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INTRODUCTION

In 1898, the Supreme Court recognized that occupational licensing restrictions created tension between criminal justice and public health, safety, and welfare.[1] Since then, federal and state governments have continued to enforce contradictory policies; expending an enormous amount of resources to penalize and rehabilitate offenders while at the same time, undermining the effectiveness of criminal justice efforts by disqualifying ex-offenders from as many as 6,000[2] occupations. Marc La Cloche's grueling fight for his opportunity to work as a barber highlights the debilitating impact that nonsensical and convoluted occupational licensing regulatory schemes can have on ex-offender reentry efforts.

When Mr. La Cloche was twenty-four years old, he was convicted of armed robbery.[3] While incarcerated for eleven years, Mr. La Cloche was "an admirable prisoner."[4] He completed a drug rehabilitation program, earned his high school equivalency degree, and consistently received favorable evaluations.[5] The New York State correctional facility also offered vocational training courses, purportedly to prepare inmates for post-incarceration opportunities.[6] In fourteen months, Mr. La Cloche took fifty barbering classes, completed 1,200 hours of training,[7] and obtained two certificates.[8] In 2000, the New York State Parole Board granted Mr.

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1. Hawker v. New York, 170 U.S. 189 (1898). Hereinafter, "occupational licensing restrictions" or "record-based occupational licensing laws" refer to licensure laws that, by statutory mandate or in practice, bar ex-offenders from qualifying for licenses to work in the regulated occupations.

2. Stacy A. Hickox, *A Call to Reform State Restrictions on Hiring Ex-offenders*, 12 STAN. J.C.R. & C.L. 121, 151 (2016).

3. Matter of La Cloche v. Daniels, No. 403466/2003, slip op. at 2 (N.Y. Sup. Ct. June 1, 2006).

4. *Id.*

5. *Id.* at 2-3.

6. *Id.* at 3.

7. Dareh Gregorian, *Ex-Con Barber in Hair Tangle*, N.Y. POST (Feb. 21, 2003), https://nypost.com/2003/02/21/ex-con-barber-in-hair-tangle/.

8. *Matter of La Cloche*, slip op. at 3.

La Cloche's request for early release based on his good conduct.[9] Shortly thereafter, Mr. La Cloche applied to the New York Division of Licensing Services ("the Licensing Board") for his barber apprentice license.[10] The Licensing Board denied Mr. La Cloche's application solely because his criminal history indicated a lack of requisite moral character and trustworthiness.[11]

Mr. La Cloche doggedly appealed the Licensing Board's decision through every possible avenue.[12] In the administrative hearing, Judge Felix Neals reversed the Licensing Board's decision and Mr. La Cloche went on to work at two barbershops without incident.[13] Meanwhile, the Licensing Board appealed the decision to the Secretary of State, who reversed Judge Neals' decision and the Licensing Board revoked Mr. La Cloche's license.[14] Having exhausted all administrative remedies, Mr. La Cloche appealed the Secretary of State's decision to the Supreme Court of New York.[15] The court vacated the decision and remanded the case back to the administrative court to determine if Mr. La Cloche had the requisite moral character on the basis of his conviction and mitigating factors, such as evidence of rehabilitation.[16] Additionally, Judge Herman Cahn chastised

9. *Id.* In granting parole, the New York State Parole Board "necessarily found that there was a reasonable probability that, once he was released, he would 'live and remain at liberty without violating the law,' and that his release 'was not incompatible with the welfare of society' and would not deprecate the seriousness of his crime." *Id.*

10. *Id.*

11. *Id.* at 3-4.

12. After the Licensing Board denies a candidate's application, the candidate may request an administrative hearing. The applicant has the burden of proof to show by substantial evidence that he or she meets the licensing qualifications. Thereafter, the presiding Administrative Law Judge ("ALJ") will either approve or deny the application. *What Is a Hearing?*, DEP'T OF ST., OFF. OF ADMIN. HEARINGS, https://www.dos.ny.gov/ooah/what_is_a_hearing.html (last visited Mar. 12, 2018). If the ALJ approves the application, the Licensing Board may appeal the decision to the Secretary of State. If either the ALJ denies the application or the Secretary of State reverses the ALJ's decision and the applicant has exhausted all administrative remedies, the applicant may appeal the decision to the Supreme Court of New York. *See What Happens After The Hearing?*, DEP'T OF ST., OFF. OF ADMIN. HEARINGS, https://www.dos.ny.gov/ooah/after_hearing.html (last visited Mar. 12, 2018); Marc La Cloche, 21 DOS APP 01 (N.Y. DEP'T OF ST. Dec. 4, 2001), https://docs.dos.ny.gov/ooah/decisions/appeals/21dosapp01.

htm.

13. *Matter of La Cloche*, slip op. at 4. Judge Neals also determined that "good moral character is not a requirement for a [barber apprentice] license." *Id.*

14. *Id.*

15. La Cloche v. Daniels, 755 N.Y.S.2d 827 (N.Y. Sup. Ct. 2003).

16. *Id.* at 830.

the State's actions:

> If the State offers this vocational training program to persons who are incarcerated, it must offer them a reasonable opportunity to use the skills learned thereby, after they are released from prison. . . . To refuse to certify an applicant as a barber apprentice solely because of a previous criminal conviction would be to deny the applicant the opportunity to practice a trade which the State itself taught him/her.[17]

For the new administrative hearing, Mr. La Cloche submitted overwhelming evidence from multiple employers in support of his good moral character and fitness for barbering.[18] Despite all of this, Judge Roger Schneier made a subjective determination that Mr. La Cloche lacked remorse and ruled in favor of the government.[19] With admirable determination, Mr. La Cloche appealed the unfavorable decision back to the Supreme Court of New York.[20] Before the court could make a decision, Mr. La Cloche died, as a highly qualified barber, in demand by employers, trained by the State, and yet denied employment by the State in deference to the state court.[21] The court had to dismiss the case after Mr. La Cloche's death, but Judge Louis York felt "compelled to comment upon the injustice" of this case[22] and criticized the State's deplorable actions in his written opinion. Judge York accused the State of: (1) successfully rehabilitating an inmate and then vigorously fighting to deny [Mr. La. Cloche] the right to live a rehabilitated life;[23] (2) improperly and irrationally denying Mr. La Cloche's license application[24]; and (3) acting

17. *Id.*

18. *Matter of La Cloche*, slip op. at 5. Michael Santos of Diamond Cuts said that Mr. La Cloche "would be his first choice to manage a second store . . . ." *Id.* A minister and his wife of God's Property, praised Mr. La Cloche's work and high moral character. *Id.* Mr. La Cloche's parole officer submitted a reference that Mr. La Cloche satisfied all conditions of his parole. *Id.*

19. *Id.* at 5-6. Judge Schneier decided that Mr. La Cloche lacked sufficient remorse for the crime because of Mr. La Cloche's imperfect memory of the armed robbery. *Id.* at 6.

