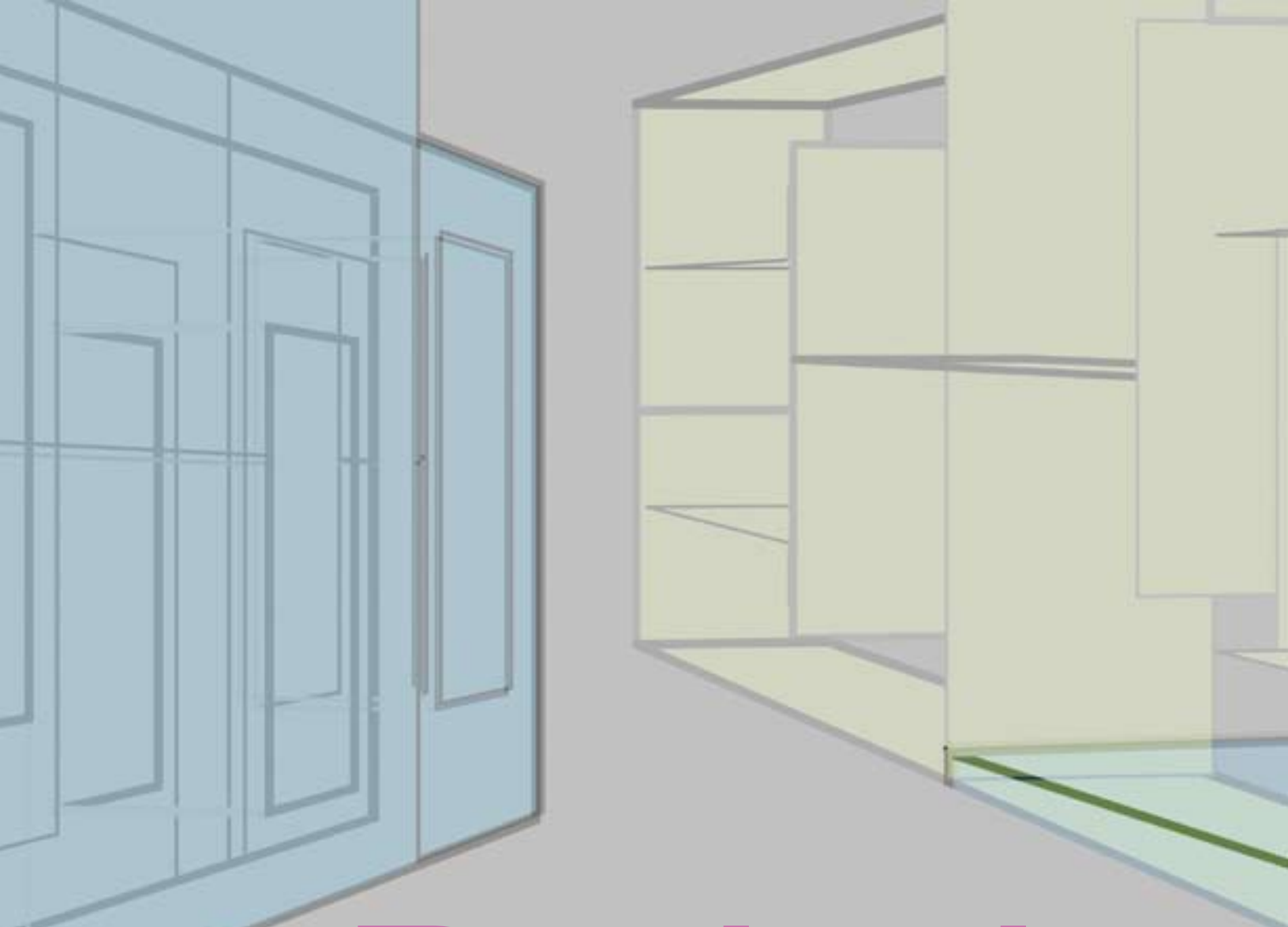

Designing Cartels:

How Industry Insiders Cut Out Competition

By Dick M. Carpenter II, Ph.D.

The Institute for Justice

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Executive Summary

This report examines titling laws, little-known regulations that require people practicing certain professions to gain government permission to use a specific title, such as "interior designer," to describe their work. Although titling laws receive little attention from the political, policy or research communities, they often represent the first step toward a better-known regulation—occupational licensing, which limits who may practice a trade. In theory, occupational regulations—including titling and licensing laws—are designed to protect the safety and economic interests of consumers. But critics charge they are often nothing but anti-competitive barriers that only benefit those already practicing.

Twenty-two states have some kind of titling law for interior designers, and four states and the District of Columbia also require aspiring designers to acquire government licenses to practice. For decades, powerful factions within the interior design industry have lobbied for legislatures to impose increasingly stringent regulations, arguing that interior design requires a minimum amount of education, experience and examination, codified by the government, to ensure public health, safety and welfare.

The results of this case study, however, indicate that there is no threat to public health, safety or welfare requiring government regulation of the interior design industry.

- Between 1988 and 2005, five state agencies examined the need for titling and/or licensing laws for interior designers. All five found no benefit to the public and concluded consumers already possessed the means to make informed decisions about interior designers.
- When pressed by state agencies, not even interior design associations lobbying for regulation produced evidence of a threat to the public from unregulated designers.
- Interior design companies receive very few consumer complaints—an average of less than one-third of one complaint per company over the past three years, according to nationwide Better Business Bureau data.
- There are no statistically significant differences in the average number of complaints against companies in highly-regulated states, less-regulated states and states with no regulation.
- Only 52 lawsuits involving interior designers have been filed since 1907. Most dealt with breach of contract issues, while very few addressed safety or code violations.

Results also indicate the demand for regulation comes *exclusively* from certain industry leaders.

- Leading design associations and political action committees have successfully pressed a legislative agenda of increased regulation.
- State licensing officials often testify against interior design regulations, citing the lack of threat to public health, safety and welfare, the likely increased cost to

consumers, and the unnecessary erection of barriers to entry into the profession.

Finally, titling laws represent a first step toward full occupational licensure.

- Of the four states with licensure, three began with titling laws that evolved into licensing.
- Interior design associations are actively working to transform title acts into licensure in at least three other states.
- In just the past two years, interior design coalitions lobbied for titling or licensure in 10 states currently without any regulation.

Legislators should critically examine the need for new titling and licensure laws and consider repealing existing regulations of questionable value. Instead, self-certification through professional associations or non-profit boards, as in California, can help designers and other professionals distinguish themselves without needless government oversight that serves only to keep out aspiring entrepreneurs.

