UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

GALE FORCE ROOFING AND RESTORATION, LLC,

Plaintiff,

v. Case No.: 21-cv-00246

JULIE I. BROWN, in her official capacity as Secretary of the Florida Department of Business and Professional Regulation,

Defendant.
_____/

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Gale Force Roofing and Restoration, LLC ("Gale Force"), by and through its undersigned attorneys, bring this Complaint for declaratory and injunctive relief against Julie I. Brown, in her official capacity as Secretary of the Florida Department of Business and Professional Regulation, to enjoin the enforcement of Chapter 2021-77, Laws of Florida (hereinafter, the "Act"), which infringes on the right to freedom of speech protected by the First Amendment to the United States Constitution. Because the Act violates Plaintiff's constitutional rights, it should be enjoined before it takes effect on July 1, 2021.

Overview

1. Much like spring follows winter, each year the Legislature gathers in Tallahassee and each year insurance companies give speeches to lawmakers lamenting the rise in insurance premiums (they collect) and demand a fix to the "insurance crisis" *du jour* by tinkering with any number of provisions in Florida's Insurance Code.

2. For instance, in 2010 and 2011, insurance companies complained of "Florida's Sinkhole Claims Crisis" and gave alarming speeches complaining that sinkhole claims "could threaten the solvency of domestic insurers and have a significant destabilizing effect on an already fragile market."[1] The target of that legislative effort was public adjusters who were accused of "gaming the system" by helping homeowners file claims. The result – the Florida Legislature overhauled the laws related to filing sinkhole claims – partly removing the requirement that insurance companies pay for sinkhole-related damage

[1] Committee on Banking and Insurance, Florida Senate, *Interim Report 2011-104*, December 2010, https://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-104bi.pdf (last accessed June 14, 2021).

to insured property. Of course, this statutory change allowed insurers to collect premiums but not pay for losses to insured property.

3. According to experts, the ***real*** reason insurance costs have continued to rise since 2010 has nothing to do with attorneys, contractors, public adjusters, or "gaming the system." In reality, after the 2008 stock market crash, financial markets sought a safe haven for investing billions of dollars of global wealth and it found such a place in insurance products – causing re-insurance prices to plummet and remain artificially low.[2] In addition, a named hurricane did not hit Florida from 2006 through 2015 – a previously unknown feat. Florida's insurance market was well in the black – receiving record premiums as new homeowners flocked to Florida, paying artificially low reinsurance rates, and saving billions of dollars with Mother Nature avoiding Florida. But that all changed as the stock market continued to rise to stratospheric levels raising reinsurance costs by double-digit margins. Mother Nature has also not been so kind leaving Florida reeling from multiple named storms each of the past years.

[2] James Tarmy, *Florida Braces for a Storm of Homeowner Insurance Rate Hikes: Climate and financial markets combined to keep policies artificially cheap for years*, Bloomberg, https://www.bloomberg.com/news/articles/2020-09-24/florida-homeowners-insurance-premiums-are-set-to-become-very-expensive (last accessed June 14, 2021)

4. As insurers continued to see their profits shrink, they needed a boogeyman to bear the blame. Florida's insurance companies lobbied the Florida Legislature decrying the "insurance crisis" allegedly created by contractors that repair storm-damaged homes in exchange for receiving payment owed under residential property insurance policies. During the 2019 Legislative Session, Representative Rommel introduced HB 7065 targeting these contractors telling Floridians passage of this bill was the ***only*** thing that would prevent insurance premiums from doubling in less than five years. It passed. Governor DeSantis signed HB 7065 into law (codified at § 627.7152 and § 627.7153), and it introduced an entirely new statutory framework for companies, like Plaintiff, that perform remedial work in Florida to obtain payment from insurance companies. But no sooner had the ink dried on that legislation when Florida's insurance industry came back to the Legislature asking to change the rules again. Ignoring the fact premiums never went down, insurers again begged the Legislature to pass more legislation with the familiar looming threat – or else homeowner's premiums will continue to skyrocket.

