

NO. 16-3968

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NDIOBA NIANG and TAMEKA STEIGERS,

PLAINTIFFS-APPELLANTS

v.

EMILY CARROLL, *in her official capacity as Executive Director of the Missouri Board of Cosmetology and Barber Examiners*, and WAYNE KINDLE, JACKIE CROW, JOSEPH NICHOLSON, LEATA PRICE-LAND, LORI BOSSERT, LINDA M. BRAMBLETT, LEO D. PRICE, SR., and CHRISTIE L. RODRIGUEZ, *in their official capacities as members of the Missouri Board of Cosmetology and Barber Examiners*,

DEFENDANTS-APPELLEES

On Appeal from the United States District Court
For the Eastern District of Missouri, Eastern Division

Honorable John M. Bodenhausen, United States Magistrate Judge

**BRIEF OF *AMICI CURIAE* PUBLIC CHOICE SCHOLARS
IN SUPPORT OF APPELLANTS AND REVERSAL**

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INTEREST OF AMICI CURIAE

The undersigned *amici* are five scholars with expertise in public choice, regulatory, and/or Labor economics. *Amici* believe that sharing the findings of relevant theoretical and empirical research will assist this Court in reaching a decision that considers the effects of occupational licensing, including increased barriers to entry and the higher prices often faced by consumers, that often fall on low-income and minority individuals. Counsel for the parties have consented to the filing of this brief.

The *amici* joining this brief are:

- Morris M. Kleiner, Ph.D., University of Minnesota
- David T. Mitchell, Ph.D., University of Central Arkansas
- Daniel J. Smith, Ph.D., Troy University
- Robert J. Thornton, Ph.D., Lehigh University
- Edward Joseph Timmons, Ph.D., Saint Francis University

STATEMENT PURSUANT TO FED. R. APP. P. 29(c)(5)

Pursuant to Fed. R. App. P. 29(a)(4)(e), the public choice scholars state:

1. No party's counsel authored this brief in whole or in part.
2. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief.
3. No person—other than the *amici curiae* or its counsel—contributed money that was intended to fund preparing or submitting the brief.

ARGUMENT

The central issue on appeal is whether African-style hair braiders in Missouri, like Appellants Ndioba Niang and Tameka Steigers, should be required to be licensed as barbers or cosmetologists, notwithstanding that the requirements that must be met to obtain such licenses have little or nothing to do with African-style hair braiding. *Amici* believe that in deciding this issue, this Court should consider the demonstrated effects of occupational licensing. Scholars and other policy experts from across the political spectrum agree that occupational licensing that fails to carefully balance consumer protection with the needs of consumers, workers, and businesses often causes more harm than good.

In this brief, *amici* provide both theoretical and empirical evidence of the negative real-world effects that result from unnecessary occupational licensing regulations. These negative effects include (1) increased prices, (2) decreased availability of goods and services, and (3) restricted access to employment, especially among low-income and minority workers. All of this for little if any benefit, for occupational licensing largely has been shown to neither improve quality nor promote public health.

For these reasons, *amici* believe that the State's proffered benefits of licensing African-style hair braiding—primarily the protection of consumers from unsafe and unhealthy practices—will not and cannot be obtained by requiring hair braiders from

obtaining an unrelated license in cosmetology or barbering. To the contrary, such restrictions do nothing more than harm workers and consumers, especially in low-income and minority communities. Such illogical and irrational restrictions have no place in our market economy and should be overturned.

I. ECONOMIC THEORY PREDICTS—AND THE EVIDENCE CONFIRMS—THAT REQUIRING A LICENSE TO PRACTICE AFRICAN-STYLE HAIR BRAIDING CONFERS NO BENEFIT TO CONSUMERS OR WORKERS.

