

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

JUN 17 2014

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
JAMES W. McCORMACK, CLERK  
*Solo*  
DEP CLERK

NIVEA EARL and CHRISTINE MCLEAN, )

Plaintiffs, )

vs. )

CIVIL ACTION NO. 4:14 cv 358 KGB

NATHANIEL SMITH, in his official capacity )

as Director of the Arkansas Department Of )

Health; KELLI KERSEY, in her official )

Capacity as Cosmetology Section Chief of the )

Arkansas Department of Health; CYNTHIA )

STEELE, JESSICA PECK, ANGELA )

JACKSON, KIMBERLY FORD, TRISH )

ANDERSON, WENDY SULLIVAN, and )

ADRIAN TABB, in their official capacities )

as members of the Arkansas Cosmetology )

Technical Advisory Committee, )

Defendants. )

This case assigned to District Judge Baker  
and to Magistrate Judge Young

**INTRODUCTION**

This lawsuit seeks to vindicate the civil rights of Plaintiffs Nivea Earl and Christine McLean to earn an honest living free of unreasonable government interference. Plaintiffs wish to provide African-style hair braiding services for compensation. The State of Arkansas, however, prevents Plaintiffs from lawfully pursuing their chosen livelihood by enforcing arbitrary and excessive occupational licensing laws against hair braiders. Specifically, Arkansas requires hair braiders to train for 1500 hours in cosmetology school and take two cosmetology exams, despite the cosmetology curriculum having nothing to do with African-style hair braiding. Braiders who do not—

or cannot—comply with Arkansas’s licensing scheme risk severe fines, closure of their businesses, unemployment, and even jail. Accordingly, the State deprives Plaintiffs of their economic liberty and denies Plaintiffs’ rights under the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment to the United States Constitution.

### **JURISDICTION**

1. 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 Judgments Act, 28 U.S.C. § 2201, for injunctive and declaratory relief against the enforcement of Arkansas’s cosmetology licensing regime—sections 17-26-101 *et seq.* of the Arkansas Code, its implementing rules and regulations, and the practices and policies of the Arkansas Department of Health and the Arkansas Cosmetology Technical Advisory Committee—against those who practice African-style hair braiding, including Plaintiffs. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

### **VENUE**

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

### **PARTIES**

3. Plaintiff Nivea Earl is a United States citizen and resident of Jacksonville in Pulaski County, Arkansas. She is the owner and operator of Twistykinks, a hair braiding business located in Jacksonville.

4. Plaintiff Christine McLean is a legal permanent resident of the United States and resident of Little Rock in Pulaski County, Arkansas. She is the owner and operator of LaBelle African Hair Braiding, a hair braiding business located in Little Rock.

5. Defendant Nathaniel Smith, M.D., M.P.H. is the Director of the Arkansas Department of Health, located in Little Rock in Pulaski County, Arkansas. The Department of Health is established by state law to enforce, *inter alia*, the Arkansas Cosmetology Act, Arkansas Code sections 17-26-101 *et seq.* 2009 Ark. Acts 4. Dr. Smith is sued in his official capacity.

6. Defendant Kelli Kersey is the Section Chief of the Department of Health Cosmetology Section, located in Little Rock in Pulaski County, Arkansas. The Department of Health Cosmetology Section is established by state law to enforce the Arkansas Cosmetology Act, Arkansas Code sections 17-26-101 *et seq.* Ms. Kersey is sued in her official capacity.

7. Defendants Cynthia Steele, Jessica Peck, Angela Jackson, Kimberly Ford, Trish Anderson, Wendy Sullivan, and Adrian Tabb are the current members of the Arkansas Cosmetology Technical Advisory Committee, located in Little Rock in Pulaski County, Arkansas. The Cosmetology Technical Advisory Committee is established by state law to enforce the Arkansas Cosmetology Act, Arkansas Code sections 17-26-101 *et seq.* Ark. Code Ann. §§ 17-26-104, -201. The Cosmetology Technical Advisory Committee members are sued in their official capacities.

## STATEMENT OF FACTS

8. Defendants are currently preventing both Plaintiffs from legally operating their hair braiding businesses by imposing arbitrary, irrational, and extremely burdensome licensing requirements on African-style hair braiding in Arkansas.

