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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

SALAMATA SYLLA,

Plaintiff,

v.

PATRICIA KOHLER, in her official
capacity as Director of the Washington
State Department of Licensing, and
SUSAN COLARD, in her official capacity
as Administrator of the Washington State
Department of Licensing’s Cosmetology
Program,

Defendants.

No. 2:14-cv-00885

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This case seeks to vindicate Plaintiff Salamata Sylla’s constitutional right to continue operating her hair braiding business free from irrational governmental regulations.

2. Employees of the Washington State Department of Licensing informed Salamata that her hair braiding practice requires a state-cosmetology license, ordered her to get a license, and threatened fines and disciplinary action against her if she refuses to comply.

1 24. The practice of African hair braiding is distinct from other practices of
2 cosmetology more common in the United States. African hair braiding is a labor-intensive
3 process, usually taking a single braider multiple hours to complete.

4 25. African hair braiding is typically performed on hair that is physically different—
5 sometimes described as “tightly textured” or “coily” hair. This physical difference is genetically
6 determined and closely correlated with race. In the United States, African hair braiding is most
7 popular among men and women of African descent, who tend to have tightly textured hair. For
8 many of these individuals, the choice of African hair braiding (rather than the conventional styles
9 taught in cosmetology schools) is as much a cultural statement and expression of self-identity as
10 it is an aesthetic matter.

11 26. Often, persons of African descent learn to braid textured hair as children or teens,
12 usually by first learning to do their own hair or that of their friends and relatives. This was the
13 case with Salamata, who learned braiding as a girl.

14 27. The concept of natural hair care is particularly meaningful for many African-
15 Americans because, for decades, Western culture has pressured African-Americans to use
16 chemicals or heat to straighten their hair and so to appear more “Western” and less “African.”
17 African hair braiding provides an alternative to “corrective” measures prevalent in cosmetology
18 schools and, instead, works with a person’s natural hair texture.

19 28. Because the use of chemicals is anathema to practitioners of natural hair care,
20 African hair braiding techniques are safe for practitioners and customers. Indeed, for many
21 people with textured hair, African hair braiding provides a welcome reprieve from harsh
22 chemical treatments of their hair. For example, sodium hydroxide, the active ingredient in many
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1 hair straighteners, has a high incidence of chemical burns because it is very caustic. It is capable
2 not only of burning hair and skin; it can dissolve aluminum cans.

3 29. While African hair braiding uses no chemicals to physically change textured hair,
4 its aesthetic possibilities are virtually unlimited with the use of hair extensions. Extensions can
5 either enhance the versatility of a person's natural hair or make their hair appear straight or curly,
6 long or short, differently textured or colored, all without permanently altering or damaging the
7 person's natural hair.

8 30. Hair extensions are altogether safe when they are attached by natural means—
9 twisting and locking the extensions with a customer's natural hair. Salamata and other African
10 hair braiders do not use any of the glues or other chemicals used at Western-style cosmetology
11 establishments to attach extensions.

12 31. Salamata and other African hair braiders rely on only their experience, skill, and
13 common tools that people use to beautify their own hair—such as combs, picks, and hair clips—
14 to create intricate, varied, and expressive hair styles.

15 **The Government's Enforcement Efforts**

16 32. Last year, two Department inspectors visited Salamata's salon and informed her
17 that she may only continue braiding hair for compensation if she obtains a state-cosmetology
18 license. The inspectors issued Salamata a form, bearing the Seal of the State of Washington,
19 ordering her to obtain a cosmetology-operator license and a salon-shop license. Ex. 1: Inspection
20 Form dated June 25, 2013.

21 33. Eight years earlier, however, the Department publicly announced that hair
22 braiding does not require any cosmetology license, issuing an interpretive statement that reads in
23 part:

1 The Department of Licensing has carefully considered the practice of natural
2 hair braiding. Natural hair braiding does not include hair cutting, application
3 of dyes, reactive chemicals or other preparations to alter the color of the hair
4 or to straighten, curl or alter the structure of the hair and therefore does not
5 meet the requirements for licensure as set forth in RCW 18.16.

6 Ex. 2: Dep't of Licensing Interpretative Statement COS1.

7 34. The Department made this announcement after another African hair braider,
8 Benta Diaw, sued Washington's cosmetology officials in King County Superior Court. See Ex.
9 3: Order Granting Defs.' Mot. to Dismiss/for Summ. J. in *Diaw v. Stephens, et al.*, No. 04-2-
10 19698-1 SEA (March 11, 2005). As a Department official explained in Ms. Diaw's case,
11 "natural hair braiding does not and will not require a cosmetology or barbering license." See Ex.
12 4: Declaration of Trudie Touchette ¶ 6.

