76% of state court cases include at least one self-represented party.<sup>8</sup> And in nearly all cases, these self-represented litigants are defendants facing a trained attorney.<sup>9</sup>

The present rate of self-represented defendants facing trained attorneys belongs to a larger pattern of increasingly inaccessible justice. Since 1992, attorney representation for plaintiffs in state court has remained consistent while attorney representation for defendants has plummeted from 97% to 46%.<sup>10</sup> The normalcy of self-represented litigants in state court is disconcerting, especially considering that the American civil justice system

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3. *Id.* at 21.

4. *Id.* at 25.

5. *Civil Justice*, WORLD JUST. PROJECT: WJP Rule L. INDEX, <https://worldjusticeproject.org/rule-of-law-index/factors/2020/United%20States/Civil%20Justice/> [<https://perma.cc/RX5J-6RF4>].

6. *See* LEGAL SERVS. CORP., *supra* note 1, at 6.

7. NAT'L CTR. STATE CTS., CIVIL JUSTICE INITIATIVE: THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS, at vi (2015), <http://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx> [<https://perma.cc/2GSL-V3JG>].

8. *Id.* at iv.

9. *See id.* at iv–v.

10. *Id.* at 31.

was designed on the assumption that litigants on both sides would have competent representation.<sup>11</sup>

*B. Continued Failure: The Inadequacy of Current Solutions*

Traditional services and existing legal reforms aimed at resolving the access-to-justice gap fail to address the inherent challenges of state courts. First, traditional legal services are inadequate because most Americans simply cannot afford an attorney. For example, while Arizona lawyers charge an average rate of \$260 per hour,<sup>12</sup> the average worker in the Phoenix metropolitan area earns \$26 per hour.<sup>13</sup> Average workers must spend a quarter of their weekly earnings to pay for one hour of an attorney's time, and just sixteen hours of legal work would exhaust their entire monthly earnings. When nearly half of Americans have no money saved,<sup>14</sup> expecting the average American to afford such legal fees is unreasonable.

Second, an increase in pro bono efforts will not resolve the access-to-justice gap because lawyers cannot provide enough pro bono hours to meet the needs of all low-income Americans and self-represented litigants.<sup>15</sup> When pro bono legal work currently accounts for only 1% to 2% of legal effort in the country, even a surge in pro bono effort would still be inadequate.<sup>16</sup> For example, if every lawyer in the country completed 100 more hours each year of pro bono work, that increase would only provide one hour per legal dispute per American household.<sup>17</sup> With many households needing far more than one hour of help with their legal problems, pro bono efforts cannot make a realistic dent in the access-to-justice gap.<sup>18</sup>

Third, a civil *Gideon* that guarantees litigants representation in civil matters, like in criminal cases, would not resolve the access-to-justice gap as

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11. *See id.* at 35.

12. CLIO, LEGAL TRENDS REPORT 63 (2021), <https://www.clio.com/resources/legal-trends/2021-report/read-online/> [<https://perma.cc/63A4-3LXW>].

13. U.S. BUREAU OF LAB. STATS., U.S. DEP'T OF LAB., OCCUPATIONAL EMPLOYMENT AND WAGES IN PHOENIX-MESA-SCOTTSDALE — MAY 2020 (2021), [https://www.bls.gov/regions/west/news-release/pdf/occupationalemploymentandwages\\_phoenix.pdf](https://www.bls.gov/regions/west/news-release/pdf/occupationalemploymentandwages_phoenix.pdf) [<https://perma.cc/TKQ3-XHNN>].

14. *See* Francisco Velasquez, *Over Half of Americans Have Less Than 3 Months Worth of Emergency Savings*, CNBC (July 28, 2021, 12:03 PM), <https://www.cnbc.com/2021/07/28/51percent-of-americans-have-less-than-3-months-worth-of-emergency-savings.html> [<https://perma.cc/LRN7-KPUQ>].

15. *See* Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 FORDHAM URB. L.J. 129, 152 (2010).

16. *Id.*

17. *Id.*

18. *See id.*

its adoption is both unlikely and impractical.<sup>19</sup> In *Lassiter v. Department of Social Services*, the Supreme Court declined to extend *Gideon* in a case involving the termination of parental rights.<sup>20</sup> Although it did not involve imprisonment, this case centered on the right to keep one's children—about as analogous to a criminal matter as a civil case can get.<sup>21</sup> The Court's decision nevertheless remains precedential and no court since has recognized a broad right to counsel for civil matters.<sup>22</sup> *Gideon* itself has also been largely disappointing; it seems imprudent to model a civil system after a criminal system beset with underfunded and overworked lawyers who are required to meet a very low bar of effectiveness.<sup>23</sup>

Finally, Arizona's recent legal reform, which deregulates law firm ownership and the provision of legal services, will likely fail to fully address the access-to-justice gap. In August 2020, the Arizona Supreme Court voted unanimously to create a new category of licensed legal service providers called Legal Paraprofessionals (LPs) and new multidisciplinary legal-service firms called Alternative Business Structures (ABSs).<sup>24</sup> Nonlawyer LPs may handle administrative, family law, debt-collection, and landlord-tenant cases, with limited jurisdiction in criminal and civil matters, while the new ABSs allow nonlawyers, such as accountants, technology companies, and hedge funds, to own an interest in law firms.<sup>25</sup> The court's stated goal for these reforms was "to improve access to justice and to encourage innovation in the delivery of legal services."<sup>26</sup>

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19. Some legal reformers advance a civil *Gideon* as a solution to the access-to-justice gap. Similar to the Supreme Court's *Gideon v. Wainwright* decision in 1963, which guarantees criminal defendants access to legal counsel, a civil *Gideon* would guarantee low-income and self-represented civil litigants access to legal counsel. See Mark Juhas, *On the Anniversary of Gideon, an Argument for Free Civil Representation*, L.A. LAW., Sept. 2013, at 44, 44 (noting that American courts will provide legal counsel to a shoplifter who stole a box of Twinkies while providing no such benefit to a low-income parent at risk of losing their child or house). See generally *Gideon v. Wainwright*, 372 U.S. 335 (1963).

20. *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 33 (1981) (holding that the trial court did not err by refusing to appoint legal counsel for petitioner).

21. Benjamin H. Barton, *Against Civil Gideon (and for Pro Se Court Reform)*, 62 FLA. L. REV. 1227, 1231–32 (2010).

22. *Id.* at 1232.

23. *Id.* at 1228. ("*Gideon* itself has largely proven a disappointment. Between overworked and underfunded lawyers and a loose standard for ineffective assistance of counsel, there is little in indigent criminal defense that makes one think that a guarantee of civil counsel will work very well.")

24. Lyle Moran, *Arizona Approves Nonlawyer Ownership, Nonlawyer Licensees in Access-to-Justice Reforms*, A.B.A. J. (Aug. 28, 2020, 2:20 PM), <https://www.abajournal.com/web/article/arizona-approves-alternative-business-structures-as-part-of-access-to-justice-reforms> [<https://perma.cc/9NKF-CLU7>].

25. *Id.*

26. *Id.* (quoting Arizona Supreme Court Chief Justice Robert Brutinel).

Although reformers assert LPs and ABSs will increase legal service options for consumers, this reform fails to address the main reasons why low-income Americans do not obtain help for their civil legal problems. Low-income Americans report seeking professional legal help for just 20% of their civil legal problems.<sup>27</sup> Their top reasons for not seeking help are (1) they decided to deal with the problem on their own; (2) they did not know where to look for help or what resources might exist; and (3) they were not sure whether their problem was legal.<sup>28</sup> Arizona's creation of new legal service providers may fail to reach the many litigants who wish to handle their civil legal problems on their own, do not have the time or energy to locate and hire an LP or ABS, or do not know that they have a legal problem until it is too late.<sup>29</sup>

Evidence from other jurisdictions that permit ABSs also demonstrates that this reform will not bridge the access-to-justice gap. In 2007, England and Wales similarly deregulated their legal services market with the creation of the multidisciplinary ABS.<sup>30</sup> Seven years later, England and Wales had only 375 licensed ABSs among 10,316 solicitor firms.<sup>31</sup> So while these ABSs predominately responded to consumer needs—including assistance with personal injury claims, tax planning, and wills and trusts—they represented a minor change in the delivery of legal services.<sup>32</sup> Unsurprisingly, researchers from the Upper Law Society of Canada who closely followed the use of ABSs

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27. LEGAL SERVS. CORP., *supra* note 1, at 33.