20. *Id.*

21. *See* Clyde Haberman, *Ex-Inmate's Legacy: Victory Over Bias and Catch-22 Bureaucracy*, N.Y. TIMES (Aug. 28, 2008), http://www.nytimes.com/2008/08/29/nyregion/29nyc.html.

22. *Matter of La Cloche*, slip op. at 7.

23. *Id.* at 8.

24. *Id.* at 8-9. The court stated that Judge Schneider should not have considered Mr. La Cloche's

"contrary to its own statutorily mandated policies."[25]

Mr. La Cloche may have been unique in his tenacity but he was just one among many ex-offenders who continue to face insurmountable barriers to legitimate employment. More than 600,000 people are released from state and federal prisons each year.[26] Nearly 5 million adults are either under supervision, on probation, or on parole.[27] Approximately 70 million people have an arrest or conviction record.[28] And despite the criminal justice system's policy to punish, deter, and rehabilitate, the United States has a 67.5% recidivism rate within three years of release.[29] Ironically, researchers believe that the number one factor to counter recidivism is gainful employment.[30]

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remorse and responsibility for his previous offense because those issues were reserved for the New York State Parole Board. *Id.*; *see also supra* note 9. Additionally, the court noted that Judge Schneider should have given weight to Mr. La Cloche's post-incarceration conduct and conduct in the profession. *Matter of La Cloche*, slip op. at 9. Finally, the court specified that Judge Schneider's consideration of moral character exceeded the scope of the traditional evaluation for a barber's license. *Id.*

25. *Id.* at 9. "The public policy of this state . . . [is] to encourage the licensure and employment of persons previously convicted of one or more criminal offenses." N.Y. CORR. LAW § 753(a)(1976) (amended in 2007 but the statutory language remains the same).

26. E. ANNE CARSON, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PRISONERS IN 2016 10 (2018), https://www.bjs.gov/content/pub/pdf/p16.pdf.

27. DANIELLE KAEBLE & THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES, 2015 (2016), https://www.bjs.gov/content/pub/pdf/ppus15.pdf.

28. MICHELLE NATIVIDAD RODRIGUEZ & BETH AVERY, NAT'L EMP'T LAW PROJECT, UNLICENSED & UNTAPPED: REMOVING BARRIERS TO STATE OCCUPATIONAL LICENSES FOR PEOPLE WITH RECORDS 6 (2016), http://www.nelp.org/content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupa

tional-Licenses.pdf.

29. PATRICK A. LANGAN & DAVID J. LEVIN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SPECIAL REPORT: RECIDIVISM OF PRISONERS RELEASED IN 1994 1 (Bulletin No. NCJ 193427, June 2002), https://www.bjs.gov/content/pub/pdf/rpr94.pdf. In the seminal study, Langan and Levin tracked nearly 300,000 prisoners, released in fifteen states, and for the course of three years. *Id. See also* ALLEN J. BECK & BERNARD E. SHIPLEY, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SPECIAL REPORT: RECIDIVISM OF PRISONERS RELEASED IN 1983 (1989), https://www.bjs.gov/content/pub/pdf/rp

r83.pdf (a study of 16,000 prisoners released during 1983 found that the recidivism rate was about forty-seven percent).

30. Miriam J. Aukerman, *The Somewhat Suspect Class: Towards a Constitutional Framework for Evaluating Occupational Restrictions Affecting People with Criminal Records*, 7 WAYNE STATE J.L. SOC'Y 18, 22 (2005). *See also* SHARRON D. MATTHEWS & AMANDA CASARJIAN, SAFER FOUND., GOVERNMENT PERSONNEL POLICIES IMPACTING THE HIRING OF EX-OFFENDERS (2002), http://www.saferfoundation.org/files/documents/CARRE%20Paper%203.pdf (discussing empirical research on the impact of unemployment and recidivism).

The prevalence of occupational licensing restrictions is a formidable barrier to reentry efforts, particularly when they relate to low-income occupations such as barbering and cosmetology. By reforming those laws and corresponding regulatory schemes, ex-offenders will have a realistic opportunity to reclaim their stake in society and contribute to the economic welfare of the community. Part I of this Note examines the history of occupational licensing laws and legal challenges based on the Fourteenth Amendment of the United States Constitution and Title VII of the Civil Rights Act of 1964. Part II identifies problems with the current occupational licensing framework and the impact of Supreme Court precedent on the validity of occupational licensing laws. Part III proposes that states require: (1) licensing boards to consider rehabilitation factors in assessing an ex-offender's application; (2) a direct relationship between the conviction and the licensed occupation; and (3) a presumption for licensure for ex-offenders who complete the correctional facility vocational training program. By prioritizing occupational licensing reform, states can provide ex-offenders legitimate rehabilitation opportunities and reconcile criminal justice and public safety policies.

I. BACKGROUND

A. The Spread of Occupational Licensing Laws

1. In General

Occupational licensing laws are meant to ensure that the quality of goods and services in certain industries meet baseline standards.[31] Federal, state, and local governments grant licenses to permit recipients to engage in activities that ordinary members of the public are not legally able to perform.[32] The state draws on its "police power" to regulate occupations

31. U.S. DEP'T OF THE TREASURY, OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS 6 (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf [hereinafter THE WHITE HOUSE REPORT].