Occupational licensing takes many forms. *See* Dick Carpenter, Angela C. Erickson, Lisa Knepper, & John K. Ross, *License to Work: A National Study of Burdens from Occupational Licensing*, Inst. for Justice, (May 2012), at 33, *available at* <http://goo.gl/LZuKHo> [hereinafter “License to Work”]. In its most minimal form, the individual may simply register with a state board. *See* Daniel J. Smith, *Reforming Occupational Licensing in Alabama*, *Improving Lives in Alabama: A Vision for Economic Freedom and Prosperity* (Daniel Sutter’s ed. 2015), at 4, *available at* <http://goo.gl/rXfW0m>. At the other extreme, the individual may be required to pay a significant fee and meet extensive testing, education, and experiential requirements. *See* Morris M. Kleiner, *Occupational Licensing*, 14 J. Econ. Persp. (2000), at 191; Morris M. Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?* 1-15 (W.E. Upjohn Inst. for Emp’t Research 2006).

After attaining the license, individuals often must satisfy other requirements to keep the license and continue working in the industry. States often require regular fees and continuing education, and commission boards to evaluate and respond to ethics and quality complaints from consumers and colleagues. Practitioners in violation of ethics or quality standards can be fined or have their licenses suspended or revoked. Smith, *supra* at 5.

The trend in this country is to increase such regulations. In the 1950s, less than five percent of the American workforce required a license from the state; today, about 25 percent do. See Morris M. Kleiner & Alan B. Krueger, *Analyzing the Extent and Influence of Occupational Licensing on the Labor Market*, 31 J. Lab. Econ. S173, S173-S202 (2013) [hereinafter “*Analyzing the Extent*”]. But while proponents of these licensing requirements argue that they are simply ways to protect the public from “unqualified or unscrupulous” individuals, Smith, *supra* at 4-6, the broad consensus in the literature suggests otherwise.

The right to work free of unnecessary regulation is an issue with support across the ideological spectrum. In July 2015, for example, the White House issued a report on occupational licensing that concluded that occupational licensing requirements work only when they are carefully designed and implemented. *Occupational Licensing: A Framework for Policymakers*, White House Report (July 2015), available at <http://goo.gl/c2Is20> [hereinafter “W.H. Report”]. The White

House therefore joins *amici* and others in widespread support for a reconsideration of the mass licensure of professions, such as the African hair-braiding at issue here. Such requirements simply do not and cannot achieve the benefits Appellees assert.

A. Occupational Licensing Regulations Do Little To Improve The Quality Of Services Received By Consumers.

In this case, the district court agreed with Appellees that public health and the protection of consumers were legitimate state interests rationally related to the requirement that African-style hair braiders have a cosmetology or barbers license. *Niang v. Carroll*, No. 4:14-cv-01100-JMB, 2016 WL 5076170, at 26 (E.D. Mo. Sept. 20, 2016). Indeed, this is a typical justification for licensing restrictions. *See* W.H. Report, *supra* at 11 (“Licensing is usually justified on the grounds that it improves quality and protects the public against incompetent or dangerous practitioners.”). In reality, however, such regulations have little to do with improving the quality of services received by consumers.

The district court based its conclusion on the faulty theory that occupational licensing keeps unqualified and dishonest providers from entering the profession, thereby increasing health, safety, and quality. Amy Fontinelle, David Mitchell & Thomas Snyder, *Unnatural Rights in The Natural State: Occupational Licensing in Arkansas*, Ark. Ctr. for Research in Econ., Univ. Central Ark. (2016), at 9-10; Smith, *supra* at 4-6; W.H. Report, *supra* at 3. Proponents claim that excluding unqualified providers from the industry provides consumers with confidence when seeking

goods or services. Without a medical education, for example, judging the “quality and reliability” of a physician might be difficult. Smith, *supra* at 4. For example, a doctor “could diagnose patients with nonexistent diseases in order to charge them for additional treatments and visits.” *Id.* at 4. Or a “quack” doctor who does not possess that education or practical experience could market her services and treat patients. *Id.*; Morris M. Kleiner, Allison Marier, Kyoung Won Park, Coady Wing, et. al., *Relaxing Occupational Licensing Requirements: Analyzing Wages and Prices for A Medical Service*, 59 J. L. & Econ. 261 (2016) [hereinafter “*Relaxing Occupational Licensing Requirements*”] (study of relaxed regulations allowing nurse practitioners to do more of physicians’ work showing no change in quality).

