

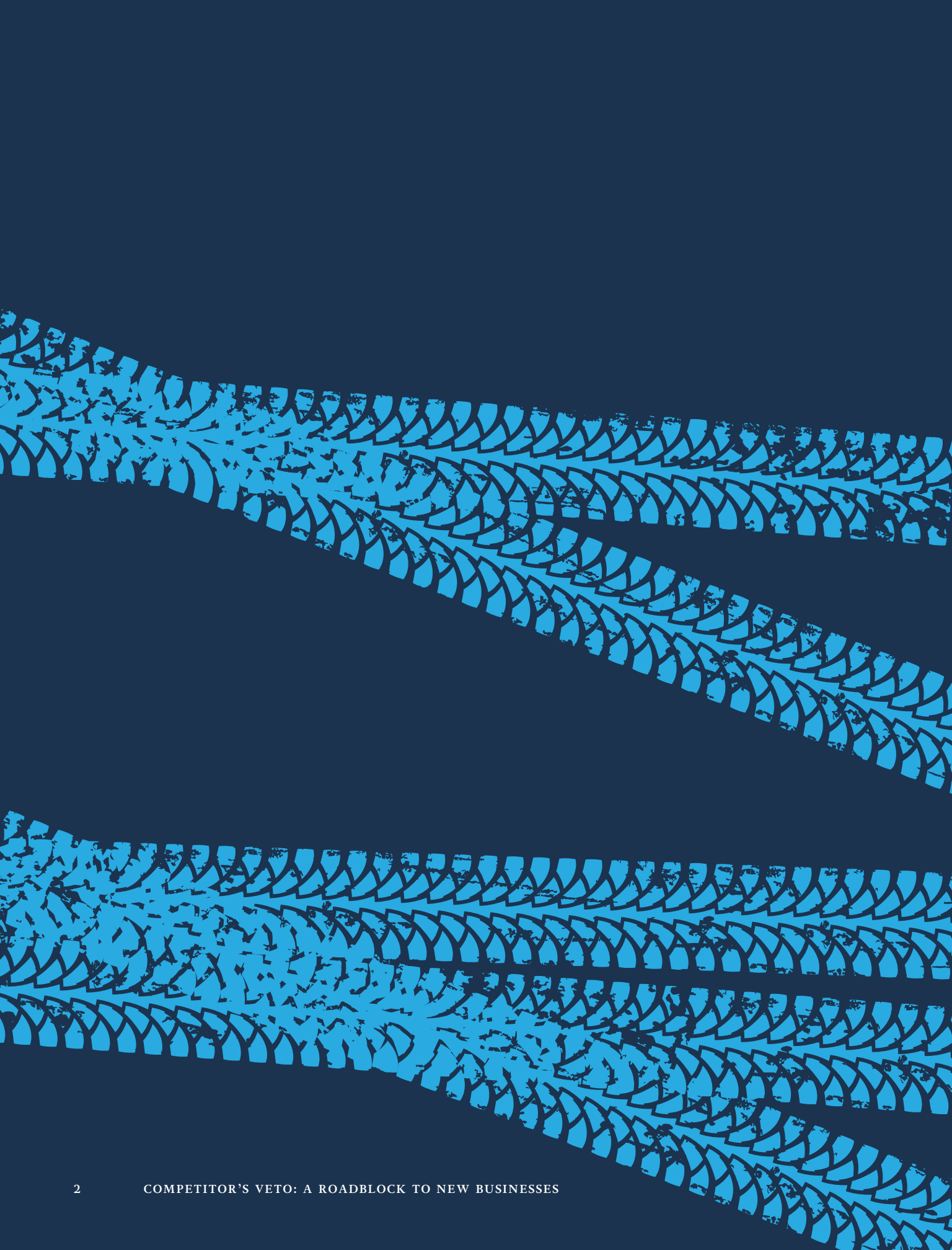


# Competitor's Veto:

## A ROADBLOCK TO NEW BUSINESSES



PACIFIC LEGAL  
FOUNDATION



## *Competitor's Veto: A Roadblock to New Businesses*

### **Executive Summary**

In 2010, a young man started a business that the government threatened to shutter—not because it threatened public health or safety, but because it threatened his competitors. Welcome to the upside-down world of certificate of need (CON) laws.

CON laws require entrepreneurs to get a permission slip, or “certificate,” from the government before starting up. Many traditional CON regimes also allow existing businesses to protest new certificate applications and force applicants to prove that a new business is “necessary.” Since this is nothing short of a competitor’s veto, we use the term to describe traditional CON regimes with these anti-competitive veto provisions.

This report analyzes results from a nationwide survey of moving industry competitor’s veto laws, which affect intrastate companies that load and haul household goods. It is the first study to examine how these laws affect entrepreneurs, consumers, and communities. Our analysis found no difference in

mover quality in states with and without a competitor’s veto, indicating that traditional CON laws provide no benefit to the public. Rather, CON laws make it easier for existing businesses to prevent competitors from entering the market—directly blocking entrepreneurs from starting new businesses.

Although entrenched businesses vigorously resist reform, Pacific Legal Foundation has successfully secured judicial rulings, legislation, and administrative reform to remove competitor’s veto provisions in the moving industry in five states.

The remaining 17 states with competitor’s veto provisions on the books can, and should, remove these unnecessary certificate of need requirements. Individuals have the right to earn a living by competing for customers’ business. By eliminating unnecessary and costly CON laws, policymakers can remove barriers to business—without compromising quality of service.



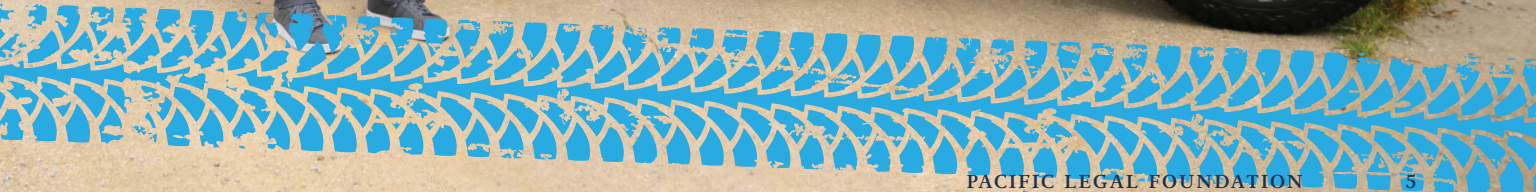
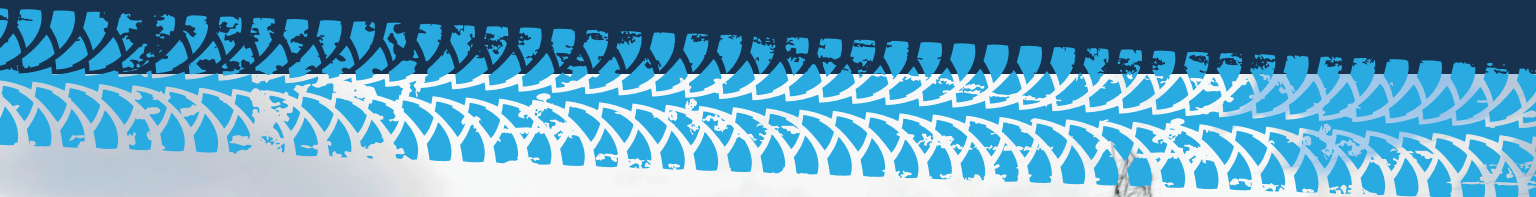
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# Entrepreneur:

## RALEIGH BRUNER STARTS A BUSINESS





RALEIGH STARTED WILDCAT MOVING WITH A CRAIGSLIST AD AND A WHITE FORD BRONCO.

**IN 2010**, a young, energetic Raleigh Bruner graduated from the University of Kentucky with an MBA. Uninspired by the idea of a nine-to-five job with a Fortune 500 company, he gave himself the summer to figure out what was next. To pay his bills, he posted an ad on Craigslist offering moving services.

With his white Ford Bronco, a motorcycle trailer, and a couple of friends, Raleigh spent 60 hours a week moving people in the Lexington, Kentucky, area. As the temperatures began to cool, Raleigh knew he was onto something.

The moving industry can provide a quick route to entrepreneurship and employment. A person needs only grit, insurance, and a truck to get started. Raleigh had all three.

To better serve his clients, Raleigh purchased a used box truck. Within a year and a half of starting his moving business, Raleigh had established a sizable operation with five trucks and 30 employees. He named the business Wildcat Moving, after the University of Kentucky mascot.

Wildcat's customers spread glowing reviews, which is what allowed Raleigh to grow the operation so quickly. "We were the fan favorite immediately," Raleigh recalled. And no wonder: Wildcat Moving operated seven days a week, compared to the competitors' six days, and charged nearly half of the established companies' fees.

