

COPY

IN THE CHANCERY COURT OF  
DAVIDSON COUNTY, TENNESSEE  
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

ELIAS ZARATE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE TENNESSEE BOARD )  
 OF COSMETOLOGY AND BARBER )  
 EXAMINERS; ROXANA GUMUCIO, in her )  
 official capacity as executive director of the )  
 Tennessee Board of Cosmetology; RON R. )  
 GILLIHAN, KELLY BARGER, NINA )  
 COPPINGER, JUDY MCALLISTER, )  
 PATRICIA J. RICHMOND, MONA )  
 SAPPENFIELD, FRANK GAMBUZZA, )  
 AMY TANKSLEY, ANITA CHARLTON, )  
 YVETTE GRANGER, JIMMY BOYD, )  
 BRENDA GRAHAM, and REBECCA )  
 RUSSELL, in their official capacities )  
 as members of the Board. )  
 )  
 Defendants. )

JURY REQUESTED

Case No. 18-534-TT

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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I.  
Introduction

1. This case presents a simple question: why do barbers need to graduate high school? Barbers basically cut hair. They do not need to understand algebra II or *The Great Gatsby*. Yet as of 2015, Tennessee requires barbers have a high school degree or equivalent. That requirement excludes many needy and hardworking people from a lucrative and satisfying career path that they are fully capable of performing. The job market is cruel enough for Elias Zarate and people like him who never finished high school but want to work and make a better life for their family, without any state-imposed artificial restraint.

This civil rights lawsuit seeks to protect Elias's right to earn an honest living by invalidating Tennessee's arbitrary and needless requirement that he graduate high school before he can become a barber.

2. Elias never graduated high school because he had to take care of his family instead. His mother was killed in a car accident when he was a boy. When Elias was thirteen (13), his father left him too. For several of his high school years, Elias was on his own, attending school while he worked at night. He finally had to drop out in the middle of his senior year of high school to care for his younger brother and sister. Finally stable and with a family of his own, Elias wants to give them the life he never had. Barbering is that path.

3. Barbering is Elias's dream job. He wants a satisfying and stable job that a social person with his creative tendencies is capable of performing even without a high school diploma. He had no idea it was nothing more than a dream because of a law enacted in 2015 – with no substantive discussion as to why – that requires a high school education for barbers. Elias's dream was crushed. He would enroll in barber school but for the defendants' enforcement of the high school requirement. This devastating law makes no sense.

4. Graduating high school has nothing to do with barbering. Tennessee's high school academic standards do not require the teaching of barbering whatsoever. And anything Elias could conceivably need to know about barbering, he would learn during the mandatory 1,500 hours of vocational training he must complete before he could even *take* the state-approved barbering exam. Requiring barbers obtain a high school education degree is an unconstitutional barrier to entry that appears to exist for no other reason other than to protect licensed barbers from competition.

5. Other jobs do not require a high school degree. If the point was to protect the public, then even jobs that directly impact health and safety like Emergency Medical First Responders (“EMRs”) show that a high school degree have nothing to do with it. EMRs perform lifesaving interventions, yet they need only to be able to communicate in English. Nor is the educational requirement rationally related to encouraging high school graduation when *the elected officials who wrote the law are not required to have a high school diploma*. Any person who can be trusted to be an elected official or save a life in an emergency should be able to manage cutting, shaving, and styling hair.

6. The defendants appear to know this because they are comfortable allowing cosmetologists – who also cut and style hair – without a high school degree. Elias certainly won’t learn anything with an additional two (2) years of school that only barbers need to know. Singling out aspiring barbers like Elias to bear this arbitrary burden is constitutionally unequal treatment.

7. The American Dream should be open to all. By hoarding it on behalf of others, the defendants continuously violate Elias’s economic liberty, one the most precious rights he possesses as a citizen of the State of Tennessee and the United States.

## **II. Jurisdiction, Authority, and Venue**

8. This Court’s jurisdiction arises under Tenn. Const. art. I, § 8, art. XI, § 8; and Tenn. Code Ann. §§ 1-3-121, 4-5-225, 16-11-101 *et seq.*, 29-14-102, and 29-14-103.

