

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

BRANDY DAVIS,

Plaintiff,

v.

OKLAHOMA STATE BOARD OF  
COSMETOLOGY AND BARBERING;  
MALENA CURTSINGER, in her official  
capacity as Executive Director of the Board;  
MACHELE CALLICOAT, in her official  
capacity as Chair of the Board; CHRISTY  
MATHER, in her official capacity as Vice  
Chair of the Board; ERICKA JACKSON,  
AUSTIN HODGES, LEAH LONGEST,  
CHRISTIE LUTHER, CARLA WILKINS,  
THAO NGUYEN-PHAM, ERIN PIERCE,  
HEATHER SINCLAIR, and JOEL ROGERS,  
in their official capacities as members of the  
Board; JOHN FUNDERBURK, in his official  
capacity as Principal Assistant for the  
Board; and MELINDA DOBIE, in her official  
capacity as the Student Registrar for the  
Board,

Defendants.

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RICK WARREN  
COURT CLERK

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Case No. **CV-2022-1729**

Judge \_\_\_\_\_

**VERIFIED PETITION**

Plaintiff Brandy Davis asserts the following claims against the Defendants Oklahoma State Board of Cosmetology and Barbering; Malena Curtsinger, in her official capacity as Executive Director of the Board; Machele Calliccoat, in her official capacity as Chair of the Board; Christy Mather, in her official capacity as Vice Chair of the Board; Ericka Jackson, Austin Hodges, Leah Longest, Christie Luther, Carla Wilkins, Thao Nguyen-Pham, Erin Pierce, Heather Sinclair, and Joel Rogers, in their official capacities as members of the Board; John

Funderburk, in his official capacity as Principal Assistant for the Board; and Melinda Dobie, in her official capacity as the Student Registrar for the Board (collectively, "Defendants").

## INTRODUCTION

1. This is a civil rights lawsuit to stop the state from imposing burdensome, irrational, and arbitrary demands on a highly trained expert in her craft, and to vindicate the right to conduct business free from unreasonable governmental restraints. The Oklahoma Constitution guarantees this right and prohibits the government from imposing restrictions on Ms. Davis when those restrictions lack a real and substantial relationship to a legitimate governmental objective.

2. Ms. Davis is a highly trained expert in the craft of semi-permanent eyelash extensions. Eyelash extensions are silk or other natural or artificial fibers that a practitioner meticulously adheres to individual eyelash hairs using semi-permanent glue and tweezers. Given the specific health and safety concerns with applying fibers and adhesive to natural hairs on a person's eyelids, the practice requires particularized training in how to apply and maintain the extensions and address adverse reactions.

3. Eyelash extensions grew in popularity in the 2000s. They became a preferred method to achieve a full- and long-lash look without using so-called strip lashes, which are sets of artificial eyelashes that are glued all at once onto a person's eyelid but that last only about a day and look less natural than eyelash extensions. Applying eyelash extensions has become a business unto itself.

4. Eyelash-extension practitioners apply either a single extension fiber or a cluster of fibers to a natural eyelash. It takes about two hours to apply a full set of extensions. Because the adhesive is semi-permanent, an extension will typically not detach from the natural lash. Instead, as natural lashes shed from a person's

eyelids every few weeks, the extensions are discarded with the natural lashes. Practitioners may then apply new extensions to other natural lashes, replacing the lost extensions.

5. Because eyelash extensions are a particularized craft, some states offer specialty licenses to apply and maintain eyelash extensions. Indiana, for example, requires 45 hours of training in health, safety, and application technique particularized to eyelash extensions. Kentucky requires an eyelash certificate from an approved training program and a 3-hour infection control course. Texas offers a specialty license for eyelash extensions, requiring 320 hours of training focused on eyelash extensions. Connecticut, Minnesota, and Rhode Island likewise offer specialty licenses for eyelash extensions. Each requires training specific to eyelash extensions. Connecticut requires 50 hours of specialized training. Minnesota requires 38, and Rhode Island requires 20.

6. In Oklahoma, however, eyelash-extension practitioners are required by the State Board of Cosmetology and Barbering (“the Board”) to obtain an esthetician license or a cosmetology license to apply eyelash extensions.

7. Not a minute of the required curriculum for an esthetician or cosmetology license addresses eyelash extensions, and eyelash extensions are not tested on the esthetician or cosmetology licensing exams.

8. As a result, practitioners who have training in eyelash extensions—through other states’ licensing programs or through private certification programs—are required to endure hundreds of hours of training irrelevant to their jobs (costing between \$1,100 and \$11,700 for the minimum-required courses) and they are required to pass irrelevant exams before the Board will license them to work as eyelash-extension practitioners. At the same time, Oklahoma-licensed cosmetologists and estheticians may perform eyelash extensions without any training in the practice.

9. Ms. Davis, specifically, has more than 320 hours of training in the practice of eyelash extensions. That is more than 320 hours above the eyelash-extension training Oklahoma-licensed cosmetologists and estheticians needed to obtain their licenses. Ms. Davis has also proven her knowledge and skills on two exams addressing eyelash-extension practices; those exams were administered by a Texas state regulatory agency. Oklahoma's licensing exams for cosmetologists and estheticians do not require licensees to prove any knowledge or skills particular to eyelash extensions.

10. Another result of Oklahoma's licensing requirements is that salon business owners who want to provide eyelash-extension services are required to hire only employees who hold a license that reflects no training, experience, or skills in eyelash extensions. Salon owners are prohibited from hiring knowledgeable, skilled, and experienced eyelash-extension practitioners unless they hold a license that promises competency in cosmetology subjects other than eyelash extensions.

11. These overly burdensome, senseless license requirements deprive Ms. Davis of her constitutional right to earn an honest living free from unreasonable and irrational government regulations. This right is protected by Article II, Sections 2 and 7 of the Oklahoma Constitution.

12. For these reasons and others set forth below, Ms. Davis brings this action seeking declaratory and injunctive relief and nominal damages.

