The LegalZoom Identity Crisis: Legal Form Provider or Lawyer in Sheep's Clothing?

Isaac Figueras

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Comment

THE LEGALZOOM IDENTITY CRISIS: LEGAL FORM PROVIDER OR LAWYER IN SHEEP’S CLOTHING?

“The legal profession of the future will be constituted of two tiers, not the solicitors and barristers of today, but the legal specialists and legal information engineers of the information society. . . . Legal systems of the information society will evolve rapidly under the considerable influence of ever more powerful information technologies.”

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INTRODUCTION

LegalZoom, Inc., is easily described as a hybrid between a legal service provider and a source for blank legal forms. At best, LegalZoom is simply an online provider of legal documents such as a company’s articles of incorporation. At worst, LegalZoom is an online legal service provider that regularly engages in the unauthorized practice of law. Though scholars, courts, and LegalZoom itself debate which of these descriptions is correct, one thing is clear: LegalZoom has the


2. Id. at 189.

3. Id. at 192.

4. LegalZoom argues that the concept behind its services is akin to self-help books and legal kits, which “have been around for as long as lawyers.” Roger Parloff, Can Software Practice Law?, CNNMoney (June 30, 2011, 8:30 AM), http://features.blogs.fortune.cnn.com/2011/06/30/
potential to transform traditional notions of legal services by providing an online forum whereby unrepresented persons obtain answers to legal questions and issues. The extent of its impact, however, is unclear without a better understanding of LegalZoom itself.

The development of LegalZoom presents three large questions: First, what is the nature of LegalZoom’s services and how could they impact the legal market? Second, how are courts reacting to LegalZoom? Third, what predictions can be made as to the actual impact of LegalZoom on traditional notions of legal services? The first question has been a source of debate for a number of years as scholars continue to discuss the phenomenon of online legal services and how they affect traditional attorney roles. Now that more consumers and bar associations are challenging LegalZoom in court and more states are addressing these issues, there is a clearer picture of the problems associated with the services provided by LegalZoom.

This Comment examines how recent state court opinions addressing LegalZoom demonstrate the difficulty of balancing the importance of providing access to justice for a greater number of people with the prohibition against the unauthorized practice of law. Part I discusses LegalZoom’s own description of its services and how this blurs the line between self-help form provider and legal service provider. Part II evaluates the scholarly debate regarding the significance of LegalZoom’s business model, the importance of its services for underrepresented portions of the population, and how it may be engaging in the unauthorized practice of law. Finally, Part III reviews recent court opinions that address what exactly LegalZoom is and whether it is engaging in the unauthorized practice of law. This review confines its analysis to a series of cases decided in Ohio, Missouri, and North Carolina and demonstrates that multiple can-software-practice-law. But scholars argue that “[t]his is a tenuous position at best.” Kirgis, supra note 1, at 192.


6. Richard Susskind, The End of Lawyers? 270 (2008) (suggesting that, with emerging legal technologies now competing with the traditional legal business model, “it looks as if the party may soon be over” for many lawyers).

7. See, e.g., Janson v. LegalZoom.Com, Inc., 802 F. Supp. 2d 1053, 1065 (W.D. Mo. 2011) (holding that LegalZoom’s services constituted the unauthorized practice of law); see also infra Part III.

8. See Kirgis, supra note 1, at 184 (discussing the debate as to the fate of attorneys in the modern age of technology).


states have found that LegalZoom's document preparation services are improper.\textsuperscript{12} Part III concludes by comparing these court opinions to both LegalZoom's description of its services and the predictions of scholars. Such a comparison highlights significant themes in the court opinions, the important public policy reasons for attempting to retain LegalZoom's business model, and how difficult this is to reconcile with the unauthorized practice of law doctrine.

At a base level, LegalZoom could help provide greater ease of access to the justice system for a larger number of people. As LegalZoom’s 2012 prospectus notes, “Despite the enormous amount spent on legal services, we believe that small businesses and consumers have not been adequately served by the options traditionally available to them.”\textsuperscript{13} Yet, as court opinions decide whether or not LegalZoom engages in the unauthorized practice of law, questions arise regarding LegalZoom's ability to maintain its business model and goals to adequately serve small businesses and consumers. Further, even if LegalZoom survives court scrutiny in some states, there are questions as to how to regulate this new industry and what traditional attorneys should expect.

As an initial matter, this Comment heavily revolves around the legal doctrine of the unauthorized practice of law. The practice of law is established by state law and often varies from state to state.\textsuperscript{14} Importantly, under the law of some states, the practice of law includes the preparation of legal documents such as wills or divorces, or even the incorporation of a company.\textsuperscript{15} As a general rule, an attorney or layperson may not engage in the practice of law without authorization. This could involve anything from offering specific

\begin{thebibliography}{9}
\bibitem{12} \textit{See Janson}, 802 F. Supp. 2d at 1065 (finding LegalZoom violated the prohibition against performing legal services without authorization).
\bibitem{13} LegalZoom.com, Inc., Registration Statement (Form S-1), at 1 (May 10, 2012). [hereinafter LegalZoom Prospectus].
\bibitem{14} \textit{Model Rules of Prof'l Conduct R. 5.5, cmt. 2} (2011).
\bibitem{15} \textit{E.g.}, N.C. Gen Stat. § 84-4 (2011) (prohibiting an unauthorized person from “prepar[ing] directly or through another for another person, firm or corporation, any will or testamentary disposition, or instrument of trust, or to organiz[ing] corporations or prepar[ing] for another person, firm or corporation, any other legal document.”). Whether this section and other like statutes include LegalZoom's activities is currently the subject of legal battles. \textit{See} Lowry v. LegalZoom.Com, Inc., No. 4:11CV02259, 2012 WL 2953109, at *4 (N.D. Ohio July 19, 2012) (dismissing a claim against LegalZoom under Ohio Revised Code § 4705 because “the Supreme Court of Ohio has not found that Legalzoom has engaged in the unauthorized practice of law”).
\end{thebibliography}
advice to providing legal analysis to a client.\textsuperscript{16} This exclusion extends to corporations: a lawyer may not “practice with or in the form of a professional corporation or association authorized to practice law for a profit” if a nonlawyer has any interest in the corporation.\textsuperscript{17} Generally, therefore, corporations are not allowed to practice law.\textsuperscript{18} The prohibition derives from the policy that the public should be protected from services from unqualified persons.\textsuperscript{19}

Ultimately, there is one question to keep in mind going forward: Is LegalZoom a service that will open the door to justice for more of the population or will LegalZoom fail to convince courts that it is \textit{not} a legal service provider at all?

