IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

RESTORATION ASSOCIATION OF FLORIDA, INC., et al.,

Plaintiffs,

v. **Case No. 4:21-cv-263-AW-MAF**

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

Defendants.
_____/

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION AND GRANTING PARTIAL MOTION TO DISMISS

Plaintiffs challenge parts of Florida Statute § 489.147, titled "Prohibited Property Insurance Practices." They seek an injunction permanently enjoining enforcement of the challenged provisions and a declaration that they are invalid. ECF No. 26 (FAC) at 22. In the meantime, Plaintiffs seek a preliminary injunction, ECF No. 5, and Defendants have moved to dismiss as to one statutory provision (§ 489.147(4)(a)), ECF No. 28. Having carefully considered the parties' written and oral arguments, I now grant the motion to dismiss and deny the preliminary injunction motion.

I.

I will first address the motion to dismiss, which relates to § 489.147(4)(a). Under that provision, "[t]he acts of any person on behalf of a contractor, including, but not limited to, the acts of a compensated employee or a nonemployee who is compensated for soliciting, shall be considered the actions of the contractor." *Id.* In Plaintiffs' view, "imputing the actions of third parties who are compensated for soliciting business for the contractor to the contractor constitutes an irrebuttable presumption in the Act and is forbidden by the Fourteenth Amendment's Due Process Clause." FAC ¶ 86. Plaintiffs further contend this provision violates the Contract Clause. *Id.* ¶ 87.

Defendants maintain that the provision does not create an irrebuttable presumption and therefore presents no Due Process problem. ECF No. 20 at 29-30. As to the Contract Clause, Defendants note that Plaintiffs have alleged nothing about any particular contract or how it might be impaired. *See* ECF No. 28 at 8. I conclude that I need not (and cannot) address the merits of this claim because Plaintiffs have not alleged facts to support standing.

Plaintiffs must show standing as to each claim. Their burden depends on the stage of litigation, and at this motion-to-dismiss stage, they must allege facts that plausibly show standing. *See Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 996 (11th Cir. 2020). "[I]t is not enough that a complaint sets forth facts from which

we could *imagine* an injury sufficient to satisfy Article III's standing requirements, since we should not speculate concerning the existence of standing." *Aaron Priv. Clinic Mgmt. LLC v. Berry*, 912 F.3d 1330, 1336 (11th Cir. 2019) (cleaned up). Here, Plaintiffs have not alleged sufficient facts showing an injury in fact—one of the essential elements of standing. *Trichell*, 964 F.3d at 996 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)).[1]

Plaintiffs correctly note that they need not expose themselves to liability or penalties before suing. ECF No. 34 at 5. But a mere concern about the possibility of disciplinary action is not enough. "[I]f a plaintiff seeks *prospective* relief, such as a declaratory judgment, he must allege facts from which it appears there is a substantial likelihood that he will suffer injury in the future. And that future injury must be real, immediate, and definite." *Mack v. USAA Cas. Ins.*, 994 F.3d 1353, 1357 (11th Cir. 2021) (marks and citation omitted).

[1] Defendants argue that "Plaintiffs allege no facts in support of their [Due Process] claim" and "fail to identify any contractual relationship" for their Contract Clause claim. ECF No. 28 at 3, 8. This relates to standing, even if not explicitly framed that way. But regardless, "federal courts always have an obligation to examine *sua sponte* their jurisdiction before reaching the merits of any claim." *Kelly v. Harris*, 331 F.3d 817, 819 (11th Cir. 2003); *see also Lewis v. Governor of Ala.*, 944 F.3d 1287, 1296 (11th Cir. 2019) (en banc) ("Because standing to sue implicates jurisdiction, a court must satisfy itself that the plaintiff has standing before proceeding to consider the merits of her claim, no matter how weighty or interesting.").

