No. 13-534

In The
Supreme Court of the United States

NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS,

Petitioner,

v.

FEDERAL TRADE COMMISSION,

Respondent.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Fourth Circuit**

BRIEF OF *AMICI CURIAE* SCHOLARS OF PUBLIC CHOICE ECONOMICS IN SUPPORT OF RESPONDENT

INSTITUTE FOR JUSTICE
WILLIAM H. MELLOR
DANA BERLINER
PAUL M. SHERMAN*
901 North Glebe Road, Suite 900
Arlington, VA 22203
Tel: (703) 682-9320
psherman@ij.org

**Counsel of Record*
Counsel for Amici Curiae

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

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INTEREST OF THE *AMICI CURIAE*[1]

The undersigned *amici* are 45 researchers and academics who are experts in the field of public choice and regulatory economics. *Amici* believe that research in the field of public choice economics will assist this Court in reaching a decision based on an accurate understanding of the narrow political and economic interests that dominate occupational-licensing boards like the North Carolina State Board of Dental Examiners and also limit the ability of these boards to accurately represent the public will or promote the public good.[2]

The *amici* joining this brief are:

- Daniel K. Benjamin, Ph.D., Clemson University
- James T. Bennett, Ph.D., George Mason University

[1] Pursuant to Supreme Court Rule 37.2(a), *amici* state that all parties have consented to the filing of this brief by filing notices of blanket consent with the Court. Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, and no such counsel or any party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

[2] The views set forth in this brief are those of the *amici* and do not necessarily reflect the views of the academic or research institutions with which they are affiliated.

- Bruce L. Benson, Ph.D., Florida State University
- Donald J. Boudreaux, J.D., Ph.D., George Mason University
- Bryan D. Caplan, Ph.D., George Mason University
- Art Carden, Ph.D., Samford University
- Christopher Coyne, Ph.D., George Mason University
- Jerry Ellig, Ph.D., Mercatus Center at George Mason University
- Anthony J. Evans, Ph.D., ESCP Europe Business School
- Timothy J. Groseclose, Ph.D., George Mason University
- Colleen Haight, MBA, Ph.D., San Jose State University
- David R. Henderson, Ph.D., Naval Postgraduate School
- Roberta Q. Herzberg, Ph.D., John Templeton Foundation
- Randall G. Holcombe, Ph.D., Florida State University
- Daniel E. Houser, Ph.D., George Mason University
- James L. Huffman, J.D., Dean Emeritus, Lewis & Clark Law School

- Noel D. Johnson, Ph.D., George Mason University
- Garett Jones, Ph.D., George Mason University
- Jeremy Kidd, J.D., Ph.D., Mercer University School of Law
- Daniel B. Klein, Ph.D., George Mason University
- Mark Leo Koyama, Ph.D., George Mason University
- David M. Levy, Ph.D., George Mason University
- Edward Lopez, Ph.D., Western Carolina University
- Michael D. Makowsky, Ph.D., Johns Hopkins University
- Fred McChesney, J.D., Ph.D., University of Miami School of Law
- Robert McCormick, Ph.D., Interim Dean, Clemson University
- Roger E. Meiners, J.D., Ph.D., University of Texas – Arlington
- Matthew D. Mitchell, Ph.D., Mercatus Center at George Mason University
- Michael C. Munger, Ph.D., Duke University
- Hester Peirce, J.D., Mercatus Center at George Mason University

- Sam Peltzman, Ph.D., Professor Emeritus, University of Chicago Booth School of Business
- Paul H. Rubin, Ph.D., Emory University
- William F. Shughart II, Ph.D., Utah State University Huntsman School of Business
- Daniel Joseph Smith, Ph.D., Troy University
- Thomas Stratmann, Ph.D., George Mason University
- Alex T. Tabarrok, Ph.D., George Mason University
- Diana W. Thomas, Ph.D., Creighton University
- Michael D. Thomas, Ph.D., Creighton University
- Richard E. Wagner, Ph.D., George Mason University
- Lawrence Reed Watson Jr., J.D., Property and Environment Research Center
- Lawrence H. White, Ph.D., George Mason University
- Walter E. Williams, Ph.D., George Mason University
- Bonnie Wilson, Ph.D., Saint Louis University
- Bruce Yandle, Ph.D., Dean Emeritus, Clemson University

