

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

WILLIAM R. L'EUROPA; EXECUTIVE PUBLIC ADJUSTERS, LLC; DISASTER RESTORATION GROUP, LLC; and ALL STAR CONSTRUCTION, INC.	:	
<i>Plaintiffs,</i>		
vs.	:	
RHODE ISLAND DIVISION OF STATE FIRE MARSHAL; JAMES GUMBLEY, in his capacity as acting Director of the RHODE ISLAND DIVISION OF STATE FIRE MARSHAL; RHODE ISLAND ATTORNEYGENERAL; PETER F. KILMARTIN, in his capacity as RHODE ISLAND ATTORNEY GENERAL; and SCOTTYE LINDSEY in his capacity as Director of THE RHODE ISLAND DEPARTMENT OF BUSINESS REGULATION	:	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
<i>Defendants</i>		

COMPLAINT

Plaintiffs, William R. L'Europa, Executive Public Adjusters, LLC, Disaster Restoration Group, LLC. and All Star Construction, Inc., bring their Complaint against Defendants, the Rhode Island Division of State Fire Marshal, James Gumbley, in his capacity as acting Director of the Rhode Island Division of State Fire Marshal, the Rhode Island Attorney General, Peter F. Kilmartin, in his capacity as Rhode Island Attorney General and Scottye Lindsey in his capacity as Director of the Department of Business Regulation (collectively "Defendants") to declare R.I. Gen. Laws § 23-28.2-11 (c) and (d) unconstitutional and permanently enjoin its enforcement and state as follows:

Nature of the Claims

1. This civil rights lawsuit seeks declaratory and permanent injunctive relief to redress and prevent the deprivation of Plaintiffs' rights, as guaranteed by the First, Fifth and

Fourteenth Amendments to the Constitution of the United States, by Defendants acting under state law.

2. Plaintiffs' rights have been violated by the enactment of R. I. Gen. Laws §23-28.2-11(c) and (d), which impermissably limit Plaintiffs' rights to solicit customers under the First Amendment and the corresponding rights under the Rhode Island Constitution. Plaintiffs seek injunctive relief to abate and prevent Defendants from enforcing the statutory provisions and seek declaratory relief that the statutory provisions are unconstitutional.

Parties and Jurisdiction

3. Plaintiff William R. L'Europa ("L'Europa") is a resident of 23 Loggers Run, West Warwick, Rhode Island and holds a public adjuster's license issued by the State of Rhode Island on or about April 29, 2016. L'Europa is the principal owner of Executive Public Adjusters, LLC.

4. Plaintiff Executive Public Adjusters, LLC ("Executive") is a limited liability company organized and existing under the laws of the State of Rhode Island with a principal place of business at 23 Loggers Run, West Warwick, Rhode Island. Executive is engaged in the business of public adjusting.

5. Plaintiff Disaster Restoration Gourp Public, LLC ("Disaster") is a limited liability company organized and existing under the laws of the State of Rhode Island with a principal place of business at 23 Loggers Run, West Warwick, Rhode Island. Disaster is engaged in the business of residential disaster recovery and property restoration.

6. Plaintiff All Star Construction, Inc. ("All Star") is a corporation organized and existing under the laws of the State of Rhode Island with a principal place of business at 98

Scenery Lane, Unit 98, Johnston, Rhode Island. All Star is engaged in the business of general residential and commercial construction.

7. Defendant Rhode Island Division of State Fire Marshal is the State agency responsible for conducting fire investigations of all fires in Rhode Island where arson is suspected, the fire is undetermined by the fire department, and/or an injury or death has occurred. The Rhode Island Division of State Fire Marshal includes all of the deputy state fire marshals or assistant state fire marshals, and other agents, and employees and is located at 560 Jefferson Boulevard, Warwick, Rhode Island.

8. Defendant James Gumbley, is being sued in his capacity as acting Director of the Rhode Island Division of State Fire Marshal responsible for said fire investigations and oversight of the agents and employees of the Rhode Island Division of State Fire Marshal.

9. Defendant Rhode Island Attorney General is the central legal agency of the State responsible for the prosecution of all felony criminal cases and misdemeanor appeals, as well as prosecution of misdemeanor cases brought by state law enforcement agencies. The Attorney General also represents all agencies, departments and commissions and initiates legal action when necessary to protect the interests of Rhode Island citizens. The Rhode Island Attorney General includes all of its agents and employee and is located at 150 South Main Street, Providence, Rhode Island.

