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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: SN-2023-CV-300030
PII COMPLIANT

In the District Court
of
Shawnee County, Kansas

Bryn Green, Plaintiff, v. **Kansas State Board of Cosmetology**, *et al.*, Defendants.	Civil Action No. 2023-CV-300030 Plaintiff's Memorandum in Support of the Motion for Summary Judgment; Ex. A-HH; Stip. Ex. 1-9; Certificate of Service. Oral Argument Requested Division Three (Hon. Teresa L. Watson)

Plaintiff's Memorandum in Support of the Motion for Summary Judgment

This case involves sugaring—a safe and effective temporary hair removal technique that uses sugar, lemon juice, and water—and on the other hand, the Defendants' unreasonable, irrational, arbitrary, oppressive, improperly tailored, protectionist, and unequal licensing requirements.

Bryn Green is a 34-year-old mother in Hays, Kansas. To help support her family, she wants to perform sugaring—and only sugaring—an ancient hair removal technique that uses an all-natural paste to gently remove unwanted hair.

Even though Ms. Green has *already* successfully completed a sugaring class, she is legally prohibited from performing sugaring for money unless she obtains a government issued license. To obtain that 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. The government admits that *less than* 1% of either curriculum is specific to sugaring. Schools spend even less time on sugaring than the miniscule percentage suggests—only ten to

[*] Per DCR 3.125, undersigned counsel did not use generative AI for legal research, legal citations, or other similar reasons, but did use it for proofreading and copyediting. Nonetheless, the brief has been checked for accuracy.

twenty minutes. The Kansas Board of Cosmetology doesn't require schools to offer any hands-on training either. The only beauty school in Hays, a cosmetology program, doesn't provide any hands-on training. The closest esthetician school to Ms. Green—about a two-and-a-half-hour drive, each way—doesn't require students to perform hands-on sugaring to graduate.

The government's recommended cosmetology and esthetics textbooks barely mention sugaring either. When they do, they endorse the practice—explaining that it is safe, sanitary, and does not cause irritation or trauma to the skin.

Making matters worse, this irrelevant schooling is prohibitively expensive. The Hays cosmetology program costs $18,900.00. The closest esthetician school costs $18,300.84. Ms. Green won't be able to earn an income while attending school either.

But that's not all. After finishing cosmetology school, Ms. Green would be forced to take two cosmetology examinations that *do not ask any* questions specific to sugaring. On the esthetician exam, there has only been one generic question about the definition of sugaring, and even then, it's only been asked on a little more than one-third of exams. What's more, because the cosmetology and esthetics tests are written only, Ms. Green would *never* be tested on her ability to perform sugaring safely, effectively, or competently.

The government's stated purpose for the licensing regime is the protection of public health. Instead of protecting the public health, the occupational licensing regime undermines it. Every aspect of the regime—from the textbooks to the schools' curricula to the licensing exams—overwhelmingly focuses on things other than sugaring. Rather than learning about sugaring, or developing hands-on sugaring skills, sugarers are spending time on things they'll never do, like cutting hair, coloring hair, giving manicures, and so on. Indeed, the government's own purported expert—who also sits on the Board of Cosmetology and is a named defendant—admitted that completing the cosmetology program and passing the licensing exams would not make anyone more capable of performing sugaring than before getting licensed. The owner and education director of the Hays Academy of Hair Design, a cosmetology school, echoed that conclusion.

That every aspect of the licensing regime overwhelmingly focuses on things other than sugaring undercuts the very idea that the licensing regime even minimally advances public health. If sugaring is so dangerous, as the government suggests, *why isn't it being taught and tested*? The government never says.

There is no evidence that the licensing regime even minimally advances public health. The Board of Cosmetology has never received a single complaint about licensed sugarers or unlicensed sugarers. The Board of Cosmetology has never received a single complaint about sugaring-related injuries from unqualified sugarers or untrained sugarers. The government repeatedly admits it has *no evidence* that the regime even minimally advances public health.

Instead of protecting public health, the evidence also demonstrates that the regime is protectionist. According to the government's purported expert witness, the Board of Cosmetology exists to protect the beauty industry, the current licensing requirements keep wages high for licensed practitioners, and the requirements shield licensed practitioners from unlicensed competitors who could offer cheaper services.

Because there is no esthetician school in Hays, only a cosmetology school, Ms. Green would be forced to spend nearly twenty-thousand dollars and almost a year of her life at cosmetology school learning irrelevant things and taking irrelevant examinations, for something that is *already* safe, that doesn't require any formal schooling to learn, and that she already knows how to do—and that she could legally do without a license if she did it for free—just so she could use a completely safe, all-natural paste to remove unwanted hair from willing customers. The same would be true if Ms. Green attended esthetician school. Except in that case, Ms. Green would have to drive two-and-a-hours, each way, for the irrelevant and prohibitively expensive schooling which lasts twenty-nine weeks.

The evidence proves what Ms. Green has alleged all along: the government's occupational licensing regime is unreasonable, irrational, arbitrary, oppressive, protectionist, not appropriately tailored to fit the practice of sugaring, and that it violates the equal protection guarantees under

the Kansas Constitution as well. The occupational licensing regime plainly violates Kansas Constitution Bill of Rights Sections 1, 2, 18, and 20. Because there are no genuine disputes about the material facts, this Court should grant Ms. Green summary judgment. K.S.A. § 60-256; *GFTLenexa, LLC v. City of Lenexa*, 310 Kan. 976, 981-82 (2019).

Statement of Undisputed Facts

A. Bryn Green and her dream business: sugaring.

1. Ms. Green is a 34-year-old mother who resides in Hays, Kansas. Ex. A, Green Dec. ¶ 2.

2. Ms. Green holds a Bachelor of Science in Agricultural Business from Fort Hays State University. Ex. A, Green Dec. ¶ 3.

3. Before having children, Ms. Green worked full-time in the insurance industry. Ex. A, Green Dec. ¶ 4.

4. When Ms. Green had her first child in 2022, she began looking for a job that would give her greater flexibility with her hours so that she could spend a greater amount of time caring for her son, while also contributing to the family financially. Ex. A, Green Dec. ¶ 5

5. As is the case for many families, finances can be tight for Ms. Green's family. Ex. A, Green Dec. ¶ 6.

6. There is a lack of affordable childcare options in Hays. Ex. A, Green Dec. ¶ 7.

7. She now works part-time on her parents' farm, where she is able to take her youngest son with her. Ex. A, Green Dec. ¶ 8.

8. Working on the farm, however, requires Ms. Green to work far more hours than she would like, particularly during planting and harvest, when she may have to work upwards of 80 hours a week. Ex. A, Green Dec. ¶ 9.

9. To help support her family, Ms. Green would like to earn an honest living by opening a business to perform sugaring—and only sugaring—for compensation. Ex. A, Green Dec. ¶ 10.

B. The Kansas State Board of Cosmetology, its Members, and the State of Kansas.

10. 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. Answer ¶ 12.

11. As of this filing, the Kansas State Board of Cosmetology members are: Kimberley Mancuso (Chair, Public Member), Kelly Robbins (Vice Chair, Tanning), Nichole Hines (Licensed Cosmetologist), Jen Kuhn (Licensed Cosmetologist), Bryan Parsons (Licensed Body Art Practitioner), Renee Anderson (Professional School Representative), and Barbara Greathouse (Licensed Electrologist). The Board's Executive Director is Breanna Bell. These parties are automatically substituted per K.S.A. 60-225(d). Ex. II, Joint Statement of Facts (*JSOF*) ¶ i.

12. The State of Kansas is a state governmental entity, and is sued for non-monetary, prospective relief. Answer ¶ 21.

C. Sugaring is a safe, temporary hair removal technique that has been practiced for thousands of years.

13. Sugaring is an ancient all-natural, temporary hair removal technique which dates back to ancient Egypt, that typically uses a mixture of sugar, lemon juice, and water to safely remove unwanted hair. *JSOF* ¶ ii.

14. Sugaring typically involves applying a thick paste made of sugar, lemon juice, and water to the skin, by hand, and then removing the paste. The hair adheres to the sugaring paste and is removed with the paste. *JSOF* ¶ iii.

15. This classical formula for sugaring is hypoallergenic and is not irritating to the skin. Ex. D, Hines Depo. 180:7-10.

16. All the leading textbooks on cosmetology, esthetics, and sugaring state that sugaring is safer and more sanitary than waxing. *JSOF* ¶ v.

17. Defendants' proffered expert and Board member, Ms. Hines, testified that these books are reliable sources. Ex. D, Hines Depo. 16:2-8.

18. These textbooks state that:

a. Sugaring paste is naturally hygienic and inhibits the growth of pathogens. *JSOF* ¶ vi(1); Ex. D, Hines Depo. 173:3-4; 174:18-21; 178:1-6; 179:2-5; 192:22—193:9; Stip. Ex. 3 at 23-25; Stip. Ex. 5 at 19-20; Stip. Ex. 8 at 19, 21-22.

b. Sugaring is hygienic because the paste is only ever used on one customer. *JSOF* ¶ vi(2); Ex. D, Hines Depo. 174:22—175:2; Stip. Ex. 5 at 20; Stip. Ex. 3 at 23-25.

c. Sugaring paste is hypoallergenic. *JSOF* ¶ vi(3); Ex. D, Hines Depo. 180:7-10; Stip. Ex. 5 at 20; Stip. Ex. 8 at 19. See also Ex. O, Patel Dec. at 9, 12, 52.

d. Unlike waxing, sugaring paste adheres to the hair but not to the skin, lessening the risk of trauma or bruising to the skin. *JSOF* ¶ vi(4); Ex. D, Hines Depo. 175:11-17; 178:13-18; 181:10-14; 186:5-10; 191:12-25; 201:4-8; Stip. Ex. 3 at 23, 25, 26; Stip. Ex. 5 at 19-20; Stip. Ex. 7 at 18; Stip. Ex. 8 at 18. See also Ex. O, Patel Report at 7, 9, 10, 52.

e. Unlike waxing, sugaring has no risk of burning. *JSOF* ¶ vi(5); Ex. D, Hines Depo. 181:22—182:8; 183:2-6; 184:13—185:9; Stip. Ex. 5 at 18-20; Stip. Ex. 3 at 24, 26. See also Ex. O, Patel Report at 6, 8, 9, 11

f. Unlike waxing, sugaring paste can be applied to the same area of skin multiple times without risking trauma to the skin. *JSOF* ¶ vi(6); Ex. D, Hines Depo. 191:12—192:4; Stip. Ex. 3 at 23-24; Stip. Ex. 5 at 18-20; Stip. Ex. 8 at 18. See also Ex. O, Patel Report at 5, 6, 7.

g. Unlike waxing, sugaring is safe for clients with diabetes. JSFO vi(7); Ex. D, Hines Depo. 174:3-5; 181:22—182:8; Stip. Ex. 3 at 24, 38; Stip. Ex. 5 at 14, 19-20.

h. Unlike waxing, sugaring is safe to perform on spider veins. *JSOF* ¶ vi(8); Ex. D, Hines Depo. 173:5-9; 178:13-18; 180:16—181:14; Stip. Ex. 3 at 24; Stip. Ex. 5 at 19-20.

i. Unlike waxing, sugaring is safe to perform on psoriasis. *JSOF* ¶ vi(9); Ex. D, Hines Depo. 173:5-9; 184:9-12; 191:3—192:4; 202:11—203:15; Stip. Ex. 3 at 24-25, 38; Stip. Ex. 5 at 19-20; Stip. Ex. 8 at 18.

j. Unlike waxing, sugaring is safe to perform on dry-itch eczema. *JSOF* ¶ vi(10); Ex. D, Hines Depo. 173:5-9; 184:9-12; 191:3—192:4; 202:11—203:15; Stip. Ex. 3 at 24-25, 38; Stip. Ex. 5 at 19-20; Stip. Ex. 8 at 18.

k. Unlike waxing, sugaring is safe to perform on varicose veins. *JSOF* ¶ vi(11); Ex. D, Hines Depo. 173:5-9; 178:13-18; 180:16—181:14; Stip. Ex. 3 at 24, 38; Stip. Ex. 5 at 19-20.

l. Unlike wax, sugaring paste is water soluble, making it easier to clean up than waxing. *JSOF* ¶ vi(12); Ex. D, Hines Depo. 175:3-5; 178:7-12; 186:5-10; Stip. Ex. 3 at 24-25; Stip. Ex. 5 at 19-20; Stip. Ex. 1 at 22; Stip. Ex. 2 at 8; Stip. Ex. 7 at 18.

m. Sugaring creates less discomfort and irritation than waxing. *JSOF* ¶ vi(13); Ex. D, Hines Depo. 171:14—172:1; 172:14-23; 173:10—174:2; 175:11-17; 177:21-25; 178:1-6; 178:22—179:1; 180:7-15; 184:1-8; 189:12-19; 191:12—192:4; 195:24—197:1; Stip. Ex. 3 at 23-26; Stip. Ex. 5 at 19-20; Stip. Ex. 8 at 18. See also Ex. O, Patel Report at 8-10, 12, 52.

n. Sugaring has less risk of folliculitis than waxing. *JSOF* ¶ vi(14); Ex. D, Hines Depo. 175:6-10; 178:19—179:10; Stip. Ex. 3 at 24; Stip. Ex. 5 at 19. See also Ex. O, Patel Report at 6, 8, 11.

o. Sugaring has less risk of ingrown hairs than waxing. *JSOF* ¶ vi(15) Ex. D, Hines Depo. 175:6-10; 179:6-21; Stip. Ex. 5 at 19. See also Ex. O, Patel Report at 6, 8.

p. Sugaring causes less distortion to the follicle than waxing. *JSOF* ¶ vi(16); Ex. D, Hines Depo. 178:19—179:1; 183:7-12; 184:1-8; 210:15-22; Stip. Ex. 3 at 24; Stip. Ex. 5 at 18-20.

q. Unlike sugaring, with waxing there's a "risk of lifting the epidermal layer of skin if the wax is too cool and goes on too thickly." *JSOF* ¶ vi(17); Ex. D, Hines Depo. 175:24—176:3; Stip. Ex. 3 at 26.

19. Depending on the technique, applying the sugaring paste does not require the use of heat, chemicals, or sharp objects. *JSOF* ¶ vii; Stip. Ex. 5 at 17-20.

20. Under the traditional hand-applied method of sugaring, which Ms. Green will use, applying the sugaring paste does not involve the use of heat, chemicals, or sharp objects. *JSOF* ¶ viii.

21. When performed properly, each customer is serviced using fresh, sanitary sugaring paste. The sugaring paste has natural antiseptic properties, which inhibit bacterial growth, cause less irritation, and reduce possible breakouts in the days following the treatment. *JSOF* ¶ ix; Stip. Ex. 5 at 18-20.

22. Due to its natural antiseptic properties, sugar dressings have been and continue to be used to treat wounds that are particularly susceptible to infections such as severe burns, open fractures, and surgical incisions. Ex. D, Hines Depo. 194:4-24; Stip. Ex. 8 at 22.

23. Sugaring paste is hygienic. Stip. Ex. 3 at 23-25; *see also*, Stip. Ex. 8 at 19 (sugaring paste "has such a high concentration of sugar, bacteria cannot breed in the jar"); *id*. at 21 ("Bacteria do not, and cannot, breed in high concentrations of sugar"); *id*. at 22 ("Sugar dressings have been, and continue to be, used to treat wounds that are particularly susceptible to infection").

24. Sugaring is "especially appropriate for more sensitive skin types." Stip. Ex. 1 at 22; Stip. Ex. 3 at 23.

25. Sugaring is "an alternative for those who have sensitive skin or who react to waxing with bumps and redness." Stip. Ex. 3 at 23.

26. Sugaring "can be used for some who have certain wax contraindications." Stip. Ex. 3 at 23.

27. Sugaring paste "can be removed in the direction of the hair growth, which is less irritating than waxing." Stip. Ex. 3 at 23.

28. "Many clients who have ingrown hairs from being waxed find that the problem disappears if they switch to the sugar method." Stip. Ex. 5 at 19-20.

29. With sugaring there is "no risk of burning or tearing the skin." Stip. Ex. 5 at 20.

30. Sugaring paste can't adhere to live skin cells and "will never tear the skin." Stip. Ex. 8 at 17-18.

31. Sugaring "can be used for some who have certain wax contraindications." Stip. Ex. 3 at 23.

32. "[T]he lower temperature and minimal adhesion to the skin make it possible to apply [sugar paste] over varicose and spider veins, dry psoriasis, and dry itch eczema." Stip. Ex. 3 at 24; see also Stip. Ex. 5 at 19, 20 ("the sugar paste does not adhere to the skin as waxes containing resins do, [so] this treatment is considered safe to use on areas with varicose veins or spider veins.").

33. "The same area can be gone over [with sugar paste] more than once during the service without the risk of causing irritation and trauma." Stip. Ex. 3 at 24; see also Stip. Ex. 5 at 18, 20 ("Because of the temperature and adhesion qualities, the same area can be treated more than once without risk of irritation or trauma.").

34. Sugaring is "safe to use on people with diabetes." Stip. Ex. 3 at 24.

35. With sugaring there is "[n]o hair follicle distortion or breakage of hair because it is removed in direction of growth." Stip. Ex. 3 at 24; see also Stip. Ex. 5 at 19 ("Sugar paste is generally and preferably applied against the hair growth and removed in the direction of hair growth, and thus it will not distort the hair follicles."); Ex. D, Hines Depo. 178:19-21.

36. Sugaring paste has "[n]aturally antiseptic properties [that] inhibit bacterial growth." Stip. Ex. 3 at 24.

37. Sugaring allows for the "[e]asy clean-up of equipment, room, and treatment table, as it is water-soluble." Stip. Ex. 3 at 24.

38. "Sugar paste adheres only to the hair, not the skin, and is easily removed with water." Stip. Ex. 6 at 13; Stip. Ex. 7 at 18.

39. Sugaring is "effective in removing the hair from the follicle without irritation or damage to follicle or surrounding skin." Stip. Ex. 5 at 19; Ex. D, Hines Depo. 184:1-8.

40. The same area can be treated more than once with sugaring without the risk of causing irritation and trauma. Ex. D, Hines Depo. 180:11-15.

