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Imagine you are sitting across the desk from Hal, a legal document preparer. Hal prompts you with questions in order to help you properly fill out and file the paperwork on the new vehicle you just purchased. Hal is trained to take the answers you provide, apply them to their proper places in the forms, and draw legal conclusions regarding your equity in ownership, loan obligations, and warranty information. The only problem is—not only is Hal not a lawyer—Hal is not human. Hal is a computer software program created by an attorney to operate a series of complex decision-trees based on your input, and it prepares a legal-document based on the outcome.¹

In an age of exponential technological growth, companies have generated hundreds of millions of dollars in revenue with computer products like Hal.² This advancement is fast outpacing the traditional definitions of the “practice of law,” and courts are now realizing they are ill equipped to render decisions concerning complex technology when the role of the lawyer has never been adequately defined.³

The Arkansas Supreme Court’s decision in Campbell v. Asbury Automotive, Inc.⁴ presents a new concern when tackling the complex intersection of technology and the definition and role of a lawyer. Asbury, the fifth larg-

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² Tomio Geron, LegalZoom Files For IPO Of Up To $120 Million, FORBES (May 11, 2012, 4:15 PM), http://www.forbes.com/sites/tomiogeron/2012/05/11/legalzoom-files-for-ipo/; Debra Cassens Weiss, LegalZoom Valued at 40 Times Last Year’s Earnings for IPO, A.B.A J. (July 25, 2012, 9:38 AM), http://www.abajournal.com/news/article/legalzoom_valued_at_40_times_last_years_earnings_for_ipo/; LegalZoom, Inc., Registration Statement (Form S–1) (May 10, 2012), available at http://www.sec.gov/Archives/edgar/data/1286139/000104746912005763/a2209299zs-1.htm [hereinafter LegalZoom Registration Statement] (In 2011, 490,000 orders were placed through LegalZoom.com; 20% of all limited liability companies in California were created by LegalZoom; During the past ten years, LegalZoom has served over 2,000,000 customers. Revenue in 2011 was $156 million); but cf. Jennifer Smith, Rivalry Grows Among No-Frills Legal Services, WALL ST. J. (Dec. 3, 2012, 10:37 AM), http://online.wsj.com/article/SB10001424127887323717004578155413493106962 (“[P]lans to take [LegalZoom] public have been on hold since August because of market conditions.”).
est automotive retailer in the country, operated eight dealerships in the central Arkansas area. Otis Campbell sued on behalf of a class of Asbury customers alleging that the company engaged in the unauthorized practice of law when it charged a fee to complete standard legal documents related to the car-buying process, including a retail buyer’s order and a Truth in Lending Disclosure.

In response, Asbury argued these documents were merely standardized forms necessary to purchase a vehicle, and did not require the knowledge, skill, or judgment of a lawyer. Not only did the court find that Asbury operated as a “law practicing company,” but it also concluded that through Asbury’s conduct arose a fiduciary duty of good faith and fair dealing to its customers. In admonishing Asbury’s fee-charging practice, the court held that by presenting itself as a legal-document preparer—even in the single context of car-purchasing documents—a fiduciary relationship attached. This exposed Asbury to liability should it breach the standards of good faith, honesty, and loyalty.

The inescapable question then becomes how the Arkansas Supreme Court should address the practices of a company like LegalZoom.com, a website providing online legal services that are essentially operating in the same illegal manner as Asbury. Like Asbury, LegalZoom has likely been practicing law without authorization. But can a software program have a fiduciary relationship with its users, as Arkansas precedent conclusively requires document preparers to maintain?

The Arkansas Supreme Court has, in fact, recently been introduced to the practices of LegalZoom, its online document preparation, and its soft-

6. Asbury, 2011 Ark. at 29 n.6, 381 S.W.3d at 41.
7. Id. at 24, 381 S.W.3d at 38.
8. Id. at 33, 381 S.W.3d at 43.
9. Id.
10. Id.; see also Cole v. Laws, 349 Ark. 177, 185, 76 S.W.3d 878, 883 (2002).
13. The court created an exception to the attachment of a fiduciary duty when creating “simple real estate transactions, provided they had been previously prepared by a lawyer.” Pope Cnty. Bar Ass’n, Inc. v. Suggs, 274 Ark. 250, 252, 624 S.W.2d 828, 829 (1981); see also Creekmore v. Izard, 236 Ark. 558, 565, 367 S.W.2d 419, 423 (1963).
ware-based lawyer-like services. But in LegalZoom.com, Inc. v. McIlwain, the court stopped short of ruling on the legality of its enterprise. Using the same principle as Campbell, the court should have ruled LegalZoom was practicing law—a violation of Arkansas law. Jonathon McIlwain, a Russellville resident, used LegalZoom to purchase a personalized Last Will and Testament. For $98.95, he completed an online questionnaire, and in the words of the court, “[LegalZoom] provided McIlwain with a custom-made document.”

After the transaction, McIlwain filed a class action alleging that LegalZoom was engaging in the unauthorized practice of law in Arkansas. He also asserted that this also violated the Arkansas Deceptive Trade Practices Act. LegalZoom’s reply, and the argument the court found most compelling, was grounded in Supremacy Clause jurisprudence. The majority viewed the validity of the arbitration clause as the first and only issue within its power to rule. Because it viewed the arbitration clause as enforceable, the United States Supreme Court’s “federal policy that favors arbitration” displaced the court’s ability to rule on the merits of McIlwain’s claims: “When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the [Federal Arbitration Act].”

But this was not a circumstance of state law prohibiting entirely the arbitration of a particular type of claim. As Chief Justice Hannah explained in his dissent, “[t]he analysis does not reach that far.” As the Arkansas Constitution mandates, the Arkansas Supreme Court is tasked with regulating the practice of law. This power is unique—lying outside of the traditionally passive judicial authority. The court is not regulated to waiting for the issues of unauthorized practice of law to meander through Arkansas’s judicial system until they are properly presented before the court. As such, “[h]ad LegalZoom’s conduct come to the attention of this court, this court would have been bound to act on its own regardless of whether there was a contract or whether any person had filed a complaint.”

Now that court has been introduced to LegalZoom and its lawyer-like services, it is constitutionally required to rule on its legality. This article will

15. See id. at 9, ___ S.W.3d ___, at ___.
16. Id. at 2, ___ S.W.3d ___, at ___ (emphasis added).
17. Id. at 2, ___ S.W.3d ___, at ___.
18. Id. at 8–9, ___ S.W.3d ___, at ___.
19. Id. at 9, ___ S.W.3d ___, at ___ (AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740, 1747 (2011)).
20. Id. at 9, ___ S.W.3d ___, at ___ (Hannah, C.J., dissenting).
21. Ark. Const. amend. XXVIII (“The Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law.”).
attempt to provide guidance to the court and its Committee on the Unauthorized Practice of Law in that effort. This note addresses these issues and suggests ways in which Arkansas courts can use *Campbell* as guidance toward addressing their treatment of online-document-preparation.  

