



## Is The Koch Network Winning Its War On Occupational Licensing?

Bob Moser

October 23, 2019

When Joe Biden launched his presidential campaign in late April at a Teamsters hall in Pittsburgh, his speech was characteristically long on talk of restoring America's "heart" and "soul" and short on specifics. But after noting that "workers feel powerless, too often humiliated" and bellowing, "I make no apologies; I am a union man!" he mentioned another way in which workers were being screwed by runaway corporate profiteers: "Why should someone who braids hair have to get 600 hours of training?" he demanded to know. "It makes no sense. They're making it harder and harder in a whole range of professions, all to keep competition down."

The crowd sort of cheered, in a half-hearted and rather puzzled way, because that's what they'd come to do. But Biden's speech — or rather, those three sentences in the middle of it — prompted loud and sustained applause from small-government conservatives and libertarians. At Real Clear Politics, former Federalist and Washington Examiner reporter Philip Wegmann gloried in the vision of "reliably Democratic voters all cheering the kind of government deregulation that has been the pet project of libertarian billionaires like Charles and David Koch for half a decade," expressing the hope that Biden's shout-out "could begin a larger national discussion about state and local licensing rules that govern everything from hair braiding to pet walking." Shoshana Weissmann, a fellow at the Koch-allied R Street Institute, called it a "BIG DEAL, especially for a Democrat," not to mention "a big win." Clark Neily, a vice president at the libertarian Cato Institute, was so carried away that he cracked, "heck, I might even vote for him."

It was, indeed, a landmark moment of sorts for one of the oddest and most successful propaganda and policy campaigns in recent years: the Koch network's legal, legislative, academic, and public-relations crusade against occupational licensure — the state and local rules under which professional boards, from doctors and nurses to truckers and electricians, certify that workers in hundreds of occupations are properly trained to do their jobs safely and well. Over the past half-century, as membership in labor unions has plummeted and manufacturing work has given way to service jobs, the number of professions requiring licenses has risen on an inverse curve; somewhere between one-quarter and one-third of American workers now go through mandated hours of training, take tests, and pay fees that allow them to legally practice their chosen trades. It can be a hassle, in terms of time and money. But licensed workers earn, on average, 15 percent higher wages — about the same benefit that union membership yields.

Free-market purists hate licensing with a red-hot passion — always have, ever since Milton Friedman railed about the incipient rise of "silly licensure laws" in his 1962 classic, "Capitalism and Freedom." Licensing is just as offensive as organized labor, writes Wegmann of Real Clear

Politics, because “both create barriers to entry into the workforce and shield workers from increased competition from newcomers.” For decades, conservative and libertarian economists have cooked up studies showing that licensed services cost consumers more, that the work of licensed professionals might not be substantially higher in quality, and that licensing’s only real benefit is to the trade groups that get to oversee it — along with state and municipal governments that take a cut, and training schools and community colleges that receive tuition for required courses. It’s downright un-American and economically unwise, as the Koch-funded Institute for Justice puts it, for people to need “permission slips from the government” to do a job. It’s socialism on wheels.

As the number of jobs requiring licensure multiplied over the years from dozens to hundreds, the howling from the free-marketeers grew louder. Except nobody else was listening. In the mainstream, most people viewed job licenses — if they thought about them at all — as ways to ensure safety and quality: the government was guaranteeing that you could hire an electrician to rewire your house, say, and be pretty sure she’d know how not to set the place on fire. Licensure also gives consumers a meaningful way to complain when the house *is* set ablaze, or when an elderly parent or a child is mistreated by a caregiver; the boards can take away licenses just as they can grant them. What could be controversial about that?

But just as Friedman predicted those many decades ago, licensing got a little out of hand. While licensing requirements aren’t typically onerous for those who want them — the average is \$209 in fees, one exam, and nine months of training — in some states, for some jobs, they can be: Aspiring cosmetologists in a few places need 2,100 hours of beauty school training at a cost upwards of \$20,000, to cite an example that critics can’t seem to repeat often enough. Some states license jobs that involve no clear public health or safety concerns. Those requirements provide grist for the anti-licensing mills: Do florists in Louisiana, for example, really need to be licensed?

Soon after the Kochs funded its inception in the early 1990s, the Institute for Justice — a legal nonprofit that likes to call itself “the national law firm for liberty” — began challenging licensing in court. The lawyers at IJ cannily chose cases that were low-hanging fruit, suing on behalf of aspiring and aggrieved casket-makers, tour guides, limousine businesses, computer technicians, eyebrow-threaders and, yes, florists. As a bonus, these people’s stories — *why do I need an expensive license for that?* — made lively human-interest fodder for local news. The results of the litigation were mixed, but in some instances, states and cities deregulated these occupations to get clear of the lawsuits. And some non-libertarian economists, most notably President Obama’s chief economic adviser, the late Alan Krueger, began to agree that licensing was locking some low-income Americans out of good jobs.

