Legislatures want to say who is an "interior designer."

Designing Cartels Through Censorship

By Dick M. Carpenter II and John K. Ross
Institute for Justice

Political economists from Adam Smith to Milton Friedman have noted the efforts of various business groups to pass occupational licensing laws, purportedly out of concern for the public's welfare. In his Fall 2006 *Regulation* article "A License for Protection," Morris Kleiner detailed the results of those efforts in the United States: a patchwork of certification, registration, and licensing laws across more than a thousand occupations.

There is a fourth distinct form of occupational regulation that falls between registration and full-scale licensure: titling laws. Such laws allow practitioners to provide services without a license, but deny them the ability—and the First Amendment right—to communicate openly to the public about those services. For instance, title acts bar anyone who offers any of the myriad services that constitute "interior design" from calling her or himself an "interior designer" without first receiving government approval. Typically, titling laws also ensure that the process of gaining this approval is arduous.

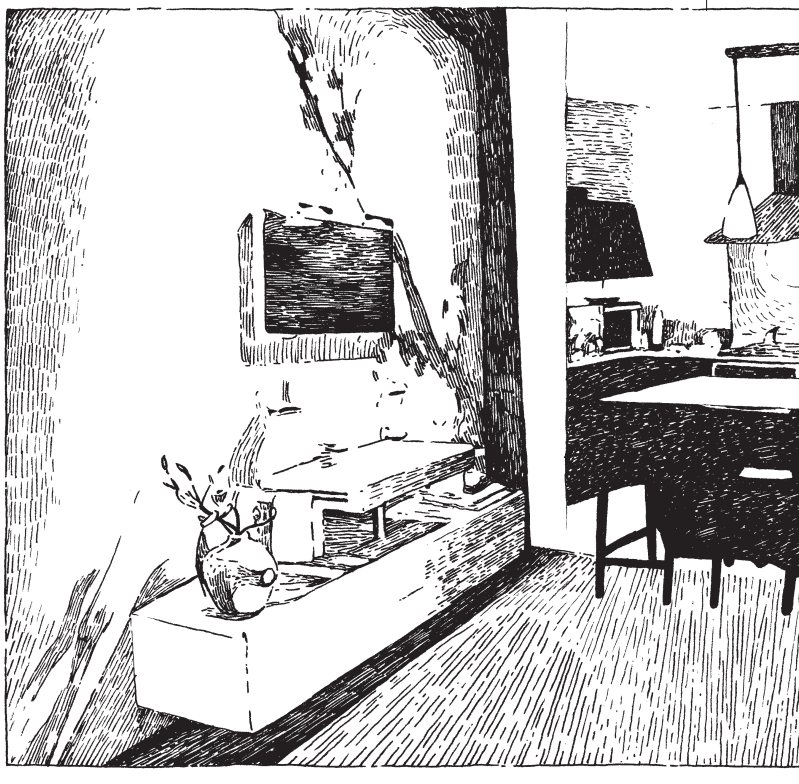
As research into the interior design industry reveals, titling laws serve as a stepping-stone to full licensure of an occupation. Because legislators typically see titling laws as less restrictive than licensure, industry leaders pursue them as an initial and more acceptable form of regulation. Once those laws are in place, insiders then seek to transform them into full licensure.

TITLES AND TRIBULATIONS

Diane Lupo knows this dynamic all too well. For more than 20 years, she practiced interior design in Alabama. But in 2002, months after politically active competitors succeeded, on their sixth try, in transforming the state's titling law into an outright ban on unlicensed interior design, the state sued Lupo for the crime of catering to willing customers without government approval.

Dick M. Carpenter II is director of strategic research at the Institute for Justice.
John K. Ross is research associate at the Institute for Justice.

The forces arrayed against her would have surprised neither Smith nor Friedman. In this case, the American Society of Interior Designers (ASID) leads the charge to regulate the industry and place its members at the head of state-created cartels controlling entry into the occupation. Born in 1975 out of a fusion of two professional associations, the ASID, which has some 20,000 members and 48 chapters in the United States and Canada, aims to enact so-called "right-to-practice" or "practice acts" in all 50 states. Such laws, the most stringent form of occupational regulation, require would-be designers to obtain a license from a state board to perform "interior design"—a term that encompasses a broad array of services.