9. This Court’s jurisdiction also arises under 42 U.S.C. § 1983 and the Fourteenth Amendment of the U.S. Constitution.

10. This Court has authority to enter a declaratory judgment and a preliminary and permanent injunction with the force and effect of a final decree pursuant to Tenn. Code

Ann. §§ 4-5-225, 29-1-101 *et seq.*, 29-14-102, 29-14-103; Tenn. R. Civ. P. 65, *et seq.*, and 42 U.S.C. § 1983.

11. Venue is proper under Tenn. Code Ann. §§ 4-4-104, 4-5-225, and 20-4-101.

### **III. The Parties**

12. The plaintiff, Elias Zarate, is a citizen of Tennessee and a resident of Memphis, Tennessee. He wishes to become a master barber, a field that is licensed and governed by the Tennessee Board of Cosmetology and Barber Examiners, officially located within Davidson County, Tennessee.<sup>1</sup>

13. The defendant, Tennessee Board of Cosmetology and Barber Examiners (“the Board”), is empowered by the laws of the State of Tennessee to govern the practice of barbering in Tennessee, including through rules, examinations, licenses and policy.

14. The defendant, Roxana Gumucio, is the executive director for the Board. She has enforcement authority over the laws governing the practice of barbering and rules as propounded by the Board. She is sued in her official capacity only. She is a person within the meaning of Tenn. Code Ann. § 29-14-101 and 42 U.S.C. § 1983 and was acting under the color of state law at all times relevant to this complaint.

15. The plaintiff also sues the members of the Board in their official capacities only, as the agents ultimately responsible for governing the practice of barbering, drafting the regulations pertaining to barbering, and carrying out the enforcement of the barbering licensing regime. They are persons within the meaning of Tenn. Code Ann. § 29-14-101 and 42 U.S.C. § 1983. At all times relevant to this complaint they were acting under color of state law. At the present time, the members are: Ron R. Gillihan II, Kelly Barger, Nina

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<sup>1</sup> Tennessee has two licenses in the general field of barbering: master barber and barber technician. References to barber in this complaint should be taken as shorthand reference to the license for a master barber.

Coppinger, Judy McAllister, Patricia J. Richmond, Mona Sappenfield, Frank Gambuzza, Amy Tanksley, Anita Charlton, Yvette Granger, Jimmy Boyd, Brenda Graham, and Rebecca M. Russell.

**IV.  
Factual Background**

**Elias Zarate**

16. Elias is the oldest of three (3) children, born and reared in Texas.
17. He has a younger brother, Pablo.
18. He has a younger sister, Jennifer.
19. On November 27, 1999, when Elias was ten (10), he was in a car, traveling with his whole family when the car became stranded.
20. His parents, Elias Sr. and Maricela, tried to push the disabled car off the road.
21. Elias Sr. steered while Maricela pushed from the back.
22. Another motorist violently crashed into the rear of the car, crushing Maricela to death.
23. Elias was badly wounded, ending up in a coma with a broken femur.
24. Elias Sr. was later imprisoned and deported when Elias was thirteen (13),
25. That was the last time Elias ever saw his father.
26. Elias was left to fend for himself.
27. When Elias Sr. left, the children moved to Memphis from Texas.
28. His maternal grandparents assumed care of his siblings but not Elias.
29. Elias cared for himself during this time, and worked odd jobs to provide for himself.
30. Elias was essentially homeless, staying occasionally at the home of friends but having no regular place to call his home.

31. Elias went to school at day and worked at night.
32. Among his other gigs, Elias cut hair for people in his neighborhood.
33. He found he enjoyed it, was good at it, and that his services were in high demand.
34. When Elias was a senior in high school (12th grade), Elias assumed care for Jennifer and Pablo.
35. Jennifer was aged fourteen (14) and Pablo was fifteen (15).
36. Elias made the decision to drop out of high school to care for them.
37. At the time he dropped out, Elias was failing.
38. Elias's high school transcript indicates that he completed 11th grade in the 2006-2007 school year.
39. Elias's transcript indicates that he did not complete 12th grade.
40. He was ranked 276 out of a class size of 278.
41. He had a grade point average ("GPA") .6949 at the time, with a grade average of 64.47.
42. Any grade below 70 is graded as an F.
43. Elias's transcript indicates that he has 17.5 total high school credits.
44. Elias's transcript indicates that 20 total credits were required for graduation (university/technical path).
45. After he quit high school to sustain his family, Elias continued working at odd jobs, like in restaurants and construction.
46. Elias also continued honing his skills and passion cutting hair as a side job.
47. Elias cared for Jennifer and Pablo until they graduated high school.
48. In 2012, at age 22, Elias met Domenica who he considers his wife
49. In 2017, they welcomed the birth of a little girl.

