

In the District Court
of
Shawnee County, Kansas

Bryn Green

Plaintiff,

v.

**Kansas State Board of Cosmetology,
David Yocum**, in his official capacity as
Chairperson of the Kansas State Board of
Cosmetology,
**Nichole Hines,
Christine "Tina" Burgardt,
Kelly Robbins,
Dave Tucker,
Ashley Rangel,
Kimberley Mancuso,
Mary Blubaugh**, in their official capacities
as members of the Kansas State Board of
Cosmetology,
Benjamin Foster, in his official capacity as
Executive Director of the Kansas State
Board of Cosmetology, and
State of Kansas.

Defendants.

Civil Action No. **SN 2023-CV-300030**

DIV 3

Petition for Declaratory Judgment; Jury
Demand; Exhibits A-H.

Petition Pursuant to KSA Ch. 60.

Petition for Declaratory Judgment

Bryn Green files this Petition for Declaratory Judgment seeking prospective, non-monetary relief from the Defendants' unconstitutional occupational licensing regime involving sugaring, a safe and effective temporary hair removal technique.

Introduction

1. The only thing standing between Bryn Green and her dream business is the government's unreasonable, arbitrary, oppressive, and unconstitutional occupational licensing regime involving sugaring, a safe and effective temporary hair removal technique that has been practiced for thousands of years.

2. Ms. Green is a 32-year-old mother in Hays, Kansas. To help support her family, Ms. Green wants to perform sugaring—and only sugaring—which is an ancient grooming technique that uses a mixture of sugar, lemon juice, and water to safely remove unwanted hair. Sugaring would also allow her greater flexibility in raising her son. But in Kansas, it's a crime to practice unlicensed sugaring for money, and Ms. Green isn't licensed.

3. To obtain a license, Ms. Green would have to complete either 1,500 or 1,000 hours of instruction in a cosmetology or esthetician school, respectively, that has virtually nothing to do with sugaring. It is estimated that *less than* 1% of either curriculum is sugaring specific.

4. Making matters worse, schooling is prohibitively expensive for most. Cosmetology and esthetician schools can cost as much as \$19,000 and \$16,000, respectively.

5. But that's not all. After finishing school, aspiring sugarers are forced to take two examinations that have virtually nothing to do with sugaring—and because the tests are *written only*, aspiring sugarers will *never* be tested on their ability to perform sugaring safely, effectively, or competently.

6. There is no esthetician school in Hays, only a cosmetology school. As a result, Ms. Green would be forced to spend tens of thousands of dollars and almost a year of her life learning irrelevant things and taking irrelevant examinations that don't test for competency in sugaring, just so she could use a completely safe, all-natural paste to remove unwanted hair.

7. The Defendants' occupational licensing regime involving sugaring is unreasonable, irrational, arbitrary, oppressive, protectionist, and not appropriately tailored to fit the practice of sugaring—it is unconstitutional.

8. This lawsuit seeks to vindicate Ms. Green's fundamental and inalienable natural right to earn an honest living, free from unreasonable government restrictions, and her right to

be treated equally under the law, all of which are protected by the Kansas Constitution Bill of Rights.

9. Ms. Green is challenging the constitutionality of the Defendants' occupational licensing regime involving sugaring, which includes the regime's statutes, regulations, rules, and policies. The occupational licensing regime involving sugaring deprives Ms. Green, and others like her, of their constitutional rights under the Kansas Constitution Bill of Rights Sections 1, 2, 18, and 20.

10. To protect the rights of Ms. Green and others similarly situated, this Court should declare Defendants' occupational licensing regime involving sugaring unconstitutional and permanently enjoin its enforcement.

Parties
Plaintiff Bryn Green

11. Bryn Green is a citizen of Kansas and the United States, and is a resident of Ellis County, Kansas. Ms. Green holds a Bachelor of Science in Agricultural Business from Fort Hays State University. She does not hold a cosmetology or esthetician license. Ms. Green would like to earn an honest living by performing sugaring services for compensation but is currently prohibited from doing so because of the Defendants' occupational licensing regime involving sugaring.

Defendant Kansas State Board of Cosmetology

12. The Kansas State Board of Cosmetology ("Board") is comprised of an executive director and individual members, and is the State of Kansas board that regulates, oversees, implements, and enforces the occupational licensing regime at issue in this case.

13. The Board regulates the practice of cosmetology, KSA 74-2701(a); it is empowered to establish rules and regulations, KSA § 74-2702a; impose cease and desist orders, KSA § 65-1902(d), KSA § 65-1908(b); assess fines, KSA § 65-1902(d); bring legal actions in its own name in a court of competent jurisdiction, KSA § 65-1909(c); prescribe rules and regulations for inspectors, KSA § 65-1908; conduct its own inspections, KAR § 69-13-2; conduct any business before it, KSA § 74-2702; keep records of its proceedings, KSA § 74-

2702; keep a register of applicants for licenses, KSA § 74-2702; possess an official seal, KSA § 75-2702; administer oaths, KSA § 74-2702; grant and deny licenses to cosmetology schools, KSA § 65-1903; grant and deny licenses to cosmetologists and estheticians, KSA § 65-1904(c); grant and deny salon or clinic licenses, KSA § 65-1904a; refuse to issue or renew a license, or revoke, suspend, censure, limit or condition a license, KSA § 65-1908; issue permanent orders for the closing of any licensed establishment, KSA § 65-1908(c); hold examinations of applicants who have applied for licensure, KSA § 74-2703; establish a course of instruction and practice for cosmetology and esthetics schools, KSA § 65-1903; conduct inspections, KAR § 69-13-2(a); authorize inspections, KAR § 69-13-2(e); investigate specific complaints, KAR § 69-13-3; select a chairperson from its membership, KSA § 74-2701(b); and approve the chairperson's appointment of inspectors, KSA § 74-2702(a).

14. The Board is sued for non-monetary, prospective equitable relief, and is capable of being sued as such based upon the allegations contained in this Petition, the relevant statutes, regulations, and caselaw, as well as other factual and good faith legal arguments developed throughout the pendency of this case.

15. The Board is located in Topeka, Kansas, and may be served with process by serving the Kansas Attorney General at Memorial Hall, 2nd Floor, 120 SW 10th Avenue, Topeka, Kansas.

Defendants Members of the Board

16. The Board's members and executive director (collectively, "Members") oversee, regulate, administer, and enforce the occupational licensing regime at issue in this case.

17. The Board's members are David Yocum, Chair of the Board; Nichole Hines, Vice Chair; Christine "Tina" Burgardt, member; Kelly Robbins, member; Dave Tucker, member; Ashley Rangel, member; Kimberley Mancuso, member; Mary Blubaugh, member.¹

18. Benjamin Foster is the Executive Director of the Board. The Executive Director serves as the Board's treasurer, keeps a record of Board proceedings, and performs such other

¹ <https://www.kansas.gov/kboc/BoardMembers.htm> (last accessed Oct. 30, 2023).

duties as the Board directs. The Executive Director is empowered to conduct inspections, KAR § 69-13-2(d); authorize inspections, KAR § 69-13-2(e); investigate specific complaints, KAR § 69-13-3; and impose fines, among other things.

19. The Members are sued in their official capacity, for non-monetary, prospective relief.

20. The Members may be served with process by serving the Kansas Attorney General at Memorial Hall, 2nd Floor, 120 SW 10th Avenue, Topeka, Kansas.

Defendant State of Kansas

21. The State of Kansas is a state governmental entity, is sued for non-monetary, prospective relief, and may be served with process by serving the Kansas Attorney General at Memorial Hall, 2nd Floor, 120 SW 10th Avenue, Topeka, Kansas.