- Todd J. Zywicki, J.D., George Mason University School of Law

SUMMARY OF THE ARGUMENT

The central legal question in this case is whether the North Carolina State Board of Dental Examiners – which consists almost entirely of licensed dentists selected by other licensed dentists – should be entitled to the benefit of state-action immunity against federal antitrust laws. *Amici* contend that the answer to that question must turn not only on legal principles, but also on the best available social-science evidence regarding the way that occupational-licensing boards like North Carolina's operate in the real world. As this brief will explain, in the real world, occupational-licensing boards routinely use government power to promote the private financial interests of their own members and licensees, rather than to promote any legitimate government interests.

The evidence for this conclusion is supplied by a branch of economics known as "public choice economics." Public choice economics is the application of economic theory to study the causes and effects of government actions. Public choice economics has been widely and successfully used to explain and predict the forces that lead to the enactment of occupational-licensing laws and the behavior of occupational-licensing boards. A central finding of this research is that when self-interested economic actors – such as

licensed dentists – are given the power to influence or, as in this case, actually write the rules by which others will compete with them, they behave as self-interested private actors, rather than as stewards of the public interest.

These predictions are not merely theoretical. There is abundant evidence that this is precisely how dental boards across the country have operated in recent years, moving aggressively to cartelize teeth-whitening services. The evidence also demonstrates that these cartelization efforts have been driven overwhelmingly by licensed dentists seeking to restrict competition, rather than by consumer complaints or evidence of consumer harm caused by non-dentist teeth whiteners.

In light of these findings, *amici* conclude that "there is no realistic assurance" that the North Carolina State Board of Dental Examiners' "anticompetitive conduct promotes state policy, rather than merely the party's individual interests." *Patrick v. Burget*, 486 U.S. 94, 100 (1988). Under these facts, extending state-action immunity to the North Carolina State Board of Dental Examiners is likely to harm consumers and entrepreneurs while providing few, if any, public benefits.

ARGUMENT

When an economic interest group is given free rein to enact regulations that exclude potential

competitors from the marketplace, should we expect that group to use its power in the service of legitimate governmental interests, or should we instead expect that group to promote its own private interests and those of its friends?

One does not need a Ph.D. in economics – or even a particularly keen insight into human nature – to guess the answer to this question. Nevertheless, economists have conducted a great deal of study on this and other related questions. Perhaps not surprisingly, economists have generally observed that governmental regulation – particularly regulation that restricts economic competition – frequently reflects the dominant influence of politically powerful interest groups, not the interests of voters, consumers, or would-be competitors. The likelihood of this occurring is even greater when, as in this case, a politically powerful interest group is directly empowered to create and enforce government policy.

These conclusions are drawn from a body of research known as "public choice economics." In section I, *amici* describe the basics of public choice economics and explain why it predicts that self-interested actors, such as the members of the North Carolina State Board of Dental Examiners, are likely to use government power to serve their own private interests rather than the governmental interests of the State. In section II, *amici* demonstrate that the predictions of public choice economics are borne out by real evidence, and that the North Carolina State Board of Dental Examiners' cease-and-desist letters

to non-dentist teeth whiteners bear all of the hallmarks of self-dealing and regulatory capture.

I. Public Choice Economics Predicts That Occupational Licensing Boards Like the North Carolina State Board of Dental Examiners Routinely Serve the Private Interests of Members of the Regulated Occupation Rather Than the Public Interest.

In section A, *amici* provide a basic overview of what public choice economics is and the reasons why it is relevant to this case. In section B, *amici* demonstrate that public choice economics explains how concentrated interest groups like licensed dentists are able to enact regulations that benefit themselves financially while harming their competitors and consumers. Finally, in section C, *amici* explain why public choice problems are particularly acute in this case, in which dentists are doing more than seeking government favors – they are actually writing the rules that will govern if, how, and when anyone else will be allowed to compete with them in the lucrative market for teeth-whitening services.