## **PARTIES**

### **Plaintiff**

13. Plaintiff Brandy Davis is a citizen of the United States and a resident of Creek County, Oklahoma. She is an eyelash-extension practitioner who holds a valid Texas eyelash-extension license and who owned and operated her own

eyelash-extension business in Texas from February 2020 to January 2022. She is a cosmetology apprentice in a Board-approved apprenticeship at Sister Act Salon, 112 W. 5th Ave., Bristow, OK 74010. Under the Board's regulations, she may provide eyelash-extension services only under the supervision of her apprenticeship instructor, and she may not reestablish her own eyelash-extension business in Oklahoma without obtaining an esthetician or cosmetology license.

### **Defendants**

14. Defendant Oklahoma State Board of Cosmetology and Barbering is a state agency created under the laws of Oklahoma and domiciled in Oklahoma County. 59 Okla. Stat. § 199.2. The Board is required by Oklahoma law to administer the state's cosmetology and barbering licensing laws and regulate the practice of cosmetology and barbering. 59 Okla. Stat. §§ 199.3, 199.6. State law authorizes and requires the Board to promulgate rules for specialty licenses, including reduced curriculum requirements, to further the purposes of the state's cosmetology and barbering laws. 59 Okla. Stat. § 199.3.

15. The Board is located at 2401 NW 23rd St., Suite 84, Oklahoma City, OK 73107.

16. Ms. Davis sues the Board's Executive Director, Malena Curtsinger, in her official capacity, as she is charged with issuing licenses, certificates of registration, permits, orders, and notices; to collect all fees and penalties; and to perform any duties directed by the Board. 59 Okla. Stat. § 199.4. Her office is in Oklahoma County.

17. Ms. Davis also sues the Board's Chair, Machele Callicoat, and the Board's Vice Chair, Christy Mather, in their respective official capacities, and the members of the Board—Ericka Jackson, Austin Hodges, Leah Longest, Christie Luther, Carla Wilkins, Thao Nguyen-Pham, Erin Pierce, Heather Sinclair, and Joel Rogers—each in their official capacities as the people responsible for

administering and enforcing the state's cosmetology laws and the Board's rules. 59 Okla. Stat. § 199.3. Their offices are in Oklahoma County.

18. Ms. Davis also sues John Funderburk, in his official capacity as Principal Assistant for the Board, and Melinda Dobie, in her official capacity as the Student Registrar for the Board. Their offices are in Oklahoma County.

19. The Oklahoma Attorney General will be served with a copy of this petition as required under 12 Okla. Stat. § 1653(C).

### **JURISDICTION AND VENUE**

20. Ms. Davis seeks to vindicate her rights under Article II, Sections 2 and 7 of the Oklahoma Constitution.

21. Ms. Davis seeks declaratory and injunctive relief and nominal damages under 12 Okla. Stat. § 1651 and under Article II, Sections 2 and 7 of the Oklahoma Constitution. This Court has jurisdiction under these provisions and under Article VII, Sections 1 and 7 of the Oklahoma Constitution.

22. Ms. Davis asks this Court to declare that the application of 59 Okla. Stat. §§ 199.6(C), (D), 199.8(B), 199.11(A)(7)–(10) and Okla. Admin. Code §§ 175:10-7-17(a), -7-33(h), -9-55(b) to Ms. Davis is unconstitutional. Ms. Davis also asks this Court to enjoin Defendants from enforcing those laws and regulations against Ms. Davis and to award Ms. Davis nominal damages.

23. Venue is proper in this Court under 12 Okla. Stat. § 133.

### **FACTS**

#### ***The Practice of Applying and Maintaining Eyelash Extensions***

24. Ms. Davis incorporates and realleges the allegations in paragraphs 1 through 23, above.

25. The use of eyelash extensions emerged in the 1980s in South Korea and Japan. It quickly became a popular way to make a person's eyelashes look long

and full without using strip lashes.

26. Strip lashes are strips of fibers that can be applied to an eyelid all at once using an easily removable adhesive. Strip lashes are meant to remain on a person's eyelids no longer than a day and are not intended to be worn while sleeping. They can be purchased at many drugstores and applied by the purchasers themselves at home.

27. By contrast, eyelash extensions are single fibers or clusters of fibers that are applied to individual natural eyelashes using semi-permanent glue.

28. The fibers are often made of silk or synthetic material.

29. The glue is semi-permanent. Once an extension is glued to a natural lash, the extension generally does not detach from that lash. Instead, the extension is discarded when the natural lash sheds from the person's eyelid.

30. High-quality eyelash extensions are generally not available at common drugstores.

31. High-quality eyelash extensions are generally not applied by the wearer.

32. Instead, a trained practitioner applies extensions to another person.

33. The process of applying eyelash extensions is meticulous.

34. Attaching a full set of extensions generally takes about two hours.

35. The practitioner first drapes a cloth over the client's shoulders.

36. The practitioner then cleans the client's eyelids and eyelashes and places a piece of tape over the lashes on the client's bottom eyelids.

37. The client's eyes are closed for the application process.

38. The practitioner uses one set of tweezers in each hand.

39. With the tweezers in one hand, the practitioner places semi-permanent glue on an extension.

40. With the other pair of tweezers, the practitioner separates the client's natural lashes from one another to isolate the lash to which an extension will be

applied.

41. The practitioner then places the extension on a natural lash, allowing the glue to fix the extension in place as it dries.

42. The practitioner may speed up the drying process by applying water or by blowing air on the applied glue.

43. The extensions are semi-permanent and are worn to sleep, shower, and swim.

44. Extensions typically remain on a person's face for a few weeks, detaching only when the natural lash sheds from the client's eyelid.

45. Because natural lashes shed at different times, extension practitioners may replace lost extensions before the full set of original extensions has shed.

46. Clients commonly prefer this "fill in" service every two to three weeks, to maintain a full- and long-lash appearance.

47. As eyelash extensions have grown in popularity, the practice has become a business unto itself, similar to hairbraiding, threading, and manicuring.

48. Applying and maintaining eyelash extensions raises specific health and safety concerns stemming from applying semi-permanent adhesive and fibers to natural hairs next to a person's eyes.

49. For example, a person could have adverse reactions to the extension adhesive.

50. Also, if an extension is improperly glued to multiple natural lashes instead of a single lash, the glue may pull out a natural lash from its follicle, resulting in temporary or permanent baldness on the eyelid.

51. Because of these and other health and safety risks inherent in applying eyelash extensions, the practice requires specific knowledge about safely applying and maintaining eyelash extensions. Practitioners should also have specific skills to avoid and address health and safety concerns that accompany the application



and maintenance of eyelash extensions, specifically.

