

**19th JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA**

ASHLEY-ROXANNE N'DAKPRI,
LYNN SCHOFIELD, and
EVANGELA MICHELLE ROBERTSON,

Plaintiffs,

v.

LOUISIANA STATE BOARD OF
COSMETOLOGY; STEVE YOUNG;
in his official capacity as executive
director of the Board, and FRANCES
HAND; WILLIAM MICHAEL
GRAYSON; EDWIN H. NEILL, III;
JAMES WILLIAMS; MELINDA
TILLEY; MELLA BROWN; DEIDRE
DELPIT; and ELIZA JILL HEBERT,
in their official capacities as members
of the Board,

Defendants.

SUIT NO.

SECTION “

DIVISION “CIVIL”

**PETITION FOR DECLARATORY
AND INJUNCTIVE RELIEF**

NOW INTO COURT, through undersigned counsel, come Plaintiffs Ashley-Roxanne N'Dakpri, Lynn Schofield, and Evangela Michelle Robertson, who file this Petition for Declaratory and Injunctive Relief against Defendants: the Louisiana State Board of Cosmetology; Steve Young, in his official capacity as executive director; and Frances Hand; William Michael Grayson; Edwin H. Neill, III; James Williams; Melinda Tilley; Mella Brown; Deidre Delpit; and Eliza Jill Hebert, in their official capacities as members of the Board.

INTRODUCTION

1. This lawsuit seeks to vindicate Plaintiffs' rights to economic liberty, equal protection of the laws, and the guarantee of separation of powers under the Louisiana Constitution. Plaintiffs are engaged in the business of natural hair braiding—an ancient haircare technique practiced widely in African and African-

American communities. Plaintiffs wish to continue providing hair-braiding services in Louisiana for compensation, as they have done—and done safely—for years or decades.

2. To practice the straightforward technique of hair braiding, the Louisiana State Board of Cosmetology requires that Plaintiffs—and all other braiders—stop working and obtain a minimum of 500 hours of training in a private cosmetology school, pass a practical examination, and pay a substantial amount of money to both the school and the Board before exercising their right to pursue their chosen occupation.

3. Specifically, Plaintiffs—and all other hair braiders—must obtain an “alternative hair design” permit, which requires at least 500 hours of training in a private cosmetology school (separately licensed by the Board), with the specific training determined by the private school. LAC 46:XXXI.1107. Braiders must also successfully complete a practical examination. *See* La. R.S. § 37:586(A).

4. The Legislature has not acted to govern natural hair braiding; instead, it has delegated to the Board the limited authority to issue “special permits to allow limited and specific powers within the practice of cosmetology.” *See* La. R.S. § 37:584(C); *see also* La. R.S. § 37:575(B)(2). But this delegation lacks the requisite specificity to guide the Board in crafting and enforcing special permits. Additionally, the Board is composed of self-interested members who benefit financially and otherwise from the creation and enforcement of the alternative hair design permit and other specialty permits.

5. Defendants maintain a list of all licensed cosmetology schools. *See Cosmetology Schools Licensed by the State of Louisiana – 2019*, <http://www.lsbc.louisiana.gov/Board/School/LSBCschools.pdf>. This list currently includes more than 50 schools, but only three claim to provide training for the alternative hair design

permit. *Id.* One school on the list requires the Board-mandated minimum 500 hours; the second requires 600 hours; and the third requires 1,000 hours.

6. On information and belief, just one of the three schools, located in Monroe, Louisiana, currently offers the alternative hair design curriculum. This school requires 600 hours of instruction (100 more than currently required by the Board) and is located more than 260 miles (4.5 hours driving) from Plaintiffs N'Dakpri and Schofield's homes in the New Orleans area. The school is substantially closer to Jackson, Mississippi (120 miles from Monroe) than to New Orleans.

7. In Louisiana's neighboring states—Texas, Arkansas, and Mississippi—braiders are free to practice their trade without formal training or prior approval from the government. Twenty-seven states require no license for hair braiding. Another 15 states have specialty licenses less burdensome than Louisiana's. In fact, eight of those licenses require 50 hours or less of training. The ability to practice hair braiding without burdensome and unnecessary cosmetology training is, in part, why Plaintiff Evangela Michelle Robertson moved from Louisiana to Texas, where she now lives.

8. Plaintiffs—and all hair braiders throughout Louisiana—are required to endure hundreds of hours of unnecessary training and complete a practical examination, to legally do the very job they have been doing for years or decades. And actually obtaining the necessary permit is virtually impossible. A braider living in the New Orleans area would be required to stop working and travel more than four hours each way to Monroe in order to complete 600 hours of courses at the only school that actually offers the alternative hair design instruction. This irrational licensing requirement deprives Plaintiffs of their constitutionally guaranteed right to earn an honest living in the profession of their choosing—a right protected by Article I, Sections 2, 3, and 24 of the Louisiana Constitution.

9. The state's cosmetology laws and regulations further violate the Louisiana Constitution's guarantees of equal protection by prohibiting Plaintiffs, and all braiders, from braiding for compensation unless they first obtain the alternative hair design permit, while arbitrarily allowing other individuals to braid for compensation without the alternative hair design permit.

10. Defendants also violated the separation of powers required by Article II, Sections 1 and 2, and Article III, Section 1 of the Louisiana Constitution when they exercised the legislative power of the state to require an alternative hair design permit for the practice of natural hair braiding, and when they promulgated training and examination requirements for that permit.

PARTIES

11. Plaintiff Ashley-Roxanne N'Dakpri is a United States citizen domiciled in Metairie, Louisiana. Ashley has been practicing natural hair braiding for at least 16 years. Today, she is the manager at Afro Touch—a salon located in Gretna, Louisiana offering natural hair braiding, weaving, and dreadlocks. Ashley is an officer and member of Marcory 663 LLC—the corporate entity that owns and operates Afro Touch. Ashley does not have a Louisiana cosmetology license or the Board's alternative hair design permit.

