IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

SHAMROCK HILLS, LLC, a Kansas limited liability corporation d/b/a SHAMROCK ROOFING AND CONSTRUCTION, Plaintiff, v. THE STATE OF IOWA; THE IOWA INSURANCE DIVISION; DOUG OMMEN, in his official capacity as Insurance Commissioner of the Iowa Insurance Division; and DAVID SULLIVAN, in his official capacity as Assistant Bureau Chief of the Iowa Insurance Division Market Regulation Bureau. Defendants.	Case No. 4:24-cv-340 **DEFENDANTS' MOTION TO DISMISS**

COME NOW the Defendants, the State of Iowa, the Iowa Insurance Division, Doug Ommen, in his official capacity as Iowa Insurance Commissioner, and David Sullivan, in his official capacity as Assistant Bureau Chief of the Division's Market Regulation Bureau, (collectively "Defendants") by and through the Attorney General of Iowa, and file this Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) for the reasons set forth herein:

1. Insurance is "a business to which the government has long had a 'special relation.'" *California Auto Ass'n v. Maloney,* 341 U.S. 105, 109 (1951). Since public interest and the public's general welfare require regulating the insurance industry to provide adequate protection, it is properly subject to the exercise of the government's police power. *See id.*; *Hardware Dealers Mut. Fire Ins. Co. v. Glidden*, 284 U.S. 151, 157–158 (1931); *Holland v. State*, 115 N.W.2d 161, 162 (Iowa 1962).

2. Congress delegated authority to regulate insurance to the states with the McCarran-Ferguson Act in 1945. 15 U.S.C. section 6701(b); *Grp. Life & Health Ins. Co. v. Royal Drug Co.,* 440 U.S. 205, 217–18 (1979) (Congress acted to preserve state-based insurance regulation); *Chicago Title Ins. Co. v. Huff*, 256 N.W.2d 17, 21 (Iowa 1977) (recognizing Congress intended insurance be regulated by the states).

3. The State of Iowa has assigned the authority to regulate insurance business transacted in the state to the Insurance Commissioner. Iowa Code § 505.8.

4. Iowa is one of forty-five states that requires public adjusters to be licensed. *See* Thompson Reuters, Public Adjusters: Licensing and Education Requirements, 0110 Surveys 78 (Dec. 2018). The goal of licensure statutes is to curtail unethical and abusive practices by public adjusters who present a danger to the public by "chasing fires" and "soliciting clients under conditions of duress." *33 Carpenters Constr., Inc. v. State Farm Life and Health Co.*, 939 N.W.2d 69, 77 (Iowa 2020). The State seeks to prevent unethical public adjuster practices, including "price gouging, collusion, high-pressure sales tactics, fraud, and incompetence." *Id.*

5. The State regulates insurance adjusters by prohibiting them from being residential contractors. The assignment of insurance benefits to contractors can lead to higher premiums as the contractors conduct unnecessary or needlessly expensive work and file lawsuits against insurers that deny or dispute the claims. *Id.* To prevent this, Iowa Code chapter 522C and section 103A.71 prohibit residential contractors from acting as insurance adjusters. Acting as an unlicensed public adjuster is deemed to violate Iowa's consumer fraud statute and is subject to civil enforcement by the Attorney General. *See* Iowa Code § 714.16.

6. Shamrock is a residential contractor doing business in Iowa. It is not a licensed public adjuster in Iowa. Yet Shamrock advertised on its Facebook and LinkedIn pages that it would assist customers with their insurance claims. On July 2, 2024, the Insurance Division sent Shamrock a

warning letter stating that the Division had "identified activity consistent with unlicensed public adjusting by your company." Exhibit A.

7. On September 5, 2024, the Insurance Division sent a follow-up letter to Shamrock's attorney with a list of Shamrock's public statements, such as "They helped me with my insurance claim," that improperly advertised Shamrock's unlicensed public adjusting services. Exhibit B.