First, this note provides necessary factual background on the development of the industry and operations of online-document preparation, including the benefits it provides its consumers. Second, the note explains Arkansas’s current approach to regulating the unauthorized practice of law (UPL), emphasizing the Arkansas Supreme Court’s decision in *Campbell* and its impact on the current view of the legal profession. Finally, the note argues that the Arkansas Supreme Court should distinguish between the activities in which a non-lawyer—whether human or computer—provides a useful service without triggering a fiduciary relationship, and those activities that the court in *Campbell* defined as the unlicensed practice of law. The court should authorize LegalZoom’s services only in conjunction with the review of a licensed Arkansas attorney. This obligation triggers the required fiduciary relationship and provides a non-protectionist approach to technology that must be the position of any profession seeking to remain relevant in a technologically evolving world.

II. BACKGROUND

A. The Unauthorized Practice of Law — “The Trouble With the Law Is Lawyers.”

The history of Arkansas’s regulation of the practice of law is unique. Attorneys, apart from almost all other professions, are essentially self-governed. But not only have Arkansas lawyers policed themselves for dec-


24. See discussion infra Part II.A.

25. See discussion infra Part II.B.


ades, they have also cemented the Arkansas Supreme Court’s exclusive authority over those practicing law into the state’s constitution. While the seat of governing authority is unmistakably clear, that clarity is lost when attempting to actually define the practice of law. Judges and lawyers in Arkansas and nationwide have grappled with defining the services they render. Courts have appeared to rely on the oft-quoted legal standard, “I know it when I see it.” When faced squarely with the task of defining the profession, the Arkansas Supreme Court was flummoxed: “The individual members of this court have spent many hours of research in trying to [define the practice] . . . . There seems to be no clear cut definition of the term.” Hence, Arkansas courts have tackled the facts of each case as it was presented, rather than establishing an overarching and comprehensive view of the profession.

This imperfect understanding of the practice of law makes defining the sphere of the unauthorized practice of law equally amorphous. In some cases it may be clear. A layperson attempting to give the opening statement in a jury trial is clearly breaching the exclusive realm of a licensed attorney. As legal documentation, however, now accompanies everything from the purchase of a home to the purchase of a cell-phone service plan, the line blurs. The court has at times parsed its own case law to conclude that “many activities, such as writing and interpreting wills, contracts, trust agreements and

Myth of Self-Regulation, 93 MINN. L. REV. 1147, 1149 (2009) (“Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement . . . .”) (quoting MODEL RULES OF PROF’L CONDUCT pmbl. para. 10 (2008)).

29. Ark. Const. amend. XXVIII (“The Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law.”). Actually authored by justices of the Arkansas Supreme Court, the constitutional amendment was approved by election on Nov. 8, 1938. The court then “put to rest for all time any possible question about the power of the courts to regulate the practice of law in the state,” which is “exclusive and supreme.” McKenzie v. Burris, 255 Ark. 330, 341, 500 S.W.2d 357, 364 (1973).

30. Ark. Bar Ass’n v. Block, 230 Ark. 430, 434–35, 323 S.W.2d 912, 914 (1959), overruled in part by Creekmore v. Izard, 236 Ark. 558, 367 S.W.2d 419 (1963): “Research of authorities by able counsel and by this court has failed to turn up any clear, comprehensible definition of what really constitutes the practice of law. Courts are not in agreement. We believe it is impossible to frame any comprehensive definition of what constitutes the practice of law. Each case must be decided upon its own particular facts. The practice of law is difficult to define. Perhaps it does not admit of exact definition.”

31. Taken from Justice Stewart’s famous statement concerning the definition of pornography in Jacobellis v. State of Ohio, 378 U.S. 184, 197, 84 S. Ct. 1676, 1683 (1964) (“I shall not today attempt further to define the kinds of material I understand to be embraced within [pornography] . . . . But I know it when I see it, and the motion picture involved in this case is not that.”).

32. Creekmore, 236 Ark. at 564, 367 S.W.2d at 423.

33. Block, 230 Ark. at 434, 323 S.W.2d at 914.
the giving of legal advice in general, constitute practicing law.\textsuperscript{34} Additionally, Arkansas statute expressly prohibits corporations from appearing as attorneys at law.\textsuperscript{35} Specifically, the court in \textit{Arkansas Bar Association v. Block}\textsuperscript{36} held that “by filling in the blank spaces” of “standardized and approved prepared [legal] forms,” a person was indeed practicing law.\textsuperscript{37} In \textit{Creekmore v. Izard},\textsuperscript{38} the court slightly modified its holding in \textit{Block} by allowing real estate brokers, in specific instances, to prepare necessary legal documents for real estate transactions.\textsuperscript{39} In its holding, the court did not redefine its view of the practice of law, but rather concluded that public policy considerations of convenience and efficiency outweighed the still obvious violation of the practice of law.\textsuperscript{40}

In \textit{Creekmore}, and later reiterated in \textit{Pope County Bar Association v. Suggs},\textsuperscript{41} the court outlined six requirements to allow a person unlicensed to practice law to complete ordinary transactional forms:

(1) That the person for whom the broker is acting has declined to employ a lawyer to prepare the necessary instruments and has authorized the broker to do so; and

\begin{itemize}
  \item 35. \textsc{Ark. Code Ann.} § 16-22-211 (1999 & Supp. 2013) provides the following: “(a) It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney at law for any person in any court in this state or before any judicial body, to make it a business to practice as an attorney at law for any person in any of the courts, to hold itself out to the public as being entitled to practice law, to tender or furnish legal services or advice, to furnish attorneys or counsel, to render legal services of any kind in actions or proceedings of any nature or in any other way or manner, or in any other manner to assume to be entitled to practice law or to assume or advertise the title of lawyer or attorney, attorney at law, or equivalent terms in any language in such a manner as to convey the impression that it is entitled to practice law or to furnish legal advice, service, or counsel or to advertise that either alone or together with or by or through any person, whether a duly and regularly admitted attorney at law or not, it has, owns, conducts, or maintains a law office or any office for the practice of law or for furnishing legal advice, services, or counsel.”
  \item 36. 230 Ark. 430, 435, 323 S.W.2d 912, 914 (1959).
  \item 37. \textit{Id.} at 437–38, 323 S.W.2d at 916.
  \item 38. 236 Ark. 558, 367 S.W.2d 419 (1963).
  \item 39. \textit{Id.} at 565, 367 S.W.2d at 423.
  \item 40. \textit{Id.} at 565, 367 S.W.2d at 423; see also Pope Cnty. Bar Ass’n v. Suggs, 274 Ark. 250, 252–53, 624 S.W.2d 828, 829 (1981). Despite allowing exceptions to certain real estate operations, the court held “the use and preparation of these instruments as so indigenous to the practice of law that it would be illogical to say they are not.” \textit{Id.} at 256, 624 S.W.2d at 831.
  \item 41. 274 Ark. 250, 252–53, 624 S.W.2d 828, 829 (1981).
\end{itemize}
(2) That the forms are approved by a lawyer either before or after the blanks are filled in but prior to delivery to the person for whom the broker is acting; and

(3) That the forms shall not be used for other than simple real estate transactions which arise in the usual course of the broker’s business; and

(4) That the forms shall be used only in connection with real estate transactions actually handled by such brokers as a broker; and

(5) That the broker shall make no charge for filling in the blanks; and

(6) That the broker shall not give advice or opinions as to the legal rights of the parties, as to the legal effects of instruments to accomplish specific purposes or as to the validity of title to real estate.\textsuperscript{42}