A. Public choice economics studies the causes and effects of government regulations.

Public choice economics, or public choice theory, is "the economic study of nonmarket decision making, or simply the application of economics to political

science." Dennis C. Mueller, *Public Choice III* at 1 (2003). Public choice is a well-established field of study that has been "almost universally accepted" since the mid-1980s as explaining much economic regulation. Jonathan R. Macey, *Promoting Public-Regarding Legislation Through Statutory Interpretation: An Interest Group Model*, 86 Colum. L. Rev. 223, 224 n.6 (1986) (citing Joseph P. Kalt & Mark A. Zupan, *Capture and Ideology in the Economic Theory of Politics*, 74 Am. Econ. Rev. 279 (1984)). At least five major figures in the field of public choice have been awarded the Nobel Prize in Economic Science: Kenneth Arrow, James Buchanan, Elinor Ostrom, Vernon Smith, and George Stigler. *All Prizes in Economic Sciences*, Nobelprize.org – The Official Web Site of the Nobel Prize, http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/ (last visited Aug. 4, 2014).

Among other things, these and other public choice economists have studied the causes and effects of governmental regulation. Public choice theory rests on the fundamental assumption that politicians and constituents are rational economic actors; that is, constituents compete with one another to demand political favors from the government, and politicians frequently use the coercive powers of the state to provide wealth transfers in return for political support. "The interest group most able to translate its demand for a policy preference into political pressure is the one most likely to achieve its desired outcome." James C. Cooper, Paul A. Pautler, & Todd J. Zywicki, *Theory and Practice of Competition Advocacy at the*

FTC, 72 Antitrust L.J. 1091, 1100 (2005). The result is that governmental policies – particularly economic policies – often fail to reflect the interests of a majority of the public and instead generally reflect the comparative advantage of special interests to organize and exert political influence relative to the public. *See* Richard A. Posner, *Economic Analysis of Law* § 19.3, at 534–36 (6th ed. 2003).[3]

B. Public choice economics predicts that concentrated interest groups have both the incentive and the ability to restrict competition in ways that harm consumers.

The insights of public choice economics have profound consequences for this case. Among other things, the North Carolina State Board of Dental Examiners has repeatedly invoked the concept of federalism in support of its argument that this Court should grant the Board state-action immunity. *See* Pet'r's Br. 2, 12-14, 16-21, 23, 29, 31-34, 42, 47-48, 52, 55-59. Public choice theory calls the Board's reliance on "federalist" concerns into question, because it predicts not only that there is little correlation between the views of North Carolinians and the self-serving policies enacted by the Dental Board, but also that North

[3] For additional background on public choice economics, *see generally* William F. Shughart II, *Public Choice*, *in The Concise Encyclopedia of Economics*, http://www.econlib.org/library/Enc/PublicChoice.html (last visited Aug. 4, 2014).

Carolinians are likely to be harmed by those policies and have little practical chance of repealing them.

For purposes of explaining the dynamics of public choice theory, *amici* will use the example of the lobbying for and passage of anticompetitive laws. But throughout the following discussion, it should be kept in mind that these dynamics are exacerbated in this case. Simply put, North Carolina's licensed dentists have little need to *lobby* for anticompetitive laws because they have the practical ability to write their own.

Anticompetitive regulations can take many forms, but an increasingly common form is occupational licensure. These laws often serve primarily to protect members of the regulated industry, with no discernable benefit to consumers or the public, and are not justified under the purported rationale of consumer protection. On the contrary, by raising prices and reducing the options available to consumers, many regulations have a net negative effect. *See* Morris M. Kleiner, *Occupational Licensing*, 14 J. Econ. Persp. 189 (2000) (summarizing many studies).

Public choice economics helps to explain the prevalence of such laws. It is widely accepted that government regulations that restrict competition and entry into a particular industry (1) cause prices to increase above the competitive market price and (2) allow industry participants to reap long-term economic profits. Unsurprisingly, such regulations are thus actively sought by particular industries and are "designed and

operated primarily for [the industry's] benefit." George J. Stigler, *The Theory of Economic Regulation*, 2 Bell J. Econ. & Mgmt. Sci. 3 (1971); Milton Friedman, *Capitalism & Freedom* 140 (1962) (observing that "[t]he pressure for [occupational licensing] invariably comes from members of the occupation itself" and not consumers or the public).

