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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,	Civil Action No. 2023-CV-300030
Plaintiff,	Plaintiff's Response to the Government's Motion for Summary Judgment; Ex. 1-29; Stip. Ex. 1-9; Certificate of Service.
v.	Oral Argument Requested
Kansas State Board of Cosmetology, *et al.*,	Division Three (Hon. Teresa L. Watson)
Defendants.	

Plaintiff's Response to the Government's Motion for Summary Judgment

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Introduction

Bryn Green is a 34-year-old mother-of-two kids, both under four years old, 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 and safely remove unwanted hair. But the government's oppressive, irrational, unequal, and protectionist, occupational licensing regime stands in the way.

Because the right to earn an honest living, free from unreasonable government restrictions, is a fundamental and inalienable natural right, this Court should apply strict scrutiny, reject the government's motion for summary judgment, and grant Ms. Green's instead. *See* Pl.'s M.S.J. Mem. at 40-49 (strict scrutiny analysis). Alternatively, this Court should do the same under intermediate scrutiny. *See* Pl.'s M.S.J. Mem. at 49-51 (intermediate scrutiny analysis).

But this Court doesn't need to read Magna Carta, English cases from the 1600s, or even John Locke's writings, to declare *this* beauty regime unconstitutional. It's so bad, it flunks even the government's preferred test: rational basis review. Requiring Ms. Green to obtain a cosmetology or esthetician license, just so she can perform sugaring for compensation, is plainly unconstitutional. The facts of this case are closely analogous to the six beauty regimes that were declared unconstitutional under rational basis review. The following highlights (or lowlights, rather) prove the point.

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 government-approved 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 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.

Because there is no esthetician school in Hays, only a cosmetology school, Ms. Green would be required to spend nearly twenty-thousand dollars and almost a year of her life in a full-time cosmetology course 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.

At bottom, the undisputed evidence proves what Ms. Green has alleged since day one: 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 deny the government's motion for summary judgment and grant Ms. Green's motion instead.

Response to Defendants' Statement of Facts

Stipulated Facts

Plaintiff admits that on December 16, 2025, the parties jointly filed a Joint Stipulation of Facts and Exhibits. The Joint Stipulation of Facts (*JSOF*) are attached as Ex. 12, and are incorporated by reference.

Response to Defendants' Additional Facts

1. **Response**: Admitted.

2. **Response**: Plaintiff admits that Ms. Hines has held Missouri licenses in cosmetology and esthetics for more than thirty years. Plaintiff denies that Ms. Hines has been a Kansas licensed cosmetologist for more than thirty years. Plaintiff denies that Ms. Hines has ever been a Kansas licensed esthetician. Plaintiff admits that Ms. Hines owns Bella Bar Holistic Aesthetics in Leawood, Kansas. Ex. 1, Hines CV at 3.

3. **Response**: Admitted.

4. **Response**: Denied. Ms. Hines began offering commercial sugaring services in 2018. Ex. 2, Hines Depo. 56:20-57:12.

5. **Objection**: Paragraphs 6-25 of Defendants' Statement of Facts are copied from the expert report of Nichole Hines. Plaintiff filed a Motion to Strike or Exclude the Opinions of the Government's Proffered Expert Witness on December 19, 2025. Plaintiff renews her objection to Ms. Hines' expert testimony and incorporates her motion to exclude paragraphs 6–25.

Response: Plaintiff admits Ms. Hines says in her affidavit that she will testify in accordance with her affidavit. Plaintiff denies that record evidence supports Ms. Hines' affidavit.

6. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites no record evidence to support this statement.

Response: Denied. Kansas law does not recognize "advanced forms" of cosmetology or esthetics services. K.S.A. § 65-1901, *et seq*. Any Kansas licensed cosmetologist or esthetician may offer sugaring without receiving any "advanced" training, or indeed any hands-on training in sugaring. *JSOF* lvi. There is no risk of blood exposure from sugaring. Ex. 3, Patel Depo. 17:16-25.

7. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Response: Denied. The record evidence establishes that for every client Ms. Green will prepare a clean, organized workspace, sanitize her hands, and use fresh, disposable gloves. The record evidence establishes that Ms. Green will adhere to the KDHE guidelines articulated in the one-page pamphlet prepared for hair braiders and eyebrow threaders and follow the Board's blood exposure procedures in the unlikely event of a blood exposure. *JSOF* xxxviii; Ex. 4, Green Sup. Dec. The record evidence establishes that adhering to the KDHE guidelines articulated in the one-page pamphlet prepared for hair braiders and eyebrow threaders is adequate to protect the public, with respect to blood exposure and infection control. *JSOF* cxlv.

8. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Objection: Relevance – the undisputed record evidence establishes that Ms. Green will employ what is known as the hand-applied method of sugaring. *JSOF* viii, xxv – xxxiv; Stip. Ex. 5 at 19.

Response: Plaintiff admits that she will utilize the hand-applied method of sugaring. Plaintiff denies that she will employ any other method of sugaring. *JSOF* viii, xxv – xxxiv; Stip. Ex. 5 at 19.

9. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Objection: Relevance – the undisputed record evidence establishes that Ms. Green will employ what is known as the hand-applied method of sugaring. *JSOF* viii, xxv – xxxiv; Stip. Ex. 5 at 19.

10. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Objection: Relevance – the undisputed record evidence establishes that Ms. Green will employ what is known as the hand-applied method of sugaring. *JSOF* viii, xxv – xxxiv; Stip. Ex. 5 at 19.

Response: Plaintiff denies that she will practice "warm sugaring." The undisputed record evidence establishes that Ms. Green will employ what is known as the hand-applied method of sugaring. *JSOF* viii, xxv – xxxiv; Stip. Ex. 5 at 19.

11. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Objection: Relevance – the undisputed record evidence establishes that Ms. Green will utilize the all-natural sugaring paste sold by Alexandria Professional. *JSOF* xxv – xxxii.

12. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Objection: Relevance – the undisputed record evidence establishes that Ms. Green only wants to perform sugaring services, not waxing. Ex. 5, Green Dec. ¶ 10.

Response: Plaintiff admits that a "Brazilian wax" entails the use of wax to remove of all or a portion of hair from the pubic are and that men or women can have their public hair removed with wax. Plaintiff is unaware of any record evidence establishing that Brazilian waxes are the most commonly requested hair removal services with the beauty industry or that the majority of recipients are women and girls.

13. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Response: Denied. The government admits that there are no additional risks or safety concerns that arise from sugaring being performed on all parts of the body. Ex. 6, Board § 60-230(b)(6) Depo. 129:5-12. The record evidence establishes that sugaring is safe and the government admits that sugaring "safely remove[s] unwanted hair." *JSOF* ii; *see also JSOF* v, vi, vii, viii, ix, xi, xii, xxv-xxxviii, cxlv, cl, cli, clvii, clix, clxi, clxii; Ex. 2, Hines Depo. 16:2-8, 178:19-21, 180:7-15, 184:1-16, 194:4-24, 213:6—214:115, 215:13-21; Stip. Ex. 1 at 22; Stip. Ex. 3 at 23-25; Stip. Ex. 5 at 18-20; Stip. Ex. 6 at 13; Stip. Ex. 7 at 18; Stip. Ex. 8 at 17-19, 21-22; Ex. 6, Board § 60-230(b)(6) Depo. 104:21—105:7, 105:16—106:2, 110:22—111:3, 112:5—113:2, 115:1-18, 121:4-7, 121:16-23, 122:17-24, 123:10—124:9, 125: 20—126:20, 129:5-12; Ex. 7, Patel Dec. at 5-13; Ex. 3, Patel Depo. 8:12—9:6, 17:5-6, 17:16-25, 57:9-13, 77:12-22, 93:8-13, 115:3-11, 117:13-17, 118:3-23; Ex. 8, Alexandria Professional, Hidden Dangers of Waxing; Ex. 9, Alexandria Professional, Key Differences Between Waxing and Sugaring; Ex. 5, Green Dec. ¶¶ 25, 30; Ex. 10, KBOC Blood Exposure Procedures; Ex. 11, KBOC Blood Exposure Procedure Tips.

14. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Response: Denied. The government admits that there are no additional risks or safety concerns that arise from sugaring being performed on all parts of the body. Ex. 6, Board § 60-230(b)(6) Depo. 129:5-12. The record evidence establishes that sugaring is safe and the government admits that sugaring "safely remove[s] unwanted hair." *JSOF* ii; *see also JSOF* v, vi, vii, viii, ix, xi, xii, xxv-xxxviii, cxlv, cl, cli, clvii, clix, clxi, clxii; Ex. 2, Hines Depo. 16:2-8, 178:19-21, 180:7-15, 184:1-16, 194:4-24, 213:6—214:115, 215:13-21; Stip. Ex. 1 at 22; Stip. Ex. 3 at 23-25; Stip. Ex. 5 at 18-20; Stip. Ex. 6 at 13; Stip. Ex. 7 at 18; Stip. Ex. 8 at 17-19, 21-22; Ex. 6, Board § 60-230(b)(6) Depo. 104:21—105:7, 105:16—106:2, 110:22—111:3, 112:5—113:2, 115:1-18, 121:4-7, 121:16-23, 122:17-24, 123:10—124:9, 125: 20—126:20, 129:5-12; Ex. 7, Patel Dec. at 5-13; Ex. 3, Patel Depo. 8:12—9:6, 17:5-6, 17:16-25, 57:9-13, 77:12-22, 93:8-13, 115:3-11, 117:13-17, 118:3-23; Ex. 8, Alexandria Professional, Hidden Dangers of Waxing; Ex. 9, Alexandria Professional, Key

Differences Between Waxing and Sugaring; Ex. 5, Green Dec. ¶¶ 25, 30; Ex. 10, KBOC Blood Exposure Procedures; Ex. 11, KBOC Blood Exposure Procedure Tips.

15. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Response: Denied. The record evidence establishes that sugaring is safe and the government admits that sugaring "safely remove[s] unwanted hair." *JSOF* ii; *see also JSOF* v, vi, vii, viii, ix, xi, xii, xxv-xxxviii, cxlv, cl, cli, clvii, clix, clxi, clxii; Ex. 2, Hines Depo. 16:2-8, 178:19-21, 180:7-15, 184:1-16, 194:4-24, 213:6—214:115, 215:13-21; Stip. Ex. 1 at 22; Stip. Ex. 3 at 23-25; Stip. Ex. 5 at 18-20; Stip. Ex. 6 at 13; Stip. Ex. 7 at 18; Stip. Ex. 8 at 17-19, 21-22; Ex. 6, Board § 60-230(b)(6) Depo. 104:21—105:7, 105:16—106:2, 110:22—111:3, 112:5—113:2, 115:1-18, 121:4-7, 121:16-23, 122:17-24, 123:10—124:9, 125: 20—126:20, 129:5-12; Ex. 7, Patel Dec. at 5-13; Ex. 3, Patel Depo. 8:12—9:6, 17:5-6, 17:16-25, 57:9-13, 77:12-22, 93:8-13, 115:3-11, 117:13-17, 118:3-23; Ex. 8, Alexandria Professional, Hidden Dangers of Waxing; Ex. 9, Alexandria Professional, Key Differences Between Waxing and Sugaring; Ex. 5, Green Dec. ¶¶ 25, 30; Ex. 10, KBOC Blood Exposure Procedures; Ex. 11, KBOC Blood Exposure Procedure Tips. The record evidence establishes that for every client Ms. Green will prepare a clean, organized workspace, sanitize her hands, and use fresh, disposable gloves. The record evidence establishes that Ms. Green will adhere to the KDHE guidelines articulated in the one-page pamphlet prepared for hair braiders and eyebrow threaders and follow the Board's blood exposure procedures in the unlikely event of a blood exposure. *JSOF* xxxviii; Ex. 4, Green Sup. Dec. The record evidence establishes that adhering to the KDHE guidelines articulated in the one-page pamphlet prepared for hair braiders and eyebrow threaders is adequate to protect the public, with respect to blood exposure and infection control. *JSOF* cxlv.

16. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Response: Denied. Kansas law does not recognize "advanced forms" of cosmetology or esthetics services. K.S.A. § 65-1901, et seq. Nor does Kansas law require sugarers

to attend additional schools, apprenticeships, or hone their waxing skills before practicing sugaring. K.S.A. § 65-1901, et seq. Any Kansas licensed cosmetologist or esthetician may offer sugaring without receiving any "advanced" training, schooling, apprenticeships, or mastery of waxing, or indeed any hands-on training in sugaring. *JSOF* lvi.

17. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Objection: Relevance – the undisputed record evidence establishes that Ms. Green only wants to perform sugaring services, not waxing. Ex. 5, Green Dec. ¶ 10.

Response: Denied. Kansas law does not recognize "advanced forms" of cosmetology or esthetics services. K.S.A. § 65-1901, et seq. Nor does Kansas law require sugarers to attend continuing education before practicing sugaring. K.S.A. § 65-1901, et seq. Any Kansas licensed cosmetologist or esthetician may offer sugaring without receiving any "advanced" training, schooling, apprenticeships, or mastery of waxing, or indeed any hands-on training in sugaring. *JSOF* lvi. The government admits that there are no additional risks or safety concerns that arise from sugaring being performed on all parts of the body. Ex. 6, Board § 60-230(b)(6) Depo. 129:5-12.

18. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Objection: Relevance – the undisputed record evidence establishes that Ms. Green only wants to perform sugaring services, not waxing, threading, tweezing, or other hair removal techniques. Ex. 5, Green Dec. ¶ 10.

Response: Denied. The record evidence establishes that sugaring is safe and the government admits that sugaring "safely remove[s] unwanted hair." *JSOF* ii; *see also JSOF* v, vi, vii, viii, ix, xi, xii, xxv-xxxviii, cxlv, cl, cli, clvii, clix, clxi, clxii; Ex. 2, Hines Depo. 16:2-8, 178:19-21, 180:7-15, 184:1-16, 194:4-24, 213:6—214:115, 215:13-21; Stip. Ex. 1 at 22; Stip. Ex. 3 at 23-25; Stip. Ex. 5 at 18-20; Stip. Ex. 6 at 13; Stip. Ex. 7 at 18; Stip. Ex. 8 at 17-19, 21-22; Ex. 6, Board § 60-230(b)(6) Depo. 104:21—105:7, 105:16—106:2, 110:22—111:3, 112:5—113:2, 115:1-18, 121:4-7,

121:16-23, 122:17-24, 123:10—124:9, 125: 20—126:20, 129:5-12; Ex. 7, Patel Dec. at 5-13; Ex. 3, Patel Depo. 8:12—9:6, 17:5-6, 17:16-25, 57:9-13, 77:12-22, 93:8-13, 115:3-11, 117:13-17, 118:3-23; Ex. 8, Alexandria Professional, Hidden Dangers of Waxing; Ex. 9, Alexandria Professional, Key Differences Between Waxing and Sugaring; Ex. 5, Green Dec. ¶¶ 25, 30; Ex. 10, KBOC Blood Exposure Procedures; Ex. 11, KBOC Blood Exposure Procedure Tips. The record evidence establishes that for every client Ms. Green will prepare a clean, organized workspace, sanitize her hands, and use fresh, disposable gloves. The record evidence establishes that Ms. Green will adhere to the KDHE guidelines articulated in the one-page pamphlet prepared for hair braiders and eyebrow threaders and follow the Board's blood exposure procedures in the unlikely event of a blood exposure. *JSOF* xxxviii; Ex. 4., Green Sup. Dec. The record evidence establishes that adhering to the KDHE guidelines articulated in the one-page pamphlet prepared for hair braiders and eyebrow threaders is adequate to protect the public, with respect to blood exposure and infection control. *JSOF* cxlv..

19. **Objection**: This paragraph violates Rule 141(a)(1) of the Rules Relating to the District Courts requirement that facts be stated in separately numbered paragraphs.

Objection: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Objection: Relevance – the undisputed record evidence establishes that Ms. Green will employ what is known as the hand-applied method of sugaring, not waxing. *JSOF* viii, xxv – xxxiv; Stip. Ex. 5 at 19; Ex. 5 Geen Dec. ¶ 10.

Response: Denied. Plaintiff denies that she will practice "warm sugaring," or waxing. The undisputed record evidence establishes that Ms. Green will employ what is known as the hand-applied method of sugaring. *JSOF* viii, xxv – xxxiv; Stip. Ex. 5 at 19. The government admits that there are no additional risks or safety concerns that arise from sugaring being performed on all parts of the body. Ex. 6, Board § 60-230(b)(6) Depo. 129:5-12. The record evidence establishes that sugaring is safe and the government admits that sugaring "safely remove[s] unwanted hair." *JSOF* ii; *see also JSOF* v, vi, vii, viii, ix, xi, xii, xxv-xxxviii, cxlv, cl, cli,

clvii, clix, clxi, clxii; Ex. 2, Hines Depo. 16:2-8, 178:19-21, 180:7-15, 184:1-16, 194:4-24, 213:6—214:115, 215:13-21; Stip. Ex. 1 at 22; Stip. Ex. 3 at 23-25; Stip. Ex. 5 at 18-20; Stip. Ex. 6 at 13; Stip. Ex. 7 at 18; Stip. Ex. 8 at 17-19, 21-22; Ex. 6, Board § 60-230(b)(6) Depo. 104:21—105:7, 105:16—106:2, 110:22—111:3, 112:5—113:2, 115:1-18, 121:4-7, 121:16-23, 122:17-24, 123:10—124:9, 125:20—126:20, 129:5-12; Ex. 7, Patel Dec. at 5-13; Ex. 3, Patel Depo. 8:12—9:6, 17:5-6, 17:16-25, 57:9-13, 77:12-22, 93:8-13, 115:3-11, 117:13-17, 118:3-23; Ex. 8, Alexandria Professional, Hidden Dangers of Waxing; Ex. 9, Alexandria Professional, Key Differences Between Waxing and Sugaring; Ex. 5, Green Dec. ¶¶ 25, 30; Ex. 10, KBOC Blood Exposure Procedures; Ex. 11, KBOC Blood Exposure Procedure Tips. The record evidence establishes that for every client Ms. Green will prepare a clean, organized workspace, sanitize her hands, and use fresh, disposable gloves. The record evidence establishes that Ms. Green will adhere to the KDHE guidelines articulated in the one-page pamphlet prepared for hair braiders and eyebrow threaders and follow the Board's blood exposure procedures in the unlikely event of a blood exposure. *JSOF* xxxviii; Ex. 4, Green Sup. Dec. The record evidence establishes that adhering to the KDHE guidelines articulated in the one-page pamphlet prepared for hair braiders and eyebrow threaders is adequate to protect the public, with respect to blood exposure and infection control. *JSOF* cxlv. The undisputed record evidence shows that with the hand-applied method of sugaring the paste will be applied at body temperature. *JSOF* viii, xxv – xxxiv; Stip. Ex. 5 at 19. The Board admits there is no risk of burning. Ex. 6, Board § 60-230(b)(6) Depo. 110:22—111:3; 112:5—113:2; *see also JSOF* vi; Stip. Ex. 5 at 20; Ex. 2, Hines Depo. 184:13-16; Ex. 7, Patel Dec. at 6, 7, 8, 9, 11; Stip. Ex. 3 at 24. Unlike waxing, sugaring paste does not adhere to the skin, so there is no risk of lifting. *JSOF* vi, xxxi; SOF Ex. 2, Hines Depo. 175:24—176:3; Stip. Ex. 3 at 24, 26; Stip. Ex. 5 at 18-20; Stip. Ex. 6 at 13; Stip. Ex. 7 at 18; Stip. Ex. 8 at 17-18. Sugaring paste is naturally hygienic and inhibits the growth of pathogens. *JSOF* vi(1); Ex. 2, 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. Sugaring is hygienic because the paste is only ever used on one customer. *JSOF* vi(2); Ex. 2, Hines Depo. 174:22—175:2; Stip. Ex. 5 at 20; Stip. Ex. 3 at 23-25. Sugaring paste is hypoallergenic. *JSOF* vi(3); Ex. 2, Hines Depo. 180:7-10; Stip. Ex. 5 at 20;

Stip. Ex. 8 at 19; Ex. 7, Patel Dec. at 9, 12, 52. 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. 2, 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; Ex. 7, Patel Dec. at 7, 9, 10, 52. Unlike waxing, sugaring has no risk of burning. *JSOF* vi(5); Ex. 2, 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; Ex. 7, Patel Dec. at 6, 8, 9, 11. 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. 2, Hines Depo. 191:12—192:4; Stip. Ex. 3 at 23-24; Stip. Ex. 5 at 18-20; Stip. Ex. 8 at 18; Ex. 7, Patel Dec. at 5, 6, 7. Unlike waxing, sugaring is safe for clients with diabetes. *JSFO* vi(7); Ex. 2, Hines Depo. 174:3-5; 181:22—182:8; Stip. Ex. 3 at 24, 38; Stip. Ex. 5 at 14, 19-20. Unlike waxing, sugaring is safe to perform on spider veins. *JSOF* vi(8); Ex. 2, Hines Depo. 173:5-9; 178:13-18; 180:16—181:14; Stip. Ex. 3 at 24; Stip. Ex. 5 at 19-20. Unlike waxing, sugaring is safe to perform on psoriasis. *JSOF* vi(9); Ex. 2, 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. Unlike waxing, sugaring is safe to perform on dry-itch eczema. *JSOF* vi(10); Ex. 2, 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. Unlike waxing, sugaring is safe to perform on varicose veins. *JSOF* vi(11); Ex. 2, Hines Depo. 173:5-9; 178:13-18; 180:16—181:14; Stip. Ex. 3 at 24, 38; Stip. Ex. 5 at 19-20. Unlike wax, sugaring paste is water soluble, making it easier to clean up than waxing. *JSOF* vi(12); Ex. 2, 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. Sugaring creates less discomfort and irritation than waxing. *JSOF* vi(13); Ex. 2, 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; Ex. 7, Patel Dec. at 8-10, 12; Stip. Ex. 3 at 24. Sugaring has less risk of folliculitis than waxing. *JSOF* vi(14); Ex. 2, Hines Depo. 175:6-10; 178:19—179:10; Stip. Ex. 3 at 24; Stip. Ex. 5 at 19; Ex. 7, Patel Dec. at 6, 8, 11. Sugaring has less risk of ingrown hairs than waxing. *JSOF* vi(15) Ex. 2, Hines Depo. 175:6-10; 179:6-21; Stip. Ex. 5 at 19; Ex. 7, Patel Dec. at 6, 8.

