

# **Mackinac Center for Public Policy**

## **Issues and Ideas Forum**

### **“Bottleneckers: Gaming the Government for Power and Private Profit”**

#### **Speaker:**

**Dr. Dick Carpenter,  
Director of Strategic Research,  
Institute for Justice**

#### **Introduction and Moderator:**

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JARRETT SKORUP: Hello. Good afternoon. Thanks for joining us. Please continue to enjoy your lunch as we go about this, but maybe just a little bit more quietly than we have been.

Thanks for coming out. Welcome to our Issues and Ideas from the Mackinac Center. Today's event is on bottlenecks, and we'll talk a little bit about what that means. It's not a term I was familiar with, but I guess by the end of this we all will be.

If you want to wash windows, erect signs or hang awnings in Detroit, you need to get a license required that almost nowhere else does. If you want to ship alcohol in Michigan, that can mean using a distributor that's hundreds of miles away. If you want to fly an airplane, you need 40 hours to be an amateur pilot, and up until a few years ago 250 flight hours in order to pilot commercial aircraft; but in Michigan, you need 1,500 hours to be a cosmetologist and 1,800 hours to be a barber.

Why is this? In each of these cases, the government has carved out a monopoly for a certain group. Most of the time this was done at the strong urging of the people being protected from this competition. The reasons are always the same: give us power in the name of public safety.

In his brand-new book, Dr. Dick Carpenter terms these groups "bottlenecks." A bottleneck is someone who uses the power of government to limit competition in the market and artificially boost their own profits. Bottlenecks use a variety of methods to achieve these goals, including tax loopholes, regulations, occupational licensing requirements, minimum-wage laws, and many more. The end result when these special-interest bottlenecks succeed is fewer choices and higher prices for consumers, fewer job opportunities for workers, and less innovation throughout the economy.

We thank today our sponsor, Auto-Owners Insurance, who's sponsoring a lot of these talks for us. And I can tell you ahead of time they knew nothing to do with the content, so we're not required to do anything insurance-related or anything like that. But we appreciate their support. They helped pay for this lunch that you're all having.

During this talk, if you have any questions when Dr. Carpenter is speaking, we have Q&A cards on the table. We'll collect those at the end. That just helps us make sure we're not getting redundant questions and kind of prioritizing. So go ahead and fill those out if you think of something and we'll come pick them up, and then ask questions. We'll have plenty of time for questions at the end.

So here to talk about some of the reasons why this bottlenecking happens and what we can do about it is Dr. Dick Carpenter. Dr. Carpenter serves as director of strategic research for the Institute for Justice, a national public-interest law firm which sues on behalf of people oppressed by government rules. Long story short, he gets paid to help sue the government. (Laughter.) He works with IJ staff and attorneys to define, implement and manage social science research related to the Institute's mission. In his free time, he is a college professor at the University of Colorado Colorado Springs.

Please welcome Dr. Dick Carpenter. (Applause.)

DICK CARPENTER: Well, thank you, and good afternoon. It's a pleasure to be here. In my free time, in addition to being a professor, I'm also a pilot, and so it was interesting to hear these comparisons being made.

I'd like to begin this afternoon by introducing you to Kim Powers Bridges. Kim owns and operates Bridges Funeral Home in Tennessee, but she is not a native of Tennessee. In fact, Kim is from Oklahoma, and that's where she started her first funeral business. But she had to leave Oklahoma when she ran afoul of the law. It turns out that Kim was engaged in the very dangerous practice of selling caskets without a funeral director's license.

Before that, in the early 1980s, Kim was on the executive fast track. She grew up in a family of hardworking entrepreneurs. She early on learned that success was very much related to hard work. And so when she left college, she worked in a series of different companies, and she was, in fact, very successful at each of those companies.

She ended up working at one of the nation's largest funeral businesses, where she sold pre-need funeral services. She saw this as a way to combine her drive in business with a desire to help other people through her work. And, not surprising, she was very successful at this as well.

But in classic entrepreneurial fashion, Kim came to recognize that there was a need – a niche to be filled in the funeral business, because in the funeral industry the merchandise that is typically purchased by consumers, caskets in particular, are marked up anywhere from 250 to 600 percent. So Kim thought there must be a way to create a business to sell the same merchandise at much lower costs.

So, after a few years in the business, she left to try to do that very thing. She partnered with Dennis Bridges, who had left the same company. They spent a year planning what became Memorial Concepts Online. And as the name implies, their business model was to sell funeral merchandise on the internet. They would have no inventory on hand; instead, they would take advantage of drop shipping from manufacturers. That way they kept their overhead costs very low, and they could sell the merchandise to consumers at a much lower cost because they had their own costs at a much lower rate. And they thought they had a winning business plan, and they did.