I. \textsc{LegalZoom’s Self-Identity Sends Mixed Messages}

LegalZoom’s own representations do not provide a clear answer as to whether it is a legal servicer or legal form provider. Even if LegalZoom’s representations do not facially represent it as a legal service provider, the actual services LegalZoom provides still blur the line between form provider and service provider. LegalZoom’s website,\textsuperscript{20} its communications with the public,\textsuperscript{21} and the prospectus it filed with the SEC in May of 2012\textsuperscript{22} all demonstrate fundamental ambiguities in its services. A closer look at LegalZoom’s representations reveals two opposing self-images: (1) the company seeking to empower consumers by offering them legal tools and (2) the legal servicer hiding in form provider’s clothing.

The first image is the image that LegalZoom wishes the public to see, best described with their public motto: “[E]veryone deserves access to quality legal services so they can benefit from the full protection of the law.”\textsuperscript{23} The founding principle of the company was

\begin{enumerate}
\item [17.] \textsc{Model Rules of Prof’l Conduct} R. 5.4(d)(1) (2011).
\item [18.] Grace M. Giesel, \textit{Corporations Practicing Law Through Lawyers: Why the Unauthorized Practice of Law Doctrine Should Not Apply}, 65 \textsc{Mo. L. Rev.} 151, 151 (2000) (“Nothing is better settled than the proposition that a corporation cannot practice law.”).
\item [19.] \textsc{Model Rules of Prof’l Conduct} R. 5.5(a) (2011).
\item [20.] \textsc{LegalZoom}, http://www.legalzoom.com (last visited Mar. 27, 2013) [hereinafter LegalZoom Homepage].
\item [21.] \textit{See}, e.g., LegalZoom, \textit{Law that Just Makes Sense—LegalZoom Commercial 30}, \textsc{YouTube} (Sept. 11, 2012), http://www.youtube.com/watch?v=I1xHweul84w.
\item [22.] LegalZoom Prospectus, \textit{supra} note 13.
\item [23.] \textit{Id.} at 1.
\end{enumerate}
to provide a convenient and affordable method to resolve common legal problems. LegalZoom backs this up with reviews from news providers that note the cost effectiveness of LegalZoom, the quality of its services, and more. LegalZoom sought to meet its goal of providing more access to justice by merging the legal and technological fields in order to create an “easy-to-use, online service that helped people create their own legal documents.” The website offers forms for LLCs, estate planning, trademark and IP problems, and more. Its services cover matters involving both the formation of a business as well as its later activities. People can receive the forms necessary to plan for the end of their life, a real estate bargain, or even bankruptcy. In theory, these practices are acceptable because providing blank legal self-help forms has long been accepted.

LegalZoom strives to present a simple, yet important, image—it is here to help the common person help himself. LegalZoom offers average people or businesses the legal tools to solve their own problems without attorneys. LegalZoom only “provide[s] self-help legal documents at [its] customers’ specific direction and general information on legal issues generally encountered.” All necessary attorney work is available through LegalZoom’s referral service. LegalZoom is able to offer consumers who want more than legal forms

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24. About Us, LegalZoom, http://www.legalzoom.com/about-us (last visited Mar. 27, 2013) (“For us, the goal is not simply to provide a smart, cost-effective alternative—it’s to make sure everyone gets the legal protection they need.”).


26. About Us, supra note 24 (emphasis added).

27. LegalZoom Homepage, supra note 20.

28. Id.

29. Id.

30. See Richard Granat, Is LegalZoom Just a Self-Help Legal Software Company?, eLAWYERING BLOG (July 4, 2011), http://www.elawyeringredux.com/2011/07/articles/competition/is-legalzoom-just-a-selfhelp-legal-software-company (last visited Mar. 27, 2013) (explaining “there is a well-established line of cases that supports the position that the publication of information about the law, as well as . . . divorce forms with instructions, and do-it-yourself kits is not the practice of law”).

31. LegalZoom Prospectus, supra note 13, at 5.

inexpensive legal advice through its various subscription plans. Thus, LegalZoom covers the consumer on both legal fronts: there are self-help documents online and, if necessary, legal service plans to put the consumer in touch with a licensed attorney who can provide further advice.

In theory, this company provides consumers with an excellent alternative for dealing with most common legal concerns. Yet all of these services come with an important tagline:

LegalZoom provides access to independent attorneys and self-help services at your specific direction. We are not a law firm or a substitute for an attorney or law firm. We cannot provide any kind of advice, explanation, opinion, or recommendation about possible legal rights, remedies, defenses, options, selection of forms or strategies.

This disclaimer describes the second face of LegalZoom. While LegalZoom wishes to make the solutions to everyday legal problems convenient and affordable, the company itself is not a law firm and it cannot provide legal advice. Any and all legal advice must come by accessing one of its subscription plans or contacting an attorney.

This is where LegalZoom is the servicer in form-provider’s clothing. Despite its representations that it seeks to help consumers help themselves and is not a law firm, and therefore cannot provide legal services, LegalZoom highlights its own concerns that it is practicing law. The LegalZoom Prospectus identifies number of risks, including the uncertain legality of its business model:

36. LegalZoom Prospectus, supra note 13, at 4 (“For small businesses and consumers who want legal advice, we offer legal plans that connect subscribers with experienced attorneys licensed in their jurisdiction to address their specific legal needs.” (emphasis added)).

34. Find an Attorney you can Trust at a Truly Affordable Price, supra note 32. This may pose a problem for LegalZoom given the low standard set for what constitutes “legal advice” and the minimal statements that can be legal advice if a client relies on those statements. Togstad v. Vesely, Otto, Miller & Keefe, 291 N.W.2d 686, 693–94 (Minn. 1980). In Togstad, the minimal advice permitted a malpractice claim even though the law firm declined to form a relationship with the prospective plaintiff-client. Id. at 694–95.

