

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

_____)	
RESTORATION ASSOCIATION OF FLORIDA,)	
INC.; and, APEX ROOFING &)	
RECONSTRUCTION, LLC,)	Case No. 21-cv-00263
)	
Plaintiffs,)	
v.)	
)	
JULIE I. BROWN, <i>in her official capacity as</i>)	
<i>Secretary of the Florida Department of</i>)	AMENDED COMPLAINT
<i>Business and Professional Regulation; and,</i>)	FOR DECLARATORY
DANIEL BIGGINS, <i>in his official capacity as</i>)	JUDGMENT AND
<i>executive director of the Construction</i>)	INJUNCTIVE
<i>Industry Licensing Board,</i>)	RELIEF
)	
Defendants.)	
_____)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
CHALLENGING CONSTITUTIONALITY OF STATE LAW**

Plaintiffs Restoration Association of Florida, Inc. and Apex Roofing & Reconstruction, by and through counsel, for their Amended Complaint against Defendants Julie I. Brown and Daniel Biggins, in their official capacities, as displayed in the case caption above (collectively, “Defendants”), state as follows:

SUMMARY OF THE CASE

1. Florida, due to its geographic position, significant coastal areas, sea-level elevations, and warm climate, is more prone than most states to the ravages of hurricanes and tropical storms that bring high winds, rains, and flood surges that generate significant property damage to its residents’ homes.

2. In 2018, for example, Hurricane Michael, a Category 5 hurricane with maximum sustained wind speeds of 161 mph and a 15-foot storm surge,¹ struck Florida and resulted in a catastrophic loss of life and property damage.²

3. In recent years, Florida has experienced an increase in extreme weather events that are a threat to residential properties.³

4. Studies suggest that the types of storms Florida has experienced will continue to become “more frequent and intense.”⁴

5. Home repair after a storm is a high priority, because damage to a home, which may be the residents’ largest lifetime investments, can grow worse with neglect affecting the building’s structural integrity, permitting the development and growth of dangerous, health-threatening mold, carcinogens, or spores, and increasing the vulnerability of the structure to milder storms.

6. Homeowners insurance is designed to “provide[] financial protection against loss due to disasters, theft and accidents” and “pays to repair or rebuild your home if it is damaged or destroyed by fire, hurricane, hail, lightning or other

¹ NOAA National Centers for Environmental Information, “Billion-Dollar Weather and Climate Disasters: Events,” available at <https://www.ncdc.noaa.gov/billions/events>.

² NOAA National Weather Service, “Catastrophic Hurricane Michael Strikes Florida Panhandle October 10, 2018,” available at <https://www.weather.gov/tae/HurricaneMichael2018>.

³ The Climate Reality Project, “Climate Change and Florida: What You Need to Know” (Oct. 16, 2018), available at <https://www.climaterealityproject.org/blog/how-climate-change-affecting-florida>.

⁴ Environmental Protection Agency, “Climate Change Indicators: Weather and Climate,” available at <https://www.epa.gov/climate-indicators/weather-climate>.

disasters listed in your policy.”⁵ Homeowners are advised to “[p]urchase enough coverage to rebuild your home.”⁶

7. After a home is damaged, homeowners are often advised to document the damage as soon as possible, which is especially important if the homeowners insurance only covers certain types of damage.

8. However, the Florida Department of Financial Services advises consumers to first “obtain[] a repair estimate from a licensed contractor” to determine if “the damage exceeds your deductible by an amount that you believe to be sufficient to justify filing a claim with your insurance company, [and] then do so as soon as possible.”⁷

9. Once homeowners contact their insurers to begin the claims-making process, the insurer will assign a claims representative to work with the homeowner.

10. Still, particularly if a storm has damaged a large number of homes, inspections by a claims representative or other person representing the insurer can be delayed.

11. Storms can remove shingles from roofs, damage walls or siding, and break windows.

⁵ Insurance Information Institute, “What is covered by standard homeowners insurance?,” available at <https://www.iii.org/article/what-covered-standard-homeowners-policy>.

