

19th JUDICIAL DISTRICT COURT  
FOR THE PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

ASHLEY-ROXANNE N'DAKPRI,  
LYNN SCHOFIELD, and EVANGELA  
MICHELLE ROBERTSON,

Plaintiffs,

v.

LOUISIANA STATE BOARD OF  
COSMETOLOGY, STEVE YOUNG in  
his official capacity as executive director  
of the Board, and FRANCES HAND,  
WILLIAM MICHAEL GRAYSON,  
EDWIN H. NEILL, III, JAMES  
WILLIAMS, MELINDA TILLEY,  
MELLA BROWN, DEIDRE DELPIT,  
and ELIZA JILL HEBERT, in their  
official capacities as members of the  
Board.

Defendants.

SUIT NO. 684468

SECTION: 25

DIVISION "CIVIL"

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

NOW COMES, Plaintiffs, Ashley-Roxanne N'Dakpri and Lynn Schofield through undersigned counsel, who represent that there are no issues of material fact and that they are entitled to judgment in their favor and against Defendants, all as more fully set forth in the attached Memorandum in Support.

Dated: September 9, 2021

Respectfully submitted,

**INSTITUTE FOR JUSTICE**

/s/ Keith Neely

Keith Neely, D.C. Bar No. 888273735\*  
Institute for Justice  
901 N. Glebe Road, Suite 900  
Arlington, VA 22203  
Telephone: (703) 682-9320  
Facsimile: (703) 682-9321  
kneely@ij.org

Wesley Hottot, Tex. Bar No. 24063861\*  
Institute for Justice  
600 University Street, Suite 1730  
Seattle, Washington 98101-3150  
Telephone: (206) 957-1300  
Facsimile: (206) 957-1301  
whottot@ij.org

F. Evans Schmidt, La. Bar No. 21863  
Koch and Schmidt, L.L.C.  
650 Poydras Street, Suite 2660  
New Orleans, Louisiana 70130  
Telephone: (504) 208-9040  
Facsimile: (504) 208-9041  
fes Schmidt@kochschmidt.com

*Attorneys for Plaintiffs*

\* Admitted *pro hac vice*

**SHERIFF PLEASE SERVE:**

Defendants: Louisiana State Board of Cosmetology, Steve Young, in his official capacity as executive director of the Board, and Frances Hand, William Michael Grayson, Edwin H. Neill, III, James Williams, Melinda Tilley, Mella Brown, Deidre Delpit, and Eliza Jill Hebert, in their official capacities as members of the Board,

By delivering copies of **Plaintiffs' Motion for Summary Judgment, Memorandum in Support, Affidavits, Exhibits, and Rule to Show Cause** via their Attorneys of Record:

**Sheri M. Morris**  
8900 Bluebonnet Blvd.  
Baton Rouge, LA 70810

and

**Rachel P. Dunaway**  
*Assistant Attorney General*  
*Litigation Division – Civil Rights*  
*Office of Attorney General Jeff Landry*  
1885 North Third Street  
Baton Rouge, LA 70802

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**RULE TO SHOW CAUSE**

Considering the foregoing Motion for Summary Judgment and Memorandum  
in Support;

IT IS HEREBY ORDERED that Defendants show cause on the \_\_\_\_ day of  
\_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ why the Motion  
for Summary Judgment sought by Plaintiffs should not be granted.

Baton Rouge, Louisiana, this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Chief Judge Wilson E. Fields

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DIVISION "CIVIL"

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF**  
**MOTION FOR SUMMARY JUDGMENT**

MAY IT PLEASE THE COURT:

Plaintiffs, Ashley N'Dakpri and Lynn Schofield, are natural hair braiders with nearly 50 years of combined experience. Because they do not possess alternative hair design permits, the Defendants—the State Board of Cosmetology and its members—have repeatedly threatened to shut down their businesses, sent cease-and-desist letters, and attempted to impose fines for continuing to practice their profession. Defendants' licensing and permitting regime violates both (1) Plaintiffs' state constitutional right to practice the occupation of their choosing free from unreasonable government interference, and (2) the separation of powers required under the non-delegation doctrine.

**INTRODUCTION**

Plaintiffs are in the business of natural hair braiding. Defendants have interpreted Louisiana's cosmetology laws to apply to all compensated hair braiding,

requiring every braider to stop work and obtain an alternative hair design license. Doing so is no easy task. Prospective licensees must attend at least 500 hours of instruction at a private cosmetology school, pay thousands of dollars in associated fees, and pass a written and a practical examination.

The Board ostensibly enacted these requirements to protect the health and safety of Louisiana residents. But the requirements do not apply to some. Licensed cosmetologists, licensed barbers, and braiders working *without* compensation are not required to obtain an alternative hair design permit regardless of expertise. Additionally, braiders with permits from other states—including states that impose far less onerous training requirements than Louisiana—are eligible to receive an alternative hair design permit without undergoing additional training or examination.

It was not always this way. Although Louisiana has regulated the conventional practice of cosmetology since the early 20th century, hair braiders were not required to obtain a license until 2003, when the Board (not the Legislature) created the “alternative hair design permit.” See LAC 46:XXXI.1101, 1105, 1107. As explained below, this permit requirement has caused Lynn Schofield to close all but one of her braiding salons; and it now threatens the livelihood of Ashley N’Dakpri and the viability of Lynn’s only remaining salon, which Ashley manages.

#### **STATEMENT OF UNCONTESTED MATERIAL FACTS**

Pursuant to Local Rule 9.10, Plaintiffs submit that the following facts are material to this Motion for Summary Judgment and are not genuinely in dispute:

*Plaintiffs are Expert Braiders Who Seek to Earn a Living Braiding Hair in Louisiana*

1. Natural hair braiding refers to braiding, locking, twisting, weaving, cornrowing, or otherwise physically manipulating hair without the use of chemicals that alter the hair’s physical characteristics. Exhibit 1 to Neely Affidavit, Butler Depo. Tr. 20:20 – 21:5.

2. Although anyone can have their hair braided, the technique is usually performed on persons with a particular type of hair—often described as “tightly textured” or “coily” hair. Exhibit 2 to Neely Affidavit, Martin Depo. Tr. 25:10 – 26:20.

3. Persons with “tightly textured” or “coily” hair are predominantly African or African American. Exhibit 3 to Neely Affidavit, Brown Depo. Tr. 74:20 – 75:5.

4. Plaintiff Ashley N’Dakpri is an expert natural hair braider who has been braiding hair since she was a child and doing so for payment for at least 16 years. N’Dakpri Aff. ¶¶ 4–7.

5. Today, she is the manager of Afro Touch, a braiding salon in Gretna. N’Dakpri Aff. ¶ 12.

6. Afro Touch holds a valid salon license. N’Dakpri Aff. ¶ 14.

7. Ashley wants to hire more braiders and expand the salon, but she is unable to do so because the skilled braiders she knows do not have braiding permits and fear being fined by the Board. N’Dakpri Aff. ¶¶ 15–20, 24.

