

PUBLIC COMMENTS

HB 3940

HOUSE COMMITTEE ON JUDICIARY & CIVIL JURISPRUDENCE

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Hearing Date: March 31, 2021 8:00 AM

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John LaRue

Self

Corpus Christi, TX

I am a licensed attorney in the State of Texas and I am opposed to this discriminatory and unnecessary bill.

Rebecca Marques, State Director

Human Rights Campaign

Austin, TX

The Human Rights Campaign opposes HB 3940 by Chairman Cain.

William Pritchett

Self

Houston, TX

Opposing HB3940 by Cain.

Religious freedom is one of our nation's most sacred beliefs, that's why it is already enshrined in the First Amendment of the United States Constitution. Texas has one of the most robust Religious Freedom Restoration Acts (RFRA's) in the country, further reinforcing our belief that religious freedom is sacred. Bills like HB3940 do not strengthen religious freedoms, they weaponize them against individuals and communities individuals may have a prejudice or dislike against. This bill is particularly concerning for rural Texans who may live in a part of the state where access to public defenders or court assigned representation may be severely limited. If this bill becomes law it is not difficult to see it being abused to discriminate against individuals and that could compromise the ability of individuals to have adequate representation in a court of law.

Religious freedom laws should be used as a shield against discrimination, not as a sword to discriminate. HB3940 is unnecessary and a dangerous first step in allowing any license holder to deny services to any individual they dislike.

Gordy Carmona, Mx

Self

Plano, TX

I'm against HB 3940. This bill does not but allow licensed holders to openly and legally discriminate against Texans from minority groups like the LGBT community. As well it would allow a back door for racist to disguised as "sincerely held religious beliefs."

There are far more important things that should be prioritized like the electrical grid and covid relief for Texans and small businesses.

Jeanne M Huey

Printed on: April 4, 2021 7:15 PM

Self

Garland, TX

Subject: Opposition to House Bill 3940

Submitted by: Jeanne M. Huey

Austin, TX

HB 3940 does not serve the members of the Texas State Bar and therefore has no legitimate purpose.

In addition to my Partner's comments (Richard Hunt) regarding the rulemaking process for the State Bar and motivation of the Bill, the Texas Attorney General already provided a well-publicized opinion on the constitutionality of ABA Model Rule 8.4(g) in 2016 (attached). In it the AG concluded that ABA Model Rule 8.4(g), as written and adopted by the ABA, would be unconstitutional if ever adopted by the Texas Supreme Court. This opinion was widely circulated and commented on at that time, and has been cited in many law review articles since.

In the Opinion, the AG concludes that (1) the Texas disciplinary rules already contain certain protections and prohibitions against discrimination and (2) any court would strike it down as unconstitutional for any one or more of the reasons set out in his Opinion.

Regardless of whether or not this is true—the odds that the Texas Supreme Court—who must approve any disciplinary rule proposed by the newly created (and appointed by the Texas Supreme Court) Committee on Disciplinary Rules and Referenda—would enact a law or administrative rule that would be immediately subject to a constitutional challenge and most likely struck down is close to zero.

For any legislator thinking of promoting or signing onto HB 3940—it is important to recognize that the Statement accompanying the Bill does not present or cite any facts to support its claims that such a bill is timely or necessary because “many attorneys feel they could lose their license” and that “individuals with certain sincerely held beliefs are facing expulsions from their careers and livelihoods”.

These statements are simply not true. There is no survey of Texas lawyers or other professionals on this issue; there are no Texas lawyers who are actually “facing expulsion” as a result of a Model Rule that has no authority or effect in the State of Texas.

Given the above, it is not possible for any serious member of the Texas State Legislature to honestly think a pre-emptive strike is necessary to keep the Texas Supreme Court and State Bar from adopting ABA Model Rule 8.4(g).

HB 3940 is a pre-emptive strike against something that will never happen. As such, it addresses no legitimate facts or concerns and, if advanced and publicized, it will only serve bring the kind of negative national attention to the State of Texas (and Texas lawyers) that drives away businesses (and their executives and employees).

Surely we can all agree Texas lawyers would rather have those businesses as clients, and that the Legislature has more important things to do than waste time on the hypothetical issue presented in HB 3940.

Please let me know if you have any questions or need anything additional from me.

Gary Schumann

Self

Austin, TX

Subject: Opposition to House Bill 3940

Submitted by: Gary Schumann

Austin, TX

My name is Gary Schumann.

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I am a founding partner of the law firm Savrick, Schumann, Johnson, McGarr, Kaminski & Shirley LLP. Our firm has done business in the State of Texas for over 20 years with offices in Austin and Dallas.

