16-3968

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NDIOBA NIANG, TAMEKA STIGERS,
Plaintiffs-Appellants,

v.

EMILY CARROL, IN HER OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINRS; WAYNE KINDLE, IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS,
Defendants-Appellees,

BETTY LEAKE,
Defendant,

JACKIE CROW, IN HER OFFICIAL CAPACITY AS MEMBER OF THE MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS,
ET AL.,
Defendants-Appellees

On Appeal from the United States District Court, Eastern District of Missouri, The Honorable John M. Bodenhausen

BRIEF OF APPELLEE

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SUMMARY OF THE CASE

This case is a challenge by two African-style hair braiders, Appellants-Plaintiffs Ndioba Niang and Tameka Stigers (the "braiders"), to Missouri's requirement that African-style hair braiders be licensed as cosmetologists or barbers. The braiders argue that this licensure requirement violates their substantive due process and equal protection rights under the Fourteenth Amendment of the United States Constitution.

The district court upheld Missouri's licensure requirement under rational-basis review, which both parties concede applies. The court held that the State's law is rationally related to the legitimate government interests of public health and consumer protection.

The Board agrees with the braiders that 30 minutes per side for oral argument is appropriate.

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STATEMENT OF THE ISSUE

Under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution, state laws must be rationally related to a legitimate government interest.

The issue presented in this case is:

Whether the district court correctly held that Missouri's requirement that African-style hair braiders be licensed as cosmetologists or barbers is rationally related to the legitimate state interests in promoting public health and protecting consumers.

The most apposite cases on this issue are:

- *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307 (1993);
- *Kansas City Taxi Cab Drivers Ass'n, LLC v. City of Kansas City, Mo.*, 742 F.3d 807 (8th Cir. 2013);
- *Gallagher v. City of Clayton*, 699 F.3d 1013 (8th Cir. 2012); and
- *Heller v. Doe*, 509 U.S. 312 (1993).

STATEMENT OF THE CASE

In this case, two African-style hair braiders have challenged the constitutionality of Missouri's requirement that all African-style hair braiders be licensed as barbers or cosmetologists. African-style hair braiding is "braiding, locking, twisting, weaving, cornrowing, or otherwise physically manipulating hair without the use of chemicals that alter the hair's physical characteristics." JA-0023.

Missouri law requires that all African-style hair braiders be licensed before practicing as barbers or cosmetologists. JA-0078. Missouri prohibits any practice as a barber or cosmetologist without being licensed. *See* Mo. Rev. Stat. § 328.020; *see also* Mo. Rev. Stat. § 329.030. State law includes this style of hair-braiding as a regulated activity of a barber or cosmetologist. *See* Mo. Rev. Stat. § 328.010(1) (defining "barber" as "any person who is engaged in the capacity so as to shave the beard or cut and dress the hair for the general public"); Mo. Rev. Stat. § 329.010(5)(a) (defining a Class CH-Hairdresser under the definition of cosmetology to include "arranging, dressing, curling, singeing, waving, permanent waving, cleansing, cutting, bleaching,

tinting, coloring or similar work upon the hair of any person by any means.").

To protect the public from unsafe, incompetent, or fraudulent hairdressing practices, Missouri requires each barber or cosmetologist to be properly trained and licensed. Applicants for cosmetology licenses must complete 1,500 hours of training or 1,220 hours in a public vocational technical school, and must pass a qualifying examination. *See* Mo. Rev. Stat. § 329.050; JA-0077. Applicants for barber licenses must complete 1,000 hours of training and must pass a qualifying examination. *See* Mo. Rev. Stat. § 328.080; JA-0078.

African-style hair braiding is included in the categories of hairdressing subject to these training and licensing requirements because, if not undertaken properly, African-style hair braiding can cause several medical issues, including hair loss, inflammation and infection of the scalp. JA-0206-207, 0217. There are certain conditions African-style hair braiders would need to recognize to know when to avoid braiding. JA-0213.

Because they object to this training and licensing requirement, two African-style hair braiders brought this suit in the United States

District Court for the Eastern District of Missouri against the state officials charged with licensing hair care professionals and enforcing state laws that prohibit the unlicensed practice of these professions, *i.e.*, the Executive Director and the members of the Missouri Board of Cosmetology and Barber Examiners. Mo. Rev. Stat. ch. 328 & 329; JA-0007;JA-0009. After discovery, the braiders and the Board filed cross-motions for summary judgment. JA-0011-12.

The district court granted summary judgment in favor of the Board. It held that the licensure requirement was rationally related to the State's legitimate interests of public health and consumer protection. The court also proffered two additional rationales for upholding the requirement. JA-2019, 2025-26. The braiders have appealed this decision to this Court. JA-0014.

SUMMARY OF THE ARGUMENT

The Fourteenth Amendment to the U.S. Constitution does not prohibit a State from requiring the practitioners of African-style hair braiding to be licensed as cosmetologists or barbers. Requiring braiders to be trained and licensed is rationally related to a legitimate government interest in promoting the public health and protecting consumers from incompetence or fraud. *Gallagher v. City of Clayton*, 699 F.3d 1013, 1019 (8th Cir. 2012).

In their opening brief, the braiders invite this Court to set aside decades of precedent emphasizing the highly deferential nature of rational-basis review—including *Heller v. Doe*, 509 U.S. 312 (1993), *FCC v. Beach Communications, Inc.*, 508 U.S. 307 (1993), *Kansas City Taxi Cab Drivers Ass'n, LLC v. City of Kansas City, Mo.*, 742 F.3d 807 (8th Cir. 2013), and *Gallagher v. City of Clayton*, 699 F.3d 1013 (8th Cir. 2012)—and adopt a much more aggressive posture of judicial review to correct what the braiders believe is an unjustified economic burden placed upon them by the State of Missouri's licensing laws.

But the precedents of both the Supreme Court and this Court are clear. With no fundamental right or suspect class at issue, challenges to

economic regulations like these are subject to rational basis review—the most highly deferential standard of review.