28. *Id.*

29. See, e.g., Amy J. Schmitz, *Expanding Access to Remedies Through E-Court Initiatives*, 67 BUFF. L. REV. 89, 95 (2019) (“[M]ost consumers do not think about ‘law’ or care to deal with litigation in seeking remedies for smaller dollar claims or less complex matters; they simply want easy access to assistance without needing to consult lawyers or physically go to court.”).

30. Jakob Weberstaedt, *English Alternative Business Structures and the European Single Market*, 21 INT’L J. LEGAL PRO. 103, 104–05 (2014).

31. See Mari Sako, Professor, Presentation at the Georgetown Law Conference: An Overview of Alternative Business Structures in England and Wales 10 (Apr. 24, 2015), <http://docplayer.net/31492820-An-overview-of-alternative-business-structures-in-england-and-wales.html> [https://perma.cc/JT4Y-4ET4]; SOLICS. REGUL. AUTH., RESEARCH ON ALTERNATIVE BUSINESS STRUCTURES (ABSS), at 9, 11 (2014), <https://www.sra.org.uk/globalassets/documents/sra/research/abs-quantitative-research-may-2014.pdf?version=4a1ac4> [https://perma.cc/PJ9D-5VR2].

32. CTR. FOR STRATEGY & EVALUATION SERVS., IMPACT EVALUATION OF SRA’S REGULATORY REFORM PROGRAMME 39 (2018), <https://www.sra.org.uk/globalassets/documents/sra/research/abs-evaluation.pdf?version=4a1ac2> [https://perma.cc/H2M9-P243].

in England, Wales, and Australia concluded that ABSs had not transformed access to justice.<sup>33</sup>

*C. The Challenge: How a Physical Courthouse Inhibits Access to Justice*

Current proposals to solve the access-to-justice gap are inadequate because the requirement that justice funnel through a physical courthouse inherently inhibits access, particularly for self-represented litigants. When self-represented litigants decide whether they will participate in the judicial process, they must weigh the costs and benefits of accessing the courts.<sup>34</sup> The economic, physical, and psychological costs of using a physical, brick-and-mortar court are immense,<sup>35</sup> and millions of litigants conclude that these costs do not justify the benefit of using the court system.<sup>36</sup>

First, self-represented litigants must account for economic opportunity costs, which arise from attending the court and using its services during typical business hours.<sup>37</sup> An employed litigant who attends a hearing or files documents at the courthouse will likely miss at least half a day of work after accounting for travel, parking, and navigating the courthouse.<sup>38</sup> The burdens of losing income, negotiating a shift change with a co-worker, and explaining one's situation to an employer deter litigants, particularly low-income litigants, from participating in the court system.<sup>39</sup> Those without work conflicts face similar challenges; students must miss classes and parents must arrange for childcare.<sup>40</sup>

Second, the physical challenge of traveling to the courthouse limits access for self-represented litigants.<sup>41</sup> Twenty-four percent of households at or

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33. PRO. REGUL. COMM., THE LAW SOC'Y OF UPPER CAN., REPORT TO CONVOCATION 119 (2015),

<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.738.2007&rep=rep1&type=pdf> [<https://perma.cc/963L-HZ5F>] (“The experiences in Australia and in England and Wales demonstrate that . . . non-lawyer ownership of law firms in those jurisdictions does not appear to have caused transformative change to facilitate access to justice.”).

34. J.J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993, 2005 (2017).

35. *Id.*

36. Maximilian A. Bulinski & J.J. Prescott, *Online Case Resolution Systems: Enhancing Access, Fairness, Accuracy, and Efficiency*, 21 MICH. J. RACE & L. 205, 235 (2016).

37. James W. Meeker & John Dombink, *Access to the Civil Courts for Those of Low and Moderate Means*, 66 S. CAL. L. REV. 2217, 2228 (1993) (“A major barrier to utilizing the courts for . . . those with low and moderate incomes involves the courts’ hours of operation.”).

38. *See* Prescott, *supra* note 34, at 2005.

39. *See id.* at 2005–06.

40. *See id.*

41. *Id.* at 2006.

below the poverty level do not have a vehicle, and nearly half have only one vehicle.<sup>42</sup> Thus, most low-income litigants will either have no access to a vehicle or limited access as a member of a household that shares a single vehicle. Predictably, a study in Minnesota found that 95% of legal service providers reported that their clients had unmet transportation needs,<sup>43</sup> which also included lack of public transport and lack of a driver's license.<sup>44</sup> Disabled litigants, in particular, face challenges in arranging transportation, which similarly limits their access to the courts.<sup>45</sup>

Third, psychological difficulties limit self-represented litigants' access to courts. Presenting in court may initiate a flood of different but debilitating emotions, including anxiety, confusion, fear, shame, and stigma.<sup>46</sup> Litigants are required to overcome these emotions before a judge in the entirely foreign environment of the courtroom, which can be a psychological challenge for even experienced attorneys.<sup>47</sup> In the midst of this emotional and environmental stress, litigants must still navigate applicable law and clearly communicate their positions despite being unsure about what to say and when.<sup>48</sup>

America's brick-and-mortar courts are presently inaccessible to millions of self-represented and low-income litigants. Yet solutions such as traditional lawyers, pro bono work, a civil *Gideon*, and regulatory reform are all inadequate approaches to resolving the inaccessibility of the courts. The brick-and-mortar nature of the courts must be reformed to remove its inherent economic, physical, and psychological barriers that restrict access to justice.

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42. U.S. DEP'T TRANSP., FED. HIGHWAY ADMIN., FHWA NHTS BRIEF: MOBILITY CHALLENGES FOR HOUSEHOLDS IN POVERTY 2 (2014), <https://nhts.ornl.gov/briefs/PovertyBrief.pdf> [<https://perma.cc/CT2N-9KQW>].

43. HANNAH LIEBERMAN CONSULTING, LLC, OVERCOMING BARRIERS THAT PREVENT LOW-INCOME PERSONS FROM RESOLVING CIVIL LEGAL PROBLEMS 13, 22–24 (2011), <https://www.lsc.gov/sites/default/files/attach/resources/LegalNeedsStudy-MinnesotaBarAssociation.pdf> [<https://perma.cc/U6GM-U9K8>].

44. *Id.* at 68–70.

45. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 6 (2d ed. 2007), <https://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf> [<https://perma.cc/P5EA-W66R>] (“Other barriers, such as geographical distance and isolation, low literacy, [and] physical or mental disability . . . pose impediments.”).

46. *See* Prescott, *supra* note 34, at 2007.

47. Bulinski & Prescott, *supra* note 36, at 229.

48. *See id.* at 229–30.



### III. THE POTENTIAL OF ONLINE COURTS

Transitioning state courts onto an online platform would resolve many barriers to justice caused by the physical courthouse. Jurisdictions across the world have implemented forms of online courts, revealing how to provide a greater access to justice with fair, efficient, and effective online dispute resolution (ODR) platforms.<sup>49</sup> These jurisdictions and courts include the United Kingdom's Money Claim Online, British Columbia's Civil Resolution Tribunal, the United States' Matterhorn, and Arizona's online court services and remote operations during the COVID-19 pandemic.