⁶ *Id.* See also Florida Dep’t of Financial Services, “Homeowners’ Insurance: A Toolkit for Consumers,” at 3 (available at <https://www.myfloridacfo.com/division/consumers/understandingcoverage/guides/documents/homeownerstoolkit.pdf>).

⁷ *Id.* at 29.

12. When damage occurs, it will often require immediate remediation to protect against further storms, water leakage, or other types of damage and allow a homeowner to continue to reside on the property while preventing further serious damage to the home.

13. If water comes inside the home, it requires immediate removal to keep excess damage to a minimum and often cannot await the inspection or estimate that the insurer might provide.

14. Homeowners also typically utilize their assignment of benefit rights under their insurance contracts so that they neither have to pay beyond any deductible for the repairs that their insurance covers nor have to fill out the myriad claims forms and deal with claims representatives, a process with which they often have little familiarity or experience, at a time of great stress and conflicting priorities.

15. Homeowners with insurance typically do not want to front the costs of repair and remediation, but look for contractors who will accept assignments of benefits and offer additional benefits to their customers, while becoming the interested party in pursuing compensation through the insurance policy.

16. Licensed contractors with experience in remediating homes and effecting repairs also often have familiarity that homeowners lack with insurance policy terms, practices, and personnel because they interact professionally with insurers on a regular basis.

17. The advice of licensed contractors can help homeowners navigate the complicated insurance process or direct homeowners to experts who are licensed to provide further assistance.

18. To find the immediate contractor assistance they often need, homeowners typically rely on advertising, referral websites, and rating services to identify contractors that can address the most immediate problems that their storm-damaged homes face and that offer, through an assignment of benefits, to undertake the process of dealing directly with the homeowner's insurer.

19. When damage is widespread in an area, homeowners contacting a contractor may find that the contractor has already reached capacity to undertake work and may ask for a referral to another contractor capable of handling the job. The recipients of those referrals, at least prior to the Act's effective date, will often compensate the referring contractor out of their own pocket and without consequence to the cost of the job.

20. All the forms of advertising discussed in this Amended Complaint and covered by the Act discharge a constitutionally protected "informational function" that not only serves the economic interest of the speaker, but also assists consumers and furthers the societal interest in the fullest possible dissemination of information." *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 563, 561-62 (1980).

21. Solicitation of clients through advertising "serves individual and societal interests in assuring informed and reliable decisionmaking." *Bates v. State*

Bar of Arizona, 433 U.S. 350, 364 (1977). It “may often carry information of import to significant issues of the day” and “serves to inform the public of the availability, nature, and prices of products and services, and thus performs an indispensable role in the allocation of resources in a free enterprise system.” *Id.*

22. This action for injunctive and declaratory relief, brought under 42 U.S.C. § 1983, challenges the constitutionality of S.B. 76 (the “Act”), approved by the Florida Legislature March 29, 2021 and signed by the Governor June 11, 2021, both facially and as applied. The Act goes into effect on July 1, 2021, absent the relief sought here.⁸ A copy of the enrolled Act is attached as Exhibit A.

23. If implemented, the Act would prohibit certain advertising by contractors and would effectively keep consumers from receiving accurate information about roof and other repairs and their insurance rights in a competitive environment where contractors will often offer discounts and other incentives to utilize their companies.

24. This action seeks urgent declaratory and injunctive relief for injuries caused by and likely to be caused by the Act, because they impinge on protected free-speech and because 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).

⁸ Subsequent to the filing of the original complaint in this matter, the Act’s provision prohibiting certain statements in advertising was preliminarily enjoined by Judge Walker of this Court in *Gale Force Roofing & Restoration, LLC v. Brown*, No. 4:21-cv-00246, Doc. No. 28 (Jul. 11, 2021) (slip op.).

