

A Pandemic of Planning: Form Wills and Online Estate Planning in the Era of Coronavirus

Introduction

As of June 2022, the Covid-19 pandemic has claimed the lives of over one million Americans, most of them being people over 50 years of age¹ Out of the chaos of the pandemic, an interesting phenomenon has occurred, websites that offer Do-It-Yourself estate planning services managed to accumulate billions of dollars' worth of revenue since March of 2020.² At the start of the initial lockdown, online estate planning websites saw a 200% increase of users.³ In April of 2020, Americans were searching the term "online Will" more than any other time since 2011.⁴ Despite coronavirus having a much higher lethality rate for older populations, younger people have not been immune to the rush to create a Will. In November of 2020, 32% of Americans under 35 have admitted they made Wills in response to the pandemic.⁵

Websites such as Gentreo, Trust&Will, Rocket Lawyer, Nolo, and Legal Zoom are attractive because they offer templates and fill-in-the-blank forms for estate planning that cost a fraction of what a lawyer would charge.⁶ LegalZoom's revenue increased 19% in 2020, generating 470 million dollars, owing much of that success to their online Will and living trust generating services.⁷ LegalZoom has been so successful in the post-covid world, it went public on the stock exchange in June 2021, the first legal document generating website to do so.⁸ DIY online estate planning start up Trust&Will received an additional 15 million dollars in funding from investors in response to their massive uptick in revenue during 2020.⁹ DIY estate planning websites have been quick to capitalize on the sudden increase in demand by increasing their marketing budgets.¹⁰

Despite their affordability, the templates and services offered by these online estate planning startups are reported to have several issues and often lead to litigation and dispute

amongst heirs if not outright rejected in probate due to not following the forum state's estate planning laws.¹¹ Laypeople often underestimate the complexity that goes into creating an estate plan, and fail to include all the assets they want protected.¹² Despite the warnings of legal professionals and negative news coverage of these online estate planning startups, they remain an attractive option for estate planning by the unprepared, impoverished, and panicked due to their ease, cost-effectiveness, and simplicity.¹³

Although what these websites are doing has not been classified as illegal, world events have led to a situation where those who lack the resources to plan for the death of themselves or their family effectively are being taken advantage of with promises of adequate estate planning by these companies.¹⁴ Furthermore, the sheer number of online estate plans created in the last two years have the potential to flood the probate court system with defective estate plans, causing both the consumers and the legal system excessive litigation costs. In this Note, I am arguing as a matter of public policy that online DIY estate planning must be regulated and cannot be allowed to profit from the vulnerability of victims of the pandemic. As the research shows, these online DIY estate planning startups provide an inferior product compared to an estate law attorney.

Part I of this Note will explore the legal history and development of DIY Wills and how they moved online, past legal challenges, and their current place in the pandemic. In Part II, I will weigh the pros and cons of the online legal document preparation industry by reviewing expert opinions from estate law scholars, analyzing cases where an online DIY estate plan was used in probate to determine their effectiveness, and examining client reviews from five estate planning websites. Finally, in Part III, I will offer my proposals on how to effectively regulate online estate planning in a way that will solve the public policy problems while balancing the

right of self-representation for those people that cannot afford or do not want to use an estate planning lawyer. Since the high cost of estate law attorneys and the frightening death toll of the pandemic were the reasons for these companies' insane profit margins, I will also offer alternative and more ethical public policy solutions that will help the financially destitute acquire adequate estate planning.

Part I: The Legality of Internet Wills

A Brief History of DIY Wills and Estate Planning

In order to understand the modern DIY online estate planning, we must discuss their evolution from the common law property right of laypeople having the freedom to transfer property at death.¹⁵ The practice of writing a Will or creating an estate plan without the assistance of an attorney can be traced back to the acceptance and use of holographic Wills.¹⁶ The purpose of holographic Wills was to provide the testator a last-minute opportunity to bequeath his property to his heirs if he was too ill to be moved or death was too imminent to find a legal professional to draft the Will.¹⁷ Although a valid attested or formal Will usually requires that the Will be written, signed and dated by the testator, and two adult witnesses must have also signed it, holographic Wills are often not witnessed due to their eleventh-hour circumstances.¹⁸

Fill-in-the-blank Will forms started being sold in America during the early 1800s and quickly became popular amongst laypeople that could not afford an attorney.¹⁹ Although these forms were originally published to be used by lawyers, stationary stores across the US started to capitalize on the need for laypeople to have an alternative to writing a holographic Will.²⁰ Unlike holographs, which are entirely handwritten and do not require a witness, form Wills are partially handwritten and must be attested.²¹ Despite only being partially handwritten, some

courts chose to disregard the preprinted part of the form Will, and just interpret the handwritten portion as a holograph.²²

Throughout the early 20th century, courts wrestled with the question of whether the sale of DIY legal guides could be sold to the masses through the medium of printed type without constituting the practice of law.²³ In the case of *N.Y. City Lawyers Association v. Dacey*, the Supreme Court of New York held the publication and sale of legal forms was a common activity and the sale of a book entitled "*How to Avoid Probate*", which included forms for use by lay people, did not constitute the unauthorized practice of law.²⁴ The court reasoned that the ability for someone to prepare their own legal document is a first amendment right and its creator was not responsible for legally representing the purchaser.²⁵ However, on appeal, it was revealed that Dacey, the author and publisher of these books in fact did not have a law license, and was charged for the unauthorized practice of law.²⁶

However, in other states, such as Texas, the sale, preparation, and advertising of templates for Wills and detailed instructions was deemed to constitute the practice of law.²⁷ The Court in *Palmer* ruled that despite the documents being created with the assistance of a lawyer, an unlicensed lay person could not advertise or sell legal documents kits, thus making Mr. Palmers publishing company illegal because he was essentially practicing law without a license.²⁸ The Court reasoned that Mr. Palmer's Will template amounted to legal advice, since they included detailed instructions as well as portions of the template being already filled out.²⁹ Texas issued another legal challenge against DIY legal books when its Unauthorized Practice of Law Committee (UPLC) issued an injunction against Vijay Fadia, a lay person, from distributing his manual titled; "*You and Your Will: A Do-It-Yourself Manual*" after finding it fell under *Palmer* and constituted the unauthorized practice of law.³⁰ Fadia attempted to challenge the

injunction by arguing that the Texas Court of Appeals should reject *Palmer* and instead require that the practice of law should include some form of personal contact between the alleged unauthorized lawyer and the client to violate the unauthorized practice of law statute.³¹ The Court did not agree with Fadia's reasoning and allowed the injunction to continue.³²

Consumer demand for self-help legal books continued to remain high during the latter half of the 20th century, as the low cost of books and manuals were an attractive alternative to those who either could not afford an attorney or simply did not trust lawyers.³³ Ed Sherman's book: *How to Do Your Own Divorce in California*, which received a formal condemnation from the Sacramento Bar Association, became a best seller during the 1970s.³⁴ Sherman, a lawyer himself, could not find a publishing company that was willing to take the risk of lawsuits for the unauthorized practice of law for publishing his self-help book, so he started his own publishing company, Nolo Press; which published other low cost legal self-help books complete with how to guides, templates, and instructions for various disciplines such as bankruptcy, real estate law, tax law, and even estate law.³⁵