52. In part for this reason, NovaLash, an industry leader in professional-grade eyelash glue, conditions the sale of its glue on the completion of a training course on how to safely and skillfully apply eyelash extensions. NovaLash will not sell its glue to an Oklahoma-licensed cosmetologist or esthetician unless that licensee completes NovaLash's certification requirements.

53. Similarly, some states require specific training in eyelash extensions before a practitioner may perform the service.

54. While safely applying and maintaining eyelash extensions requires particularized knowledge and skills concerning the attendant health and safety risks, safely performing the practice does not require knowledge about and skills in other cosmetic procedures.

55. To safely apply and maintain eyelash extensions, a person needs training in the safe application and maintenance of eyelash extensions specifically, not training in other cosmetic procedures.

56. Obtaining a cosmetology or esthetician license from the Oklahoma State Board of Cosmetology and Barbering requires no training in the practice of applying or maintaining eyelash extensions.

57. And yet, the Board's rules require all eyelash-extension practitioners to hold a cosmetology or esthetician license.

58. Eyelash-extension practitioners who have specialized training in safely applying and maintaining eyelash extensions are qualified to apply and maintain eyelash extensions.

59. Unless they have obtained separate specialized training in addition to the training required by state law, Oklahoma-licensed cosmetologists and estheticians are not qualified to safely apply and maintain eyelash extensions. That is because holding an Oklahoma cosmetology or esthetician license

guarantees no training in safely applying or maintaining eyelash extensions—the very training that is needed to safely provide the service, and the very training that some eyelash-extension practitioners have without an Oklahoma cosmetology or esthetician license.

60. In Oklahoma, each salon establishment must perform sanitary and disinfection procedures, regardless of which cosmetic procedures are offered. Okla. Admin. Code §§ 175:10-5-2, -7-18, -7-32. Accordingly, Ms. Davis and the owner of the establishment where she works would have to comply with these requirements if she were allowed to practice eyelash extensions in Oklahoma.

61. The training that licensed estheticians and cosmetologists receive in school does not teach them how to safely and skillfully apply and maintain eyelash extensions; it doesn't even teach them the basics of eyelash extensions. Indeed, this Petition gives more information about the technique and health and safety risks of eyelash extensions than does the required curriculum to obtain a cosmetology or esthetician license.

62. The prerequisites for obtaining an esthetician or cosmetology license do not equip licensees to provide safe, skilled eyelash-extension services.

63. Brandy is equipped to provide safe, skilled eyelash-extension services.

64. Brandy has more training and experience in eyelash-extension health, safety, and technique than any licensed cosmetologist or esthetician was required to obtain.

65. Even without a license, eyelash-extension practitioners have to follow safety and sanitation procedures required of all salon establishments.

66. Completing the requirements for an esthetician or cosmetology license would not make Brandy's practice of eyelash extensions safer.

67. Completing the requirements for an esthetician or cosmetology license does not make any eyelash-extension practitioner's services safer.

68. Under Oklahoma law, a licensed cosmetologist or esthetician who has completed zero hours of training in eyelash extensions may legally apply eyelash extensions. Ms. Davis, who has completed hundreds of hours of training in eyelash extensions, may not legally apply eyelash extensions.

***Brandy Davis***

69. Brandy Davis is a highly trained and experienced eyelash-extension practitioner.

70. Ms. Davis does not hold an Oklahoma cosmetology or esthetician license.

71. Ms. Davis holds a valid Texas eyelash-extension specialty license.

72. To obtain that license, Ms. Davis successfully completed 320 hours of eyelash-extension curriculum approved by the Texas Department of Licensing and Regulation and required for a specialty eyelash-extension license.

73. That training included first aid and adverse reactions, sanitation and contagious diseases, safety and client protection, eyelash growing cycles and selection, chemistry of products, supplies and equipment, application technique, eye shapes, salon management, and law.

74. Ms. Davis completed the 320 required hours of eyelash-extension curriculum on or about November 8, 2020.

75. Ms. Davis also passed the two exams (one written and one practical) administered by the Texas Department of Licensing and Regulation and required to obtain a specialty eyelash-extension license.

76. Ms. Davis has also completed 4 hours of continuing education required to renew her eyelash-extension license. She anticipates renewing her license in the coming months.

77. In addition to completing the requirements for Texas's eyelash-extension license, Ms. Davis has completed an 8-hour health, safety, and technique course through NovaLash—a company from which she buys eyelash-

extension products.

78. Ms. Davis has also completed more than 500 hours in esthetician curriculum approved by the Texas Department of Licensing and Regulation.

79. Ms. Davis has more training and experience in eyelash extensions than the Board requires Oklahoma-licensed cosmetologists and estheticians to receive before they may practice eyelash extensions.

80. Ms. Davis may have more training and experience in eyelash extensions than anyone else in the state of Oklahoma.

81. Ms. Davis received her eyelash-extension license in January 2020. She opened her own eyelash-extension business in Texas in February 2020. By May 2020, she had a full book of clients and was looking to expand the business.

82. Ms. Davis never received a complaint from any clients about her eyelash-extension services.

83. Ms. Davis did not receive any complaints or citations from the Texas Department of Licensing and Regulation.

84. Ms. Davis moved to Oklahoma in January 2022.

85. Ms. Davis was hoping to reestablish her eyelash-extension business in Oklahoma.

86. Ms. Davis still wants to reestablish her eyelash-extension business in Oklahoma and plans to do so once she is legally permitted.

87. Ms. Davis is currently an apprentice in a Board-approved cosmetology apprenticeship.

88. Ms. Davis is currently enrolled in esthetician courses approved by the Texas Department of Licensing and Regulation.

89. Ms. Davis has asked the Board to permit her to practice eyelash extensions without having to be supervised by her licensed apprentice instructor. The Board has not given her that permission.

90. Ms. Davis's licensed apprentice instructor was not required to receive training in eyelash extensions, was not trained in the practice of eyelash extensions in cosmetology school, and has not received training in eyelash extensions from a Board-approved cosmetology or esthetician school.

91. Ms. Davis has more training and experience in eyelash extensions than her licensed apprentice instructor has.

92. Shortly after moving to Oklahoma, Ms. Davis twice called the Board's offices and asked to practice eyelash extensions without obtaining an Oklahoma cosmetology or esthetician license.