#### A. *The United Kingdom's Money Claim Online*

The United Kingdom's Money Claim Online (MCOL) is a digital service that allows litigants to file, answer, and resolve certain civil claims online.<sup>50</sup> Plaintiffs may issue monetary claims against up to two defendants with addresses in England or Wales for any fixed amount of money up to GBP £100,000 provided it is not a claim for an accident or injury.<sup>51</sup> The requirements to use MCOL are minimal; plaintiffs must have a valid credit or debit card to pay court fees, an address in the United Kingdom, an email address, and access to a computer with an internet connection.<sup>52</sup>

To begin the process, plaintiffs create a free Government Gateway account through the MCOL website and select whether they will register as an individual, solicitor, or organization.<sup>53</sup> MCOL then requires plaintiffs to review guidance material on online procedures and court fees before entering contact information for the plaintiff and defendant, a brief written summary of the claim, and the amount of the claim and interest rate.<sup>54</sup> After digitally signing and verifying the claim, plaintiffs pay the court fee and submit the claim, and MCOL begins its automated process of issuing the claim and mailing all parties a service packet and questionnaire.<sup>55</sup>

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49. Richard Susskind, *The Future of Courts*, 6 THE PRACTICE (2020), <https://thepractice.law.harvard.edu/article/the-future-of-courts/> [<https://perma.cc/5Q6P-F9LB>].

50. Press Release, HM Cts. & Tribunals Serv., More Than 100,000 Civil Money Claims Issued Online (July 3, 2020), <https://www.gov.uk/government/news/more-than-10000-civil-money-claims-issued-online>.

51. HM CTS. & TRIBUNALS SERV., MONEY CLAIM ONLINE (MCOL) – USER GUIDE FOR CLAIMANTS 4 (2018), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/762843/mcol-userguide-eng.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/762843/mcol-userguide-eng.pdf) [<https://perma.cc/TC83-4TTX>].

52. *Id.*

53. *Id.* at 5–6.

54. *Id.* at 7–10.

55. *Id.* at 11–12, 14.

Because MCOL issues the claim within minutes, the ODR process begins quickly.<sup>56</sup> The date of service is always five calendar days from when the claim is issued, and defendants have two weeks from the date of service to submit their response and the questionnaire, either online or by using the forms in the packet.<sup>57</sup> Depending on the responses of the litigants, the claim will either settle, transition to a judgment, be referred to a mediator, or be transferred to a local court.<sup>58</sup> And although any MCOL claim that proceeds to litigation must be transferred from the platform,<sup>59</sup> the United Kingdom has already begun testing a pilot program that will expand the capabilities of MCOL and manage cases online from start to finish.<sup>60</sup>

MCOL provides an easy-to-use platform where parties may conveniently file, answer, and resolve monetary claims from the comfort of their own homes and without having to parse through complex legal language or forms.<sup>61</sup> Most plaintiffs complete the claim form in less than fifteen minutes, and nearly nine out of every ten users report being satisfied or very satisfied with the service.<sup>62</sup> MCOL's success shows that automated online courts can effectively and efficiently manage the pleadings stage of civil cases, not just for small claims but for high-value claims, too.

### B. British Columbia's Civil Resolution Tribunal

British Columbia's Civil Resolution Tribunal (CRT) is an independent, online, quasi-judicial court that offers end-to-end dispute resolution for residential property and professional association disputes, small claims up to CAD \$5,000, and motor-vehicle personal-injury disputes up to CAD \$50,000.<sup>63</sup> CRT's service begins by providing litigants with free twenty-four-seven access to a Solution Explorer that gives them expert legal knowledge about their legal problem, rights, and resolution options through a simple

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56. See Press Release, HM Cts. & Tribunals Serv., *supra* note 50.

57. HM CTS. & TRIBUNALS SERV., *supra* note 51, at 12–13.

58. *Id.* at 14.

59. *Id.*

60. This pilot program, Online Civil Money Claims, is expected to offer online, end-to-end management of claims up to £25,000. Neil Rose, *Complete Online Process for Money Claims 'Ready Next Year,'* LEGAL FUTURES (July 1, 2019), <https://www.legalfutures.co.uk/latest-news/complete-online-process-for-money-claims-ready-next-year> [https://perma.cc/86S6-D3F5].

61. Press Release, HM Cts. & Tribunals Serv., *supra* note 50.

62. *Id.*

63. 2019–2020 CIV. RESOL. TRIBUNAL ANN. REP. 1 (2020) (Can.), <https://civilresolutionbc.ca/wp-content/uploads/2020/07/CRT-Annual-Report-2019-2020.pdf> [https://perma.cc/NV9P-H6TR].

question and answer platform.<sup>64</sup> Claims and responses can be filed online at no cost, and litigants only pay fees for the services they use.<sup>65</sup>

Once the claim is filed, CRT automatically completes service by mail on the respondent,<sup>66</sup> who then has fourteen days to respond.<sup>67</sup> Unless the respondent fails to respond and triggers a default decision,<sup>68</sup> the claim will proceed to the case management phase where a case manager will facilitate negotiations, communicate with the litigants, and direct the collection of evidence<sup>69</sup>—all through the online platform that litigants have access to at all times of the day.<sup>70</sup> If the case manager determines the litigants cannot settle, the claim will proceed to a tribunal decision by a CRT member.<sup>71</sup>

The case manager then helps the litigants prepare for the tribunal decision, in part by identifying and narrowing the case's disputed legal issues and the facts relevant to resolving those issues.<sup>72</sup> The case manager may also direct the litigants as they complete a Tribunal Decision Plan, which involves sharing information and evidence, providing information and explanations about their own or the opposing litigant's position, providing an agreed upon statement of facts, and timely submitting arguments, responses, and replies.<sup>73</sup> If the litigants still cannot reach a settlement,<sup>74</sup> a CRT member will conduct an oral or written hearing by document submission, telephone, video conference, or in-person proceedings.<sup>75</sup>

Although CRT provides the option of in-person services, over 99% of CRT litigants choose to use online services<sup>76</sup>—highlighting an overwhelming preference for online court. Surveyed litigants also reported high satisfaction rates with CRT's service: 86% believed CRT treated them fairly, 77% would recommend CRT to others, 82% believed CRT provided them with information that prepared them for dispute resolution, and 75% believed CRT handled their dispute in a timely manner.<sup>77</sup>

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64. *Id.*

65. *Id.* at 2.

66. CIV. RESOL. TRIBUNAL R. 2.2 (Can.).

67. CIV. RESOL. TRIBUNAL R. 3.1 (Can.).

68. CIV. RESOL. TRIBUNAL R. 4.1–3 (Can.).

69. CIV. RESOL. TRIBUNAL R. 5.1–3 (Can.).

70. 2019–2020 CIV. RESOL. TRIBUNAL ANN. REP., *supra* note 63, at 2.

71. *Id.* at 4; *see also* CIV. RESOL. TRIBUNAL R. 5.4 (Can.).

72. CIV. RESOL. TRIBUNAL R. 7.2 (Can.).

73. CIV. RESOL. TRIBUNAL R. 7.3 (Can.).

74. *See* CIV. RESOL. TRIBUNAL R. 7.4 (Can.) (allowing the case manager to suspend the tribunal decision process and refer the dispute back to negotiations at any time).

75. CIV. RESOL. TRIBUNAL R. 9.1 (Can.).

76. 2019–2020 CIV. RESOL. TRIBUNAL ANN. REP., *supra* note 63, at 2.

77. *Id.* at 29.

Indeed, CRT proved effective and efficient in resolving disputes online. From April 2019 to March 2020, CRT closed over 6,000 disputes<sup>78</sup> with an average case-closure period of 79 days.<sup>79</sup> Although 29% of cases resolved by default and 21% by tribunal decision, nearly 40% of cases resolved by consensual withdrawal or settlement.<sup>80</sup> British Columbia plans to keep building on this success by expanding CRT's jurisdiction to include nearly all motor-vehicle personal-injury disputes beginning in May 2021.<sup>81</sup> CRT is an excellent example of how providing litigants with accessible online self-help tools and dispute resolution procedures can facilitate fair and efficient outcomes for a broad range of civil cases.