This process of special interests lobbying governments to impose anticompetitive regulations is known as "rent seeking." That term, in this context, refers to an industry's ability, through an anticompetitive regulation, to raise prices above the price that would be charged in an otherwise open market. Nobel laureate James Buchanan defined "rent" as "that part of the payment to an owner of resources over and above that which those resources could command in any alternative use," or "receipt in excess of opportunity cost." James M. Buchanan, *Rent Seeking and Profit Seeking*, *in Toward a Theory of the Rent-Seeking Society* 1 (1980). A monopoly profit is one example of a "rent," as used herein.

Economists have long recognized that, when it comes to rent seeking, smaller, homogenous interest groups – such as members of a specialized trade – frequently have a comparative advantage in the political process relative to larger, more heterogeneous and diffuse groups such as consumers and the public at large. *See generally* Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (1965). Members of a small interest group stand to make a substantial economic gain from

securing favorable legislation. Hence, members have an incentive to inform themselves regarding laws and regulations that affect their industry and to organize to secure enactment of favorable legislation or block legislation adverse to their interests. John O. McGinnis, *Our Supermajoritarian Constitution*, 80 Tex. L. Rev. 703, 735 n.137 (2002) (observing that the "intense common concerns" of special interest groups "help them overcome organizational difficulties and give them more influence than their numbers warrant").

This advantage is especially pronounced in industries governed by professional licensing. First, members of professional networks are often already organized by trade associations or otherwise, thereby reducing the transaction costs of redirecting their organizational resources (money and manpower) toward political lobbying efforts. Second, such professional organizations also often have an internal communications infrastructure. Through newsletters, e-mail lists, regular meetings, and the like, members can be educated about relevant issues and proposed legislation with relative ease. This greatly reduces the time and money that would need to be spent for any individual to remain informed and motivated to act, overcoming problems of rational ignorance within the profession.[4] Third, licensed professions are

[4] "Rational ignorance" is a term used to describe situations in which an individual chooses not to pay attention to certain information because paying attention has costs in time and effort

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usually largely self-governing, which gives members an opportunity to enact anticompetitive regulations to benefit their members at the expense of the public with little public or legislative oversight.

By contrast, consumers generally face significant collective-action problems in opposing anticompetitive regulations. The costs of anticompetitive regulations are spread thinly across consumers, principally in the form of marginally higher prices, giving each individual consumer little incentive to learn about and organize to oppose every anticompetitive or protectionist regulation. Each member of the public is thus "rationally ignorant" about many anticompetitive regulations that apply to scores of products and services they buy.

Thus, because of industries' "superior ability to organize in the political process relative to consumers, consumer interests are often subservient to industry interests in the regulatory process." Cooper, *supra*, at 1100; Sam Peltzman, *Toward a More General Theory of Regulation*, 19 J.L. & Econ. 211, 212 (1976) ("A common[,] though not universal, conclusion has become that, as between the two main contending interests in regulatory processes, the producer interest tends to prevail over the consumer interest."). The result is that consumers often have little hope of stopping the enactment of anticompetitive

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and the benefits to that individual of paying attention are too small to justify the cost.

regulations that force them to pay higher prices for fewer choices.

C. All of these concerns are heightened in this case due to North Carolina's for-dentists, by-dentists regulatory scheme.

The foregoing discussion has concerned the power of concentrated interest groups to secure passage of anticompetitive legislation in spite of the harms that legislation may visit on consumers. But, as mentioned earlier, all of these concerns are magnified when a concentrated interest group is not merely lobbying for anticompetitive legislation, but is instead actually writing the rules by which others will be allowed to compete with them. Once given the power of self-regulation and the power to control entry into an occupation, licensed professionals have a strong incentive to expand the scope of their governmental monopoly to further protect their economic interests.

Unfortunately, the same failures of the political process that produce special-interest regulations explain why these regulations, once enacted, are so immune to correction or repeal through legislative processes. Because legislative efforts must survive multiple roadblocks to the passage of legislation (often referred to as "veto gates"), well-organized special interests can even more easily frustrate the repeal of special-interest laws than they could enact the laws in the first place. *See* Maxwell L. Stearns & Todd J. Zywicki, *Public Choice Concepts and Applications in*

Law 72 (2009) (explaining that "'veto gates' are in place to slow down or to stop legislation that benefits the public at large at a cost borne largely or entirely by a narrow interest group").