93. Melinda Dobie, or another employee or two of the Board, twice informed Ms. Davis that she would not be permitted to practice eyelash extensions without a cosmetology or esthetician license issued by the Board.

94. Shortly after moving to Oklahoma, Ms. Davis arranged to speak with the Board at one of its meetings, to explain her training and experience and again ask to practice eyelash extensions without obtaining a cosmetology or esthetician license issued by the Board.

95. When Ms. Davis arrived at the meeting, John Funderburk informed her that the Board would not allow her to speak that day.

96. Ms. Davis asked when she could present her plea to the Board. Mr. Funderburk initially informed her that she would be allowed to speak to the Board at a meeting in July or August 2022. Later he informed her that she would not, in fact, be permitted to present her situation to the Board in July or August. When Ms. Davis asked when she could present her situation to the Board, he did not respond.

97. Ms. Davis has all the training, knowledge, and skills needed to safely provide eyelash-extension services.

98. Ms. Davis has provided safe eyelash-extension services to customers in

Texas.

99. Ms. Davis has provided safe eyelash-extension services to customers in Oklahoma under the supervision of her licensed apprenticeship instructor.

100. Ms. Davis is as qualified to provide safe eyelash-extension services as holders of Oklahoma cosmetology and esthetician licenses.

101. Ms. Davis is more qualified to provide safe eyelash-extension services than are holders of Oklahoma cosmetology and esthetician licenses who have not completed comparable training in eyelash extensions.

102. Because the Board and its regulations do not permit Ms. Davis to provide eyelash-extension services unsupervised by her apprenticeship instructor, Ms. Davis has not been able to establish her own eyelash-extension business.

103. Ms. Davis upholds higher safety standards for eyelash-extension services than the Board requires of licensed cosmetologists and estheticians.

104. The Board does not have any regulations specifically addressing health and sanitation practices to perform eyelash extensions.

105. Ms. Davis requires all customers to undergo a consultation before receiving eyelash extensions, to ensure each customer does not have any health conditions that eyelash extensions could further compromise.

106. Ms. Davis wears single-use gloves, uses magnifying glasses, and uses an over-the-chair light to ensure careful, sanitary application of eyelash extensions.

107. Ms. Davis cleanses each customer's eyelids and eyelashes before applying eyelash extensions.

108. Ms. Davis ensures that the eyelash-extension glue she uses remains in a consistent temperature and humidity climate and away from chemicals that alter the glue's properties, which make its use less effective and safe.

109. Ms. Davis washes her eyelash-extension tweezers with soap and disinfectant after each use.

110. Ms. Davis does not reuse any eyelash extensions, tape, or other disposable items.

111. Ms. Davis keeps on hand products to treat allergic reactions to the eyelash-extension glue that a customer may experience. She also keeps on hand adhesive remover.

112. Ms. Davis stores eyelash extensions in a clean, closed container.

113. Ms. Davis uses high-quality eyelash extensions from NovaLash and other industry leaders, which reduce health and safety risks that come with using lower-quality extensions that do not achieve as strong a bond to the adhesive and natural lash.

114. Ms. Davis does not apply so-called “cluster lashes,” which are like small segments of strip lashes glued to parts of a person’s eyelids. Cluster lashes can cause multiple natural lashes to be glued together or to the cluster lash, pulling out natural lashes and causing irritation or balding.

115. Ms. Davis uses an isolation-and-separation technique to apply eyelash extensions. This technique reduces the risk that an eyelash extension will be glued to more than one natural lash. Gluing multiple eyelashes together or to a single extension may cause irritation or balding.

116. Ms. Davis uses NovaLash glue that dries quickly, aided by occasional sprays of water, reducing safety risks of lashes moving or detaching shortly after a customer departs the salon.

117. Ms. Davis is passionate about and prides herself in providing top-of-the-line, safe eyelash extensions to customers.

118. Given her training, experience, and safety practices, Ms. Davis may provide the safest and most skilled eyelash-extension services of anyone in the state of Oklahoma.

119. Because the Board and its regulations require Ms. Davis to hold a

cosmetology or esthetician license to provide eyelash-extension services, Ms. Davis has spent approximately 1,000 hours in a cosmetology apprenticeship that she would not have otherwise undertaken, and she has spent more than 500 hours in esthetician courses that she otherwise would not have enrolled in.

120. Defendants' enforcement of the state's cosmetology laws and the Board's regulations has caused Ms. Davis to suffer substantial and irreparable harm. Defendants' insistence that eyelash-extension services be provided only by licensed estheticians or cosmetologists prevents Brandy from earning a living through eyelash-extension services and building a clientele.

121. Ms. Davis wants to support herself and her family with the craft she is well-trained and highly qualified to perform safely. She cannot do so because of the Board's enforcement of and penalties for practicing eyelash-extension services without a cosmetology or esthetician license.

122. Without a cosmetology or esthetician license, Ms. Davis may not open her own business or employ similarly qualified eyelash-extension specialists.

123. If Brandy were legally permitted to practice eyelash extensions without the supervision of her apprenticeship instructor, she would do so and open her own business to provide eyelash-extension services.

### ***Oklahoma's Cosmetology Licensing Statutes and Regulations***

124. Oklahoma's cosmetology laws are found at 59 Okla. Stat. §§ 199 *et seq.*

125. The Board's cosmetology regulations are found at Okla. Admin. Code §§ 175:1-1-1 *et seq.*

126. The Oklahoma Cosmetology and Barbering Act defines "Cosmetology" as "any one or combination of practices generally and usually performed by and known as the occupation of beauticians, beauty culturists, beauty operators, cosmeticians, cosmetologists, or hairdressers" and to include "cleansing, . . . dressing, . . . styling, . . . or similar work upon the hair of any



person by any means.” 59 Okla. Stat. § 199.1.9.

127. The Act also requires the Board to “promulgate rules for special licenses, including but not limited to reduced curriculum requirements, as the Board may deem appropriate and necessary to further the purposes of the Oklahoma Cosmetology and Barbering Act.” 59 Okla. Stat. § 199.3(B)(5).