Against this jurisprudential backdrop, Otis Campbell filed suit against Asbury Automotive, Inc. Mr. Campbell filed a class action in the Pulaski County Circuit Court, alleging violations of the Arkansas Deceptive Trade Practices Act (ADTPA) by Asbury’s routine fee charging for legal document preparation, constituting the unauthorized practice of law.\textsuperscript{43} The trial court granted summary judgment in favor of Asbury on the ADTPA claim, but ruled for Mr. Campbell’s summary judgment motion on the UPL claim.\textsuperscript{44} On appeal, the supreme court affirmed the judgment on the UPL claim, relying on the six requirements established by Suggs.\textsuperscript{45} Justice Paul E. Danielson, writing for six of the seven justices, did not hesitate to find Asbury operating outside of the Suggs UPL exception.\textsuperscript{46} In its own court filings, Asbury admitted to charging for “filling in the blanks,” explicitly prohibited by both Suggs and Creekmore.\textsuperscript{47}

B. The Case for Professional Competence

The bubble burst on the ostensibly unstoppable growth of the legal services market over the past quarter century, resulting in members of the legal profession clamoring for solid ground in the aftermath.\textsuperscript{48} One long-standing reactionary tactic within the legal community has been to secure its walls against “the barbarians at the gate”—those providing legal services sans

\textsuperscript{42} Id.


\textsuperscript{44} Id. at 3–4, 281 S.W.3d at 27.

\textsuperscript{45} Id. at 28, 281 S.W.3d at 40.

\textsuperscript{46} Id. at 29, 281 S.W.3d at 41.

\textsuperscript{47} Id. at 30, 281 S.W.3d at 41.

attorney. These strategies, coupled with the ever-malleable definition of the practice of law, have unflattering implications. The wider the scope of the definition, the wider the monopoly lawyers maintain of one of the most lucrative industries in the United States.50

While the profession may truly be impossible to comprehensively define, this indeterminacy lends itself to extensive control over legal access.51 An American Bar Association study, conducted in 1995, concluded that nearly 80% of low-income individuals are unable to afford an attorney, including in those circumstances where a lawyer is necessary.52 Pro se litigation is on the rise, even for those individuals and families who can afford an attorney.53 The benefit of a lawyer’s expertise weighed against the risks of legal self-help often leans in favor of completely foregoing attorney help—especially when dealing with relatively simple transactions.54 The unfortu-


50. Smith, supra note 2 (“[T]he lucrative U.S. legal-services market . . . generated $269.6 billion in 2011, according to the U.S. Bureau of Economic Analysis.”). Citing a commissioned study by L.E.K. Consulting, LLC, LegalZoom stated in its S-1 filing with the U.S. Securities and Exchange Commission that small businesses and consumers spent $97 billion on legal services in 2011. LegalZoom Registration Statement, supra note 2.

51. See, e.g., Lanctot, supra note 49, at 256: “In the past, one weapon that the organized bar has used to protect itself during economic hard times is the principle of unauthorized practice of law—guarding its market for legal services against the barbarians at the gate. Although pursuing laypeople for intruding into the business of lawyers is an ongoing regulatory tactic, studies have shown that such enforcement actions inspire particular devotion during times when business is scarce for licensed lawyers.”


53. See generally Joseph Callanan, Pro Se Bankruptcy Filings Growing Faster than Other Debtor Relief, ABA Litigation News (Dec. 29, 2011), http://apps.americanbar.org/litigation/litigationnews/top_stories/010312-pro-se-bankruptcy-growing.html: “[A] recent study by the Administrative Office of the U.S. Courts of bankruptcy filings . . . found the growth rate of pro se filings is double that of regular filings. The study indicates bankruptcy debtors with legal representation increased 98 percent during the five-year period of the study. By contrast, pro se bankruptcy filings ballooned 187 percent.”

nate reality in a stagnant economy, with so many facing unemployment, eviction, and financial struggles, is that many face situations where legal representation would have avoided many of the consequences they now face—unfair mortgage foreclosures, penalties, and loss of colorable claims. Laurence Tribe, head of the U.S. Justice Department’s Access to Justice Initiative, has gone so far as declaring that “[t]he whole system of justice in America is broken. The entire legal system is largely structured to be labyrinthine, inaccessible, [and] unusable.”

However flawed the current legal system is, the answer is not to be found in empowering non-lawyers to conduct activities that require knowledgeable legal expertise. Proponents of lower cost legal service accessibility argue that complicated legal problems may be handled by licensed attorneys, while simple legal transactions in certain areas of law—wills, real estate, divorces—could be handled by non-lawyer legal service providers. This division, however, proves problematic. One of the most indispensable responsibilities of a licensed attorney is to recognize a case’s potential complexity, especially when it hides beneath deceptive clarity. Being unable to decipher those problems—either through self-help or unlicensed help—can present such severe consequences that they have served as the justification for the heavily proscribed regulation of the legal profession.

vidual clients likewise assume that electronic tools make lawyers increasingly irrelevant to help with commodity services like drafting a will, filing a patent application, or registering a deed.”).


57. See Underwood, supra note 54, at 438.

58. See Emily Brandon, How to Write a Will Online, U.S. NEWS (Nov. 12, 2007), http://money.usnews.com/money/retirement/articles/2007/11/12/how-to-write-a-will-online: “Most experts agree that do-it-yourself wills are best suited for people worth less than $2 million, the threshold for triggering estate taxes. ‘Legal fees have gone up, and some people feel that they often can no longer afford to go get their work done by a lawyer,’ says Alan Rothschild, vice chairman of the trust and estate division of the American Bar Association and an estate-planning lawyer in Columbus, Ga., who estimates that a basic estate plan from a lawyer costs $500 to $1,000.”


60. See, e.g., J. Howard Beales, III, The Economics of Regulating the Professions, in REGULATING THE PROFESSIONS 125, 127 (Roger D. Blair & Stephen Rubin eds., 1980) (addressing the need for regulation rather than a free market given the drastic consequences of low quality legal services).
For example, someone creating a will with the assistance of a legal formbook may mistakenly leave $200,000 to “[insert name here]” rather than to a family member. Accompanied by countless others, this type of occurrence suggests that persons engaging in their own legal work without assistance may find it less expensive in the short term to forego a licensed attorney’s services, but problems often arise in the long term that prove more costly than worthwhile—both financially and emotionally.

As advocates for people involved in some of the most harrowing and stressful events in their lives—ugly divorces, imminently necessary wills, lawsuits wherein an adverse judgment means complete financial ruin—attorneys are held to the highest of professional standards. The relationship between Arkansas lawyers and their clients has always been recognized as a “special relationship,” one that burdens the practitioner with the duties of good faith, trust, confidence, and complete honesty. This standard extends to those operating as licensed attorneys or assuming the functions of a lawyer. Surprisingly, the court had not addressed the standard of those functioning as lawyers until 1981 in Wright v. Langdon. There, without its own precedent to rely upon, it invoked common sense, because “reason urges that the standard should be no less than that required of a licensed attorney, and conceivably an even higher standard . . . to deter those who might be otherwise tempted to profess a competence they have no right to claim.”