Thus, within the vaguely defined scope of North Carolina's broadly worded dental practice act, the members of the Dental Board have the practical ability to enact nearly unrepealable regulations that fence out competitors. In doing so, they are not directly accountable to any elected official or the voting public. Instead, they are primarily accountable to their colleagues – the fellow dentists who elected them and who will also benefit from any anticompetitive regulations they enact. The scheme is ripe for self-dealing. And, as explained in the following section, the burgeoning market for teeth-whitening services provides an opportunity for just that.

II. Dental Boards Across the Country Are Behaving Precisely as Public Choice Economics Predicts, Using Government Power to Grant Dentists a Lucrative Monopoly on Teeth Whitening.

Teeth whitening is a lucrative business. The record below indicates that more than 80 percent of dentists offer teeth-whitening services. *See* Complaint Counsel's Proposed Final Stipulations of Law, Fact, and Authenticity at 7, *In re N.C. Bd. Of Dental Exam'rs*, No. 9343 (F.T.C. Feb. 8, 2011), *available at* http://www.ftc.gov/os/adjpro/d9343/110208ccproposedfinalstip.pdf.

The American Academy of Cosmetic Dentistry reported that in 2006 its members performed, on average, 70 teeth-whitening procedures for annual revenues of $25,000 per dentist, or $350 per procedure. Angela C. Erickson, *White Out: How Dental Industry Insiders Thwart Competition from Teeth-whitening Entrepreneurs* 2 (2013), *available at* http://www.ij.org/images/pdf_folder/other_pubs/white-out.pdf (hereinafter *White Out*).

Because teeth whitening is such a lucrative business, dentists have much to lose if non-dentists are permitted to compete with them for the provision of teeth-whitening services. This is especially true given that non-dentists offer markedly lower prices for teeth-whitening services – typically under $150. *Id.* at 2.

Public choice economics predicts that a concentrated interest group such as licensed dentists is likely to respond to these facts by seeking the passage of legislation or regulations that will restrict entry into the market for teeth whitening, even if those regulations are ultimately harmful to entrepreneurs who are shut out of the market and consumers who are forced to pay higher prices for fewer choices. As explained below, that is precisely what has happened: Throughout the country, dentists and dental boards have aggressively – and successfully – pursued policies that promote the narrow financial interests of their members, rather than any legitimate governmental interest.

A. State restrictions on non-dentist teeth whitening have spread in recent years, largely through the efforts of state dental boards.

Between 2005 and 2011, at least 29 states and the District of Columbia took legal action to restrict teeth whitening to licensed dentists. *White Out* at 7-8, 14-15, 18, 21 & Tables 1, 2, 3 & 4. The most common tactic was the one employed by the North Carolina State Board of Dental Examiners: the cease-and-desist letter. The dental boards of 24 states and the District of Columbia sent nearly 200 letters to non-dentist teeth-whitening businesses, claiming they were violating state law and urging or ordering them to shut down, often with the threat of fines or other legal penalties. *Id.* at 17-18.[5] Although the North Carolina State Board of Dental Examiners was the most aggressive, sending 47 cease-and-desist letters, it was by no means alone: The Kansas dental board sent 39 such letters, and Iowa's board sent 20. *Id.* at 18, Table 3.

As in North Carolina, all 25 dental boards sent cease-and-desist letters whose only legal basis was the boards' own interpretation of broadly worded statutes that did not explicitly prohibit non-dentist teeth whitening.[6] Typically, boards pointed to vague

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[5] At least nine states went further and sought injunctions to shut down teeth-whitening entrepreneurs. These efforts met with mixed success. *White Out* at 20-21.

[6] This number can be calculated by comparing the timing of legislation restricting teeth whitening to licensed dentists and

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statutory language in dental practice acts defining "dental service of any kind" or treatment of a dental "condition" as the exclusive province of licensed dentists. *Id.* at 20.

