

is ideally suited for such styling. In 2007, Texas adopted a 35-hour hairbraiding license and wedged it into the state's barber statutes. Defendants will not allow Plaintiffs to offer 35-hours of hairbraiding instruction that qualifies their students to legally work as hairbraiders. Before being allowed to do so, Plaintiff Brantley must become a state-licensed barber instructor—which means obtaining a 1500-hour class-A barber license and completing an additional 750-hour course on barbering instruction. Defendants also require that she operate a state-licensed barber college, one at least 2,000 square-feet and fully equipped to teach barbering, and wholly irrelevant to hairbraiding. In total, Plaintiff Brantley must spend 2,250 hours in barber school, pass four licensing exams, and spend thousands of dollars on tuition and a barber college, all to teach a 35-hour hairbraiding curriculum that is impossible to fail because the state requires no examination for its hairbraiding license.

2. Braiders are not barbers, and Defendants have no evidence supporting the need to force braiding instructors to take classes from barbers or build barber schools. The enforcement of these occupational licensing laws against Plaintiffs is unconstitutional under the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment to the U.S. Constitution. The Fourteenth Amendment protects economic liberty, and prevents the government from unreasonably interfering with the right to earn an honest living in one's chosen occupation.

JURISDICTION AND VENUE

3. Plaintiffs bring this civil rights lawsuit pursuant to the Fourteenth Amendment to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. § 2201.

4. Plaintiffs seek declaratory and injunctive relief against the enforcement of Texas Occupations Code §§ 1601.253-.254 together with 16 Texas Administrative Code §§ 82.20(a),(c),(d),(m), 82.21, 82.120(a)-(d) (together, the “Barber Instructor Laws”), and Texas Occupations Code §§ 1601.351-.353 together with 16 Texas Administrative Code §§ 82.23, 82.51, 82.72 (together, the “Barber School Laws”), related implementing rules and regulations, and the practices and policies of the Texas Department of Licensing and Regulation (“Department”) and the Texas Commission of Licensing and Regulation (“Commission”), that unconstitutionally deny Plaintiff Brantley and Plaintiff Isis Ornamentations and Natural Hair Care Consultant d/b/a the Institute of Ancestral Braiding the ability to provide hairbraiding instruction at a hairbraiding business in satisfaction of the 35-hour curriculum required for the Hair Braiding Specialty Certificate of Registration contained in Tex. Occ. Code § 1601.259 and 16 Tex. Admin. Code §§ 82.20(h), 82.120(k) (together, the “Hairbraiding License”).

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 2201-2202 and 42 U.S.C. § 1983.

6. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

7. Plaintiff Isis Brantley is a United States citizen. She resides in the city of DeSoto, Dallas County, Texas. She owns and operates a sole proprietorship named Isis Ornamentations and Natural Hair Care Consultant, d/b/a the Institute of Ancestral Braiding, an African hairbraiding business and school located at 2642 South Beckley Avenue in Dallas, Texas. She provides African hairbraiding services to the public and also teaches students how to braid hair. Plaintiff Brantley currently holds a Texas Hairbraiding License and she may legally braid hair for compensation.

8. Plaintiff Isis Ornamentations and Natural Hair Care Consultant, d/b/a the Institute of Ancestral Braiding (“Institute of Ancestral Braiding”), is an African hairbraiding business and school in the city of Dallas, Dallas County, Texas. It is owned and operated by Plaintiff Brantley as a sole proprietorship and is located at 2642 South Beckley Avenue in Dallas, Texas. The Institute of Ancestral Braiding is licensed by Defendants as a “Hair Weaving Salon” and offers African hairbraiding services and instruction to the public.

9. Defendant William H. Kuntz, Jr. is sued in his official capacity as executive director of the Texas Department of Licensing and Regulation. The headquarters of the Department is located in the city of Austin, Travis County, Texas.

10. Defendants Mike Arismendez, LuAnn Roberts Morgan, Fred N. Moses, Catherine Rodewald, Deborah Yurco, Ravi Shah, and Thomas F. Butler are sued in their official capacities as members of the Texas Commission of Licensing and Regulation. The office of the Commission is located in the city of Austin, Travis County, Texas.

FACTUAL ALLEGATIONS

Plaintiff Brantley and Her African Hairbraiding Business

11. Plaintiff Isis Brantley is an African (or “ancestral”) hairbraider, an entrepreneur, and a mother of five. She began hairbraiding at the age of six and was taught to braid by her mother. For years, she and her sister would braid hair in the community of Oak Cliff in south Dallas, honing their skills. After high school, Plaintiff Brantley began braiding hair for a living and has done so for the past 32 years.

12. Plaintiff Brantley opened her first hairbraiding business—“African Braiding Studio”—in 1981. In 1994, she moved her business to a small community center at 2642 South

Beckley Avenue. She subsequently renamed her hairbraiding business the “Institute of Ancestral Braiding” and has been operating at this location for nearly 20 years.

13. At the Institute, Plaintiff Brantley provides braiding services to the public and hairbraiding instruction to students who want to become African hairbraiders. The practice involves the intricate twisting, braiding, weaving, and locking of hair using a braider’s hands, mostly for African-American clients whose characteristically textured hair is perfect for such styling.

14. African hairbraiding is so-called because it has distinct geographic, cultural, historical, and racial roots. The basis for African hairbraiding techniques originated many centuries ago in Africa and were brought by Africans into this country, where they have endured and been expanded upon as a distinct and popular form of hair styling primarily done by and for persons of African descent.

15. The practice of African hairbraiding is distinct from other types of hair styling in the United States. African hairbraiding is a labor-intensive process, usually taking a single stylist many hours to complete. Like Plaintiff Brantley, persons of African descent often learn to braid textured hair as children or teens, usually by first learning to do their own hair or that of friends and relatives.

16. African hairbraiding is typically performed on hair that is physically different—alternatively described as “tightly textured” or “coily” hair. This physical difference is genetically determined and closely correlates with race. In the United States, African hairbraiding is most popular with men and women of African descent, who tend to have more textured hair. Further, for many of these individuals the choice of African hairbraiding is as much a cultural statement and expression of self-identity as it is simply an aesthetic concern.

