

Blooming Nonsense

Do claims about the consumer benefit of licensure withstand empirical scrutiny?

BY DICK M. CARPENTER II | *Institute for Justice*

Leslie Massony and Monique Chauvin are established experts in their field, with awards and happy customers testifying to the quality of their work. Nonetheless, after years in the business, they had to take a state test in order to continue legally practicing their trade. The test included a written assessment of industry knowledge and a multi-hour practical exam scored by judges already in the trade. The practical exam required them to use special tools to complete delicate tasks with often fragile and slowly dying organisms under the pressure of time and scrutiny.

Passing this test meant Massony and Chauvin could officially join an exclusive club of practitioners protected by a state law adopted during Franklin Roosevelt's first term as president. They are now licensed by the State of Louisiana to practice ... floristry.

Louisiana is the only state in the nation to require government permission to arrange flowers, but this kind of occupational license is hardly unique. On the contrary, occupational licensure now affects more American workers than minimum wage laws or unionization, according to noted occupational licensure expert and University of Minnesota economist Morris Kleiner.

In his fall 2006 *Regulation* article "A License for Protection," Kleiner used census data to estimate that the percentage of the workforce in licensed occupations had grown from 4.5 percent in the 1950s to about 20 percent by 2000. More recently, Kleiner and coauthor Alan Krueger (former assistant secretary for economic

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policy in the Obama Treasury Department) upped the estimate to about one in three workers: 35 percent of workers are either licensed or certified by government, and 29 percent are fully licensed.

Often, government licenses occupations that are perfectly suited for new or returning members of the workforce who may be short on formal training and capital — occupations such as African hair braiding, manicuring, taxi driving, and interior design. While requirements for obtaining licenses vary across localities and occupations, states require tests for occupations such as travel guides, taxidermists, home entertainment installers, pest control workers, auctioneers, and interpreters for the deaf.

As numerous studies have shown, the costs of these regulations are both predictable — fewer practitioners in the occupation, artificially inflated wages, higher prices for consumers — and not so predictable. In a 2009 study of interior design regulations, for example, Kenyon College economists David Harrington and Jaret Treber found occupational barriers to entry disproportionately excluded minorities and older workers.

Defenders of occupational licensing typically claim it protects public health and safety and benefits consumers by ensuring quality products and services from quality producers. For example, in 2004, an official with the Louisiana state agriculture commission testified that the florist license protects consumers and florists from infected dirt. One wonders how consumers and florists in the other 49 states have survived.

On the issue of quality of service, the head of a statewide florists' organization told the Louisiana legislature in 2004 that the tests were "necessary to protect consumers and ensure that the

products florists put out are up to snuff.” In March 2010, another florists’ association representative asserted on the *Stossel* program that licensing ensured practitioners have an “understanding of the principles and practices of floral arranging and the mechanics that are involved.”

This claim generated plenty of guffaws from *Stossel*’s studio audience. And, in fact, while some scholarly research finds positive effects from licensing, a growing body of literature calls into question claims that licensing improves quality in occupations including teachers, interior designers, construction trades, dentists, and physicians.

In January 2010, I put the quality-of-service claims advanced by defenders of Louisiana’s florist licensing regime to the test with an original experiment. The results show that, as *Stossel*’s audience recognized, the idea that licensing florists improves the quality of their work is blooming nonsense.