32. Bruce E. May, *Real World Reflection: The Character Component of Occupational Licensing Laws: A Continuing Barrier to the Ex-Felon's Employment Opportunities*, 71 N.D.L. REV. 187, 189 (1995).

that implicate public health, safety, and welfare.[33] Noncompliance with occupational licensing laws entails financial and legal consequences. Three common penalties include: (1) fines or other financial measures; (2) administrative or criminal offenses that range from misdemeanors to felonies; or (3) an unenforceable contract between the ex-offender (service or good provider) and the other party.[34]

The share of the workforce requiring occupational licensing has grown exponentially over time. In the early 1950s, less than five percent of the workforce was subject to state occupational licensing laws.[35] As of 2008, twenty-five percent were subject to state laws and an additional four percent were subject to local and federal laws.[36] About two-thirds of the increase in licensed workers is due to a growing number of regulations targeting various occupations and the remaining one-third is from the growing number of workers in the service sector.[37]

Occupational licensing laws are classified as either revenue-raising or regulatory.[38] A revenue-raising licensing law requires that an applicant pays a routine fee in order to engage in the business or profession.[39] A regulatory licensing law either prescribes qualifications for an occupation or grants a government agency broad authority to do so, commonly through a licensing board.[40] These qualifications often include a competency component and a character component.[41] Competency refers

33. ANTHONY C. THOMPSON, RELEASING PRISONERS, REDEEMING COMMUNITIES 111 (N.Y.U. Press 2008); *but cf.* Paul J. Larkin, Jr., *Public Choice Theory and Occupational Licensing*, 39 HARV. J.L. & PUB. POL'Y 209 (2016) (arguing that occupational licensing laws should not be a legitimate exercise of state power).

34. May, *supra* note 32, at 191-92. *See, e.g.,* City of Beaufort v. Holcombe, 369 S.C. 643, 647 (S.C. Ct. App. 2006) (affirming the defendant's conviction and sentence to thirty days in jail or payment of a fine and administrative penalties for operating a business without a license).

35. THE WHITE HOUSE REPORT, *supra* note 31, at 17.

36. THE WHITE HOUSE REPORT, *supra* note 31, at 17.

37. *See* THE WHITE HOUSE REPORT, *supra* note 31, at 19-22. Eleven of the twelve occupations with the most licensed workers provide services: health care practitioners, education, transportation, sales, management, construction, personal care, protective service, health care support, installation and maintenance, business and financial. *Id.* at 21.

38. May, *supra* note 32, at 189. The state legislature creates the licensing board and the governor appoints members from the profession to serve on those boards. *Id.*

39. May, *supra* note 32, at 189-90. This tends to be a ministerial procedure and the state does not consider an applicant's background or competence. May, *supra* note 32, at 190.

40. May, *supra* note 32, at 190; Larkin, *supra* note 33, at 213.

41. THOMPSON, *supra* note 33, at 111.

to training or experience.[42] Character generally refers to at least one of the following requirements: (1) no criminal conviction; (2) good moral character (or a lack of evidence of moral turpitude); (3) reputable character; or (4) honest and trustworthy character.[43] Despite the significance of the character component, statutory definitions for "good moral character" or "moral turpitude" are ambiguous and highly discretionary.[44] As a result, ex-offenders are frequently disqualified on the basis of their criminal background.[45]

2. Variance Among the States

States differ in regard to the types of regulated occupations, specific competency and character requirements, and how licensing boards interpret equivocal requirements such as "moral character." The number of occupations that require a license in at least one state may be as few as 1,100[46] or as many as nearly 6,000.[47] Yet, less than sixty occupations are regulated in all fifty states.[48] 841 different statutory licensing provisions enable licensing boards to deny ex-offenders licenses solely on the basis of their past criminal conduct.[49] 1,814 licensing provisions require good

42. For example, Oklahoma requires a hairbraiding technician to complete 600 hours in "bacteriology, chemistry, anatomy, physiology, sterilization and sanitation[,] hairbraiding/hairweaving skills (includes purpose and effect, procedures, repair, removal of weft, sizing and finishing, extension and maintenance/care of braids/weaves[,] salon development[,] and board rules, regulations and statutes." OKLA. ADMIN. CODE §175:10-3-43 (2017).

43. May, *supra* note 32, at 195, 199.

44. May, *supra* note 32, at 197-98, n. 66. "Moral turpitude is generally understood as behavior that violates accepted moral standards of the community." May, *supra* note 32, at 199. For example, South Dakota requires that "any licensee . . . must be a person of good moral character, never convicted of a felony, and, if a corporation, the managing officers thereof must have like qualifications." S.D. CODIFIED LAWS § 35-2-6.2 (2018). Mississippi defines "good moral character" as "a pattern of behavior conforming to the profession's ethical standards and behavior that indicates honesty and truthfulness, integrity, respect among the community for lawful behavior, respect for the rights of others, and obedience to the lawful directives of public officers or officials or persons charged with the enforcement of the law and showing an absence of moral turpitude." MISS. ADMIN. CODE § 30-27-3103:1.1(1) (2015).

45. *See* THOMPSON, *supra* note 33, at 111-12; May, *supra* note 32, at 197.

46. THE WHITE HOUSE REPORT, *supra* note 31, at 7.

47. Hickox, *supra* note 2, at 151.

48. THE WHITE HOUSE REPORT, *supra* note 31, at 7.

49. HUNT ET. AL., AMERICAN BAR ASSOCIATION, LAWS, LICENSE AND THE OFFENDER'S RIGHT TO WORK 5 (1973).

moral character.[50] 410 statutory provisions disqualify an applicant based on a criminal offense of moral turpitude.[51]

States also vary in the amount of discretion licensing boards have to determine the impact of past criminal convictions (and arrests) on licensing eligibility. Twenty-five states and the District of Columbia have no standards for how a licensing board should consider an applicant's criminal record, which may result in the automatic disqualification of ex-offenders.[52] The remaining twenty-five states do require some relationship between the ex-offender's criminal offense and the professional responsibilities in the particular occupation.[53] A comprehensive survey showed that thirty-eight states allow licensing boards to also consider arrests that did not result in convictions.[54] Nine states restrict inquiry into such arrests.[55] Two states forbid public employers and licensing boards

50. *Id.* For example, New York provides that the purpose of its barbering licensing requirements is for:

> The need for technical skill, training and experience, good health, good moral character and other fundamental qualities and qualifications in persons engaged in the practice of barbering, as herein defined, having been unquestionably established and demonstrated and in order to safeguard the health of the persons who patronize the barber shops of our state and because of the evils connected with itinerant barbers and barber shops and because of the inadequacy of local regulation[.]