17. African hairbraiding is a natural method of styling hair that does not use chemicals, and thus stands in stark contrast to modern practices of using chemicals to straighten and style hair. Because the use of chemicals is anathema to natural hair care, natural hairbraiding techniques are safe for practitioners, customers, and the students who learn them.

18. For example, sodium hydroxide, the active ingredient in many hair straighteners, has a high incidence and intensity of chemical burns because it is very caustic. It is capable not just of burning human hair and skin, but of dissolving aluminum cans.

19. For many women with textured hair, natural hairbraiding provides a reprieve after years of harsh chemical treatments to their hair.

20. The concept of “natural” hair care has a particular meaning for many African Americans because for many years state-licensed barber and cosmetology schools taught students to use chemicals or heat to straighten their hair, and still continue to do so. African hairbraiding provides an alternative to current “corrective” measures prevalent in cosmetology schools and instead works with a person’s natural hair texture.

21. While African hairbraiding uses no chemicals to change textured hair, the various styles of natural braids, weaves, and locks can vary greatly. Braiding can either enhance the versatility of the natural hair or make the hair *appear* straight or curly, long or short, differently textured or colored, without chemicals.

22. The proficiency of the African braiding services that Plaintiff Brantley provides, and her decades of experience, have allowed her to work with everyone from a Grammy-award-winning artist to everyday customers whose hair has been damaged by the use of chemicals and by the practices taught at state-licensed cosmetology schools.

Plaintiff Brantley's Hairbraiding School

23. Recognizing the demand for African hairbraiding instruction, Plaintiff Brantley teaches African hairbraiding classes at the Institute of Ancestral Braiding and has done so since its doors first opened nearly 20 years ago.

24. The African hairbraiding instruction Plaintiff Brantley provides at the Institute of Ancestral Braiding is distinct from—and largely unavailable at—licensed barber and cosmetology schools in Texas.

25. Plaintiff Brantley has provided African hairbraiding instruction at her hairbraiding school to everyone from homeless women seeking a new skill as a first step on the economic ladder, to state-licensed cosmetologists interested in learning African hairbraiding.

26. The curriculum Plaintiff Brantley teaches at the Institute of Ancestral Braiding is based on her decades of experience braiding hair for clients. She teaches a variety of techniques for twisting, locking, and braiding hair (with and without extensions), braid removal, and also instructs students on client consultation, sanitation, various curl patterns and hair textures, and natural hair care.

27. Plaintiff Brantley charges between \$250 and \$750 for the instruction she provides at the Institute of Ancestral Braiding depending on the type of class a student chooses.

28. No students receiving hairbraiding instruction from Plaintiff Brantley have ever been harmed.

29. Defendants have no evidence that anyone has ever been harmed at the Institute of Ancestral Braiding.

30. Plaintiff Brantley has been contacted by multiple licensed barber and cosmetology schools across Texas seeking to offer hairbraiding instruction, and they have offered to pay her

to develop hairbraiding lesson plans similar to the ones she developed for the Institute of Ancestral Braiding. However, she has turned down these requests.

Texas's Hairbraiding License

31. African hairbraiding falls within the state's definition of "barbering" and requires a license. Texas Occupations Code § 1601.002(1)(K) defines "barbering" to include "braiding a person's hair, trimming hair extensions only as applicable to the braiding process, and attaching commercial hair only by braiding and without the use of chemicals or adhesives[.]" A person may not perform any act of barbering unless the person holds an appropriate certificate, license, or permit. Tex. Occ. Code § 1601.251(a).

32. In 2007, Texas enacted the Hairbraiding License, the "Hair Braiding Specialty Certificate of Registration," that allows persons to perform African hairbraiding if they are at least 17 years of age and meet the requirements specified by the Department, including training through a Commission-approved training program. Tex. Occ. Code § 1601.259; 16 Tex. Admin. Code §§ 82.20(h), 82.120(k).

33. The required curriculum for the Hairbraiding License consists of 35 hours of instruction and does not require an examination. 16 Tex. Admin. Code §§ 82.120(k), 82.20(h). As long as the student attends the course, the student "passes."

34. The health and safety standards Texas requires for hairbraiding services consist of basic sanitation: washing one's hands with soap and water; cleaning and disinfecting any braiding materials or tools before their use; and storing hair extensions and related items for their application in a bag or covered container until they are ready to use. 16 Tex. Admin. Code § 82.110.

35. Defendants have issued Plaintiff Brantley a Hairbraiding License, and accordingly she is legally entitled to braid hair for compensation under license number 632638.

36. Prior to enacting the 35-hour Hairbraiding License in 2007, the state of Texas imposed the state's 1500-hour cosmetology license on African hairbraiders—even though it was wholly irrelevant to hairbraiding—and prohibited them from braiding hair for a living unless they became licensed cosmetologists.

37. In 1997, seven law enforcement officers (including undercover officers) entered Plaintiff Brantley's hairbraiding business and arrested her for braiding hair without a cosmetology license. After her release, she was required to pay a \$600 fine for the offense of braiding without a license.

Defendants Arbitrarily Regulate Hairbraiding Instructors

38. On June 25, 2013, the Department's Assistant General Counsel, Lynn Latombe sent a letter to Plaintiff Brantley ("TDLR Letter") stating the requirements for providing hairbraiding instruction at her own hairbraiding school. (Attached as Ex. A).

39. The TDLR Letter notified Plaintiff Brantley that she must comply with the Barber Instructor Laws and Barber School Laws before being allowed to teach hairbraiding at her own school, and also included the Department's \$700 Barber School Permit application. Ex. A.

40. Plaintiff Brantley has provided hairbraiding instruction at the Institute of Ancestral Braiding for nearly 20 years, but before she can teach Texas's 35-hour hairbraiding curriculum so her students can obtain the Hairbraiding License, Defendants demand that she meet each requirement for a "Barber Instructor License," which requires: (1) being a class-A licensed barber; (2) completing a 750-hour barber instructor curriculum at a licensed barber

college; and (3) passing two examinations (written and practical). *See* Ex. A; *see also* Tex. Occ. Code § 1601.254.