At the turn of the 21st century, the Internet became an attractive new medium for the publishing of DIY legal preparation documents. Websites such as LegalZoom, Rocket Lawyer, and Parsons entered the DIY market with promises to make legal services obtainable to the masses.³⁶ Ed Sherman's Nolo Press became Nolo.com and moved to selling legal templates as well as their previously published books online, becoming one of the first to use DIY legal software to allow its users to create their estate plans through a computer.³⁷ Owing to their notoriety, Nolo.com also became one of the first internet estate law companies to face legal challenges and a number of investigations by state bar committees for the alleged unauthorized practice of law.³⁸

Legality of Online Legal Document Preparation Services

After facing several legal challenges in jurisdictions through the country, DIY self-help books were accepted as lawful by the 1980s.³⁹ Depending on the jurisdiction, form Wills could be interpreted as either formal Wills or as holographic Wills in both their printed and preprinted format.⁴⁰ For example, in *Taylor v. Holt* the decedent wrote his last Will and testament on a Microsoft Word document and the court found that it satisfied the states requirements for a holographic Will.⁴¹ *Estate of Gonzalez* found that a partially written Will can be read in conjunction with a partially written preprinted section if the evidence suggests that the testator intended for both pieces of writing to be his Will.⁴² However, while these electronic documents can be accepted into probate as holographic Wills, they must meet all of the state's requirements in order to be executed.⁴³

Shortly after their sudden growth in popularity, online legal document preparation services faced numerous legal challenges by state bar associations under the accusation of engaging in the unauthorized practice of law. The American Bar Association's Model Rule 5.5 prohibits a person not admitted to the bar association of a particular jurisdiction from practicing law in that specific jurisdiction.⁴⁴ A person who is not admitted to the bar association may not represent to the public that they may practice law in that jurisdiction.⁴⁵

Nolo.com received a writ of mandamus from Texas Unauthorized Practice of Law Committee, asking for documents and information relating to Nolo's business practices to determine whether Nolo was violating Texas' UPL statute.⁴⁶ This was a part of an ongoing investigation being performed by the UPL committee against websites selling legal templates and DIY guides.⁴⁷ Nolo tried to fight back by issuing its own writ of mandamus against the UPL committee, a request that was rejected by the Texas Supreme Court.⁴⁸ However, before the UPL

committee could continue its investigation into Nolo, the Texas legislature amended its Unauthorized Practice of Law statute by asserting that the practice of law did not include the sale of DIY legal form generating computer software if the software stated clearly and conspicuously that it was not a substitute for the advice of an attorney.⁴⁹ After the amending of Code § 81.101, Nolo and other websites and publishers that produced legal material were free to operate within the state providing they included disclaimers that indicated they were not an attorney.⁵⁰

Other state bar associations also investigated whether these online legal document distributors were engaged in the unlicensed practice of law. Unlike NoloPress, LegalZoom was not offering downloadable software, rather all of the document preparation was done through the internet. In March of 2003, LegalZoom sought injunctive relief against the North Carolina Bar after they refused to certify LegalZoom's prepaid legal services plan, a plan that was unrelated to its sale of document preparation software.⁵¹

While the court chose not to rule on whether LegalZoom was engaged in the unauthorized practice of law, it reasoned that LegalZoom's practices likely fall within two possible exceptions for North Carolina's UPL statute; self-help and the scriveners' exception.⁵² LegalZoom had argued that they were engaging in "self-help", meaning that their customers were doing their own legal work, rather than themselves.⁵³ The Court also considered the scriveners exception, meaning that unlicensed individuals may record information that another provides without engaging in UPL as long as they do not also provide advice or express legal judgments.⁵⁴ Following this decision, North Carolina and LegalZoom settled years of litigation by agreeing that companies like LegalZoom which offer automated legal document preparation will not violate North Carolina's prohibitions against the unauthorized practice of law if the companies register with the state and comply with consumer protection procedures.⁵⁵

A class action lawsuit was filed in federal court against LegalZoom by individuals that used their estate planning preparation kits, under the theory that LegalZoom's services went beyond mere self-help.⁵⁶ The Missouri District Court denied LegalZoom's summary judgment motion that they were not engaged in the unauthorized practice of law.⁵⁷ The court differentiated LegalZoom's website from the DIY-Divorce Kit found in *In re Thompson*. The Court reasoned that LegalZoom's portal was far more interactive than the blank legal templates and general instructions found in Thompson's book.⁵⁸ LegalZoom's program consists of a questionnaire where users can put in very basic information and receive a quality legal document filed for the customer by LegalZoom employees. The court reasoned that this was no different than a lawyer interviewing a client and preparing a legal document based on their answers.⁵⁹ Furthermore, before completing the document, the user sends the document to LegalZoom where an employee reviews the data file for completeness, spelling and grammatical errors, and consistency of names, addresses, and other factual information.⁶⁰ Although the lawsuit seemed to have a strong case against LegalZoom's document preparation portal, the case was settled out of court before it could get to trial.⁶¹ The result in this case seems to suggest that there is at least the potential that LegalZoom's service constitutes the unauthorized practice of law.

Current Status

Overall, the question of whether these websites' practices are legal is murky. Most states have tolerated their existence as long as the level of interactivity between the website and client doesn't go beyond providing general information and disclosing to their patrons that they are not a replacement for a law firm.⁶² It also appears that the federal government has already accepted this business model is not illegal. After the finalizing of the North Carolina Bar Associations litigation with LegalZoom, both the US Federal Trade Commission and the US Department of

Justice advised the North Carolina that the state should refrain from placing excessive restrictions on companies that offer internet legal document preparation services.⁶³ Both the UFT and DOJ touted the benefits of affordable online legal services as a net positive, and encouraged North Carolina to amend their unauthorized practice of law statutes.⁶⁴

Despite the use of disclaimers insisting these businesses are not substitutes for consulting actual attorneys, their advertising seems to imply quite the opposite. The Court in *Janson* reviewed some of LegalZoom's advertisements and determined that it could imply a service that goes well beyond that of a stenographer or selling blank forms and general instructions. The Court read quotes from the ads such as: "we'll prepare your legal documents," and that "LegalZoom takes over once customers answer a few simple online questions."⁶⁵ One can make the inference that creating an estate plan is just as easy as filling in the blanks and their products will hold up in court, but does this assertion have any merit?

Part II: Is having a DIY Will Better Than no Will at all?