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Introduction

As a young girl, Sherry Franzoy dreamed of working as an interior designer. But when she married, began raising children and started managing the business side of a family farm in New Mexico, her designer dreams appeared destined to remain just that, dreams—until life circumstances intervened. When she and her husband divorced, Sherry needed to find a way to support herself, and quickly.

She worked as a produce broker for a year to make ends meet, but that childhood dream remained in the back of her mind. As she contemplated the idea, it seemed unattainable. She lacked the time to attend design school. Besides, the closest school was more than 200 miles away.

So when she came across a business franchise opportunity called Interiors by Decorating Den, Sherry jumped at it. The franchise specializes in "we come to you" and complimentary interior design consultations. As a full-service design store, it sells everything from floor to ceiling, and, important to Sherry, purchasing the franchise came with intensive, condensed schooling on everything from managing a business to the intricacies of interior design.

The implications of titling laws remain largely unknown. To date, these regulations have received little to no attention among the policy or economics research communities.

Sherry now manages a thriving business with a stable of subcontractors and clients from all over the country. Many of her clients are east or west coast transplants who lack the know-how to design in the Southwestern style that characterizes New Mexico. She provides design services ranging from window treatments to kitchen and bath remodels in homes valued from the mid-$200,000s to more than $1,000,000.

By any measure, Sherry Franzoy embodies the American Dream. The State of New Mexico, however, stands squarely in the path of that dream. Under New Mexico law, everyone calling themselves "interior designers" must complete a minimum of two years of post-high school education, have a combination of six years of education and experience in interior design and pass an exam. Short of that, it is illegal to refer to oneself as an interior designer—either in advertising, business documents or conversation. Interior decorator yes, interior designer no.

Such regulations are called titling laws. These little-known laws regulate who may and may not use a specific title in a particular profession. In theory, they are designed to protect the safety and economic interests of consumers. But critics charge they are nothing but anti-competitive barriers designed to benefit those already practicing.

Unfortunately, the implications of titling laws remain largely unknown. To date, these regulations have received little to no attention among the policy or economics research communities. Thus, this research report examines titling laws, using the interior design industry as the focus, to stimulate further research in this area and to illustrate what titling laws are and how they function. Although the issues addressed in this report are somewhat academic, the effects of titling laws for individuals like Sherry are anything but.

Previous Research On Occupational Licensure

As demonstrated in this report, titling laws often represent the first step in a better-known and more invasive process—occupational licensing, which limits who may practice a trade. Indeed, Morris Kleiner,[1] a national expert in occupational regulations and professor at the University of Minnesota's Humphrey Institute of Public Affairs, documents how licensing practices originated thousands of years ago in ancient Babylonian and Greek cultures, and the study of licensing spans centuries, from Adam Smith's *Wealth of Nations* to contemporary examinations utilizing sophisticated econometrics.[2]

Proponents of occupational licensing typically cite two primary benefits: improving the quality of services rendered and protecting the public health, safety and welfare. Licensing purportedly promotes those ends by requiring individuals practicing the regulated occupation to invest in education, training and often apprenticeship, and frequently to complete an occupation-related examination. The process is supposed to ensure that practitioners meet a minimum threshold of skill and knowledge necessary for quality and safety, although research appears decidedly inconclusive, at best, about the relationship between licensure and quality.[3]

Unnecessary licensing can erect needless barriers in entry-level occupations or to budding entrepreneurs.

But the effects of occupational licensing do not end there. In fact, a widely held view among economists is that licensing restricts the number of new entrants into an occupation, resulting in an increase in the price of labor and services rendered.[4] Research also indicates workers often enjoy higher wages as a result of licensing due to the "scarcity" or artificially limited number of available workers.[5]

Industry insiders recognize this effect and pursue licensing as a way to benefit those already in the occupation.[6] Through the "cartelization" or monopolization of their occupations, practitioners can realize greater economic benefits, while "signaling" to consumers and policymakers the assurance of quality and safety associated with licensure.[7] Yet such social benefits may be small, if present at all.

In addition, unnecessary licensing can erect needless barriers in entry-level occupations or to budding entrepreneurs. The most direct effect of occupational licensing is to shut out new entrants into the workforce from suitable occupations, such as taxi drivers and manicurists.[8] Moreover, a social benefit is lost as such jobs otherwise would enable individuals to transition out of welfare. Excluding such barriers to entry, these are ideal pursuits for low-income, entry-level entrepreneurs who typically lack financial capital or high levels of education required for other professions. In short, the regulation of some industries conceivably benefits only one group—industry insiders.

Of course, industry leaders cannot simply institute occupational licensing by decree. They must win the support of legislators and other policy leaders to pass the required laws and regulations. Licensing some professions, such as dentists, engenders little question about the utility of government oversight, particularly in the interest of protecting public health and safety. Yet others, such as casket sellers and florists, lack any clear need for government regulation. As this report demonstrates, interior designers could be added to that list, although some leaders in that industry work to convince legislators otherwise.

Defining Interior Design

According to the U.S. Department of Commerce, an interior designer "[p]lans, designs and furnishes interior environments of residential, commercial, and industrial buildings."[9] Estimates put the numbers of individuals practicing design in the United States at anywhere from 20,000 to 75,000[10] working primarily in residential, commercial or mixed environments.[11]

The wide disparity in the numbers largely reflects an issue at the center of this case study: What defines an interior designer? In the loosest sense, all those who practice a profession in which they "plan, design and furnish interior environments" work as interior designers. But that definition could define, in part, the work of architects. This fact has not been lost on either the interior design or architecture industries and has resulted in what some have called a "never-ending border war."[12]

Developing an identity distinct from architects is not, however, the only "border war" interior designers face. The other, more germane to this report, is from interior decorators. While many (perhaps most) people see the terms as essentially synonymous, interior design associations have expended much effort over the past several decades in making distinctions between designer and decorator. In discussing this effort, interior design professor Lucinda Havenhand writes:

> Interior designers do understand that they have a problematic and often misunderstood identity, although they have worked diligently over the past fifty years to identity [sic] and legitimize their field. In the 1930s and '40s, these activities were centered on differentiating interior design from interior decoration through the creation of educational programs and criteria for competency and knowledge. Later, professional organizations such as the American Society of Interior Designers (ASID), the Foundation for Interior Design Education and Research (FIDER) and the National Council for Interior Design Qualification (NCIDQ) were formed to oversee the development and maintenance of these criteria both in education and practice. These groups crafted legal definitions of interior design and constructed a unified body of knowledge that included its own history and theory. A professional internship program (IDEP) was put in place in 1993, and an ongoing effort to create licensing and titling acts that identify qualified interior designers to the public continues.[13]

One of the groups mentioned by Havenhand, ASID, characterizes interior design as more than decorating but not quite architecture:

> Interior design is a unique profession with a unique body of knowledge. It involves more than just the visual or ambient enhancement of an interior space. While providing for the health and safety of the public, an interior designer seeks to optimize and harmonize the uses to which the built environment will be put.[14]

Elsewhere, ASID seeks to draw a line between designer and decorator: "The professional interior designer is qualified by education, experience and examination to enhance the function, safety and quality of interior spaces."[15] As will be discussed below, "education, experience and examination" play a critical role in the industry's effort to achieve occupational licensure.