That was pretty much the extent of anti-licensing activism, until the Koch brothers decided they needed to rebrand their image. By 2014, Charles and David (who died in August) desperately needed a public relations facelift. Their massive corporate empire, Koch Industries, had become known for dangerous workplaces and for being one of the country’s top air, water and climate polluters. Their high-dollar activism on behalf of libertarian policies and far-right Republican candidates was making them equally toxic to many—especially after the rise of the Tea Party, which had been organized and underwritten by their main political arm, Americans for Prosperity, and the resulting radicalism that roiled state capitals and gridlocked Congress. On the Senate floor, Majority Leader Harry Reid began regularly ripping into the Kochs for “trying

to buy America,” once famously declaring, “It’s time that the American people spoke out against this terrible dishonesty of these two brothers who are about as un-American as anyone that I can imagine.”

So the Kochs did what mega-billionaires do. They hired a pricey team of public-relations specialists, led by a PR whiz for the tobacco industry, and embarked upon what The New Yorker’s Jane Mayer called “the best image overhaul that money can buy.” After spending zilch on corporate advertising in 2013, Koch Industries flooded the airwaves in 2014 and 2015 with soft-focus ads about their life-giving products and their happy, diverse employees. More important, they sought out new policy initiatives to make them, in the words of public-relations specialist Mike Paul, “look more compassionate—and so their theme is that they care about the poor.”

The Kochs started doing all kinds of unexpected things. They poured money into a nonprofit group, the Libre Initiative, with a mission to “equip the Hispanic community with the tools they need to be prosperous”; the initiative began handing out free school supplies, Turkeys at Thanksgiving, and offering Spanish-language drivers’ education, English-proficiency classes, and free tax-preparation assistance. They gave \$25 million to the United Negro College Fund. They started initiatives that offered “healthy life style” advice in low-income neighborhoods. They bankrolled criminal justice reform efforts, partnering with liberal organizations like the ACLU and NAACP. And in 2016, under the guise of defending low-income Americans’ “right to earn an honest living,” they declared war on occupational licensing.

\* \* \*

A few days before Christmas in 2015, the Anchorage Dispatch News published an op-ed by Mark Holden, Koch Industries’ senior vice president. “What should Alaska lawmakers’ New Year’s resolutions be?” Holden asked. “I have a suggestion: Break down barriers to opportunity for the least fortunate.” He knew just how they could do it: “Elected officials in Anchorage City Hall and the state government in Juneau should start by rolling back burdensome occupational licensing regulations, which stand in the way of low-income job-seekers and budding entrepreneurs.”

After reading Holden’s piece, which cited evidence from a Koch-funded think tank to bolster his argument, Dispatch News columnist Dermot Cole — finding it a little odd that a powerful Kochster would be taking the time to write about job licenses in Alaska — did a little digging around. He discovered that at least 35 papers across the country had published nearly identical op-eds by Holden, with just the cities and states and a few fill-in-the-blank statistics about their licensing laws altered. There were New Year’s resolutions for legislators in Reno, Nevada; Portland, Maine; Casper, Wyoming; Oklahoma City; Fort Myers, Florida; Wilmington, Delaware ... the list went on. “It’s just like a Mad Lib, if Lib were short for ‘Libertarian,’” commented Andy Cush at Gawker. The job licensing argument, he noted, “is an unsurprising point for a Koch executive, considering his company’s stringent opposition to government regulation of all kinds.”

Holden’s New Year’s resolutions signaled the blast-off for a public-relations blitz behind licencing reform that hasn’t slowed down since. Publications like USA Today were writing uncritical features about the newly discovered plague of occupational licensing, and the Kochs’ fledgling campaign against, as Holden told the paper, “government overreach that is

restricting the ability for people to help improve their lives and remove barriers to opportunity.” When the reporter asked how much the Koch network would spend on the effort, Holden responded: “We don’t constrain ourselves by a budget.”

Indeed, pretty much every big tentacle of the “Kochtopus” — the best of many nicknames for the sprawling policy, political, academic, industrial, and media empire — would be activated in the drive to gut occupational regulations. The Institute for Justice would step up the pace of its lawsuits. The American Legislative Exchange Council (ALEC) would write model bills for state legislators to copy-and-paste, and promote them at the lavish conferences it throws to wine-and-dine conservative lawmakers. Americans for Prosperity would organize its state chapters — the largest, in Wisconsin, has 130,000 volunteer activists, eight field offices, and a handful of paid organizers — behind those proposals. Koch-funded think tanks, including a newly opened one at Saint Francis University called the Knee Center for the Study of Occupational Regulation, would churn out research demonstrating the damage wrought by “licensing cartels.”

