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Occupational Licensing: How States and Professionals Work to Keep the Poor from Working

Seth Johnson

An occupational license is a governmental permission to work in a particular field.¹ Occupational licensing emerged under the auspices of protecting consumers and establishing high standards for products and services.² Though forms of occupational licensing have existed since medieval times, the nineteenth century marked the emergence of widespread licensing in the United States.³ During this early period, licensing laws focused predominantly on the medical profession.⁴ In 1889, the Supreme Court heard a challenge to a West Virginia law requiring graduation from an accredited medical school, and either passage of an exam or requisite experience, in order to practice as a physician.⁵ In *Dent v. West Virginia*, the Court upheld the aforementioned law, holding that the state's interests in protecting health and safety were sufficient grounds to allow some restrictions on a person's pursuit of work.⁶ Since the *Dent* decision, courts have generally upheld state licensing laws.⁷ By the 1950s, a little under five percent of workers required a state-issued license.⁸ In 2008, the proportion grew to twenty-nine percent.⁹

If twenty-nine percent sounds high, that's because it is.¹⁰ Though occupational licensing often proceeds from a desire to protect public safety, the

¹ Dick M. Carpenter et al., *License to Work: Introduction*, INSTITUTE FOR JUSTICE (2012), <https://ij.org/report/license-to-work/introduction/>.

² Morris M. Kleiner, *Reforming Occupational Licensing Policies*, THE HAMILTON PROJECT 5 (2015), https://www.brookings.edu/wp-content/uploads/2016/06/THP_KleinerDiscPaper_final.pdf.

³ Paul Larkin, *A Brief History of Occupational Licensing*, THE HERITAGE FOUNDATION (2017), <https://www.heritage.org/government-regulation/report/brief-history-occupational-licensing-0>.

⁴ *Id.*

⁵ *Id.*

⁶ *Dent v. State of West Virginia*, 129 U.S. 114, 121-124 (1889).

⁷ C. Jarrett Dieterle & Shoshana Weissmann, *The Licensing Logjam*, 37 NATIONAL AFFAIRS (Spring 2018), available at <https://www.nationalaffairs.com/publications/detail/the-licensing-logjam>.

⁸ Kleiner, *supra* note 2.

⁹ *Id.*

¹⁰ See Morris M. Kleiner, *The Influence of Occupational Licensing and Regulation*, IZA WORLD OF LABOR, 2 (2017), <https://wol.iza.org/uploads/articles/392/pdfs/the-influence-of-occupational-licensing-and-regulation.pdf> (Reporting a lower U.K licensing rate of 19% of the working population).

growth of licensing victimizes many citizens it was initially intended to protect.¹¹ Many recent anecdotes illustrate this point. In New York City, health department officials issued violations carrying \$1,000 fines to two residents who pet-sat without a license.¹² In Arizona, a formerly homeless man studying cosmetology was investigated and threatened with penalties by the state's licensing board after giving free haircuts to the homeless.¹³ A recent Georgia law created licensing requirements for lactation consultants – women who help teach and assist new mothers with breastfeeding.¹⁴ When the law was still being debated, the state licensing board released a statement opposing the bill, arguing that it would harm women in low-income, minority, and rural areas.¹⁵ The state legislature passed the bill anyway, leaving ninety percent of the 800 lactation consultants in Georgia ineligible to continue work.¹⁶ In order to become eligible, the consultants must complete two years of college courses and demonstrate proof of over 300 hours of clinical experience.¹⁷ Georgia is the only state with such stringent requirements, and one of only three states that regulates lactation consultants at all.¹⁸

For the poor, losing the ability to work due to a licensing law can lead to losing much more.¹⁹ In 2003, a Louisiana woman named Sandy Meadows ran afoul of the Louisiana Horticulture Commission for practicing floristry without a license.²⁰ Meadows had over ten years of experience arranging flowers,²¹

¹¹ See Carpenter, *supra* note 1.

¹² Patrice Lee Onwuka, *New York's crackdown on dog-walking licenses is only hurting low-income workers*, WASHINGTON EXAMINER (Jul. 2017), <https://www.washingtonexaminer.com/new-yorks-crackdown-on-dog-walking-licenses-is-only-hurting-low-income-workers>.

¹³ Shoshana Weissmann & C. Jarred Dieterle, *Is It Wrong to Cut a Homeless Man's Hair Without a License?*, WALLSTREET JOURNAL (Apr. 8, 2018), <https://www.wsj.com/articles/is-it-wrong-to-cut-a-homeless-mans-hair-without-a-license-1523209162>.