### C. *The United States' Matterhorn*

Matterhorn by Court Innovations began as an online-court project at the University of Michigan Law School in 2013<sup>82</sup> before growing to where it now provides an ODR platform to over 110 courts, mediation centers, and municipalities across 17 states.<sup>83</sup> Courts that use Matterhorn pay for a subscription that connects the online platform to the court's existing case management software and e-filing system, thereby providing judges, court staff, attorneys, and the public with streamlined access to the court through the Matterhorn interface.<sup>84</sup> Matterhorn is currently used by courts to handle

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78. *Id.* at 9.

79. *Id.* at 24.

80. *Id.* at 9.

81. *The CRT's Jurisdiction over Motor Vehicle Personal Injury Claims Is Expanding*, CIV. RESOL. TRIBUNAL (Apr. 15, 2020), <https://civilresolutionbc.ca/expanding-jurisdiction-over-motor-vehicle-injury-claims/> [<https://perma.cc/K8S7-Z8L4>]. The cause of this expansion also includes British Columbia's Legislative Assembly passing Bill 11 in August 2020 and creating a new, no-fault auto insurance system that largely precludes lawsuits against at-fault drivers and replaces them with first-party benefit claims against insurers. See *No-Fault ICBC Reform Given Royal Assent*, SINGLETON REYNOLDS (Aug. 24, 2020), <https://www.singleton.com/2020/08/no-fault-icbc-reform-given-royal-assent/> [<https://perma.cc/8HLE-MSM5>]; Greg Meckbach, *Public Not Aware of Rights Lost in B.C.'s No-Fault Auto Scheme: Personal Injury Lawyer*, CANADIAN UNDERWRITER (Dec. 1, 2020), <https://www.canadianunderwriter.ca/legislation-regulation/public-not-aware-of-rights-lost-in-b-c-s-no-fault-auto-scheme-personal-injury-lawyer-1004200657/> [<https://perma.cc/RS2X-FZ2T>].

82. Orna Rabinovich-Einy & Ethan Katsh, *The New New Courts*, 67 AM. U. L. REV. 165, 197 (2017).

83. Home Page, GETMATTERHORN.COM, <https://getmatterhorn.com> [<https://perma.cc/8WBD-2FTB>].

84. *How It Works: Technical*, GETMATTERHORN.COM, <https://getmatterhorn.com/tour/how-it-works-tech> [<https://perma.cc/4ZLE-2HQ6>].

civil cases, family cases, traffic tickets, misdemeanors, and warrants and amnesty cases.<sup>85</sup>

Unlike MCOL and CRT, Matterhorn is a private company and not a court itself.<sup>86</sup> Instead of bringing its own unique procedural rules, it facilitates the operations of the local court with its asynchronous information sharing and communication services, which are available to the public online, twenty-four seven.<sup>87</sup> Litigants will typically first access Matterhorn through the court's website, where they locate their case and have the option of selecting ODR.<sup>88</sup> Once litigants access the site, Matterhorn provides them with instructions, information, and court documents for their case.<sup>89</sup> Litigants then answer questions, write a summary of their claim or defense, and describe their reasoning and evidence—all customizable based on the type of case and each court's procedures.<sup>90</sup>

Matterhorn's ODR process does not center on specifically timed conferences, mediations, or hearings but allows litigants to communicate, negotiate, and submit documentation in a manner that is convenient for everyone.<sup>91</sup> Moreover, with the platform available on any device, Matterhorn enables litigants to participate in their case from anywhere.<sup>92</sup> This freedom from typical business hours and the physical courthouse allows litigants to effectively and conveniently engage with judges, mediators, and opposing litigants, which fosters not only quick resolution but an increased trust in the judicial system.<sup>93</sup>

The efficiency and effectiveness of Matterhorn as an ODR platform is, statistically, quite clear. By implementing Matterhorn, courts decreased the average number of days to case closure from fifty to fourteen.<sup>94</sup> The combined time court staff spent per hearing decreased from over two and a half hours

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85. *What Is Matterhorn*, GETMATTERHORN.COM, <https://getmatterhorn.com/tour/what-is-matterhorn> [<https://perma.cc/U3JG-8AVK>].

86. *See About Us*, GETMATTERHORN.COM, <https://getmatterhorn.com/about-us/> [<https://perma.cc/S2GE-L7NU>].

87. *Id.*

88. Prescott, *supra* note 34, at 2021–22.

89. *Id.* at 2022.

90. *See id.*

91. *See id.* at 2023.

92. *See How It Works*, GETMATTERHORN.COM, <https://getmatterhorn.com/tour/how-it-works/> [<https://perma.cc/M9G8-9BPB>].

93. Prescott, *supra* note 34, at 2023–25 (describing the benefits of Matterhorn for a hypothetical litigant facing a traffic violation).

94. MJ Cartwright & Kate MacEwen, *Online Resolution Outcomes: Putting Court Access Technology to Work*, MATTERHORN BY CT. INNOVATIONS 3 (2016), <https://www.sec.gov/Archives/edgar/data/1691881/000166919116000080/WhitePaper1.pdf> [<https://perma.cc/V8ET-WWQD>].

to less than thirty minutes with Matterhorn.<sup>95</sup> Notably, Matterhorn also increased participation in and access to the court process: 37% of surveyed litigants said they would not have been able to attend court in person, and court default rates—an indicator of lack of judicial participation—decreased from over 13% to nearly zero.<sup>96</sup>

While it is possible that the selection bias of litigants opting into Matterhorn for simple cases contributes to the significant decrease in average case-closure time, the overall time-saving potential and value of Matterhorn should not be understated. The efficiency of online tools like Matterhorn, even if concentrated on small cases, frees up court resources for larger cases and provides access to small-claim litigants who would have otherwise been excluded from traditional, in-person court proceedings.<sup>97</sup> Matterhorn's asynchronous online court thus increases access to justice for litigants by enhancing services for individual litigants and by improving the overall efficiency of the court system.

#### *D. Arizona's Online Court Services and Remote Operations During the COVID-19 Pandemic*

Although Arizona state courts have failed to provide the public with a central online platform or ODR service, the success of the state courts' remote operations during the COVID-19 pandemic shows the potential of online court services and offers an opportunity to leverage the courts' increased online presence. Arizona state courts provide the public with piecemeal online services through many websites, the usefulness of which varies by county, court level, and case type. These sites include supreme-court-run AZCourts.gov,<sup>98</sup> Arizona Judicial Branch's Public Access website,<sup>99</sup> superior court websites,<sup>100</sup> justice court websites,<sup>101</sup> superior court e-filing sites,<sup>102</sup>

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95. *Id.* at 2.

96. *Id.* at 5–6.

97. *Id.* at 3.

98. See *Self-Service Center: Forms*, AZCOURTS.GOV, <https://www.azcourts.gov/selfservicecenter/Forms> [<https://perma.cc/JH4J-3NC9>].

99. See *Public Access to Court Information*, ARIZ. JUD. BRANCH, <https://apps.supremecourt.az.gov/publicaccess/caselookup.aspx> [<https://perma.cc/WDU3-P57D>].

100. See, e.g., *Court Forms*, THE JUD. BRANCH OF ARIZ.: MARICOPA CNTY., <https://superiorcourt.maricopa.gov/llrc/court-forms/> [<https://perma.cc/VFQ5-JVTL>].

101. See, e.g., *Justice Court How-To Packets*, MARICOPA CNTY. J. CTS., <http://justicecourts.maricopa.gov/HowTo/index.aspx> [<https://perma.cc/75RX-ANTB>].