35. Find an Attorney you can Trust at a Truly Affordable Price, supra note 32 (explaining LegalZoom can help individuals find a lawyer); see also MODEL RULES OF PROF’L CONDUCT R. 5.4(d) (2011) (regulating the practice of law by attorneys in professional corporations and disallowing nonlawyer interests in such a corporation).

36. Find an Attorney you can Trust at a Truly Affordable Price, supra note 32 (indicating that individuals must sign up to talk with an attorney through LegalZoom).

37. LegalZoom Prospectus, supra note 13, at 4.
our business and services subject us to complex and evolving U.S.
and foreign laws and regulations regarding the unauthorized
practice of law, legal document processing and preparation, legal
plans, privacy and other matters . . . .38

The risk regarding the unauthorized practice of law is the first risk
LegalZoom identifies in its prospectus.39 This illustrates LegalZoom’s
own concern that the jurisprudence regarding the unauthorized
practice of law may evolve in such a manner that LegalZoom will be
illegally practicing law.

The reason LegalZoom displays concern is because its program
uses questionnaires created by customers in order to help generate
legal documents.40 Further, when you finish, “LegalZoom’s document
assistants review your answers for consistency and completeness.”41
LegalZoom then prints the documents and mails them to you with
instructions regarding how to finalize this document.42 LegalZoom
offers both self-help documents and legal service plans.43 The crux of
the dilemma regards whether or not these services go beyond self-help
and constitutes advising clients, preparing legal documents, or
performing other services that may be considered the “practice of
law.”44 As stated above, there are currently strict rules regulating the
practice of law that generally prohibit a corporation from practicing
law. Therefore, if these actions constitute the provision of legal
services, LegalZoom’s current business model may be unable to
survive litigation under the laws of some states.45

38. Id.
39. Id.
in and “answer a series of straightforward questions”).
41. Id.
42. Id.
43. Complaint for Declaratory and Injunctive Relief ¶ 9, LegalZoom.com,
Inc. v. North Carolina State Bar, No. 11 CVS 15111, 2012 WL 3678650
Complaint] (explaining that LegalZoom “principally provides two
services: (1) a self-help legal document service and (2) prepaid legal
services plans”).
44. French, supra note 16, at 115 (“But if legal software were instead
viewed as an interactive product that mimics the attorney-client process
and relationship, providing specific advice and assistance to the user in
drafting legal documents, it would likely be found to violate
unauthorized practice prohibitions.”).
45. See Nathan Koppel, Seller of Online Legal Forms Settles Unauthorized
LegalZoom often notes that because the customers are effectively creating the documents themselves, its activities cannot be considered the practice of law since the company does not technically prepare the final documents.\textsuperscript{46} If it were practicing law, LegalZoom argues, then “every guide and legal formbook in libraries and bookstores in the state would also be engaging in the unauthorized practice of law.”\textsuperscript{47} Yet this remains a gray area because the customization of forms for customers and review of their documents for inconsistencies could push LegalZoom into the role of a document preparer and therefore into the practice of law.\textsuperscript{48}

LegalZoom claims that it was founded to provide inexpensive self-help legal services in a convenient online forum.\textsuperscript{49} This representation is at odds with the concerns it highlights in its prospectus.\textsuperscript{50} Such a contradiction demonstrates that LegalZoom’s self-image is at best ambiguous. LegalZoom walks a fine line whereby it attempts to be a service provider without offering legal advice.\textsuperscript{51} Yet LegalZoom’s ambiguous self-image may prove to be its undoing in the face of increasing litigation over its alleged unauthorized practice of law.\textsuperscript{52} Despite its representations, the question remains—is LegalZoom really just the “latest and natural evolution of the centuries-old legal self-help industry”?\textsuperscript{53}


\textsuperscript{47} Id.

\textsuperscript{48} Kirgis, supra note 1, at 192 (“To say the least, this is a slippery area of regulation”).

\textsuperscript{49} About Us, supra note 24 (explaining LegalZoom’s goal to provide a “more affordable way to take care of common legal matters”).

\textsuperscript{50} LegalZoom Prospectus, supra note 13, at 4 (describing the risks regarding “the unauthorized practice of law”).

\textsuperscript{51} Id. at 5 (“Independent, licensed attorneys participate in our attorney network to provide services to our customers through our legal plans.”).

\textsuperscript{52} Id. at 18–19 (noting class actions in Missouri and California regarding unfair business practices, misrepresentations, and the unauthorized practice of law). In the past, even such legal formbooks have been challenged as violating the unauthorized practice of law doctrine. In re Nolo Press, 991 S.W.2d 768, 771, 773 (Tex. 1999) (noting that the Texas Bar association challenged Nolo Press and argued that, by providing formbooks, this corporation engaged in the unauthorized practice of law).

\textsuperscript{53} Missouri Class Action Notice FAQ, supra note 46.
II. THE SIGNIFICANCE OF LEGALZOOM: BALANCING THE IMPORTANCE OF ACCESS TO JUSTICE IN A LEGAL GREY AREA

LegalZoom’s significance is derived from the admirable goal of providing access to justice for the general population. Yet LegalZoom walks a fine line between providing traditional legal self-help forms and violating unauthorized practice of law doctrine. This juxtaposes the importance of providing affordable legal services to the public with the risk LegalZoom poses to traditional conceptions of the practice of law. Further, whether such online legal services constitute the unauthorized practice of law increases in importance as rapid changes in technology give rise to online legal providers that could pose a growing challenge to traditional attorneys. In many ways, LegalZoom is at the forefront of a emerging breed of companies that use the Internet to offer to help settle claims, provide legal forms, or otherwise. This Part asserts that there must be a decision regarding whether LegalZoom’s business model is legitimate in order to determine if LegalZoom can continue to service the underrepresented portions of the population.

As a starting point, LegalZoom offers clear benefits to the general population. As discussed above, LegalZoom provides cost-effective legal documents with customer service available at any point necessary. Its forms and customer service representatives provide answers to general legal issues and can put the consumers in touch with live attorneys if necessary. These services have received very favorable reviews: LegalZoom “boasts a wide array of consumer services... including wills, small claims, real estate deeds and even divorces—all available from the comfort of your home. And they do the filing for you.” As a result, LegalZoom benefits pro se litigants,

54. See LegalZoom Prospectus, supra note 13, at 5 (“We provide self-help legal documents... and general information on legal issues generally encountered.”).


