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**INADEQUATE ATTORNEY GENERAL OVERSIGHT OF LICENSING BOARDS**

*To avoid antitrust liability, boards must change or licensing must change.*

**OKLAHOMA CITY, OK** (December 15, 2020) – The 1889 Institute has published “[The Inadequacy of Attorney General Oversight as a Guard against Antitrust Liability of Oklahoma Licensing Boards](#),” which argues that Oklahoma’s solution for avoiding antitrust liability for its licensing boards is inadequate. The current scheme has Oklahoma’s attorney general opine on proposed rules regarding whether they could be construed as an attempt to restrain trade. The attorney general has no legislated power to veto licensing boards’ rules considered to violate federal antitrust law.

“Sovereign states’ actions generally get a pass when it comes to antitrust law, but licensing boards have often been established as quasi-independent trade groups with the might of government at their backs,” said Mike Davis, the study’s author, an attorney and Research Fellow at the 1889 Institute. “The U.S. Supreme Court said the states can’t exempt trade groups from antitrust just by virtue of setting them up as licensing boards, and states with licensing boards have to make sure they adhere strictly to state law,” he said.

Davis makes the case in his paper that Oklahoma’s attorney general cannot exercise the type of active oversight required to comply with U.S. Supreme Court requirements laid out in their decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*. This is the landmark case that says licensing boards are not automatically immune to antitrust just by virtue of having been put in place by a state legislature.

“Even Governor Fallin’s executive order requiring the removal of a board member who fails to adhere to attorney general guidance fails to meet the Supreme Court’s test,” said Davis. “There are too many conflicts of interest, with the attorney general serving as licensing boards’ counsel as well as their watchdog,” he said.

Davis suggests that one solution would be for the legislature to change the law so that licensing boards’ members do not include anyone in an occupation a given board licenses. Better yet, the legislature should pass a private certification law suggested and modeled by the 1889 Institute and the Arizona-based Goldwater Institute.

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**[About the 1889 Institute](#)**

The 1889 Institute is an Oklahoma think tank committed to independent, principled state policy fostering limited and responsible government, free enterprise and a robust civil society. The publication, “The Inadequacy of Attorney General Oversight as a Guard against Antitrust Liability of Oklahoma Licensing Boards” and other reports can be found on the nonprofit’s website at [www.1889institute.org](http://www.1889institute.org).