Sugaring causes less distortion to the follicle than waxing. *JSOF* vi(16); Ex. 2, 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. 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. 2, Hines Depo. 175:24—176:3; Stip. Ex. 3 at 26. 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. 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. 2, Hines Depo. 194:4-24; Stip. Ex. 8 at 22. Sugaring paste is hygienic. Stip. Ex. 3 at 23-25; Stip. Ex. 8 at 19, 21, 22. Sugaring is "especially appropriate for more sensitive skin types." Stip. Ex. 1 at 22; Stip. Ex. 3 at 23. Sugaring is "an alternative for those who have sensitive skin or who react to waxing with bumps and redness." Stip. Ex. 3 at 23. Sugaring "can be used for some who have certain wax contraindications." Stip. Ex. 3 at 23. Sugaring paste "can be removed in the direction of the hair growth, which is less irritating than waxing." Stip. Ex. 3 at 23. "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. With sugaring there is "no risk of burning or tearing the skin." Stip. Ex. 5 at 20. Sugaring paste can't adhere to live skin cells and "will never tear the skin." Stip. Ex. 8 at 17-18. "[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 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. 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; Stip. Ex. 5 at 19; Ex. 2, Hines Depo. 178:19-21. Sugaring paste has "[n]aturally antiseptic properties [that] inhibit bacterial growth." Stip. Ex. 3 at 24. Sugaring allows for the "[e]asy clean-up of equipment, room, and treatment table, as it is water-soluble." Stip. Ex. 3 at 24. "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. 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. 2, Hines Depo. 184:1-8. The same area can be treated more than once with sugaring without the risk of causing irritation and trauma. Ex. 2, Hines Depo. 180:11-15. There is no risk of burning. Ex. 6, Board § 60-230(b)(6) Depo. 112:5—113:2; Ex. 2, Hines Depo. 184:13-16; Ex. 7, Patel Dec. at 5, 6, 8, 9, 11; Stip. Ex. 3 at 24; Stip. Ex. 5 at 18-20; Stip. Ex. 8 at 17. There is no risk of abrasions. Ex. 7, Patel Dec. at 11. There is nothing inherently dangerous about sugaring. Ex. 7, Patel Dec. at 7, 9-13. Sugaring is safe. Ex. 7, Patel Dec. at 7, 9-13; Ex. 3, Patel Depo. 77:12-22; 93:8-13; 118:3-23; Ex. 8, Alexandria Professional, Hidden Dangers of Waxing; Ex. 9, Alexandria Professional, Key Differences Between Waxing and Sugaring. "There is no case study that has ever reported a viral pathogen being spread with sugaring." Ex. 3, Patel Depo. 57:9-13. There is no risk of blood exposure from sugaring. Ex. 3, Patel Depo. 17:16-25. Defendants have never received any complaints from the public related to sugaring. *JSOF* xi. Defendants have never received any complaints from the public about sugaring-related injuries. *JSOF* xii.

20. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Response: Plaintiff admits that if a sugarer adhered to the basic KDHE sanitation requirements contained in the one-page pamphlet produced for hair braiders and eyebrow threaders that this would be sufficient to protect public health. Ex. 2, Hines Depo. 215:16-21. The record evidence establishes that Ms. Green will adhere to the KDHE guidelines articulated in the one page pamphlet prepared for hair braiders and eyebrow threaders. *JSOF* xxxviii; Ex. 4, Green Sup. Dec. Plaintiff denies that there is any record evidence that health and sanitation inspections would protect the health and safety of the public.

21. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Objection: This paragraph violates Rule 141(a)(1) of the Rules Relating to the District Courts requirement that facts be stated in separately numbered paragraphs.

Objection: Relevance – Plaintiff has not challenged sanitation or inspection requirements, or claimed that the state may not enact any regulations regarding sugaring. Plaintiff's claim is that education and testing required to obtain a license are arbitrary, unreasonable, oppressive, protectionist, irrational, and not appropriately tailored to the practice of sugaring—and therefore unconstitutional. Whether inspections are effective at protecting public health is not relevant to the claims.

Response: Plaintiff admits that if a sugarer adhered to the basic KDHE sanitation requirements contained in the one page pamphlet produced for hair braiders and eyebrow threaders that this would be sufficient to protect public health. Ex. 2, Hines Depo. 215:16-21. The record evidence establishes that Ms. Green will adhere to the KDHE guidelines articulated in the one page pamphlet prepared for hair braiders and eyebrow threaders. *JSOF* xxxviii; Ex. 4, Green Sup. Dec. Plaintiff denies that there is any record evidence that she would not abide by KDHE sanitation requirements. The Board is unaware of any evidence that conclusively establishes that unlicensed sugaring is more dangerous than licensed sugaring. *JSOF* clxii.

22. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Objection: Relevance – the undisputed record evidence establishes that Ms. Green will employ what is known as the hand-applied method of sugaring, which does not use sticks or gauze. *JSOF* viii, xxv – xxxiv; Stip. Ex. 5 at 19.

Response: Plaintiff admits that gloves are one time use items, and the undisputed record evidence establishes that Ms. Green will sanitize her hands and use fresh, disposable gloves on each client. *JSOF* xxviii & xxx.

23. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Objection: This is not a statement of fact, but pure speculation.

Response: Denied. The record evidence establishes that for every client Ms. Green will prepare a clean, organized workspace, sanitize her hands, and use fresh, disposable gloves. The

record evidence establishes that Ms. Green will adhere to the KDHE guidelines articulated in the one-page pamphlet prepared for hair braiders and eyebrow threaders and follow the Board's blood exposure procedures in the unlikely event of a blood exposure. *JSOF* xxxviii; Ex. 4, Green Sup. Dec. The record evidence establishes that adhering to the KDHE guidelines articulated in the one-page pamphlet prepared for hair braiders and eyebrow threaders is adequate to protect the public, with respect to blood exposure and infection control. *JSOF* cxlv. The Board is unaware of any evidence that conclusively establishes that unlicensed sugaring is more dangerous than licensed sugaring. *JSOF* clxii.

24. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Objection: This is not a statement of fact, but pure speculation.

Response: Denied. The record evidence establishes that for every client Ms. Green will prepare a clean, organized workspace, sanitize her hands, and use fresh, disposable gloves. The record evidence establishes that Ms. Green will adhere to the KDHE guidelines articulated in the one-page pamphlet prepared for hair braiders and eyebrow threaders and follow the Board's blood exposure procedures in the unlikely event of a blood exposure. *JSOF* xxxviii; Ex. 4, Green Sup. Dec. The record evidence establishes that adhering to the KDHE guidelines articulated in the one-page pamphlet prepared for hair braiders and eyebrow threaders is adequate to protect the public, with respect to blood exposure and infection control. *JSOF* cxlv. The Board is unaware of any evidence that conclusively establishes that unlicensed sugaring is more dangerous than licensed sugaring. *JSOF* clxii..

25. **Objection**: With the exception of Ms. Hines' objectionable expert report, the government cites to no record evidence to support this statement.

Response: Denied. The undisputed record evidence shows that Ms. Green will employ what is known as the hand-applied method of sugaring and the paste will be applied at body temperature. *JSOF* viii, xxv – xxxiv; Stip. Ex. 5 at 19. The Board admits there is no risk of burning. Ex. 6, Board § 60-230(b)(6) Depo. 110:22—111:3; 112:5—113:2; *JSOF* vi; Stip. Ex. 5 at 20; Ex. 2,

Hines Depo. 184:13-16; Ex. 7, Patel Dec. at 5, 6, 8, 9, 11; Stip. Ex. 3 at 24; Stip. Ex. 5 at 18-20; Stip. Ex. 8 at 17. Unlike waxing, sugaring paste does not adhere to the skin, so there is no risk of lifting. *JSOF* vi, xxxi;; Stip. Ex. 3 at 24; Stip. Ex. 5 at 18-20; Stip. Ex. 6 at 13; Stip. Ex. 7 at 18; Stip. Ex. 8 at 17-18.

26. **Response**: K.S.A. § 65-1901 speaks for itself and needs no admission or denial.

27. **Response**: K.S.A. § 65-1901 speaks for itself and needs no admission or denial.

28. **Response**: Plaintiff admits that K.A.R. § 69-13-2 purports to authorize inspections of licensed establishments.

29. **Response**: Plaintiff admits that K.S.A. § 65-1,148 authorizes the Secretary of Health and Environment to adopt rules and regulations establishing sanitation standards. Plaintiff denies that K.S.A. § 65-1,148 itself authorizes the Board to enforce these standards. The requirements of the law are not factual statements that need to be admitted or denied.

30. **Response**: Defendant has represented that its reference to K.A.R. 2-24-14 was a scrivener's error and should refer to K.A.R. 21-24-1 – 14. Plaintiff admits that K.A.R. 21-24-1 – 14 require handwashing, disposal of single use items, and cleaning and disinfecting of equipment and facilities.

31. **Objection**: The assertions in Governor Kelly's veto statement are hearsay and are not supported by any evidence in the record.

Response: Plaintiff admits that Governor Kelly's veto statement claimed that "[d]eregulating sugaring risks contamination, improper infection control, and potential safety issues involving minors." Plaintiff denied that any record evidence supports Governor Kelly's assertion. The Governor said she was "relying on the expertise of the Board of Cosmetology." Ex. 2. Hines Depo. 133:17—134:6; 134:22—135:3; 135:19—136:7; 137:3-18; Ex. 13, Veto Statement; *JSOF* lix. The Board is unaware of any evidence that conclusively establishes that unlicensed sugaring is more dangerous than licensed sugaring. *JSOF* clxii. The Board has no evidence unlicensed sugaring is a danger to minors or that the licensing regime will deter sex offenders or

improve good moral character. *JSOF* clxiii, clxv, clxvi, clxvii, clxviii, clxix, clxx; Ex. 6, Board § 60-230(b)(6) Depo. 134:5-23, 135:18—136:1.

32. **Response**: Denied. The cost of tuition, child care requirements, and time commitment prevents Ms. Green from attending a cosmetology or esthetics school. SOF 105, 153, 171.

33. **Response**: Denied as phrased. Plaintiff admits that she has not attended or applied to a Board licensed cosmetology or esthetics school. Plaintiff has attended and completed a sugaring specific course of instruction. Ex. 5, Green Dec. ¶¶ 20-23; *JSOF* xxiii. Plaintiff inquired about attending an additional sugaring specific course from 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. Ex. 5, Green Dec. ¶ 24; *JSOF* xxiv.

34. **Response**: Admitted.

35. **Objection**: Relevance.

36. **Response**: Denied. The income is not "comparable," as she currently works longer hours for the same income with less flexibility for child care. Ex. 14, Green Depo. 25:17—26:6; 33:16—34:5.

37. **Objection**: Relevance. The right to earn an honest living free from that are oppressive, unreasonable, irrational, arbitrary, protectionist, or improperly tailored regulations is not limited to those experiencing "financial distress."

Response: Denied. "Financial distress" is a subjective, undefined term. Defendant's cited deposition testimony only establishes that Ms. Green is not in "danger of losing [her] vehicle" or in "danger of not being able to feed [herself] or [her] family." Ms. Green testified that she does not have enough money to pay for cosmetology or esthetician school, Ex. 14, Green Depo. 20:3-6; Ex. 5, Green Dec. ¶¶ 53, 58, that finances are tight for her family, Ex. 5, Green Dec. ¶ 6, that there is a lack of affordable childcare options in Hays, Ex. 5, Green Dec. ¶ 7, and that her family must be "very, very conscientious of our spending" to avoid losing their home, Ex. 14, Green Depo. 30:22-31:1.

38. **Response**: Denied. Ms. Markley testified that a school may not deviate from the curriculum and the hours set by the Board. Ex. 15, Hays Academy Depo. 15:16—16:1.

39. **Response**: Denied as phrased. The Hays Academy does not teach hands-on sugaring, even if a specific student desires and needs to learn hands-on sugaring, and does not plan to offer hands-on sugaring instruction in the future. Ex. 15, Hays Academy Depo. 85:2-12. The Hays Academy informed Ms. Green that they would not teach her sugaring. *JSOF* xlvii, lxiii, lxx, lxxxix, xc, xci, xcii.

40. **Response**: Denied. The Hays Academy does not teach hands-on sugaring, even if a specific student desires and needs to learn hands-on sugaring, and does not plan to offer hands-on sugaring instruction in the future. Ex. 15, Hays Academy Depo. 85:2-12. The Hays Academy informed Ms. Green that they would not teach her sugaring. *JSOF* xlvii, lxiii, lxx, lxxxix, xc, xci, xcii.