Jurisdiction and Venue

22. Ms. Green seeks to vindicate her rights under Sections 1, 2, 18, and 20 of Kansas Constitution Bill of Rights, under the Kansas Declaratory Judgment Act, KSA § 60-1701, *et seq.*, the Kansas Injunctive Relief Act, KSA § 60-901, *et seq.*, and KSA § 60-257.

23. Ms. Green seeks prospective declaratory and injunctive relief from the Defendants' unreasonable, irrational, oppressive, protectionist, and arbitrary occupational licensing regime involving sugaring.

24. As more fully developed below and throughout this lawsuit, Defendants' occupational licensing regime involving sugaring violates Ms. Green's fundamental and inalienable natural right to earn an honest living, free from unreasonable government restrictions, and her right to be treated equally under the law, all of which are protected by the Kansas Constitution Bill of Rights. These constitutional violations are ongoing and continuous. As more fully developed later, Ms. Green seeks 1) a judgment declaring the occupational licensing regime involving sugaring unconstitutional; and 2) a permanent injunction preventing Defendants from enforcing the occupational licensing regime involving sugaring.

25. This Court has jurisdiction pursuant to KSA § 60-1701, *et seq.*, KSA § 60-901 *et seq.*, Sections 1, 2, 18, and 20 of the Kansas Constitution Bill of Rights, KSA § 20-301, and KSA § 60-257.

26. The Board is located in Shawnee County, Kansas. Venue is proper.

Facts

Sugaring is An All-Natural, Temporary Hair Removal Technique

27. Sugaring is an ancient, all-natural, temporary hair removal technique, which dates back at least to ancient Egypt.

28. Sugaring typically involves applying a thick paste made of sugar, lemon juice, and water to the skin, by hand, and then removing the paste. *Milady Standard Esthetics: Advanced*, 2nd Edition (2013) at 570-71; *Milady Standard Esthetics: Fundamentals, 12th Edition* (2020) at 467. The hair adheres to the sugaring paste and is then removed.

The Benefits of Sugaring

29. Sugaring has become increasingly popular in North America. *Milady Standard Esthetics: Advanced* at 568-71. “Customers like the idea of an ancient, well-used technique, and they like that the sugar paste is 100 percent natural.” *Id.*

30. Sugaring is all-natural. *Id.*

31. Sugaring is non-invasive. *Id.*

32. Sugaring is safe. *Id.*

33. Applying the sugaring paste does not involve the use of heat, chemicals, or sharp objects. *Id.*

34. Each customer is serviced using fresh, sanitary sugar paste. *Id.*

35. Unlike waxing, sugaring does not risk burning or removing a customer’s skin. *Id.*

36. Unlike waxing, it is safe to sugar on areas of the skin with varicose veins, spider veins, psoriasis, and eczema. *Id.*

37. Because the sugaring paste does not adhere to the skin, it can be applied to the same area more than once without creating the risk of undue trauma to the skin. *Id.*

38. The sugaring paste has natural antiseptic properties, which inhibit bacterial growth, cause less irritation, and reduce possible breakouts in the days following the treatment. *Id.*

39. Sugaring paste is water soluble which can be cleaned up with soap and water.

40. In contrast, wax is not water soluble, which makes it more difficult to clean up. *Id.* Additionally, if wax is inadvertently applied to any part of the body, there is no easy way to remove it without also removing the hair underneath. Any misplaced sugar paste can simply be washed off with soap and water, leaving the hair intact.

41. Some customers prefer sugaring to waxing because the sugar paste can adhere to hair as short as 1/16-inch long, while wax requires at least 1/4-inch long, allowing customers to have hair removed more frequently. *Id.* at 570, 583.

42. There is nothing inherently dangerous about sugaring.

43. Sugaring doesn't require extensive schooling, coursework, or instruction to be able to perform it safely or competently.

44. Sugarers do not need extensive schooling, coursework, or instruction to learn basic hygiene or know how to wash their hands.

Cosmetology and Esthetics Licensing Regime Overview

45. State law prohibits owning or operating a salon where cosmetology or esthetics is practiced unless the person holds a valid salon license issued by the Board. KSA § 65-1902(a)(10). Among other penalties and potential consequences, operating a salon without a license is a class C misdemeanor. KSA § 65-1902(e).

46. State law prohibits persons from “engag[ing] in [the] practice of cosmetology [or] esthetics ... unless the person holds a valid license, issued by the [cosmetology] board[.]” KSA § 65-1902(a)(1). Among other penalties and potential consequences, practicing cosmetology or esthetics without a license is a class C misdemeanor.

47. State law prohibits a person from employing or allowing an individual to “engage in any activity for which a license is required ... unless such individual holds a

currently valid license issued to such individual[.]” KSA § 65-1909(a)(1). Among other penalties and potential consequences, doing so is a misdemeanor. KSA 65-1909(b).

48. The practice of cosmetology includes accepting compensation for the “temporary hair removal from the face or any part of the body by use of the hands or mechanical or electrical appliances other than electric needles.” KSA § 65-1901(d)(1)(C).

49. “Esthetics” isn’t defined, but an “esthetician” is a “person who, for compensation, practices” “cosmetology only to the following extent:” “(2) temporary hair removal from the face or any part of the body by use of the hands or mechanical or electrical appliances other than electric needles[.]” KSA § 65-1901(f)(2).

50. Hair braiders are exempted from the cosmetology licensing regime. *See* KSA § 65-1901(d)(2), KSA § 65-1928.

51. Hair threaders are exempted from the cosmetology licensing regime. *See* KSA § 65-1901(d)(2), KSA § 65-1928.

52. Sugaring is not exempted from the cosmetology licensing regime. Instead, sugaring falls within the definition of “temporary hair removal from the face or any part of the body by use of the hands or mechanical or electrical appliances other than electric needles[.]” KSA § 65-1901(d)(1)(C) & (e)(2).

53. Therefore, unlicensed sugaring for money is a crime, and only those who hold a license issued by the Defendant Board are able to earn honest livings through sugaring.

Becoming licensed: Mandatory apprenticeship and mandatory schooling

54. To obtain a license, aspiring sugarers must graduate from a Board-approved cosmetology or esthetician school. KSA § 65-1912; KAR § 69-1-1.

55. Fifteen days after enrolling in the Board-approved cosmetology or esthetician school, aspiring sugarers must apply and pay for an apprentice license. KSA § 65-1912(a).

56. While in school, aspiring sugarers must complete a certain number of apprenticeship hours. KSA 65-1912(b)(1), KSA 65-1912(b)(2)(B).

57. There is no Board-approved esthetician school in Hays, Kansas.

Cosmetology School

58. Cosmetology school consists of “not less than” 1,500 hours of a “course of instruction and practice” that is determined by the Board. KSA § 65-1903(a)(2)(D)(2)&(5).