As a means to that end, the ASID and its allies often push title acts, intermediate measures that allow anyone to perform interior design services but prohibit those without government approval to use the term "interior design" to describe what they do. Unlicensed individuals can call themselves "interior decorators" or another similar appellation.

While perhaps not as immediately pernicious as an outright ban on working, title acts are nonetheless a significant infringement on the First Amendment right of entrepreneurs to speak truthfully about the services they provide. The laws pose a real, practical obstacle to designers trying to communicate to customers through advertising in yellow pages, on websites, or even on business cards.

In a less restrictive form, title acts may allow individuals to call themselves interior designers but not "registered interior designers" or "certified interior designers." Intended to appear innocuous, the laws prevent no one from working or advertising. Nevertheless, they often establish state boards—tellingly composed primarily of established practitioners who happen to be members of the ASID or other pro-regulation professional associations—to register interior designers. From there, industry insiders lobby for more and more authority.

Table 1

Restraint of Trade

States with license or title laws for interior design:

License laws	Alabama*, District of Columbia, Florida, Louisiana, Nevada
Title laws	Alabama, Arkansas, Connecticut, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Nevada, New Jersey, New Mexico, New York, Oklahoma, Tennessee, Texas, Virginia, Wisconsin

** Alabama's license law was struck down by the state supreme court in 2007.*

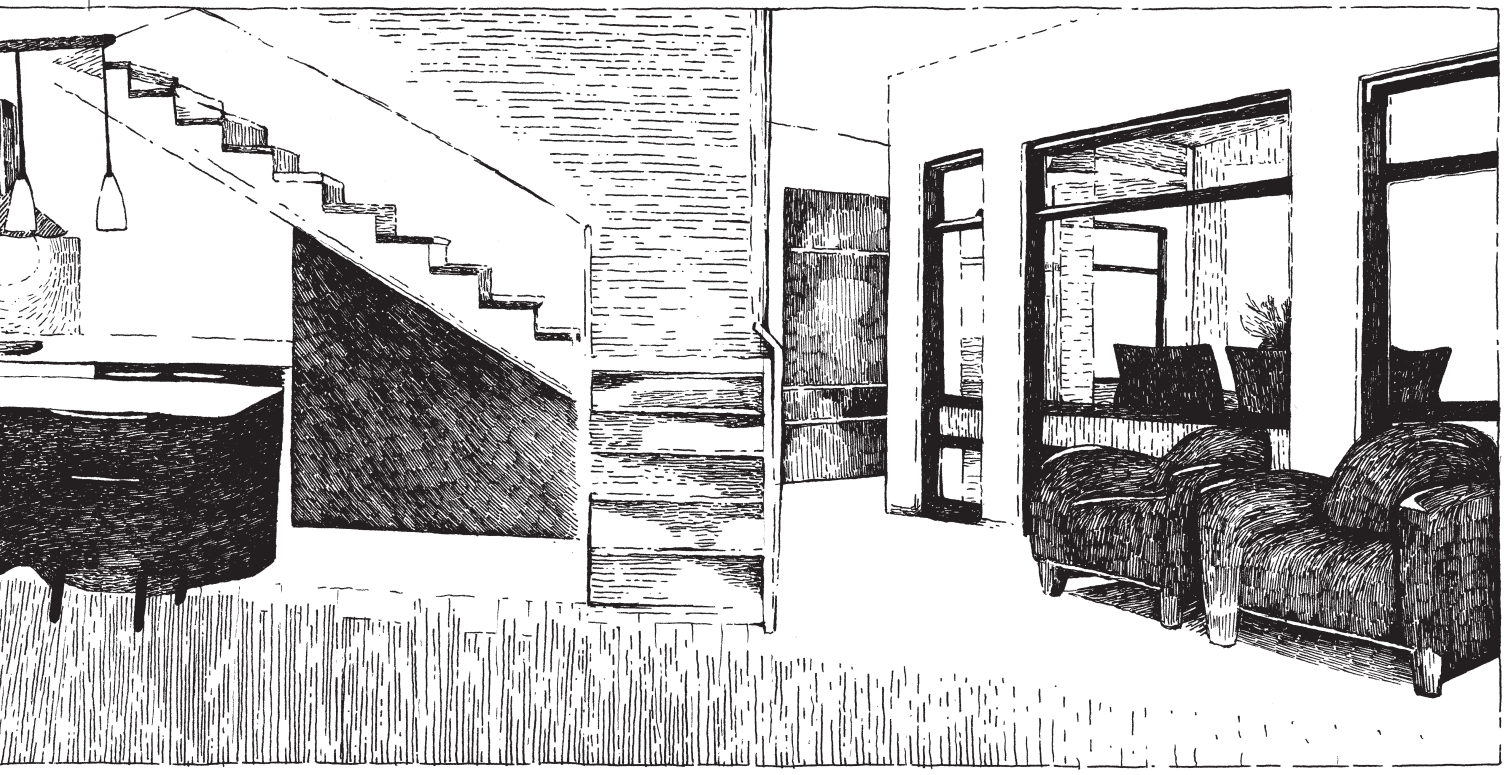
Alabama passed the country's first interior design title act in 1982, forcing Diane Lupo to stop calling herself an interior designer and instead tell clients she is an "interior decorator." Then, after Alabama's practice act passed in 2001, even recommending shades of paint without a license became a Class A misdemeanor and the Alabama State Board of Registration fined Lupo for illegally working as an interior designer. From 2002 to 2006, the board cited another 282 designers for violations of the state's interior design regulations.