102. See, e.g., *Sign In to eFiling Online*, CLERK OF THE SUPERIOR CT.: MARICOPA CNTY., ARIZ., <https://efilingonline.clerkofcourt.maricopa.gov/Web/> [<https://perma.cc/N5S2-VZRB>].

appellate e-filing sites,<sup>103</sup> eFileAZ,<sup>104</sup> AZTurboCourt,<sup>105</sup> ezCourtForms,<sup>106</sup> and Matterhorn’s website for certain cases in select local jurisdictions.<sup>107</sup>

Self-represented litigants may need to navigate a litany of these websites to find self-help resources, file pleadings, check the court calendar, and manage their case. For example, if a self-represented litigant is sued by a creditor in the Maricopa County Justice Court, the self-represented defendant will need to respond by filing an answer.<sup>108</sup> The defendant may browse the justice court’s website, and if they are fortunate, they will find within a list of over sixty PDF forms the “Civil Answer” form.<sup>109</sup> After noticing the absence of any guidance or instructions on the Civil Answer form itself,<sup>110</sup> the defendant will likely continue browsing for more resources. Hopefully, the defendant will locate the “CV Answer packet,” again, within a long list of PDFs, this time on the justice court’s How-To Packets page.<sup>111</sup>

When reviewing the justice court’s How-To CV Answer Packet, the defendant will encounter five dense pages of procedural rules and checklist items.<sup>112</sup> If they are feeling determined, they may find this resource useful; however, if they decline to read through the many procedural rules or feel they may not understand them, they will likely continue searching for help. The Civil Answer form itself does not mention AZTurboCourt’s self-help

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103. See, e.g., *E-Filing*, ARIZ. CT. OF APPEALS: DIV. TWO, <https://www.appeals2.az.gov/e-filer/welcome.cfm> [<https://perma.cc/F6TV-C5HR>].

104. See *Arizona Courts eFiling*, EFILEAZ, <https://efile.azcourts.gov/> [<https://perma.cc/467S-PD7E>]; *eFiling Information in Arizona*, AZCOURTS.GOV, <https://www.azcourts.gov/efilinginformation/> [<https://perma.cc/LL6C-TEWS>] (noting that e-filing services will vary by county and case category).

105. See *About AZTurboCourt*, TURBOCOURT, <http://info.turbocourt.com/azturbocourt/> [<https://perma.cc/Z9XS-6XGY>]; *eFiling Information in Arizona*, *supra* note 104.

106. See *Superior Court of Arizona’s Portal for Preparing Court Documents*, EZ COURT FORMS, <http://www.superiorcourt.maricopa.gov/ezcourtforms2/> [<https://perma.cc/8ZNV-XBSC>].

107. See, e.g., Andy Mohr, *Arizona Court Offers ODR for Civil Debt Cases*, GETMATTERHORN.COM (Feb. 26, 2019), <https://getmatterhorn.com/arizona-court-offers-odr-for-civil-debt-cases/> [<https://perma.cc/P2NG-YK85>]; Dunrie Greiling, *Scottsdale City Court Expands Access, Launches Misdemeanor ODR*, GETMATTERHORN.COM (Jan. 18, 2019), <https://getmatterhorn.com/scottsdale-city-court-expands-access-launches-misdemeanor-odr/> [<https://perma.cc/E2CG-44QR>].

108. ARIZ. JUST. CT. R. CIV. P. 114; ARIZ. R. CIV. P. 4.2(m), 12(a).

109. See *Justice Court Forms*, MARICOPA CNTY. JUST. CTS., <http://justicecourts.maricopa.gov/Forms/index.aspx> [<https://perma.cc/Q8HH-5LLZ>].

110. See *Blank Civil Answer Form To Be Completed by Defendant*, MARICOPA CNTY. JUST. CTS., <http://justicecourts.maricopa.gov/Forms/8150-102-civil-Answer.pdf> [<https://perma.cc/Q7MR-RJFU>].

111. See *Justice Court How-To Packets*, *supra* note 101.

112. See *If You Want To File a . . . Civil Answer*, MARICOPA CNTY. JUST. CTS., <http://justicecourts.maricopa.gov/HowTo/CV-Answer-HowTo.pdf> [<https://perma.cc/C5T2-HXHR>].

tools,<sup>113</sup> so unless the defendant stumbles upon AZTurboCourt during a Google search or hears about it from a friend or relative, they may simply give up or incorrectly complete the form as they struggle through with little guidance.

If the defendant finds the AZTurboCourt website, they will benefit from its self-help interviewing tool which identifies each necessary form, uses guided questions to obtain the information for each form, and then inserts that information into the form at the end of the interview.<sup>114</sup> AZTurboCourt can also e-file the Answer.<sup>115</sup> However, this service is unfortunately unavailable for the Maricopa County Justice Court; the defendant will need to print out the form and mail or file it in-person—limiting the benefits of this online service.<sup>116</sup>

The issues caused by dispersed online services also arose during the COVID-19 pandemic. For example, in March 2020, the Maricopa County Superior Court responded to the public health emergency and government-mandated lockdown by requiring nearly all court proceedings to continue remotely through video and telephone conference calls.<sup>117</sup> Although self-represented litigants in this court could use self-help tools, e-file forms, and access court documents with AZTurboCourt,<sup>118</sup> they still needed to navigate video conferencing software<sup>119</sup> and the court's website to access the court calendar,<sup>120</sup> all while managing deadlines and keeping an organized file. When many Americans already have twenty-seven discrete online accounts and logins,<sup>121</sup> adding several more for litigants, and requiring them to learn

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113. See *Blank Civil Answer Form To Be Completed by Defendant*, *supra* note 110.

114. *Solutions: Prepare and File Your Court Case Online in 3 Easy Steps*, TURBOCOURT, <http://info.turbocourt.com/learn-more/> [<https://perma.cc/R6XT-BPDG>].

115. *Id.*

116. See *AZTurboCourt*, AZCOURTHELP, <https://azcourthelp.org/azturbocourt> [<https://perma.cc/DN7N-PTPG>].

117. Restricting Physical Access to Court Facilities Due to a Public Health Emergency, Admin. Ord. No. 2020-043 (Maricopa Cnty. Super. Ct. Mar. 23, 2020), <https://www.superiorcourt.maricopa.gov/SuperiorCourt/AdministrativeOrders/AdminOrders/AO%202020-043.pdf> [<https://perma.cc/SCU7-N4FZ>] [hereinafter *Restricting Physical Access to Courts*].

118. See *Individuals & Families*, TURBOCOURT, <http://info.turbocourt.com/learn-more/individuals-families/> [<https://perma.cc/747K-FNUS>].

119. See *generally Restricting Physical Access to Courts*, *supra* note 117 (repeatedly stating that the court may conduct “video conferencing proceedings”).

120. The court calendar is accessible remotely only by calling the court or viewing the court's web-based calendar. See *generally* Court Calendar, THE JUD. BRANCH OF ARIZ.: MARICOPA CNTY., <https://www.superiorcourt.maricopa.gov/calendar/today/>.

121. See Joseph Bernstein, *Survey Says: People Have Way Too Many Passwords To Remember*, BUZZFEED NEWS (May 4, 2016, 2:00 P.M.), <https://www.buzzfeednews.com/article/josephbernstein/survey-says-people-have-way-too-many-passwords-to-remember> [<https://perma.cc/XNH4-4QB9>].



how to use these accounts, may deter the participation that is essential to serving the purpose of online courts.<sup>122</sup>

Arizona state courts' transition to remote proceedings because of COVID-19 nevertheless demonstrated the significant and realistic potential of an online court system. For the first time, cases, conferences, and hearings all continued online without litigants ever needing to travel to the courthouse.<sup>123</sup> Although state courts did not offer a central ODR platform, parties conducted ODR on their own as all communications and negotiations were conducted remotely.<sup>124</sup> This transition online proved to be largely successful in civil cases<sup>125</sup> and some Arizona courts even explored online civil jury trials on the Zoom video-conferencing platform.<sup>126</sup>

The United Kingdom's MCOL, British Columbia's CRT, Matterhorn, and Arizona's own experience increasing online and remote court services demonstrate that online courts are an accessible, efficient, effective, and fair end-to-end method of managing a broad range of cases. Despite Arizona's online court services being scattered across the internet, the need for them is evident. Further, the remote proceedings required by the COVID-19 pandemic provide a unique opportunity that the courts can leverage into a full, online transition. The only remaining step is assembling the pieces—self-help tools, e-filing, court dockets, calendars, telephone and video conferencing, and ODR—onto a single online platform, which will provide self-represented Arizonans greater access to their court system.