13 35. The claims in Ms. Diaw's case were materially identical to the claims in this case.
14 See Ex. 5: Civil Right Compl. for Declaratory and Injunctive Relief in *Diaw v. Stephens, et al.*
15 (August 5, 2004).

16 36. In written correspondence, however, the Department took the position that
17 Salamata's practice of African hair braiding is not "natural hair braiding." Ex. 6: Ltr. from
18 William Maurer to Pat Kohler, July 26, 2013; Ex. 7: Ltr. from Susan Colard to William Maurer,
19 Oct. 16, 2013. The Department did not explain what makes Salamata's practice of African hair
20 braiding (which it says requires licensure) materially different from Ms. Diaw's practice of
21 African hair braiding in 2005 (which did not). See Ex. 7 (suggesting only that "[i]n the case of
22 Salamata Sylla, her practice of hair braiding does not meet the practice of natural hair braiding").

1 37. On June 16, 2014, an employee of the Department, having learned of Salamata's
2 intention to file this lawsuit, contacted her and her counsel by telephone and represented that the
3 Department's prior written correspondence contained a major typographical error: Instead of
4 saying that Salamata's practice of hair braiding "does *not* meet the practice of natural hair
5 braiding," the employee stated that what the Department meant to say was that her practice of
6 hair braiding "*does* meet the practice of natural hair braiding."

7 38. Plaintiff has been unable to confirm which of the Department's positions actually
8 controls. As a result, Salamata does not know which to believe—the Department's written
9 representation that she is violating Washington's cosmetology laws or its verbal representation
10 that she is not. Even if the Department's verbal communication accurately reflects the
11 Department's position, however, the Department's inspectors—who are agents and employees of
12 the Department acting under color of state law—have proceeded as if hair braiders must receive
13 a cosmetology license.

14 **The Irrational Burdens of Cosmetology Licensure**

15 39. Obtaining a cosmetology license in Washington requires completion of 1,600
16 hours of cosmetology training, followed by successful completion of two examinations—one
17 written and one practical.

18 40. State law and the Department's regulations determine what cosmetology schools
19 must teach and what content must be covered on the licensing examinations.

20 41. Although the Department treats African hair braiding as if it were cosmetology,
21 the Department's cosmetology curriculum does not require cosmetology schools to teach African
22 hair braiding, natural hair care, twisting, cornrowing, weaving, locking, or any other aspect of the
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1 unique needs of African or textured hair, except that it requires instruction in using chemicals
2 such as relaxers and straighteners and may involve instruction in gluing hair extensions.

3 42. Both licensing examinations do not test African hair braiding or natural hair care
4 techniques and the Department does not require schools to test students on African hair braiding.

5 43. On the other hand, the two examinations require extensive knowledge of
6 conventional cosmetology practices that are inconsistent with the practices, principles, and
7 cultural foundations of African hair braiding.

8 44. On information and belief, Washington's cosmetology schools do not teach
9 African hair braiding voluntarily, nor do they teach twisting, cornrowing, weaving, locking, or
10 any other natural technique for the treatment of African or tightly textured hair.

11 45. The Department's cosmetology-education requirements for tightly textured hair
12 do, however, involve the use of relaxing and straightening chemicals. The use of these
13 chemicals can result in severe damage to the hair and skin, including hair loss, loss of the ability
14 to grow hair, dry and broken hair, and burn damage to the hair and skin. All of these conditions
15 are commonly found among African-Americans who regularly use relaxing and straightening
16 chemicals. The risk of acquiring these conditions is often one of the reasons why African-
17 Americans choose to forgo chemical treatments in favor of African hair braiding, which does not
18 involve the use of any chemicals.

19 46. Under the Department's written interpretation of Washington's cosmetology-
20 licensing laws, someone like Plaintiff who is highly skilled in African hair braiding may not
21 practice hair braiding for pay without a cosmetology license. At the same time, a person with a
22 cosmetology license is allowed to practice hair braiding, although nothing guarantees that
23 licensees know the first thing about hair braiding.

1 47. The Department’s written interpretation of Washington’s cosmetology-licensing
2 program has the effect of creating and protecting a harmful cartel for hair braiding services. The
3 Department’s written interpretation of Washington’s cosmetology laws precludes people, like
4 Plaintiff, who are highly skilled in hair braiding from lawfully offering their services to the
5 public, while it perversely limits the lawful practice of African hair braiding only to people who
6 are not required to know anything about African hair braiding.