As Raleigh's business grew, established companies took notice. Rather than responding with business innovations of their own, they began calling the police and complaining that Wildcat was operating illegally.

### **What was illegal?**

- ~~Fraudulent practices~~
- ~~Unregistered vehicles~~
- ~~Lack of business license~~
- ~~Lack of liability insurance~~
- Competitors weren't provided an opportunity to veto Raleigh's entrance into the market



# Roadblock:

## THE COMPETITOR'S VETO



**RALEIGH HAD NO IDEA** he needed something called a certificate of need (CON) in order to operate.<sup>1</sup> But believing the licensing process would be reasonable, Raleigh reached out to his attorney to figure out how to get one. “I think it might be impossible,” said his attorney. “I can’t help you.”

To secure a certificate of need, Raleigh was required to first get permission from the very people who were calling the police—Lexington’s established moving companies.

Under traditional CON laws, the government gives existing businesses the power to prevent new competition.

Incumbent businesses may formally protest any new business that applies for a certificate to operate. Worse, the government’s certifying bodies often defer to the existing businesses’ statements about whether they can fulfill consumers’ new or existing demand and, therefore, about whether a new business is “needed.” Because the competitors’ self-serving assertions often determine whether the government grants the certificate, CON laws are competitor’s veto laws.

From 2007 to 2012, 39 intrastate moving companies applied to operate in Kentucky.<sup>2</sup> Of those, 19 of the applicants were protested with a total of 114 protests—all from moving companies, none from the general public.<sup>3</sup> Because of the protests, 15 businesses gave up, one waited, and three pushed forward through the hearing process. The three that persisted were denied a certificate of need.<sup>4</sup>

“It can’t be right that there’s no way for me to get a license,” Raleigh recalled. “I have this

business that’s already successful. And I can see that it could be extremely successful.” Raleigh was particularly motivated to see his business succeed, because he was recently married with a baby on the way.

## *A Survey of Competitor’s Veto Laws*

This report analyzes information from a nationwide survey of state competitor’s veto laws in the moving industry. For purposes of this study, a state has a competitor’s veto if it requires movers to prove that services are “needed” in order to secure operating authority. Seventeen states have competitor’s veto

laws in place for the moving industry (see map).<sup>5</sup> With the exception of Hawaii and Massachusetts, all states also allow es-

tablished moving companies to protest new applicants and to intervene in the hearing process. This report does not address other moving regulations such as requiring good-faith cost estimates, insurance disclosures, and vehicle safety requirements designed to protect the public.

By probing the stories of individuals who fought the laws, and consumer reviews, this report describes the effect that traditional CON laws have on entrepreneurs and the quality of services available to consumers. Based on consumers’ complaints and mover reviews on the Better Business Bureau’s website, we find no difference in mover quality in states with and without a competitor’s veto. Though CON laws provide no measurable benefit to consumers, they may increase costs for those who cannot or do not move their own household goods.



An analysis of evidence obtained through litigation shows that competitor’s veto laws stop moving businesses from opening in various states discussed in this report. However, data on the number of moving businesses in each state did not capture any statistically significant difference in the average number of businesses between states with and without competitor’s veto laws.<sup>6</sup> This finding may suggest that CON laws do not significantly affect the overall number of businesses, due perhaps to artificial market segmentation or substitution effects, but they do have an effect on individual entrepreneurs—as demonstrated by every application denied to ready, willing, and able applicants.

The case studies below illuminate the individual costs and effects that are harder to capture with aggregate data: such as businesses being forced to operate in limited

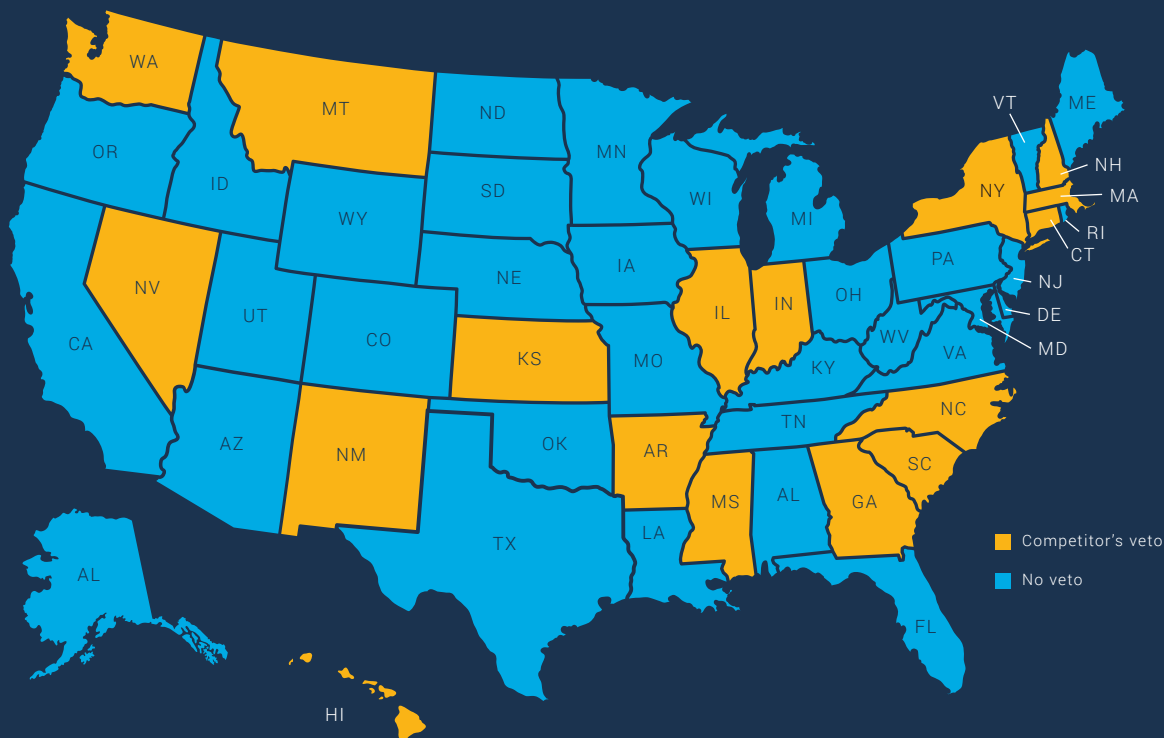
geographic areas to open and the costs and time associated with fighting a protest by an existing business.

Our study demonstrates the need to end competitor’s veto laws. In this report, we recommend avenues to free more would-be entrepreneurs from unnecessary, burdensome regulations, while providing alternatives designed to better protect consumers’ interests. A rollback of competitor’s veto laws is underway. Although entrenched businesses vigorously resist reform, lawsuits have led to the judicial invalidation, legislative repeal, or administrative repeal of CON laws in five states.

### Information Sources

We obtained CON law information from four sources.<sup>7</sup>

## Competitor’s Veto Laws by State



1. We scraped data from the Better Business Bureau website on all moving businesses in the United States and all consumer reviews and complaints filed with the BBB on moving businesses during a three-year period (August 2016-July 2019).
2. We interviewed entrepreneurs affected by CON laws.<sup>8</sup>
3. We mined PLF information obtained while litigating on behalf of entrepreneurs.
4. We sent public records requests to every state-based agency that requires moving businesses to register or become certified.

## **History of CON Laws and Policy Goals**

State governments created CON laws in the 19th century to regulate the construction of railroads and utilities, which were thought to have characteristics of a “natural monopoly.” The 19th-century economic theory of the natural monopoly was applied to public utilities like water and sewer systems because of the expensive, fixed technology or infrastructure like treatment plants, electric generation systems, and distribution systems. Natural monopoly theory proposed that these investments would not be viable or efficient unless a single local provider had the opportunity to earn a return on its investment by maintaining a monopoly on the supply of services.<sup>9</sup>

Using this theory, railroad companies and their investors sought protections and incentives similar to those given to public utility companies. They argued that the cost of laying track could only be recouped through a monopoly on ridership and shipping.

Railroad companies argued many angles:<sup>10</sup>

- The number of operators needed to be artificially limited to prevent a proliferation of unused railroads.
- If the government allowed competition, railroads would have to keep lowering prices until many were forced out of business, leading to a scarcity of providers.
- Competition would force operators to cut costs in detrimental ways. That would result in railroads serving only the most lucrative populations and leaving out poor, rural, or otherwise vulnerable populations.
- If given a monopoly privilege, railroads would agree to price regulations and other rules that govern public utilities.