Plaintiff's Additional Facts (ASOF)

1. Ms. Green is a 34-year-old mother who resides in Hays, Kansas. Ex. 5, Green Dec. ¶ 2.

2. Ms. Green holds a Bachelor of Science in Agricultural Business from Fort Hays State University. Ex. 5, Green Dec. ¶ 3.

3. Before having children, Ms. Green worked full-time in the insurance industry. Ex. 5, 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. 5, Green Dec. ¶ 5

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

6. There is a lack of affordable childcare options in Hays. Ex. 5, 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. 5, 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. 5, 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. 5, Green Dec. ¶ 10.

10. This classical formula for sugaring is hypoallergenic and is not irritating to the skin. Ex. 2, Hines Depo. 180:7-10.

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

12. These textbooks state that:

a. Sugaring paste is naturally hygienic and inhibits the growth of pathogens. *JSOF* vi(1); Ex. 2, 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. 2, 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. 2, Hines Depo. 180:7-10; Stip. Ex. 5 at 20; Stip. Ex. 8 at 19. *See also* Ex. 7, 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. 2, 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. 7, Patel Dec. at 7, 9, 10, 52.

e. Unlike waxing, sugaring has no risk of burning. *JSOF* vi(5); Ex. 2, 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. 7, Patel Dec. 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. 2, 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. 7, Patel Dec. at 5, 6, 7.

g. Unlike waxing, sugaring is safe for clients with diabetes. JSFO vi(7); Ex. 2, 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. 2, 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. 2, 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. 2, 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. 2, 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. 2, 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. 2, 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. 7, Patel Dec. at 8-10, 12, 52.

n. Sugaring has less risk of folliculitis than waxing. *JSOF* vi(14); Ex. 2, Hines Depo. 175:6-10; 178:19—179:10; Stip. Ex. 3 at 24; Stip. Ex. 5 at 19. *See also* Ex. 7, Patel Dec. at 6, 8, 11.

o. Sugaring has less risk of ingrown hairs than waxing. *JSOF* vi(15) Ex. 2, Hines Depo. 175:6-10; 179:6-21; Stip. Ex. 5 at 19. *See also* Ex. 7, Patel Dec. at 6, 8.

p. Sugaring causes less distortion to the follicle than waxing. *JSOF* vi(16); Ex. 2, 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. 2, Hines Depo. 175:24—176:3; Stip. Ex. 3 at 26.

13. 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.

14. 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.

15. 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. 2, Hines Depo. 194:4-24; Stip. Ex. 8 at 22.

16. 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").

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

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

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

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

21. "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.

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

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

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

25. "[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.").

26. "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.").

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

28. 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. 2, Hines Depo. 178:19-21.

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

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

31. "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.

32. 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. 2, Hines Depo. 184:1-8.

33. The same area can be treated more than once with sugaring without the risk of causing irritation and trauma. Ex. 2, Hines Depo. 180:11-15.

34. There is no risk of burning. Ex. 6, Board § 60-230(b)(6) Depo. 112:5—113:2; Ex. 2, Hines Depo. 184:13-16; Ex. 7, Patel Dec. 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.").

35. There is no risk of abrasions. Ex. 7, Patel Dec. at 11.

36. There is nothing inherently dangerous about sugaring. Ex. 7, Patel Dec. at 7, 9-13.

37. Sugaring is safe. Ex. 7, Patel Dec. at 7, 9-13; Ex. 3, Patel Depo. 77:12-22; 93:8-13; 118:3-23; *see also* Ex. 8, Alexandria Professional, Hidden Dangers of Waxing; Ex. 9, Alexandria Professional, Key Differences Between Waxing and Sugaring.

38. Sugaring doesn't require extensive schooling, coursework, or instruction to be able to perform it safely or competently. Ex. 7, Patel Dec. at 11-13.

39. Traditionally, sugaring was taught at home, with mothers teaching the technique to daughters. Ex. 7, Patel Dec. at 12; Ex. 3, Patel Depo. 8:12—9:6 (Dr. Patel learned sugaring as a child from her mother).

40. Sugarers do not need extensive schooling, coursework, or instruction to learn basic hygiene or know how to wash their hands. Ex. 7, Patel Dec. at 11-13.

41. 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. 2, Hines Depo. 213:6—214:115; 215:13-21.

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

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

44. Plaintiff's proffered expert, Dr. Seema Patel, is certified by the American Board of Family Practice. Ex. 7, Patel Dec. at 24.

45. For the past two and a half years, Dr. Patel has owned her own private medical practice. Ex. 7, Patel Dec. at 4.

46. 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. 7, Patel Dec. at 4.

47. 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. 7, Patel Dec. at 4.

48. 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. 3, Patel Depo. 17:5-6.

49. "There is no case study that has ever reported a viral pathogen being spread with sugaring." Ex. 3, Patel Depo. 57:9-13.

50. There is no risk of blood exposure from sugaring. Ex. 3, Patel Depo. 17:16-25.

51. The sugaring course cost $19.99. Ex. 5, Green Dec. ¶ 21.

52. The sugaring course included one hour of instruction. Ex. 5, Green Dec. ¶ 22.

53. 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. 5, Green Dec. ¶ 23.

54. 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. 5, Green Dec. ¶ 25.

55. When finished, the used sugaring paste and gloves are thrown away, and the work area will be sanitized. Ex. 5, Green Dec. ¶ 30.

56. 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. 10, KBOC Blood Exposure Procedures; Ex. 11, KBOC Blood Exposure Procedure Tips.

57. 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. 5, Green Dec. ¶ 53.

58. 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. 5, 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.").

59. 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. 2, Hines Depo. 213:6—214:115; 215:13-21.

60. 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. 2. Hines Depo. 133:17—134:6; 134:22—135:3; 135:19—136:7; 137:3-18; Ex. 13, Veto Statement.

61. 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.

62. 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.

63. 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.

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

65. 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.

66. 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. 5, Green Dec. ¶ 53.

67. Defendants' proffered expert and member of the Board, Ms. Hines, doubts that all cosmetology instructors know how to practice sugaring. *JSOF* xcv; Ex. 2, Hines Dep. 218:3-7 ("the instructors probably don't know how to do it.").

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

69. 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. 5, Green Dec. ¶ 58.

70. 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. 2, Hines Dep. 218:3-7.

71. 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. 2, Hines Dep. 220:24—221:20.

72. 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. 23, Ergometrics Dec. at ¶ 5.

73. 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. 27, Ergometrics Sugaring Questions – Under Seal.

74. Defendants' proffered expert and Board member, Ms. Hines, testified that publications from Alexandria Professional are reliable sources for sugaring information. Ex. 2, Hines Depo. 44:24—45:17.

75. 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. 2, Hines Depo. 42:16-24; 234:4-22; Stip. Ex. 9.

76. 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. 2, Hines Depo. 218:13-24.

77. 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. 2, Hines Depo. 213:6—214:115; 215:13-21; Ex. 18, Braiding Pamphlet; Ex. 19, Threading Pamphlet.

78. 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. 2, Hines Dep. 117:21—118:15; Ex. 29, Skin Games Article.

79. 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. 28, Occupational Licensing: A Framework for Policymakers, The White House, at 12; *see also id*. at 60.

80. "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. 28, Occupational Licensing: A Framework for Policymakers, The White House, at 12.

81. "[T]here is compelling evidence that licensing raises prices for consumers." Ex. 28, Occupational Licensing: A Framework for Policymakers, The White House, at 14.

82. "[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. 28, Occupational Licensing: A Framework for Policymakers, The White House, at 14.

83. "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. 28, Occupational Licensing: A Framework for Policymakers, The White House, at 14.

84. 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. 2, Hines Depo. 101:14-25; 102:8-20; Ex. 20, Hines Social Media Video Feb. 2024 10:40-11:08.

85. Defendants' proffered expert and Board member, Ms. Hines, views deregulation as an existential threat to the industry. Ex. 2, Hines Depo. 121:6-8.

86. Defendants' proffered expert and Board member, Ms. Hines, views this lawsuit as an existential threat to the industry. Ex. 2, Hines Depo. 121:9-11.

87. Defendants' proffered expert and Board member, Ms. Hines, believes that SB 434 was a "war on women," Ex. 2, 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. 2, Hines Depo. 81:13—82:16; Ex. 21, Hines Social Media Video March 2024 pt 1 14:09-15:04.

88. Defendants' proffered expert and Board member, Ms. Hines, views deregulation as "coming for" practitioners. Ex. 2, Hines Depo. 99:4-20.

89. 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. 2, Hines Depo. 143:5-24.

90. 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. 6, Board § 60-230(b)(6) Depo. 38:8-15.

91. 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. 16, Defendants' Responses to Plaintiff's First Set of Interrogatories, Interrogatory 9.

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

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

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

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

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

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

98. 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. 6, Board § 60-230(b)(6) Depo. 129:5-12.

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

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

101. 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. 6, Board § 60-230(b)(6) Depo. 146:19-23.

102. 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. 6, Board § 60-230(b)(6) Depo. 146:24—147:10.

103. 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. 6, Board § 60-230(b)(6) Depo. 147:21—148:9.

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

105. 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. 16, Defendants' Responses to Plaintiff's First Set of Interrogatories, Interrogatory 18.

106. 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.

107. Apart from Ms. Hines, the Board members did not know what sugaring was when the suit was filed. Ex. 2, Hines Depo. 224:11—225:4.

108. Ms. Green has reviewed the pamphlet on basic sanitation, infection control, and blood spill procedures used for hair braiders and threaders and would follow those procedures. Ex. 4, Green Sup. Dec. ¶ 2.

109. Ms. Green has two children, age three and a half and one and a half. Ex. 4, Green Sup. Dec. ¶ 3.

Argument

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

This case is about whether the occupational licensing requirements for cosmetologists and estheticians, when applied to Ms. Green—who only wants to perform sugaring—violate Section 1 of the Kansas Constitution's Bill of Rights. It is *not* about whether the government has the power to regulate (it does), or even whether it can impose a licensing requirement for certain occupations (it can). Although the government has the *power* to regulate, it's not an unlimited one, and it cannot be exercised in a manner that violates the Kansas Constitution. These ideas are neither new nor unique. Kansas caselaw is replete with instances where courts have properly declared laws unconstitutional. *E.g.,* Pl.'s M.S.J. Mem. at 51-53.[1]

Throughout its brief though, the government mischaracterizes Ms. Green's positions and attacks argument she does not make. This case is *not* about the right to work in a "totally unregulated profession," or the "fundamental right to offer sugaring without a license." Govt's M.S.J. Mem. at 17, 15. It's *not* that Ms. Green "does not want to get a license," or as the government patronizingly suggests, that "[s]he simply does not want to spend the time and money that it would take to obtain the requisite education and training for a license." Govt's M.S.J. Mem. at 1, 17. The government says these things because it can't defend the regime based on the facts or caselaw.[2]

Ms. Green has never suggested she doesn't want a license. Instead, she's arguing—with ample facts and caselaw—that the requirements to obtain a cosmetology or esthetician license so she can perform sugaring, and only sugaring, are oppressively unconstitutional when applied to

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[1] *See also*, Randy E. Barnett & Evan D. Bernick, *The Original Meaning of the 14th Amendment:" Its Letter & Spirit*, 33 (2021) ("The American conception of the police power is not unlimited; if it were, it would be arbitrary power.").