41. There is no risk of burning. Ex. I, Board § 60-230(b)(6) Depo. 112:5—113:2; Ex. D, Hines Depo. 184:13-16; Ex. O, Patel Report at 5, 6, 8, 9, 11; see also Stip. Ex. 3 at 24 ("There is no

risk of burning because it is applied at body temperature"); Stip. Ex. 5 at 18 ("Neither method carries a risk of burning because both use material at body temperature."); *id*. at 19 ("there is no risk of burning because it is applied at body temperature."); *id*. at 20 ("Because of the application temperature, there is no risk of burning."); *id*. ("As there is no risk of burning . . . sugaring is considered safe to use on individuals with diabetes."); Stip. Ex. 8 at 17 ("Paste is applied at body temperature making it safe for all areas" and "you will never burn your client's skin.").

42. There is no risk of abrasions. Ex. O, Patel Report at 11.

43. There is nothing inherently dangerous about sugaring. Ex. O, Patel Report at 7, 9-13.

44. Sugaring is safe. Ex. O, Patel Report at 7, 9-13; Ex. Z, Patel Depo. 77:12-22; 93:8-13; 118:3-23; see also Ex. BB, Alexandria Professional, Hidden Dangers of Waxing; Ex. CC, Alexandria Professional, Key Differences Between Waxing and Sugaring.

45. Sugaring doesn't require extensive schooling, coursework, or instruction to be able to perform it safely or competently. Ex. O, Patel Report at 11-13.

46. Traditionally, sugaring was taught at home, with mothers teaching the technique to daughters. Ex. O, Patel Report at 12; Ex. Z, Patel Depo. 8:12—9:6 (Dr. Patel learned sugaring as a child from her mother).

47. Sugarers do not need extensive schooling, coursework, or instruction to learn basic hygiene or know how to wash their hands. Ex. O, Patel Report at 11-13.

48. If sugarers follow the basic sanitation and infection control guidelines that the Board publishes in a one-page pamphlet for hair braiders and eyebrow threaders that is sufficient to protect public health. Ex. D, Hines Depo. 213:6—214:115; 215:13-21.

49. About two hours of training would be sufficient to teach sugarers proper sanitation, infection control, blood exposure, and public health procedures. Ex. Z, Patel Depo. 115:3-11; 117:13-17.

50. The only potential side effect of sugaring, folliculitis, is a common temporary skin condition that occurs when the hair follicle becomes infected with either bacteria, viruses, fungi, or from noninfectious irritation. Ex. O, Patel Report at 6.

51. Mild cases of folliculitis resolve spontaneously with good hygiene, while more moderate to severe infections (which are rare in skin care services) may require topical [or] oral antibiotics to be used. *JSOF* ¶ x; Ex. O, Patel Report at 6.

52. The risk of folliculitis is "considerably less" with the hand applied method of sugaring than it is for waxing. Stip. Ex. 3 at 24.

53. Plaintiff's proffered expert, Dr. Seema Patel, is certified by the American Board of Family Practice. Ex. O, Patel Dec. at 24.

54. For the past two and a half years, Dr. Patel has owned her own private medical practice. Ex. O, Patel Dec. at 4.

55. Prior to that she was a staff physician at the Cleveland Clinic, Center for Functional Medicine as well as an assistant clinical professor at the Lerner College of Medicine at Case Western Reserve University. Ex. O, Patel Dec. at 4.

56. Dr. Patel previously testified as an expert witness on behalf of the plaintiffs (no relation) in the case of Patel v. Texas Dep't of Licensing & Regul., 469 S.W.3d 69 (Tex. 2015). Ex. O, Patel Dec. at 4.

57. Dr. Patel testified in this case that because sugaring doesn't use chemicals or heat, the chance of transmission of infections through sugaring, when compared to other procedures, was "the lowest risk." Ex. Z, Patel Depo. 17:5-6.

58. "There is no case study that has ever reported a viral pathogen being spread with sugaring." Ex. Z, Patel Depo. 57:9-13.

59. There is no risk of blood exposure from sugaring. Ex. Z, Patel Depo. 17:16-25.

60. Defendants have never received any complaints from the public related to sugaring. *JSOF* ¶ xi.

61. Defendants have never received any complaints from the public about sugaring-related injuries. *JSOF* ¶ xii.

62. For some women, unwanted body hair can be a source of significant anxiety and mental health concerns, and the removal of this unwanted body hair, whether through sugaring or another method, can be important to psychological health and wellbeing. *JSOF* ¶ xiv; Ex. Z, Patel Depo. 62:19—63:15

63. Dr. Seema Patel, the plaintiff's proffered expert, testified that "[f]rom a dermatological standpoint there's no reason to remove hair." *JSOF* ¶ xiv.

D. Ms. Green's desire to open a sugaring business.

64. Sugaring would provide Ms. Green the opportunity to set her own schedule so she could spend more time with her children while also providing additional income for the family. Ex. A, Green Dec. ¶ 11.

65. For the past seven years, Ms. Green has received sugaring services in Dodge City. *JSOF* ¶ xv.

66. Ms. Green has also performed sugaring services on herself at home for several years. *JSOF* ¶ xvi.

67. She believes sugaring is a superior hair removal technique to waxing. *JSOF* ¶ xvii.

68. Ms. Green is not aware of any salon that offers sugaring in Hays. *JSOF* ¶ xviii.

69. Sometime around December 2022 or January 2023, Ms. Green started thinking about offering sugaring services for compensation. *JSOF* ¶ xix.

70. She researched the legal requirements for forming a business and identified available names for a potential limited liability company. *JSOF* ¶ xx.

71. She has researched sugaring products she would like to use at her business. *JSOF* ¶ xxi.

72. Ms. Green inquired about a location in Hays where she could offer sugaring services. She found a location for her sugaring business that was available to her and which she

would have used if she could have started her business without a license. The building has enclosed rooms for privacy and access to running water and sinks. *JSOF* ¶ xxii.

73. Ms. Green has successfully completed an online sugaring course of instruction as well. *JSOF* ¶ xxiii.

74. The sugaring course cost $19.99. Ex. A, Green Dec. ¶ 21.

75. The sugaring course included one hour of instruction. Ex. A, Green Dec. ¶ 22; Ex. GG, Monique Certificate.

76. The sugaring course covered the following topics: sugaring preparation, sanitation, hand washing, cleaning the work area, patch tests, contraindications, the pros and cons of both the hand applied and the spatula applied methods, after care, and demonstrations for both the hand applied and the spatula applied methods. Ex. A, Green Dec. ¶ 23.

77. Ms. Green would like to attend an additional multi-day sugaring course of instruction from an industry leader, Alexandria Professional, but they will only accept students who hold a license, or who reside in a state that does not require a license to sugar. *JSOF* ¶ xxiv.

78. Under the traditional hand-applied method of sugaring, which Ms. Green will use, applying the sugaring paste does not involve the use of heat, chemicals, or sharp objects. Ex. A, Green Dec. ¶ 25.

79. If allowed to lawfully provide sugaring services without a license, Ms. Green would likely at first use Alexandria Professional's all-natural sugaring paste. *JSOF* ¶ xxv.

80. Alexandria's paste is designed to be applied at body temperature. *JSOF* ¶ xxvi.

81. The paste can be warmed by hand, or in a digital sugar warmer sold by Alexandria that will keep the sugaring paste at body temperature. *JSOF* ¶ xxvii.

82. Ms. Green will use fresh, disposable gloves to apply and remove the sugaring paste by hand. *JSOF* ¶ xxviii.

83. When finished, the used sugaring paste and gloves are thrown away, and the work area will be sanitized. Ex. A, Green Dec. ¶ 30.

84. To begin a sugaring hair removal service, Ms. Green will first consult with the client to determine what areas they would like treated, discuss any current or past skin issues, and identify any concerns or sensitivities. *JSOF* ¶ xxix.

85. Once the service plan is clear, Ms. Green will prepare a clean, organized workspace, sanitize her hands, and put on gloves. *JSOF* ¶ xxx.

86. The client's skin is cleansed with a gentle, skin-safe cleanser to remove oils, sweat, or lotion, then lightly dusted with a natural powder to absorb moisture and help the sugar adhere only to the hair. *JSOF* ¶ xxxi.

87. While there are many products on the market, Ms. Green would probably begin using the Alexandria Professional line of products, such as Presept Skin Cleanser, Essential Tonic, Vertal 6 Drying Powder, and Restore Lotion. *JSOF* ¶ xxxii.

88. Ms. Green would then mold a ball of sugaring paste against the direction of hair growth and then quickly flick the sugar off in the direction of growth to gently remove hair with minimal breakage or irritation. *JSOF* ¶ xxxiii.

89. This process is repeated in small sections, replacing the sugaring paste as needed. *JSOF* ¶ xxxiv.

90. Ms. Green may use tweezers to remove hair that is missed by the sugaring paste, depending on what the client asks for. *JSOF* ¶ xxxv.

91. After the area is fully treated, a soothing product like aloe vera or witch hazel could be applied to calm the skin if desired by the client. *JSOF* ¶ xxxvi.

92. Finally, Ms. Green would provide aftercare instructions, including advising the client to avoid heat, friction, and exfoliation for 24–48 hours and to moisturize regularly. *JSOF* ¶ xxxvi.

93. Ms. Green has read the Board's blood exposure procedures and would follow those procedures, to the best of her ability, in the unlikely event of a blood exposure with a client. *JSOF*

¶ xxxviii; Ex. EE, KBOC Blood Exposure Procedures; Ex. FF, KBOC Blood Exposure Procedure Tips.

94. On March 28, 2023, Ms. Green reached out to the Board to determine if there were any legal requirements she had to meet before she could offer sugaring services. *JSOF* ¶ xxxix; Ex. Q, Email to Board.

95. Initially, she did not think to clarify between waxing and sugaring. *JSOF* ¶ xl.

96. A Board staff member responded by sending her links to statutes, regulations, and the Board-approved cosmetology and esthetics curriculum. *JSOF* ¶ xli; Ex. Q, Email to Board.

97. Ms. Green followed up with a Board staff member 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. *JSOF* ¶ xlii; Ex. Q, Email to Board.

98. She did not receive a response. *JSOF* ¶ xliii.

99. 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. *JSOF* ¶ xliv.

100. Ms. Green does not have a cosmetology or esthetics license. *JSOF* ¶ xlv.

101. In Kansas, a person who practices unlicensed sugaring for money is guilty of a misdemeanor offense. *JSOF* ¶ xlvi.

102. Ms. Green reached out to the only cosmetology school in Hays, the Hays Academy of Hair Design, and was informed that they only taught waxing, not sugaring. *JSOF* ¶ xlvii.

103. The Hays Academy costs $18,900. Ex. B, Hays Depo. 13:8-14.

104. A full-time student at the Hays Academy will take about a year to graduate. *JSOF* ¶ xlviii; Ex. B, Hays Depo. 26:10-14.

105. This tuition at the Hays Academy, the lost wages for a year of work, and the cost of childcare while she attended school would be prohibitively expensive for Ms. Green, particularly

since the Hays Academy would not even teach her how to perform hands-on sugaring. Ex. A, Green Dec. ¶ 53.

106. Fearing potential legal consequences for practicing cosmetology or esthetics without a license, Ms. Green was forced to pause her dream of opening a sugaring business. Ex. A, Green Dec. ¶ 59; *see also*, *id*. at ¶ 60 ("If I were able to legally open a sugaring business, I would be able to offer a service that I love, with products that I love, to help other people with a service that I truly believe in. Being able to open my business would allow me to make extra income to help support my family and help make my dreams come true.").

E. Sugaring is considered the practice of cosmetology or esthetics.

107. In Kansas, 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." *JSOF* ¶ xlix; KSA § 65-1901(d)(1)(C).

108. "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[.]" *JSOF* ¶ l; KSA § 65-1901(f)(2).

109. Hair braiders are exempted from the cosmetology licensing regime. *JSOF* ¶ li; KSA § 65-1901(d)(2), KSA § 65-1928.

110. Hair threaders are exempted from the cosmetology licensing regime. *JSOF* ¶ lii; KSA § 65-1901(d)(2), KSA § 65-1928.

111. To perform hair braiding legally, hair braiders need only attest that they have reviewed a pamphlet on basic sanitation, infection control, and blood spill procedures, administer a self-test, and keep the pamphlet at the location where they are offering braiding services. *JSOF* ¶ liii; Ex. E, Hair Braiders Pamphlet.

112. To perform hair threading legally, hair threaders need only attest that they have reviewed a pamphlet on basic sanitation, infection control, and blood spill procedures, and

administer a self-test, and keep the pamphlet at the location where they are offering threading services. *JSOF* ¶ liv; Ex. F, Hair Threaders Pamphlet.

113. 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[.]" *JSOF* ¶ lv; KSA § 65-1901(d)(1)(C) & (e)(2).

114. An individual must therefore have a cosmetology or esthetics license to perform sugaring for compensation. *JSOF* ¶ lvi.

115. In the 2024 legislative session, the Kansas Legislature passed S.B. 434, which removed sugaring from the definition of the practice of cosmetology and esthetics. *JSOF* ¶ lvii; Ex. R, SB 434.

116. S.B. 434 would have required sugarers to review a pamphlet on basic sanitation, infection control, and blood spill procedures, and administer a self-test, identical to what is required for hair braiding and threading. *JSOF* ¶ lviii; Ex. R, SB 434.

117. The Defendants' proffered expert and member of the Board, Ms. Hines, believes that if a sugarer follows the basic sanitation, infection control, and blood spill procedures found in the pamphlets for braiders and threaders that would be adequate to protect the public. Ex. D, Hines Depo. 213:6—214:115; 215:13-21.

118. Defendants' proffered expert and Board member, Ms. Hines, testified against SB 434, vocally opposed the bill on social media, organized other cosmetologists and estheticians to oppose the bill, and lobbied Governor Laura Kelly to veto the bill—which the Governor ultimately did. *JSOF* ¶ lix (Governor Kelly vetoed bill); Ex. D. Hines Depo. 133:17—134:6; 134:22—135:3; 135:19—136:7; 137:3-18; Ex. S, Veto Statement.

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

F. The schooling required to obtain a cosmetology or esthetics license

120. 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. *JSOF* ¶ lxi.

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

122. The Board adopted the 1,500-hour cosmetology curriculum by reference in KAR § 69-3-8. *JSOF* ¶ lxii; Ex. G, Cosmetology Curriculum.

123. A significant portion of the time is spent on topics a sugarer will never use under any circumstances.

124. At the Hays Academy of Hair Design, of the 1,500-hour cosmetology curriculum, approximately 15 minutes is devoted to teaching sugaring theory. *JSOF* ¶ lxiii.

125. Thus, approximately 99.983% of the of the mandatory 1,500-hour curriculum is devoted to topics other than sugaring. *JSOF* ¶ lxiv.

126. By the Board's own admission, the following hours of Board required cosmetology instruction are unrelated to the practice of sugaring:

a. 35 hours: (1) Scientific Concepts, (b) Hair & Scalp. *JSOF* ¶ lxv(1).

b. 20 hours: (1) Scientific Concepts, (d) Nails. *JSOF* ¶ lxv(2).

c. 35 hours: (2) Physical Services, (a) Shampoo & rinses. *JSOF* ¶ lxv(3).

d. 35 hours: (2) Physical Services, (b) Scalp and hair care. *JSOF* ¶ lxv(4).

e. 180 hours: (2) Physical Services, (d & e) Manicuring & Artificial nails. *JSOF* ¶ lxv(5).

f. 450 Hours: (3) Chemical Services, (a-d) Hair coloring, lightening, chemical waving, chemical hair relaxing. *JSOF* ¶ lxv(6).

g. 360 hours: (4) Hair designing, (a-d) Hair shaping, hair styling, Thermal Techniques, care and styling of hair pieces. *JSOF* ¶ lxv(7).

h. 50 hours: (6) State law, (a) rule and regulations. *JSOF* ¶ lxv(8).

i. 50 hours: (7) Student specific needs. *JSOF* ¶ lxv(9).

127. All told, the Board admits that 1,215 out of 1,500, or 81%, of the required hours in the cosmetology curriculum are unrelated to the practice of sugaring. *JSOF* ¶ lxvi.

128. Of the remaining 285 hours, the Board admits that many of these hours are also unrelated to the practice of sugaring:

a. 40 hours: (1) Scientific Concepts, (a) Sanitation. The Board admits that some but not all of the 40 hours of instruction on sanitation are relevant to the practice of sugaring. *JSOF* ¶ lxvii(1).

b. 20 hours: (1) Scientific Concepts, (c) Skin. The Board admits that some but not all of the 20 hours of instruction on skin are relevant to the practice of sugaring. *JSOF* ¶ lxvii(2).

c. 150 hours: (2) Physical Services (c) Facials and make-up. The Board admits that of the 150 hours and 11 subtopics in Facials and make-up, only Hair Removal is relevant to the practice of sugaring. And the Hair Removal subtopic includes tweezing, waxing, depilatories, threading, shaving, and sugaring, as well as permanent hair removal techniques, of which only "sugaring" is directly related to the practice of sugaring. *JSOF* ¶ lxvii(3).

d. 75 hours: (5) Business Practices. The Board admits that of the 75 hours and 5 subtopics in Business Practices, only Client Records is directly relevant to the practice of sugaring. *JSOF* ¶ lxvii(4).

129. A Board-approved textbook that forms a basis for many schools' curricula, Milady Standard: Cosmetolgy, 13th ed. (2016), devotes only three paragraphs of the 1,129 pages to the technique of sugaring, one of which is only one sentence long. The book advises students to learn about sugaring "at trade shows and seminars, as well as through videos." *JSOF* ¶ lxviii; Stip. Ex. 1 at 22.

130. By comparison, the textbook spends five pages on "Resume Development," fourteen pages on "Life Skills," four pages instructing students on their personal image, grooming,

and fashion, approximately 175 pages on "Nail Care," approximately 35 pages on "Scalp care, Shampooing, Conditioning," and approximately 169 pages on "Haircutting" and "Hairstyling." *JSOF* ¶ lxix.

131. The textbook used by the Hays Academy of Hair Design devotes a single paragraph to sugaring. *JSOF* ¶ lxx; Stip. Ex. 2 at 8.

132. By comparison, the textbook used at the Hays Academy devotes ten pages to "Healthy Body & Mind," twelve pages to "Ergonomics," eleven pages to "Basic Communication," seven pages to "Communicating with Confidence," fourteen pages to "Human Relations," and twelve pages to "Resilience." *JSOF* ¶ lxxi.

133. The Board-approved cosmetology curriculum doesn't require any hands-on practical training in sugaring. *JSOF* ¶ lxxii.