Plaintiffs' challenge "only concerns actions of third parties who receive compensation, not employees," so it is not a facial challenge. ECF No. 34 at 4; *see also id.* at 3 n.1 ("[T]he fact that Plaintiffs have only challenged the provision as applied to third-parties over which contractors have no control also distinguishes this challenge from a facial one."). Regardless, Plaintiffs do not allege that the provision is invalid in all applications, as required for a facial challenge. *See GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1261 (11th Cir. 2012) ("Plaintiffs must show that the Carry Law is unconstitutional in all applications to prevail in their facial challenge."); *see also* Hrg. Trans. at 27:21-28:7 (no objection to (4)(a) as applied to employees).

As to their as-applied Due Process challenge, Plaintiffs have not alleged concrete facts to support standing. Their hypothetical injury appears to hinge on their alleged inability to prove—in some hypothetical enforcement action—that a particular third party was not under their "direction or control," or that there was no "knowing ratification of a violation by the contractor." ECF No. 34 at 7. But to find an injury, I would need to imagine factual circumstances where Defendants would apply provision (4)(a) in an unconstitutional way. There are simply no concrete facts here to declare how the statute would operate as to those facts.[2]

[2] The lack of concreteness would also make it impossible to craft a declaratory judgment with any specificity. A declaratory judgment requires "a real and

The same goes for the Contract Clause claim. Plaintiffs cite "uncertain[ty] about how Defendants will interpret the Imputation Provision." *Id.* at 9. But they seem to concede that the provision likely won't be applied in a manner that violates the Contract Clause. *See id.* ("While Plaintiffs may believe that under the constitutional-avoidance canon of statutory interpretation, a contractual approach to receiving assurances that all state and local laws have been observed by the third party should be sufficient to prevent the assessment of sanctions, they cannot be certain of that."). Regardless, they have not alleged facts showing that any contract has been (or will be) impaired, so they have again not alleged injury.

Last, Plaintiffs say Defendants misunderstand the nature of declaratory judgment actions. *Id.* at 4. But standing is essential whether the relief sought is a declaratory judgment or something else. *DiMaio v. Democratic Nat'l Comm.*, 520 F.3d 1299, 1301 (11th Cir. 2008) ("That a plaintiff seeks relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, does not relieve him of the burden of satisfying the prerequisites for standing, since a declaratory judgment may only be issued in the case of an actual controversy." (marks and citation omitted)). Plaintiffs may

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substantial controversy admitting of specific relief *through a decree of a conclusive character*, as distinguished from an opinion advising what the law would be upon a hypothetical set of facts." *Stevens v. Osuna*, 877 F.3d 1293, 1312 (11th Cir. 2017) (quoting *Aetna Life Ins. v. Haworth*, 300 U.S. 227, 241 (1937) (emphasis added)).

reasonably want answers, but "federal courts do not issue advisory opinions." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021).

Defendants' motion to dismiss (ECF No. 28) will be granted. To the extent they challenge subsection (4)(a), Plaintiffs' claims will be dismissed without prejudice for lack of standing. Plaintiffs may amend to allege additional facts.

II.

I next turn to Plaintiffs' preliminary injunction motion.[3] A preliminary injunction "is an extraordinary remedy" and requires a substantial showing. *Bloedorn v. Grube*, 631 F.3d 1218, 1229 (11th Cir. 2011). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). And he must "clearly establish[] the burden of persuasion as to each of the four prerequisites." *See Siegel*

[3] The preliminary injunction aspect of this order only relates to §§ 489.147(2)(b), (2)(c), (2)(d), (4)(a) and (5). Plaintiffs challenge additional provisions related to "prohibited advertisements," *see* ECF No. 5 at 9, but this court enjoined enforcement of these provisions in another case, *see Gale Force Roofing & Restoration, LLC v. Brown*, No. 4:21-cv-00246-MW-MAF, ECF No. 28 (N.D. Fla. July 11, 2021) (Walker, C.J.). As I indicated earlier, "the court will not address (at this time) the challenges to the provisions already preliminarily enjoined." ECF No. 13. This order also doesn't address Plaintiffs' Dormant Commerce Clause arguments, which Plaintiffs have explained do not relate to these provisions. *See* ECF No. 22 at 4 n.1; *see also* Hrg. Trans. at 4:6-15. Last, because the claim as to (4)(a) is dismissed (see above), preliminary injunctive relief must be denied as to it.

v. LePore, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc) (marks and citation omitted).

