

**Scharf-Norton Center for Constitutional Litigation at the  
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**IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

LAUREN BOICE and ANGELS ON  
EARTH HOME BEAUTY, LLC,

Plaintiffs,

vs.

DONNA AUNE, in her official capacity as  
executive director of the Arizona State  
Board of Cosmetology; and GARY  
BEGLEY; KARLA CLODFELTER;  
SANDRA HECKSEL; CHERYL  
CHELIUS; JOE VERDUGO; LARRY  
BULECHEK; and JESSICA STALL, in  
their official capacities as members of the  
Arizona State Board of Cosmetology

Defendants.

Case No.: CV2011-021811

**FIRST AMENDED COMPLAINT**

**(for Injunctive and Declaratory Relief)**

*Hon. Michael Herrod*

**Introduction**

1. This is a civil-rights lawsuit brought pursuant to the United States and Arizona

constitutions to vindicate the due process, equal protection and free speech rights of Plaintiffs Lauren Boice and Angels on Earth Home Beauty, LLC (“Angels on Earth”), to pursue a legitimate business in the face of Defendants’ irrational, oppressive, and unlawful regulations.

**Parties, Jurisdiction, and Venue**

2. Plaintiff Lauren Boice is a citizen of the United States and a resident of Pima County in the State of Arizona. She is the founder and owner of Angels on Earth. Plaintiff Boice is not a cosmetologist, nor does she perform cosmetology services.

3. Plaintiff Angels on Earth is an Arizona limited liability corporation in the Tucson area dedicated to connecting its elderly and infirm homebound clients with independently-licensed cosmetologists that provide salon and spa services. Angels on Earth has been serving clients in the Tucson area for about three years. It is not a salon and before the Board’s intervention, it did not operate in conjunction with any salon.

4. Defendant Donna Aune is Executive Director of the Arizona Board of Cosmetology (“Board”) and is sued in her official capacity.

5. Defendant Gary Begley is a member and Chair of the Board and is sued in his official capacity.

6. Defendant Karla Clodfelter is a member and Vice Chair of the Board and is sued in her official capacity.

7. Defendant Sandra Hecksel is a member, Secretary and Treasurer of the Board and is sued

in her official capacity.

8. Defendant Cheryl Chelius is a member of the Board and is sued in her official capacity.

9. Defendant Joe Verdugo is a member of the Board and is sued in his official capacity.

10. Defendant Larry Bulechek is a member of the Board and is sued in his official capacity.

11. Defendant Jessica Stall is a member of the Board and is sued in his official capacity.

12. Jurisdiction over this action, claims, and parties is provided by A.R.S. §§ 12-123, 12-1831 *et seq.*, and 12-1801; and 42 U.S.C. § 1983.

13. Venue is proper pursuant to A.R.S. § 12-401.

### **Facts Common to All Claims**

#### **Angels on Earth Home Beauty**

14. Plaintiff Boice, a former hospice Certified Nursing Assistant and cancer survivor, is the owner of Angels on Earth.

15. Having a lifelong desire to help those that are unable to help themselves, Plaintiff Boice left behind over twenty years of corporate experience to pursue a career as a nursing assistant in hospice. Her experience caring for terminal patients and her own battle with cancer inspired her to start a unique business dedicated to elevating the self image of homebound individuals.

16. Through Angels on Earth, Plaintiff Boice provides a novel service by connecting Board-licensed, independent cosmetologists with (1) people who would like salon and spa services, but are homebound due to age or medical condition, including cancer; (2) people who are providing

care for someone who is homebound; and (3) people who desire at-home services. Customers wishing to book home beauty services such as haircuts, makeup application, nail therapy, facials, and massages call Plaintiff Boice, who schedules an appointment with an independent cosmetologist.

17. Because many of Plaintiffs' clients are restricted to their homes, hospitals, long-term-care or assisted-living facilities, they cannot easily visit a salon.

18. When new clients call Angels on Earth, Plaintiff Boice asks them the type of services they would like, their location, and the nature of any medical condition. When a client wishes to book an appointment, Plaintiff Boice calls or emails an independent cosmetologist with the time, location, and service requested. The cosmetologist then travels to the home or other location and provides these services.