Contemporary commentators criticized many of the sweetheart deals and incentives offered to railroads. But fixed railroad lines were expensive, and Congress, local officials, and businesses wanted service.<sup>11</sup> So, an awkward patchwork of federal and state incentives, protections, and regulations emerged—including the CON process.

Eventually, CON laws were applied to other industries, including such modern forms of transportation as taxicabs, public utilities, and even hospitals and other medical providers (see “Other Transportation Industries,” p. 12).

## **21st-Century CON Laws and Policy Outcomes**

Rapid technological innovation over the past 50 years has reduced fixed technology costs and turned the idea of a natural monopoly on

its head.<sup>12</sup> For example, despite public utility protections, cable television lost its monopoly power with the creation of the personal satellite dish.

Today's CON laws apply to transportation industries that lack the characteristics of a natural monopoly. And, because federal trucking laws and regulations override state laws on interstate commerce, state CON laws apply only to intrastate transportation, including intrastate moving companies. Such intrastate movers don't need expensive, fixed infrastructure—and therefore should be a low-cost way to start a business. Raleigh Bruner was able to start with a truck and trailer he already owned and public roads that already connect every home and apartment. In fact, moving is a service that people can do without hiring a company: There is no “natural monopoly” in the moving industry.

But when a government requires a certificate of need, the costs of starting a business rise. And the regulatory barriers can be insurmountable when existing movers file objections to new competitors.

Companies that have certificates of need benefit from reduced competition, which may also generate higher profits and incentivize them to exert political influence to maintain an advantage.<sup>13</sup> Certificate holders have a lot to lose compared to individual consumers who seldom move. The infrequent need for service, together with small additional CON-related costs to individual consumers, discourage them from organizing to end CON laws. For their part, entrepreneurs can pursue a different line of work rather than sink their limited capital into a fight against established moving companies.

Political monopolies and oligopolies resulting from CON laws are anything but “natural.” They've emerged from the arbitrary, outdated certificate of need scheme. And their only advantage is how they got their certificates. Some were grandfathered in when the CON law was enacted; others were the first to operate in a geographic area; some purchased a certificate from an existing company. Subsequent entrepreneurs seeking to enter a geographic market must apply and prove the “necessity” of their services despite potential protests from certificate holders.

In lawsuits challenging CON laws, governmental defendants have provided different justifications, depending on the industry. In the moving industry, where infrastructure is not fixed (for example, trucks can easily change locations), the government has argued that CON laws protect consumers' personal property. In medicine, regulators argue that CON laws restrict “excess entry” into the market and keep costs low.

Modern economic and other social science literature has established that, contrary to these justifications, competition helps society flourish. Competition, in which consumers choose which products and services to purchase, ensures that the best products and services, rather than the most politically powerful, thrive. Allowing businesses to start without barriers forces companies to compete for consumers, keeping prices low and quality high.

Even though the concept of “natural monopolies” is thought to be much more limited now, and even though CON laws regulate industries that have no natural monopoly characteristics, CON laws remain on the books in several states.

## Competitor's Veto

Whatever a state's CON law justification, data obtained from PLF lawsuits demonstrates that, in practice, all CON laws operate as competitor vetoes that favor entrenched business interests. This bias favoring established businesses manifests itself in four main ways.

### 1. COMPETITORS ARE ALLOWED TO PROTEST

Typically, only existing certificate holders file protests, and they do it to prevent new competition. Although some states allow any member of the public to protest an application, our review of public records and litigation documents found no consumer protests. Moreover, records obtained from PLF lawsuits

## Other Transportation Industries

CON laws govern other transportation services, among them limousines, taxis, shuttles, and even medical transportation by handicapped-accessible van or ambulance.

After building successful transportation companies in New Mexico and Texas, Tracie Pabst dreamt of opening one in her hometown of Big Sky, Montana. Given the sometimes dangerous terrain and lack of transportation companies in the area, Tracie hoped to provide customers a safe means of getting around. Her companies had provided transportation services to over 170,000 passengers without a single accident or moving violation, and she thought she could save lives by providing reliable transportation around Montana's precarious Gallatin Canyon. But before she could operate a shuttle business in Big Sky, she had to obtain permission from her competitors. PLF challenged Montana's CON law on Tracie's behalf, and shortly thereafter the Montana legislature repealed the law.<sup>1</sup>

Ron Perlman bought his first limousine for the simple reason that he was a car enthusiast. In 1987, after friends and clients asked to rent the limo for special occasions, Ron decided to buy a second limo and to open a business. By 2015, Ron and his wife, Danell, had grown their company to 25 vehicles spanning Nevada and California. In 2017, after years of seeking a certificate to expand their fleet in Nevada (including litigation and legislative efforts),<sup>2</sup> the Nevada Transportation Authority granted the Perlmans limited authority to operate additional limousines.

Most startups could never sustain the effort or expense that Tracie Pabst and the Perlmans invested in fighting the government to secure their rights to open or to expand a business.

<sup>1</sup> *Pabst v. Fox*, No. 6:15-CV-00006-CCL (D. Mont. filed January 29, 2015).

<sup>2</sup> *Wilson-Perlman v. Mackay*, No. 2:15-CV-285-JCM, 2016 WL 1170990 (D. Nev. Mar. 23, 2016).



revealed that self-interested industry protesters were quite active in blocking new competition. For example:

**MISSOURI:** In the seven years preceding PLF's lawsuit in Missouri, every application for a certificate to operate a moving company statewide, or in a large area of the state, received an objection.<sup>15</sup> Not one of these protests was filed by a member of the public; instead, every protest was filed by an existing moving company that did not want new competition. Applicants that revised their geographic market areas to avoid competition with protesters received certificates, after protesters withdrew their objections.<sup>16</sup>

**KENTUCKY:** The same was true of the 19 protested applications in the five years before Raleigh's competitors threatened his business in Kentucky. Every one of the protests were filed by competitors.<sup>17</sup>

## 2. PROTESTED APPLICANTS ARE DENIED CERTIFICATES

As in Missouri, Kentucky, and several other states, the government either frequently or always denied protested applications, barring exceptional circumstances. For example:

**WEST VIRGINIA:** When PLF filed a lawsuit in West Virginia in 2017, the legal team discovered that the State had not granted a single application to operate as a mover of household goods in the previous 10 years. From January 1, 2007, to January 1, 2017, certificate holders protested all 15 applications. Ten businesses abandoned their applications in the face of opposition. The State denied the rest on the basis that the existing moving companies were "adequate" to meet current and future demand.

The last time an applicant secured a new certificate to operate as a mover was over a decade earlier, when a mover applied for limited authority to operate within a certain county. No out-of-state mover had been able to secure a new certificate in the preceding 20 years. Out-of-state companies seeking to expand to West Virginia obtained certificates only if they purchased them from an established company.<sup>18</sup>

## 3. DENIALS ARE UNRELATED TO QUALIFICATIONS

Application denials frequently state that the new business is fully qualified to operate but is rejected solely because it would threaten existing businesses' financial interests. For example:

**NEVADA:** In Nevada, government officials denied Ron and Danell Perlman's application to expand their limousine business even though they had a stellar safety record and already owned seven vehicles that they used for trips in California. The State did not assert that the Perlmans were unfit or unqualified. Instead, it denied the Perlmans a certificate solely because it found their expansion "unnecessary"—that is, a threat to their competitors (see "Other Transportation Industries," p. 12).<sup>19</sup>

CON laws can result in entrenched cartels and few providers. When PLF challenged Nevada's CON law for movers, only 43 licensed moving businesses operated in the entire state, and only two worked in Reno, the state's second-largest metropolitan area.<sup>20</sup>

Five years later, Nevada still has only 43 state-certified movers.<sup>21</sup> Nevada's neighbor Utah, with a comparable population, does not

*The government either frequently or always denied protested applications.*

have a CON law and has three to four times as many moving companies.<sup>22</sup>

#### 4. PROTESTS ARE COSTLY TO FIGHT

Even in states where applicants with protests are sometimes granted a certificate, the CON law imposes a heavy cost of entry and discourages many applicants from applying or completing the process. At a minimum, fighting a protest usually requires an applicant to hire attorneys to prepare for and respond to objections in a hearing. The required forms and loss of time impose further costs.

Hearings in which new entrants are required to prove the necessity of their businesses often devolve into explicit or implicit bargaining. Applicants are pressured to agree to restrict their territory—as if existing certificate holders “own” the potential customers in a given area. Discussions with government officials who administer the process, and with others familiar with it, indicate that many would-be applicants do not bother to file for a certificate on the advice of their attorneys or the government officials who inform them that the odds of success are low.