12. Plaintiff Lynn Schofield is a United States citizen domiciled in Laplace, Louisiana. She moved to the United States from the Ivory Coast when she was in her 20s. Lynn has been practicing natural hair braiding for more than 30 years. Currently, she braids hair for payment out of her home. Lynn founded Afro Touch salon in or around 2000 and, until recently, she operated a second location from a storefront in Laplace. At one time, Lynn ran four Afro Touch locations in Louisiana. Lynn does not have a Louisiana cosmetology license or the Board's alternative hair design permit.

13. Plaintiff Evangela Michelle Robertson is a United States citizen domiciled in Richardson, Texas. She was a long-time Louisiana hair braider who recently relocated to Texas, where she now works as a public-school teacher. Michelle has been practicing natural hair braiding for more than 20 years. She still returns to Louisiana from time to time to braid for family, friends, and former clients. She frequently does so for compensation. She also braids occasionally in Texas for compensation. Michelle does not have a Louisiana cosmetology license or the Board's alternative hair design permit.

14. Defendant the Louisiana State Board of Cosmetology is a state board created under the laws of Louisiana and domiciled in East Baton Rouge Parish, Louisiana. *See* La. R.S. §§ 37:571(A). The Board is authorized by law to regulate the practice of cosmetology and to administer the state's cosmetology licensing laws. *See* La. R.S. §§ 37:575(A), 37:584(C). The Board's principal office is located at 11622 Sun Belt Court, Baton Rouge, Louisiana 70809.

15. Defendant Steve Young is the executive director of the Board. Plaintiffs sue Mr. Young in his official capacity, as he is responsible for supervising all employees of the Board, performing all administrative duties of the Board, supervising all inspectors, performing administrative inspections, and performing any duties as may be prescribed by the Board for the proper administration of the cosmetology laws. *See* La. R.S. § 37:576(A). His office is in East Baton Rouge Parish.

16. Additionally, Plaintiffs sue the members of the Board—each in their official capacities—namely, Frances Hand; William Michael Grayson; Edwin H. Neill, III; James Williams; Melinda Tilley; Mella Brown; Deidre Delpit; and Eliza J. Hebert—because they are the state officers ultimately responsible for adopting, administering, and enforcing the state's cosmetology laws. *See* La. R.S. § 37:575(A)(2). The Board members' office is in East Baton Rouge Parish.

17. The Attorney General will be served with a copy of this petition pursuant to Louisiana Code of Civil Procedure article 1880.

JURISDICTION AND VENUE

18. This Court has subject-matter jurisdiction because Plaintiffs seek to vindicate their individual rights under Article I, Sections 2, 3, and 24 of the Louisiana Constitution and seek to enforce the separation of powers required by Article II, Sections 1 and 2 and Article III, Section 1 of the Louisiana Constitution.

19. Further, this Court has subject-matter jurisdiction because Plaintiffs seek declaratory and injunctive relief and nominal damages pursuant to Louisiana Code of Civil Procedure articles 1871 and 3601 and pursuant to their implied remedies under the Louisiana Constitution.

20. Venue is proper in this Court pursuant to La. R.S. § 13:5104(A).

FACTS

Plaintiff Ashley-Roxanne N'Dakpri

21. Plaintiff Ashley-Roxanne N'Dakpri is an entrepreneur, natural hair braider and the manager of Afro Touch—a natural hair braiding salon located at 419 Lapalco Boulevard in Gretna, Louisiana.

22. Ashley was born in the United States, but her family is originally from the Ivory Coast.

23. Ashley manages Afro Touch's day-to-day operations, and her brother, Serge, oversees its accounting and paperwork.

24. Ashley started braiding when she was only six or seven years old. She learned by practicing braiding on family, friends, and herself. Braiding is an essential part of Ashley's cultural identity. She is passionate about braiding and has always enjoyed sharing the technique with others. Ashley is an expert braider.

25. Ashley has worked as a braider at Afro Touch since 2011. In January 2019, Ashley took over operation of Afro Touch's Gretna location.

26. In October 2018, the Board mailed Afro Touch a cease and desist letter for having a lapsed salon license and for employing an unlicensed braider. The braider, who was also cited individually, left Afro Touch and did not challenge the citation.

27. Afro Touch currently holds a valid salon license from the Board.

28. The penalties at Defendants' disposal for violations of the state's cosmetology laws and regulations are quite severe. If Defendants observe an unlicensed or unpermitted hair braider working at Afro Touch, they could revoke its salon license, assess administrative fines and civil penalties of up to \$5,000 per incident, and even shut down the business. Defendants could also assess the administrative fines and civil penalties of up to \$5,000 per incident against each unlicensed or unpermitted braider.

29. There are not sufficient braiders with the alternative hair design permit to allow Ashley to properly staff Afro Touch.

30. Cosmetologists, while legally allowed to braid hair as holders of cosmetology licenses, do not learn how to braid during cosmetology school and are not competent to practice natural hair braiding.

31. Afro Touch's current and future success depends on its ability to employ unlicensed or unpermitted braiders.

32. Ashley knows numerous skilled braiders who would be willing to work at Afro Touch but for the alternative hair design permit requirements.

33. In fact, Afro Touch used to routinely employ unlicensed and unpermitted braiders who are experts at natural hair braiding. For example, Ashley has been braiding for payment for at least 16 years, and Plaintiff Lynn Schofield has been braiding for payment for more than 30 years. Both women are not licensed or permitted but have far more braiding experience than the licensed cosmetologists that they know.

34. For the last two years or longer, Defendants have routinely sent inspectors to Afro Touch. During some of these inspections, inspectors have witnessed unlicensed and unpermitted braiders providing braiding services.

35. Due to Defendants' enforcement of the state's cosmetology rules and regulations, Afro Touch's salon license is at risk of being revoked. One of the conditions of maintaining a salon license is that the business employ only licensed and permitted individuals.

36. Defendants' application of the state's cosmetology laws and regulations against hair braiding businesses and braiders threatens Ashley's ability to support herself and her family.

