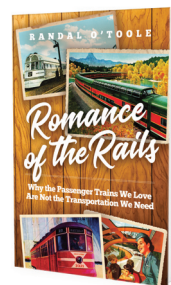


**FREEDOM
IN THE 50
STATES**
Who's the
freest?
PAGE 3



**CLARK
NEILY**
10 years
after
Heller
PAGE 16



**RANDAL
O'TOOLE**
How a
train fan
lost faith
PAGE 12

Cato Policy Report

SEPTEMBER/OCTOBER 2018

VOL. XL NO. 5

The Tangled Mess of Occupational Licensing

BY ANGELA C. ERICKSON

Kine Gueye is a hair braider in Kentucky. She learned to braid hair as she was growing up in Senegal, where “African hair braiding” is a way of life. The art of hair braiding extends back thousands of years in West Africa, and it carries strong social and cultural significance for Gueye and her customers.

When Gueye arrived in the United States, she turned her skills into a job. She sometimes worked 12 hours a day braiding hair in her Louisville home, earning between \$80 and \$250 per customer. As her practice expanded, so did her family. She got married, had children, and moved her practice into a storefront.

Then the government came knocking. “She told me she was from the state Board of Cosmetology . . . and that I was not allowed to do hair without a license,” Gueye told the Urban News Service. “I told her I had been braiding for years, and I did not know you had to have a license.”

Braids, like cornrows, micro braids, and Senegalese twists, require no chemicals or heat and provide relatively easy maintenance

for kinky hair. In contrast, the typical styles offered in American salons often use caustic chemicals and heat to straighten hair. Properly handling those chemicals is one of the skills that cosmetology schools teach.

It's worth noting that until very recently

Kentucky cosmetology schools didn't teach African hair braiding, and that Gueye doesn't use chemicals in her practice.

Despite her decades of experience and her many happy customers, the decision that the

Continued on page 6



ANGELA C. ERICKSON is the author of *Barriers to Braiding: How Job-Killing Licensing Laws Tangle Natural Hair Care in Needless Red Tape* and *Putting Licensing to the Test: How Licenses for Tour Guides Fail Consumers—and Guides*, and coauthor of the first edition of *License to Work: A National Study of Burdens from Occupational Licensing*.

Federal Communications Commission Chairman AJIT PAI speaks to audience members at Cato in June. Pai participated in a one-on-one interview at a #CatoDigital event, Net Neutrality: Six Months Later, to discuss evidence that the repeal of the Obama-era regulation has not been the disaster predicted by critics, and in fact investment in broadband infrastructure has already increased.

Continued from page 1

government put before Gueye was difficult, if straightforward: spend hundreds of hours and thousands of dollars to get right with the state—and stop earning money in the meantime—or choose another line of work.

The burden Kentucky's government imposed on Gueye was arbitrary, expensive, and a threat to her family's financial security. Her experience is sadly common.

Licensing directly affects more workers today than union membership and the minimum wage combined, but it wasn't always this way. Some government restrictions on who can perform what job have been around for decades. In the 1950s, 1 in 20 workers needed government permission in the form of a license to work. Today licensing has ballooned to ensnare 1 in 4 workers. Most of that expansion is new license regulations for previously unlicensed occupations and the broadening scope of existing licenses.

Licenses are now required not just for doctors, dentists, and lawyers but also for shampooers, makeup artists, travel agents, auctioneers, and home entertainment installers. According to the Council of State Governments, 1,100 occupations were licensed in 2003.

State lawmakers once uncritically accepted dubious arguments for licensing rooted in quality assurance and public health or safety. Only in the past decade have they started paying attention to licensing's substantial effects on wages, consumer prices, and unemployment. Today, state legislators have begun to view licensing for what it often is: naked rent-seeking behavior, compelling would-be entrepreneurs and workers to buy expensive and needless training to secure a license.

WHY OCCUPATIONAL LICENSING?

Cosmetology licensing regulations were created in the 1930s in response to barbering boards that cracked down on hairdressers who were also cutting hair. Hairdressers pushed back and urged the creation of a new license separate from barbering (today it's

“Today licensing has ballooned to ensnare 1 in 4 workers.”

often under the same licensing board). Much like barbers before them, cosmetologists have also argued for the expansion of their territory. Over the decades cosmetologists have been successful in sweeping numerous practitioners under their restrictions—including estheticians, shampooers, manicurists, makeup artists, hair braiders, and eyebrow threaders.

The story of state occupational licensing is the same across most occupations. Insiders want to block outsiders—people they deem less professional—from practicing their occupation. Thus, they lobby state legislators or licensing boards to restrict entry into the occupation.

Licensing advocates will typically argue that requiring a state license is necessary to guarantee quality or to protect public health and safety from unprofessional or dangerous workers. However, advocates lobby vigorously to protect their turf by creating barriers to entry with scant evidence that those barriers will improve quality, public health, or public safety. Once an occupation is licensed, workers are motivated to increase the costs to outsiders by changing requirements to include more hours of education, higher grades to pass exams, or increased fees. They are also motivated to block alternatives like Gueye's hair braiding services.