25. It also challenges other provisions of the Act that implicate due process, the prohibition on impairment of contract, and the Commerce Clause.

PARTIES

26. Plaintiff Restoration Association of Florida, Inc. (RAF) is a non-profit restoration contractors association, located in Altamonte Springs, Florida, whose mission is to serve as an advocate for independent contractors that specialize in water, fire, and mold restoration throughout the State of Florida and seeks, as an organization, to protect those members' rights.

27. Its approximately 300 members in the state of Florida own emergency restoration companies, mold remediation, fire restoration, general contractors, roofing contractors, pack out companies and other independent contractors licensed to repair roofs and restore homes suffering from damage due to water, fire, and mold throughout the state, whether the damage is due to age, natural disasters, or the malicious acts of others, as well as other home repairs and remediation.

28. As part of its mission, RAF seeks to support or oppose legislation and other government actions that adversely affect the businesses of its members.

29. Its members advertise and solicit business in ways that are directly and adversely affected by the limitations and requirements of S. 76, including through company websites and other written and electronic means used to solicit business.

30. The advertising of some RAF members, for example, offer free roof inspections, financing options, and discounts on roofing repairs that entail repair estimates above a certain amount of money.

31. The advertising of some RAF members also often indicate that they have significant insurance claims experience and that the contractor will send all required forms to the homeowner's insurance company to help expedite the processing of an insurance claim.

32. Plaintiff Apex Roofing and Reconstruction LLC is an RAF member and licensed Florida contractor with business locations throughout Florida, including Longwood, Boca Raton, Cocoa Beach, Destin, Fort Myers, Jacksonville, Panama City, Tampa, and West Palm Beach. In addition, it has other locations in Alabama, where it is also licensed and has its principal place of business.

33. Apex Roofing is the largest roofing contractor in the Southeastern United States, performing work in Alabama, Florida, Mississippi, and Tennessee and has been in business since 2010.

34. Apex Roofing operates a website (<https://apexroofs.com/>) and engages in other forms of advertising and solicitation of customers that are directly and adversely affected by the limitations and requirements of S. 76.

35. Apex Roofing's website reaches potential customers in Alabama and other Southeastern states, as well as Florida.

36. On its website, it advises potential customers that "[o]ne part of handling roofing repairs and replacements is dealing with your insurance

company,” pledges that it will provide “as much assistance as we can” to help with insurance claims, and that “as a roofing contractor, we have years of experience [in dealing with insurance companies].”

37. The website further states that “[w]e’ll provide your insurance company with everything they need to process the claim. If you have any questions, we’ll either have the answer for it or help you get an answer.”

38. Apex Roofing advertises through cold calls, print and digital advertisements, mail, and its website.

39. Apex Roofing receives some business through referrals and has paid for referrals in the past and would like to continue that practice.

40. Each year, it performs approximately 3,000 unique jobs for which there is coverage through insurance carriers.

41. Defendant Julie I. Brown is sued in her official capacity as Secretary of the Florida Department of Business and Professional Regulation and is located in Tallahassee, Florida.

42. Pursuant to state law, Secretary Brown oversees the Department of Business and Professional Regulation, which is responsible for licensing and regulating more than 1.4 million businesses and professionals in the State of Florida, including contractors covered by S. 76.

43. The department under Secretary Brown’s direction accepts and investigates complaints about law or consumer violations by licensees, including those that are the result of S. 76’s new enactments. *See*

<https://www.myfloridalicense.com/entercomplaint.asp?SID>.

44. Home contractors who are members of RAF and home contractors such as Apex Roofing are licensees subject to the regulations and disciplinary actions of Secretary Brown's department.

45. Defendant Daniel Biggins is sued in his official capacity as executive director of the Construction Industry Licensing Board (CILB) and is located in Tallahassee, Florida.

46. Pursuant to state law, Executive Director Biggins oversees the CILB, which has rulemaking authority to implement Chapter 489, including provisions added by S. 76. Section 489.108, Fla. Stat.