Both sides disclaimed the need for any evidentiary hearing. Hrg. Trans. at 3:12-4:1.[4] So the evidentiary record comprises Plaintiffs' affidavits and the related webpage. ECF Nos. 5-1, 5-2, 5-3. That record is insufficient to sustain Plaintiffs' request for preliminary injunctive relief as to any of the challenged provisions, each of which I will address in turn.

Subsection 2(b)

This provision prohibits contractors from directly or indirectly:

> (b) Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:
>
> > 1. Allowing the contractor to conduct an inspection of the residential property owner's roof; or
> >
> > 2. Making an insurance claim for damage to the residential property owner's roof.

Fla. Stat. § 489.147(2)(b). The challenge to this provision cannot succeed because Plaintiffs have not shown it is likely that they have standing.

"[T]he 'merits' on which plaintiff must show a likelihood of success encompass not only substantive theories but also establishment of jurisdiction." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015) (quoting

[4] Citations are to the rough transcript from the November 22, 2021 hearing.

Obama v. Klayman, 800 F.3d 559, 565 (D.C. Cir. 2015) (Op. of Williams, J.)). So a plaintiff "who fails to show a 'substantial likelihood' of standing is not entitled to a preliminary injunction." *Id.* (marks and citation omitted). That is the case here.

Standing requires (among other things) an injury in fact that is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560-61 (marks omitted). Here, Plaintiffs' affidavits vaguely assert they "do not want to be prevented" from engaging in conduct (2)(b) proscribes. ECF No. 5-2 ¶ 25.[5] They further state—again in vague terms—that they "have and wish to continue to offer free roof inspections, rebates or discounts on large jobs, or waivers of deductibles as part of [their] marketing." *Id.* ¶ 26.

It is true that the "injury requirement is most loosely applied" in the First Amendment context. *Dermer v. Miami-Dade Cnty.*, 599 F.3d 1217, 1220 (11th Cir. 2010). But a plaintiff still must allege he "has an unambiguous intention at a reasonably foreseeable time to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute or rule, *and* that there is a credible threat of prosecution." *Bloedorn*, 631 F.3d at 1228. Plaintiffs have not made this showing.

[5] One affidavit is from the roofing company plaintiff; the other is from the association plaintiff. An association may have standing based on their members' injuries. *See Sierra Club v. Morton*, 405 U.S. 727, 739 (1972).

First, Plaintiffs' assertions about "not want[ing] to be prevented" fall short. Although concrete allegations of self-censorship tied to a credible threat of enforcement satisfy the injury-in-fact requirement, a "mere assertion of a chill is insufficient." *Dermer*, 599 F.3d at 1221; *see also Laird v. Tatum*, 408 U.S. 1, 13-14 (1972) ("Allegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm . . . ."). This "not want[ing] to be prevented" is at best a "mere assertion of a chill." Plaintiffs offer no "detail, such as when, where, or how" they intend to engage in prohibited conduct. *Dermer*, 599 F.3d at 1221. Indeed, they include no assertion of Plaintiffs' intention or concrete desire to engage in any conduct or speech at all.[6] This is a significant evidentiary failure.

Next, Plaintiffs' affidavit saying they "have and wish to continue to offer free roof inspections, rebates or discounts on large jobs, or waivers of deductibles as part

[6] For similar reasons, it is not clear that Plaintiffs' as-applied challenge is ripe for review. *See Dermer*, 599 F.3d at 1221 ("[Plaintiff's] allegations contain no factual specificity and, therefore, do not demonstrate a credible threat of prosecution. When a plaintiff lacks standing for prospective relief because the injury in fact requirement is not satisfied, the claim is usually not ripe because the factual predicate for the injury has not fully materialized." (marks and citation omitted)). In other words, the controversy between the parties is too hypothetical and abstract. And this is not because Plaintiffs haven't yet been disciplined. Rather, it is because they have not set out in definite and concrete terms what they intend to do or say but have avoided because of the law. This problem is clear from the parties' briefs which, without these critical factual underpinnings, debate whether vague hypotheticals would violate § 489.147.