### **Plaintiff Nivea Earl**

9. Nivea is an Arkansas native who has been braiding for more than 16 years. She is passionate about natural hair care and has attended classes about African-style hair braiding from nationally-recognized braiding experts, like Isis Brantley in Texas.

10. Nivea is married and has two young children. She wants to be able to provide for her family by using her experience in and talent for African-style hair braiding.

11. In February 2013, Nivea started her own natural hair business, called Twistykinks.

12. Nivea is not a licensed cosmetologist in Arkansas or any other state.

13. Nivea only performs African-style hair braiding. She does not cut her clients' hair or use any chemicals, such as relaxers, straighteners, or dyes.

14. At first, Nivea operated Twistykinks out of her home, and built a relationship with several regular clients.

15. It was always Nivea's plan to move her business to a storefront. In the spring of 2014, Nivea seized an opportunity to move her business to a commercial location only a few blocks from her home. Nivea signed a lease for six months, starting

April 19, 2014. She has already invested a substantial amount of money for paint, flooring, furniture, and interior decoration.

16. Nivea is reasonably afraid, however, that she will be fined or otherwise punished by Defendants for braiding without a license, as she has heard of several other hair braiders being fined for braiding without a license.

17. Nivea would like to advertise her business with the Arkansas State Chamber of Commerce and local businesses, as well as in the Yellow Pages, magazines, and local newspapers. Because of her fear of enforcement by Defendants, however, Nivea is not doing so. Her business currently operates only through word of mouth.

18. Nivea cannot afford to stay out of work while she takes the required 1500 hours of cosmetology training, nor can she afford the thousands of dollars it costs for cosmetology school tuition.

19. If Defendants force Nivea to get a cosmetology license in order to continue braiding, she would have no choice but to shut down her business, break her lease, and find another way to help support her family.

**Plaintiff Christine McLean**

20. Christine came to the United States in 1998 from Ivory Coast, Africa. She learned how to braid when she was a little girl in her home country. Christine has supported herself since coming to the United States by braiding. She loves that braiding allows her to be involved in her community.

21. Christine has a license to braid hair in Florida and braided there for six years. Florida only requires braiders to take 16 hours of classes in order to braid, which Christine completed to earn her license.

22. Christine then braided in and managed a shop in Missouri for several years before coming to Arkansas.

23. Christine came to Arkansas when she had the opportunity to buy her own shop. She has now owned and run LaBelle African Hair Braiding for three years.

24. Christine is not a licensed cosmetologist in Arkansas or any other state.

25. Christine only performs African-style hair braiding. She does not cut her clients' hair or use any chemicals, such as relaxers, straighteners, or dyes.

26. Nevertheless, over the last three years, Christine and her business have been fined several times by the Department of Health—solely for braiding without a license or allowing others to braid without a license. The fines assessed total approximately \$1850.

27. Christine reasonably fears she will be fined again for braiding without a license and for allowing other unlicensed braiders to braid in her shop.

28. Christine has never been cited for any sanitation violation by the Department of Health. In fact, several inspectors have complimented Christine on the cleanliness of her shop.

29. Christine uses her braiding income to support herself and her 21-year-old son in college.

30. If Christine was not able to braid for compensation, she has no idea how she would earn a living and support her family. She has never had another type of job.

31. Christine wants to be able to run her business without the cost, uncertainty, and fear of operating illegally.

32. If Defendants force Christine to get a cosmetology license in order to continue braiding, she would have no choice but to shut down her business and find another way to support herself and her family. Christine cannot afford to stay out of work while she takes the required 1500 hours of cosmetology training, nor can she afford the thousands of dollars it costs for cosmetology school tuition.

### **African-Style Hair Braiding**

33. As used in this Complaint, “African-style hair braiding” refers to braiding, locking, twisting, weaving, cornrowing, or otherwise physically manipulating hair without the use of chemicals that alter the hair’s physical characteristics. It incorporates both traditional and modern styling techniques. African-style hair braiding is a method of natural hair care.

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

35. The practice of African-style hair braiding is quite distinct from other types of styling more common in the United States. African-style hair braiding is a labor-intensive process, usually taking a single stylist multiple hours to complete.

36. African-style hair braiding is typically performed on hair that is physically unique, often described as “tightly textured” or “coily” hair. This physical characteristic is genetically determined to be in close correlation with race. In the United States, African-style hair braiding is most popular with men and women of African descent, who tend to have more textured hair. For many of these individuals, the choice of African-style hair braiding (rather than mainstream styles taught in cosmetology schools) is as much a cultural statement and expression of self-identity as it is an aesthetic preference.