50. They are now a happy family unit that includes Domemica's daughter who Elias considers his stepdaughter.

51. They live in Memphis.

52. Having grown up in a broken home and often in desperate need, Elias is resolved to do better for his family and break the cycle of poverty once and for all.

53. Elias decided to make a career out of barbering.

54. His reputation got him a job at a licensed barbershop.

55. Elias began working at a licensed shop, displaying what he later learned was a bogus license.

56. On January 18, 2017, an inspector from the cosmetology board conducted an inspection of the shop where he worked.

57. The inspector told him his license was fake and cited him for providing barber services without a license.

58. Shortly thereafter, an official formally served Elias with a notice of a hearing on his violation.

59. This person told Elias at the time to show up to the hearing where they would help him get licensed.

60. The administrative hearing was set in Nashville on June 12, 2017.

61. Elias attended the hearing, believing that the purpose was for him to find out how to get licensed and as an initial appearance where he would learn the nature of the charge against him.

62. At the hearing, Elias explained how he had ended up with the bogus license and Domenica testified to his character.

63. Elias also explained that he just wanted to legally earn a living and asked what he needed to do.

64. Elias was found guilty and fined.

65. Regarding his inquiry about how to become licensed, he was told he would have to complete barber school, and he would have to obtain a high school equivalency diploma.

66. After the hearing, an official in the hallway had a separate conversation with Elias. He told Elias not to attend barber school because he was not eligible.

67. An initial order, signed and dated August 22, 2017, ordered Elias to pay \$1,500, prosecution, and hearing costs,

68. On September 5, 2017, Elias formally petitioned for reconsideration, writing:

I Elias Zarate Jr. wish to appeal for a reconsideration in this matter due to the fact that I have been going through a lot of changes and struggle. I am seeking for advice and help on how to resolve my situation and how to become a licensed barber. The fact that I grew up with no guidance made a big impact on my future and my career. I am soon to be a father and have been forced to sale my belongings in order to support my family. After this incident my life and income were snatched from me leaving me to struggle. In the time that I was at Revolution Salon I did not even acquire the fine I am being charged. Most of it went to booth rent and other shop expenses. The only thing I truly want is a chance to provide for my family. I ask for an opportunity to take an exam and get licensed. I only wish to prove my years of experience and ask that I am pardoned. I want to be a great contribution to society and the state of Tennessee.

Sincerely,  
Elias Zarate

69. His petition was denied.

70. The Department of Commerce and Insurance's disciplinary action report from October, 2017 indicates that Elias owed a \$1,500 civil penalty, plus \$605.09 in costs.

71. In November of 2017, Elias began contacting Memphis-area barber schools about admittance.



72. Last Minutes Cuts School of Barbering, the Barber Schol, and Vibe Barber College all related that they would not admit him until he graduated high school or had an equivalent degree.

73. Memphis Academy of Barbering likewise related that it would not admit anyone who was not a high school graduate or equivalent unless that person was at least sixteen (16) and currently in the 10th grade.

74. The number for Jett College was disconnected.

75. On March 16, 2018, Elias paid the Board in full, totaling \$2,105.09.

### **The Master Barber license**

76. According to the Tennessee Department of Commerce and Insurance's website, the Board of Cosmetology and Barber Examiners regulates the practice of cosmetology and barbering, including the licensure and registration of cosmetologists, master barbers, and barber and cosmetology schools.

77. According to this website, the mission of the Division of Regulatory Boards is to protect public welfare by ensuring that only qualified persons are permitted or licensed.