Expert Opinions

The vast majority of estate law attorneys warn against the use of DIY legal document preparation in place of consulting a lawyer.⁶⁶ Most attorneys reason that a layperson does not have the knowledge to understand a forum state Will requirements nor the foresight to anticipate any potential challenges or disputes that may arise once they convey their property to their heirs.⁶⁷ Although some legal professionals concede that in rare circumstances, an online created Will may suffice under the condition that the decedent's estate planning intentions are simple such as wanting to leave all of his property to his children, if the website's form follows the requirements of decedent's state, and if the decedent had to write the Will in an emergency scenario and had no reasonable access to a lawyer.⁶⁸ However, many laypeople simply do not

understand that their estate law planning is more complex than anticipated, and a DIY Will have the potential to cause much confusion amongst the testator's heirs, ultimately rendering the benefit of affordable DIY document preparation moot, as correcting a bad estate plan could cost thousands of dollars in legal fees and lost property.⁶⁹

One Minnesota attorney named Gregory Luce, sought to test out the effectiveness of a LegalZoom Will by creating his own Will on the site and posting it on his blog.⁷⁰ Gregory, who was not an estate law attorney said that he thought the Will looked good, but comments from estate law attorneys found glaring issues with the final product. The most glaring issue was that the Will potentially disinherited Gregory's oldest child because the Will listed Gregory's current wife as the sole beneficiary, Greg's oldest child was born from a previous marriage. Another problem was that the Will failed to include an alternate trustee in the event the named trustee predeceases him or is unable or unwilling to serve. It also did not include a self-proving affidavit. This would make it necessary to track down witnesses after his death to prove up the validity of the Will. The LegalZoom Will also fail to provide guidance about beneficiary designations on non-probate assets that pass outside the Will. Additionally, it did not address the contingency of his children predeceasing him or the birth or adoption of a third child. It also failed to include a spendthrift provision, which protects the trust assets from the trust beneficiary's creditors.

Another estate law blogger based in Michigan reviewed a Will and trust made by a potential client through LegalZoom. The blogger, found several typos on the documents such as multiple names being on the trustee signature line as if it were one name, the documents did not include a list of the assets and property he wanted to give away, and many people he wanted to give gifts to were not listed on any of the documents.⁷¹ The blogger also found that although the client wanted to keep his affairs out of probate after death, there was no HIPAA authorization,

meaning someone would have to go through the court process to be appointed as guardian if they needed access to his medical records.⁷² Another problem was that the clients living trust wasn't funded, meaning that his assets were not transferred to the trust and therefore his heirs would have had to go to court to gain access to his inheritance.⁷³

The Access to Justice Movement

On the opposite end of the spectrum, there is a small but vocal minority of estate law attorneys that argue self-representation is a fundamental first amendment right of laypeople and these websites provide the tools necessary at an affordable rate.⁷⁴ Dubbed the "Access to Justice Movement", these lawyers argue that the benefits of having a service to cater to the needs of those too poor to hire an attorney outweigh the potential mistakes those laypeople can make and reasonability for those mistakes fall upon the users themselves.⁷⁵ Proponents of the movement also argue that estate law attorneys should not gatekeep their profession by attempting to combat the legal document preparation websites. Supporters of online legal document preparation services point out that estate law attorneys have an ulterior motive in regulating the industry, as they are direct competition and a potential threat to the profitability of the estate law practice.⁷⁶

In regards to online Wills, proponents argue that their existence is the way of the future as our society becomes more intertwined with the internet and the estate planning field should adapt as well.⁷⁷ The fact that 68% of Americans die intestate suggests that there are systemic barriers to obtaining the services of an attorney, whether it be the daunting task of finding a lawyer you can trust or the high costs.⁷⁸ Online estate planning websites provide quicker and cheaper alternatives to hiring an attorney, and thus have the potential to provide Wills to populations that otherwise would not be have access to legal services.⁷⁹

Another reform that the Access to Justice movement is seeking to make is to allow Will drafting and execution formalities be moved entirely online. In 2019, the Uniform Law Commission a nonprofit organization made up of estate law attorneys, approved the Electronic Wills Act, which permits the electronic signing of wills and allows probate courts to deem electronic Wills as legal.⁸⁰ Rather than having the Will being drafted in a lawyer's office, Will drafting and execution can take through the internet, and any requirement that witnesses be in the physical presence of the client can be replaced by an electronic presence.⁸¹ Typically, states adopt ULC recommendations, but as to date the only four states that permit E-wills by statute are Nevada, Florida, Indiana and Arizona. Utah and Colorado are in the process of considering approving e-wills.⁸² Since the pandemic, at least six state governors issued executive orders temporarily suspending formal Will execution requirements and issued temporary orders allowing witnesses to appear via video conference.⁸³ Moreover, the only states that allow notaries to serve in place of witnesses, Colorado and North Dakota authorized notaries to serve remotely.⁸⁴ In states where it is legal, DIY estate planning websites have been quick to add e-signing and electronic witnessing and notarization to their premium services options while traditional estate planning attorneys fail to adopt or even fight against the idea of moving Will drafting conventions online.⁸⁵

Although the Access to Justice movement makes some important critiques on the potential elitism of estate law attorneys trying to stop websites like LegalZoom, it fails to acknowledge that DIY estate law planning websites are potentially misleading their clients into thinking their service is sufficient to replace a licensed attorney. The ATJ movement also fails to acknowledge that in taking advantage of the current climate, these companies have made enormous profits in DIY estate law planning during the pandemic at the expense of thousands of

Americans that lost their jobs during the lockdowns and were in fear of dying from coronavirus.⁸⁶ One may argue that profiting such an exorbitant amount would be justified if these websites provided a working product. As for their points about moving the Will drafting process online, estate law attorneys are more than capable of adapting to the internet age, and the move towards electronic signatures, witnessing, and notarization can be incorporated into an estate attorneys law practice when states legalize the practice.

User Experience for DIY Estate Planning Websites

Generally, online estate planning website have the same format a list of available estate planning options followed by a questionnaire that asks some general information about your assets and potential beneficiaries. However, the websites vary in the level of complexity with their questionnaires, the number of available sales packages provided, and the level of integration between company and consumer. Below, this note will explain the various user functions of the five following websites: LegalZoom, Nolo, Rocket Lawyer, Trust&Will and Gentreo.

1. LegalZoom

When a user first logs onto LegalZoom.com, the user is shown a variety of different estate plans to choose from with their price displayed on the bottom; Last Will and Testament (89 dollars), Living Will (39 dollars), Living Trust (279 dollars), healthcare power of attorney (39 dollars), and financial power of attorney (35 dollars).⁸⁷ These prices are vastly cheaper than the average estate law attorney, whose hourly rate can range from 250 dollars to 310 dollars.⁸⁸ LegalZoom provides short descriptions on what each document is meant to be used for, and compares them all in a chart. LegalZoom also offers the Estate Plan bundle, where the user can obtain all the above-mentioned documents for the price of 189 dollars.⁸⁹ When clicking on the

Last Will and Testament, the user is greeted with a prompt that says you can make a will in as little as 15 minutes and that LegalZoom Wills are accepted in all 50 states.⁹⁰ However, LegalZoom's terms of service outlines in bold lettering that its forms and templates are not a substitute for the advice and services of an attorney and that they cannot guarantee that the legal documents will always work in all jurisdictions because the law is constantly changing.⁹¹

When clicking the simple Will, you are brought to a questionnaire that asks for your name, state, marital status, and number of dependents. You are then asked about what gifts you plan on giving to your heirs. The next part of the questionnaire are what gifts you'd like to give to your heirs and plugging in the names of the intended recipients. The user has the option of giving general gifts, which are percentages of the testator's financial holdings, specific gifts, or charitable gifts, to intended recipients. The questionnaire then asks the user to name a personal representative that will have legal authority to distribute the gifts as well as two backups in case that person is unable to be a personal representative.⁹² The questionnaire also asks if the user would like to name a trustee that will manage certain gifts for recipients until they reach a certain age. The final section allows the user to write any special considerations about how the testator wants his or her remains to be handled, final resting place, and funeral arrangements. After plugging all the information, the user is prompted to a page to checkout and purchase the document. The user receives a digital copy of their Will to their email within 24-48 hours and can opt for a physical copy to be sent to their house. The user is instructed to sign and date the will created by LegalZoom and to have the Will notarized.