Whatever arguments might be made in support of licensing physicians, however, have little if anything to do with the licensing of low-skilled occupations such as hair braiding. There is little to no risk in cases where consumers have or can access sufficient information to choose a hair braider based on the quality and price consumers prefer, and the most likely negative outcome of visiting an underqualified hair braider is a bad hair day. See Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?*, *supra* at 98 (“The difference between a good and bad haircut is two days.”).

To the contrary, research has shown that licensing of relatively unskilled professions reduces quality by reducing the number of providers and elevating

prices, and thus reducing consumer choice. *See, e.g.,* Smith, *supra* at 4-6. As one of the *amici* has noted, the reduction in employment in an industry with restrictive licensing drives up prices for consumers because there is less competition. *See* Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?*, *supra* at 1-15. With fewer providers, however, those faced with incompetent – or overpriced – providers have fewer options for change.

Indeed, as early as the 1970’s, research has challenged the commonly-held belief that licensing ensures quality—that is, that licensing “protect[s] the public from quacks and incompetents.” *See* Stanley J. Gross, *Professional Licensure and Quality: The Evidence*, Cato Inst. Pol’y Analysis No. 79, 1-2 (1986), available at <https://object.cato.org/pubs/pas/pa079.pdf>. When the need for a license is disassociated with the public’s need for protection, however, the primary effect of the licensing regime is to bar otherwise qualified individuals from the industry. *See, e.g.,* Smith, *supra* at 4-6; W.H. Report, *supra* at 3; Fontinelle, *supra* at 9-10. This is particularly true when licensing requirements fail to closely match the qualifications necessary for the profession. *See* W.H. Report, *supra* at 3. A licensing regime cannot plausibly meet its purported goal of promoting quality and preventing unfit practitioners from entering the profession if the license does not even require the amount of competency necessary to practice in the industry. *See id.*

Empirical research has borne out what theory predicted, for study after study has revealed that professions regulated by occupational licensing regimes did not result in any discernible increase in the quality of services or goods. *See* Morris M. Kleiner, *Occupational Licensing*, *supra* at 189-202 (summarizing studies); Smith, *supra* at 6 (collecting studies); *see also, e.g.*, Gross, *supra*; Morris M. Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?*, *supra*. The White House Report’s review of twelve occupational-licensing studies identified only two instances in which occupational licensing resulted in any increase in quality. W.H. Report, *supra* at 13, 58-59 (Research App’x); *see also* Kleiner, *Relaxing Occupational Licensing Requirements*, *supra* at 284-87 (finding no evidence of quality change when regulations were eased, allowing nurse practitioners to work more independently of physicians). The only study in that report related to cosmetology, moreover, observed little if any increase in quality of cosmetology services in states with restrictive licensing regimes. *Id.* at 58 (citing Mark A. Klee, *How Do Professional Licensing Regulations Affect Practitioners? New Evidence*, U.S. Bureau of Labor Statistics, SEHSD Working Paper 2013-30 (2013), *available at* <http://goo.gl/39RCs3>). That study concluded empirical support is “scant” for the claim that licensing screens out relatively low-quality practitioners from the practice of cosmetology. Klee, *supra* at 1 & n.2 (summarizing empirical

studies). There is no reason to believe that a study of African hair-braiding would come to a different conclusion.

Although the quality of goods and services does not noticeably improve with licensing restrictions, consumers still must pay more for those goods and services. In a study of licensing for cosmetologists, researchers found “support [for] the hypothesis that the more stringent a state’s statutes concerning cosmetology licensing requirements, the higher will be the average price and the less will be the quantities consumed of those services in that state.” A. Frank Adams, John D. Jackson, & Robert B. Ekelund, 23 *Occupational Licensing in a “Competitive” Labor Market: The Case of Cosmetology*, J. Lab. Res. 267, 273 (2002), available at <http://goo.gl/Q8M8wT>. In considering each states’ regulatory requirements for education, training, and reciprocity with other states’ cosmetology licenses, the study estimated that unnecessary regulations increased the price of cosmetology services by about \$2.94 per service. *Id.* at 272. In total, “losses owing to such restrictions would constitute an annual loss of billions of dollars.” *Id.* at 273.