But they ran into a problem, and the problem was this: Kim was not a licensed funeral director. She could become a licensed funeral director, but she would have to go back to school for two years. She would have to complete an internship during which she would embalm 25 bodies. Then she would have to have a brick-and-mortar business in which she had a preparation room, a selection room, a viewing room, she would have to have inventory on hand, none of which she was interested in.

As if it were not irrational enough for the state to require a funeral director's license to sell an empty box – because that's what a casket is; a casket is just an empty box – the state also created a circumstance with a law that said an Oklahoma-based company could not sell caskets to consumers without a funeral director's license, but companies outside of Oklahoma could sell to consumers in Oklahoma without having to have a funeral director's license. So Kim could have taken her business, which was essentially computer servers – she could have taken that business and just moved across the state line to Kansas, and there she could have sold caskets to people in Oklahoma all day long.

But she didn't want to do that. She wanted to stay in Oklahoma. She wanted to raise her family in her hometown of Ponca City. And she thought Oklahoma's law was wrong, and not only wrong but injurious. So she stayed in Oklahoma and she fought the law.

Well, she wasn't the only one who believed that the law was wrong. There were some state legislators who did as well. So, beginning in 1999, legislators began introducing bills each year to remove the licensing requirement for the sales of caskets. Kim testified on behalf of several of those bills. And each year they lost. And they lost for one reason and one reason only, and that was because licensed funeral directors went to the legislature and they lobbied aggressively to protect their license. And because of the power of that lobby, they were successful. To this day, if you want to sell a casket in Oklahoma and you are an Oklahoma-based company, you must have a funeral director's license to do that.

What Kim and the bottleneckers – or the legislators ran into is what we call in the book the bottleneckers. And you heard – you heard Jarrett define that, a person who advocates for the creation or perpetuation of an occupational regulation, particularly an occupational license, designed to restrict the free flow of workers into an occupation in order to enjoy an economic benefit as a result.

In recent years, the issue of occupational licensing has grown significantly in attention. In fact, in 2015, the Obama White House actually released a report skeptical of occupational licensing.

The issue of licensing, as we probably know, exists throughout the – throughout the economy. We know that our doctors and our attorneys have licenses, and as you heard just a moment ago, our cosmetologists and our barbers have licenses. But because licensing has grown so pervasive in recent years, now occupations that people never imagined would require a license now have to have a license. So things like, for instance, sign-language interpreters, auctioneers, locksmiths, florists, upholsterers, crane operators. Here in Michigan, if you want to be an auto mechanic, you have to have a license. That's rare, by the way. Very few states actually require that. Michigan is one of the few. Or if you want to be a basement waterproofer here in Michigan, you have to have a license, as does a driver's ed instructor; again, one of the very few states that require that.

If that sounds outrageous to you, keep in mind that this activity of all of these licenses that have come into – come into existence is as a result of these bottleneckers, as we describe in the book. And for the past 25 years, we at the Institute for Justice have worked to reform

occupational licensing. We're a law firm, and we have represented individuals and continue to represent individuals who want nothing more than to exercise their right to earn an honest living free from unnecessary government regulation.

And throughout this time, we have discovered that there is a myth that persists about occupational licensing. And the myth is this: licenses are created by legislators at the request of harmed consumers and concerned citizens. But the truth is legislators create licenses at the request of those in the industry to be licensed. And at first blush, it seems absurd: Why would anyone ask for more government intrusion into their business? The answer to the question, like so many questions, is to follow the money. Those in the industry come to recognize that with a bottleneck they can keep competitors out and artificially inflate prices and wages as a result, to their own benefit. So think of funeral directors and their ability to mark up caskets somewhere in the neighborhood of 600 percent.

But the push for licensure is more than just economic. When you hear bottleneckers make requests for a license in their industry, they will often also say: we need this license because it gives us a certain form of status and recognition that only comes with a license. We want to be like those other occupations that are already licensed, and we can't have it any other way without the license.

So it's no surprise, then, that when some reform bill is introduced in a legislature or when a law is challenged in court, the bottleneckers will mount a ferocious campaign in order to protect their license. And the funeral industry is just one example. In 25 years, we have yet to find a single example of an occupation that is created or protected by any means other than bottleneckers. But the myth persists that there's some sort of demonstrable need, and that's one of the reasons that we wrote the book.