78. According to this website, a barber performs one or any combination of the following practices:

Shaving or trimming beards, cutting, or styling the hair, giving facial and scalp massages or treatments with oils, creams, lotions or other preparations either by hand or mechanical appliances; singeing, curling, shampooing, coloring, bleaching or straightening the hair, or applying hair tonics; cutting fitting, measuring and forming head caps for wigs or hair pieces; hair weaving (excluding medical or surgical procedures); applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face, neck or other parts of the body; or manicuring and nail care.

79. Barbering requires no particular level of academic attainment to successfully learn how to do it. All that is required is some basic level of manual dexterity, the right tools, a good attitude, and practice.

80. Barbers enjoy good pay and a high degree of independence.

81. Barbers also engage in continuous interaction with the customer.

82. Because it includes styling, barbering also has a creative aspect and barbers who have that are especially in demand.

83. All of this makes barbering an attractive calling to individuals who are social and have creative talents.

84. Because no particular level of academic attainment is necessary, barbering is especially attractive to individuals without a high school diploma who may otherwise have limited career options. A barber is capable of learning the trade and earns a good living whether or not he or she has graduated high school.

#### **Barbering eligibility**

85. According to the Tennessee Department of Commerce and Insurance's website, a Twelfth-grade education or equivalent (10th grade prior to July 1, 2015) is a requirement for the barber license. *See also* Tenn. Code Ann. § 62-3-110(b)(2) (LexisNexis 2018).

86. An equivalent degree is a High School Standard Equivalency (HiSET(R)) or a General Educational (GED(R)) diploma. *See* Tenn. Code Ann. § 62-3-110(a)(3)(B) (LexisNexis 2018).

87. Prior to 2015, a high school diploma or equivalent was not a requirement for barbers.

88. The sponsor of the senate bill changing the academic requirement described it as a clean up and an effort to streamline regulations that are similar to both cosmetology and barber professions for consistency's sake, in light of the recent merger of the cosmetology and barber boards.

89. The 2015 legislative record does not refer to any health or safety reason for requiring high school graduation or equivalency for barbers.

90. The 2015 legislative record does not refer to any consumer complaints over barbers who had not graduated high school or equivalent.

91. At no point in the 2015 legislative record does any legislator provide a reason for elevating the academic standard for barbers.

92. This law does not apply retroactively, thus allowing existing barbers without high school equivalency to continue to perform barbering services.

93. In 2018, lawmakers debated repealing the requirement with SB2293/HB2059.

94. On March 20, 2018, Senator Mike Bell, the sponsor, explained that in 2015, following the merger of the cosmetology and barber boards, they had tried to unify the professional standards for both fields by using the lesser of the two educational requirements.

95. On this day, the only reason stated by any legislator for maintaining the high school academic achievement level was to send a message to stay in school.

96. Upon information and belief, Tennessee's state-approved high school curriculum does not teach practices or combination of practices that would constitute barbering.

97. Upon information and belief, Tennessee's state-approved 11th and 12th grade curriculum does not teach practices that constitute barbering but not cosmetology.

98. As mentioned above, aspiring barbers may receive a HiSET(R) diploma in lieu of a high school diploma.

99. The HiSET(R) exam tests knowledge of reading, writing, mathematics, science, and social studies.

100. The HiSET(R) exam does not test knowledge of acts that would constitute the practice or combination of practices that would constitute barbering.

101. The HiSET(R) exam does not test knowledge of acts that would constitute the practice or combination of practices that would constitute barbering but not cosmetology.

102. According to the Tennessee Department of Commerce and Insurance's website, any person also must satisfactorily complete 1,500 hours in a registered barber school before they are eligible to become a barber.

103. According to this website, anyone desiring to practice barbering or cosmetology is required to have a barber or cosmetology license.

104. The instructions accompanying Tennessee's barber application require the applicant provide a copy of a certified high school transcript or GED.

105. Tennessee's barber application requires an applicant to provide: name of high school attended, highest grade completed, high school address, and GED test score.

### **Cosmetology eligibility**

106. According to the Tennessee Department of Commerce and Insurance's website, cosmetology is the practice of:

arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work on the hair. A cosmetologist may care for or service wigs or hair pieces; manicure; massage, clean, stimulate, manipulate, exercise, beautify or perform similar work upon the hands, arms, face, neck, or feet with hands or by use of cosmetic preparations, tonics, lotions or creams; place or apply artificial eyelashes, give facials, apply make up, give skin care, or remove superfluous hair by tweezing, depilatories, or waxing. Effective July 1, 2015, a cosmetologist may shave using a safety razor.