56. See Granat, supra note 30 (discussing the debate regarding whether LegalZoom’s services constitute the “practice of law”).

57. Susskind, supra note 6, at 96.


60. Resnick, supra note 25.

61. Id.
people who need help filling out a will, and many other sections of the general population. LegalZoom even hosts online forums to allow attorneys to answer questions posed by persons without representation so that the general public can also benefit from these answers.

The importance of this business model will increase as legal technologies continue to gain the ability to provide services traditionally associated with attorneys. The growing debate regarding legal technologies and their effect on the legal field was sparked in part by Richard Susskind’s prediction that, due to emerging legal technologies, “it will transpire, for the ordinary affairs of most citizens, that lawyers are not even the dominant interface” for “securing access to legal understanding and justice.” This prophecy culminated from Susskind’s research into the growth of legal technologies and how this could expand the ability of average people to obtain adequate legal remedies and lead to the commoditization of legal services. Susskind further noted that, as a result of legal services becoming more available, “IT-based services or other forms of sourcing can give rise to a quicker, better, more widely available, or cheaper service than that offered today.”

As one of the leading companies in this field, LegalZoom poses a special threat to traditional legal service providers. But legal scholars are not unanimous in their belief that Susskind’s prophecy will come to fruition. The prophecy must account for whether clients prefer such services to traditional attorneys, whether the services are effective, and, chiefly, whether this business model will be limited by the doctrine of the unauthorized practice of law. In part, scholars argue that there are “people who paid for estate guidance before LegalZoom was a gleam in anyone’s eye, and they are unlikely to trust their legacies to a software program anytime soon.” LegalZoom itself notes that one of its risk factors is the threat posed by the unauthorized practice of law theory. This creates an awkward

62. Robertson, supra note 5, at 87.
63. Id. at 84.
64. Susskind, supra note 6, at 31–32.
65. Id. at 284.
66. Id. at 32 (“[A] commoditized legal service is an IT-based offering that is undifferentiated in the marketplace.”).
67. Id. at 284.
68. See Kirgis, supra note 1, at 192, 196 (arguing that the unauthorized practice of law theory could impede LegalZoom and that, generally, it will have relatively little impact on the legal profession).
69. Id. at 196.
70. LegalZoom Prospectus, supra note 13, at 4.
dynamic: one must continually balance the importance of the company’s services with its blurring the line between an attorney and a self-help form provider.

LegalZoom is threatened by the unauthorized practice of law doctrine because it offers services that stand out and make it especially competitive with traditional attorneys.\(^71\) LegalZoom has a section of its business that helps prepare documents instead of simply providing a blank form.\(^72\) LegalZoom’s service also creates the legal documents according to the customer’s wishes using questionnaires prepared by the customers.\(^73\) Scholars have argued that automated self-help services providers are engaged in the unauthorized practice of law.\(^74\) Further, by crossing the line from blank form provider to form preparer, LegalZoom brings an added level of sophistication to online legal form services. This unique aspect of LegalZoom is what makes its business model a risky one: by offering services that cater to a customer’s need and check for “inconsistencies and errors,”\(^75\) LegalZoom may move beyond being an acceptable blank form provider and enters into the practice of law. Lastly, providing anything more than generalized information to a consumer has the risk of creating an attorney-client relationship.\(^76\)

If LegalZoom’s business model survives, then this could be a significant step towards the commoditization of law predicted by Susskind. This provides many advantages to consumers who were previously unable to access affordable, customized legal services. Yet there must be a balance between offering access to justice and undermining the unauthorized practice of law doctrine. This issue, mentioned early on in LegalZoom’s formation,\(^77\) has received more attention from state courts in recent years. The next Part discusses the judicial treatment of LegalZoom in order to obtain a better view of how jurisprudence attempts to establish this balance.

71. See supra Part I (discussing the services LegalZoom provides that could constitute the practice of law).

72. Granat, supra note 30.

73. Id.

74. French, supra note 16, at 94.

75. See id. at 103 (discussing the concept that “the publication of legal forms could not be considered the practice of law”).


77. LegalZoom Prospectus, supra note 13, at 4; see also Catherine J. Lanctot, Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law, 30 HOFSTRA L. REV. 811, 818–19 (2002) (juxtaposing LegalZoom’s disclaimer that it is not practicing law with the fact that it provides completed forms to consumers instead of just the forms themselves).
III. FINDING (A LACK OF) CLARITY IN THE JUDICIAL SYSTEM: THE DEVELOPING JURISPRUDENCE OF LEGALZOOM

On May 5, 2008, the North Carolina State Bar (NCSB) sent LegalZoom a letter requesting that LegalZoom cease its operations in the state.\footnote{78. Letter of Caution to Cease and Desist from North Carolina State Bar to LegalZoom, regarding Allegation of Unauthorized Practice of Law (May 5, 2008) [hereinafter Letter of Caution], available at http://www.directlaw.com/LegalZoom%2020080326%20LOC.pdf.} Specifically, it said:

Legalzoom’s conduct...is illegal in North Carolina and must end immediately. Specifically, Legalzoom may not prepare or offer to prepare legal documents to North Carolina residents or for use in North Carolina, including but not limited to articles of incorporation or organization, deeds, wills, trusts, or court pleadings, including divorce complaints.\footnote{79. Id. at 3.}

Of course, the story does not end here. LegalZoom has since filed suit in North Carolina challenging this cease-and-desist letter and the authority of the NCSB to impose such an order.\footnote{80. LegalZoom.com, Inc. v. North Carolina State Bar, No. 11 CVS 15111, 2012 WL 3678650, ¶ 7 (N.C. Super. Ct. Aug. 27, 2012).} This case represents the growing threat of legal action to LegalZoom’s business model. LegalZoom has previously been sued by its customers in other states such as Missouri\footnote{81. Janson v. LegalZoom.Com, Inc., 802 F. Supp. 2d 1053 (W.D. Mo. 2011).} and Ohio.\footnote{82. Lowry v. LegalZoom.Com, Inc., No. 4:11CV02259, 2012 WL 2953109 (N.D. Ohio July 19, 2012).} These cases may mark a growing trend of consumers and bar associations challenging LegalZoom’s representation that it is solely a form provider.