7 48. The application of Washington’s cosmetology-licensing regime would drive
8 African hair braiders “underground.” Under the Department’s written interpretation of
9 Washington law, hair braiders will not advertise to the general public, expand their businesses, or
10 hire employees without fear of enforcement. Because these normal competitive forces are
11 squelched, customers will not find hair braiders that they would otherwise find, and customers
12 will end up paying more for African hair braiding when they do find it.

13 49. The application of Washington’s cosmetology-licensing program will result in a
14 dearth of lawful options for consumers who wish to purchase African hair braiding services. The
15 practical consequences of the Department’s written interpretation of Washington law are that:

- 16 a. The vast majority of licensed cosmetologists will not offer African hair
17 braiding services. If a licensed cosmetologist does braid, she can charge large
18 fees because of a lack of lawful competition.
- 19 b. Some consumers may patronize unlicensed braiders, who know how to braid
20 and may charge less than a licensed cosmetologist. But these unlicensed
21 braiders, if they receive payment, are apparently violating Washington law
22 and the Department’s regulations, making them subject to fines and sanctions
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1 from the Department. Skilled braiders are thus chilled from providing their
2 services, advertising their services, and expanding their businesses.

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

6 50. Absent these regulatory barriers to entry into the profession, African hair braiding
7 would provide entrepreneurial, employment, and training opportunities for economically
8 disadvantaged individuals and others. Washington's cosmetology-licensing program limits entry
9 into the profession to only those people with at least 1,600 hours and thousands of dollars to
10 spare on cosmetology training that is altogether irrelevant to the profession those people wish to
11 practice.

12 51. Therefore, Washington's cosmetology laws and the Department's written
13 interpretation of those laws work a particular and unequal hardship upon Plaintiff specifically
14 and upon practitioners and consumers of African hair braiding services generally.

15 **Injury to Plaintiff**

16 52. Application of the current cosmetology-licensing program to Plaintiff's practice
17 of African hair braiding has caused and will continue to cause real and irreparable harm to
18 Plaintiff.

19 53. Under the Department's written interpretation of Washington law, Plaintiff cannot
20 legally braid hair for money unless she spends 1,600 hours and thousands of dollars on training
21 that will teach her nothing about hair braiding.
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1 54. Additionally, Plaintiff must pay for, prepare for, and sit for two examinations—
2 one written and one practical. These examinations would not test her on African hair braiding,
3 but would test her on information and skills that bear no relation to African hair braiding.

4 55. The practical examination is only offered in English. The written examination is
5 offered only in English, Korean, Spanish, and Vietnamese. This makes preparing for and
6 passing the examinations a particular burden for people, like Plaintiff, who learned English as a
7 second language and who do not happen to speak Korean, Spanish, or Vietnamese.

8 56. Plaintiff cannot afford to spend 1,600 hours at cosmetology school rather than
9 earning money to support her children and herself.

10 57. During her 1,600 hours of cosmetology training, Plaintiff would be forced to
11 handle potentially hazardous chemicals that she does not want to handle and would not otherwise
12 handle as a hair braider.

13 58. Plaintiff cannot afford to pay the \$10,000 to \$20,000 that it costs to attend
14 cosmetology school in Washington.

15 59. But if Plaintiff continues providing African hair braiding services for
16 compensation without a cosmetology operator license and without a salon license, she risks daily
17 fines of up to \$1,000, an additional \$500 fine for each distinct violation, and being denied a
18 cosmetology license if she later chooses to practice other licensed techniques.

19 60. The Department's actions threaten to sour the goodwill of Plaintiff's existing
20 customers because those customers are led to believe there is something untoward, unsafe, or
21 illegal about Plaintiff's business, when none of those things is true.

1 Plaintiff from pursuing her chosen livelihood and are not rationally related to any legitimate
2 governmental interest. The arbitrary limitations that Defendants are attempting to impose on
3 Plaintiff's economic liberty deprives her of due process of law as guaranteed by the Fourteenth
4 Amendment to the United States Constitution and 42 U.S.C. § 1983.

5 67. As a direct and proximate result of Defendants' application of Washington's
6 cosmetology regime against Plaintiff and other African hair braiders, braiders have no other
7 adequate legal, administrative, or other remedy by which to prevent or minimize the continuing
8 irreparable harm to their constitutional rights. Unless Defendants are enjoined from committing
9 the above-described constitutional violations of the Fourteenth Amendment, Plaintiff and other
10 African hair braiders will continue to suffer great and irreparable harm.