Florida's Unconstitutional Act

5. This time the Florida Legislature decided to prohibit a

contractor from "contacting" a "residential property owner" in a manner that "encourages," "instructs," or "induces" that homeowner to contact the contractor "for the purpose of making an insurance claim for roof damage." Act, § 1. For each violation, a contractor may have its license suspended, revoked, and potentially receive a fine up to $10,000. For example, if a contractor sends out a mailer to 100 homes in an area that has been devastated by a hurricane offering its services in exchange for the payment of insurance proceeds owed on those homeowner's residential insurance policies, that contactor would face licensure suspension/revocation and fines up to $1,000,000 – a crippling blow. On March 29, 2021, the Florida Legislature passed the Act and Governor DeSantis signed it into law on June 11, 2021.[3] The Act is due to go into effect on July 1, 2021.

6. Public statements by state legislators and government officials make clear the Act was motivated by hostility toward contractors based on a (at best) flawed understanding of the complex financial picture surrounding insurance premiums in Florida. Florida's Insurance Commissioner, David Altmaier, bemoaned "Florida has become a beacon

[3] Press Release, *Governor DeSantis Signs Legislation to Continue Insurance Reform in Florida*, https://www.flgov.com/2021/06/11/governor-desantis-signs-legislation-to-continue-insurance-reform-in-florida/ (last accessed June 11, 2021).

for companies who canvass neighborhoods creating roofing claims that would not otherwise be filed." *Id.* (statement of David Altmaier) and Rep. Rommel boasted the Act will stop "the abusive practices of these few bad actors, where they encourage homeowners to file insurance claims or even lawsuits." *Id.* (statement of Rep. Rommel).

7. These statements are very telling in what they ***don't*** say. These government leaders didn't say the Act will prevent fraudulent claims from being filed. Nor did they say the roofing claims being filed are not covered by the respective insurance policies. Indeed, they essentially admit the claims are covered claims, but the insurers were hoping most homeowners would not get up on their roof and see the damage and consequently never file a claim – despite paying policy premiums for coverage for their roofs. Rep. Rommel went so far as to hope the Act would have a chilling effect and prevent homeowners from exercising their constitutional right to seek redress in the court system. *BE&K Constr. Co. v. NLRB*, 536 U.S. 516 (2002) (recognizing that filing a lawsuit is protected First Amendment activity) (citations omitted).

8. These unprecedented restrictions are a blatant attack on Plaintiff's First Amendment rights seeking to make it unlawful to provide

accurate, truthful information to customers regarding the availability of insurance coverage to repair storm damaged property. To be sure, the Act does not just prohibit encouraging a homeowner to file a ***false*** claim – something the state of Florida undoubtedly could (and does) prohibit. It prohibits any communication that "encourages," "instructs," or "induces" a homeowner to contact a contractor or public adjuster "for the purpose of making an insurance claim for roof damage." Act, § 1. There is no doubt the state of Florida lacks any legitimate interest—much less a compelling one—in its profound infringement on Plaintiff's fundamental constitutional rights.

9. The Act is a frontal assault on the First Amendment and an extraordinary intervention by the government that would be unthinkable in any other context. Consider the same type of prohibition in other industries. There would be widespread outrage if it prohibited doctors from "encouraging," "instructing," or "inducing" a patient from coming in for a checkup – since that checkup would result in a claim for health insurance benefits paid to the doctor. But that's precisely what the Act does. It prohibits contractors from assisting homeowners in maintaining the well-being of their home, which for many Floridians is their most

significant asset.

10. The Act provides, in pertinent part:

> Section 1. Section 489.147, Florida Statutes, is created to read:
>
> 489.147 Prohibited property insurance practices.—
>
> (1) As used in this section, the term:
>
> (a) "Prohibited advertisement" means any written or electronic communication by a contractor that encourages, instructs, or induces a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage. The term includes, but is not limited to, door hangers, business cards, magnets, flyers, pamphlets, and e-mails.
>
> (b) "Soliciting" means contacting:
>
> 1. In person;
>
> 2. By electronic means, including, but not limited to, e-mail, telephone, and any other real-time communication directed to a specific person; or
>
> 3. By delivery to a specific person.
>
> (2) A contractor may not directly or indirectly engage in any of the following practices:
>
> (a) Soliciting a residential property owner by means of a prohibited advertisement.