We also wrote the book because we wanted to coin a new term. We wanted to create a word that was descriptive and useful and accessible, and perhaps most importantly pejorative. (Laughter.) We wanted to create a word that would enable us to name and shame those who engage in or enable this type of activity. So, with the word "bottleneckers," we drew on the well-known metaphor of a bottleneck, something that restricts free flow or movement – think of the bottleneck in traffic – and the negative freight associated with the word. So think of the two-hour morning commute as a result of the bottleneck in traffic. That only enriches the metaphor all the more.

So each industry that we cover in our book, from cosmetologists to dieticians and nutritionists, have exhibited classic special-interest behavior in order to achieve or protect their license. And the behavior looks like this: coordinated letter-writing campaigns to the legislature, crowding out legislative hearing rooms, industry day at the Capitol, special awards to legislators, personal lobbying in legislators' offices, campaign contributions, going to the legislature and giving testimony in committee hearings full of all kinds of unsubstantiated facts and scary-sounding stories such as, if this license is repealed, it will result in the deaths of tens of thousands of people. (Laughter.) That was actual testimony in Florida when they considered repealing the interior design law. (Laughter.)

Now, our book is somewhat backward-looking in that we look at the history of the creation and protection of licenses in various different industries. But this activity that we're describing is not an historical artifact. This is something that continues today.

And there's no better example than the American Music Therapy Association and the Certification Board for Music Therapists. These two organizations have mounted a nationwide campaign to license music therapy. They go state by state asking for a license. And when they do, they say the same thing that bottleneckers have said for decades: we need this license to protect public health and safety from the unlicensed practice of music therapy. Now, regardless of what one thinks of the occupation – and we attach no value judgment to it – there is no evidence that there is a significant threat to public health and safety such that a license is necessary in this occupation. It has been practiced freely and safely for years. And the fact that some states have already adopted regulation is not because there is some demonstrable need; it is because the bottleneckers – the music therapists – have gone to the legislature begging for a license in their industry. They have a regulatory affairs team that coordinates state-based task forces that go state by state and ask for the license, and they've been successful in a little more than a half-dozen states.

Some of those requirements to earn the licenses in these states are quite severe. In Georgia, for instance – Georgia has probably one of the more severe licensing requirements. If you want to work as a music therapist now in Georgia, to earn that license you have to earn a bachelor's degree or higher in music therapy from an approved music therapy program, and the program has to be approved by the Music Therapy Association – (laughter) – the same people that lobbied for the bill. Then you will have to complete 1,200 hours of internship. You'll have to pass a national examination that's offered only by the music therapists. You'll pay more than \$300 for that privilege. You'll pay fees to the state, you have to be 18 years of age or older, and you will have to pass a criminal background check.

And research on occupational licensing tells us now, in Georgia and other states that have adopted regulation, consumers will pay as much as 15 (percent), perhaps upwards of 30 percent more for their music therapy services without necessarily gaining any more in terms of quality of service or protection from the public. And, if at some later date the legislature were to go and try to reform this licensing law, the legislature will be overrun by licensed music therapists who are seeking to protect their license, and now they will be joined by the state music therapy licensing board, who is also there to protect its license.

Now, boards play a significant role in our book, because after the creation of a license, the board is the vehicle by which the license is protected. Boards are composed almost entirely of people who are licensed in the industry. I say "almost" because boards will typically have one or two members of the public, and this should be understood to be complete tokenism. A public member of the board is there as a token. Even if that individual is sincere and seeks to represent the interests of the public, they are overwhelmed, certainly in numbers if not in any other way, by the other members of the board. So make no mistake that having a public member is essentially worthless. The board members will continue to run things on their board and in their industry regardless of what the public member thinks.

Majority of the time spent on a board is focused on keeping a close eye on their particular industry, particularly focused on keeping that fence erect. So, to introduce a new metaphor or a different metaphor, think of a license as a fence around the occupation. And so the board spends most of its time policing that fence to make sure that there are no people encroaching upon their business, people doing the work of their occupation without earning the license.

And they do that primarily through three means. First is a cease-and-desist letter that will go to somebody who's practicing without a license.

Second is fines. Fines can be quite severe. In Florida, for instance, we analyzed the cease-and-desist letters and the fines for interior designers, which is licensed in Florida. Fines will range anywhere from \$500 to multiple thousands of dollars for people who are engaging in this occupation without a license.

And believe it or not, some occupations also can earn a disciplinary action of time in jail if you were to engage in a certain practice without a license.