CONSOLIDATING POWER

Since 1982, 22 states and the District of Columbia have enacted title or practice acts. Bills creating new or tightening existing regulations were introduced in 11 states in 2005, 11 states in 2006, and 12 states in the 2007 legislative season. These gambits everywhere and always trace back to the ASID and its allies.

Statutes and proposed statutes vary from state to state. Some allow state boards latitude to enact their own standards, others write them into law. Often, bills or proposed bills exempt groups with powerful lobbies. Alabama, for example, exempted hospitals and home improvement retailers. Some include grandfathering clauses for existing designers.

Nonetheless, the regulatory thicket has several commonalities. Most importantly, title and practice acts create, or lay the groundwork for, a single channel to enter the occupation and place enforcement in the hands of a captured regulator. Securing a license or permission to use a title rests upon completion of examination, prescribed education, and specific experience requirements:



MORGAN BALLARD

■ ***Examination:*** Would-be designers typically must pass the National Council for Interior Design Qualification (NCIDQ) exam. Created by the ASID, the NCIDQ purports to separate designers with mere "good taste" from those who are "truly qualified." The test is a 13.5-hour paper-and-pencil exam. To even sit for it, applicants must complete a minimum of six years of combined education and apprenticeship.

■ ***Education:*** Candidates must complete an interior design degree at a school accredited by the Council for Interior Design Accreditation. According to the ASID, "In the near future, the post-professional master's degree will be the accepted requirement for all entry level interior designers."

■ ***Experience:*** After graduation, applicants must apprentice with a state-licensed interior designer (of whom there will be very few) for two or more years. According to the ASID, "By the end of the decade, NCIDQ will require the Interior Design Experience Program," which is the NCIDQ's own internship program, "for all examination candidates."

These are the same requirements the ASID imposes on its own members, so anyone eligible for full-fledged "professional" membership in the ASID is eligible for a license or a title in any state.

The education requirement empowers the cartel to accredit, and thereby limit, degree programs whose graduates can become eligible for licensure. In Pennsylvania, where a bill regulating the occupation is currently creeping through the legislature, only five of the 17 interior design programs offered in the state have been accredited. The cheapest costs $18,600 per year to attend. In Michigan, where legislation is also up for consideration this session, only five out of 15 programs are cartel-approved.

Designed to discourage all but the most determined individuals from pursuing an otherwise attractive career, interior design licensure rewards favor-seeking in state capitals and forces consumers to forgo services or pay higher prices. Unwary designers, too, pay a high cost. In Florida, for instance, 451 unlicensed designers received cease-and-desist letters between 2001 and 2007. Of those, 83 individuals received fines ranging from $1,000 to $15,000. One person identified herself as an interior designer from Florida on the television show *Big Brother*, triggering threats of fines and legal action. Others simply advertised in the yellow pages.