Despite the effort of factions within the interior design industry to draw a hard distinction between designers and decorators, not everyone agrees. For example, the U.S. Department of Commerce definition of interior designer is the exact same definition the Department used for interior decorator. Moreover, the "health, safety and welfare" argument sometimes used in distinguishing designers from decorators in the pursuit of government regulation has proved unconvincing to policy leaders in numerous states, as discussed below.

This research will illustrate the process of industry-driven regulation often hidden behind the screen of "public protection" and "quality assurance."

Nevertheless, 22 states and the District of Columbia currently regulate the interior design industry through either titling or occupational licensing laws (or both), some of which go back more than 20 years. But titling laws have received no attention in occupational licensing or public policy literature to date. This does not mean titling laws have received no attention at all. In fact, organizations like ASID have given much attention to titling laws, as have journalists and state legislative agencies. Yet titling laws as a vehicle for the incremental growth in government oversight of occupational licensing remain unexamined in a systematic treatment.

Therefore, this study investigates the passage and/or evolution of titling laws and occupational licensing of interior designers in the 22 states that have such regulations, plus the District of Columbia, as well as four additional states that considered but rejected the regulation of interior design through so-called "sunrise" laws. Consistent with the purpose of case study research, this examination of one industry illustrates a larger phenomenon—the genesis and evolution of occupational licensing through the vehicle of titling laws.

The advantage of studying this particular industry is the early stage of its regulation. Unlike long-regulated industries, less than half of the states regulate interior designers in any way, and those with such laws have enacted them relatively recently. Therefore, this research will illustrate the process of industry-driven regulation often hidden behind the screen of "public protection" and "quality assurance."

Research Methods

This research begins with two primary questions:

1. What are titling laws and what role do they play in occupational licensing?
2. Do data indicate a need for regulation of the interior design industry through titling and other types of laws?

The first question is examined through an analysis of the legislative history of interior design laws (see the Appendix for further details on research methods). This required the collection and systematic analysis of the following:

1. Proposed and enacted interior design legislation at the state level.
2. Legislative records, including committee meeting minutes, transcripts and recordings; records of floor debates; and legislative reports and analyses.
3. Media reports on said legislation.
4. Industry records, such as documents produced by ASID, various state design coalitions and similar industry groups. These documents included newsletters, board-meeting minutes, proposed legislation and reports.

The second question was examined using two types of data: complaint reports from the Better Business Bureau (BBB) and lawsuits involving interior designers. BBB complaint data were collected from databases in all 50 states at the company level, which resulted in a sample size of 5,006 companies. The number of complaints reported per company represents the past three years.

In the analysis to follow, these data were aggregated by type of regulation: the different types of titling laws across the states and full occupational licensure. We then examined differences in the average number of complaints by type of regulation using Analysis of Variance (ANOVA). The advantage of such analysis is that it answers the second research question in multiple ways using the same data. First, it indicates the average number of complaints against interior designers over a three-year period. Second, it allows for a comparison in the average number of complaints under different regulatory schemes, thus illustrating a need, or lack thereof, for titling laws or occupational licensure. Stated as a hypothesis, fewer complaints should be reported under conditions of stricter regulation.

Lawsuit data represent a particularly under-utilized but nonetheless revealing measure of industry quality and safety. Unlike BBB data, which do not consistently report the type of complaint or the issues at hand, lawsuits represent a measure of the relative frequency of and the reasons for complaints. Because the sample of cases was so small (only 52 between 1907 and 2006), only descriptive statistics were used in the analysis.

The Nationwide Landscape Of Interior Design Regulation

Although interior design (or decorating) has been a recognized U.S. industry since the early decades of the 20th century, the first regulation of it did not occur until 1982, when Alabama enacted titling legislation.[16] Since that time, nearly half of the states have enacted regulations of some kind. As Table 1 indicates, four states and the District of Columbia require designers to earn licenses to practice at least some aspects of interior design. An additional 18 states, through titling laws, regulate in some way how people in the industry may refer to themselves (i.e., "interior designer," "certified interior designer" or "registered interior designer").

Table 1: Interior Design Laws

STATE	TYPE OF LAW	MIN. POST-HIGH SCHOOL EDUCATION	TOTAL EDUCATION PLUS EXPERIENCE	YEAR PASSED
AL	Title/License[1,2]	60 quarter hours or 48 semester credit hours; 4 years for "registered"	6 years	Title Law: 1982 License: 2001
AR	Title[2]	4 years	6 years	1993, amended 1997
CT	Title[1]	Follows NCIDQ	Follows NCIDQ	1983, amended 1987
DC	Title/License[1]	2 years	6 years	1986
FL	Title/License[1]	2 years	6 years	Title Law: 1988, amended 1989 License: 1994
GA	Title[2]	4 years or first professional degree	(no experience specified)	1992, amended 1994
IL	Title[1,2]	2 years	6 years	1990, amended 1994
IA	Title[2]	2 years	6 years	2005
KY	Title[3]	Follows NCIDQ	Follows NCIDQ	2002
LA	Title/License[2]	2 years	6 years	Title Law: 1984, amended 1990, 1995, 1997 License: 1999
ME	Title[3]	4 years	6 years	1993
MD	Title[3]	4 years	6 years	1991, amended 1997, 2002
MN	Title[3]	Board determines	6 years	1992, amended 1995
MO	Title[2]	2 years	6 years	1998, amended 2004
NV	Title/License[2]	4 years	6 years	1995
NJ	Title[3]	2 years	6 years	2002
NM	Title[1]	2 years	6 years	1989
NY	Title[3]	2 years	7 years	1990
OK	Title[1]	2 years	6 years	2006
TN	Title[2]	2 years	6 years	1991, amended 1995, 1997
TX	Title[1]	2 years	6 years	1991
VA	Title[3]	4 years	6 years	1990, amended 1994
WI	Title[4]	2 years	6 years	1996

1."interior designer" 2."registered interior designer" 3."certified interior designer" 4."Wisconsin Registered Interior Designer"

Simply stated, a titling law regulates the use of a title, such as "interior designer," in a profession. Titling laws do not require individuals to become licensed in order to practice a given profession, nor do they restrict anyone from providing services of any kind. However, people cannot advertise or in any other way represent themselves using a specific title, such as "interior designer," unless they meet minimum statutory qualifications concerning education, experience and examination.[17]

As Table 1 also indicates, titling laws come in different variations. The first is the regulation of the title "interior designer." The strictest of the titling laws, this removes a broad descriptive phrase, or title, from the public domain and reserves it only for those who have satisfied certain requirements. Less restrictive laws reserve the titles "certified interior designer" or "registered interior designer" for those who have met specified requirements. Under the less restrictive laws, individuals may call themselves interior designers and describe their work as such, but may not refer to themselves as certified or registered.

