State Board of Cosmetology  
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RE: Brief on Exceptions to the Hearing Examiner’s Proposed Report.  
Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs v.  
Maimouna Thiam t/b/d/a Rama Hair Braiding Salon  
Case No. 17-45-12478

Dear Members of the State Board of Cosmetology:

I write on behalf of the Institute for Justice ("IJ") in support of Ms. Maimouna Thiam.

IJ is a nonprofit, public-interest law firm dedicated to defending Americans’ rights to private property, economic liberty, free speech and educational choice. To further its mission to protect economic liberty, IJ is the nation’s leading advocate for reforming occupational licensing laws through strategic litigation, advocacy and research. Today, there is bipartisan agreement that occupational licensing laws—which at their best are supposed to protect the public—have gone too far and are, in too many instances, denying Americans the opportunity to earn an honest living without any benefit to consumers.¹

One of the most dramatic examples of excessive licensing involves natural hair braiding. Natural hair braiding is a beauty practice common in many African American and African immigrant communities with a rich cultural heritage spanning millennia. Natural hair braiding is a safe, time-tested craft. It does not use heat or potentially harmful chemicals to treat hair. Rather, it involves only the interlocking or twisting of hair into a variety of styles, often using to more than the braiders hands and perhaps some common instruments such as clips or combs.

IJ has represented braiders across the country for more than 25 years to protect their right to earn an honest living. Our very first case, in 1991, was on behalf of braiders in Washington, D.C. Since then, IJ has litigated successfully against licensing schemes in 11 states and is currently challenging Louisiana’s specialty braiding license. We also have worked with braiders and legislators in at least 10 more states to repeal or reduce licensing burdens on braiders.

Today, thanks in part to IJ’s efforts, at least 28 states do not require natural hair braiders to obtain a license to practice their craft. These states include Pennsylvania’s neighbors Delaware, Maryland, and West Virginia. They also include states as politically divergent as

¹ See IJ’s forthcoming white paper on occupational licensing.
Vermont and California on one hand and Arizona and Texas on the other. Of these 28 states, 17 eliminated licenses in just the past five years.

While there are some states that, like Pennsylvania, require a license to braid, most of those states still have less-burdensome requirements. As you know, braiders must finish at least 300 hours of training before they can obtain the Commonwealth’s license for natural hair braiding. But of the 16 states that have a braiding license, 10 of them require fewer training hours than does Pennsylvania, and most of these require markedly fewer hours. Only one state that expressly licenses braiders requires more hours of training than does Pennsylvania: Louisiana, which is, as noted above, currently in litigation over that requirement.

As is apparent from a review of other states’ licensing regulations, Pennsylvania’s regulatory treatment of braiders is outside the national mainstream. This is one of the reasons why Governor Tom Wolfe called for the repeal of the license.

Building on our experience in litigation and legislation across the country, IJ released in 2016 the only published research regarding whether hair braiders pose a risk to public health and safety. That study, called Barriers to Braiding: How Job-Killing Licensing Laws Tangle Natural Hair Care in Needless Red Tape, analyzed complaint data collected by state licensing boards in nine states and the District of Columbia from 2006 to 2012. Our analysis showed:

1. Complaints against braiders are extremely rare. The boards turned up just 130 complaints in seven years. Out of more than 9,700 licensed and registered braiders in ten jurisdictions, only 95 braiders had a complaint filed against them. Only one braider ever received a complaint from an actual consumer.

2. Most complaints concerned whether braiders were properly licensed, not health or safety issues. Of the 130 complaints, only six raised questions of consumer harm, and none of those were verified by the boards.

3. For perspective, complaints against braiders are so rare that a person is 2.5 times more likely to be audited by the IRS (8.6 in 1,000) than a licensed or registered braider is to receive a complaint of any kind (3.4 in 1,000). Receiving a complaint filed by a consumer is far rarer still (0.035 in 1,000).

4. During that same period, the boards received only 27 complaints against unlicensed braiders. Again, most of these complaints regarded just licensure status. Across the seven years and 10 jurisdictions studied, only nine complaints—all from New York and Ohio—were related to health and safety. And again, none of these complaints were verified by the boards.

5. IJ’s study confirmed the variation in regulatory burdens imposed by the various jurisdictions studied. However, there were so few complaints against braiders—licensed or not—that it was not possible to run a statistical analysis to verify the lack of statistically significant differences between the states. In short, it was impossible to determine whether more hours of training resulted in fewer complaints. It should be noted, however, that the American Institutes for Research published a similar review of
cosmetology licensing generally that same year which found “[g]iven the available data, there is no evidence of a relationship between curriculum hours and the number of safety incidents or complaints.”

6. IJ’s study did confirm, however, that more hours of training resulted in fewer braiders. States that demanded more training hours had fewer licensed or registered braiders relative to their black populations than states with lighter requirements. This effect was such that Mississippi, which requires zero hours of training to register as a braid, had over 1,200 registered braiders while neighboring Louisiana, which requires 500 hours, had only 32 licensed braiders despite its larger black population.

Given all this, there is no real and substantial evidence that Pennsylvania’s mandated 300 hours of training to be a braid is necessary to protect the public. A threat to the public from unlicensed braid has not been the experience of the 28 states that do not require a license to braid at all. The published research in this area does not support the existence of such a threat either. Indeed, nothing in the record suggests that Ms. Thiam’s braid salon threatened consumer health and safety. We understand that the Pennsylvania General Assembly—not the Board—has created the license that the Board is tasked with enforcing here. But in light of the facts of this case, the published research in this area, the lack of a real and substantial threat posed here, and that Pennsylvania’s regulatory requirements are outside of and far more burdensome than the national mainstream, we urge the Board to show leniency in Ms. Thiam’s case.

Sincerely,

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2 As to today, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, North Dakota, Oklahoma, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and West Virginia expressly do not require a license to braid hair.

3 These states (and their hours requirements) are: Oregon (online module), Missouri (4-6 hour video), South Carolina (6 hours), Florida (16 hours), Tennessee (16 hours), Alaska (35 hours), New Jersey (40-50 hours), District of Columbia (100 hours), Alabama (210 hours), and Nevada (250 hours).


5 This study is available at https://ij.org/report/barriers-to-braiding/.