This aggressive enforcement, though portentous, is as yet unrepresentative. Florida is one of only four states (the others being Alabama, Louisiana, and Nevada) and the District of Columbia to enact a practice act. (Florida's willingness to share enforcement information is also unrepresentative; other states would not furnish comparable data.) As *Washington Post* columnist George Will noted in a 2007 column on Nevada's law, "So in Las Vegas, where almost nothing is illegal, it is illegal—unless you are licensed, or employed by someone licensed—to move, in the role of an interior designer, any piece of furniture, such as an armoire, that is more than 69 inches tall."

JUSTIFYING PRIVILEGES, IMMUNITY

The ASID and its affiliates advance a number of dubious claims to rationalize their agenda, chief among them that the unlicensed practice of interior design threatens public health and safety. According to the ASID, "Every decision an interior designer makes in one way or another affects the health, safety, and welfare of the public." This mantra—repeated in hopes that it will attain the status of accepted fact without the inconvenience of supporting evidence—makes an appearance in every appeal for licensure in legislative testimony, media reports, ASID literature, and so on.

In more than 30 years of advocating for regulation, ASID has yet to identify a single incident resulting in harm to anyone from an unlicensed interior designer.

Readers of Milton Friedman will protest that even if there is some credible threat to public health and safety from inexperienced or incompetent practitioners, licensure does not deliver on its promise to protect consumers. In this case, however, there is no reason to debate the point; there is no threat.

Governors in six states—Indiana, New York, Colorado, California, New Jersey, and Ohio—have vetoed interior design regulation on the grounds that there is no health and safety benefit to the public. State agencies in Colorado, Georgia, South Carolina, and Washington State have examined the need for titling and practice laws, as did the Federal Trade Commission. Those agencies contacted industry associations, law enforcement and consumer affairs departments, Better Business Bureaus, reciprocal agencies in other states, and even the ASID and its affiliates, looking for data. Unanimously, they could find no evidence showing a threat to public health, safety, or welfare from unlicensed interior design.

In more than 30 years of advocating for regulation, the ASID and its ilk have yet to identify a single documented incident resulting in harm to anyone from the unlicensed practice of interior design—despite a tremendous incentive to identify and publicize such evidence. These laws simply have nothing to do with protecting the public.

Unbowed, the ASID continues to assert that any conceivable harm—from the tragic to the mundane—that could befall a

person indoors directly relates to interior design and thus constitutes a case for regulation. This includes horrific tragedies like the 2003 Rhode Island nightclub fire that killed 100 people. Needless to say, exhaustive investigation of the accident does not even remotely support any claim that interior design regulation could have prevented the catastrophe, nor were interior designers at fault. Rhode Island legislators apparently did not see a connection either—they refused to pass interior design regulations in 2005.

Literature from the Interior Design Legislative Coalition of Pennsylvania (IDLCPA), a state lobbying ally of the ASID, claims that 11,000 fatalities and 300,000 disabling incidents occur every year because of slip-and-fall accidents—intimating that licensure could prevent those accidents. Surely, one could compare serious slip-and-fall accident rates in states with regulations to those without, but this has not been done.

In a pamphlet entitled "10 Ways Interior Designers Save Lives," the IDLCPA further suggests only licensed interior designers can mitigate "poor ergonomic conditions," appreciate "the psychology of color," select energy efficient lighting, "harmonize the way the built environment is constructed working in correlation with the natural environment," and specialize to meet a wide variety of consumer needs.

In Michigan, the Coalition for Interior Design Registration seeks a practice act that its members claim would "eliminate the restraint of trade" and "give the consumer a choice" in "an expanded marketplace." The Texas Association for Interior Design does not want the public to trust unlicensed designers who may not know "that often used items in a work area need to be within reach to avoid awkward body movements."