Titling laws are both a form of occupational regulation and the first step in the policy evolution toward full occupational licensure.

Titling differs from full occupational licensing, which "prohibit[s] the performance of professional services by anyone not licensed by the state agency charged with the duty of regulating that profession."[18] Those laws are often referred to as "practice acts."

Typically, the regulation of occupations is conceived and studied in the latter sense—i.e., occupational licensing laws that dictate who may work in a given vocation. However, as the interior design industry illustrates, titling laws are both a form of occupational regulation and the first step in the policy evolution toward full occupational licensure. And, as the interior design profession also demonstrates, the force behind the creation of titling laws and their subsequent transformation into full occupational licensure is overwhelmingly factions within the industry itself.

Pushing for Regulation from the Inside

As a newspaper reporter writing about interior design regulation observed, "Most of the time, private businesses are begging to get government off their backs."[19] Yet interior designers, over an extended period of time, have sought recognition as a profession and have persistently pressed for licensing or certification granting them such status.[20] Some of the earliest organized attempts at regulation began in the late 1970s and early 1980s. In New York in 1979, interior design lobbyists tried unsuccessfully to persuade lawmakers to pass a practice act,[21] and it was after a decade of vigorous lobbying that they finally obtained a titling law in 1990.[22] At the same time, Connecticut designers worked for several years before finally achieving success with a titling law in the early 1980s.[23]

By the mid-1980s, ASID began a national campaign to regulate the interior design industry, dedicating nearly $300,000 to that effort in 1986.[24] More often than not, success required persistence. For example, passing the Texas titling act required a seven-year campaign.[25] Missouri's failed HB 1501 in 1994 would have licensed interior designers, but it was not until 1998 that a titling law finally passed. New Jersey's AB 1301 passed the Legislature in 1994 but was vetoed by the governor. After several attempts in between, New Jersey passed a titling act in 2002. And though Oklahoma designers tried unsuccessfully in 1992 to establish licensure with SB 925, they did not see fruit from their efforts until 2006 with a titling act.

Given the scope of a national campaign and the number of years it often requires to realize titling or practice laws, representatives from different sectors of the design community work together to press for new or expanded legislation. One sector includes representatives from interior design organizations, such as ASID and the Institute of Business Designers (IBD). For example, Washington, D.C.'s 1986 title and practice law came about after heavy lobbying by IBD and ASID.[26] Conveniently, an ASID representative sat on the City's licensing board and pushed for the regulation.[27]

Another sector includes state chapters and coalitions comprising ASID, IBD and others. Examples include the Tennessee Interior Design Coalition (TIDC), the Colorado Interior Design Coalition (CIDC) and the Georgia Alliance of Interior Design Professionals (GAIDP). Such coalitions combine the efforts and resources of the aforementioned design organizations primarily to influence state legislation (i.e., see http://www.tidc.org/asp/legislative.asp for a definition of TIDC's mission). For example, one reporter described the GAIDP as "instrumental in getting the licensing legislation passed in Georgia."[28]

A third sector includes interior design professors and students from post-secondary institutions. For instance, the sponsor of Iowa's 2005 titling legislation readily credited professors and students from Iowa State University's College of Design with the bill's success.[29] And Connecticut's 1983 titling law enjoyed support from three interior design professors who, in concert with representatives from interior design associations, pushed for the bill's passage.[30]

The efforts of these groups and organizations include creating sample legislation (e.g., http://www.asidmn.org/documents/statute011805.pdf), working with licensing boards to amend existing legislation, and lobbying and testifying in committee hearings.[31] Indeed, a closer look at the latter often reveals just how instrumental interior design representatives are in the process. For example, in a February 26, 2002, committee hearing for Kentucky's titling law, bill proponents included representatives from ASID and the Kentucky Interior Designers Legislative Organization, as well as two dozen interior designers seated in the chambers.[32] After testimony, committee members began questioning the bill sponsor, Representative Ron Crimm, about specifics of the legislation. Obviously lacking any knowledge of the issues surrounding the bill, or seemingly the bill itself, Crimm called himself a "conduit" for the interior design representatives and referred all questions to them.

The "Need" for Regulation

In pushing for titling laws, proponents and industry representatives often face legislators who question the need for new or expanded occupational regulation. For example, in a hearing to establish Connecticut's titling law, Representative O'Neill asked an interior design representative, "All right, just a question, has there been a demonstrated need in this state for the type of legislation you are proposing?"[33]

Historically, legislators find public health, safety and welfare the most compelling need. Indeed, legislators often ask about this specifically. Four years after the institution of their titling law, interior designers were back at the Connecticut Legislature seeking new amendments. In the Joint Standing Committee hearing Representative Fox asked for demonstrated cases of harm to the public at the hands of interior designers.[34] As discussed below, some states statutorily require a demonstration of these needs before allowing new regulation.

When pressed for data supporting their claims, proponents of increased regulation often fail to produce much, if any, evidence.

Not coincidentally, the interior designer lobby uses the health, safety and welfare language to buttress its push for titling laws. An ASID publication on the need for regulation begins, "Every decision an interior designer makes in one way or another affects the health, safety and welfare of the public."[35] Numerous letters of support, testimony on behalf of bills and letters to the editor in newspapers supporting legislation refer to health, safety and welfare. For example, a letter to the editor supporting the Iowa Interior Design Title Act concluded, "Simply stated, the interior designer protected by the interior design act is responsible for the safety of the consumer."[36]

Bill sponsors have mentioned these same reasons in support of their legislation,[37] and health, safety and welfare has been cited in legislative intent. For example, Florida's SB 127, which created its 1988 titling law, stated:

> The Legislature finds the practice of interior design by unskilled and incompetent practitioners presents a significant danger to the public health, safety and welfare; that it is necessary to prohibit the use of the title "interior designer" by persons not licensed in order to ensure the competence of those who hold themselves out as interior designers.[38]

Yet the health, safety and welfare rationale for titling laws has not always proved convincing, either to state leaders or to those in the industry itself. Moreover, when pressed for data supporting their claims, proponents of increased regulation consistently fail to produce much, if any, evidence.