Furthermore, empirical studies by occupational licensing researchers Sydney Carroll and Robert Gaston revealed that less restrictive licensing requirements can result in an *increase* in quality. In a study looking at real estate brokers, states that required specific education and had low exam pass rates had a longer average duration of vacancy prior to sale, indicating poorer performance. Sidney L. Carroll

& Robert J. Gaston, *State Occupational Licensing Provisions and Quality of Services: The Real Estate Business*, Res. L. & Econ. 1, 10 (1979). The same researchers found that licensing requirements reduced the availability of sanitarians, veterinarians, and optometrists and reduced service quality in rural and inner-city areas. Gross, *supra* at 5.

There is also little if any evidence that state licensing boards' responses to licensing violations improves the quality of services. See David A. Swankin, *Regulation of the Professions: Where Have We Been? Where Are We Going?* FARB Speech (2012); W.H. Report, *supra* at 13 & n.20; Smith, *supra* at 6. Indeed, as the district court acknowledged here, it was unclear what percentage of complaints regarding African hair braiders came from consumers, competitors, or other parties. *Niang*, 2016 WL 5076170, at 11 & n.9. In the present case, like in many others, there is little evidence suggesting that rigid licensing restrictions on a profession results in any benefits to consumers.

B. Occupational Licensing Regulations Confer Few Benefits On Workers (Other Than Potential Competitors).

Occupational licensing also confers no benefit to workers outside a licensed industry; however, already-established members of a profession seeking to exclude potential competitors do see a benefit from licensing restrictions. Licensing reduces employment, reduces entrepreneurship, and restricts mobility. See Fontinelle, *supra* at 31-37. Economic theory predicts licensure artificially elevates the wages of

workers in the licensed industry, but hair braiders will not see any benefit of this wage growth if they are barred by licensure from entering the industry in the first place.

The burdens imposed by occupational regulations make the labor market less efficient and, as noted above, result in substantial cost to consumers. A review of standard economic models by one of the *amici* concluded that occupational licensing requirements cost nearly three million jobs nationwide and raise consumer expenses by over two hundred billion dollars annually. Morris M. Kleiner, *Reforming Occupational Licensing Policies*, The Hamilton Project, Brookings Institution, 6 & n.3 (2015), available at <http://goo.gl/vVHDPQ>.

Research has shown real life examples of the costs and benefits associated with changes in occupational licensing standards. For example, in a study of Vietnamese manicurists, researchers found that for every additional 100 hours of training required by a state to obtain a license, the number of Vietnamese manicurists declined by nearly 20 percent. Maya N. Federman, David E. Harrington, & Kathy J. Krynski, *The Impact of State Licensing Regulations on Low-Skilled Immigrants: The Case of Vietnamese Manicurists*, 96 Am. Econ. R. (May 2006), at 237. A similar study of interior designers concluded that state license restrictions kept 1,300 potential designers from the workforce, 765 of which would have been self-employed. David E. Harrington & Jaret Treber, *Designed to Exclude: How Interior*

Design Insiders Use Government Power to Exclude Minorities & Burden Consumers, Inst. for Justice, 8 (Feb. 2009), available at <http://goo.gl/YrFbRx>.

These findings imply that licensing suppresses entrepreneurship in industries, such as the African-style hair braiding industry, well-suited to small businesses.