Meanwhile, dental boards pursued both policy and legislative changes aimed at outlawing teeth whitening outside dental offices. By 2011, 11 state boards had taken the formal position that teeth whitening is the practice of dentistry, while another three adopted policies that appear to restrict teeth whitening but are either unclear or are not being enforced. *Id.* at 7-8.[7] Eight states passed legislation purporting to sweep teeth whitening into the practice of dentistry, and dental boards often proposed or supported their passage. *Id.* at 13-14. Dental boards in Alabama, Iowa, Kentucky, Minnesota, Nevada, New Hampshire, and North Dakota initiated legislative efforts, often by drafting bills. *Id.* at 13. At least two

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the timing of cease-and-desist letters as shown in *White Out* Tables 1 and 3. As these tables illustrate, 20 state dental boards sent cease-and-desist letters even though the legislatures of those states have never adopted a clear prohibition on non-dentist teeth whitening. Dental boards in another five states sent cease-and-desist letters *before* the legislatures of those states adopted a clear prohibition on non-dentist teeth whitening.

[7] One state board, Ohio's, explicitly permits non-dentist teeth whitening. *White Out* at 15. Delaware's board told one whitening business its procedure did not fall under the practice of dentistry; the board later adopted a policy that makes the application of teeth-whitening products illegal. *Id.* at 9-10, 16. Vermont's board told a business that teeth whitening was outside its purview. *Id.* at 16.

boards, in Nevada and Arizona, employed lobbyists to secure legislation restricting teeth whitening to licensed dentists. *Id.*

B. As public choice theory predicts, the rash of restrictions on non-dentist teeth whitening was driven by the economic self-interest of dentists, not the public interest.

Legal efforts to shut down non-dentist teeth-whitening businesses bear the hallmarks of classic "rent seeking" under public choice theory: They were initiated and backed by a well-organized network of dental interests with a sophisticated communications infrastructure, as well as a greater financial incentive to bend public policy to its own ends than consumers have to organize in opposition. Moreover, through state boards that oversee the profession, licensed dentists enjoy unique access to the levers of public power.

Indeed, as legal restrictions on teeth whitening flourished, dental boards were anything but disinterested administrators. Not only are most board members licensed dentists or hygienists, they also have deep ties to a constellation of dental organizations. *White Out* at 11-12. In some states, board members are nominated by the state dental association, and members often belong to or have served on the boards of their state associations. *Id.* at 11. State dental board members have their own professional organization, the American Association of Dental Boards

("AADB"), as do the employees of state boards – the American Association of Dental Administrators ("AADA"). *Id.* The AADB is housed in the headquarters of the American Dental Association ("ADA"), a 400-employee organization whose membership comprises 70 percent of licensed dentists. *Id.* All three groups hold their annual conferences consecutively at the same location, and the ADA not only sponsors and hosts the boards' and administrators' annual midyear meetings, its president has also spoken at them, urging board members to regulate teeth whitening. *Id.* at 11-12.

Thanks to annual conferences and meetings, as well as online message boards and e-mail lists maintained by the AADB and AADA, dental board members and board employees enjoy a nationwide communications network that teeth-whitening entrepreneurs and their customers cannot hope to match. *Id.* at 12. Board members and board attorneys have used these forums to keep each other abreast of policy and legal developments, share enforcement strategies, and collaborate on statutory language to define teeth whitening as dentistry. *Id.*

Private dental interests were also enthusiastic supporters of outlawing or shutting down non-dentist teeth-whitening businesses. In 2008, the American Dental Association's House of Delegates adopted a resolution calling on members to undertake legislative and regulatory efforts to restrict teeth whitening by non-dentists, and public records indicate that many state associations and individual members did

so. *Id.* at 13-15, 17-20. Licensed dentists, dental students, and state dental associations engaged in letter-writing campaigns, testified before legislative committees, and employed lobbyists to back legislation restricting teeth whitening. *Id.* at 13-14.

The dental industry also pressured state boards, primarily by filing complaints and urging legal action against teeth-whitening businesses. *Id.* at 15, 17-19. Of 97 such complaints from nine states, 93 charged only that businesses offering teeth whitening were engaged in the unlicensed practice of dentistry; only four were genuine consumer complaints. *Id.* at 23-24.[8] At least 81 percent of the complaints were filed by dental interests – dentists, hygienists, dental associations, or dental boards themselves – while only four percent came from consumers; the other 15 percent were anonymous. *White Out* at 19.

