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## Texas Plans to Change How it Defines a "Psychologist"

A three-judge panel ruled earlier this year that the state's definition of "psychologist" violates the First Amendment. Now, officials are working to come up with a new definition that they hope will still prove valuable to potential patients. [f](#) [t](#)

BY **ALANA ROCHA** JUNE 9, 2016 6 AM



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When a patient sits before Dr. Cynthia de las Fuentes, a licensed psychologist in West Austin, she says they get much more than an empathic ear.

"It's much more science-based," she said. She noted that a person doesn't need to be a licensed psychologist to talk with another person through their problems. People do that all the time with friends, family members



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and co-workers.

"But that's not practicing psychology," de las Fuentes said.

De Las Fuentes and others in her profession are bracing for the very meaning of the title they studied for years to attain — psychologist — to change in Texas, following a court ruling that undermined the state's official definition.

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The 5th Circuit Court of Appeals ruled parts of the state's licensing statute unconstitutional earlier this year following a challenge by Austin attorney and academic Mary Louise Serafine.

When Serafine ran unsuccessfully as a Republican for the Texas Senate in 2010 against state Sen. [Kirk Watson](#), D-Austin, she referred to herself as an “Austin Attorney and Psychologist” on her campaign website. She soon received a cease-and-desist letter from the Texas Attorney General informing her that without a Texas psychology license she could not lawfully say she’s a “psychologist.”

Despite years of serving on psychology faculties at Yale University and Vassar College, Serafine didn’t meet eligibility requirements to apply for a license to practice in the state and never intended to get her license.

“I’m a psychologist in the truest sense, which means one who studies the mind or behavior,” she said.

Serafine complied with the order and removed the “psychologist” title from her website. She then sued Dr. [Tim Branaman](#), chair of the [Texas State Board of Examiners of Psychologists](#), arguing that as a candidate



for office, the First Amendment protected her right to call herself a psychologist as political speech.

“The First Amendment doesn’t list as on its exceptions, ‘unless the state decides there’s going to be a license to talk about certain topics.’ Doesn’t say that,” Serafine said.

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She further contended in her suit that the state’s definition of the practice of psychology was overbroad and that it banned unlicensed people from normal behavior, such as offering advice to a friend or student.

After a lower court ruled in favor of the state, Serafine appealed to the 5th Circuit Court of Appeals. Earlier this year, she won on both of her points.

"The ability to provide guidance about the common problems of life – marriage, children, alcohol, health – is a foundation of human interaction and society, whether this advice be found in an almanac, at the feet of grandparents, or in a circle of friends," the three-judge panel wrote. "There is no doubt that such speech is protected by the First Amendment."

The court did leave open the opportunity for the Texas Legislature to narrow the definition of the practice of psychology in statute — a challenge Serafine thinks is impossible to meet without violating the First Amendment.

Dr. Gregory Simonsen, president of the Texas Psychological Association and one of more than 4,800 licensed psychologists in the state, disagrees. The professional organization filed the initial complaint with the state board over Serafine calling herself a psychologist in her campaign materials.

“We believe it can be [redefined],” Simonsen said.

“We’re working diligently with all of the stakeholders to come up with a definition that not only protects the public but defines the profession and doesn’t infringe on the free speech of people.”

He said the 5th Circuit’s January ruling was unexpected.

“It was quite a shock, I think, to most psychologists to think that the licensure act was overbroad in that way. Everyone I’ve heard from is committed to changing the licensure act not to be overbroad but to continue to protect the citizens of the state of Texas and to define the profession.”

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The state allowed the May 12 deadline for it to appeal the decision to the U.S. Supreme Court to pass, meaning the ruling is binding.

The ruling is likely to have an impact beyond Texas. It is also binding in Louisiana and Mississippi. A call to Louisiana’s psychology licensing board went unreturned. A representative for Mississippi’s board said she intended to make members aware of the decision at an upcoming meeting.

Darrel Spinks, executive director of the Texas State Board of Examiners of Psychologists, confirmed it is still issuing licenses while its board members work with Simonsen and several other state groups on the issue ahead of the next legislative session, which convenes in January.

The timing is opportune as the state board is up in 2017 for its review from the Sunset Advisory Commission — the body that assesses the operation and efficiency of most state agencies every 12 years.

Serafine maintains that the state should replace the licensure of psychologists with certifications.

“A license prohibits people from doing something unless you have the state’s permission to do it,” she said. “A certification says that the people who have the certification have the state’s approval.”

Simonsen said such a process would not offer patients adequate protections.

“When a person suffering from serious mental illness comes to a psychologist’s office, they (and their loved ones) can rest assured that their psychologist has been vetted by the state’s licensure requirements and been ‘allowed’ to practice,” Simonsen wrote in a follow-up email.

De las Fuentes agreed. She said her license assures patients she adheres to ethical and confidentiality standards.

“Without that, then how would people know that they have confidence in what I have to offer them?”



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