Rational basis review "accord[s]" laws "a strong presumption of validity." *Heller v. Doe*, 509 U.S. 312, 319 (1993). Under rational-basis review, courts do not overturn a State law "as long as there is a plausible reason for the legislature's decision." *Kansas City Taxi Cab Drivers Ass'n, LLC v. City of Kansas City, Mo.*, 742 F.3d 807, 809 (8th Cir. 2013). Challengers to the law have the burden to negate every conceivable basis which might support the licensing requirement, whether or not the basis is supported by the evidence or record. *Heller v. Doe*, 509 U.S. 312, 320–21 (1993). The State is not required to produce evidence in support of its interests and a reviewing court may rely on any conceivable legislative interest as a reason to uphold the law. Indeed, for this reason, rational basis review has been called a "paradigm of judicial restraint." *F.C.C. v. Beach Communications*, 508 U.S. 307, 314 (1993).

To be sure, these standards make rational-basis review a very low bar for a State to clear, but that is for a good reason. When no suspect class or fundamental right is affected, courts must be "very reluctant" to

"closely scrutinize legislative choices as to whether, how, and to what extent [a State's] interests should be pursued." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 441–42 (1985). The sort of economic grievances asserted in this case should be addressed through democratic processes.

Here, Missouri's requirement that African-style hair braiders must be licensed as barbers or cosmetologists is rationally related to at least two legitimate government interests: public health and consumer protection. Expert evidence suggests that there are health concerns associated with African-style hair braiding, and there is evidence that aspiring African-style hair braiders would learn how to prevent or reduce such health risks during cosmetology or barber school. Further, as with any business, practitioners of African-style hair braiding may be guilty of incompetence or fraud in the course of conducting their businesses. Pre-screening hair braiders by checking their criminal and disciplinary history and subjecting them to discipline for misconduct protect Missouri consumers.

In addition to these interests, the district court pointed out two additional rationales for the licensure requirement: that licensing could

incentivize the creation of more instruction focused on African-style hair braiding, or that it might encourage the expansion of African-style hair braiders' businesses to more comprehensive hair care. This was entirely proper. Courts are not limited to the reasons proffered by the State when undertaking its rational-basis review nor are the braiders entitled to engage in discovery to refute every conceivable rationale. *See Fowler v. United States*, 633 F.2d 1258, 1263 (8th Cir. 1980); *see also Gallagher v. City of Clayton*, 699 F.3d 1013, 1020 (8th Cir. 2012); and *Knapp v. Hanson*, 183 F.3d 786, 789 (8th Cir. 1999). Instead, they must anticipate and negate every conceivable basis for a statute.

Nor are these licensing requirements out of the ordinary. Just as in many other professions, hair braiders must obtain a general license before choosing to specialize in a particular subset of that profession. Lawyers, for example, likewise must attend law school courses that take a substantial amount of time and money and that cover subjects that they will not use in practice before they may enter the practice of law and pick a field of specialization. The Constitution does not require that a state create a separate license for every specialty or subset of a particular profession.

For this reason, Missouri's licensure requirement comports with the Equal Protection Clause as well. The analysis under rational-basis review is the same for an equal-protection claim as for a due process claim, and here the braiders have not stated a valid Equal Protection claim. African-style hair braiders are merely a subset or specialty within the definition of barbering and cosmetology, not a different occupation, and thus are properly included in its regulatory reach.

Were this Court to side with the braiders and hold that rational basis review requires a stricter scrutiny of these laws than precedent admits, this Court would set a precedent that could have far-reaching consequences for federalism. The federal courts are not in the business of second-guessing state legislatures on the wisdom of the exercise of their police powers. But if every state law were subject to searching review for its burdensomeness in every application, the weighing of competing legislative interests that the people have entrusted to the States would be absorbed by the federal judiciary, a task for which federal judges are ill-equipped and a result that is contrary to our Nation's democratic process.

ARGUMENT

I. The Braiders Misconstrue the Standard For Rational-Basis Review.

A. Economic regulations are subject to rational basis review.

Under the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person . . . the equal protection of the laws." U.S. Const. amend. XIV. This Amendment reserves heightened scrutiny for laws that implicate a fundamental right (such as free-speech or religion) or a suspect class (such as race). *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

Because the intent to practice an occupation is only an economic interest, it implicates neither a fundamental right nor a suspect class, and so rational-basis review applies to this case, *Gallagher v. City of Clayton*, 699 F.3d 1013, 1019 (8th Cir. 2012), as the district court correctly held and as the braiders concede. Aplt. Br. at 18-25. In the "local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment." *Kansas City Taxi Cab Drivers Ass'n, LLC*, 742 F.3d at 810-811 (quoting *City of New Orleans v. Dukes*, 427 U.S. 297,

303–04 (1976)). When a law is not wholly arbitrary, the courts are called upon to be a "paradigm of judicial restraint." *F.C.C. v. Beach Communications*, 508 U.S. 307, 314 (1993). And here, without a fundamental right or suspect class at issue, there is no reason to apply a more demanding framework than rational-basis review. *Gallagher v. City of Clayton*, 699 F.3d 1013, 1019 (8th Cir. 2012). This is true for both the braiders' equal protection and substantive due process claims. *See Indep. Charities of Am., Inc. v. State of Minn.*, 82 F.3d 791, 798 (8th Cir. 1996) (stating a statute satisfying the equal protection rational-basis test also satisfies the due process rational-basis test).

B. Rational-basis review is a highly deferential standard.

Unable to dispute that rational-basis review applies, the braiders instead argue that the court below wrongly treated rational-basis review as a "toothless" standard, instead of a more stringent form of review. Aplt. Br. at 16-18, 21.

This argument misses the mark. Rational-basis review is "not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993). Courts instead accord laws "a strong presumption of validity," *Heller v. Doe*,

509 U.S. 312, 319 (1993), and are "very reluctant" to "closely scrutinize legislative choices as to whether, how, and to what extent [a State's] interests should be pursued," *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 441 (1985). Under rational-basis review, courts do not overturn a State law "as long as there is a plausible reason for the legislature's decision." *Kansas City Taxi Cab Drivers Ass'n, LLC v. City of Kansas City, Mo.*, 742 F.3d 807, 809 (8th Cir. 2013).