47. The CILB, a part of the Department of Business and Professional Regulation, has the authority to conduct disciplinary proceedings on licensed contractors like the contractor plaintiffs here for violations of Florida law and implements those disciplinary actions through Executive Director Biggins and his staff. Section 489.129, Fla. Stat.

48. S. 76 assigns violations of its provisions for disciplinary proceedings to the CILB under the authority of Executive Director Biggins by making the Act's provisions subject to § 489.129, Fla. Stat.

Jurisdiction and Venue

49. This is an action for injunctive and declaratory relief pursuant to 42 U.S.C. § 1983 against enforcement of certain provisions enacted as S. 76, which action is grounded in the First and Fourteenth Amendments, the impairment of

contract clause in the United States Constitution, and the Commerce Clause. Jurisdiction exists pursuant to 28 U.S.C. § 1331 and 1343 based on 42 U.S.C. § 1983 and questions of federal constitutional law. Jurisdiction also exists under the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202. This is both a facial and as-applied constitutional challenge to the statute.

50. This Court has personal jurisdiction over the parties because plaintiffs are largely located in Florida or do business in Florida and submit to personal jurisdiction, while all defendants are located in Florida, and the relevant acts occurred or will occur in Florida.

51. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as a substantial part of the events or omissions that give rise to an enforcement action under the challenged Act and any enforcement itself against Plaintiffs would occur in this district.

PROVISIONS OF THE ACT

52. S. 76 adds a new provision to § 489.147, Fla. Stat., that delineates what is deemed to be prohibited property insurance practices.

53. Among its provisions are prohibited advertisements, which it defines as any written or electronic communication that “encourages, instructs, or induces a consumer to contact a contractor or public adjuster” to make an insurance claim for roof damages. S. 76, § 1, codified at § 489.147(1)(a).

54. The Act further prohibits in-person, electronic, or third-person solicitations through prohibited advertisements. S. 76, § 1, codified at §

489.147(1)(b).

55. The Act further prohibits the use of rebates, gifts, gift cards, cash, coupons, deductible waivers, or anything of value in exchange for (a) allowing the contractor to inspect a residential property owner's roof, or (b) making an insurance claim for roof damage. S. 76, § 1, codified at § 489.147(2)(b).

56. The Act further prohibits paid referrals when insurance proceeds are payable for the contracted work. S. 76, § 1, codified at § 489.147(2)(c).

57. The Act further prohibits contractors from interpreting insurance policies or advising the insured regarding coverage or the insurer's duties, unless the contractor holds a public adjuster license. S. 76, § 1, codified at § 489.147(2)(d).

58. The Act further imputes the actions of anyone compensated by the contractor for soliciting work for the contractor, including violations of S. 76 by a third party. S. 76, § 1, codified at § 489.147(4)(a).

59. The Act requires that the contractor provide potential customers with a notice of the practices prohibited in § 489.147(2)(b) concerning providing something of value such as a discount for engaging the contractor, or be subject to the voiding of the contract within 10 days of its execution. S. 76, § 1, codified at § 489.147(5).

60. Violations of the above provisions of S. 76 puts a contractor in jeopardy disciplinary proceedings that could include the loss of the contractor's license, pursuant to § 489.129, Fla. Stat., and to a \$10,000 fine per violation. S. 76, § 1, codified at § 489.147(3).

THE FIRST AMENDMENT AND THE ACT

61. “The First Amendment, as applied to the States through the Fourteenth Amendment, protects commercial speech from unwarranted governmental regulation.” *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of New York*, 447 U.S. 557, 561 (1980) (citation omitted).

62. Advertising and solicitation of the type prohibited by the Act constitutes a form of commercial speech entitled to First Amendment protection from unwarranted government regulation. *Id.*

63. The First Amendment, which operates on the States through the Fourteenth Amendment, protects commercial speech “based on the informational function of advertising.” *Id.* at 563.