N.Y. GEN. BUS. LAW § 430 (McKinney 2015).

51. HUNT ET. AL., *supra* note 50.

52. THE WHITE HOUSE REPORT, *supra* note 31, at 36.

53. THE WHITE HOUSE REPORT, *supra* note 31, at 36. For example, Texas requires that, "Each licensing authority shall issue guidelines relating to the practice of the licensing authority under this chapter. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority." TEX. OCC. CODE ANN. § 53.025 (West 2012).

54. Debbie A. Mukamal & Paul N. Samuels, *Twelfth Annual Symposium on Contemporary Urban Challenges: Statutory Limitations on Civil Rights of People with Criminal Records*, 30 FORDHAM URB. L.J. 1501, 1503-04 (2003).

55. *Id.* at 1504. These nine states include: California, Hawaii, Massachusetts, Michigan, New York, Ohio, Rhode Island, Utah, and Wisconsin. *Id.* For example, Ohio specifies that in any application for license:

> [A] person may not be questioned with respect to any record that has been sealed . . . ." If such inquiry is made, "the person whose official record was sealed may respond as if the arrest underlying the case to which the sealed official records pertain and all other proceedings in that case did not occur, and the person . . . shall not be subject to any adverse action because of the arrest, the proceedings, or the person's response.

OHIO REV. CODE ANN. § 2953.55 (LexisNexis 2010).

from considering arrests at all.[56] And one state forbids public employers from considering arrests.[57]

B. Legal Challenges to the Validity of Occupational Licensing Laws

1. Fourteenth Amendment: Equal Protection and Due Process Clauses

Occupational licensing restrictions may be unconstitutional per the Fourteenth Amendment of the United States Constitution. The Equal Protection Clause mandates that states cannot "deny to any person within its jurisdiction the equal protection of the laws."[58] The Due Process Clause provides that states cannot "deprive any person of life, liberty, or property, without due process of law."[59] Courts apply different standards of review according to: (1) the classification of the private party in the suit or (2) the type of regulated activity.[60]

Under the Equal Protection Clause, ex-offenders may allege that the state's occupational licensing restriction discriminates against people with criminal records. The now infamous footnote in *United States v. Carolene Products Co.* established a hierarchy system of judicial review.[61] Justice Stone suggested that a "more exacting judicial scrutiny" may be appropriate in cases where the law "prejudices against discrete and insular minorities."[62] Since then, courts have recognized race and alienage, among others, as suspect classifications that are reviewed under strict scrutiny.[63] Gender, among others, is a quasi-suspect classification that is subject to intermediate scrutiny.[64] Alternatively, courts will also apply strict scrutiny to laws that affect fundamental rights.[65] However, an ex-offender's

56. These two states are Arkansas and New Mexico. Mukamal, *supra* note 54, at 1504.
57. This state is New Hampshire. *Id.*
58. U.S. CONST. amend. XIV, § 1.
59. *Id.*
60. *Infra* notes 61-65 and accompanying text.
61. 304 U.S. 144, n.4 (1938).
62. *Id.*
63. McLaughlin v. Florida, 379 U.S. 184 (1964) (race); Graham v. Richardson, 403 U.S. 365 (1971) (alienage).
64. Craig v. Boren, 429 U.S. 190 (1976).
65. May, *supra* 32, at 204.

criminal record is not a suspect classification[66] and the ability to work in certain occupations is not a fundamental right.[67] Therefore, courts will apply minimum scrutiny (rational basis review) such that the occupational licensing law only needs to relate generally to a legitimate or "any reasonably conceivable" state purpose.[68]

Ex-offenders may also allege that the state violated the Due Process Clause by depriving them of a liberty interest to pursue an occupation by way of inadequate procedures or substance.[69] In very simplified terms and as applied to the occupational licensing context, procedural due process requires that the review process of a person's application is fair.[70] This is a fact-specific balancing inquiry that weighs the rights at risk with the interests involved.[71] Substantive due process requires that the licensing requirements have a rational relationship to either an applicant's ability to provide services in the regulated occupation or to the state's purpose in

66. *See, e.g.*, Champion v. Artuz, 76 F.3d 483, 486 (2d Cir. 1996) (affirming dismissal of the defendant's equal protection claim because his wife, an ex-offender, was not part of a suspect class and that there was a rational relationship between suspension of conjugal visits and purpose of prison regulations); *cf.* Glauner v. Miller, 184 F.3d 1053, 1054 (9th Cir. 1999) (applying rational basis review because "prisoners [were] not a suspect class and there [was] no fundamental constitutional right to parole.").

67. *See, e.g.*, Thomas v. Bd. of Exam'rs., 651 F. Supp. 664, 671 (N.D. Ill. 1986) (declining to apply heightened scrutiny because pursuing an occupation as a school principal was not a "fundamental right" and status as an applicant for a principal position did not entail a suspect classification).

68. FCC v. Beach Commc'ns. Inc., 508 U.S. 307, 313 (1993); Ben Geiger, Comment, *The Case for Treating Ex-Offenders as a Suspect Class*, 94 CALIF. L. REV. 1191, 1215-16 (2006).Where courts have overturned licensing restrictions, they have found a lack of adequate rational relationship between the restriction and the government interest. The conviction "is often, but not always, minor, nonexistent, or old." *Id.* at 1216. *See also*, Doe v. Saenz, 140 Cal. App. 4th 960, 993 (Cal. Ct. App. 2006) (holding that the state licensing law violated the Equal Protection Clause under rational basis review because statutory classifications of certain convictions as non-exempt or exempt did not relate to a valid state purpose).

69. *Thomas v. Bd. of Exam'rs.,* 651 F. Supp. at 665. *See also*, Hampton v. Mow Sun Wong, 426 U.S. 88, 102 (1976) (holding that a federal regulation that barred noncitizens from employment in federal service deprived resident aliens of their Fifth Amendment right to due process). Although an ex-offender may also allege that the state deprived him or her of a property interest without due process, this argument will likely fail because he has no claim of entitlement to an occupation unless there is, for example, a legitimate contract. *Thomas v. Bd. of Exam'rs.,* 651 F. Supp. at 667; *see also Barsky v. Bd. of Regents*, 347 U.S. 442, 452 (1954) (plaintiff alleged that that New York's standard for his license suspension hearing deprived him of his property rights to his license and medical practice).