This is how boards spend most of their time. Even people who have sat on boards and no longer do will acknowledge or perhaps admit that this is how they spend their time.

So there are two types of – two types of ways that people on boards are looking at the fence and patrolling the fence. One is to pay attention to people who are doing actual work without a license. So somebody who's holding himself out as a practitioner and doing the actual work of that occupation, the board will bring some disciplinary action against them.

A second is what we call in the book "license creep." And license creep is when the board takes an action against somebody who is not actually doing the occupation, but it actually working at the fringe of the occupation. So they seek to push their fence out further in order to sweep in somebody who's doing the work somewhat related to their occupation.

A classic example is African hair-braiding. So hair braiders don't do the work of cosmetologists. They braid hair. They don't cut hair. They don't color hair. They don't use chemicals on hair. They don't do cosmetology. They braid hair. But cosmetology boards over the years have come to say that is cosmetology, and they've pushed their fence out to try to sweep in African hair-braiders and keep African hair-braiders out of the ability to do their work. So the end result is, A, women who want to do hair braiding either stop or don't get started; or, B, they do it in the informal economy. And that hurts not only the braider, but all the rest of us as well.

So that's a classic example of how license creep looks. But in recent years, we've seen that license creep now takes a different form, a more insidious form, and that is the fence is pushed out to include people who aren't actually earning any money in the occupation, particularly in areas where people just speak or give advice.

And a really great example is Steve Cooksey. Steve lives in North Carolina. This is where he grew up. As a young man Steve was very active, participated in lots of different sports.

Even into his 20s he was a very active person. He started out working in accounting, then went into management. Eventually he was managing in a medical devices firm, and he began working 10, 11, 12 hours a day, exercising less and less, and his job became very stressful, as you can imagine. And so, as a result, he began to put on a lot of weight. In fact, as he's about 5-foot-10, he put on at his peak weight about 75 pounds over his ideal weight for his frame. And as you imagine, what this resulted in was a lot of physical infirmities that went with it. So he had hypertension and high cholesterol, plantar fasciitis, lower back pain, acid reflux, et cetera, et cetera.

And so, when I talked to Steve, he said if you were to open my medicine cabinet, it looked like a pharmacy in there, because I had just all kinds of bottles. I was taking all kinds of medications for all of these things. I had no idea what was interacting with what. I just took them, thinking that they were going to help.

In 2010, on Valentine's Day, Steve ended up in the hospital on the verge of a diabetic coma because this is what Steve's typical diet looked like. In the morning, breakfast was sausage, gravy and biscuits. Lunch was fast food. And dinner was two full fast-food meals eaten in 15 minutes on his drive home. And before bed, a few cans of beer. This was his daily intake. So, not surprisingly, he ended up, as millions of other Americans, as a type 2 diabetic. So he was told in the hospital you will spend the rest of your life on insulin with all these other medications that you're taking, and they gave him a recommendation on a high-carbohydrate, low-fat diet.

So he got out of the hospital and he was – his attention on this issue was galvanized like nothing else in his life. He began reading widely and came to realize that he needed to change his diet not to a high-carb, low-fat, but into something else that would lower his blood sugar. And so what he ended up doing was becoming an advocate of the paleo diet. If you're not familiar with this, the paleo diet is you eat meat, vegetables, fruit, nuts, things that are available to people that lived in the Paleolithic era, and you don't eat processed foods, sugars, et cetera, et cetera. And he began to exercise. And the result is what you see here.

You'll not be surprised to learn that Steve became an evangelist for the paleo diet. He started a blog entitled the Diabetes Warrior. And so his blog, which continues to run today, was full of all kinds of his advice and his stories and his experience and things that he had been reading. He was just sharing these things widely because he felt so strongly about his own experience.

People began sending him emails. And he thought, hey, here's a nice idea, I'm going to take questions that come to me in the emails, I'm going to post these questions and give answers to these questions. He posted these on his blog.

So, in 2012, he received an email from the Board of Dietitians and Nutritionists in North Carolina. And they gave him, attached to his email, 19 pages of his own blog redlined, telling him why and how he was in violation of the licensing law for dietitians in North Carolina. And it gave him an option, and the option was go back to school and become a licensed dietitian, go back to school and become an M.D., or censor your blog.

So Steve censored his blog. He removed the material that they found offensive. He let this go for a few weeks and it gnawed at him more and more, because it wasn't just an injury, he believed, not just to himself, but to others who relied on his blog and might be helped by his blog – he believed would be helped.