Before purchasing the basic last Will, LegalZoom shows ads for other services and add-ons. LegalZoom offers electronic notarization for an additional fee for users that cannot get a notary in person. For an additional fee, the user can buy the Legal Plan Plus, which provides

users with phone-consultations with a practicing lawyer for legal advice about their estate plan.⁹³ However, the terms and conditions of the Legal Plan Plus are clear that LegalZoom is not providing legal services, rather, LegalZoom employees third-party attorneys as independent contractors to answer legal questions.⁹⁴

2. Rocketlawyer

Rocketlawyer.com followed a very similar format to LegalZoom, however their questionnaire for an online Will was more specific when asking for what assets the testator wanted to bequeath. Rocketlawyer had option to divide personal property, financial assets, digital assets such as social media accounts, and cryptocurrency holdings.⁹⁵ Unlike LegalZoom, the questionnaire on Rocketlawyer had more questions that discussed the executor of the Will, whether to include a bond to protect heirs in case the executor didn't follow the instructions of the Will, and a section of whether or not the executor will be compensated. Rocketlawyer also has a section where the witness could have the information put on the Will before being notarized. Like LegalZoom, once the user is finished with the questionnaire, the user can buy the document and have the Will sent via email or postage. Rocketlawyer doesn't allow the user to simply buy the Will, rather, they have to make a membership that costs 39 dollars a month. Rocketlawyer also provides options for electronic notarization and pay additional fees to consult an attorney with questions regarding the legal document that was created.

3. NoloPress

NoloPress's Will generator include a questionnaire and format that is almost identical to that of LegalZoom and Rocketlawyer. However, NoloPress's estate law webpage is full of informative articles about what type of estate plan a user may need based on their current

situation. On their webpage, Nolo admits that if the user's estate law plan is complex, then they should consult an actual estate law attorney rather than using its Will generator.⁹⁶

4. *Gentreo*

Gentreo is a relatively new company and offers the same types of estate plans as the other websites. Gentreo charges a yearly 100-dollar membership fee that allows users to create estate plans such as; Last Will and Testaments, Living Wills, Power of Attorney, Living Trusts, and even estate plans for pets such as pet power of attorney and a pet trust.⁹⁷ One notable difference is that the questionnaire has a lot more explanations on the various terminology. For example, when making a Will, the questionnaire asks if the user would like to make specific gifts or remaining assets and briefly explains through prompts how specific gifts are different than transferring remaining assets via a Will.⁹⁸ Gentreo is also the only website on this list that allows the user to designate classes of heirs rather than just name individuals to be included or barred from receiving assets or gifts. For example, a user can create classes for children and grandchildren, allocate 75% of their remaining assets to their children and then 25% to their grandchildren.

5. *Trust&Will*

Trust&Will's format isn't all that different from the other DIY websites. However, the one feature that seems to separate it from its competition is that the website allows users to digitally connect their bank accounts, life insurance plans, stock portfolios, and cryptocurrency wallets to their digital Will.⁹⁹ Such a feature would surely save loved one's time finding and accessing the testator's financial assets. A Will from Trust&Will costs 140 dollars, however, if you feel your Will is more complicated, you can pay an additional 200 dollars for attorney support. Attorney support from Trust&Will included the ability to speak to a licensed estate law

attorney, but Trust&Will does not specify whether this means the attorney is taking you on as a client or that you are just limited to asking certain types of questions.¹⁰⁰

Generally, these websites all share a very similar format that's both convenient and easy to use; a questionnaire and a quick delivery system. All the websites listed above touted their effectiveness in creating an estate plan, but also had disclaimers explaining they were not a law firm and are not a replacement for one. Overall, it appears the point the websites are trying to make is that they are providing the means of self-representation, but also claiming that their service will ensure a working estate plan. But are these promises true?

How effective are DIY Online Wills?

Although no cases explicitly state that the estate plan was directly related to the Covid-19 pandemic, there are several cases that occurred after March 2020 and can be inferred as resulting from the pandemic. There are also cases that happened before the start of the pandemic that exemplify the weaknesses of DIY online Wills. Analyzing these cases provide great insight into the strengths and weaknesses that these types of online prepared documents have. For example, the most common problems that DIY Wills seem to have been not following the states conventions on Will construction. In two separate actions against LegalZoom for loss of money over inheritance, both petitioners' Wills did not follow the forum states requirements because neither of them were notarized.¹⁰¹ Another example is *Litevich v. Prob. Court*, where the deceased created a Will using LegalZoom, but it failed to meet the requirements of Connecticut law because it was not signed by the decedent in the presence of two witnesses.¹⁰²

Another major issue online DIY Wills have is the potential for vague language. For example, in the *California Clark v. Radelt*, the testator drafted his own Will using an unnamed online legal document preparation service.¹⁰³ The Will Stated: "To Susan Radelt of Fairfax,

California, I give a life estate of either residency rent-free in the smallest of my real properties, or the rental income of that property of up to the sum of two thousand dollars."¹⁰⁴ At probate, the executor of the Will wanted to confirm her interpretation that it was a condition that allowed his widow to either live rent free in one of the rental units he owned, or collect the net amount of income from that unit after fees that didn't exceed two-thousand dollars. The court instead ruled that the widow could receive the gross amount of rental income from the unit up to a limit of two-thousand dollars per month. Ultimately, the appellate court agreed with the executor that the decedent meant the net amount of income when considering the facts surrounding his relationship with his widow. The widow had addiction issues in the past and there was evidence that the testator said he wanted his wife to have enough money to live comfortably but not enough where she would spend it on drugs.¹⁰⁵ The main problem with the Will in *Radelt* was how vague the form Will was, had the decedent gone to an estate law attorney to draft his Will, this litigation would likely have been avoided.