8. In October 2018, the Board cited and mailed a cease-and-desist letter to Afro Touch for employing an unpermitted braider. Exhibit 4 to Neely Affidavit, LBSC 0924–0930.

9. In September 2019, the Board issued two additional notices of violation—one to Afro Touch for employing three unpermitted braiders, and another notice to the braiders. Neely Aff. Ex. 4, LBSC 1050–1055.

10. In order to obtain the required alternative hair design permit, Ashley would have to stop working and spend thousands of dollars that she does not have in order to complete the alternative hair design curriculum at a private cosmetology school where she would learn skills she has already mastered. N’Dakpri Aff. ¶ 28.

11. Plaintiff Lynn Schofield founded Afro Touch in 2000. Schofield Aff. ¶ 11.

12. Lynn is also an expert natural hair braider, with more than three decades of experience braiding hair. Schofield Aff. ¶ 5.

13. When the alternative hair design permit went into effect, in 2003, the Board grandfathered Lynn, giving her a permit despite the fact that she had not met its standards for the new permit. Schofield Aff. ¶¶ 28–29.

14. At one time, Lynn operated four Afro Touch locations around the greater New Orleans area, employing approximately 20 braiders. Schofield Aff. ¶¶ 13–14.

15. After the Board required braiders to obtain an alternative hair design permit, Lynn was unable to retain staff at her salons and was eventually forced to start closing locations. Schofield Aff. ¶¶ 15–20.

16. At first, Lynn closed two Afro Touch locations. Schofield Aff. ¶ 21.

17. In 2013, Lynn transferred Afro Touch’s Greta location to Ashley while she continued to operate a salon in Laplace. Schofield Aff. ¶ 23.

18. Eventually, the alternative hair design permit requirement forced Lynn to close the Laplace location, too. Schofield Aff. ¶¶ 24–26.

19. Today, Lynn continues to braid hair from her home, but she does not do the kind of business or make the kind of money that she could in a commercial salon. Schofield Aff. ¶ 27.

20. If the Board did not require braiders in Louisiana to obtain an alternative hair design permit, Lynn would be able to work openly and better provide for herself and her family because she could hire more braiders. Schofield Aff. ¶ 35.

21. If the Board did not require braiders in Louisiana to obtain an alternative hair design permit, Lynn would want to teach others how to braid hair. She does not currently teach in Louisiana because she knows her students would not be able to braid hair legally. Schofield Aff. ¶¶ 36–37.

*The Cosmetology Act and Alternative Hair Design Permit*

22. The Legislature regulates the practice of cosmetology through the Cosmetology Act. *See* La. R.S. §§ 37:561 *et seq.*

23. The Cosmetology Act's stated purpose is to "promote, preserve, and protect the public health, safety, and welfare by and through the effective control and regulation of the practice of cosmetology." *Id.* § 37:562(B).

24. The Cosmetology Act charges the Board with responsibility "for the control and regulation of the practice of cosmetology." *Id.* § 37:575(A).

25. The Cosmetology Act defines cosmetology as "the practice of using one's hands, mechanical or electrical apparatuses, or appliances or using cosmetic preparations, antiseptics, soaps, detergents, tonics, lotions, or creams in any one or any combination of the practices of esthetics, hair dressing, and manicuring for compensation, direct or indirect, including tips." *Id.* § 37:563(6).

26. The Cosmetology Act further defines hairdressing as "massaging, cleansing, washing, stimulating, manipulating, exercising, beautifying, or doing similar work upon the scalp of any person, including arranging, singeing, cutting or shaping, curling or waving, cleansing, shampooing, styling, bleaching, coloring, or similar work upon the hair of another person." *Id.* § 37:563(9).

27. In 2001, the Legislature amended the cosmetology laws to allow—but not require—the Board to create specialty permits "within the practice of cosmetology." *Id.* § 37:584(C).

28. In 2003, the Board adopted the alternative hair design permit at issue here without any additional legislative input. *See* LAC 46:XXXI.1105, 1107; *see also* Neely Aff. Ex. 3, Brown Depo. Tr. 38:18.

29. By contrast, in 2016, the Legislature amended the cosmetology laws to instruct the Board to "[a]dopt rules to establish and regulate the license of blow dry technician," further specifying that an applicant be "subject to the same qualifications and fees" as a cosmetologist but that "the required number of instruction hours for a cosmetologist . . . shall not apply." La. R.S. § 37:575(17). The Legislature also defined "blow dry technician" as an individual providing "for compensation the services of

beautifying, cleaning, arranging, curling, dressing, blow drying, or performing any other similar procedure intended to beautify, clean, or arrange the hair.” *Id.* § 37:563(2)–(3).

30. As defined and regulated by the Board, alternative hair design includes the practice of natural hair braiding. *See* LAC 46:XXXI.101(A).

31. Prior to 2003, the Board did not regulate the practice of natural hair braiding either separately or as a subcomponent of cosmetology. *See* Neely Aff. Ex. 1, Butler Depo. Tr. 31:23, 32:3.

32. The Board says that it adopted the alternative hair design permit requirement in order to protect the public health, safety, and welfare from the alleged risks of unregulated natural hair braiding, specifically the “transfer of bacteria, illnesses and/or viruses.” Exhibit 5 to Neely Affidavit, Defs. Answer to Interrogatory 4; *see also* Neely Aff. Ex. 1, Butler Depo Tr. 81:20 – 82:2 (confirming that this list is complete).

33. Any record of evidence, studies, outside experts, or public complaints that the Board consulted when adopting the alternative hair design permit requirement in 2003 would be contained in the Board’s minutes. Neely Aff. Ex. 1, Butler Depo. Tr. 46:24 – 48:14.

34. However, the Board’s minutes contain no record of evidence, studies, outside experts, or public complaints that the Board consulted when adopting the alternative hair design permit requirement in 2003. Neely Aff. Ex. 4, LBSC 0461–0588.

35. Initially, the alternative hair design permit required prospective applicants to complete 1,000 hours of training at a private cosmetology school. *See* LAC 46:XXXI.1107(A) (2004); *see also* Neely Aff. Ex. 1, Butler Depo. Tr. 33:8.

36. Braiders who were working at the time could obtain alternative hair design permits based on a grandfathering provision. *See* LAC 46:XXXI.1105(B) (2004).