So, as a result, he contacted us at the Institute for Justice. And we represented him, and we went to court. And at the trial level, we lost. But we went up on appeal and we won.

AUDIENCE MEMBER: Good job.

MR. CARPENTER: Thank you. (Laughter.) And so today Steve is able to speak freely.

Now, keep in mind that Steve was not taking any money for his blog. He was only talking about his experience and answering questions. He was doing nothing more than the millions of other books out there with diets and exercise plans and advice columns galore. He was doing nothing different than all of those other people. And we took that to court on a First Amendment – as a First Amendment case, and we eventually – as I mentioned, we won, and so the board changed its policy to allow people like Steve to speak freely. So these boards – that's why I give special attention to these boards, because their activities happen to be so insidious.

Now, often those of us who advocate for the reform of occupational licensing, we do so by making economic arguments. And Chip and I do that in the book. But this is more than just an issue of economic growth. This is also about creating a just society, a society that is built in part on preserving the right to earn an honest living free from unnecessary government regulation. There's nothing just about telling someone he may not work in the occupation of his choice or for which he is best suited simply because it offers too much competition for someone else who's more politically savvy.

In 1787, James Madison wrote that the protection of property rights is the first object of government. To Madison, property rights actually extended to more than just real estate or personal property as we typically think of it. For Madison, property rights actually covered, quote, "everything to which a man may attach a value and have a right," including, quote, "opinions" – "everything to which" – I'm sorry, "opinions and the free communication of them" and "the free use of his faculties and free choice of the objects on which to employ them."

Madison's disdain for the cooptation of government for one group at the expense of another was unequivocal, as was his inclusion of economic liberty under the rubric of property rights. Here's how Madison describes it. Quote, "That is not a just government, nor is property secure under it, where the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of citizens for the service of the rest," "where arbitrary restrictions, exemptions, and monopolies deny to part of its citizens that free use of their faculties, and the free choice of their occupations, which not only constitute their property in the general sense of the word; but are the means of acquiring property strictly so called."

In condemning, quote, "arbitrary seizures of one class of citizens for the service of the rest," or "arbitrary restrictions, exemptions, and monopolies," Madison very well could have

been talking about occupational licensing today. He could have been talking about bottleneckers today.

So, to fulfill Madison's call for a just government and to execute the first object of government, elected officials should protect the property rights of citizens, including free occupational practice. And those of us who love liberty, we should prod legislators toward reforming occupational licensing, and we should support those who work to break open bottlenecks and expand economic liberty.

In 25 years, we have represented individuals like this and many others. These are courageous men and women who have fought to break open bottlenecks and expand economic liberty not just for themselves, but for millions of other people as well. And we tell some of the stories of these people in our book. So for 25 years we've done that work, and we're going to continue to do that work until we put occupational – until we put economic liberty back in its place as a right as important as it was when Madison first wrote about it.

So, with that, I'm going to stop and I think we're going to take some questions.  
(Applause.)

MR. SKORUP: Thank you. Thanks. Dick. Really appreciate that.

So you've got question cards, so go ahead and fill them out. We'll have people going around asking them.

So I'll start off with one. Can you talk a little bit about any progress you've had in other states around the nation in terms of breaking these bottlenecks?

MR. CARPENTER: Certainly. So let's take a casket as an – casket sales as an example. We represented some monks in Louisiana who wanted to sell their handcrafted caskets as a way to raise money for their monastery, and the funeral board in Louisiana said, sorry, you have to be licensed funeral directors to sell those caskets. So we actually took that case, we took it all the way to the appeals court, and we actually won that one as well. And the Supreme Court refused to hear it, so that meant the appellate court decision stands, which was a huge victory at the federal level, and we continue to take advantage and exploit that.

In Texas we had a great win at the state Supreme Court there on behalf of eyebrow threaders. If this is an occupation that's unfamiliar to you, eyebrow threading is –

MR. SKORUP: I'm very familiar with it. (Laughter.)

MR. CARPENTER: Well, you look – you look like it. (Laughter.)

So eyebrow threading, if you're not familiar, it's a – it's a way to remove unwanted facial hair and body hair as well, but typically it's on the face, using cotton thread. This is all that's done: you take a strand of cotton thread and you sweep it across the area where you want to

remove hair, and the thread is used to pluck the hair. That's all it is. And they were required to have a cosmetology license.

So we represented some eyebrow threaders in Texas. We went all the way to the state Supreme Court, and we won on behalf of these eyebrow threaders. And that victory was particularly important because that victory essentially said that kind of the way we've described economic liberty, this is what the Texas Supreme Court upheld, that there is a right to economic liberty. And so that was a very important decision.