70. *Thomas v. Bd. of Exam'rs.*, 651 F. Supp. at 668.

71. *Id.*

exercising its police power to protect public health, safety, or welfare.[72]

2. Guidance from the Supreme Court

Supreme Court precedent establishes some limits to the scope of occupational licensing restrictions to ensure that they are constitutional under the Due Process Clause but generally, the holdings are still deferential to the states. In *Hawker v. New York*, the Supreme Court upheld a New York Public Health Law that made it a crime for any person convicted of a felony to practice medicine.[73] Although the Supreme Court recognized that there have been no definitive limits placed on the bounds of a state's police power, it was undeniable that "legislation which simply defines the qualifications of one who attempts to practice medicine is a proper exercise of that power."[74]

Furthermore, the Supreme Court explained that just as the state can impose a competency requirement, the state may "with equal propriety" prescribe a character requirement and the evidence it entailed based on "whatever is ordinarily connected with bad character, or indicative of it."[75] And a criminal conviction may be "conclusive evidence" of questionable character.[76] After its strongly deferential commentary about state power, the Supreme Court attempted to offer some reprieve for barred ex-offenders: "Doubtless, one who has violated the criminal law may thereafter reform and become in fact possessed of a good moral character. But the legislature has power in cases of this kind to make a rule of universal application."[77]

In affirming Hawker's conviction for the illegal practice of medicine, the Supreme Court established that occupational licensing laws are definitively up to the state's legislative functions, there is a rational basis between an ex-offender's criminal record and licensing qualifications, and a state may determine what constitutes bad moral character. Where the

72. *Id.* at 669; Indep. Electricians and Elec. Contractors' Ass'n. v. N.J. Bd. of Exam'rs. of Elec. Contractors, 226 A.2d 169, 175-76 (N.J. 1967); THOMPSON, *supra* note 33.

73. 170 U.S. 189, 190 (1898).

74. *Id.* at 194.

75. *Id.* at 194-95.

76. *Id.* at 196.

77. *Id.* at 197.

state passes an occupational licensing law for the protection of public health, safety, and welfare, it is within the state's police power and does not impinge on the Fourteenth Amendment.[78]

Notably after the Supreme Court legitimized state power to legislate record-based occupational licensing laws, the Supreme Court in *Barsky v. Board of Regents* suggested that an absolute ban of ex-offenders from license occupations violated the Due Process Clause.[79] The New York licensing board suspended Barsky's medical license after he was convicted for contempt.[80] Barsky alleged that the state law and the actions of the Medical Committee on Grievances and the subcommittees violated his Fourteenth Amendment right to due process.[81] Regarding the state law, the Supreme Court held that the state legitimately exercised its police power because it "sought to attain its justifiable end by making the conviction of any crime a violation of its professional medical standards, and then leaving it to a qualified board of doctors to determine initially the measure of discipline to be applied to the offending practitioner."[82] Furthermore, the Supreme Court rejected Barsky's claim against the committees because there was insufficient evidence.[83] Despite this holding, the Court proposed in dicta that professional licenses could not be automatically suspended or revoked post-conviction:[84]

> The issue is not before us but it has not been questioned that the State could make it a condition of admission to practice that applicants shall not have been convicted of a crime in a court of competent jurisdiction either within or without the State of New

78. *Id.* at 200. Although *Hawker v. New York* is not a Fourteenth Amendment case, the Supreme Court's rationale in favor of its decision that regulatory collateral consequences did not violate the Article I, section 10 ex post facto clause has important ramifications for Equal Protection Clause cases. *See* Aukerman, *supra* note 30, at 28.

79. 347 U.S. 442 (1954).

80. *Id.* at 443. The New York State Education Law stated that if a practitioner was convicted of a crime, he or she may be suspended after a due hearing. *Id.* at 445-46.

81. *Id.* at 454. Barsky contended that in the administrative hearing: (1) the committee based its decision on immaterial and prejudicial evidence; (2) the committee exceeded its statutory authority because there was insufficient legal evidence; and (3) the committee's actions were capricious and arbitrary. *Id.*

82. *Id.* at 451.

83. *Id.* at 455.

84. *Id.* at 451.

> York. It could at least require a disclosure of such convictions as a condition of admission and leave it to a competent board to determine, after opportunity for a fair hearing, whether the convictions, if any, were of such a date and nature as to justify denial of admission to practice in the light of all material circumstances before the board.[85]

A few years later in *Schware v. Board of Bar Examiners of New Mexico*, the Supreme Court considered the question left open in *Barsky*: How can criminal records be used in the decision-making process for an ex-offender's licensing application pursuant to the Due Process Clause?[86] A unanimous Supreme Court held that while a state may establish occupational licensing qualifications, such as "good moral character," "any qualification must have a rational connection with the applicant's fitness or capacity to practice [in that occupation]."[87] For Schware, his use of aliases, prior arrests, and association with the Communist Party more than fifteen years ago were not indicative of his lack of good moral character.[88] Contrary to the licensing board's findings, the Supreme Court noted the amount of evidence in support of his moral character: (1) the length of time between his arrest and his current bar application and (2) his good reputation among his law school teachers and peers, associates, and synagogue.[89] Since there was no rational basis for the licensing board's finding that Schware did not have the requisite moral character to practice law, the Supreme Court held that the state violated Schware's right to due process.[90]

3. Title VII of the Civil Rights Act of 1964

Title VII prohibits employment discrimination based on the protected classes of race, color, religion, sex, and national origin.[91] Discrimination

85. *Barsky*, 347 U.S. at 451.
86. Schware v. Bd. of Bar Exam'rs of N.M., 353 U.S. 232 (1957).
87. *Id.* at 239.
88. *Id.* at 242-43.
89. *Id.* at 240-41.
90. Id. at 247.
91. 42 U.S.C. § 2000e-2 (1991).

may be premised on disparate treatment or disparate impact.[92] Since record-based employer hiring policies are analogous to record-based occupational licensing laws, ex-offenders may allege that the laws themselves or as applied by the licensing boards violate Title VII.