[2] These were the same arguments raised, rejected, *and* called a "misinterpret[ation]" of the plaintiffs' claims in a case that also challenged the constitutionality of a beauty licensing regime. *Cornwell v. Hamilton,* 80 F. Supp. 2d 1101, 1118 (S.D. Cal. 1999).

her. Whether they're declared unconstitutional under strict scrutiny, intermediate scrutiny, or rational basis review doesn't entirely matter—so long as they're declared unconstitutional.

But as explained previously, because the right to earn an honest living, free from unreasonable government restrictions, is a fundamental and inalienable natural right, this Court should apply strict scrutiny, declare the requirements unconstitutional, reject the government's motion for summary judgment, and grant Ms. Green's instead. *See* Pl.'s M.S.J. Mem. at 40-49 (strict scrutiny analysis). Alternatively, this Court should do the same under intermediate scrutiny. *See* Pl.'s M.S.J. Mem. at 49-51 (intermediate scrutiny analysis).

Ultimately though, this Court doesn't need to engage in a lengthy historical analysis to declare *this* occupational licensing unconstitutional. That's because it's *so* bad, it flunks even rational basis review.

Indeed, the government is flat out wrong when it tells this Court that "ruling in [Ms. Green's] favor requires a completely new constitutional interpretation." Govt's M.S.J. Mem. at 2. 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. *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);[3] *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

[3] 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.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.

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

Rather than directly addressing one of the most impactful cases in Kansas's history, *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 622-23 (2019) (*Hodes I*), the government all but ignores it—except to mischaracterize it as "protect[ing] natural rights rooted in Kansas history and tradition." Govt's M.S.J. Mem. at 16. As shown next, that's *not* the standard. And the government is also wrong when it suggests the right to earn an honest living free from unreasonable restrictions is a "novel constitutional right." Govt's M.S.J. Mem. at 1 (cleaned up). The right has been recognized for more than 800 years.

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 I,* 309 Kan. at 622-23. 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).[4] "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).[5] 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).

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[4] *See also*, 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, 393 (2021) (natural rights exist "independent of the government").

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

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[.]" Lemke & Macdonald, *supra* at 399. 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 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.[6] 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).[7] Jefferson also wrote that "every one has a *natural right* to chuse [sic] that which he thinks most likely to give him comfortable subsistence." Thomas Jefferson, *Thoughts on Lotteries*[8] (emphasis added).[9] James Madison, too, wrote that when government imposes "arbitrary restrictions, exemptions, and monopolies"—that includes

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

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

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

[9] 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.

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).[10]

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 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).

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

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).[11]

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 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.

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

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."); 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); T. Dwight Thacher, *Oration*, Western Home Journal (Jul. 14, 1859) (the right to life, liberty, and the pursuit of happiness are "the foundation stones upon which the whole structure of Liberty rests.").

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.*[12]

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 & 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").[13]

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[12] 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).

[13] *See also*, *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.*

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. *ASOF* 1-9; *ASOF* 58 ("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 is "necessary," that it's not underinclusive, and that it's not overinclusive. *Hodes II,* 318 Kan. at 953-55 (italics in original).

Sherwood, 308 Ga. App. 185, 186 (2011) (observing that the right to start one's own business is part of the "American Dream.")

[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.").

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, which the government can't satisfy.

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. 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

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

[16] Available at https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=3892&context=uclrev

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] *ASOF* 79; Ex. 28, 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. *JSOF* xcccvii.[19] She also sits on the Kansas Board of Cosmetology and is a named defendant in this case. *JSOF* i. The government admits Ms. Hines "represent[s] the Cosmetology industry." Govt's Additional Statement of Fact 3.

According to Ms. Hines, the Board of Cosmetology exists to "represent the practitioners, represent the industry," *JSOF* cxlix, the licensing requirement for sugarers "insulates licensed beauty industry employees from minimum wage jobs offered to unlicensed workers," *JSOF* cxlvii-cxlviii, Ex. 29, Skin Games Article, and for "the licensed entrepereneurs (sic), regulation shields them from the unlicensed offering cheap services that undercut a small business's bottom line for

[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 already filed a motion to strike or exclude Ms. Hines as an expert witness.

survival," *JSOF* cxlvii-cxlviii, Ex. 29, Skin Games Article; *ASOF* 85-86 (Ms. Hines viewing deregulation and this lawsuit as an existential threat); *ASOF* 88 (Ms. Hines considering deregulation as "coming for" licensed practitioners); *ASOF* 84 (Ms. Hines comparing unlicensed sugarers earning a minimum wage to the slave trade); *see also JSOF* cxlvi; *ASOF* 79-83, 87, 89. 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 ample factual record, supported by equally ample caselaw in which cosmetology licensing regimes have been declared unconstitutional—*Cornwell*, *Clayton*, *Waugh*, *Brantley*, *Thiam*, and *Patel*—demonstrate that requiring Ms. Green to obtain a cosmetology or esthetician license, just so she can perform sugaring for compensation, fails even rational basis review.

1. The rational basis test demands actual rationality.

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 factual record, 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, and because the Kansas Constitution *separately* and *independently* protects the right to earn an honest living—even *if* rational basis applies—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 governments than the federal version, the federal version is still not a rubber stamp. *See, e.g.*, *Cornwell*, 80 F. Supp. 2d 1101, 1106 ("while a perfect fit is not required" under federal rational basis, "the fit must be reasonable. There must be some congruity between the means employed and the stated end or the test would be a nullity.").

What's more, the federal version cited by the government isn't even the correct one. Govt's M.S.J. Mem. at 21 ("A law will be upheld if any conceivable rational basis supports it") (cleaned up) (relying on *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307 (1993)). While it's true that *Beach Commc'ns, Inc.*, 508 U.S. at 318, said facts are irrelevant in rational basis cases, the Court repudiated that position three years later in *Romer v. Evans*, 517 U.S. 620 (1996), and said facts *do* matter: "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).[20]

The federal rational basis test is, moreover, 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)). It's "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

[20] For the same reasons, the government's references to *Chiles v. State*, 254 Kan. 888 (1994), *State v. Mueller*, 271 Kan. 897 (2001) and *Blue v. McBride*, 252 Kan. 894 (1993) are misplaced. Govt's M.S.J. Mem. at 16, 18, 21. All three cases were decided under federal law, not state law; and because they were decided pre-*Hodes*, their analysis is no longer viable when deciding claims raised under Section 1. What's more, the outdated "all negative conceivable basis" test is illogical because it's impossible to prove a negative. *E.g., Am. Fed'n of State, Cnty. & Mun. Emps. Council 79 v. Scott*, 717 F.3d 851, 882 (11th Cir. 2013); *Piedmont & Arlington Life-Ins. Co. v. Ewing*, 92 U.S. 377, 378 (1875); *Lupyan v. Corinthian Cs., Inc.*, 761 F.3d 314, 322 (3d Cir. 2014); Timothy Sandefur, *The Permission Society* 8-12 (2016).

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,[21] and in 2019, it even struck down an alcohol-related 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.[22] 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. 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. Kansas's sugaring regime flunks rational basis review.

The government offers four justifications for requiring Ms. Green to spend tens of thousands of dollars and almost a year of her life learning irrelevant things and taking irrelevant examinations for something she already knows how to do, just so she could use a completely safe, all-natural paste to gently and safely remove unwanted hair: protecting public health, the

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[21] *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, 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).

[22] 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.

government's own convenience, making it easier for the government to oversee cosmetologists and estheticians, and upholding the veto powers of Governor Laura Kelly. Govt's M.S.J. Memo at 21, 23, 23, 24-26.

None of the government's interests are even remotely supported by the factual record. What's more, the evidence demonstrates that sugaring is already a safe practice, and the requirements for obtaining a cosmetology or esthetician license do nothing to make the practice of sugaring any safer than it already is. But even if there were legitimate health concerns about the practice of sugaring (the evidence demonstrates there aren't any), the government's regulation of sugaring is grossly out of proportion to those concerns.

Just like in *Cornwell*, *Clayton*, *Waugh*, *Brantley*, *Thiam*, and *Patel*, Kansas's requirements for obtaining a cosmetology or esthetician license, just so Ms. Green can perform sugaring for compensation, fails even rational basis review.

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 tuition of schooling and the cost of lost time and wages, 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). Just 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.

The following facts in *this* case demonstrate that requiring a cosmetology or esthetician license just so Ms. Green can perform sugaring for compensation is unconstitutional, even under rational basis review. *Raffensperger*, 316 Ga. at 396 ("talismanic recitation" of public health is not enough to satisfy rational basis review); *see Strehlow*, 232 Kan. at 600 (unconstitutionally irrational to regulate something that is already safe).

a. Sugaring is non-invasive, sanitary, and safe.

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. *JSOF* ii-iii; *ASOF* 12.a-b, 16.

Sugaring is non-invasive, sanitary, and safe. *JSOF* ii, iii, v; *ASOF* 10, 12.f-l, 12.q, 17-19, 22-23, 26-27, 31, 33, 35-37. Application of the sugaring paste doesn't involve the use of heat, chemicals, or sharp objects. *JSOF* ii-iii, vii-viii; Stip. Ex. 5 at 17-20. Instead, the paste is applied and removed by hand. *JSOF* ii-iii, vii-viii; *ASOF* 10; Stip. Ex. 5 at 17-20. The hair adheres to the paste and is removed with the paste. *JSOF* iii; *ASOF* 31. The process is safe, gentle, and does not cause trauma to the skin. *JSOF* v; *ASOF* 10, 12.f-l, 12.q, 17-19, 22-23, 26, 33, 35-37.

Because the sugaring paste is "natural[ly] antiseptic," *ASOF* 14-15, 29, and "hygienic," *ASOF* 16, the same area of skin "can be treated more than once without the risk of irritation or trauma." *ASOF* 26.[23]

Sugaring does not cause "irritation or damage to the follicle or surrounding skin." *ASOF* 32. It does not distort hair follicles or break the hair either. *ASOF* 28 (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. *ASOF* 12.h.-k., 25.

Sugaring is safe, gentle, and does not cause trauma to the skin. *JSOF* v; *ASOF* 10, 12.f-l, 12.q, 17-19, 22-23, 26, 33, 35-37. It's a safe and effective alternative to waxing and for those who react to "waxing with bumps and redness." *ASOF* 18.[24] It doesn't tear the skin or cause abrasions.

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[23] *See also*, *ASOF* 26 (sugaring paste's antiseptic properties inhibit bacterial growth); *ASOF* 12.c. (sugaring paste is hypoallergenic); *ASOF* 16 (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").

[24] *See also*, *ASOF* 17 (sugaring is "especially appropriate for more sensitive skin types"); *ASOF* 21 ("Many clients who have ingrown hairs from being waxed find that the problem disappears if they switch to the sugar

ASOF 12.q, 22-23, 25-26, 31, 35. It poses no risk of burns. *ASOF* 12.e., 22 ("no risk of burning"); *ASOF* 94 (Board of Cosmetology admitting that sugaring doesn't pose a risk of burns).[25] It doesn't present a risk of blood exposure. *ASOF* 50.[26] Besides, Ms. Green will use gloves when sugaring and will follow the same blood exposure and infection control recommendations that braiders and threaders follow—two beauty practices that don't require licensure—which Ms. Hines says is sufficient to protect the public. *JSOF* xxviii, xxx, lviii, cxlv; *ASOF* 56, 59, 77, 108.

Dr. Seema Patel, a certified family physician with a master's degree in public health, 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." *ASOF* 48. Dr. Patel also testified "[t]here is no case study that has ever reported a viral pathogen being spread with sugaring." *ASOF* 49.

Finally, Dr. Patel 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, and managed a clinic for 10 years that offered a variety of hair removal services. *ASOF* 36-40, 44-50.

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method"); *ASOF* 19 (sugaring "can be used for some who have certain wax contraindications"); *see also*, *JSOF* v; *ASOF* 12.d.-q., 20, 22, 43.