The ASID also posits that "legal recognition" for interior designers establishes a minimum competency. To test this proposition, the Institute for Justice gathered complaint data from Better Business Bureaus and found that the 5,006 interior design companies we sampled received, on average, 0.20 complaints per company from 2004 through 2006. Disaggregating states by regulation type, we found that the more stringent the regulation, the more consumers complain—although it is still an extremely infrequent occurrence. In states with practice acts, there were 0.37 complaints per company. In states with no regulation, interior design firms received only about half as many complaints—0.19 per company. If licensure resulted in higher-quality practitioners, we should have seen the opposite trend.

Data from state interior design regulatory boards in 13 states also showed that complaints of any kind against interior designers are extremely rare. Moreover, the overwhelming majority—nearly 95 percent—are related to licensure (whether the designer is properly licensed by the state), not the quality of service. Meaningful consumer complaints are so rare as to barely register. Since 1998 an average of one out of every 5,650 designers has received a complaint for reasons other than licensure.

There is simply no evidence that designers shielded from market pressures yield better, safer services. This is consistent with studies of producers in other industries. According to Indiana governor Mitch Daniels, who vetoed interior design legislation in May 2007, "The marketplace already serves as an effective check on poor performance; designers doing inadequate work are more likely to be penalized by negative customer reaction than by a government agency trying to enforce arbitrary and subjective qualification standards."

IF AT FIRST YOU DON'T SUCCEED

Even without evidence, the ASID has scored some legislative victories. Currently, three states and the District of Columbia have practice acts and 19 states have title acts on the books.

Key aspects of an ASID campaign include: testimony at relevant hearings, legislative training seminars, and the funding of state-level affiliates (separate from the ASID's state chapters) that exist solely to agitate for regulation. Allies can rely on the ASID for advice on building a coalition and implementing a lobbying campaign. The group's website provides state-specific form letters addressed to legislators, as well as fundraising tips, materials on the "need" for regulation, and other advice ("hire a lobbyist").

The ASID's most salient strategy, however, is dogged persistence. When bills fail, they are often re-filed in a somewhat watered-down form until something passes. Then more rigid bills are introduced. In New York, for instance, where the first bid to regulate interior designers via a practice act took place in 1979, the lobby finally shepherded through legislation restricting use of the title "certified interior designer" in 1990. Industry insiders have since moved to bar the use of the title "interior designer" without a license. Former governor George Pataki vetoed those attempts in both 2004 and 2005. Similar bills have been re-filed in 2006, 2007, and 2008.

Though the governor of New Jersey vetoed a practice act in 1995, a titling act passed in 2002. In Missouri, a practice act failed in 1994 but a title act passed in 1998. In Oklahoma, a title act passed in 2006, 14 years after a practice act failed. Texas passed a title act in 1991 and concerted lobbying efforts since then, most recently in 2007, have focused on enacting a practice act.

Of the states that saw action in 2007, bills in eight states—Indiana, Minnesota, Mississippi, New Hampshire, New York, South Carolina, Tennessee, and Texas—failed. Bills in the remaining four states—Massachusetts, Michigan, Ohio, and Pennsylvania—are carrying over to this year's legislative sessions. In 2008, bills have been taken up again in Indiana, Mississippi, New York, and South Carolina and new legislation has been filed in California, Connecticut, Hawaii, Illinois, Minnesota, Nebraska, Oklahoma, Tennessee, and Washington State.

States spared for the present will surely be battlegrounds in the future. In December 2007, *The Oregonian* newspaper published an article examining efforts to bring interior design regulation to Oregon. The article quoted the leaders of regional and state-level pro-regulation groups, an ASID statement, and university professors whose programs are accredited by the cartel. No member of the public demanding protection from unqualified designers appeared in the story, nor did a designer opposed to regulation. To date, Oregon legislators have passed neither practice nor title act, but not for lack of opportunity. The article notes legislation that failed in 1997 but neglects to mention the practice act that failed in 1999 and title acts that failed in 2001 and 2003.

FIGHTING BACK

The tide is beginning to turn, however. Diane Lupo fought for her rights in court, and in October 2007 the Alabama Supreme Court struck down the state's practice law, declaring it unconstitutional. In his 2006 *Regulation* article, Prof. Kleiner found "no examples of occupations becoming less regulated and moving towards certification or registration once they become licensed." Happily, that is no longer the case.

