

In the District Court
of
Shawnee County, Kansas

Bryn Green,

Plaintiff,

v.

Kansas State Board of Cosmetology, *et al.*,

Defendants.

Civil Action No. 2023-CV-300030

Plaintiff's Reply in Support of her Motion for
Summary Judgment; Ex. 1-5; Certificate of
Service.

Oral Argument Requested

Division Three
(Hon. Teresa L. Watson)

Plaintiff's Reply in Support of her Motion for Summary Judgment

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Introduction

Bryn Green wants to help support her two kids by performing 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.

For more than 800 years, the right to earn an honest living, free from unreasonable government restrictions, has been recognized. Because it is a fundamental and inalienable natural right, this Court should apply strict scrutiny, grant Ms. Green’s motion for summary judgment and reject the government’s motion. Pl.’s M.S.J. Mem. at 40-49 (strict scrutiny analysis); Pl.’s Resp. to Govt’s M.S.J. at 32-42 (same). Alternatively, because the undisputed evidence demonstrates that the government’s licensing regime is protectionist, this Court should do the same under intermediate scrutiny. Pl.’s M.S.J. Mem. at 49-51 (intermediate scrutiny analysis); Pl.’s Resp. to Govt’s M.S.J. at 43-45 (same).

But this Court doesn’t need to read Magna Carta, English cases from the 1600s, John Locke’s writings, or even the directly-relevant law review articles written by accomplished scholars—all of which support Ms. Green’s arguments, and none of which support the government’s—to properly declare *this* beauty regime unconstitutional. Just as the six other on-point beauty licensing cases establish, Kansas’s licensing regime flunks even rational basis review. Pl.’s M.S.J. Mem. at 51-65 (rational basis analysis); Pl.’s Resp. to Govt’s M.S.J. at 45-66 (same).

The undisputed evidence proves that sugaring is safe; that the licensing regime does not protect public health or welfare; that instead, the regime protects industry insiders from competition; and that even if there were concerns about sugaring (the evidence demonstrates there aren’t any), applying the cosmetology requirements to Ms. Green is grossly out of proportion to those concerns.

Requiring Ms. Green to spend nearly twenty-thousand dollars and almost a year of her life in a full-time, 1,500 hour cosmetology program, learning irrelevant things (like cutting hair, doing nails, and writing a resume), and taking irrelevant examinations (that don’t ask a single sugaring-

specific question), 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, is patently unconstitutional.

Reply to Defendants' Response to Plaintiff's Statement of Facts

23. Defendants have stipulated to Stip. Ex. 3 & 8, and Defendants' proffered expert and Board member has identified these sources as reliable. Defendants fail to cite any record evidence to controvert this statement of fact. It is therefore deemed admitted.

29. Defendants' reference to the "reduced risk of burning" for the spatula-applied method of sugaring is irrelevant, since it is undisputed that Ms. Green will utilize the hand-applied method of sugaring, which "does not involve the use of heat." *JSOF* viii. It is undisputed that Ms. Green will use sugaring paste from Alexandria Professional, *JSOF* xxv, that is applied at body temperature, *JSOF* xxvi. Defendants' reference to a "digital sugar warmer," is deceptive, since the full joint stipulation of fact is "The paste can be warmed by hand, or in a digital sugar warmer sold by Alexandria *that will keep the sugar paste at body temperature.*" *JSOF* xxvii (emphasis added). Sugaring paste at body temperature by definition will not burn the body.

35. Defendants have failed to cite any record evidence controverting the statement of fact. It is therefore deemed admitted. Furthermore, it is undisputed that "Ms. Green would then mold a ball of sugaring paste the direction of hair growth and then quickly flick the sugar off in the direction of growth to gently remove hair with minimal breakage or irritation." *JSOF* xxxiii.

41. Defendants have failed to cite any record evidence controverting the statement of fact. It is therefore deemed admitted. Furthermore, it is undisputed that Ms. Green will use the hand-applied method, *JSOF* viii, xxxiii, to apply sugaring paste from Alexandria Professional, *JSOF* xxv, that is applied at body temperature, *JSOF* xxvi. Sugaring paste at body temperature by definition will not burn the body.

42. Defendants have failed to cite any record evidence controverting the statement of fact. It is therefore deemed admitted.

43. Defendants have failed to cite any record evidence controverting the statement of fact. It is therefore deemed admitted. Whether something is dangerous is not a legal conclusion, and an expert witness such as Dr. Patel is allowed to offer her expert opinion.

44. Defendants have failed to cite any record evidence controverting the statement of fact. It is therefore deemed admitted. Whether something is dangerous is not a legal conclusion, and an expert witness such as Dr. Patel is allowed to offer her expert opinion.

45. Defendants have failed to cite any record evidence controverting the statement of fact. It is therefore deemed admitted. The amount of schooling needed to safely practice sugaring is not a legal conclusion, and an expert witness such as Dr. Patel is allowed to offer her expert opinion.

46. Defendants have failed to cite any record evidence controverting the statement of fact. It is therefore deemed admitted.

47. Defendants have failed to cite any record evidence controverting the statement of fact. It is therefore deemed admitted. The amount of schooling necessary to learn basic hygiene or how to wash hands is not a legal conclusion, and an expert witness such as Dr. Patel is allowed to offer her expert opinion.

49. Defendants have failed to cite any record evidence controverting the statement of fact. It is therefore deemed admitted. The amount of training needed to teach proper sanitation, infection control, blood exposure, and public health procedures is not a legal conclusion, and an expert witness such as Dr. Patel is allowed to offer her expert opinion.

50. Defendants have failed to cite any record evidence controverting the statement of fact. It is therefore deemed admitted. An expert witness such as Dr. Patel is allowed to offer her expert opinion about the risk of folliculitis.

57. Defendants have failed to cite any record evidence controverting the statement of fact that the chance of transmission of infections through sugaring is the lowest risk. It is therefore deemed admitted

58. Defendants have failed to cite any record evidence controverting the statement of fact that no case study has ever reported a viral pathogen being spread with sugaring. It is therefore deemed admitted.

59. With the exception of Ms. Hines's objectionable expert report, the government cites to no record evidence to controvert this statement. Ms. Hines's report should be excluded and this statement of fact should be deemed admitted. *See also* Stip. Ex. 1-9 (blood exposure by sugaring never listed or mentioned).

83. Defendants have failed to cite any record evidence controverting the statement of fact that would limit this statement to only the "intent" of Ms. Green. It is therefore deemed admitted.

105. Defendants have failed to cite any record evidence controverting the statement of fact that the 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. Ms. Green need not produce financial statements to bolster her own uncontested, sworn statements about her finances. It is therefore deemed admitted.

123. Approximately 99.983% of the of the mandatory 1,500-hour cosmetology curriculum is devoted to topics other than sugaring. *JSOF* lxiii-lxvii.

135. Approximately 99.967% of the mandatory 1,000 hours esthetician curriculum is devoted to topics other than sugaring. *JSOF* lxxv-lxxxii.

148. Defendants have failed to cite any record evidence controverting the statement of fact that the only cosmetology school within a reasonable commuting distance for Ms. Green is the Hays Academy. There is a lack of affordable childcare options in Hays, Pl.'s M.S.J. Ex. A, Green Dec. ¶ 7, and childcare would be even more unaffordable if she had to arrange childcare during a

long commute to and from school every day. Ms. Green need not produce documentation to bolster her own uncontested, sworn statements about her family situation. It is therefore deemed admitted.

153. Defendants have failed to cite any record evidence controverting the statement of fact that the 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. Ms. Green need not produce financial statements to bolster her own uncontested, sworn statements about her finances. It is therefore deemed admitted.

166. Defendants have failed to cite any record evidence controverting the statement of fact that commuting approximately 5 hours each day for a full-time esthetics school is not a viable option for Ms. Green. There is a lack of affordable childcare options in Hays, Pl.'s M.S.J. Ex. A, Green Dec. ¶ 7, and childcare would be even more unaffordable if she had to arrange childcare for an additional 5 hours a day to commute to and from Manhattan every day. Ms. Green need not produce documentation to bolster her own uncontested, sworn statements about her family situation. It is therefore deemed admitted. Additionally, under K.S.A. § 60-409(b)(3) & (4), Plaintiff requests this Court to take judicial notice of the fact that a daily commute from Hays to Manhattan is not viable, reasonable, or realistic.