8. The Division's investigation into Shamrock is ongoing, and the Division has warned Shamrock it may still seek sanctions. Exhibit A. The Division has offered Shamrock a chance to resolve the dispute by voluntarily ceasing its misconduct and removing the improper statements about working with insurance companies. *Id.*

9. That said, the warning letter informs Shamrock that the investigation is ongoing and that if Shamrock does not comply with the Division's instructions, the Division will take further action: "[a]n Investigation has been opened to evaluate evidence of related misconduct and frequency of incidents. This letter is a warning that further instances of misconduct will result in administrative violation(s) and a referral to law enforcement officials for consideration of criminal prosecution."

10. In addition, the letter requires Shamrock to take action by removing certain statements from its websites, which goes beyond a mere warning. *See Irland v. Iowa Bd. of Med.,* 939 N.W.2d 85 (Iowa 2020) (where letter of warning goes beyond warnings but requires action, it is discipline).

11. The Division has recently taken action against other contractors acting as unlicensed public adjusters. *See In the Matter of Michael P. Michio*, Division Case No. 110256, Oct. 9, 2024*; In the Matter of Recon Roofing & Construction LLC, et al.*, Division Case No. 118885, Oct. 24, 2024; *In the Matter of American Dream Home Improvement Inc., et al.*, Division Case No. 122471, June 21, 2024*; In the Matter of Darren Reeves Roofing LLC,* Division Case No. 122515, June 21, 2024; *all available at https://iid.iowa.gov/legal-resources/legal-information/enforcement-orders-actions.*

12. Shamrock asks this Court to find that Iowa Code sections 103A.71 and 522C.2 – which provided the basis for the letter – are unconstitutional. Shamrock further asks the Court to enter preliminary and permanent injunctions against Insurance Commissioner Douglas Ommen and Assistant Bureau Chief David Sullivan to prevent them from enforcing Iowa law against Shamrock now or in the future.

13. For the reasons of law and policy set forth in the Brief in Support of Defendants' Motion to Dismiss filed contemporaneously herewith, this Court should dismiss Plaintiff's claims or otherwise abstain from exercising jurisdiction.

14. Specifically, Shamrock's claims against the State of Iowa and the Iowa Insurance Division should be dismissed because neither Defendant is amenable to suit in federal court.

15. Shamrock's remaining claims should also be dismissed for failure to state a claim.

16. Without sufficient justification, Shamrock has failed to pursue its remedies under the Iowa Administrative Procedure Act before pursuing declaratory and injunctive relief.

17. Shamrock's First Amendment claim fails because Iowa Code sections 103A.71(3) and 522C.2(7) regulate conduct, rather than speech, and Shamrock has not established its conduct is protected speech.

18. Shamrock's Due Process claim should be dismissed because the statutes are not vague.

19. Finally, the Court should also dismiss the claims under the *Younger* and *Pullman* abstention doctrines.

WHEREFORE, the Defendants pray this Court dismiss Plaintiff's Complaint in its entirety or, in the alternative, abstain from exercising jurisdiction.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

/s/ Lindsey L. Browning

LINDSEY L. BROWNING AT0011959
Assistant Attorney General
Agency Counsel Division
1305 E. Walnut St., Second Fl.
Des Moines, IA 50319
Ph: (515) 281-3441
Fax: (515) 281-4209
Email: lindsey.browning@ag.iowa.gov

*/s/ Kevin Protzmann**
KEVIN PROTZMANN AT0013818
Assistant Attorney General
Agency Counsel Division
1305 E. Walnut St., Second Fl.
Des Moines, IA 50319
Ph: (515) 281-6690
Fax: (515) 281-4209
Email: kevin.protzmann@ag.iowa.gov

ATTORNEYS FOR DEFENDANTS
* Pending Admission

Counsel of record served electronically on
January 13, 2025.