134. The Board adopted an esthetician curriculum by reference in KAR § 69-3-8. *JSOF* ¶ lxxiii; Ex. H, Esthetician Curriculum.

135. A significant portion of time is spent on topics a sugarer will never use under any circumstances.

136. The closest esthetician school to Hays is the Bellus Academy in Manhattan, Kansas, approximately a two-and-a-half-hour drive from Hays. *JSOF* ¶ lxxiv.

137. At the Bellus Academy, during the course of the 1,000-hour esthetics curriculum, approximately 10-20 minutes is devoted to teaching sugaring theory. *JSOF* ¶ lxxv.

138. Assuming that sugaring is taught for a full 20 minutes, approximately 99.967% of the mandatory 1,000 hours curriculum is devoted to topics other than sugaring. *JSOF* ¶ lxxvi.

139. By the Board's own admission, the following hours of Board-required esthetics instruction are unrelated to the practice of sugaring:

a. 240 hours: (4) Skin Treatments. *JSOF* ¶ lxxvii(1).

b. 40 hours: (5) Body Treatments. *JSOF* ¶ lxxvii(2).

c. 140 hours: (6) Advanced Skin Treatments. *JSOF* ¶ lxxvii(3).

d. 60 hours: (8) Make up. *JSOF* ¶ lxxvii(4).

e. 20 hours: (10) State law. *JSOF* ¶ lxxvii(5).

f. 50 hours: (11) Student specific needs. *JSOF* ¶ lxxvii(6).

140. All told, the Board admits that 550 out of 1,000, or 55%, of the required hours in the esthetics curriculum are unrelated to the practice of sugaring. *JSOF* ¶ lxxviii.

141. Of the remaining 450 hours, the Board admits that many of these hours are also unrelated to the practice of sugaring:

a. 60 hours: (1) Infection Control. The Board admits that some but not all of the 60 hours of instruction on infection control are relevant to the practice of sugaring. *JSOF* ¶ lxxix(1).

b. 200 hours: (2) Skin anatomy and physiology. The Board admits that of the 200 hours of instruction on skin anatomy and physiology, only the subsection on dermatology is directly related to the practice of sugaring. *JSOF* ¶ lxxix(2).

c. 120 hours: (3) Skin analysis and consultation. The Board admits that some but not all of the 120 hours of instruction on skin analysis and consultation are relevant to the practice of sugaring. *JSOF* ¶ lxxix(3).

d. 40 hours: (7) Temporary hair removal. Of the 40 hours of temporary hair removal instruction, the Board admits that only the instruction on sugaring is directly related to the practice of sugaring. *JSOF* ¶ lxxix(4).

e. 30 hours: (9) Business Practices. Of the 30 hours of business practices, the board admits that only the instruction on client records could be directly related to the practice of sugaring. *JSOF* ¶ lxxix(5).

142. Of the 1,000 hours required to become a licensed esthetician, only 40 hours are devoted to the entire category of hair removal, consisting of 10 hours for theory instruction and 30 hours of practice. *JSOF* ¶ lxxx.

143. These 40 hours are spread over six temporary hair removal topics. *JSOF* ¶ lxxxi.

144. 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.

145. In reality, however, esthetics schools do not teach the six hair removal topics evenly, and the esthetics school closest to Ms. Green only offers 10-20 minutes of instruction on sugaring theory, with no requirement or guarantee that students practice sugaring hands-on. Ex. C, Bellus Dec. at ¶ 15.

146. 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. *JSOF* ¶ lxxxii.

147. The closest cosmetology school to Ms. Green is the Hays Academy of Hair Design. *JSOF* ¶ lxxxiii.

148. The only cosmetology school that is within a reasonable commuting distance to Ms. Green is the Hays Academy of Hair Design. Ex. A, Green Dec. ¶ 50.

149. The Hays Academy costs $18,900 for a full course of cosmetology instruction. *JSOF* ¶ lxxxiv.

150. That cost is roughly 33% of the median household income in Hays, which is $56,861. Census Bureau Profile, Hays, Kansas. *JSOF* ¶ lxxxv.

151. That cost is roughly 54% of the median annual wage of cosmetologists in Kansas, which is $34,740. Bureau of Labor Statistics, Occupational Employment and Wage Statistics (OEWS) Map – Personal Care and Service Occupations, Hairdressers, Hairstylists, and Cosmetologists. *JSOF* ¶ lxxxvi.

152. That cost is roughly 69% of the cost of tuition and books for four years of schooling at Fort Hays State University, which is $27,247.60. Ft. Hays State University Tuition. *JSOF* ¶ lxxxvii

153. This tuition at the Hays Academy, the lost wages for a year of work, and the cost of childcare while attending school would be prohibitively expensive for Ms. Green, particularly since the Hays Academy would not even teach her how to perform hands-on sugaring. Ex. A, Green Dec. ¶ 53.

154. A full-time student at the Hays Academy will take about a year to graduate. *JSOF* ¶ lxxxviii.

155. Of the Hays Academy's 1,500 hours of instruction, approximately 10-15 minutes of time is devoted to instruction on the theory of sugaring. *JSOF* ¶ lxxxix.

156. This instruction consists of a single PowerPoint slide. *JSOF* ¶ xc; Ex. DD, Hays Academy Sugaring Slide – Under Seal.

157. The Hays Academy does not offer hands-on instruction on sugaring. *JSOF* ¶ xci.

158. The Hays Academy does not believe that the 10-15 minutes of sugaring theory it offers is sufficient for graduates of the cosmetology program to know how to provide sugaring services on the public. *JSOF* ¶ xcii.

159. Defendants' proffered expert and member of the Board, Ms. Hines, is not surprised that cosmetology schools only offer 10-15 minutes of instruction on sugaring theory. *JSOF* ¶ xciii; Ex. D, Hines Dep. 218:13-20.

160. Defendants' proffered expert and member of the Board, Ms. Hines, is not surprised that cosmetology schools do not offer hands-on practice with sugaring. *JSOF* ¶ xciv; Ex. D, Hines Dep. 218:3-7; 220:4-10.

161. Defendants' proffered expert and member of the Board, Ms. Hines, doubts that all cosmetology instructors know how to practice sugaring. *JSOF* ¶ xcv; Ex. D, Hines Dep. 218:3-7 ("the instructors probably don't know how to do it.").

162. When asked if individuals who have graduated from cosmetology or esthetician school and passed their licensing exams are qualified to perform sugaring, Defendants' proffered

expert and member of the Board, Ms. Hines, testified "without any hands on? No. Not necessarily. No." *JSOF* ¶ xcvi

163. When asked why they wouldn't be qualified to perform sugaring, Ms. Hines said, "it might just – in my mind they wouldn't know how to do it." *JSOF* ¶ xcvii.

164. There is no esthetician school in Hays, only a cosmetology school. *JSOF* ¶ xcviii.

165. The closest esthetician schools to Hays is the Bellus Academy in Manhattan, Kansas, which is approximately a two-and-a-half-hour drive from Hays. *JSOF* ¶ xcix.

166. Commuting approximately 5 hours each day to an esthetician school is not a viable option for Ms. Green. Ex. A, Green Dec. ¶ 55.

167. Bellus Academy costs $18,300.84 for a full course of esthetics instruction. *JSOF* ¶ c.

168. That cost is roughly 32% of the median household income in Hays, which is $56,861. Census Bureau Profile, Hays, Kansas. *JSOF* ¶ ci.

169. That cost is roughly 53% of the median annual wage of cosmetologists in Kansas, which is $34,740. Bureau of Labor Statistics, Occupational Employment and Wage Statistics (OEWS) Map – Personal Care and Service Occupations, Hairdressers, Hairstylists, and Cosmetologists. *JSOF* ¶ cii.

170. That cost is roughly 67% of the cost of tuition and books for four years of schooling at Fort Hays State University, which is $27,247.60. Ft. Hays State University Tuition. *JSOF* ¶ ciii.

171. This tuition at the Bellus Academy, the lost wages for more than six months of work, commuting expenses, and the cost of childcare while attending school would be prohibitively expensive for Ms. Green, particularly since the Bellus Academy might not ever provide her with a hands-on opportunity to practice sugaring. Ex. A, Green Dec. ¶ 58.

172. A full-time student at the Bellus Academy will take 29 weeks to graduate. *JSOF* ¶ civ.

173. Of the Bellus Academy's 1,000 hours of instruction, approximately 10-20 minutes of instruction is devoted to instruction on the theory of sugaring. *JSOF* ¶ cv.

174. Bellus Academy does not require hands-on instruction on sugaring and a student may graduate without ever performing sugaring on a client. *JSOF* ¶ cvi.

175. Defendants' proffered expert and member of the Board, Ms. Hines, is not surprised that esthetician schools only offer 10-20 minutes of instruction on sugaring theory. *JSOF* ¶ cvii; Ex. D, Hines Dep. 218:21-24.

176. Defendants' proffered expert and member of the Board, Ms. Hines, is not surprised that esthetics schools may not offer hands-on practice with sugaring. *JSOF* ¶ cviii; Ex. D, Hines Dep. 218:21-24; 220:11-15.

177. Defendants' proffered expert and member of the Board, Ms. Hines, is not surprised that hands-on sugaring is not being taught because "the instructors probably don't know how to do it." Ex. D, Hines Dep. 218:3-7.

178. Defendants' proffered expert and member of the Board, Ms. Hines, does not think that students who graduate from an esthetician course and receive only 20 minutes of sugaring theory are qualified to practice sugaring on the public. Ex. D, Hines Dep. 220:24—221:20.

179. To become a licensed cosmetology instructor, aspiring-teachers must obtain a cosmetology instructor's license. *JSOF* ¶ cx; KSA § 65-1903(b).

180. To become a licensed esthetics instructor, aspiring-teachers must obtain either an esthetics instructor license or a cosmetology instructor license. KSA § 65-1903(f).

181. To obtain a cosmetology 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. *JSOF* ¶ cxi; KSA § 65-1903(b).

182. To obtain an esthetics instructor's license, aspiring instructors must first become licensed cosmetologists or estheticians, pass an instructor exam—administered by the Board or

the Board's designee—and either take 450 hours of instructor training or have practiced as an esthetician for one year and take 300 hours of instructor training. KSA § 65-1903(f).

183. The instructor training curricula does not specifically cover sugaring. The instructor examination does not specifically cover sugaring. *JSOF* ¶ cxii.

184. The Board's testing designee – Ergometrics and Applied Personnel Research, Inc. – only offers a combine Instructor Written Exam for both cosmetology and esthetics instructors. Ex. J, Ergometrics Dec. at ¶ 5.

185. Since at least 2016, the cosmetology instructor examination has been written only. Therefore, aspiring instructors are not tested on their ability to perform sugaring as a condition of their teaching license. *JSOF* ¶ cxiii.

186. There is no requirement that licensed instructors in Kansas know how to perform sugaring or effectively teach the technique. *JSOF* ¶ cxiv.

187. Defendants' proffered expert and Board member, Ms. Hines, doubts that cosmetology and esthetics instructors know how to practice sugaring. *JSOF* ¶ cxv; Ex. D, Hines Dep. 218:3-7.

G. The examinations required to obtain a cosmetology or esthetics license.

188. After finishing school, aspiring sugarers must take either two cosmetology examinations or two esthetician examinations in order to obtain the respective license—one practical and one theoretical. *JSOF* ¶ cxvi.

189. Because the tests are computer-based and not hands-on, aspiring sugarers are not tested by the Board on their hands-on ability to perform sugaring. *JSOF* ¶ cxvii.

190. 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. *JSOF* ¶ cxviii

191. 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. *JSOF* ¶ cxix.

192. The instructor examination consists of a single, two-hour written only test. *JSOF* ¶ cxx.

193. All of the examinations are administered on behalf of the Board by Ergometrics and Applied Personnel Research, Inc. *JSOF* ¶ cxxi.

194. Each of these tests are computer administered. *JSOF* ¶ cxxii.

195. Ergometrics has a question bank of potential test questions for each test. *JSOF* ¶ cxxiii.

196. When a test is administered to an individual, Ergometrics' system will generate a unique test for each test taker by drawing questions from the question bank. *JSOF* ¶ cxxiv.

197. To ensure that each test covers the appropriate material, the questions drawn from the question bank are proportional to the percentages listed in the appropriate candidate information bulletin published by Ergometrics on behalf of the Board. *JSOF* ¶ cxxv; Ex. K, Cosmetology Candidate Information Bulletin; Ex. L, Esthetician Candidate Information Bulletin; Ex. M, Instructor Candidate Information Bulletin.

198. For instance, the Cosmetology Written Theory Exam consists of 120 multiple-choice questions. One hundred of these questions are scored and 20 are non-scored experimental questions. For the Cosmetology Written Theory Exam, the candidate information bulletin lists the topic of "Skin Care & Services" as constituting 4% of the test. As a result, when the system generates a test, 4 of the 100 scored questions drawn from the question bank will be on the topic of Skin Care & Services. *JSOF* ¶ cxxvi.

199. Ergometrics has created two question items related to sugaring: Item Numbers 1089 and 18336. *JSOF* ¶ cxxvii.

200. Item Number 18336 has not appeared on any exams for any discipline. While this item is in Ergometrics' database, it is not active, meaning that it will not be used on exams. *JSOF* ¶ cxxviii.

201. Item Number 1089 was first added to Ergometrics' question bank on August 8, 2013. From August 8, 2013, through June 30, 2025, Item Number 1089 has only been utilized in the Esthetics Written Theory Exam, it has never been used on the Cosmetology or Instructor Exams. *JSOF* ¶ cxxix.

202. From August 8, 2013, to June 30, 2025, the Esthetics Written Theory Exam has been administered a total of 3,419 times. Of these 3,419 exams, 1,260 of them included Item Number 1089. *JSOF* ¶ cxxx.

203. The text of Item Number 1089, the only question ever tested relating to sugaring, is produced subject to the Court's protective order. It is a multiple-choice question about the definition of sugaring. *JSOF* ¶ cxxxi; Ex. N, Ergometrics Sugaring Questions – Under Seal.

204. In sum, from August 8, 2013, to June 30, 2025, no applicant taking a cosmetology or instructor exam has been asked a single question about sugaring, while 36.85% of the applicants taking the esthetics exam were asked one question about sugaring. *JSOF* ¶ cxxxii.

H. The Board does not conduct independent background checks of those applying for a license.

205. In addition to attending a Board-approved school and passing the Board-approved exams, license applicants must inform the Board if they have ever been convicted of a felony. *JSOF* ¶ cxxxiii.

206. If an applicant discloses a felony, the Board will review the facts and determine whether or not to issue a license, based on the Board's determination of whether the applicant is properly rehabilitated. *JSOF* ¶ cxxxiv.

207. The Board does not have a policy that makes any felony, including sex offenses, automatically disqualifying. *JSOF* ¶ cxxxv.

208. The Board does not conduct its own independent background checks of applicants. *JSOF* ¶ cxxxvi.

I. The sugaring regime is protectionist.

209. Defendants' proffered expert and Board member, Ms. Hines, is a licensed cosmetologist. *JSOF* ¶ cxxxvii.

210. Defendants' proffered expert and Board member, Ms. Hines, is the owner of Bella Bar Holistics Aesthetics in Leawood, Kansas, where she offers sugaring and waxing hair removal services. *JSOF* ¶ cxxxviii.

211. Defendants' proffered expert and Board member, Ms. Hines, began offering sugaring services after taking a sugaring training course from Alexandria Professional. *JSOF* ¶ cxxxix; Ex. D, Hines Depo. 56:20—57:7.

212. This is the same sugaring training course from Alexandria Professional that Ms. Green would take if Kansas did not require a cosmetology or esthetics license to practice sugaring. *JSOF* ¶ cxl.

213. Defendants' proffered expert and Board member, Ms. Hines, testified that publications from Alexandria Professional are reliable sources for sugaring information. Ex. D, Hines Depo. 44:24—45:17.

214. Defendants' proffered expert and Board member, Ms. Hines, testified that she has used the publication from Jessa Skincare and it is a reliable source for sugaring information. Ex. D, Hines Depo. 42:16-24; 234:4-22; Stip. Ex. 9.

215. Defendants' proffered expert and Board member, Ms. Hines, defends Kansas' cosmetology and esthetics licensing regime, and states in her report that "[d]ue to Kansas' licensing program of cosmetologists and estheticians, the public assumes that anyone rendering services on their body has been educated and passed tests proving their knowledge of the services rendered." *JSOF* ¶ cxli; Ex. W, Hines Report at 6.

216. Defendants' proffered expert and Board member, Ms. Hines, testified that she wouldn't be surprised if cosmetology and esthetics schools only offered a few minutes of instruction on the theory of sugaring. *JSOF* ¶ cxlii; Ex. D, Hines Depo. 218:13-24.

217. Defendants' proffered expert and Board member, Ms. Hines, testified that learning how to sugar required hands-on training, but that she would not be surprised if students graduated from cosmetology or esthetics school without receiving hands-on training because "the instructors probably don't know how to do it." *JSOF* ¶ cxliii; Ex. D, Hines Depo. 217:22—218:7.

218. Defendants' proffered expert and Board member, Ms. Hines, testified that an individual who attended cosmetology or esthetics school and passed their licensure tests, but had not received hands-on training in sugaring, would not be qualified to perform sugaring. But they would be legally allowed to perform sugaring. *JSOF* ¶ cxliv; Ex. D, Hines Depo. 220:4—221:20.

219. When shown the pamphlets that hair braiders and eyebrow threaders are legally required to read and follow, Defendants' proffered expert and Board member, Ms. Hines, testified that if a sugarer followed the blood exposure and infection control guidelines in the pamphlets that it would be adequate to protect the public, with respect to blood exposure and infection control. *JSOF* ¶ cxlv; Ex. D, Hines Depo. 213:6—214:115; 215:13-21; Ex. E, Braiding Pamphlet; Ex. F, Threading Pamphlet.

220. Defendants' proffered expert and Board member, Ms. Hines, testified that licensure helps provide practitioners in the beauty industry with a livable wage of roughly $30,000 for salon employees and $40,000 - $50,000 for the self-employed. *JSOF* ¶ cxlvi; Ex. D, Hines Depo. 115:19-22; 116:5-16.

221. Following Governor Kelly's veto of Senate Bill 434, Defendants' proffered expert and Board member, Ms. Hines, wrote an article for an industry publication, Skin Games. *JSOF* ¶ cxlvii; Ex. D, Hines Dep. 117:21—118:15; Ex. T, Skin Games Article.