¹⁴ Jamie Cavanaugh, *Breastfeeding can be difficult, but a law to license lactation consultants may make it even harder*, THINK (Aug. 1, 2018), <https://www.nbcnews.com/think/amp/ncna896566>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Shoshana Weissmann & Jarret Dieterle, *Louisiana is the only state that requires occupational licenses for florists. It's absurd.*, USA TODAY (Mar. 28, 2018), <https://www.usatoday.com/story/opinion/2018/03/28/louisiana-only-state-requires-occupational-licenses-florists-its-absurd-column/459619002/>.

²⁰ Jacob Sullum, *Flower Power*, REASON (Jan. 9, 2004), <https://reason.com/archives/2004/01/09/flower-power>.

²¹ *Id.*

but she never passed the state's floristry exam in any of her five attempts.²² Despite failing the state examinations, the quality of Meadows' work appeared evident to others.²³ In addition to her regular job at Wal-Mart where she cycled through many departments including floristry, Meadows was often asked to fill in at another store's florist department.²⁴ She was approached by an inspector from the commission while working at the second store.²⁵ The inspector threatened her with a \$250 fine if she did not throw out all of the arrangements she made earlier in the day.²⁶ Joined by several other unlicensed florists, Meadows eventually filed a federal lawsuit against the Louisiana Horticulture Commission, in the hope of overturning the licensing requirements on constitutional grounds.²⁷ Meadows never lived to see the outcome of the case,²⁸ dying a year after being forced out of floristry, without a car, telephone, or working electricity.²⁹ A federal judge vacated the lawsuit in 2006 after Hurricane Katrina and various other circumstances coalesced to render it moot.³⁰

THE COST OF EXCESSIVE LICENSING

While it is impossible to put a number on human despair, the broader economic impacts are measurable.³¹ Occupational licensing demonstrably reduces job growth and employment opportunities for low-income individuals in particular.³² There are up to 2.85 million fewer jobs that would otherwise exist but for current levels of occupational licensing.³³ It is estimated that the extra cost to consumers is up to \$203 billion annually.³⁴ Given these statistics, it is easy to see how the costs to society add up. Consider ninety-percent of the 800 lactation consultants in Georgia excluded from work by the new licensing

²² Weissmann & Dieterle, *supra* note 19.

²³ *Sandy Meadows*, INSTITUTE FOR JUSTICE, <https://ij.org/client/sandy-meadows/> (last visited Oct. 7, 2018).

²⁴ *Id.*

²⁵ Sullum, *supra* note 20

²⁶ *Id.*

²⁷ John Kramer, *Louisiana Florists Seek Independence From State Licensing Scheme*, INSTITUTE FOR JUSTICE (Jul. 1, 2005), <https://ij.org/press-release/louisiana-florists-old-release-7-1-2005/>.

²⁸ *See Sandra Horn Meadows Obituary*, THE ADVOCATE (Oct. 7, 2004), <https://obits.theadvocate.com/obituaries/theadvocate/obituary.aspx?n=sandra-horn-meadows&pid=2683349>.

²⁹ Weissmann & Dieterle, *supra* note 19.

³⁰ John Kramer, *Louisiana Florist Case Moot*, INSTITUTE FOR JUSTICE (Aug. 1, 2006), <https://ij.org/case/meadows-v-odom/>.

³¹ Kleiner, *supra* note 2.

³² *See Id.* at 6.

³³ *Id.*

³⁴ *Id.*

law.³⁵ The excluded consultants lose income, and those wishing to use their services spend more.³⁶ The fact that of the three states that license lactation consultants, that only Georgia has such an exclusionary law, cuts strongly against the notion that safety and quality are the primary concerns of lawmakers.³⁷

Occupational licensing is also implicated in the phenomenon of rising income inequality in the United States. In 1980, the bottom 50% of earners held 20% of the nation's wealth.³⁸ That same year, the top 1% of earners held 12% of the nation's wealth.³⁹ In 2014, the situation reversed; the bottom 50% held 12%, and the top 1% held 20%.⁴⁰ In terms of average income, the top 1% earned about 27 times more than the bottom 50% in 1981.⁴¹ In 2014, the top 1% earned 81 times more on average than the bottom 50%.⁴²