64. Undue restriction of advertising “reduces the information available for consumer decisions and thereby defeats the purpose of the First Amendment.” *Id.* at 567.

65. Therefore, the right infringed is not just the right of the speaker to communicate, but the right of consumers and the general public to receive the information. *See Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 757 (1976) (“If there is right to advertise, there is a reciprocal right to receive the advertising.”).

66. The Act prohibits various truthful, non-misleading forms of commercial speech for activities that are lawful to undertake, such as informing consumers about their rights concerning assignment of benefits or how contractors

usually get paid for repair and remediation work when a homeowners insurance policy is in place.

67. The Act is additionally vague in signifying what speech violates the statute and is not limited to furthering either a compelling or substantial state interest.

68. Both the likelihood of enforcement and the threat of enforcement unconstitutionally chill the exercise of protected free speech rights, including Plaintiff RAF's members and Plaintiff Apex Roofing's plans to engage in truthful and nondeceptive advertising.

69. The provisions of the Act would hamper the receipt of information to consumers from licensed and experienced contractors that is both truthful and non-deceptive, while burdening those communications with unnecessary and unjustified disclosures.

70. To justify a burden on speech, “[t]he State must assert a substantial interest to be achieved by restrictions on commercial speech,” and “the regulatory technique must be in proportion to that interest.” *Id.*

71. However, where the State targets commercial speech based on its content or the identity of the speaker, a presumption of unconstitutionality attaches and the compelling-state-interest test applies. *National Institute of Family and Life Advocates v. Becerra*, 138 S.Ct. 2361, 2371 (2018).

72. In short, “[t]he limitation on expression must be designed carefully to achieve the State’s goal.” *Id.* The law must be “narrowly drawn” and “may extend

only as far as the interest it serves.” *Id.* at 565; *In re R.M.J.*, 455 U.S. at 203 (“Although the potential for deception and confusion is particularly strong in the context of advertising professional services, restrictions upon such advertising may be no broader than reasonably necessary to prevent the deception.”).

73. Here, the prohibitions and disclosure requirements are unjustified by the State’s purported interest, fail the First Amendment’s narrowly tailored requirement because they are achievable by more speech-friendly means, prohibit the communication of truthful, non-deceptive information, and unreasonably burden protected commercial speech in unjustifiable and discriminatory ways.

74. Mandatory disclosures like the notice of prohibited advertising practices required by the Act are also subject to First Amendment scrutiny. *See, e.g., Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985). In particular, “unjustified or unduly burdensome disclosure requirements might offend the First Amendment by chilling protected commercial speech,” and an advertiser’s rights are “adequately protected” only if those “disclosure requirements are reasonably related to the State’s interest in preventing deception of consumers.” *Id.*

75. In the First Amendment context, a law is also unconstitutionally overbroad if a substantial number of its applications are unconstitutional. *United States v. Stevens*, 559 U.S. 460, 473 (2010).

76. The First Amendment jurisprudence is further sensitive to vague statutory terminology because “a vague statute ... operates to inhibit the exercise of

[First Amendment] freedoms ... [and] inevitably lead citizens to steer far wider of the unlawful zone ... than if the boundaries of the forbidden areas were clearly marked.” *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (footnotes and internal quotation marks omitted).

77. Here, the Act imposes prohibitions and requires disclosures in the form of a compelled notice by the contractor to the potential customer, despite the fact that the prohibitions and disclaimers are unrelated to any legitimate State interest in preventing consumer deception and instead censor truthful representations.

78. For example, the Act prohibits advertising that “encourages, instructs, or induces a consumer to contact a contractor or public adjuster” to make an insurance claim for roof damages, S. 76, § 1, codified at § 489.147(2)(b), and S. 76, § 15, codified at § 626.854(20)(a), even though Florida’s Department of Financial Services advises homeowners to do exactly that in order to determine whether the amount of damage is sufficient to justify an insurance claim.