Professional organizations representing architects (the American Institute of Architects) and kitchen and bath designers (National Kitchen and Bath Association) along with the National Federation of Independent Business have been fighting interior design regulations. Recently, interior designers themselves have emerged, forming nascent state and national coalitions to resist cartelization.

In March 2008, designers launched the Interior Design Protection Council, a national clearinghouse, to keep tabs on legislation and media interest on the issue, and also to inform and persuade the general public. Designers in New Hampshire (the "Live Free or Die" state) formed Live Free and Design and turned back legislation in 2007. Led by designer Patti Morrow, who took precious time away from her small business to lobby politicians, raise money, and persuade fellow designers and the public of the danger, the group also aids designers threatened in other states. They anticipate another battle this year. When the 2007 legislation died in committee, the president of the pro-regulation interior design coalition wrote to her members:

> Most at the meeting agreed that a practice act as our bill is written is the one to pursue. However, since NH isn't the most agreeable state toward licensure, it was added that we may want to begin with a title act and move inconspicuously toward a practice act within a few years.

Designers have organized in Alabama (which now has only a title act), Arizona, California, Massachusetts, Oregon, Pennsylvania, Texas, and Washington State to oppose regulation. In Washington State, with help from the Institute for Justice, designers have already killed legislation that would have created a practice act.

While the recent successes may prove to be the turning point, the struggle is far from over for designers. The enormous expenditure of time and resources necessary to fight lobbying battles is borne largely by individual designers, and many of them view such political intrigues as unwelcome distractions from operating their small businesses. Many despair that defeating a bill this year provides—given the ASID's history and resources—no guarantee that they will not have to fight for their livelihood the next time the legislature is in session.

Limiting the right to use a particular title is tantamount to creating a monopoly on free speech that violates the rights of entrepreneurs.

Thus a legal strategy is an essential complement to legislative advocacy. Already, legal efforts are bearing fruit. In addition to the Alabama Supreme Court victory, New Mexico softened its titling law in 2007 in response to a lawsuit the Institute for Justice brought on behalf of New Mexico designers. In Texas, IJ has filed a federal First Amendment challenge to the state's titling law.

Indeed, the interior design industry's approach of pursuing titling laws as a first step toward licensure creates an important opportunity to bring First Amendment law to bear on legal regimes that restrict economic liberty—the right to earn an honest living in the occupation of one's choice. To limit, by government force, the right to use a particular title to members of a state-approved cartel is to create a monopoly on speech that violates the rights of entrepreneurs to communicate truthful information to potential customers.

The industry's incremental tactics also provide a rare peek into the real-world process of rent-seeking by established interests. The long-term effects of occupational licensing and incentives to pursue it are just as Smith and Friedman predict, but the path to cartelization is not always as clear cut—forcing some cartels to settle for censorship first. R

Readings

- "A License for Protection," by Morris M. Kleiner. *Regulation*, Vol. 29, No. 3 (Fall 2006).
- "Designing Cartels: How Industry Insiders Cut Out Competition," by Dick M. Carpenter II. Institute for Justice, November 2007.
- "Interior Designers," by M. Michael Cook. Colorado Department of Regulatory Agencies, Office of Policy and Research, 2000.
- *Licensing Occupations: Ensuring Quality or Restricting Competition*, by Morris M. Kleiner. Upjohn Institute, 2006.
- "Review of Occupational Registration and Licensing for Interior Designers," by E. LeRoy Nettles. South Carolina State Reorganization Commission, 1991.
- "Review of Senate Bill 305, Which Proposes to License Interior Designers in Georgia," by William H. Roper. Georgia Occupational Regulation Review Council, 1989.
- "Sunrise Review of Interior Designers," published by the Washington State Department of Licensing. 2005.