Judging Flowers and Florists

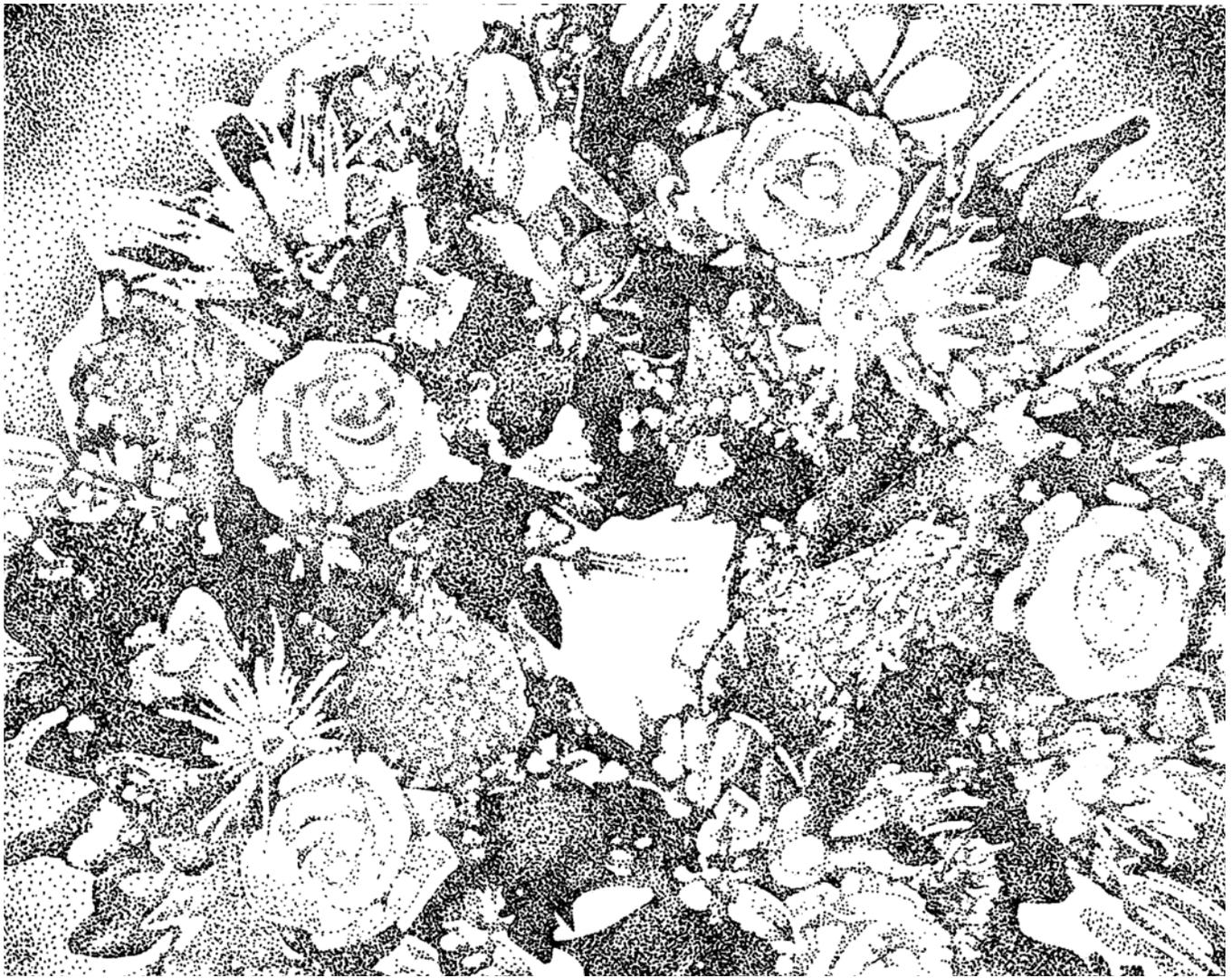
To see whether floral arrangements for sale in Louisiana are indeed appreciably superior to — or even appreciably different from — those made by unlicensed florists, I conducted a randomized field experiment. Twenty-five arrangements were purchased from randomly selected retail stores in regulated Louisiana and 25 from stores in unregulated Texas. Retailers

were given a theme — sympathy — and some general parameters in which to work. The florists had no idea their arrangements would be used in the experiment, so the arrangements were typical of those any consumer might buy.

I then asked a panel of 18 randomly chosen florists — eight from Texas and 10 from Louisiana — to rate the arrangements on a scale from 10 to 50 using criteria such as proportion, balance, color, form, and workmanship. Judges did not know the origin of the arrangements.

Not surprisingly, judges rated the Texas and Louisiana arrangements essentially the same, giving the Texas arrangements an average score of 25 to Louisiana’s 24.05, a difference that is not statistically significant. Using multiple regression to control for the state of origin of the judge, the freshness of the arrangement, and the cost of the arrangements, I found that there is essentially no difference between arrangements from licensed and unlicensed florists.

Not only does licensing have no effect on the quality of arrangements, but I found that it also has no effect on the quality of florists. The theory of consumer benefit from licensing is that consumers receive better products because licensing improves the pool of producers by weeding out the less capable. If Louisiana’s law had that effect, one would expect that Louisiana florist-judges, all of whom were licensed, would be more discerning in their judgments and rate the arrangements systematically differ-



ently than the Texas judges. However, using Intra-Class Correlation, a form of analysis that examines the consistency of multiple judges across items, I found a high degree of consistency ranging from 0.749 to 0.933 between the judges. The data show licensed florists are not more discriminating than unlicensed ones.