171. Defendants have failed to cite any record evidence controverting the statement of fact that the tuition at the Bellus Academy, the lost wages, 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. Ms. Green need not produce financial statements to bolster her own uncontested, sworn statements about her finances. It is therefore deemed admitted.

178. None of the record evidence cited by Defendants controverts this statement of fact. It is a stipulated fact that Defendants' proffered expert and member of the Board, Ms. Hines, "testified that an individual who attended cosmetology or esthetics school and passed their

licensure tests, but had not received hands on training in sugaring, would not be qualified to perform sugaring.” *JSOF* cxliv. Neither the joint stipulated fact nor Ms. Hines’s testimony leaves open the possibility that an individual will be qualified.

218. This statement is identical to *JSOF* cxliv. Defendants may not controvert their own stipulations of fact. None of the record evidence cited by Defendants controverts this statement of fact. Additionally, “[t]he Hays Academy does not believe that the 10-15 minutes of sugaring theory it offers is sufficient for graduates of the cosmetology program to know how to provide sugaring services on the public.” *JSOF* xcii.

223. This statement of fact is not an opinion or legal conclusion. It is a quote from a report prepared by the United States Department of the Treasury office of Economic Policy, the Council of Economic Advisers, and the Department of Labor. It is admissible as a government record under K.S.A. § 60-460(o). Alternatively, Plaintiff requests the Court to take judicial notice of Pl.’s M.S.J. Ex. AA, Occupational Licensing: A Framework for Policymakers, The White House, and the quoted statement from the exhibit, as a learned treatise under K.S.A. § 60-460(cc).

224. This statement of fact is not an opinion or legal conclusion. It is a quote from a report prepared by the United States Department of the Treasury office of Economic Policy, the Council of Economic Advisers, and the Department of Labor. It is admissible as a government record under K.S.A. § 60-460(o). Alternatively, Plaintiff requests the Court to take judicial notice of Pl.’s M.S.J. Ex. AA, Occupational Licensing: A Framework for Policymakers, The White House, and the quoted statement from the exhibit, as a learned treatise under K.S.A. § 60-460(cc).

225. This statement of fact is not an opinion or legal conclusion. It is a quote from a report prepared by the United States Department of the Treasury office of Economic Policy, the Council of Economic Advisers, and the Department of Labor. It is admissible as a government record under K.S.A. § 60-460(o). Alternatively, Plaintiff requests the Court to take judicial notice of Pl.’s M.S.J. Ex. AA, Occupational Licensing: A Framework for Policymakers, The White House, and the quoted statement from the exhibit, as a learned treatise under K.S.A. § 60-460(cc).

226. This statement of fact is not an opinion or legal conclusion. It is a quote from a report prepared by the United States Department of the Treasury office of Economic Policy, the Council of Economic Advisers, and the Department of Labor. It is admissible as a government record under K.S.A. § 60-460(o). Alternatively, Plaintiff requests the Court to take judicial notice of Pl.'s M.S.J. Ex. AA, Occupational Licensing: A Framework for Policymakers, The White House, and the quoted statement from the exhibit, as a learned treatise under K.S.A. § 60-460(cc).

227. This statement of fact is not an opinion or legal conclusion. It is a quote from a report prepared by the United States Department of the Treasury office of Economic Policy, the Council of Economic Advisers, and the Department of Labor. It is admissible as a government record under K.S.A. § 60-460(o). Alternatively, Plaintiff requests the Court to take judicial notice of Pl.'s M.S.J. Ex. AA, Occupational Licensing: A Framework for Policymakers, The White House, and the quoted statement from the exhibit, as a learned treatise under K.S.A. § 60-460(cc).

235. This statement of fact is not an opinion or legal conclusion. It is a quote from a report prepared by the United States Department of the Treasury office of Economic Policy, the Council of Economic Advisers, and the Department of Labor. It is admissible as a government record under K.S.A. § 60-460(o). Alternatively, Plaintiff requests the Court to take judicial notice of Pl.'s M.S.J. Ex. AA, Occupational Licensing: A Framework for Policymakers, The White House, and the quoted statement from the exhibit, as a learned treatise under K.S.A. § 60-460(cc).

247. Defendants mischaracterize the nature of Plaintiff's line of questioning of the Board's K.S.A. §60-230(b)(6) witness. Plaintiff asked Defendants in Interrogatory 13 "Please describe in detail how an unlicensed sugarer poses a risk to public health, safety, and/or welfare." Defendants answered, among other things, that "[s]ugaring risks burns." Pl.'s M.S.J. Ex. Y, Def. Resp. Rog 13. In the Amended Notice of KSA § 60-230(b)(6) Deposition to Defendant Kansas Board of Cosmetology, dated July 25, 2025, one of the deposition topics identified was topic 23: "The facts surrounding responses to Interrogatories 10, 11, 12, 13, 15, 19 and Request for Admission 1, 2, 3, 10, 11, 30." Defendants did not object to this topic. Plaintiff's questioning of the witness concerning burns was clearly seeking the facts surrounding Defendants' claim in their

response to Interrogatory 13 that sugaring risks burns. Plaintiff questioned the witness regarding the compatibility of the response to Interrogatory 13 with statements in the Board approved textbooks stating that sugaring did not risk burns. *See generally* Ex. 1 Board § 60-230(b)(6) Depo. 106—110. Plaintiff then asked if the Board had any other evidence that sugaring risks burns. *See* Ex. 1 Board § 60-230(b)(6) Depo. 110:22—111:3 (Q: What empirical data does the Board have that shows sugaring presents a risk of burning? A: None. Q: What peer-reviewed study does the Board have that shows sugaring presents a risk of burning? A: None that I know.). Only after this line of questioning does the Plaintiff ask, “In light of the textbooks, does the Board of Cosmetology still hold the opinion that sugaring presents a risk of burns?” Board § 60-230(b)(6) Depo. 112:5-7. Defense counsel did not object to this question at the deposition but now quibbles about the use of the word “opinion,” when the question was clearly intended to determine if the Board still contended that “sugaring risks burns” as was claimed in the response to Interrogatory 13.

251. Defendants mischaracterize the nature of Plaintiff’s line of questioning of the Board’s K.S.A. §60-230(b)(6) witness. Plaintiff asked Defendants in Interrogatory 13 “Please describe in detail how an unlicensed sugarer poses a risk to public health, safety, and/or welfare.” Defendants answered, among other things, that “[s]ugaring is also performed on all parts of the body, including the pubic area, which presents additional risks and additional safety concerns.” Pl.’s M.S.J. Ex. Y, Def. Resp. Rog 13. In the Amended Notice of KSA § 60-230(b)(6) Deposition to Defendant Kansas Board of Cosmetology, dated July 25, 2025, one of the deposition topics identified was topic 23: “The facts surrounding responses to Interrogatories 10, 11, 12, 13, 15, 19.” Defendants did not object to this topic. Plaintiff’s questioning of the witness concerning the alleged additional risks and additional safety concerns of sugaring the pubic area was clearly seeking the facts surrounding Defendants’ claim in their response to Interrogatory 13 that sugaring the public area presents additional risks and safety concerns. *See generally* Ex. 1, Board § 60-230(b)(6) Depo. 126:21—129:12. At no point did Defense counsel object to this line of questioning. Plaintiff was entitled to question the Board about the factual basis of its Interrogatory responses, and the Board

representative admitted that there are no additional risks or safety concerns that arise from sugaring being performed on all parts of the body.

261. Defendants have failed to cite any record evidence controverting the statement of fact. It is therefore deemed admitted. Defense counsel failed to object to this question at the deposition. Whether 1,500 hours of cosmetology school is necessary for the protection of public health when it comes to sugaring is within the information known or reasonably available to the state organization that is tasked with regulating sugaring. The government contends that “[t]he nature and extent of the qualifications required must depend primarily upon the judgment of the state as to their necessity.” Govt’s Resp. to Pl.’s M.S.J. at 18 (quoting *Dent v. West Virginia*, 129 U.S. 114, 122 (1889)). The government can’t simultaneously argue that this court must defer to “the judgment of the state as to their necessity,” and that the necessity of 1,500 hours of cosmetology school is a legal conclusion. If the Court must defer to the judgment of the state as to the necessity of 1,500 hours of cosmetology training for sugaring, then this Court must accept evidence of the judgment of the Kansas State Board of Cosmetology as to the necessity of 1,500 hours of cosmetology training for sugaring.