41. In total, the “Barber Instructor License” requires that African hairbraiding instructors obtain 2,250 hours of instruction and pass four examinations to teach Texas’s 35-hour hairbraiding curriculum: a 1500-hour class-A barber curriculum; an additional 750 hours of instruction in teaching barber students; and both a written and practical exam for the class-A barber license and the barber instructor license. Tex. Occ. Code §§ 1601.253(2), 1601.254(4)-(5); 16 Tex. Admin. Code §§ 82.20(c)-(d), 82.21(c)-(d), 82.120(b),(d).

42. The 1500-hour curriculum for the class-A barber license is wholly irrelevant to African hairbraiding and includes, among other things: cutting hair (800 hours); shaving (80 hours); shampooing and rinsing (40 hours); bleaching hair using chemicals (30 hours); straightening hair using chemicals (25 hours); and studying beards and mustaches (15 hours). 16 Tex. Admin. Code § 82.120(d). The words “hairbraiding” or “braid” do not appear anywhere in the class-A barber curriculum.

43. The eligibility requirements for obtaining a “Barber Instructor License” include completing 750 hours of instruction in “barber courses and methods of teaching in a barber school.” Tex. Occ. Code § 1601.254(b). The required curriculum for obtaining the 750-hour instructor license includes spending at least 350 hours “assisting with students” who are attending barber college to become barbers, and 150 hours assisting barber instructors to teach barbering theory. *See* 16 Tex. Admin. Code 82.120(b). The words “hairbraiding” or “braid” do not appear anywhere in the barber instructor curriculum.

44. The 1500-hour curriculum for a class-A barber license—a prerequisite to obtaining a “Barber Instructor License”—does not require any teaching of African hairbraiding technique.

45. The 750-hour curriculum for a “Barber Instructor License” does not require knowledge in African hairbraiding technique.

46. Although Texas has no exam requirement for its 35-hour Hairbraiding License, Defendants require candidates seeking to teach the 35-hour hairbraiding curriculum for licensure to pass four examinations, consisting of a written and practical exam for both the class-A barber license and the “Barber Instructor License.” 16 Tex. Admin. Code §82.21(c)-(d).

47. Of the four examinations Defendants require Plaintiff Brantley to pass before being allowed to teach Texas’s 35-hour hairbraiding curriculum at her own hairbraiding school, none test proficiency in African hairbraiding technique, nor the teaching of African hairbraiding technique.

48. Defendants require the same amount of instructor training to teach the 35-hour curriculum required for a Hairbraiding License as they do to teach the 1500-hour curriculum for a class-A barber license.

49. The 750-hour “Barber Instructor License” curriculum is designed for teaching a 1500-hour barbering course.

50. Tellingly, in a letter from Defendant Kuntz, Plaintiff Brantley was informed she may work for a licensed barber college as a “guest instructor”—thus waiving the requirement that she obtain a “Barber Instructor License”—and can teach Texas’s 35-hour hairbraiding curriculum to students seeking the Hairbraiding License, without any additional training or licensing from the state. (Attached as Ex. B).

51. Between 2011 and 2013, Plaintiff Brantley stopped teaching hairbraiding students at the Institute of Ancestral Braiding, and instead taught hairbraiding as a “guest instructor” at the Texas Barber Institute in Longview, Texas.

52. Defendants allowed Plaintiff Brantley to teach the required 35-hour hairbraiding curriculum as a “guest instructor” without any additional training, testing, or state licensing.

53. While working as a “guest instructor” at the Texas Barber Institute, Plaintiff Brantley provided hairbraiding instruction to students that satisfied the 35-hour hairbraiding curriculum required to obtain Texas’s Hairbraiding License.

54. The hairbraiding instruction Plaintiff Brantley provided students while working as a “guest instructor” was based on, and substantively identical to, the hairbraiding instruction she provides at her own hairbraiding business, the Institute of Ancestral Braiding.

55. Defendants granted the Hairbraiding License to students who completed the 35-hour hairbraiding curriculum taught by Plaintiff Brantley while working as a “guest instructor” at the Texas Barber Institute.

56. Defendants refuse to grant the Hairbraiding License to students completing the same 35-hour hairbraiding curriculum taught by Plaintiff Brantley if she offers the instruction at her own hairbraiding business, the Institute of Ancestral Braiding.

57. The hairbraiding students that Plaintiff Brantley teaches at her Institute of Ancestral Braiding are prohibited from braiding hair for compensation in Texas unless they also complete an additional 35-hour hairbraiding curriculum at a state licensed barber school or cosmetology school.

58. Students that have taken Plaintiff Brantley’s hairbraiding class at the Institute of Ancestral Braiding, and then subsequently attended a licensed barber school to sit through their

35-hour hairbraiding curriculum in order to obtain the Hairbraiding License, report not having learned to braid at all while at the licensed barber college. They report the instruction provided by Plaintiff Brantley was professionally useful, but that the 35-hour curriculum taught at the licensed barber college was not useful.

59. Defendants have no evidence supporting the requirement that Plaintiff Brantley obtain additional instructor training, testing, or state licensing in order to teach hairbraiding at the Institute of Ancestral Braiding.

60. Plaintiff Brantley wants to work for herself, not for barber schools, and simply seeks to provide hairbraiding instruction at her own hairbraiding business that satisfies Texas's 35-hour hairbraiding curriculum. It is economically infeasible for her to leave her hairbraiding business and enroll in a barber college to receive instruction in the practice and teaching of barbering—a trade she does not even wish to practice.

61. Unless she complies with the Barber School Laws and Barber Instructor Laws, no amount of instruction Plaintiff Brantley provides to her students at the Institute of Ancestral Braiding will be sufficient to allow them to obtain a Hairbraiding License and braid hair legally for a living.

62. Texas does not place similar restrictions on shampoo apprentices. A person holding a "shampoo apprentice" permit may shampoo and condition a person's hair. Tex. Occ. Code § 1602.267.