Better Business Bureau complaint data confirm the experiment's finding that Louisiana's license had little effect on quality. If Louisiana's regulation was beneficial, one would expect to see fewer complaints against florists in Louisiana compared to nearby states. Yet results revealed very similar complaint rates (that is, complaints per business) in Louisiana, Mississippi, and Arkansas, and only moderately higher complaint rates in Texas. Statistical testing revealed no significant differences.

Judging Licensure

When I revealed to the florist-judges — in focus groups after the experiment — that the arrangements came from different states, they were not surprised that the ratings did not differ at all based on state of origin, even after being reminded that Louisiana licenses florists and Texas does not. They pointed out that the quality of the work reflected the efforts of individual businesses to please customers more than being a function of licensing requirements.

According to one florist-judge, "If you don't do good work, you're not going to have any business." The suggestion that using licensure to restrict market entry might protect the public from low-quality or unsafe florists and floral arrangements provoked skeptical laughter from the focus groups.

Apart from a few judges who approved of using licensure to exclude people who work out of their homes or otherwise sell arrangements outside of a traditional retail shop, the Louisiana judges were uniformly critical of the licensing regime. One even reported that a competing floral shop near her store repeatedly called the Louisiana Horticultural Commission, which oversees floral licensing, with trumped-up complaints as a way to harass and damage her business.

Many in the focus groups felt that instead of producing high-quality florists, licensure served two purposes: raising money for the state through licensing and testing fees and shutting out competition. At the time of the experiment, applicants had to pay the state \$150 to take the full licensing exam and \$100 for each re-test of the design portion. Study booklets cost \$50 and license renewal costs florists \$75 a year.

All of the Louisiana judges criticized the licensing exam for testing knowledge on outdated techniques that went out of fashion decades ago. Moreover, floral design requirements were dismissed as "ugly" and something consumers would not buy.

Consumers vs. Bureaucrats

With such observations, the focus group participants provided experience-based commentary on the ironic relationship between occupational licensure and quality of goods or service. As schol-

ars for some decades have noted, licensure weakens competitive pressures in an occupation or profession, resulting in the retardation or distortion of innovation and technical progress. In part, this is because the nature and organization of services are shaped by producer interests rather than client demand.

One of the more recent scholars to discuss this idea is UCLA sociologist Stefan Timmermans in a recent issue of the journal *Work and Occupations*. He notes that the standardization and bureaucratization of the workplace through licensure (which he calls "market shelter") stifles innovation by cementing in place and time how work is done. In a dynamic social and economic environment, practitioners find themselves beholden to bureaucratic requirements rather than consumer demand.

As if he were trying to prove that point, the former head of the Louisiana horticulture commission, Bob Odom, once defended the state's law by asking, "If [aspiring florists] can't take the instruction and pass the exam, how can they do an arrangement that you and I want to buy?"

How indeed. By Odom's logic, Leslie Massony is a fluke, a miracle, perhaps a prodigy. Without a license — she previously failed Louisiana's florist test twice — she was published in prominent floral design books. For Massony, Chauvin, and the countless other people aspiring to work in a walled-off occupation, that is the true test. As Massony puts it, "The customers are the people that really count."

Who Really Benefits?

So if — as my experiment indicates, scholars have long noted, and practitioners observe — occupational licensure does little, if anything, to improve quality for consumers, why do such regulations persist? The florist focus group — and the work of economists and sociologists who study occupational licensing — suggest the real purpose: protecting financial rewards for existing practitioners by limiting competition. According to the Economic Census, Louisiana has 332 floral retailers that generate \$76.8 million in annual revenues. Licensure enables incumbents to enjoy a greater share of that revenue.

As additional evidence, consider the surprisingly powerful "florist lobby" in Louisiana, which includes the state florists' association. For years the lobby fought hard and successfully against reform. In 2004, a bill that would have eliminated florist licensing passed the Louisiana House of Representatives by a vote of 93-2, but in classic public choice fashion licensed florists packed a subsequent hearing in the Senate Agriculture Committee as a show of concentrated opposition. The committee voted unanimously to kill the bill.

Subsequent anti-licensing efforts also ran into significant opposition. In 2008, the Louisiana House passed a measure eliminating the highly subjective practical portion of the florist licensing test, but the Senate modified the bill, instructing the horticulture commission simply to put less weight on that part of the exam. The change reduced the fail rate from 56 percent to 23 percent.