128. The purpose of the Oklahoma Cosmetology and Barbering Act is “to safeguard and protect the health and general welfare of the people of the State of Oklahoma.” 50 Okla. Stat. § 199.3(A).

129. The Board’s rules prohibit anyone from performing eyelash-extension services to the public without an esthetician license or a cosmetology license. Okla. Admin. Code §§ 175:10-7-33(h), -9-55(b).

130. The Board’s rules require licenses to be posted in a place easily viewed by the public. Okla. Admin. Code § 175:10-7-17(a).

131. The Cosmetology Act makes it unlawful and a misdemeanor to practice cosmetology without having obtained a license from the Board or to employ anyone to practice cosmetology unless that employee has obtained a license from the Board. 59 Okla. Stat. § 199.6(C).

132. The Cosmetology Act gives the Board authority to levy administrative fines for persons practicing cosmetology without a license and for establishment owners who allow unlicensed individuals to practice cosmetology without a license in their establishment. 59 Okla. Stat. § 199.6(D).

133. The Cosmetology Act prohibits apprentices from engaging in the practice of cosmetology except under the immediate supervision of a licensed instructor in a cosmetology establishment approved by the Board for apprentice training. 59 Okla. Stat. § 199.8(B).

134. The Cosmetology Act authorizes the Board to deny or refuse to renew any license, certificate, or registration that the Board is authorized to issue based

on continued or flagrant violation of any rules of the Board or failure to display a license or certificate or employment of any person to perform any practice of cosmetology without a license from the Board. 59 Okla. Stat. § 199.11(A).

135. Obtaining an esthetician license requires completing 600 hours of esthetician coursework in a cosmetology school (or 1,200 hours in an esthetician apprenticeship) and passing two esthetician licensing exams. None of the required training or exams address eyelash extensions.

136. Obtaining a cosmetology license requires completing 1,500 hours of cosmetology coursework in a cosmetology school (or 3,000 hours in a cosmetology apprenticeship) and passing two cosmetology licensing exams. None of the required training or exams address eyelash extensions.

137. Two final ways to obtain an esthetician or cosmetology license are through reciprocal and crossover licensing.

138. Under the Board's rules for reciprocal licensing, a person who holds a valid esthetician or cosmetology license in another state may receive an Oklahoma esthetician or cosmetology license if the other state's licensure is "the same" as Oklahoma's and the license-holder passes the Board's test on rules, regulations, and law. None of the required training or the exam address eyelash extensions. A person also qualifies for reciprocity if she has undergone the "required occupational training" in a foreign country; practiced continuously for three years immediately prior to applying for a reciprocity license; has at least an eighth-grade education; and has passed Oklahoma's state rules, regulations, and law test administered by the Board. 59 Okla. Stat. § 199.13; Okla. Admin. Code § 175:10-13-1.

139. The Board accepts applications for reciprocal licenses only for cosmetologist, manicurist, esthetician, or barber licenses; the Board does not offer reciprocal licenses for eyelash-extension licenses from another state.

140. The Board does not offer a specialty license for eyelash extensions, reciprocal or otherwise.

141. Under the Board's rules for crossover licensing, a person who holds an Oklahoma barber license may receive a cosmetology license by completing 300 hours of cosmetology coursework in a cosmetology school and passing a written cosmetology exam. None of the required training or the exam address eyelash extensions. 59 Okla. Stat. § 199.13; Okla. Admin. Code § 175:10-13-2.

142. Apart from the reciprocity process, an applicant for an esthetician or cosmetology license must satisfy the following requirements:

- a. Be at least 16 years old before starting coursework, and at least 17 years old before taking the Board-issued exams;
- b. Complete the eighth grade or its equivalent;
- c. Register with the Board and pay a \$5 application fee before attending cosmetology school;
- d. Attend a cosmetology school licensed by the Board;
- e. Complete and pass a 600-hour esthetician course for an esthetician license or a 1,500-hour cosmetology course for a cosmetology license;
- f. Pass two exams conducted by the Board to determine fitness for licensure: a written exam and a practical exam;
- g. Apply for a license after passing the exams; and
- h. Pay fees for the exams and license application: \$35.00 for the exams, and \$25.00 for the license application.

59 Okla. Stat. §§ 199.7, 199.14; Okla. Admin. Code § 175:10-3-16, -34, -39.

### ***The Cosmetology Curriculum***

143. Defendants are responsible for "promulgat[ing] rules for special licenses, including but not limited to reduced curriculum requirements, as the Board may deem appropriate and necessary to further the purposes of the Oklahoma

Cosmetology and Barbering Act.” 59 Okla. Stat. § 199.3(B)(5).

144. Defendants have determined that to perform eyelash extensions—even if an eyelash-extension practitioner will perform no other services—a person must pass, at a licensed cosmetology school, at least a 600-hour esthetician course in the following areas, not one of which requires instruction in eyelash extensions:

- a. Bacteriology, disinfection, sanitation, and safety (80 hours);
- b. Sciences (180 hours):
  - i. Histology;
  - ii. Dermatology and physiology of the skin
- c. Facials (200 hours):
  - i. Draping;
  - ii. Manipulations;
  - iii. Cleaning and toning;
  - iv. Chemistry and light therapy;
  - v. Make-up;
- d. Non-permanent hair removal (40 hours)
- e. Salon development (60 hours):
  - i. Business administration and law;
  - ii. Insurance;
  - iii. Professional ethics;
  - iv. Record keeping;
  - v. Business telephone techniques;
  - vi. Salesmanship;
  - vii. Displays and advertising;
  - viii. Hygiene and public health; and
- f. Board rules, regulations, and statutes (40 hours).

Okla. Admin. Code § 175:10-3-39.

145. Defendants maintain on their website a list of all licensed cosmetology schools. See Oklahoma State Board of Cosmetology and Barbering, Cosmetology Schools, <https://tinyurl.com/5sdpwtvf>.

146. Defendants' list of cosmetology schools indicates that 28 cosmetology schools offer a Board-approved esthetics program, though three of those schools appear to have closed (CC's Cosmetology College Antlers, CC's Cosmetology College II, and CC's Cosmetology College III).

147. The Defendants' rules require eyelash-extension practitioners to attend cosmetology school, but they do not require cosmetology schools to teach eyelash extensions.