This fiduciary duty cannot be shirked even by disclaiming any duty within any expressed terms of an agreement. Liability for breach of duty always accompanies the unlicensed practice of law.

61. Id.
62. Id.
66. Id.
67. Id. at 263, 623 S.W.2d at 826. The court in Wright cited several other state supreme courts that had already reached the same conclusion as early as 1895. See, e.g., Miller v. Whelan, 42 N.E. 59, 63 (1895) (“That [the defendant] was not a lawyer, and had fraudulently imposed upon [the plaintiff] in that regard, did not release him from the duty that in his assumed character of a lawyer he had voluntarily taken upon himself.”).
69. See Cole, 349 Ark. at 185, 76 S.W.3d at 883.
On appeal, Asbury challenged the circuit court’s ruling that the corporation burdened itself with the same standards as a licensed attorney in preparing legal documents related to the process of buying a car.\(^70\) It urged the court to use a case-by-case factual analysis, looking to the circumstances of how the violator engaged in UPL, and what duties arose from the actual interactions with the “client.”\(^71\)

Asbury fought the application of a fiduciary relationship for obvious reasons. It is cliché to assume such tired stereotypes as the slick, dishonest, used-car salesman who sees only dollar signs where others see valued customers. But while there are certainly many honest and upstanding men and women in the car-selling profession, few could be said to maintain a fiduciary relationship with their customers. It is through no fault of their own. One who holds a fiduciary relationship can hold no opposing, competing, or conflicting interests.\(^72\) By the very nature of the industry—and sales generally—a certain amount of self-interest is inevitable. The lower the offering price for a car, the lower the profit margins for the salesman.\(^73\) There is an incapability of self-dealing that is irreconcilable with the strict bounds of a fiduciary relationship under Arkansas law.\(^74\)

Concerning the relationship Asbury maintained with its customers, the court’s holding is significant in two regards. First, Asbury’s conduct amounting to an unlicensed law practice saddled the company with the same fiduciary relationship that exists between attorneys and clients.\(^75\) Second, given this standard of conduct, the circuit court did not err when it accepted Mr. Campbell’s view that “[c]ar dealers that prepare or complete legal documents for pay are prohibited from arguing or proving that in fact their conflict of loyalties had no influence upon their conduct.”\(^76\) The court held that Asbury could not conceivably perform the duties of full disclosure, fair deal-

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71. Id.
72. Cole, 349 Ark. at 185, 76 S.W.3d at 883. The court held in Cole that by definition, a fiduciary can hold no undivided interests, or one that involves “betrayal of a trust and benefit by the dominant party at the expense of one under his influence.”
74. Cole, 349 Ark. at 185, 76 S.W.3d at 883 (“The guiding principle of the fiduciary relationship is that self-dealing, absent the consent of the other party to the relationship, is strictly proscribed.”) (citing Sexton Law Firm, P.A. v. Milligan, 329 Ark. 285, 298, 948 S.W.2d 388, 395 (1997)).
75. Asbury, 2011 Ark. 157, at 32–33, 381 S.W.3d at 42–43.
76. Id.
ing, and good faith, while also assuming the role of a dealer, one that is naturally adverse to the buyer.\textsuperscript{77}

C. Putting the Law on Your Side — The Rise of LegalZoom

Among other consequences, the economic crisis that began in 2008 forced families to squarely face harsh new realities. Home foreclosures, unemployment, shrinking consumer credit, family stress, and vanishing retirement savings have all forced some under the poverty line for the first time.\textsuperscript{78} From 2005 to 2008 alone, the number of Americans living below 125\% of the poverty line increased from 49.6 million to 53.8 million.\textsuperscript{79} Many Americans are still faced with a new standard of living that may remain lower than before the country entered the worst recession since the mid-twentieth century.\textsuperscript{80}

This new American reality has widened the already troubling gap between legal services and those who need them most.\textsuperscript{81} Those in poverty seeking state legal aid have a fifty-percent chance of being turned away.\textsuperscript{82} Only one legal aid lawyer is available for every 6,415 low-income persons.\textsuperscript{83} Additionally, state legal studies show that less than one in five of the legal needs faced by low-income individuals and families are actually met by private attorneys or legal aid.\textsuperscript{84} When surveyed to provide reasons why poor families are not obtaining these services, the answers are disappointing—"Didn’t know who could help," “Afraid/intimidated,” and “Couldn’t afford a lawyer.”\textsuperscript{85}

The State of Arkansas itself has faced severe federal and state funding cutbacks to the “only game in town for individuals with civil issues without resources to pay an attorney,”—Legal Aid of Arkansas. The organization

\textsuperscript{77} Id. at 33, 381 S.W.3d at 43.
\textsuperscript{79} Id. at 6.
\textsuperscript{81} Legal Servs. Corp., supra note 78, at 1–2.
\textsuperscript{82} Id. at 1 (“Data collected in the spring of 2009 show that for every client served by an LSC-funded program, one person who seeks help is turned down because of insufficient resources.”).
\textsuperscript{83} Id.
\textsuperscript{84} Id.
\textsuperscript{85} Id. at app. C.
\textsuperscript{86} The quote was given to KARK News by Lee Richardson, Executive Director of Legal Aid Arkansas. Legal Aid of Arkansas Suffers Funding Cuts, ARKANSASMATTERS.COM
will likely face a 10% decrease in funding in 2013, on top of a recent 18% state funding cut to Arkansas’s State Administration of Justice Fund and a 14.9% federal funding cut to the Legal Services Corporation over the last fiscal year. For the non-profit, this equated to a forced hand, requiring Legal Aid to close seven thousand cases and turn away one of every two Arkansans who sought legal assistance.

These circumstances, among others, have contributed to the runaway success of LegalZoom.com, Inc., which filed for an initial public offering of up to 120 million dollars. Gaining revenue of $120.8 million in 2010, and increasing to 156.1 million in 2011, the company, co-founded by famed O.J. Simpson attorney Robert Shapiro, has risen above other online legal service websites to become a household name. LegalZoom, Inc., the company that “put[s] the law on your side” is currently a privately held company headquartered in California that operates the website www.legalzoom.com, offering a wide variety of online document forms and legal services. The company has clearly entered a void in the Internet, one that attorneys have generally left wide open for it to occupy.

The website claims to have served over one million customers, to whom it offers a “100% satisfaction guarantee.” First, the site offers stand-
ard legal forms in digital form, the same forms that have been available in print and have been accepted by courts without issue for decades (i.e. affidavits, promissory notes, bills of sale). Second, and most crucial to this discussion, the website offers an interactive legal service portal for its customers, based entirely online. This prong of the company’s business model has been the largest source of contention between the site’s owners and those who believe the site is violating UPL regulations.

Upon entering the site, the customer is faced with a variety of legal document preparation services. A user may choose between such differing legal documents as pet protection agreements and trademark and patent applications. Once a selection is made, the owner of a beloved Chihuahua or brilliant new invention is ushered through an online questionnaire, taking the user step-by-step through the chosen document. Behind the aesthetics of the virtual questionnaire is a computer software program that amounts to a “branching intake mechanism”—a decision tree that takes each answer the user gives and makes a series of automated decisions. For example, the software the company calls “LegalZip,” may skip an entire series of questions relating to a spouse or dependents based on a user’s answer classifying the user as “single with no children.”