It was not until 2010 that regulation opponents finally broke down the barrier to entry — at least in part. After the Institute for Justice (IJ) sued the state for violating the constitutionally pro-

tected right to earn an honest living, a bill was introduced in the Louisiana legislature to repeal the florist licensing law. It passed, but not before being modified to repeal only the arrangement portion of the test, the most burdensome part of the regulation. The written test and licensure fees remain.

Such deregulation is rare, however, and usually happens only after overcoming significant industry resistance. For example, when the Mississippi legislature considered removing a requirement that African hair braiders earn a 1,500-hour cosmetology license just to braid hair, state bureaucrats and cosmetologists staged a massive effort to protect their turf. It was only after an equally Herculean effort led by Tupelo-based hair braider Melony Armstrong that the law changed in 2005.

The American Society of Interior Designers (ASID) and its many state affiliates have spent 30 years lobbying for restrictions on interior designers. When IJ began challenging those laws, the industry fought back to preserve their market shelters. When state legislatures, in response to IJ lawsuits, considered bills to reduce the regulation of their occupation, interior designers turned out en masse to lobby against reform. The ASID crafted talking points and circulated them to members and even hired university interior design academics to write reports, all for the purpose of responding to IJ's position and research. Despite the stiff resistance by industry groups, four states so far have loosened the regulatory grip on interior design.

But these remain among the few exceptions. As Queensland University of Technology economist Jason Potts wrote in a recent issue of *Economic Affairs*,

Occupational deregulation almost never occurs. Instead, the licensing of occupations is continually expanding frontier, ever upgrading old trades and new services to the mantle of professional status, and always justified in service of the public good. On and on it rolls, "professionalizing" the workforce as it goes with layers of new regulation and board certification, all the while systematically redistributing rents from those outside the licensing system to those inside it, raising rents across the economy, inhibiting experimentation in new business models, and stifling innovation in service delivery.

In Florida, for example, aggressive lobbying by interior designers in the spring of 2009 helped defeat a bill that would have exempted office furniture dealers — who have frequently been sanctioned by the state Board of Architecture and Interior Design for offering forbidden "space plans" in connection with the sale of specific items like cubicles — from Florida's interior design law.

Market and Voluntary Alternatives

The losers from all of this regulation are consumers, entrepreneurs, and workers alike. In a forthcoming article in the *British Journal of Industrial Relations*, Kleiner and Krueger estimate that occupational licenses increase wages as much as 15 percent, typically borne by consumers in the form of higher costs. Our economy limps along as entrepreneurship is strangled by the more than 1,000 occupations licensed in the United States. And work-

ers lose because many of the occupations that would be ideal for those entering or re-entering the workforce are fenced off.

Occupational licensing eliminates the first rung of the economic ladder. The result is that rather than encouraging positive economic activity, states discourage it with no rational evidence to support their actions.

Finding quality goods | This is not to say that the public finds no value in "signals" of quality and competence commonly associated with occupational licensure. Instead, the question is whether such signaling requires state-sanctioned licensure that comes with real costs instead of other forms of signaling that come without such costs. One example of the latter is "market transparency," where consumers receive signals through warranties or brand names. Other signaling occurs through third-party consumer organizations, such as the Better Business Bureau, and more contemporary versions built on new information and communication technologies, such as Angie's List.

There is also credentialing through private or nonprofit professional associations for practitioners who successfully demonstrate the requisite knowledge, skills, and/or education. Examples include Automotive Service Excellence certification for automobile mechanics, Certified Travel Counselor designation for travel agents, or Certified Financial Planner appellation for financial planners.

Specific to florists, the American Institute of Floral Designers offers certification that requires a prescribed educational background, a written exam, and a practical test to earn the title of Certified Floral Designer. State floral associations also offer similar designations. For example, both Louisiana and Texas — the states included in my experiment — have professional associations that offer a "master florist" title. This certification requires the completion of a series of training workshops and a multi-stage testing regime before certification. This certification could serve the same signaling function to prospective florist employers and consumers without the costs of licensure.

Given that the legislature stripped the florist licensing scheme of the practical exam, Louisiana's private certification program may become more active, as the industry is finally significantly free from regulation that has been on the books since the early days of the New Deal. Louisiana now has a chance to see what (mostly) open entry in the floral market looks like. Would that consumers and entrepreneurs across the country facing similarly unjustified barriers to entry had the same opportunity to enjoy the benefits of an open and dynamic marketplace. **R**

READINGS

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