263. Defendants have failed to cite any record evidence controverting the statement of fact. It is therefore deemed admitted. Defense counsel failed to object to this question at the deposition. Whether a sugaring specific course of instruction could adequately protect the public even if it required less than 1,500 hours of instruction is within the information known or reasonably available to the state organization that is tasked with regulating sugaring. The government contends that “[t]he nature and extent of the qualifications required must depend primarily upon the judgment of the state as to their necessity.” Govt’s Resp. to Pl.’s M.S.J. at 18 (quoting *Dent v. West Virginia*, 129 U.S. 114, 122 (1889)). The government can’t simultaneously argue that this court must defer to “the judgment of the state as to their necessity,” and that the necessity of 1,500 hours of cosmetology school is a legal conclusion. If the Court must defer to the judgment of the state as to the necessity of 1,500 hours of cosmetology training for sugaring, then

this Court must accept evidence of the judgment of the Kansas State Board of Cosmetology as to the necessity of 1,500 hours of cosmetology training for sugaring.

Reply Additional Statement of Facts (*RSOF*)

1. 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. 2, Green Sup. Dec. ¶ 2.

2. Ms. Green has two children, age three and a half and one and a half. Ex. 2, Green Sup. Dec. ¶ 3.

3. Apart from Ms. Hines, the Board members did not know what sugaring was when the suit was filed. Ex. 3, Hines Depo. 224:11—225:4.

The Factual Record: a Recap.

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; *SOF* 18.a-b, 16.¹

Sugaring is non-invasive, sanitary, and safe. *JSOF* ii, iii, v; *SOF* 15, 18.f-1, 18.q, 24-26, 29-30, 33-34, 38, 40, 42-44. Application of the sugaring paste doesn't involve the use of heat, chemicals, or sharp objects. *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; *SOF* 15; Stip. Ex. 5 at 17-20. The hair adheres to the paste and is removed with the paste. *JSOF* iii; *SOF* 38. The process is safe, gentle, and does not cause trauma to the skin. *JSOF* v; *SOF* 15, 18.f-1, 18.q, 24-26, 29-30, 33, 40, 42-44; *see also*, *SOF* 21-23, 33, 36.²

¹ *SOF* refers to the statement of facts in Ms. Green's memorandum in support of motion for summary judgment.

² *See also*, *SOF* 33 (sugaring paste's antiseptic properties inhibit bacterial growth); *SOF* 18.c. (sugaring paste is hypoallergenic); *SOF* 23 (sugaring paste "has such a high concentration of sugar, bacteria cannot breed in the jar"); *id.* ("Bacteria do not, and cannot, breed in high concentrations of sugar"); *id.* ("Sugar dressings have been, and continue to be, used to treat wounds that are particularly susceptible to infection").

Sugaring does not cause “irritation or damage to the follicle or surrounding skin.” *SOF* 39. It does not distort hair follicles or break the hair either. *SOF* 35. Because sugaring is safe and gentle, it can be done on areas of the skin with varicose veins, spider veins, psoriasis, and eczema, and on individuals with diabetes or who have sensitive skin. *SOF* 18.h.-k., 32.

Sugaring is a safe and effective alternative to waxing and for those who react to “waxing with bumps and redness.” *SOF* 25.³ It doesn’t tear the skin or cause abrasions. *SOF* 18.q, 29-30, 32-33, 38, 42. It poses no risk of burns. *SOF* 18.e., 29 (“no risk of burning”); *SOF* 247 (Board of Cosmetology admitting that sugaring doesn’t pose a risk of burns).⁴ It doesn’t present a risk of blood exposure. *SOF* 59.⁵ 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 the government’s purported expert witness says is sufficient to protect the public. *JSOF* xxviii, xxx, lviii, cxlv; *SOF* 93, 117, 219; *RSOF* 1.

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.” *SOF* 57. Dr. Patel also testified “[t]here is no case study that has ever reported a viral pathogen being spread with sugaring.” *SOF* 58.

³ See also, *SOF* 24 (sugaring is “especially appropriate for more sensitive skin types”); *SOF* 28 (“Many clients who have ingrown hairs from being waxed find that the problem disappears if they switch to the sugar method”); *SOF* 26 (sugaring “can be used for some who have certain wax contraindications”); see also, *JSOF* v; *SOF* 18.d.-q., 27, 29, 52.

⁴ See also, *SOF* 41 (“There is no risk of burning because [the sugaring paste] is applied at body temperature”); *id.* (“Neither [sugaring] method carries a risk of burning because both use material at body temperature.”); *id.* (“there is no risk of burning because it is applied at body temperature.”); *id.* (“Because of the application temperature, there is no risk of burning.”); *id.* (“As there is no risk of burning . . . sugaring is considered safe to use on individuals with diabetes.”); *id.* (because the paste “is applied at body temperature” it is “safe for all areas” and “you will never burn your client’s skin.”).

⁵ See also, *SOF* 29 (“no risk of . . . tearing the skin”); *SOF* 39 (“Sugar paste adheres only to the hair not the skin, and is easily removed with water”); *SOF* 40 (the same area can be treated more than once without risk of irritation or trauma).

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 who has managed a clinic for 10 years that offered a variety of hair removal services. *SOF* 43-47, 53-59.

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. *SOF* 121.

The only beauty school in Hays is a cosmetology program. *JSOF* xcvi. It costs \$18,900 and takes about a year to complete. *JSOF* lxxxiv, xlvi. 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 *SOF* 5-9, 105, 153, 166, 171.

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. *JSOF* 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* *SOF* 144; 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-lxxx, cv; *SOF* 144. In practice, schools devote even less

time to sugaring than the minuscule percentages suggest, about ten to twenty minutes.⁶ *JSOF* lxiii, lxxv, lxxxix, cv.

The textbooks approved by the government devote barely any space to sugaring. *JSOF* lxviii-lxxi; *SOF* 129, 131. 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. *SOF* 213-214; 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, *SOF* ¶ 9.

Ms. Green has already received *at least three times more* sugaring-specific instruction than the cosmetology or esthetician school offers. *JSOF* xxiii; *SOF* 74-76. The cost of attending the class was about \$20. *SOF* 74.

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. *SOF* 161, 177. Becoming a licensed instructor doesn't require knowledge or competency in sugaring either. *JSOF* cx, cxi, cxii, cxiii, cxiv; cxxxii; *SOF* 184; 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; Pl.'s M.S.J. Ex. N, Ergometrics Sugaring Questions – Under Seal. As for the two

⁶ 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; *SOF* 131; Pl.'s M.S.J. Ex. DD, Hays Academy Sugaring Slide – Under Seal.

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-cxxxii; Pl.'s M.S.J. Ex. N, 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. The government admits it has *no evidence* that the regime even minimally advances public health. *JSOF* xi, xii, clv-clxi, clxviii-clxx clxxiv-clxxv; *SOF* 236, 244-247, 248-250, 261-262, 264, 272. 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 SOF* 272-273.

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 Cosmetology), *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 for that matter, any more capable of performing sugaring than *before getting licensed*. *SOF* 45-47, 177-178; *JSOF* xlvii, xci-xcii, xcvi-xcvii, cxliii-cxliv.

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 that the licensing regime protects incumbent practitioners from competition and increases the prices they can charge the public. *JSOF* cxxxvii-cxlix, *SOF* 213-214, 219, 221, 223-228, 230-234.

E. Every witness agrees: the licensing regime is *too much*. Less restrictive alternatives exist that would satisfy the government’s interests.

Dr. 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’s currently required. *SOF* 261, 263-264.

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. *SOF* 49; *JSOF* cli.

Reply Argument

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

Ms. Green has demonstrated, by meticulously and faithfully following the Kansas Supreme Court’s roadmap,⁷ that the right to earn an honest living, free from unreasonable restrictions, is a fundamental and inalienable natural right under Section 1 of the Kansas Constitution Bill of Rights. Strict scrutiny should therefore apply, which the government has no hope of satisfying. Pl.’s M.S.J. Mem. at 40-49 (strict scrutiny analysis); Pl.’s Resp. to Govt’s M.S.J. at 32-42 (same).

Alternatively, because the undisputed evidence demonstrates that the government’s licensing regime is self-admittedly protectionist, intermediate scrutiny applies, which the government has no hope of satisfying either. Pl.’s M.S.J. Mem. at 49-51 (intermediate scrutiny analysis); Pl.’s Resp. to Govt’s M.S.J. at 43-45 (same).