of [their] marketing" (ECF No. 5-2 ¶ 26) is likewise insufficient. It too lacks specificity and fails to "illuminate[] the specifics of [plaintiffs'] claimed injury." *Dermer*, 599 F.3d at 1221. Regardless, most of this vaguely outlined conduct is not even arguably proscribed by the challenged provision. The statute prohibits offering a "thing of value *in exchange for*:" (1) "inspection of the . . . roof" or (2) "[m]aking an insurance claim for damage to the . . . roof." Fla. Stat. § 489.147(2)(b) (emphasis added). Yet none of the referenced offers are alleged to be in exchange for anything. And the allegation pertaining to discounts and waivers of deductibles is not tied to roof inspections or roof-based insurance claims. The provision does not prohibit all discounts and waivers of deductibles, only those relating to roof inspections or roof-based insurance claims. Finally, as to the free roof inspection, the provision cannot reasonably be read to prohibit offering a roof inspection in exchange for permission to conduct the roof inspection. That is not a logical or natural reading of the statute, and even if it were, that is not the way Defendants—those responsible for enforcing the provision—read it. They have represented that the provision does not prohibit free roof inspections or general offers of a discount. *See* ECF No. 20 at 16-17. Under these circumstances, Plaintiffs cannot show a credible threat of enforcement.

In sum, Plaintiffs have not demonstrated a definite and concrete injury, and they have not demonstrated "an actual and well-founded fear that the law will be enforced against [them]." *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 393

(1988). They have therefore not shown a likelihood of establishing standing, which means they have not shown a likelihood of success on the merits. And without showing a likelihood of success on the merits, they are not entitled to a preliminary injunction. I therefore need not consider their substantive theories or the other preliminary injunction factors. *See Bloedorn*, 631 F.3d at 1229 ("If [plaintiff] is unable to show a substantial likelihood of success on the merits, we need not consider the other requirements.").[7]

Subsection 5

> (5) A contractor may not execute a contract with a residential property owner to repair or replace a roof without including a notice that the contractor may not engage in the practices set forth in paragraph (2)(b). If the contractor fails to include such notice, the residential property owner may void the contract within 10 days after executing it.

Fla. Stat. § 489.147(5).

Because Plaintiffs have not shown a likelihood of success on the merits for subsection (2)(b), they have not shown a likelihood of success on the merits as to subsection (5). Plaintiffs do not argue that this provision addresses anything other than commercial speech, so without demonstrating that (2)(b) violates their First

[7] "[A]n inability to establish a substantial likelihood of standing requires denial of the motion for preliminary injunction, not dismissal of the case." *Food & Water Watch,* 808 F.3d at 913. I have separately concluded Plaintiffs alleged insufficient facts to show standing as to subsection 4(a). It is premature to make that determination as to the other claims, but as noted below, I am authorizing repleading with greater specificity. If they replead, Plaintiffs should ensure sufficient factual allegations to establish standing.

Amendment rights, they are unlikely to demonstrate that requiring this "purely factual and uncontroversial information" about what (2)(b) prohibits would violate the First Amendment. *See Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626, 651 (1985) ("[The] requirement that appellant include in his advertising purely factual and uncontroversial information about the terms under which his services will be available" did not violate the appellant's First Amendment rights in part because his "constitutionally protected interest in *not* providing any particular factual information in his advertising [was] minimal."). Relatedly, if Plaintiffs have not shown any concrete plans to violate subsection (2)(b)—regardless of its validity—they have not shown any harm from subsection (5). At any rate, Plaintiffs acknowledged at the hearing that their challenge to subsection (5) was contingent on succeeding as to subsection (2)(b), which they have not done. Hrg. Trans. at 26:17-21.

Subsection 2(d)

> A contractor may not directly or indirectly engage in . . . [i]nterpreting policy provisions or advising an insured regarding coverages or duties under the insured's property insurance policy or adjusting a property insurance claim on behalf of the insured, unless the contractor holds a license as a public adjuster pursuant to part VI of chapter 626.