Act, § 1.

11. The Act also goes beyond just regulating contractors licensed under Chapter 489. The Act creates a catch-all provision that penalizes ***anyone*** that "encourages," "instructs," or "induces" a homeowner to contact a contractor or public adjuster "for the purpose of making an

insurance claim for roof damage" and any person that does so is "guilty of unlicensed contracting and is subject to the penalties set forth in s. 489.13." Act, § 1; see also § 489.13(3),(7) (authorizing criminal penalties against an unlicensed contractor and fines up to $10,000 per violation). This provision would criminalize an attorney that answers a call from a client that was recently impacted by a hurricane if that attorney advised the homeowner to contact a public adjuster or a contractor to make an insurance claim and get the damage repaired. That simple advice would be a violation of the Act and subject the attorney to criminal or civil penalties, including fines up to $10,000.

12. The Act is an unconscionable attack on the right for homeowners to receive truthful information about how to repair the damage they may have to their property. In reality, it is a thinly-veiled attempt to prevent anyone from assisting homeowners from making valid insurance claims to repair their homes.

13. For all these reasons, and as described further below, Plaintiff seeks (1) an order declaring Section 1 of the Act unconstitutional on its face and (2) a preliminary and permanent injunction enjoining its enforcement.

Jurisdiction

14. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claim arises under the First Amendment to the U.S. Constitution.

15. This Court has authority to grant relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 42 U.S.C. § 1983. In addition, this Court has authority to issue injunctive relief under the All Writs Act. 28 U.S.C. § 1651.

16. This Court has jurisdiction over the Defendant in her official capacity as Plaintiff is seeking declaratory and injunctive relief. *Ex parte Young*, 209 U.S. 123 (1908)

17. There is an actual controversy of sufficient immediacy and concreteness relating to the legal rights and duties of Plaintiff to warrant relief under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201. The harm to Plaintiff as a direct result of the threatened actions of Defendant is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment and injunctive relief.

18. When the Act becomes law (July 1, 2021), Plaintiff will be subject to immediate liability and potential enforcement of this Act given

its primary business activity is assisting Florida homeowners who are recovering from the impact of Florida's harsh and unpredictable weather. As a part of this, Plaintiff regularly performs remedial and repair work in exchange for insurance benefits owed to homeowners by their residential insurance policies.

19. Plaintiff regularly encourages homeowners to contact Plaintiff to allow Plaintiff to inspect their property (primarily the roof system) and determine the nature and extent of storm damage the property may have suffered. Plaintiff will then truthfully convey to homeowners the nature and extent of the damage (if such is found) and encourage homeowners to contact their insurance company to make a claim under their residential insurance policy. The Act will necessarily make it unlawful for Plaintiff to continue to provide its services to its customers helping homeowners quickly recover from the life-interrupting damage Mother Nature brings to Florida.

20. Plaintiff will face immediate, devastating liability (possible loss of its contracting license as well as up to a $10,000 fine per violation) should it continue its current business practices and this Court not enjoin enforcement of the Act. Without an injunction of the Act, Plaintiff will be

forced to cease its regular business activities and suffer having its First Amendment rights chilled.

21. Plaintiff's fear of being targeted with enforcement actions is well-founded as the Act clearly applies and was intended to target contractors (like Plaintiff) that are licensed under Chapter 489. The statements of Governor DeSantis and the law's sponsors demonstrate that the state of Florida plans to immediately enforce the Act, and its unconstitutional restrictions, against Plaintiff. Plaintiff has suffered and will continue to suffer irreparable harm as its First Amendment rights have been violated and will continue to be violated until the Court invalidates the Act and enjoins its unlawful pronouncements. Plaintiff lacks an adequate remedy at law for the deprivation of its rights. Injunctive relief would serve the public interest by promoting free speech and the defending the rights protected by the First Amendment to the U.S. Constitution.

Venue

22. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1)-(2). Defendant is considered to reside in the Northern District of Florida because this is where she performs her official duties. 28 U.S.C. §

1391(b)(1).