148. Not a minute of required instruction in cosmetology school addresses the practice of eyelash extensions. Because no eyelash-extension instruction is required, the license requirements do not safeguard and protect the health and general welfare of the people of the state of Oklahoma from any dangers that could come from unskilled eyelash-extension services. Indeed, a person does not need to know anything about how to apply or maintain eyelash extensions to obtain an esthetician license.

149. To the extent any licensed cosmetology schools provide instruction arguably related to eyelash extensions—such as sanitation training—that instruction makes up only a small fraction of the 600 hours required, students do not learn eyelash extensions in the process, and all necessary sanitation training can be provided in training specific to eyelash extensions.

150. Although none of the Board's requirements ensure that licensees are competent in eyelash-extension application and maintenance, even well-trained and experienced eyelash-extension practitioners like Ms. Davis are required to spend 15 weeks, 40 hours per week, completing the irrelevant or redundant coursework.

151. The tuition for the esthetics courses is prohibitively expensive for most eyelash-extension practitioners, who are often of modest means and dependent on working continuously to support themselves. Tuition for Board-approved esthetics courses ranges from \$1,000 to \$12,000, depending on which school an eyelash-extension practitioner attends.

### ***The Licensing Exams***

152. After completing an approved esthetics course, applicants are required to pass two licensing exams: one written, and one practical. Okla. Admin. Code § 175:10-9-25(c).

153. Defendants are responsible for promulgating rules governing licensing exams and for administering the exams. 59 Okla. Stat. §§ 199.3(B)(2), 199.6(A).

154. Just as Defendants do not require the state's cosmetology schools to teach eyelash extensions, the esthetician licensing exams do not test eyelash extensions.

155. Defendants administer—as the state's written exam—the National-Interstate Council of State Boards of Cosmetology (NIC) "National Esthetics Theory Examination." The state exclusively uses this exam for its written exam.

156. The "National Esthetics Theory Examination" does not test eyelash extensions. See National Esthetics Theory Examination, Candidate Information Bulletin, <https://tinyurl.com/4cmj4p6y>.

157. The state's practical esthetician exam likewise does not test eyelash extensions.

158. Thus, to obtain a license to legally provide eyelash-extension services, a person must show knowledge and competency in various skills and subjects, but not eyelash extensions.

### ***Defendants' Enforcement of Board Regulations***

159. Defendants are responsible for issuing all licenses, permits, certificates

of registration, notices, and orders; making inspections of all cosmetology establishments licensed to operate in Oklahoma; and investigating and making reports on all violations of the Oklahoma Cosmetology and Barbering Act. 59 Okla. Stat. §§ 199.3(B), 199.6(B).

160. Defendants are authorized to enforce the provisions of the Oklahoma Cosmetology and Barbering Act and the Board's promulgated rules. 50 Okla. Stat. §§ 199.3, 199.6(B).

161. Defendants inspect cosmetology establishments at least twice a year to ensure safety and sanitation compliance and to ensure all persons providing cosmetology services hold a valid license or permit. *See* Oklahoma State Board of Cosmetology and Barbering, Consumer Information, <https://bit.ly/3j76eMC>.

162. Defendants issue inspection reports and instructions to cease providing cosmetology services without a license from the Board.

163. Salon employers may hire employees without a license, to assist with business operations, so long as those employees do not perform any services requiring an esthetician, cosmetology, or barber license. For example, unlicensed employees may—under the establishment owner's supervision—sweep floors, clean windows, organize paperwork, answer phones, schedule appointments, clean countertops, take out trash, do laundry, and disinfect supplies. *See* Okla. Admin. Code § 175:10-5-2(d).

164. Salon employers who are Board-approved apprentice instructors may charge customers for services performed by an apprentice during apprentice training. *See* Okla. Admin. Code § 175:10-9-1(k).

165. An apprentice may provide eyelash-extension services, and a salon owner may charge for those services, so long as the apprentice renders those services under the instructor's supervision. *See* Okla. Admin. Code § 175:10-9-1(k).

166. An apprentice may perform extra-curricular work for a shop owner for compensation. See Okla. Admin. Code § 175:10-9-1(I).

167. Defendants regularly inspect the salon where Ms. Davis has her cosmetology apprenticeship.

168. Defendants are authorized to impose administrative fines up to \$500 for persons practicing cosmetology or barbering without a license, and for owners of licensed establishments who allow unlicensed individuals to practice cosmetology or barbering in their establishments. 59 Okla. Stat. § 199.6(D).

169. Defendants may file a lawsuit against an unlicensed individual to enforce the state's cosmetology licensing laws and regulations, and seek an injunction. 59 Okla. Stat. § 199.3(B)(11).

170. Defendants have threatened to punish businesses for employing unlicensed employees who perform cosmetology services.

171. The Defendants' enforcement of the Board's licensing requirements against businesses and unlicensed practitioners has discouraged Ms. Davis from providing eyelash-extension services outside of her apprenticeship.

172. Business owners who permit unlicensed eyelash-extension practitioners to provide eyelash-extension services in their establishments, and unlicensed practitioners who do so, also risk conviction of a misdemeanor, along with fines up to \$150 per day or jailtime. 59 Okla. Stat. § 199.6(C).

173. The threat of punishment has the effect of chilling many businesses from hiring or retaining unlicensed but skilled eyelash-extension practitioners, preventing eyelash-extension practitioners from earning a living and providing their services to customers.

174. The threat of punishment has prevented Ms. Davis from opening a business to provide eyelash-extension services unsupervised by her apprenticeship instructor.



## INJURY TO PLAINTIFF

175. Ms. Davis incorporates and realleges the allegations in paragraphs 1 through 174, above.

176. Defendants' actions threaten Ms. Davis's right to earn a living and conduct business free from unreasonable government interference.

177. Defendants' actions have caused Ms. Davis real, substantial, and irreparable harm. They also threaten more immediate, irreparable harm.

178. Defendants' actions have caused Ms. Davis to lose the opportunity to build her clientele and reputation and practice her craft unsupervised by her apprenticeship instructor.

179. Defendants' prohibition on performing eyelash-extension services without an esthetician or cosmetology license has prevented Ms. Davis from supporting herself with the practice of applying and maintaining eyelash extensions.

180. If Ms. Davis were permitted under the Board's regulations to practice eyelash extensions without a cosmetology or esthetician license, she would provide those services for a charge unsupervised by her apprenticeship instructor.