State "Sunrise" Reports

To date, the most systematic examinations of the need for interior design regulations have been in the form of "sunrise" reports produced by a handful of state agencies in states with sunrise laws. Using Washington's as an example, sunrise laws state:

> [N]o regulation shall be imposed upon any business profession except for the exclusive purpose of protecting the public interest. All proposals introduced in the legislature to regulate a business profession for the first time should be reviewed according to the following criteria. A business profession should be regulated by the state only when: a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument; b) The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and c) The public cannot be effectively protected by other means in a more cost-beneficial manner.[39]

Such laws require that proposed occupational regulations undergo scrutiny by a State agency to determine if the profession meets these criteria. The results are published in sunrise reports and presented to the state legislature. In the case of interior design, four states (Colorado, Georgia, South Carolina and Washington) have produced such reports, and Virginia implemented a similar examination at the specific direction of the state Legislature via House Joint Resolution 245.[40]

In the course of these studies, the agencies routinely examine data from multiple sources, looking for evidence of any harm befalling the public related to the industry in question. Often this includes industry association data, BBB reports, complaints to their respective state law enforcement or consumer affairs divisions, and data from reciprocal agencies in other states with interior design regulations. For example, for its sunrise report, the Colorado Department of Regulatory Agencies contacted the Colorado Interior Design Coalition (CIDC), ASID, the Denver/Boulder BBB, the Office of the Attorney General's Consumer Protection Section, the Board of Architecture, the Governor's Advocacy Office and the Denver District Attorney's Office.[41] The studies also typically include hearings with various industry associations and sometimes the public at large.

Every sunrise report on interior design found "No sufficient and reliable evidence...to suggest that harm is occurring...as a result of the unregulated practice of interior designers."

Without exception, every sunrise report on interior design found, to use South Carolina as an example, "No sufficient and reliable evidence…to suggest that harm is occurring…as a result of the unregulated practice of interior designers."[42] Neither the data from the respective states nor data from reciprocal state agencies indicated a threat to the public. Interestingly, when given the chance to produce such evidence for the reports, the interior design associations lobbying for regulation either produced none,[43] or they provided complaints that designers were practicing without a license.[44] In other words, the only basis for the complaint was the lack of a license, not substantive problems associated with health, safety or welfare.

The reports further found that means were already in place to ensure the quality of interior designers' work (such as market forces, building inspections and building material codes) and failed to identify any economic benefit to the public from such regulations. Thus, every report recommended against titling laws in their respective states.

Better Business Bureau And Lawsuit Data

Still, one might argue that these reports provide an incomplete picture of the need for titling laws. First, three of the five reports hail from the late 1980s and early 1990s. The interior design industry commonly points to significant changes in the industry during the past two decades related to building and safety codes.[45] Thus, the majority of these reports may fail to capture the results of those changes.

Second, the reports debatably use an incomplete database. That is, in examining complaints against designers, the reports use data from their states or other states with titling or practice laws. Absent are the majority of other states with no regulation whatsoever. Those states conceivably may have greater numbers of complaints given the lack of regulation.

However, an analysis of nationwide and current data from legal actions involving interior designers and the BBB contradicts such arguments. To begin, Table 2 includes the numbers and types of disputes involved in interior design lawsuits. As indicated, the number of lawsuits related to interior designers is quite small—52 since 1907 (or 45 since 1982, the year of the first title law). When disaggregated by type, contract issues clearly dominate the claims asserted. Typically, these cases involve allegations such as over-charging and failing to adhere to agreed-upon designs. Code violations, practicing without a proper license and safety are cited least frequently. This is particularly striking, since safety and building codes typify the arguments industry lobbyists make for increased regulation.

Table 2: Number of Interior Design Lawsuits by Type

	1907 TO PRESENT	SINCE 1982*
Breach of contract	24	21
Poor quality	12	12
Service	5	3
Fraud	4	4
Safety	3	2
Lack of license	3	2
Code violations	1	1

*Year the first interior design regulation passed

BBB data also undermine the alleged "need" for increased regulation. Table 3 shows the average number of complaints reported to the BBB about interior design companies over a three-year period. Nationwide, the 5,006 interior design companies in this sample received, on average, 0.20 complaints per company in the past three years—about one-fifth of a complaint for each company in the sample. In other words, the average number of complaints nationwide to the BBB about interior designers, over a three-year period, is close to zero. The maximum number of complaints reported about any one company was 46, while many companies had no complaints at all, as represented in the last two columns of Table 3.

When disaggregating the averages by type of regulation, the data indicate the average number of complaints is slightly greater in states with practice laws, at 0.29 complaints per company, compared to states with self-certification titling laws (which is only in California), with 0.17 complaints per company, and states with no regulation, which saw only 0.19 complaints per company.

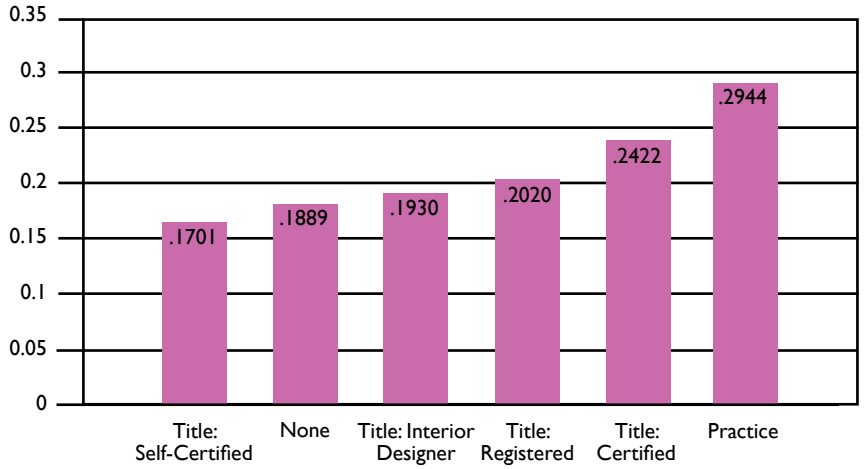
Table 3: Average Number of BBB Complaints per Company by Regulation Type (Past Three Years)

REGULATION TYPE	NUMBER OF COMPANIES	THREE-YEAR AVERAGE	STANDARD DEVIATION	MINIMUM	MAXIMUM
None	2149	.1889	1.28	.00	46.00
Title: Self-Certified	435	.1701	.59	.00	6.00
Title: Certified	611	.2422	1.02	.00	18.00
Title: Registered	599	.2020	1.54	.00	36.00
Title: Interior Designer	570	.1930	.87	.00	13.00
Practice	642	.2944	1.82	.00	25.00
Total	*5006*	*.2093*	*1.28*	*.00*	*46.00*

Such results challenge the logic behind occupational regulation. Stricter control over who practices a profession theoretically should result in higher-quality practitioners, which should then result in fewer complaints. But these results show just the opposite. As Figure 1 illustrates, more complaints were present in conditions of greater regulation (practice laws), and fewer complaints were present with less regulation, such as California's voluntary, non-governmental certification, or no regulation.