Under rational-basis review, a statute is constitutional if it is rationally related to a legitimate governmental interest. *See Heller*, 509 U.S. at 320. "The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record." *Heller*, 509 U.S. at 320–21 (internal quotations and citations omitted). Indeed, "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged [law] actually motivated the legislature." *Beach Cmmc'ns, Inc.*, 508 U.S. at 315. An asserted legislative interest "is not subject to courtroom factfinding," may be "based on rational speculation unsupported by evidence or empirical data," and must be

upheld "if there is any reasonably conceivable state of facts" that could support it. *Heller*, 509 U.S. at 320.

What is more, "courts are compelled to accept a legislature's generalizations even when there is an imperfect fit between means and ends." *Id.* at 321. Laws need not be made "with mathematical nicety" because "[t]he problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific." *Id.* at 321 (quotations omitted). Indeed, the assumptions underlying the State's rationales may be erroneous, but as long as they are arguable this is sufficient to protect the measure from a constitutional challenge under rational-basis review. *Beach Commc'ns, Inc.*, 508 U.S. at 320.

As this Court has repeatedly held, a law that "neither implicates a fundamental right nor involves a suspect or quasi-suspect classification" must only be "rationally related to a legitimate government interest." *Gallagher v. City of Clayton*, 699 F.3d 1013, 1019 (8th Cir. 2012). For example, in *Gallagher*, this Court held that an ordinance that banned smoking in certain public places survived rational basis review because the law conceivably furthered public interests in public health and

safety, litter reduction, and aesthetics. *Id.* at 1019. As this court explained, these legislative facts "could ... reasonably be conceived to be true by the governmental decisionmaker." *Id.* (quoting *Vance v. Bradley,* 440 U.S. 93, 111 (1979)). The government could have engaged in "rational speculation unsupported by evidence or empirical data" that the smoke exposure at issue was harmful to health, based on reports that "could...reasonably be conceived to be true." *Id.* (quoting *Beach Commc'ns, Inc.,* 508 U.S. at 315; *Vance,* 440 U.S. at 111).

The many Supreme Court and Eighth Circuit cases that the braiders reference in footnotes to support their interpretation of the rational-basis standard consist almost entirely of cases involving facially discriminatory statutes, or older cases that predate the Supreme Court's opinion in *Beach* and this Court's opinions in *Gallagher* and *Kansas City Taxicab.*[1] For example, in *Schware v. Bd. of*

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[1] *Quinn v. Millsap*, 491 U.S. 95, 106–07 (1989), *Turner v. Fouche*, 396 U.S. 346, 348–50 (1970), *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 446–47 (1985), *Fowler v. United States*, 633 F.2d 1258, 1263 (8th Cir. 1980), *Mayer v. City of Chicago*, 404 U.S. 189, 196–97 (1971), *Plyler v. Doe*, 457 U.S. 202, 202 (1982) and *Ranschburg v. Toan*, 709 F.2d 1207, 1211 (8th Cir. 1983) all addressed measures that

Bar Exam. of State of N.M., 353 U.S. 232, 233 (1957), the court's analysis of the factual record addressed whether the plaintiff's prior arrests established he had bad moral character so that he could be excluded by a state bar from practicing law without violating the Fourteenth Amendment's Due Process Clause, and the court did not engage in an analysis of rational-basis review under the current framework. Likewise, in *Miller v. Ackerman*, 488 F.2d 920, 922 (8th Cir. 1973), the court was addressing a challenge regarding an individual's personal liberty in her ability to wear wigs to conform to the Marine Corps grooming code, and the court did not even reference Equal Protection or the Due Process Clause.[2] In *Peeper v. Callaway Cty. Ambulance Dist.*, 122 F.3d 619, 622-23 (8th Cir. 1997), the court's concern was with First Amendment associational rights. Moreover, *Planned Parenthood of Minnesota v. State of Minn.* 612 F.2d 359 (8th

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involved alleged invidious discrimination or otherwise targeted particular groups.

[2] *Zobel v. Williams*, 457 U.S. 55 (1982), and *Peeper v. Callaway Cty. Ambulance Dist.*, 122 F.3d 619 (8th Cir. 1997), two additional cases referenced by the braiders, are addressed in subsequent sections.

Cir. 1980) addressed regulations that appeared to target Planned Parenthood specifically. *Id.* at 361-363.

II. Missouri's Licensing Law Withstands Rational-Basis Review Under Substantive Due Process.

A. Missouri's licensure requirement for African-style hair braiders is rationally related to multiple legitimate government interests.

This Court must uphold the licensure requirement so long as it is rationally related to a legitimate government interest. *Gallagher v. City of Clayton*, 699 F.3d 1013, 1019 (8th Cir. 2012). As long as there is any reasonably conceivable state of facts that could provide a rational basis for the requirement, *Heller v. Doe,* 509 U.S. 312, 319–20 (1993); *F.C.C. v. Beach Commc'ns, Inc.,* 508 U.S. 307, 313 (1993)), this Court's "inquiry is at an end." *Kansas City Taxi Cab Drivers Ass'n, LLC v. City of Kansas City, Mo.*, 742 F.3d 807, 809 (8th Cir. 2013).

Here, the requirement that African-style hair braiders must be licensed as barbers or cosmetologists is rationally related to multiple legitimate government interests in the areas of public health and consumer protection. There is no dispute that protecting the public health and consumer protection are legitimate government interests, and so the only dispute is whether the braiders can establish that the

State could not conceivably believe that the licensure requirement furthers these interests. And this the braiders cannot show.

First, there are health concerns presented with the practice of African-style hair braiding, and requiring licensure would help prevent these concerns. As the district court noted, the fact that there was competing evidence as to how real these health concerns are is not relevant to this Court's decision. JA-2020; *Beach*, 508 U.S. at 315. Specifically, there was evidence by dermatologists on behalf of the Board that African-style hair braiding comes with the potential for serious health consequences. JA-0206-0207 (declaration of Raechele C. Gathers, M.D., stating that African-style hair braiding "if done incorrectly-can be associated with a variety of deleterious effects to both the hair and scalp"). Gathers' declaration further states that the most common medical issue she has observed relating to hair braiding is loss of hair (JA-0207), and that it can also be related to inflammation of the hair follicles and infection of the scalp. JA-0207. Gathers added that braiders should be knowledgeable of the "basi[c] fundamentals of scalp and hair biology" and noted that "harsh braiding and grooming practices in young children could permanently impact the child's ability

to grow future hair, and could also lead to devastating infections that can cause both physical and psychological harm." JA-0211-0212. Gathers also stated that there are "certain medical scalp conditions that braiders would need to avoid braiding on, as to do so could either worsen the condition, or, secondary to communicability, place other clients at risk." JA-0213.