Plaintiffs refined the scope of this challenge at the preliminary injunction hearing. They do not contend that it is invalid to the extent it precludes their "adjusting a property insurance claim on behalf of an insured"; they contend they do not do that

anyway. Hrg. Trans. at 47:8-9. They do, however, contend that they wish to "advis[e] insured[s]" about their policies, in ways the statute might preclude. *Id.* at 46:8-47:4.

To be sure, the statute precludes a broad range of "advice," and Defendants acknowledged at the hearing that it implicates First Amendment freedoms. *Id.* at 36:1-2. But as with other provisions, Plaintiffs have not shown a likelihood that they have standing to challenge it.

First, Plaintiffs chiefly offer only general statements of what they do (or will do). They submitted an affidavit saying that Plaintiff Apex Roofing's website tells customers that "part of handling roofing repairs and replacements is dealing with [the customer's] insurance company," and that if customers have questions, "we'll either have the answer for it or help you get an answer." ECF No. 5-2 ¶¶ 6, 8. Another affidavit, from Plaintiff Restoration Association of Florida's executive director, said some unspecified association members' advertisements "let[] homeowners know that their home's repairs may be covered by their homeowner insurance policy." ECF No. 5-1 ¶ 7.

It is unclear whether any of these advertising practices would run afoul of the statute. Plaintiffs certainly have not shown a credible threat that the statute will be enforced against these practices, so they have not shown any cognizable injury. And although not dispositive, I note that Defendants' counsel at the hearing was uncertain as to whether this provision prohibited *anything* not already prohibited by other

Florida statutes. Hrg. Trans. at 42:19-25. Its text suggests it does, but it is not clear that it would reach the types of advertising Plaintiffs describe.

Separate from advertising, Plaintiffs say that some unspecified association members "must often respond to questions posed by homeowners about their insurance policies." ECF No. 5-1 ¶ 10.

> In response, they will provide information about their experiences, what their legal counsel has opined or indicate when the question goes beyond their knowledge and experience, while offering to help the homeowner get an answer to the question. In such instances, RAF members will offer a disclaimer, voluntarily, that they are not lawyers or insurance representatives and cannot authoritatively speak to what the insurance policy states.

Id. This generality does not show that any member engages in any speech or conduct the statute clearly proscribes—much less that Defendants are likely to enforce against. Thus, Plaintiffs have not shown it likely that they have a concrete injury, meaning they have not shown it likely that they have standing.

Plaintiffs have not shown an injury for another, related reason. They have not shown that they are refraining from engaging in any of this conduct. In the First Amendment context, the pre-enforcement injury is self-censorship. *See Harrell v. Fla. Bar*, 608 F.3d 1241, 1254 (11th Cir. 2010) ("[A]n actual injury can exist when the plaintiff is chilled from exercising her right to free expression or forgoes expression in order to avoid enforcement consequences. In such an instance . . . the injury is self-censorship." (quoting *Pittman v. Cole*, 267 F.3d 1269, 1283 (11th Cir.

2001)); *see also Am. Booksellers Ass'n*, 484 U.S. at 393 ("[T]he alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution."). A plaintiff is harmed from the "chill" that comes from the threat of enforcement. Here, though, there is no hint in Plaintiffs' affidavits that they are actually chilled—that they are refraining from anything they would *not be* refraining from if the statute never passed. *Cf. ACLU v. Fla. Bar*, 999 F.2d 1486, 1492 (11th Cir. 1993) ("Because Schack's alleged injury is one of self-censorship, the likelihood of disciplinary action . . . is an important factor in determining whether he reasonably believed that he had to forego what he considered to be constitutionally protected speech in order to avoid disciplinary charges being brought against him."). This is not like *Wollschlaeger v. Governor, Florida*, which involved doctors who "engaged in self-censorship" so they could avoid discipline—doctors who, "[a]gainst their professional judgment, [were] no longer asking patients questions related to firearm ownership." 848 F.3d 1293, 1304 (11th Cir. 2017) (en banc). Here, it appears Plaintiffs are operating business as usual, albeit without the "certainty" they seek. But without showing self-censorship, they have not shown an injury that would produce standing.