222. In this article, Defendants' proffered expert and Board member, Ms. Hines, wrote that opposition to deregulation "insulates the licensed beauty industry employees from minimum

wage jobs offered to unlicensed workers," and that "[f]or the licensed entrepreneurs, regulation shields them from the unlicensed offering cheap services that undercut a small business's bottom line for survival, and, protecting the integrity of the beauty industry." *JSOF* ¶ cxlviii; Ex. D, Hines Depo. 120:14—121:5; Ex. T, Skin Games Article at 3.

223. Defendants' proffered expert and Board member, Ms. Hines, is correct to believe that "by imposing requirements on people seeking to enter licensed professions—such as additional training and education, fees, exams, and paperwork—licensing reduces employment in the licensed occupation and hence competition, driving up the price of goods and services for consumers." Ex. AA, Occupational Licensing: A Framework for Policymakers, The White House, at 12; see also id. at 60.

224. "This could benefit licensed practitioners, who might earn more than they would in an unlicensed market, or the financial benefits could flow elsewhere, such as to educational institutions or other licensing entities." Ex. AA, Occupational Licensing: A Framework for Policymakers, The White House, at 12.

225. "[T]here is compelling evidence that licensing raises prices for consumers." Ex. AA, Occupational Licensing: A Framework for Policymakers, The White House, at 14.

226. "[R]estrictions are expected to raise the wages of those who manage to enter licensed occupations, and lower the wages of other workers, leading to a wage gap." Ex. AA, Occupational Licensing: A Framework for Policymakers, The White House, at 14.

227. "Estimates that account for differences in education, training, and experience find that licensing results in 10 percent to 15 percent higher wages for licensed workers relative to unlicensed workers." Ex. AA, Occupational Licensing: A Framework for Policymakers, The White House, at 14.

228. In her social media posts during the debate over SB 434, Defendants' proffered expert and Board member, Ms. Hines, compared unlicensed sugarers earning a minimum wage to

the slave trade. Ex. D, Hines Depo. 101:14-25; 102:8-20; Ex. U, Hines Social Media Video Feb. 2024 10:40-11:08.

229. Defendants' proffered expert and Board member, Ms. Hines, opined that the purpose of the Kansas Board of Cosmetology is to "in a sense, represent the practitioners, represent the industry." *JSOF* ¶ cxlix; Ex. D, Hines Depo. 140:16-18.

230. Defendants' proffered expert and Board member, Ms. Hines, views deregulation as an existential threat to the industry. Ex. D, Hines Depo. 121:6-8.

231. Defendants' proffered expert and Board member, Ms. Hines, views this lawsuit as an existential threat to the industry. Ex. D, Hines Depo. 121:9-11.

232. Defendants' proffered expert and Board member, Ms. Hines, believes that SB 434 was a "war on women," Ex. D, Hines Depo. 76:23-25, and stated on social media that female legislators who voted in favor of SB 434 did not value themselves. Ex. D, Hines Depo. 81:13—82:16; Ex. V, Hines Social Media Video March 2024 pt 1 14:09-15:04.

233. Defendants' proffered expert and Board member, Ms. Hines, views deregulation as "coming for" practitioners. Ex. D, Hines Depo. 99:4-20.

234. Defendants' proffered expert and Board member, Ms. Hines, said about Ms. Green on social media: "the gall, the audacity of that just blows my mind," and "I can't have those people with audacity blaming it on me anymore that they can't work in the state of Kansas, with no education and that's supposed to be okay. They can't have the business in Kansas because Nichole and all the others are stopping them, because they literally say they don't have the time to go to school, like the rest of us did." Ex. D, Hines Depo. 143:5-24.

J. The Board has no evidence that the schooling, testing, and licensing requirements advance any government interest.

235. "[M]ost research does not find that licensing improves quality or public health and safety." Ex. AA, Occupational Licensing: A Framework for Policymakers, The White House, at 13; see also id. at 58.

236. The Board of Cosmetology is unaware how the 1,500-hour Board-approved cosmetology curriculum was developed in 1996, *JSOF* ¶ cliv, or in 2020, Ex. I, Board § 60-230(b)(6) Depo. 38:8-15.

237. The Board does not know whether the Board-approved cosmetology and esthetics curricula was designed after reviewing objective evidence. *JSOF* ¶ clv.

238. The Board is unaware of any evidence that establishes that the cosmetology curriculum is effective at protecting the health and safety of consumers. *JSOF* ¶ clvi.

239. The Board is unaware of any evidence that establishes that the cosmetology curriculum is effective at protecting the health and safety of consumers who wish to receive only sugaring services. *JSOF* ¶ clvii.

240. The Board is unaware of any evidence that establishes that the esthetics curriculum is effective at protecting the health and safety of consumers. *JSOF* ¶ clviii.

241. The Board is unaware of any evidence that establishes that the esthetics curriculum is effective at protecting the health and safety of consumers who wish to receive only sugaring services. *JSOF* ¶ clix.

242. The Board is unaware of any evidence that establishes that the cosmetology and esthetics licensing exams are effective at protecting the health and safety of consumers. *JSOF* ¶ clx.

243. The Board is unaware of any evidence that establishes that the cosmetology and esthetics licensing exams are effective at protecting the health and safety of those who only wish to receive sugaring services. *JSOF* ¶ clxi.

244. The Board produced no evidence that the cosmetology, esthetics, or instructor curricula are appropriately tailored to their respective practices in general, or sugaring in particular. Ex. Y, Defendants' Responses to Plaintiff's First Set of Interrogatories, Interrogatory 9.

245. The Board is unaware of evidence that conclusively establishes that unlicensed sugaring is more dangerous than licensed sugaring. *JSOF* ¶ clxii; Ex. I, Board § 60-230(b)(6) Depo. 104:21—105:7; 105:16-21

246. The Board is unaware of any evidence that conclusively establishes that Kansas' licensing regime directly increases infection control. Ex. I, Board § 60-230(b)(6) Depo. 105:22—106:2

247. The Board admits that sugaring does not pose a risk of burning. Ex. I, Board § 60-230(b)(6) Depo. 110:22—111:3; 112:5—113:2.

248. The Board is unaware of any evidence that sugaring presents a risk of infection. Ex. I, Board § 60-230(b)(6) Depo. 115:1-18.

249. The Board is unaware of any evidence that sugaring presents a risk of abrasion. Ex. I, Board § 60-230(b)(6) Depo. 121:4-7; 121:16-23; 122:17-24; 123:10—124:9.

250. The Board is unaware of any evidence that sugaring presents a risk of contamination of bodily fluid, including blood and mucus. Ex. I, Board § 60-230(b)(6) Depo. 125: 20—126:20.

251. The Board admits that there are no additional risks or safety concerns that arise from sugaring being performed on all parts of the body. Ex. I, Board § 60-230(b)(6) Depo. 129:5-12.

252. The Board is unaware of whether or not licensed cosmetologists or estheticians are allowed to performing sugaring on minors. Ex. I, Board § 60-230(b)(6) Depo. 134:5-23.

253. Before Governor Kelly's veto statement on SB 434, the Board was not aware of any discussion among Board members about potential safety issues involving sugaring performed on minors. *JSOF* ¶ clxiii.

254. The Board requires license applicants to self-report any felony convictions. *JSOF* ¶ clxv.

255. The Board does not conduct any independent background checks of license applicants. Ex. I, Board § 60-230(b)(6) Depo. 135:18—136:1.

256. Under state law and regulation, the Board has discretion to determine whether a licensee or applicant with a felony conviction has been sufficiently rehabilitated to warrant the public trust. *JSOF* ¶ clxvi.

257. Thus, even a convicted sex offender could, in theory, receive a license if the Board determines that they are rehabilitated sufficient to warrant the public trust. *JSOF* ¶ clxvii.

258. The Board admits that the 1,500-hour education requirement for cosmetologists does not prevent individuals with poor moral character from practicing sugaring. *JSOF* ¶ clxviii.

259. The Board admits that the 1,000-hour education requirement for estheticians does not prevent individuals with poor moral character from practicing sugaring. *JSOF* ¶ clxix.

260. The Board admits that the licensing tests administered for cosmetologists and estheticians do not prevent individuals with poor moral character from practicing sugaring. *JSOF* ¶ clxx.

261. The Board admits that the completion of 1,500 hours of instruction in cosmetology school is not necessary for the protection of public health when it comes to sugaring. Ex. I, Board § 60-230(b)(6) Depo. 146:19-23.

262. The Board is unaware of whether an aspiring sugarer who graduated cosmetology or esthetics school and passed the licensing examinations is capable of safely performing sugaring. Ex. I, Board § 60-230(b)(6) Depo. 146:24—147:10.

263. The Board admits that a sugaring specific course of instruction could adequately protect the public even if it required less than 1,500 hours of instruction. Ex. I, Board § 60-230(b)(6) Depo. 147:21—148:9.

264. The Board is unaware of the number of hours of sugaring specific instruction that would be required to safely perform sugaring. *JSOF* ¶ clxxi; Ex. I, Board § 60-230(b)(6) Depo. 151:7-11.

265. Plaintiff's proffered expert, Dr. Seema Patel, opined that the following recommendations are appropriate to protect the public health: *JSOF* ¶ cl.

a. Prior to offering sugaring services to the public, an individual should attend a course on sugaring techniques, and a course on basic hygiene and sanitation, where they learn aseptic technique, appropriate hand washing, work place and equipment sanitation, and appropriate universal precautions; *JSOF* ¶ cl.

b. Practicing sugarists should—

1. list all sugar paste ingredients and the date the sugar paste was created *JSOF* ¶ cl.

2. use disposable items for each client *JSOF* ¶ cl.

3. learn who are high risk clients and how to counsel them on the risks of sugaring, including risks related to recent or current:

i. use of antibiotics; *JSOF* ¶ cl.

ii. use of hormonal birth control; *JSOF* ¶ cl.

iii. use of over-the-counter retinoids, such as Accutane; *JSOF* ¶ cl.

iv. surgery, chemotherapy, or radiation; *JSOF* ¶ cl.

v. pregnancy. *JSOF* ¶ cl.

4. ensure that the sugaring area has appropriate sanitation, running water, lighting and cleaning standards. *JSOF* ¶ cl.

266. Dr. Patel opines that it would take about two hours of instruction time to learn the coursework and recommendations that are appropriate to protect the public health, listed in the paragraph immediately above. *JSOF* ¶ cli.

267. The Board is unaware of any increase in braiding related injuries since hair braiding was deregulated. *JSOF* ¶ clxxii.

268. The Board is unaware of any increase in threading related injuries since hair threading was deregulated. *JSOF* ¶ clxxiii.

269. The Board is unaware of how many cosmetology or esthetics schools teach sugaring. *JSOF* ¶ clxxiv.

270. The Board is unaware of how much time any particular cosmetology or esthetics school spends teaching sugaring. *JSOF* ¶ clxxv.

271. The Board does not require or mandate that a cosmetology or esthetic school teach sugaring hands-on. *JSOF* ¶ clxxvi.

272. Defendants have not identified any legitimate public interest justifying the requirement that those who offer sugaring for compensation must be licensed while those who offer sugaring for free may be unlicensed. Instead, Defendants simply state that "[t]he legislature has judged it necessary to require licensing only for compensation." Ex. Y, Defendants' Responses to Plaintiff's First Set of Interrogatories, Interrogatory 18.

273. Defendants have offered no record evidence, and Plaintiff is unaware of any record evidence, justifying the legal distinction between sugaring for compensation and sugaring for free.

Argument

I. Kansas's occupational licensing regime for sugarers violates Section 1 of the Kansas Constitution's Bill of Rights.

To help support her growing family, Ms. Green wants to perform sugaring—and only sugaring—but can't. *SOF* ¶¶ 9, 64, 100-101. The government's occupational licensing regime stands in the way. *SOF* ¶¶ 100-101, 106, 107-108, 113-114.

Sugaring is an ancient hair removal technique that uses an all-natural paste consisting of lemon juice, water, and sugar to gently remove unwanted hair. *SOF* ¶¶ 13-14. The sugaring paste is applied to the skin by hand and removed. *SOF* ¶¶ 14, 20, 78. The hair adheres to the sugaring paste and is removed with the paste. *SOF* ¶ 14. The process is safe, gentle, and does not cause trauma to the skin. *SOF* ¶¶ 15-16, 18.f-l, 18.q., 24-26, 29-30, 33, 40, 42-44.

The undisputed evidence establishes that Ms. Green cannot legally perform sugaring unless she spends nearly twenty thousand dollars at a government-approved cosmetology or esthetician school, *SOF* ¶¶ 103, 149, 167, where less than 1% of the 1,500-hour or 1,000-hour curriculum is specific to sugaring, *SOF* ¶¶ 124-125, 137-138. In practice though, schools devote

even less time to sugaring than the minuscule percentages suggest—between ten and twenty minutes.[1] *SOF* ¶¶ 124, 137, 145, 155, 173. By comparison, Ms. Green has *already* received *at least three times more* sugaring-specific instruction in the private sugaring class she completed. *SOF* ¶¶ 73-76, 149-153, 165-172.

The Kansas Board of Cosmetology doesn't require schools to offer any hands-on training in sugaring. *SOF* ¶ 133, 271. The only beauty school in Hays, a cosmetology program, takes about a year to complete and doesn't provide any hands-on training in sugaring. *SOF* ¶¶ 147-148, 153-155, 157, 164. The closest esthetician school to Ms. Green, about a two-and-a-half-hour drive—each way—lasts twenty-nine weeks and doesn't require students to perform hands-on sugaring to graduate. *SOF* ¶¶ 164-166, 172, 174.

After graduating from cosmetology school, Ms. Green would be forced to take two cosmetology examinations that do not ask any questions specific to sugaring. *SOF* ¶¶ 188, 190, 195-204. As for the two esthetician exams, the practical exam does not ask any sugaring-specific questions. *SOF* ¶¶ 188, 191. The theory exam sometimes asks a basic question about the definition of sugaring, but it has only appeared on a little more than one-third of the exams. *SOF* ¶¶ 195-204.

The undisputed evidence further establishes that completing the schooling and passing the licensing exams would not make anyone, including Ms. Green, any more capable of performing sugaring than if they were unlicensed. *SOF* ¶¶ 45-47, 102, 157-158, 162-163, 177-178, 217-218.

Making matters worse, all of those prerequisites above are required for something that is already safe, *SOF* ¶¶ 15-16, 18.f-l, 18.q., 24-26, 29-30, 33, 40, 42-44, that doesn't require any formal schooling to learn, *SOF* ¶¶ 43-47, that Ms. Green already knows how to do, *SOF* ¶¶ 66, 73-76—and that she could legally do for free, *SOF* ¶¶ 107-108, 114; *see SOF* ¶¶ 272-273—just so she can use a completely safe, all-natural paste to remove unwanted hair from willing customers.

[1] Even the twenty minutes is generous. Instructors are doing little more than reading from a one-paragraph description about sugaring from a textbook and showing a single PowerPoint slide about it. *SOF* ¶¶ 131, 155-156.

For the reasons outlined below, this Court should apply strict scrutiny, declare the licensing regime unconstitutional, and grant Ms. Green's motion for summary judgment. The right to earn an honest living, free from unreasonable government restrictions is a fundamental and inalienable natural right. The government cannot satisfy strict scrutiny's heavy burden.

If this Court applies intermediate scrutiny or even rational basis review, the government still loses, and Ms. Green is still entitled to judgment as a matter of law. Ms. Green's Section 1 claim—and the factual support for it—is closely analogous to the six beauty regimes that were declared unconstitutional under rational basis review in recent years. *See, e.g.*, *Cornwell v. Hamilton,* 80 F. Supp. 2d 1101, 1110-11, 1116 (S.D. Cal. 1999) (licensing requirement unconstitutionally "irrational and certainly unreasonable"); *Clayton v. Steinagel,* 885 F. Supp. 2d 1212, 1215–16 (D. Utah 2012) (cosmetology license requirement unconstitutional because "[m]ost of the cosmetology curriculum" was "irrelevant," and that "[e]ven the relevant parts [were] at best, minimally relevant"); *Waugh v. Nev. State Bd. of Cosmetology,* 36 F. Supp. 3d 991, 1022 (D. Nev. 2014) (beauty licensing regime unconstitutional because there was no sufficient justification for requiring people to learn a "laundry list of subjects" that were "wholly unrelated" to the would-be practitioner)[2]; *Brantley v. Kuntz*, 98 F. Supp. 3d 884, 894 (W. D. Tex. 2015) (beauty licensing regime unconstitutionally irrational); *Thiam v. Bureau of Pro. & Occupational Affs.*, 302 A.3d 1271, 2023 WL 4715186, *12 (Pa. Commw. Ct. 2023) (unpublished) (beauty regime was "unreasonable" and "unduly oppressive," and therefore, unconstitutional under Pennsylvania's Constitution); *Patel v. Texas Dep't of Licensing & Regul.*, 469 S.W.3d 69 (Tex. 2015) (beauty licensing regime unconstitutionally irrational under the Texas Constitution even though 58% of the required 750 hours of schooling were relevant to the beauty practice).

Under Section 1 of the Kansas Constitution's Bill of Rights, the regime is plainly unconstitutional under any standard of review above.

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[2] Vacated as moot and remanded after Nevada legislature passed legislation changing the cosmetology regime, No. 14-16674, 2016 WL 8844242 (9th Cir. Jan. 27, 2016).

A. Strict scrutiny applies, which the government can't satisfy.

1. The right to earn an honest living, free from unreasonable government restrictions is a fundamental and inalienable natural right.

Section 1 of the Kansas Constitution's 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, 622-23 (2019) (*Hodes I*). It's like other Lockean natural rights guarantees in other state constitutions, applies to an enormous variety of topics and is "nonexhaustive." *Hodes I,* 309 Kan. at 626, 631-32. *See also*, *Hodes & Nauser, MDs, P.A. v. Kobach*, 318 Kan. 940, 967 (2024) (*Hodes II*) (Wilson, J., concurrence (Section 1 "makes clear in plain language that all people have natural rights beyond the rights to life, liberty, and the pursuit of happiness").

"Natural rights are inherent and pre-political rights possessed by each person." *Hodes & Nauser, MDs, P.A. v. Stanek*, 318 Kan. 995, 1039 (2024) (*Stanek*) (Wilson, J. concurrence). "The theory of natural rights traces its lineage from the writings of John Locke through the Declaration of Independence, written by Thomas Jefferson, and the Virginia Declaration of Rights of 1776, written by George Mason." *State v. Carr*, 314 Kan. 615, 635 (2022) (cleaned up).