So we're continuing to have wins in the courts, and we're working in the legislatures to achieve as much as we can by way of reform as well. And that's taken different forms. Sometimes we're able to achieve the removal of licensing requirements for discrete occupations and other times we're able to have some greater effects, like in Indiana where they had a reform bill there a couple of years ago.

MR. SKORUP: Somebody asked: Can you sell caskets online in Michigan?

MR. CARPENTER: Yes.

MR. SKORUP: Michigan, you can. However, you cannot do teeth whitening in Michigan, according to state law right now. You need a dentist license to do that. So you can do it at home. You can order it, you can do it yourself, you can do it on your kids, you can do it on your pets. But if you want to make money, sorry, you're out of luck.

MR. CARPENTER: Right. Caskets, you know, people don't realize you can buy a casket from Costco. So they're – yeah.

MR. SKORUP: So colleges and universities often provide a lot of these educational services preparing people for occupational licensing. What side of the issue are they? Do you find that colleges advocate for more bottlenecking?

MR. CARPENTER: In short, yes. So –

MR. SKORUP: We ask the college professor. (Laughter.)

MR. CARPENTER: (Laughs.) Universities make an enormous amount of money from licensing. Right now, we want to get engaged in this particular topic where we want to do some research on this, but I know they're making an enormous amount of money.

Here's a quick anecdote. Do we have time?

MR. SKORUP: Yep.

MR. CARPENTER: OK. So a few years ago we had released a study called "License to Work" and examined the licensing requirements of 102 low- to moderate-income occupations across all 50 states and D.C. And there was nothing like it, ever. When we released our study in

2012, it was unprecedented. So shortly after that I receive a call from somebody with a policy consortium for universities, and he asked me – he said to me, I read your study, “License to Work” – that’s important to keep in mind – I read your study. I want you to come and sit on a panel and talk about your results at a policy consortium meeting that we have coming up. I said, great, I’ll be there.

So I show up at the appointed time and day. It’s in a big conference room in a hotel. I’m sitting on the panel. It’s my turn. And he told me to prepare 15 minutes, and I said fine. So I prepared 15 minutes to the second. My turn, I’m going, I’m maybe six, seven minutes in, and he – and this is several hundred people – he stands up and he walks down to the front, and he stands in front of me and he wants me to stop. And I’m thinking, you son of a gun. You invited me and you told me to prepare 15 minutes, and you’re going to get 15 minutes. (Laughter.) So I just kept talking to the end of my 15 minutes.

Then it was Q&A, and every question was for me, and they were all hostile. (Laughter.) And it was very clear why, because, as you can imagine, my message was very skeptical of licensing, and they saw it as a threat. It was a significant threat because they make an enormous amount of money on licensing. So for all of these licensing requirements to go away, that had the potential to affect their bottom line.

This is not to say – I’m making no statement about the importance of education in preparing to do jobs. I’m not saying that. What we’re talking about is the government requiring it before you do a job. And so universities play a significant role in this.

In fact, sorry, one last thing on that. Bottleneckers, when they go to the legislature, will often be joined by people representing universities, and often students in programs will be required to go and be in the committee room as well.

MR. SKORUP: We mentioned in the beginning barbers in Michigan have to do 1,800 hours, which is far higher than the vast majority of states. That used to be 2,000 hours, and we were working a couple years ago on a bill – initially there was a bill that would eliminate the license, then eventually they compromised at 1,800 hours. (Laughter.) So we went from 2,000 to 1,800 hours. But we talked to the head of the barber colleges. So there’s four barber colleges in Michigan. None are north of Flint, so if you’re up in the Upper Peninsula and you want to be a barber, you got quite a hike. But the head of the barber colleges said this is insane, we aren’t quite doctors, but we’re as close as you can get in terms of the danger, and if they – if they eliminate this license, in five years it will be the wild, wild west in barbershops. By the way, Alabama never had a barber license. So I don’t know, you know, if you’ve safely traveled through Alabama, but I think I went there, I didn’t notice particularly bad haircuts or anything. (Laughter.) Well, I did, but I think that was separate from the barber. (Laughter.)

Do you have a sense of how the current U.S. Supreme Court members stand on this issue? There’s a big kind of legal debate on how these things go?