Meanwhile, Koch-funded websites like the libertarian Reason and the right-wing Daily Caller, along with the always-friendly Wall Street Journal, would publish op-eds by Koch allies, treat each new Koch-funded study and ALEC-inspired piece of legislation as news, profile the lawmakers sponsoring the bills, and gin up outrage with feature stories about the human casualties of runaway licensing the Institute for Justice was representing in court. When the Kochs were rethinking their image, Arthur C. Brooks, president of the (yes, Koch-funded) American Enterprise Institute, had advised them to “lead with vulnerable people” in making the case for their free-market agenda. “Telling stories matters,” he said. “By telling stories, we can soften people.”

So the Koch network told stories. There was the one about the boy shoveling his grandmother’s snow in Normandy, Missouri, who received a warning from police because he didn’t have a permit for snow-shoveling services. There was the kid who set up a lemonade stand outside the Saratoga County Fair in New York, only to be shut down by a state health inspector when licensed lemonade vendors at the fair complained. (“Sadly,” wrote Reason’s Scott Shackford, “not enough people make the connection between these lemonade crackdowns and the broader ways licensing and permitting laws restrict people’s ability to earn a living.”) There was the poor department store florist in Louisiana — a widow, mind you — who lost her job because she kept failing the state board’s floral arrangement exam, and ultimately “died in poverty in 2004 because the state had prevented her from working to support herself.” There were the inmate firefighters in California, risking their necks to save lives and homes, who would be barred upon release from making a living doing the same because state law didn’t allow anyone with a criminal record to become a professional firefighter. And who could soon forget the sad tale of the Kentucky minister who tried to “dispense eyeglasses to the poor,” and was blocked by the state boards of Optometric Examiners and Ophthalmic Dispensers?

The pace of legislative action has accelerated in the last two years. Already in 2019, more than 1,000 occupational licensing bills have been introduced in state capitals, up from around 750 last year.

But most of all, in story after story, there were the military spouses and the hair-braiders. The first lawsuit brought by the Institute for Justice, in 1991, was on behalf of an African-American hair-braiding shop in Washington, D.C., that had run afoul of the local cosmetology licensing board. When the case became a local news cause celebre, and the district wound up nixing the

requirement for hair braiders to make the lawsuit go away, the Koch network knew it was onto something. The hair-braiding cases were easy to make, both legally and in the court of public opinion: Since the process doesn't involve the use of chemicals, dyes, or scissors, why should its practitioners be required to go to pricey beauty schools, where hair-braiding usually isn't even taught?

The fact that licensing requirements “disadvantaged black stylists in particular because of the braiding’s racial and cultural roots,” as *The Atlantic* put it in reporting on an Iowa lawsuit in 2016, made these stories pitch-perfect for the Kochs’ big adventure in rebranding: Now the evil white corporatists were doing their part to help African-American women keep their ancient tradition alive and make a business out of it. Recognizing the propaganda value inherent in this, the Institute for Justice set up a slick, full-blown website, Braiding Freedom. Hair braiders started calling the Institute to help them sue their states. Local media — along with, apparently, former Vice President Biden — were enamored of the women’s stories, all of which dutifully repeated the Koch rhetoric about the perils of “job-killing” occupational licenses holding ambitious Americans down.

The military spouse sagas illustrated, in stories overlaid with stars and stripes, the problem of “licensing portability” — the ability to use an occupational license from one state when you move to another, rather than having to go through your new state’s licensing regime. In *The Wall Street Journal*, Shoshana Weissmann and C. Jarrett Dieterle of the Koch-allied R Street Institute decried the plight of Heather Kokesch Del Castillo, who’d set up shop as a “health coach” in California; when the Air Force transferred her husband to a base in Florida, she restarted her business there until a Department of Health investigator “showed up at the door of their new home with a cease-and-desist letter and a \$750 fine. . . . She retained the Institute for Justice, a public-interest law firm, to fight the law that stripped her of her livelihood.”

This was a genuine problem for military spouses, who move a lot. But when it came to the moral of such stories, the Koch network tended to stretch things a bit — as it did with the other tales of licensing woes. First, Weissmann and Dieterle suggested, the obstacles to getting licenses in new states “perhaps” account for the high unemployment rate of military spouses (16 percent). In a far broader context, the difficulties with licensing portability were used to explain a troubling development that economists had fretted about for years: As Morris Kleiner of the University of Minnesota has noted, “The overall interstate migration rate is about half what it was in 1980, and it can reduce the efficiency of the labor market in the economy.”