10. Defendant Peter F. Kilmartin is being sued in is capacity as Attorney General for the State of Rhode Island, responsible for oversight and direction of the agents and employees of the Rhode Island Attorney General's Office.

11. Defendant Scottye Lindsey is being sued in his capacity as Director of the Department of Business Regulations.

12. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331, because the matter in controversy arises under the Constitution and laws of the United States, including, but not limited to, the First, Fifth, and Fourteenth Amendments to the United States Constitution.

13. This case is also brought under 42 U.S.C. § 1983, which provides for redress of the deprivation, under color of state law, of rights, privileges, and immunities secured to the Plaintiffs by the United States Constitution, particularly the First, Fifth, and Fourteenth Amendments thereto. Thus, this Court also has subject-matter jurisdiction under 28 U.S.C. § 1333(a)(3), (4).

14. This Court also has supplemental jurisdiction over Plaintiffs' state law claims because those claims are so related to Plaintiffs' federal claims that they form part of the same case or controversy under Article III of the United States Constitution. 28 U.S.C. § 1337.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1331 because it is the judicial district where Defendants reside, and in "which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. 1331(b).

16. Plaintiffs seek the recovery of attorneys' fees and costs pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988.

COUNT I

(Declaratory Judgment – First and Fourteenth Amendments.)

17. Plaintiffs reallege and incorporate by reference paragraphs 1 through 16 of their Complaint as if fully set forth herein.

18. On or about July 9, 2016, R.I. Gen. Laws § 23-28.2-11 was amended to include the following language:

(c) The state fire marshal, and/or any of the deputy state fire marshals or assistant state fire marshals, and/or municipal officials, including, without limitation,

police, fire, and building officials, shall prohibit any and all insurance adjusters, contractors, and restoration companies from engaging in any solicitation or inspection or any physical presence on the premises under investigation until twenty-four (24) hours after either the municipal fire department and/or the state fire marshal, deputy state fire marshal, or assistant state fire marshal releases control of the premises back to its legal owner(s) or occupant(s), unless the insurance adjuster, contractor, or restoration company is accompanied by, and acting with, permission of the premises' legal owner.

(d) Any insurance adjuster, contractor, or restoration company in violation of the provisions of subsection (c) shall be subject to a civil penalty of one thousand dollars (\$1,000) for each violation and may be subject to revocation of the appropriate professional license or registration.

19. The above provision was amended again on June 22, 2017, as follows:

(c) The state fire marshal, and/or any of the deputy state fire marshals or assistant state fire marshals, and/or municipal officials, including, without limitation, police, fire, and building officials, shall prohibit any and all insurance adjusters, contractors, and restoration companies from engaging in any solicitation or inspection or any physical presence on the premises under investigation until twenty-four (24) hours after either the municipal fire department and/or the state fire marshal, deputy state fire marshal, or assistant state fire marshal releases control of the premises back to its legal owner(s) or occupant(s), unless the insurance adjuster, contractor, or restoration company is accompanied by, **OR** acting with, permission of the premises' legal owner. (Emphasis added.)

The statutory provisions cited above, as amended, are referred to as the "Challenged Statute."

20. On September 13, 2017 the Defendant Scottye Lindsey issued an Order to Plaintiff William R. L'Europa to Show Cause why orders should not issue to revoke his license, to cease and desist unlawful activity and pay penalties based in part for a violation of R.I. Gen. Laws § 23-28.2-11.

21. Plaintiffs assert that the Challenged Statute violates the First Amendment to the United States Constitution, made applicable to the States pursuant to the Fourteenth Amendment to the United States Constitution.

22. The First Amendment to the United States Constitution provides “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. Amend. I

23. The First Amendment’s guarantees of freedom of speech, freedom of the press, freedom of assembly, and freedom to petition for redress of grievances are protected by the Fourteenth Amendment from invasion by the States and their political subdivisions.

24. The First Amendment’s guarantees of freedom of speech, freedom of the press, freedom of assembly, and freedom to petition for redress of grievances, as protected by the Fourteenth Amendment from invasion by the states and their political subdivisions, inures to the benefit of the Plaintiffs.

25. The language of the Challenged Statute prohibiting all insurance adjusters from “engaging in any solicitation” violates the First Amendment rights of public adjusters and companies engaging in the business of public adjusting, including L’Europa and Executive.

26. The language of the Challenged Statute prohibiting all restoration companies from “engaging in any solicitation” violates the First Amendment rights of persons and restoration companies engaging in the business of restoring residential or commercial properties, including Disaster.