37. Any record of evidence, studies, outside experts, or public complaints that the Board consulted when creating the grandfathering provision in 2003 would be included in the Board's minutes. *Neely Aff. Ex. 1, Butler Depo. Tr. 48:15 – 50:1.*

38. However, the Board's minutes contain no record of evidence, studies, outside experts, or public complaints that the Board consulted when adopting the grandfathering provision in 2003. *Neely Aff. Ex. 4, LBSC 0461–0588.*

39. In or around 2010, the Board simultaneously removed the grandfathering provision while reducing the training requirement from 1,000 hours to 500 hours. *See* LAC 46:XXXI.1105, 1107; *see also* *Neely Aff. Ex. 1, Butler Depo. Tr. 35:12 – 20.*

40. Any record of evidence, studies, outside experts, or public complaints that the Board consulted when reducing the training requirement from 1,000 hours to 500 hours in 2010 would be included in the Board's minutes. *Neely Aff. Ex. 1, Butler Depo. Tr. 48:15 – 50:1.*

41. However, the Board's minutes contain no record of evidence, studies, outside experts, or public complaints that the Board consulted when reducing the training requirement from 1,000 hours to 500 hours in 2010. *See* *Neely Aff. Ex. 4, LBSC 0281–0364; see also* *Defs.' Answer ¶ 94* (admitting that the Board reduced the training requirement in or around 2011).

42. The Board cannot point to a single example of an injury caused by natural hair braiding since at least 2003 (and it points to no injuries prior to 2003). *See* *Exhibit 6 to Neely Affidavit, Defs.' Answer to Interrogatory 24.*

43. There are currently 18 individuals statewide who hold an alternative hair design permit. *Neely Aff. Ex. 6, Defs.' Answer to Interrogatory 31.*

44. Braiders possessing an alternative hair design permit must practice their profession in a licensed salon. *See* LAC 46:XXXI.1105(A).

*The Alternative Hair Design Curriculum and Curriculum Approval*

45. The Board currently requires prospective applicants for the alternative hair design permit to complete at least 500 hours of training. *See* LAC 46:XXXI.1107(A).

46. The Board requires the 500 hours of training to be distributed among a curriculum of eight (8) major topics and several subtopics, including:

- a. History Overview
  - i. Ancient Origins of Braiding
  - ii. Traditional Multi-Cultural Braid Styles
  - iii. The Multi-Cultural American Hair Experience
- b. Bacteriology and Sanitation
  - i. Types of Bacteria
  - ii. Growth and Reproduction of Bacteria
  - iii. Prevention of Infection and Infection Control
  - iv. Use of Antiseptics, Disinfectants and Detergents
- c. Client Consultation
- d. Hair Types and Hair Structure
- e. Scalp Diseases and Disorders
- f. Shampoos, Conditioners, Herbal Treatments and Rinses for Synthetic Hair Only
- g. Braiding and Sculpting, and
- h. Louisiana Cosmetology Act and Rules and Regulations

*See* LAC 46:XXXI.1107(A). This list of topics is the only guidance that the Board has provided regarding the required curriculum and is the only standard the Board refers to when evaluating a school's proposed curriculum. *See* Neely Aff. Ex. 1, Butler Depo. Tr. 39:10 – 40:13.

47. The Board designed this curriculum with input from Board staff. Neely Aff. Ex. 3, Brown Depo. Tr. 43:4 – 8.

48. Although licensed cosmetology schools are responsible for teaching the alternative hair design curriculum, they must first apply for and receive approval from the Board. Neely Aff. Ex. 1, Butler Depo. Tr. 38:14 – 19.

49. The approval process involves a review by both Board staff and Board members to ensure that the "proposed curriculum complies with the Cosmetology

Practice Act and applicable rules.” Neely Aff. Ex. 5, Defs.’ Answer to Interrogatory 7; *see also* Neely Aff. Ex. 1, Butler Depo. Tr. 83:15 – 84:6 (confirming this is the complete process).

50. Schools are not required to specify how many hours they intend to spend on any required subject in order to obtain curriculum approval. Neely Aff. Ex. 1, Butler Depo. Tr. 41:8 – 23.

51. The Board has never denied a school’s proposed alternative hair design curriculum. Neely Aff. Ex. 1, Butler Depo. Tr. 39:5 – 7.

52. Cosmetology schools are not required to offer the alternative hair design curriculum to their students. Neely Aff. Ex. 1, Butler Depo. Tr. 38:8 – 19.

53. Of the 39 licensed cosmetology schools in Louisiana, only three offer the alternative hair design curriculum: the Cosmetology Institute in New Orleans, the Cuillier Career Center in Marrero, and Celebrity Stylist in Monroe. Neely Aff. Ex. 1, Butler Depo. Tr. 42:6 – 14; *see also* <http://www.lsbclouisiana.gov/Board/School/LSBCschools.pdf>.

*The Alternative Hair Design Exam*

54. In addition to completing the minimum 500 hours of training required by the Board, prospective applicants for an alternative hair design permit are also required to pass an examination and pay a fee. *See* La. R.S. § 37:586(A)(1).

55. The Board may legally administer the exam itself or “may employ an examination team and may contract with a testing service to conduct the examinations of applicants required” by regulation. La. R.S. § 37:585(A).

56. The alternative hair design exam has both a written component and a practical component. Neely Aff. Ex. 1, Butler Depo. Tr. 50:2 – 51:6.

57. The Board contracts with a national service called Schroeder’s to administer the written component. Neely Aff. Ex. 1, Butler Depo. Tr. 51:2 – 6.

58. The Board administers the practical component itself through a “test team” comprised of four licensed cosmetologists. Neely Aff. Ex. 1, Butler Depo. Tr. 51:22 – 25.

59. The practical component purports to test an applicant’s competency in hair braiding technique, but does not test sanitation, safety, or first aid. See Neely Aff. Ex. 4, LBSC 0033–0035; see also *Instructions for the Alternative Hair Examination*, <http://www.lsbclouisiana.gov/pdfs/AH.pdf>.

60. Since 2010, twenty-three (23) individuals have been issued alternative hair design permits after passing the practical exam. Neely Aff. Ex. 6, Defs.’ Answer to Interrogatory 28.

*The Board and its Enforcement Actions*

61. The Board is composed of eight members, each appointed by the governor. La R.S. § 37:571(B).

62. Each Board member is required to be either a licensed cosmetologist, an owner of a beauty shop or salon, or a cosmetology instructor. La R.S. § 37:572(B).

63. Three of the Board’s eight members have an ownership interest in a Louisiana cosmetology school. Neely Aff. Ex. 2, Martin Depo. Tr. 19:7 – 9.

64. The Board is responsible for “[e]stablish[ing] and enforc[ing] compliance with professional standards and rules of conduct of cosmetology.” La R.S. § 37:575(A)(6).

65. Defendants are responsible for inspecting licensed facilities to ensure compliance and “[c]onduct[ing] any investigation, inquiry, or hearing as is necessary to supervise the regulatory provisions” of the state’s cosmetology laws and regulations. La. R.S. § 37:575(A)(10), (B)(5).

66. As part of its enforcement authority, Defendants may file a lawsuit against a salon owner, a licensed individual, or an unlicensed individual to enforce the state’s cosmetology licensing laws and regulations and seek an injunction. La.

R.S. § 37:605(A). In an action for an injunction, Defendants may impose a penalty of up to \$5,000, as well as reasonable attorneys' fees and court costs on an individual found to be in violation of the cosmetology laws. La. R.S. §§ 37:605(B), 37:606(C), (D).