59. The Board adopted the cosmetology curriculum by reference in KAR § 69-3-8. Exhibit A.²

COSMETOLOGY SCHOOL COURSE CURRICULA					
Approved by the Kansas Board of Cosmetology on July 24, 2020					
Cosmetology Training		Minimum Practice	Hours		
(1) Scientific concepts		40			
(a) Sanitation					
Personal					
Public					
Methods					
Chemistry					
Safety precautions					
First aid					
(b) Hair and Scalp		35			
Structure					
Composition					
Blood, nerve, and muscle supply and function					
Growth and regeneration					
Analysis					
Conditions and disorders					
(c) Skin					
Structure					
Function					
Blood and nerve supply and Function					
Conditions					
Disorders					
(d) Nails					
Structure					
Composition					
Growth and Regeneration					
Irregularities					
Disorders and diseases					
(2) Physical services					
(a) Shampoos and rinses				35	
Purpose and effects					
Materials and supplies					
Types of shampoos					
Types of rinses					
Procedures					
Related chemistry					
Client protection					
(b) Scalp and hair care		35			
Purpose and effects					

Cosmetology Training cont.		Minimum Practice	Hours
Materials and supplies			
Types of scalp treatments			
Procedures			
Safety measures			
Related chemistry			
(c) Facials and make-up		150	
Purpose and effect of massage			
Movements			
Materials, implements, and supplies			
Facial nerves and muscles			
Procedures			
Related chemistry			
Effects of make-up			
Hair removal			
Eyebrow arching			
Lash and brow tinting			
Safety precautions			
(d) Manicuring		180	
(e) Artificial nails			
Purpose and effects			
Equipment, supplies, and implements			
Procedures			
Related chemistry			
Safety precautions			
(3) Chemical Services			
(a) Hair coloring			
(b) Hair lightening		25	
Purpose and effects			
Materials and supplies			
Scalp and hair analysis			
Classification/types			
Color selection			
Procedures			
Corrective measures			
Fillers and conditioners			
Removal of artificial color			
Special effects			
Related chemistry			
Safety precautions			
(c) Chemical waving		25	150
Purpose and effects			
Materials and supplies			
Scalp and hair analysis			
Chemical classification			

² Also available at https://www.kansas.gov/kboc/Docs/Curriculum_Cosmetology.pdf (last accessed Oct. 30, 2023).

Cosmetology Training cont.	Minimum Practice	Hours	Cosmetology Training cont.	Minimum Practice	Hours
Procedures			Curling iron sets	50	
Special effects			Air waving		
Special hair problems			Blow dry styling	50	
Related chemistry			Safety measures		
Safety measures			(d) Care and styling of hair pieces		10
(d) Chemical hair relaxing	25	125	(5) Business practices		75
Purpose and effects			(a) Management practices		
Materials and supplies			(b) Salon developments		
Scalp and hair analysis			(c) Insurance		
Chemical classification			(d) Client records		
Procedures			(e) Salesmanship		
Special hair problems			(6) State law		50
Related chemistry			(a) Rules and regulations		
Safety measures			(7) Student specific needs		50
(4) Hair designing			Total Hours		1500
(a) Hair shaping		150			
Purpose and effects					
Materials, supplies and implements					
Techniques					
Use of implements					
Razor	25				
Scissors	25				
Designing					
Safety measures					
(b) Hair Styling		125			
Purpose and effects					
Materials and supplies					
Finger waving and shaping					
Curl formation					
Pin curls					
Complete pineurl sets	25				
Complete pineurl & wave	25				
Rollers					
Complete roller sets	50				
Comb-out techniques					
Complete comb out	50				
(c) Thermal Techniques		75			
Hair and scalp analysis					
Materials, supplies, and implements					
Hair pressing					
Thermal curling and waving					
Iron curling					
Electric curling					

60. Nearly every minute of cosmetology school is spent on matters non-specific to sugaring. A significant portion of the time is spent on topics a sugarer will never use under any circumstances.

61. Of the 1,500 hours required to become a licensed cosmetologist, only 150 hours are devoted to “facials and make-up.” Exhibit A. “Facials and make-up” include 11 sub-categories, one of which is “hair removal.” Exhibit A. There are at least six types of temporary hair removal techniques, one of which includes sugaring. Exhibit B.

62. Assuming each temporary hair removal technique was taught evenly, and assuming each of the “[f]acials and make-up” sub-categories were taught evenly, only 2.27 hours of instruction would be devoted to sugaring. Therefore, of the mandatory 1,500 hours, cosmetology school spends 99.998% teaching non-sugaring-specific information. Only .002% of

the curriculum would be sugaring specific. This assumes sugaring is being taught for the full 2.27 hours, which is highly unlikely.

63. A Board-approved textbook that forms a basis for schools' curricula, *Milady Standard: Cosmetology*, 13th ed. (2016), devotes only three *paragraphs* of the 1129 *pages* to the technique, one of which is only one sentence long. Rather than teaching cosmetology students how to provide sugaring services, the book advises students to learn about sugaring "at trade shows and seminars, as well as through videos." *Id.* at 747.

64. By comparison, the textbook spends five pages on "Resume Development," *id.* at 1036-1040; fourteen pages on "Life Skills," *id.* at 22-35; four pages instructing students on their personal image, grooming, and fashion, *id.* at 38-41; approximately 175 pages on "Nail Care," *id.* at 846-1021; approximately 35 pages on "Scalp care, Shampooing, Conditioning," *id.* at 320-355; and approximately 169 pages on "Haircutting" and "Hairstyling," *id.* at 356-525.

65. The book devotes three pages to the importance and proper method of washing hands, which is the only thing needed to safely practice sugaring. *Id.* at 92-93, 104.

66. The cosmetology curriculum doesn't require any hands-on practical training in sugaring either. Exhibit A.

67. It would take an aspiring sugarer about 47 weeks to complete the irrelevant course of instruction, if the aspiring sugarer attended school for 32 hours per week, every week.

68. Cosmetology school is prohibitively expensive for most aspiring sugarers.

69. The only cosmetology school in Hays, Kansas charges \$18,200 in total costs for its cosmetology program.³

70. That cost is roughly 58% of the per capita annual income in Hays, which is \$31,143;⁴ it is roughly 63% of the median annual wage of cosmetologists in Kansas, which is

³ <https://haysacademy.edu/courses/cosmetology-courses/> (last accessed Oct. 30, 2023).

⁴ <https://www.census.gov/quickfacts/fact/table/hayscitykansas/IPE120221#IPE120221> (last accessed on Oct. 30, 2023).

\$29,080;⁵ and it is roughly 72% of the cost of tuition and books for four years of schooling at Fort Hays State University, which is \$25,336.⁶

71. By comparison, becoming an emergency medical technician requires successful completion of a Kansas Board of Emergency Medical Services approved course.⁷ Fort Hays State's program is 7 credit hours,⁸ or approximately 93.33 clock hours.

Esthetician School

72. Esthetician school consists of "not less than" 1,000 hours of a "course of instruction and practice" that is determined by the Board. KSA § 65-1903(a)(2)(F)(2)&(5).

73. The Board adopted an esthetician curriculum by reference in KAR § 69-3-8. Exhibit B.⁹

⁵ <https://www.bls.gov/oes/current/oes395012.htm#st> (last accessed on Oct. 30, 2023).

⁶ <https://www.fhsu.edu/admissions/tuition/costofattendance> (last accessed on Oct. 30, 2023).

⁷ <https://www.ksbems.org/ems/pdfs/InitialCertProcess.pdf?ver=22.04> (last accessed on Oct. 30, 2023).

⁸ <https://catalog.fhsu.edu/college-of-health-behavioral-sciences/health-human-performance/courses/HHP195.html> (last accessed on Oct. 30, 2023).

⁹ Also available at: https://www.kansas.gov/kboc/Docs/Curriculum_Esthetics.pdf (last accessed Oct. 30, 2023).