Plaintiff Lynn Schofield

37. Plaintiff Lynn Schofield is an entrepreneur and hair braider with decades of experience.

38. In or around the 1980s, Lynn moved to the United States from the Ivory Coast with family to pursue a better life. She first lived in the D.C.-metro area.

39. In or around 2000, Lynn moved to Louisiana. She has lived in Louisiana continuously since that time, and she now considers Louisiana her home. She is the mother of adult children and currently helps care for a grandson.

40. Lynn is an expert hair braider and has devoted substantial time and effort to developing her expertise and artistry. She learned how to braid from her family beginning in childhood. She has been braiding professionally for more than 30 years.

41. Hair braiding is an important part of Lynn's cultural identity as an African immigrant, and it has been an essential source of gainful employment. Before moving to Louisiana, hair braiding was a reliable means for Lynn to support herself and her family, but Defendants' actions threaten Lynn's livelihood.

42. When the Board began permitting hair braiders in 2003, Lynn was initially grandfathered—meaning she was given a permit to continue braiding—because she had been practicing hair braiding in the state for more than two years. For several years, Lynn renewed her grandfathered authorization to practice, but her permit lapsed in the wake of personal emergencies including hurricanes and the deteriorating health of her mother.

43. Lynn is now unable to obtain an alternative hair design permit. She cannot afford to take time away from work and her family to obtain irrelevant cosmetology training four hours away in Monroe.

44. Lynn is the founder of Afro Touch. She started the business around 2000. At its peak, Afro Touch had four locations and approximately 20 employees. Lynn wanted to continue growing her business but was prevented from doing so when the Board promulgated and began enforcing the hair braiding regulations. Lynn's employees feared enforcement from the Board, and many voluntarily stopped working at Afro Touch. The Board's enforcement of its braiding regulations further prevented Lynn from being able to hire other unlicensed or unpermitted braiders. Without access to employees, Afro Touch was no longer able to meet its clients' demands. As a result, Lynn was forced to close two Afro Touch locations.

45. In or around 2013, Lynn transferred Afro Touch's Gretna salon to her nephew and niece. She continued to operate the Afro Touch salon in Laplace, but eventually was forced to close that location too because she was unable to hire licensed or permitted braiders or otherwise find unlicensed and unpermitted braiders willing to work for her and risk enforcement from Defendants.

46. Today, Lynn braids her clients' hair out of her home.

47. If Lynn did not have to obtain an alternative hair design permit to braid, she would work openly and would be better able to provide for herself and her family.

48. If the Board did not require braiders in Louisiana to obtain an alternative hair design permit, Lynn would consider other pursuits including teaching natural hair braiding. Although Lynn knows of individuals who would pay to learn braiding techniques from her, Lynn does not want to teach braiding in Louisiana when she knows her students would not be able to braid legally.

49. Defendants' application of the state's cosmetology laws and regulations against hair braiding businesses and braiders prevents Lynn from pursuing a well-paying trade and threatens her ability to support herself and her family.

Plaintiff Evangela Michelle Robertson

50. Plaintiff Evangela Michelle Robertson is a United States citizen and resident of Richardson, Texas. She goes by Michelle.

51. Michelle is married and a mother of two.

52. Until approximately 2018, Michelle lived and worked as a hair braider in Shreveport, Louisiana.

53. Michelle first learned how to braid from her mom and her family when she was in high school. She has been braiding for more than 20 years and is an expert braider.

54. Michelle cannot afford to stop her job as a schoolteacher in order to obtain an alternative hair design permit. Nor would that be feasible given that the one school that offers the alternative hair design permit is nearly 290 miles (4.5 hours driving) from her home in Texas.

55. Over the last decade, Michelle has been publicly active in proposing reforms to the Board's hair braiding regulations. After repeated efforts to repeal the alternative hair design permit failed, she decided to move to Texas, where braiders can work freely without any type of government license or permit.

56. Michelle previously wanted to open her own hair braiding business in Louisiana but was forced to abandon that dream because of the alternative hair design permit requirements.

57. To this day, Michelle returns to Louisiana to braid hair for payment. Many of her former clients cannot find other braiders to maintain their hair. Some of these clients occasionally drive to Texas to have Michelle braid their hair.

58. Defendants' actions have impacted Michelle's ability to live in Louisiana and support herself and her family there. If she did not have to obtain an alternative hair design permit to braid in Louisiana, she would have been able to start her own hair braiding business, braid full-time, and perhaps would still be living in the state.

59. Defendants' actions in enforcing the state's cosmetology laws and regulations continue to force Michelle to fear penalties and fines for braiding in Louisiana.

The Technique of Natural Hair Braiding

60. As used in this Petition, "natural 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. The technique incorporates both traditional and modern styling techniques. Natural hair braiding is increasingly popular among Africans and African Americans who do not want to use harsh chemicals to straighten and relax their natural hair. The technique is usually performed on persons with a particular type of hair—often described as "tightly textured" or "coily" hair—but anyone can have their hair braided and, increasingly, men and women with all types of hair are seeking out natural hair braiding services.

61. Natural hair braiding has distinct geographic, cultural, historical, and racial roots. The basis for natural hair braiding techniques originated many centuries ago in Africa and was brought by Africans to this country, where the

techniques have persisted (and been expanded upon) as a popular form of hair styling primarily done by and for persons of African descent. Persons of African descent regularly learn to braid hair as children or teens, often by learning to do their own hair or that of family and friends.

62. Natural hair braiding is distinct from other types of styling more widely practiced in the United States. Natural hair braiding is dramatically different from general hair braiding, such as simple French braids. The hair braiding practiced by Plaintiffs is complex and labor intensive, usually taking multiple hours or sometimes even days to complete.

63. For many people, the choice of natural hair braiding over other styles is as much a cultural statement and expression of self-identity as it is simply an aesthetic concern.