HB 3940 seeks to address a problem that doesn't exist. Never in the history of the Bar has a lawyer ever been disciplined because of "strongly held religious belief". However, because the proposed law contains absolutely no objective standard whatsoever as to what constitutes a "strongly held religious belief", and because the courts will not presume to question anyone's religion, if this bill were to be passed into law, it would undo lawyer discipline altogether.

Lawyers, being the clever word-smiths that they are, will claim this law as a defense to any and all disciplinary actions brought against them.

Texas already has one of the strongest RFRA's in the country. Protections against religious discrimination of the type this bill might legitimately seek to prevent already exists in the Texas RFRA and in the Texas Constitution.

As a lawyer who has been licensed in Texas for 32 years - I believe our profession stands to lose much more than gain from HB 3940, and I strongly urge that it not be passed into law.

Elliott Beck

Self

Austin, TX

Subject: Opposition to House Bill 3940

Submitted by: Elliott Beck

Austin, TX

To Whom It May Concern:

My name is Elliott Beck. I was born and raised in Beaumont, Texas, attended Texas A&M University, then Baylor Law, and now practice law in Austin, TX.

I write today in strong opposition to HB 3940 for a number of reasons, the first of which is that the legislation is unnecessary. In addition to the 1st Amendment to the United States Constitution, and Article 1 Section 8 of the Texas Constitution, speech in Texas is also protected by one of the strongest Religious Freedom Restoration Acts in the country. An additional, albeit slightly different, narrowly-tailored law protecting the speech of a single profession risks not only conflicting with, and thereby weakening, existing free speech legislation, but it also implies that other, excluded professions are not afforded the same rights.

Second, the obvious intent of this legislation is to act as a weapon rather than a shield. LGBTQ+ Texans deserve the same rights, respect, and protections as any other. HB 3940 would provide a license to discriminate by some of the most important members of our communities - lawyers - who are charged with upholding liberty, protecting freedom, and defending the innocent.

Third, the breadth of the legislation opens a dangerous can of worms, as it empowers lawyers to ignore laws they do not agree with under the guise of religious freedom. The text of HB 3940 could just as easily be read to excuse discrimination against women, racial minorities, of even other religions like Christianity.

Finally, the language will certainly invite unnecessary, expensive litigation, as it clearly violates the Equal Protections Clause as well as the State Bar of Texas's right to self-governance. After a year-long pandemic and one of the most expensive, dangerous winter weather events this state has ever seen, it is simply imprudent to invite yet another decade's long legal battle over legislation that provides no more constitutional religious protections than those that already exist.

For these reasons I re-urge my opposition to HB 3940 and ask that you do the same.

Sincerely, Elliott Beck

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Steven Kirkland

Self

Houston, TX

Subject: Opposition to House Bill 3940

Submitted by: Judge Steven Kirkland

Houston, TX

Just over 30 years ago in 1988, Texans were shocked when Dallas Judge Jack Hampton admitted in a newspaper interview he gave a lighter sentence to a murderer because his two victims were gay. Texans of all political parties and religions were appalled. The Texas Supreme Court responded by adopting a rule prohibiting antigay bias by Judges and the State Bar followed suit by adopting the current rule which does the same for lawyers in Court, or other adjudicatory proceedings. The rule did not and still does not apply to the decision to represent a person, so no lawyer is required to represent any person in opposition to any religious (or any other) beliefs. The ABA's model rule includes the same exclusion.

So if you assert that lawyers should be free to discriminate for religious reasons in choosing clients, the ABA's rule simply requires that lawyers cannot do so in a harassing way. Since neither the current Texas rule or the ABA's model rule apply to a refusal to represent a client, HB 3940 is unnecessary for its stated purpose.

Instead, there is a direct line from Judge Hampton's public statements that shocked Texans in 1988 and HB 3940. That is the desire of some to use the guise of religion shielded by this law to denigrate the humanity of a particular group of Texans. Texans did not stand for it in 1988 and we should not stand for it today.

Steve Rudner

Self

Dallas, TX

Subject: Opposition to House Bill 3940

Submitted by: Steve Rudner

Dallas, TX

My name is Steve Rudner, and I am an attorney. I oppose HB 3940, which strikes me as a solution to a problem which does not exist, and an attempt to go out of our way to declare Texas to be a state which is prejudiced against members of the LGBTQ and other minority communities.