19. Clients pay Angels on Earth directly and Plaintiff Boice then pays the independent cosmetologist. The cosmetologists are considered by the Internal Revenue Service ("IRS") to be independent contractors. Plaintiff Boice completes an IRS Form 1099 for each cosmetologist.

20. Angels on Earth has been serving homebound clients since 2008. When Angels on Earth opened, Plaintiff Boice filed Articles of Organization with the Arizona Corporation Commission and placed the required advertisement in a local newspaper. She also applied for and received an Employer Identification Number from the IRS.

21. Angels on Earth initially worked with one independent cosmetologist. Due to the

business's success, three independent cosmetologists currently work with Angels on Earth. Plaintiff Boice's unique services are in high demand and her business continues to expand.

22. The independent cosmetologists carry their own liability insurance, use their own tools, and abide by Board rules and sanitation requirements.

23. Plaintiff Boice is not a cosmetologist and does not perform cosmetology services for her clients or business. She merely serves as a facilitator, booking appointments for her clients with independent cosmetologists who are licensed to perform salon and spa services.

### **The Board Regulates Angels on Earth**

24. In correspondence dated June 14, 2011, the Board notified Plaintiff Boice of a complaint against Angels on Earth it received on or about May 5, 2011. The Board alleged that Angels on Earth for violated three sections of Arizona law: A.R.S. §§ 32-574(A)(6), 32-574(A)(9) and 32-574(A)(10).

25. A.R.S. § 32-574 governs unlawful acts under cosmetology regulations. Subsection (A)(6) states that a person shall not “[p]ractice or attempt to practice cosmetology, aesthetics or nail technology in any place other than in a salon licensed pursuant to this chapter unless the person is requested by a customer to go to a place other than a salon licensed pursuant to this chapter and is sent to the customer from the salon.”

26. Subsection (A)(9) states that a person shall not “[o]perate a salon or school without being licensed pursuant to this chapter.”

27. Subsection (A)(10) states that a person shall not “[v]iolate any provision of this chapter or any rule adopted pursuant to this chapter.”

28. A.R.S. § 32-504(A)(9) states that “the board shall . . . prescribe standards and requirements for the *provision of salon services* . . . in customer locations.” (emphasis added).

### **The Board Mandates that Plaintiffs Boice and Angels on Earth Open a Salon**

29. On or about June 10, 2011, Debra Cochran, an Investigator for the Board, contacted Plaintiff Boice by telephone. During that conversation, Ms. Cochran told Plaintiff Boice that she had visited Plaintiff Boice’s home on three separate occasions in an attempt to speak with her, but that no one was home. Ms. Cochran described Plaintiff Boice’s home office and noted that it did not appear to have a salon workstation, indicating that she had looked through Plaintiff Boice’s window.

30. Ms. Cochran then informed Plaintiff Boice that the Board had received an anonymous complaint that Plaintiff Boice did not have a salon license.

31. Although Plaintiff Boice clearly advised Investigator Cochran that she does not operate a salon nor practice cosmetology, and that Angels on Earth is not a cosmetology business, Investigator Cochran nevertheless asserted that Plaintiff Boice needed to obtain a salon license to operate her business.

32. Afraid of losing her business, on or about June 10, 2011, Plaintiff Boice downloaded from the Board’s website the appropriate forms to apply for a salon license. She then telephoned

Investigator Cochran to ask a question about the form.

33. During this call, Investigator Cochran informed Plaintiff Boice for the first time that in addition to applying for a salon license, Plaintiff Boice must also establish a physical salon, post her license and the licenses of the independent cosmetologists at that salon and advertise her business in the salon's window.

34. Investigator Cochran told Plaintiff Boice she had three options: (1) converting her home into a working salon that complies with Board regulations, (2) establishing a separate salon, or (3) renting space at an existing salon. If Plaintiff Boice chose to rent space at an existing salon, however, Investigator Cochran said Plaintiff Boice would be forced to relinquish the management of her business to the owner of that salon.