Similarly, the declaration of Dakara Rucker Wright, M.D., states that hair braiding can "potentially damage hair follicles deep in the scalp and hair shaft." JA-0217. Wright disagreed that there are no significant health concerns associated with African-style hair braiding simply because it does not involve the use of chemicals. JA-0217. Wright stated hair braiding can cause hair loss, which can be irreversible, and inflammation of the hair follicles. JA-0217. Wright further explained that unrecognized hair and scalp infections can lead to permanent or irreversible hair loss. JA-0218. Wright stated medical conditions including "traction alopecia, traction folliculitis, hair breakage, tinea capitis, staphylococcus aureus, contact dermatitis or allergy can be caused by practices surrounding hair braiding, or if a

patient already has the above conditions, braiding could exacerbate or make worse." JA-0218.

Thus, regardless of any conflicting evidence provided by the braiders, it is at least arguable that African-style hair braiding comes with health concerns. Further, the curriculum in Missouri's licensed cosmetology and barber schools includes scalp treatments and scalp diseases, sanitation and sterilization, properties and disorders of the skin, scalp, and hair and treatment of the hair and scalp (JA-0365, 0368). Thus, it is conceivable that the State would want to require licensure to further its interests in protecting the public health based on the relevant knowledge braiders gain during barber or cosmetology school.

The licensure requirement should be upheld based on the State's interest in public health even if it is merely based on "rational speculation unsupported by evidence or empirical data" that it furthers this interest. But here, as in *Gallagher*, there was actual evidence that African-style hair braiding presents health issues. *Gallagher v. City of Clayton*, 699 F.3d 1013, 1019–20 (8th Cir. 2012). Accordingly, the braiders cannot establish that the licensure requirement for African-

style hair braiders does not at least conceivably further the State's legitimate interest in protecting the public health. *See Kansas City Taxi Cab Drivers Ass'n, LLC v. City of Kansas City, Mo.*, 742 F.3d 807, 809 (8th Cir. 2013) (the court's inquiry is at an end when there is a plausible reason for the legislature's decision). Moreover, given that Niang admits to asking customers about scalp sensitivities or conditions and conducting an examination of customers' scalps prior to braiding (JA-0358-059), the State reasonably could have determined that being licensed as a barber or cosmetologist is relevant to such an examination.

As the district court noted, in *Sensational Smiles*, it did not matter that the parties disputed the evidence that there were potential health risks associated with using LED lights in teeth whitening, so as to justify restricting the practice to dentists. *Sensational Smiles, LLC v. Mullen*, 793 F.3d 281, 284–85 (2d Cir. 2015). The court explained it was not their role to "second-guess the wisdom or logic of the State's decision to credit one form of disputed evidence over another." *Id.* The court further stated that even if dentists were not formally trained on using LED lights, the State Dental Commission "might have reasoned" that if

issues arose during the procedure dentists would be better equipped than non-dentists to handle them, thus there were rational grounds for restricting the use of LED lights in whitening procedures to dentists. *Id.* at 285. The court concluded that because there was at least some evidence that LED lights could cause some harm to consumers, "and given that there is some relationship (however imperfect) between the Commission's rule and the harm it seeks to prevent, we conclude that the rule does not violate either due process or equal protection." *Id.*

Similarly, in this case, there was at least some evidence that there are health concerns associated with African-style hair braiding, and some evidence that lessons taught in barber and cosmetology school help address these concerns. It is not the court's role to weigh the evidence. JA-2021; *Beach*, 508 U.S. at 315. Because it is at least conceivable that requiring African-style hair braiders to be licensed furthers the State's interest in protecting the public health (particularly in light of the actual evidence addressed above), the licensure requirement survives rational-basis review. *See Gallagher*, 699 F.3d at 1020.

Second, the licensure requirement also furthers the State's legitimate interest in consumer protection. *See New Jersey Retail Merchants Ass'n v. Sidamon-Eristoff*, 669 F.3d 374, 398 (3d Cir. 2012) (recognizing consumer protection as a legitimate state interest). The State has a legitimate interest in ensuring that practitioners of African-style hair braiding are screened regarding their criminal or disciplinary history, and that they can be disciplined as appropriate for misconduct. Without a licensure requirement for African-style hair braiders, anyone could practice African-style hair braiding for the public regardless of their professional or criminal history, or knowledge of the health concerns referenced above. Removing the licensure requirement would eliminate the State's ability to discipline practitioners who act in a manner that is harmful to their customers. Aggrieved customers would be left attempting to bring expensive and time-consuming private lawsuits against such practitioners. As the district court noted, requiring licensure for hair braiders is a rational means of protecting the State's consumer protection interests because it provides a framework to monitor and keep braiders accountable. JA-2025; citing *Merrifield*, 547 F.3d at 988. Moreover, as noted by the district court, the

fact that consumer-protection concerns might be addressed in other manners is not determinative under rational-basis review. JA-2025.

Further, the braiders are not unique in that they are required to spend significant time and money to get licensed, through a licensure process that includes training and testing on material that is not directly related to their desired subset of their profession. There are countless instances in which professionals are required to spend time and money obtaining licenses, where much of what they learn and are tested on is not relevant to what they will do in practice. For example, psychiatrists can expect to spend countless hours in medical school on training in physical treatments unrelated to psychiatry, and future attorneys can expect to spend countless hours and thousands of dollars in law school and studying for the bar to acquire expertise in numerous areas of the law (e.g., secured transactions and negotiable instruments) in which they may never practice. There is no violation of the Constitution simply because a State does not carve out a separate licensing regime for every specialty within a particular profession that considers itself a separate discipline.

B. Missouri's licensing requirement is not so overbroad or underinclusive as to be entirely unrelated to any legitimate interest.