While the results of these lawsuits vary between dismissal,\footnote{83. Id. at *1.} settlement,\footnote{84. Koppel, supra note 45 (discussing LegalZoom’s agreement to make “modifications” to its business practices in Missouri as part of the settlement of a class action lawsuit alleging that LegalZoom was “illegally practicing law in the state of Missouri”).} and more, at least one of the courts has ruled that LegalZoom is improperly engaging in the practice of law.\footnote{85. Janson, 802 F. Supp. 2d at 1065.} These cases demonstrate that LegalZoom’s representations of itself falter before some state courts and bar associations due to its document preparation services. By analyzing the cases in North Carolina, Missouri, and Ohio, this Part demonstrates LegalZoom’s difficulty in successfully arguing that it is not engaged in the unauthorized
practice of law. Finally, these decisions demonstrate the importance of uniformity in this area and the difficulty of striking a balance between the important benefits of LegalZoom’s services and the prohibition against practicing law without authorization.86

A. North Carolina’s State Bar Speaks Out: LegalZoom is a Form-Preparer, not a Simple Form Provider

LegalZoom’s struggle against the NCSB represents the threat that state bar associations could pose to LegalZoom’s current business model. The reason is simple: though the NCSB admits its lack of authority to ban LegalZoom,87 this case demonstrates the willingness and ability of a bar association to challenge LegalZoom based on state law.88 Further, though the North Carolina court noted that it is the proper forum to decide whether to enjoin LegalZoom, it also made clear that the NCSB was fully empowered to seek to enjoin this kind of activity.89 As the regulators of, and guardians against, the unauthorized practice of law, bar associations may pose a significant challenge to LegalZoom.90

The lawsuit began with a letter from the NCSB to LegalZoom that threatened to seek an injunction against LegalZoom preparing or offering to prepare legal documents in the state.91 The NCSB stated multiple reasons for this cease-and-desist letter. First, North Carolina law prohibits providing legal services without authorization, which includes organizing corporations and preparing legal documents.92 Second, LegalZoom’s activities go beyond merely incorporating a company or providing blank legal forms, as LegalZoom takes a role in, for example, “performing the legal acts necessary for . . . establishing [a] corporation.”93 Finally, LegalZoom provides legal advice and

86. Infra Part III.D.
90. This is not the first time bar associations have taken a lead role in attacking the unauthorized practice of law. See Lanctot, supra note 76, at 213 (noting that the American Bar Association has previously encouraged bar associations to “stamp out” the unauthorized practice of law).
91. Letter of Caution, supra note 78.
92. Id. at 2 (citing N.C. GEN. STAT. § 84-4 (2011)).
93. Id.
practices law simply by selecting the terms and clauses that become part of its customer’s legal documents.94

All of these arguments revolved around the North Carolina definition of “practice law,”95 which includes “preparing or aiding in the preparation of” wills, probate court petitions or proceedings, deeds, mortgages, and other such instruments.96 Further, the practice of law consists of advising or giving opinion upon legal rights of any person or corporation.97 Finally, the practice of law incorporates preparing or filing petitions for use in a court.98 The NCSB relied on this definition of law to say that at least part of LegalZoom’s services unambiguously constitute the practice of law under North Carolina Law.99 Because North Carolina prohibits corporations from practicing law, LegalZoom is violating North Carolina law at any point a court determines its actions satisfy the definition of the practice of law.100

LegalZoom was quick to respond. It filed a lawsuit against the NCSB asserting that the NCSB (1) violated the antimonopoly laws of North Carolina’s constitution; (2) denied LegalZoom Equal Protection; (3) engaged in commercial disparagement; and (4) exceeded its statutory authority. LegalZoom additionally argued that it was not engaged in the unauthorized practice of law.101 Further, as relief, LegalZoom requested a mandatory injunction ordering the NCSB to register its prepaid legal services plans under the statute, withdraw the cease-and-desist Caution Letter, and declare LegalZoom lawful.102 Essentially, the complaint requested the court declare the actions taken by the NCSB to be unconstitutional and outside of its authority and that all these actions be enjoined by the court.103

LegalZoom further addressed many of the arguments in the Caution Letter. LegalZoom focused on its business practice as a “self-help legal document service.”104 It discussed how its prepaid legal plans include licensed attorneys who advise and perform legal services

94. Id.
96. Id.
97. Id.
98. Id.
100. N.C. Gen. Stat. § 84-5 (“Prohibition as to practice of law by corporation”).
102. Id. ¶¶ I–VII.
103. Id.
104. Id. ¶ 9.
for LegalZoom’s customers.\textsuperscript{105} The standardized terms are selected \textit{before} the consumer uses LegalZoom’s services, and attorneys create these clauses and forms.\textsuperscript{106} LegalZoom argued that it was comparable to any other “do-it-yourself legal document kit” and that these services do not \textit{perform} legal services and “do[ ] not exercise legal judgment based on the facts or circumstances of any given customer’s needs.”\textsuperscript{107} LegalZoom did not shy away from making a public policy argument either: “Both LegalZoom’s self-help legal document service and prepaid legal services plans offer alternative low-cost personal resources to the consuming public of North Carolina in general, and to consumers of low and moderate means in particular.”\textsuperscript{108}

Despite these arguments, the NCSB urges the court to find that LegalZoom’s activities go beyond self-help services by “offering to prepare documents using content that it determines based on the customer’s responses to LegalZoom’s questionnaire.”\textsuperscript{109} It argues that LegalZoom goes too far: it \textit{prepares} documents—“takes over” and fills in its forms for the customers.\textsuperscript{110} Focusing on the state’s prohibition on a company practicing law and on LegalZoom’s document preparation services, the NCSB stands firm that LegalZoom has entered too far into the practice of law to continue all of its practices.\textsuperscript{111} Though the North Carolina court has yet to arrive at a conclusion,\textsuperscript{112} this case demonstrates the threat that a state bar poses to LegalZoom. As the first protector against the unauthorized practice of law, the NCSB presented an immediate threat to LegalZoom. Despite LegalZoom’s representations as to the nature and importance of its services, the company fails to convince all state bars that its

\textsuperscript{105} Id. ¶ 11.