35. On or about June 21, 2011, Plaintiff Boice mailed her application for a salon license. She received the license in the mail on or about June 29, 2011.

### **The Board Compels Plaintiff Boice to Register a Trade Name**

36. On or about June 13, 2011, Plaintiff Boice telephoned Investigator Cochran to notify her that she had found a salon in Tubac, Arizona, that was willing to rent her a booth.

37. During that conversation, Investigator Cochran informed Plaintiff Boice of yet another Board requirement – she would have to register a trade name for her business with the Secretary of State (“SOS”). Plaintiff Boice asked Investigator Cochran why she had not been informed of this during one of their previous conversations but received no answer.

38. According to the SOS website, the SOS does not require businesses to register a trade name.

39. On or about June 16, 2011, Plaintiff Boice telephoned Ms. Cochran to inform her of this, but Ms. Cochran insisted that trade name registration is the Board's requirement and supersedes that of the SOS. Ms. Cochran did not indicate the source of this requirement.

40. On or about June 16, 2011, Plaintiff Boice visited an SOS office in Tucson and applied for a trade name. At that time, an SOS employee told Plaintiff Boice that the SOS does not register trade names to LLCs and that the Board is aware of this.

41. In order to register a trade name for her business, Plaintiff Boice had to register as "Angels on Earth Home Beauty, dba Angels on Earth Home Beauty, LLC."

42. Thereafter, Plaintiff Boice had to change her existing brochures, business cards, website, and other advertisements to reflect the new trade name

43. Plaintiff Boice received her certificate of registered trade name in the mail on or about June 18, 2011.

**The Board Compels Plaintiffs Boice and Angels on Earth to Keep an Appointment Book and Licenses at the Unused Salon**

44. On or about June 17, 2011, Defendant Donna Aune, Executive Director of the State Board of Cosmetology, contacted Plaintiff Boice by telephone. During that conversation, Defendant Aune reiterated all of the regulations Ms. Cochran previously discussed and then



added yet another requirement: Plaintiff Boice would be forced to keep her appointment book at the rented salon.

45. Plaintiff Boice told Defendant Aune that she carries her appointment book with her so she can book appointments while travelling. Defendant Aune insisted that keeping records of Plaintiff Boice's appointments at the salon, updated on a daily basis, is necessary so that the Board can investigate the independent cosmetologists at client locations.

46. Plaintiff Boice informed Defendant Aune that many of her clients are restricted to their private homes. Defendant Aune agreed that the Board would not investigate the clients' private homes, but maintained the appointment book requirement.

47. Before concluding the conversation, Defendant Aune told Plaintiff Boice that the licenses the Board required her to display in the salon must be Board-authorized duplicates, which must be purchased for a fee. Moreover, Defendant Aune insisted that the independent cosmetologists carry with them Board-authorized duplicates of Plaintiff Boice's salon license, even though they are not employees of a salon.

### **Plaintiffs Boice and Angels on Earth Seek Help**

48. On or about June 24, 2011, Plaintiff Boice mailed correspondence to Governor Jan Brewer and Attorney General Tom Horne, imploring their assistance in getting the Board to rescind its oppressive regulations that do not pertain to her type of business. In her letter, Plaintiff Boice described her business as solely communicating information, stated that she does

not operate a salon or provide cosmetology services, and explained the Board regulations.

49. In correspondence dated June 29, 2011, the Attorney General's office informed Plaintiff Boice that it had consulted with the Board and that Plaintiff Boice is "running a cosmetology business." The letter cited A.R.S. §§ 32-574(A)(6) and (9) and reiterated the Board's demand that Plaintiff Boice establish a licensed salon.

50. Additionally, although the independent cosmetologists do not store their tools nor provide services at the rented salon, the letter stated, "The reasoning behind this requirement is to have a licensed salon that the Board Inspectors and Investigators can inspect and ensure that only licensed individuals are practicing cosmetology or aesthetics and that all tools being used on the public are properly disinfected."

51. Plaintiff Boice has complied with all of the Board's regulations at considerable disruption to her business. The Board's ongoing and excessive regulations shut down Angels on Earth for approximately one month, causing Plaintiff Boice to lose clients, impeding her ability to pursue an honest living and legitimate business, and burdening her speech.