63. Like African hairbraiding, the practice of shampooing and conditioning a person's hair involves using one's hands to manipulate the hair of a person.

64. The state of Texas allows a licensed cosmetologist who is not licensed as an instructor to train shampoo apprentices in a licensed establishment that is not a licensed beauty school. Tex. Occ. Code § 1602.267; Tex. Atty. Gen. Op. GA-0168 (2004).

65. Defendants have no evidence that teaching hairbraiding is more dangerous than teaching someone to shampoo and condition a person's hair.

Texas's Indiscriminate Regulation of Hairbraiding Schools

66. The TDLR Letter notified Plaintiff Brantley that she must comply with the Barber School Laws before being allowed to teach hairbraiding at her own hairbraiding school—something she has done harmlessly for nearly 20 years. Ex. A.

67. The state of Texas requires a person teaching any act of “barbering”—including the 35-hours of hairbraiding instruction required for a Hairbraiding License—to teach at a licensed barber college. Tex. Occ. Code §§ 1601.001(1-a), 1601.351.

68. All licensed barber schools in Texas that operate in a city with over 50,000 residents must contain at least 2,000 square feet of floor space. Tex. Occ. Code § 1601.353.

69. Converting Plaintiff Brantley's modest African hairbraiding business into a barber college would require her to comply with a long list of requirements contained in Texas's Barber School Laws that are irrelevant to braiding, including: (1) operating in a facility with a minimum of 2,000 square feet of floor space; (2) installing a minimum of ten student workstations with reclining chairs, a back bar, mirrors and no less than five sinks; (3) obtaining at least ten classroom chairs and an instructor's desk; (4) purchasing barbering textbooks for each student; and, (5) obtaining other items wholly irrelevant to African hairbraiding such as a wig, a hairpiece, and a hooded hair dryer. Tex. Occ. Code §§ 1601.351-.353; 16 Tex. Admin. Code §§ 82.23, 82.72.

70. Plaintiff Brantley would also need to attach a sign outside of her hairbraiding business—the Institute of Ancestral Braiding—that reads “BARBER SCHOOL – STUDENT BARBERS.” Tex. Occ. Code § 1601.553; *see also* Ex. A (Barber School Permit application). She would also need to post similar signs on each inside wall of her hairbraiding business. *Id.*

71. Plaintiff Brantley would be required to post these signs even though they would be literally false—she would not be teaching barbering and her students would not be student barbers.

72. Plaintiff Brantley estimates the cost to comply with the Barber School Laws Defendants are applying to her and her business will require over \$25,000 in renovation and equipment costs, and would increase her monthly rent from the \$400 per month she currently pays to occupy space at a small community center, to between \$1,500 to \$2,000 per month for commercial space containing at least 2,000 square-feet of floor space.

73. Plaintiff Brantley will not be allowed to teach the state’s 35-hour hairbraiding curriculum in satisfaction of the Hairbraiding License at the Institute of Ancestral Braiding until she converts it into a fully-equipped barber college, as described above, and the state inspects and approves it. Tex. Occ. Code § 1603.103; 16 Tex. Admin. Code § 82.51.

74. Defendants currently license the Institute of Ancestral Braiding as a “Hair Weaving Salon” under license number 726903.

75. Defendants do not require a minimum square-footage of floor space for a “Hair Weaving Salon,” but do require basic requirements such as having: (1) a sign with the salon’s name; (2) a minimum of one workstation and styling chair; (3) a sink with hot and cold water and a “sufficient amount” of shampoo bowls; (4) separate receptacles for used towels and trash;

(5) a container for disinfectant; and (6) a clean storage area. 16 Tex. Admin. Code §§ 83.71(d), (e)(7).

76. While Defendants allow Plaintiff Brantley to perform hairbraiding for compensation at a “Hair Weaving Salon,” Defendants will not permit her to use the salon to teach a 35-hour hairbraiding curriculum that qualifies her students for a Hairbraiding License.

77. Defendants have no evidence that providing African hairbraiding instruction at a licensed “Hair Weaving Salon” would be more dangerous than if the same instruction is provided in a building licensed as a barber college.

78. Defendants have no evidence that limiting the teaching of hairbraiding to facilities with 2,000 square-feet or more of floor space advances any legitimate government interest.

INJURY TO PLAINTIFF

79. But for the specific application of Tex. Occ. Code §§ 1601.253-.254, 1601.351-.353, together with 16 Tex. Admin. Code §§ 82.20(a),(c),(d),(m), 82.21, 82.23, 82.51, 82.72, 82.120(a)-(d), to Plaintiff Brantley, she would teach many more students at her hairbraiding business, the Institute of Ancestral Braiding, because her instruction would qualify students to earn a living as professional hairbraiders. Due to Defendants’ unconstitutional regulations, Plaintiffs have lost, and are continuing to lose, substantial business income because students who would otherwise take their hairbraiding curriculum do not do so because the instruction cannot count towards a student’s licensure as a hairbraider.

80. But for the specific application of Tex. Occ. Code §§ 1601.253-.254, 1601.351-.353, together with 16 Tex. Admin. Code §§ 82.20(a),(c),(d),(m), 82.21, 82.23, 82.51, 82.72, 82.120(a)-(d), to Plaintiff Brantley, she would be able to charge more for the hairbraiding

instruction she provides because her students would not be required to take a useless additional 35-hour hairbraiding course at a state-licensed barber college.

81. But for the specific application of Tex. Occ. Code §§ 1601.253-.254, 1601.351-.353, together with 16 Tex. Admin. Code §§ 82.20(a),(c),(d),(m), 82.21, 82.23, 82.51, 82.72, 82.120(a)-(d), to Plaintiff Brantley, she would be able to transform her hairbraiding business, the Institute of Ancestral Braiding, from a hairbraiding salon to a full-time hairbraiding school.

82. But for the specific application of Tex. Occ. Code §§ 1601.253-.254, 1601.351-.353, together with 16 Tex. Admin. Code §§ 82.20(a),(c),(d),(m), 82.21, 82.23, 82.51, 82.72, 82.120(a)-(d), to Plaintiff Brantley, she would market the Institute of Ancestral Braiding across Texas and the United States as a premiere hairbraiding school that enables its students to obtain Texas's Hairbraiding License.

