

Congress of the United States

U.S. House of Representatives

Committee on Small Business

2361 Rayburn House Office Building

Washington, DC 20515-0515

August 20, 2014

The Hon. Winslow Sargent
Chief Counsel for Advocacy
United States Small Business Administration
409 3rd St., SW
Washington, DC 20416

Dear Dr. Sargent,

Over the last 60 years the number of occupations subject to state and local licensure laws has expanded greatly. Whereas in 1950, fewer than 5 percent of all occupations were licensed at the state level,¹ today, an estimated 29 percent of occupations are licensed, or approximately 1 in 3 occupations.² According to one study from 2007, the total cost of licensing regulations to the economy is between \$34.8 billion to \$41.7 billion per year.³

At a time of economic uncertainty, when our nation's job creators, small businesses, are struggling to stay afloat, we are concerned that occupational licensing laws which are not narrowly tailored to the public benefit could have the unintended consequence of stifling entrepreneurship. Occupational licensing also may impede innovation and business development as would-be entrepreneurs focus their resources on meeting licensing board requirements rather than on meeting the needs of their businesses or customers.⁴ Notably, a June 2014 study found that occupational licensing was the number one regulatory burden facing small firms.⁵

The Committee on Small Business has held two hearings over the past few months regarding the barriers to entrepreneurship caused by occupational licensing and we believe that this issue merits further examination. At a Subcommittee on Contracting and Workforce of the Committee on Small Business hearing on March 26, 2014, entrepreneurs and academic experts

¹ Morris M. Kleiner and Alan B. Krueger, *The Prevalence and Effects of Occupational Licensing*, 48 BRIT. J. INDUS. REL. 651, 679, 2010, available at

http://www.hhh.umn.edu/people/mkleiner/pdf/Prevalence_of_Occupational_lisc.pdf.

² *Id.* at 9; accord DICK M. CARPENTER, ET. AL., THE INSTITUTE FOR JUSTICE, LICENSE TO WORK: A NATIONAL STUDY OF THE BURDENS FROM OCCUPATIONAL LICENSING 6 (2012), available at

https://www.ij.org/images/pdf_folder/economic_liberty/occupational_licensing/licensetowork.pdf.

³ ADAM SUMMERS, REASON FOUNDATION, OCCUPATIONAL LICENSING: RANKING THE STATES AND EXPLORING ALTERNATIVES 36 (2007), available at <http://reason.org/files/762c8fe96431b6fa5e27ca64eaa1818b.pdf>.

⁴ *Id.* at 22.

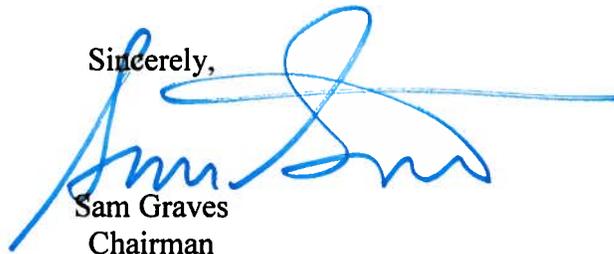
⁵ <http://www.thumbtack.com/survey#/2014/1/states>; see e.g., Gabrielle Karol, *Survey: Licensing Regulations Biggest Pain for SMBs*, FOXBUSINESS, June 11, 2014, available at <http://smallbusiness.foxbusiness.com/finance-accounting/2014/06/11/survey-licensing-regulations-biggest-pain-for-smb/>.

testified on the barriers to entry that such anti-competitive licensing places on entering the market and job creation. At a July 16, 2014, Committee on Small Business hearing the Federal Trade Commission (FTC) testified on its efforts to curb anti-competitive licensing schemes through advocacy and enforcement of federal anti-trust laws to prohibit unfair competition. You may know that there is a case, *North Carolina State Board of Dental Examiners v. FTC*, 717 F.3d 359 (4th Cir. 2013), pending before the United States Supreme Court which will decide whether an occupational licensing board comprised of private actors but created by the state is subject to anti-trust scrutiny or exempt under the state action immunity doctrine. It is likely the Supreme Court's ruling will have significant implications for occupational licensing boards moving forward.

Given the Office of Advocacy's charge to conduct research examining the economic climate for small businesses and measure the effects of government regulation on small businesses, we request that the Office of Advocacy conduct a study on the rise of occupational licensing across states and the economic effects of licensing on entrepreneurs and would-be entrepreneurs.

Should you have any questions regarding this request, please contact Corey Cooke, counsel to the Committee, at (202) 225-5821.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sam Graves", with a long horizontal flourish extending to the right.

Sam Graves
Chairman