IN THE UNITED STATES DISTRICT COURT
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SHAMROCK HILLS, LLC, a Kansas limited liability corporation d/b/a SHAMROCK ROOFING AND CONSTRUCTION, Plaintiff, v. THE STATE OF IOWA; THE IOWA INSURANCE DIVISION; DOUG OMMEN, in his official capacity as Insurance Commissioner of the Iowa Insurance Division; and DAVID SULLIVAN, in his official capacity as Assistant Bureau Chief of the Iowa Insurance Division Market Regulation Bureau. Defendants.	Case No. 4:24-cv-340 **BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

COME NOW the Defendants, the State of Iowa, the Iowa Insurance Division, Doug Ommen, in his official capacity as Iowa Insurance Commissioner, and David Sullivan, in his official capacity as Assistant Bureau Chief of the Division's Market Regulation Bureau, (collectively "Defendants"), and in support of their Motion to Dismiss argue as follows:

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INTRODUCTION

Plaintiff Shamrock Hills, LLC, challenges the constitutionality of Iowa Code sections 103A.71(3) and 522C.2(7), both of which regulate the practice of public insurance adjusting. Shamrock contends that both statutes are facially unconstitutional and as applied. In support, Shamrock relies on the First and Fourteenth Amendments of the United States Constitution. Shamrock claims both statutes violate the First Amendment for being content-based restrictions on the free speech rights of licensed contractors and violate the Due Process Clause of the Fourteenth Amendment for being unconstitutionally vague.

MOTION TO DISMISS STANDARD

A complaint that fails to state a claim upon which relief can be granted must be dismissed. Fed. R. Civ. P. 12(b)(6). While a complaint need not contain "detailed factual allegations" to state a claim, it must provide more than "unadorned, the-defendant-harmed-me accusations." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Complaints which offer nothing more than "labels or conclusions" or a formulaic recitation of the elements of a cause of action are not sufficient. *Id.* To survive a motion to dismiss, a complaint must contain sufficient facts that, if accepted as true, state a claim for relief that is plausible on its face. *Id.* A party's failure to exhaust administrative remedies is also grounds for dismissal under Fed. R. Civ. P. 12(b)(6). *See Martin v. Iowa*, 752 F.3d 725, 727 (8th Cir. 2014).

In evaluating the sufficiency of a complaint under a 12(b)(6) motion, a court must accept the factual allegations as true. There is no such requirement that the Court accept the legal conclusions in the complaint as true. Courts evaluate plausibility by drawing on their judicial experience and common sense, considering the materials that are "necessarily embraced by the complaint, including documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleadings." *Rossi v. Arch Ins. Co.*, 60 F.4th 1189, 1193 (8th Cir. 2023) (citations and quotations omitted). Here, Shamrock's Complaint incorporates by reference two letters mailed from the Division to Shamrock, the first being sent on or around July 2, 2024, and the second being sent on or around September 5, 2024. *See* Complaint at ¶¶ 18–24. Shamrock relies on both letters in its Complaint, but Shamrock included neither letter as an exhibit to its Complaint. The Defendants have properly attached the Division's letters of July 2, 2024, and September 5, 2024, as exhibits to their Motion to Dismiss. *See Rossi*, 60 F.4th at 1193; Exhibits A–B.

Beyond the standard for dismissal under the federal rules, this Court should also abstain from asserting jurisdiction under the *Younger* doctrine or under the *Pullman* doctrine.

ARGUMENT

A. The State of Iowa and the Iowa Insurance Division are Immune from Suit in Federal Court

Shamrock has named as Defendants the State of Iowa, the Iowa Insurance Division, Commissioner Doug Ommen in his official capacity, and Division bureau chief David Sullivan in his official capacity. The Eleventh Amendment immunizes the State and its agencies from suit in federal court . *Monroe v. Arkansas State Univ.*, 495 F.3d 591 (8th Cir. 2007); *Thomas v. St. Louis Bd. of Police Comm'rs*, 447 F.3d 1082, 1084 (8th Cir. 2006) (sovereign immunity extends to arms of the state). The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another state, or by Citizens or Subjects of any Foreign State." Courts have interpreted the Eleventh Amendment to grant sovereign immunity to states in federal court actions brought by citizens against states. *Treleven v. Univ. of Minn.*, 73 F.3d 816, 818 (8th Cir. 1996) (citing *Hans v. La.*, 134 U.S. 1, 15 (1890)).