52. If the law were changed or if the Board ceased applying A.R.S. §§ 32-574(A)(6) and (9) to her dispatch service, Plaintiff Boice would not rent a booth at a salon, display licenses at a salon, or otherwise maintain a physical salon for Angels on Earth.

### **Changes to the law**

53. On March 27, 2012, Governor Jan Brewer signed into law H.B. 2440, which amends

A.R.S. §§ 32-574(A)(6), only one of the sections of the statute for which the Board cited Plaintiff Boice. Subsection (A)(6), as amended by H.B. 2440, states that a person shall not “[p]ractice or attempt to practice cosmetology, aesthetics or nail technology in any place other than in a salon licensed pursuant to this chapter unless the person is requested by a customer to go to a place other than a salon licensed pursuant to this chapter and is sent to the customer from the salon, *except that a person who is licensed pursuant to this chapter may practice, without the salon’s request, cosmetology, aesthetics or nail technology in a health care facility, hospital, residential care institution, nursing home or residence of a person requiring home care because of an illness, infirmity or disability.*” (emphasis added).

54. H.B. 2440 does not exempt cosmetology services performed in places other than a licensed salon, health care facility, hospital, residential care institute, nursing home or homebound person’s residence.

55. H.B. 2440 does not exempt cosmetology services for people who are providing care for someone who is homebound or people who otherwise desire at-home services.

56. H.B. 2440 does not exempt the totality of services Plaintiff Boice arranges for her clients through Angels on Earth.

### **Count I – Lack of Jurisdiction**

57. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 56, as though fully set forth herein.

58. Defendants possess no authority except for authority that is expressly delegated to them by Arizona statutes.

59. Angels on Earth does not engage in the practice of cosmetology, aesthetics, or nail technology as those terms are defined in A.R.S. § 32-501(2), (6), or (10).

60. Plaintiff Boice does not operate a salon as that term is defined in A.R.S. § 32-501(11), or at all.

61. Accordingly, and for all of the foregoing reasons, defendants do not have jurisdiction over Plaintiffs Boice or Angels on Earth.

### **Count II – Due Process**

62. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 61, as though fully set forth herein.

63. At all times and in all of their actions encompassed by this complaint, Defendants acted under color of state law.

64. The 14th Amendment to the U.S. Constitution protects the privileges or immunities of citizens and the right to due process of law.

65. Article II, § 4 of the Arizona Constitution provides, “No person shall be deprived of life, liberty, or property without due process of law.”

66. These provisions guarantee to every citizen the right to earn an honest living by pursuing the occupation of their choice, free from unreasonable government interference.

67. By forcing Plaintiffs to maintain a physical salon and subjecting them to the aforementioned regulations, Defendants are subjecting Plaintiffs to regulations that do not rationally pertain to their business. Defendants' actions irrationally, arbitrarily, and excessively restrict the ability of Plaintiffs to operate a legitimate business.

68. Defendants' actions exceed any rational and legitimate public health and safety concerns necessary to protect the public.

69. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing harm to their constitutional rights to due process of law.

70. For all of the foregoing reasons, A.R.S. §§ 32-574(A)(6) and 32-574(A)(9) as applied and Defendants' actions violate Plaintiffs' constitutional due process rights under the United States and Arizona constitutions.

### **Count III – Equal Protection**

71. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 70, as though fully set forth herein.

72. At all times and in all of their actions encompassed by this complaint, defendants acted under color of state law.

73. The 14th Amendment to the U.S. Constitution protects the right to equal protection under the law.

74. Article II, § 13 of the Arizona Constitution provides, "No law shall be enacted granting to

any citizen, class of citizens, or corporations other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.”

75. These provisions guarantee to every citizen the right to earn an honest living by pursuing the occupation of their choice, free from unreasonable government interference.

76. Defendants’ application of cosmetology laws and regulations treats Plaintiffs’ dispatch service like the practice of cosmetology, and Plaintiffs’ business like a salon, although Plaintiff Boice does not practice cosmetology and Angels on Earth is not a salon, in violation of the Arizona Constitution.