37. Often, persons of African descent learn to braid textured hair as children or teens, usually by first learning to do their own hair or that of friends and relatives.

38. The concept of natural hair care is particularly meaningful for many African-Americans because, for decades, Western culture pressured African-Americans to use chemicals or heat to straighten their hair. These Western methods are still prevalent in American cosmetology schools. African-style hair braiding provides an alternative to these “corrective” measures by working with a person’s natural hair texture.

39. Because African-style hair braiding embraces natural hair care and shuns chemicals, it is very safe for practitioners and customers. For many women with textured hair, African-style hair braiding provides a reprieve after years of harsh chemical treatment of their hair. For example, sodium hydroxide, the active ingredient in many



hair straighteners, has a high incidence of chemical burns because it is very caustic. It is capable of burning human hair and skin.

40. While African-style hair braiding uses no chemicals to physically change textured hair, the use of hair extensions in braiding can change the physical appearance of the hair. Extensions can either enhance the versatility of the natural hair or make the hair appear straight, curly, long, short, differently textured, and/or colored, without affecting or damaging a person's own hair.

41. Nivea, Christine, and other African-style hair braiders rely on their skills and simple tools—like combs, picks, hair ties, and other common tools that people use on their own hair—to create intricate, diverse, and expressive hair styles.

#### **Arkansas's Regulation of Cosmetology**

42. Arkansas's Cosmetology Act is codified at Arkansas Code sections 17-26-101 *et seq.*

43. The Arkansas cosmetology rules and regulations are entitled "Rules and Regulations for Cosmetology in Arkansas" (hereinafter "Cosmetology Rules"). The Cosmetology Rules are available online at <http://www.healthy.arkansas.gov/aboutADH/RulesRegs/CosmetologyRulesandRegs.pdf>.

44. The laws, rules, and regulations governing cosmetologists in Arkansas are enforced by Defendants.

45. The Arkansas Cosmetology Technical Advisory Committee is a seven-member committee appointed by the Arkansas State Board of Health. Cosmetology Rule

No. 2.23. Its duties include holding hearings on cases that may require disciplinary action. *Id.*

46. Arkansas Code section 17-26-102(a)(3) defines “[c]osmetologist” as any person who “[e]ngages in the practice of cosmetology in a licensed cosmetological establishment” or “[s]ervices a client in premises not licensed as a cosmetological establishment when the services rendered involve a special event in which the cosmetology service is to be performed . . . .”

47. Arkansas Code section 17-26-102(b) defines “cosmetology” as including “any and all and any combination of the following practices:

- (1) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, singeing, bleaching, tinting, coloring, straightening, dyeing, brushing, beautifying, or otherwise treating by any means the hair of any person or wigs or hairpieces;
- (2) Externally manipulating, cleaning, waxing, or stimulating the body by means of the hands, devices, apparatus, or appliances with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams;
- (3) Beautifying the body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams;
- (4) Temporarily removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays;

(5) Cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person; and

(6) Massaging, cleansing, or beautifying the nails of any person.”

48. Arkansas requires that cosmetologists obtain a license from the State. The Cosmetology Rules state that “[n]o person shall practice any phase of cosmetology and its related occupations with the intent of receiving compensation when the person does not hold a current and valid license . . . .” Cosmetology Rule No. 3.2.

49. Arkansas requires a cosmetology license for individuals performing African-style hair braiding for compensation.

50. Arkansas does not require a license for individuals who perform African-style hair braiding without compensation.

51. A first violation of the Cosmetology Act can result in a minimum civil penalty of \$25. Ark. Code Ann. §§ 17-26-104(c)(5)(B), 104(f). The statutory scheme does not state what the maximum civil penalty is for braiding without a cosmetology license. Thus far, the highest fine that Christine has received is \$550.

52. A first violation of the Cosmetology Act can also result in a Class D misdemeanor and up to 90 days in jail. Ark. Code Ann. § 17-26-104(b)(1).

#### **Arkansas’s Cosmetologist License Requirements**

53. Arkansas Code section 17-26-304 outlines four requirements for a cosmetology license. Applicants must be at least 16 years old and have completed two years of high school. Additionally, they must have completed at least 1500 hours of cosmetology training or alternatively have studied “cosmetology under the laws of

another state whose licensing requirements are equal to or stricter than those of Arkansas.” Finally, applicants must pass a written and practical examination.