64. Natural hair care is particularly meaningful for African Americans because Western culture has traditionally pressured African Americans to use chemicals or heat to straighten their hair. These Western methods remain prevalent in cosmetology schools and conventional salons, although they can damage naturally coily hair. By contrast, natural hair braiding works with a person's natural hair texture, and thus serves as a replacement for conventional "corrective" cosmetology techniques.

The Benefits of Natural Hair Braiding

65. Natural hair braiding is safe, simple, and non-invasive.

66. Unlike other Western cosmetology practices, natural hair braiding does not involve the use of harsh chemicals, heat, or sharp objects.

67. For many women with textured hair, natural 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. Sodium hydroxide can burn human hair and skin.

68. Natural hair braiding carries no risk of burns.

69. Because hair braiding is such a safe and common activity, its risks, if any at all, are so unlikely to occur and so obvious that members of the public are capable of judging those risks for themselves.

70. Although natural hair braiding takes longer than many forms of hair care, the results typically last longer and provide the customer with a resilient hair style that needs less care and attention between appointments.

71. Nationally, natural hair braiding is a multi-million dollar industry. Louisiana's cosmetology laws and regulations prevent the hair braiding industry from thriving in Louisiana.

The Cosmetology Board

72. Defendant Louisiana State Board of Cosmetology is composed of eight board members appointed by the Governor. La. R.S. § 37:571(B).

73. By law, each member of the Cosmetology Board "shall be a registered cosmetologist who has been actively engaged, for at least five years prior to his appointment, in the practice of cosmetology, or an owner of a beauty shop or salon . . . or [] a teacher or instructor of cosmetology in this state." La. R.S. § 37:572(B).

74. And "[n]o more than four board members shall be connected directly or indirectly with a school of cosmetology. 'Connected' shall mean having an ownership interest, being employed by or having a contract with a school, or having an immediate family member who has an ownership interest in a school." La. R.S. § 37:572(D).

75. Prior to 2001, all Board members were prohibited from being connected, either directly or indirectly, to a cosmetology school.

76. Because the Board is composed of licensed cosmetologists, salon owners, and owners of cosmetology schools, its members are self-interested and financially interested in enforcing the cosmetology laws and in promulgating and enforcing regulations, including the alternative hair design permit regulations.

77. More than one current Board member has an ownership interest in a cosmetology school.

78. At least one current Board member has an ownership interest in a cosmetology school that advertises and/or offers the alternative hair design permit curriculum.

Licensure and the Alternative Hair Design Permit

79. Louisiana's cosmetology laws as enacted by the Legislature can be found at Louisiana Revised Statutes §§ 37:561 *et seq.* The state's cosmetology regulations, as enacted by the Cosmetology Board, can be found at Louisiana Administrative Code Title 46, Part XXXI, §§ 101 *et seq.*

80. No person may practice cosmetology in Louisiana without the appropriate license or permit as required by the Cosmetology Board. La. R.S. § 37:581(A).

81. To obtain a cosmetology license, an individual must complete 1,500 hours of training at a licensed cosmetology school, pass an exam, and pay all required fees. *See* La. R.S. § 37:582; LAC 46:XXXI.301.

82. On information and belief, few hours, if any, of the 1,500-hour cosmetology school curriculum are related to natural hair braiding.

83. On information and belief, the cosmetology license training is insufficient to teach hair braiding to someone with no prior knowledge of braiding.

84. No person may practice barbering in Louisiana without first obtaining a certificate of registration from the Board of Barbers. La. R.S. § 37:349(A).

85. To obtain a certificate of registration from the Board of Barbers, an individual must complete 1,500 hours of training at a certified barber college, or otherwise successfully complete the Barber Apprenticeship Program, pass an exam, and pay all required fees. *See* La. R.S. §§ 37:349, 375; LAC 46:VII.1501.

86. On information and belief, few hours, if any, of the 1,500-hour barber college curriculum teach natural hair braiding.

87. On information and belief, the barber training is insufficient to teach hair braiding to someone with no prior knowledge of braiding.

88. Prior to 2003, hair braiders in Louisiana did not need any form of cosmetology license or permit.

89. Then, as now, the Legislature took no action to license hair braiders.

90. But, in 2003, the Cosmetology Board created the alternative hair design permit on its own, which for the first time required Plaintiffs and all hair braiders to complete training at a licensed cosmetology school and maintain a permit at all times in order to braid hair legally in Louisiana. *See* LAC 46:XXXI.1105, 1107.

91. The Board created the alternative hair design permit and its implementing regulations even though the statutory definition of cosmetology does not specifically cover hair braiding.

92. When the Board adopted the hair braiding permitting regime in 2003, it included a provision that grandfathered everyone who could, at that time, prove that they had been practicing hair braiding for two years or more. *See* LAC 46:XXXI.1105 (2003). The grandfathering provision has since been removed from the regulations, and braiders are no longer able to obtain a new permit under the grandfathering process.

93. As originally enacted, the alternative hair design permit required individuals to complete 1,000 hours of courses from private cosmetology schools. LAC 46:XXXI.1107 (2003).

94. In or around 2011, the Board changed the minimum alternative hair design permit curriculum to 500 hours. *See* LAC 46:XXXI.1107.

95. Notwithstanding the requirement that braiders obtain the alternative hair design permit to legally braid in Louisiana, several classes of people, including licensed barbers, are exempted from regulation under the cosmetology laws and, as a result, do not have to obtain an alternative hair design permit in order to braid hair for compensation, even if they have no knowledge of or training in natural hair braiding. *See* La. R.S. § 37:581(B)(3)

96. Additionally, no permit is required if a person performs hair braiding for free, *see* La. R.S. § 37:563(6), or performs compensated braiding services for members of their immediate household, La. R.S. § 37:581(B)(5).

97. The exempted individuals (who are allowed to braid hair without obtaining the alternative hair design permit) are not required to have any training in or knowledge of hair braiding.

98. On information and belief, there are only 19 people in Louisiana who currently hold alternative hair design permits, while there are many more unlicensed and unpermitted braiders.

99. Louisiana's 19 permitted hair braiders are inadequate to meet the demands for braiding services. For example, neighboring Mississippi has a smaller African-American community than Louisiana yet has more than 1,200 working braiders.