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122. See, e.g., *COVID-19 and Shifting Generational Preferences Reshape the Future of the US Media and Entertainment Landscape*, DELOITTE (Apr. 19, 2021), <https://www2.deloitte.com/us/en/pages/about-deloitte/articles/press-releases/digital-media-trends.html> [<https://perma.cc/58DA-G9AJ>] (noting that consumer frustration and fatigue from managing too many streaming options may lead to an increase in account cancellations).

123. See Paul Davenport, *Arizona Courts Eye Ways To Hold Jury Trials During Pandemic*, AP NEWS (July 11, 2020), <https://apnews.com/article/technology-trials-courts-arizona-pandemics-1a23e471901c301b8b0782cbc9ee32f2>.

124. See Mohr, *supra* note 107; see also *Restricting Physical Access to Courts*, *supra* note 117.

125. This success, however, was not shared by Arizona's criminal system. In response to the COVID-19 pandemic, the Arizona Supreme Court suspended speedy-trial deadlines for criminal defendants while courts temporarily halted jury trials, causing a backlog of criminal cases and requiring thousands of defendants to remain in jail for periods of time that under normal conditions would be considered unconstitutional. See Ryan J. Stevens, *3 Ways COVID-19 Can Affect Your Criminal Case in Arizona*, GRIFFEN & STEVENS L. FIRM, PLLC, <https://www.flagstaff-lawyer.com/blog/3-ways-covid-19-is-affecting-prison-sentences-in-arizona.cfm> [<https://perma.cc/VSZ7-VKN2>].

126. Davenport, *supra* note 123.

#### IV. THE SOLUTION: BRINGING JUSTICE ONLINE IN ARIZONA

An online court in Arizona would combine the approaches in MCOL, CRT, Matterhorn, and the various existing platforms the state relied on during the COVID-19 pandemic. Although a central online platform would require some new areas of innovation, most online services have already been developed and applied in these areas with great success. The challenge will be synthesizing this progress into a single resource that manages civil and family cases from start to finish. Part IV.A will present how this can be done at each stage of a case and Part IV.B will address objections to this proposal.

##### *A. The Plan: How the Online Court Will Operate*

From initiating a case until dispute resolution, an online platform can manage cases with great efficiency and fairness, all while increasing the court's accessibility to low-income and self-represented litigants. Beginning a transition to online courts with civil and family cases is a practical start. Less than 1% of these cases go to trial, and even fewer are tried before an actual jury.<sup>127</sup> As discussed above in Part III, most remaining stages of civil cases can, or already are, conducted remotely through online court services, email, and telephone and video conference calls. Also, civil and family cases, unlike criminal ones, do not encounter the potential constitutional challenges of remote proceedings.<sup>128</sup> Civil and family court proceedings, communication between parties, and effective dispute resolution should all be conducted online, removing the economic, physical, and psychological barriers created by a brick-and-mortar courthouse.

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127. Out of over 2 million cases filed annually, Arizona courts hold an average of 45 jury trials and 254 non-jury trials each week. This equates to about 15,000 civil and criminal trials a year, less than 1% of newly filed cases reaching trial, and about 0.1% of newly filed cases reaching a jury. See *Fiscal Year 2014 Caseload and Financial Highlights*, AZCOURTS.GOV, <http://www.azcourts.gov/2015annualreport/Court-Statistics> [https://perma.cc/4CE2-F65N].

128. The Constitution's Confrontation Clause guarantees criminal defendants the right to be present in the courtroom at every stage of their trial. *Illinois v. Allen*, 397 U.S. 337, 338 (1970). The Supreme Court, however, has permitted limited exceptions to this rule, including allowing a child-abuse victim to testify against a defendant via a closed-circuit television. See *Maryland v. Craig*, 497 U.S. 836, 857 (1990). Yet this exception requires a specific necessity or state interest to justify the use of teleconferencing. *Id.* at 853, 855. Thus, a broad application of remote proceedings in post-pandemic criminal cases may face constitutional challenges. See Michael Pressman & Michael Shammass, *Memorandum: The Permissibility & Constitutionality of Jury Trial by Videoconference*, N.Y.U.: CIV. JURY PROJECT (2020), <https://civiljuryproject.law.nyu.edu/memorandum-the-permissibility-constitutionality-of-jury-trial-by-videoconference/> [https://perma.cc/LB5M-SD9S].

### 1. Initiating a Case

The public will be able to access Arizona's online state court website on a computer, a mobile device browser, or through the court's mobile application, downloaded from an online app store. Unlike current online services in Arizona,<sup>129</sup> this platform will offer the public access to all state courts on one application, regardless of the county, case type, or court level. The platform will allow the public to view all case dockets, pleadings, and court calendars for civil cases. For family cases, the platform will limit public access to case dockets to protect minors and the privacy of families.

Litigants who want to file a legal claim may initiate a case by logging into the centralized website or mobile application. Like MCOL, litigants will create an account, and like CRT's Solution Explorer and TurboCourt's interviewer, they will begin with a legal questionnaire that guides them through the process of submitting their claim. The questionnaire will gather responses from litigants about their legal problem and narrow down their claim through a preprogrammed decision-tree evaluation process. Like the Solution Explorer, the questionnaire will then provide the litigants with an overview of the applicable rules, options, and remedies for their claim—informing them of the steps ahead so litigants can choose how, or whether, to proceed.

Once the questionnaire identifies the legal claim a plaintiff wishes to present, it will select the correct legal form or complaint template for that claim in the applicable jurisdiction. Unlike the self-help PDFs on many local court websites, the questionnaire will not require the plaintiff to read through long instructions or complete the forms themselves. Through the online interview process, the questionnaire will gather details, including contact information for the plaintiff and defendant, the location of the breach or injury, a factual summary, and the requested remedy. The questionnaire will then import the gathered information into the applicable form or complaint template and allow the plaintiff to review and finalize it before continuing to service of process.<sup>130</sup>

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129. See discussion *supra* Part III.D.

130. As the capabilities of artificial intelligence progress, courts may further develop the questionnaire to provide self-represented litigants with fully automated legal services. For example, Australia is developing an ODR platform called Amica, which leverages an AI-powered chatbot to assist separating couples in dividing assets and making parenting arrangements. *How It Works*, AMICA, <https://www.amica.gov.au/how-it-works> [<https://perma.cc/QV6M-KTVW>].

## 2. Service of Process

With the complaint finalized, the questionnaire will generate a summons based on the contact information provided for each defendant. The questionnaire will provide plaintiffs with several options for completing service. The plaintiff may choose to complete service themselves, hire their own process server, or use the online platform's registry of process servers. If the plaintiff elects to complete service on their own or independently hire their own server, the platform will offer directions on how to do so, along with PDF copies of the complaint and service packet, which plaintiffs may print or send to the process server they retain.

If the plaintiff elects to use the online platform's registry of process servers, the platform will offer a list of process servers, ordered by proximity to the defendant's address. The online platform will set a standard rate based on the location of the address and allow the plaintiff to hire the process server through the platform. When the plaintiff selects the process server, the process server will receive digital copies of the service packet, which the process servers will be responsible for printing prior to initiating service. The platform will charge the plaintiff up front, but it will not transfer the funds until the process server uploads the return of service.

After receiving the service packet, the process server may begin efforts to deliver the documents. Each time the process server makes an attempt of service, they will take a photograph of the business or residence and upload it to the online platform, which will record the date, time, and location of each attempt. If the process server records over four meaningful attempts and is unsuccessful, they may verify their efforts through the online platform, which will then automatically generate and e-file an affidavit of non-service and mail the service packet through USPS.<sup>131</sup> If the process server successfully completes service, they will verify the recipient's description and upload a photograph from the attempt. The online platform will automatically generate and e-file a return of service with this information before notifying the plaintiff that service has been completed.