MR. CARPENTER: Yeah. Mmm, hard to say. I think if we have any indication at all, it would probably be the recent decision on FTC versus North Carolina Dental. And so that

decision would lead us to believe that there is skepticism about licensing on the Court. We'd like to believe that would be true. It's hard to say where the presumed new member would come down on the issue, so we can't really judge that right now. But based on that one decision, we think there's probably some skepticism on it. But it's honestly very difficult to say because the cases that we have filed cert on and thought, oh, this would be great, this would be something right up their alley, there are split decisions in the – in the appellate courts, this is just tailor made, and they don't take it, so.

MR. SKORUP: Jefferson's original Declaration of Independence called for property rights, which was replaced by pursuit of happiness. Do you have any idea on what was the definition of property rights that Jefferson had in mind?

MR. CARPENTER: Yeah, I do not. Do you? (Laughter.)

MR. SKORUP: I heard one of your colleagues at the Institute for Justice speak on this once, and he made the point that at the time that protection of property rights and the pursuit of happiness in the founders' mind was very much centered around this idea of work, of people being able to go out and then find fulfilling work. So he presented the case –

MR. CARPENTER: It's certainly consistent with Madison. Yeah, it wouldn't surprise me if they believed the same thing.

MR. SKORUP: Have there been some examples of state boards going after any particular field, individuals trying to practice, especially based on other states? So you talked a little bit about providing a service in one state that was illegal in a state. Do you have – that's kind of an interstate commerce issue, but are state boards going after practitioners in other states that are providing services in those states?

MR. CARPENTER: In their own state, yeah. So interior design is another – is yet another good example of this activity. So Florida – Florida, as you can imagine, is a very attractive place for interior designers, say, in New York, for instance, to practice, because people might split their time. They have a house in New York, they have a house in Florida, and so they have established a relationship with an interior designer in New York that has perhaps done work for them there. They travel down to Florida, they own a house there, they'd like to do – they'd like to have their New York designer come down and do work in their Florida house. This is not uncommon. And so what happens is the person in New York goes down to do work in Florida, and so the Florida board brings action against them because they're doing work in Florida and they're not a licensed interior designer in Florida. So that's one example.

But contracting is another example, as well, and Florida's a great example because of all the hurricanes in Florida. And so there's just constant churn and constant need of contractors and a constant market, and so there's a lot of action there in order to protect their interests.

MR. SKORUP: On that line, can you talk a little – there's been a lot of interest on – and our state took up, and many states have taken up, the idea behind the military licensing on the military spouse side of things. Can you talk about that issue a little bit?

MR. CARPENTER: Yeah, even Michelle Obama, when she was first lady, she took this up as an issue as well.

So one of the costs of occupational licensing is it hurts people who are moving across states. So one way we describe it is to say it reduces interstate mobility or migration. So if you work in a state without licensing or lower levels of licensing, and you want to move to another state for whatever reason and that state had a licensing requirement, now you have to either get relicensed or have to get licensed to begin with, and so it's a disincentive for you to go to that state.

For the military spouse, this puts that person in a pickle. They can't say no. They have to go to that state. So that means either, A, they're going to go to that state and they're going to have to earn that license again or earn it for the first time, or they're going to go to that state and they're not going to be able to work in their occupation. So, consequently, what Mrs. Obama and others have said is we ought to find a way to try to enable those who are military-attached to be able to move and not have to go through all of these licensing regimes over and over and over again, which is a very fine idea. My view is if it's fine for them, I think it should be fine for a whole lot of people.

MR. SKORUP: Yes, my youngest sister was a teacher in Tennessee, and she married an Army Ranger, and they moved to Washington state. So she had to navigate, even though she had been teaching a couple years. And then my wife, not the military side, but she had her teaching degree and was teaching in New Jersey and came to Michigan, and luckily there was reciprocity for those. But a lot of people it's a big obstacle.

MR. CARPENTER: Mmm hmm.

MR. SKORUP: So you talked about legislators that are captive by these special-interest lobbyists or these groups. So how can the public possibly compete with that – with that advocating, with that amount of money?

MR. CARPENTER: Yes. So there are a couple of ways that come immediately to mind.

My cousin was a state legislator in Ohio for a number of years and was fond of saying that one letter or one email or one contact in his mind represented thousands. So we think I'm one person, but that one person, you know, actually represents, in the mind of a legislator, a whole great number of people. And so it doesn't take much to have an influence. That's one thing to keep in mind.