Parties

23. Plaintiff is a is a Florida limited liability company with its principal place of business in Hillsborough County, Florida. Plaintiff is a construction company that builds and repairs property, including residential property damaged by natural disasters in the state of Florida. Plaintiff is qualified as a roofing contractor in the state of Florida by the Florida Department of Business and Professional Regulation (License No.: CCC1332874).

24. Defendant, Julie I. Brown, in her official capacity as Secretary of the Florida Department of Business and Professional Regulation, is the individual charged with enforcing Section 1 of the Act against Plaintiff. Section 1 of the Act charges the Florida Department of Business and Professional Regulation (the "Department") with enforcement of its prohibitions and instructs it to impose the penalties set forth in §§ 489.127 and 489.13. The Department has jurisdiction to begin disciplinary proceedings against contractors. § 455.225, Fla. Stat.

25. The Defendant is charged with enforcing the provisions of the Act challenged by this action. The Defendant (or her designee) has the

authority under the Act to investigate, fine, and otherwise penalize Plaintiff for exercising its constitutional rights.

26. The Defendant is statutorily required to act (and will likely act if not enjoined) under color of state law to impose restrictions on Plaintiff's constitutional rights.

27. Plaintiff sues the Defendant here in her official capacity to prevent imminent violations of Plaintiff's constitutional rights.

28. Plaintiff has retained the undersigned counsel to represent it in this action and are obligated to pay a reasonable fee for its services.

29. All conditions precedent to the maintenance of the causes of action alleged herein, if any, have occurred, been waived, or are otherwise satisfied.

COUNT I
(42 U.S.C. § 1983)
Violation of First Amendment Rights

30. Plaintiff incorporates by reference the allegations in paragraphs 1 to 29 above as if fully set forth herein.

31. The Act is a content-based restriction on Plaintiff's speech entitled to full First Amendment protection, is not supported by a compelling governmental interest, and is not narrowly tailored to achieve any such interest.

32. Because the Act imposes content-based restrictions, it is subject to strict scrutiny and is presumptively unconstitutional. The state of Florida has no legitimate (much less compelling) governmental interest that supports the Act. But, even if it did have compelling governmental interests, since the provisions are not narrowly tailored, they would not survive strict scrutiny.

33. The First Amendment, which is applicable to the States through the Fourteenth Amendment, prohibits laws "abridging the freedom of speech." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226 (2015). A government entity "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Id.* (*citing Police Dept. of Chicago v. Mosley,* 408 U.S. 92, 95 (1972) (internal quotations omitted). Laws that attempt to regulate speech based on its communicative content are presumptively unconstitutional and may be justified only if the government can establish the laws are narrowly tailored to serve compelling state interests. *Id.*

34. Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *Reed*, 135 S. Ct. at 2227. In evaluating the

constitutionality of governmental regulation of speech, a court must consider whether the law "on its face" draws distinctions based on the message a conveyed. *Id.*

35. The Act prohibits anyone from "encourage[ing]," "instruct[ing]," or "induc[ing]" a homeowner to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage. The Act clearly only applies to certain speech: speech regarding filing a roof insurance claim. The Act also applies across the board to any individual who engages in such speech – broadly sweeping up a vast amount of protected speech (i.e. a lawyer advising a client to contact a contractor or public adjuster to make a claim for roof damage).

36. The Act (specifically, Section 1) is a First Amendment violation.

WHEREFORE Plaintiff demands judgment against Defendant for declaratory relief that Section 1 of the Act is facially unconstitutional under the First Amendment to the United States Constitution; temporary and permanent injunctive relief prohibiting Defendant from enforcing Section 1 of the Act; costs incurred in bringing this action; attorneys' fees pursuant to 42 U.S.C. § 1988(b), and all other relief that is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 21, 2021, a true and correct copy of the foregoing was filed with the Clerk of Court using the CM/ECF portal and will be served on the Defendant via service of process. A copy will also be provided to the Attorney General of the state of Florida pursuant to § 86.091, Florida Statutes.

WEBER, CRABB & WEIN, P.A.

/s/ Jeremy D. Bailie

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