181. If Ms. Davis were permitted under the Board's regulations to provide eyelash-extension services without a cosmetology or esthetician license, she would cease her cosmetology apprenticeship.

182. Because the Board's regulations require a cosmetology or esthetician license to provide eyelash-extension services, Ms. Davis spent time and money acquiring a Board-approved cosmetology apprenticeship, which allows her to perform eyelash extensions, albeit under the supervision of her instructor, and which may be used to acquire a cosmetology license if she completes 3,000 hours of apprenticeship training.

183. Because the Board's regulations require a cosmetology or esthetician

license to provide eyelash-extension services, Ms. Davis has spent time and money on esthetician courses approved by the Texas Department of Licensing and Regulation. If Ms. Davis were to obtain a Texas esthetician license, and if the Board were to deem a Texas esthetician license “the same” as an Oklahoma esthetician license, Ms. Davis would be a candidate for a reciprocal esthetician license in Oklahoma. The reason Ms. Davis has enrolled in Texas esthetician courses is because the Board requires an Oklahoma esthetician or cosmetology license to practice eyelash extensions, and it is easier and less costly for Ms. Davis to enroll in Texas esthetician courses than in Oklahoma esthetician courses.

184. Because the Board’s regulations require a cosmetology or esthetician license to provide eyelash-extension services, Ms. Davis may provide eyelash-extension services now only under her apprentice instructor’s supervision.

185. Because the Board’s regulations require a cosmetology or esthetician license to provide eyelash-extension services, Ms. Davis has not been able to develop clientele for her own business.

186. Because the Board’s regulations require a cosmetology or esthetician license to provide eyelash-extension services, Ms. Davis may not reestablish her eyelash-extension business or hire other eyelash-extension specialists who have comparable specialized training and who lack a cosmetology or esthetician license.

187. Defendants’ actions threaten Ms. Davis’s ability to survive and prosper. Because of Defendants’ actions, Ms. Davis cannot open her own business to provide eyelash-extension services herself or hire comparably trained eyelash-extension practitioners.

188. But for Defendants’ actions, Ms. Davis would open her own business to provide eyelash-extension services herself.

189. If Ms. Davis were to provide eyelash-extension services without her instructor’s supervision and without obtaining a cosmetology or esthetician

license, she would be under threat of:

- a. criminal prosecution that could include hefty fines and even imprisonment, because violation of the Board's rule requiring providers of eyelash-extension services to hold an esthetician or cosmetology license constitutes a misdemeanor, 59 Okla. Stat. § 199.6(C)(3);
- b. Board-instituted action in a court to have Ms. Davis's unlicensed eyelash-extension services enjoined, 59 Okla. Stat. § 199.3(B)(11);
- c. administrative fines, 59 Okla. Stat. § 199.6(A);
- d. administrative refusal, revocation, or suspension of Board-issued licenses, forcing Ms. Davis to shut down her practice or preventing her from obtaining licenses, 59 Okla. Stat. § 199.3(B)(9); and
- e. other enforcement actions taken under contracts the Board may enter to implement or enforce the provisions of the state's cosmetology laws and the Board's promulgated rules. 59 Okla. Stat. § 199.3(B)(10).

## **CAUSES OF ACTION**

### **Count 1**

#### **Violation of Article II, Sections 2 and 7 of the Oklahoma Constitution— Inherent Rights and Substantive Due Process**

190. Ms. Davis incorporates and realleges the allegations in paragraphs 1 through 189, above.

191. Article II, Section 2 of the Oklahoma Constitution recognizes, "All persons have the inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry."

192. Article II, Section 7 of the Oklahoma Constitution guarantees, "No person shall be deprived of life, liberty, or property, without due process of law."

193. Among the rights secured by these provisions is the right to earn an honest living in the occupation of one's choice, and to conduct business, free from unreasonable government interference.

194. Under Article II, Sections 2 and 7, a law that restricts a person's right to earn an honest living and conduct business must have a real and substantial relationship to public health, safety, or welfare.

195. Under Article II, Sections 2 and 7, a law that impairs an individual's right to earn an honest living and conduct business must be rationally related to a legitimate governmental interest.

196. Under Article II, Sections 2 and 7, a law that impairs an individual's right to earn an honest living and conduct business must not be arbitrary or capricious.

197. Oklahoma's cosmetology laws and the Board's rules, as applied to Ms. Davis, have no real and substantial relationship to public health, safety, or welfare.

198. Oklahoma's cosmetology laws and the Board's rules, as applied to Ms. Davis, do not advance any legitimate governmental interest.

199. Oklahoma's cosmetology laws and the Board's rules, as applied to Ms. Davis, are arbitrary and capricious.

200. The state's police power does not permit the regulation of eyelash-extension services in this manner.

201. Ms. Davis does not object to any legitimate regulation of eyelash-extension services that is rationally, reasonably, and substantially related to public health and safety objectives. Ms. Davis strives to satisfy the highest standards for health, safety, and professionalism. But the state's cosmetology laws and the Board's rules do not serve legitimate public health and safety objectives; in fact, they undermine them.

202. For each of these reasons, Oklahoma's cosmetology laws and the Board's rules as applied to Ms. Davis by Defendants, their agents, and their employees, unconstitutionally deprive Ms. Davis of her right to liberty, the enjoyment of the gains of her own industry, and due process of law protected by Article II, Sections 2 and 7 of the Oklahoma Constitution.

203. Ms. Davis has no other legal, administrative, or other remedy to prevent or minimize the continuing irreparable harm to her constitutional rights that is directly and proximately caused by Defendants' application of Oklahoma's laws and the Board's regulations to Ms. Davis. Unless Defendants are enjoined from continuing the above-described violations of Article II, Sections 2 and 7 of the Oklahoma Constitution, Ms. Davis will continue to suffer great and irreparable harm.

**Count 2**  
**Violation of Article II, Section 7 of the Oklahoma Constitution—**  
**Equal Protection**

204. Ms. Davis incorporates and realleges the allegations in paragraphs 1 through 189, above.

205. Article II, Section 7 of the Oklahoma Constitution guarantees, "No person shall be deprived of life, liberty, or property, without due process of law."