In Section 1 claims, the scope and contours of the purported natural and fundamental rights turn on a historical analysis. *Hodes I*, 309 Kan. at 639. That requires a "review of our founding documents, the historical record, and relevant scholarship on the meaning and scope of natural rights," *Stanek*, 318 Kan. at 1012, including Magna Carta, the writings of Edward Coke, John Locke, William Blackstone, James Madison, Thomas Jefferson, Abraham Lincoln, and others. *Hodes I*, 309 Kan. at 639; *see also Hodes II*, 318 Kan. at 943 (affirming *Hodes I*).

2. The right to earn an honest living: tracing its lineage from Magna Carta to the Wyandotte Convention.

The right to earn a living has been protected at common law as far back as Magna Carta. *See* Timothy Sandefur, *The Right to Earn a Living* 17-29 (2010); William S. McKechie, *Magna*

Carta: A Commentary on the Great Charter of King John 287-91, 289 & n.1 (2d ed. 1914).[3] English courts protected this right beginning in at least the 1600s. *See., e.g.*, *Allen v. Tooley*, 80 Eng. Rep. 1055, 1055 (K.B. 1614) (the common law protects the right of "any man to use any trade thereby to maintain himself and his family"); *The Ipswich Tailors' Case*, 77 Eng. Rep. 1218, 1219 (K.B. 1615) (At "the common law, no man could be prohibited from working in any lawful trade, for the law abhors idleness, the mother of all evil."). That included striking down licensing requirements. *Case of the Bricklayers*, 81. Eng. Rep. 871 (K.B. 1624); *see further* Steven G. Calabresi & Larissa C. Leibowitz, *Monopolies and the Constitution: A History of Crony Capitalism*, 36 Harv. J.L. & Pub. Pol'y 983, 989–1008 (2013) (citing cases).

In his 1628 *Institutes of the Laws of England*, Sir Edward Coke recognized that laws which prohibited individuals from working in a common trade are "against the liberty, and freedom of the subject, that before did, or lawfully might have used that trade, and consequently against this great charter." 2 E. Coke, Institutes * 47 (spelling modernized). He went on: "No man ought to be put from his livelihood without answer." *Id.* "Importantly, Coke expressly condemned an early form of occupational licensing" and "wrote vigorously against the imposition of restriction on engaging in trade[.]" Alexander C. Lemke & Alexander Macdonald, *Getting A Second Wind: Reviving Natural Rights Clauses As A Means to Challenge Unjustified Occupational Licensing Regulations*, 41 Pace L. Rev. 371, 399 (2021). Summarizing Coke's doctrine, a century and a half later, Blackstone explained that "[a]t common law every man might use what trade he pleased." 1 W. Blackstone, *Commentaries* *427. In other words, people have a legal right to put their skills to use providing for themselves and their families, without unreasonable interference from others—or from the government.

This was not a mere legal tradition. John Locke held that economic liberty is a natural, fundamental human right. He wrote that everyone "has a *Property* in his own *Person.* This no Body

[3] Also available at https://archive.org/details/magnacartacommen00mckeuoft/page/288/mode/2up

has any Right to but himself. The *Labour* of his body, and the *Work* of his Hands, we may say, are properly his." John Locke, *Two Treatises of Government* § 27 at 287-88 (Peter Laslett, student ed. 1988) (emphasis in original).

That principle, that "'every Man has a Property in his own Person,'" *Hodes I*, 309 Kan. at 640, means that a person has a right to her knowledge and skills to earn an honest living free from unreasonable interference by others, or by the government. Timothy Sandefur, *The Right to Earn a Living*, 6 Chap. L. Rev. 207, 221 (2003).

By the 1720s, "liberty" was well understood to include the right to "labour for [one's] own pleasure and profit." John Trenchard & Thomas Gordon, 2 *Cato's Letters: Or, Essays on Liberty, Civil and Religious, and Other Important Subjects, Letter #62* at 248 (1724).

In 1776, Adam Smith declared that "[t]he property which every man in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of a poor man lies in the strength and dexterity of his hands, and to hinder him from employing this strength and dexterity in what manner he thinks proper without injury to his neighbor is a plain violation of this most sacred property." 1 Adam Smith, *Wealth of Nations* 121-22 (Random House 1937 ed.).

But America's founding fathers said the same years earlier. In 1768, Benjamin Franklin explained that a principal cause of the upset in the American colonies was the British government's violation of Americans' economic freedom. British trade restrictions barred colonists from making and selling hats made from furs trapped in North America or making retail goods from iron mined in America; instead, raw materials were legally required to be shipped to Britain to be made into retail goods there and returned to America. Americans objected to these rules because "[t]here cannot be a stronger natural right than that of a man's making the best profit he can of the natural produce of his lands." *Causes of the American Discontents before 1768, in Franklin: The Autobiography*

and Other Writings on Politics, Economics, and Virtue (Alan Houston ed.) at 291.[4] Thomas Jefferson likewise objected that these laws were "an instance of despotism," because they violated "the rights of free commerce." *A Summary View of the Rights of British America* (1774) *in Thomas Jefferson: Writings* 108-09 (Peterson, ed, 1984).[5] Jefferson also wrote that "every one has a *natural right* to chuse that which he thinks most likely to give him comfortable subsistence." Thomas Jefferson, *Thoughts on Lotteries*[6] (emphasis added).[7] James Madison, too, wrote that when government imposes "arbitrary restrictions, exemptions, and monopolies"—that includes licensing laws—it denies "part of its citizens the free use of their faculties and free choice of their occupations." *Property* (1792), *in James Madison: Writings* 516 (Rakove, ed., 1999).[8]

Simply put, the right to earn a living free from unreasonable government interference was a staple of American common law lawyers before, during, and after the American Revolution. America's Founders also understood the right to earn an honest living to be a natural right—one courts would enforce. *See* David N. Mayer, *Liberty of Contract: Rediscovering a Lost Constitutional Right* 14 (2011); Lemke & Macdonald, *supra* at 399-401.

By 1776, when the Declaration of Independence was written—the model for Kansas Bill of Rights Sec. 1, *Hodes I*, 309 Kan. at 626; *see also Stanek*, 318 Kan. at 1041 (Wilson, J. concurring)—the phrase, 'life, liberty, and the pursuit of happiness' was well understood as "intended to refer, among other things, to the individual's right to pursue a trade and thereby improve [her] position

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[4] Also available at https://founders.archives.gov/documents/Franklin/01-15-02-0001

[5] Also available at https://press-pubs.uchicago.edu/founders/documents/v1ch14s10.html

[6] Also available at https://founders.archives.gov/documents/Jefferson/98-01-02-5845

[7] Jefferson believed the "first principle of association" was "the guarantee to every one a free exercise of his industry, and the fruits acquired by it." 13 Bergh, ed., *Writings* at 466. Also available at https://founders.archives.gov/?q=%22free%20exercise%20of%20his%20industry%22&s=1111311111&r=1. At his first inauguration, he described good government as "leav[ing individuals] to regulate their own pursuits of industry and improvement" and "not tak[ing] from the mouth of labor the bread it has earned." *Jefferson: Writings, supra* at 494. Available at https://founders.archives.gov/?q=Ancestor%3ATSJN-01-33-02-0116&s=1511311111&r=4.

[8] Also available at https://founders.archives.gov/?q=%20Author%3A%22Madison%2C%20James%22%20%22property%22&s=1511311111&r=201&sr=

in life." Sandefur, *supra* at 24; *id.* ("[T]he right to earn a living appears in the Declaration of Independence"); *id.* ("The Founders believed that among the most important liberties was the individuals' right to go into business and keep the fruits of their labor"); *see further,* Chester James Antieau, *Natural Rights and the Founding Fathers: The Virginians*, 17 Wash. & Lee L. Rev. 43, 64 (1960); *see further* James W. Ely, Jr., "*To Pursue Any Lawful Trade or Avocation": The Evolution of Unenumerated Economic Rights in the Nineteenth Century*, 8 U. Pa. J. Const. L. 917 (2006).

In the run-up to the Civil War, the issue of the individual's inalienable, natural, fundamental right to earn a living became even more pressing. Abraham Lincoln told an audience in 1859—the same year as the Wyandotte Convention—that he endorsed the principle of "*free labor*—the just and generous, and prosperous system, which opens the way for all—gives hope to all, and energy, and progress, and improvement of condition to all." Speech at the Wisconsin Agricultural Society, 3 *Collected Works of Abraham Lincoln* 479 (Basler ed., 1953).

Frederick Douglass was even more explicit: "What is freedom?" he asked—and answered: "It is the right to choose one's employment. Certainly, it means that, if it means anything." *Great Speeches by Frederick Douglass* 217 (New York: Dover Thrift ed. 2013). Douglass's understanding of these principles is expressed in his recounting of earning a living after escaping from slavery: "To understand the emotion which swelled my heart as I clasped this money, realizing that I had no master who could take it from me—*that it was mine—that my hands were my own*, and could earn more of the precious coin[.] ... I was not only a freeman but a free-working man, and no Master Hugh stood ready at the end of the week to seize my hard earnings." Frederick Douglass, *The Life and Times of Frederick Douglass: From 1817-1882*, 130-31 (John. Lobb ed., 1882).[9]

The bottom line is simple: the natural rights concept in general, and the fact that among these rights is the specific right to earn an honest living, was fixed, firm, and defined by the time the Wyandotte Convention convened in 1859. When William Hutchinson presented the report of

[9] Available at https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/2007/Douglass_1349_EBk_v6.0.pdf

the Committee on the Preamble and Bill of Rights he noted that "[i]t should be the work of legislation to restore the people back to their natural rights from which preceding legislation has driven them." Kansas Constitutional Convention: A Reprint of the Proceedings and Debates of the Convention Which Framed the Constitution of Kansas at Wyandotte in July, 1859. (Kansas State Printing Plant, Topeka 1920) at 185.

At that convention, Samuel Kingman proposed the language that became Section 1 because he "wished the purely American feeling to appear in this first section. These terms were already in the hearts of the people; they had become traditional. The declaration of independence and declaration of rights formed a part of the political creed from which no man could extricate himself." Kansas Constitutional Convention: A Reprint of the Proceedings and Debates of the Convention Which Framed the Constitution of Kansas at Wyandotte in July, 1859. (Kansas State Printing Plant, Topeka 1920) at 678-79.

Other Kansas Framers and their contemporaries echoed these notions. *See, e.g., The Republican,* Western Home Journal (Solon O. Thacher ed. Aug. 4, 1859) (in the Kansas Constitution the "rights of the people are jealously cared for," which "is radiant with the sunlight of Liberty.");[10] Rev. 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") (emphasis in original);[11] T. Dwight Thacher, *Oration*, Western Home Journal (Jul.

[10] Solon Thacher was a delegate at the Wyandotte Convention. *See* Kansas Constitutional Convention: A Reprint of the Proceedings and Debates of the Convention Which Framed the Constitution of Kansas at Wyandotte in July, 1859. (Kansas State Printing Plant, Topeka 1920) at 14; *see also Wyandotte Constitutional Convention, 1859, Cast of Characters*, available at https://freedomsfrontier.org/wp-content/uploads/2022/12/Wyandotte-Constitution_Cast-of-Characters.pdf

[11] Richard Cordley was an influential abolitionist minister who authored the famed book, *A History of Lawrence, Kansas* (1895). *See* Wilson, Nathan, "Congregationalist Richard Cordley and the Impact of New England Cultural Imperialism in Kansas, 1857-1904" (2004). *Great Plains Quarterly*. 246; *see also*, https://www.kansasmemory.gov/item/211282; *see also* https://www.kancoll.org/books/cordley_history/

14, 1859) (the right to life, liberty, and the pursuit of happiness are "the foundation stones upon which the whole structure of Liberty rests.").[12]

The historical record shows that there can be no reasonable debate: among the fundamental and inalienable natural rights that the Kansas Constitution's natural rights clause protects is the right to earn an honest living, free from unreasonable government restrictions.

3. The right to earn an honest living is objectively and deeply rooted in history and tradition, implicit in the concept of ordered liberty, and long protected by American courts.

The right to earn an honest living free from unreasonable government interference "is objectively, deeply rooted in this Nation's history and tradition." *Patel*, 469 S.W.3d at 93 (Willett, J., concurring) (cleaned up); *id.* at 93-94 (describing the "right to earn an honest living" as "constitutionally protected"). In fact, in *Dent v. West Virginia*, the first U.S. Supreme Court case to consider the constitutionality of a state occupational licensing law, the Court called this right "a distinguishing feature of our republican institutions." 129 U.S. 114, 121 (1889). It held that licensing can be a constitutional means of protecting public safety—but only if the requirements for obtaining the license "are appropriate to the calling or profession." *Id.* at 122. "[W]hen they have no relation to such calling or profession," the Court said, they "deprive one of his right to pursue a lawful vocation," and are thus unconstitutional. *Id.*[13]

In 1904, the Kansas Supreme Court expressly held that the right to earn a living is "as completely within the protection of the Constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will." *Coffeyville Vitrified Brick &*

[12] T. Dwight Thacher was a "scholar, stateman, and editor." He was a member of the Leavenworth Convention and later, a Kansas State Representative. https://legendsofkansas.com/timothy-thacher/

[13] That case involved the Fourteenth Amendment, which this case does not; nevertheless, it is instructive—as is the fact that Congressman John Bingham—one of the framers of the Fourteenth Amendment—argued that "Liberty, our own American constitutional liberty, is the right . . . to work an honest calling and contribute by your toil in some sort to the support of yourself, to the support of your fellowmen, and to be secure in the enjoyment of the fruits of your toil." Cong. Globe, 42nd Cong., 1st Sess. App. 86 (1871).

Tile Co. v. Perry, 69 Kan. 297, 299, 76 P. 848, 849 (1904); *see Hodes I*, 309 Kan. at 634 (favorably citing *Coffeyville.* as recognizing the right of every citizen to "work where and for whom").

Many other state and federal courts have recognized and protected the right to earn an honest living. *See, e.g., Raffensperger v. Jackson*, 316 Ga. 383, 389 (2023) ("It is the common inherent right of every citizen to engage in any honest employment he may choose, subject only to such restrictions as are necessary for the public good") (cleaned up); *id*. at 398 (recognizing the "right to practice one's chosen profession free from unreasonable government restrictions"); *Sail'er Inn, Inc. v. Kirby*, 485 P.2d 529, 539 (Cal. 1971) ("The right to work and the concomitant opportunity to achieve economic security and stability are essential to the pursuit of life, liberty and happiness."); *Van Zandt v. McKee*, 202 F.2d 490, 491 (5th Cir. 1953) ("The right to life, liberty, and the pursuit of happiness, includes the right to work and earn an honest living"); *Livesay v. Tennessee Bd. of Exam'rs in Watchmaking*, 322 S.W.2d 209, 213 (Tenn. 1959) (right to earn a living is "fundamental"); *State v. Harris*, 6 S.E.2d 854, 863 (N.C. 1940) ("Among [the unyielding constitutional rights] the right to earn a living must be regarded as inalienable. Conceding this, a law which destroys the opportunity of a man or woman to earn a living in one of the ordinary harmless occupations of life by the erection of educational and moral standards of fitness is legal grotesquery."); *Truax v. Raich*, 239 U.S. 33, 41, (1915) ("the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure."); *Harbison v. Knoxville Iron Co.*, 53 S.W. 955, 957 (Tenn. 1899) (liberty includes the right "to pursue any lawful calling, vocation, trade, or profession"); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) ("the fundamental rights to life, liberty, and the pursuit of happiness" "are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws" and "the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom

prevails, as being the essence of slavery itself"); s*ee Dossie v. Sherwood*, 308 Ga. App. 185, 186 (2011) (observing that the right to start one's own business is part of the "American Dream.")

4. The licensing regime is presumed unconstitutional.

As shown above, the right to earn an honest living free from unreasonable government restrictions is a fundamental and inalienable natural right. It's also "*transformative.*" *Patel*, 469 S.W.3d at 92 (Willett, J., concurring) (emphasis added). That's because "[s]elf-ownership, the right to put your mind and body to productive enterprise … is indispensable to human dignity and prosperity." *Id.* Frederick Douglass's "irrepressible joy" in earning an honest living "captures just how fundamental—and transformative" the right to earn an honest living is. *Id.*

For Ms. Green, the ability to earn an honest living performing sugaring would be profound, unique, and transformative. It would provide her the flexibility she needs to raise her children, help the household financially, and pursue the American Dream. *SOF* ¶¶ 1-9; *SOF* ¶ 106 ("If I were able to legally open a sugaring business, I would be able to offer a service that I love, with products that I love, to help other people with a service that I truly believe in. Being able to open my business would allow me to make extra income to help support my family and help make my dreams come true.").

Because the right to earn an honest living free from unreasonable government restrictions is a fundamental and inalienable natural right under Section 1, strict scrutiny applies. *Hodes I*, 309 Kan. at 669. That, in turn, means the licensing requirements are *presumptively unconstitutional*. *Id.*[14] The government bears the burden of proving the regime is narrowly tailored to serve a compelling interest—"one that is not only extremely weighty, possibly urgent, but also rare—much rarer than merely legitimate interests and rarer too than important interests." *Id.* at 663 (cleaned up). The government must also prove the regulation "*furthers* that compelling interest," that the regulation

[14] *See also Hodes I*, 309 Kan. at 674 ("Presuming that any state action alleged to infringe" on fundamental and inalienable natural right is constitutional "dilutes the protections established by our Constitution.").

is "necessary," that it's not underinclusive, and that it's not overinclusive. *Hodes II,* 318 Kan. at 953-55 (italics in original).

The government can't win under strict scrutiny. That the government can't even satisfy less rigorous tests, *see* Sections I.B, and I.C., below, necessarily means it can't satisfy the heavier one.