83. But for the specific application of Tex. Occ. Code §§ 1601.253-.254, 1601.351-.353, together with 16 Tex. Admin. Code §§ 82.20(a),(c),(d),(m), 82.21, 82.23, 82.51, 82.72, 82.120(a)-(d), to Plaintiff Brantley, she would travel across the state of Texas teaching the 35-hour hairbraiding curriculum required for a Hairbraiding License at salons, instead of at barber schools.

84. But for the specific application of Tex. Occ. Code §§ 1601.253-.254, 1601.351-.353, together with 16 Tex. Admin. Code §§ 82.20(a),(c),(d),(m), 82.21, 82.23, 82.51, 82.72, 82.120(a)-(d), to Plaintiff Brantley, she would be able to teach the 35-hour hairbraiding curriculum sufficient to obtain a Hairbraiding License without having to devote thousands of dollars and over a year of her life becoming a state-licensed barber instructor.

85. But for the specific application of Tex. Occ. Code §§ 1601.253-.254, 1601.351-.353, together with 16 Tex. Admin. Code §§ 82.20(a),(c),(d),(m), 82.21, 82.23, 82.51, 82.72,

82.120(a)-(d), to Plaintiff Brantley, she would be able to teach the 35-hour hairbraiding curriculum sufficient to obtain a Hairbraiding License at the Institute of Ancestral Braiding, without having to spend thousands of dollars uprooting her hairbraiding business from the community it has served for nearly 20 years and converting it into a state-licensed barber college.

86. But for the specific application of Tex. Occ. Code §§ 1601.253-.254, 1601.351-.353, together with 16 Tex. Admin. Code §§ 82.20(a),(c),(d),(m), 82.21, 82.23, 82.51, 82.72, 82.120(a)-(d), to Plaintiff Brantley, she would not have an objectively reasonable fear of being punished if she continues offering hairbraiding instruction at the Institute of Ancestral Braiding. Before the enactment of the 35-hour Hairbraiding License in 2007, the state of Texas irrationally applied its 1500-hour cosmetology license against African hairbraiders. In 1997, the state sent seven law enforcement officers (including undercover officers) to Plaintiff Brantley's hairbraiding business and arrested her for the crime of unlicensed hairbraiding.

87. Due to Defendants' specific application of Tex. Occ. Code §§ 1601.253-.254, 1601.351-.353, together with 16 Tex. Admin. Code §§ 82.20(a),(c),(d),(m), 82.21, 82.23, 82.51, 82.72, 82.120(a)-(d), to Plaintiff Isis Brantley and her hairbraiding business, the Institute of Ancestral Braiding, she has been irreparably injured by the deprivation of her substantive due process rights to earn an honest living free from arbitrary and irrational government interference, her rights to equal protection under the laws, and her right to the privileges or immunities of citizenship.

CONSTITUTIONAL VIOLATIONS

FIRST CLAIM FOR RELIEF (SUBSTANTIVE DUE PROCESS)

88. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 87 of this Complaint as if fully set forth herein.

89. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution protects every American's economic liberty, or the right to pursue legitimate occupations free from unreasonable government interference subject only to regulations that are rationally related to a legitimate government purpose.

90. The Barber Instructor Laws violate Plaintiff Brantley's right to due process of law under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 as-applied, to the extent that requiring her to obtain a barber instructor license—including obtaining a 1500-hour class-A barber license, the completion of a 750-hour barber instructor course, and the passage of four exams—to teach a 35-hour hairbraiding curriculum is so disproportionate as to be unconstitutional, and that the laws and regulations unreasonably and arbitrarily interfere with her ability to offer hairbraiding instruction at her existing hairbraiding business, the Institute of Ancestral Braiding, in satisfaction of Texas's Hairbraiding License.

91. The Barber School Laws violate Plaintiffs' right to due process of law under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 as-applied, to the extent the laws and regulations unreasonably and arbitrarily interfere with their ability to offer hairbraiding instruction at their existing hairbraiding business, the Institute of Ancestral Braiding, in satisfaction of Texas's Hairbraiding License.

92. No health or safety concerns are addressed by the regulatory scheme being applied to Plaintiffs—it exists simply because Defendants have chosen to regulate braiders under the regulatory framework for barbers, even though braiding and barbering share almost nothing in common. This has resulted in Defendants unconstitutionally applying unreasonable and arbitrary laws and regulations to African hairbraiding instructors seeking to teach hairbraiding students to legally braid hair for a living at their own hairbraiding business.

93. The arbitrary diminution of Plaintiffs' economic liberty by Defendants' application of the Barber School Laws and Barber Instructor Laws to African hairbraiding instructors and their hairbraiding businesses deprives them of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

94. Defendants, their agents and employees, acting under color of state law, violate Plaintiffs' right to due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

95. Unless Defendants are enjoined from committing the above-described constitutional violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

**SECOND CLAIM FOR RELIEF
(EQUAL PROTECTION)**

96. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 87 of this Complaint as if fully set forth herein.

97. Plaintiffs' second claim for relief is brought pursuant to the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983, which prohibits the government from treating similarly situated persons differently, or treating different persons the same, unless the reason for doing so bears a rational relationship to a legitimate government interest.

98. Plaintiff Brantley owns and operates the Institute of Ancestral Braiding, a state-licensed establishment offering African hairbraiding services. Plaintiff Brantley also holds the state's Hairbraiding License, allowing her to legally braid hair in Texas.

99. Texas's Barber Instructor Laws require that African hairbraiding instructors first become state-licensed barber instructors—requiring a 1500-hour class-A barber license, the

completion of a 750-hour barber instructor course, and the passage of four exams—before being permitted to teach the state’s 35-hour hairbraiding curriculum at their own hairbraiding schools in satisfaction of the Hairbraiding License.