206. Under Article II, Section 7, persons are entitled to equal protection of the laws.

207. Under Article II, Section 7, regulatory classifications must have a real and substantial relationship to public health, safety, or welfare.

208. Under Article II, Section 7, regulatory classifications must be rationally related to a legitimate governmental interest.

209. Under Article II, Section 7, regulatory classifications must not be arbitrary and capricious.

210. Under Article II, Section 7, 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.

211. Requiring Ms. Davis to attend cosmetology school and obtain an esthetician's license, while not requiring instruction or training in eyelash-extension services, has no real and substantial relationship to public health, safety, or welfare.

212. Requiring Ms. Davis to attend cosmetology school and obtain an esthetician's license, while not requiring instruction or training in eyelash-extension services, is arbitrary and capricious.

213. A person without an Oklahoma esthetician license who wants to provide eyelash-extension services, like Ms. Davis, is similar to licensed estheticians because the 600 hours of training and two exams that estheticians have completed do not cover eyelash extensions.

214. A person without an Oklahoma cosmetology license who wants to provide eyelash-extension services, like Ms. Davis, is similar to licensed cosmetologists because the 1,500 hours of training and two exams that cosmetologists have completed do not cover eyelash extensions.

215. The Board's regulations treat Ms. Davis, who wants to practice eyelash extensions without an Oklahoma esthetician or cosmetology license, differently from licensed estheticians and cosmetologists, by allowing licensed estheticians and cosmetologists to practice eyelash extensions while forbidding Ms. Davis from doing the same.

216. Ms. Davis is different from estheticians and cosmetologists because Ms. Davis wants to practice eyelash extensions only, whereas estheticians and cosmetologists provide other services. Defendants' regulations treat Ms. Davis identically to estheticians and cosmetologists by subjecting them to the same

licensing requirements to practice eyelash extensions and other services.

217. Ms. Davis is different from licensed estheticians and cosmetologists who meet the minimum requirements under Oklahoma law to obtain their licenses, because Ms. Davis has extensive training in eyelash extensions, whereas estheticians and cosmetologists meeting the minimum licensing requirements received no training in eyelash extensions. Defendants' regulations treat Ms. Davis the same as cosmetology and esthetician licensees by subjecting them to the same requirements for a license to perform eyelash extensions.

218. Ms. Davis is different from cosmetology and esthetician apprentices who lack training in eyelash extensions because Ms. Davis has extensive training in eyelash extensions. Defendants' regulations treat Ms. Davis the same as those inexperienced cosmetology and esthetician apprentices by prohibiting both Ms. Davis and inexperienced apprentices from practicing eyelash extensions without the supervision of a licensed apprenticeship instructor.

219. Ms. Davis is similar to salon assistants because Ms. Davis wants to work in a salon without providing hair, makeup, or many other cosmetology and esthetician services; she wants only to provide a service not addressed by the cosmetology or esthetician curriculum and to perform tasks like those of salon assistants, such as cleaning the salon and equipment, organizing supplies, and scheduling appointments. Defendants' regulations treat Ms. Davis differently from salon assistants by requiring Ms. Davis to hold an esthetician or cosmetology license while not requiring salon assistants to hold a license.

220. Ms. Davis is similar to holders of out-of-state cosmetologist, esthetician, manicurist, or barber licenses who practice crafts they were trained to do, because Ms. Davis holds an out-of-state eyelash-extension license to practice the craft of eyelash extensions, which she was trained to do. Defendants' regulations treat Ms. Davis differently from those holders of out-of-state cosmetologist, esthetician,

manicurist, and barber licenses by disallowing her to obtain a reciprocal license without completing additional training in a craft outside her area of practice.

221. The state's police power does not extend to the regulation of Ms. Davis's eyelash-extension services in this manner.

222. For each of these reasons, Oklahoma's cosmetology licensing laws and regulations as applied to Ms. Davis by Defendants, their agents and employees, unconstitutionally deprive Ms. Davis of equal protection of the laws.

223. Ms. Davis has no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to her constitutional rights that is a direct and proximate result of Defendants' application of Oklahoma's laws and regulations to her. Unless Defendants are enjoined from committing the above-described violations of Article II, Section 7 of the Oklahoma Constitution, Ms. Davis will continue to suffer great and irreparable harm.

#### **PRAYER**

**WHEREFORE**, Ms. Davis respectfully requests the following relief:

A. Entry of judgment declaring that 59 Okla. Stat. §§ 199.6(C), (D), 199.8(B), 199.11(A)(7)–(10) and Okla. Admin. Code §§ 175:10-7-17(a), -7-33(h), -9-55(b) are unconstitutional when applied to Ms. Davis;

B. An order temporarily enjoining Defendants from enforcing Oklahoma's cosmetology laws and regulations upon Ms. Davis;

C. An order permanently enjoining Defendants from enforcing Oklahoma's cosmetology laws and regulations upon Ms. Davis;

D. An award of nominal damages in the amount of \$1 for violations of the Oklahoma Constitution;

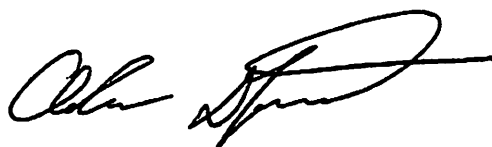
E. Any costs and attorneys' fees to which Ms. Davis may show herself entitled; and



F. All other relief to which Ms. Davis may show herself entitled.

Dated: September 6, 2022

Respectfully submitted,



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***Counsel for Plaintiffs***

\* Applications for admission *pro hac vice*  
pending

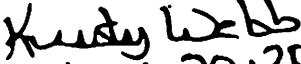
**VERIFICATION**

STATE OF OKLAHOMA            )  
  ) ss.  
COUNTY OF OKLAHOMA )

Brandy Davis, of lawful age, being first duly sworn upon oath, states that she has personal knowledge of the allegations set forth in paragraphs 2-4, 9, 13, 25-52, 69-123, 167, 171, 174, 176-88, 201 of the foregoing Verified Petition, and she has read the foregoing Verified Petition and the matters stated in the cited paragraphs are correct to the best of her knowledge, information, and belief.

  
\_\_\_\_\_  
Brandy Davis

SUBSCRIBED AND SWORN to before me 9-16, 2022.

Notary Public   
My commission expires: 1-20-2026  
My commission number: 27000939