67. The Board frequently finds braiders to be noncompliant, estimating that braiders are found noncompliant in 80% of inspections “only because they do not have a Louisiana license.” Neely Aff. Ex. 1, Butler Depo. Tr. 69:1 – 11; *see also* Neely Aff. Ex. 1, Butler Depo. Tr. 79:13 – 22 (agreeing that “virtually all braiders who fail fail because of the absence of a license”). Nevertheless, the Board is unaware of a single instance of an unpermitted braider injuring a client. *See supra* ¶ 41.

68. For example, on June 12, 2018, the Board inspected Art of Braiding and reported a violation for employing an unlicensed braider. Every other component of the inspection report, including the components regarding cleanliness, sanitation, and sterilization, were given passing marks. Neely Aff. Ex. 4, LBSC 0910.

69. Similarly, on September 7, 2018, the Board inspected Flamin Hair Designs and reported a violation for employing an unlicensed braider. Every other component of the inspection report, including the components regarding cleanliness, sanitation, and sterilization, were given passing marks. Neely Aff. Ex. 4, LBSC 0896.

70. Afro Touch, like these other salons, received exemplary sanitation scores on its violation reports for failing to have a license. *See supra* ¶¶ 8–9.

#### Exceptions to the Permit Requirement

71. Not all individuals who practice hair braiding are required to obtain an alternative hair design permit in order to practice their profession. Licensed cosmetologists, for example, may braid hair without obtaining a separate alternative hair design permit. *See* Neely Aff. Ex. 3, Brown Tr. 51:14 – 53:15.

72. Cosmetologists are required to complete 1,500 hours of instruction spread out over five (5) major topics and twenty-one (21) subtopics, only one of which includes alternative hair design. *See* LAC 46:XXXI.301(A).

73. As with the alternative hair design curriculum, the Board does not require cosmetology schools to devote any amount of the required 1,500 hours of instruction to any specific topic. *See* LAC 46:XXXI.301(A).

74. In order to obtain a cosmetology license, prospective applicants must complete a practical exam. The Board admits that braiding is not tested on the cosmetology practical exam. *Neely Aff. Ex. 3, Brown Depo. Tr. 69:14.*

75. Licensed barbers are also exempt under Louisiana's cosmetology laws. *See* La. R.S. § 37:581(B)(3).

76. Barbers are required to complete 1,500 hours of training spread out over seventeen (17) major topics and associated subtopics, none of which include alternative hair design or braiding. *See* LAC 46:VII.1301.

77. Indeed, the Board concedes that barbers do not possess the knowledge or experience necessary to provide safe hair braiding services. *Neely Aff. Ex. 2, Martin Depo. Tr. 59:8 – 11.*

78. Braiders who work for free are also exempt from the Board's requirement to obtain an alternative hair design permit. La. R.S. § 37:563(6).

79. The Board concedes that unpaid braiders present a "risk," but that "the person who is not paying has very little to lose." *Neely Aff. Ex. 2, Martin Depo. Tr. 56:10 – 14.*

80. Braiders who have obtained a hair braiding license from another state may also apply for and receive an alternative hair design permit without taking additional coursework, even if their out-of-state license required less than 500 hours of training. *Neely Aff. Ex. 1, Butler Depo. Tr. 61:24 – 62:6; see also* LAC 46:XXXI.1105(A).

81. An application for reciprocity consists of the out-of-state license, a copy of the applicant's social security card, a driver's license or state-issued ID, a certificate

of training from the issuing state, and a small fee. Neely Aff. Ex. 1, Butler Depo. Tr. 59:21 – 60:5.

82. The Board has never denied a complete application for reciprocity that Board staff submitted for approval. Neely Aff. Ex. 1, Butler Depo. Tr. 62:15 – 21.

*Braiders in Other States*

83. Braiders in 31 other states, including neighboring Texas, Arkansas, and Mississippi, do not require a license to braid hair for compensation.<sup>1</sup>

84. The Board concedes that it is not aware of any reason why Louisiana braiders need to be subjected to strict regulations when braiders in every neighboring state are permitted to practice without any regulation whatsoever. Neely Aff. Ex. 1, Butler Depo. Tr. 86:12 – 24; Neely Aff. Ex. 2, Martin Depo. Tr. 97:16 – 98:2.

85. Indeed, the Board cannot point to a single example of an injury caused by natural hair braiding in Texas, Arkansas, or Mississippi. Neely Aff. Ex. 6, Defs.' Answer to Interrogatory 27.

86. Braiders in six states are required only to obtain a specialty license that involves less than 50 hours of required instruction, including Oregon (an online module),<sup>2</sup> Missouri (a 4–6 hour video),<sup>3</sup> South Carolina (6 hours of instruction),<sup>4</sup>

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<sup>1</sup> See Ariz. Rev. Stat. § 32-506; Ark. Code § 17-26-504; Cal. Bus. & Prof. Code § 7316; Colo. Rev. Stat. § 12-105-118; Conn. Gen. Stat. § 20-250; Del. Code tit. 24, § 5103; Fla. Stat. § 477.019; Ga. Code § 43-10-1; Ind. Code § 25-8-1.1-1; Iowa Code § 135.37A; Kan. Stat. § 65-1901; Ky. Rev. Stat. § 317A.020(1); Me. Rev. Stat. tit. 32, § 14203; Md. Code, Bus. Occ. & Prof. § 5-101; Mass. Gen. Laws ch. 112, § 87T; Mich. Comp. Laws § 339.1201; Minn. Laws § 155A.28; Miss. Code § 73-7-71; Neb. Rev. Stat. § 38-1075(3); N.H. Rev. Stat. § 313-A:25(XIII); N.D. Cent. Code § 43-11-01; Okla. Stat. tit. 59, § 199.1; R.I. Gen. Laws § 5-10-29; S.D. Codified Laws § 36-15-16.1; Tex. Occ. Code § 1601.003; Utah Code § 58-11a-304(12); Vt. Stat. tit. 26, § 273; Va. Code Ann. § 54.1-700; Wash. Admin. Code § 308-20-025; W. Va. Code § 30-27-3.

<sup>2</sup> Or. Admin. R. 817-006-0050.

<sup>3</sup> Mo. Rev. Stat. § 329.275.

<sup>4</sup> S.C. Code § 40-7-255.

Tennessee (16 hours of instruction),<sup>5</sup> Alaska (35 hours of instruction),<sup>6</sup> and New Jersey (40–50 hours of instruction).<sup>7</sup>

87. The Board, like regulators in those other states, knows how to design rational regulations that are not unduly burdensome for cosmetology practices other than braiding. For example, after being sued over its 750-hour training requirement for eyebrow threaders, the Board adopted a zero-hour training requirement with nothing more than a 15-question sanitation training to ensure public health and safety. See <http://www.lsbclouisiana.gov/pdfs/threading.pdf>.

#### **STATEMENT OF ESSENTIAL LEGAL ELEMENTS**

Pursuant to Local Rule 9.10, Plaintiffs represent that the following legal elements are essential to this motion:

1. Article I, Section 2 of the Louisiana Constitution guarantees “[n]o person shall be deprived of life, liberty, or property, except by due process of law.”