Esthetics Training	Theory Instruction	Practical Hours	Minimum Procedures	Esthetics Training cont.	Theory Instruction	Practical Hours	Minimum Procedures
(1) Infection Control	10	50		(5) Body treatments	20	20	10
(a) Public Health				(a) Back and chest			
Sanitation				(b) Body wrap			
Disinfection				(c) Body exfoliation			
Sterilization				(d) Hydrotherapy – (theory only)			
(b) Universal precautions				(6) Advanced skin treatments	80	60	45
Cross contamination				(a) Advanced exfoliation			
Blood borne pathogens				(b) Extractions using a lancet			
(2) Skin anatomy and physiology	200			(c) Microdermabrasion			
(a) Structure and function of the				(d) LED			
body systems and nerves				(e) Chemical exfoliation			
(b) Dermatology				Gessner's			
(c) Cosmetic chemistry				AHA's			
(d) Pharmacology				(f) Microcurrent and other electrical			
(e) Nutrition				treatments			
(3) Skin analysis and consultation	80	40		(g) Equipment for advanced skin			
(a) Skin types and conditions				treatments			
(b) Contraindications				Microdermabrasion			
(c) Health screening				Microcurrent			
(d) Consultation, post				LED			
consultation and home care				Mechanical			
(e) Skin analysis equipment				(7) Temporary hair removal	10	30	40 facial waxes 10 body waxes
(4) Skin treatments	120	120	80 facials	(a) Tweezing			
(a) Cleansing techniques				(b) Waxing			
(b) Exfoliation				(c) Depilatories			
Mechanical				(d) Sugaring			
Chemical (enzymes, hydro-aphroxy)				(e) Threading			
(c) Extraction				(f) Contraindications and safety			
Without lancet				(8) Make up	20	40	25
(d) Conditioning				(a) Purpose and effects			
(e) Masque therapy				(b) Eyebrow and eyelash			
(f) Protection				Services			
(g) Massage				(c) Corrective			
(h) Basic facial equipment				(d) Camouflage			
and safety				(9) Business Practices	30		
Steamer				(a) Business planning			
Brush machine				(b) Client records			
				(10) State law	20		
				(a) Rules and regulations			
				(11) Student specific needs	50		
				Total Hours	1000		

74. Nearly every minute of esthetician school is spent on matters non-specific to sugaring. In fact, a significant portion of time is spent on topics a sugarer will never use under any circumstances.

75. Of the 1,000 hours required to become a licensed esthetician, only 40 hours are devoted to the entire category of hair removal. The esthetics curriculum also contains six temporary hair removal techniques. Assuming each of the six hair removal topics are evenly taught, only 1.667 hours would be devoted to sugaring theory, and only 5.0 hours would be devoted to the practice of sugaring. Therefore, of the mandatory 1,000 hours, esthetician school spends 99.333% teaching non-sugaring-specific information. Only .667% of the curriculum would be sugaring specific. This assumes sugaring is being taught for the full 6.667 hours, which is highly unlikely considering Board-approved textbooks only passingly reference sugaring. *E.g., Salon Fundamentals Esthetics*, 2nd ed. (2007) at 376 (only one paragraph of 553-page textbook devoted to sugaring); *Milady Standard Esthetics: Fundamentals*, 12th ed. (2020)

at 467-69 (only two and a half pages of 736-page textbook devoted to sugaring); *Milady Standard Esthetics: Advanced*, 2nd ed. (2013) at 568-73 (only six pages of 980-page textbook devoted to sugaring).

76. The only health precaution needed to safely practice sugaring is proper handwashing, to which the Board approved textbooks devote only a handful pages. *E.g.*, *Salon Fundamentals Esthetics*, 2nd ed. (2007) 108, 111; *Milady Standard Esthetics: Advanced*, 2nd ed. (2013) 33-35, 51-52; *Milady Standard Foundations*, 1st ed. (2020) 117, 135-37.

77. While the curriculum requires an esthetics student to perform 40 facial waxes and 10 body waxes, there is no requirement to perform sugaring even once.

78. It would take aspiring sugarers more than 31 weeks to complete the irrelevant course of instruction, if the sugarer attended school for 32 hours per week, every week.

79. Esthetician school is prohibitively expensive for most sugarers. An esthetician school in Kansas charges more than \$16,000 for its program.

80. The closest Board-approved esthetician school to Hays is in Wichita, about 2 ½ hours away.

Instructors Are Not Required to Competently Perform Sugaring as a Condition of Licensure

81. To become a licensed cosmetology instructor, aspiring-teachers must obtain a cosmetology instructor's license. KSA § 65-1903(b).

82. To obtain an instructor's license, aspiring instructors must first become licensed cosmetologists, pass a cosmetology instructor exam—administered by the Board or the Board's designee—and either take 450 hours of instructor training or have practiced as a cosmetologist for one year prior to licensure. KSA § 65-1903(b).

83. The instructor training curricula does not specifically cover sugaring. Exhibit C.¹⁰ The instructor examination does not specifically cover sugaring. Exhibit D.¹¹

¹⁰ Also available at https://www.kansas.gov/kboc/Docs/Curriculum_Instructor.pdf (last accessed Oct. 30, 2023).

¹¹ Also available at <https://s3-us-west-2.amazonaws.com/ergontn-public/cos-ks/handbooks/instructor-2020-02-01.pdf> (last accessed Oct. 30, 2023).

84. Since at least 2016, the cosmetology instructor examination has been written only. Therefore, aspiring instructors will never be tested on their ability to perform sugaring safely, effectively, or competently as a condition of their teaching license.

85. Because the cosmetology and esthetician schools, textbooks, and examinations have essentially nothing to do with sugaring, there is no requirement that licensed instructors in Kansas know how to perform sugaring or effectively teach the technique.

86. On information or belief, the Board does not supervise the competency, compliance, or conduct of the Board-licensed cosmetology or esthetician schools.

Becoming licensed: Mandatory licensing examinations and licensing application process

87. After completing a program at an approved cosmetology or esthetician school, aspiring sugarers must take a licensure examination developed and administered by the Board, or by a Board-approved examination provider. KSA § 65-1904(c); KSA § 65-1905(a); KAR § 69-1-1(a); KAR § 69-1-4(c). The examinations are \$75 each.

88. To take the examinations, aspiring sugarers must be “referred” by the cosmetology or esthetician school, an apprenticeship program, or by the Board. Exhibits E, F.

89. To be eligible for a cosmetology license, aspiring sugarers must be at least 17 years old, a graduate of an accredited high school or equivalent, and have served as an apprentice. See KSA § 65-1905(b).

90. Aspiring sugarers cannot sit for the examination unless they first submit a written application to the Board. KAR § 69-1-1.

Cosmetology Exams

91. The cosmetology examination consists of two, two-hour written only tests: a 120-question multiple-choice theory exam and a 125-question multiple-choice practical examination. Exhibit E.¹² Both exams are administered by computer.

¹² Also available at <https://s3-us-west-2.amazonaws.com/ergontn-public/cos-ks/handbooks/cosmetologist-2021-07-01.pdf> (last accessed Oct. 30, 2023).

Cosmetology Written Theory Exam Content

92. The content of the written theory exam is broken down by percentages. Exhibit E.

93. “Skin Care & Services” comprises 4% of the examination. *Id.* at 16. “Skin Care & Services” includes 7 sub-categories, one of which is “hair removal.” *Id.* There are at least six types of *temporary* hair removal techniques, one of which includes sugaring, Exhibit B, and there are permanent hair removal techniques as well. Based upon the percentages, it is highly unlikely the cosmetology theory exam asks a sugaring question at every examination, if it asks any sugaring questions at all.

Cosmetology Written Practical Exam Content

94. The content of the written practical exam is broken down by percentages. Exhibit E. The written practical exam does not contain any sugaring-specific questions.