Disparate treatment exists when an employer (or licensing board) treats an applicant differently because of his or her race, color, religion, sex, or national origin.[93] The burden- of-proof shifts between the applicant and the employer (or state): (1) the applicant must establish a prima facie case of discrimination; (2) the employer must provide a legitimate, nondiscriminatory reason for its decision; then (3) the applicant must show that the employer's reason was pretext for discrimination.[94] As applied to the occupational licensing context, an ex-offender must make a prima facie showing that the licensing board treated the criminal record of a protected class differently than that of an applicant in a non-protected class.[95] However, these types of cases provide "extreme deference to employers."[96]

Disparate impact exists when a seemingly neutral policy or practice results in the disproportionate exclusion of a protected class.[97] Again, the burden-of-proof shifts between the applicant and the employer (or state): (1) the applicant must identify the facially neutral policy or practice and establish that it has an unlawful adverse impact on a protected class; (2) the employer must demonstrate that the challenged policy or practice is related to the position and satisfies a business necessity; then (3) the

92. *See* U.S. EQUAL EMP. OPPORTUNITY COMM'N, ENFORCEMENT GUIDANCE: CONSIDERATION OF ARREST AND CONVICTION RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 6 (2012)[hereinafter EEOC ENFORCEMENT GUIDANCE] (noting that the combination of particularly high arrest and incarceration rates for African American and Hispanic populations and the increased access to criminal history information necessitates agency guidance to help eliminate unlawful employment discrimination).

93. EEOC ENFORCEMENT GUIDANCE, *supra* note 92, at 6.

94. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-05 (1973).

95. A classic example is when an employer rejects an African American applicant with a criminal history and hires a Caucasian applicant with a similar criminal history. EEOC ENFORCEMENT GUIDANCE, *supra* note 92, at 6. Evidence of disparate treatment may include biased statements, inconsistencies in the hiring process, success of similarly situated applicants, employment testing, and statistical evidence. EEOC ENFORCEMENT GUIDANCE, *supra* note 92, at 8.

96. Dallan F. Flake, When Any Sentence Is a Life Sentence: Employment Discrimination Against Ex-Offenders, 93 WASH. U. L. REV. 45, 74 (2015).

97. EEOC ENFORCEMENT GUIDANCE, *supra* note 92, at 8.

applicant must propose that there is a less discriminatory alternative to achieve the employer's purpose and the employer refused to adopt it.[98] Since ex-offenders are not part of a statutorily protected class on the basis of having a criminal record, they must allege that the record-based occupational licensing law is discriminatory against applicants of a particular race, color, religion, sex, or national origin.[99]

The seminal disparate impact case *Green v. Missouri P.R. Co.* involved an employer-created policy, which is analogous to occupational licensing restrictions. [100] The Missouri Pacific Railroad Company had a blanket ban on the employment of any person convicted of a crime.[101] Green alleged that the policy violated Title VII because, as applied, the policy discriminated against African Americans and was not job-related.[102] Green successfully established a prima facie case of discrimination through statistical analysis, which showed that African American applicants were disqualified from employment at a substantially higher rate than white applicants.[103] The Eighth Circuit then considered whether there was a business necessity such as a relationship to job performance.[104] While the circuit court gave some credence to the company's justifications, the policy violated Title VII because there was no conceivable reason for the automatic ban.[105] In the post-remand appeal, the Eighth Circuit upheld the trial court's decision to allow the railroad company to use criminal conviction as a factor in the employment decision if the company also considered: (1) "the nature and gravity of the offense or offenses"; (2) the time that has passed since the conviction and/or completion of sentence"; and (3) "the nature of the job for which the applicant has applied".[106]

98. 42 U.S.C. § 2000e-2(k)(1).
99. EEOC ENFORCEMENT GUIDANCE, *supra* note 92, at 6, 8.
100. Green v. Mo. Pac. R.R. Co., 523 F.2d 1290 (8th Cir. 1975).
101. *Id.* at 1292.
102. *Id.*
103. *Id.* at 1295.
104. *Id.* at 1296 (citing Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971)).
105. *Id.* at 1298. The company proffered that they feared theft, the job may require handing of company funds, potential liability for hiring ex-offenders, the effects of recidivism on workforce stability, and lack of moral character. *Id.*
106. Green v. Mo. Pac. R.R. Co., 549 F.2d 1158, 1159-1160 (8th Cir. 1977).

II. ANALYSIS

A criminal record tends to create a particularly debilitating effect on the trajectory of a person's life. Researchers agree that after a certain number of years without incident, ex-offenders are no more likely to offend than their counterparts without past criminal convictions.[107] Yet, occupational licensing restrictions continue to deter and even prevent rehabilitation efforts because ex-offenders cannot pursue a wide variety of high-skilled, semi-skilled, and low-skilled professions. State legislators must consider action and reform to address ambiguous statutory requirements, licensing boards' disregard for rehabilitative factors, and disruptive state efforts that suppress the legitimacy of correctional vocational training.

The spread of occupational licensing to upwards of 6,000 occupations and to twenty-nine percent of the workforce has profound economic ramifications.[108] The total cost of licensing regulations is between $34.8 billion to $41.7 billion per year.[109] In barbering, hairdressing, and cosmetology, there will be a growth of approximately 64,000 positions between 2014 and 2024.[110] However, in at least twenty-five states, a felony conviction is sufficient for disqualification.[111] The economic cost to sustain occupational licensing requires a carefully constructed statutory regime that both protects the public and facilitates the criminal justice system's rehabilitation goals.

State-by-state differences in the types of regulated occupations and statutory competency and character requirements interfere with the efficiency and effectiveness of occupational licensing. When states ban ex-offenders from certain occupations purportedly to protect public safety, health, and welfare, the message is that any and all past offenses (and

107. *See infra* note 125 and accompanying text. The Supreme Court also recognized that after a certain length of time without incident, criminal conduct has less weight among the totality of evidence. *See supra* note 89 and accompanying text.

108. Hickox, *supra* note 2, at 151; THE WHITE HOUSE REPORT, *supra* note 31 at 17.

109. ADAM B. SUMMERS, REASON FOUNDATION, OCCUPATIONAL LICENSING: RANKING THE STATES AND EXPLORING ALTERNATIVES 4 (2007), http://reason.org/files/762c8fe96431b6fa5e27ca64eaa1818b.pdf.