The braiders argue that the State's asserted interests are not supported, because they contend their own evidence shows an imperfect—or "awful"—fit between Missouri's licensing requirements and its goals of public safety and consumer protection. Specifically, the braiders claim the licensing requirement is overbroad in that much of what they must learn is not related to African-style hair braiding, that it is underinclusive in that it does not adequately teach them African-style hair braiding, and that a handful of minimally related features cannot "bootstrap" the otherwise irrelevant licensing requirement.

But this sort of tailoring is simply not required under rational-basis review. "[E]very line drawn by a legislature leaves some out that might well have been included." *Vill. of Belle Terre v. Boraas*, 416 U.S. 1, 8 (1974). Even where a measure "may exact a needless, wasteful requirement in many cases," nevertheless "[i]t is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." *Williamson v. Lee Optical of Oklahoma Inc.*, 348 U.S. 483, 487-88

(1955). It is for the political branches, not the courts, to "balance the advantages and disadvantages of the new requirement." *Id.* So long as the legislature rationally could have thought the measure would further a legitimate government interest, courts should not and cannot strike the measure down on rational-basis review simply because it may be overbroad or underinclusive.

Here, the argument that the licensing requirement fails rational-basis review because it is underinclusive is unavailing. While the licensing process may not perfectly train an individual to become an expert in African-style hair braiding, this does not mean the licensure requirement fails to further legitimate government interests, such as public health and consumer protection. *See Williamson*, 348 U.S. at 487-88. The bar exam does not perfectly train lawyers to become experts in patent law, but this does not mean that it is a wholly irrational method of licensing future patent attorneys.

Nor are the State's interests fatally undermined by the exemption for hair braiding at public amusement or entertainment venues. According to the exemption, an individual is exempt from the requirements of Chapter 329 only when they are working in conjunction

with a licensee. Mo. Rev. Stat. § 316.265. And even if the braiders can argue the licensure requirement is somewhat underinclusive in exempting hair braiders at these particular venues, this does not cause it to fail rational-basis review. Even if the State could advance its legitimate interests in a more consistent manner, "mathematical exactitude" is not required, and a measure does not fail rational-basis review simply because it only "partially ameliorates a perceived evil." *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). For example, an ordinance banning tobacco smoke in certain public places may be underinclusive, but that is acceptable under rational basis review, because the government may rationally believe that it is appropriate to eliminate tobacco smoke from certain public places but not other possible air contaminants. *Gallagher v. City of Clayton*, 699 F.3d 1013, 1019 (8th Cir. 2012).

Nor is the law fatally overbroad because it requires training in more than the techniques of hair braiding. The braiders claim that requiring braiders to be licensed "only advances legitimate interests to the extent it requires instruction or testing related to the practice of African-style hair braiding," and the braiders claim that there can only

be minimal benefits from requiring braiders to obtain a barber or cosmetology license. Aplt. Br. at 43. But the braiders overlook the State's interests in the benefits of training beyond acquiring expertise in African-style hair braiding, including broader skills in business management. The State has several legitimate interests in requiring licensure that do not depend on the African-style hair braiding related instruction or testing during the licensure process. These interests include retaining the Board's ability to discipline an individual's license when necessary, ensuring that African-style hair braiders learn general health related practices during barber or cosmetology school, ensuring that practitioners have to pass background checks, and otherwise protecting the public from fraud. JA-2024-25. The State's interests in public health and consumer protection are thus not dependent on how much the training directly relates to braiding. The braiders' chief error is that they only look at the benefits resulting from the instruction *they will receive* in order to get licensed, as opposed to the overall benefits *to the public* of the licensure requirement.

These rational interests distinguish Missouri's law from other laws in which a court has not found any connection to a state's

interests. In *Zobel v. Williams*, 457 U.S. 55, 65 (1982), for example, Alaska had "shown no valid state interests which are rationally served by the distinction it makes between citizens who established residence before 1959 and those who have become residents since then." And in *Craigmiles v. Giles*, the court did not find that requiring sellers of caskets to be licensed as funeral directors failed rational-basis review because the legislation was overbroad; it held so because the law was not rationally related to any legitimate government interest. *Craigmiles v. Giles*, 312 F.3d 220, 224-25 (6th Cir. 2002) (noting the "weakness of Tennessee's proffered explanations indicates that the 1972 amendment adding the retail sale of funeral merchandise to the definition of funeral directing was nothing more than an attempt to prevent economic competition"). These cases reflect that the courts do not weigh benefits and burdens as part of rational-basis review; all they look for is some rational connection between the law and the state interests.

The braiders also claim that the lower court should have given greater weight to their evidence to determine whether an actual connection exists between the State interest and the particular measure, and that they should prevail if they "negate each of the

government's proffered purposes for the challenged laws using specific factual evidence." Aplt. Br. at. 23. This is simply incorrect. The State is not required to produce evidence at all. Even though "[t]he assumptions underlying" a State's "rationales may be erroneous," "the very fact that they are 'arguable' is sufficient, on rational-basis review, to 'immuniz[e]' the [legislative] choice from constitutional challenge." *Beach*, 508 U.S. at 320.

To the extent a court looks at facts or evidence when conducting rational-basis review, it can only be for the purpose of determining whether the State could have rationally decided the measure would further a legitimate government interest, and not whether such a connection actually exists in practice. It is only necessary the State has plausible reasons for its actions, that the lawmakers could have rationally thought the measure furthered a legitimate government interest, or that 'it is evident from all the considerations presented to [the legislature], and those of which we may take judicial notice, that the question is at least debatable."' *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981) (quoting *United States v. Carolene Products Co.*, 304 U.S. 144, 153–154 (1938)).

Here, this means that so long as Missouri could have conceivably thought this licensure requirement would further a legitimate government interest, this Court need not conduct a review of the evidentiary record to determine whether such a connection in fact exists. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 466 (1981); *see also Kansas City Taxi Cab Drivers Ass'n, LLC v. City of Kansas City, Mo.*, 742 F.3d 807, 809 (8th Cir. 2013). The braiders must negate every conceivable basis which might support the measure, "whether or not the basis has a foundation in the record." *Heller v. Doe by Doe*, 509 U.S. 312, 320–21 (1993). And the braiders' evidence does not carry that burden. The district court considered the braider's evidence and found that the braiders did not disprove that the legislature could have determined the requirement conceivably furthered a legitimate government interest.