Recent studies suggest that growing income inequality robbed the United States of about five GDP percentage points worth of economic growth from 1990-2010.⁴³ The Organization for Economic Co-operation and Development (OCED) found that the primary cause of lowered GDP growth is a lack of opportunity for greater education amongst low-income people.⁴⁴ This lack of opportunity results in poor social mobility, and hinders the development of skills needed for better incomes.⁴⁵ Specifically, OCED found that the bottom forty-percent of households lack access to higher-cost education.⁴⁶ This in turn, leads to lower worker productivity, lower wages, and a smaller economic impact in general.⁴⁷ When one considers the educational requirements of

³⁵ See Jamie Cavanaugh, *Breastfeeding can be difficult, but a law to license lactation consultants may make it even harder*, THINK (Aug. 1, 2018, 8:50 GMT), <https://www.nbcnews.com/think/amp/ncna896566>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Howard R. Gold, *New data: Inequality runs even deeper than previously thought*, CHICAGO BOOTH REVIEW (May 23, 2017), <http://review.chicagobooth.edu/economics/2017/article/new-data-inequality-runs-even-deeper-previously-thought>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Christopher Ingraham, *How rising income inequality hurts everyone, even the rich*, WONK-BLOG, WASHINGTON POST (Feb. 6, 2018), https://www.washingtonpost.com/news/wonk/wp/2018/02/06/how-rising-inequality-hurts-everyone-even-the-rich/?utm_term=.a02d9c4d732d.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

many contemporary licensees, the connection between licensing and inequality becomes clear. Of the 29% of workers who require licenses to work, nearly 48% required a college degree.⁴⁸ Nearly 68% required some form of continuing education beyond high school.⁴⁹ 46% needed to complete an internship.⁵⁰

For those who find ways to pay for their education, licensing laws can still prevent them from working in their desired profession.⁵¹ Fifteen states revoke occupational licenses when student loan borrowers default on their loans.⁵² The *New York Times* found 8,700 instances of licenses revoked for student loan default in recent years, while estimating the true number was significantly higher.⁵³ In 2012, the national default rate on student loans was nearly twelve-percent.⁵⁴ For some lower-paying licensed positions requiring post-high school education, the default rate is considerably higher.⁵⁵ Graduates of cosmetology programs for which federal aid was obtainable default at a rate of seventeen-percent.⁵⁶ All but one of the educational institutions whose graduates had the highest default rates were cosmetology or barber schools.⁵⁷ With an average salary of \$25,000,⁵⁸ it is not difficult to see how occupational licensing laws create no-win scenarios for cosmetologists and similarly licensed professions.

Interests contrary to the welfare of the public are at work in reducing so many employment opportunities. Sandy Meadows failed a section of the Louisiana floristry exam judged by a panel of already-licensed florists, five times.⁵⁹ The judges evaluated the candidates according to subjective criteria including balance, scale, harmony, focal point, accent, repetition and unity.⁶⁰ Fewer than

⁴⁸ Kleiner, *supra* note 2 at 8.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See Nick Sibilla, *Defaulting on a student loan could cost you your job in these professions*, THINK, NBC NEWS (Aug. 28, 2018), <https://www.nbcnews.com/think/opinion/defaulting-student-loan-could-cost-you-your-job-these-professions-ncna904476>.

⁵² *Id.*

⁵³ Jessica Silver-Greenberg et al., *When Unpaid Student Loan Bills Mean You Can No Longer Work*, NY TIMES (Nov. 18, 2017), <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html?mwrsm=Facebook>.

⁵⁴ Sibilla, *supra* note 51.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Jacob Sullum, *Flower Power*, REASON (Jan. 9, 2004), <https://reason.com/archives/2004/01/09/flower-power>.

⁶⁰ *Id.*

fifty-percent of candidates passed the exam.⁶¹ It is clear this presents ample opportunities for conflicts of interest. Though Louisiana eventually removed this portion of the exam,⁶² it is far from an unusual occurrence for persons with potential conflicts of interest to be vested with state power to grant or deny license to work.⁶³

Some data provides evidence for why licensing board members who are also market participants might consider factors beyond a candidate's qualifications and skills.⁶⁴ Research indicates that licensing tends to increase prices for services and goods derived from licensed workers.⁶⁵ Some argue that price increases represent a reduction in the probability of poor service.⁶⁶ Others note that the increase presents a potent means for those already in licensed professions to increase their pay and limit the amount of competition they face in the market.⁶⁷ Some logical support for the latter proposition is found in the fact that the professions states choose to license, and the way in which they license, varies immensely even for the same kinds of jobs.⁶⁸

EXCESSIVE LICENSING AND FEDERAL ANTITRUST LAW

When private enterprises engage in anti-competitive efforts, the Federal Trade Commission (FTC) can bring actions against them under the Sherman Antitrust Act.⁶⁹ In the early 1940s, a California raisin farmer argued that a state agricultural scheme violated the Sherman Act.⁷⁰ The farmer's case reached the Supreme Court in *Parker v. Brown*.⁷¹ The Court held that the agricultural scheme was immune to the Sherman Act because "[i]t derived its authority and its efficacy from the legislative command of the state."⁷² From

⁶¹ Weissmann & Dieterle, *supra* note 19.