But even under Kansas’s version of rational basis review, Ms. Green is still entitled to declaratory judgment. That’s because the application of the cosmetology or esthetician licensing

⁷ See, e.g., *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 622-23 (2019) (*Hodes I*); *State v. Carr*, 314 Kan. 615, 635 (2022); *Hodes & Nauser, MDs, P.A. v. Kobach*, 318 Kan. 940, 967 (2024) (*Hodes II*); *Hodes & Nauser, MDs, P.A. v. Stanek*, 318 Kan. 995, 1039 (2024) (*Stanek*).

requirements to Ms. Green, who only wants to perform sugaring, is plainly unconstitutional. Pl.’s M.S.J. Mem. at 51-65 (rational basis analysis); Pl.’s Resp. to Govt’s M.S.J. at 45-66 (same).

A. Because the government cannot defend this case on the merits, it mischaracterizes what this case is about, and attacks arguments Ms. Green has not made.

Twice now the government mischaracterizes what this case is about, and attacks arguments Ms. Green has not made. It continues to insist Ms. Green is challenging the government’s *ability* or *power* to impose regulations and even suggests Ms. Green is asking this Court to “deregulate her own sugaring business.” *See, e.g.*, Govt’s M.S.J. Mem. at 17, 15; Govt’s Resp. to Pl.’s M.S.J. at 1, 15, 16, 19, 20, 23, 26. The government suggests that Ms. Green is arguing for an “unqualified right,” the “right to practice unlicensed sugaring,” the right to “totally unregulated employment,” and that where there is a natural or fundamental right, there can be no regulation whatsoever. *Id.* at 15, 16, 19, 21.⁸ All of that is wrong. The government says these things because it cannot defend this case on the merits.

This case is decidedly *not* about whether the government *can* regulate (it can), or even whether it can impose a licensing requirement for certain occupations (it can). Instead, Ms. Green is arguing—with ample facts and caselaw supporting her—that 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.

As Ms. Green has previously explained, 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. *See* Pl.’s Resp. to Govt’s M.S.J. at 32-33. Under strict scrutiny, intermediate

⁸ In the government’s attempt to bolster its attack on an argument Ms. Green hasn’t made, the government stresses that “Locke believes in *some* regulation[.]” Govt’s Resp. to Pl.’s M.S.J. at 20. It’s true that Locke believed in *some* regulation—but the regulation Locke envisioned certainly wasn’t an occupational license for sugaring; it was regulation to ensure the protection of one’s life, liberty, and property from interference by others, including the government. *See, e.g.*, John Locke, *Two Treatises of Government*, Bk. II, §§ 27, 123, 124, 131, 135, 171 (Peter Laslett, student ed. 1988).

scrutiny, or rational basis review, the regime is patently unconstitutional when applied to Ms. Green.⁹

B. Under the government’s theory of the case, Kansas judges can’t judge. But they can make up the facts or invent theories if it’s helpful to the government. Those views aren’t just wrong, they’re unprincipled and extreme.

Because the undisputed factual record and ample caselaw proves the irrationality of applying *this* licensing regime’s requirements to Ms. Green, the government retreats to an equally indefensible and irrational position. Under the government’s theory of the case, no matter how irrational this licensing regime is, this Court cannot judge it so. Govt’s Resp. to Pl.’s M.S.J. at 38 (“the entire purpose of rational basis review” is “to defer to legislative judgments” and “avoid judicial second-guessing”); *id.* at 40 (“th[is] Court should not second-guess the judgment of the Legislature”); *id.* at 41 (“*No one* should presume” that textbooks “carry more authority than the Board of Cosmetology”) (emphasis added); *id.* at 45 (asking this Court to ignore the record because of “the wisdom of deferring to the Legislature”).

The government’s argument that this Court should blindly defer to the Kansas Legislature is a strange one considering it overwhelmingly passed legislation deregulating sugaring. *See*, S.B. 434 (2024). And on this record, there is *no reason* to defer to the government either. *RSOF* 3; Ex. 3, Hines Depo. 224:11—225:4 (Board members didn’t know what sugaring was at the time of the lawsuit); *SOF* 236 (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); *SOF* 246 (Board doesn’t know whether the regime increases infection control); *SOF* 248-250 (Board doesn’t know whether sugaring presents a risk of infection, abrasion, or contamination of bodily fluids); *SOF* 262 (Board doesn’t know whether licensees are capable of safely performing sugaring); *SOF* 264 (Board doesn’t know how many hours of training would be required to safely perform sugaring); *JSOF* clxxiv (Board doesn’t

⁹ Pl.’s M.S.J. Mem. at 40-49 (strict scrutiny analysis); Pl.’s Resp. to Govt’s M.S.J. at 32-42 (same); Pl.’s M.S.J. Mem. at 49-51 (intermediate scrutiny analysis); Pl.’s Resp. to Govt’s M.S.J. at 43-45 (same); Pl.’s M.S.J. Mem. at 51-65 (rational basis analysis); Pl.’s Resp. to Govt’s M.S.J. at 45-66 (same).

know how many schools teach sugaring); *JSOF* clxxv (Board doesn't know how much time schools spend on sugaring).

The government's argument is particularly confused considering it tries distancing itself from the very textbooks it endorses. Govt's Resp. to Pl.'s M.S.J. at 41-43; *id.* at 41 (arguing the textbooks should be ignored because "there is no evidence that the authors of the textbook were trained in medicine, public health, etc.")). The textbooks' authors *were* trained in those sorts of things. Ex. 4, Milady Standard Cosmetology – About the Authors at xix-xxi; Ex. 5, Milady Standard Esthetics: Advanced at xvi-xxi; Stip. Ex. 7 at 171-172. More fundamentally though, if the government is correct that the textbooks cannot be trusted, then its education and licensing requirements are even more irrational than one can possibly imagine—because that's what's used to form the entire basis of the government's 1,500- and 1,000-hour cosmetology and esthetician curricula, and the respective licensing examinations.

But in any event, the government is wrong for another reason. That's what judges *do* in constitutional cases—they *judge*. Which, moreover, is precisely what judges are *required* to do, and *have always done*. One year after Kansas became a state, the very person who proposed Section 1's current wording, Justice Samuel Kingman, *rejected* the idea that courts "have no right to judge the constitutionality of a law passed by the legislature," because "[t]he constitution is law—the fundamental law." *Mayberry v. Kelley*, 1 Kan. 116, 125 (1862).

The Kansas Constitution "does not tolerate such judicial abdication" no matter what the government insists here. *See Jenner & Block LLP v. U.S. Dep't of Just.*, 784 F. Supp. 3d 76, 101 (D.D.C. 2025); *Fla. ex rel. Atty. Gen. v. U.S. Dep't of Health & Hum. Servs.*, 648 F.3d 1235, 1284 (11th Cir. 2011) ("Constitution requires judicial engagement, not judicial abdication.");¹⁰ *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 375 (2010) ("There is a difference between judicial restraint and judicial abdication" and where constitutional questions must be resolved, "the court must meet and decide them.") (cleaned up); *cf State v. Carr*, 314 Kan. 615, 735 (2022) (Stegall, J.,

¹⁰ *Aff'd in part, rev'd in part sub nom. Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012).

concurring) (explaining why the Kansas Constitution prohibits a “presumption of constitutionality” when analyzing statutes).

And if the “entire purpose” of rational basis review is to blindly defer to the government (which is *of course* what the government would say when faced with such terrible facts), plaintiffs could *never* win under it. But as Ms. Green has previously explained, that’s not what happens in Kansas, or elsewhere, for that matter. *See* Pl.’s M.S.J. Mem. at 51-53; Pl.’s Resp. to Govt’s M.S.J. at 45-48.

The extreme and outdated (and incorrect) version of the rational basis test, championed by the government here, is wrong. Govt’s Resp. to Pl.’s M.S.J. at 31 (“the Court must uphold the licensing laws if there is any conceivable basis which might support them”) (relying on *F.C.C. v. Beach Commc’ns, Inc.*, 508 U.S. 307 (1993)). As Ms. Green has previously explained, 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).¹¹ Pl.’s M.S.J. Mem. at 54; Pl.’s Resp. to Govt’s M.S.J. at 48.