2. Article I, Section 2 protects the right to earn an honest living and conduct business free from unreasonable government interference. *City of Crowley Firemen v. City of Crowley*, 280 So.2d 897, 902 (La. 1973) (calling the “right to work” a “basic individual freedom[ ]” and ruling unconstitutional an ordinance interfering with firefighters’ economic liberty).

3. Article I, Section 24 guarantees, in relevant part, that the “enumeration in [the Louisiana] constitution of certain rights shall not deny or disparage other rights retained by the individual citizens of the state.”

4. One unenumerated right recognized by the Louisiana Supreme Court is the right to economic liberty. See *City of Lafayette v. Justus*, 161 So.2d 747, 749 (La. 1964) (ruling unconstitutional an ordinance that interfered with business owner’s ability to earn his income).

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<sup>5</sup> Tenn. Code § 62-4-135.

<sup>6</sup> Alaska Admin. Code tit. 12, § 09.096.

<sup>7</sup> N.J. Stat. § 45:5B-22.2.

5. Because the right to liberty is afforded constitutional protection, any infringement of the right must bear a real and substantial relation to public health, safety, or welfare. *See id.*

6. Article I, Section 3 of the Louisiana Constitution requires “equal protection of the laws” and prohibits distinctions based on “arbitrar[y], capricious[], or unreasonabl[e]” policymaking:

No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations.

La. Const. art. I, § 3.

7. Thus, Article I, Section 3 prohibits state officials from creating regulatory classifications unrelated to a legitimate governmental interest in health, safety, or welfare. *La. & Ark. Ry. Co. v. Goslin*, 246 So.2d 852, 854 (La. 1971). In deciding whether a particular classification or exemption is constitutional, courts must “determine whether the distinction is arbitrary or is based on practical and reasonable grounds with relation to the public purpose sought to be achieved by the legislation.” *Id.*

8. Article II, Section 1 “divide[s]” the “powers of government of the state . . . into three separate branches: legislative, executive, and judicial,” while Section 2 requires that “no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others.”

9. Article III, Section 1(A) guarantees that “[t]he legislative power of the state is vested in a legislature, consisting of a Senate and a House of Representatives.”

10. Under Articles II and III, an administrative rule is facially unconstitutional unless the grant of authority from the legislature to the administrative agency (1) contains a clear expression of legislative policy,

(2) prescribes sufficient standards to guide the agency in the execution of that policy, and (3) is accompanied by adequate procedural safeguards to protect against an abuse of discretion by the agency. *State v. Alfonso*, 99-1546, p. 8 (La. 11/23/99), 753 So.2d 156, 161.

11. “An injunction shall be issued in cases where irreparable injury, loss or damage may otherwise result to the applicant, or in other cases specifically provided by law.” La. Code Civ. P. art. 3601.

12. “[A] petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, *i.e.*, when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right.” *Zeringue v. St. James Parish Sch. Bd.*, 13-444, p. 6 (La. App. 5 Cir. 11/19/13), 130 So.3d 356, 359 (citing *Jurisch v. Jenkins*, 99-0076 (La. 10/19/99), 749 So.2d 597).

13. Finally, even if the Court does not grant injunctive relief, “[c]ourts of record within their respective jurisdictions may declare rights, status, and other legal relations whether or not further relief is or could be obtained.” La. Code Civ. P. art. 1871. And “[n]o action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for; and the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.” *Id.* As a result, this Court can—and should—declare that the Board acted unconstitutionally, even if it does not enjoin the Board or otherwise order it to correct the constitutional violation.

### ARGUMENT

Motions for summary judgment must be granted when there is “no genuine issue as to material fact” and the “mover is entitled to judgment as a matter of law.” La. Code Civ. P. art. 966(A). While the burden of proof remains with the mover, summary judgments are favored under Louisiana law and “shall be” construed to

accomplish the ends of securing a “just, speedy, and inexpensive determination of every action.” *Id.* art. 966(A)(2). When a motion for summary judgment is supported by proof, “an adverse party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or . . . otherwise . . . must set forth specific facts showing that there is a genuine issue for trial.” *Id.* art. 967(B).

There are no material facts in dispute, and Plaintiffs are entitled to judgment as a matter of law. In Part I, Plaintiffs explain how Defendants’ licensing and permitting regime violates Plaintiffs’ state constitutional right to practice the occupation of their choosing free from unreasonable government interference. In Part II, Plaintiffs explain how Defendants’ licensing and permitting regime violates the separation of powers required under Louisiana’s non-delegation doctrine.

**I. The Permit Requirement Violates Plaintiffs’ Right to Practice Their Occupation Free From Unreasonable Interference.**

Plaintiffs’ right to practice the occupation of their choosing free from unreasonable government interference is based on three provisions of the Louisiana Constitution: Article I, Section 2 (the Due Process Clause), Article I, Section 3 (the Equal Protection Clause), and Article I, Section 24 (the Unenumerated Rights Clause). Together, these provisions establish limits on the government’s ability to use the police power to regulate a person’s livelihood. *See, e.g., Banjavich v. La. Licensing Bd.*, 111 So.2d 505, 511 (La. 1959) (“This court, buttressed by authorities of the Supreme Court of the United States, has recognized that the right to engage in a lawful calling is of such a basic nature that the curtailment of the right by oppressive or arbitrary legislation effectuates a deprivation of the complainant’s property without due process and denies him equal protection of the law.”); *see also City of Crowley Firemen v. City of Crowley*, 280 So.2d 897, 902 (La. 1973) (“We find it particularly crucial in this case that the ordinance in question operates as a direct infringement upon one of the most basic individual freedoms, the right to work . . .”).

Louisiana courts have applied two different legal standards in economic liberty cases—one requiring a real and substantial relationship between an economic regulation and the general public good; the other requiring only a rational relationship. For example, in *Gilbert v. Catahoula Parish Police Jury*, the Louisiana Supreme Court held:

The test to be applied in determining whether a particular ordinance is a reasonable exercise of a government's police power is whether there is a *real and substantial relationship* between the regulation imposed and the prevention of injury to the public or the promotion of the general welfare.

407 So.2d 1228, 1231 (La. 1981) (emphasis added).

Yet, while *Gilbert* and other real-and-substantial cases like it remain good law, the Louisiana Supreme Court has at times applied a rational basis standard. See, e.g., *Lakeside Imports, Inc. v. State*, 94-0191, p. 4 (La. 7/5/94), 639 So.2d 253, 256 (“When a statute does not interfere with fundamental personal rights or draw upon inherently suspect distinctions such as race or religion, the jurisprudence requires only that the classification challenged be *rationaly related to a legitimate state interest.*” (emphasis added)). Of course, only the Louisiana Supreme Court can decide which of these two lines of cases governs. The best approach for this Court is to apply both standards.