27. The language of the Challenged Statute prohibiting all contractors from “engaging in any solicitation” violates the First Amendment rights of contractors and companies engaging in the business of performing contracting services on residential or commercial properties, including All Star.

28. Under Article III of the United States Constitution, Plaintiffs have standing to bring this action to vindicate their First Amendment rights to the extent they seek to engage in activities prohibited by the Challenged Statute, subjecting them to actual or threatened injury. Plaintiffs also have standing to challenge the Challenged Statute because of its possible chilling effect on protected speech.

29. The serious and substantive penalties for violation of the Challenged Statute, in particular that the Plaintiffs, and other similarly situated businesses, “may be subject to revocation of the appropriate license or registration,” thereby depriving them of their business and livelihood, presents an actual or threatened injury conferring standing on the Plaintiffs. Plaintiffs intend to engage in conduct to solicit business from persons whose properties have sustained fire damage, said conduct is affected with constitutional interest under the First Amendment; said conduct is proscribed by the Challenged Statute; and since the Defendants have not indicated that the Challenged Statute will not be enforced, a credible threat of prosecution exists.

30. The Challenged Statute is not narrowly tailored to advance a substantial state interest. The legislation is explained as prohibiting physical presence on the premises, yet there is no legislative history articulating a statutory purpose or objective and, in actuality, the express language of the Challenged Statute prohibits public adjusters, contractors and restoration companies from engaging in all solicitation for an indeterminable period.

31. Under 42 U.S.C. § 1983, every person who, under color of state law, subjects any citizen of the United States to the deprivation of “rights, privileges, or immunities secured by the Constitution and laws,” shall be liable to the injured party. Because the Challenged Statute

deprives Plaintiffs of their rights, privileges and/or immunities as secured by the Fourteenth Amendment, Defendants are liable to Plaintiffs under 42 U.S.C. § 1983.

32. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202.

33. There exists between the parties an actual controversy as to which Plaintiffs are entitled to a declaration of rights regarding the constitutionality of the Challenged Statute pursuant 28 U.S.C. § 2201-2201 and R.I. Gen. Laws § 9-30-1 *et seq.*, in particular that the Challenged Statute violates the First Amendment right to free speech.

34. Joined as parties are all those persons or entities necessary for a just and complete adjudication of this dispute between the Plaintiffs and Defendant.

COUNT II
(Injunctive Relief)

35. Plaintiffs reallege and incorporate by reference paragraphs 1 through 34 of their Complaint as if fully set forth herein.

36. As set forth above, the Challenged Statute violates the Plaintiffs' First Amendment rights to solicit customers whose properties have been damaged or destroyed by fire, unconstitutionally abridging Plaintiff's rights to pursue their lawful businesses for an undetermined time period after a fire has occurred.

37. Plaintiffs are entitled to injunctive relief, restraining and enjoining the State Fire Marshall and/or any of the deputy state fire marshalls or assistant state fire marshalls, as well as the municipal agencies enumerated in the Challenged Statute from enforcing the Challenged Statutes until the merits of this action are resolved or adjudicated.

38. Plaintiffs are entitled to injunctive relief, restraining and enjoining the Rhode Island Attorney General and/or its agents and employees from enforcing the Challenged Statutes until the merits of this action are resolved or adjudicated.

WHEREFORE, Plaintiffs, William R. L'Europa, Executive Public Adjusters, LLC, Disaster Restoration Group, LLC. and All Star Construction, Inc. demand judgment against the Defendants and seek the following relief:

- (a) Entry of judgment declaring that R.I. Gen. Laws § 23-28.2-11 (c) and (d) are unconstitutional;
- (b) Entry of judgment declaring that Plaintiffs have been deprived of their rights guaranteed by the First Amendment as applied to the Defendants through the Fourteenth Amendment to the United States Constitution, and therefore, Defendants are liable to Plaintiffs under 42 U.S.C. § 1983;
- (c) Entering an Order preliminarily enjoining the Defendants from enforcing § 23-28.2-11 (c) and (d);
- (d) Entry of judgment permanently enjoining Defendants and their agents and/or their employees from enforcing the Challenged Statute;
- (e) Award Plaintiffs their costs and disbursements of this action, including reasonable attorneys' fees, costs and interest in accordance with law, including 42 U.S.C. § 1988; and
- (f) such other and further relief as this Court deems just and appropriate.

Plaintiffs,
By their Attorney,

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