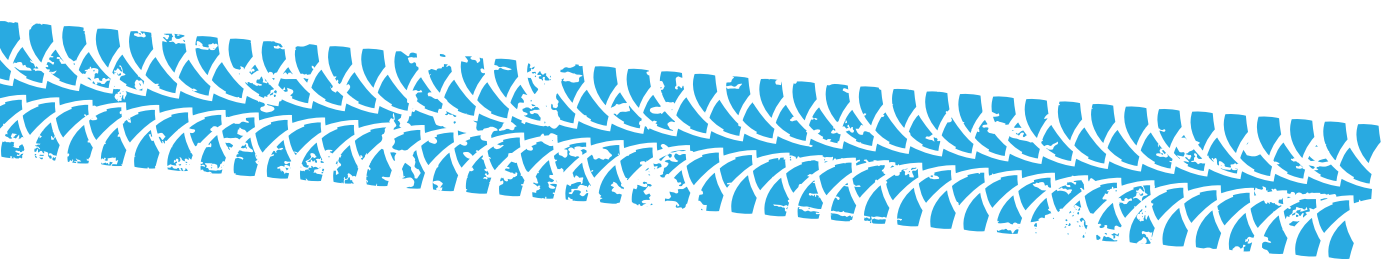
In cases where CON laws apply to medical businesses (see “KY Ambulance,” p. 17), the process can be just as warped, and the consequences more dramatic. In a 2019 lawsuit challenging Kentucky’s CON law for ambulance businesses, PLF discovered that, with only two exceptions, every protested application filed in the past decade had been denied.

In one case, the protesting business allowed an employee suspected of elder abuse to return to work before the investigation had concluded. Based on those facts, the government discounted the protest and

granted the applicant a certificate. In the other case, the applicant presented evidence that long wait times had likely contributed to a Kentucky resident’s death. Those were the only instances in which an applicant overcame a competitor’s protest.

Thus, regardless of how the government tries to justify the certificate-of-need application process, it is, in practice, a tool for incumbent businesses to block new companies.

*Nevada’s neighbor Utah, with a comparable population, does not have a CON law and has three to four times as many moving companies.*



# Detour:

## PLF FIGHTS FOR MOVERS



**DESPITE THE PROBABILITY** that his competitors would thwart his business through the certificate-of-need process, Raleigh Bruner's mantra—"It's always going to work out; there's always a solution"—pushed him forward.

Raleigh was consumer focused. He had liability insurance, provided good-faith cost estimates, and followed every law and regulation except for getting his competitors' permission to operate. He decided he was not doing anything wrong and refused to be bullied. "I'm going to keep doing it until you put me in jail," he said. He was not alone in his fight. In searching the Internet for a solution, Raleigh found movers in other states who fought similar laws.

PLF has represented other movers who, like Raleigh, were blocked by CON laws from competing in their industry. In 2008, PLF brought its first certificate-of-need lawsuit. Attorneys filed on behalf of college student and entrepreneur Adam Sweet.<sup>24</sup> A student at Portland State University in Oregon, Sweet was fined \$2,100 and had his truck towed in a full-fledged police sting after he helped people move without applying for a certificate of need.

In 2010, PLF brought a lawsuit on behalf of Michael Munie in Missouri federal court.<sup>25</sup> Despite running one of the most popular moving companies in St. Louis for 20 years, he was prevented from expanding. Michael applied for a certificate, but existing businesses filed "interventions" on the basis that his new routes would "permit substantial diversion of traffic" from their own

businesses. Those businesses had done the same over the preceding seven years, filing more than 100 objections to applications for certificates. The protesting companies didn't even pretend to object based on health or safety concerns; instead, they blatantly objected to new competition.<sup>26</sup>

After discovering these stories and reaching out to Pacific Legal Foundation, Raleigh learned that the Constitution was on his side. The Constitution protects the right of entrepreneurs to earn a living free of arbitrary restrictions like CON laws. The Fourteenth Amendment guarantees that people will not be deprived of liberty without "due process of law." This means that any time the government passes a law, it must be pursuing a legitimate public health or safety goal. CON laws have no relationship to protecting consumers' health or safety; they only protect the economic interests of existing businesses.

Courts, including the Supreme Court of the United States, have struck down CON laws based on this reasoning. As early as 1932, the Supreme Court ruled in *New State Ice Co. v. Liebmann* that a CON law requiring ice sellers to obtain a certificate of need was akin to an "attempt of the dairyman under state authority to prevent another from keeping cows and selling milk on the ground that there are enough dairymen in the business," or a law that "prevent[s] a shoemaker from making or selling shoes because shoemakers already in that occupation can make and sell all the shoes that are needed." Any such law "create[s] and foster[s] monopoly in the hands of existing

*The Fourteenth Amendment guarantees that people will not be deprived of liberty without "due process of law."*





CON laws are also common in the healthcare industry, governing hospitals and ambulatory surgical centers, which are required to obtain a certificate before purchasing new medical equipment like imaging technology, or even before adding new hospital beds.

In southern Ohio in 2017, a local power plant was set to close and Phillip Truesdell and his adult children were about to lose their jobs. Phillip's solution was to start a nonemergency ambulance company to transport individuals requiring extra support going to and from medical appointments and between facilities. He wanted to help individuals who, for example, use supplemental oxygen, are on dialysis, or are bedridden.

Fearing that his children would have to move to find new jobs, Phillip purchased an ambulance and built a family-run company. Within two years, he had grown his fleet to seven vehicles and averaged 1,500 trips a year. The Truesdells sought to expand their business by one mile: from Aberdeen, Ohio, into Kentucky.

Phillip applied for a certificate to operate in Kentucky, but thousands of dollars in attorney fees later, the government denied his application, saying he had not proven a "need" for his service in the state. Phillip and his daughter were unprepared for the tribunal they faced. They expected questions about their qualifications. Instead, they were assailed with questions about how they would "harm" existing businesses. In late 2019, PLF filed a lawsuit in the Eastern District of Kentucky, challenging its CON law.<sup>1</sup>

Kentucky's CON law has led to cartel-like behavior throughout the state's healthcare sector. Hospitals, birthing centers, and emergency ambulance businesses must obtain certificates before opening. The Mercatus Center estimates that Kentucky has 42% fewer hospitals as a result of its certificate program.<sup>2</sup>

The COVID-19 pandemic clarified the consequences: CON laws restrict medical providers' ability to respond quickly to changing circumstances. During the pandemic, at least 24 states suspended their CON laws for medical services.<sup>3</sup> In doing so, these states likely saved hundreds of lives that states with these laws still operating lost.<sup>4</sup>

<sup>1</sup> *Truesdell v. Meier*, No. 3:19-CV-00066 (E.D. Ky. filed on Sept. 24, 2019), <https://pacificlegal.org/wp-content/uploads/2019/09/Legacy-Medical-Transport-LLC-and-Phillip-Truesdell-v.-Adam-Meier-et-al.-Complaint.pdf>.

<sup>2</sup> Thomas Stratman, Christopher Koopman, Matthew D. Michell, Matthew C. Baker, and Anne Philpot, "Certificate-of-Need Laws: Kentucky," (Arlington, VA: Mercatus Center, 2017).

CONTINUED FROM KY AMBULANCE

<sup>3</sup> Angela Erickson, “States Are Suspending Certificate of Need Laws in the Wake of COVID-19 but the Damage Might Already be Done,” Pacific Legal Foundation, August 20, 2020, <https://pacificlegal.org/certificate-of-need-laws-covid-19/>.

<sup>4</sup> Sripama Ghosh, Roy Choudhury, and Alicia Plemmons, “Certificate-of-Need Laws and Healthcare Utilization During COVID-19 Pandemic,” July 29, 2020, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3663547](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3663547).

establishments, against, rather than in aid of, the interest of the consuming public.” Various courts of appeals have also struck down CON laws governing motorcycle dealerships, pharmacies, and even transporters of infectious waste.