The braiders also argue the district court erred by "rejecting" decisions from district courts in other circuits that ruled in favor of plaintiffs bringing similar challenges. However, a district court decision is not even binding precedent in its own judicial district, let alone a different district. *Camreta v. Greene*, 563 U.S. 692, 709, n.7 (2011); *see*

also Se. Stud & Components, Inc. v. Am. Eagle Design Build Studios, LLC, 588 F.3d 963, 967 (8th Cir. 2009) (stating a district court is not bound by the holdings of other district courts, even within the same district). Such decisions are authoritative only to the extent they are persuasive, and they are not persuasive for the reasons stated herein.

III. Under Rational-Basis Review, The State May Require African-Style Hair Braiders To Be Licensed As Barbers Or Cosmetologists Without Violating Equal Protection.

The braiders argue the requirement that African-style hair braiders must be licensed as barbers or cosmetologists violates their rights under the Fourteenth Amendment's Equal Protection Clause because the government must treat similarly situated individuals or groups alike and cannot treat differently situated individuals or groups the same. But this is not the standard under rational-basis review, and here the braiders are not "differently situated" from barbers or cosmetologists.

A. The Equal Protection Clause is not implicated by treating different groups as if they are the same.

Pursuant to the Equal Protection Clause of the Fourteenth Amendment, the government must "treat all similarly situated people alike." *Creason v. City of Washington*, 435 F.3d 820, 823 (8th Cir. 2006). The court in *Creason* explained that as a "threshold matter" to state an

Equal Protection claim a party must first establish that they were treated differently from others who are similarly situated. *Id.* (citing *Johnson v. City of Minneapolis,* 152 F.3d 859, 862 (8th Cir. 1998). Thus, the Equal Protection Clause is not implicated unless people are treated differently from those similarly situated, and does not protect differently situated people from being treated the same.

As the district court correctly noted, the braiders misconstrue the court's holding in *Jenness v. Fortson*, 403 U.S. 431, 432 (1971). *Jenness* involved a Georgia law that stated a candidate for office who did not win a political party's primary election can have his name on the general election ballot if he files a nominating petition signed by five percent of voters from the previous general election. *Id.* at 432. Independent candidates challenged the law, claiming that requiring nonparty candidates to secure signatures of five-percent of the voters but printing the names of candidates who won nominations from party primaries violated the Fourteenth Amendment's Equal Protection Clause. *Id.* at 434. The court stated there were obvious differences between established political parties and small political organizations,

and that Georgia did not discriminate by "recognizing these differences and providing different routes to the printed ballot." *Id.* at 440-42.

As the district court explained, the court's holding was that Georgia did not violate the Equal Protection Clause by treating differently situated groups differently, and not that the Equal Protection Clause prohibits treating differently situated groups the same. The Court's statement that "sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike" was dicta, given that the case did not involve different groups being treated as if they were the same. *Id.* at 442. Similarly, *Williams* involved a requirement that new political parties "obtain petitions signed by qualified electors totaling 15% of the number of ballots cast in the last preceding gubernatorial election." *Williams v. Rhodes*, 393 U.S. 23, 24–26 (1968). The two major parties faced a smaller burden because they could remain on the ballot merely by obtaining ten-percent of the votes from the preceding gubernatorial election and did not need to obtain any signature petitions. *Id.* Thus, *Williams* also involved a situation where differently situated groups were treated differently, and the court did not prohibit treating

differently situated groups the same under the Equal Protection Clause. *Id.* at 23.

The court in *Merrifield v. Lockyer* effectively distinguished *Jenness* and *Williams* from this case, when it stated: "[I]n both *Jenness* and in *Williams,* the challenged laws imposed *different* requirements on two different groups, traditional and new political parties. However, in *Cornwell* the challenge was by an African hair stylist who challenged a *uniform* licensing scheme. While the reasoning of the district court in *Cornwell* may be consistent with our due process analysis, it cannot survive equal protection analysis." 547 F.3d 978, 984–85 (9th Cir. 2008). Thus, the braiders' reliance on *Jenness* and *Williams* is improper, as those cases did not hold that the Equal Protection Clause prohibits treating differently situated groups the same.

Moreover, the additional cases the braiders cite fail to support their argument that the Equal Protection Clause prohibits treating differently situated groups the same. In *Green Party of Tennessee v. Hargett*, the court was reviewing a challenge to a Tennessee law that placed a higher burden on minor political parties, specifically requiring minor parties "to obtain 5% of the total number of votes cast for

governor in the last gubernatorial election to retain ballot access beyond the current election year. In contrast, statewide political parties are given four years to obtain the same level of electoral success." 791 F.3d 684, 693 (6th Cir. 2015). Thus, the court was examining a law that treated differently situated groups differently, not differently situated groups the same. In referencing *Jenness*, the court stated "[D]efendants are correct that the Supreme Court has recognized that different burdens can be justified by differences in the types of parties at issue." *Id.* at 694. The court held the statute at issue imposed a greater burden on minor parties without a sufficient rationale, and therefore violated the Equal Protection Clause. *Id.* at 695. Accordingly, *Hargett* did not rely on *Jenness* to hold the Equal Protection clause is violated by treating differently situated groups the same, as it was addressing a challenge in which differently situated groups were being treated differently.

Similarly, *Green Party of Connecticut v. Garfield* also involved a law that treated major and minor political parties differently, this time in how state funds were disbursed during campaigns. 616 F.3d 213, 219–20 (2d Cir. 2010). Nothing in *Garfield* supports the proposition that

the Equal Protection Clause is violated by treating differently situated groups the same, as that was not the issue before the court. Instead, the court found in part that the Equal Protection Clause did not prohibit the State funding plan from distinguishing between candidates who could and could not make a preliminary showing of public support in its distribution of funds. *Id.* at 231.