Esthetician Exams

95. The esthetician examination consists of two, two-hour written only tests: a 100-question multiple-choice theory exam and a 125-question multiple-choice practical examination. Exhibit F.¹³ Both exams are administered by computer.

Esthetician Written Theory Exam Content

96. The content of the written theory exam is broken down by percentages. Exhibit F.

97. “Skin Care & Services” comprises 21% of the examination. *Id.* at 14. “Skin Care & Services” includes 9 sub-categories and 4 sub-sub-categories. One sub-category is “hair removal.” *Id.* There are at least six types of temporary hair removal techniques, one of which includes sugaring, Exhibit B, and there are permanent hair removal techniques as well. Based upon the percentages, it is highly unlikely the esthetician theory exam asks a sugaring question at every examination, if it asks any sugaring questions at all.

¹³ Also available at <https://s3-us-west-2.amazonaws.com/ergontn-public/cos-ks/handbooks/esthetician-2021-07-01.pdf> (last accessed Oct. 30, 2023).

Esthetician Written Practical Exam Content

98. The content of the written practical exam is broken down by percentages. Exhibit F. The written practical exam does not contain any sugaring-specific questions. Exhibit F.

Penalties for Sugaring without a License

99. Sugaring without a license, for compensation, is a class C misdemeanor. KSA §§ 65-1902(a)(1) and (e).

100. The Board may also issue a cease and desist order, assess a fine, or do both, to someone caught sugaring without a license. KSA §§ 65-1902(a)(1) and (d).

101. It is a misdemeanor for a person to fail or refuse to comply with rules and regulations prescribed by the Board. KSA §§ 65-1909(a)(3) and (b).

102. It is a misdemeanor for a person to violate any of the provisions of Article 19 of Chapter 65 of the Kansas Statutes Annotated. KSA §§ 65-1909(a)(4) and (b).

103. Violations of the licensing regime at issue empower the Board to refuse to issue or renew a cosmetology or esthetician license, or revoke, suspend, censure, limit or condition a cosmetology or esthetician license. KSA § 65-1908(a)(2).

104. The Board may refuse to issue or renew a cosmetology or esthetician license, or revoke, suspend, censure, limit or condition a cosmetology or esthetician license for a failure to comply with the rules and regulations promulgated by the Board. KSA § 65-1908(a)(2).

105. The Board may refuse to issue or renew a cosmetology or esthetician license, or revoke, suspend, censure, limit or condition a cosmetology or esthetician license for a failure to comply with any order issued by the Board. KSA § 65-1908(a)(2).

106. The Board may order the remedying of any violations of rules and regulations of the Board or any provision of licensing regime, and the Board may issue a cease and desist order upon Board determination that the holder of a license or any person has violated any order of the Board, any rules and regulations of the Board or any provision of the licensing regime at issue. KSA § 65-1908(b).

107. In addition to the Board's authority to refuse licensure or impose discipline, the Board shall have the authority to assess a fine not in excess of \$1,000 against a licensee for each of the reasons specified in KSA § 65-1908(a)(1-9). KSA § 65-1908(d).

108. The Board is empowered to deny aspiring sugarers a license if the Board determines the aspiring sugarer has previously violated the cosmetology statutes, rules, regulations, orders, and/or policies.

109. The Board has a fines schedule. Exhibit G.¹⁴

Enforcement by Defendants

110. The Board and its Members have sent inspectors to search for unlicensed estheticians and/or cosmetologists.

111. The Board and its Members have issued citations and fines to salons and individuals based on the unlicensed practice of esthetics or cosmetology.

112. Defendants' enforcement of the licensing requirements threatens the current and future success of unlicensed sugarers.

113. Unlicensed sugarers who provide their services to the public risk harsh penalties, including criminal convictions and fines, and losing their livelihoods.

114. On information or belief, the Board and its Members will continue to send inspectors to search for unlicensed estheticians and cosmetologists.

115. On information or belief, the Board and its Members will continue to issue citations and fines to salons and individuals based on the unlicensed practice of esthetics or cosmetology.

116. The threat of enforcement and punishment prevents Ms. Green from providing for herself and her family by sugaring in Kansas.

117. On information or belief, the threat of punishment has the effect of deterring many businesses from hiring unlicensed sugarers, preventing unlicensed sugarers from earning a living and providing their services to consumers.

¹⁴ Also available at <https://www.kansas.gov/kboc/Docs/FinesCosmo.pdf> (last accessed Oct. 30, 2023).

Plaintiff Bryn Green

118. Bryn Green is 32-years old and a resident of Hays, Kansas.

119. Ms. Green holds a Bachelor of Science in Agricultural Business from Fort Hays State University, where she graduated in 2013.

120. Since 2013, Ms. Green has held several jobs, including employment as an insurance claims representative, a crop insurance adjuster, and as a county executive director at a farm service agency office.

121. For the past seven years, Ms. Green has received sugaring services in Dodge City. She believes sugaring is a superior hair removal technique to waxing. Ms. Green is not aware of any salon that offers sugaring in Hays. The Hays cosmetology school does not offer sugaring to members of the public either, just waxing services.¹⁵

122. In July 2022, Ms. Green gave birth to her son. Since then, Ms. Green has searched for ways to earn additional income to help support her growing family, while at the same time having greater flexibility to attend to her family's needs.

123. Sometime around December 2022 or January 2023, Ms. Green started thinking about offering sugaring services herself.

124. Like many places in Kansas, there is a lack of affordable daycare options in Hays. Sugaring would provide Ms. Green the opportunity to set her own schedule so she could spend more time with her son. It would also help provide additional income for the family.

125. Ms. Green only wants to offer sugaring services. She does not want to offer any other type of esthetics or cosmetology services.

126. Ms. Green has taken concrete steps to achieve her dream business. She has researched sugaring products as well as esthetician and cosmetology schools. Ms. Green has sought out and even secured a location in Hays where she could offer sugaring services. Ms. Green has successfully completed a sugaring course of instruction as well.

127. On March 28, 2023, Ms. Green reached out to the Board to determine what was required before she could offer sugaring services.

¹⁵ <https://haysacademy.edu/services/> (last accessed Oct. 30, 2023).

128. Initially, she did not think to clarify between waxing and sugaring. A Board representative responded by sending her links to statutes, regulations, and the Board-approved cosmetology and esthetics curriculum.

129. Ms. Green followed up with a Board representative on May 1, 2023, explaining that the links did not help her understand whether a license was required, and specifically asked whether she would be required to have either a cosmetology or esthetics license to offer sugaring as a client service. She did not receive a response.

130. After calling and leaving messages, Ms. Green talked to someone at the Board on the phone and was informed by that person that Ms. Green was essentially seeking legal advice.

131. There is no esthetician school in Hays, only a cosmetology school. Exhibit H.¹⁶ Tuition and costs at the Hays cosmetology school are \$18,200.

132. On information and good faith belief, the Hays cosmetology school does not typically offer hands-on practical training in sugaring or offer sugaring services.

133. The closest Board-approved esthetician school is located in Wichita, about 2 ½ hours away. Exhibit H.

134. Ms. Green does not have the time, money, or ability to spend five hours a day commuting to Wichita for esthetician school.

135. Ms. Green can't afford months of full-time childcare to watch her son during the commute and full day of classwork.

136. The Hays cosmetology school is a full-time, 11-month program that costs \$18,200.

137. The Hays cosmetology school is the only licensed school within a reasonable distance from Ms. Green.

¹⁶ Exhibit H. Also available here: https://www.kansas.gov/kboc/Docs/School_Directory.pdf (last accessed Oct. 30, 2023).