I believe that the bill you are considering will most certainly have consequences which will be of significant negative impact to the practice of law in Texas. Allow me to explain:

I graduated from the University of Texas School of Law almost 34 years ago, and I founded my own law firm in Dallas 26 years ago. Our law firm has a unique speciality: We represent luxury hotels and resorts all around the world. As a result, lawyers in our firm practice in courts throughout the country. We accomplish that in two ways: I am a member of the bars of New York, Colorado, Arizona and the District of Columbia, and other members of my firm are licensed in California, Florida and elsewhere. I was not required to take the bar exam in the District of Columbia or in Colorado, because they extend reciprocity to licensed Texas lawyers. In many states, our firm retains local counsel and we are permitted to practice before courts on a pro hac vice basis – the courts in those other states allow us to practice before them just for the purpose of a single case.

Based on what we have seen sister states do in response to various laws which have been perceived to be discriminatory, it seems very clear to me that some of those sister states will, should this bill be passed, withdraw their reciprocity and not allow Texas-licensed lawyers to waive into the bars, or make it more difficult for Texas lawyers to appear in their courts for the purposes of a single case. This would have a devastating impact not only on law firms like mine, but also on the biggest law firms in our State. Moreover, I oppose this bill because it spits in the face of the best and most honored traditions of the practice of law. In *To Kill a Mockingbird*, Atticus Finch defended an innocent man who no one else would defend, because it was the right, though unpopular, thing to do. It does not take much to imagine, in the days following the tragedy of September 11, a lawyer turning away a Muslim client wrongfully accused of breaking the law; It does not take much to imagine, today when attacks on Asian Americans are on the drastic increase, a lawyer turning away an wrongfully accused Asian American client; and it does not much imagination to imagine a lawyer turning away a gay, lesbian, bisexual or transgender client who needs representation.

I represented two men in Dallas, who were married to each other, who were turned away from a medical practice because they were gay, with a practice that asserted treating them would violate the practice's sincerely held religious belief. It is not hard to imagine a law firm turning away these clients

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Stephanie Perdue

Self

Copperas Cove, TX

I wish I could make the drive down again yo testify in person today.

Keep professional services professional. The right to discriminate against someone because of your religious beliefs is not something that belongs in the state of texas. I urge you to vote against this bill.

Shelly Skeen

Self

Dallas, TX

Subject: Opposition to House Bill 3940

Submitted by: Shelly Skeen

Dallas, TX

My name is Shelly L. Skeen, I am an attorney in good standing who has been licensed to practice law in this state since 1999. I have practiced law as a commercial litigator and appellate practitioner in state and federal courts across the country for over twenty years. During law school, I clerked for a federal judge. After law school, I worked as a briefing attorney and a staff attorney for two separate state appellate courts. In 2018, I earned an LL.M. with specializations in Constitutional Law and Law and Sexuality. I now work for a nonprofit organization and teach as an adjunct instructor at a public Texas law school. During my practice, I also defended lawyers who were accused of legal malpractice and who had grievances filed against them under the Texas Rules of Disciplinary Conduct. With that background in mind, I ask you not to vote this bill out of committee and not to vote this bill into law for the following reasons:

First, the Legislature should not interject itself into a matter that it has given to the Texas Supreme Court. By statute, the Texas Supreme Court (the "Court") has administrative control over the State Bar of Texas pursuant to Tex. Gov't Code § 81.011. The Court is the sole authority for licensing attorneys in our states. As part of that authority, the Court appoints the members of the State Board of Law Examiners, which administers the Texas bar examination. Tex. Gov't Code §§ 82.00, 82.004. In addition, the Court promulgates the Texas Rules of Civil Procedure, the Texas Rules of Appellate Procedure, the Texas Rules of Evidence and other rules and standards, including the Texas Disciplinary Rules of Professional Conduct which govern the conduct of lawyers in our state. Not only is there no need for this bill, but it represents an unwarranted intrusion into matters that should remain within the purview of the Court.

Second, to the extent that the purpose of this bill is to stop the adoption of ABA Model Rule 8.04(g), which the ABA adopted five years ago, any such concern is unfounded. The State Bar and its membership just went through a lengthy process wherein they adopted 8 new rules of professional conduct on or about March 4, 2021. The concern over the adoption of the ABA Model Rule is, therefore, unfounded. Had the State Bar wanted to consider the rule within the last five years, or during the most recent comment and voting process for the newly adopted 8 rules, it could have done, so but it did not. As this Committee likely knows, before a rule of professional conduct is adopted by the State Bar, it goes through a thorough, intensive, and scrutinizing review before it even makes it to the ballot. The lawyers of the State Bar are best able to determine what they need with respect to protection for their profession and protection for their religious and moral beliefs. The Legislature should not interfere with this process by telling lawyers

Danielle Healey

Self

Houston, TX

Subject: Opposition to House Bill 3940

Submitted by: Danielle Healey, Houston, TX

Testimony Against HB 3940 by D.J. Healey

My name is D.J. Healey. I was licensed to practice law in the State of Texas in 1985. I am testifying on my own behalf and as a concerned attorney.