***The required 1500 hours of cosmetology training***

54. Cosmetology Rules 7.10 and 7.11 set forth the requirements for the 1500 hours of cosmetology training, which are a prerequisite to the cosmetology licensing exam.

55. Rule 7.10(A) requires 1500 hours “of theoretical and practical instruction.”

56. Rule 7.11(A) sets forth the required components of the 1500 hours of instruction:

“(1) Hygiene and Sanitation – 80 Hours – Instructions in sanitation, sterilization, hygiene, lighting and ventilation . . . .

(2) Related Science – 120 hours – Physiotherapy or cosmetricity (pertaining to electricity used in cosmetology), Physiology and Histology Anatomy, Neurology, Myology and Osteology.

(3) Hairdressing – 1000 hours – A course in cleaning hair, shampooing, haircutting, clipping, singeing, dying, tinting, bleaching, scalp massage, brushing and combing, curling, permanent waving, and reconditioning hair, wiggery, thermal pressing, iron curling, chemical relaxing, etc.

(4) Manicuring – 100 hours – A course in the construction, filing and shaping of the fingernails, loosening and removing the dead cuticle and the art of hand and arm massage.

(5) Aesthetics – 100 hours – A course in the skin, various kinds of facial massage, cosmetics, packs, the art of makeup, eyebrow arching, eyebrow and eyelash dying.

(6) Salesmanship and Shop Management – 50 hours – Instruction in how to keep records, knowledge of business law, cosmetology law, rules and regulations, booking appointments, retailing, etc.

(7) Shop Department – 50 hours – Courtesy, neatness and professional attitude in meeting the public.”

57. Upon information and belief, tuition and fees at an Arkansas cosmetology school can cost over \$17,000.

***The required cosmetology license exam***

58. Arkansas Code section 17-26-303 describes the examination required for the cosmetology license. The exam “shall include both a practical demonstration and written test” and must also be of “sufficient thoroughness to satisfy the Cosmetology Technical Advisory Committee.”

59. Fees for the practical and written cosmetology exams are \$65.00 and \$60.00, respectively. Cosmetology Rule 1.5. A passing score of 70 and 75 are required for the written and practical cosmetology exams, respectively. Cosmetology Rule 4.3.

**Arkansas’s Regulation of African-Style Hair Braiders Under Its Cosmetology Statutory Scheme**

60. On its face, the definition of cosmetology in Arkansas Code section 17-26-102(b) includes African-style hair braiding.

61. Defendants, who are tasked with enforcing Arkansas's Cosmetology Act, interpret the statutory definition of cosmetology to include African-style hair braiding.

62. Defendants actively enforce the cosmetology license requirement against African-style hair braiders.

63. Defendants have imposed fines on African-style hair braiders solely for braiding without a license.

64. Plaintiff Christine McLean is one of the braiders who has been punished with multiple fines for braiding without a license. The fines assessed to her for braiding without a license and to her business for allowing unlicensed braiders to braid at the business total approximately \$1850.

65. Even though Arkansas law and Defendants treat African-style hair braiding as cosmetology, the Arkansas cosmetology curriculum does not require cosmetology schools to teach African-style hair braiding, nor do the Arkansas cosmetology written and practical examinations test African-style hair braiding. Rather, the curriculum teaches, and the exams test, knowledge and skills largely—if not entirely—irrelevant to African-style hair braiding.

66. At most, only a portion of the 80 hours of hygiene and sanitation training in the cosmetology curriculum is relevant to African-style hair braiding.

67. The requirement for 1500 hours of training for the cosmetology license does not include any instruction regarding techniques or styles of African-style hair braiding.

68. The requirement for the 1500 hours of training for the cosmetology license mandates hundreds of hours of instruction regarding topics, techniques, and styles that are irrelevant to African-style hair braiding.

69. Upon information and belief, none of the state's cosmetology schools include African-style hair braiding in their curricula.

70. In a January 2, 2014 letter to Plaintiff Nivea Earl, officials at the Department of Health admitted that there are no programs that provide training in African-style hair braiding in Arkansas.

71. Neither the practical demonstration nor the written portion of the cosmetology license examination requires any knowledge or skill regarding African-style hair braiding.