Of course, the average number of complaints under any regulatory regime is quite small and the differences between them even smaller. Thus, the key point here may not be the number of complaints per type of regulation. Instead, the more important story is the little difference in the average number of complaints in regulated versus unregulated states. Indeed, ANOVA results indicate no significant difference based on type or amount of regulation, $F(5, 5006)=.851$, $p=.541$. Simply stated, there appears to be no discernible

Figure 1: Average Number of Complaints per Type of Regulation



relationship between stricter regulation and the quality of service offered by interior designers. The key question for policymakers, then, is not what kind of regulation to impose on interior designers, but whether to impose any at all.

Such results would not surprise some industry practitioners and state leaders who have opposed titling laws. For example, when interior designers proposed such a law in Wisconsin, the State's Department of Regulation and Licensing opposed it, arguing that proponents had not shown a substantial danger to the public from unregulated interior designers.[46] In fact, licensing department staffers testified in committee hearings that consumers were sufficiently able to judge for themselves whether designers were competent.

Likewise, Washington, D.C.'s interior design license faced "considerable opposition" from some City officials. Specifically, the director of the Department of Consumer and Regulatory Affairs told the City Council that licensing designers was unnecessary and redundant. Further, the head of the Occupational and Professional Licensure Administration opposed the measure as "unnecessary government intervention."[47]

Designers, too, have opposed titling laws in testimony before or letters to legislative committees. In 1995, Doreen Mack, an interior designer, opposed the bill that eventually created Nevada's license (SB 506). Mack wrote in a letter to the Senate Committee on Commerce and Labor:

> This bill acts to serve a minority, leaving that group of people free rein to charge whatever they want, limiting the public's freedom of choice and eliminating the right to create. SB 506 sets up an elitist group who would have

> a monopoly on all the interior design business in the state. Further, it purports to regulate and thereby 'protect' the public from a group of people who practice the art of home interior decoration and design. We are already governed by laws and regulations that keep us from acting as home construction contractors. We are not architects, home construction or 'interior area' demolition contractors.[48]

In her February 26, 2002, testimony before the Kentucky Senate Committee on Licensing and Occupations, interior designer Beverly Dalton made similar points:

> The bill does nothing to achieve its purported purpose of safeguarding the public health, safety and welfare. Its sole purpose is to protect the interests of a select few within the interior design industry and in no way promotes nor advances any rational, justifiable or necessary public policy. Indeed, if the intent of this legislation is to protect the public health, safety and welfare, it would regulate the practice of interior design and not merely the title.[49]

In fact, some state licensing officials contend that titling laws are designed to lead to that very end. When Wisconsin interior designers advocated for that state's titling laws, some questioned why they were not seeking a practice act. Patricia Reuter, then head of the State Division of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, suggested that those lobbying for regulation viewed the title law as a first step toward total licensing.[50] An examination of both the history of titling and practice acts and contemporary efforts by designers suggests Reuter was correct.

From Titling to Licensure

As Table 1 indicates, three of the four states that currently restrict the practice of interior design began with titling laws. Of those, Louisiana gradually amended its way into a practice act from the titling law. The 1984 law restricted use of the term "licensed interior designer." The 1990 amendment expressed the intent of the Legislature to protect public health and safety in interior design and also specified further regulations for the practice. The 1995 amendment required seals for interior design documents, and the 1997 amendment expanded the law's restrictions to regulate use of the term "registered interior designer."

When the 1999 amendment went forward, it faced little resistance, likely because most designers who would be affected were unaware of the pending legislation.[51] Indeed, minutes from the Senate Commerce and Consumer Protection Committee indicate only five people testified on the bill—two for, two against and one for informational

Table 4: Titling and Practice Legislation, 2005 and 2006

	ACT	TYPE	TITLE
2005			
IA*	SB 405/HB 714	title	registered interior designer
IN	HB 1434	title	registered interior designer
MA	HB 2592/SB189	practice/title	registered interior designer
MI	HB 4311, HB 4312, HB 4262	practice/title	interior designer
MN**	SB 263/HB 1277	practice/title	licensed interior designer
NY**	SB 2514/AB 5630	title	certified interior designer
OH	SB 25	title	certified interior designer
OK	SB 623	title	registered interior designer
RI	SB 102	title	registered interior designer
TX**	SB 339/HB 1649	practice/title	registered interior designer
WA	SB 5754/HB 1878	title	registered interior designer
2006			
IN	HB 1063	title	registered interior designer
MA	SB 189	practice/title	registered interior designer
MI	HB 4311, HB 4312, HB 4263	practice/title	interior designer
MN**	SB 263/HB 1277	practice/title	licensed interior designer
NE	LB 1245	title	registered interior designer
OH	SB 26	title	certified interior designer
OK*	SB 1991	title	registered interior designer
RI	SB 103	title	registered interior designer
SC	HB 4989	practice/title	registered interior designer
TN**	SB 3715/HB 3830	practice/title	interior designer
WA	SB 5754/HB 1879	title	registered interior designer

*Legislation enacted
**Titling laws already in effect

purposes.[52] The two proponents included a representative from the State board of interior designers and a design instructor from a community college. The same two testified at the House Commerce Committee meeting, but no one testified against.[53]

Alabama's route from a titling law to licensure took a different course. Beginning in 1996, a series of House and Senate bills were introduced every year to license interior designers (1996: HB 99, SB 47A, SB 246; 1997: HB 209, SB 272; 1998: HB 524, SB 394, SB 445; 1999: SB 501; 2000: HB 417, SB 507). It was not until 2001 that the title law became a practice act, and only after a legislative battle that lasted 20 hours.[54] After years of fruitless efforts, interior designers hired one of Alabama's most powerful lobbying firms and found a champion in Sen. Jim Prueitt—chair of the agenda-setting Senate Rules Committee. During the last full week of the regular session, Prueitt refused to allow anything to pass through his committee unless the interior design bill was approved.[55]

Table 4 indicates states where designers attempted to impose titling and/or licensure requirements in the past two years. The table shows four states with titling laws that have seen recent attempts to move toward licensure but have failed thus far: New York, Minnesota, Texas and Tennessee. New York interior designers began thinking about a move toward licensure shortly after their titling law passed in 1990. According to a reporter writing about the new law, designers wanted "more than the right to add 'certified' to their names. They want[ed] their profession to require a license to practice, like a doctor or an architect."[56]