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131. This is similar to the automated service-of-process methods used by MCOL and CRT. See discussion *supra* Part III.A–B. Arizona currently allows service by mail upon the approval of the court if a plaintiff submits evidence of their efforts to complete traditional service, albeit unsuccessful. See ARIZ. R. CIV. P. 4.1(k). This proposed change would allow plaintiffs to continue this process immediately after non-service and without waiting on the court to enter an order.

### 3. Filing an Answer

When a defendant receives the service packet and complaint, a QR code and abbreviated URL will be included on the summons with instructions on how to access the case through the court's online platform. The defendant may scan the QR code with a mobile device, which will direct them to the court's mobile application in the device's application store and to their case, after the application is installed. If the defendant uses a computer rather than a mobile device, they may look up their case with a web browser by typing in the abbreviated URL included on the service packet.

For those without access to a smartphone or computer with internet access, kiosks will be available in public buildings, such as community centers and local libraries. Nearly all Arizonans own a computer and live in a household with broadband internet access.<sup>132</sup> Those who do not may travel to a nearby public facility to use kiosks built around tablets with the court's platform preinstalled. By placing kiosks in both common areas and small, private rooms, litigants may use the public device for both case management and private videoconferencing.

Once inside the online platform, the site will direct the defendant to their case and require them to create an account, if they do not have one already. The online platform will guide the defendant through a questionnaire tool like the one used by the plaintiff in filing the complaint. The questionnaire will inform the defendant about the claim being presented against them, basic and applicable legal rules and defenses, and what steps to expect moving forward.

The defendant will then begin completing the template answer form with help from the questionnaire. As the defendant answers questions about their contact information, version of facts, and position on the claims asserted against them, the online platform will input the responses into a template answer. After this process is complete, the defendant will review the answer before e-filing and serving the plaintiff through the platform.

### 4. Disclosure and Discovery

Litigants will conduct each disclosure and discovery step online while litigating their case. Initial conferences, such as temporary restraining order hearings in family cases or Rule 16<sup>133</sup> conferences in civil cases, will be

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132. Ninety-four percent of Arizonans own a computer and 86% live in a household with broadband. *Infrastructure: Internet Access*, MAKING ACTION POSSIBLE FOR SOUTHERN ARIZONA, <https://mapazdashboard.arizona.edu/infrastructure/internet-access> [https://perma.cc/9G9X-8GRW].

133. Ariz. R. Civ. P. 16 (providing the guidelines for scheduling and management of civil actions).

hosted on the online platform. Rather than having separate, parallel telephonic and video conferencing resources, the platform will have a single conferencing tool where parties can communicate online with video and audio, or audio only. Litigants may also call into the conference telephonically if they have difficulties with their internet connection. The online platform will provide periodic notifications and email and text reminders as the upcoming conferences approach. Within these reminders will be links allowing litigants to quickly join the online call or call in telephonically.

The platform will automatically generate conference appointments and disclosure and discovery deadlines within each litigant's case calendar. Litigants may also synchronize their personal calendar with the case calendar to streamline the notification process and organize their schedule in one place. Each deadline will come with programmed notifications that remind litigants of discovery tasks, such as completing the disclosure questionnaire and uploading evidence. This will help prevent litigants from waiting until the last minute and becoming overwhelmed as upcoming deadlines approach.

Litigants will complete initial disclosures through a questionnaire that will ask questions about their claims, facts, the legal doctrines they wish to rely on, the evidence in their possession, and the identities of known witnesses. Much like the CRT, a litigant may upload documents and evidence to the online platform. If they do not have a digital version of a document, they may use the platform's PDF tool to photograph and convert physical documents into a digital file. After uploading the evidence to the online platform, which will automatically Bates stamp the files, litigants will verify their submission and send it to other parties, prompting the platform to automatically generate and e-file a certificate of service.

Litigants will draft interrogatories, requests for production, and requests for admission through the questionnaire tool. The questionnaire will inform litigants of the procedural limits on the number of requests and then allow litigants to draft their own questions, select uniform or template requests, or a combination of both. When a litigant completes the questionnaire, they will serve the respective parties with discovery through the online platform, which will then automatically generate and e-file a certificate of service. Litigants will respond to discovery through the questionnaire tool, which will also allow them to upload any relevant evidence they have not already submitted.

Depositions will be noticed and conducted through the online platform. If a litigant subpoenas a non-party witness, they will complete the service of process method mentioned above. Litigants will schedule depositions through the online platform, which will issue reminders to witnesses as their depositions approach. A brief informational video on the platform will

explain the purpose of depositions and offer basic guidelines to witnesses and self-represented litigants. The online platform's video-conferencing tool will host the depositions, record video and audio, and provide parties with a written transcript to download. After a witness has been deposed, the online platform will require the witness to review the transcript and submit any corrections or clarifications before verifying the deposition record.

## 5. Motions and Hearings

The online platform will host all hearings and manage the filings of and responses to motions. The questionnaire tool will guide litigants through the process of completing a motion and requesting an action from the court. Litigants responding to motions will also use the questionnaire tool. Motion practice, however, will likely be a tool of last resort because the court's facilitation of ODR and active communication with litigants will serve as the initial and primary methods of addressing and resolving concerns that arise during the discovery and litigation process. As with the initial conferences, litigants will participate in hearings and oral arguments through the online platform's video-conferencing feature.

## 6. Dispute Resolution

From when the defendant files their answer, the online platform will facilitate communication and negotiations between litigants. Like CRT's case manager, a judicial coordinator, trained in mediation and supervised by the judge, will be assigned to each case to facilitate agreements. While the primary facilitation goal will be settlement or case resolution, the judicial coordinator will also be tasked with resolving disputes about smaller case issues, such as scheduling and discovery. For family cases involving child custody, a parenting coordinator will be assigned to this role.<sup>134</sup>

The online platform's messaging board will facilitate asynchronous and synchronous communication and negotiations. For example, when parents have a disagreement about their parenting time schedule, they will send a message to their parenting coordinator through the online platform. Because the platform is accessible anywhere with an internet connection, twenty-four seven, parents may communicate their concerns at any time. The parenting coordinator may respond with a text or video message, depending on the

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134. Admittedly, new personnel will increase costs. For more information on budgetary and cost concerns, see discussion *infra* Part IV.B.

circumstances.<sup>135</sup> If a matter requires immediate attention, the parents will send an urgent message and select the timeframe within which they need assistance. Their parenting coordinator will either respond with a message or, if necessary, initiate a call.

Although the judicial coordinator will direct the litigants towards resolution, some cases may require synchronous, rather than asynchronous mediation. If the close of discovery approaches without resolution, or at the request of the litigants, the judicial coordinator will schedule a video mediation held through the online platform. During the mediation, the judicial coordinator may communicate with both litigants at the same time or create separate virtual rooms to discuss the case with each litigant.

If the litigants cannot reach an agreement through ODR, the case will proceed to trial. Litigants will always have the option of electing to hold a bench trial through the online platform. The bench trial will be conducted through the same video-conferencing tool used for oral arguments and depositions. Should the litigants require a jury trial, they will be allowed to use designated courtrooms reserved for civil trials or may agree upon an off-site location that will accommodate a jury. To promote transparency, the court's online platform will record and stream jury and bench trials for the public.

### *B. Responding to Objections*

Because transitioning an entire court system online for civil and family cases is a comprehensive structural change, opponents of this reform will likely have reasonable objections and concerns. Many of these objections, however, will likely be resolved with a thorough understanding of the online platform and an appreciation for the accessibility, effectiveness, and efficiency it will bring to the courts. The online platform will not be without flaws, but a major benefit of online courts is flexibility—they can evolve as laws change, new concerns arise, and better technology, such as artificial intelligence, offers more advanced and affordable tools.