[25] *See also*, *ASOF* 34 ("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.").

[26] *See also*, *ASOF* 22 ("no risk of … tearing the skin"); *ASOF* 31 ("Sugar paste adheres only to the hair not the skin, and is easily removed with water"); *ASOF* 33 (the same area can be treated more than once without risk of irritation or trauma).

b. Even though sugaring is safe, the government requires completion of 1,500 or 1,000 hours of instruction in a prohibitively expensive, and completely irrelevant, cosmetology or esthetician school.

Even though sugaring is safe, Ms. Green cannot legally perform sugaring for compensation unless she completes either 1,500 or 1,000 hours of instruction in a cosmetology or esthetician school. *JSOF* lxi. By comparison, becoming an E.M.T. takes about 93.33 clock-hours. *ASOF* 62.

The only beauty school in Hays is a cosmetology program. *JSOF* xcviii. It costs $18,900 and takes about a year to complete. *JSOF* lxxxiv, xlviii. It doesn't provide any hands-on sugaring training. *JSOF* xci. The closest esthetician school is about two-and-a-half hours from Hays, each way. *JSOF* xcix. It costs $18,300.84 and takes twenty-nine weeks to complete. *JSOF* c, civ. It doesn't require students to perform hands-on sugaring to graduate. *JSOF* cvi. The Kansas Board of Cosmetology doesn't require schools to offer any hands-on sugaring training. *JSOF* lxxii, clxxvi. For Ms. Green, either school is prohibitively expensive. JSOF lxxxiv-lxxxvii, xcix-civ *ASOF* 5-9, 57, 66, 68-69.

The government admits that less than 1% of the 1,500-hour cosmetology curriculum is specific to sugaring, *JSOF* lxiii-lxiv; and that 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. ***J****SOF* lxvi; *see also*, *JSOF* lxiv-lxv, lxvii-lxxi; Stip. Ex. 1 at 22; Stip. Ex. 2 at 8. Likewise, the government admits that less than 1% of the 1,000-hour esthetician curriculum is specific to sugaring, *JSOF* lxxv-lxxvi; *see also ASOF* 65; and that *at least* 550 of the 1,000 required esthetician curriculum—or 55% of the required curriculum—is unrelated to the practice of sugaring. *JSOF* lxxviii; *see also*, *JSOF* lxxv-lxxvii, lxxix-lxxxi, cv; *ASOF* 65. In practice, schools devote even less time to sugaring than the minuscule percentages suggest, about ten to twenty minutes.[27] *JSOF* lxiii, lxxv, lxxxix, cv.

[27] 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. *JSOF* xc; *ASOF* 64; Ex. 22, Hays Academy Sugaring Slide – Under Seal.

The textbooks approved by the government devote barely any space to sugaring. *JSOF* lxviii-lxxi; *ASOF* 63-64. When they do discuss sugaring, they endorse it, saying 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 are reliable sources of information, she says. *ASOF* 74-75; Stip. Ex. 8-9.

Rather than learning about sugaring, or developing hands-on sugaring skills, sugarers are spending virtually all of their time (and money) on things like cutting hair, coloring hair, giving manicures, writing resumes, and so on, *JSOF* lxiv-lxvii, lxix, lxxi, lxxvi-lxxi—things that Ms. Green *will never* do, *ASOF* ¶ 9.

Ms. Green has already received *at least three times more* sugaring-specific instruction than the cosmetology or esthetician school offers. *JSOF* xxiii; *ASOF* 51-53. The cost to attend the class was about $20. *ASOF* 51.

It's not surprising that sugaring isn't being taught. The government's proffered expert witness, who also sits on the Board of Cosmetology, testified it's doubtful that cosmetology and esthetics instructors even know how to perform sugaring. *ASOF* 67, 70. Becoming a licensed instructor doesn't require knowledge or competency in sugaring either. *JSOF* cx, cxi, cxii, cxiii, cxiv; cxxxii; *ASOF* 72; K.S.A. § 65-1903(b), (f).

c. The licensing examinations do not test sugaring competency and are irrelevant to the practice of sugaring.

After graduating from cosmetology school, Ms. Green would be forced to take two cosmetology examinations that *do not ask any* questions specific to sugaring. *JSOF* cxvi, cxviii, cxxiii-cxxxii; Ex. 24, Cosmetology Candidate Information Bulletin; Ex. 25, Esthetician Candidate Information Bulletin; Ex. 26, Instructor Candidate Information Bulletin; Ex. 27, Ergometrics Sugaring Questions – Under Seal. As for the two esthetician exams, the practical exam does not ask any sugaring-specific questions. *JSOF* cxi, cxix. The theory exam asks 100 scored multiple-choice questions. *JSOF* cxix. 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. *JSOF* cxxiii-xcccii; Ex. 27, Ergometrics Sugaring Questions – Under Seal. JSOF cxxiii-cxxxii; Ex. 24, Cosmetology Candidate Information Bulletin; Ex. 25, Esthetician Candidate Information Bulletin; Ex. 26, Instructor Candidate Information Bulletin; Ex. 27, Ergometrics Sugaring Questions – Under Seal.

Because the cosmetology and esthetician exams are computer-based, aspiring sugarers are not tested on their ability to perform sugaring safely, effectively, or competently. *JSOF* cxvi-cxvii.

d. There is no evidence that the regime protects public health. Instead, the evidence demonstrates that the regime exists to protect licensees from competition.

There is no evidence—*zero*—that public health is threatened by the practice of sugaring, regulated or not. To start with, the government admits it has *no evidence* that the regime even minimally advances public health. *JSOF* xi, xii, clv-clxi, clxviii-clxx clxxiv-clxxv; *ASOF* 90-93, 95-97, 101-102, 104-106. The Board of Cosmetology, moreover, 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. *JSOF* xi-xii; *see ASOF* 105-106. If sugaring were dangerous—as the government tries to suggest (without any evidence)—the Board would make sure that sugaring is taught and tested, regardless of the "hair removal market." Govt's M.S.J. Mem. at 23.[28]

The evidence also demonstrates that the licensing regime does *nothing* to make sugaring any safer than it already is. According to both the government's own purported expert witness (who is also a member of the Board of Cosmetolgy), *and* the owner of the cosmetology school Ms. Green would be required to attend, completing the government-approved cosmetology program and passing the government-approved licensing exams would not make Ms. Green, or anyone else

[28] The government isn't correct when it suggests there's a lack of "demand among the public" for sugaring. Govt's M.S.J. Mem. at 23. The record establishes precisely the opposite, that there is a demand for sugaring services, but the government's oppressive and protectionist requirements are stifling new entrants into the market. *See* Section I.B. above.

for that matter, any more capable of performing sugaring than *before getting licensed. ASOF* 38-40, 70-71; *JSOF* xlvii, xci-xcii, xcvi-xcvii, cxliii-cxliv.

The government next suggests that requiring Ms. Green to complete 1,500 or 1,000 of irrelevant and prohibitively expensive coursework, and requiring her to pass two irrelevant licensing exams, is rational because "licensees are required to work in a licensed establishment … subject to inspections." Govt's M.S.J. Memo at 22. This case isn't challenging the government's ability to conduct inspections. There is no evidence that inspections improve public health outcomes either. But even if inspections did improve public health outcomes, that would be an insufficient basis to require 1,500 or 1,000 hours of schooling, at a cost of tens of thousands of dollars in both tuition and in lost wages. Put differently, if the government wants to conduct inspections, it could nonetheless do so without the 1,500 or 1,000 hours of prohibitively expensive schooling and irrelevant licensing exams.

The extensive and undisputed factual record demonstrates that sugaring is safe. All of the textbooks endorsed by the government establish that sugaring is safe. The sugaring-specific textbooks used by Ms. Hines to learn sugaring establish that sugaring is safe. A certified family physician who also holds a degree in public health testified that sugaring is safe.

Instead of protecting public health, the record demonstrates the licensing regime protects incumbent practitioners from competition and increases the prices they can charge the public. *JSOF* cxxxvii-cxlix, *ASOF* 74-75, 77-89; *see also* Section I.B above (incorporated here fully).

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

e. Even if there were legitimate concerns about the practice of sugaring (the evidence demonstrates there aren't any), the government's regulation of sugaring is grossly out of proportion to those concerns.

As shown above, there are no legitimate public health concerns with sugaring. But even if there were, requiring Ms. Green to spend tens of thousands of dollars and almost a year of her life

learning irrelevant things and taking irrelevant examinations for something she has *already* learned about, and that she *already* knows how to do, just so she could use a completely safe, all-natural paste to gently and safely remove unwanted hair, is grossly out of proportion to those concerns—and therefore, unconstitutional.

The government suggests that requiring Ms. Green to complete 1,500 or 1,000 of irrelevant and prohibitively expensive coursework, and requiring her to pass two irrelevant licensing exams, is rational because licensees need training in "sanitation, first aid, and proper handling of heated substances." Govt's M.S.J. Memo at 21. The record demonstrates there are no sugaring-specific sanitation or first aid requirements, and that sugaring can't cause burns. But in any event, Dr. Seema Patel, the Board of Cosmetology itself, and the government's purported expert witness *all* testified there are *far* less restrictive alternatives to satisfy the licensing regime's ostensible public health purpose than what is currently required. *ASOF* 101, 103-104.

Instead of 1,500 or 1,000 hours of irrelevant coursework, and irrelevant examinations, Dr. Patel testified that a *two-hour* sugaring-specific course of instruction would be enough to protect the public. *ASOF* 42; *JSOF* cli.[29]

For her part, 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, *ASOF* 41, 59, 77; *JSOF* cxlv—two beauty practices that aren't required to be licensed, *JSOF* li-lii—which consists of complying with a one-page informational pamphlet prepared by the Department of Health, *JSOF* liii-liv.

And the Board of Cosmetology agrees with both Dr. Patel and Ms. Hines that less restrictive alternatives exist. *ASOF* 103-104.

Scholars and academics also recognize there are a number of less restrictive alternatives to the full-blown licensing requirements here. *See*, Knepper, *supra* at 50-51 (detailing the less

[29] It has been recognized, for more than 400 years, that where extensive training is unnecessary to learn a skill, such a requirement is patently unreasonable. *E.g., Allen v. Tooley*, 80 Eng. Rep. 1055, 1057 (K.B. 1614).

burdensome alternatives to licensing); Sweetland, *supra* at 16-17 (same); Ex. 28, The White House, *supra* at 42-25 (same).

The government next insists that requiring Ms. Green to complete 1,500 or 1,000 of irrelevant and prohibitively expensive coursework, and requiring her to pass two irrelevant licensing exams, is "rational" because "facilitate[ing] uniform standards for cosmetologists" advances the government's own "administrative efficiency." Govt's M.S.J. Memo at 23. The government never raised "administrative efficiency" as one of its interests. *See*, Ex. 16, Def. Inter. 15, 16, 13. The Plaintiff objects and this Court shouldn't consider it. But in any event, there is no evidence that declaring this regime unconstitutional, *as applied to Ms. Green*, would make the government less administratively efficient. Even if Ms. Green prevails, cosmetologists and estheticians will still have uniform standards for *their* practices, even *if* they "cohere together," as the government suggests. Govt's M.S.J. Memo at 23.[30] And besides, braiders and threaders are already exempted from the licensing regime, which has not hampered the Board's administrative efficiency. There is no logical reason—or factual basis—to think less regulation makes the government's oversight harder.[31] Finally, the government's own convenience is an insufficient basis to require 1,500 or 1,000 hours of schooling, at a cost of tens of thousands of dollars in both tuition and in lost wages, for something that doesn't improve public health outcomes. Indeed, "the Constitution recognizes higher values than speed and efficiency." *Vlandis v. Kline*, 412 U.S. 441, 451 (1973) (cleaned up); *Am. Fed'n*, 717 F.3d at 882 ("convenience cannot override the commands of the Constitution); *Plyler v. Doe*, 457 U.S. 202, 227 (1982).