⁶² *Id.*

⁶³ See Dieterle & Weissmann, *supra* note 7 (discussing "opportunity hoarding", the phenomenon of licensed market participants creating and/or enforcing licensing regulations).

⁶⁴ Kleiner, *supra* note 2 at 15.

⁶⁵ See *Id.* (discussing research showing various percentages of price increases from licensing in different occupations, finding a range of 5-33% increases in prices).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 10.

⁶⁹ Ingram Weber, *The Antitrust State Action Doctrine and State Licensing Boards*, 79 U CHI L REV 737, 43 (2012).

⁷⁰ *Parker v. Brown*, 317 U.S 341, 344-50 (1943).

⁷¹ *Id.* at 341.

⁷² *Id.* at 350.

Parker emerged the “state action doctrine.”⁷³ The doctrine states that anti-competitive or monopolistic actions resulting from acts of state legislation do not expose states to liability under the Sherman Act.⁷⁴ Since states typically create licensing boards through acts of their legislatures, even licensing schemes that would be illegal under the Sherman Act were historically immune from it.⁷⁵ Federal courts and the FTC often tried to articulate certain conditions for continued immunity, usually requiring some degree of “active supervision” of the licensing boards by state authorities.⁷⁶

In 2015, the Supreme Court fundamentally reduced state-created licensing board’s degree of immunity to the Sherman Act in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*.⁷⁷ In North Carolina, the State Board of Dental Examiners is vested by statutory authority with the power to regulate the practice of dentistry.⁷⁸ The law establishing the board requires that six of eight board members be licensed dentists “engaged in the active practice of dentistry.”⁷⁹ The licensed dentists of the board are elected solely by a pool of other licensed dentists.⁸⁰ In 2006, the board issued forty-seven cease and desist letters to businesses engaged in teeth whitening services and production of goods used in those services without dentistry licenses.⁸¹ In the letters, the board heavily implied that it considered teeth-whitening “the practice of dentistry,” without an explicit declaration that it was making such a determination.⁸² The board also convinced the North Carolina Board of Cosmetic Art Examiners to issue similar warnings to cosmetologists engaged in teeth whitening.⁸³ Unlicensed teeth-whitening apparently ceased as a result of these actions.⁸⁴

Teeth-whitening as a practice did not take off in North Carolina until the 1990s.⁸⁵ Dentists held a monopoly on the practice until approximately 2003,

⁷³ Weber, *supra* note 69.

⁷⁴ *Id.*

⁷⁵ Dieterle & Weissmann, *supra* note 7.

⁷⁶ Weber, *supra* note 69 at 739.

⁷⁷ See *North Carolina State Bd. Of Dental Examiners v. F.T.C.*, 135 S. Ct. 1101, 1104-1107 (2015).

⁷⁸ *Id.* at 1107.

⁷⁹ *Id.* at 1108.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

when unlicensed practitioners began providing the service.⁸⁶ A fair amount of evidence surfaced suggesting that the board's primary motivations in threatening legal action were not safety or quality concerns.⁸⁷ Rather, the board was concerned about competing with the lower prices offered by non-dentists.⁸⁸

In 2010, the FTC filed an administrative complaint against the North Carolina board, alleging a concerted effort to unlawfully and unfairly prevent competition with non-licensed teeth-whiteners.⁸⁹ In an administrative proceeding, the board argued that as a state agency, it was immune to anti-trust actions.⁹⁰ The administrative law judge rejected this argument and found for the FTC.⁹¹ The board challenged the administrative determinations in federal court where the FTC's position was affirmed.⁹² The Supreme Court then agreed to hear the board's appeal.⁹³

In discussing the state-action immunity doctrine as it relates to the Sherman Act, the Court found the main justification for the doctrine stems from principles of federalism.⁹⁴ The Court found that the board did not possess the same degree of sovereignty as the state legislature, particularly where it is controlled by active market participants – in this case dentists who provide whitening services themselves.⁹⁵ The Court settled disagreements in the federal courts definitively ruling that state-action immunity only applies where (1) the state action on the part of the board is clearly articulated and expressed state policy; and (2) the policy is actively supervised by the state.⁹⁶ While the Court found that the board was generally acting within the scope of articulated and expressed state policy in regulating dentistry, it argued that supervision was lacking where the board's action essentially defined what the practice of dentistry was without consulting the state.⁹⁷ The Court went on to explain that actors created and empowered by the state are not “automatically” sovereign actors, because they are capable of acts that are unrelated to the state's actions

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *See Id.*

⁸⁹ *Id.* at 1108-1109.