72. Both the practical demonstration and the written portion of the cosmetology license examination require knowledge and skills irrelevant to African-style hair braiding.

73. During a February 24, 2014 meeting of the Cosmetology Technical Advisory Committee, a lawyer for the Department of Health admitted that Arkansas's cosmetology license requirement for hair braiders is unconstitutional under two federal court decisions: *Clayton v. Steinagel*, 885 F. Supp. 2d 1212 (D. Utah 2012) and *Cornwell v. Hamilton*, 80 F. Supp. 2d 1101 (S.D. Cal. 1999).

#### **Effects of Treating African-Style Hair Braiding as Cosmetology**

74. Arkansas's cosmetology license requirement for African-style hair braiders harms both braiders and consumers.

75. The current cosmetology regime has the intent and effect of establishing and maintaining a cartel for cosmetology services within Arkansas. The State's cosmetology regulations and practices were developed or otherwise influenced by the Cosmetology Technical Advisory Committee, which is comprised of seven practitioners and insiders of the cosmetology industry. Ark. Code Ann. § 17-26-201(c).

76. The State's cosmetology regulatory scheme has the perverse effect of limiting the lawful provision of African-style hair braiding for compensation only to those who are not required to know anything about African-style hair braiding while precluding those who are specifically skilled in these techniques from lawfully offering their services to the public.

77. In addition, the cosmetology regulatory scheme irrationally treats similarly situated people differently by requiring African-style hair braiders to acquire a cosmetology license when they braid for compensation, while not requiring African-style hair braiders to have a license when they braid for free.

78. Further, Arkansas's cosmetology regulatory scheme irrationally treats differently situated people the same by treating African-style hair braiders exactly like cosmetologists, despite the two professions being substantially different.

79. The cosmetology regulatory scheme also drives some African-style hair braiders "underground." For example, often African-style hair braiding services will be performed out of a hair braider's home or in a retail-cosmetic shop. Among many customers of African-style hair braiding services, the existence of an underground



economy is an open secret. Braiders in the underground economy, however, constantly risk prosecution and reasonably fear advertising their services.

80. Because of the regulatory barriers to entry into this profession, African-style hair braiders are deprived of entrepreneurial, employment, and training opportunities. These barriers have a particularly harsh impact on low-income individuals in the African-American and African-immigrant community.

81. The current cosmetology regulatory scheme has also severely limited the options for consumers who wish to purchase African-style hair braiding services.

82. The vast majority of licensed cosmetologists do not offer African-style hair braiding services. If a licensed cosmetologist does braid, she can charge large fees because of a lack of “legal” competition.

83. Some consumers patronize unlicensed braiders, who know how to braid and may charge less than a licensed cosmetologist. But these unlicensed braiders, if they receive payment, are violating Arkansas law. Accordingly, these braiders are subject to fines and are thus chilled from providing their services.

84. Some consumers may rely on friends and family to braid without compensation. But these braiders must dedicate long hours for no pay, and thus are chilled from providing their services.

85. Some Arkansas consumers leave the State of Arkansas entirely to receive African-style hair braiding in nearby states, like Mississippi, which do not require a license for African-style hair braiding.

### **Injury to Plaintiff Nivea Earl Caused by Arkansas's Licensing Scheme**

86. Application of the current cosmetology regulatory scheme has caused and will continue to cause grave and irreparable harm to Nivea.

87. Because Nivea provides African-style hair braiding services for compensation without a cosmetology license, she risks fines every time she braids hair.

88. Nivea reasonably fears fines, as she has heard about other African-style hair braiders recently being fined by Defendants.

89. Nivea cannot legally braid for money unless she spends thousands of dollars on 1500 hours of training, none of which will teach her anything about African-style hair braiding, and takes examinations which bear no relation to African-style hair braiding.

90. Nivea cannot afford to spend 1500 hours at cosmetology school instead of supporting herself and her family.

91. Nivea cannot afford to spend the thousands of dollars it takes to attend cosmetology school.

92. Nivea does not currently have enough cosmetology training to pass the Arkansas cosmetology licensing exam because she has not trained to be a cosmetologist.

93. Nivea would be forced to handle potentially hazardous chemicals during cosmetology training and the cosmetology exam that she does not want to handle and would not otherwise handle as an African-style hair braider.