This Court should apply the real-and-substantial test and hold that the Board's permit requirement fails to satisfy this elevated level of scrutiny. As explained below in Part I.A, application of the real-and-substantial test is firmly rooted in Louisiana caselaw and reflects a growing number of state high courts that provide heightened protection to economic liberty under state constitutions.

Under either the real-and-substantial test or the less demanding rational basis test, however, Plaintiffs successfully carry their burden of proving that the Board's permit requirement is unconstitutional. That's because both standards require “at least some substantial evidence upon which the legislative action could have been

taken.” *City of Crowley Firemen*, 280 So.2d at 900 (applying rational basis); *see also Schwegmann Bros. v. La. Bd. of Alcoholic Beverage Control*, 43 So.2d 248, 258 (La. 1949) (looking to evidence in applying the real-and-substantial test). Where that evidence is “incongruous with the reasonableness of the [legislation], the [legislation] will be invalidated although under different local conditions it would be upheld.” *City of Crowley Firemen*, 280 So.2d at 900. As explained below in Part I.B, the Board’s permit requirement fails to meet even this minimal standard because the Board considered no evidence in enacting the permit requirement and because the permit requirement is oppressive and unreasonable.

A. This Court Should Apply the Real-And-Substantial Test and Strike Down the Permit Requirement as Unconstitutional.

Because this case involves Plaintiffs’ constitutionally protected right to earn a living, this Court should apply the real-and-substantial test to the Board’s permit requirement and strike it down as unconstitutional. Indeed, a growing number of state high courts have begun to recognize that their state constitutions provide elevated protections against occupational restrictions that burden a person’s right to practice their chosen profession. *See Patel v. Texas Dep’t of Licensing & Regul.*, 469 S.W.3d 69 (Tex. 2015) (applying the real-and-substantial test to invalidate a 750-hour training requirement for eyebrow threaders); *Ladd v. Real Estate Comm’n*, 230 A.3d 1096 (Pa. 2020) (applying the real-and-substantial test to reverse the grant of a motion to dismiss in a case challenging a real-estate license requirement for web-based short-term rental managers); *Jackson v. Raffensperger*, 843 S.E.2d 576 (Ga. 2020) (applying the real-and-substantial test to reverse the grant of a motion to dismiss in a case challenging a license requirement for lactation consultants).

Similar decisions are deeply rooted in Louisiana caselaw. For example, in *Schwegmann Brothers*, the Louisiana Supreme Court heard a challenge brought by a New Orleans retailer against a state law that required price markups on certain alcoholic beverages. 43 So. 2d at 250. The state justified the measure as necessary for

the protection of public health and safety, specifically to “prevent cut throat competition and price wars.” *Id.* at 258. Applying the real-and-substantial test, the Court explained that “[t]he claim that . . . the law bears a reasonable relation to a public interest must not rest on mere conjecture, but must be supported by something of substance.” *Id.* at 257 (citations omitted). Turning to the trial record, the Court held that there was no evidence to suggest that price wars existed at or around the time of the legislation. Instead, the record “at the most . . . shows that several isolated price cutting incidents between certain individuals occurred many years before the adoption of the statute.” *Id.* at 258. Even if evidence substantiated a health and safety concern, the Court continued, the legislation was not appropriately tailored to that purpose because it omitted mandatory mark-ups for manufacturers, who “very easily might instigate and sustain the occasion of a price war.” *Id.* at 259. Consequently, the legislation was “manifestly unreasonable within the contemplation of the state’s police power” and therefore unconstitutional. *Id.*

Here, as in *Schwegmann Brothers*, the record is bereft of any evidence supporting the Board’s rationale for permitting braiders. The Board consulted no experts or studies and fielded no public complaints when the permit requirement was first established in 2003. *See supra* SUMF ¶¶ 33–34. Nor did it consider any evidence when considering whether to grandfather existing braiders. *See supra* SUMF ¶¶ 37–38. The Board again considered no experts or studies and fielded no public complaints when reducing the training requirement from 1,000 hours to its present level of 500 hours in 2010. *See supra* SUMF ¶¶ 40–41. Indeed, since enacting the alternative hair design permit requirement in 2003, the Board cannot point to a single recorded instance of an individual who has been harmed by natural hair braiding. *See supra* SUMF ¶ 42. Nor can the Board point to a single recorded instance of an individual who has been harmed by hair braiding in the three neighboring states where hair braiding is not regulated. *See supra* SUMF ¶ 85. The absence of such a factual record

leaves the Board “rest[ing] on mere conjecture,” *Schwegmann Brothers*, 43 So.2d at 257, and is therefore fatal to the constitutionality of the permit requirement in this case. *See also City of Shreveport v. Curry*, 357 So.2d 1078, 1082 (La. 1978) (holding unconstitutional a municipal ordinance prohibiting frog gigging in part because its “purpose relative to the public health, morals, peace or general welfare . . . is not made apparent by the barren record”).

Even if the Board had acted upon “at least some substantial evidence,” in establishing the permit requirement, *City of Crowley Firemen*, 280 So.2d at 900, its implementation bears no relationship to its stated objective of protecting the public health and safety, much less the “real and substantial” relationship that the Louisiana Constitution requires. The Board’s 500-hour “curriculum,” for example, merely lists required topics, leaving it to each school to determine whether to devote more instruction to “The Multi-Cultural American Hair Experience” or “Types of Bacteria.” *See supra* SUMF ¶ 46. Indeed, cosmetology schools seeking to offer the Alternative Hair Design Curriculum need not even specify how many hours they intend to spend on any given subject in order to obtain the Board’s approval to teach it. *See supra* SUMF ¶ 50. Unsurprisingly, not a single cosmetology school that has sought to teach the alternative hair design curriculum has failed to meet the Board’s lax standard. *See supra* SUMF ¶ 51.

The last step in the Board’s unimpressive curriculum is an equally deficient examination requirement. The practical exam, which all applicants must complete before receiving a permit, does not even test sanitation, safety, or first aid. *See supra* SUMF ¶ 59. Instead, it tests only an applicant’s ability to complete basic braids. *See id.* The written exam, meanwhile, is exclusively composed and administered by a national testing company over which the Board possesses zero oversight. *See supra* SUMF ¶ 57.

The permit requirement's many exceptions also undermine its relationship to protecting the public welfare. Licensed cosmetologists are not required to obtain an alternative hair design permit in order to braid hair, even though they receive as little as an hour of instruction in alternative hair design and are not tested on braiding as part of their practical exam. *See supra* SUMF ¶¶ 72–74. Licensed barbers receive no instruction in alternative hair design but are similarly allowed to braid hair without a permit, even though the Board concedes that barbers do not possess the knowledge or experience to provide safe hair braiding services. *See supra* SUMF ¶¶ 76–77. Braiders who do not charge for their services are also permitted to braid hair without a permit despite presenting a “risk” to public safety because “the person who is not paying has very little to lose.” *See supra* SUMF ¶¶ 78–79. Lastly, braiders with out-of-state licenses are eligible to apply for reciprocity—an application which the Board has never denied—even if their out-of-state license required far less than 500 hours of instruction.<sup>8</sup> *See supra* SUMF ¶¶ 80–82.