There are also, examples of online created estate plans that met all the criteria of being valid.¹⁰⁶ But even Wills that follow all of the necessary conventions are subject to being thrown out in probate. In fact, DIY Wills are statistically more likely to be contested against in probate.¹⁰⁷ For example, in the *Matter of Robinson-Murphy*, the petitioner attempted to submit a copy of Will drafted from LegalZoom into probate court that was properly signed and notarized, consistent with NY law.¹⁰⁸ The LegalZoom Will would have made the petitioner the executor of the testator's estate and the beneficiary of the many financial assets. The petitioner claimed that the copy of the Will was given to her by the testator, and the testator kept the original in a safe in her house. The defendant, the testator's husband claimed that the testator physically destroyed the LegalZoom Will, and provided evidence that testator wanted to leave her property to her

husband such as establishing joint bank accounts and life insurance policies before her death.¹⁰⁹ The petitioner failed to provide evidence that the original LegalZoom Will had not been revoked, could not find the original LegalZoom Will, and thus the testators estate went into intestacy, leaving her husband everything.¹¹⁰ Had this individual sought the consultation of an estate law attorney, she could have likely had a plan and collect evidence in order to get the LegalZoom Will accepted.

It is unclear from the facts of these cases how much fault can be attributed to the website that the user used to create their Will or the user themselves. While the most common mistake people seem to make is not following the states conventions, LegalZoom says on their website their prepared legal documents conform with the state the user selects from the website's questionnaire.¹¹¹ Adding a question asking for the user's state may place an expectation that the Will they are buying is sufficient to survive probate without any additional work. This begs the question of whether it is ethical to place the burden on the layperson to research their state's Will formalities? When viewing DIY online estate planning through the lens of laypeople engaging in self representation, it is difficult to figure out where to draw the line when it comes to regulating the websites that provide these templates. LegalZoom does in fact provide warning that encourages their clients to get their Will witnessed or notarized and to follow the state conventions on execution.¹¹² In fact, LegalZoom admits 80% of their clients make mistakes on their documents that could potentially render them invalid.¹¹³ To LegalZoom's credit, they can only provide a limited amount information before entering the territory of providing legal advice, which they are not in the business of doing. This is a troubling statistic for LegalZoom to admit to, but also seems to imply that such a high statistic cannot be solely the fault of the users. If the fault is on the website, then the online legal document preparation business model is not a good

product. However, if the fault is on the consumer, then the purpose of online legal document preparation is undermined because most of these sites pride themselves in being easy to use and cost effective.¹¹⁴

Part III: Proposals

The pandemic's effect on the demand for estate planning allowed online estate planning websites to exploit a niche market for affordable alternatives to licensed attorneys. The sheer volume of wealth these websites were able to accumulate as a result of a horrific event in history would be forgivable if a sufficient product or service was being offered. These websites have shown only to be effective when the testators estate plan is incredibly simple.¹¹⁵ While these websites have also led the way into technological innovations that will aid the estate law field in entering the 21st century such as electronic notarization via video conferencing, and E-signing, their sudden popularity threatens to clog up probate courts across the country with faulty estate plans.¹¹⁶ Another major issue lies within these websites misrepresenting their clients about the effectiveness of their product and those many laypeople are under the impression that a legally binding Will can be made in less time it takes to order a pizza.¹¹⁷ The ability to disclaim legal responsibility combined with the how interactive they are, gives the average person a false sense of security that their estate planning document will hold up in court.

Federal Legislation Against Online Estate Planning Startups

Federal legislation may be necessary because DIY estate planning websites exist within the channels of interstate commerce.¹¹⁸ The internet and mass travel is making our country more interconnected, people are moving from state to state more often and will likely make estate law plans in various states throughout their lives, thus necessitating federal regulation.¹¹⁹ This note proposes a law that will prevent the disclaiming of legal representation and responsibility by DIY

estate planning websites to their customers in the event their estate plan goes wrong. The law will outline that if the level of interactivity between the DIY website and the user exceeds the scope of just laying out a fill in the blank form with general instructions, or gives a reasonable person the impression that they are being represented, the website may no longer disclaim responsibility.¹²⁰ More exposure to lawsuits DIY legal document preparation services face, they will be forced to provide better products in order to avoid legal penalties, or risk failing entirely. Such a law may also force these websites to use only their advanced services that have actual representation, such as LegalZoom's Legal Plus Plan.¹²¹ While those supporting the access to justice movement would be opposed to regulation of DIY legal preparation, such a law is that it will not actively make DIY websites illegal or prevent anyone from representing themselves, just an additional measure to prevent these websites from taking advantage of people.

However, there are admittedly many problems to this type of proposal. The first is getting such a law through Congress is incredibly difficult, such a bill would require a large grassroots campaign to gain the attention of members of congress. The process of passing bills into laws is already a difficult and there would need to be bipartisan cooperation in order for such a bill to pass, unfortunately both the House and Senate are deeply divided.¹²² Past attempts at federal regulation on the law of Wills had failed to be passed into laws, and there is little reason to believe that this situation would be any different.¹²³

Potential State Laws and Actions Regulating Online Estate Planning Startups

The states could individually create laws such as the proposed federal one, where if level of interactivity between the DIY website and the user exceeds the scope of just laying out a fill in the blank form with general instructions, or gives a reasonable person the impression that they are being represented, the website may no longer disclaim responsibility. State legislatures have

a much better record of passing bipartisan legislation than Congress, and would thus be more likely to be able to pass such a law.¹²⁴ The states could also protect the general public from the risks of faulty Wills and the interests of estate lawyers by issuing an Assurance of Discontinuance, such as what Washington did in 2010.¹²⁵ After conducting an investigation, Attorney General Rober M. Mckenna found that LegalZoom’s business practices violated Washington’s UPL statutes.¹²⁶ Rather than go to trial, LegalZoom agreed to enter into an Assurance of Discontinuance that had the following stipulations: 1. LegalZoom could not compare the cost of its “self-help” products (the legal forms) and clerical services with those provided by an attorney without clearly disclosing to consumers that LegalZoom is not a substitute for a law firm; 2. Misrepresent the costs, complexity and time required to complete a probate in Washington; 3. Misrepresenting the benefits or disadvantages of any estate planning document as compared to any estate distribution document in Washington; 4. Engaging in the unauthorized practice of law; 5. Failing to offer estate planning forms that conform to Washington law; 6. Failing to have a Washington licensed attorney review all self-help estate planning forms offered to Washington consumers; and 7. Failure to clearly and conspicuously disclose that communications between the company and consumers are not protected by the attorney-client privilege.¹²⁷ This settlement had the effect of completely shutting down LegalZoom’s online questionnaire and limited them to selling preprinted forms, rather than an individualized legal service.¹²⁸

Problems with a state solution would include a lack of uniformity across the nation and would require the willingness of the state legislatures to create a law that specifically targets DIY online estate planning. Not every state may want to adopt an Assurance of Discontinuance like

Washington, as Washington has very strict UPL statutes and most states do not believe that websites like LegalZoom are engaged in the unauthorized practice of law.¹²⁹

Federal and State Funding of Estate/Elder Law Clinics

Rather than focusing on legal and ethical avenues to solve the public policy issue created by the pandemic, the solution will rely on attacking the heart of the issue, the fact that most Americans are unprepared for death. The pandemic exacerbated these issues by spreading fear of an untimely demise, which allowed DIY estate planning websites to profit handsomely.¹³⁰ It is unclear what level of income or education the users of DIY wills post pandemic have, but it can be inferred that the reason they chose to create an estate plan online rather than with an attorney could be due to the comparative costs, a lack of understanding of how superior consulting an estate law attorney will be, or a combination of the two. If more Americans had the financial means to afford an estate law attorney and if they were aware of how inferior a LegalZoom will could be in comparison to a professionally created one, then the economic niche DIY estate planning websites profited from would be diminished. Nonprofits and elder law clinics have provided free estate planning to the poor and elderly, and with continued funding from the federal and state governments, they could expand their services.