Primary objections, each of which will be addressed below, include the following: (1) the online questionnaire will improperly provide legal advice; (2) online courts will cause privacy and data security concerns; (3) litigants benefit from attending hearings and conferences in person; (4) a transition to

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135. Research demonstrates that litigants who send text messages to a judge and receive video-message replies feel a greater sense of being heard and report a more positive, overall procedural experience within an ODR platform. See Ayelet Sela, *Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation*, 26 CORNELL J.L. & PUB. POL'Y 331, 375–76 (2016).



an online court is not worth the cost; (5) the court system should not be restructured simply to improve services for self-represented litigants; and (6) a transition to a central online platform is unnecessary when Arizona courts already offer many services online.

First, the questionnaire will not unlawfully provide self-represented litigants with legal advice. The questionnaire and its decision-tree analysis, legal resources, template, and forms will be designed with the support of legal experts and approved by the Arizona Supreme Court. Although this tool will provide self-represented litigants with some guidance, the litigants themselves will control their involvement in the process, select their responses, review their submissions, and apply their facts and circumstances to the law. Furthermore, similar interviewing tools are already used by TurboCourts and ezCourtForms.<sup>136</sup>

Second, an online court will not create substantial or new privacy concerns. Personal identifying information, such as dates of birth or social security numbers, will be redacted from all public files. Other types of personal information, such as a home address or the details of a motor vehicle accident, are already available in the public record, often online as well. And because family court filings will not be available to the public online, no new privacy concerns will arise in these types of cases.

The centralized nature of the platform and public filings in civil cases may decrease privacy for some litigants. However, creating centralized, online access to civil cases, which are already public record, will create a more transparent and accessible court system—a benefit worth the cost of a minor decrease in privacy. And while cyber security will remain critical to the operation of the courts, the overall increase in public access does not necessarily increase the threat of hacking. The personal data found in these court files is already stored online and at risk—whether on court servers, personal email accounts, or cloud-based law firm accounts.

Third, in reality, most litigants do not prefer in-person proceedings. Throughout the COVID-19 pandemic, attorneys and judges, like self-represented litigants, expressed a preference for remote operations and enjoyed the benefits of avoiding in-person proceedings.<sup>137</sup> Yet, even if most attorneys prefer in-person proceedings, courts should not weigh their interest

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136. See, e.g., *Solutions: Prepare and File Your Court Case Online in 3 Easy Steps*, *supra* note 114 (noting that TurboCourt will guide litigants through a customized interview).

137. See Allie Reed & Madison Alder, *Zoom Courts Will Stick Around as Virus Forces Seismic Change*, BLOOMBERG L. (July 30, 2020, 1:50 AM), <https://news.bloomberglaw.com/us-law-week/zoom-courts-will-stick-around-as-virus-forces-seismic-change> [<https://perma.cc/3A6T-6RSU>] (discussing judges' and attorneys' perspectives on the benefits of working remotely).

more heavily than the interest of the public, the actual people courts are designed to serve. Additionally, any benefit from in-person hearings is offset by its cost—in time and money. Video conferencing is also quite effective, if done correctly,<sup>138</sup> and can adequately simulate the in-person experience by displaying most gestures and body language.

Fourth, the ability to increase access to justice through an online court is well worth its cost. The long-term benefits of an online platform justify the significant short-term investment required to create the platform and transition courts online. An online court comes with few expensive buildings, faster disposal of cases, and more efficient overall administration.<sup>139</sup> And while British Columbia's CRT required the new role of case manager, it still allocated proportionately less resources for personnel than Arizona has with traditional court proceedings.<sup>140</sup> Thus, this proposal may result in future savings by reducing real estate and physical operational costs and optimizing the time of judges and court personnel.<sup>141</sup>

The societal benefits of an online court also justify the cost of this reform. Worthwhile, twenty-first century investment in access to justice requires reforms that leverage the internet and modern software tools to reach as much of the public as possible, especially low-income and self-represented litigants. Investing in access to justice will also translate into meaningful progress within struggling communities by improving the health of self-represented litigants; reducing crime, eviction, and domestic violence; and reducing the public's reliance on social safety-net programs.<sup>142</sup> And despite stiff competition for public resources, few endeavors should transcend the development of a sustainable court system.<sup>143</sup>

Fifth, online court services should be structured around those who need it most, and, today, those are self-represented litigants. Further, this proposal

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138. *See id.*

139. RICHARD SUSSKIND, *ONLINE COURTS AND THE FUTURE OF JUSTICE* 181 (2019).

140. From 2019–2020, CRT allocated 72% of its budget to salaries and benefits. 2019–2020 CIV. RESOL. TRIBUNAL ANN. REP., *supra* note 63, at 31. Meanwhile, in fiscal year 2019, Arizona state courts allocated 85% of its budget to salaries and benefits. COURT EXPENDITURES: STATEWIDE NARRATIVE SUMMARY: STATE FISCAL YEAR 2019 (2020), [https://www.azcourts.gov/Portals/39/2019DR/SWExpenditure\\_F19.pdf?ver=2020-07-22-144210-850](https://www.azcourts.gov/Portals/39/2019DR/SWExpenditure_F19.pdf?ver=2020-07-22-144210-850) [<https://perma.cc/L3YS-DG5F>].

141. Matterhorn has reduced the combined time of court staff spent per hearing by 500%, which represents the potential benefits of an efficient online court. *See Cartwright & MacEwen, supra* note 94, at 2.

142. *See* Laura K. Abel & Susan Vignola, *Economic and Other Benefits Associated with the Provision of Civil Legal Aid*, 9 SEATTLE J. SOC. JUST. 139, 155 (2010).

143. SUSSKIND, *supra* note 139, at 84–85 (“No doubt, there are all manner of competing demands on the public purse but it is hard to see how they take precedence over the need for a sustainable judiciary which . . . underpins civilized democracies and market economies.”).

will not substantially affect attorneys and represented parties, as they may continue many of their existing procedures. The platform will not require their use of the questionnaires and will allow them to directly upload pleadings. Attorneys and represented parties will also benefit from the platform's centralized access, remote operations, and efficient dispute resolution processes—all of which will save them time and money.

Sixth, a central online platform for Arizona courts is necessary because while Arizona offers many online services, those services are of no benefit if the public cannot find them or if they are too complicated to use. As discussed in Part III.D, self-represented litigants must navigate many sites to locate resources and those sites and resources change based on the type of case, court level, and county or city. Even if a self-represented litigant completes a litigation process using online services, the second time they interact with the court they may have to use completely different processes, resources, and websites. The burden of navigating up to four platforms for different tasks—such as e-filing, emailing an opposing party, video conferencing, and reviewing the court calendar—will likely overwhelm and deter self-represented litigants rather than increase accessibility.<sup>144</sup>

## V. CONCLUSION

A centralized online court will serve as a pillar of innovation, progress, and equal justice within the Arizona community, creating a lasting and empowering effect on marginalized families, low-income victims and defendants, and self-represented litigants. Take Maria, for example. With Arizona's traditional and in-person court proceedings, she could not protect her rights in the collection lawsuit that left her with a judgment and writ of garnishment. Her story, however, would end much differently with the implementation of the online court proposed in this Comment.

When served with the lawsuit, Maria would follow the brief instructions in the service packet and scan the document's QR code with her smartphone. Within minutes, she would access the court's mobile application, create an account, and review and respond to the lawsuit using the platform's questionnaire tool. Through the platform, Maria and the credit card company would complete initial disclosures and scheduling, providing Maria with access to the full case record and court deadlines on her phone. With help from a judicial coordinator facilitating asynchronous negotiations, Maria could communicate her concerns and questions and receive replies at her own convenience. And rather than receiving a judgment and writ of garnishment,

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144. See discussion *supra* Part III.D.

Maria would settle her case and agree to a payment plan—without having to consult a lawyer, step into a courtroom, take time off work, or arrange for childcare.

To serve many Arizonans who lack access to justice, the state should transition all state civil and family court cases to a centralized online platform. This transition to a central, online court weakens the economic, physical, and psychological barriers that restrict low-income and self-represented litigants from accessing the courts. And with COVID-19 forcing remote court operations, there has perhaps never been a more ideal time to begin this transition. Arizona should build on this progress and leverage this opportunity to bring its court system online and into the twenty-first century.