In this respect, the Board's exception-riddled permit requirement mirrors the professional licensing requirement in *Banjavich v. Louisiana Licensing Board for Marine Divers*, 111 So.2d 505 (La. 1959). In that case, the Court heard a challenge brought by experienced marine divers to a state licensing regime that required them to spend years as an apprentice diver and complete a licensing exam in order to be certified as a master marine diver. *Id.* at 508–10. It also included a grandfathering provision that permitted Louisiana residents with ten years of commercial marine diving experience to receive a master marine divers' license without obtaining an apprenticeship or passing an exam. *Id.* at 510. Declaring that “there appears to be no tangible reason” for the disparate treatment caused by the grandfathering provision,

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<sup>8</sup> Braiders in six states can obtain a specialty braiding license with less than 50 hours of required instruction, including Oregon (an online module), Missouri (a 4-6 hour video), South Carolina (6 hours of instruction), Tennessee (16 hours of instruction), Alaska (35 hours of instruction), and New Jersey (40–50 hours of instruction). *See supra* SUMF ¶ 86.

the Court held the licensing regime unconstitutional and observed that “the whole scheme of legislation exhibits that many of the statute’s provisions are arbitrary, discriminatory and oppressive, which, in the end result, may probably create a monopoly of the marine diving business for the benefit of a favored few.” *Id.* at 515; *see also City of Shreveport*, 357 So.2d at 1082–83 (holding an ordinance prohibiting frog gigging unconstitutional in part because there was no reason “to differentiate the nocturnal activity of frog giggers . . . as opposed to the activity of other boaters and hunters who can permissibly . . . enjoy their sport”).

Here, just as in *Banjavich* and *City of Shreveport*, there is no reasoned justification for the exceptions to the Board’s permit requirement. Indeed, the Board explicitly acknowledges that two of the exceptions—for licensed barbers and unpaid braiders—present the very same alleged health and safety risks as unpermitted braiders.

If braiding presented the slightest genuine risk to public health and safety, untrained people would be forbidden from doing it. Yet, people who have little to no training (like licensed cosmetologists and barbers) are allowed to braid hair for compensation. And people who charge no fee are allowed to braid hair because, in the Board’s view, only their money is at stake, and “the person who is not paying has very little to lose.” *See supra* SUMF ¶ 75. Where real health and safety concerns exist, the untrained are prohibited from practicing—this is why it is illegal to perform medical procedures for free. Here, a person’s ability to braid hair turns not on training or competency; it turns only on whether they are paid. As in *Banjavich*, this regulatory regime “create[s] a monopoly . . . for the benefit of a favored few.” 111 So.2d at 515. Those “favored few” happen to be members of the Board.<sup>9</sup> This is the type of senseless

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<sup>9</sup> Each of the Board’s eight members must be a licensed cosmetologist, an owner of a beauty shop or salon, or a cosmetology instructor. *See supra* SUMF ¶ 62. Three of the board’s current members have an ownership interest in a Louisiana cosmetology school. *See supra* SUMF ¶ 63.

regulatory burden that the Louisiana Supreme Court has struck down in cases like *Banjavich* and *Schwegmann Brothers*.

B. The Permit Requirement Is Not Rationally Related to Preventing Injury.

Even if this Court applies the less rigorous rational basis test, the Board's alternative hair design permit requirement fails to pass constitutional muster for many of the same evidentiary and tailoring reasons discussed above. It bears repeating here, though, that even the rational basis test requires "at least some substantial evidence upon which the legislative action could have been taken." *City of Crowley Firemen*, 280 So.2d at 900; *see also City of Shreveport v. Restivo*, 491 So.2d 377, 380 (La. 1986) (applying rational basis to strike down a law because "there was no evidence whatsoever in the record"). The Fifth Circuit has similarly adopted a robust standard for federal rational basis challenges, recognizing that "[t]he great deference due state economic regulation does not demand judicial blindness to the history of a challenged rule or to the context of its adoption nor does it require courts to accept nonsensical explanations for regulation." *St. Joseph Abbey v. Castille*, 712 F.3d 215, 226 (5th Cir. 2013) (striking down Louisiana law that permitted only state-licensed funeral directors to sell "funeral merchandise" like caskets).

In *City of Crowley Firemen*, the Louisiana Supreme Court heard a challenge brought by local firemen against a city ordinance that forbade police and firefighters from engaging in any outside employment. 280 So.2d at 898. The city argued that the restriction was justified because (1) outside employment could subject the department to increased risk of accident and/or sickness, and (2) because it promoted a more efficient department. *Id.* at 899–900. In evaluating these justifications, the Court engaged in a thorough review of the fact findings of the lower court. Noting that taking on outside employment had been a "common practice by employees" prior to the ordinance, the Court further noted that:

- “[n]o firemen has required sick leave or pay as a result of injuries sustained while engaged in outside employment during at least sixteen years prior to the trial of this case;”
- “[t]here has been no problem locating off-duty firemen to have them report for emergencies;” and
- “outside employment has not caused any fatigue which would hinder the alertness of the firemen while on duty.”

*Id.* at 900. In other words, the city’s rationales were unsupported by the record, rendering the restrictions “an arbitrary exercise of authority by the municipality . . . not reasonably related to the ostensible purpose of the ordinance.” *Id.* at 901.

Here, as in *City of Crowley Firemen*, the record is entirely devoid of factual support for the notion that there is or ever was a legitimate health concern regarding natural hair braiders. *See supra* Part I.A. This alone is fatal under a rational basis inquiry.

But even if the Board’s health and safety concerns were legitimate—and they are not—the Board’s permitting regime fails rational basis because in practice it is “so oppressive or unreasonable as to outweigh the desired benefits.” *City of Crowley Firemen*, 280 So.2d at 900; *see also C.J. Richard Lumber Co., Inc. v. Melancon*, 476 So.2d 1018, 1021 (La. Ct. App. 1985) (“[O]ne who claims a violation of due process of law must show that the statute in question exceeds the bounds of reasonableness because it is arbitrary or oppressive.”).

In order to obtain an alternative hair design permit, a prospective applicant must complete at least 500 hours of instruction at a licensed cosmetology school. *See supra* SUMF ¶ 45. But cosmetology schools are not required to offer an alternative hair design program. *See supra* SUMF ¶ 52. In fact, of the 39 licensed cosmetology schools in Louisiana, only three offer the alternative hair design curriculum: the Cosmetology Institute in New Orleans, the Cuillier Career Center in Marrero, and

Celebrity Stylist in Monroe. *See supra* SUMF ¶ 53. Any prospective braider living outside of the New Orleans or Monroe areas—including those in major cities like Baton Rouge, Lafayette, and Shreveport—would need to drive several hours *in addition to* the hours spent attending instruction. Even if a braider was able to make obtaining a permit her full-time job, it would take her a little over three months working 40 hours a week in order to complete the required classes, not to mention the additional time spent preparing for and taking the written and practical exams. Perhaps unsurprisingly, just 18 individuals statewide have managed to complete this grueling process and are currently holding a permit. *See supra* SUMF ¶ 39.