By the early 2000s, interior designers were vigorously drafting bills and lobbying in the halls of power in Albany, and their efforts paid off in a 2004 bill to restrict the titling law from "certified interior designer" to "interior designer." Although the bill passed through the Legislature, Governor Pataki vetoed it. The same bill made it to Pataki's desk again in 2005, which he also vetoed. His response both years stated:

> Current law already provides that interior designers with demonstrable experience, skill and training can distinguish themselves by becoming licensed Certified Interior Designers. Only duly licensed individuals may hold themselves out as Certified Interior Designers. Interior Designers who do not wish to so distinguish themselves, however, may hold themselves out as interior designers free of state regulation.[57]

The early 2000s also saw an effort on the part of the Texas Association for Interior Design to push that state's titling law into a practice act. In 2003, HB 1692, which mandated licensure, was passed out of the House Licensing and Administrative Committee without any opposition.[58] However, the bill stalled in the Senate Business and Commerce Committee. In 2005, the effort to license interior designers appeared again in the form of HB 1649 and SB 339. HB 1649 was placed on the general legislative calendar on May 12, 2005. Because the Texas Legislature meets only every other year, no

more action has occurred on either bill.

The effort to transform Minnesota's titling law into full licensure began in 2003 with legislation drafted, endorsed and proposed by the Minnesota Interior Design Legislative Action Committee (MIDLAC).[59] MIDLAC represents the International Interior Design Association (IIDA), ASID and unaffiliated designers in Minnesota. In 2005, SB 263 and HB 1277 were introduced into the Minnesota Legislature and sent to committee. With a $5,000 grant from the national ASID, $8,000 from the Minnesota chapter of ASID, and an undisclosed sum from IIDA, MIDLAC lobbied legislators and instituted a letter writing campaign on behalf of the bills.[60] The legislation, however, languished into 2006, largely because the chairs of both committees did not see a need for licensing.[61]

Tennessee is the latest state (as of this writing) in which designers, through the Tennessee Interior Design Coalition (TIDC), are pushing for the conversion of a titling law into a practice act. Originally introduced February 23, 2006, the TIDC voluntarily pulled the bill at the request of the Tennessee Board of Architectural and Engineering Examiners (BAEE) in order to allow them time to familiarize themselves with the language of the bill and to ensure they could support the administrative requirements established by it.[62]

The BAEE formed a task force to work with TIDC, the goal of which was to have a bill they could recommend to the full BAEE and the 2007 Legislature. According to Tennessee ASID board meeting minutes,[63] TIDC met with the BAEE board, and no problems with the language of the practice act were identified. TIDC also produced an infomercial about the pending legislation to distribute throughout the state.

Finally, as Table 4 also indicates, the 2005 and 2006 legislative sessions saw attempts to pass titling laws and practice acts in states without any current interior design regulation. In only two cases did new laws pass—Iowa and Oklahoma, both titling laws. And in all states, legislative efforts are coordinated through interior design coalitions or associations.

Discussion

This case study illustrates, using the interior design industry, how titling laws serve as a vehicle for occupational insiders to "professionalize" their trade by regulating who may and may not use a title, such as "interior designer," in professional work. Once ensconced, such laws make for a natural point of evolution toward full occupational licensing, as evident in states with current interior design practice acts and other states with titling laws where attempts have been made to cartelize the design industry.

Yet, this evolutionary process is not as "natural" as industry leaders portray. For example, an ASID publication predicts, "States with title registration will attempt to move to practice legislation *as the value and impact of interior design is more clearly realized by the public and state legislatures*" (emphasis added).[64] According to such logic, the public and state legislatures will see such a need due to threats against public safety, health and welfare and for the protection of consumers who lack the ability to distinguish for themselves quality designers from unscrupulous charlatans.

But evidence contradicts such ideas. First, beginning with reports dating back to the 1980s, data from consumer organizations and state agencies belie any significant threat to public health, safety and welfare such that increased regulation of the interior design industry is required. Even assuming dramatic changes in the interior design industry over the past few decades, analysis of contemporary data analyzed from the BBB and lawsuits involving interior designers simply do not point to the need for State regulation, never mind the need for more strict legislation. Such findings undermine the veracity of designers' claims and suggest their motives are far less altruistic.

Second, an analysis of legislative history and industry documents indicates titling laws and other forms of regulation in the design industry have come about *exclusively* through the efforts of leaders within the occupation itself, not through public demand and legislative awakenings. Through lobbying, hearing testimony, sample legislation, letter-writing campaigns, incrementalism, persistent legislative attempts and other classic forms of persuasion, design associations and political action committees have successfully pressed a legislative agenda of increased regulation using titling laws as an introductory vehicle. As the Colorado sunrise report noted, "There is a concentrated effort by members of the interior design profession across the nation to be regulated."[65]

ASID leads this effort and dedicates considerable energy and resources to this cause. For example, ASID reviews, tracks and analyzes bills that affect the interior design profession, and they advise and educate chapters and coalitions on legislative strategies and specific legislation, including staff and volunteer visits to key states. In the past three years, ASID has completed more than 30 legislative training sessions.[66] ASID's website enables interior designers to identify and contact their legislators using a template to create a personalized letter on their own letterhead. The website also includes numerous publications, talking points and resources designed to assist members in influencing legislation.

On the national level, ASID staff includes three registered federal lobbyists who represent the interior design profession before Congress and numerous federal agencies, including the Consumer Products Safety Commission, the Occupational Safety and Health Administration, the Small Business Administration, the U.S. Census Bureau and the General Services Administration.[67] Finally, ASID resource allocations now total more than $5 million to state interior design legislative efforts.[68] Of course, such efforts are typical for an advocacy organization, but they further demonstrate who is behind titling laws and other regulation in this industry.

Absent any benefit to public health, safety and welfare, the next logical motivation for such regulation is the economic benefit it awards those who practice within a cartelized industry.