During the pandemic, the federal government bailed out large corporations, provided loans to small businesses, and handed out stimulus checks to help alleviate the economic stress caused by Covid and the resulting lockdowns.¹³¹ Just as stimulus money went to individuals and corporations, federal and state governments should also be funding estate law clinics. The logical reason for this is the link between Covid and death; Covid has killed over one million Americans to date.¹³² Clinics that help serve the indigent will have the benefit of providing the very people that were afraid to spend money on an estate law attorney.¹³³ There are already some state

sponsored estate law clinics such as The Legal Project's Wills Program in New York state, which provides Will drafting services for those that financially qualify.¹³⁴ Another program is Wills on Wheels, a volunteer committee of committed paralegals and lawyers that provides estate document drafting services in several different states free of charge.¹³⁵ AARP's Legal Consul for the Elderly Program connects people with volunteer lawyers that provide free Wills.¹³⁶ Many elder law and estate law clinics are hosted by law schools across the country and have already helped thousands of Americans across the country settle their affairs.¹³⁷ The only problem with clinics is that they are expensive to run, if these institutions were to be given more funding, they would be able to hire more attorneys, and even spend money on advertising awareness of their services. If more people had knowledge that there were free options for estate plans done by attorneys, websites like LegalZoom would likely have a lot less business.

Modernizing the Estate Law Practice and Liberalizing Formal Will Requirements

Technology has also been a factor in the popularity of DIY online Wills. The lockdowns gave American's time to peruse their computers and find websites that offered cheap estate plans. Websites such as LegalZoom were quick to capitalize on the ease on convenience of creating a Will from home. A study conducted by Harris Poll of over 2,000 adults in the United States showed that 76% of respondents aged 18-54 said "they were willing to use online legal services for legal issues if it would save them money."¹³⁸ When a customer can access legal information and assistance over the Internet in an on-demand fashion or simply by making a phone call from his or her home or office, the thought of contacting a lawyer and hoping he or she will get back to the client, to make an appointment in the lawyer's office at a time that is convenient for the lawyer, is likely to deter many clients from turning to those lawyers.¹³⁹ If estate law attorneys were to adopt a more easy access approach to estate planning, such as an

increased online presence, they would likely to be able to compete with disruptive industries such as LegalZoom. Furthermore, moving the drafting and execution process to a virtual format will enable more people to execute Wills and trusts. Covid has forced many states to already allow for virtual execution, however, the practice should stay if the field of estate law is going to survive into the 21st century.¹⁴⁰

Conclusion

The proposals outlined above show that a multi-pronged approach is required to correct the damage the pandemic caused on estate planning in this country. The wave of death brought on by Covid has caused a flood of faulty DIY Wills to be created. These lackluster estate plans have the potential to not only clog up the probate system, but cause thousands of dollars in continued fees for its users. This note's recommended course of action is to encourage all estate lawyers to push the government increased funding of estate law clinics for those most vulnerable and most willing to take Will drafting into their own hands.

¹ CENTER FOR DISEASE CONTROL AND PREVENTION, *Demographic Trends of COVID-19 Cases and Deaths in the US Reported to CDC*, (Jun. 4, 2022 7:32 PM), <https://covid.cdc.gov/covid-data-tracker/#demographics>

² Bryan Borzykowski, *Americans rush to make online wills in the face of the coronavirus pandemic*, CNBC, (March 25 2020 9:14 AM), <https://www.cnbc.com/2020/03/25/coronavirus-pandemic-triggers-rush-by-americans-to-make-online-wills.html>

³ Elizabeth J. Dale, *Want to do more for your favorite chair? Consider a planned gift*, THE CONVERSATION, (May 26, 2020 8:16am), <https://theconversation.com/want-to-do-more-for-your-favorite-charity-consider-a-planned-gift-138241>

⁴ LegalZoom Staff, *Estate Planning Statistics*, LEGALZOOM, (October 12, 2021), <https://www.legalzoom.com/articles/estate-planning-statistics>

⁵ *Id.*

⁶ Borzykowski, *supra* note 2.

⁷ Sarah Fevot, *LegalZoom, Flush from Pandemic Gains, Files for an IPO*, DOT.LA, (June 7, 2021), <https://dot.la/legalzoom-ipo-2653271666.html>

⁸ *Id.*

⁹ Danny Critchton, *Trust & Will raises \$15M as digital estate planning hits mainstream*, Tech Crunch, (November 17, 2020), <https://techcrunch.com/2020/11/17/trust-will-raises-15m-as-digital-estate-planning-hits-mainstream/>

¹⁰ Fevot, *supra* note 7.

¹¹ Borzykowski, *supra* note 2.

¹² *Id.*

¹³ See William Morris, *It's the Law: Do-It-Yourself will can be Dangerous*, NAPLES DAILY NEWS (April 23, 2014).

¹⁴ Borzykowski, *supra* note 2.

¹⁵ See Iris J. Goodwin, *Access to Justice: What to do About the Law of Wills*, WIS. L. REV. 947, 950 (2016).

¹⁶ *Id.* at 961.

¹⁷ Goodwin, *supra* note 9.

¹⁸ *Id.* at 964.

¹⁹ See *In re Estate of Rand*, 61 Cal. 468 (1882).

²⁰ See, David Horton, *Empirical Analysis of Wealth Transfer Law: Do it Yourself Wills*, 53 U.C. DAVIS L. REV. 2357, 2358 (2020).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *N.Y. Cty. Lawyers' Asso. v. Dacey*, 28 A.D.2d 161, 171 (App. Div. 1967).

²⁵ *Id.* at 165.

²⁶ See *N.Y. Cty Lawyers's Ass'n v. Dacey*, 21 N.Y.2d 694 (1967). *But see*, *In re Thompson*, 574 S.W.2d 365, 368 (Mo. 1978) (ruling the advertisement and sale of divorce kits did not constitute the unauthorized practice of law so long as the respondents and others similarly situated refrain from giving personal advice as to legal remedies or the consequences).

²⁷ See *Palmer v. Unauthorized Prac. Comm. of State Bar*, 438 S.W.2d 374, 375 (Tex.Civ.App. 1969).

²⁸ *Id.* at 376.