This regulatory regime is “so oppressive . . . as to outweigh the desired benefits” both because of the burdens it places on prospective braiders and on the communities braiders serve. For these reasons, the Board’s permit requirement also fails rational basis.

## **II. The Permit Requirement Violates Separation of Powers.**

The Board’s adoption of the permit requirement also violates the separation of powers required by Article II, §§ 1–2 and Article III, § 1 of the Louisiana Constitution. These provisions divide the powers of state government into “three separate branches: legislative, executive and judicial,” La. Const. art. II, § 1, and further provide that “no one of these branches . . . shall exercise power belonging to either of the others,” La. Const. art. II, § 2. The legislative power is vested exclusively in the Legislature. La. Const. art. III, § 1.

Because the Louisiana Constitution “unequivocally mandates the separation of powers among the three branches of state government,” the Louisiana Supreme Court in delegation cases “traditionally has distinguished between delegations of purely *legislative* authority, which necessarily violate the separation of powers, and delegations of *ministerial or administrative* authority, which do not.” *State v. All Pro Paint & Body Shop, Inc.*, 93-1316, pp. 6–7 (La. 7/5/94), 639 So.2d 707, 711 (emphasis

in original). To make that distinction, the Court developed a three-part test. Under this test, a delegation of authority is constitutionally valid if it “(1) contains a clear expression of legislative policy; (2) prescribes sufficient standards to guide the agency in the execution of that policy; and (3) is accompanied by adequate procedural safeguards to protect against abuse of discretion by the agency.” *State v. Alfonso*, 99-1546, p. 8 (La. 11/23/99), 753 So.2d 156, 161. “[E]ven when the Legislature has properly delegated to an agency certain administrative or ministerial authority, the regulations promulgated by the agency may not exceed the authorization delegated by the Legislature.” *Id.* at 9.

Here, the Legislature’s stated policy is to “promote, preserve, and protect the public health, safety, and welfare by and through the effective control and regulation of the practice of cosmetology.” *See supra* SUMF ¶ 23. The Legislature defines cosmetology as “the practice of using one’s hands, mechanical or electrical apparatuses, or appliances or using cosmetic preparations, antiseptics, soaps, detergents, tonics, lotions, or creams in any one or any combination of the practices of esthetics, hair dressing, and manicuring for compensation, direct or indirect, including tips.” *See supra* SUMF ¶ 25. The Legislature further defines hair dressing as “massaging, cleansing, washing, stimulating, manipulating, exercising, beautifying, or doing similar work upon the scalp of any person, including arranging, singeing, cutting or shaping, curling or waving, cleansing, shampooing, styling, bleaching, coloring, or similar work upon the hair of another person.” *See supra* SUMF ¶ 26. In furtherance of this stated policy, the Legislature created the Board and vested it with the “control and regulation of the practice of cosmetology.” *See supra* SUMF ¶ 24. The Legislature also gave the Board the power to “adopt rules and regulations for the issuance of special permits to allow limited and specific powers within the practice of cosmetology.” *See supra* SUMF ¶ 25.

It is undisputed that, prior to creating the alternative hair design permit in 2003, natural hair braiding was not regulated as a component of cosmetology. *See supra* SUMF ¶ 31. Indeed, at no point has the Legislature explicitly opined on the regulation, licensing, or permitting of natural hair braiding. Instead, it has delegated to the Board the general power to regulate cosmetology, leaving it to the Board to determine whether that includes practices ranging from natural hair braiding to eyebrow threading and, if so, how to regulate them. Such an extraordinarily broad delegation of legislative authority contains neither “sufficient standards to guide the agency in the execution of that policy” nor “adequate procedural safeguards to protect against abuse of discretion by the agency.” *Alfonso*, 99-1546, p. 8 (La. 11/23/99).

By contrast, when the Legislature sought to regulate blow dry technicians, it told the Board both whether and how to regulate them. It specifically instructed the Board to establish a license for blow dry technicians, and it defined the practice of blow drying with particularity. *See supra* SUMF ¶ 29. The Legislature also told the Board how to regulate blow dry technicians—by “subject[ing them] to the same qualifications and fees” as a cosmetologist but fewer hours of required training. *See id.* These standards and safeguards are wholly absent in the context of the regulation of natural hair braiding.

The Legislature’s silence concerning natural hair braiders “supports the conclusion that the Legislature did not intend to authorize the [Board] to adopt” the permit requirement. *See Alfonso*, 99-1546, p. 11 (La. 11/23/99). The practice of natural hair braiding is not specifically covered by the Legislature’s definition of cosmetology. The only plausible statutory basis for the permit requirement is the hair dressing subcomponent of cosmetology. *See supra* SUMF ¶ 26. But the activities listed under that subcomponent—which include “arranging, singeing, cutting or shaping, curling or waving, cleansing, shampooing, styling, bleaching, coloring, or similar work upon the hair of another person”—do not obviously include natural hair braiding, which

involves “braiding, locking, twisting, weaving, cornrowing, or otherwise physically manipulating hair *without* the use of chemicals that alter the hair’s physical characteristics.” *See id.; supra* SUMF ¶ 1 (emphasis added). The fact that the Legislature did not obviously include natural hair braiding in the practice of cosmetology explains why natural hair braiding was not regulated by the Board until 2003. *See supra* SUMF ¶ 31. Because natural hair braiding is not clearly part of the statutory definition of cosmetology, the Board exceeded its authority when it adopted the permit requirement for natural hair braiders. The permit requirement is therefore unconstitutional and void.

### **CONCLUSION**

For these reasons, Plaintiffs’ Motion for Summary Judgment should be granted and Defendants’ permitting requirement should be declared unconstitutional and enjoined either facially or as applied to Plaintiffs.

Dated: September 9, 2021

Respectfully submitted,

#### **INSTITUTE FOR JUSTICE**

/s/ Keith Neely  
Keith Neely, DC Bar No. 888273735\*  
Institute for Justice  
901 N. Glebe Road, Suite 900  
Arlington, VA 22203  
Phone: (703) 682-9320  
Facsimile: (703) 682-9321  
kneely@ij.org

Wesley Hottot, Tex. Bar No. 24063861\*  
Institute for Justice  
600 University Street, Suite 1730  
Seattle, WA 98101-3150  
Phone: (206) 957-1300  
Facsimile: (206) 957-1301  
whottot@ij.org

F. Evans Schmidt, La. Bar No. 21863  
Koch and Schmidt, L.L.C.  
650 Poydras Street, Suite 2660  
New Orleans, LA 70130  
Telephone: (504) 208-9040  
Facsimile: (504) 208-9041  
fes Schmidt@kochschmidt.com

*Attorneys for Plaintiffs*

\* Admitted *pro hac vice*