The process is fully automated, controlled only by static choices and decision-making based on the written computer code. Relevant information is supplied to users in sidebar displays or pop-up windows depending on the question. Critically, however, no employee gives real-time advice to the user. When the automated program fills in each blank space

98. See id. at 1054; Michael P. Forrest & Mike Martinez Jr., Too Broke to Hire an Attorney? How to Conduct Basic Legal Research in a Law Library, 9 SCHOLAR 67, 85 (2006) (discussing the variety of self-help options a law library holds for those not seeking professional legal assistance).
102. Janson, 802 F. Supp. 2d at 1055.
104. See Janson, 802 F. Supp. 2d at 1055–56.
106. See Janson, 802 F. Supp. 2d at 1055–56.
107. See id. at 1055.
108. See id.
109. See id.
completely, a LegalZoom employee reviews the document for commonplace spelling and grammatical errors. The employee may contact the user after finding an incomplete or inconsistent answer in order to correct the mistake. The finished—but unsigned—document can be mailed either to the users to do with what he or she wishes, or, in the case of trademark and copyright applications, directly to the government for processing.

LegalZoom asserts this process in no way infringes upon the regulated realm of a licensed attorney. In its view, users prepare the documents themselves, and the online questionnaire only simplifies and facilitates pro se representation. In fact, disclaimers abound throughout the website’s many pages. The company’s disclaimer for its LegalZip software states that the site is not a law firm, and no rendered services may be substituted or understood to be the advice of a licensed attorney. Additionally, before customers can finish the document-preparation process, they must first agree that the site did not give any “advice, explanation, opinion, or recommendation to [the customer] about possible legal rights, remedies, defenses, options, selection of forms or strategies.” The website expressly disclaims an attorney-client relationship, as well as any guarantee that the forms are current, accurate, or applicable in every jurisdiction.

While the multiple disclaimers—made obvious to the user—appear to send a unified message, LegalZoom’s prolific advertisement campaigns muddy the legal waters. For example, those with cable television (or Internet access) have likely seen one of the company’s many television commercials. In one of these ads, a voice-over states the following:

Over a million people have discovered how easy it is to use LegalZoom for important legal documents, and LegalZoom will help you incorporate your business, file a patent, make a will and more. You can complete our

110. See id.
111. Id.
113. Id. at 1063.
115. See Disclaimer, supra note 114.
116. See Schindler, supra note 114, at 190.
117. See Disclaimer, supra note 114.
118. See Janson, 802 F. Supp. 2d at 1055.
119. See Fisher, supra note 93.
online questions in minutes. Then we’ll prepare your legal documents and deliver them directly to you.\(^\text{120}\)

Another commercial expresses a similar sentiment:

Log on to LegalZoom.com and check out filing incorporation papers for a new business. Click the tab marker “Incorporations, LLCs and DBAs.” Then click the “get started” button, and you’re in. Just answer a few simple online questions and LegalZoom takes over. You get a quality legal document filed for you by real helpful people.\(^\text{121}\)

Users may understand that their relationship to the website does not constitute an attorney-client relationship, but the advertisements seem to suggest something more than offering online legal form books for customers to fill out and do with as they wish. The company claims to “put the law on your side,” to “take[] over” and “prepare your legal documents” for you.\(^\text{122}\)

A Missouri federal court held that under Missouri’s UPL common law, LegalZoom crossed the line from formbook to function and from product to service.\(^\text{123}\) In *Janson v. LegalZoom.com, Inc.*, Todd Janson, along with other co-plaintiffs, sued LegalZoom claiming that the company had engaged in the unauthorized practice of law under Missouri’s Merchandising Practices Act.\(^\text{124}\) The court in *Janson*, relying on precedent similar to that of Arkansas’s, denied LegalZoom’s motion for summary judgment and distinguished the online portal from traditional self-help merchandise in this way: A legal “kit” may provide numerous detailed instruction across hundreds of pages, but it is for the purchaser to decide which provisions to use and which to exclude.\(^\text{125}\) LegalZoom software takes those decisions out of the hands of the

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120. *Janson*, 802 F. Supp. 2d at 1055 (emphasis added). As of the writing of this note, LegalZoom has removed these television advertisements from circulation. However, the company’s online questionnaire procedures, including its lack of attorney involvement, remain unchanged.
121. *Id.* (emphasis added).
123. *Janson*, 802 F. Supp. 2d at 1064.
125. *Id.* The Missouri Merchandising Act parallels Arkansas’s statutory prohibition of the unauthorized practice of law. Missouri Revised Statute Section 484.010 provides the following: “The “practice of the law” is hereby defined to be and is the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies.” *Mo. Ann. Stat.* § 484.010(1) (West 2004). Missouri Revised Statute 484.020 then provides the following: “No person shall engage in the practice of law or do law business, as defined in section 484.010, unless he shall have been duly licensed therefor . . . .” *Mo. Ann. Stat.* § 484.020(1) (West 2004).
user, like excluding questions from the user’s view based on his or her admission of marital status, as discussed earlier.\textsuperscript{127} The court focused on the software’s engineers to determine who exactly was engaging in the unlawful interaction:

It is that human input that creates the legal document. A computer sitting at a desk in California cannot prepare a legal document without a human programming it to fill in the document using legal principles derived from [state] law that are selected for the customer based on the information provided by the customer.\textsuperscript{128}

It was the passivity of the user’s experience after entering a few pertinent details that ultimately triggered an unauthorized \textit{legal} interaction between a business and its customer.\textsuperscript{129} The court also found that the Internet, the medium through which the transaction takes place, is merely a distraction from the “essence of the transaction.”\textsuperscript{130} There was no distinction between LegalZoom’s software and a Missouri lawyer asking his or her client questions and preparing a legal document based on the given responses.\textsuperscript{131} It is why Hal—the Introduction’s virtual protagonist—could so easily be confused with an attorney.

Given the uphill battle the company would likely have faced, LegalZoom negotiated a settlement, wherein among other provisions, the company would provide to its Missouri customers a consultation with a licensed Missouri attorney free of charge.\textsuperscript{132} While still admitting no fault or wrongdoing, the company is moving in a direction within Missouri that is beginning to circumvent some of the UPL issues that have beset the company there and in many other states.\textsuperscript{133}

\textsuperscript{127} Id. at 1055–56.
\textsuperscript{128} Id. at 1065.
\textsuperscript{129} Id. at 1063.
\textsuperscript{130} Id. at 1065.
\textsuperscript{131} Janson, 802 F. Supp. at 1065.
\textsuperscript{132} Settlement Agreement at 17, Janson v. LegalZoom, Inc., 802 F. Supp. 2d (W.D. Mo. 2011) (1053 2:10-CV-04018-NKL); see also Final Approval Order and Dismissal With Prejudice, Janson v. LegalZoom, Inc., 802 F. Supp. 2d (W.D. Mo. 2012) (2:10-CV-04018-NKL): “LegalZoom will make available to customers who select a Missouri Class Product on the LegalZoom.com website a prominent offer for an individual consultation with an attorney licensed in Missouri through a minimum free five-day enrollment (not subject to automatic renewal) in the Legal Advantage Plus Program (for individuals) or the Business Advantage Pro Program (for businesses)).”
The question still remains, however, whether these steps can overcome the largest hurdle. Even after offering customers the ability to consult with a licensed attorney, a customer might decline. At that point, LegalZoom’s operation still operates in the same possibly violative manner as it did before. Putting aside a private cause of action, is it a criminal violation of state statutes regulating the practice of law? \footnote{134}{See generally Levin, supra note 1; Susan D. Hoppock, Current Development, Enforcing Unauthorized Practice of Law Prohibitions: The Emergence of the Private Cause of Action and Its Impact on Effective Enforcement, 20 GEO. J. LEGAL ETHICS 719 (2007).}