The fact that Plaintiffs have not shown any "chill," any change in their conduct, also means they have not shown irreparable harm. This is a separate, independent reason to deny preliminary injunctive relief. "The loss of First

Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). But Plaintiffs have not shown they are giving up their First Amendment freedoms—either voluntarily or otherwise. They are instead proceeding as they did before, meaning they are not suffering any irreparable harm. At the least, Plaintiffs have not met their burden of *proving* irreparable harm. *Cf. Siegel*, 234 F.3d at 1177-78 (rejecting argument "that a violation of constitutional rights always constitutes irreparable harm" and explaining that "[t]he only areas of constitutional jurisprudence where we have said that an on-going violation may be presumed to cause irreparable injury involve the right of privacy and certain First Amendment claims *establishing an imminent likelihood that pure speech will be chilled or prevented altogether*" (emphasis added)); *cf. also Winter*, 555 U.S. at 22 ("Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.").

Subsection 2(c)

> A contractor may not directly or indirectly engage in . . . [o]ffering, delivering, receiving, or accepting any compensation, inducement, or reward, for the referral of any services for which property insurance proceeds are payable. Payment by the residential property owner or insurance company to a contractor for roofing services rendered does not constitute compensation for a referral.

Fla. Stat. § 489.147(2)(c).

The parties dispute whether this provision regulates conduct or speech, but either way, Plaintiffs have not shown an imminent injury in fact.

The Plaintiffs allege that "Apex Roofing receives some of its business through referrals and has paid for referrals in the past and would like to continue that practice." FAC ¶ 39. Additionally, Apex Roofing alleges that "[e]ach year, it performs approximately 3,000 unique jobs for which there is coverage through insurance carriers." *Id.* ¶ 40. But Apex Roofing does not allege that it has paid for referrals in the past where property insurance proceeds were payable or that it would like to continue that practice in the future.

Similarly, Plaintiffs offer arguments about the use of referral websites violating provision (2)(c) in their Motion. *See, e.g.*, ECF No. 5 at 23. But, as Defendants point out (ECF No. 20 at 19), Plaintiffs offer no evidence (or even allegation) that they have paid any of these websites.[8] Therefore, Plaintiffs have not

[8] Defendants also argue that "the Act would not prohibit" payments for referral services on these websites. ECF No. 20 at 20. However, the parties appear to dispute how the websites function. For example, Defendants characterize this as "payments for advertising to the general public that in turn might generate leads" and argue that "a payment made for an advertisement does not constitute a payment for a referral." *Id.* In contrast, Plaintiffs state that "the sites actively provide contractors with a list of customers seeking roofing services for a fee" and inform contractors "whether insurance will cover the repair" when they are matched to a job. ECF No. 22 at 10-11. I need not resolve this dispute because Plaintiffs do not allege that their members have paid "referral fees" to these websites.

shown a likelihood of success on the merits because they have not shown any injury or any credible threat of enforcement.

III.

"A preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion as to each of the four prerequisites." *Siegel*, 234 F.3d at 1176 (cleaned up)). Plaintiffs here have not met that high burden.

It is now ORDERED:

1. Plaintiffs' Motion for Preliminary Injunction (ECF No. 5) is DENIED.

2. Defendants' Motion to Dismiss in Part (ECF No. 28) is GRANTED. Plaintiffs' claims are dismissed to the extent they challenge Florida Statutes § 489.147(4)(a).

3. Within 14 days, Plaintiffs may replead as to § 489.147(4)(a). They may also replead as to the other challenges to add factual specificity. If they do so, they should separate their claims to the different subsections into separate counts.

4. If Plaintiffs do not replead within 14 days, Defendants must answer as to the remaining claims no later than 21 days from today. If

Plaintiffs do replead, Defendants must respond to the new complaint within 14 days of its filing.

SO ORDERED on January 10, 2022.

s/ *Allen Winsor*
United States District Judge