

Burgos, Alexander N

Subject: FW: [External] Please submit this as to the authority of Statues govern NCPSB and rules

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From: Joseph Gibson III <joegibsonishome@yahoo.com>

Sent: Wednesday, October 11, 2023 3:34 AM

To: rrc.comments <rrc.comments@oah.nc.gov>

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requirements necessary for each license, permit or certificate issued by Private Protective Services. In addition, license applicants are responsible for complying with relevant North Carolina law, Private Protective Services N.C.G.S. 74-C, and the Board's Administrative Rules and Regulations under Private Protective Services 14B N.C.A.C. 16.

All applicants must:

Be at least 18 years of age with a high school degree or equivalent.

Be a US citizen or a resident alien.

Be of good moral character with temperate habits (no criminal record, etc.).

ALSO CONFLICTS WITH legislation that may have escaped the notice of some criminal law practitioners, the North Carolina General Assembly enacted significant reforms this year to the state's occupational licensing laws. The reforms, which apply to applications for licensure submitted on or after October 1, 2019, significantly lessen legal barriers to obtaining an occupational license for people with a criminal conviction. The legislation, S.L. 2019-91 (H 770), received bipartisan support, passing both chambers unanimously.

Claims that the Constitution prohibits business licensing requirements have proliferated in recent years. The U.S. Court of Appeals for the

District of Columbia Circuit recently concluded that a District requirement that tour guides obtain business licenses violated the First Amendment.¹ The Sixth Circuit likewise held that a licensing scheme for funeral directors violated due process and equal protection under the Fourteenth Amendment.² These cases mark a sea change in the treatment of economic liberty claims both by the courts and in U.S. legal culture.

These business licensing cases raise deep and pressing questions about the purpose and scope of rights and constitutional JUDICIAL REVIEW more broadly today. Underlying these debates are competing conceptions of constitutional liberty. One view, perhaps the ascendant one, reflects free-market libertarian values, whereas others understand the First and Fourteenth Amendments to reflect ideals such as democratic self-governance, anti-subordination, or civic republicanism. Resolving disputes about the constitutional status of business licensing requires that we grapple with those deeper questions.

In the modern era, until recently, business licensing, like most of life, was not the subject of constitutional litigation.³ Regulations requiring you to get a license before working as a doctor, a lawyer, or a candlestick maker (not to mention a tour guide or a securities trader), were instead part of the vast swath of non-constitutionalized economic life. If you did not like the business licensing regime in your area and asked a lawyer for advice, she would most likely have given you tips on how to achieve compliance or perhaps suggested that you organize politically to change the regulation.

Challenging the licensing law under the Constitution would not have come to mind. Recent challenges to occupational licensing regimes under the First and Fourteenth Amendments are one facet of these larger trends. Raised as free speech claims, these challenges contribute to broader efforts to expand the scope of the First Amendment in economic life. When brought under the Fourteenth Amendment, occupational licensing cases seek to reinvigorate economic substantive due process and revive *Lochner*-type principles under their original constitutional hook. In either First or Fourteenth Amendment form, these cases contribute to a moment in which advocates are seeking more stringent review of economic liberty claims.¹⁵

Recent occupational licensing cases have provoked considerable disagreement and created several circuit splits. The Fifth Circuit and District of Columbia Circuit have diverged, for instance, over whether a requirement that tour guides acquire a business license violates the First Amendment.¹⁶ And the circuits have likewise split over whether, in the context of other business licensing regimes, a desire to favor one intrastate industry or group over another constitutes a rational basis under substantive due process.¹⁷ Occupational licensing is being pushed from being largely a non-constitutional issue to being a constitutional one. The fact of this conversation—of these cases, of this collection—sheds light on deep questions in constitutional discourse today. The ambit of the Constitution’s more stringent review is being pushed to expand more broadly into economic affairs. These shifts raise deep questions about our constitutional system. They challenge us to ask what sorts of activities should be devoted to politics (as protected by lax or no judicial review) versus law (as defended by more stringent scrutiny). They challenge us to consider substantively conflicting notions of liberty and their relationship to constitutional review—including whether liberty is only freedom from regulation, or also freedom of self-government. To date, however, the chief public arguments in favor of more stringent constitutional review of occupational licensing regimes have not addressed themselves to, let alone answered, those questions.

mY COMPLAINT is with in the rules and Statues the board is in conflict with its very own rules and the governing statues

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