While dentists have much to gain from capturing the teeth-whitening market, consumers have relatively little incentive to organize in opposition. Even if most consumers prefer the convenience and lower cost of non-dentist teeth-whitening services, those limited benefits are hardly enough to motivate very many to put personal time and resources into keeping abreast of – let alone lobbying against – proposed

[8] The Institute for Justice sought complaints from all 50 states and the District of Columbia for 2007 through 2011. Seven states and D.C. reported no relevant complaints, and the other 34 states withheld complaints pursuant to state open-records laws. *White Out* at 4, 23.

regulations. And in fact, consumers rarely do: As legislatures and state boards across the country were considering new restrictions, only once did consumers speak out at all. Significantly, they opposed the proposed regulations.[9]

Non-dentist teeth-whitening businesses have substantially more at stake but, being small and new, they lack the organization, communications infrastructure, and resources of the dental industry, and thus their policy successes have been limited.[10] Of course, even if teeth-whitening entrepreneurs and consumers could match the resources and organization of dental interests, they would have virtually no ability to affect the decisions of state dental boards that face limited or no democratic accountability.

Without fail, dental interests claim that teeth-whitening restrictions protect consumer health and safety. *Id.* at 13-14. Yet the same products sold by teeth-whitening businesses can be bought and used

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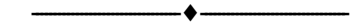
[9] A survey of public records detailing the adoption of legislation and regulations on teeth whitening nationwide identified one instance of consumer advocacy, when six teeth-whitening customers filed comments with the Kansas Dental Board opposing new restrictions. *White Out* at 11-17.

[10] The Council for Cosmetic Teeth Whitening, a trade group and the only voice countering dental interests in debates over the regulation of teeth whitening, spoke out against and helped stop proposed legislation in Minnesota and secured a rare legislative victory when Illinois legalized non-dentist teeth whitening. *White Out* at 11, 13. Few other efforts by teeth-whitening businesses to oppose regulation were successful. *Id.* at 12.

by anyone at home, without instruction, supervision, or a prescription, and they are regulated by the U.S. Food and Drug Administration as cosmetics. *Id.* at 4. Unsurprisingly, dental interests rarely point to actual evidence of consumer harm. *Id.* at 13-14. Indeed, during a five-year period when dental associations were urging dentists to report harm from teeth whitening, only four genuine consumer complaints were filed across 16 states and the District of Columbia. *Id.* at 23-24. None of the complaints alleged permanent injury, only varying degrees of gum irritation – a temporary side effect that is common to teeth whitening wherever it is done, including dental offices. *Id.*

It should come as no surprise, then, that the clamor to restrict teeth whitening has come exclusively from dental interests, not consumers. Licensed dentists have every incentive to ban outsiders from a profitable trade, the organizational means to lobby effectively, and, through state boards, the ability to directly implement public policy. As public choice theory predicts, the growth of teeth-whitening restrictions reflects neither consumer demand nor the public interest, but rather the economic interests of licensed dentists.



CONCLUSION

This Court has recognized that "[f]ederalism is more than an exercise in setting the boundary between different institutions of government for their

own integrity." *Bond v. United States*, 131 S. Ct. 2355, 2364 (2011). It is also a crucial means of protecting "individual liberty" by, among other things, ensuring "greater citizen involvement in democratic processes." *Id.* (internal quotation marks omitted). Despite the North Carolina State Board of Dental Examiners' frequent references to the concept of "federalism," the reality of this case is that – just as public choice economics predicts – the Board has enacted an anti-competitive policy that reflects the narrow interests of an unelected and unaccountable group of industry insiders, rather than any legitimate governmental interest. Accordingly, for the reasons stated above, the decision of the U.S. Court of Appeals for the Fourth Circuit should be affirmed.

Respectfully submitted,

INSTITUTE FOR JUSTICE
WILLIAM H. MELLOR
DANA BERLINER
PAUL M. SHERMAN*
901 North Glebe Road, Suite 900
Arlington, VA 22203
Tel: (703) 682-9320

**Counsel of Record*
Counsel for Amici Curiae