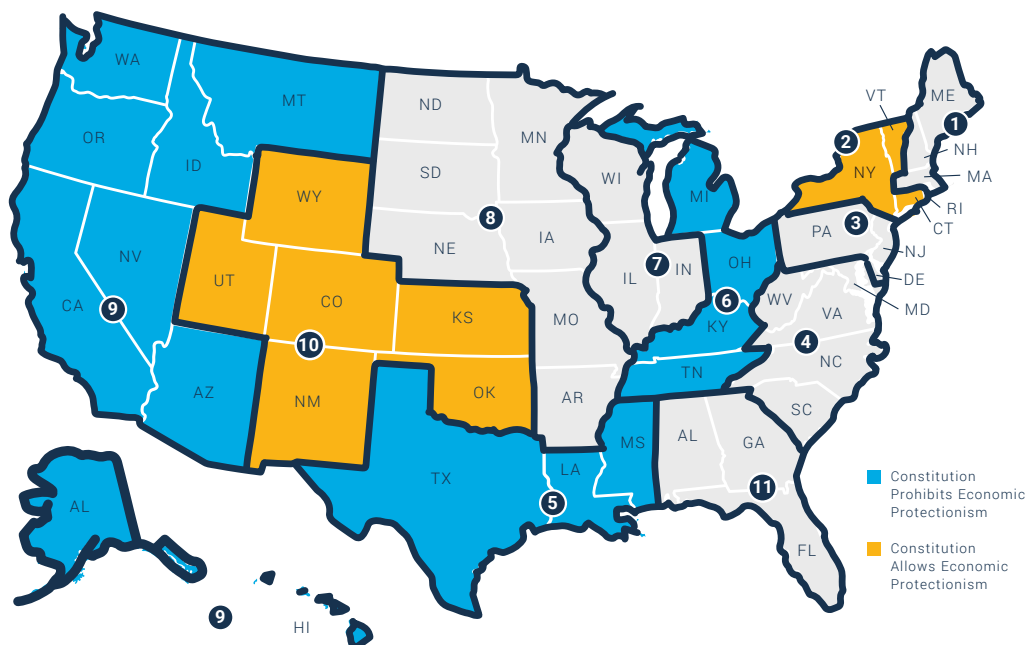
Though CON laws violate the Constitution, Raleigh had no guarantee of a successful suit. Some courts have wrongly upheld CON laws, either turning a blind eye to how they operate in practice, or ruling that the government may pass laws based on favoritism.

The federal circuit courts are split on the latter issue. The U.S. Fifth, Sixth, and Ninth Circuits have ruled that the Constitution prohibits economic

protectionism, while the Second and Tenth Circuits have ruled that burdening one group’s right to earn a living to protect the economic interests of another is mere “politics,” and is constitutional.

PLF challenges CON laws to reaffirm that laws cannot be arbitrary, nor can they be handouts to favored interest groups. Instead, laws must be intended to protect the public generally, and the government must be able to show, through objective evidence, that the measures achieve their goals. Any law that restricts one person’s liberty merely as a favor to another, or that lacks a demonstrable relationship to achieving legitimate ends, is arbitrary and unconstitutional.

### Circuit Split on Economic Protectionism



# Reroute: THREE PATHS





**PLF HAS HELPED** change unconstitutional CON laws via three different avenues—judicial, legislative, and executive. In the five states that removed CON laws for movers, one (Kentucky) did so through a judicial ruling, three (Missouri, Oregon, and West Virginia) through a legislative fix, and one (Pennsylvania) through executive agency action.

## Judicial Rulings

With the help of PLF, Raleigh opted to fight Kentucky’s CON laws in the courts. In 2013, he sued the Commonwealth of Kentucky for his right to compete. In litigation, the State justified the certificate-of-need process by claiming it protected consumers’ personal property and provided information about movers to the public. Yet, even

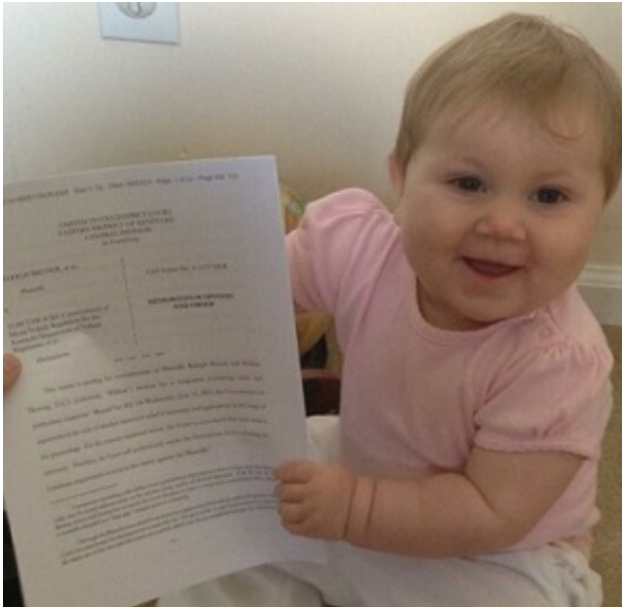


Arty Vogt began working for Lloyd’s Moving & Storage in Berryville, West Virginia, straight out of college. He started as a driver and worked his way up, until he and his wife, Stephanie, were able to purchase the business. Lloyd’s was a family-run business that had operated for nearly a century, but when Arty bought it, he didn’t realize that the company’s certificate to operate in West Virginia did not transfer to him with the sale.

When Arty realized he needed a new certificate of need to operate legally, he applied for one, but the government deemed his business “unnecessary.” Arty’s wife, Stephanie, who had led the fight to get a certificate, passed away from cancer soon after the denial.

Arty renewed Stephanie’s efforts in a federal district court in 2016. Represented by PLF, he argued that the law acted as an unconstitutional competitor’s veto. Evidence obtained during litigation showed that every certificate application that competitors had protested in the past 10 years had been denied, and 2005 was the last time a moving company had been able to obtain a certificate to operate. In 2017, while Arty’s lawsuit was pending and gaining adverse publicity, the West Virginia Legislature repealed its CON law. Arty fondly calls the repeal bill “Stephanie’s Law.”





JULIET HOPE BRUNER, DAUGHTER OF PLF CLIENT RALEIGH BRUNER, HOLDS THE INJUNCTION THAT ALLOWED HER FATHER'S BUSINESS TO STAY OPEN.

without a certificate of need, Raleigh's business grew because consumers shared their experiences on Google Reviews, Yelp, and the Better Business Bureau website. These online reputation sites provide information about movers to the public without the conflict of interest inherent in the certificate-of-need process.

During the two years of litigation, Raleigh told us he was "still dedicating 10 to 12 hours a day to building the business, knowing that [he] could be building it on sand." He doubled the company from five trucks to 10 while waiting for a resolution.

Raleigh "was calm throughout it," noted Andy Montgomery, the company's general manager at the time. Still, on the day Raleigh received an injunction allowing him to keep the business running during the lawsuit, Andy saw Raleigh's relief.

Raleigh felt like he was on a pendulum. "You go from operating a successful company that you're doing well—you can support your family—to having nothing if the judge rules in the opposite direction," he said. "You have to stop operating that day. And then what? ... It would have been a disaster to have to go and do something else."

Thankfully for Raleigh, his family, his 170 employees, and his thousands of happy customers, Kentucky's CON law was declared unconstitutional. "[A] judge did something no federal judge has done since 1932," stated George Will about the ruling. "By striking down a 'certificate of necessity' (CON) regulation" under the Fourteenth Amendment, "he struck a blow for liberty and against crony capitalism."<sup>27</sup>

The federal judge struck down Kentucky's CON law for movers because it denied Raleigh and others due process and equal protection of the law. While the State claimed that its CON law prevented "excess" entry into the industry, the court found that preventing excess entry was synonymous with preventing competition that the existing businesses did not like. The only way the State determined whether a new business would be "excessive" was by deferring to its competitors' wishes. In addition, the judge found that the competitor's veto process increased costs and gave no new information to consumers.<sup>28</sup>

*"You go from operating a successful company that you're doing well—you can support your family—to having nothing if the judge rules in the opposite direction."*

Upon receiving the announcement of his court victory, Raleigh recalls, “It was a weight that I had been carrying for years, just lifted. We won! We beat the State.”

## Legislative Reform Laws

Litigation is one pathway to beating CON laws; legislation is another. After Adam Sweet was targeted in a police sting and PLF sued on his behalf, the Oregon legislature repealed Oregon’s CON law in 2009.<sup>29</sup>

Missouri amended its law so that movers only need to show they are fit, willing, and able to provide service in order to receive a certificate to operate, allowing Michael Munie to operate outside of St. Louis. And in 2017, Arty Vogt secured a victory when the West Virginia legislature repealed its CON law for movers. The act was a direct response to Arty’s 2016 lawsuit (see “Arty Vogt,” p. 20).<sup>30</sup>

Yet Legislative efforts don’t always succeed. Raleigh had also tried the legislative route:

I was very naïve about how that works. I thought okay, these elected officials will see how crazy this law is and they will jump at the chance to make it right. And what we were met with were a lot of lobbyists from the large moving companies and of course the limousine companies and taxicab companies fighting really hard to keep those laws on the books. The legislators blocked it from getting changed.

## Executive Action

Executive action is a third option for reining in unconstitutional CON laws. Cosmo and Mary Anne Losco, entrepreneurs in Telford,



COSMO AND MARY ANNE LOSCO OWN AND OPERATE COLLEGE HUNKS IN TELFORD, PA.