\textsuperscript{106} Id. ¶¶ 13, 18.

\textsuperscript{107} Id. ¶¶ 13–16, 28.

\textsuperscript{108} Id. ¶ 14.


\textsuperscript{110} Id.

\textsuperscript{111} See id. (“LegalZoom’s document preparation services constitute the unauthorized practice of law.”).

\textsuperscript{112} LegalZoom v. NCSB, 2012 WL 3678650, ¶¶ 42–43, 49 (denying NCSB’s motion to dismiss “as to the claims which seek to declare that the State Bar has exceeded its statutory powers” but “reserv[ing] further ruling as to whether LegalZoom has properly stated a claim which seeks a declaration whether its conduct constitutes unauthorized practice of law”).

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form preparation services are not the practice of law and its business model wavers as a result.

B. LegalZoom Falters in Missouri

LegalZoom has also had its share of trouble in Missouri, where a federal district court determined that LegalZoom was engaged in the unauthorized practice of law.113 Here, a group of Missouri consumers challenged LegalZoom, claiming that it engaged in the unauthorized practice of law in violation of Missouri law and that LegalZoom unlawfully accepted money for these services.114 Before the Western District of Missouri, LegalZoom’s business model faltered, and for the first time, a court held against its form preparation service.115 In the face of this holding, LegalZoom settled the case and changed its business practices in the state.116 As a whole, Janson v. LegalZoom.com, Inc. signifies that LegalZoom may have to adjust its business model in order to comply with state laws.

In Janson, the court distinguished between LegalZoom’s acceptable services versus the unacceptable parts of its business model. LegalZoom’s service that provides blank legal forms to customers was acceptable and unchallenged.117 Similar to the NCSB, the court took issue primarily with LegalZoom’s document preparation service.118 This rested on the difference between a product and a service—a customer prepares the final legal document with a self-help product, whereas LegalZoom prepares the final product with its legal document preparation service.119

According to the court, the document preparation service has multiple points where “LegalZoom employees intervene.”120 The court noted that LegalZoom employees check the questionnaire, review it for errors or inconsistencies, examine the final document, and ship the final, unsigned document to the customer.121 In addition, LegalZoom’s program is created by LegalZoom employees using Missouri law and, “[t]here is little or no difference between this and a lawyer in Missouri asking a client . . . questions and . . . preparing a legal document

115. See Janson, 802 F. Supp. 2d at 1065.
116. Koppel, supra note 45.
117. Janson, 802 F. Supp. 2d at 1063.
118. Id.
119. Id.
120. Id. at 1064.
121. Id.
based on . . . applicable Missouri law.” 122 This is an essential part of
the holding against LegalZoom. This quote illustrates that, in the
court’s view, these were the services that too heavily blurred the line
between a distributor of legal self-help kits or blank forms and a legal
service provider.

The court ultimately held against LegalZoom under the theory
that its document preparation service constitutes the unauthorized
practice of law. 123 The holding relied heavily on Missouri’s definition
of the practice of law and of law business. 124 Under Missouri law, the
practice of law includes “the drawing of papers, pleadings or
documents.” 125 Law business includes counseling someone and “the
drawing or the procuring of or assisting in the drawing for a valuable
consideration of any paper, document or instrument affecting or
relating to secular rights.” 126 The court grounded its decision by citing
a series of Missouri Supreme Court decisions against escrow
companies, 127 trust marketing companies, 128 and banks. 129 All of these
decisions prohibited the companies from charging fees for the
preparation of simple, albeit still legal, documents (for example, sales
contracts, property deeds, trust documents, mortgage documents).
Seeing little difference between these cases and the services
LegalZoom provides, the court held that LegalZoom was engaged in
the unauthorized practice of law under Missouri law through its
automated legal documentation preparation services. 130

122. Id. at 1065.
123. Id.
125. Id.
126. Id. § 484.010(2).
127. See, e.g., In re First Escrow, Inc., 840 S.W.2d 839 (Mo. 1992) (en
banc). In this case, the Missouri Supreme Court held that escrow
companies could only complete standardized agreements; such
companies cannot prepare contracts for sale or “complete nonstandard
or specialized documents such as contracts for deed.” Id. at 848–49. Any
forms used by the companies must be prepared or approved by legal
counsel. Id. Finally, the company cannot charge a separate fee for these
services. Id.
128. See, e.g., In re Mid-America Living Trust Assocs., Inc., 927 S.W.2d 855,
864–65 (Mo. 1996) (en banc) (holding that company unlawfully
recommended trusts to client, used information from clients to make
recommendations, prepared trust documents, and, as a result, engaged
in the practice of law).
129. See, e.g., Eisel v. Midwest Bankcentre, 230 S.W.3d 335, 337 (Mo. 2007)
(en banc) (holding that bank engaged in the unauthorized practice of
law by charging fees for preparation of mortgage documents such as
promissory notes and deeds).
130. Janson, 802 F. Supp. 2d at 1065.
The *Janson* case sets an important precedent against LegalZoom. In the aforementioned case between the NCSB and LegalZoom, the NCSB was quick to cite to this precedent as authority for sanctioning LegalZoom as practicing law without authorization. The NCSB recited the argument from this case to support its contention that LegalZoom’s program is not acceptable because a LegalZoom employee imputes state law into the program that later becomes essential for the program’s selection of clauses for the customer’s legal document. This was the first time LegalZoom’s representation of itself as *only* a legal form provider failed before a state court. Even though this case settled soon after the court’s opinion, LegalZoom had to change its business practices in the state. In the end, *Janson* demonstrates that LegalZoom falters before some state laws despite its best attempts to promote the important benefits of its services to the public and to avoid practicing law.