B. Alternatively, intermediate scrutiny applies.

Even if strict scrutiny doesn't apply, intermediate scrutiny should. Will Clark, *Intermediate Scrutiny as a Solution to Economic Protectionism in Occupational Licensing*, 60 St. Louis U. L.J. 345 (2016); Alexandra L. Klein, *The Freedom to Pursue a Common Calling: Applying Intermediate Scrutiny to Occupational Licensing Statutes,* 73 Wash. & Lee L. Rev. 411 (2016); Marshall Stula, *Occupational Licensing Laws: Threading the Needle Between Consumer Protecting and the Constitutional Right to Earn a Living* (Jan. 3, 2022).[15]

These scholars reason that such scrutiny is best adapted to balance between the government's need to regulate and the risk that licensing laws will be used by politically influential private interest groups to exclude legitimate economic competition. *See, e.g.,* Clark, *supra*, at 361 ("courts examining protectionist licensing laws have expressed their disapproval of using rational basis review as a rubber-stamp. To prevent the proliferation of different types of poorly defined rational basis review, [intermediate scrutiny would] provide an easy-to-apply standard that allows courts to address unfair licensing laws."); *see also* Klein, *supra*, at 457-59 (licensure laws "also affect both individuals seeking the right to practice and consumers who are harmed by the lack of market competition.")

Scholarship also shows that protectionism-by-occupational licensing keeps costs to the consumer artificially high, reduces competition, and narrows opportunities to enter the market by increasing costs of entry. *See* Walter Gellhorn, *The Abuse of Occupational Licensing*, 44 U. Chi. L.

[15] Available at https://kansaslawreview.ku.edu/occupational-licensing-laws-threading-needle-between-consumer-protection-and-constitutional-right

Rev. 6, 17-18 (1976); [16] Lisa Knepper, et al, *License to Work*, 48 (Inst. for Just., 3rd ed. 2022) (licensing's negative effects include limiting entry into the market, reduced competition, increased costs to consumers, and limited access to services);[17] Kyle Sweetland, et al., *Raising Barriers, Not Quality*, 14 (Inst. for Just., revised ed. 2022) (same);[18] *SOF* ¶ 223; Ex. AA, The White House, *Occupational Licensing: A Framework for Policy Makers* ("imposing requirements on people seeking to enter licensed professions—such as additional training and education, fees, exams, and paperwork—licensing reduces employment in the licensed occupation and hence competition, driving up the price of goods and services for consumers").

Under intermediate scrutiny, the government is required to prove the regime "substantially further[s] an important state interest." *Hodes I*, 309 Kan. at 663. Or as it's sometimes phrased, that the regime "must serve important governmental objectives and must be substantially related to achievement of those objectives." *Stephenson v. Sugar Creek Packing*, 250 Kan. 768, 775 (1992) (quoting *Craig v. Boren*, 429 U.S. 190, 197 (1976)).

In the instant matter, because the evidence establishes Kansas's sugaring licensing regime is protectionist, intermediate scrutiny is warranted.

The government's proffered expert witness, Nichole Hines, is a licensed cosmetologist who offers sugaring services. *SOF* ¶ 209.[19] She also sits on the Kansas Board of Cosmetology and is a named defendant in this case. *SOF* ¶ 11.

According to Ms. Hines, the Board of Cosmetology exists to "represent the practitioners, represent the industry," *SOF* ¶ 229, the licensing requirement for sugarers "insulates licensed beauty industry employees from minimum wage jobs offered to unlicensed workers," *SOF* ¶¶ 221-222, and for "the licensed entrepereneurs (sic), regulation shields them from the unlicensed

[16] Available at https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=3892&context=uclrev
[17] Available at https://ij-org-re.s3.amazonaws.com/ijdevsitestage/wp-content/uploads/2022/09/LTW3-11-22-2022.pdf
[18] Available at https://ij.org/wp-content/uploads/2022/10/Raising-Barriers-Not-Quality-10142022-WEB-REVISED.pdf
[19] Ms. Green has contemporaneously filed a motion to strike or exclude Ms. Hines as an expert witness.

offering cheap services that undercut a small business's bottom line for survival," *SOF* ¶¶ 221-222; *SOF* ¶¶ 230-231 (Ms. Hines viewing deregulation and this lawsuit as an existential threat); *SOF* ¶ 233 (Ms. Hines considering deregulation as "coming for" licensed practitioners); *SOF* ¶ 228 (Ms. Hines comparing unlicensed sugarers earning a minimum wage to the slave trade); *see also* SOF ¶¶ 220, 223-227, 232, 234. Remarkably, Ms. Hines is saying the quiet part out loud (and validating the very thing scholars have been writing about for decades): Kansas's occupational licensing requirements involving sugarers are protectionist.

That the sugaring regime fails even rational basis review, *see* Section I.C. immediately below, necessarily means the government can't satisfy intermediate scrutiny.

C. Even if rational basis review applies, Ms. Green is entitled to judgment as a matter of law. The evidence proves the licensing regime is arbitrary, unreasonable, oppressive, protectionist, irrational, and not appropriately tailored to the practice of sugaring—and therefore unconstitutional.

Even if this Court doesn't apply strict or immediate scrutiny, Ms. Green is still entitled to judgment as a matter of law under rational basis review. The evidence establishes that Kansas's sugaring regime is just as irrational as the cosmetology regimes declared unconstitutional in *Cornwell*, *Clayton*, *Waugh*, *Brantley*, *Thiam*, and *Patel*. In each of those cases, courts applied rational basis review and declared their respective cosmetology regimes unconstitutional.

1. The rational basis review standard.

In *Hodes I*, the Kansas Supreme Court explained that the rational basis standard requires a "legislative enactment [to] bear some rational relationship to a legitimate state interest." 309 Kan. at 663.

At times, the rational basis review test has been described in different terms, sometimes depending on the nature of the legal claim. But under Kansas law, it's not a toothless test. *Cent. Kansas Med. Ctr. v. Hatesohl*, 308 Kan. 992, 1024 (2018) (Stegall, J., concurring) (rational basis test isn't toothless and may be overcome based on evidence); *City of Baxter Springs v. Bryant*, 226 Kan.

383, 391 (1979) (in a rational basis case, court focused on actual facts, not mere assertions by government).

Legislative enactments that are oppressive, unreasonable, irrational, arbitrary, or improperly tailored cannot survive rational basis review. *Ernest v. Faler*, 237 Kan. 125, 129-30 (1985) (striking down statutory notice provision after explaining laws "must not be unduly oppressive, discriminatory, capricious, whimsical, or arbitrary" but instead must have a "real and substantial relation to the objective sought"); *Gilbert v. Mathews*, 186 Kan. 672, 686 (1960) (striking down a public auction law because it was "designed to be so oppressive and unreasonable that it prohibit[ed] the conduct of such lawful business"); *City of Junction City v. Mevis*, 226 Kan. 526, 535 (1979) (a city "cannot under the guise of the police power enact unreasonable and oppressive legislation") (cleaned up); *Delight Wholesale Co. v. City of Overland Park*, 203 Kan. 99, 104 (1969) (striking down ordinance prohibiting the selling of vegetables, fruits, and ice cream because the facts showed the regulation was unreasonable, oppressive and unsuited to "the facts and circumstances as they exist"); *Crawford v. City of Topeka*, 51 Kan. 756 (1893) (striking down ordinance as unreasonable because it prohibited structures that were already safe); *Coffeyville*, 69 Kan. at 299 ("[T]he Legislature has no power to impair or limit the reasonable and lawful exercise of a right, guarantied by the Constitution, under the guise of a police regulation."); *Capital Gas & Electric Co. v. Boynton*, 137 Kan. 717, 728, 730, 22 P.2d 958, 964 (1933) (law did not promote the public welfare, and was "unreasonable, arbitrary, unjust, and oppressive") (cleaned up); *Strehlow v. Kansas State Bd. of Agr.*, 232 Kan. 589, 601-602 (1983) (declaring Kansas's filled dairy product law unconstitutional because the facts showed the product was safe and the regulation was unreasonable and "totally ridiculous and bears absolutely no reasonable relationship to the objectives set forth by the legislature"); *Delight Wholesale Co. v. City of Prairie Vill.*, 208 Kan. 246, 249-250 (1971) (explaining legislation can't be arbitrary, oppressive, "or so capricious that it has not reasonable basis" and then striking down city ban on selling goods from vehicles between seven a.m. and nine p.m. due to the lack of a "substantial relationship of the regulation to the health,

safety, or morals of the community"); *Bryant*, 226 Kan. at 391 (the court invalidated a statute on the grounds that a "legislative body cannot, under the guise of the police power, enact unequal, unreasonable, and oppressive legislation).

Kansas courts have similarly refused to blindly defer to state boards, including the Board of Cosmetology. *State v. Gillen*, 126 Kan. 368 (1928) (court denied State's request to enjoin Emma Gillen from practicing cosmetology without first passing the Board's examination); *State v. Cavender*, 131 Kan. 577 (1930) (denying Board of Cosmetology's request to enjoin a licensed barber from giving permanent waves to hair without a cosmetology license); *see also Keith v. State Barber Bd.*, 112 Kan. 834 (1923) (rejecting board's argument that performing services similar to barbering means a person is engaged in the barbering occupation).

At its core, like several other states, Kansas's version of rational basis review applies a realistic and factually oriented test which "demand[s] actual *rationality,* scrutinizing the law's actual *basis,* and applying an actual *test*." *Patel*, 469 S.W.3d at 98 (Willett, J. concurring) (emphasis in original); *Ladd v. Real Est. Comm'n*, 659 Pa. 165, 186 (2020) ("rational basis test under Pennsylvania law is less deferential to the legislature than its federal counterpart"); *Raffensperger*, 316 Ga. at 391-393, 399 (2023) (describing and applying rational basis test under Georgia law to strike down lactation consultant license).

Because Ms. Green seeks relief from the government's irrational licensing regime solely under the Kansas Constitution and hasn't sought any relief under the Fourteenth Amendment, the federal rational basis standard doesn't apply. As shown above, Kansas's version of the test isn't the same as the *federal* one. *See also*, *Gannon v. State*, 305 Kan. 850, 883 (2017) (explicitly "reject[ing]" the federal standard "of virtually conclusive deference to the legislature's enactment[s]"); *compare Strehlow*, 232 Kan. at 602 (ban on sale of filled milk unconstitutional under Kansas rational basis test) *with United States v. Carolene Prods. Co.*, 304 U.S. 144 (1938) (ban on sale of filled milk constitutional under federal rational basis test).

Even though Kansas's version of the test is less deferential to the government than the federal version, the federal version is still not a rubber stamp. In *Romer v. Evans*, the Court explained that "even [where rational basis applies], we insist on knowing the relation between the classification adopted and the object to be attained." 517 U.S. 620, 632-33 (1996). What's more, the federal rational basis test is only a *rebuttable factual presumption*. *See Borden's Farm Prod. Co. v. Baldwin*, 293 U.S. 194, 209-210 (1934) (federal rational basis test is a presumption of fact that can be rebutted "by a resort to common knowledge or other matters which may be judicially noticed, or to *other legitimate proof*." (emphasis added)). The federal test "is not a conclusive presumption, or a rule of law which makes legislative action invulnerable to constitutional assault. Nor is such an immunity achieved by treating any fanciful conjecture as enough to repel attack." *Id*.

That plaintiffs *win* under federal rational basis review definitively establishes the test "is not a rubber stamp." *Hadix v. Johnson*, 230 F.3d 840, 843 (6th Cir. 2000). *See, e.g., Craigmiles v. Giles*, 312 F.3d 220, 225 (6th Cir. 2002) (licensing requirement for coffin-makers unconstitutional under rational basis); *Merrifield v. Lockyer*, 547 F.3d 978, 992 (9th Cir. 2008) (licensing requirement for pest control workers unconstitutional under rational basis); *St. Joseph Abbey v. Castille*, 712 F.3d 215, 223-27 (5th Cir. 2013) (licensing statute for casket sales invalid under rational basis); *Gilbert*, 186 Kan. at 678, 686 (holding Kansas's New Goods Public Auction Law unconstitutional under the outdated "negative every conceivable basis" test).

Indeed, the United States Supreme Court has struck down at least twenty laws under the federal rational basis test since the 1970s,[20] and in 2019, it even struck down an alcohol-related

[20] *E.g.*, *Lawrence v. Texas*, 539 U.S. 558, 578 (2003); *United States v. Morrison*, 529 U.S. 598, 614-15 (2000); *Village of Willowbrook v. Olech*, 528 U.S. 562, 565 (2000); *Romer v. Evans*, 517 U.S. 620, 634-35 (1996); *United States v. Lopez*, 514 U.S. 549, 567 (1995); *Quinn v. Millsap*, 491 U.S. 95, 108 (1989); *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336, 345 (1989); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 447 (1985); *Hooper v. Bernalillo Cnty. Assessor*, 472 U.S. 612, 623 (1985); *Williams v. Vermont*, 472 U.S. 14, 24-25 (1985); *Metro. Life Ins.Co. v. Ward*, 470 U.S. 869, 880 (1985); *Plyler v. Doe*, 457 U.S. 202, 230 (1982); *Zobel v. Williams*, 457 U.S. 55, 64 (1982); *Chappelle v. Greater Baton Rouge Airport Dist.*, 431 U.S. 159 (1977); *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973); *James v. Strange*, 407 U.S. 128,

public health and safety regulation in *Tennessee Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 510, 539, 543 (2019). There, the Court explained that a government's talismanic invocation of public health is not enough to satisfy constitutional scrutiny.[21] Instead, the test requires courts to meaningfully scrutinize challenged laws, including their "actual purpose and effect." *Id.* at 538. Regulations must be a "bona fide health and safety measure" and must have a real and substantial relation to the government's objective, otherwise they're unconstitutional. *Id.* at 522, 525, 538.

In summary, this case involves the Kansas Constitution, not the federal constitution. Therefore, legislative enactments that are oppressive, unreasonable, irrational, arbitrary, protectionist, or improperly tailored cannot survive rational basis review. But even under versions of the federal rational basis test, the evidence nonetheless shows Ms. Green is entitled to judgment as a matter of law as well.

2. The regime fails rational basis review.

Sugaring is an ancient hair removal technique that uses an all-natural and hygienic paste consisting of lemon juice, water, and sugar to gently remove unwanted hair. *SOF* ¶¶ 13-14, 18.a-b, 23. The process is safe, gentle, and does not cause trauma to the skin. *SOF* ¶ 15-16, 18.f-l, 18.q., 24-26, 29-30, 33, 40, 42-44.

Ms. Green cannot legally perform sugaring unless she completes either 1,500 or 1,000 hours of instruction in a cosmetology or esthetician school. *SOF* ¶ 120. By comparison, becoming an EMT takes about 93.33 clock-hours. *SOF* ¶ 121.

The only beauty school in Hays is a cosmetology program. *SOF* ¶ 164. It costs $18,900 and takes about a year to complete. *SOF* ¶¶ 103-104. It doesn't provide any hands-on sugaring training. *SOF* ¶¶ 157. The closest esthetician school is about two-and-a-half hours from Hays, each way.

141-42 (1972); *Lindsey v. Normet*, 405 U.S. 56, 77-78 (1972); *Mayer v. City of Chicago*, 404 U.S. 189, 196 (1971); *Reed v. Reed*, 404 U.S. 71, 76-77 (1971); *Turner v. Fouche*, 396 U.S. 346, 363-64 (1970).

[21] The test used by the majority in *Tennessee Wine* has been described as the "rational basis test or something indistinguishable from it." Braden H. Boucek, *That's Why I Hang My Hat in Tennessee: Alcohol and the Commerce Clause*, 2019 Cato Sup. Ct. Rev., 119, 152.

SOF ¶ 165. It costs $18,300.84 and takes twenty-nine weeks to complete. *SOF* ¶ 167, 172. It doesn't require students to perform hands-on sugaring to graduate. *SOF* ¶ 174. The Kansas Board of Cosmetology doesn't require schools to offer any hands-on sugaring training. *SOF* ¶ 133, 271. For Ms. Green, either school is prohibitively expensive. *SOF* ¶¶ 5-9, 105, 149-153, 165-172.

The government admits that less than 1% of the 1,500-hour cosmetology curriculum is specific to sugaring. *SOF* ¶¶ 124-125. Likewise, the government admits that less than 1% of the 1,000-hour esthetician curriculum is specific to sugaring. *SOF* ¶¶ 137-138; *see also* SOF ¶ 144.

In practice, schools devote even less time to sugaring than the minuscule percentages suggest, about ten to twenty minutes.[22] *SOF* ¶¶ 124, 137, 145, 155, 173. By comparison, Ms. Green has already received *at least three times more* sugaring-specific instruction than the cosmetology or esthetician school offers. *SOF* ¶¶ 73-76. The cost to attend the class was about $20. *SOF* ¶ 74.

That sugaring isn't being taught is unsurprising. As Ms. Hines put it, it's doubtful that instructors even know how to perform sugaring. *SOF* ¶ 161, 177; *see also SOF* ¶¶ 179-186, 204 (knowledge or competency in sugaring is not required to become a licensed instructor).

After graduating from cosmetology school, Ms. Green would be forced to take two cosmetology examinations that *do not ask any* questions specific to sugaring. *SOF* ¶ 188, 190, 195-204. As for the two esthetician exams, the practical exam does not ask any sugaring-specific questions. *SOF* ¶ 181, 191. The theory exam asks 100 multiple-choice questions. *SOF* ¶ 191. It has sometimes asked a single, basic question about the definition of sugaring, but this question has only appeared on a little more than one-third of the exams administered since the question was developed. *SOF* ¶ 195-204. Because the cosmetology and esthetician exams are computer-based, aspiring sugarers are not tested on their ability to perform sugaring safely, effectively, or competently. *SOF* ¶ 188-189.

[22] Even the twenty minutes is generous. Instructors are doing little more than reading from a one-paragraph description about sugaring from a textbook and showing a single PowerPoint slide about it. *SOF* ¶¶ 131, 156.

The undisputed evidence further establishes that successfully completing the schooling requirements and passing the licensing examinations would not make anyone—including Ms. Green—any more capable of performing sugaring than if they hadn't become licensed. *SOF ¶¶* 45-47, 102, 157-158, 162-163, 177-178, 217-218. Making matters worse, all of that is required for something that is already safe, *SOF* ¶¶ 13-16, 18.f-l, 18.q., 24-26, 29-30, 33, 40, 42-44, that doesn't require any formal schooling to learn, *SOF* ¶¶ 43-47, that has been around for thousands of years, *SOF* ¶ 13, and that Ms. Green already knows how to do, *SOF* ¶ 66, 73-76—and that she could legally do for free, *SOF* ¶ 107-118, 114—just so she can be paid to use a completely safe, all-natural paste to remove unwanted hair from willing customers.

The government's only stated interest in the regime—including the prerequisites above—is the protection of public health and general welfare. But as shown in more detail next, sugaring is *already* a safe practice, and in any event, the regime does *nothing* to make sugaring any safer than it already is.

