

TESTIMONY IN OPPOSITION TO HOUSE BILL 172

Before the Ohio House of Representatives
Civil Justice Committee
Representative Brett Hillyer, Chair
By Larae Schraeder, Esq.

February 6, 2024

Chairman Hillyer, Vice-Chair Mathews, and members of the Ohio House of Representatives Civil Justice Committee, thank you for the opportunity to present opponent testimony to House Bill 172.

Summary:

I oppose H.B. 172 because it effectively paves the way for the use of software to create simple electronic wills without the customized counsel of an attorney. There is no substitute for professional advice. But for an attorney, people that think their situation is simple, that their legal documents can be simple, and that the implications of those simple documents will be simple. Based on my personal and professional experience, few people have situations that are simple, and even fewer people face situations that can be adequately addressed by a simple electronic will, sans counseling.

Remarks:

I am Larae Schraeder. Five years ago, I founded a solo law practice focused on estate planning, probate, and elder law including Medicaid planning and crisis situations. I currently serve as a member of the Ohio State Bar Association's Estate Planning, Trust, and Probate Law Section Council. I am also a member of the National Academy of Elder Law Attorneys.

I help clients of all ages address issues my own family faced without legal counsel. As a solo practitioner, I have handled over 600 matters with 70-80 active cases at a time. My practice is located in central Ohio, however, my firm has served clients in 40 of Ohio's 88 counties.

The perceived benefit of electronic wills, that more Ohioans will quickly have inexpensive legal documents, are not well-founded, and there is significant risk. This could not ring truer that electronic wills are prepared in a self-serve fashion. There is a quote that some attribute to Mark Twain, "It's not what you know; it's what you think you know that just ain't so." This applies to electronic wills. Ohioans may think they know what they want and need in their will but what one THINKS matters not. And for this reason, I testify before you about the negative effects of H.B. 172 on Ohioans.

Law is my second career. I spent 25 years in technology consulting for Fortune 100 Financial Services companies, and then working directly for top financial services companies as a Director in IT, Corporate Finance, Marketing Research, and Data Analytics before practicing law full time. I have helped design and implement solutions that used software to offer inexpensive, semi-automated, semi-customized capabilities to the masses. I believe such solutions can and do serve important needs. A Last Will and Testament is a different animal.

I attended the evening program at Capital University Law School, graduating in 2018. After being admitted to the Ohio Bar, I started Schraeder Law to help people during the evenings and weekends while I was working my day job in Corporate America. I left two years ago to practice law full time.

Although I was a non-traditional law student, and my firm had a non-traditional start, my day-to-day services resemble those of many other solo and small law offices. Like many of my fellow practitioners, I make getting a will as accessible, and affordable as possible. I offer evening and weekend hours. I make house calls and hospital trips routinely. In addition to participating in my formal pro bono services as a volunteer attorney, at my firm, I occasionally draft documents for free, I have traded for services, and I take payments without interest.

Representative examples from my practice:

During my relatively short tenure as an attorney, I have already experienced many clients who needed drastically different Estate Plans than they realized when they contacted me, different estate plans than they would have drafted if navigating the process alone. Not everyone has the complexity to warrant a trust or a fifty-age estate plan costing thousands of dollars. But a person's circumstances may seem straightforward, but more often than not, there is one fact lurking, and that fact changes everything about how they must approach their will or Estate Plan in order to accomplish their goal.

Some representative examples from my practice are as follows¹:

1. But for an attorney, my client Dave thought a simple will would address his needs. Without counseling, he would have left a brokerage account to his son requiring probate, instead of a beneficiary designation, and he would have died falsely believing his daughter from a prior marriage would automatically inherit something when his second wife died.
2. But for an attorney, Bob and Judy, would have had simple wills. If June had died with the simple wills she initially requested, Bob would have lost his Medicaid eligibility that paid for his nursing home. He would have inherited from June more than the \$2,000 limit for assets he could have and still receive public assistance. He would have needed to re-start the multi-month application process again. It seemed so simple: leave everything to each other, then the kids. But the lurking fact was that *his* health changed the appropriateness of a simple will for *her*.
3. But for an attorney, a young couple, Kurt and Kathy, might have had simple wills, nominating a guardian for their firstborn. If they had prepared their simple wills online, they may have had a false sense of security while still lacking basic documents needed to protect their growing family. Wills were the only documents Kurt mentioned when he scheduled an appointment, but during our meeting we discussed their situation holistically. It was eye opening, even for Kurt, who is an attorney in a different field of practice. For example, their deed would have required legal proceedings before the surviving spouse could have inherited the other half of the house. We also discussed the benefits of a General Durable Power of Attorney to grant each other powers not automatically bestowed upon each other when they said "I do". Because of an attorney's counseling, within a few days of our initial meeting, they returned to execute a plan, not just a simple will that might not have worked as intended. With the new General Durable Power of Attorney, Kurt could file their joint tax return even if Kathy could not sign her name, and Kathy could have renewed the family's health insurance offered through Kurt's employer if she ever needed to step in!

All of these clients, and others, ended up with *somewhat* "simple" wills but only after they received legal advice to address their unique situations. The right will at the right time for the right person

¹ Client names have been changed to protect confidentiality.

matters. The guidance of a professional to match the will to the person and the circumstances is the superior means to accomplish this, and we should take measures to guard, not discourage, this standard practice.

Closing:

Software to draft simple wills is not the salve we need to remedy subtle and sometimes substantial needs that can be spotted and addressed by an attorney's customized counseling.

I do not deny that H.B. 172 could increase the number of people who have wills, but the answer is not to have more Ohioans dying with self-serve, simple wills that may not meet their needs.

That presumes that having *something*, even if simple, is better than *nothing*. I respectfully disagree. Often, having something *isn't* better than *nothing*, specifically when that *something* is a will created with software that can't appreciate the nuances that are often "game changers." Our law provides for an organized and efficient distribution of assets if there is no will. The law of descent and distribution works. To die intestate is far better than dying with a bad will, and not knowing it.

Neither the inconvenience nor the expense of having professional advice and assistance preparing a will are so great as to warrant a disruption to the standard practice of counseling Ohioans throughout the will creation process.

To be clear, I am not opposed to all forms of digital assistance in estate planning. Technology is changing the way we do everything. However, I strongly oppose any steps that remove or diminish the role of the attorney and legal counseling, and that's what I believe this proposal will do. Further, software has no duty to act in one's best interests or to anticipate the things that a practitioner can address. Simply put, there is no substitute for an attorney's counseling. NONE.

To reiterate, but for an attorney's customized counseling, Ohioans will create legal instruments without understanding the ramifications on their estate or their heirs. Engaging an attorney need not be an overly expensive, lengthy, or inconvenient process so why spend our legislative effort trying to change it in this way?

Thank you for the opportunity to provide this opponent testimony on House Bill 172.