Sugaring is Safe. There is no good reason to criminalize sugaring without a license, for compensation. But even if a license should be required, *this* licensing regime is still unconstitutional.

138. Ms. Green realleges and incorporates by reference all the preceding paragraphs.

139. There is no constitutionally sufficient reason for imposing a licensing requirement on sugaring for compensation, and there is no constitutionally sufficient reason for criminalizing sugaring without a license, for compensation, for at least all of the following reasons, whether viewed individually or collectively:

- a. Sugaring is all-natural, non-invasive, sanitary, and safe.
- b. Applying the sugaring paste does not involve the use of heat, chemicals, or sharp objects.
- c. The sugaring paste has natural antiseptic properties, which inhibit bacterial growth, cause less irritation, and reduce possible breakouts in the days following the treatment.
- d. Sugaring is safe and can be safely done on areas of the skin with varicose veins, spider veins, psoriasis, and eczema.
- e. Because the sugaring paste does not adhere to the skin, it can be applied to the same area more than once.
- f. Sugaring is safe, and any potential side effects of sugaring are mild and transient.
- g. There is no evidence that sugaring without a license is inherently dangerous to public health, public safety, or public welfare.
- h. There is no evidence that sugaring *for money* is any different than sugaring as a hobby.
- i. The government's police power does not extend to the regulation of benign commercial practices such as sugaring.

140. Ms. Green realleges and incorporates by reference all the preceding paragraphs.

141. The Defendants' occupational licensing regime involving sugaring, as described above and throughout this lawsuit, is unreasonable, irrational, arbitrary, oppressive,

protectionist, and not appropriately tailored to fit the practice of sugaring, for at least all of the following reasons, whether viewed individually or collectively:

- a. The cosmetology and esthetician curricula have essentially nothing to do with sugaring.
- b. Cosmetology and esthetician schools spend essentially all of their instruction time on subjects that sugarers will never use.
- c. Cosmetology and esthetician schools spend essentially none of their time on subjects that sugarers will use.
- d. The cosmetology and esthetician textbooks devote almost none of their space to teaching sugaring.
- e. The cosmetology and esthetician theory examinations essentially do not cover sugaring-specific matters.
- f. The cosmetology and esthetician practical examinations do not test sugaring skills at all.
- g. There is no evidence that the Defendants' occupational licensing regime involving sugaring protects the public's health, public's safety, or the public's welfare, because sugaring is safe.
- h. There is no evidence that justifies requiring aspiring sugarers who only want to perform sugaring to take 1,500 or 1,000 hours of schooling, because sugaring is safe.
- i. There is no evidence that justifies requiring aspiring sugarers who only want to perform sugaring to take these Board-approved cosmetology or esthetician examinations, because sugaring is safe.
- j. There is no evidence the cosmetology or esthetician examinations protect the public's health, public's safety, or the public's welfare when it comes to sugaring, because sugaring is safe.
- k. There is no evidence the cosmetology or esthetician schools protect the public's health, safety, or welfare when it comes to sugaring, because sugaring is safe.

- l. The Defendants' occupational licensing regime involving sugaring is grossly disproportionate to any interest advanced by the government.
- m. The Defendants' occupational licensing regime involving sugaring does not have any rational connection with the applicant's fitness or capacity to engage in sugaring.
- n. The licensing regime does not provide less restrictive alternatives to satisfy the regime's ostensible purpose.
- o. The Defendants' occupational licensing regime involving sugaring, as described above and throughout this lawsuit, is evidence of protectionism, it refutes the regime's ostensible public interest rationale, it harms competition, it harms Ms. Green, and it harms Kansans' ability to obtain sugaring services.

The Licensing Regime Injures Ms. Green and Others Like Her.

142. Ms. Green realleges and incorporates by reference all the preceding paragraphs.

143. The Defendants' occupational licensing regime involving sugaring prevents Ms. Green from offering sugaring, even though it is safe.

144. Defendants' occupational licensing regime involving sugaring unreasonably, arbitrarily, oppressively, and unfairly prohibits Ms. Green's fundamental and inalienable natural right to earn an honest living, to be free from unreasonable government restrictions, and her right to be treated equally under the law, all of which are protected by the Kansas Constitution Bill of Rights.

145. Defendants' occupational licensing regime involving sugaring, as described throughout this lawsuit, is not appropriately tailored to fit the practice of sugaring.

146. Because of the Defendants' occupational licensing regime involving sugaring, Ms. Green has not performed sugaring for compensation, has not started her sugaring business, has not advertised for clients, has not made any agreements with property owners for her business, or taken additional steps to start her sugaring business.

147. But for the Defendants' occupational licensing regime involving sugaring, Ms. Green would immediately begin taking additional steps to start her sugaring business.

148. The same day the Defendants' occupational licensing regime involving sugaring is declared unconstitutional and enjoined, or as soon thereafter as reasonably possible, Ms. Green would take additional steps to start her sugaring business, including enrolling in additional online or in-person sugaring classes, continue learning from knowledgeable sugarer(s) outside of Hays, and either sign a lease, or come to an agreement to more formally secure the location for her sugaring business.

149. Every day the Defendants' occupational licensing regime involving sugaring is in effect, Ms. Green is losing the opportunity to earn an honest living, losing the opportunity to make additional income, and she's being treated unequally under the law.

150. Ms. Green fears criminal, civil, and administrative prosecution if she were to begin offering sugaring services for compensation. These fears are founded given the Defendants' past and present inspection and enforcement actions.

151. The Defendants' occupational licensing regime involving sugaring is ongoing and continuous, as are the violations of Ms. Green's rights under the Kansas Constitution Bill of Rights.

152. Ms. Green is irreparably harmed and injured by the Defendants' occupational licensing regime involving sugaring.

153. There is no administrative remedy available that would provide Ms. Green with the relief she seeks.

154. Ms. Green has no other remedy at law, other than to file this lawsuit for prospective, non-monetary relief from the ongoing and continuous violations of her constitutional rights.

Declaratory Judgment and Injunctive Relief

155. Plaintiff realleges and incorporates by reference all the preceding paragraphs.

156. An actual controversy has arisen and now exists between Ms. Green and Defendants concerning Plaintiff's rights under the Kansas Constitution Bill of Rights. A judicial declaration is necessary and appropriate at this time.

157. Plaintiff's injuries result from Defendants' occupational licensing regime involving sugaring and are caused by Defendants' occupational licensing regime involving sugaring.

158. Plaintiff's injuries are concrete, particularized, and cognizable.

159. Plaintiff requires a judicial determination of her rights against Defendants as they pertain to the licensing regime at issue in this matter.

160. It is appropriate and proper that a declaratory judgment be issued under the Kansas Declaratory Judgment Act, KSA § 60-1701, *et seq.*, declaring unconstitutional all relevant portions of licensing regime at issue in this case.

161. Pursuant to the Kansas Injunctive Relief Act, KSA § 60-901, *et seq.*, it is appropriate and requested that this Court issue permanent, prospective relief prohibiting enforcement of the licensing regime at issue in this case.

Claim One:

**Violation of the Kansas Constitution Bill of Rights, Section 1
(Life, Liberty, and Pursuit of Happiness Clause)**

162. Plaintiff realleges and incorporates by reference all the preceding paragraphs.

163. Kansas Constitution Bill of Rights section 1 guarantees that “[a]ll men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.”