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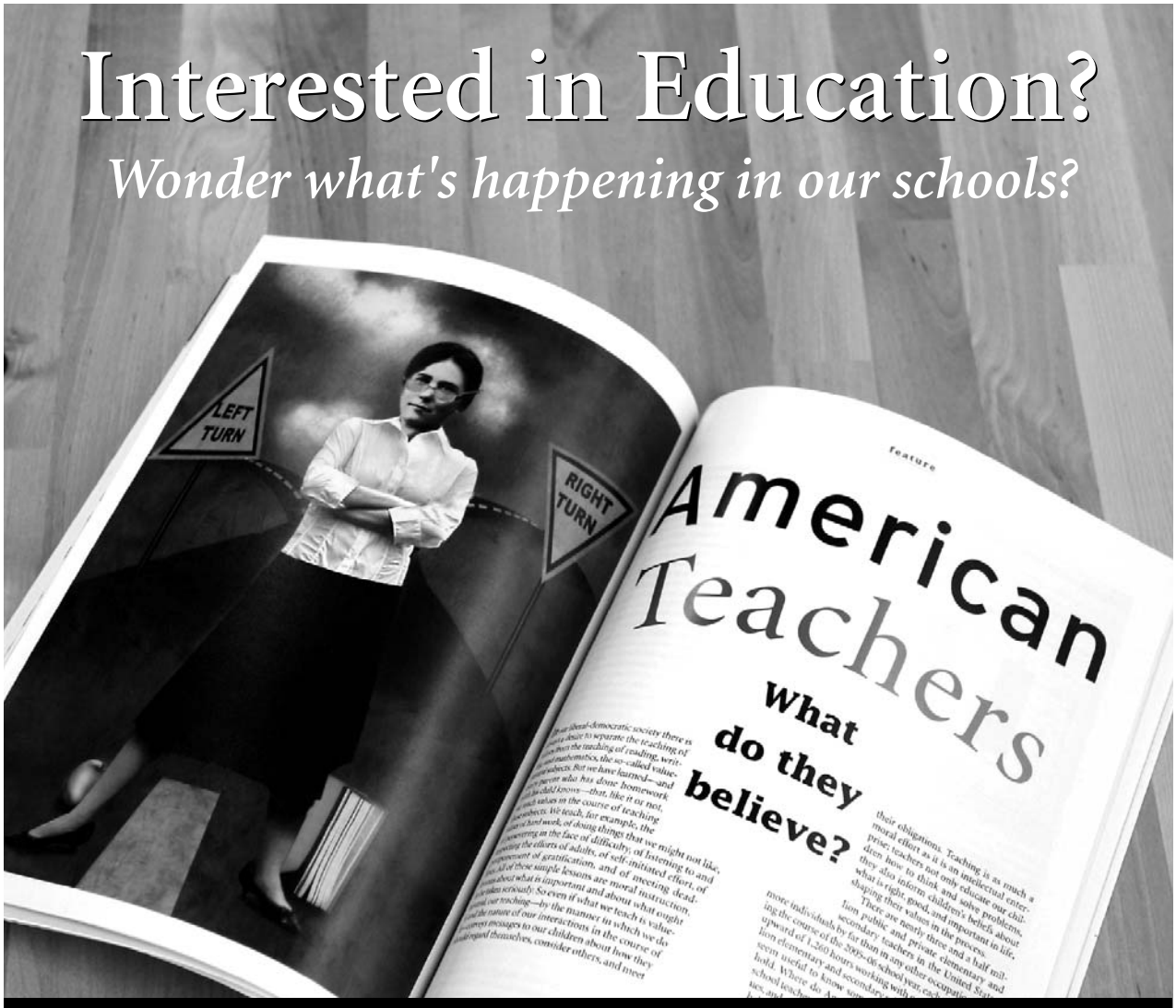

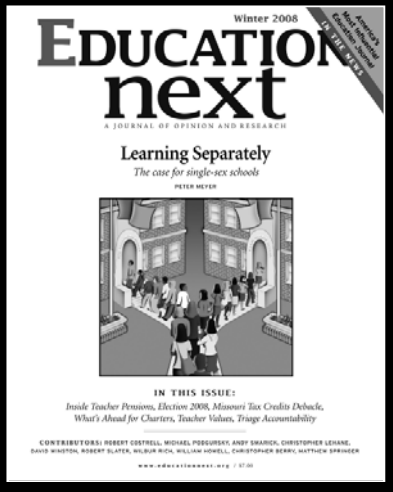

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