⁹⁰ *Id.* at 1109.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 1110.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

or even contrary to them.⁹⁸ Justice Kennedy's opinion stressed that cases involving state boards composed of active market participants are the most suspect kind of boards because of the great potential for conflicts of interest.⁹⁹ The Court strongly emphasized that wherever active market participants sit on state licensing boards, immunity to antitrust law cannot be assumed.¹⁰⁰

The decision in *North Carolina State Board of Dental Examiners* paved the way for the FTC to pursue more antitrust actions against state licensing boards.¹⁰¹ Whether the FTC decides to pursue antitrust actions depends on the priorities of its agency leaders.¹⁰² In the wake of *North Carolina State Board of Dental Examiners*, it appears that private citizens and organizations are driving antitrust litigation against state licensing boards.¹⁰³ The FTC could support these suits by filing amicus briefs as it did in 2013 in *St. Joseph Abbey v. Castille*.¹⁰⁴ In that case, the Louisiana State Board of Funeral Directors ordered the monks of a Benedictine Abbey to halt their plans to sell hand-made wooden caskets to the public.¹⁰⁵ The rules promulgated by the Louisiana board prohibited anyone from selling caskets except licensed funeral homes.¹⁰⁶ In order to become a licensed funeral home under the regulations, a funeral home had to (1) consist of a building built to accommodate at least thirty people; space to display at least six caskets; and have arrangement and embalming facilities and (2) employ a full-time funeral director.¹⁰⁷ One becomes a full-time funeral director in Louisiana by: acquiring a GED; thirty credit hours at an accredited college; and completing an apprenticeship during which the apprenticeship must be the candidates' principal occupation.¹⁰⁸ Notably absent from any of the licensing requirements are any rules regarding casket-making.¹⁰⁹

⁹⁸ *Id.* at 1111.

⁹⁹ *Id.*

¹⁰⁰ *Id.* (emphasis added).

¹⁰¹ See Dieterle & Weissmann, *supra* note 7.

¹⁰² Interview with Shoshana Weissmann, Digital Media Manager, R Street Institute (Oct. 5, 2018).

¹⁰³ See Nathan Standley, *Antitrust and Regulatory Boards: Where Do We Go From Here?*, 8, n.4 JOURNAL OF NURSING REGULATION 56, 58-59 (2018) (discussing antitrust litigation trends since *North Carolina State Bd. Of Dental Examiners*).

¹⁰⁴ Dieterle & Weissmann, *supra* note 7.

¹⁰⁵ *St. Joseph Abbey v. Castille*, 712 F. 3d 215, 217-19 (5th Cir. 2013).

¹⁰⁶ *Id.* at 218.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

The court struck down the board's order, affirming the district court's finding that it bore no rational relation to any articulated state interest, and thus violated the Fourteenth Amendment's Due Process and Equal Protection Clauses.¹¹⁰ The amicus brief filed by the FTC appears to have been persuasive to the court in this case. A discussion of FTC funeral rules featured heavily in the opinion.¹¹¹ Due to FTC funeral regulations, Louisiana could not legally prohibit the use in funerals of caskets purchased from third parties from outside of Louisiana.¹¹² The fact that Louisiana was already using caskets made outside of its own regulatory framework made it difficult for the board to argue for the necessity of its rules.¹¹³

THE FUTURE OF LICENSING REFORM

Given the sheer scale of the issue, it is unlikely that a one size-fits-all solution will emerge to the many problems posed by excessive occupational licensing laws. Despite that, Republicans and Democrats in Congress agree that the scope of occupational licensing has grown too large.¹¹⁴ Many agree that action is needed to avoid and alleviate harm.¹¹⁵ Congress can wield its spending power to incentivize states to cut down on excessive regulations.¹¹⁶

Congress did just that with the recent passage of the New HOPE Act.¹¹⁷ The New HOPE Act allows states to allocate funds they receive through federal workforce training to study existing state regulations.¹¹⁸ The studies must proceed with the goal of eliminating regulations adversely impacting employment.¹¹⁹ The Protecting JOBS Act is another piece of legislation in this vein, co-sponsored by Senators Marco Rubio and Elizabeth Warren.¹²⁰ The bill proposes to use the spending power to prohibit any state receiving funds under the federal student loan program from revoking an occupational license on the basis of student loan default.¹²¹ Similarly, the Restoring Board Immunity Act would guarantee immunity to state boards from the Sherman Act on the con-

¹¹⁰ See *St. Joseph Abbey*, *supra* note 105 at 220-227.