**C. Successful Dismissal: LegalZoom Victorious Under Ohio Law**

While LegalZoom has faced difficulty in North Carolina and Missouri, it succeeded in dismissing a consumer class action in Ohio that accused LegalZoom of the unauthorized practice of law. Similar to the Missouri class action, in *Lowry v. LegalZoom.com, Inc.*, a group of Ohio consumers accused LegalZoom of engaging in the unauthorized practice of law and violating consumer protection laws. This time the court ruled in LegalZoom’s favor, but this result did not relate to a statutory definition of the practice of law. The court dismissed the case because it lacked jurisdiction: only the Ohio Supreme Court has the authority to decide what constitutes the practice of law in Ohio. In other words, unless the Ohio Supreme Court decides that LegalZoom engages in the unauthorized practice of law, other courts lack jurisdiction to hear a claim for relief against LegalZoom.

The Ohio Revised Code makes clear that “*only the supreme court may make a determination that any person has committed the unauthorized practice of law.*” The Ohio Supreme Court rules define the practice of law as including drafting legal documents, giving

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132. *Id.* (quoting *Janson*, 802 F. Supp. 2d at 1065).
135. *Id.* at *1
136. *Id.* at *3, 5.
137. *Id.*
advice regarding the law, and other items similar to the Missouri and North Carolina statutes defining the practice of law. Corporations are inherently forbidden to practice law. But the Board on the Unauthorized Practice of Law in Ohio notes that this law develops on a “case-by-case basis by the Supreme Court of Ohio.” No matter how a plaintiff pleads its case to lower courts, the only court that can decide LegalZoom has implicated this Ohio common law definition of the practice of law is the state’s supreme court.

Though LegalZoom did successfully dismiss this complaint, its victory may be hollow because the court in Lowry did not rule that LegalZoom is not practicing law. Instead, the court summarily said, “Based upon the Court’s research and the thorough briefing provided by the parties, the law has not changed. And, the Supreme Court of Ohio has not found that Legalzoom has engaged in the unauthorized practice of law.” In other words, LegalZoom’s business model survives to provide all of its services to Ohio consumers for another day. But the quick dismissal of this case leaves an unanswered question: Would the Ohio Supreme Court rule that LegalZoom is engaged in the unauthorized practice of law?

D. Looking Forward: Will All of LegalZoom Survive?

The above cases demonstrate three important themes: (1) various state agencies and courts pose a significant threat to LegalZoom’s ability to continue with its current business model; (2) LegalZoom’s business model falters due to its legal document preparation service, which arguably goes beyond the scope of typical legal self-help kits and blank forms; and (3) because state definitions of the practice of law are not uniform, LegalZoom’s business model may only be problematic in certain jurisdictions. As a result, LegalZoom’s attempt to reconcile its services and their benefits to the general public against the unauthorized practice of law doctrine are currently unsuccessful.

140. Land Title Abstract & Trust Co. v. Dworken, 193 N.E. 650, 653 (Ohio 1934).
142. See Lowry v. LegalZoom.com, Inc., No. 4:11CV02259, 2012 WL 2953109, at *3–4 (N.D. Ohio July 19, 2012) (“No court has . . . jurisdiction . . . unless the Supreme Court of Ohio has first made a finding that the very person in question has engaged in the unauthorized practice of law.”).
143. Id. at *6.
144. Id.
In recent years, agencies and courts have shown a tendency to argue that LegalZoom implicates various state definitions of the practice of law. In other words, those with the authority to discipline LegalZoom are skeptical of its representation that it only provides self-help legal documents at the customer’s direction and limits itself to general legal advice. These groups are unmoved by the public policy justification forwarded by LegalZoom—providing access to justice to underrepresented parts of the community is not enough to allow courts to overlook LegalZoom’s crossing the line between the authorized and unauthorized practice of law. Though LegalZoom disclaims any role as an attorney and urges that its business model’s current form is necessary to provide legal justice to the underrepresented, these cases demonstrate its failure to completely avoid engaging in the practice of law.

The issue in LegalZoom’s services is its online document preparation services, not its form providing service. Its blank forms are prepared ahead of time by attorneys and selected by customers at their own volition. As a result, this does not pose an issue for most courts. Its document preparation service, on the other hand, “goes beyond self-help.” Even if the clauses that end up in these forms are written beforehand by attorneys, the fact that LegalZoom’s program selects which clauses go in the form supports the argument that this constitutes providing legal advice or some other form of practicing law. This, combined with the multiple points where an employee reviews the document, has led to repeated problems in LegalZoom’s attempt to maintain its image of not practicing law. Because a corporation cannot practice law, this service continues to be a problem for LegalZoom because the service is conducted through LegalZoom’s online program.

146. LegalZoom Prospectus, supra note 13, at 5.
147. See id. at 1 (urging that its business model is essential because “everyone deserves access to quality legal services so they can benefit from the full protection of the law”).
149. See, e.g., Janson v. LegalZoom.com, Inc., 802 F. Supp. 2d 1053, 1064 (W.D. Mo. 2011) (stating that “LegalZoom’s sale of blank forms over the internet does not constitute the unauthorized practice of law”).
150. Id.
151. See Letter of Caution, supra note 78, at 2 (“Legal advice includes the selection of terms and clauses within a legal document as well as the selection of which template to use.”).
LegalZoom may find some solace in the fact that state law governs the definition of the practice of law and state definitions vary.\(^\text{153}\) For example, on its face, Missouri law differs from Ohio law because Missouri’s statutes explicitly define the practice of law,\(^\text{154}\) whereas Ohio makes it a common law problem decided by Ohio Supreme Court decisions.\(^\text{155}\) Yet even Ohio’s common law defines the practice of law to include preparing documents and advising clients.\(^\text{156}\)

In one case, the Ohio Supreme Court noted, “It seems too obvious to permit any discussion that a corporation may not be authorized to practice law, and hence should not be permitted to perform, or hold itself out as authorized to perform, any of the acts which constitute the practice of law.”\(^\text{157}\) The factors that served as a basis for the argument that LegalZoom engages in the practice of law are included in many other state definitions of the practice of law as well. States commonly include accepting consideration for legal advice and the preparation of legal documents in their analogous definitions.\(^\text{158}\)

\(^{153}\) See Kirgis, supra note 1, at 192 (noting that the unauthorized practice of law is a complicated area for LegalZoom because of the differing and sometimes nonexistent standards for what constitutes the practice of law).


\(^{156}\) See Sup. Ct. R. for Gov’t of Bar of Ohio, R. I, § 9(B)(2) (defining the practice of law in Ohio).