77. By unreasonably and arbitrarily requiring Plaintiffs’ dispatch service to establish a physical salon, but not requiring other dispatch services to establish physical locations, defendants deny plaintiffs an equal opportunity to offer their services lawfully, in violation of the federal and Arizona constitutions.

78. By forcing Plaintiffs to maintain a physical salon and subjecting them to the aforementioned regulations, Defendants are subjecting Plaintiffs to regulations that do not rationally pertain to their business. Defendants’ actions irrationally, arbitrarily, and excessively restrict the ability of Plaintiffs to operate a legitimate business.

79. Defendants’ actions exceed any rational and legitimate public health and safety concerns necessary to protect the public regarding the practice of cosmetology.

80. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or

minimize the continuing harm to their constitutional rights to equal protection under the law.

81. For all of the foregoing reasons, A.R.S. §§ 32-574(A)(6) and 32-574(A)(9) as applied and Defendants' actions violate Plaintiffs' constitutional equal protection rights under the United States and Arizona constitutions.

#### **Count IV – Free Speech**

82. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 81, as though fully set forth herein.

83. At all times and in all of their actions encompassed by this complaint, Defendants acted under color of state law.

84. The First Amendment to the U.S. Constitution and Article II, § 6 of the Arizona Constitution guarantee Plaintiffs the right to free speech.

85. The U.S. and Arizona constitutions protect Plaintiff Boice's right to communicate lawful and truthful information to her clients.

86. Requiring Plaintiff Boice to obtain a salon license and maintain a physical salon, keep her appointment book at that salon, and otherwise comply with the Board's regulations before communicating information to her clients places an unconstitutional burden on Plaintiff's speech.

87. Requiring Plaintiff Boice to obtain a salon license and otherwise comply with the Board's cosmetology regulations before communicating information constitutes an unconstitutional prior

restraint on her speech.

88. Regulating Plaintiff Boice for communicating information about cosmetology services but not other topics constitutes a content-based restriction on her speech.

89. Defendants do not have sufficient justification for their restrictions on Plaintiff Boice's right to speak.

90. Plaintiffs have no adequate legal, administrative or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights to free speech.

91. For all of the foregoing reasons, A.R.S. §§ 32-574(A)(6) and 32-574(A)(9) as applied and Defendants' actions violate Plaintiffs' constitutional rights to free speech under the United States and Arizona constitutions.

### **REQUEST FOR RELIEF**

To serve the interests of equity and justice, Plaintiffs request that this honorable Court award the following relief:

A. Declare that Defendants do not possess jurisdiction over Plaintiff Boice and Plaintiffs' business Angels on Earth;

B. Declare that A.R.S. § 32-574(A)(6) is unconstitutional, and that Defendants' application of A.R.S. §§ 32-574(A)(6) and 32-574(A)(9) to Plaintiffs' business is unconstitutional;

B. Declare that A.R.S. § 32-574(A)(6), §§ 32-574(A)(6) and 32-574(A)(9) as applied to



Plaintiffs, and Defendants' actions violate the Fourteenth Amendment to the United States Constitution, and Article II, Sections 4 and 13 of the Arizona Constitution;

C. Declare that A.R.S. § 32-574(A)(6), §§ 32-574(A)(6) and 32-574(A)(9) as applied to Plaintiffs, and Defendants' actions violate the First Amendment to the United States Constitution and Article II, Section 6 of the Arizona Constitution;

D. Permanently enjoin Defendants and their agents and employees from enforcing A.R.S. § 32-574(A)(6), and § 32-574(A)(9) as-applied to Plaintiffs;

E. Award costs and attorney fees to plaintiffs pursuant to A.R.S. §§ 12-341 and 12-348, the private attorney general doctrine and 42 U.S.C. § 1988;

F. Order such additional relief as may be just and proper.

**DATED: April 30, 2012**

Respectfully submitted,

/s/ Christina Sandefur

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E-FILED this 30th day of April, 2012 with:

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Copy of the foregoing MAILED and E-MAILED this 30th day of April, 2012 to:

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