The Alternative Hair Design Curriculum

100. Notwithstanding the requirements of Louisiana's cosmetology statutes (which do not specifically address hair braiding), the Board has the power to "adopt rules and regulations for the issuance of special permits to allow limited and specific powers within the practice of cosmetology." La. R.S. § 37:584(C).

101. The Legislature has vested Defendants with responsibility for “determin[ing] and issu[ing] standards for recognition and approval of educational programs of schools whose graduates shall be eligible for licensure in this state.” La. R.S. § 37:575(A)(7). Defendants are also responsible for “specify[ing] and enforc[ing] requirements for training in such schools.” *Id.*

102. In contrast, the Legislature has not conferred on Defendants any similar authority regarding the educational and training requirements for special permits. Instead, the Legislature has provided only that Defendants “may . . . [i]ssue special permits in accordance with rules and regulations adopted by the board.” *Id.* § 37:575(B)(2).

103. Defendants have determined that applicants for an alternative hair design permit must complete at least 500 hours of instruction in the following areas:

- a. History Overview
 - 1. Ancient Origins of Braiding
 - 2. Traditional Multi-Cultural Braid Styles
 - 3. The Multi-Cultural American Hair Experience
- b. Bacteriology and Sanitation
 - 1. Types of Bacteria
 - 2. Growth and Reproduction of Bacteria
 - 3. Prevention of Infection and Infection Control
 - 4. Use of Antiseptics, Disinfectants and Detergents
- c. Client Consultation
- d. Hair Types and Hair Structure
- e. Scalp Diseases and Disorders
- f. Shampoos, Conditioners, Herbal Treatments and Rinses for Synthetic Hair Only
- g. Braiding and Sculpting
- h. Louisiana Cosmetology Act and Rules and Regulations

LAC 46:XXXI.1107.

104. To the best of Plaintiffs’ knowledge, this curriculum is insufficient to teach hair braiding to someone with no prior knowledge of braiding.

105. The Board allows—it does not require—cosmetology schools to offer the hair braiding curriculum. And the Board allows schools to determine, for themselves, whether they will require additional training beyond the minimum standards set by

the Board. *See Cosmetology Schools Licensed by the State of Louisiana – 2019*, <http://www.lsbclouisiana.gov/Board/School/LSBCschools.pdf>.

106. On information and belief, only one cosmetology school currently offers the alternative hair design permit curriculum. That school requires 600 hours of training and is located in Monroe, Louisiana.

107. None of the hours of study completed in pursuit of the alternative hair design permit can be counted toward another type of license issued by the Board. LAC 46:XXXI.1115.

The Alternative Hair Design Practical Exam

108. After completing the alternative hair design curriculum, applicants must pass a practical examination administered by the Board. *See Louisiana Board of Cosmetology, Testing, Alternative Hair Exam Information*, <http://www.lsbclouisiana.gov/testing.aspx>; *see also* La. R.S. §§ 37:575(A)(4), 37:586.

109. The alternative hair design examination purports to test an applicant's competency in hair braiding technique; but it does not test sanitation, safety, or first aid. *See Instructions for the Alternative Hair Examination*, <http://www.lsbclouisiana.gov/pdfs/AH.pdf>.

110. The Board may legally administer the exam itself or "may employ an examination team and may contract with a testing service to conduct the examinations of applicants required" by regulation. La. R.S. § 37:585(A).

111. Exams for special permits, including the alternative hair design permit, are supposed to be offered at least twice per year. La. R.S. § 37:586(A)(4).

112. To the best of Plaintiffs' knowledge, Defendants do not offer the alternative hair design permit exam twice per year, nor have they contracted with a testing service to do so on the state's behalf.

113. In fact, to the best of Plaintiffs' knowledge, Defendants have never offered the alternative hair design permit exam—making compliance with the permitting requirement virtually impossible.

114. On information and belief the majority, if not all, of the 19 braiders with alternative hair design permits in Louisiana may have received their permits under the grandfathering provision found in the previous version of the regulations.

Defendants' Enforcement Actions

115. Defendants are responsible for "[e]stablish[ing] and enforc[ing] compliance with professional standards and rules of conduct of cosmetology." La. R.S. § 37:575(A)(6).

116. Defendants are responsible for inspecting licensed facilities to ensure compliance and "[c]onduct[ing] any investigation, inquiry, or hearing as is necessary to supervise the regulatory provisions" of the state's cosmetology laws and regulations. La. R.S. §§ 37:575(A)(10), 37:575(B)(5).

117. As part of its enforcement authority, Defendants may file a lawsuit against a salon owner, a licensed individual, or an unlicensed individual to enforce the state's cosmetology licensing laws and regulations and seek an injunction. La. R.S. § 37:605(A). In an action for an injunction, Defendants may impose a penalty of up to \$5,000, as well as reasonable attorneys' fees and court costs on an individual found to be in violation of the cosmetology laws. La. R.S. §§ 37:605(B), 37:606(C),(D).

118. Defendants have previously sent and continue to send inspectors to hair braiding salons in search of unlicensed/unpermitted hair braiders.

119. Defendants have and continue to issue warnings, notices of violation, cease and desist letters, and administrative penalties and fines to hair braiding salons and individual hair braiders based on the unlicensed/unpermitted practice of hair braiding.

120. Defendants have threatened and/or imposed and continue to threaten and/or impose notices of violation, cease and desist letters, administrative fines and penalties on hair braiding businesses due to the employing of unlicensed/unpermitted braiders.

121. Defendants' heavy-handed enforcement of the state's licensing and permitting requirements against hair braiding businesses threatens the current and future success of these businesses.

122. The threat of punishment has the effect of chilling many businesses from hiring unlicensed/unpermitted hair braiders. As a result, braiding businesses are unable to grow and cosmetology salons are unable to meet their customers' requests for increased braiding services.

123. Defendants' heavy-handed enforcement of the state's licensing and permitting requirements against hair braiders threatens braiders' ability to earn an honest living.