D. Doomed to Collide: LegalZoom and the Arkansas Supreme Court

Under its interpretation of the Constitution of Arkansas, and of its own precedent, the Arkansas Supreme Court would almost certainly hold LegalZoom, in its current practice, to violate Arkansas’s prohibition on the unauthorized practice of law. \footnote{135}{Cf. Janson, 802 F. Supp. at 1065.} The conduct the court ruled Asbury was prohibited from continuing is identical in its essence to the conduct LegalZoom performs every day. \footnote{136}{See Campbell v. Asbury Auto., Inc., 2011 Ark. 157, 32–33, 381 S.W.3d 21, 42–43 (2011).} One could replace the Asbury employee that prepared the motor-vehicle-purchase documents with the automated software LegalZoom has created. Without a licensed attorney preparing the vast number of available documents on the company’s website, LegalZoom is a corporation practicing law without authorization, which both Arkansas statute and Arkansas Supreme Court precedent prohibit. \footnote{137}{ARK. CODE ANN. § 16–22–211 (1999 & Supp. 2013); Ashbury, 2011 Ark. 157 at 33, 381 S.W.3d at 43; Ark. Bar Ass’n v. Union Nat’l Bank of Little Rock, 224 Ark. 48, 53, 273 S.W.2d 408, 411 (1954) (quoting People ex rel. Comm. on Grievances of the Colo. Bar Ass’n v. Denver Clearing House Banks, 59 P.2d 468, 470 (1936)); see also Brown v. Kelton, 2011 Ark. 93, 5–7, 380 S.W.3d 361, 365–66 (holding that § 16-22-211 was constitutional and did not conflict with this court’s exclusive power to regulate the practice of law).}

What may prove even more difficult for LegalZoom in continuing to conduct its business in Arkansas is the creation of a fiduciary relationship that accompanies any legal-document preparation. There must be an undivided loyalty, honesty, and good-faith representation, born out of the established standard of licensed Arkansas attorneys. \footnote{138}{Ark. Bar Ass’n v. Union Nat’l Bank of Little Rock, 224 Ark. 48, 53, 273 S.W.2d 408, 411 (1954) (quoting People ex rel. Comm. on Grievances of the Colo. Bar Ass’n v. Denver Clearing House Banks, 59 P.2d 468, 470 (1936)); see also Brown v. Kelton, 2011 Ark. 93, 5–7, 380 S.W.3d 361, 365–66 (holding that § 16-22-211 was constitutional and did not conflict with this court’s exclusive power to regulate the practice of law).} Just as a car dealership employee could not be said to have established a fiduciary relationship, it is even more apparent that computer software cannot establish liability based on its conduct. One could argue that it is the attorneys who created the software who are truly providing legal assistance to LegalZoom’s customers. \footnote{139}{For its part, LegalZoom has never made this argument, strictly asserting that its online legal services portal is a “self-help” tool. See Janson, 802 F. Supp. at 1063.}
This connection is too attenuated, however, if for no other reason than the attorney is unlikely to be licensed to practice in all fifty states, including Arkansas.

LegalZoom emphatically denies that any attorney-client relationship exists when a customer creates a document via the website’s online service. 140 However, as clear as the disclaimers may be to the customer, it cannot distinguish or diminish the liability that the Arkansas Supreme Court has repeatedly placed upon those who assume the role of an attorney. 141 In simple terms, actions speak louder than words, so the Arkansas Supreme Court will likely disagree with LegalZoom over its attempts to distance itself with the creation of any fiduciary liability.

III. ARGUMENT

In order for LegalZoom to continue offering its legal-document-preparation services to Arkansas citizens, a change in its current operation is necessary. In its current form, the Arkansas Supreme Court, the constitutionally authorized regulator of the practice of law in Arkansas, is required to take action because LegalZoom’s software currently violates Ashbury’s holding. In striding towards change, two essential requirements must remain at the forefront. First, any solution must take into account the widening gap between the legal profession and the general public that can no longer afford legal services. 142 Even with its faults, the services LegalZoom provides to its customers are affordable alternatives, many of which come away from the experience with very positive reviews. 143 Second, any option the Arkansas Supreme Court might adopt must seek to protect the public from an incompetent work product, at a time when the difference between a valid and faulty legal document could mean financial success or ruin, the successful creation of a will, or an expensive legal battle. These risks are exactly why representing individuals in this capacity must be accompanied with a license, expertise, and a fiduciary relationship between attorney and client. 144

Given these concerns, this article suggests three viable options the state of Arkansas has in finding a solution to this vexing issue.

142. See infra Part II.B.
144. See infra Part II.B.
In reconciling LegalZoom’s legal services with current precedent, the court has several options, guided by various other states’ responses. The State of Arkansas can (1) seek an assurance of discontinuance, eliminating LegalZoom from the state’s legal services market; (2) establish a certification system for legal-document preparers; or finally, (3) tackle the conflict of UPL regulations and online legal services by requiring a partnership between websites and Arkansas attorneys, giving Arkansans a cost-efficient fiduciary relationship with their legal provider. Of these options, the third proves most beneficial to the state, its citizens, and to LegalZoom.

A. Approach One: Assurance of Discontinuance

The first option errs on the side of protecting the interests of lawyers and the public from incompetent and liability-free legal work products by seeking an outright prohibition of the website’s legal services portal. The state of Washington, known for its strict regulations regarding the UPL, provides a better example of how things could be done. The Washington Attorney General took action against LegalZoom in 2010, alleging violations of Washington’s UPL regulations. In order to avoid trial, LegalZoom entered into an Assurance of Discontinuance, wherein the company would no longer offer its individualized legal services, including its online questionnaire service. While the company did not admit fault in the Assurance of Discontinuance, any violation of the agreement will result in two thousand dollars in civil penalties, restitution to the customer, and attorneys’ fees. LegalZoom was also given the burden of proving its practices consistently satisfy the settlement.

The settlement, among other provisions, requires the legal service provider to adhere to the following:

1. Comparing the cost of its “self help” products (i.e., legal forms) and clerical services with those provided by an attorney without clearly disclosing to consumers that LegalZoom is not a law firm;

145. Goffe, supra note 97, at 244.
148. Id.
149. Id.
2. Misrepresenting 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.\footnote{150}

By thus restricting the website’s Washington operations, Attorney General Rob McKenna hoped to ensure that consumers wouldn’t be misled by LegalZoom’s cost-saving claims.\footnote{151} Additionally, Washington’s Consumer Protection Division Chief Doug Walsh explained that selling legal forms alone does not constitute the practice of law—LegalZoom may make forms available for consumers to complete their own legal documents.\footnote{152}

The approach Washington has taken is similar to the Arkansas Supreme Court’s approach in \textit{Asbury}. The \textit{Asbury} Court, however, allowed Asbury to continue its legal-document preparation based on the limited exception provided by \textit{Creekmore} and \textit{Suggs}.\footnote{153} Specifically, the company could continue offering the service but must do so free of charge, as well as meeting the five other requirements delineated in \textit{Creekmore}.\footnote{154} After the decision, Asbury had a viable option to continue its current practice, while providing customers the same beneficial service.