\(^{157}\) Land Title Abstract & Trust Co. v. Dworken, 193 N.E. 650, 653 (Ohio 1934). But this may change. Scholars note that Citizens United v. Fed. Election Comm’n, 558 U.S. 310 (2010), signifies that the First Amendment protects a corporation’s right to practice law. See Renee Newman Knake, Democratizing the Delivery of Legal Services, 73 Ohio St. L.J. 1, 20–21 (2012) (noting that a line of cases, including Citizens United, “establish[es] the nonlawyer corporation’s First Amendment right to engage in activity with lawyers to provide meaningful access to the law or, in other words, to deliver legal services”). Citizens United and other cases “reveal[] the critical First Amendment interests held not only by corporations, but also individuals, lawyers, the judiciary, and the public generally.” Id. As a result, LegalZoom’s alternative arguments regarding the First Amendment and its constitutional right to practice law may become a successful argument for it as the effects of Citizens United on First Amendment law become clearer.

\(^{158}\) The American Bar Association provides a summary of the state definitions of the practice of law. See generally ABA Task Force on the Model Definition of the Practice of Law, State Definitions of the Practice of Law. Some states, such as Arkansas, note that the practice of law is a hard thing to define and thus each situation is determined on a case-by-case basis. Id. at 5. But others, such as Arizona, the District of Columbia, and Alabama, include preparing legal documents in their current definitions. Id. at 1–3, 7. Even more states include advising clients in their definition. Id. at 1–2, 9 (including Arizona and Georgia). These are the very same factors that led to trouble for LegalZoom in North Carolina and Missouri.
while the differences in state definitions of the practice of law initially seem to help LegalZoom, there are enough commonalities between these laws to pose a significant threat to its business model.

This case law demonstrates that LegalZoom has not properly balanced the nature of its services with the jurisprudence regarding the unauthorized practice of law. Despite the public policy argument that LegalZoom’s services heavily benefit the underrepresented, LegalZoom now struggles to convince all courts and bar associations to allow it to continue its business model. Further, even if it can settle future cases as it did in Missouri, this may force LegalZoom to change its business model to avoid implicating state definitions of the practice of law. Courts note that LegalZoom can offer blank forms and instructions on how to use them, but LegalZoom may need to alter its document preparation services, stop offering general guidance on state laws, or remove some of the checkpoints where its employees review a customer’s legal document. Indeed, LegalZoom may need to alter its business model to make it more akin to a legal self-help kit than it currently is. Otherwise, LegalZoom may suffer from more legal challenges in the future.

This, in large part, answers the question of whether LegalZoom will fail to convince courts that it does not practice law. This does not mean that LegalZoom is out of options. As noted in the North Carolina and Missouri cases, LegalZoom also raises First Amendment arguments. The Missouri court was not receptive to the argument, quickly noting that protecting the interests of its citizens outweighed LegalZoom’s First Amendment rights. But this decision came in the middle of the debate on the effects of *Citizens United v. Federal Election Commission* on constitutional law. According to some, *Citizens United* changed the scope and meaning of the First Amendment, possibly rendering unconstitutional the prohibition against corporations and nonlawyers practicing law. As a result, the same scholars argue

159. See Koppel, *supra* note 45.

160. See Janson v. LegalZoom.com, Inc., 802 F. Supp. 2d 1053, 1060 (W.D. Mo. 2011) (“[I]n Missouri, as it is in other jurisdictions . . . the practice of law does not include the sale of ‘do-it-yourself’ kits, which include blank legal forms and general instructions.”).

161. See, e.g., N.C. Complaint, *supra* note 46, ¶ 15; Janson, 802 F. Supp. 2d at 1065 (claiming LegalZoom’s services are allowed by the First Amendment).

162. Janson, 802 F. Supp. 2d at 1066 (“Given the weight of these authorities indicating that states have a compelling interest in the regulation of professionals for the protection of the public, as well as the paucity of authority cited by Defendant, the Court declines to alter Missouri law based on inarticulate free speech principles.”).


the “blanket bans on corporate investment in law practices are unlikely to survive.” If this comes to pass, corporations such as LegalZoom would no longer need to avoid engaging in the practice of law. Thus, LegalZoom’s identity crisis would cease to be a problem.

While *Citizens United* arrived before *Janson*, critics could argue that this Supreme Court holding renders the Missouri court’s opinion incorrect. Although the jurisprudence on the practice of law currently disfavors LegalZoom’s position, *Citizens United* could change the landscape in which LegalZoom makes its arguments, and the success of LegalZoom’s arguments may change as well. Further, the increasing pressure to offer adequate legal services to all parts of the population may play a role in making the unauthorized practice of law doctrine unsustainable as applied to corporations. Thus, while the door on LegalZoom’s position that it is not practicing law may close, alternative avenues for LegalZoom to maintain its business model remain open.

**CONCLUSION**

At the onset, this Comment posed three questions: (1) what is the nature of LegalZoom’s business model; (2) how do courts analyze this business model; and (3) what predictions can be made as to the impact of LegalZoom on the legal market. The answers to these questions are contextualized by the tension between the importance of LegalZoom’s offering services to the unrepresented and its skirting the line between the authorized and the unauthorized practice of law. As bar associations begin to seek to enjoin LegalZoom and consumers challenge the company in court, the answers to these questions are becoming clearer. While LegalZoom’s blank form providing service is generally acceptable, its form preparation service risks crossing into the realm of unauthorized practice of law. In fact, courts and bar associations alike are not afraid to rule against LegalZoom. LegalZoom, going forward, may be forced to adapt its business model to better avoid the unauthorized practice of law if the current prohibition against corporations practicing law remains in place. Yet, as First Amendment law changes, a question remains as to whether this prohibition remains sustainable in the face of constitutional law and public policy concerns. Thus, LegalZoom may lose the argument that it is not engaging in the practice of law, but it may win the war to retain its current business model.

*Isaac Figueras*†

165. *Id.* at 1.
166. *See id.* at 20–21.
† J.D. Candidate, 2013, Case Western Reserve University School of Law. Thank you to Professor Cassandra Burke Robertson for her guidance on this Comment.