100. Texas’s Barber School Laws require that African hairbraiding instructors like Plaintiff Brantley and hairbraiding businesses like Plaintiff Institute of Ancestral Braiding, that seek to teach hairbraiding students a curriculum satisfying Texas’s 35-hour Hairbraiding License, do so in a state-licensed barber college that is a minimum of 2,000 square-feet and contains thousands of dollars of equipment wholly unrelated to African hairbraiding, as described above.

101. Plaintiffs have been denied equal protection of the laws because Defendants fail to distinguish between hairbraiding and barbering, two very different things being treated similarly, and are unconstitutionally treating Plaintiff Brantley as a barber instructor, and Plaintiff Institute of Ancestral Braiding, as a barber college.

102. Plaintiffs have also been denied equal protection of the laws because the distinction between teaching the required 35-hour curriculum for a Hairbraiding License while standing inside a licensed barber college as a “guest instructor”—something Defendants allow Plaintiff Brantley to do, and that she has done, without having to obtain any additional instructor training or state-licensing—and teaching the identical 35-hour hairbraiding curriculum for a Hairbraiding License while standing inside a licensed hairbraiding business—something Texas does not allow Plaintiff Brantley to do unless she becomes a licensed barber instructor and unless the Institute of Ancestral Braiding becomes a licensed barber college—is a meaningless formality bearing no rational relationship to a legitimate government interest, and constitutes the unconstitutional exercise of the state’s police power.

103. Defendants, their agents and employees, acting under color of state law, violate Plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

104. Unless Defendants are enjoined from committing the above-described constitutional violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

**THIRD CLAIM FOR RELIEF
(PRIVILEGES OR IMMUNITIES)**

105. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in ¶¶ 1 through 87 of this Complaint as if fully set forth herein.

106. The Barber Instructor Laws violate Plaintiff Brantley's privileges or immunities of citizenship under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 as-applied, to the extent that requiring a 750-hour "Barber Instructor License"—requiring a 1500-hour class-A barber license, the completion of a 750-hour barber instructor course, and the passage of four exams—to teach a 35-hour hairbraiding curriculum that qualifies for the Hairbraiding License is so disproportionate as to be unconstitutional, and that the laws and regulations unreasonably and arbitrarily interfere with her ability to offer hairbraiding instruction at her existing hairbraiding business, the Institute of Ancestral Braiding, in satisfaction of Texas's 35-hour Hairbraiding License.

107. The Barber School Laws violate Plaintiffs' privileges or immunities of citizenship under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 as-applied, to the extent the laws and regulations unreasonably and arbitrarily interfere with their ability to offer hairbraiding instruction at their existing hairbraiding business, the Institute of Ancestral Braiding, in satisfaction of Texas's Hairbraiding License.

108. Defendants, their agents and employees, acting under color of state law, violate Plaintiffs' privileges or immunities as guaranteed by the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

109. Unless Defendants are enjoined from committing the above-described constitutional violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief as follows:

A. For entry of judgment declaring that Texas's barber instructor regulations contained in Texas Occupations Code § 1601.253-.254 and 16 Texas Administrative Code §§ 82.20(a),(c),(d),(m), 82.21, 82.120(a)-(d) are unconstitutional as-applied to Plaintiffs, to the extent that they impair Plaintiffs' ability to provide hairbraiding instruction, at their own hairbraiding business, in satisfaction of Texas's 35-hour Hair Braiding Specialty Certificate of Registration contained in Tex. Occ. Code § 1601.259, 16 Tex. Admin. Code §§ 82.20(h), 82.120(k);

B. For entry of judgment declaring that Texas's barber school laws and regulations contained in Tex. Occ. Code §§ 1601.351-.353 and 16 Texas Admin Code §§ 82.23, 82.51, 82.72 are unconstitutional as-applied to Plaintiffs to the extent that they impair Plaintiffs' ability to provide hairbraiding instruction, at their own hairbraiding business, in satisfaction of Texas's 35-hour Hair Braiding Specialty Certificate of Registration contained in Tex. Occ. Code § 1601.259, 16 Tex. Admin. Code §§ 82.20(h), 82.120(k);

C. For entry of permanent injunctions against all Defendants prohibiting enforcement of these laws, regulations and policies in a manner that impairs Plaintiffs' ability to

provide hairbraiding instruction, at their own hairbraiding business, in satisfaction of Texas's 35-hour Hair Braiding Specialty Certificate of Registration contained in Tex. Occ. Code § 1601.259, 16 Tex. Admin. Code §§ 82.20(h), 82.120(k), and prohibiting the imposition of fines or criminal penalties, administrative penalties and sanctions, or otherwise subjecting the aggrieved to harassment;

D. For an award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

E. For such further legal and equitable relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED

this 1st day of October, 2013

INSTITUTE FOR JUSTICE

By: 

Arif Panju (TX Bar No. 24070380)
Matthew R. Miller (TX Bar No. 24046444)
Institute for Justice
816 Congress Avenue, Suite 960
Austin, TX 78701
(512) 480-5936
(512) 480-5937 (fax)
apanju@ij.org
mmiller@ij.org

Complaint for Declaratory and Injunctive
Relief

EXHIBIT A



TEXAS DEPARTMENT OF LICENSING AND REGULATION

General Counsel's Office

P. O. Box 12157 • Austin, Texas 78711 • (512) 463-3306 • (800) 803-9202

Fax (512) 475-3032 • Web site: www.license.state.tx.us

June 25, 2013

Ms. Isis Brantley
2642 South Beckley
Dallas, Texas 75224

RE: Requirements for becoming a barber instructor and obtaining a school license.

Dear Ms. Brantley,

Thank you for your recent correspondence. You asked two questions:

- 1) What type of instructor license do I need to teach braiding at my own hair braiding school?
- 2) What barber school permit do I need (if necessary) to teach braiding at my own hair braiding school?

To be eligible for a barber instructor license, you must:

- be at least 18 years of age;
- have a high school diploma or a high school equivalency certificate;
- hold a current Class A barber certificate;
- have completed:
 - 1) a course consisting of 750 hours of instruction in barber courses and methods of teaching in a barber school; or
 - 2) at least one year of work experience as a licensed Class A barber; and, have completed 500 hours of instruction in barber courses and methods of teaching in a commission-approved training program; or
 - 3) have completed 15 semester hours in education courses from an accredited college or university within the 10 years preceding the date of the application; or have obtained a degree in education from an accredited college or university; and pass the written and practical exams.

