

Testimony of Attorney Adam M. Fried, Reminger Co. LPA, on HB 339:

Chairman Hillyer, Vice-Chair Grendell, Ranking Member Galonski, and members of the House Civil Justice Committee. Thank you for the opportunity to present opponent testimony to House Bill 339.

My name is Adam Fried. I am an Ohio Lawyer with a practice focused on preventing the financial exploitation of older adults. Over the last 20+ years, I have litigated hundreds of will and trust contests and challenges to beneficiary designations. I am a past chair of the consortium against adult abuse and participated as a task force member for the Cuyahoga County Adult Protective Services Steering committee in partnership with the Cuyahoga County Probate Court. I have also served as an appointed delegate to the 4th national guardianship summit by the elder law committee of the American College of Trust and Estate Counsel. I am presently a member of the Ohio Supreme Court's monitoring guardianship of estate work group. I have seen and litigated the worst of the worst financial exploitation cases and am firmly against the remote witnessing of wills components in HB 339.

MetLife, in June of 2011 issued a study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America's Elders. MetLife then recognized that "...elder financial abuse continues to be the "Crime of the 21st Century," one that is often at the heart of other forms of elder mistreatment." The MetLife study concluded that these crimes occur by stealth and cunning and that a predator does this by working his or her way into the trust of the elder. MetLife also concluded that "... elders who are alone or isolated may be more likely to be victims of financial abuse. Conversely, some research suggests that living with a relative is a risk factor for financial elder abuse." Surprisingly, with the knowledge MetLife gained in this report, it advocates to allow remote witnessing of wills regardless of the known fact that the Covid Pandemic has increased the isolation of our parents and grandparents and caused our elders to

be more reliant upon the perpetrators who would act to cause a will to be prepared.

“Steal an Estate – GET RICH On Other People’s Money!!!, just another WordPress.com weblog” is an article easily findable on the internet that educates predators how to steal an estate. “Step one is to assess opportunities and establish yourself. Identify elderly affluent people who are alone – Target people who live alone and whose children or heirs live and work out of state.” The National Law Review in February of 2021 published an article “How Isolation and COVID Make Seniors More Vulnerable to Fraud and Exploitation”. The very concept of technology supported will signing that the proponents of HB 339 contend will foster access to estate planning by our elder population also makes the elder population more vulnerable because of lack of understanding how to use the technology. If any of you believe that the perpetrator is not in the background to “aid” the elder to set up the technology necessary to prepare the electronic will then I have a bridge to sell you.

The remote witnessing of wills components of HB 339 is poorly conceived. The drafters, presumably to counter the opponents to remote witnessing, proposed a fix in the form of an amorphous definition of “vulnerable adult”. In essence, as currently written, if a person can be shown to be a “vulnerable adult” then that “vulnerable adult” cannot use the remote witnessing process. In other words, a will that happens to be remotely witnessed will be void if it can be shown that the testator was a vulnerable adult when the will was signed. That determination will not be made until after the testator dies and the will is challenged. This “fix” will create nightmarish results and serve to set aside wills simply upon the validity of the will signing process without the need of any evidence of lack of capacity or the exercise of undue influence. I will take a moment to explain.

HB 339 is created to make it easier for wills to be executed and without the need of an attorney. Presumably, any adult can go online, fill out a will, and press a couple buttons to proceed to connect to remote witnesses who have zero knowledge about the human being about to dispose of his or her estate in a manner that may or may not be natural and to beneficiaries that may or may not have participated in the process. The remote witnesses may not be able to detect

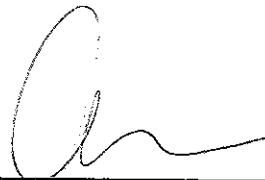
from their electronic perch that the testator is a “vulnerable adult”. No one will be present or capable to advise the testator on the risks of selecting the remote witnessing features and, for the convenience of remote witnessing, that is exactly what the testate choses.

Soon thereafter, the testator dies and the disinherited heirs challenge the will. I can construct an argument using the definition of “vulnerable adult” that would void the will, simply because the will was remotely witnessed and without having a shred of evidence that the will was the product of undue influence or anything but the intent of the testator.

A “vulnerable adult” is defined as “a person who is eighteen years of age or older and whose ability to perform the normal activities of daily living or to provide for the person’s own care or protection is impaired due to mental, emotional, sensory, or long-term physical or developmental, disability or dysfunction, or brain damage, or the debilitating infirmities of aging.” Imagine an 80-year-old with memory problems that only surface in lengthy conversations. Under this definition, while the participants in the remote witnessing may not have detected a vulnerability, in a will contest, you can bet I will have access to medical records and family testimony that shows memory problems. If I can also show some regular assistance is needed by the testator such as driving to appointments, or check writing then, under HB 339, the will can be voided regardless of whether the testator was acting independently with full mental capacity.

The remote witnessing components of HB 339 will create a litigation mecca. HB 339 will cause good wills to fail and enable the execution of bad wills procured by undetectable malfeasance and manipulation. Don’t choose economic expedience and commercial success over protecting Ohio citizens from known dangers.

Thank you for the opportunity to testify. I am happy to answer any questions the committee may have.



Adam M. Fried, Esq.