But in any event, 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 *does not apply*. Pl.’s M.S.J. Mem. at 51-65 (rational basis analysis); Pl.’s Resp. to Govt’s M.S.J. at 45-66

¹¹ For the same reasons, the government’s references to *State v. Mueller*, 271 Kan. 897 (2001), *Blue v. McBride*, 252 Kan. 894 (1993), and *Mudd v. Neosho Memorial Regional Medical Center*, 275 Kan. 187 (2003) are misplaced. 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).

(same). Under Kansas's rational basis test, Ms. Green is entitled to summary and declaratory judgment.

Even worse than the judicial abdication position it advances, the government says this Court could just make up the facts or invent theories to help the government prevail. Gov't's Resp. to Pl.'s M.S.J. at 32 ("The rational basis test is clear: this Court need only find a single, conceivable rational basis—*whether or not the Board has asserted it*—to uphold the licensing laws") (emphasis added).

That argument is over-the-top, misinformed, and wrong. And it is an extreme position not countenanced by the Kansas Framers who wrote the Kansas Constitution, nor the people who adopted it. The *first* of Kansas's Bill of Rights was patterned after the Declaration of Independence, and the right to life, liberty, and the pursuit of happiness are "the foundation stones upon which the whole structure of Liberty rests." T. Dwight Thacher, *Oration*, Western Home Journal (Jul. 14, 1859). As William Hutchinson explained at the Wyandotte Convention, moreover, "The bill of rights starts out on the old maxim that the world is governed too much—that there is too much proscriptive law," that "[i]t should be the work of legislation to restore the people back to their natural rights," that "natural industry, private industry as well as national, has been stamped upon by this spirit of protection, and a desire to overlegislate (sic), to hamper the energies of mind, commerce and industry," ultimately endorsing Thomas Jefferson's view that "'The Tyranny of the Legislature is really the danger most to be feared, and will continue to be so for many years.'" 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, 186; *see also Mayberry*, 1 Kan. at 125; *see also*, Pl.'s M.S.J. Mem. at 40-48 (historical analysis); Pl.'s Resp. to Gov't's M.S.J. at 34-41 (same).

In Kansas, judges don't make up the facts for the government. Nor do they conjure up theories to help the government win cases. If they *did*, it would plainly violate Kansas's separation of powers doctrine. In Kansas, it's a judge's job to call balls and strikes, not to serve as the government's relief pitcher.

What’s *really* going on here, and what the government is *really* doing, is not-so-subtly suggesting that a declaratory judgment in Ms. Green’s favor would be tantamount to judicial activism, a pejorative label no judge would want to be called. Then-Justice Willet (decidedly *not* a judicial activist) addressed the very same charges, in a virtually identical case, *Patel v. Texas Dep’t of Licensing & Regul.*, and thoroughly dispatched them—just as this Court should do.

“As in other constitutional settings, we should be neutral arbiters, not bend-over-backwards advocates for the government. ... And judges should not be obliged to concoct speculative or far-fetched rationalizations to save the government’s case.”

“[A]n independent judiciary must *judge* government actions, not merely rationalize them. Judicial restraint doesn’t require courts to ignore the nonrestraint of the other branches, not when their actions imperil the constitutional liberties of people increasingly hamstrung in their enjoyment of ‘Life, Liberty and the pursuit of Happiness.’”

“[T]he very reason constitutions are written [is] to stop government abuses, not to ratify them.”

“[The] government doesn’t get to determine the reach of its own power, something that subverts the original constitutional design of limited government.”

“Bottom line: Police power cannot go unpoliced.”¹²

In sum, given the undisputed facts and the closely analogous six cosmetology cases that declared their licensing regimes unconstitutional, (more on those below), “[s]triking down” Kansas’s cosmetology or esthetician regime, as applied to Ms. Green, “is not judicial activism,” it is simply “enforcing limits on government power consistent with the text, purpose, and history” of the Kansas Constitution. *See* Clark M. Neilly III, *Terms of Engagement* 148 (2013).

¹² 469 S.W.3d 69 at 116, 120, 120, 123, 123 (Willet, J. concurrence).

C. Six beauty licensing regimes have been declared unconstitutional under rational basis review. Tellingly, the government completely ignores all of them.

In recent years, six closely analogous beauty licensing regimes have been declared unconstitutional under rational basis review. Ms. Green cited these six cases in response to the government’s 212(b)(6) motion in February 2024, M.T.D. Resp. at 7-9, 11, 12, 13, 18, 23, 26-27; relied on them during oral argument in July 2024, M.T.D. Hr’g. Tr. at 20, 31, 38, 43; and again, cited them in her summary judgment memorandum, Pl.’s M.S.J. Mem. at 39, 51, 61-63, 65.

Tellingly, the government has *completely* ignored these six cases at the summary judgment stage and treats them as if they never happened. *See*, Govt’s Resp. to Pl.’s M.S.J.; *see* Govt’s M.S.J. Mem. Except for a single perfunctory citation in a footnote—which did nothing but say it was a case cited by Ms. Green—the government ignored all six cases at the motion to dismiss stage as well, including at oral argument. *See* Govt’s M.T.D. Reply at 3, FN2; *see* M.T.D. Hr’g Tr.

That the government continues to ignore the six cases, through multiple rounds of briefing, for almost two years, should be viewed for what it is: an admission that it cannot prevail under their analytical framework.

The six cases *also* demonstrate the government is profoundly wrong when it tells this Court that “[u]nder rational basis review,” it doesn’t matter that Ms. Green is required to spend tens of thousands of dollars and a year of her life learning irrelevant things and taking irrelevant examinations. *See* Govt’s Resp. to Pl.’s M.S.J. at 38, 37. That’s because *all six cases* demonstrate the application of the cosmetology and esthetician licensing regime to Ms. Green, so she can perform sugaring—and only sugaring—is plainly unconstitutional.

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 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” for hair braiders, 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 of makeup artistry. 36 F. Supp. 3d 991, 1022 (D. Nev. 2014).¹³

Similarly, in *Brantley v. Kuntz*, 98 F. Supp. 3d 884, 894 (W. D. Tex. 2015), the court struck down a beauty licensing regime for hair braiding schools 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 applicable to hair braiders. 302 A.3d 1271, 2023 WL 4715186, *12 (Pa. Commw. Ct. 2023) (unpublished).

The sixth case, *Patel v. Texas Dep’t of Licensing & Regul.*, 469 S.W.3d 69 (Tex. 2015), is virtually identical to Ms. Green’s case—except that the undisputed facts *here* demonstrate Kansas’s sugaring regime is *even more irrational* than Texas’s unconstitutional licensing regime.

In *Patel*, 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

¹³ 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)

textbooks, and the licensing exams—and declared it unconstitutionally irrational under the Texas Constitution. 469 S.W.3d 69. 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 (Willet, 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.

Kansas’s sugaring regime is even *more* irrational than Texas’s unconstitutional threading regime. 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; *SOF* 129, 131. By contrast, Texas admitted that 42% of the required 750 hours were irrelevant. *Patel*, 469 S.W.3d at 88-90.¹⁴

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.*

As the table below demonstrates, Kansas’s sugaring regime therefore requires more irrelevant curriculum hours—1,215—than Texas required for its entire threading regime—750.¹⁵ That is double the hours and double the ratio of irrelevant coursework than in *Patel*. *Id.* at 90

¹⁴ 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-lxxxii; *SOF* 144.

¹⁵ 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*, *SOF* 144.

("[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.").

	<u>Cosmetology License</u>	<u>Esthetician License</u>	<u>Patel v. Texas</u>
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

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.

So, how does the government respond to the argument that there are too many irrelevant and prohibitively expensive hours of coursework? By suggesting it could add *even more* prohibitively expensive and irrelevant coursework. Govt’s Resp. to Pl.’s M.S.J. at 40 (“[T]he easiest way to remedy the alleged deficiencies in sugaring-specific instruction would be to add time and expense to the cosmetology education[.]”). That very same argument was rejected in *Patel*, 469 S.W.3d at 90–91.¹⁶

¹⁶ “[A]ssume in this case the record demonstrated conclusively, or the State conceded, that the Threaders are right and only 40 hours of the required training are relevant to safety and sanitation in performing threading. It would not matter under the [dissent]’s proposed [constitutional] standard. For under that

The government also tries to wave away the factual record by claiming the burdens “are specific to [Ms. Green] and cannot be generalized.” Govt’s Resp. to Pl.’s M.S.J. at 37. But that’s precisely the point Ms. Green has been making for years now. There is no legitimate reason why Ms. Green—who only wants to perform sugaring—should be required to attend prohibitively expensive schooling that is at least *16 times longer* than a person who is learning how to save lives, and to take irrelevant licensing exams, none of which makes sugaring any safer than it already is.