On the other hand, when states have chosen to deregulate, entrepreneurship flourished. For example, when Mississippi transformed its requirements for African-style hair braiders from a cosmetology-type requirement, similar to the one at issue in this case, to a less onerous registration requirement, 300 new braiders registered with the state within six years. Many of that number moved to Mississippi from states with higher requirements, and many others registered once they were no longer forced to operate illegally. Dick Carpenter, *The Power of One Entrepreneur: A Case Study of the Effects of Entrepreneurship*, 4 So. J. Entrepreneurship (2011), at 19-35 [hereinafter “Entrepreneur”]; Carpenter, *License to Work*, *supra* at 33.

Only one group of workers benefits from occupational licensing: those who are already licensed and can exclude others. Scholars note professional licensure “enable[s] industry professionals to more systematically exploit any existing information asymmetries” between the consumer and the practitioners. Smith, *supra* at 6. That exploitation occurs, among other ways, through anticompetitive pricing. Research shows that by excluding unlicensed workers from the industry through licensing requirements, existing professionals can elevate their prices by between

three and sixteen percent. W.H. Report, *supra* at 4; *see also* Kleiner, *Relaxing Occupational Licensing Requirements*, *supra* at 261-291 (finding restrictive state licensing of nurse practitioners, versus physicians, raised price of well-child medical exam by 3 to 16 percent and no influence on quality). It cannot seriously be disputed that when market participants are given the power to regulate their own profession, there arises a “structural risk of market participants’ confusing their own interests with the State’s policy goals.” *N. Carolina State Bd. of Dental Examiners v. F.T.C.*, 135 S. Ct. 1101, 1106 (2015). Indeed, “there is no doubt that the members of such associations often have economic incentives to restrain competition.” *Id.* Courts evaluating such licensing requirements must therefore always keep in mind that the ones imposing the rules are also the ones who most benefit from their imposition.

II. ECONOMIC THEORY PREDICTS – AND THE EVIDENCE CONFIRMS – THE HEAVY COSTS OF REGULATING AFRICAN-STYLE HAIR BRAIDING ON LOW-INCOME INDIVIDUALS.

In a perfect world, licensing would enable “practitioners to offer services to the full extent of their current competency.” W.H. Report, *supra* at 5. In reality, however, occupational licensing regulations often confer no benefit, and instead impose substantial costs on the public, as discussed above. This burden falls most heavily on low-income and minority communities, particularly when, as here, African-style hair braiding is a service commonly provided and sought by those

communities. There are numerous reasons why that burden falls so heavily upon those least equipped to bear it. Smith, *supra* at 6.

A. Occupational Licensing Regulations Disproportionately Impact Low-Income Consumers and Workers.

First, as more states license more occupations, low-income individuals “are denied the occupational choice to enter into what should be low-startup cost professions.” Smith, *supra* at 6. To the contrary, instead of providing low-cost entry into the workforce, state-mandated costs of filing paperwork, paying licensing fees, and enduring onerous education requirements make many regulated professions inaccessible to low-income individuals. Smith, *supra* at 6.

In Missouri, 31 low-income occupations, encompassing 30 percent of the state’s low-income occupations, require a license. Carpenter, *License to Work*, *supra* at Table 6. Indeed, the cosmetology and barber’s license requirements at issue here include a \$125 initial fee, nearly a year of education, and success on two exams. Carpenter, *License to Work*, *supra* at 86. These costs are a substantial burden for low-income individuals attempting to enter the workforce. But they are typical of what occupational licensing imposes on prospective professionals. According to one study of low- and moderate-income occupations across the United States, the average occupational license requires an average of nine months of education and training. Carpenter, *License to Work*, *supra* at 14. “For low-skilled services, these entry costs represent steep barriers for access to the profession.” Smith, *supra* at 9.

As should be obvious, low-income workers are less able to afford the tuition and lost wages suffered when seeking licensing and are, therefore, unlikely to seek a license required for certain work. Kleiner, *Analyzing the Extent*, *supra* (using their Westat survey); W.H. Report, *supra* at 18; *see* Stephen Slivinski, *Bootstraps Tangles in Red Tape: How Occupational Licensing Hinders Low-Income Entrepreneurship*, 272 *Goldwater Inst.* 15 (2015), *available at* <http://goo.gl/KFHd4b>. In fact, at least one study has concluded that “the presence of widespread occupational licensing in a state has a statistically significant negative effect on the rate of entrepreneurship in a state.” Slivinski, *supra* at 15.