11 **COUNT 2**

12 **(Fourteenth Amendment – Equal Protection of Law)**

13 68. Plaintiff re-alleges and incorporates by reference all of the allegations contained
14 in all of the preceding paragraphs.

15 69. Requiring African hair braiders to attend cosmetology school and obtain a
16 cosmetology license, while not requiring instruction or training in hair braiding, is not rationally
17 related to any legitimate governmental interest. By not providing an equal opportunity for
18 individuals trained in the practice of African hair braiding to lawfully offer their services to meet
19 public demand, Defendants, their agents, and their employees, acting under color of state law,
20 violate Plaintiff's right to equal protection of the laws as guaranteed by the Fourteenth
21 Amendment of the United States Constitution and 42 U.S.C. § 1983.

22 70. As a direct and proximate result of Defendants' application of Washington
23 cosmetology laws and regulations against African hair braiders, including Plaintiff, African hair

1 braiders have no other adequate legal, administrative, or other remedy by which to prevent or
2 minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are
3 enjoined from committing the above-described constitutional violations of the Fourteenth
4 Amendment, Plaintiff and other African hair braiders in the state will continue to suffer great and
5 irreparable harm.

6 **COUNT 3**

7 **(Fourteenth Amendment – Procedural Due Process)**

8 71. Plaintiff re-alleges and incorporates by reference all of the allegations contained
9 in all of the preceding paragraphs.

10 72. Defendants, their agents, and their employees, acting under the color of state law
11 have violated the procedural due process protections of the Fourteenth Amendment to the United
12 States Constitution by publicly announcing that hair braiding does not require a state-
13 cosmetology license, in 2005, and then, in 2013, changing their position without notifying
14 Plaintiff or the general public.

15 73. If, however, Defendants' official position remains unchanged, and hair braiding
16 requires no state-cosmetology license, then Defendants have nevertheless violated the procedural
17 due process protections of the Fourteenth Amendment to the United States Constitution by
18 allowing their agents and employees to mislead and harass Plaintiff about the need for her to
19 obtain licensure in violation of the Fourteenth Amendment to the United States Constitution and
20 42 U.S.C. § 1983.

21 74. As a direct and proximate result of Defendants' violation of the procedural due
22 process protections of the Fourteenth Amendment, Plaintiff and other African hair braiders have
23 no other adequate legal, administrative, or other remedy by which to prevent or minimize the

1 continuing irreparable harm to their constitutional rights. Unless Defendants are enjoined from
2 committing the above-described constitutional violations of the Fourteenth Amendment, Plaintiff
3 and other African hair braiders will continue to suffer great and irreparable harm.

4 **COUNT 4**

5 **(Fourteenth Amendment – Privileges or Immunities)**

6 75. Plaintiff re-alleges and incorporates by reference all of the allegations contained
7 in all of the preceding paragraphs.

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

11 77. Application of Washington's current cosmetology laws and regulations arbitrarily
12 and unreasonably impairs Plaintiff's ability to pursue her chosen livelihood by forcing her to
13 obtain a license that is unrelated to her profession and subjecting her to fines and criminal
14 penalties, thus threatening the existence, profitability, and potential growth of her business, in
15 violation of the privileges or immunities guarantee of the Fourteenth Amendment to the United
16 States Constitution and 42 U.S.C. § 1983.

17 78. As a direct and proximate result of Defendants' application of Washington's
18 cosmetology laws and regulations against African hair braiders, including Plaintiff, African hair
19 braiders have no other adequate legal, administrative, or other remedy by which to prevent or
20 minimize the continuing irreparable harm to their constitutional rights. Unless Defendants are
21 enjoined from committing the above-described constitutional violations of the Fourteenth
22 Amendment, African hair braiders, including Plaintiff, will continue to suffer great and
23 irreparable harm.

REQUEST FOR RELIEF

Wherefore, Plaintiff respectfully requests the following relief:

A. An entry of judgment declaring that Chapter 18.16 RCW is unconstitutional when applied to hair braiders generally and when applied to Plaintiff's practice of hair braiding specifically;

B. An entry of judgment declaring that Chapter 308-20 Wash. Admin. Code is unconstitutional when applied to hair braiders generally and when applied to Plaintiff's practice of hair braiding specifically;

C. A permanent injunction prohibiting Defendants from applying Chapter 18.16 RCW to the practice of hair braiding generally or to Plaintiff's practice of hair braiding specifically;

D. A permanent injunction prohibiting Defendants from applying Chapter 308-20 Wash. Admin. Code to the practice of hair braiding generally or to Plaintiff's practice of hair braiding;

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 ON JUNE 17, 2014

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