124. The threat of punishment has the effect of chilling many individual braiders from providing their services to paying customers and earning a living.

Injury to Plaintiffs

125. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.

126. Defendants' actions threaten Plaintiffs' economic liberty—their right to provide commercial hair braiding services free from unreasonable governmental interference.

Injury to Plaintiff Ashley N'Dakpri

127. Defendants' actions have caused and will continue to cause Plaintiff Ashley N'Dakpri real, substantial, and irreparable harm.

128. Although Ashley is an expert at hair braiding and has devoted substantial time and effort to developing her trade, Defendants require her to obtain an alternative hair design permit to legally braid hair.

129. To obtain the alternative hair design permit, Ashley would have to stop working. She cannot afford to spend thousands of dollars to complete the alternative hair design curriculum at a cosmetology school where she would learn skills that she has already mastered or that do not relate to her trade.

130. Defendants' actions force Ashley to risk being fined up to \$5,000 every time she braids hair for compensation in Louisiana.

131. Ashley would be put out of work if Defendants either targeted her for enforcement or forced Afro Touch to cease operating.

132. Defendants' actions in enforcing the state's cosmetology laws and regulations deprive Ashley and other braiders in Louisiana of the ability to pursue their calling and lawfully provide their services to the public.

133. Defendants' enforcement of the state's cosmetology laws against Afro Touch further injures Ashley as the salon's manager.

134. Defendants' enforcement of the state's cosmetology laws against Afro Touch prevents Ashley from hiring and employing competent, experienced hair braiders and causes Ashley and Afro Touch to lose profits and customers.

135. Because of Defendants' actions, Ashley has ceased employing unlicensed or unpermitted braiders at Afro Touch. Ashley has lost the salon's most qualified, experienced hair braiders as a result of Defendants' actions.

136. To comply with Defendants' demands and hire licensed or permitted braiders, Ashley would be forced to hire individuals with cosmetology licenses because there are only 19 individuals with alternative hair design permits.

137. In Ashley's experience, licensed cosmetologists do not know how to braid hair adequately.

138. To hire licensed cosmetologists, Ashley would be required to expend significant time and resources teaching these cosmetologists to braid before they would reach the level of expertise that Ashley has found commonplace among unlicensed or unpermitted hair braiders.

139. Defendants' enforcement of the state's cosmetology laws against Afro Touch has caused the business to suffer substantial and irreparable harm. Because of Defendants' actions, the salon cannot effectively operate its business. It is unable to reliably offer hair braiding services to its customers without employing unlicensed or unpermitted braiders. It would also like to expand, but it is unable to do so because it cannot find qualified, licensed, or permitted braiders to meet present demands.

140. Defendants' actions have harmed Afro Touch's goodwill with its customers. Its customers have expressed dissatisfaction that certain unlicensed or unpermitted hair braiders are no longer available and that the salon employs so few braiders.

Injury to Plaintiff Lynn Schofield

141. Defendants' actions have caused and will continue to cause real, substantial, and irreparable harm to Lynn.

142. Although Lynn is an expert at hair braiding and has devoted substantial time and effort to developing her trade, Defendants require her to obtain an alternative hair design permit to legally braid hair.

143. For several years, the Board permitted Lynn to braid hair for compensation, by grandfathering her so that she did not have to comply with the permitting requirement.

144. To obtain the alternative hair design permit, Lynn would have to stop working. She cannot afford to spend thousands of dollars to complete the alternative hair design curriculum at a cosmetology school where she would learn skills that she has already mastered or that do not relate to her trade.

145. Because of Defendants' actions, Lynn is at risk of being fined \$5,000 any time she braids hair for compensation in Louisiana.

146. But for Defendants' actions, Lynn would not be risking prosecution each time she braids hair for payment.

147. But for Defendants' application of the state's cosmetology laws to hair braiding, Lynn would have been able to keep all four Afro Touch locations staffed and open.

148. But for Defendants' application of the state's cosmetology laws to hair braiding, Lynn would be able to work full-time as a hair braider in a commercial salon.

149. But for Defendants' application of the state's cosmetology laws to hair braiding, Lynn would teach braiding to others who want to learn to braid. Existing cosmetology schools do not teach natural hair braiding. Lynn knows individuals who would like to learn to braid but are unwilling to pay her to teach them since they cannot legally braid in Louisiana without also paying for and obtaining an alternative hair design permit.

150. Defendants' actions in enforcing the state's cosmetology laws and regulations deprive Lynn and other braiders in Louisiana of the ability to pursue their calling, earn an honest living, and lawfully provide their services to the public.

Injury to Plaintiff Michelle Robertson

151. Defendants' actions have caused and will continue to cause real, substantial, and irreparable harm to Michelle.

152. Although Michelle is an expert at hair braiding and has devoted substantial time and effort to developing her trade, Defendants require her to obtain an alternative hair design permit to legally braid hair in Louisiana.

153. To braid legally in Louisiana, as Michelle plans to continue doing, she would need to obtain the alternative hair design permit. But Michelle is unable to

obtain the alternative hair design permit. To do so, she would need to take time away from her work as a public-school teacher and her family to complete the state's irrelevant permitting requirements. She cannot afford to spend thousands of dollars to complete the alternative hair design curriculum at a cosmetology school where she would learn skills that she has already mastered or that do not relate to her trade.

154. In part because of Defendants' actions, Michelle moved from Louisiana to Texas, so that she could live in a state where hair braiding does not require any government license or permit.

155. But for Defendants' actions, Michelle would not be risking \$5,000 in fines each time she braids hair for family, friends, and clients in Louisiana.

156. But for Defendants' application of the state's cosmetology laws to hair braiding, Michelle would spend more time in Louisiana braiding hair for compensation.

157. Defendants' actions and the state's cosmetology laws and regulations deprive Michelle and other braiders in Louisiana of the ability to pursue their calling, earn an honest living, and lawfully provide their services to the public.