One goal of licensing is to make the occupation appear more professional and standardized. The existence of a license allows licensees to promote the work they do as higher quality. By appearing more professional, workers in the occupation can charge more. Restricting competition also adds to the increased revenues licensees receive. The additional revenues to cosmetologists alone cost consumers \$1.7 billion a year, according to a 2002 paper by economists A. Frank Adams, John D. Jackson, and Robert B. Ekelund.

Another stated goal of licensing is to protect public health and safety. Thirty-three states license contractors for home improvements such as landscaping, painting, roofing, or drywall installation. The California Contractors State License Board claims to protect “consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public.” Like most occupational licensing boards, the California board has not had to demonstrate that its restrictions actually improve health and safety. The only research done in this area, a 2014 Bureau of Labor Statistics report, shows that licensing has had no effect on worker safety for electricians.

BARRIERS FOR WORKERS

Once Gueye became aware that it was illegal for her to practice her 30-year profession in Kentucky, she faced some hard decisions. Workers like Gueye must decide whether the costs and benefits of licensing are worth entering an occupation. Those who choose to become licensed will benefit from being able to charge more for their services. However, those who cannot afford to become licensed may be out of work, choose a less-preferred occupation, or work illegally.

Gueye could have gotten a cosmetology license, but the education alone would have cost her up to \$20,000 and 420 days that she could not spend earning a living. Instead she would have spent time learning about hair cutting, facials, manicuring, hair removal, and numerous other things that have nothing to do with her business.

In occupations whose workers earn less than the national median income, the average licensing costs include nearly a year of education or training, passing an exam, and paying licensing fees (not to mention the costs of education), according to the latest *License to Work* study by the Institute for Justice. For workers on the lowest rungs of the economic ladder, these costs may be prohibitive. The more it costs to enter an occupation, the fewer people will work in it, leaving unlicensed

workers to crowd into other occupations.

Costs vary widely among states. For licensed contractors, education requirements vary from zero hours in Washington to 4 years in California. Education requirements for hair braiders can range from nothing to 2,000 hours. This time and cost commitment has real effects on employment. In 2012, Mississippi had more than 1,200 registered braiders who were required to complete zero hours of education. Neighboring Louisiana had only 32 licensed braiders who were required to complete 500 hours of training.

The varied requirements for licensing among occupations have no apparent link to health or safety. Cosmetologists, on average, must complete a year or more of education, whereas emergency medical technicians, who literally save lives, must complete only a month of training.

Gueye could have responded by moving her business back into her home while trying to hide from the government. Doing so would have meant facing potential fines and dangerous customers. She had moved into a storefront because she felt unsafe inviting strangers into her home to braid their hair. “One day we do a lady’s hair, and afterwards, she gets a knife and says she’s not going to pay and you can do nothing about it,” Gueye explained to Louisville’s WAVE TV.

Unlicensed workers operating in the shadow (or informal) economy have a harder time standing up to such threats. Those workers will earn less than they could out in the open. Hiring employees and paying taxes might expose them as unlicensed operators. In 2012 the California contractors board estimated that the shadow economy for home improvement was worth between \$60 billion and \$140 billion each year.

SMART CONSUMERS

Licensing harms consumers by increasing the price of services and decreasing innovation—without ensuring quality. Consumers may purchase fewer services. For example, those in states with higher costs for cosme-

“Occupational licensing impedes safe alternatives and innovations that benefit consumers.”

tology licenses purchase 14 percent fewer services, according to the paper by Adams, Jackson, and Ekelund. Consumers who choose to save money by hiring unlicensed practitioners may face fewer legal protections. And people who chose to save money by performing potentially dangerous work themselves, like electrical work, place themselves at a greater risk of harm.

On top of those tradeoffs, consumers still face the costs of finding reputable service providers, despite claims that occupational licensing establishes professionalism and quality. Remember experiences you may have had with a bad haircut, a slow home contractor, an angry nurse, or a painful dental procedure.

Licensing is not a substitute for reputation. Word of mouth is a typical method for finding quality service providers, even in licensed occupations. Today it is easier than ever to find a provider who will best fit your needs. Technology reduces search costs through website reviews from Yelp, Angie’s List, and TripAdvisor, for example, and through crowdsourcing on sites like Facebook and Reddit.

In addition to failing to ensure quality, there is little to no evidence that occupational licensing improves health and safety outcomes for consumers. And consumers do not require occupational licenses to feel safe. Consider restaurants. No one working in a restaurant is required to obtain an occupational license. Yet many Americans eat out four to five times a week. Despite the lack of occupational licenses, Americans feel confident enough to consume food prepared at restaurants. Instead of creating barriers for restaurant workers, health departments and customers

rely on inspection results and complaints to ensure safety.