This would not be true in issuing an Assurance of Discontinuance within the State of Arkansas. First, Asbury was not forced to disrupt its business practice given that it was able to continue providing the same service in the course of selling a car. The automotive group was simply unable to charge the documentary fee for doing so.\footnote{155} No other aspect of its business practice

\footnote{150} \textit{Id.} \\
\footnote{151} Press Release, \textit{supra} note 146, at 3. \\
\footnote{152} \textit{Id.} \\
\footnote{153} See Pope Cnty. Bar Ass’n, Inc. v. Suggs, 274 Ark. 250, 252, 624 S.W.2d 828, 829 (1981); see also Creekmore v. Izard, 236 Ark. 558, 565, 367 S.W.2d 419, 423 (1963). \\
\footnote{154} \textit{Creekmore}, 236 Ark. at 565, 367 S.W.2d at 423. \\
\footnote{155} See \textit{Asbury}, 2011 Ark. 157, at 29, 381 S.W.3d at 41.
was irreparably harmed in the process.\textsuperscript{156} Arkansas’s exception to the prohibition of the UPL found in \textit{Creekmore} and \textit{Suggs} cannot be applied to the operations of LegalZoom. The exception relies on the notion that the documents being prepared are ancillary to the primary transaction—like the selling of a house or, in Asbury’s case, the selling cars.\textsuperscript{157} These documents are so common in the practice of these two non-legal professions that public policy concerns allow for leeway that promotes efficiency and alleviates the burden of a profession that only incidentally must deal with legal documents.\textsuperscript{158} Here, LegalZoom is in the \textit{business} of preparing legal documents.\textsuperscript{159} This operation is not ancillary to some other transaction or service, but is rather the heart of the company’s revenue.\textsuperscript{160} It provides legal-document preparation on different aspects of the law.\textsuperscript{161} The forms are more than “simple retail transactions, which arose in the usual course of [LegalZoom’s] business,”\textsuperscript{162} they are the business of LegalZoom.

The prohibition implemented in Washington addresses one of the two factors previously mentioned. The ban protects the general public from the risks of faulty, incompetent legal work and the interests of Washington lawyers attempting to safeguard their profession.\textsuperscript{163} However, this complete ban appears to be a temporary fix. The likely answer to the new intersection of legal assistance and technological growth is not to completely ignore one in favor of the other.\textsuperscript{164} In order to address the dissatisfaction many Americans have with the legal profession’s fierce competition over wealthy and powerful clients at the expense of those seeking efficient and affordable services, another alternative must be explored.

\textsuperscript{156} \textit{Id.}
\textsuperscript{157} \textit{Id.}
\textsuperscript{158} See \textit{id.} at 26, 381 S.W.3d at 39; see also Beach Abstract & Guaranty Co. v. Bar Ass’n of Ark., 230 Ark. 494, 501, 326 S.W.2d 900, 904 (1959) (holding title examination ancillary to real estate transactions). 
\textsuperscript{160} \textit{Id.}
\textsuperscript{161} \textit{Id.} at 61.
\textsuperscript{162} \textit{Asbury,} 2011 Ark. 157, at 29, 381 S.W.3d. at 41.
B. Approach Two: A Certification System for Legal-Document Preparers

LegalZoom may offer a variety of legal documents to its customers, but the vast majority of users—and legal scholars seeking to deal with the rise of online legal services—are concerned with estate planning. This is partly because of the rising popularity of legal formbooks that offer do-it-yourself documents and also partly because they are fairly straightforward instruments which provide minimal profits to attorneys in and of themselves. Michael S. Knowles suggests creating a certification system specific to estate planning that "not only help[s] protect the public from incompetent estate-planning products, but also [increases] access to the justice system by providing persons of lower income with more affordable . . . services that would not otherwise be available."167

Advocated as a middle ground between non-lawyers and lawyers who ineffectively serve those users who have resorted to formbooks, desktop software, and online legal services, a certification system could both offer a competent legal work product as well as lower the price of entry to secure a will or another estate-planning instrument.168 It is also a reasonable answer to the problem many states and jurisdictions are currently facing. The ambiguity of the definition of the practice of law and the runaway success of attorney-less options has created a game of cat and mouse. Non-lawyers and businesses have been one step ahead of UPL regulatory enforcement, and courts either can’t narrow the gap, or are entrenched in traditional views of what constitutes the practice of law.169

In establishing the certification system, Mr. Knowles suggests assigning the task of creating and maintaining that system to those authorized to regulate the UPL—typically state courts.171 He suggests looking for guid-

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166. Id. at 876–77.

167. Id. at 883.


169. See, e.g., supra note 86 and accompanying text.

170. See Daniel Fisher, Entrepreneurs Versus Lawyers, FORBES (Oct. 24, 2011, 6:00 PM), http://www.forbes.com/forbes/2011/1024/entrepreneurs-lawyers-suh-legalzoom-automate-daniel-fisher.html “These vague rules give the bar a way to discipline competitors, but nobody is asking whether consumers have been harmed,” says Laurel A. Rigertas, a professor at Northern Illinois University College of Law. “I don’t think that approach is sustainable, because there is this growing consumer demand to have access to a lot of legal services which are not being supplied by the legal profession.”

171. See Knowles, supra note 165, at 883.
ance from the State of Arizona’s supreme court, which has established the Board of Legal-Documnet Preparers (“Board”). A test was created to evaluate the applicant’s ability to discern ethical issues, their knowledge of legal-document preparation, data gathering, legalese, and client communication. Next, an applicant must possess, in the Board’s view, an adequate level of education and moral character.

Upon their certification, an Arizonan Legal-Document Preparer is entitled to:

1. supply or prepare legal documents, without the direction of a lawyer, for a member of the public or an entity, when that person or entity is without legal representation;
2. supply general legal information, but such information may not constitute specific recommendations, opinions, or advice to a customer about legal strategies, options, defenses, remedies, or rights;
3. supply general factual information concerning legal options, procedures, or rights available to a person in a legal issue when that person is without legal representation;
4. supply legal documents and forms to a person who is without legal representation; and
5. file and plan for service of legal documents and forms in a legal issue when that person is without legal representation.

The advantages to an analogous system in Arkansas are clear. It directly addresses and responds to the need for adequate and affordable legal services to the vast number of Arkansans who are currently seeing fewer and

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172. Id. at 872; see Ariz. Code of Jud. Admin. § 7-208(C)(1) (2013), available at https://www.azcourts.gov/Portals/0/admcode/pdfcurrentcode/7-208_Amend_2013.pdf (last visited Feb. 16, 2014) (the court’s purpose in creating section 7-208 was intended to “[p]rotect the public through the certification of legal-document preparers to ensure conformance to the highest ethical standards and performance of responsibilities in a professional and competent manner. . . .”).


