

Amended Witness Statement of Carter E. Strang,
President of the Cleveland Metropolitan Bar
Association, in Opposition to the Governor's
Proposed 5% Tax on Legal Services

Introduction

I am Carter Strang, Cleveland Metropolitan Bar Association President. On behalf of the CMBA, I thank you for this opportunity to present testimony today about the proposed 5% tax on legal services.

On a personal note, I am a lifelong Ohio resident. I was born in Zanesville, and my father's Hall of Fame coaching career took us to Caldwell, Upper Sandusky, East Cleveland, Massillon, and Kent, where I graduated from Kent State in 1973.

I am a partner with the Cleveland-based law firm Tucker Ellis LLP, which has offices in Columbus, Denver, Los Angeles and San Francisco, and I have practiced law for almost thirty years since graduating from Cleveland-Marshall College of Law in 1984.

The CMBA

The CMBA is Ohio's largest metropolitan bar association with nearly 6,000 members, including attorneys of all practice areas and firm sizes, judges, paralegals, and law students. It serves as a center for legal professionalism in the Cleveland area, promoting the highest ethical and professional standards.

The CMBA includes members of every political stripe. It seldom takes sides on political issues -- such as a state budget proposal -- but it does take a stance on issues access to justice, constitutional rights, and/or the fundamental role of attorneys in our society.

CMBA Opposes Tax on Legal Services

The Cleveland Metropolitan Bar Association strongly opposes the proposed 5% tax on legal services set forth in Governor Kasich's budget (fiscal year 2014-2015) because the tax will decrease both access to justice and legal sector jobs. It takes no position on the budget itself.

The CMBA is pleased that the Ohio State Bar Association and many city, county, and specialized bar associations have joined it in opposition to the proposed tax.

The damage such a tax will cause to access to justice and to legal sector employment is why it is a bad idea for Ohio, why 47 other states have no such tax, and why several that passed it have since repealed it, including Florida and Michigan.

Providing Access to Justice is an Essential Service

The Governor's budget provides for a 5% tax on services that are deemed non-essential by his administration. Services deemed essential are not subject to a service tax.

The newly taxed services include pet grooming, laundry, and dating services. Inexplicably, legal services are also included in the tax as a non-essential service.

Access to justice is a fundamental right and use of an attorney to exercise that right is an essential service. Stopping foreclosures, keeping the falsely accused out of prison, gaining child custody, securing benefits for veterans, and obtaining divorces for abused spouses are just a few of the life-altering essential services that our attorneys provide day in and day out.

Classification of such services as non-essential services as non-essential defies logic, is not grounded in sound public policy, and raises significant Constitutional questions. My request to the administration for an explanation for how they arrived at that decision was never answered.

Ohioans need legal services when they are at their most vulnerable. Such services are not discretionary. A true “misery tax, it will constitute a hardship to Ohioans -- particularly for those already struggling economically -- who ultimately will be forced to actually pay the tax, forgo their legal rights, or attempt to represent themselves in our complex legal system.

The Tax Will Reduce Legal Service Employment

A 5% tax on legal services will be a jobs killer for the thousands of Ohioans employed in the potentially put such jobs at risk. Attorneys, paralegals, secretaries, administrators, and others will be negatively affected by the increased cost of legal services.

Companies have increasingly looked to Ohio for legal services, not only because of the excellent quality of such service, but also because the costs charged are lower than in many other states. Only Hawaii, New Mexico and South Dakota tax legal services, per data provided by the American Bar Association. The proposed tax will make Ohio less competitive for those services, and result in less work for Ohio attorneys.

Ohio law firms – particularly those with national and international practices – will have every incentive to relocate attorneys and staff to one of the 47 states where the tax isn’t imposed.

I offer my own law firm as an example of the adverse economic impact the tax will have on legal service providers. Tucker Ellis LLP was founded in 2003 with 158 Ohio employees and has since grown to 245 employees though out Ohio, a net gain of 87 stable, good paying Ohio jobs.

Companies hire Tucker Ellis to provide legal services across the country, not just in Ohio. The firm competes for that national work against firms from New York, Chicago, and other large metropolitan areas. Tucker Ellis has won much of that work in part due to a competitive pricing advantage which has allowed it to expand the number of good paying jobs it provides in our state. The proposed tax will hurt the firm’s price advantage, inhibit its ability to continue to grow more of these good jobs, and will potentially put such jobs at risk. Many other Ohio law firms share similar concerns about the proposed tax’s adverse economic impact.

The tax will be particularly unfair to small businesses, which Governor Kasich says he is trying to help through his budget. Businesses large enough to have their own legal departments will avoid the tax on the work done by their attorneys, while smaller businesses – which typically cannot afford their own legal departments – will have to pay it.

A tax on legal services will be another cost of doing business in Ohio that may dissuade companies from relocating here.

The tax will also create significant compliance and enforcement issues. Lawyers – who are legally obligated to collect the tax paid by their clients and hold it in trust for payment to the State of Ohio – will incur increased administrative costs and face potential liability from the State of Ohio and/or clients for the amount due and collected.

Determining the amount of tax due will be particularly difficult for complex multi-state transactions. In addition, state auditing of attorney records raises attorney-client privilege and other issues.

Conclusion

The Cleveland Metropolitan Bar Association is committed to making our city, region and state stronger. While we are sympathetic to Governor Kasich's desire to grow Ohio's economy, taxing legal services is the wrong way to do it. It will not create a better Ohio; rather, it will harm Ohio citizens, businesses and legal service providers.

I ask that my amended witness statement be added to the record of these proceedings.

Thank you.

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