Further, the court was not engaging in analysis under the Equal Protection Clause in *Anderson v. Celebrezze*, in which the court struck down a law requiring independent candidates to declare their candidacy on the same day as those declaring for a primary election. 460 U.S. 780, 806 (1983). Instead, the court was employing the framework it uses for constitutional challenges to a State's election laws, in which a court weighs the injury to the "rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against the interests provided by the state as justifications for the burden of the law to determine whether it is unconstitutional. *Id.* at 709. Moreover, the court did not consider the filing deadline to be a uniform requirement, given that the name of the Democratic or Republican party nominees would appear on the general election ballot even if they decided to run

after the filing deadline had passed, whereas the independent would be denied a position on the ballot. *Id.* at 799. Thus, *Anderson* does not stand for the proposition that the Equal Protection Clause is violated by treating differently situated groups the same.

Similarly, the court in *Wood v. Meadows* was following the framework from *Anderson* in its analysis and was not addressing the Equal Protection Clause in a challenge brought by independent candidates over when they needed to comply with a filing deadline. 207 F.3d 708, 711 (4th Cir. 2000). Nor was the court engaging in Equal Protection analysis in *MacBride v. Exon* when it found a state law requiring parties to be certified and meet certain organizational requirements ninety days ahead of the primary and nine months prior to the general election was an arbitrary restriction upon the rights of voters and was unconstitutional. 558 F.2d 443, 448–49 (8th Cir. 1977).

Moreover, in *Libertarian Party of N. Dakota v. Jaeger*, the court simply recognized that a statute that appears neutral on its face but has an unequal effect or burden on certain groups violates the Equal Protection Clause. 659 F.3d 687, 702 (8th Cir. 2011). This is not the issue in our case, as there is no argument that the facially neutral

licensure requirement makes it more burdensome on aspiring African-style hair braiders to become licensed than any other aspiring hair care professionals. The "effect" of the licensure requirement is not to make it harder on African-style hair braiders to become licensed than anyone else, thus there is no unequal burden on African-style hair braiders. The braiders' real claim is that the licensure requirement for African-style hair braiders is not rationally related to any legitimate government interest, not that the licensure requirement has an unequal effect on aspiring African-style hair braiders.

Further, in *St. Joseph Abbey v. Castille*, the court never addressed why the Equal Protection Clause was implicated when addressing a law that restricted casket sales to funeral homes. 712 F.3d 215, 217 (5th Cir. 2013). Rather, the court combined its Equal Protection analysis with its Due Process analysis. *Id.* Likewise, the district court's opinion contained no analysis as to why the Equal Protection Clause was implicated, other than its blanket statement at the end of the opinion that "[l]ikewise these laws violate the Equal Protection Clause, since the Act in essence treats two distinct and different occupations as the same. The licensing scheme is not rationally related to public health

and safety concerns." *St. Joseph Abbey v. Castille*, 835 F. Supp. 2d 149, 160 (E.D. La. 2011). There was no analysis or explanation in either opinion as to why the Equal Protection Clause applies, and the district court provided no citation to support its statement. This Court should not be persuaded by the unsupported statement of the district court in *St. Joseph Abbey* that the Equal Protection Clause is implicated where distinct occupations are treated as the same, and where on review the Court of Appeals conducted no separate analysis under the Equal Protection Clause.

B. Requiring African-style hair braiders to be licensed as barbers or cosmetologists does not violate equal protection.

African-style hair braiders perform work covered by the definition of cosmetology and barbering under Missouri's statutes, and thus are not differently situated than others aspiring to work as hair care professionals. Rather, they seek to practice a particular specialty within the fields of cosmetology and barbering. Thus, even if the braiders' interpretation of the Equal Protection Clause were correct, the braiders do not constitute a "differently situated" occupation. Like other aspiring hair care professionals, they are required to learn the basics of the hair

care profession, and then, after being licensed, they can choose to focus on a particular specialty within that profession.

African-style hair braiding is not a distinct occupation from cosmetology and barbering under Missouri law. Rather, it is a subset or specialty of cosmetology and barbering that fits within Missouri's statutory definitions of cosmetology and barbering. The definition of "cosmetology" under Missouri law includes "arranging, dressing, . . . or similar work upon the hair of any person." Mo. Rev. Stat. § 329.010(5)(a). The definition of "barber" includes "any person who is engaged in the capacity so as to shave the beard or cut and dress the hair for the general public." Mo. Rev. Stat. § 328.010(1). The braiders' own definition of African-style hair braiding defines it as "braiding, locking, twisting, weaving, cornrowing, or otherwise physically manipulating hair without the use of chemicals that alter the hair's physical characteristics. . ." JA-0023. Thus, the braiders' own definition of African-style hair braiding meets the definitions of "arranging, dressing, . . . or similar work upon the hair of any person" in the cosmetology statute and "dressing" under the barbering statute. Accordingly, African-style hair braiding is not a distinct occupation

from cosmetology or barbering as defined in Missouri law. It is a subset or specialty of those professions.

Thus, even if the Equal Protection clause were violated by treating distinct occupations as if they were the same, the braiders' claim would fail because African-style hair braiders are not differently situated than other aspiring hair-care professionals who may wish to pursue a specialized vocation within the profession as a whole.

IV. The District Court Did Not Err By Proffering Its Own Alternative Justifications For The Licensure Requirement.

The braiders' argument that the district court erred by proffering additional rationales for the licensure requirement is also unconvincing.

A. The district court properly considered alternative rationales for the licensure requirement.

Under rational basis review, a decision-maker need not "articulate at any time the purpose or rationale supporting its classification." *Nordlinger v. Hahn*, 505 U.S. 1, 15 (1992). Therefore, "it is entirely irrelevant . . .whether the conceived reason for the challenged [law] actually motivated the legislature." *Beach*, 508 U.S. at 315. Instead, "[t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it, whether or not

the basis has a foundation in the record." *Heller*, 509 U.S. at 320–21 (internal quotations omitted).