Again, the burdens imposed upon prospective entrants result in benefits to those already in the profession. In one study of barbers, barbers in states requiring an apprenticeship prior to starting work were observed to earn an estimated 22 percent more than barbers in states who lacked this requirement. *See* Edward J. Timmons & Robert J. Thornton, *The Licensing of Barbers in the USA*, 48 *Brit. J. Indus. Relations* (Dec. 2010), at 740, 751. But while this may appear superficially appealing, these increased wages result from a barrier to entry for low-income, would-be barbers, because the apprenticeship requirement doubled the amount of time required to become a barber. *Id.*

This is all the more disconcerting when the educational requirements, a large part of the costs inherent in licensing, largely do not pertain to the profession being

licensed. Such is true here, where an irrelevant cosmetology or barber's license is required to practice African-style hair braiding. As explained when Alabama extended its licensing requirements in 2013 to barbers, natural hair stylists, and eyebrow threaders, such actions "will likely deny access to what would otherwise be a low-skill and low-startup-cost occupation that poses no serious health threats to the population." Smith, *supra* at 6-8.

Second, low-income individuals suffer the consequences of occupational licensing disproportionately more than higher-income individuals because established practitioners are more likely to engage in and successfully enact occupational licensing regulations when the opposition possesses limited political power. Morris M. Kleiner & Alan B. Krueger, *The Prevalence and Effects of Occupational Licensing*, Working Paper #531, Princeton Univ. (2008), available at <http://harris.princeton.edu/pubs/pdfs/531.pdf>. Professional associations of licensed workers can source their members for volunteers and donations for legislative lobbying. And because licensing artificially increases wages, these associations' members are able to provide the financial and political resources the association seeks to enact further regulations. Through their efforts, already-licensed workers are able to continue receiving higher wages while non-licensed workers are excluded from the profession and its wages.

By excluding potential competitors, established professionals impose a double penalty on the low-income population. Wages for unlicensed workers fall, and a wage gap between the licensed and unlicensed results. *See* Kleiner, *Analyzing the Extent, supra* (using their Westat survey); W.H. Report, *supra* at 12. Indeed, unlicensed workers in a profession—who are often forced into the underground economy—are estimated to earn 28 percent less than licensed workers. *Id.* On the other hand, consumers forced into lower incomes by occupational licensing must also suffer from the higher prices created by such laws. Smith, *supra* at 9; *see also* Harrington, *supra* at 8 (excluding “entrepreneurs out of the market reduces the number of low-cost competitors, which increases the power of [licensed] designers (and larger design firms) to charge consumers more.”).

Third, occupational licensing hurts low-income communities by preventing them from choosing the level of quality and price appropriate for their situation. Instead, occupational licensing forces all consumers to pay a higher price for goods and services, often without any resulting benefit in quality. W.H. Report, *supra* at 14, 60-61 (demonstrating significantly higher prices where licensing requirements were stricter); Adams, *supra* at 272-73 (concluding licensing elevated prices for cosmetology services). Indeed, to the contrary, Dr. Kleiner has concluded that these price increases are “expected to *reduce* [the] quality received by consumers. This will occur as certain low-income consumers would not receive any service due to

rising prices.” Kleiner, *Ensuring Quality or Restricting Competition*, *supra* at 8 (emphasis added). When low-income individuals cannot afford to pay the higher prices charged by licensed professionals, those individuals are forced to either provide the services themselves or go without them. See Stuart Dorsey, *Occupational Licensing and Minorities*, 7 L. & Hum. Behav. 171, 173 (1983), available at <http://goo.gl/eeoY2X>.