These six beauty licensing cases, properly considered, demonstrate that the licensing regime, as applied to Ms. Green, is unconstitutional.

D. The extensive and undisputed factual record demonstrates Kansas’s sugaring regime flunks even rational basis review.

In the government’s reply brief, it offers three justifications for requiring Ms. Green to complete 1,500 or 1,000 hours of irrelevant and prohibitively expensive coursework and requiring her to pass two irrelevant licensing exams: protecting the public health, the government’s own convenience, and making it easier to oversee cosmetologists. Govt’s Resp. to Pl.’s M.S.J. at 32, 33.

As Ms. Green has explained previously, *see* Pl.’s Resp. to Govt’s M.S.J. at 32-42, and as shown in the recap of the factual record above, the government’s purported interests are not supported by the facts.

Sugaring is *already* a safe practice. There is no evidence that public health is threatened by the practice of sugaring, regulated or not; the government admits it has *no evidence* that the regime even minimally advances public health; the Board of Cosmetology has *never* received a complaint about licensed or unlicensed sugaring, nor has it *ever* identified a sugaring-related injury from unqualified or untrained sugarers; and sugaring is so safe, *anyone* can perform sugaring on the public for free. If sugaring were dangerous—as the government tries to suggest (without any

standard, so long as at least some part of the required training could be rationally related to safety and sanitation, the entire 750 hours are rationally related because the provisions as a whole ‘might achieve the objective.’ The logical result of such standard would be that if the State were to require 1,500 or even more hours of training, the increased requirement would pass constitutional muster. Why is that so? Because if 40 hours of training might conceivably effect the Legislature’s purpose and be constitutional, then any greater number that included that same 40 hours would also.” (cleaned up).

evidence)—the Board would make sure that sugaring is taught and tested, regardless of the “market for sugaring.” Govt’s Resp. to Pl.’s M.S.J. at 39.

The evidence also demonstrates that the licensing regime does *nothing* to make sugaring any safer than it already is. Completing the government-approved cosmetology program and passing the government-approved licensing exams would not make Ms. Green, or anyone else for that matter, any more capable of performing sugaring than *before getting licensed*. *SOF* 45-47, 177-178; *JSOF* xlvii, xci-xcii, xcvi-xcvii, cxliii-cxliv.

The government next suggests that requiring Ms. Green to complete 1,500 or 1,000 hours of irrelevant and prohibitively expensive coursework, and requiring her to pass two irrelevant licensing exams, is rational because “licensing facilitates enforcement of health and sanitation regulations.” Govt’s Resp. to Pl.’s M.S.J. at 33. This case isn’t facially challenging the government’s ability to conduct inspections for all licensed cosmetologists and estheticians. There is no record evidence that inspections improve public health outcomes either for sugarers, in particular, or for the beauty industry in general. 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 for licensed cosmetologists and estheticians, it could nonetheless do so without requiring Ms. Green to attend the 1,500 or 1,000 hours of prohibitively expensive schooling and pass irrelevant licensing exams.

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, *SOF* 213-214, 219, 221, 223-228, 230-234; *see also* Pl.’s Resp. to Govt’s M.S.J. at 42-45; Pl.’s M.S.J. Mem. at 49-51. Indeed, the government’s proffered expert and Board member, Ms. Hines, publicly wrote that licensure is good for salon owners such as herself because “regulation shields them from the unlicensed offering cheap services that undercut a small business’s bottom line for survival.” *JSOF* cxlviii.

On this record, the government’s “talismanic recitation” of public health does not satisfy rational basis review. *Raffensperger v. Jackson*, 316 Ga. 383, 396 (2023); see *Strehlow v. Kansas State Bd. of Agr.*, 232 Kan. 589, 600 (1983) (unconstitutionally irrational to regulate something that is already safe).

But even if there were legitimate public health concerns with sugaring (the record shows otherwise), 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 hours 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 Resp. to Pl.’s M.S.J. at 32. 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. *SOF* 261, 263-264.

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. *SOF* 49; *JSOF* cli.¹⁷

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,

¹⁷ 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).

SOF 48, 117, 219; *JSOF* cxlv—two beauty practices that aren’t required to be licensed, *JSOF* 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. *SOF* 263-264.

Scholars and academics also recognize there are a number of less restrictive alternatives to the full-blown licensing requirements here. *See*, Lisa Knepper, et al, *License to Work*, 50-51 (Inst. for Just., 3rd ed. 2022) (detailing the less burdensome alternatives to licensing);¹⁸ Kyle Sweetland, et al., *Raising Barriers, Not Quality*, 16-17 (Inst. for Just., revised ed. 2022) (same);¹⁹ Pl.’s M.S.J. Ex. AA, Occupational Licensing: A Framework for Policymakers, The White House, at 42-45 (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 Resp. to Pl.’s M.S.J. at 33. The government never disclosed “administrative efficiency” as one of its interests when asked to do so in interrogatories. *See* Pl.’s M.S.J. Ex. Y, Def. Rog. Resp. 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 Resp. to Pl.’s M.S.J. at 33.²⁰ And besides, braiders and threaders are already exempted from the

¹⁸ Available at <https://ij-org-re.s3.amazonaws.com/ijdevsitestage/wp-content/uploads/2022/09/LTW3-11-22-2022.pdf>

¹⁹ Available at <https://ij.org/wp-content/uploads/2022/10/Raising-Barriers-Not-Quality-10142022-WEB-REVISED.pdf>

²⁰ 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.

licensing regime, which has not hampered the Board’s administrative efficiency. The government seems to take the position that Ms. Green is asking this Court to create a sugaring-specific license. Govt’s Resp. to Pl.’s M.S.J. at 34-35. Again, the government misunderstands what this case is about. Ms. Green is not asking this Court to create a sugaring license; she’s asking this Court to declare the current licensing requirements unconstitutional, as applied to Ms. Green. There is no logical reason—or factual basis—to think *less* regulation makes the government’s oversight harder.²¹ 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).

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 Resp. to Pl.’s M.S.J. at 33. This purported government interest wasn’t disclosed either when asked to do so in interrogatories. *See* Pl.’s M.S.J. Ex. Y, Def. Rog. Resp. 15, 16, 13. Ms. Green 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.

²¹ The government suggests to this Court that it “should respect the legislative judgment that has kept sugaring a licensed activity.” Govt’s Resp. to Pl.’s M.S.J. at 33. But the Kansas Legislature judged the cosmetology or esthetician licensing requirements *too much* for those who only desire to perform sugaring and sought to deregulate the practice. *See* S.B. 434 (2024).

The government contends that the licensing regime must be upheld because “sugaring is practiced on the entire body, including the genital area.” Govt’s Resp. to Pl.’s M.S.J. at 35. But the government fails to explain why that would make irrelevant education and irrelevant testing requirements somehow relevant, or that requiring irrelevant schooling and irrelevant examinations is rational. What’s more, the government *admits* that there are no additional risks or safety concerns that arise from sugaring being performed on all parts of the body, including the genital area. *SOF* 251. But even if sugaring the genital area did present additional risks or safety concerns, forcing Ms. Green to spend a year in a cosmetology school where she will not be taught anything about sugaring in the genital area is not rationally related to any legitimate government interest.

The government next argues the regime “helps regulate the moral character of the profession.” Govt’s Resp. to Pl.’s M.S.J. at 33. 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; *SOF* 252, 255. 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; *SOF* 255.

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; *SOF* 15, 18.f-l, 18.q, 24-26, 29-30, 33, 40, 42-44, that doesn’t require any formal schooling to learn, *SOF* 43-47, that has been around for thousands of years, *JSOF* ii, and that Ms. Green already knows how to do, *JSOF* xvi, xxiii; *SOF* 74-76—and that she could legally do for free, *JSOF* xlix-lix; *SOF* 117-118—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 thus, the regime is unconstitutionally irrational, oppressive, and unreasonable. *See, e.g., Ernest v. Faler*, 237 Kan. 125, 130 (“the legislature cannot use a cannon to kill a cockroach.”); *City of Baxter Springs v. Bryant*, 226 Kan. 383, 391 (1979) (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”).