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- ²⁹ *Id.*
- ³⁰ Fadia v. Unauthorized Practice of Law Comm., 830 S.W.2d 162, 164 (Tex. App. 1992).
- ³¹ *Id.*
- ³² *Id.*
- ³³ Julee C Fischer, *Policing the Self-Help Legal Market: Consumer Protection or Protection of the Legal Cartel?* 34 IND. L. REV. 121, 147.
- ³⁴ Dashka Slater, *Sue Yourself*, LEGAL AFFAIRS (October 2003), www.legalaffairs.org/issues/September-October-2003/scene_slater_sepoct03.msp
- ³⁵ NOLO, *Our History*, <https://www.nolo.com/about/history> (last visited Nov. 2, 2021).
- ³⁶ See Brandon Schwarzentraub, *Electronic Wills & The Internet: Is LegalZoom Involved in the Unauthorized Practice of Law or is Their Success Simply Ruffling the Legal Profession's Feather?* 4 TX TECH. E. PLAN. COM. PROP. L.J. CODICIL. 1, 3 (2012).
- ³⁷ Fischer, *supra* note 33.
- ³⁸ *Id.* at 132.
- ³⁹ Horton, *supra* note 20, at 2376.
- ⁴⁰ Kyle C. Bacchus, *A Testament to The Future of Testaments: Electronic Wills Are the Future*, 17 AVE MARIA L. REV. 35, 42 (2019).
- ⁴¹ See Taylor v. Holt, 134 S.W.3d 830, 834 (Tenn.Ct.App. 2003).
- ⁴² See Estate of Gonzalez, 855 A.2d 1146, 1148 (Me. 2004)
- ⁴³ See Guardianship & Alts., Inc. v. Jones (*In re Estate of Horton*), 325 Mich. App. 325, 329 (2018).
- ⁴⁴ Emily McClure, *LegalZoom and Online Legal Service Providers: Is the Development and Sale of Interactive Questionnaires that Generate Legal Documents the Unauthorized Practice of Law?* 105 KY. L.J. 563, 565 (2017).
- ⁴⁵ *Id.*
- ⁴⁶ Fischer, *supra* note, 33.
- ⁴⁷ *Id.*
- ⁴⁸ *In re Nolo Press/Folk Law*, 991 S.W.2d 768, 775 (Tex. 1999).
- ⁴⁹ See H.R. 1507, 1999 Leg., 76th Sess (Tex. 1999); *see also* Tex. Gov't Code § 81.101
- ⁵⁰ *Id.*
- ⁵¹ LegalZoom.com, Inc. v. N.C. State Bar, 2014 NCBC 9 1, 6 (2012).
- ⁵² *Supra* note 46, at 53.
- ⁵³ *Id.*
- ⁵⁴ *Id.*
- ⁵⁵ See Joan Rogers, *N.C. Law Regulates LegalZoom, Other Legal Doc Providers* BLOOMBERG LAW (July 26, 2016, 5:49 PM) <https://news.bloomberglaw.com/business-and-practice/n-c-law-regulates-legalzoom-other-legal-doc-providers/>
- ⁵⁶ See Janson v. LegalZoom.com, Inc., 802 F. Supp. 2d 1053 (W.D. Mo. 2011)
- ⁵⁷ *Id.* at 1063.
- ⁵⁸ *Id.*
- ⁵⁹ *Id.* at 1065.
- ⁶⁰ *Id.* at 1064.
- ⁶¹ See Janson v. LegalZoom.com, Inc., No. 2:10-cv-04018-NKL, 2012 U.S. Dist. LEXIS 60019 (W.D. Mo. Apr. 30, 2012).
- ⁶² McClure, *supra* note 42.

⁶³ See Eric Kroh, DOJ, *FTC Say Legal Documents Software Helps Consumers* LAW360 (June 13, 2016).

⁶⁴ See Joint advisory letter from the Fed. Trade Comm. & Dept. of Justice to Senator Bill Cook, Re North Carolina *HB 436*" (June 10, 2016).

https://www.ftc.gov/system/files/documents/advocacy_documents/comment-federal-trade-commission-staff-antitrust-division-addressing-north-carolina-house-bill-436/160610commentncbill.pdf

⁶⁵ *Supra* note, 57.

⁶⁶ See Stephen J. Lacey, *Do-it-yourself estate plans can go wrong* FLORIDA TODAY (OCTOBER 10, 2021).

⁶⁷ *Id.*

⁶⁸ Borzykowski *supra* note 2.

⁶⁹ *Id.* (“Some of the biggest litigation cases I’ve ever had have to do with discrepancies in documents and no real ability to understand what that person was doing”).

⁷⁰ Rania Combs, *LegalZoom vs. Lawyer: What You Don't Know Can Hurt You*, TEX. WILLS & TR. ONLINE (May 1, 2020), <http://www.texaswillsandtrustslaw.com/2010/05/24/legalzoom-vs-lawyer-what-you-dont-know-can-hurt-you/>

⁷¹ Michael Lichterman, *My First LegalZoom “Estate Plane” Review*, MICHAEL BLOG (September 18, 2011) <https://www.lichtermanlaw.com/index.php/legal-zoom-review/>

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Fischer, *supra* note, 33 at 127.

⁷⁵ See Roger C. Cramton, *The Future of the Legal Profession: Delivery of Legal Services to Ordinary Americans* 44 CASE W. RES. 531, 534 (1994).

⁷⁶ *Id.* at 592

⁷⁷ David Riedel, *Behold the 21st Century Will: The E-Will!* JD SUPRA (October 19, 2021) <https://www.jdsupra.com/legalnews/behold-the-21st-century-will-the-e-will-6004522/>

⁷⁸ *Id.*

⁷⁹ See Allison Anna Tait, *Online tools put will-writing in reach for most people – but they’re not the end of the line for producing a legally binding document*, THE CONVERSATION (Jan. 5, 2022).

⁸⁰ *Id.*

⁸¹ See Murphy's Will Clauses § 1.12 (2021) (defining electronic presence as “the relationship of two or more individuals in different locations communicating in real time to the same extent as if the individuals were physically present in the same location.”).

⁸² See Naman Anand, *Where there is a Will, there is No Way: Covid-19 and a Case for the Recognition of E-Wills in India and other Common Law Jurisdictions*, 27 ILSA J INT'L & COMP L 77 at 81 (2021).

⁸³ *Id.* (Showing states that the six states of Connecticut, Illinois, Kansas, Michigan, New York, and Tennessee have all adopted emergency legislation allowing for witnesses via video conferencing).

⁸⁴ Riedel, *supra* note, 82.

⁸⁵ Tait, *supra* note, 79.

⁸⁶ Borzykowski, *supra* note, 2.