Pennsylvania, wanted to work for themselves by opening a franchise, College HUNKS Hauling Junk and Moving. “I was looking for an opportunity to be my own boss and hire and mentor young people,” Cosmo said. The Loscos were drawn to the company’s commitment to building leaders and maintaining high standards—HUNKS stands for Honest, Uniformed, Nice, Knowledgeable, Service. However, the Loscos’ franchise hit a roadblock with Pennsylvania’s competitor’s veto law.

In 2015, Pacific Legal Foundation brought a lawsuit on behalf of the Loscos. Following PLF’s lawsuit, the state’s Public Utilities Commission rescinded the anti-competition criteria within its CON law. In this case an agency reformed their rules. Similarly, a governor could require an agency’s rules be changed.

# Back on Track:

## A WORLD WITHOUT CON LAWS





**WITH HIS RIGHT** to earn an honest living free from the competitor’s veto burden, Raleigh Bruner transformed his moving company into Kentucky’s largest. Litigation “ended up being the only possible way to get this problem solved,” Raleigh said. In the years since Raleigh’s victory he has grown his business, served thousands of customers, and given back to his community.

## Movers Flourish

In a world without CON laws, Raleigh’s moving business flourished. Since 2014, when Raleigh received his certificate to operate, an additional 27 moving companies have opened in Kentucky including two companies Raleigh co-owns.<sup>31</sup>

Since packing and moving its first customer in 2010, Wildcat Moving has grown to 22 trucks and completed 4,500 moves in 2019. Raleigh is also part owner of Cardinal Moving in Louisville, a company with 18 trucks and 3,500 moves in 2019. In April 2019, he helped open Big Blue Moving outside Cincinnati. By year’s end, the fledgling company had nine trucks and 625 moves under its belt. It’s hard for competitors to argue that there wasn’t a need for more moving businesses like Raleigh’s when he and his partners have added nearly 50 moving trucks to the market and completed over 8,000 moves in 2019.

Though public records do not illuminate the precise circumstances in states PLF has not litigated, social science research in other areas may provide further insight. In the health-care industry, for example, there are fewer service providers and services offered in CON

law states than in non-CON law states.<sup>32</sup> Research on occupational licensing laws also provides evidence regarding CON law effects. Like CON laws, occupational licensing requires service providers to obtain a license based on fixed criteria, but unlike CON laws, there is no opportunity for existing providers to protest (CON law without the veto). Occupational licensing research shows that a licensed occupation has fewer workers in states that license the occupation relative to those that do not.<sup>33</sup>

## Consumers Benefit

CON laws provide no measurable benefit for consumers and may, in fact, cost them more. For example, when Raleigh started, his competitors charged twice his rates. There is no difference in moving-service quality in states with and without CON laws, as seen in two measures of consumer happiness—reviews and complaints.

*CON laws provide no measurable benefit for consumers and may, in fact, cost them more.*

### Average BBB Mover Review



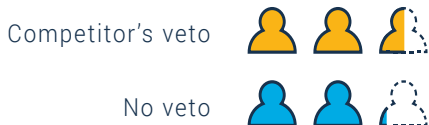
Consumers visiting the Better Business Bureau (BBB) website can rate a business from one to five stars. Moving businesses typically received mixed reviews—75% of reviewers give movers five stars and 19% leave one star. The average review in competitor’s veto states is 3.60, compared to 3.51 in states with no veto, a statistically insignificant difference.



The results are similar when looking at complaints. The average number of complaints per moving business on the Better Business Bureau website does not significantly vary based on a state's competitor veto status. In competitor's veto states, the average number of complaints is 2.5, compared to 2.1 in non-veto states. These findings indicate that moving businesses in non-veto states provide the same quality of service as businesses in competitor veto states, meaning that the competitor's veto regime does not affect quality.

These findings are unsurprising. Though an analysis of prices is beyond the scope of this report,<sup>34</sup> academic research on CON laws in the healthcare industry has found that certificates of need lead to higher costs and worse health outcomes.<sup>35</sup> Research finds that licensing laws do little if anything to improve quality.<sup>36</sup> But licensing does impose a cost on consumers by restricting the supply of businesses that provide services.<sup>37</sup> With fewer choices, consumers see higher prices,<sup>38</sup> like Lexington residents seeking moving support at the time Raleigh entered the market.

### Average Number of BBB Complaints



Fewer moving companies in a geographic area does not indicate that fewer people are moving, or that people are moving less frequently. Instead, it is likely that they forego moving services that the customers either cannot find or cannot afford. Alternatives to professionally licensed moving services



RALEIGH ELEVATES MOVERS TO MANAGERS AND MANAGERS TO BUSINESS OWNERS.

include moving your own property; packing a vehicle that someone else drives; hiring people to pack a vehicle that the consumers drive; or hiring full-service movers operating without a certificate.<sup>39</sup> The presence of fewer moving companies may put consumers and their property at risk. For example, people who aren't used to lifting heavy objects may injure themselves if moving their own goods.<sup>40</sup>

### Communities Thrive

Raleigh's business has brought immense value to his community. Allowing entrepreneurs to earn an honest living by competing allows them to help people. And the more entrepreneurs are able to support their communities, the more communities thrive.

*"We can take those guys and elevate them."*

Wildcat doesn't just move people. Raleigh created the Wildcat Group Company, which includes companies that perform a range of moving-related services: packing and unpacking, cleaning, pressure washing, carpet cleaning, home inspection, storage, and pet kenneling. In Lexington alone, these businesses employ around 170 people.

Raleigh has helped other entrepreneurs start 18 businesses in 11 states. "Just find really good people. If you employ a hundred 20-something-year-old guys every season, by the end of that season, it's [been] a trial by fire," he said. "We know who the guys are that are respectful, responsible, hardworking guys. And we can take those guys and elevate them." He turns successful movers into managers, and many of his managers have become moving company owners in other locations.



WILDCAT MOVING DELIVERED 3,000 BACKPACKS AND SCHOOL SUPPLIES TO THE YMCA'S BACK-TO-SCHOOL BACKPACK DRIVE.





WILDCAT MOVING WAS A PREMIER SPONSOR FOR THE CHILD CARE COUNCIL OF KENTUCKY'S ANNUAL GOLF TOURNAMENT FUNDRAISER.

*Raleigh is proud that he's been able to give back.*

Raleigh has paved a path for others to succeed and to find communities they can call home and raise their children. And he has given his employees the values to succeed: Stand your ground. Maintain boundaries. Give back. Be involved. These are the values one manager, now co-owner, said he took with him to Oklahoma.

Raleigh is proud that he's been able to give back. His Wildcat Group helps the community—donating time, trucks, and hands to help make fundraisers and other events possible by moving equipment around town and setting it up.

### **Certificate-of-Need Alternatives**

A world without certificate-of-need laws doesn't mean a world with no regulation. But, because the protest procedure and "need" requirement embedded in most CON laws does not further public health or safety goals,

policymakers should consider alternative forms of regulation.

Policymakers should start by evaluating the less-restrictive regulations in place that already protect consumers. These might include USDOT regulation, private certification, bonding or insurance, requiring good-faith cost estimates, and even noncoercive means of regulating quality, like review websites.

If evidence indicates that existing regulations provide insufficient consumer protection, policymakers can turn to deceptive trade practice acts, inspections, and other less-restrictive forms of regulation than CON laws.



RALEIGH'S COMMUNITY MOTTO IS "DON'T BUILD A HIGHER FENCE. BUILD A LONGER TABLE."



## Appendix A: Quality of Businesses

We hypothesized that the existence of a CON law does not improve the quality of businesses in a state. Research on occupational licensing finds that the existence of a licensing requirement may have no effect, or even a negative effect, on quality.<sup>41</sup>

To test this hypothesis, we collected information from two sources: The Better Business Bureau website and public records requests. From the BBB, we collected data on all moving businesses and all complaints and ratings received over the previous three years (data collection took place during July and August 2019). We collected data on 4,400 moving businesses with over 19,000 reviews and over 12,000 complaints submitted between August 2016 and August 2019.

We used Better Business Bureau data because it is the best online source for scraping reviews and complaints about mover businesses. Yelp’s user agreement explicitly forbids data scraping practices. Although the subset of the full population that uses BBB will produce different data, there is no reason to expect that bias to vary by state.

We calculated the average consumer review and average number of complaints per business. We averaged those numbers for each state by business to get the average review and average number of complaints per business in each state.