174. See id. § 7-208(E)(2)(b)(1).

175. See id. § 7-208(E)(2)(a)(1) (“Potential applicants for standard certification shall successfully pass the examination prior to submitting an application for certification.”); see also id. § 7-208(E)(3) (establishing a requirement that the applicant satisfy certain educational and moral standards before becoming certified).

176. Id. § 7-208(F)(1)(a)–(e); see also Knowles, supra note 165, at 875.
fewer affordable options.¹⁷⁷ The approach also addresses the proliferation of non-lawyer services in light of the legal community’s general rejection of these less profitable client services.¹⁷⁸ The system could help remedy the lack of legal services for a vast majority of Arkansas citizens.

Alas, two major concerns remain. First, it is unclear whether a fiduciary relationship is established between certified legal-document preparers and the clients they serve. The Board in Arizona provides civil penalties, probations, disciplinary sanctions, and eventually a loss of certification for a preparer who violates minimum ethical, professional, and performance standards.¹⁷⁹ None of these, however, are so strong as to attach liability to the actual document preparer for failure to meet specified standards in the same way that an attorney-client relationship establishes.¹⁸⁰ This would likely represent a large impediment to the Arkansas Supreme Court’s adoption of such a certification system, given that the requirement of a fiduciary duty when providing legal services was a key holding in Asbury. Second, the financial and temporal resources needed to create an entirely new department within the Arkansas Judiciary would likely serve as the largest obstacle to overcome.

The creation of an entirely new category of legal-document preparers, something below the status of a licensed attorney but above that of a complete non-lawyer, could create numerous unforeseen consequences that would have to be addressed to effectively implement the new system. An approach that remains within the previously defined parameters of the current Arkansas judicial system might prove wiser. Rather than creating an entirely new category of legal-document preparers—a category that could be just as detrimental to the legal community as self-help websites—the extant partnership between LegalZoom and some Arkansas attorneys could be the answer.

¹⁷⁷. See Weiss, supra note 2; see also ARKANSAS MATTERS.COM, supra note 86.
¹⁷⁸. See Weiss, supra note 2; “You can hardly find a lawyer who charges less than $150 per hour, which is out of reach for most people,” University of Southern California law professor Gillian Hadfield tells the Wall Street Journal. At the same time, people who can’t afford lawyers make too much money to qualify for legal aid. Most aid groups serve those at or below the poverty line, and budget cuts are forcing the organizations to turn away more people, the story says.
¹⁸⁰. Id.
C. Approach Three: A Partnership Between LegalZoom and Arkansas Attorneys

Generalizing the entire legal profession by declaring that companies like LegalZoom threaten the community at large ignores a nuance of the company’s client base. The largest law firms in Arkansas have likely not suffered losses at the digital hands of online legal services because they typically offer large corporations and wealthy individuals complex transaction and litigation services that are far beyond the capabilities of legal self-help software.\(^{181}\) It is the lawyer who operates a solo practice or partners with a small firm—those serving the needs that LegalZoom and other companies have arrogated—that suffers.

This shift appears inevitable, despite the plethora of currently pending UPL lawsuits, given LegalZoom’s growing success. Surviving in this fast-changing environment means attorneys must create or expand their online presence. They must, however, also hold tightly to their largest advantage, “their role as a [personal] trusted adviser in the communities where they live and work . . . . [L]aw firms that think they can emulate LegalZoom’s success but don’t have either the capital or the skills to compete in an online environment.”\(^{182}\) Rather than continuing to fight a battle in which momentum is shifting against it, the legal community must adapt and accommodate in order to remain a worthwhile option for those seeking legal services. Irrelevance looms over the solo attorney who ignores the growing force of online legal services.

In its legal-plan options offered to customers that visit the site, LegalZoom offers plans “For Your Business” and “For Your Family.”\(^{183}\) These plans offer a subscription service to a user that combines the ease of use of the LegalZoom website, with a backend attorney review process.\(^{184}\) For example, the service offers review of estate planning documents, the ability to call and seek advice from a licensed attorney in your jurisdiction, and a yearly “Legal Check-Up” service that provides an annual review of users’ legal matters with LegalZoom and recommendations based on signif-

\(^{181}\) Chris Johnson, *Leveraging Technology to Deliver Legal Services*, 23 Harv. J.L. & Tech. 259, 282 n.142 (2009) (noting, however, that “other developments are likely to impact the larger firms, as corporate clients find ways to bring legal tasks in-house using sophisticated software.”).


\(^{184}\) *Id.*
significant changes in the law or the user’s relevant legal status. In creating this subscription plan, the company sought to assure its customers:

[Y]ou no longer have to make legal decisions on your own. You can have your own attorney advise you and answer all the questions that, before, you couldn’t afford to have answered. [You can] move forward with the confidence that comes from knowing you’ve made the best decisions for you.

The same basic service is provided for businesses seeking a subscription plan under the “Business Legal Plan.” The plan offers thirty-minute consultations on a given legal matter, including review of legal documents concerning business or intellectual property matters, and the ability to download self-help legal forms from LegalZoom’s library of documents. The consultations are unlimited as to the number of new legal matters upon which the individual seeks advice. Each legal matter is limited to a thirty-minute session.

The rates amount to $14.99 a month for the personal plan and $29.99 for the business plan. These do have limitations. The plans do not include violent felonies, patent issues, or issues concerning another subscriber of either the personal or business legal plans.

These types of services are advantageous to both the attorney and to LegalZoom. The website is able to avoid the fiduciary relationship and UPL restrictions entirely by accompanying their services with attorney reviews and consultations. Additionally, lawyers who participate in the program are able to partner with the company so that new clients are essentially given to them without the need for costly marketing and advertising. This allows an attorney to realize revenue gains attributable to an increase in clients and legal work as well as diminishing the need to spend large amounts of self-promotion. LegalZoom is also able to protect itself by placing the burden of fiduciary liability onto the attorney.

186. Id.
188. Id.
189. Id.
This “click and mortar” approach—maintaining a physical law office while expanding an online presence—is the surest path to survival for many practitioners. This partnership also avoids the pitfalls of Arkansas precedents like Suggs and Creekmore, which first prohibit any person but a licensed attorney to prepare legal documents for profit, and secondly require the establishment of a fiduciary relationship when the work of an attorney is being performed. LegalZoom serves as the intermediary through which attorneys are able to serve clients, and both LegalZoom and the attorneys profit from the legal work provided. Additionally, the site is still able to sell its library of self-help legal forms, so long as there is no way a user can automate the process. Arkansas attorneys already take advantage of the program, and this type of symbiotic relationship is the surest way to usher profitable and adaptable legal services into the twenty-first century.

IV. CONCLUSION

In order to survive, attorneys and the legal community must embrace new technology, or they risk being swallowed and marginalized by those individuals and companies that do. To accomplish this, attorneys must seek to preserve the critical role they play as confidants, advisors, and representatives of clients’ interests, while also harnessing technology to allow them to do so more cost-effectively for themselves and more affordably for the consumer. The Arkansas Supreme Court must address LegalZoom’s violation of Arkansas’s law against the unauthorized practice of law, so that Arkansas might give way to a progressive approach that best enables the legal profession to move alongside the swift march of technology.

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193. Granat, supra note 182.
194. Id.