Absent any benefit to public health, safety and welfare, the next logical motivation for such regulation is the economic benefit it awards those who practice within a cartelized industry. Titling laws begin that process with the goal of increasing the credibility an exclusive title grants, and designers clearly recognize this. When New York passed its titling law in 1990, designers commented on its potential impact. "I think it's a very good thing," said Georgina Fairholme, a Manhattan designer. "This will divide the real workers from the 'social' workers."[69] Elizabeth Dresher, a designer in White Plains, likewise concluded, "The new law will give academically trained interior designers credibility."[70]

Yet not all designers agree that titling ensures credibility or even quality. Diane Kovacs, a long-time New York designer, observed:

> I don't think a test shows what a real designer is about. If you're good you get work. I go to my clients and show my portfolio and myself personally and they make their decision. I don't need a title at that point. Certification doesn't have any relevance to me.[71]

Sherry Franzoy from New Mexico agrees. "The only people who care about certification are ASID." After six years in business, she remembers only two people who asked about education and certification. Instead, customers hire her based on the consultation. They talk with her about ideas for the space, get to know her as an individual and look at her portfolio. By now, more than half of her work is repeat and referral. "Those who can't do the job are out of work quickly," she says. "Your reputation precedes you."

Implications and Recommendations

Although laws that reserve the title of "interior designer" and the like appear to function as precursors to full occupational licensure, this is not to say some form of certification is without value. There may be some professional benefit from the ability to distinguish oneself with certification, but such distinction need not come in the form of government force—specifically, State-mandated occupational regulations that limit or exclude entrants.

Indeed, professional associations can easily serve as vehicles for voluntary self-certification. Using interior design as an example, Table 5 includes four different national and international design associations and their requirements for membership. As the table indicates, membership requirements typically include a combination of education, experience and examination similar to state titling laws. Thus, designers who wish to benefit from certification can do so without the creation of unnecessary government regulations.

Table 5: Professional Design Associations and Membership Requirements

ASSOCIATION	REQUIREMENTS
ASID	Professional Membership: One course of accredited education and equivalent work experience in interior design and NCIDQ examination.
IDSA: Industrial Designers Society of America	Professional Membership: Undergraduate degree in industrial design or related design discipline, and/or appropriate professional experience. Member's primary professional responsibility must be as a practitioner or educator in industrial design of products, instruments, equipment, packages, transportation, environments, information systems or related design services.
IIDA: International Interior Design Association	Professional Membership: Proof of certification date (or test results) by NCIDQ. Member must be actively engaged in profession of interior design or design education.
NCIDQ: National Council for Interior Design Qualification	Maintain minimum eligibility requirements to enter examination process and earn NCIDQ Certificate, including at least six years combined of college-level interior design education and interior design work experience.

California demonstrates another option for self-certification. In 1990, an amended SB 153 recognized a self-certification program for Californians. A year later, the California Council for Interior Design Certification (CCIDC) formed to act as a non-profit certifying board for interior design. Notably, neither this certification program nor the CCIDC board are in any way affiliated with the State. Designers who receive CCIDC certification do so voluntarily, and those who choose not to may still use interior design titles in the course of their work, although they may not represent themselves as certified by the CCIDC.

In conclusion, this case study indicates that policymakers considering titling laws would be best served to examine the need for such regulation prior to approval. The questions from sunrise processes can act as a useful guide:

(a) Does the unregulated practice clearly harm or endanger the health, safety or welfare of the public, and is the potential for the harm easily recognizable and not

remote or dependent upon tenuous argument?

(b) Does the public need an assurance of initial and continuing professional ability and can it reasonably be expected to benefit from such assurances?

(c) Can the public be effectively protected by other means in a more cost-beneficial manner?

Moreover, policy leaders in states with titling laws for any profession, including interior design, should be wary of the evolutionary nature of such regulation, and consider repealing such laws that fail to show any impact on public health, safety or welfare. Incrementalism as a public policy tool has long been discussed in the research community.[72] This study demonstrates how titling laws provide a first step in the incremental process toward occupational licensure.

Finally, assuming the accuracy of economists who show how cartelization artificially inflates consumer prices, erects unnecessary barriers to entry into a profession, gives government-imposed advantages to those already practicing and fails to derive any social benefit, legislative skepticism concerning new regulations and repeal of current unnecessary statutes could prove significantly beneficial to consumers and practitioners alike, except for those who seek to create a monopoly. "If there's a good reason for the regulation, I'm all for it," says Sherry Franzoy. "But I haven't heard one yet. The snooty designers in those associations just don't want the competition."

Appendix: Notes on Methodology

Records and Documents

Proposed and enacted interior design legislation were collected through LexisNexis and state legislative websites. Legislative records were obtained through state legislative websites or offices, state archives or law libraries. Media reports on legislation were collected through LexisNexis or other media databases. Industry records were obtained via industry websites or through interior design association offices.

BBB and Lawsuit Data

BBB complaint data represent an often-used measure of industry quality by State agencies seeking to determine the need for occupational regulation. The advantage of using BBB complaint data as opposed to a State regulatory or law enforcement agency is the ubiquity of the BBB. As a nationwide non-profit, it is a far more recognized source of consumer information and an "authority" with which to lodge complaints than State regulatory agencies or licensing boards often unfamiliar to consumers. The BBB also represents a measure of consistency when gathering data in multiple states.

Obviously, given the number of interior designers reported earlier (20,000 to 75,000), these BBB data are not comprehensive. Nor are they random. Each BBB chapter sends out company profiles to businesses in its community and enters the companies into the database when the profile is returned, regardless of their BBB membership status. Therefore, companies that fail to return the profile are not included in the database. Nevertheless, a sample of more than 5,000 companies is substantial. The companies in the BBB databases also represent both BBB members and non-members. The majority of these data are available online, but some were obtained directly from BBB chapters.

Advantages of lawsuit data were identified in the report, but, to be sure, they are not a perfect measure. Among other limitations, cases settle out of court, and people lack the funds to hire attorneys for bringing lawsuits. Yet despite the limitations, lawsuit data add a different perspective to the analysis of the need for regulation, one left unaddressed by other measures, such as BBB data.

Lawsuits involving interior designers were collected from the LexisNexis database. Using the search terms "interior designer," "interior decorator" and various derivations, lawsuits in federal and state databases were compiled. Cases were then included in the sample if a complaint clearly involved a designer. For example, in some cases, a designer may have been included as one in a list of defendants on a large project. In such cases, the specific complaint against the designer was unclear. Thus, such cases were not included in the sample.

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As an experienced researcher, Carpenter has presented and published on a variety of topics ranging from educational policy to the dynamics of presidential elections. His work has appeared in academic journals, such as the *Journal of Special Education, The Forum, Education and Urban Society* and the *Journal of School Choice*, and practitioner publications, such as *Phi Delta Kappan* and the *American School Board Journal*. Moreover, the results of his research are used by state education officials in accountability reporting and have been quoted in newspapers such as the *Chronicle of Higher Education*, *Education Week* and the *Rocky Mountain News*.

Before working with IJ, Carpenter worked as a high school teacher, elementary school principal, public policy analyst and professor at the University of Colorado, Colorado Springs. He holds a Ph.D. from the University of Colorado.

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