

Testimony on: Oklahoma Senate Bill 986 – Unauthorized Practice of Law

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Judiciary Committee**

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Consumers for a Responsive Legal System (“Responsive Law”) thanks the Committee for the opportunity to present its testimony on Senate Bill 986. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible and accountable to the people.

We oppose the passage of the bill, which creates a misdemeanor offense for “unauthorized practice of law,” punishable by up to six months imprisonment. The bill defines “unauthorized practice of law” to include “when a person gives legal advice of any kind . . . without being licensed to practice law in this state.” This proposed definition is both vague and dangerously overbroad. The prohibition on “legal advice of any kind” deprives consumers of valuable information, both legal and otherwise. Moreover, it could potentially impose criminal liability on thousands of ordinary Oklahomans for simply doing their jobs.

The unauthorized practice of law (UPL) is currently prohibited by the Oklahoma Bar Association.¹ The Bar Association is responsible for investigating alleged UPL and for taking judicial action to enforce the prohibition.² Defining the practice of law, however, is a notoriously difficult endeavor. Jurisdictions across the country have struggled to formulate a clear standard for differentiating legal from non-legal services. The Oklahoma Supreme Court, in its leading case on the subject, recognized that “[t]he distinction between law practice and that which is not may be determined only from a consideration of the acts of service performed in each case.”³ Accordingly, neither Oklahoma statutory law nor the rules of the Bar Association attempt to define the practice of law. Generally, the Supreme Court has held that the practice of law consists of “the

¹ 5 O. S. Ch. 1, App. 1, Art. 2, § 7(a).

² *Id.* at § 7(c).

³ *R. J. Edwards, Inc. v. Hert*, 1972 OK 151, 504 P.2d 407, 417 (internal quotation marks omitted).

rendition of services requiring the knowledge and the application of legal principles and technique to serve the interests of another.”⁴ This bill, by contrast, would codify a definition that broadly includes any “legal advice *of any kind.*” Combining the expansive language “of any kind” with the already nebulous concept of “legal advice” would dramatically and unnecessarily expand the coverage of Oklahoma UPL law, to the serious detriment of ordinary Oklahomans.

This bill would prevent many Oklahomans from obtaining any form of legal assistance.

Many basic legal tasks that people commonly encounter can be performed by a friend or family member who has familiarity or experience with the issue involved. This third party can assist with the legal tasks without any detriment to the individual. If such assistance were classified as UPL because it constitutes “legal advice of any kind,” it would effectively deny access to the legal system to a great number of low- and medium-income Oklahomans. Retaining a lawyer to perform such tasks is simply not practically or economically feasible for most people. The average take-home pay in Oklahoma is \$34,327.⁵ The average person must therefore work an entire week in order to pay for only two hours of a lawyer’s time, assuming an hourly billing rate of \$300.

Proponents may argue that the bill’s broad prohibition is necessary to protect consumers from being preyed upon by individuals falsely holding themselves out to be attorneys. Responsive Law certainly shares the concern that legal consumers can be victims of fraud. Consumers in Oklahoma, however, are already protected by existing fraud statutes.⁶ For example, if a non-attorney holds himself out to a consumer as an attorney in order to draft a will, Oklahoma’s fraud statute expressly protects the consumer who received the fraudulent services.⁷ The protections afforded to legal consumers under this bill

⁴ *Id.*, 1972 OK at 151, 504 P.2d at 416.

⁵ U.S. Bureau of Economic Analysis, “Table SA51-53, Disposable personal income summary,” <http://www.bea.gov/iTable/iTable.cfm?reqid=70&isuri=1&acrdn=4>, accessed March 20, 2013.

⁶ *E.g.*, 21 O. S. § 1542(A).

⁷ *Id.* (“Every person who, with intent to cheat or defraud another, designedly, by . . . aid of any . . . false pretense, obtains the signature of any person to any written instrument . . . is punishable by imprisonment in the penitentiary not exceeding three (3) years or in a county jail not exceeding one (1) year. . .”).

are therefore largely duplicative of existing criminal law; and any small additional protection is more than offset by the affirmative harm the bill's broad language would impose on consumers.

This bill would hinder Oklahomans' ability to receive a wide array of non-legal advice.

Unlike the "rendition of services . . . to serve the interests of another," giving "legal advice of any kind" would encompass *any* advice that includes a legal component or that bears on a legal issue. If enacted, this bill could subject "Dear Abby" or Carolyn Hax to a misdemeanor conviction and six months in jail for responding to a reader's question involving an arguably legal concern. Accountants, financial planners, real estate agents, social workers, and even doctors could similarly find themselves facing jail time if their professional advice happens to touch on a legal issue "of any kind." In short, anyone whose occupation involves giving advice or providing information of any sort is potentially implicated by this bill. The prohibition on advice is not limited to compensated services, however. Accordingly, *anyone* who tried to help a friend or family member with any kind of legal problem could be criminally prosecuted and sentenced to six months in jail.

Proponents of this bill may contend that reasonable construction and prosecutorial discretion will protect the doctors, accountants, and family members from the literal language of the bill. However, this kind of overbroad criminal statute is affirmatively harmful in and of itself, even if not enforced to its fullest extent. The threat of a six-month jail sentence for potentially infringing advice cannot help but chill the offering of such advice. This chill would deprive consumers of a significant amount of essential assistance and valuable information.

Requiring a showing of harm could produce a legitimate consumer protection bill.

Although Responsive Law opposes this bill, we recognize that it could legitimately protect legal consumers, if it were properly amended. As presently drafted, the bill lacks any requirement of harm to consumers. If the consumer of the service does not object to and suffers no harm from the service, the provider of that service should not be prosecuted for UPL. Accordingly, Responsive Law

suggests that, at a minimum, the bill be amended to include harm to a consumer as a required element of misdemeanor UPL.

In an economic climate in which four out of five people cannot afford a lawyer, additional barriers should not be placed between people and the legal system that is intended to adjudicate their disputes. **On behalf of the users of the legal system, we urge the Committee to oppose this legislation.**