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. As these cases show, it is unconstitutionally irrational to require Ms. Green to “master[] the entire [cosmetology] curriculum,” Govt’s Resp. to Pl.’s M.S.J. at 39—which includes styling hair, doing nails, and so on—just to be able to perform sugaring.

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.²² 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, *SOF* 9. *Cornwell*, 80 F. Supp. 2d at 1112 (finding time spent on irrelevant training, rather than relevant training, undermines public health).

²² It bears repeating that the government tries distancing itself from the very textbooks it has endorsed. Govt’s Resp. to Pl.’s M.S.J. at 41-43; *id.* at 41 (arguing the textbooks should be ignored because “there is no evidence that the authors of the textbook were trained in medicine, public health, etc.”). The textbooks’ authors *were* trained in those sorts of things though. Ex. 4, *Milady Standard Cosmetology – About the Authors* at xix-xxi; Ex. 5, *Milady Standard Esthetics: Advanced* at xvi-xxi; Stip. Ex. 7 at 171-172. But if the government is right—that its textbooks aren’t credible or reliable—then its education and licensing requirements are even more irrational than one can possibly imagine, because that’s what’s used to form the entire basis of the government’s 1,500- and 1,000-hour cosmetology and esthetician curricula, and the respective licensing examinations.

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 composition 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. Neither exam asks a single sugaring-specific question.

It's unconstitutionally irrational, oppressive, and harsh to force Ms. Green to spend nearly \$20,000 and almost a year of her life at beauty school—and “at the same time lose the opportunity to make money”—when *just two hours* of sugaring-specific instruction will protect the public, *SOF* 49; *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, *SOF* 213-214, 77-89; see Pl.'s M.S.J. Mem. at 49-51; Pl.'s Resp. to Govt's M.S.J. at 43-45. Ms. Green wants to help financially support her growing family by performing sugaring but can't because established license holders don't want competition. See *SOF* 1-9; *SOF* 209-234. Such naked protectionism is not a legitimate government interest and is patently unconstitutional. See *Cent. Kansas Med. Ctr. v. Hatesohl*, 308 Kan. 992, 1024 (2018) (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 that 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”); *Schwartz v. Board of Examiners*, 353 U.S. 232, 239 (1957); *Dent v. West Virginia*, 129 U.S. 114, 121-122 (1889); *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.²³ 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.

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

The government’s response to Ms. Green’s summary judgment memorandum is virtually identical to its motion to dismiss and its motion for summary judgment. The government yet again claims that Section 18 is “a procedural right,” and that it “does not create new substantive rights.” Govt’s Resp. to Pl.’s M.S.J. at 28. This badly confuses Section 18, centuries of history regarding the “due course of law,” and Ms. Green’s Section 18 claim.

²³ The same is equally true for the esthetician regime.

Section 18 is Kansas’s due process of law clause. *League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 806 (2024) (“The phrase ‘remedy by due course of law’ is ‘tied to due process concerns.’”); *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; *see also Gannon v. State*, 298 Kan. 1107, 1131-34 (2014) (recognizing substantive due process claim under Section 18 but holding that plaintiffs lack standing).

The government, however, argues that the Kansas Constitution has no due process clause. *See Govt’s Resp. to Pl.’s M.S.J. at 28 n.4* (arguing that *Hodes* relied upon Section 1 because the Kansas Constitution does “not hav[e] a due process clause.”). The government does not cite a single case for its Section 18 procedural-rights-only theory.²⁴

The government cannot wish-away substantive due process protections. *Hodes I*, *Schwab*, *Creecy*, and *Gannon* (and plenty more cases) all make clear that Section 18’s guarantee of a

²⁴ As Ms. Green previously explained in Pl.’s Resp. to Govt’s M.S.J at 66-67, the cases the government cites involved private civil tort actions asserting a novel tort claim, and claiming that Section 18 required courts to recognize the novel cause of action. The cases the government cites stand for nothing more than the proposition that Section 18 does not create new civil causes of action, but guarantees a remedy for civil causes of action that existed when the Constitution was adopted. *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”); *see also Tillman v. Goodpasture*, 313 Kan. 278, 293 (2021) (holding that while the Legislature could not do away with common law torts existing at the time of the founding, common law torts created after the founding, such as the wrongful birth tort, could be abolished by statute). While the Legislature generally has the flexibility to modify rules of common law, such as torts, “section 18 curtails that flexibility for claims that existed at common law when our Constitution was adopted.” *Id.* None of these cases have ever hinted that Section 18 does not guarantee the due process of law.

“remedy by due course of law” is Kansas’s due process clause, and that it provides both a substantive and procedural check on government actions.²⁵

Besides misreading Section 18, 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 17th century, and that the regime violates the right. *See* Pl.’s Resp. to Govt’s M.S.J at 67-68 (tracing Section 18’s historical protections from Magna Carta to Coke, Blackstone, and the Wyandotte Convention).

Finally, the government argues that Section 18 caselaw mandating the use of the “reasonableness” test and the “real and substantial relation” test are indistinguishable from the federal rational basis test. *See* Govt’s Resp. to Pl.’s M.S.J. at 28-29. That’s wrong. As Ms. Green has previously explained, the Kansas tests are realistic, factually oriented, and far less deferential than federal tests. Pl.’s M.S.J. Mem. at 51-55, 65-67; Pl.’s Resp. to Govt’s M.S.J. at 45-49, 68-69.

For the reasons stated above, and in Pl.’s M.S.J. Mem. at 65-67, and Pl.’s Resp. to Govt’s M.S.J. at 66-70, Ms. Green is entitled to summary judgment on her Section 18 claim.

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

The government treats sugarers differently based solely on whether sugaring involves a commercial transaction. Put differently, if Ms. Green performs sugaring for \$.01, she’s required to have a license. But if she performs sugaring for free, she doesn’t. For nearly two years, the government has never even tried justifying the difference in treatment, except to say, “the legislature has judged it necessary.” *SOF* 272-273. But as shown throughout the briefing, the

²⁵ The “due process of law guarantee is an effort—one with deep roots in the history of western civilization—to reduce the power of the state to a comprehensible, rational, and principled order, and to ensure that citizens are not deprived of life, liberty, or property except for *good reason*.” Timothy Sandefur, *In Defense of Substantive Due Process, Or the Promise of Lawful Rule*, 35 Harv. J.L. & Pub. Pol’y, 283, 285 (2012) (emphasis in original). It “guarantee[s] that the government will not employ its coercive powers against the individual on the basis of ‘because I say so.’” *Id.* at 292.

rational basis test is a real test that demands real evidence. Rational basis *is not* an after-the-fact rationalization kind of inquiry. Because the government finally realizes it needs *some sort of justification*, it offers speculation and conjecture. Govt’s Resp. to Pl.’s M.S.J. at 24-25. In Kansas, that’s not enough to survive rational basis review. “We’re the government, we can do what we want” is an insufficient reason to violate Equal Protection. Sugaring is safe whether there’s a commercial transaction or not. On this record, the unequal treatment is irrational and unconstitutional.

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 only engage in sugaring.

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. *SOF* 48, 117, 219; *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.

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

As Ms. Green has previously explained, Section 20 is a robust Lockean guarantee of unenumerated natural rights. Pl.’s M.S.J. Mem. at 69-73; Pl.’s Resp. to Govt’s M.S.J. at 72-77.

“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).