94. Nivea would like to advertise her business with the Arkansas State Chamber of Commerce and local businesses, as well as in the Yellow Pages, magazines,

and local newspapers. But because of her reasonable fear of enforcement under the cosmetology statutory regime, Nivea is not doing so.

95. But for the threat of enforcement of Arkansas's cosmetology licensing scheme to African-style hair braiding, Nivea would begin to advertise her business and take other steps to grow her business.

96. Nivea provides professional, high-quality braiding services. Yet the cosmetology regulatory scheme constantly threatens to impair her ability to practice her chosen profession and support herself and her family.

97. If Defendants force Nivea to get a cosmetology license to continue braiding, she would have to close down her business and break the lease for her business.

98. But for Arkansas's requirement that braiders obtain a cosmetology license before practicing their craft for money, Nivea could legally continue her African-style hair braiding business, Twistykinks.

#### **Injury to Plaintiff Christine McLean Caused by Arkansas's Licensing Scheme**

99. Application of the current cosmetology regulatory regime has caused and will continue to cause grave and irreparable harm to Christine.

100. Because Christine provides African-style hair braiding services for compensation without a cosmetology license, she risks fines every time she braids hair.

101. Christine and her business have already been fined approximately \$1850 by Defendants solely for violating Arkansas's hair braiding licensing requirement.

102. Christine reasonably fears receiving more fines in the near future. She also reasonably fears jail time, as jail time is a possible penalty under the Cosmetology Act.

103. Christine cannot legally braid for money unless she spends thousands of dollars on 1500 hours of training, none of which will teach her anything about African-style hair braiding, and takes examinations which bear no relation to African-style hair braiding.

104. Christine cannot afford to spend 1500 hours at cosmetology school instead of supporting herself and her family.

105. Christine cannot afford to spend the thousands of dollars it takes to attend cosmetology school.

106. Because Christine is originally from Ivory Coast, she struggles with English, and would have significant difficulty understanding the cosmetology training and the exam. Specifically, the training and the exam use many technical words with which Christine has little or no familiarity.

107. Christine would be forced to handle potentially hazardous chemicals during cosmetology training and the cosmetology exam that she does not want to handle and would not otherwise handle as an African-style hair braider.

108. Christine cannot substitute the braiding training that she completed in Florida for Arkansas's 1500-hour training requirement, as Florida does not have "licensing requirements that are equal to or stricter than those in Arkansas" under Arkansas Code section 17-26-304(3)(D). Even if she could substitute her Florida training, Christine currently does not have enough cosmetology training to pass the Arkansas cosmetology licensing exam.

109. Even if Christine were to somehow acquire the necessary 1500 hours of cosmetology training and pass the cosmetology exam, she still could not get a license because, having been raised in Ivory Coast, she has not completed two years of high school in the public schools of Arkansas or its equivalent, as required by Arkansas Code section 17-26-304.

110. Christine provides professional, high-quality braiding services. Yet the cosmetology regulatory regime constantly threatens to impair her ability to practice her chosen profession and support herself and her family.

111. If Defendants force Christine to get a cosmetology license to continue braiding, she would have to close down her thriving business. Christine has never had another job and she has no idea how she would support herself and her son without braiding.

112. But for Arkansas's requirement that braiders obtain a cosmetology license before practicing their craft for money, Christine could legally continue her African-style hair braiding business, LaBelle African Hair Braiding.

### **Count I**

#### **Substantive Due Process**

113. Plaintiffs incorporate and reallege the allegations contained in paragraphs 3 through 112 of this Complaint as set forth fully herein.

114. The Due Process Clause of the Fourteenth Amendment protects the right to earn a living in the occupation of a person's choice subject only to reasonable government regulation.

115. Arkansas's current cosmetology laws and regulations as applied to Plaintiffs by Defendants, their agents and employees, acting under the color of state law, arbitrarily and unreasonably prohibit Plaintiffs from pursuing their chosen livelihood by forcing them to obtain a license that is unrelated to their profession and subjecting them to fines, thus threatening the existence, profitability, and potential growth of their businesses. The arbitrary diminution of Plaintiffs' economic liberty by the imposition of these regulations deprives them of due process as guaranteed by the Fourteenth Amendment to the United States Constitution and protected by 42 U.S.C. § 1983.

116. Requiring African-style hair braiders to attend cosmetology school and obtain a cosmetology license, which does not include any instruction or training in African-style hair braiding, is not rationally related to any legitimate government interest. Imposing the two-years-of-high-school requirement on African-style hair braiders also does not rationally serve a legitimate government interest.