164. Section 1 of the Kansas Constitution Bill of Rights is a “natural rights” clause that sets forth “rights that are broader than and distinct from those in the Fourteenth Amendment” to the United States Constitution. *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 622 (2019). Section 1’s protections apply to “an enormous variety of topics” and is “nonexhaustive.” *Hodes* at 624, 631-32; *accord Smith v. Steineauf*, 140 Kan. 407 (1934).

165. The “scope” and “contours” of the “natural rights guaranteed” by Section 1 requires an examination of the historical record, including the “writings of John Locke and William Blackstone.” *State v. Carr*, 314 Kan. 615, 629 (2022).

Section 1 Protects the Right to Earn an Honest Living

166. Based upon Section 1's text, the historical record, the Magna Carta, the writings of John Locke, William Blackstone, Thomas Jefferson, Cato's Letters, and others—as will be shown throughout this lawsuit—the right to earn an honest living is a fundamental and inalienable natural right protected by Section 1 of the Kansas Constitution Bill of Rights.

167. The right to earn an honest living is objectively, deeply rooted in both our Nation's and State's history and tradition, and implicit in the concept of ordered liberty such that neither liberty nor justice could exist without it.

168. Kansas founders understood the right to earn an honest living to be a natural right too. *See, e.g.,* Richard Cordley, *The Lessons of Our History*, *The Herald of Freedom* (Dec. 3, 1859) (“every man has an inalienable right to the undisturbed possession and use of himself and all his faculties. The right of individual self-possession and self-use are the only basis of free government, and any government that fully guarantees these, whatever its form, is a free government.”); Solon Thatcher, *The Republican*, *Western Home Journal*, (Aug. 4, 1859) (the natural rights expressed in the Declaration of Independence are “the foundation stones upon which the whole structure of Liberty rests;” the “rights of the people are jealously cared for” in the Kansas Constitution, which “is radiant with the sunlight of Liberty.”).

169. In sum, Kansas Constitution Bill of Rights Section 1 protects, among other things, the right to earn an honest living, to conduct business free from unreasonable governmental interference, and to be free from arbitrary, unreasonable, oppressive, protectionist, or irrational government restrictions.

Defendants' Occupational Licensing Regime Involving Sugaring Violates Ms. Green's Fundamental and Inalienable Natural Rights

170. The Defendants' occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff, violates Kansas Constitution Bill of Rights Section 1.

171. There is no evidence, or sufficient justification, for Defendants' occupational licensing regime involving sugaring, as described above and throughout.

172. Defendants' occupational licensing regime involving sugaring, as described above and throughout, is unreasonable, irrational, arbitrary, oppressive, and unconstitutional for at least all of the reasons stated above and throughout the lawsuit, whether viewed individually or collectively.

173. Defendants' occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff, is not appropriately or reasonably tailored to any sufficiently important government interest.

174. Defendants' occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff, does not directly or materially advance any sufficiently important government interest.

175. Defendants oversee, implement, and enforce the occupational licensing regime involving sugaring, as described above and throughout, which violates Plaintiff's rights, and which causes Plaintiff's injuries.

176. As a consequence of Defendants' occupational licensing regime involving sugaring, as described above and throughout, Plaintiff has been and will continue to be injured, and is therefore entitled to, among other things, declaratory judgment and prospective injunctive relief, and any other equitable or other legal relief as the court deems just or appropriate.

177. Plaintiff has no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to her constitutional rights that is a direct and proximate result of Defendants' application and enforcement of Defendants' occupational licensing regime involving sugaring, as described above and throughout.

178. Unless Defendants' occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff and others who are similarly situated, is declared unconstitutional and permanently enjoined, Plaintiff and others who are similarly situated will continue to suffer great and irreparable harm. Plaintiff therefore seeks such declaratory and injunctive relief.

**Claim Two:
Violation of the Kansas Constitution Bill of Rights Sections 1 & 2
(Equal Protection)**

179. Plaintiff realleges and incorporates by reference all the preceding paragraphs.

180. Kansas Constitution Bill of Rights Section 1 guarantees the equal protection of rights. Kansas Constitution Bill of Rights Section 2 guarantees that “[a]ll political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit.”

181. Kansas Constitution Bill of Rights Sections 1 and 2 protect against unequal treatment. These clauses protect similarly situated people from being treated differently, and differently situated people from being treated similarly.

182. Defendants’ occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff, violates Kansas Constitution Bill of Rights Sections 1 and 2.

183. There is no evidence, or sufficient justification, for treating sugarers differently based solely on whether sugaring involves a commercial transaction.

184. There is no evidence, or sufficient justification, for treating sugarers the same as those who are engaged in dangerous activities.

185. There is no evidence, or sufficient justification, for treating sugarers differently from those who are engaged in safe activities.

186. Defendants’ occupational licensing regime involving sugaring, as described above and throughout, unconstitutionally treats sugarers the same as those whose pursuits are inherently dangerous.

187. Defendants’ occupational licensing regime involving sugaring, as described above and throughout, unconstitutionally treats sugarers differently from those whose pursuits are safe.

188. Defendants’ occupational licensing regime involving sugaring, as described above and throughout, unconstitutionally treats sugarers the same as estheticians and cosmetologists, even though the services they provide are different.

189. Defendants' occupational licensing regime involving sugaring, as described above and throughout, unconstitutionally treats sugarers differently from threaders and hair braiders, even though the services they provide are similar.

190. Defendants' occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff, is not appropriately or reasonably tailored to any sufficiently important government interest.

191. Defendants' occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff, does not directly or materially advance any sufficiently important government interest.

192. Defendants oversee, implement, and enforce the occupational licensing regime involving sugaring, as described above and throughout, which violates Plaintiff's rights, and which causes Plaintiff's injuries.

193. As a consequence of Defendants' occupational licensing regime involving sugaring, as described above and throughout, Plaintiff has been and will continue to be injured, and is therefore entitled to, among other things, declaratory judgment and prospective injunctive relief, and any other equitable or other legal relief as the court deems just or appropriate.

194. Plaintiff has no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to her constitutional rights that is a direct and proximate result of Defendants' application and enforcement of Defendants' occupational licensing regime involving sugaring, as described above and throughout.

195. Unless Defendants' occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff and others who are similarly situated, is declared unconstitutional and permanently enjoined, Plaintiff and others who are similarly situated will continue to suffer great and irreparable harm. Plaintiff therefore seeks such declaratory and injunctive relief.

Claim Three:
Violation of the Kansas Constitution Bill of Rights, Section 18:
(Due Course of Law)

196. Plaintiff realleges and incorporates by reference all the preceding paragraphs.

197. Section 18 states, in pertinent part: “All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law[.]”

198. Section 18 is Kansas’ due process of law clause. *Hodes*, 309 Kan. 610 at 627; *Creecy v. Kansas Dep’t of Revenue*, 310 Kan. 454, 462 (2019).

199. Due process of law protects, among other things, the right to earn an honest living, to conduct business free from unreasonable governmental interference, and to be free from arbitrary, unreasonable, oppressive, protectionist, or irrational government restrictions.

200. There is no evidence, or sufficient justification, for Defendants’ occupational licensing regime involving sugaring, as described above and throughout.

201. Defendants’ occupational licensing regime involving sugaring, as described above and throughout, is unreasonable, irrational, arbitrary, oppressive, and unconstitutional for at least all of the reasons stated above and throughout the lawsuit, whether viewed individually or collectively.

202. Defendants’ occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff, violates Kansas Constitution Bill of Rights Section 18.

203. Defendants’ occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff, is not appropriately or reasonably tailored to any sufficiently important government interest.