A study of the profession of electricians demonstrates the real world consequences of the demand for professional licensing. Proponents of such licensing would argue that the licensing of electricians will elevate the quality of electrical work, and, as a result, correlate with fewer deaths related to electrocution. Unfortunately, that is not the case. A study of electrical occupational licensing observed a positive correlation between increased licensing requirements for electricians and an increased number of deaths by electrocution. See Sidney L. Carroll & Robert J. Gaston, *Occupational Restrictions and the Quality of Service Received*, 47 So. Econ. J. 959, 959-76 (1981). Because the license requirements resulted in fewer electricians available to the public (at a higher price), individuals with lower incomes who needed electrical work either attempted to do the work themselves or to go without it; the result was an increase in fatal electrocutions.

Carroll and Gaston also observed that in locations where veterinarian licensing became more restrictive, the rates of rabies in domestic animals increased.

In other words, the licensing restriction did not improve either quality or public health because those with less expendable income chose not to have their pets vaccinated for rabies, with the expected increase of rabies as a result. See Sidney L. Carroll & Robert J. Gaston, *Barriers to Occupational Licensing of Veterinarians and the Incidence of Animal Disease*, 30 Agric. Econ. R. 37, 37-39 (1978). Indeed, amici and other scholars in their field have found similarly troubling results in occupations running the gamut from plumbers to optometrists, no matter the skill and expertise required. See Smith, *supra* at 7 n.21 (collecting studies).

Economic theory can therefore predict that the effects of requiring a license to practice African-style hair braiding will disproportionately burden low-income communities. Those who seek hair-braiding services will (1) do it themselves because they cannot afford the licensed practitioners whose wages are artificially inflated (to pay for all the unnecessary education and fees required to receive a license), (2) be unable to find a hair braider for the price they can or want to pay, or (3) seek an unlicensed, underground hair braider. The first two results have a negative effect on hair braiders who could be working but for the negative impacts restrictive licensing laws create. But the last option has a negative effect on consumers as well: Underground practitioners must keep their occupation quiet, which makes it more difficult for consumers to judge the quality of goods and services. Indeed, the state's interest in protecting consumers from unsafe practices

is *reduced* by unnecessary licensing burdens because the state has no information about these underground practitioners.

B. Occupational Licensing Regulations Work To Exclude Minorities.

Licensing laws have been shown to be especially detrimental to minorities as well as low-income communities. *See* Daniel H. Klein, Benjamin Powell, & Evgeny S. Vorotnikov, *Was Occupational Licensing Good for Minorities? A Critique of Marc Law and Mindy Marks*, 9 *Econ. J. Watch* (2012), at 210-233, *available at* <http://goo.gl/avThXE>. Such barriers result in lower numbers of minorities entering the licensed occupation, or larger numbers practicing that trade informally. *See* Carpenter, *Entrepreneur*, *supra* at 26 (collecting studies); Carpenter, *License to Work*, *supra* at 6. Indeed, one study reviewed over 100 professions and concluded that “[d]emographically, the people who work in the 102 low- and moderate-income occupations studied . . . make less money; [and] are more likely to be . . . racial/ethnic minorities and to have less education.” Carpenter, *License to Work*, *supra* at 9.

Licensing restrictions such as education and language requirements are particularly effective in excluding minority groups. For example, one study concluded that restrictions on the practice of interior design were likely to exclude black and Hispanic workers, as well as older “career-switchers,” from the field of interior design. *See* Harrington, *supra* at 1. The regulation of interior design is a relatively recent phenomenon, increasing from 36 percent of interior designers in

1993 to 60 percent in 2007 that were subject to state regulation. *Id.* at 2. But only 47 percent of black and Hispanic interior designers (including those “grandfathered” into the profession when licensing restrictions were enacted) had a college degree, compared with 66 percent of white interior designers. *Id.* at 5, 9. In regulated states, even fewer black and Hispanic designers had college degrees—only 39 percent. *Id.* at 9. Licensing restrictions requiring college degrees to practice interior design will therefore reduce the number of black and Hispanic individuals in the profession, especially as “grandfathered-in” black and Hispanic interior designers retire. *Id.* at 9, 14. As explained before, the absence of minority interior designers is likely to affect the quality of interior design work available to consumers, especially minority consumers. *Id.* at 14.