[30] The government's "cohere together" argument helps illustrate that the government doesn't fully appreciate what this case is about. Ms. Green is not trying to become a cosmetologist or esthetician—she is trying to become a sugarer. And as she has explained from the very beginning of this case, applying the cosmetology and esthetician requirements to her is oppressive, irrational, and ultimately, unconstitutional.

[31] The government is also mistaken when it says "the Legislature made a rational choice to limit the number of specific licenses" to braiders and threaders. *See* Govt's M.S.J. Memo at 23. The Legislature did create a sugaring-specific regime, but Governor Kelly vetoed it.

The government next argues that requiring the completion of irrelevant and prohibitively expensive coursework and irrelevant examinations is rational because it "facilitate[s] disciplinary oversight" of licensed cosmetologists and estheticians. Govt's M.S.J. Mem. at 23. This purported government interest wasn't disclosed either. *See*, Ex. 16, Def. Inter. 15, 16, 13. The Plaintiff objects and this Court shouldn't consider it. But in any event, there is no evidence that declaring this regime unconstitutional, *as applied to Ms. Green*, would make the government less able to discipline licensed cosmetologists or estheticians. Rather, the opposite is true. Even if Ms. Green prevails, the Board of Cosmetology will *still* be able to discipline cosmetologists and estheticians. And besides, the government hasn't explained how irrelevant coursework and irrelevant licensing exams facilitate disciplinary oversight either.

The government next argues the regime "help[s] regulate the moral character of the profession." Govt's M.S.J. Mem. at 23. Although the government did mention this interest, it has no factual basis for it. The Board of Cosmetology admits it has no idea whether aspiring or currently licensed cosmetologists or estheticians are criminals, or drug addicts, or even sex offenders, unless they self-report. *JSOF* cxxxv-cxxxvi, clxiii, clxv-clxvii *ASOF* 99-100. Nor does the Board have any evidence that the irrelevant schooling and irrelevant testing requirements will improve good moral character. *JSOF* cxxxv-cxxxvi, clxv, clxviii-clxx; *ASOF* 100.

Finally, the government suggests Ms. Green shouldn't be allowed to earn an honest living, free from unreasonable restrictions, because it would undermine the veto powers of Governor Laura Kelly. Govt's M.S.J. Mem. at 24-26. The argument is not a serious one. Veto messages don't immunize laws, nobody is challenging Governor Kelly's ability to veto legislation, and Ms. Green is not attempting to overturn Governor Kelly's veto either. The idea that a veto message can turn an unconstitutional occupational licensing regime into one that comports with the Kansas Constitution is nonsensical, unsupportable, and if adopted, would expand the powers of the governor to unimaginable levels.

Furthermore, the government's argument that "[w]hen Plaintiff argues that the law which requires a license for sugaring is irrational, she essentially asks this Court to declare that the

Governor's exercise of her constitutional veto authority was irrational," completely ignores the timeline of events. Govt's M.S.J. Memo at 26. Ms. Green filed this suit long before S.B. 434 (2024) was even introduced, to say nothing of when Governor Kelly vetoed the bill.

The government's suggestion, moreover, that Governor Kelly's veto message "announc[ed] a rational basis" for the regime is both circular and irrational. Board Member Hines lobbied Governor Kelly to veto S.B. 434 (2024), which the Governor did, explaining that she was "relying on the expertise of the Board of Cosmetology." *See ASOF* 60. This idea, that the very entity who convinced the Governor to veto S.B. 434 (2024) is now insisting the veto is an independent basis in which to uphold the regime, makes a mockery of the Kansas Constitution. It's also completely unsupported by the factual record. The "expertise" by the Board of Cosmetology? When it comes to sugaring, it's virtually *nonexistent*. *ASOF* 107; Ex. 2, Hines Depo. 224:11—225:4 (Board members didn't know what sugaring was at the time of the lawsuit); *ASOF* 90 (Board doesn't know how it's curriculum was approved); *JSOF* clv-clix (Board doesn't know whether its curricula are evidence-based); *JSOF* clvi-clxi (Board doesn't know whether its curricula or licensing exams are effective); *ASOF* 93 (Board doesn't know whether the regime increases infection control); *ASOF* 95-97 (Board doesn't know whether sugaring presents a risk of infection, abrasion, or contamination of bodily fluids); *ASOF* 102 (Board doesn't know whether licensees are capable of safely performing sugaring); *ASOF* 104 (Board doesn't know how many hours of training would be required to safely perform sugaring); *JSOF* clxxiv (Board doesn't know how many schools teach sugaring); *JSOF* clxxv (Board doesn't know how much time schools spend on sugaring).

Even if the government's interests are accepted as theoretically valid (the evidence demonstrates otherwise), the application of the cosmetology or esthetician requirements to Ms. Green, for something that is already safe, *JSOF* ii-iii, v; *ASOF* 10, 12.f-l, 12.q, 17-19, 22-23, 26, 33, 35-37, that doesn't require any formal schooling to learn, *ASOF* 36-40, that has been around for thousands of years, *JSOF* ii, and that Ms. Green already knows how to do, *JSOF* xvi, xxiii; *ASOF* 51-53—and that she could legally do for free, *JSOF* xlix-lix; *ASOF* 59-60,—just so she can be paid

to use a completely safe, all-natural paste to remove unwanted hair from willing customers, is grossly out of proportion to those interests. And therefore, the regime is unconstitutionally irrational, oppressive, and unreasonable. *See, e.g.*, *Ernest*, 237 Kan. at 130 ("the legislature cannot use a cannon to kill a cockroach."); *Bryant*, 226 Kan. at 391 (a "legislative body cannot, under guise of the police power, enact unequal, unreasonable, and oppressive legislation[.]"); *Strehlow*, 232 Kan. at 601-602 (law declared unconstitutional because the facts showed the government's regulations were "totally ridiculous and b[ore] absolutely no reasonable relationship to the objectives set forth by the legislature").

3. The extensive factual record and ample caselaw demonstrate Kansas's sugaring regime—like other beauty regimes—is unconstitutional.

The extensive factual record above, like in the six beauty licensing cases above, establishes 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, instead of protecting public health, the regime undermines it. Every single 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 virtually all of their time (and money) on things like cutting hair, coloring hair, giving manicures, and so on, *JSOF* lxiv-lxvii, lxix, lxxi, lxxvi-lxxix—things that Ms. Green will never do, *ASOF* ¶ 9. *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. Or it's like requiring a bus driver to obtain training as an airplane pilot. Though some skills might overlap, it would be

patently arbitrary and irrational to force a bus driver to become proficient at flying airplanes (but not driving a bus). Forcing aspiring sugarers like Ms. Green to sit for the cosmetology exams will do about as much good for public health as forcing her to sit for an architecture exam, given that it would contain the exact same number of questions about sugaring—none.

What's more, Kansas's sugaring regime is even *more* irrational than Texas's unconstitutional threading regime (the case most closely resembling this one). Here, 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 totally unrelated to the practice of sugaring. ***JSOF*** lxvi; *see also*, *JSOF* lxiv-lxv, lxvii, lxix, lxxi; *ASOF* 63-64. By contrast, Texas admitted that 42% of the required 750 hours were irrelevant. *Patel*, 469 S.W.3d at 88-90.[32]

The only cosmetology school in Hays costs $18,900.00; and the closest esthetician school to Ms. Green costs $18,300.84. *JSOF* lxxxiv, c. In Texas, the tuition for cosmetology schools averaged $9,000. *Id.*

	Cosmetology License	Esthetician License	*Patel v. Texas*
Hours Required	1,500 hours	1,000 hours	750 hours
Cost of attendance	$18,900.00	$18,300.84	$9,000 average
Length of the program	About a year	29 weeks	
Hours the government admits are irrelevant	At least 1,215 hours irrelevant (or 81% admittedly irrelevant)	At least 550 hours irrelevant (or 55% admittedly irrelevant)	320 hours (or 42% admittedly irrelevant)
Time spent on sugaring	15 minutes	10-20 minutes	
Percentage specific to sugaring	.013%	.667%	
Exams: Practical	No sugaring-specific questions.	No sugaring-specific questions.	No threading-specific questions.
Exams: Theory	No sugaring-specific questions.	One basic question, on a little more than one-third of the exams.	No threading-specific questions on the written exams

[32] For Kansas's esthetician regime, the government admits that *at least* 55% of the 1,000 hours are unrelated. *JSOF* lxxviii; *see also*, *JSOF* lxxv-lxxxi; *ASOF* 65.

As the table demonstrates, Kansas's sugaring regime therefore requires more irrelevant curriculum hours—1,215—than Texas required for its entire threading regime—750.[33] 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.").

Kansas's sugaring regime is worse than the table suggests though. Ms. Green has *already* received *at least* three times more sugaring-specific instruction than the cosmetology or esthetician school closest to her offers—for about $20—but she still can't legally offer sugaring services. And to put the mandatory 1,500 hours in context, becoming an emergency medical technician takes about 93.33 clock-hours. There is no legitimate reason why Ms. Green—who only wants to perform sugaring—should be required to attend schooling that is at least *16 times longer* than a person who is learning how to save lives.

4. This Court should reject the government's motion for summary judgment and grant Ms. Green's instead.

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*, and *only two hours*, of sugaring-specific instruction will protect the public, *ASOF* 42; *JSOF* cli. *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 enables entrenched insiders to charge more to the public. *JSOF* cxxxvii-cxlix, *ASOF* 74-75, 77-89; *see also* Section I.B above (incorporated here fully). Ms. Green wants to help financially support her growing family by sugaring but can't because established license holders

[33] The government admits that less than 1% of the cosmetology or esthetician curriculum is devoted to the topic of sugaring. *JSOF* lxiv, lxxvi; *see also*, *ASOF* 65.

don't want competition. *see ASOF* 1-9. Such naked protectionism is not a legitimate government interest and is patently unconstitutional. *See Hatesohl*, 308 Kan. at 1024 (Stegall, J., concurring).

The undisputed evidence, moreover, "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); *Dent*, 129 U.S. 121-122; *Hainline v. Bond*, 250 Kan. 217 (1992); *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002); *Cornwell*, 80 F. Supp. 2d 1101, 1106 (explaining "[t]here must be some congruity between the means employed and the stated end").

At bottom, insisting that Ms. Green spend almost $20,000 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.[34] 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.

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

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.

The government's summary judgment memorandum is virtually identical to its motion to dismiss. It hasn't cited any new cases or identified any facts either. Instead, the government yet again claims that Section 18 is "a procedural right," and that it "does not create new substantive rights." Govt's M.S.J. Mem. at 26. This badly confuses Section 18, centuries of history regarding the "due course of law," and Ms. Green's Section 18 claim.

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." Section 18 is Kansas's due process of law clause. *Hodes I*, 309 Kan. at 627 ("The Kansas Constitution does include a due process provision, however: section 18 of the Bill of Rights"); *Creecy v. Kansas Dep't of Revenue*, 310 Kan. 454, 462 (2019). Section 18 entails both "substantive due process, which protects individuals from arbitrary state action, [and] procedural due process, which at its core protects the opportunity to be heard in a meaningful time and manner." *Creecy*, 310 Kan. at 462. The government is wrong to suggest Section 18 only protects procedural rights.