107. This website details no particular level of academic attainment as necessary to obtain a cosmetology license.

108. Any application for a cosmetologist's license shall submit a fee, and satisfactory proof that the applicant is sixteen years old and has completed a specified

number of hours at a school of cosmetology. *See also* Tenn. Code Ann. § 62-4-110(a) (LexisNexis 2018).

109. A licensed cosmetology school may only admit a student who has completed and passed at least two (2) years of high school or received a score of thirty-eight (38%) on the GED(R) or HiSET(R) examination. *See* Tenn. Code Ann. § 62-4-122(a)(2) (LexisNexis 2018).

### **Education and Examination**

110. According to this website, the educational requirement for a barber license is completion of 1,500 hours in a registered barber school, in addition to the academic attainment level of high school graduate or equivalent.

111. According to this website, the educational requirements for a cosmetologist license is completion of 1,500 hours in practiced and theory at a school of cosmetology.

112. For barber students, the 1,500 hours of instructions must be apportioned among general hours (240); chemical hours (360); and physical hours (900). Tenn. Comp. R. & Regs. R. 0200-01-.02(2) (LexisNexis 2018).

113. For cosmetology students, the 1,500 hours of instructions must be apportioned among general hours (300); chemical hours (600); physical hours (600). Tenn. Comp. R. & Regs. R. 0440-01-.03(3)(a) (LexisNexis 2018).

114. The Board has contracted with a third party vendor, PSI, to conduct the examinations of both barbers and cosmetologists.

115. PSI issues a candidate information bulletin for both barbers and cosmetologists.

116. Both bulletins are linked on the Tennessee Department of Commerce and Insurance's website

117. According to the bulletins for both barbers and cosmetologists, PSI works closely with the State of Tennessee to be certain that the exam meets requirements in both basic principles and examination development standards.

118. Both bulletins relate that the examinations have a theory and law portion, and a separate practical portion.

119. Both bulletins state that an applicant must be pre-approved to take the examination.

120. Both bulletins relate that education provider provides an applicant's eligibility electronically to PSI.

121. The education provider answers the question about the level of high school education to the testing vendor.

122. Both bulletins outline that the theory portion consists of 100 questions to be taken in 2 hours.

123. Both bulletins outline that the law portion consists 25 questions to be taken in 45 minutes.

124. Both bulletins outline that the topics on the law portion consist of: sanitation, disinfection, and safety (20%; 5 questions); licensing (80%; 20 questions).

125. Both bulletins outline the scoring procedure for the practical portion.

126. Both bulletins state that a passing score is 70%.

127. Both bulletins also contain procedures for a blood spill incident.

128. Once licensed, barbers and cosmetologists – as well as the shops themselves in which they practice – have separate sanitation requirements they must obey.

129. The defendants do require that a person obtain a high school degree or equivalent before they may take the master barber exam or obtain a master barber license.

130. The defendants do not enforce a requirement that a person graduate high school or its equivalent before they may be eligible to take the cosmetology exam, or obtain a license.

**Other Tennessee professions do not require a high school degree**

131. To be eligible to hold public office in Tennessee – including governor, state senator, or state representative – an individual need not graduate high school or equivalent.

132. To be eligible to be an EMR in Tennessee, an individual need not graduate high school.

133. An EMR is someone who has successfully completed the Emergency Responder training course and has qualified by examinations to perform lifesaving interventions while awaiting additional EMS response and to assist higher-level personnel at the scene and during transport, under medical direction. *See* Tenn. Comp. R. & Regs. R. 1200-12-01-.04(1)(a)(5) (LexisNexis 2018).

134. The Tennessee Department of Health states on its website that to be eligible for certification as an EMR, an applicant must be able to read, write, and speak the English language. *See also* Tenn. Comp. R. & Regs. R. 1200-12-01-.04(2)(a)(2) (LexisNexis 2018).

**Unlicensed practice**

135. To practice a profession for which a license certifies the qualifications of the licensee is a crime, specifically a Class E felony. Tenn. Code Ann. § 39-16-302 (LexisNexis 2018).