Mike Arismendez, Chair – Littlefield, Texas

*Tom Butler – Deer Park, Texas
LuAnn Morgan – Midland, Texas
Fred Moses – Plano, Texas*

*Lilian Norman-Keeney – Taylor Lake Village, Texas
Ravi Shah – Carrollton, Texas
Deborah A. Yurco – Austin, Texas*

In order to open a barber school, you must:

- complete the Barber School Permit application and
- submit with the required documents and a fee of \$700. Fees are non-refundable.

Enclosed is a copy of the Barber School Permit application for your review of the detailed criteria for obtaining the permit.

If you have any questions regarding this matter, please contact the Department at (512) 463-3306.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Latombe". The signature is fluid and cursive, with a large loop at the end.

Lynn Latombe, Assistant General Counsel



TEXAS DEPARTMENT OF LICENSING AND REGULATION
P.O. Box 12157, Austin, Texas 78711-2157
(800) 803-9202 – (512) 463-6599 – FAX (512) 463-1512
www.tdlr.texas.gov education@tdlr.texas.gov

BARBER SCHOOL PERMIT APPLICATION INSTRUCTIONS

**AN APPLICATION IS NOT CONSIDERED COMPLETE AND WILL NOT BE PROCESSED
UNTIL ALL SECTIONS OF THE APPLICATION HAVE BEEN SUBMITTED.**

The application must be completed and signed by the applicant. All information provided must be typed or printed in black ink. This application must be submitted on single-sided, 8½" x 11" paper. Please use a paperclip to fasten all pages together, with cashiers check or money order on top. **Please do not use staples.**

1. **School Name** - Enter the official name of the school. This must be the name used in advertisements.
2. **School Type** - Select the appropriate type of school to be licensed.
3. **Opening Date** - Enter the date you plan to open.
4. **Business Hours** - Provide the days and hours of operation.
5. **School Mailing Address and Contact Information** - Enter the mailing address for the school. This address is where the Department will mail all correspondence and may be a post office box. Provide the contact person's name, telephone number, fax number and email address. **NOTE:** The contact person listed and their email will be the contact for the SHEARS program. SHEARS is the electronic student activity reporting system and is only accessible by a PIN (personal identification number). Email addresses are a part of the key information required to transact business with TDLR. Your email address is confidential pursuant to the Texas Public Information Act. The Department will not share it with the public.
6. **School's Website** - Provide the website address of the school, if applicable.
7. **Physical Address** - Enter the physical address of the school. This address is the actual business location of the school, and is where permanent records must be kept for auditing and inspection purposes. A post office box is not acceptable for the physical address.
8. **Organization Type** - Indicate how your school is organized.
9. **Owner Name** - (*for private post-secondary schools only*) Enter the name of the owner and attach the ownership information page.
10. **Curriculum** - Indicate which curriculums you will be offering. Include a copy of the school catalog, handbook, lesson plan and course outline. Provide the name of the textbook to be used.
11. **Signature of Applicant(s) and/or Officer(s)** - Application must be signed by the owner, officer or authorized representative of the school. Be sure to print the name, sign and date the application.

REQUIRED FACILITIES AND EQUIPMENT CHECKLIST

This list is provided to help the school obtain the property facilities and equipment.

BUILDING AND CLASSROOM EQUIPMENT

- A building of permanent construction containing at least 2,000 square feet of floor space, including classroom and practical areas (for school located in a municipality with a population of more than 50,000)
- A building of permanent construction containing at least 1,000 square feet of floor space, including classroom and practical areas (for school located in a municipality with a population of 50,000 or less, or in an unincorporated area of a county)
- Sign on front outside portion of building in a prominent place, with 10-inch block letters reading "BARBER SCHOOL - STUDENT BARBERS", as well as on each inside wall of the school.
- Posted copy of Sanitation Rules (Section 1601.552)
- Posted Consumer Complaint Sign (Section 1603.151(2))
- A hard surface floor-covering of tile or other suitable material
- At least 10 student workstations that include a chair that reclines, a back bar, and a wall mirror
- A sink behind every two workstations
- A liquid sterilizer for each workstation
- Adequate lighting for each room
- At least 10 classroom chairs, and other materials necessary to teach the required subjects
- Access to permanent restrooms
- Access to adequate drinking fountains facilities
- Adequate supply of permanent wave rods and optional hairstyling rollers
- One hooded hair dryer
- At least two canvas-type wig blocks
- Two mannequins, one long-haired and one short-haired
- At least one wig, one hairpiece, and hair extensions for weaving
- Clock
- Bulletin board
- Chalk board or dry erase board
- Fire extinguisher with current inspection report
- Instructor's desk in classroom
- One complete manicure table, one complete set of manicuring implements for plain and sculptured nails, and, one text textbook with complete instructions, for each student in attendance on the practical floor, enrolled in a manicurist course
- An autoclave, dry heat sterilizer or ultraviolet sanitizer, if providing manicure or pedicure nail services



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www.tdlr.texas.gov - education@tdlr.texas.gov

APPLICATION FOR:

Texas Barber School Permit

PURSUANT TO OCCUPATIONS CODE, CHAPTER 1601

DO NOT WRITE IN THE FEE AREA IMMEDIATELY BELOW

FEE	RECEIPT NUMBER	EVENT CODE	FEE AMOUNT	PMT. AMOUNT	MONEY TYPE
Application			\$700		

Permit # _____

NOTE: ALL INFORMATION MUST BE TYPED OR PRINTED IN INK.