These raw numbers are useful but do not tell us if there is a significant difference between the numbers. To determine if there

**Table A: T-Test Results for Consumer Happiness with Movers**

Consumer measure	T-test	Regime	Mean	SD
Reviews	$t(48) = -0.46,$ $p = 0.32$	Veto	3.6	0.72
		Other	3.5	0.48
Complaints	$t(48) = -1.16,$ $p = 0.13$	Veto	2.5	1.30
		Other	2.1	1.73

was a difference in the averages between CON law (veto) and non-CON law (other) states, we ran *t*-tests (a method that determines statistical significance between two means), which showed no difference in quality between regimes. Table A provides the results including the *t*-statistics, probabilities, means, and standard deviations. We also ran *t*-tests with state population weights and observed no change in results.<sup>42</sup>

In addition, for every state that registers moving complaints, we requested all complaints against movers from 2012 to present. Public records were received in summer and fall 2019. We received complaint records from 15 states. For 13 of these we had complete data for the analysis.<sup>43</sup> We ran *t*-tests and regression analyses on these data, and the results were the same—there was no statistically significant difference in the average number of complaints per mover in CON law and non-CON law states. We will supply these data upon request.

## Appendix B: State Moving Company Laws and BBB Data

State	Statute	Competitor's veto	Businesses	Mean complaints	Mean review stars
Alabama	Ala. Code § 37-3-11(c)	No	53	2.26	3.90
Alaska	None	No	22	2.05	2.12
Arizona	None	No	184	1.71	3.71
Arkansas	Ark. Code Ann. § 23-13-220	Yes	12	1.08	3.71
California	Cal. Pub. Util. Code § 5133	No	533	2.27	3.39
Colorado	Colo. Rev. Stat. Ann. § 40-10.1-502	No	136	2.60	3.08
Connecticut	Conn. Gen. Stat. Ann. §§ 13b-389–13b-392	Yes	56	1.77	4.07
Delaware	None	No	21	2.10	4.04
Florida	Fla. Stat. Ann. § 507.03	No	474	1.92	3.58
Georgia	Ga. Comp. R. & Regs. 515-16-5-.12	Yes	220	2.43	2.83
Hawaii	Haw. Rev. Stat. Ann. § 271-12	Yes	13	1.92	4.25
Idaho	None	No	64	1.39	3.64
Illinois	625 Ill. Comp. Stat. Ann. 5/18c-4202	Yes	108	3.26	3.05
Indiana	Ind. Code Ann. § 8-2.1-22-12.5	Yes	86	4.80	2.64
Iowa	Iowa Code Ann. §§ 325A.1(10), 325.A.1(13)	No	9	1.56	3.92
Kansas	Kan. Stat. Ann. § 66-1,114	Yes	30	2.37	3.33
Kentucky	Ky. Rev. Stat. Ann. §§ 281.624, 281.655; 601 Ky. Admin. Regs. 1:080	No	19	1.32	3.82
Louisiana	La. Stat. Ann. § 45:164	No	16	1.31	5.00

State	Statute	Competitor's veto	Businesses	Mean complaints	Mean review stars
Maine	None	No	9	1.11	3.83
Massachusetts	Mass. Gen. Laws Ann. ch. 159B, § 3	Yes	113	2.42	4.07
Michigan	Mich. Comp. Laws Ann. § 477.1	No	57	1.74	3.76
Minnesota	Minn. Stat. Ann. § 221.0251-1(a)	No	52	1.94	2.59
Mississippi	Miss. Code Ann. § 77-7-41	Yes	13	2.31	4.47
Missouri	Mo. Ann. Stat. § 390.051	No	77	2.32	3.79
Montana	Mon. Stat. Ann. § 69-12-321	Yes	20	2.15	3.67
Nebraska	Neb. Rev. Stat. Ann. §§ 75-304.02(1); 75-310; LB 461 (2020)	No	27	2.30	3.88
Nevada	Nev. Rev. Stat. Ann. § 706.391	Yes	14	6.21	3.44
New Hampshire	N.H. Rev. Stat. Ann. §§ 375-A:1, 375-A:2	Yes	24	1.79	3.23
New Jersey	None	No	90	5.08	3.09
New Mexico	N.M. Stat. Ann. § 65-2A-9	Yes	15	1.13	3.97
New York	N.Y. Trans. Law § 193	Yes	146	3.66	3.58
North Carolina	N.C. Gen. Stat. Ann. § 62-262	Yes*	155	2.56	3.32
North Dakota	N.D. Cent. Code Ann. § 39-31-03	No	10	1.00	1.00
Ohio	Ohio Rev. Code Ann. § 4921.03	No	212	1.96	3.26
Oklahoma	Okla. Stat. Ann. tit. 47, § 166	No	28	5.32	4.47
Oregon	Or. Rev. Stat. Ann. § 825.110	No	133	1.43	3.25
Pennsylvania	52 Pa. Code § 3.381; 66 Pa. Stat. and Cons. Stat. Ann. § 1103	No	97	2.19	2.77



State	Statute	Competitor's veto	Businesses	Mean complaints	Mean review stars
Rhode Island	39 R.I. Gen. Laws Ann. § 39-12-6	No	6	1.00	4.00
South Carolina	S.C. Code Ann. § 58-23-250; S.C. Code Ann. Regs. 103-102	Yes	54	1.44	3.64
South Dakota	None	No	13	1.08	3.67
Tennessee	Tenn. Code Ann. § 65-15-109	No	125	1.98	3.71
Texas	Tex. Transp. Code Ann. § 643.051(b)	No	349	2.73	3.39
Utah	None	No	17	3.18	3.59
Vermont	None	No	6	1.33	3.00
Virginia	Va. Code Ann. § 46.2-2150	No	108	2.56	3.51
Washington	Wash. Rev. Code § 81.80.075; WAC 480-15-340	Yes	206	1.52	3.64
West Virginia	None	No	3	1.67	3.67
Wisconsin	Wis. Stat. § 194.01	No	58	2.26	3.34
Wyoming	None	No	7	1.00	4.65

\*North Carolina has a competitor's veto provision on its books, but in recent years it has allowed movers to apply for a "certificate of exemption" under a more lenient standard. The level of regulation varies across the states, with most states having some regulation for intrastate household goods movers.

## Sources

<sup>1</sup> In Kentucky, a certificate of need is called a certificate of necessity. The same permission slip goes by different names in other states (see Appendix B).

<sup>2</sup> In states with CON laws, a moving company is only required to obtain a certificate if it operates intrastate and both loads and hauls household goods. CON laws do not apply to those companies that (1) only load and unload goods but do not drive vehicles, or (2) only drive a vehicle that the property owner loads and unloads.

<sup>3</sup> Competitors are notified about the applications and their ability to protest. Consumers are not notified.

<sup>4</sup> Timothy Sandefur, "State Competitor's Veto Laws and the Right to Earn a Living: Some Paths to Federal Reform," *Harvard Journal of Law and Public Policy* 38 (2015): 1009. The applicant that waited was relieved from the hearing process after the competitor's veto law was struck down in court.

<sup>5</sup> Included in these 17 states are five states that do not use the nomenclature CON law, but do have a "need" requirement, as a traditional CON law does.

<sup>6</sup> The USDOT Motor Carrier Management Information System (MCMIS) census file, state registration data, and BBB data were all used to test the hypothesis that CON laws reduce the average number of businesses in those states. Controlling for population and number of intrastate moves, we found no statistically significant difference in the number of businesses using both t-tests and regression analysis.

<sup>7</sup> We also explored the USDOT's MCMIS census file. This file contains a classification for every vehicle registered with the USDOT. Not every state requires intrastate movers to register with the USDOT, which might distort some cross-state comparisons.

<sup>8</sup> The authors thank the following individuals for providing interviews: Raleigh Bruner, Wildcat Moving owner, in-person interview, November 21, 2019; Meredith Turk, Wildcat Marketing Director, phone interview, December 16, 2019; Kye Keefe, Thunder Moving Owner, phone interview, December 16, 2019; Nathan Thompson, Big Blue Moving Owner, phone interview, December 16, 2019; Andy Montgomery, Cardinal Moving Owner, phone interview, December 17, 2019.

<sup>9</sup> Richard A. Posner, "Natural Monopoly and Its Regulation," *Stanford Law Review* 21 (1968): 548.

<sup>10</sup> William K. Jones, "Origins of the Certificate of Public Convenience and Necessity: Developments in the States, 1870–1920," *Columbia Law Review* 79, no. 3 (Apr. 1979): 426–516.

<sup>11</sup> Heywood Fleisig, "The Central Pacific Railroad and the Railroad Land Grant Controversy," *The Journal of Economic History* 35, no. 3 (1975): 552–66; Herbert Hovenkamp, "Regulatory Conflict in the Gilded Age: Federalism and the Railroad Problem," *The Yale Law Journal* 97, no. 6 (1988): 1017–72.

<sup>12</sup> Posner, "Natural Monopoly."