79. Moreover, to the extent that a contractor encourages the making of an insurance claim through an assignment of insurance benefits, the information on assigning benefits provided post-loss by a roofing contractor is entirely legal in Florida and cannot be divested by insurance policy language. *See, e.g., Sec. First Ins. Co. v. State, Off. of Ins. Regul.*, 177 So. 3d 627, 628 (Fla. 1st D.C.A. 2015) (citing cases in support of an “unbroken string of Florida cases over the past century holding that policyholders have the right to assign such claims without insurer consent.”).

80. Similarly, the provision against interpreting or advising regarding insurance policies, coverage, or the insurer's duties, S. 76, § 1, codified at § 489.147(2)(d), appears to prohibit a licensed contractor from telling a homeowner that the policy must include a right to assign benefits to the contractor so that the homeowner does not have to finance the repairs or remediation initially, even though Florida's courts have long recognized that right. *See Sec. First Ins. Co.*, 177 So. 3d at 628.

81. The provision further deprives consumers of the contractor's experience with identical policies or the specific insurer, even though a disclaimer could effectuate any interest of the State that the provision purports to address on the authoritativeness of any advice.

82. Thus, the Act has the effect of seeking to discourage consumer knowledge of a right to assign insurance benefits only when that information is conveyed by licensed contractors or public adjusters, even when time is of the essence and when the same information may be conveyed by others without running afoul of the Act.

83. In addition, the Act bars an *offer of a discount* or other thing of value as an inducement to a roof inspection or assigning insurance benefits, even though similar offers are common practice in nearly every industry and that the prohibition is on an offer rather than the act of discounting or providing something of value as an incentive. S. 76, § 1, codified at § 489.147(2)(b); S. 76, § 15, codified at § 626.854(20)(a).

84. Instead of protecting consumers from unfair practices, the provision seeks to keep homeowners in the dark about available the availability of insurance coverage for roof damage they have suffered, the role of assignment of benefits, and other information that a roof contractor may have about insurance.

85. The Act further violates the First Amendment by appearing to prohibit contractors from making use of automated online referral services on websites such as yelp.com or other sites where homeowners may turn to find an appropriate contractor for home repair or remediation. S. 76, § 1, codified at § 489.147(4)(a).

ADDITIONAL CONSTITUTIONAL PROBLEMS WITH THE ACT

86. The Act's provision 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. *See Vlandis v. Kline*, 412 U.S. 441, 453 (1973).

87. To the extent the Act has the effect of modifying existing contracts that disclaim prohibited practices and indicate that the third party is responsible for any and all actions taken, the Act appears to violate the impairment of contract clause. U.S. Const. art. I, § 10, cl. 1.

88. To the extent that it seeks to impose its prohibitions on interstate advertising by contractors with licenses and business in states other than Florida where S.B. 76's prohibitions are legal and where it reaches those businesses' websites, the Act runs afoul of the dormant Commerce Clause. U.S. Const. art. 1, § 8, cl. 3.

89. A federal court may enjoin a state officer from taking future actions that violate federal law and may take prospective actions to assure compliance with constitutional requirements. *Ex Parte Young*, 209 U.S. 123 (1908).

COUNT I

Injunctive Relief

90. Plaintiffs reallege and incorporate by reference all allegations in the paragraphs above.

91. Plaintiff RAF's members and Plaintiff Apex Roofing want to continue to use advertising and other promotions to inform potential customers in need of home repair and remediation, including roofing repair and remediation, of the full array of services that they legally and properly offer, including the value of assignments of benefits or other steps they need to take to protect their insurance claim.

92. Plaintiff RAF's members and Plaintiff Apex Roofing want to be able to continue to offer discounts, rebates, waivers of deductibles, and other benefits that are legal to provide to their customers and potential customers.

93. Plaintiff RAF's members and Plaintiff Apex Roofing want to continue to have the option of utilizing referral sites or pay others for referrals when a job requires the additional expertise of a different contractor or exceeds another contractor's capacity.