110. RODRIGUEZ & AVERY, *supra* note 28, at 7.

111. THE WHITE HOUSE REPORT, *supra* note 31, at 36.

potentially arrests) are so dangerous that they overcome all other evidence to the contrary and prevent the employment of an otherwise qualified applicant.

Additionally, record-based qualifications such as "moral character" and "moral turpitude" tend to be overly inclusive. [112] These ambiguous terms exclude ex-offenders whose conduct provides no reasonable basis to conclude that they will be dangerous and untrustworthy employees.[113] The Supreme Court recognized the ambiguity of "good moral character" stating:

> It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial . . . .[114]

Still, legislatures either do not define the meaning of "moral turpitude" and "moral character" or are satisfied with ambiguous statutory drafting, which affords licensing boards broad discretionary authority.[115] As a result, licensing boards apply inconsistent interpretations of the statutes and may even abuse their discretion.[116] Given the lack of clarity, a generally accepted definition of "moral character" defaults to "if a person has committed a crime, that person lacks the requisite good character for a license."[117] Legislatures and licensing boards should not categorically exclude ex-offenders just because crime is an easy characteristic to pinpoint.

Furthermore, there is no rational relationship between the stringency of licensing requirements and the marginal benefit to public health, safety, and welfare. For example, cosmetologists are required to maintain licensing in all fifty states and the District of Columbia.[118] States demand

112. *See supra* note 45-47 and accompanying text.
113. THE WHITE HOUSE REPORT, *supra* note 52 and accompanying text.
114. Konigsberg v. State Bar of Cal., 353 U.S. 252, 263 (1957).
115. MISS. ADMIN. CODE § 30-27-3103:1.1(1); N.Y. GEN. BUS. LAW § 430 (McKinney 2015).
116. There is a plethora of research premised on the antitrust behavior of licensing occupations.
117. May, *supra* note 32, at 197.
118. Larkin, *supra* note 33, at 221.

between 233 days to 490 days of education and training, with the average being 372 days.[119] Emergency medical technicians are also licensed in all fifty states and the District of Columbia.[120] Periods of education and training vary from zero to 140 days, with an average of thirty-three days.[121] It seems incongruous that people who regularly face life or death situations are required to have an average of *ninety percent fewer days* of training than people who provide consumer services.

There are attempts to alleviate the burden on ex-offenders. Some states issue rehabilitation certificates as evidence of sufficient "moral character."[122] These certificates have "little operational usefulness" because they are not conclusive proof of sufficient character.[123] Other states provide a list of rehabilitation factors for the licensing board to consider.[124] In theory, this is sensible because research shows that there is an inversely proportional relationship between the length of time since offense and the likelihood to reoffend.[125] However, a licensing board has free rein to interpret and apply these factors.

Even though occupational licensing often unduly restricts an ex-offender's ability to work, complainants who attempt to seek recourse through the Fourteenth Amendment are subject to rational basis review and they have generally been unsuccessful.[126] The *Hawker* Court created a high burden when it granted broad authority for states to use their police power to set qualifications and determine what the requisite evidence

119. Larkin, *supra* note 33, at 221.

120. Larkin, *supra* note 33, at 221.

121. Larkin, *supra* note 33, at 221.

122. *Summary of State Laws*, LEGAL ACTION CENTER, https://lac.org/toolkits/certificates/summary_s

tate_laws.htm (last visited April 24, 2017).

123. Hickox, *supra* note 2, at 142.

124. *See, e.g.*, *infra* note 140 and accompanying text.

125. Studies show that after a certain number of years, an ex-offender is no more likely to commit another crime than any other person. In one study, researchers found that after ten years, an ex-offender is no more likely to commit an offense than a person without a record. Aukerman, *supra* note 30, at 25. Another study showed that young offenders "arrested at age 18 reaches age 24 without committing any more crimes, he or she is no more likely than someone with no prior record to commit a crime." Aukerman, *supra* note 30, at 25. And yet another frequently cited study found that after six or seven years without incidence, offenders are no more likely to offend than others. Megan Kurleycheck, Robert Brame & Shawn Bushway, *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 CRIMINOLOGY & PUB. POL'Y 483 (2006).

126. *See supra* note 68 and accompanying text.

entails.[127] And even more specifically, the Supreme Court provided that a criminal record "has some relation to character" thereby conveying that the licensing restrictions satisfies rational basis review.[128] While protecting the public is a legitimate concern in industries that directly serve consumers, states cannot sacrifice one public good for another public good.

The leading cases for Fourteenth Amendment claims have created a convoluted and disjointed course of evaluation. Subsequent to the preeminent *Hawker* decision, the Supreme Court in *Barsky* made it unconstitutional for a state to automatically suspend or revoke a person's license post-conviction.[129] However, *Barsky* left open the issue of whether it would be unconstitutional for a licensing board to bar an ex-offender in the initial licensing decision.[130] In *Schware*, the Supreme Court only mandated that there must be a "rational connection" between the occupational licensing restriction and public health, safety, and welfare.[131] This is analogous to rational basis review under the Equal Protection and Due Process clauses, which is deferential to the states.[132] The Supreme Court's analysis was very specifically related to Schware's situation and did not set standards that are more broadly applicable to licensing restrictions. Despite the lack of guidance, the Supreme Court in all three decisions expressed concern about the amount of weight that past criminal conduct should have on the licensing board's decision-making process.[133]

Although Title VII appears to be a promising avenue to combat discriminatory employer policies, it is an inadequate approach to oppose legally mandated occupational restrictions. The first problem is that ex-offenders are not a protected class so they cannot rely on the trait that most

127. Hawker v. New York, 170 U.S. 189 (1898).
128. *Id.* at 196.
129. Barsky v. Bd. of Regents, 347 U.S. 442, 451 (1954).
130. *Barsky*, 347 U.S. at 442; *See* Aukerman, *supra* note 30, at 31.
131. Schware, supra note 86, at 239.
132. *Supra* note 68 and accompanying text.
133. "Doubtless, one who has violated the criminal law may thereafter reform and become in fact possessed of a good moral character." Hawker v. New York, 170 U.S. 189, 197 (1898); the licensing board can determine "whether the convictions, if any, were of such a date and nature as to justify denial of admission to practice in the light of all material circumstances before the board." Barsky v. Bd. of Regents, 347 U.S. 442, 451 (1954); "The mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct." Schware v. Bd. of Bar Exam'rs of N.M., 353 U.S. 232, 241 (1957).