117. As a direct and proximate result of Defendants' application of the cosmetology regime to African-style hair braiders, including Plaintiffs, African-style hair braiders have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing the above-described constitutional violations of the Due Process Clause of the Fourteenth Amendment, African-style hair braiders, including Plaintiffs, will continue to suffer great and irreparable harm.

**Count II**

**Equal Protection**

118. Plaintiffs incorporate and reallege the allegations contained in paragraphs 3 through 117 of this Complaint as set forth fully herein.

119. Requiring African-style hair braiders to attend cosmetology school and obtain a cosmetology license, which does not include any instruction or training in African-style hair braiding, is not rationally related to public health or safety.

120. Plaintiffs enjoy a right to Equal Protection under the Fourteenth Amendment to the United States Constitution. This right protects similarly situated people from being treated differently, as well as protects differently situated people from being treated the same.

121. Arkansas's cosmetology regulatory regime irrationally treats similarly situated people differently by requiring African-style hair braiders to acquire a cosmetology license when they braid for compensation, while not requiring African-style hair braiders to have a license when they braid for free. This difference in treatment is not rationally related to any legitimate government interest.

122. Arkansas's cosmetology regulatory regime also irrationally treats similarly situated people differently by allowing individuals with two years of high school to apply to be legally licensed African-hair braiders, while not allowing those with less than two years of high school to apply to be legally licensed African-hair braiders. This difference in treatment is not rationally related to any legitimate government interest.

123. Arkansas's cosmetology regulatory regime irrationally treats differently situated people the same by treating African-style hair braiders exactly like cosmetologists, despite the two professions being substantially different. This identical treatment is not rationally related to any legitimate government interest.

124. Thus, 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 to the United States Constitution and 42 U.S.C. § 1983.

125. As a direct and proximate result of Defendants' application of Arkansas's cosmetology laws and regulations against African-style hair braiders, including Plaintiffs, African-style hair braiders have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing the above-described constitutional violations of the Equal Protection Clause of the Fourteenth Amendment, African-style hair braiders, including Plaintiffs, will continue to suffer great and irreparable harm.

### **Count III**

#### **Privileges or Immunities**

126. Plaintiffs incorporate and reallege the allegations contained in paragraphs 3 through 125 of this Complaint as set forth fully herein.

127. The Privileges or Immunities Clause of the Fourteenth Amendment protects the right to earn a living in the occupation of a person's choice subject only to reasonable government regulation.



128. Application of Arkansas's current cosmetology laws and regulations arbitrarily and unreasonably impairs Plaintiffs' ability to pursue their chosen livelihood by forcing them to obtain a license that is unrelated to their profession and subjecting them to fines and penalties, thus threatening the existence, profitability, and potential growth of their businesses, in violation of the privileges or immunities guarantee of the Fourteenth Amendment to the United States Constitution.

129. As a direct and proximate result of Defendants' application of Arkansas's cosmetology laws and regulations against African-style hair braiders, including Plaintiffs, African-style hair braiders have no other adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing the above-described constitutional violations of the Privileges or Immunities Clause of the Fourteenth Amendment, African-style hair braiders, including Plaintiffs, will continue to suffer great and irreparable harm.

**Request for Relief**

WHEREFORE, Plaintiffs pray for judgment as follows:

A. An entry of judgment declaring that Arkansas Code sections 17-26-101 *et seq.* are unconstitutional when applied to African-style hair braiders generally and when applied to Plaintiffs specifically;

B. An entry of judgment declaring that the Arkansas "Rules and Regulations for Cosmetology" are unconstitutional when applied to African-style hair braiders generally and when applied to Plaintiffs specifically;

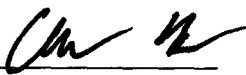
C. A permanent injunction prohibiting Defendants from applying Arkansas Code sections 17-26-101 *et seq.* to the practice of African-style hair braiding generally or to Plaintiffs specifically;

D. A permanent injunction prohibiting Defendants from applying the Arkansas “Rules and Regulations for Cosmetology” to the practice of African-style hair braiding generally or to Plaintiffs specifically;

E. An award of attorneys’ fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

F. All further legal and equitable relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 17th day of June, 2014.

/s/   
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*\*Pro hac vice applications pending*