CAUSES OF ACTION

COUNT I

Violation of Article I, Sections 2 and 24 of the Louisiana Constitution— Substantive Due Process and Unenumerated Rights

158. Plaintiffs incorporate the allegations set forth above, all of which are fully re-alleged here.

159. Article I, Section 2 of the Louisiana Constitution guarantees "[n]o person shall be deprived of life, liberty, or property, except by due process of law."

160. Article I, Section 2 protects the right to earn a living and to conduct business free from unreasonable governmental interference.

161. Under Article I, Section 2, a law that restricts an individual's economic liberty must have a real and substantial relationship to public health, safety, or welfare.

162. Under Article I, Section 2, a law that impairs an individual's economic liberty must be rationally related to a legitimate governmental interest.

163. Under Article I, Section 2, a law that impairs an individual's economic liberty must not be arbitrary and capricious.

164. Article I, Section 24 of the Louisiana Constitution, states, in relevant part, that the "enumeration in [the Louisiana] constitution of certain rights shall not deny or disparage other rights retained by the individual citizens of the state." Thus, the people of Louisiana have rights beyond those enumerated in the Louisiana Constitution's Declaration of Rights, and these rights receive the same protection as those rights that are enumerated in the Louisiana Constitution.

165. Article I, Section 24 protects Plaintiffs' right to economic liberty.

166. The government has no legitimate interest in regulating something as safe and as common as natural hair braiding.

167. Louisiana's cosmetology laws, as applied to Plaintiffs and others who provide commercial hair braiding services, have no real and substantial relationship to public health, safety, or welfare because braiding is inherently safe.

168. Even if braiding posed a risk to public health, safety, or welfare (and it does not), the alternative hair design permit regulations do not protect against such risks.

169. Louisiana's cosmetology laws, as applied to Plaintiffs and others who provide commercial hair braiding services, do not advance any legitimate governmental interest.

170. Defendants' only interest in promulgating and enforcing the alternative hair design permit is the illegitimate interest of protecting existing licensed cosmetologists and cosmetology businesses from competition.

171. Louisiana's cosmetology laws, as applied to Plaintiffs and others who provide commercial hair braiding services, are arbitrary and capricious.

172. The state's police power does not permit the regulation of natural hair braiding in this manner because natural hair braiding is inherently safe.

173. Even if regulating hair braiding was a valid exercise of police power (which it is not), the means chosen by Defendants to regulate braiding are unreasonable.

174. For each of these reasons, Louisiana's cosmetology licensing laws and regulations as applied to Plaintiffs by Defendants, their agents and employees, unconstitutionally deprive Plaintiffs of their right to due process of law protected by Article I, Section 2 of the Louisiana Constitution and their unenumerated right to economic liberty as protected by Article I, Section 24 of the Louisiana Constitution.

175. Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights that is a direct and proximate result of Defendants' application of Louisiana's laws and regulations to hair braiding businesses and hair braiders, including Plaintiffs. Unless Defendants are enjoined from committing the above-described violations of Article I, Sections 2 and 24 of the Louisiana Constitution, Plaintiffs, other hair braiders and other hair braiding businesses will continue to suffer great and irreparable harm.

COUNT II
Violation of Article I, Section 3 of the Louisiana Constitution—
Right to Individual Dignity and Equal Protection

176. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.

177. Article I, Section 3 of the Louisiana Constitution guarantees in relevant part:

No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations.

178. Under Article I, Section 3, regulatory classifications must have a real and substantial relationship to public health, safety, or welfare.

179. Under Article I, Section 3, regulatory classifications must be rationally related to a legitimate governmental interest.

180. Under Article I, Section 3, regulatory classifications must not be arbitrary and capricious.

181. Under Article I, Section 3, the right to equal protection of the laws protects both similarly situated people from being treated differently and differently situated people from being treated similarly.

182. Requiring compensated hair braiders to attend private cosmetology school and obtain an alternative hair design permit—while exempting barbers, uncompensated hair braiders, and those who perform compensated services for members of their household—has no real and substantial relationship to public health, safety, or welfare.

183. If braiding were the type of activity that affected public health, safety or welfare (which it is not), the exemptions would pose a direct threat to public health, safety, or welfare.

184. Requiring hair braiders to attend cosmetology school and obtain an alternative hair design permit—while exempting barbers, uncompensated hair braiders and those who perform compensated services for members of their household—is not rationally related to any legitimate governmental interest.

185. Requiring hair braiders to attend cosmetology school and obtain an alternative hair design permit—while exempting barbers, uncompensated hair braiders, and those who perform compensated services for members of their household—is arbitrary and capricious.

186. Defendants’ only interest in promulgating and enforcing the alternative hair design permit is the illegitimate interest of protecting existing licensed cosmetologists and cosmetology businesses from competition.

187. The state’s police power does not extend to the regulation of natural hair braiding in this manner.

188. For each of these reasons, Louisiana’s cosmetology licensing laws and regulations as applied to Plaintiffs by Defendants, their agents and employees, unconstitutionally deprive Plaintiffs of equal protection of the laws.

189. Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights that is a direct and proximate result of Defendants’ application of Louisiana’s laws and regulations to hair braiding businesses and braiders, including Plaintiffs. Unless Defendants are enjoined from committing the above-described violations of Article I, Section 3 of the Louisiana Constitution, Plaintiffs and other hair braiding businesses and braiders will continue to suffer great and irreparable harm.

COUNT III

Violation of Article II, Sections 1 and 2 and Article III, Section 1 of the Louisiana Constitution—Separation of Powers

190. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.

191. Article II, Section 1 of the Louisiana Constitution declares that “[t]he powers of government of the state are divided into three separate branches: legislative, executive, and judicial,” while Section 2 requires that “[e]xcept as

otherwise provided by this constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others.”

192. Article III, Section 1(A) of the Louisiana Constitution declares that “[t]he legislative power of the state is vested in a legislature, consisting of a Senate and a House of Representatives.”