The government's next argument, that Section 18 "does not create new substantive rights" and "cannot be used to create one" is based on three inapplicable cases. Govt's M.S.J. Mem. at 25-26. *None* of the three cases involved due process or violations of constitutional rights by the government. Instead, each case involved a private civil tort action, asserting a novel tort claim, and claimed that Section 18 required the courts to recognize that cause of action. *See Schmeck v. City of Shawnee*, 231 Kan. 588, 594 (1982) (Section 18 did not create a cause of action for a parent's "emotional, physical, or other injuries against one who negligently causes injury to an adult child, when the parent is not present at the scene, is not directly injured, and neither

witnesses nor perceives the occurrence causing injury to the child"); *Noel v. Menninger Found.*, 175 Kan. 751, 763–64 (1954) (holding that charitable immunity from tort suits violated Section 18); *OMI Holdings, Inc. v. Howell*, 864 F. Supp. 1046, 1050 (D. Kan. 1994), aff'd, 107 F.3d 21 (10th Cir. 1997) (Section 18 cannot be used to create "a civil cause of action for embracery"). None of these cases had anything to do with substantive due process or Ms. Green's right to be free from unequal, oppressive, unreasonable, arbitrary, protectionist, and harsh restrictions on her right to earn a living in a lawful profession.

Besides badly misreading three tort cases, the government's contention that Section 18 does not create new substantive rights entirely misses the point. Ms. Green isn't arguing that Section 18 creates a new right to earn a living free from unequal, oppressive, unreasonable, arbitrary, protectionist, and harsh regulations. Ms. Green is arguing that this right predates the Kansas Constitution, has been recognized since at least the 16th century, and that the regime violates the right. Indeed, Section 18 traces its lineage "to English law and history, adopting Sir Edward Coke's interpretation of language in the Magna Carta." Shannon M. Roesler, *The Kansas Remedy by Due Course of Law Provision: Defining A Right to A Remedy*, 47 U. Kan. L. Rev. 655, 656 (1999); *see also* Michael J. DeBoer, *The Right to Remedy by Due Course of Law-A Historical Exploration and an Appeal for Reconsideration*, 6 Faulkner L. Rev. 135, 176-93 (2014).

Magna Carta proclaimed that "[n]o freeman shall be taken or imprisoned or disseised of any freehold, or liberties, or free customs, or outlawed, or banished, or in any other way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land. To no one will we sell, to no one will we deny, or delay right or justice." *Id.;* Thomas R. Phillips, *The Constitutional Right to A Remedy*, 78 N.Y.U. L. Rev. 1309, 1320 (2003). Lord Coke explained that "every subject of this realm, for injury done to him in goods, lands, or person, . . . may take his remedy by the course of the law, and have justice, and right for the injury done to him." *Id.* at 1320–21. Similarly, Blackstone emphasized the government could not infringe upon rights except by the due course of law. 1 William Blackstone, Commentaries *141-42; Phillips, *The Constitutional Right to A Remedy*, 78 N.Y.U. L. Rev. at 1321-22.

English courts recognized that arbitrary and protectionist laws restricting the right to earn a living violated the due course of law beginning in at least the 1600s. *See*, *e.g.*, *Darcy v. Allein*, 77 Eng. Rep. 1260 (1603) (striking down license requirement for producing playing cards); *Allen v. Tooley*, 80 Eng. Rep. 1055, 1055 (K.B. 1614) (striking down apprenticeship requirement for upholsterers); *The Ipswich Tailors' Case*, 77 Eng. Rep. 1218, 1219 (K.B. 1615) (striking down apprenticeship requirement for tailors); *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). Lord Coke explained in his *Institutes of the Laws of England* that such oppressive and protectionist restrictions on the right to earn a living "are against this great charter, because they are against the liberty and freedom of the subjects, and against the law of the land." Edward Coke, *The Second Part of the Institutes of the laws of England* *47 (William S. Hein Co. 1986) (1797) (spelling and capitalization modernized).

The delegates at the Wyandotte Convention chose to codify the promise of Magna Carta, Coke, and Blackstone in Section 18's guarantee of a "remedy by due course of law, and justice administered without delay."

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, when 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. The government may not use a cannon to kill a cockroach, but in this case, there isn't even a cockroach to kill. That's because sugaring is already a safe practice and the licensing regime does absolutely nothing to make it safer than it already is. 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.

Equal protection requires that similarly situated individuals are treated alike. *League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 805 (2024). But 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[.]"). 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. *ASOF* 105-106. The *only* justification the defendants have ever offered for this different treatment is that "the legislature has judged it necessary." *ASOF* 106. But the government's "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 aspiring sugarers as cosmetologists or estheticians either. *Cornwell*, 80 F. Supp. 2d at 1103. As shown repeatedly above, the elaborate and costly requirements Ms. Green must satisfy before becoming a sugarer are wholly arbitrary as applied to her—because those requirements have nothing to do with becoming a sugarer. Put differently, sugaring isn't cosmetology (or esthetics). Cosmetologists and estheticians engage in many beauty practices; sugarers engage in only one.

Similarly, it violates equal protection to treat sugaring as though it were the same thing 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 pamphlet prepared by the Department of Health. *ASOF* 41, 59, 77; *JSOF* li-liv. 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 pamphlet, 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.

Section 20 is a robust Lockean guarantee of unenumerated natural rights. 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,* 318 Kan. at 844 (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. 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.[35]

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

That fear has now become a reality. The government contends that because the Framers at the Wyandotte Convention did not specifically enumerate the right to earn an honest living free from unreasonable, irrational, arbitrary, oppressive, improperly tailored, protectionist, and unequal laws anywhere in the Bill of Rights, then it must not exist; and that because it's not specifically enumerated, Ms. Green "has not shown that the licensing statute and regulations are in excess of the legislative power in violation of section 20." Govt's M.S.J. Mem. at 28. But a right does not need to be enumerated in the Bill of Rights, or as the government suggests, hiding within "the 'penumbra' of any other constitutional provision," to be protected by Section 20. Govt's M.S.J. Mem. at MSJ at 28. Instead, it merely needs to be a natural right that has been retained by the people.

The government next contends that *Manning v. Davis*, 166 Kan. 278 (1948) stands for the proposition that Section 20 does not "protect the right to practice cosmetology (or any other profession) free from government regulation." Govt's M.S.J. Mem. at MSJ at 27. As explained above, that mischaracterizes Ms. Green's positions and attacks arguments she has not made.[36] And in any event, *Manning* isn't a Section 20 case. The case revolved around the impact of a 1948 amendment to Article 15, Section 10 on alcohol prohibition. Prior to 1948, Article 15, Section 10 outright prohibited the manufacture and sale of intoxicating liquor. *Manning*, 166 Kan. at 280. The 1948 amendment instead authorized the legislature to "provide for the prohibition of intoxicating liquors in certain areas" or to instead "regulate" alcohol. *Id*. Shortly after the amendment was ratified, Richard Manning was arrested for possession of alcohol and he argued that the amendment to Article 15, Section 10 rendered all existing alcohol statutes void. *Id*. at 281. The Court rejected that argument and held that even without the previous Article 15, Section 10 prohibition of alcohol, the alcohol prohibition statutes were still a valid exercise of the police power and that further legislative action would be needed to end prohibition. *Id*. at 281-82. The Court

[36] It's also the same argument a federal district court rejected *and* called a "misinterpret[ation]" of the plaintiffs' claims in a case that challenged the constitutionality of a beauty licensing regime. *Cornwell,* 80 F. Supp. 2d at 1118.

briefly referenced Section 20 in dicta for the proposition that "under our theory of government all governmental power is vested in the people." *Id.* at 280. But it certainly did not hold that Section 20 does not protect any rights or that the government may require Ms. Green to pay more than $18,000 and attend 1,500 hours of irrelevant training to practice sugaring.

The government also asserts that provisions such as Section 20 "ensure only those rights deemed fundamental by history and tradition," Govt's M.S.J. Mem. at 28 (citing *Filan v. Martin*, 38 Wash. App. 91, 97, (1984)). *Filan* involved a criminal defendant who filed a *pro se* civil suit against the prosecutors and judges involved in his criminal case—including the appellate judges and their spouses as named defendants, alleging they "conspired to keep the constitution from the jury and demanding 100,000 silver dollars as damages." *Filan*, 38 Wash. App. at 92. The appeal was only about absolute judicial and prosecutorial immunity, and whether such immunity violated a number of constitutional provisions, including the Ninth Amendment. *Id.* In its perfunctory rejection of this argument, the court stated that the Ninth Amendment "ensures only those rights deemed fundamental by history and tradition. It does not necessarily give constitutional magnitude to all unenumerated rights." *Id.* at 97 (cleaned up). At most, *Filan* stands for the proposition that judicial and prosecutorial immunity is consistent with the Ninth Amendment, and Washington courts have recognized that the state's equivalent of Section 20 protects unenumerated rights. *State v. Hull*, 185 Wash. App. 1005 (2014), *amended on denial of reconsideration* (Feb. 12, 2015) (right to self-defense is a right retained under unenumerated rights provision). But even *if Filan* were applicable to Ms. Green's case, as stated in Section I.A. above, the right to earn a living free from unreasonable, irrational, arbitrary, oppressive, improperly tailored, protectionist, and unequal regulations *is* a fundamental right by history and tradition.

The government's other citation, to *Charles v. Brown*, 495 F. Supp. 862, 863 (N.D. Ala. 1980), isn't relevant either. There, the central issue was whether the Ninth Amendment had been incorporated against the states through the Fourteenth Amendment. Ms. Green's case isn't about incorporating the Ninth Amendment, and Section 20 obviously applies to the State of Kansas by its own forces.

At a more fundamental level, the government is wrong to suggest that rights are created by the constitution; and that if a right is not created by some constitutional provision, then it does not exist, which is why it repeatedly argues that Section 20 does not create rights. Govt's M.S.J. Mem. at 26-28. But the natural rights of individuals predate government and predate the constitution. As Thomas Cooley explained in *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union*, 4th ed. (1878) at 46-47:

> In considering State constitutions we must not commit the mistake of supposing that, because individual rights are guarded and protected by them, they must also be considered as owing their origin to them. These instruments measure the powers of the rulers, but they do not measure the rights of the governed. … [a constitution] grants no rights to the people, but is the creature of their power, the instrument of their convenience. Designed for their protection in the enjoyment of the rights and powers which they possessed before the constitution was made…[37]

Section 20 makes clear that the enumerated bill of rights is not an exhaustive list of rights created by the government, but a non-exhaustive list of pre-existing rights that are retained by the people, and that unenumerated rights must be protected just like those rights listed. Doing so provided "a way of authorizing the enforcement of a Lockean vision of 'rights first – government second." Randy Barnett, *Are Enumerated Constitutional Rights the Only Rights We Have? The Case of Associational Freedom*, 10 Harv. J.L. & Pub. Pol'y 101, 103, 111 (1987).

Thirty-five states, moreover, have an unenumerated rights provision similar to Section 20. Anthony B. Sanders, *Baby Ninth Amendments: How Americans Embraced Unenumerated Rights and Why It Matters* (2023) at 149-59. The general understanding is that these provisions "protect vital rights." *Rivera*, 315 Kan. at 891; Sanders, at 42.[38]

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[37] Available online at https://repository.law.umich.edu/books/70/

[38] *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*

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,[39] 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

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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); *State v. Hull*, 185 Wash. App. 1005 (2014), *amended on denial of reconsideration* (Feb. 12, 2015) (right to self-defense is a right retained under unenumerated rights provision).

[39] 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 long predates the Kansas Constitution and 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.

Conclusion

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 reject the government's motion for summary judgment and grant Ms. Green's instead. And because the regime is unconstitutional, this Court should 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 and permanently enjoin the government from enforcing the regime against Ms. Green and others who are similarly situated.

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.

Ms. Green requests oral argument pursuant to Local Rule 3.202(c).

Kansas Justice Institute

Dated: January 23, 2026.

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Certificate of Service

The undersigned certifies that on January 23, 2026, 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