A second is there are – one of the problems Milton Friedman talked about is one of the problems is the diffused interest versus the concentrated interest. The concentrated interest is, of course, the bottleneckers. The diffused interest is the public. So people will often say, well, what's the voice of the diffused interests? It's Mackinac, OK? There are groups that represent the public interest. And so supporting groups like Mackinac helps get the public voice, as we were doing just this morning. Just this morning, we had gone up and met with a state legislator

and represented all of this to that individual. And so supporting the work of groups like this is a way to have the public voice, the diffused interest, represented in the legislature.

And then voting, of course, holding people – holding people accountable by their actions. And again, Mackinac plays an important role because they keep a tally on these things, how do people vote and so forth.

MR. SKORUP: So you mentioned this being a relatively bipartisan issue. The Obama administration put out a report that could have been written by a number of free-market groups. It was very favorable to repealing these occupational licenses. One of the reasons a lot of groups are behind this is there's a criminal justice element to it. Can you talk a little bit about that angle, particularly on licensing or some of the other bottlenecks?

MR. CARPENTER: Sure. So what happens is somebody has served their time, they leave their incarceration, they need or want to go back to work, and what they discover is that many state laws prevent them from earning a license in an occupation of their choice because they have been incarcerated. So the effect of this is to say to people who desperately need to work that we're going to severely limit the opportunities for you. And because these licenses exist in the types of occupations that would be ideal for men and women that are leaving incarceration, it's even more – the effect is even more profound.

So, in Michigan – we were talking about this a little bit earlier – in Michigan, if you want to work with what I – you know, in the research world, in the university world we call vulnerable populations – children, people in health care, particularly in hospitals, et cetera, et cetera – if you have a criminal background, no chance. But there are other types of occupations that also have this restriction as well.

So a colleague of ours down in Arizona, at Arizona State, at a think tank down there, recently released a study that looked at the relationship between recidivism rates and licensing, and discovered that there is, in fact, a relationship. In places where more – with stricter forms of licensing in place, you see greater recidivism, more people going back into incarceration because they have fewer opportunities because licensing is so severe.

So this is an issue that has attracted people all over the political spectrum, people on the left and the right, as a way to try to fix this particular issue.

MR. SKORUP: Yeah, one way to look at it is if somebody comes out of prison and wants a job, they apply for a job, one of the first things you ask, do you have a criminal record? And a lot of places will say we're not going to hire you. And then, if they want to go work for themselves and get a license, the state tells them, sorry, you can't get a license there. And it ends up then they go back to doing illegal activity and end up back in prison, and you get that type of cycle.

We'll do one more question and then I know Dick will be around for a little bit afterward, so if you want to talk to him about this we'll be here for a couple minutes.

So why the casket? What is a casket? Why could a person not just say “I’m selling boxes to people”?

MR. CARPENTER: Yeah, because it’s a very specialized box. (Laughter.) I think the logic is because the way the box is going to be used, OK? So not that it’s just a box that can – I mean, most of us are not going to go out and buy a casket to plant flowers or to hold our trinkets in our home. I mean, a casket is something that’s used for a very specific purpose. So the logic is, because of the way it’s going to be used, there needs to be some sort of special training that goes with it. But the truth is, in fact, you can be buried in anything you want, or nothing. You can be buried in a cardboard box, wrapped in a shroud, put in a wicker basket, nothing at all, upside down, whatever you want. None of this – none of these things that you hear – it needs to be a steel, with this silk and a pillow and – no, none of that’s actually required. And so this – kind of this myth that there’s something special about the casket that you have to have some sort of special training is, in fact, not the case.

But in answer to the question, I think it’s because there is an impression that it’s going to be used for this very special purpose, and therefore you need special training. And that’s – when IJ attorneys have deposed members of funeral boards, this is, in fact, what they will say: you know, there’s health and safety concerns, and you need to know the composition of the casket, et cetera, et cetera. In fact, that’s not true.

MR. SKORUP: All right. Thank you, Dick.

MR. CARPENTER: Yes. You bet. (Applause.)

MR. SKORUP: Thank you all for coming. We appreciate it.

So, if you want, this will be on our website or on our Facebook page if you want to re-watch it. I’m sure you’ll re-watch it again and again, you’re so excited. (Laughter.) I know I do.

If you didn’t see, we have a publication table outside. We have a lot of our publications that are free. You can check out some of the work we’ve been doing on the licensing issue, as well as a whole variety of other issues. And we will be back here next week for another event. So if you – if you want, give us your email and you can sign up to get these events. They’re always great. Kristin Anderson, our events coordinator, does a great job, and we always include a free lunch with them. So please give us your contact info if you are interested in that. And besides that, we hope to see you next time.

(END)