A study of cosmetology licensing regulations revealed “striking differences” between those who passed and those who failed the examination. Dorsey, *supra* at 174. That research found that although black potential cosmetologists are less likely to take a licensing exam to begin with, being less likely to satisfy the preliminary education and training prerequisites, black cosmetology test-takers who satisfied those preliminary requirements failed three times as often as non-black test-takers in Missouri and Illinois. *Id.* The same study concluded that, even when education and training backgrounds were the same, “the estimates suggest blacks are 30 [percent] less likely to pass in” Missouri and Illinois. *Id.* at 175. Because the two

states at the time of the study utilized a professionally written exam, the results are likely representative of the exclusive effects of licensing regulations in other states as well. *Id.* This study implies the repercussions of such exclusion have a ripple effect. *Id.* at 177. The failure of licensing requirements results in larger numbers of minorities: being unemployed, spilling into the unlicensed sector and competing for jobs, reducing earnings, and practicing licensed trades without a license. *Id.*

One study of low-income entrepreneurship across the United States found that low-income Hispanic and Latino populations had an entrepreneurship rate 2.5 times that of their percentage of the general population. Slivinski, *supra* at 6. This is consistent with the fact that “immigrants account for a much higher portion of all low-income entrepreneurs than their percentage of the general survey population would indicate (27 [percent versus] 11 [percent]).” *Id.* at 4. A question thus arises as to why “a heavily Hispanic/Latino state like Arizona has a just-below-average rate of low-income entrepreneurship.” *Id.* at 6. “The answer hinges on regulatory barriers that budding entrepreneurs face. . . . Arizona has one of the heaviest average occupational-licensing burdens for low-income entrepreneurs.” *Id.* at 6. Simply put, occupational licensing reduces minority entrepreneurship.

The study of Vietnamese manicurists discussed previously also found similar effects. Federman, *supra* at 237. Where state licensing law directly or indirectly requires English proficiency, for example, the growth of Vietnamese manicurists is

“nearly eliminate[d].” *Id.* at 238. As would be expected, the study found that “English proficiency requirements impact primarily those with poor English skills.” *Id.* at 239. Finally, the study suggested that occupational licensing reduces assimilation, as English-proficiency requirements prevent Vietnamese manicurists from entering “counties with no initial Vietnamese population.” Such restrictions “impede assimilation by restricting entry into an occupation in which immigrants arguably face lower costs of learning English and receive benefits from doing so via higher earnings.” *Id.* at 240. Occupational licensing requirements, such as language proficiency, that are unrelated to the practice at hand thus result in unintended disproportionate effects on minority communities. *Id.* at 237-38.

Finally, evidence suggests licensing reduces the earnings of minorities. Of a national sample of cosmetologists, white cosmetologists earned 16 percent more than their nonwhite counterparts, all other variables being equal. Dorsey, *supra* at 178-79. Similarly, nonwhite barbers earned an average of 21 percent less than their white colleagues. *Id.* The researcher concluded that the results were “consistent with the view that licensing lowers the relative earnings of blacks,” and “licensing inhibits [black barbers’ and cosmetologists’] mobility into higher-paying jobs within the occupation.” *Id.*

Nothing in the foregoing empirical studies suggests the consequences of requiring African-style hair braiders to have irrelevant cosmetology or barbering licenses would be any different.

CONCLUSION

The district court's opinion in this case is at odds with the well-documented, undesirable practical implications that economic theory and empirical research predict will occur from requiring African-style hair braiders to obtain an unnecessary occupational license to practice their trade. Missourians benefit when they can "take full advantage of all of [Missouri's] talented labor." W.H. Report, *supra* at 5. Licensing African-style hair braiders confers no benefit, and significant harm, to Missouri's low-income populations. For the foregoing reasons, *amici* urge this Court to reverse the holding of the District Court.

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I hereby certify that on this ___th day of January, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

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