136. A Class E felony is punishable not less than one (1) year nor more than six (6) years in prison, and a fine of up to \$3,000. Tenn. Code Ann. § 40-35-111(b)(5) (LexisNexis 2018).

137. Violating any provision of the barber chapter of the code itself is a crime, specifically a Class B misdemeanor. Tenn. Code Ann. § 62-3-130 (LexisNexis 2018).

138. A Class B misdemeanor is punishable by up to six (6) months in prison and/or a \$500 criminal fine. Tenn. Code Ann. § 40-35-111(e)(2) (LexisNexis 2018).

139. The defendants can also assess civil penalties of up to \$1,000 per day for each unlicensed act, as well as the costs of attorney fees and the investigation. *See* Tenn. Code Ann. § 56-1-308(a), 311(a); Tenn. Comp. R. & Regs. R. 0200-01-18 (LexisNexis 2018).

140. The defendants have in the past assessed civil penalties and costs for unlicensed practice, including against Elias.

### Injury to Elias

141. Elias has not graduated high school or obtained an equivalent diploma.

142. Elias is prohibited from becoming a licensed barber in Tennessee because of the academic achievement requirement.

143. Elias is not able to obtain an equivalent diploma. He tried to answer the sample questions for the HiSET exam available online at: [http://hiset.ets.org/s/pdf/sample\\_questions.pdf](http://hiset.ets.org/s/pdf/sample_questions.pdf). For example, one question asked:

A solution of salt water is made by dissolving 2 grams of salt in 1 liter of water. Which of these would yield a solution with the same concentration?

- A. Dissolving 1/2 gram of salt in 2 liters of water
- B. Dissolving 1/2 gram of salt in 1/2 liter of water
- C. Dissolving 1 gram of salt in 1/2 liter of water
- D. Dissolving 1 gram of salt in 2 liters of water
- E. Dissolving 2 grams of salt in 1/2 liter of water

Elias was not able to even attempt to answer over half the sample questions.

144. But for the academic achievement requirement, Elias would have found a barber school willing to admit him.



145. But for his ineligibility, Elias would be willing to invest the time and cost into attending barber school to start his career.

146. If Elias were to practice barbering without a license, the defendants would take enforcement action against him designed to penalize him and stop him from engaging in practices constituting barbering.

147. Elias's current work is not as stable, lucrative, permanent, or rewarding as barbering.

148. Elias already knows he loves barbering and finds it fulfilling, and rewarding on both a financial and personal level.

149. Elias wants to use the experience to become an owner of a barbershop or barbershops.

150. The financial benefits of barbering would guarantee Elias a stable, well paying job, and a pathway to being a business owner.

151. Only barbering offers Elias a career path that he knows to be stable, lucrative, dignified, fulfilling, and can be performed by persons like Elias who are creative, social and have not graduated high school.

## V. Claims

### Claim One-Right to Earn an Honest Living.

152. Elias hereby repeats all of the preceding allegations and incorporates them here by reference as though fully set forth herein.

153. As a Tennessean, Elias has a right to earn an honest living protected under Article I, Section 8 of the Tennessee Constitution. It provides that "no man shall be ... disseized of his freehold, liberties or privileges ... or in any manner destroyed or deprived of his life, liberty or property, but by judgment of his peers, or the law of the land."

154. No legitimate reason exists to enforce an academic achievement level before a person may become a barber.

155. Barbering is not a trade that requires a particular level of academic achievement to study.

156. Tennessee does not teach, test, or require proficiency in acts constituting barbering to graduate a Tennessee high school or in a HiSET(R) degree.

157. The academic achievement requirement for barbers has no tendency to promote the public's health, safety, or welfare.

158. The academic achievement requirement excludes anyone from barbering absent a level of academic attainment that is irrelevant to barbering, and unreasonably prevents otherwise qualified persons from seeking entry into this field.

159. The public interest is adequately protected by state-approved barber training, state-approved testing, and state-mandated sanitary requirements and regulations.

160. The academic achievement requirement far exceeds whatever legitimate public health and safety requirements are necessary to protect the public.

161. The academic achievement requirement was enacted for purposes of protectionism, that is, to restrict the number of barbers.