193. The Legislature may not delegate its legislative power to Defendants.

194. At most, the Legislature may delegate to administrative boards, such as the Cosmetology Board, the authority to determine the facts upon which legislative enactments are to be applied and enforced.

195. Under Articles II and III, a law, administrative rule, or executive action is facially unconstitutional when it violates the separation of powers.

196. Hair braiding is not specifically included in the statutory definition of cosmetology.

197. The unelected members of the Cosmetology Board exercised the legislative power of the state by determining that natural hair braiding is the regulated practice of cosmetology and by determining that a minimum of 500 hours of instruction are necessary to safely practice natural hair braiding.

198. Worse, Defendants have delegated authority to private actors by giving private cosmetology schools the power to determine the number of hours of instruction necessary to obtain an alternative hair design permit and the content of the curriculum.

199. One purpose of the separation of powers is to ensure that politically accountable actors are making policy decisions on behalf of the people of the State, so that the people may remove those individuals who are not carrying out their policy preferences.

200. Another purpose of the separation of powers is to ensure judicially manageable rules by which the state, administrative agencies, and executive branch officials exercise their governmental powers.

201. Defendants' promulgation and enforcement of the alternative hair design permit goes well beyond its limited authority to determine the facts upon which the Cosmetology Act should be applied and enforced.

202. Defendants' promulgation of the alternative hair design permit regulations was a quintessentially legislative function because it created a policy of requiring a class of people to obtain specific training in order to qualify for a license, which cannot constitutionally be applied to them.

203. Defendants further lack authority to delegate government power to the cosmetology schools to increase the minimum standards for obtaining an alternative hair design permit.

204. The Cosmetology Act provides that Defendants may "adopt rules and regulations for the issuance of special permits to allow limited and specific powers within the practice of cosmetology." La. R.S. § 37:584(C).

205. A valid grant of authority from the Legislature must: (a) contain a clear expression of legislative policy; (b) prescribe sufficient standards to guide the agency in the execution of that policy; and (c) be accompanied by adequate procedural safeguards to protect against the abuse of discretion by the agency.

206. The Legislature failed to provide a clear expression of the legislative policy or reasons for the alternative hair design permit.

207. The Legislature failed to provide sufficient standards to guide Defendants in the creation of specialty permits and the conditions on which they will be awarded.

208. The Legislature failed to provide any procedural safeguards to protect against abuse of discretion by Defendants.

209. Defendants' self-interest in creating the alternative hair design permit is itself an abuse of discretion.

210. Louisiana's cosmetology laws do not provide judicially manageable standards for determining the scope of regulated cosmetology practices or the training and examination requirements for natural hair braiding because they do not contemplate regulation of hair braiding.

211. For each of these reasons, the alternative hair design permit and its implementing regulations are the result of an unconstitutional exercise of legislative authority by the Board and an unconstitutional delegation of power from the Board to private cosmetology schools. Defendants' actions—and those of their agents and employees—have deprived Plaintiffs of the structural protections for individual liberty that the Louisiana Constitution's separation of powers guarantees.

212. Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to constitutionally required separation of powers, which is a direct and proximate result of Defendants' application of Louisiana's laws and regulations to natural hair braiding businesses and hair braiders and Defendants' delegation of state power to private actors. Unless Defendants are enjoined from committing the above-described violations of Articles II and III of the Louisiana Constitution, Plaintiffs and other hair braiders will continue to suffer great and irreparable harm.

PRAYER FOR RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for relief as follows:

A. For an entry of judgment declaring that Louisiana Revised Statutes §§ 37:563, 37:581(A), and 37:584 and their implementing regulations, Louisiana Administrative Code, Title 46, Part XXXI, §§ 1101, 1105, and 1107 are

unconstitutional as applied to Plaintiffs' practice of natural hair braiding, and to the practice of natural hair braiding generally;

B. For an entry of judgment declaring that Louisiana Revised Statutes §§ 7:575, 37:584, and 37:586 and Louisiana Administrative Code, Title 46, Part XXXI, §§ 1101, 1105, and 1107 are facially unconstitutional because, in adopting those provisions, the Louisiana State Board of Cosmetology unconstitutionally exercised the power of the Legislature;

C. For an entry of judgment declaring that the Louisiana State Board of Cosmetology unconstitutionally delegated the power of the Executive to private cosmetology schools by allowing them to set curricular requirements for the alternative hair design permit above and beyond those required by Louisiana Administrative Code, Title 46, Part XXXI, §§ 1101, 1105, and 1107;

D. For an order permanently enjoining Defendants from committing the ongoing constitutional violations described above in items A, B, and C;

E. For an order permanently enjoining Defendants from enforcing the requirements in Louisiana Administrative Code, Title 46, Part XXXI, §§ 1101, 1105, and 1107;

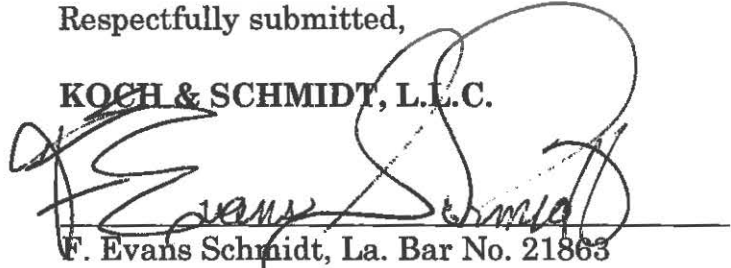
F. For an award of nominal damages in the amount of \$1 for violations of the Louisiana Constitution; and

G. For all other relief to which Plaintiffs may show themselves entitled.

WHEREFORE, Plaintiffs pray that the Defendants herein be served with a copy of this Petition and duly cited to appear and answer this Petition and that, after all legal delays and due proceedings had, there be judgment herein in favor of Plaintiffs.

Respectfully submitted,

KOCH & SCHMIDT, L.L.C.

A large, stylized handwritten signature in black ink, appearing to read 'F. Evans Schmidt', is written over the firm name and extends across the contact information.

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* Motions *pro hac vice* to be filed

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