94. Plaintiff RAF's members and Plaintiff Apex Roofing do not want to have to put potential customers on notice of prohibited advertising practices that they believe violate their constitutional rights.

95. Plaintiff RAF's members and Plaintiff Apex Roofing also do not want an irrebuttable presumption of imputation for a third-party's independent acts to result in discipline or fines to themselves, in violation of their freedom of association, their due-process rights, and their rights against impairment of contract, as well as the limitations on Florida's regulation of interstate commerce.

96. Plaintiff Apex Roofing does not want to modify its website to comport to S.B. 76's restrictions in order to continue to do business in Florida so that it will then be at a disadvantage in the other states in which it operates by being unable to convey to consumers the full array of services it offers and that are not prohibited advertising practices in those states.

COUNT II

Declaratory Relief

97. Plaintiff realleges and incorporates by reference all allegations in the paragraphs above.

98. Under the facts alleged herein, an actual, justiciable, and substantial controversy exists between Plaintiffs and Defendants, who are adverse in legal interests.

99. Plaintiffs RAF's members and Apex Roofing are uncertain about their rights to advertise and otherwise solicit business as they have and wish to continue

to advertise and solicit business that informs potential customers of possible insurance coverage, offer to deal with insurance through an assignment of benefits, describe their past experience with insurers, or engage in other standard practices in this and other industries without suffering from disciplinary actions or monetary fines pursuant to the Act.

100. Plaintiffs RAF's members and Apex Roofing are also uncertain about their rights with respect to utilizing on referral websites or paying referral fees to fellow contractors in light of the Act.

101. Plaintiffs also are uncertain about their rights not to provide notice about the Act's prohibited advertising practices that they believe are unconstitutional and their rights to avoid imputation of violative acts by third persons that they may pay for one service or another.

102. Plaintiffs are uncertain about what the Act permits them to say and prohibits them from saying about insurance and insurance policies and procedures.

103. Plaintiff Apex Roofing is uncertain about what adjustments must be made to its website that covers its interstate offer of services where prohibitions required by S.B. 76 are not prohibitions in the other states where it operates.

104. The uncertainty, discrimination against the subject matter and content of their plans for and existing advertising, and the burdens that the Act imposes violate Plaintiffs' First and Fourteenth Amendment rights, as well as their rights against impairment of contract. It further oversteps state authority under the Dormant Commerce Clause.

105. Plaintiffs RAF's members and Apex Roofing are contractors who advertise in ways affected by the Act and are thus subject to the disciplinary measures and fines authorized by the Act.

106. The Act's requirements violate Plaintiffs' constitutional right to communicate truthful, non-misleading information on their advertising, including their websites, based on the Act's imminent effective date and likely enforcement.

107. Plaintiffs seek declaratory relief based on the specific and live grievance alleged—namely, the deprivation of constitutionally guaranteed rights.

108. The controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs RAF and Apex Roofing respectfully request that the Court enter judgment in their favor and against Defendants in their official capacities, as follows:

1. Declare that the Act is invalid and unenforceable in the provisions challenged herein because it violates the First Amendment and/or Fourteenth Amendment, as well as the impairment of contracts prohibition and dormant Commerce Clause, in the United States Constitution;

2. Issue an Order permanently enjoining Defendants from enforcing the challenged provisions of the Act and ordering Defendants' compliance with the United States Constitution;

3. Award Plaintiff all costs and fees incurred in bringing this action to the extent permitted under applicable laws; and,

4. Award all other relief as deemed just and proper.

DATED: October 6, 2021

Respectfully submitted,

/s/ Robert S. Peck

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court using the CM/ECF portal, which automatically sends notice and a copy of the filing to all counsel of record. A copy will also be provided to the Attorney General of the state of Florida pursuant to Fed. R. Civ. P. 5.1 and § 86.091, Florida Statutes.

October 6, 2021

/s/ Robert S. Peck