Sugaring is all-natural, non-invasive, sanitary, and safe. *SOF* ¶¶ 13-16, 18.f-l, 18.q., 24-26, 29-30, 33-34, 38, 40, 42-44. Application of the sugaring paste doesn't involve the use of heat, chemicals, or sharp objects. *SOF* ¶ 13-14, 19-20. Instead, the paste is applied and removed by hand. *SOF* ¶¶ 13-15, 19-20. The hair adheres to the paste and is removed with the paste. *SOF* ¶ 14, 38.

Because the sugaring paste is "natural[ly] antiseptic," *SOF* ¶¶ 21-22, 36, and "hygienic," *SOF* ¶ 23, the same area of skin "can be treated more than once without the risk of irritation or trauma." *SOF* ¶¶ 33; *see also*, *SOF* ¶ 33 (sugaring paste's antiseptic properties inhibit bacterial growth); *SOF* ¶ 18.c. (sugaring paste is hypoallergenic); *SOF* ¶ 23 (sugaring paste "has such a high concentration of sugar, bacteria cannot breed in the jar"); *id.* ("Bacteria do not, and cannot, breed in high concentrations of sugar"); *id.* ("Sugar dressings have been, and continue to be, used to treat wounds that are particularly susceptible to infection").

Sugaring does not cause "irritation or damage to the follicle or surrounding skin." *SOF* ¶ 39. It does not distort hair follicles or break the hair either. *SOF* ¶ 35 (sugaring "will not distort

hair follicles"); *id*. (with sugaring, there is "[n]o hair follicle distortion or breakage of hair"). Because sugaring is safe and gentle, it can be done on areas of the skin with varicose veins, spider veins, psoriasis, and eczema, and on individuals with diabetes or who have sensitive skin. *SOF* ¶¶ 18.h.-k., 32.

Sugaring is a safe and effective alternative to waxing and for those who react to "waxing with bumps and redness." *SOF* ¶ 25; *SOF* ¶ 24 (sugaring is "especially appropriate for more sensitive skin types"); *SOF* ¶ 28 ("Many clients who have ingrown hairs from being waxed find that the problem disappears if they switch to the sugar method"); *SOF* ¶ 26 (sugaring "can be used for some who have certain wax contraindications"); *see also*, *SOF* ¶¶ 16, 18.d.-q., 27, 29, 52.

Sugaring poses no risk of burns. *SOF* ¶¶ 18.e., 29 ("no risk of burning"); *SOF* ¶ 247 (Board of Cosmetology admitting that sugaring doesn't pose a risk of burns); *SOF* ¶ 41 ("There is no risk of burning because [the sugaring paste] is applied at body temperature"); *id*. ("Neither [sugaring] method carries a risk of burning because both use material at body temperature."); *id*. ("there is no risk of burning because it is applied at body temperature."); *id*. ("Because of the application temperature, there is no risk of burning."); *id*. ("As there is no risk of burning . . . sugaring is considered safe to use on individuals with diabetes."); *id*. (because the paste "is applied at body temperature" it is "safe for all areas" and "you will never burn your client's skin.").

Sugaring does not tear the skin or cause abrasions either. *SOF* ¶¶ 18.q, 29-30, 42; *see also*, *SOF* ¶¶ 32-33, 38.

The government-approved textbooks endorse sugaring and say time-and-again it's a safe, sanitary, and gentle practice that does not cause irritation or trauma to the skin. *See further*, Stip. Ex. 1-7. The leading industry textbooks say the same thing, which includes the textbooks used by Ms. Hines to learn about sugaring—both of which she admits are reliable sources of information. *SOF* ¶¶ 213-214; Stip. Ex. 8-9.

Dr. Seema Patel, a certified family physician, concludes that sugaring is safe in light of the worldwide popularity of sugaring, the dearth of complications related to the practice of sugaring in

medical literature, as well as her experiences as both a medical doctor and someone who has performed sugaring. *SOF* ¶¶ 43-47, 53-59.

There is *no evidence* that public health is threatened by the unregulated, deregulated, or minimally regulated practice of sugaring. The Board of Cosmetology has *never* received a complaint about licensed or unlicensed sugaring, has *never* identified a sugaring-related injury from unqualified or untrained sugarers, and sugaring is so safe, *anyone* can perform sugaring on the public for free. *SOF* ¶¶ 60, 61; *see SOF* ¶¶ 272-273.

With nowhere else to turn, the government might speculate about the theoretical possibility of folliculitis, or other minor infections, but those possibilities exist in virtually all grooming techniques, are not specific to sugaring, and typically resolve on their own. *SOF* ¶¶ 18.m-p., 21, 35, 39-40, 50-52, 57-59. The government's textbooks aren't particularly concerned about folliculitis for the hand-applied method of sugaring, which is the method Ms. Green will use. *SOF* ¶ 20, 52, 78. Dr. Patel testified that because sugaring doesn't use chemicals or heat, the chance of a transmission of infections through sugaring, when compared to other procedures, was "the lowest risk." *SOF* ¶ 57. Dr. Patel also testified "[t]here is no case study that has ever reported a viral pathogen being spread with sugaring." *SOF* ¶ 58.

The government might also speculate about the theoretical possibility that sugaring can somehow involve the contamination of bodily fluid, including blood or mucous. The government does not have any evidence these risks are real, of course. *SOF* ¶¶ 60-61; *see SOF* ¶¶ 246, 248, 249-250, 250. As shown above, the very textbooks endorsed by the government contradict these concerns. What's more, Dr. Patel testified that sugaring doesn't present a risk of blood exposure. *SOF* ¶ 59; *see also*, *SOF* ¶ 29 ("no risk of … tearing the skin"); *SOF* ¶ 38 ("Sugar paste adheres only to the hair not the skin, and is easily removed with water"); *SOF* ¶ 40 (the same area can be treated more than once without risk of irritation or trauma). Besides, Ms. Green will use gloves when sugaring and will follow the same recommendations braiders and threaders follow—two

beauty practices that don't require licensure—which Ms. Hines says is sufficient to protect the public. *SOF* ¶¶ 82, 85, 93, 116-117, 219.

As shown above, all of the textbooks endorsed by the government establish that sugaring is safe. The sugaring-specific textbooks used by Ms. Hines to learn sugaring establishes that sugaring is safe. A certified family physician testified that sugaring is safe. There has never been a complaint about sugaring or sugaring-related injuries.

In a last-ditch effort to save the licensing regime, the government is likely to argue that mandating a license for sugarers will protect the public from sex offenders. *See SOF* ¶ 118. The government's argument is a wild one, nothing more than unsupported sensationalism, and directly contradicted by the evidence. First, the Board of Cosmetology was simply parroting language from Governor Laura Kelly's statement vetoing S.B. 434 (2024), the bill passed by the Kansas Legislature that would have significantly reduced the regulations for sugaring. *SOF* ¶¶ 114-116, 118. Governor Kelly's veto statement was, in turn, apparently based on statements made by Ms. Hines while she was lobbying the Governor to veto S.B. 434 (2022). *See SOF* ¶ 118. In a serious bout of circular reasoning as well, the Board of Cosmetology relies on the Governor's veto message to uphold the constitutionality of the regime, but the Governor said she was "relying on the expertise of the Board of Cosmetology." *See SOF* ¶ 118. But in any event, the Board of Cosmetology now admits it has no evidence supporting its sex offenders theory, and even worse, admits that it doesn't conduct background checks and has no idea whether aspiring or currently licensed cosmetologists or estheticians are sex offenders unless they self-report. *SOF* ¶¶ 252-257. Nor does the Board have any evidence that the schooling and testing requirements will deter sex offenders or improve good moral character. *SOF* ¶¶ 258-260.

At bottom, the government's "talismanic recitation" of public health is not enough to satisfy rational basis review. *Raffensperger*, 316 Ga. at 396; *see Strehlow,* 232 Kan. at 600 (unconstitutionally irrational to regulate something that is already safe).

The evidence also demonstrates that the licensing regime does *nothing* to make sugaring any safer than it already is. Put differently, requiring sugarers to obtain a license does not advance public health, even minimally so. The government repeatedly admits *it has no evidence* the regime even minimally advances public health, or that the regime is properly tailored to its stated objectives. *SOF* ¶¶ 60-61, 236-246, 248-250, 258-262, 264, 269-270, 272-273.

Instead, the evidence establishes that completing the cosmetology program and passing the licensing exams would not make Ms. Green, or anyone else for that matter, any more capable of performing sugaring than *before getting licensed*—according to the government's own expert, *and* the owner of the cosmetology school Ms. Green would be forced to attend. *SOF* ¶¶ 45-47, 102, 157-158, 162-163, 177-178, 217-218.

The undisputed evidence shows that Kansas's sugaring regime is closely analogous to the six cosmetology regimes declared unconstitutional in *Cornwell*, *Clayton*, *Waugh*, *Brantley*, *Thiam*, and *Patel*.

In *Cornwell v. Hamilton*, the court examined a cosmetology regime's curricula, textbooks, and licensing examinations and held the licensing requirement unconstitutionally "irrational and certainly unreasonable" because it required forced aspiring hair braiders to spend thousands of dollars and thousands of hours to obtain a cosmetology license. 80 F. Supp. 2d 1101, 1110-11, 1116 (S.D. Cal. 1999). The court likened the licensing regime to "require[ing] would-be lawyers and architects to take course work and pass a licensing exam in cosmetology," which is irrational and unconstitutional. *Id*. at 1106.

In *Clayton v. Steinagel*, the court likewise reviewed the curricula, textbooks, and licensing examinations, and found that "[m]ost of the cosmetology curriculum" was "irrelevant," and that "[e]ven the relevant parts [were] at best, minimally relevant." 885 F. Supp. 2d 1212, 1215 (D. Utah 2012). Consequently, requiring a cosmetology license was "wholly irrational" and unconstitutional especially given the "right to earn a living," is the "very essence of the personal freedom and opportunity that the Constitution was designed to protect." *Id*. at 1216 (cleaned up).

In *Waugh v. Nev. State Bd. of Cosmetology*, the court invalidated another beauty licensing regime because there was no sufficient justification for requiring people to learn a "laundry list of subjects" that were "wholly unrelated" to the would-be practitioner. 36 F. Supp. 3d 991, 1022 (D. Nev. 2014).

Similarly, in *Brantley v. Kuntz*, 98 F. Supp. 3d 884, 894 (W. D. Tex. 2015), the court struck down a beauty licensing regime because it was unconstitutionally irrational. And in *Thiam v. Bureau of Pro. & Occupational Affs.*, the court declared a beauty licensing regime unconstitutional under the Pennsylvania Constitution because it was "unreasonable" and "unduly oppressive" under the facts. 302 A.3d 1271, 2023 WL 4715186, *12 (Pa. Commw. Ct. 2023) (unpublished).

In a case remarkably similar to this one, *Patel v. Texas Dep't of Licensing & Regul.*, the Texas Supreme Court reviewed the facts of the beauty licensing regime—which included the cost of schooling, the curriculum, the textbooks, and the licensing exams—and declared it unconstitutionally irrational under the Texas Constitution. 469 S.W.3d 69 (Tex. 2015). There, the plaintiffs had to complete only 750 hours of schooling—*half as much* as Kansas's 1,500 hours—to practice a temporary hair removal technique called threading. *Id.* at 73. As much as 58% of the required 750 hours were considered relevant to the practice of threading, and even that was considered unconstitutionally irrational. *Id.* at 88-90. This lack of a relationship between the mandatory hours and the practice, "combined with the fact that threader trainees have to pay for the training and at the same time lose the opportunity to make money actively practicing their trade" was "not just unreasonable or harsh, but it is so oppressive that it violate[d]" the Texas Constitution. *Id.* at 90. As then-Justice Willet put it, it's "irrational" to force people to spend "thousands of dollars" learning irrelevant things. *Id.* at 110 (Willett, J., concurring). Like here, Texas had argued the licensing regime was necessary—and that it passed rational basis review—because of public health and safety concerns. *Id.* at 88.

Based upon the evidence, Kansas's sugaring regime is even more irrational than Texas's unconstitutional threading regime. The Kansas Board of Cosmetology concedes that *at least* 1,215

of the 1,500 required cosmetology curriculum hours—or 81% of the required curriculum—is unrelated to the practice of sugaring. *SOF* ¶ 127; *see also*, *SOF* ¶¶ 125-126, 128-132. By contrast, Texas admitted that 42% of the required 750 hours were irrelevant. *Patel*, 469 S.W.3d at 88-90.[23] Kansas's sugaring regime therefore requires more irrelevant curriculum hours—1,215—than Texas required for its entire threading regime—750.[24] That is double the hours and double the ratio of irrelevant coursework than in *Patel*. *Id.* at 90 ("[w]here the number of hours required and the associated costs are low, the ratio of required hours to arguably relevant hours is less important as to the burdensome question. But its importance increases as the required hours increase.") In Texas, the tuition for cosmetology schools averaged $9,000. *Id.* The only cosmetology school in Hays costs $18,900.00, and the closest esthetician school to Ms. Green costs $18,300.84. *SOF* ¶¶ 149, 167.

The evidence also establishes, like in the six cases above, there is no constitutionally sufficient reason to compel Ms. Green to learn a "laundry list of subjects that are" "wholly unrelated" to sugaring, *Waugh*, 36 F. Supp. 3d at 1022; or to spend "thousands of dollars" learning irrelevant things, *Patel,* 469 S.W.3d at 110 (Willett, J., concurring); or to take "irrelevant" licensing examinations, *Cornwell*, 80 F. Supp. 2d at 1115-7; *Clayton*, 885 F. Supp. 2d at 1215. Indeed, forcing Ms. Green to spend time on irrelevant training, like cutting hair, coloring hair, giving manicures, and so on, *SOF* ¶¶ 130, 132; Ex. G; Ex. H.—things that Ms. Green will never do, *SOF* ¶ 9 —*undermines* public health and safety. *Cornwell*, 80 F. Supp. 2d at 1112 (finding time spent on irrelevant training, rather than relevant training, undermines public health). Functionally, it's the equivalent of requiring a license for shoveling snow but forcing the aspiring snow-shoveler to spend 1,500 or 1,000 hours learning how to prune trees, mow yards, rake leaves, and then pass examinations about soil compensation and lawn mowers.

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[23] For Kansas's esthetician regime, the government admits that *at least* 55% of the 1,000 hours are unrelated. *SOF* ¶ 140; *see also*, *SOF* ¶¶ 137-139, 141-145.

[24] The government admits that less than 1% of the cosmetology or esthetician curriculum is devoted to the topic of sugaring. *SOF* ¶¶ 125, 138; *see also*, *SOF* ¶ 144.

Adding to the regime's unconstitutional irrationality, the Board of Cosmetology, the government's purported expert witness, and Dr. Seema Patal *all* testified there are *far* less restrictive alternatives to satisfy the licensing regime's ostensible public health purpose than what's currently required. *SOF* ¶ 261, 263-264 (Defendant Board of Cosmetology testimony).

In particular, Ms. Hines admits that the public would be adequately protected so long as sugarers followed the same health and safety guidelines that hair braiders and threaders follow, *SOF* ¶¶ 48, 117, 219—two beauty practices that aren't required to be licensed, *SOF* ¶¶ 109-110—which consists of complying with a one-page informational brochure prepared by the Department of Health, *SOF* ¶¶ 111-112.

Similarly, Dr. Patel testified that public health would be adequately protected if aspiring sugarers attended a *two-hour* sugaring-specific course of instruction. *SOF* ¶¶ 49, 266.

It's unconstitutionally irrational, oppressive, and harsh to force Ms. Green to spend nearly $20,000 and almost a year of her life at beauty school—and "at the same time lose the opportunity to make money"—when just two hours of sugaring-specific instruction will protect the public. *Patel*, 469 S.W.3d at 90; *see Hatesohl*, 308 Kan. at 1024 (Stegall, J. concurring) (less restrictive alternatives analysis).

The evidence also establishes that, rather than protecting the public, the licensing regime is protectionist and entrenched to protect those who are already licensed. *SOF* ¶¶ 209-234; *see also* Section I.B above (incorporated here fully). Ms. Green wants to help financially support her growing family by sugaring, *see SOF* ¶¶ 1-9, but can't because already-entrenched license holders don't want competition. Such naked protectionism is patently unconstitutional. *See Hatesohl*, 308 Kan. at 1024 (Stegall, J., concurring).

In sum, the undisputed evidence "refut[es] the [regime's] ostensible public-interest rationale," establishes "the presence of less restrictive alternatives to satisfy the [regime's] ostensible purpose," that the regime is "protectionis[t]," and that it "harm[s] competition and consumers." *Hatesohl*, 308 Kan. at 1024 (Stegall, J., concurring) (cleaned up).

The undisputed evidence also demonstrates the licensing regime is insufficiently related to the practice of sugaring. The regime therefore fails rational basis review. *See, e.g.*, *Patel,* 469 S.W.3d at 90; *id*. at 110 (Willett, J., concurring); *Raffensperger*, 316 Ga. at 398 (laudable policy goals insufficient "to justify an unreasonable burden on the ability to pursue a lawful occupation"); *Schware v. Board of Examiners*, 353 U.S. 232, 239 (1957); *Hainline v. Bond*, 250 Kan. 217 (1992); *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002).

Insisting that Ms. Green spend more than $18,000 and nearly a year of her life at a cosmetology school learning things the government concedes are irrelevant, and sitting for exams that never ask a single sugaring-specific question—all to perform an ancient beauty practice *that is already safe,* that she *already knows how to do*, and *that she could legally do without a license if she does it for free*—is unconstitutional even under rational basis review.[25] It's arbitrary, protectionist, and grossly disproportionate to any asserted government interest; it bears no rational connection to the practice of sugaring; it is analogous to the beauty regimes declared unconstitutional in *Cornwell*, *Clayton*, *Waugh*, *Brantley*, *Thiam*, and *Patel*; and "is not just unreasonable or harsh, but so oppressive that it violates" the Kansas Constitution. *Patel*, 469 S.W.3d at 90.

Ms. Green doesn't "seek a special 'out' or preferential treatment;" she seeks "rationality when trying to pursue a livelihood." *Cornwell,* 80 F. Supp. 2d at 1118.

Based on the evidence, this Court should declare Kansas's sugaring licensing regime unconstitutional under Section 1 of the Kansas Constitution Bill of Rights and grant Ms. Green judgment as a matter of law.