⁸⁷ *Protect your loved ones with a legally-binding will*, LEGALZOOM, <https://www.legalzoom.com/personal/estate-planning/last-will-and-testament-overview.html>

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- ⁸⁸ MARTINDALE-NOLO RSCH., *Hourly Rates for Trust and Estate Attorneys Across the Country*, LAWYERS.COM <https://www.lawyers.com/legal-info/trusts-estates/cost-of-creating-an-estate-plan-and-administering-an-estate/how-much-does-an-estate-planning-attorney-cost.html>
- ⁸⁹ LEGALZOOM *supra* note, 105
- ⁹⁰ *Id.*
- ⁹¹ *See Terms of Use* LEGALZOOM.COM, <https://www.legalzoom.com/legal/general-terms/terms-of-use> (last visited January 4, 2022).
- ⁹² *Id.*
- ⁹³ *See, Legal Plan Contract*, LEGALZOOM.COM, <https://www.legalzoom.com/legal/product-service-terms/legal-plan-contract> (last visited January 2, 2022).
- ⁹⁴ *Id.*
- ⁹⁵ *Make Your Free Simple Will*, ROCKETLAWYER, <https://www.rocketlawyer.com/family-and-personal/estate-planning/make-a-will/document/simple-will>
- ⁹⁶ *The Simple Will Basics: No Frills, No Fuss, No Anxiety*, NOLO, <https://www.nolo.com/legal-encyclopedia/simple-wills-basics-29917.html>
- ⁹⁷ *Id.*
- ⁹⁸ *Id.*
- ⁹⁹ *Last will and Testament*, TRUST&WILL, (last accessed Jan. 7, 2022) trustandwill.com/documents
- ¹⁰⁰ *Id.*
- ¹⁰¹ *See* Litevich v. Legalzoom.com, Inc., No. X04HHDCV146055757S, 2016 Conn. Super. LEXIS 36 (Super. Ct. Jan. 8, 2016); *see also*, Bergenstock v. Legalzoom.com, Inc., 2015 NCBC LEXIS 66
- ¹⁰² *See* Litevich v. Prob. Court, No. NNHCV126031579S, 2013 Conn. Super. LEXIS 1158 (Super. Ct. May 17, 2013).
- ¹⁰³ *See* Clark v. Radelt, No. A159182, 2020 Cal. App. Unpub. LEXIS 6342 (September 29, 2020).
- ¹⁰⁴ *Id.* at 6.
- ¹⁰⁵ *Id.* at 5.
- ¹⁰⁶ *See In re Estate of Cook*, 472 P.3d 1179 (Mont. 2020) explaining (A will and Power of Attorney document that was drafted using an online template was found to be valid under Montana law and survived challenges by the petitioner that the estate documents were invalid).
- ¹⁰⁷ Horton, *supra* note 20 at 2391.
- ¹⁰⁸ *See* Matter of Robinson-Murphy, 41 N.Y.S.3d 721 (Sur. Ct. 2015).
- ¹⁰⁹ *Id.*
- ¹¹⁰ *Id.*
- ¹¹¹ *See* Stephanie Kurose, *Does a LegalZoom Will Have to Be Notarized?* LEGALZOOM, <https://info.legalzoom.com/article/does-a-legalzoom-will-have-to-be-notarized> (accessed Nov. 2, 2021).
- ¹¹² *Id.*
- ¹¹³ Combs, *supra* note, 72
- ¹¹⁴ *See LegalZoom Review 2021*, ONLINE WILL-MAKERS <https://onlinewillmakers.com/legalzoom-review/> (accessed Nov.3 2021).
- ¹¹⁵ *See* Borzykowski, *supra* note, 2.
- ¹¹⁶ *See* LEGALZOOM.COM *supra* note, 101.
- ¹¹⁷ *See* Combs, *supra* note, 84.

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- ¹¹⁸ See *United States v. Trotter*, 478 F.3d 918, 921 (8th Cir. 2007); see also *United States v. Giboney*, 863 F.3d 1022 (8th Cir. 2017).
- ¹¹⁹ See Terry Collins, *Americans move to Texas, Florida and Alabama as more work from home since COVID*, USA TODAY (Feb. 11, 2021), <https://www.usatoday.com/story/money/2022/02/11/moving-work-from-home-jobs/6720392001/?gnt-cfr=1>
- ¹²⁰ Schindler, *supra* note, 149 at 208.
- ¹²¹ *Id.*
- ¹²² Douglas J. Besharov and Douglas M. Call, *Excess Partisanship and the Cost of Big Budget Bills*, THE HILL (Feb. 7 2022), <https://thehill.com/opinion/finance/592779-excess-partisanship-and-the-cost-of-big-budget-bills>
- ¹²³ Tait, *supra* note, 79.
- ¹²⁴ NAT'L CONF. OF STATE LEGIS., *State Legislative Policymaking in an Age of Political Polarization*, (2016), https://www.ncsl.org/Portals/1/HTML_LargeReports/Partisanship_1.htm (arguing that of the 10 states reviewed in this study, 90 percent or more of all bills are not partisan and are passed unanimously or with substantial bipartisan majorities).
- ¹²⁵ Washington Attorney General, *supra* note 106.
- ¹²⁶ *Id.*
- ¹²⁷ *In re LegalZoom.com, Inc.*, No. 10-2-02053-2, at 2 3 (Thurston Cnty. Sup. Ct. Sept. 15, 2010), <https://www.atg.wa.gov/news/news-releases/washington-attorney-general-zooms-legalzoom-s-claims#:~:text=LegalZoom%20Assurance%20of%20Discontinuance>
- ¹²⁸ Pierce G. Hunter, *CONSTITUTIONAL LAW—Unauthorized Practice of Law: Driving Legal Business Without a License, LegalZoom, Inc., and Campbell v. Asbury Automotive, Inc.*, 2011 Ark. 157, 381 S.W.3d 21., 36 U. ARK. LITTLE ROCK L. REV. 201, 220 (2014).
- ¹²⁹ *Id.*
- ¹³⁰ Fevot, *supra* note, 7.
- ¹³¹ Eric Milstein and David Wessel, *What did the Fed do in response to the COVID-19 crisis?* BROOKINGS (December 17, 2021), <https://www.brookings.edu/research/fed-response-to-covid19/>
- ¹³² CENTER FOR DISEASE CONTROL AND PREVENTION *supra* note 1.
- ¹³³ See James H. Pietsch, *Expanding Access to Justice for Socially and Economically Needy Elders Through Law School Experiential Programs*, 20 ELDER L.J. 315, 321.
- ¹³⁴ NY.GOV, *Estate Planning Assistance* <https://www.nyconnects.ny.gov/services/estate-planning-assistance-1032>
- ¹³⁵ Marsha Mercer, *Create Your Will for Free: Nonprofit organizations can help you draft this crucial document for little or no cost*, AARP (2012) <https://www.aarp.org/money/investing/info-04-2012/create-your-will-for-free.html>
- ¹³⁶ *Id.*
- ¹³⁷ *Id.* at 331.
- ¹³⁸ Caroline Shipman, *Unauthorized Practice of Law Claims Against LegalZoom—Who Do These Lawsuits Protect, and is the Rule Outdated?* 36 THE GEO. J. OF LEG. ETHICS 939, 940 (2019).
- ¹³⁹ Raymond H. Brescia, *Law and Social Innovation: Lawyering in the Conceptual Age*, 80 Alb. L. Rev. 235, 297 (2017).
- ¹⁴⁰ Anand, *supra* note 109, at 81.