I frequently teach continuing legal education courses approved by the State Bar of Texas, including courses on ethics. I taught a

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course on ethics at a national convention in 2018 for which continuing legal education credits were given by several states. I have taught classes in legal ethics which were accredited by Texas as well as California, Delaware, the District of Columbia, Georgia, Minnesota, Massachusetts and New York. I am submitting this testimony in opposition to HB 3940 because it will cause Texas attorneys significant problems administering their practices, make them less competitive with other states, and increase their costs.

#### I. Texas Lawyers Must Comply With Prevailing Legal Industry Practices and Federal Law

##### A. ABA Rules Protect the Bar, the Public, and Individual Rights

The American Bar Association, the largest voluntary Bar Association in the world, and the most influential in the United States, has promulgated model rules for professional conduct. These rules are the basis for the Multistate Professional Ethics Examination. All people applying to be lawyers in Texas must pass this test. Moreover, nearly all state and federal rules for professional conduct are based on the ABA Model Rules.

The ABA rules are typically adopted by states after their adoption by the ABA. The ABA is also the credentialing body for law schools in the United States. Texas, and nearly all other states, require graduation from an ABA accredited law school as a condition for admission to the practice of law. The ABA rules for credentialing law schools typically follow the form of the ABA Model Rules, but since the law school rules are handled in a different forum they are generally updated on a later track.

The ABA only adopts Model Rules for Professional Conduct after a vigorous, lengthy process that includes drafting and study at different levels of the organization, and then approval by vote of eligible delegates from every state at an annual meeting.

##### B. ABA Rules Prohibit Discrimination and Harassment Co-Extensive with Title VII

The ABA has adopted its Rule 8.4(g), which bars discrimination in professional practice and in professional settings, to the same extent as current federal law.

ABA Model Rule of Professional Conduct 8.4(g)

Rule 8.4: Misconduct

It is professional misconduct for a lawyer to:

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or

Adrian Osella

Self

San Antonio, TX

Subject: Opposition to House Bill 3940

Submitted by: Adrian Osella

San Antonio, TX

Those who need legal representation are already in a stressful, and often life threatening situation. As an LGBT individual who sought legal representation against criminal charges, I cannot imagine having been turned away in the moment I reached out to a lawyer-- just because I am LGBT. Instead, my lawyer and the law firm, a fantastic group in Austin, took my case with absolutely no verbal judgment at all. In fact, they listened with empathy and understanding, and were able to work with me closely in my case that ultimately it was tossed out. Had I been rejected in that moment of desperation because of my identity, I know that I would have suffered an obscene amount of anxiety, shame, and sadness. A bill like HB 3940 distract from the original intent of law; protecting individual liberty and rights, including the right to counsel. A lawyer who would exploit religion so as to decline representing an LGBT individual does not possess the ethical grounding necessary to uphold the Attorney's Oath, and should not be legally allowed to discriminate because of a bill like HB 3940.

Rachel Jackson

Self

Austin, TX

This is a disgusting attempt to discriminate against the LGBTQIA+ community. Do not pass this bill.

Wendy McRoberts

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Self/Mama Bear

Danbury, TX

It seems this legislature just tosses darts to see what sticks. First, as the parent of a trans son, who has fought Texas for 5 years, a large part of my research involved finding QUALIFIED GENDER SPECIALISTS. Most parents don't want to take their kids to an untrained and unqualified physician for this situation. You go where the training is so that there are helpful resources, rather than issues with someone uneducated on transgender healthcare. For emergency situations, Doctors have to treat everyone or find another job. There is very little chance a doctor that believed the patient was "inherently" wrong would get the opportunity to treat the child. The parent/patient often picks up on that and removes their child before some under educated bigot causes our kids more pain. As a former State employee, I believe we were not ALLOWED to sponsor "State Sanctioned" discrimination. Since the State issues the "License to Practice " that would ENDORSE State Sanctioned discrimination. Next, will there be a full list of lifestyle disagreements for ALL patients? 1) Did you have sex before marriage? 2) Have you committed adultery? 3) Do you watch porn? 4) Have you lied about fleeing to Cancun and let your constituents die? 5) Have you committed fraud to cover an affair and abused your position as a servant of the people and then committed sedition to secure a pardon for your current FBI investigation? See how messy it gets? The choices are endless and the HYPOCRISY is in FULL GOP. Oh and the NCAA said they're pulling games for States that enact anti trans laws. So maybe check out your profit loss before deciding how "moral" to be.