¹¹¹ *Id.* at 218-226.

¹¹² *Id.* at 218-220.

¹¹³ *Id.*

¹¹⁴ See Dieterle & Weissmann, *supra* 63.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Protecting Jobs Act, S. 3065, 115th Cong. § 2 (2018).

dition that states meet its proposed requirements.¹²² This would shift the onus of deregulation onto the states.¹²³

Currently, many states are rapidly deregulating occupational licensing in specific areas.¹²⁴ For example, Illinois recently passed a law completely banning the practice of revoking occupational licenses on the basis of student loan default.¹²⁵ Alaska and Washington State did likewise.¹²⁶ Arizona tackled excessive licensing under the executive discretion of its current governor, Doug Ducey, who has used his powers against the state dental board and the state cosmetology board.¹²⁷ Seven states passed laws after *North Carolina Board of Dental Examiners* attempting to ensure active state supervision of their licensing boards.¹²⁸ Georgia and Mississippi's laws allow or require members of the executive branch (in Georgia, the governor; in Mississippi, a commission on which the governor, secretary of state, and attorney general sit) to review and veto state licensing regulations before they become effective.¹²⁹ In Alabama, only those regulations that involve boards staffed by active market participants need to submit proposed regulation for review, and the legislature, rather than executive conducts the review.¹³⁰ In Ohio, review of regulations falling under several categories is the responsibility of a body known as the Ohio Common Sense Initiative Office.¹³¹ While these kinds of laws are geared directly towards providing the required state supervision, Idaho takes another approach by granting the governor the power to fire any licensing board member.¹³² In West Virginia, the state Board of Accountancy members undergo antitrust training.¹³³

Post-*North Carolina Board of Dental Examiners* litigation has trended mostly in favor of state licensing boards.¹³⁴ A consistent theme of many suits is that plaintiffs often fail to show that their harm is more than individuated.¹³⁵

¹²² Restoring Board Immunity Act, S. 1649, 115th Cong. § 1 (2018).

¹²³ Dieterle & Weissmann, *supra* note 7.

¹²⁴ See Standley, *supra* note 103 at 57.

¹²⁵ Sibilla, *supra* note 51.

¹²⁶ *Id.*

¹²⁷ Dieterle & Weissmann, *supra* note 7.

¹²⁸ Standley, *supra* note 103 at 57.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See *Id.* at 58-59.

¹³⁵ *Id.* at 58.

It is typically insufficient to allege that an individual person is subjected to an anti-competitive act in a particular instance; instead a plaintiff must demonstrate that the whole market at issue is unfairly affected.¹³⁶ One case implicating a state attempt to regulate technological innovations has gone favorably for the plaintiffs.¹³⁷ *Teladoc, Inc. v. Texas Medical Board* ended when the Texas legislature intervened during the proceedings to abrogate the regulation at issue.¹³⁸ Teledoc filed its antitrust suit against the Texas Medical Board after the board imposed a regulation requiring an initial face-to-face consultation with a physician before the physician could provide medical services at a distance using various technologies.¹³⁹

CONCLUSION

Though the initial intent of regulating occupations was to protect the health and safety of the nation's citizens,¹⁴⁰ such regulations are now often used to harm them. In today's increasingly stratified society, the burdens of unfair licensing often serve to denote the haves from the have-nots.¹⁴¹ That the means to provide for oneself must themselves be purchased should not be a fact of American life. Though legal trends may be moving in a positive direction, that is little recompense for people like Sandy Meadows who died alone and destitute waiting for her day in court.¹⁴²

¹³⁶ *Id.*

¹³⁷ *Id.* at 58-59

¹³⁸ *Id.* at 59.

¹³⁹ *Id.*

¹⁴⁰ Carpenter, *supra* note 1 at 12.

¹⁴¹ Ingraham, *supra* note 43 at 12.

¹⁴² Dieterle & Weissmann, *supra* note 7.