directly prohibits their licensure.[134] This excludes a large population of ex-offenders, most obviously Caucasian males, who do not otherwise fit the characteristics of a protected class under Title VII. It is unlikely that Congress would amend Title VII to include ex-offenders as a protected class because the purpose of Title VII is to "protect vulnerable populations whose opportunities in the labor market historically have been limited by discrimination."[135] Historically, possessing a criminal history has not qualified an individual as part of a vulnerable population group or protected class. This will prevent many potential complainants from establishing that the occupational licensing law has an unlawful adverse impact on them.[136]

The second problem is that even when a claimant successfully shifts the burden to the state or the state licensing board, the state is able to avail itself of permissive defenses such as demonstrating a business necessity or showing that the practice is sufficiently related to the occupation.[137] There is no formal enforcement or guidance regarding what is sufficient for business necessity. As long as the state can make a convincing argument and with strategic emphasis on public safety, health, and welfare, it is likely that the burden will shift back to the claimant to demonstrate that there are alternatives.[138] Additionally, licensing boards are frequently made up of licensed professionals in that occupation and they have the expertise to offer support for the business necessity of certain requirements to the occupation.

Although *Green* set forth certain factors to use when assessing the relevance of criminal history, these factors are too general to be effective.[139] Without an enforcement mechanism, licensing boards can still impose their own biases and experiences in the decision-making process. As a result, they effectively serve as the judge and the jury.

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134. EEOC ENFORCEMENT GUIDANCE, *supra* note 92.
135. Flake, supra note 96 at 84.
136. EEOC ENFORCEMENT GUIDANCE, *supra* note 92.
137. EEOC ENFORCEMENT GUIDANCE, *supra* note 92.
138. *See* El v. SEPTA, 479 F.3d 232, 235 (3d Cir. 2007) (affirming summary judgment for the defendant because the policy of disqualifying anyone with a criminal record is consistent with business necessity); N.Y.C. Transit Auth. v. Beazer, 440 U.S. 568, 570-71 (holding that the employer did not violate Title VII with its blanket ban policy of employees who use narcotic drugs because it was job related).
139. *See* Green v. Mo. Pac. R.R. Co., 523 F.2d 1290 (8th Cir. 1975).

IV. PROPOSAL

Reform of the statutory regime of occupational licensing is essential to integrate rehabilitation efforts during incarceration and those efforts made post-release. States should implement the following approach to correct for the exclusion of well-qualified applicants with a passion to succeed in the regulated trade: (1) licensing boards must consider rehabilitation factors in assessing an ex-offender's application; (2) rejection must be predicated upon a direct relationship between the conviction and the licensed occupation; and (3) a presumption for licensure for ex-offenders who have completed correctional facilities' vocational training programs.

A. Rehabilitation Factors

Licensing boards often impose their discretion based on attitudes, experience, and prejudices. State legislatures have difficulty defining essential terms such as "moral character" and "moral turpitude", yet they are content to allow an ex-offender's criminal history bar the otherwise competent person from engaging in a trade. This tendency to disqualify ex-offenders is contrary to a multitude of research into human behavior and rehabilitation. State legislatures should replace or supplement "moral turpitude" or "moral character" requirements with more specific guidelines. This will help satisfy the state's policy to protect the health, safety, and welfare of the public and to rehabilitate offenders without sacrificing the role of a licensing board's purpose to maintain the quality of the trade.

New York, for example, recommends that a licensing board consider the following factors: (1) the state's public policy to encourage the licensure and employment of ex-offenders; (2) the specific duties and responsibilities of the license or employment; (3) how the individual's criminal record would affect his or her ability to perform those specific duties and responsibilities; (4) the amount of time that has passed since the crime was committed; (5) how old the person was at the time of the crime; (6) the seriousness of the offense; (7) evidence of rehabilitation or good

conduct; (8) employers' legitimate interest in protecting both property and safety and welfare of specific individuals or the general public.[140]

By providing guideposts that encourage a more individualized assessment of each ex-offender's application for a particular occupation, this will help to deter the automatic association of criminal conviction with poor moral character.

B. Direct Relationship of Conviction to the Occupation

If there is a rejection based on a conviction, there should be a direct relationship between the applicant's criminal conviction and the occupation. Occupational licensing laws should not impose additional punishment on ex-offenders. Rather, the purpose of these laws is to maintain the quality of the trade in an effort to protect the public safety, health, and welfare. Therefore, in order for an applicant to be rejected, the nature of the convicted crime should be a real threat to the public if the applicant was licensed.

C. Presumption for Licensure

Marc La Cloche's five-year legal battle to work as a barber exemplifies the need for a presumption for licensure for ex-offenders who have completed vocational programs while incarcerated.[141] This presumption would give offenders an incentive to pursue rehabilitation both pre- and post-release and provide a societal benefit. Without such a presumption, it is a waste of state resources to train inmates in a trade which they cannot pursue once released. To reiterate Judge York's words, there cannot be "a situation in which the State successfully rehabilitated a citizen and then vigorously fought to deny him the right to live a rehabilitated life."[142]

CONCLUSION

140. N.Y. CORRECT. LAW § 753.1 (Consol. 2016). As Mr. La Cloche's legal battle demonstrates, the recommendations that a licensing board consider a defined list of rehabilitation factors is insufficient. There must be a comprehensive approach, such as the one proposed here.

141. *Supra* note 17 and accompanying text.

142. Matter of La Cloche v. Daniels, No. 403466/2003, slip op. at 10 (N.Y. Sup. Ct. June 1, 2006).

The impact of contemporary occupational licensing restrictions on ex-offender employment opportunities is often in direct contradiction to criminal justice policies of deterrence, denunciation, and rehabilitation. Licensing restrictions that effectively ban ex-offender licensure have immense economic and criminal justice ramifications. Ex-offenders have had little or mixed success in legal challenges to the validity of occupational licensing laws. Therefore, state legislatures should amend the current statutory regime to more effectively and efficiently provide ex-offenders with employment opportunities and simultaneously fulfill state goals of protecting of public health, safety, and welfare.