Licensing, of course, is only one factor in that historical trendline — and some economists have found that it has no impact on interstate mobility at all — but the idea that licensing was forcing people to stay in place became the rationale for some of the most ambitious reforms to emerge from the anti-licensing campaign. The first piece of federal legislation clamping down on licensing, co-sponsored by Republican Sens. Mike Lee and Ben Sasse was pitched as a solution to the plight of military spouses. But the law went far beyond that narrow concern: the Alternatives to Licensing that Lower Obstacles to Work Act (ALLOW) would have permitted the District of Columbia, military bases, and national military parks — as “federal enclaves” — to apply licensing laws “only to those circumstances in which it is the least restrictive means of protecting the public health, safety or welfare.”

Lee said he intended the bill as a model for state legislators to adopt — and several of them would. The upshot of this “model” was that the impetus would be put on licensing boards to

prove that nothing short of their licensing regimes could protect the public from the potential health or safety perils of their services — a far higher legal bar than the one that previously existed.

\* \* \*

After nearly four years of sustained assault from the Koch network, the vast majority of occupational licenses remain in place. But the issue, which almost nobody had heard of or given a passing thought when Mark Holden began issuing his New Year's resolutions in 2015, now actually *is* an issue that many Americans are aware of — and almost all their awareness involves horror stories of little guys and gals with their ambitions cruelly flattened by the iron fist of big government colluding with all-powerful trade associations. It's a testament to the power of the propaganda that the Koch network can muster. And there's every sign that they're in this for the long haul. Regulatory regimes don't tend to crumble quickly, as Kochworld knows. And labor unions weren't gutted in a day.

The most tangible impact of the anti-licensing crusade, not surprisingly, has been a raft of states — upwards of 20 so far — exempting hair braiders from licensing requirements. Almost as many have eased restrictions on licensing ex-convicts. More than a dozen states have deregulated a host of other professions. Some look like no-brainers: Arizona rolled back requirements for citrus fruit packers, cremationists, assayers, and yoga instructors; Charleston, S.C., set tour guides free; Rhode Island de-licensed fur buyers, kickboxers, and beer line cleaners. But regulations have been eliminated or eased for several jobs for which safety and public health concerns are real; in Nebraska, for instance, audiologists, nurses, and school bus drivers now only need easy-to-obtain certificates to ply their trades.

The pace of legislative action has accelerated in the last two years. Already in 2019, more than 1,000 occupational licensing bills have been introduced in state capitals, up from around 750 last year. And in the past few years, at least seven states have passed laws that sound innocuous, but may ultimately be the most consequential: “sunset reviews” like the one that Ohio Governor John Kasich signed this past January. Once every six years, Ohio legislators will now decide which licensing laws stay intact — based on the question of whether they're the “least restrictive form of regulation” for each profession. Those subjective decisions, in turn, can be challenged: If the Institute for Justice thinks that nurses could be regulated “less restrictively,” for instance, they'll now have a basis for taking Ohio to court.

Most of the new laws, whatever form they take, incorporate a sentence taken straight from ALEC's models: “The right of an individual to pursue a lawful occupation is a fundamental right.” You don't have to rack your brain to see how *that* new “right” could lead to a raft of litigation that weakens licensing regulations going forward.

One of the reasons that it's taken just a few years to turn licensing into a conservative *cri de coeur* is that Koch's propagandists have been arguing in a void. While trade associations will unleash lobbyists and supporters when they're directly challenged in a state legislature, you don't see a lot of op-eds and feature stories singing the praises of licensing regimes. Who wants to read that? But in the last couple of years, as the propaganda has taken hold, economists have issued findings that shoot down many of the now-popular assumptions about the effects of licensing.

Rather than hurting low income Americans, for instance, a recent (non-Koch-funded) study found that licensing provides the greatest benefits, in terms of higher wages, to workers who don't have a high school or college degree. Another shot down the idea that allowing people to move and still use their previous state licenses would increase "mobility" in the workforce. And the idea that licensing laws hold back African Americans economically? The opposite is true, according to multiple studies: Nobody gains more from holding a job license than black women and men. (Conversely, nobody benefits less from licensing than white men, who earn about the same with them or without them.) But where it used to be libertarians who hollered about licensing without being heard, now it's the mainstream economists who find that licensing is good for less educated workers, for women, and for people of color who can't get anybody to lend them an ear.

The Koch people have some serious message discipline. You have to grant them that. They've stuck religiously to their scripts when they talk about occupational licensing: They simply want to help lift people up, to get the government off the backs of the aspiring classes. *Braiding freedom, everybody!* But once in a while, somebody slips and gives the game away. Exulting after Ohio's mandatory-review law passed, for instance, Lee McGrath of the Institute for Justice told a reporter: "Occupational licensing should only be a policy of last resort." The least-restrictive last resort: Now, that sounds like classic Koch.