

Haynes and Boone Wins Fifth Circuit Ruling Striking Down Provisions of the Texas Psychologists' Licensing Act

January 20, 2016 Andrew Guthrie

PRACTICES Appellate

Haynes Boone Dallas Associate [Andrew Guthrie](#) has persuaded the Fifth Circuit Court of Appeals that key provisions of the Texas Psychologists' Licensing Act should be struck down on First Amendment grounds because the statute is overly broad and could prohibit everyday citizens from giving certain kinds of advice, even for free, without a state psychology license.

Guthrie donated his services to client Mary Lou Serafine just weeks before oral argument and after Serafine had completed the appellate briefing pro se. On Jan. 12, the Fifth Circuit issued an opinion in which Serafine prevailed on both as-applied and facial challenges to the statute.

Serafine ran for the Texas Senate in 2010, describing herself as an “Austin attorney and psychologist.” While Serafine is not a licensed psychologist, she has extensive training and experience in the field. Serafine completed a four-year post-doctoral fellowship in psychology at Yale, and the dissertation for her Ph.D. in education was published in Genetic Psychology Monographs. Serafine also served as a professor in the psychology departments at Yale University and Vassar College, where she taught a variety of psychology courses.

Nevertheless, the Texas State Board of Examiners of Psychologists told Serafine she was violating the licensing act and ordered her to cease using the title “psychologist” in her campaign materials and to refrain from offering or providing “psychological services” in Texas. The board also sought a correction from two Texas newspapers that had identified Serafine as a psychologist. In January 2011, Serafine received a letter from the Attorney General’s office threatening prosecution.

Serafine removed the word “psychologist” from her website then sued, claiming that the act infringed her political speech, commercial speech, equal protection rights and right to earn a living. She also challenged the act as vague, overbroad and a prior restraint.

After the district court rejected Serafine’s claims and found the act to be constitutional, the Fifth Circuit largely reversed. Most notably, it held that a provision of the act restricting the “practice of psychology” to licensed psychologists was unconstitutionally overbroad—and therefore facially invalid—because it could be read to require a psychology license to simply give advice about mental, behavioral or emotional problems (even for free). Thus, for example, an unlicensed person could be prosecuted for facilitating an Alcoholics Anonymous meeting or hosting various kinds of self-help seminars.

The court also struck down another provision of the act as it was applied to Serafine’s use of the term “psychologist” on her campaign website, as she is arguably a psychologist by reputation and training, and in any event, the state had not justified its interest in proscribing her political speech.