204. Defendants’ occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff, does not directly or materially advance any sufficiently important government interest.

205. Defendants oversee, implement, and enforce the occupational licensing regime involving sugaring, as described above and throughout, which violates Plaintiff’s rights, and which causes Plaintiff’s injuries.

206. As a consequence of Defendants' occupational licensing regime involving sugaring, as described above and throughout, Plaintiff has been and will continue to be injured, and is therefore entitled to, among other things, declaratory judgment and prospective injunctive relief, and any other equitable or other legal relief as the court deems just or appropriate.

207. Plaintiff has no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to her constitutional rights that is a direct and proximate result of Defendants' application and enforcement of Defendants' occupational licensing regime involving sugaring, as described above and throughout.

208. Unless Defendants' occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff and others who are similarly situated, is declared unconstitutional and permanently enjoined, Plaintiff and others who are similarly situated will continue to suffer great and irreparable harm. Plaintiff therefore seeks such declaratory and injunctive relief.

**Claim Four:
Violation of Kansas Constitution Bill of Rights Section 20
(Unenumerated Rights)**

209. Plaintiff realleges and incorporates by reference all the preceding paragraphs.

210. Kansas Constitution Bill of Rights section 20 states, in pertinent part, "[t]his enumeration of rights shall not be construed to impair or deny others retained by the people[.]"

211. Section 20 of the Kansas Constitution Bill of Rights guarantees that unenumerated constitutional rights are protected to the same extent as enumerated constitutional rights.

212. Section 20 protects, among other things, the right to earn an honest living, to conduct business free from unreasonable governmental interference, and to be free from arbitrary, unreasonable, oppressive, protectionist, or irrational government restrictions.

213. There is no evidence, or sufficient justification, for Defendants' occupational licensing regime involving sugaring, as described above and throughout.

214. Defendants' occupational licensing regime involving sugaring, as described above and throughout, is unreasonable, irrational, arbitrary, oppressive, and unconstitutional for at least all of the reasons stated above and throughout the lawsuit, whether viewed individually or collectively.

215. Defendants' occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff, violates Kansas Constitution Bill of Rights Section 20.

216. Defendants' occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff, is plainly unconstitutional under Kansas Constitution Bill of Rights Section 20, without resorting to a tiered-scrutiny analysis.

217. Alternatively, Defendants' occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff, is not appropriately or reasonably tailored to any sufficiently important government interest.

218. Defendants' occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff, does not directly or materially advance any sufficiently important government interest.

219. Defendants oversee, implement, and enforce the occupational licensing regime involving sugaring, as described above and throughout, which violates Plaintiff's rights, and which causes Plaintiff's injuries.

220. As a consequence of Defendants' occupational licensing regime involving sugaring, as described above and throughout, Plaintiff has been and will continue to be injured, and is therefore entitled to, among other things, declaratory judgment and prospective injunctive relief, and any other equitable or other legal relief as the court deems just or appropriate.

221. Plaintiff has no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to her constitutional rights that is a direct and proximate result of Defendants' application and enforcement of Defendants' occupational licensing regime involving sugaring, as described above and throughout.

222. Unless Defendants' occupational licensing regime involving sugaring, as described above and throughout, and as applied to Plaintiff and others who are similarly situated, is declared unconstitutional and permanently enjoined, Plaintiff and others who are similarly situated will continue to suffer great and irreparable harm. Plaintiff therefore seeks such declaratory and injunctive relief.

Request for Relief

Plaintiff respectfully requests the Court grant the following relief:

223. Plaintiff realleges and incorporates by reference all the preceding paragraphs.

224. Declaratory judgment that the Defendants' occupational licensing regime involving sugaring, as described throughout and above, is unconstitutional under Kansas Constitution Bill of Rights Sections 1, 2, 18, and 20, when applied to Plaintiff and others who are similarly situated.

225. Declaratory judgment that the Defendants' occupational licensing regime involving sugaring, as described throughout and above, is unconstitutional under Kansas Constitution Bill of Rights Section 1, in that the Defendants' occupational licensing regime involving sugaring:

- a. Unconstitutionally deprives Plaintiff of her fundamental and inalienable natural right to earn an honest living free from unreasonable government restrictions.
- b. Unconstitutionally deprives Plaintiff of her fundamental and inalienable natural right to earn an honest living in an occupation of her choice.
- c. Is unreasonable, arbitrary, oppressive, protectionist, and irrational.
- d. Is not appropriately tailored to any sufficiently important government interest.
- e. Does not directly or materially advance any sufficiently important government interest.

226. Declaratory judgment that the Defendants' occupational licensing regime involving sugaring, as described throughout and above, is unconstitutional under Kansas

Constitution Bill of Rights Section 1 and 2 in that the Defendants' occupational licensing regime involving sugaring apply unequally.

227. Declaratory judgment that the Defendants' occupational licensing regime involving sugaring, as described throughout and above, is unconstitutional under Kansas Constitution Bill of Rights Section 18, in that the Defendants' occupational licensing regime involving sugaring:

- a. Unconstitutionally deprives Plaintiff of her fundamental and inalienable natural right to earn an honest living free from unreasonable government restrictions.
- b. Unconstitutionally deprives Plaintiff of her fundamental and inalienable natural right to earn an honest living in an occupation of her choice.
- c. Is unreasonable, arbitrary, oppressive, protectionist, and irrational.
- d. Is not appropriately tailored to any sufficiently important government interest.
- e. Does not directly or materially advance any sufficiently important government interest.

228. Declaratory judgment that the Defendants' occupational licensing regime involving sugaring, as described throughout and above, is unconstitutional under Kansas Constitution Bill of Rights Section 20, in that the Defendants' occupational licensing regime involving sugaring:

- a. Unconstitutionally deprives Plaintiff of her fundamental and inalienable natural right to earn an honest living free from unreasonable government restrictions.
- b. Unconstitutionally deprives Plaintiff of her fundamental and inalienable natural right to earn an honest living in an occupation of her choice.
- c. Is unreasonable, arbitrary, oppressive, protectionist, and irrational.
- d. Is not appropriately tailored to any sufficiently important government interest.
- e. Does not directly or materially advance any sufficiently important government interest.

229. For entry of preliminary and/or permanent prospective injunctive relief, enjoining Defendants, Defendants' officers, agents, employees, attorneys, servants, assigns, and all those in active concert or participation who receive, through personal service or otherwise, actual notice of this Court's order, from enforcing or directing the enforcement of the portions of the statutes, regulations, rules, and/or policies that, as described throughout and above, constitute violations of the Kansas Constitution Bill of Rights Sections 1, 2, 18, and/or 20.

230. Reasonable costs and attorneys' fees to the extent allowed; and

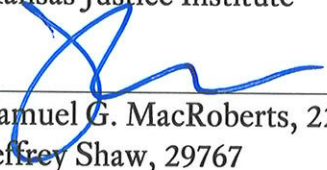
231. Such other legal or equitable relief as this Court deems appropriate and just.

Jury Demand

232. Plaintiff demands a jury trial on all issues so triable.

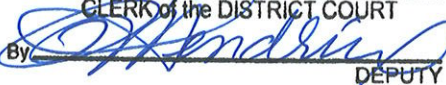
Kansas Justice Institute

Dated: Oct. 31, 2023


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STATE OF KANSAS, COUNTY OF SHAWNEE, SS.
I hereby certify the above and foregoing to be
a true and correct copy, the original of which
if filed and entered of record in the court

Dated 10/31/2023
CLERK of the DISTRICT COURT
By 
DEPUTY