The braiders argue that the district court deprived them of their procedural due process rights by addressing additional rationales for the licensure requirement following the close of discovery. The braiders claim this deprived them of an opportunity to "negate the factual underpinnings for these new rationales" during discovery. Aplt. Br. at 58. The braiders' argument fails to recognize that, under rational-basis review, a measure is upheld so long as there is a "plausible reason for the legislature's decision," and thus there is no requirement that this plausible reason was one actually proffered by the State. *See Kansas City Taxi Cab Drivers Ass'n, LLC v. City of Kansas City, Mo.*, 742 F.3d 807, 809 (8th Cir. 2013). This Court is not limited to the reasons proffered by the State when undertaking its rational-basis review and is free to analyze whether the measure at issue should be upheld based on additional rationales not proffered by the State. *See Fowler v. United States*, 633 F.2d 1258, 1263 (8th Cir. 1980) ("the government has shown this court no rational interest, *and we can perceive of none*, that would be furthered by the government's retaining the power to summarily

discharge without cause" workers with intellectual disabilities but not other workers (emphasis added)); *see also Gallagher v. City of Clayton*, 699 F.3d 1013, 1020 (8th Cir. 2012) ("Even if the City's asserted rationales were to fail rational basis review, Gallagher still would have the burden 'to negative every conceivable basis which might support' the Ordinance. Because the City's health-based justification is sufficient, we will not analyze other conceivable rationales for the Ordinance") (citing *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973)).

Similarly, the braiders are not entitled to conduct discovery on the district court's proffered alternative rationales. Those challenging a statute under rational-basis review are not entitled to engage in discovery to refute every conceivable rationale. *Fowler v. United States*, 633 F.2d 1258, 1263 (8th Cir. 1980); *see also Gallagher v. City of Clayton*, 699 F.3d 1013, 1020 (8th Cir. 2012). Whether a measure survives rational-basis review can be resolved through a ruling on a motion to dismiss prior to discovery. *Knapp v. Hanson*, 183 F.3d 786, 789 (8th Cir. 1999). The braiders "are incorrect in their contention that this issue cannot be decided on a motion to dismiss. . . When all that

must be shown is 'any reasonably conceivable state of facts that could provide a rational basis for the classification,' it is not necessary to wait for further factual development." *Id.* (quoting *Beach Communications, Inc.*, 508 U.S. at 313)); *see also Carter v. Arkansas*, 392 F.3d 965, 968 (8th Cir. 2004) (stating that a district court may conduct rational-basis review on a motion to dismiss and that it need not wait for further factual development). It is not merely the braiders' job to negate the State's asserted rationales to prevail on a challenge under rational-basis review but "to negative every conceivable basis which might support" it. *Gallagher*. at 1020 (quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973)). That the braiders did not anticipate and refute these alternative rationales demonstrates their own failure to carry their assigned burden.

Moreover, the district court did not deprive the braiders of an impartial tribunal by referencing additional rationales that would justify the licensure requirement. The braiders' argument fundamentally misunderstands the role of a court engaging in rational-basis review. A plaintiff must negate any rationales potentially conceived of by the court. *Beach Commc'ns, Inc.*, 508 U.S. at 318, 320

(stating that a model "originally suggested by Chief Judge Mikva in his concurring opinion" provided a conceivable basis for the statute at issue, and referencing other sufficient rationales in its own opinion).

By considering alternative rationales for a requirement not proffered by the State, the district court plainly acted properly under the Supreme Court's and this Court's precedents. A judge is not providing aid or advocacy for one party by following the analytical framework set forth by the Supreme Court when conducting their analysis, and there is no bias present merely by the judge following Supreme Court precedent in reaching its decision. Further, the braiders expressly disavow any suggestion that recusal was required here. Aplt. Br. At 59-60 & n.20.

B. The district court's additional rationales supporting the licensure requirement are convincing, and they provide an independent basis on which to affirm the judgment.

The braiders argue the additional rationales for the licensure requirement provided by the district court "are not rationally connected to the licensing regime." Aplt. Br. at 65. This is incorrect.

Deciding whether or not the additional rationales proffered by the court provide a further basis for upholding the licensure requirement is

not necessary to uphold Missouri's law. The district court properly concluded that the licensure requirement was at least rationally related to the State's legitimate interests of public health and consumer protection, and its ruling would have been the same regardless of whether it referenced additional plausible reasons for the licensure requirement. It is not necessary that every proffered rationale referenced by the State or court survives rational-basis review, as long as the measure conceivably furthers at least one legitimate state interest.

In any event, the district court's two additional rationales for the licensure requirement are convincing. As the district court noted, licensing can incentivize the creation of more instruction focused on African-style hair braiding, and it might promote the expansion of African-style hair braiders' businesses to more comprehensive hair care. These alternative rationales for the licensing requirement provide reasonably conceivable sets of facts under which the requirement serves a legitimate state interest, and thus they provide independent alternative rationales to uphold the requirement.

V. This Court Should Not Read the Fourteenth Amendment Expansively To Intrude Upon The State's Historic Police Powers in Economic Matters.

At the end of the day, all that remains are the braiders' arguments against the wisdom and necessity of the State's occupational licensing laws as applied to them. But, whatever the merits of their policy positions, this Court does not sit to review the wisdom or necessity of economic regulations. Nor should it do so here.

If this Court allows this suit to proceed, it will open the floodgates to litigation. Virtually every member of every profession can complain of training or licensing requirements that seem overbroad or underinclusive to them. Under the braiders' theory, these displeased citizens would all have the incentive, not to contact their state legislators, but to sue in federal court. Moreover, if this and future challenges succeed, the States would be subject to wholesale revision of their laws by the federal courts—which would constitute an undue intrusion upon State sovereignty and a task inappropriate for the federal judiciary. The federal courts are not roving commissions to review the wisdom and justice of economic policies. It is the task of the political branches, not the courts, to weigh the wisdom and efficiency of

such regulations. Deciding on the right fit between regulatory means and ends is a quintessentially legislative task. The people are entitled to resolve these issues through their elected representatives.

CONCLUSION

The judgment of the district court should be affirmed.

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CERTIFICATE OF COMPLIANCE AND OF SERVICE

The undersigned hereby certifies that on this 2nd day of February 2017, one true and correct copy of the foregoing brief was served electronically, and an additional paper copy will be mailed, postage prepaid, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule 32(a)(5), 32(a)(6) and 32(a)(7)(B), and that the brief contains 8,967 words. The undersigned further certifies that the electronically filed brief has been scanned for viruses and is virus-free.

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