<sup>13</sup> Gary S. Becker, "A Theory of Competition Among Pressure Groups for Political Influence," *Quarterly Journal of Economics* 98, no. 3 (1983): 371–400; Gordon Tullock, "Public Choice in Practice," *Collective Decision Making: Applications from Public Choice Theory* (1979): 27–45.

<sup>14</sup> George J. Stigler, "The Theory of Economic Regulation," *Bell Journal of Economic and Management Science* 2, no. 1 (1971): 3–21; Hal R. Varian, *Intermediate Microeconomics: A Modern Approach: Ninth International Student Edition* (New York: W.W. Norton), 2014.

<sup>15</sup> Data was collected for the seven years prior to the case.

<sup>16</sup> Sandefur, "State Competitor's Veto Laws."

<sup>17</sup> Data was collected for the five years prior to the case.

<sup>18</sup> During document discovery phase of litigation, PLF attorneys obtained documents revealing this information. Documents are available upon request.

<sup>19</sup> See *In re Application of Ronald M. Perlman d/b/a/ Reno Tahoe Limousine* for expansion of authority, Nevada Transportation Authority, Docket 12-09001 (2014).

<sup>20</sup> PLF brought two cases in Nevada. In 2013 before Maurice Underwood could argue the merits of his case, a district court judge dismissed his case on the grounds that he had not yet been formally denied a certificate, and that his case was thus not "ripe" for adjudication. *Underwood v. Mackay*, 614 Fed. Appx. 871, 872 (9th Cir. 2015). Despite this ruling, federal courts in other parts of the country have allowed plaintiffs to bring suit without submitting to a process they contend is unconstitutional. See, e.g., *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979). In 2016, Nevada mover Steve Saxon's case was also dismissed, and a legislative effort failed. *Wilson-Perlman v. Mackay*, No. 2:15-CV-285-JCM, 2016 WL 1170990, at \*4 (D. Nev. Mar. 23, 2016).

<sup>21</sup> Nevada Transportation Authority, "Tariffs & Certificates," accessed May 1, 2020, <http://nta.nv.gov/Carriers/Tariffs-Certificates/>.

<sup>22</sup> USDOT, MCMIS, census file, [https://ask.fmcsa.dot.gov/app/mcmiscatalog/d\\_census\\_mcmis\\_doc](https://ask.fmcsa.dot.gov/app/mcmiscatalog/d_census_mcmis_doc), obtained December 26, 2019. State numbers do not align with the MCMIS data. Nevada has 29 registered moving companies and Utah 127.

<sup>23</sup> See *Complaint* at 8 n.5, *Truesdell v. Friedlander*, No. 3:19-cv-00066-GFVT (E.D. Ky. Sept. 24, 2019), <https://pacificlegal.org/wp-content/uploads/2019/09/Legacy-Medical-Transport-LLC-and-Phillip-Truesdell-v.-Adam-Meier-et-al.Complaint.pdf>.

<sup>24</sup> *Sweet v. Kroger*, No. 08-CV-00671-MO (D. Or. Filed on June 8, 2008).

<sup>25</sup> *Munie v. Koster*, No. 4:10-CV-01096-AGF, 2011 WL 839608 (E.D. Mo. Mar. 7, 2011).

<sup>26</sup> *Id.* at \*1 ("MODOT found that [Munie's company] was fit, willing, and able, but four household-goods moving companies already operating in Missouri each filed a motion to intervene objecting to [Munie's] application on the ground that granting the application would divert traffic from them.")

<sup>27</sup> George F. Will, "A Strike Against Rent-Seeking," *Washington Post*, December 31, 2014, [https://www.washingtonpost.com/opinions/george-will-a-strike-against-rent-seeking/2014/12/31/ba5a1686-9109-11e4-ba53-a477d66580ed\\_story.html](https://www.washingtonpost.com/opinions/george-will-a-strike-against-rent-seeking/2014/12/31/ba5a1686-9109-11e4-ba53-a477d66580ed_story.html).

<sup>28</sup> *Bruner v. Zawacki*, 997 F.Supp.2d 691, 699–700 (E.D. Ky. 2014).

<sup>29</sup> H.B. 2817, 75th Leg. Assemb., Reg. Sess. (Or. 2009).

<sup>30</sup> *Vogt v. Ferrell*, No. 2:16-CV-04492, (S.D. W. Va. Filed on May 19, 2016), <https://pacificlegal.org/plf-challenges-law-that-allows-businesses-to-veto-new-competition/>.

<sup>31</sup> Public records obtained from the Kentucky Transportation Cabinet.

<sup>32</sup> Thomas Stratmann and Matthew C. Baker, "Are Certificate-of-Need Laws Barriers to Entry? How They Affect Access to MRI, CT, and PET Scans," Mercatus Working Paper (2016); Thomas Stratmann and Matthew C. Baker, "Barriers to Entry in the Healthcare Markets: Winners and Losers from Certificate-of-Need Laws," Mercatus Working Paper (2017); Thomas Stratmann and Christopher Koopman, "Entry Regulation and Rural Health Care: Certificate-of-Need Laws, Ambulatory Surgical Centers, and Community Hospitals," Mercatus Working Paper (2016).

<sup>33</sup> William Flanders and Collin Roth, *Fencing Out Opportunity: The Effect of Licensing Regulations on Employment* (Milwaukee: Wisconsin Institute for Law and Liberty, 2017); David E. Harrington and Jaret Treber, *Designed to Exclude: How Interior Design Insiders Use Government Power to Exclude Minorities and Burden Consumers* (Arlington, VA: Institute for Justice, 2009); Angela C. Erickson, *Barriers to Braiding: How Job-Killing Licensing Laws Tangle Natural Hair Care in Needless Red Tape* (Arlington, VA: Institute for Justice, 2016); Stephen Slivinski, *Bootstraps Tangled in Red Tape: How State Occupational Licensing Hinders Low-Income Entrepreneurship*, Policy Report No. 272 (Phoenix, AZ: Goldwater Institute, 2015).

<sup>34</sup> Given the time and cost required to collect that information via survey research, we chose not to compare prices. We encourage other scholars to conduct a survey to compare prices using a border study methodology.

<sup>35</sup> James B. Bailey, "Can Health Spending Be Reined in Through Supply Constraints? An Evaluation of Certificate-of-Need Laws," Mercatus Working Paper (2016); Sriparna Ghosh, Roy Choudhury, and Alicia Plemmons, "Certificate-of-Need Laws and Healthcare Utilization During COVID-19 Pandemic," July 29, 2020, [https://papers.ssrn.com/sol3/papers.cfm?Abstract\\_id=3663547](https://papers.ssrn.com/sol3/papers.cfm?Abstract_id=3663547); Monica Noether, "Competition Among Hospitals," *Journal of Health Economics* 7, no. 3 (1988): 259–84; Patrick A. Rivers, Myron D. Fottler, and Jemima A. Frimpong, "Regulation of Hospital Costs," *Journal of Health Care Finance* 36, no. 4 (2010): 16; Patrick A. Rivers, Myron D. Fottler, and Mustafa Zeedan Younis, "Does Certificate of Need Really Contain Hospital Costs in the United States?" *Health Education Journal* 66, no. 3 (2007): 229–44; Thomas Stratmann and David Wille, "Certificate-of-Need Laws and Hospital Quality," Mercatus Working Paper, 2016; Bingxiao Wu, Kyoungrae Jung, Hyunjee Kim, and Daniel Polsky, "Entry Regulation and the Effect of Public Reporting: Evidence from Home Health Compare," *Health Economics* 28, no. 4 (2019): 492–516.

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<sup>39</sup> Occupational licensing literature finds substitution effects. Carroll and Gaston, "Occupational Restrictions."

<sup>40</sup> Evidence from the licensing of electricians shows that more restrictive licensing increases the cost of hiring an electrician, which leads to individuals opting to do the work themselves. In the more restrictive states, there are higher rates of electrocution. Carroll and Gaston, "Occupational Restrictions."

<sup>41</sup> Buddin and Zamarro, "Teacher Qualifications"; Carpenter, "Blooming Nonsense"; Carroll and Gaston, "Occupational Restrictions"; Erickson, *Putting Licensing to the Test*; Kleiner and Todd, *Mortgage Broker Regulations*; Shilling and Sirmans, "The Effects of Occupational Licensing."

<sup>42</sup> We also did a regression analysis that controlled for various other factors that may influence quality, among them weather, number of moves in the state per business, and percentage of urban population. We will supply these analyses upon request.

<sup>43</sup> The analyses were run with seven veto states (Hawaii, Illinois, Nevada, New York, Oklahoma, Pennsylvania, and Washington) and six non-veto states (California, Florida, Kentucky, Louisiana, New Jersey, and Ohio). Virginia did not provide dates from the complaints and we did not have complete counts of registered movers in Arizona with which to compare complaints.

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