Occupational licensing also impedes safe alternatives and innovations that benefit consumers. Although hair braiding, for example, has been around for thousands of years, it was not taught in cosmetology schools until recently (and is still not widely taught). As braids became more popular, cosmetology boards and associations lobbied lawmakers to add hair braiding to the licensing laws—and hair braiders became outlaws.

The same is true in other areas. In 2001 Crest introduced Whitestrips, a product that allowed people to whiten their teeth in the comfort of their home. Entrepreneurs began offering similar products (approved by the U.S. Food and Drug Administration) to consumers in mall kiosks and spas. However, dental boards and associations argued that the entrepreneurs who allowed customers to use these products at their businesses needed to be licensed dentists.

Technology has made it easier not just for consumers to search for providers but also for providers to communicate with customers remotely. But licensing boards are trying to restrict services—such as a simple online eye exam, medical advice by phone or Skype, or online nutritional advice—for consumers in remote areas or those who have difficulty leaving their homes.

THE FUTURE IS BRIGHT

Gueye did not seek out a cosmetology license. She did not find a different job. She refused to stay underground. Instead, Gueye fought the government’s stifling regulations. She fought alongside other braiders in Kentucky to defend their right to earn an honest living performing their cultural trade. In a win for Kentucky’s hair braiders, Governor Matt Bevin signed a bill in 2016 exempting them from the state’s cosmetology regulations.

Fortunately, workers are beginning to push back, and policymakers are beginning to reform occupational licensing across the country. Kentucky is one of 10 states that have recently

exempted hair braiders from cosmetology licensing. Michigan has eliminated 7 occupational licenses—including nutritionists, auctioneers, community planners, and interior designers. New Jersey's governor recently pocket-vetoed the creation of 7 new licenses—such as music therapists, drama therapists, dance therapists, and pool and spa contractors.

Arizona recently passed a bill, drafted by the Goldwater Institute, requiring the government to provide evidence that regulations imposing costs on workers will in fact keep people safe. This innovative law requires evidence that a new licensing regulation will protect public health and safety. It also empowers workers harmed by current regulations to ask the agency to repeal or modify the barriers.

State lawmakers are also challenging local licenses. Wisconsin recently banned local governments from creating new local occupational licenses. State Representative Dale Kooyenga plans to introduce legislation that would remove existing local licenses, like those for Milwaukee's snow plow operators, limousine drivers, home security businesses, and parking lot operators.

Although licensing is primarily a state and local issue, the federal government has also taken action. In 2015 the Obama White House published a report describing the

“We can now be free to work and earn a living without fear.”

problems of licensing and calling for widespread reform. That same year the Supreme Court ruled against a licensing board, deciding that boards made up of practitioners are legitimate targets for antitrust litigation (*North Carolina Board of Dental Examiners v. Federal Trade Commission*).

Congress is now considering a bill in response to the Federal Trade Commission case that would help states reform occupational licensing rules. The Restoring Board Immunity Act would give limited legal immunity from antitrust lawsuits if states do one of two things: periodically review licensing boards to detect and end anticompetitive behavior, or place the burden on the government to show that occupational licensing regulations are necessary (as Arizona has already done).

CONCLUSION

On the day of the hair braiders' victory, Gueye told the Institute for Justice, “This is a wonderful day for all the braiders. We can now go about and be free to work and earn a living without fear. Like millions we can now

live our American Dream.” Gueye's American Dream supports her community by creating jobs and supplying wanted services.

No one should have to spend hundreds of hours obtaining an education that is irrelevant or unnecessary to work in their occupation of choice. Regulators must provide compelling evidence in favor of licensing restrictions before they can prevent people from earning an honest living.

It is time for a cultural shift in the way governments think about occupational licensing. Instead of taking incumbent practitioners at their word, officials need to ask a set of questions: Is there a need for regulation that cannot be solved by the market? What is the evidence that the stated issue is really a problem? What is the minimum level of regulation that would solve that problem?

It may be obvious to start with hair braiders, auctioneers, and other lower-income jobs, but these questions also ought to apply to the various restrictions placed on doctors, dentists, and lawyers. For example, why should an orthodontist be barred from offering low-cost teeth cleanings to his community because he is not merely a dentist?

Once state and local governments remove unnecessary barriers to entry, more workers like Kine Gueye will be able to have the American Dream. ■

MONETARY POLICY 10 YEARS AFTER THE CRISIS

CATO INSTITUTE'S 36TH ANNUAL MONETARY CONFERENCE
NOVEMBER 15, 2018 • WASHINGTON, D.C.

A decade down the road, we are again facing the possibility of economic turmoil as the Fed and other central banks exit their unconventional monetary policies. National experts and leaders join together for a day of debate and analysis.

CATO
INSTITUTE

CENTER
FOR MONETARY
AND FINANCIAL
ALTERNATIVES

DETAILS AND REGISTRATION AT
CATO.ORG/MONCON • #CatoMonCon