1. School Name

2. School Type (check one) Private Post-Secondary Public Secondary (High School) Public Post-Secondary (Or College/Community College)

3. Opening Date _____**4. Normal Business Days and Hours Open** Days: _____ Hours: _____**5. School's Mailing Address and Contact Information (USED FOR ALL CORRESPONDENCE)**

Number, Street and Apt. No. _____ OR _____ P.O. Box number _____

City _____ State _____ Zip Code _____

Contact Person (responsible party for school) _____ Email Address (johndoe@aol.com for example) _____

(_____) _____ (_____) _____
Area Code Contact person's phone number Area Code Contact Person's Fax Number**6. School's Website:****7. School's Physical Address (where permanent records will be kept)**

Number, Street, Suite No. _____

City _____ State _____ Zip Code _____

8. Organization Type (check one) Sole Proprietorship Corporation Limited Partnership Limited Liability Company Limited Liability Partnership Public**9. Owner Name** (private post-secondary school only)**THIS FORM CONSISTS OF 3 PAGES**

10. Curriculum		Select the curriculum that will be offered
Class A Barber (1,500 hours)		Barber Technician/Hairweaving (600 hours)
Class A Barber (1,000 secondary)		Hair Weaving (300 hours)
Class A Barber Crossover (300 hours)		Hair Braiding (35 hours)
Manicurist (600 hours)		Barber Instructor (750 hours)
Barber Technician (300 hours)		Barber Instructor (500 hours) (Requires one (1) year experience)
Barber Technician/Manicurist (900 hours)		

NOTE: Section 1601.557 Course Length and Curriculum Content of the Barbering Law states:

- (a) A barber school shall submit to the department for approval the course length and curriculum content for a course offered by the school. The course length and curriculum content shall be designed to reasonably ensure that a student develops the job skills and knowledge necessary for employment. The school may not implement a course length or curriculum unless it is approved by the department.
- (b) Before issuing or renewing a permit under this chapter, the department shall require a school to account for all course lengths and curriculum contents.

Please submit the Texas Barber School Curriculum Approval Application and material for each curriculum selected in #10 above.

11. Signature of Owner(s) or Officer(s)		
STATEMENT OF APPLICANT(S)		
<p>I certify that I will comply with all applicable provisions of the Texas Occupations Code, Chapters 51, 1601 and 1603; Texas Administrative Code, Title 16, Chapter 60; and the Barber Administrative Rules, Tex. Admin. Code, Title 16, Chapter 82. I understand that providing false information on this application may result in revocation of the license I am requesting and the imposition of administrative penalties.</p>		
_____	_____	_____
Printed Name of Owner, Officer or Authorized Representative	Signature of Owner, Officer or Authorized Representative	Date Signed
_____	_____	_____
Printed Name of Owner, Officer or Authorized Representative	Signature of Owner, Officer or Authorized Representative	Date Signed



TEXAS DEPARTMENT OF LICENSING AND REGULATION
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www.tdlr.texas.gov - education@tdlr.texas.gov

**PRIVATE BARBER SCHOOL PERMIT
OWNERSHIP INFORMATION PAGE**

LIST ALL OWNERS THAT HAVE 25% OR MORE OWNERSHIP OF THE BUSINESS.
YOU MAY ATTACHED ADDITIONAL PAGES IF NECESSARY.

Name _____ Percentage of Ownership _____ %

Federal ID No. or Owner Social Security No.* _____

Mailing Address and Contact Information

Number, Street and Apt. No. _____ P.O. Box number _____

City _____ State _____ Zip Code _____ (_____) _____
Area Code Phone Number

(_____) _____
Area Code Fax Number

_____ Email Address (johndoe@aol.com for example)

Name _____ Percentage of Ownership _____ %

Federal ID No. or Owner Social Security No.* _____

Mailing Address and Contact Information

Number, Street and Apt. No. _____ P.O. Box number _____

City _____ State _____ Zip Code _____ (_____) _____
Area Code Phone Number

(_____) _____
Area Code Fax Number

_____ Email Address (johndoe@aol.com for example)

Name _____ Percentage of Ownership _____ %

Federal ID No. or Owner Social Security No.* _____

Mailing Address and Contact Information

Number, Street and Apt. No. _____ P.O. Box number _____

City _____ State _____ Zip Code _____ (_____) _____
Area Code Phone Number

(_____) _____
Area Code Fax Number

_____ Email Address (johndoe@aol.com for example)

* If you have a Social Security Number (SSN), Section 231.302 of the Texas Family Code REQUIRES all applicants to disclose their SSN when filing an application. The SSN that is provided is confidential and is required to enforce Child Support orders.

NOTE: Inspections will not be performed until all requirements are met.

Schools may not enroll students until the inspection has been passed and the license has been received.

The following must be submitted along with application, and approved prior to inspection:

- Provide adequate proof of financial responsibility, such as a bond, letter of credit, etc.
- Submit application, documentation, and fee in the amount of \$700, payable to TDLR, to the address shown above. The fee amount includes the \$500 application fee and the \$200 initial inspection fee. (Fees are non-refundable)

Complaint for Declaratory and Injunctive
Relief

EXHIBIT B



TEXAS DEPARTMENT OF LICENSING AND REGULATION

P.O. Box 12157, Capitol Station • Austin, Texas 78711
512-463-3173 • fax 512-475-2874 • www.license.state.tx.us

October 2, 2012

Joe H. McFatter
1115 S. Alamo St.
2209
San Antonio, Texas 78210

Dear Mr. McFatter:

Thank you for your letter dated September 10, 2012. While I appreciate your desire to see Isis Brantley become a licensed instructor, you should be aware that as the Executive Director, I cannot "with the stroke of the pen" grandfather Isis Brantley to become an instructor.

The 82nd Legislature reviewed the requirements for eligibility as a Barber Instructor, and amended §1601.254 to expand the ways to meet the education and experience requirements and provided for diverse paths to meet the licensing requirements.

The legislative changes, however, did not provide for grandfathering individuals to become license instructors.

Under the current law Isis can work as a guest instructor. Until the law changes, she will need to follow the current process. As Ms. Brantley is aware, grandfathering of the instructor license can only be granted by the legislature.

Thank you again for your letter.

Yours truly,

A handwritten signature in black ink, appearing to read "Will H. Kuntz, Jr.", written over a horizontal line.

William H. Kuntz, Jr.
Executive Director

WHK/klm