II. Kansas's occupational licensing regime for sugarers violates Section 18 of the Kansas Constitution's Bill of Rights.

Section 18 of the Kansas Constitution's Bill of Rights provides that "All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay." Previously, Kansas courts considered Sections 1 and 2 as the

[25] The same is equally true for the esthetician regime.

due process equivalent for more than 100 years. *Hodes I*, 309 Kan. at 635. Oftentimes courts applied variations of Fourteenth Amendment tests to claims under Sections 1 and 2 without differentiation. *See e.g., Leiker v. Employment Sec. Bd. of Review*, 8 Kan. App. 2d 379, 386-87 (1983).

It is clear, however, that Section 18 is Kansas's due process of law clause. *Hodes I*, 309 Kan. at 627; *Creecy v. Kansas Dep't of Revenue*, 310 Kan. 454, 462 (2019).

Hodes I did not explain how Section 1's decoupling from the Fourteenth Amendment affects claims now brought under Section 18, Kansas's due process clause. But Kansas courts have applied two different "due process" tests: a "reasonableness" test, and the "real and substantial relation test."

The "reasonableness" test requires a "case-by-case" examination and "balancing" of the nature of the individual interest infringed, the degree of the infringement, the importance of government's interest, whether the government's actions could be "more carefully tailored" and whether there were "alternative means of achieving [the government's] goal." *Darling v. Kansas Water Office*, 245 Kan. 45, 51-52 (1989).

In the occupational licensing context, this test has meant that the government cannot impose unreasonable restrictions and qualifications that exclude persons of skill. *State ex rel. Beck v. Gleason*, 148 Kan. 1, supplemented, 148 Kan. 459 (1938); *State ex rel. Beck v. Cooper*, 147 Kan. 710 (1938); *State v. Wilcox*, 64 Kan. 789 (1902); *Hainline v. Bond*, 250 Kan. 217, 222 (1992).

The "real and substantial relation" test asks "whether the legislative means selected has a real and substantial relation to the objective sought." *Ernest*, 237 Kan. at 129; *see also Peterson v. Garvey Elevators, Inc.*, 252 Kan. 976, 981 (1993) ("When a statute is attacked as violative of due process, the test is whether the legislative means selected has a real and substantial relation to the objective sought.") (cleaned up); *Cott v. Peppermint Twist Mgmt. Co.*, 253 Kan. 452, 484-85 (1993); *Bryant*, 226 Kan. at 395 ("The section has no real and substantial relationship to the moral, sanitary or health conditions of the licensed premises.").

The "real and substantial relation" test relies on "human judgment, natural justice, and common sense. Whether or not a restriction is reasonable may depend on many factors, no single factor being ordinarily decisive" and examines the "total situation." *Ernest*, 237 Kan. at 130-131. This means "the legislature cannot use a cannon to kill a cockroach." *Id*. at 130. In other words, a "legislative body cannot, under guise of the police power, enact unequal, unreasonable, and oppressive legislation[.]" *Bryant*, 226 Kan. at 391; *Capital Gas & Electric Co. v. Boynton*, 137 Kan. 717, 728, 730 22 P.2d 958, 964 (1933) (law did not promote the public welfare, and was "unreasonable, arbitrary, unjust, and oppressive.") (cleaned up).

For the reasons stated in Section I.A., incorporated here as if set forth fully, the right to earn an honest living free from unreasonable regulations is a fundamental and inalienable natural right, and this Court should apply strict scrutiny, which the government can't satisfy. Alternatively, for the reasons stated in Section I.B., incorporated here as if set forth fully, this court should apply intermediate scrutiny, which the government can't satisfy either.

Alternatively, the undisputed evidence establishes that, properly analyzed, the licensing regime violates Section 18 under the "reasonableness" test, the "real and substantial relation" test, or any other Section 18 test. Insisting that Ms. Green spend more than $18,000 and nearly a year of her life learning things the government concedes are irrelevant, and sitting for exams that never ask a single sugaring-specific question—all to perform an ancient beauty practice *that is already safe,* that she *already knows how to do*, and *that she could legally do without a license if she does it for free*—is unconstitutional under Section 18. It is grossly disproportionate to any asserted government interest, bears no rational connection to the practice of sugaring, is unequal, oppressive, unreasonable, arbitrary, protectionist, and harsh. Based on the evidence, this Court should declare Kansas's sugaring licensing regime unconstitutional under Section 18 of the Kansas Constitution Bill of Rights and grant Ms. Green judgment as a matter of law.

III. Kansas's occupational licensing regime for sugarers violates Equal Protection.

The "textual grounding of equal protection guarantees contained in the Kansas Constitution Bill of Rights is firmly rooted in the language of section 2." *Rivera v. Schwab*, 315 Kan. 877, 894 (2022). Section 2 states, in part, "All 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."

Equal protection requires that similarly situated individuals are treated alike. *League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 805 (2024). Equal protection also prevents treating things that are different as though they were the same. *Cornwell*, 80 F. Supp. 2d at 1103 ("sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike.") (cleaned up). The equal protection test is not a rubber stamp and requires an examination of the facts. *Romer*, 517 U.S. at 632-33 (in equal protection cases, "[courts] insist on knowing the relation between the classification adopted and the object to be attained" and there must be a "sufficient factual context for [courts] to ascertain some relation between the classification and the purpose it serve[.]"). Under equal protection, laws cannot be under- or over-inclusive either. *State v. Limon*, 280 Kan. 275, 288 (2005).

In the instant matter, the undisputed evidence establishes there is no basis whatsoever for treating sugarers differently based solely on whether sugaring involves a commercial transaction. *SOF* ¶¶ 272-273. The *only* justification the defendants have ever offered for this different treatment is that "the legislature has judged it necessary." *SOF* ¶ 273. But this "because I said so" explanation epitomizes the kind of irrational, arbitrary, and capricious discrimination that is prohibited under the equal protection of the law. In other words, it is an irrational and arbitrary distinction that violates equal protection principles to treat sugarers who do it for money differently than those who do it for free, because nothing about the exchange of money makes sugaring dangerous to the public health, safety, or welfare, or that makes it safe enough to practice without a license where money is *not* exchanged.

There is no evidence or sufficient justification for treating sugaring *the same* as dangerous occupations either. *Cornwell*, 80 F. Supp. 2d at 1103 ("sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike.") (cleaned up). As shown repeatedly above, even though sugaring is safe, it's treated as though it were the same as a dangerous occupation that requires 1,500 or 1,000 hours of schooling.

There is no evidence or sufficient justification for treating sugarers *differently* from those engaged in similarly safe activities, like hair braiding and threading either. Ms. Hines, the government's expert witness who offers sugaring, admits that the public would be adequately protected so long as sugarers followed the same health and safety recommendations that hair braiders and threaders follow—two beauty practices that aren't required to be licensed—which consists of a one-page informational brochure prepared by the Department of Health. *SOF* ¶¶ 48, 109-112, 117, 219. Because all three beauty practices are safe—or alternatively, because the risks are the same—and because the public would be adequately protected by voluntarily complying with a one-page informational brochure, requiring sugarers to complete the full cosmetology or esthetician licensing regime—1,500 or 1,000 hours, examinations, and so on—violates Section 2 of the Kansas Constitution Bill of Rights.

For the reasons stated above, and based on the evidence, this Court should declare that Kansas's sugaring licensing regime violates the equal protection guarantees in the Kansas Constitution Bill of Rights, and grant Ms. Green judgment as a matter of law.

IV. Kansas's occupational licensing regime for sugarers violates Section 20 of the Kansas Constitution Bill of Rights.

The Framers of the Kansas Constitution began the Bill of Rights with Section 1's broad embrace of Locke's theory of natural rights and they similarly ended with a robust Lockean guarantee of unenumerated natural rights in Section 20. Steven Calabresi, *et al.*, *Individual Rights Under State Constitutions in 2018: What Rights Are Deeply Rooted in A Modern-Day Consensus of the States?*, 94 Notre Dame L. Rev. 49, 132-33 (2018). "By wrapping up the previous 19 sections of the

Bill of Rights with [Section 20], the framers and adopters conveyed their intent to protect both enumerated and unenumerated rights retained by the people." *League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 844 (2024) (Standridge, J., concurring in part and dissenting in part).

According to Locke, when individuals form civil societies, they surrendered a limited portion of their natural rights, while retaining the rest, in order to "preserve and enlarge freedom." John Locke, *Two Treatises of Government* § 57 at 306 (Peter Laslett, student ed. 1988), *see also id.* § 131 at 353. This Lockean understanding was widely accepted at the time of the American Founding. But as Americans began drafting their constitutions, they found it necessary to include a constitutional provision retaining the people's unenumerated natural rights, such as Section 20, because without one, an enumerated bill of rights "would even be dangerous" to liberty. *The Federalist* No. 84 at 513 (Hamilton) (Clinton Rossiter ed. 1961).

By enumerating specific rights, a bill of rights could imply there were no other rights, and the government possessed the power to pass any legislation so long as it does not violate an enumerated rights provision. This would "furnish, to men disposed to usurp, a plausible pretense for claiming that power." *Id.* Additionally, a complete enumeration of rights would be "impractical and limiting," and imply that every right not enumerated had been surrendered. *League of Women Voters of Kansas*, 318 Kan. at 845 (Standridge, J., concurring in part and dissenting in part). The inevitable result would be "an imperfect enumeration [that] would throw all implied power into the scale of the government, and the rights of the people would be rendered incomplete." James Wilson, Speech at Pennsylvania Ratifying Convention, Nov. 28, 1787.[26]

Provisions such as Section 20 make clear that an enumerated bill of rights is not an exhaustive list, and that the people's retained, unenumerated rights must be protected just like those rights listed in the bill of rights. This provided "a way of authorizing the enforcement of a Lockean vision of 'rights first – government second." Randy Barnett, *Are Enumerated*

[26] Available at https://press-pubs.uchicago.edu/founders/documents/v1ch14s27.html

Constitutional Rights the Only Rights We Have? The Case of Associational Freedom, 10 Harv. J.L. & Pub. Pol'y 101, 103, 111 (1987).

Section 20 states that, "This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people." Section 20 is patterned after the Ninth and Tenth Amendments to the U.S. Constitution. *See generally* Anthony B. Sanders, *Baby Ninth Amendments: How Americans Embraced Unenumerated Rights and Why It Matters* (2023). Thirty-five states have an unenumerated rights provision similar to Section 20. *Id.* at 149-59. The general understanding is that these provisions "protect individual rights." *Id.* at 42 (cleaned up).[27]

By the time of Kansas' admission to statehood, it had become commonplace for states to supplement their own enumerated bills of rights with a provision guaranteeing that unenumerated natural rights were still retained by the people. The matter was uncontroversial and the Topeka,[28] Lecompton,[29] and Leavenworth[30] conventions each adopted a similar provision. Section 20 was so uncontroversial that its language was not debated at the Wyandotte Convention, and it was passed

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[27] *See also In re Adoption of B.G.S.*, 556 So. 2d 545, 551 (La. 1990) (natural right of parents to their children, as well as "reciprocal rights and obligations of natural parents and children are among those unenumerated rights retained by individuals"); *In re Brown*, 478 So. 2d 1033, 1039 (Miss. 1985) (right to refuse blood transfusion is protected by unenumerated rights provision); *Nickola v. Grand Blanc Twp.*, 394 Mich. 589, 607-08 (1975) (exclusionary zoning law invalid because "[w]hile shelter and food are not specially enumerated constitutional concerns . . . they may be among the unenumerated rights still 'retained by the people'"); *Murphy v. Pocatello Sch. Dist. No. 25*, 94 Idaho 32, 38 (1971), *abrogated on other grounds by Planned Parenthood Great Nw. v. State*, 171 Idaho 374 (2023) ("the right to wear one's hair in a manner of his choice" is protected); *Thiede v. Town of Scandia Valley*, 217 Minn. 218, 225 (1944) (forcible removal of individuals from their home violated unenumerated rights clause); *City of Mobile v. Rouse*, 233 Ala. 622, 623-24 (1937) ("the right of an individual engaged in an inherently lawful occupation to fix the price for which he will render personal service is a part of the liberty reserved to him against governmental encroachment"); *Roman Cath. Archbishop of Diocese of Oregon v. Baker*, 140 Or. 600, 613 (1932) (striking down zoning prohibition on schools in residential neighborhoods because "[t]he right to own property is an inherent right" protected by unenumerated rights provision); *State v. Williams*, 146 N.C. 618 (1908) (prohibition on transporting more than a half-gallon of liquor fails the real and substantial relationship test required by unenumerated rights provision).

[28] Available at https://www.kansasmemory.gov/item/221061/page/3

[29] Available at https://www.kansasmemory.gov/item/207409/page/6

[30] Available at https://www.kansasmemory.gov/item/207410/page/2

without discussion or objection. Kansas Constitutional Convention: A Reprint of the Proceedings and Debates of the Convention Which Framed the Constitution of Kansas at Wyandotte in July, 1859. (Kansas State Printing Plant, Topeka 1920) at 291. While there have been very few cases brought under Section 20, as recently as 2022, the Kansas Supreme Court acknowledged that Section 20 "protect[s] vital rights," *Rivera*, 315 Kan. at 891, and as shown next, that includes rights which might be alienable, but are nonetheless retained, under Lockean principles.

For instance, the Kansas Constitution does not enumerate a takings clause limiting eminent domain, yet Kansas courts still universally hold that private property may only be taken by the government for public use with just compensation. *See Venard v. Cross*, 8 Kan. 248 (1871) (takings challenge to government land regulation under Section 20); *Williams v. City of Wichita*; 190 Kan. 317 (1962) (same). While Section 1 protects "inalienable" rights "that cannot be disposed of by sale or assignment to another," *Carr*, 314 Kan. at 633, an individual's rights in a particular piece of property is alienable, otherwise it could never be sold. Thus, while a person's alienable rights in a piece of property may not be protected by Section 1,[31] they have retained those rights under Section 20, and property may never be taken except for public use and with just compensation.

Similarly, even if the right to earn an honest living may, in some sense, be alienable—such as through a non-compete contract or through retirement—the right is still retained under Section 20. Therefore, the government may not restrict the right to earn an honest living through unreasonable, irrational, arbitrary, oppressive, improperly tailored, protectionist, and unequal licensing requirements.

Alternatively, Section 20 may be read as a rule of construction placing limits on the police power of the state. Given its text, Section 20 doesn't permit unenumerated rights to be treated worse than enumerated rights. It certainly doesn't authorize the legislature to enact oppressive, irrational, protectionist, and arbitrary licensing regimes like this one, under the police powers

[31] Plaintiff contends that while the right to property, in the abstract, is inalienable, the bundle of rights that a person holds as owner of a particular piece of property are alienable.

doctrine. At a minimum, Section 20 requires courts reviewing *all* restrictions on an individual's liberty to find "actual *rationality*, scrutinizing the law's actual *basis*, and applying an actual *test*." *Hodes I*, 309 Kan. at 766 (Stegall, J., dissenting) (emphasis in original) (cleaned up). Additionally, courts should not "apply the presumption of constitutionality" to Section 20 claims, like this one. *See Matter of A.B.*, 313 Kan. 135, 148, (2021) (Stegall, J. concurring).

The right to earn an honest living free from unreasonable government restrictions has been retained by the people of Kansas, and Section 20 requires that this right receive the same protections afforded to enumerated rights. The facts show that requiring Ms. Green to spend almost a year of her life and almost $20,000 on irrelevant cosmetology schooling is unreasonable, irrational, arbitrary, oppressive, improperly tailored, protectionist, and unequal. This court should declare that the licensing regime unconstitutionally denies Ms. Green's retained right to earn an honest living under Section 20.

V. This Court should grant Ms. Green's motion for summary judgment, and her request for declaratory judgment, and enjoin the government from enforcing the regime against Ms. Green and other similarly situated individuals.

For the reasons above, Kansas's occupational licensing regime for sugarers violates Sections 1, 2, 18, and 20 of the Kansas Constitution Bill of Rights, when applied to Ms. Green and others who are similarly situated. This Court should therefore issue a declaratory judgment that Kansas's occupational licensing for sugarers is unconstitutional under Sections 1, 2, 18, and 20, when applied to Ms. Green and others who are similarly situated. This Court should also permanently enjoin the government from enforcing the regime against Ms. Green and others who are similarly situated.

Again, for the reasons and evidence above, the regime is unconstitutional. Because the regime violates Ms. Green's rights under the Kansas Constitution, she is irreparably harmed. And because the constitutional violations are ongoing and reaching into the future, the government should be permanently enjoined from enforcing the regime against Ms. Green and others who are similarly situated, so the government's unconstitutional actions are permanently stopped from

happening in the future. What's more, preventing the government from enforcing the regime against Ms. Green and others who are similarly situated doesn't cause the government any injury whatsoever. Finally, upholding the Kansas Constitution is always in the public's interest.

Finally, to alleviate concerns about judicial economy, should this Court grant Ms. Green declaratory judgment, Ms. Green would be more than willing to confer and work with the government's attorney in an attempt to jointly submit proposed injunctive relief language within 14 days from the memorandum and order—again, should this Court grant such an order.

Conclusion

The undisputed evidence establishes the occupational licensing regime involving sugaring violates Kansas Constitution Bill of Rights Sections 1, 2, 18, and 20, when applied to Ms. Green and others similarly situated. This Court should grant Ms. Green's motion for summary judgment, declare Kansas's occupational licensing regime involving sugaring unconstitutional when applied to Ms. Green and others similarly situated, and permanently enjoin its enforcement against Ms. Green and others similarly situated. Ms. Green requests oral argument pursuant to Local Rule 3.202(c).

Kansas Justice Institute

Dated: December 19, 2025.

/s/ Samuel G. MacRoberts
Samuel G. MacRoberts, 22781
12980 Metcalf Avenue, Suite 130
Overland Park, Kansas 66213
sam@kansasjusticeinstitute.org
(913) 213-5018
Attorneys for Ms. Green

Kansas Justice Institute

Dated: December 19, 2025.

/s/ Jeffrey S. Shaw
Jeffrey S. Shaw, 29767
12980 Metcalf Avenue, Suite 130
Overland Park, Kansas 66213
jeff@kansasjusticeinstitute.org
(913) 213-5018
Attorneys for Ms. Green

Certificate of Service

The undersigned certifies that on December 19, 2025, the above document(s) were filed using the electronic filing system, which will send notification of such filing to all participants, including to: Jay Rodriguez and Jesse A. Burris.

/s/ Samuel G. MacRoberts
Samuel G. MacRoberts