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. Thirty-five states, moreover, have an unenumerated rights provision similar to Section 20. The general understanding is that these provisions “protect vital rights.” *Rivera*, 315 Kan. at 891.²⁶

The government asserts that Section 20 “does not create standalone substantive rights or limit the Legislature’s police power,” and that it could only ever apply to “rights deemed

²⁶ See also *In re Adoption of B.G.S.*, 556 So. 2d 545, 551 (La. 1990) (natural right of parents to their children, as well as “reciprocal rights and obligations of natural parents and children are among those unenumerated rights retained by individuals”); *In re Brown*, 478 So. 2d 1033, 1039 (Miss. 1985) (right to refuse blood transfusion is protected by unenumerated rights provision); *Nickola v. Grand Blanc Twp.*, 394 Mich. 589, 607-08 (1975) (exclusionary zoning law invalid because “[w]hile shelter and food are not specially enumerated constitutional concerns . . . they may be among the unenumerated rights still ‘retained by the people’”); *Murphy v. Pocatello Sch. Dist. No. 25*, 94 Idaho 32, 38 (1971), *abrogated on other grounds by Planned Parenthood Great Nw. v. State*, 171 Idaho 374 (2023) (“the right to wear one’s hair in a manner of his choice” is protected); *Thiede v. Town of Scandia Valley*, 217 Minn. 218, 225 (1944) (forcible removal of individuals from their home violated unenumerated rights clause); *City of Mobile v. Rouse*, 233 Ala. 622, 623-24 (1937) (“the right of an individual engaged in an inherently lawful occupation to fix the price for which he will render personal service is a part of the liberty reserved to him against governmental encroachment”); *Roman Cath. Archbishop of Diocese of Oregon v. Baker*, 140 Or. 600, 613 (1932) (striking down zoning prohibition on schools in residential neighborhoods because “[t]he right to own property is an inherent right” protected by unenumerated rights provision); *State v. Williams*, 146 N.C. 618 (1908) (prohibition on transporting more than a half-gallon of liquor fails the real and substantial relationship test required by unenumerated rights provision); *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); see also Anthony B. Sanders, *Baby Ninth Amendments: How Americans Embraced Unenumerated Rights and Why It Matters* (2023) at 42, 149-59.

fundamental.” Govt’s Resp. to Pl.’s M.S.J. at 29. The government does not cite a single on-point case to support its view,²⁷ but instead states that “Kansas courts have never held that any rights other than fundamental rights are protected by Section 20.” Govt’s Resp. to Pl.’s M.S.J. at 29. But one can just as easily argue that “Kansas courts have never held that only fundamental rights are protected by Section 20.” That’s because Section 20 makes no mention of fundamental or non-fundamental rights, only the unenumerated rights retained by the people.

The government seeks to reduce Section 20 to “a fount of judicially discovered and preferred ‘fundamental’ rights.” *Hodes I*, 309 Kan. at 766 (2019) (Stegall, J., dissenting). But Section 20 is much more than that; it is a recognition that the people of Kansas, through their Constitution, have only authorized the state to perform limited functions for the public. All other rights and powers that have not been ceded to the government in the Constitution are retained by the people. “In order to be a constitutional exercise of power, *every* act of our Legislature must be rationally related to the furtherance or protection of the commonwealth. The lodestar of this test is, ‘*what have* [the people] *authorized to be done?*’ The people have not authorized the State to act in arbitrary, irrational, or discriminatory ways.” *State v. Carr*, 314 Kan. 615, 734 (2022) (Stegall, J., concurring) (emphasis in original). Nor have the people authorized the state to enact occupational licensing laws that require thousands of hours of irrelevant education to perform an ancient, safe grooming practice, all for the sake of protecting industry insiders from competition from unlicensed individuals. This court should, therefore, “examine the *actual* legislative record to determine the *real* purpose behind any law in question before it can conclude the law is within

²⁷ As explained in Pl.’s Resp. to Govt’s M.S.J. at 73-74, *Manning v. Davis*, 166 Kan. 278 (1948), is not a Section 20 case. The case revolved around the impact of a 1948 amendment to Article 15, Section 10 on alcohol prohibition. The Court simply held that the repeal of the Constitution’s prohibition of alcohol did not render the statutes prohibiting alcohol void, because the statutes could still be justified under the state’s police power even if the Constitution did not mandate prohibition. Similarly, the government’s reliance upon *Filan v. Martin*, 38 Wash. App. 91, 97, (1984) is misplaced, since *Filan* involved a vexatious, pro se litigant arguing that judicial and prosecutorial immunity violated the federal Ninth Amendment. But 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 kill dog in self-defense is retained under unenumerated rights provision).

the limited constitutional grant of power possessed by the State.” *Id.* (emphasis in original). Doing so will lead to the inescapable conclusion that this regime is plainly unconstitutional.

Scope of Relief

The government mischaracterizes the relief Ms. Green seeks. Ms. Green is *not* asking this Court to declare the *entire* occupational licensing regime facially unconstitutional in every aspect, for *all* individuals. *See* Govt’s Resp. to Pl.’s M.S.J. at 46. Ms. Green is *not* asking this Court to find that there is “no education and no test that could be rationally applied to prospective sugarers,” or that “*any* education” or “*any* examination” is irrational either. *Id.* (emphasis in original).

Instead, Ms. Green has sought a much narrower declaratory judgment—that the cosmetology and esthetician licensing requirements, as applied to Ms. Green—who only wants to perform sugaring—and others who are similarly situated, is unconstitutional under Sections 1, 2, 18, and 20 of the Kansas Constitution. Ms. Green has sought a permanent injunction to that effect as well, including the concomitant enforcement penalties.

It’s not that *any* licensing requirements, or *any* education requirements, or *any* examination requirements are unconstitutional; it’s that *these* licensing, education, and examination requirements are unconstitutional, as applied to Ms. Green and others who are similarly situated, which Ms. Green has consistently challenged since the filing of her Amended Petition.

And it’s the *licensing requirement* that triggers all of the other requirements, oversight, and enforcement penalties. *See, e.g.*, K.S.A. § 65-1902(a)(1) (no person can engage in cosmetology or esthetics without a license); K.S.A. § 65-1909(a)(1) (prohibiting a person from employing or allowing an individual to “engage in any activity for which a license is required ... unless such individual holds a currently valid license issued to such individual[.]”); K.S.A. § 65-1902(a)(10); K.S.A. § 65-1902(a)(11); K.A.R. 69-13-2 (licensed establishments to be inspected).

Obtaining that license requires graduation from a Board-approved cosmetology or esthetician school, K.S.A. § 65-1912; K.A.R. § 69-1-1, consisting of “not less than” 1,500 hours or 1,000 hours of instruction, K.S.A. § 65-1903(a) (2) (D) (2)&(5); K.S.A. § 65-1903(a)(2)(F)(2)&(5); K.S.A. 65-1905(b)(4).

Obtaining that license also requires successfully completing cosmetology or esthetics licensing exams. K.S.A. § 65-1904(c); K.S.A. § 65-1905(a); K.A.R. § 69-1-1(a); K.A.R. § 69-1-4(c).

There are, of course, penalties for engaging in unlicensed cosmetology or esthetics. *See, e.g.*, K.S.A. §§ 65-1902(a)(1), (d) and (e); K.S.A. §§ 65-1909(a)(3) and (b); K.S.A. §§ 65-1909(a)(4) and (b); K.S.A. § 65-1908(a)(2); K.S.A. § 65-1908(b); K.S.A. § 65-1908(a)(1-9). K.S.A. § 65-1908(d).

At bottom, Ms. Green has alleged—and proven—that requiring Ms. Green to obtain a full cosmetology or esthetics license, which requires 1,500 or 1,000 of prohibitively expensive and irrelevant coursework, and which also requires passing two irrelevant licensing examinations, just to be able to perform sugaring—and only sugaring—is unconstitutional. And because requiring her to obtain such a license would be unconstitutional, the Kansas Board of Cosmetology cannot require her to attend cosmetology or esthetics school, enforce penalties against her, or require her to work in a licensed facility, and so on. A declaratory judgment in Ms. Green’s favor does *not* mean that *all* of the licensed facility requirements, or high school educational requirements, will be declared unconstitutional for everyone—because again, Ms. Green seeks relief from the requirements as applied to her and others who are similarly situated.

Ms. Green’s request for relief is more limited than the government suggests. But in any event, because a declaratory judgment striking down the licensing regime’s requirements would “change the scope of the Act,” and because they have “such an integral and inseparable part of the whole scheme and purpose of the law,” they are not severable. *Thompson v. KFB Ins. Co.*, 252 Kan. 1010, 1024 (1993) (cleaned up). But even assuming they are severable, again, Ms. Green is seeking relief as applied to her and others who are similarly situated. And as Ms. Green has repeatedly stated, 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.²⁸

²⁸ Ms. Green requests oral argument pursuant to Local Rule 3.202(c).

Conclusion

If the Kansas Constitution has any meaning, requiring Ms. Green to spend nearly twenty-thousand dollars and almost a year of her life in a full-time, 1,500 hour cosmetology program, learning irrelevant things (like cutting hair, doing nails, and writing a resume), and taking irrelevant examinations (that don't ask a single sugaring-specific question), 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, is patently unconstitutional.

It is precisely *because* the Kansas Constitution has meaning that this Court should grant Ms. Green's motion for summary judgment and reject the government's motion.

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Dated: February 6, 2026.

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Certificate of Service

The undersigned certifies that on February 6, 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
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