162. Protectionism is not a legitimate governmental interest.

163. For these reasons, the defendants have violated and continue to violate Elias's Tennessee constitutional right.

### **Claim Two-Equal Treatment**

164. Elias hereby repeats all of the preceding allegations and incorporates them here by reference as though fully set forth herein.

165. As a Tennessean, Elias has a right to equal treatment. Tennessee's constitutional guarantee of equal treatment under the law is found in two different clauses

of the state constitution. The first is found in Article I, Section 8. The second is found in Article XI, Section 8.

166. Enforcement of the academic achievement requirement for barbers violates the guaranty of equal treatment by cosmetologists but not barbers to become licensed with only two (2) years of high school equivalency, even though both barbers and cosmetologists engage in virtually the same basic activity — cutting and styling hair, and performing related service.

167. Tennessee does not teach, test, or require proficiency in acts constituting barbering but not cosmetology, in order graduate a Tennessee high school or with a HiSET(R) degree.

168. The academic achievement requirement for barbers also violates the guaranty of equal treatment by excluding aspiring barbers who have not graduated high school while allowing persons to become EMRs with no academic achievement requirement whatsoever, when barbering activity — cutting and styling hair, and performing related services — does not implicate the public health and safety any more than EMR activity.

169. No legitimate reason exists to treat Elias differently than the thousands of aspiring cosmetologists or EMRs, all of whom may legally practice without graduating high or having an equivalent diploma and engage in practices that:

- Can be learned without any level of academic attainment;
- Involve physical contact with the public;
- Can be safely performed after appropriate training;
- Require passage of state approved education;
- Require passage of state approved testing;
- Are subject to ongoing health and sanitation requirements;
- Are subject to continuous inspection for observance of sanitation standards.

170. The academic achievement requirement for barbers also violates the guaranty of equal treatment by excluding aspiring barbers who have not graduated high

school while allowing elected officials to hold public offices – governor, senator, representative – with no academic achievement requirement whatsoever, when barbers do not encourage high school graduation any more than elected officials.

171. No legitimate reason exists for elected officials to encourage Tennesseans to graduate high school by imposing this requirement on barbers when they do not impose this requirement on themselves.

172. The differential treatment of Elias furthers no legitimate governmental interest.

173. By unreasonably and arbitrarily requiring barbers to have high school equivalency, the defendants have subjected Elias to a difficult and expensive level of academic achievement that is not required of cosmetologists, EMRs, or public office.

174. For these reasons, the defendants have violated Elias's constitutional right.

**Claim Three-Fourteenth Amendment to the U.S. Constitution.**

175. Elias hereby repeats all of the preceding allegations and incorporates them here by reference as though fully set forth herein.

176. The Fourteenth Amendment to the U.S. Constitution protects the privileges and immunities of citizens, the right to due process under law, and the right to equal protection under the law.

177. The defendants have irrationally, illegitimately, arbitrarily, and excessively restricted Elias's ability to enter into his chosen vocation.

178. The defendants have irrationally, illegitimately, arbitrarily, and excessively treated Elias differently from others similarly situated to the government's interest.

179. The defendants have irrationally, arbitrarily, and excessively abridged Elias's privileges and immunities of citizenship by denying him entry into his chosen vocation.

180. The reason for requiring a high school degree is protectionism, that is, to restrict the number of entrants into the barbering profession.

181. Protectionism is not a legitimate governmental interest.

182. For the foregoing reasons, the defendants have violated Elias's state and federal constitutional rights.

**VI.  
Relief Sought**

**WHEREFORE, PLAINTIFF** requests that this Court:

A. Order a speedy hearing of this action and advance it on this Court's calendar pursuant to Tenn. R. Civ. P. 57.

B. Enter a declaration that the academic achievement requirement for barbers found at Tenn. Code Ann. § 62-3-110(a)(3)(B) is unconstitutional.

C. Enter an order permanently enjoining the defendants from enforcing the academic achievement requirement for barbers.

D. Award costs, expenses and reasonable attorney's fees according to 42 U.S.C. § 1988, Tenn. Code Ann. § 29-14-111, and any other applicable laws.

E. Award any other relief as is appropriate under the circumstances.

Dated: May 14, 2018.

Respectfully submitted,



BRADEN H. BOUCEK

P. B. No. 091200