Shamrock's claims against Insurance Commissioner Doug Ommen and employee David Sullivan are not barred by the Eleventh Amendment. But Shamrock's claims against the State of Iowa and the Insurance Division are improper and should be dismissed.

B. Shamrock's Suit Should be Dismissed because the Iowa Administrative Procedure Act is Shamrock's Exclusive Remedy

Under the Iowa Administrative Procedure Act, Iowa Code chapter 17A, judicial review in State court is the "exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action." Iowa Code § 17A.19. If judicial review is available, it must be conducted either in Polk County District Court or in the District Court where the aggrieved party resides. Iowa Code § 17A.19(2). Judicial review under chapter 17A is not proper in federal court. *See Climbing Kites LLC v. Iowa*, --- F.Supp.3d ---, 2024 WL 3437598 * 14 (S.D.

Iowa 2024) ("Any challenge to an action by a state agency under Iowa law must be brought in state court").

This Court has recognized that 17A "precludes judicial review by common-law writs such as declaratory judgment, certiorari, and injunction." *Williams Pipe Line Co. v. Bayer Corp*, 964 F.Supp. 1300, 1333 (S.D. Iowa 1997) (citing *Salsbury Lab v. Iowa Dep't of Envtl. Quality*, 276 N.W.2d 830, 830–34 (Iowa 1979)). In some cases, the chapter 17A allows an aggrieved party to prematurely request declaratory relief and "avoid[] going through usual chapter 17A" processes, but the party "bears the burden of demonstrating why it should be permitted to enter court prematurely." *Williams*, 964 F.Supp. at 1334. Parties may bypass the Act:

> under the following limited circumstances: where a plaintiff challenges an agency action as being in violation of rulemaking procedures under the IAPA; where a plaintiff claims no adequate administrative remedy exists for the claimed wrong, i.e., the plaintiff will suffer "irreparable injury of substantial dimension" if not allowed access to a district court before exhausting available administrative remedies; or the plaintiff asserts the applicable statute does not require exhaustion of remedies before bringing the action in court.

Id. (quoting *Salsbury*, 276 N.W.2d at 837).

Here, the Division's warning letter may constitute final agency action, *see Irland*, 939 N.W.2d at 94, and if Shamrock is aggrieved by the Division's letter, its remedy under 17A would be to seek judicial review. *See* Iowa Code § 17A.19. Rather than exhaust its remedies under 17A, however, Shamrock is trying to circumvent the Act by seeking declaratory and injunctive relief in federal court. But Shamrock has not shown the inadequacy of available remedies under chapter 17A that allows it to circumvent the Act. Nor has Shamrock shown how it will "suffer irreparable injury of substantial dimension if not allowed to access" this Court instead of following the standard course set out in a comprehensive state law. *See Williams*, 964 F.Supp. at 1334. Shamrock only offers self-serving, conclusory statements that the Division's warning letter "ha[s] and will continue to cause irreparable harm for which monetary damages alone will not be an adequate remedy." Complaint at ¶ 63.

Nor do Shamrock's constitutional claims justify circumventing 17A. In Iowa, constitutional issues can be raised before an agency and preserved for judicial review before the Iowa district court. *Soo Line R.R. v. Iowa Dep't of Transp.,* 521 N.W.2d 685, 688 (Iowa 1994). Indeed, "where issues decided by an administrative agency involve potential constitutional questions, these constitutional issues *must* first be raised before the agency in order to be considered by a court in reviewing the final agency action under Iowa Code section 17A.19." *Shell Oil Co. v. Blair*, 417 N.W.2d 425 (Iowa 1987) (emphasis added).

There are times, however, when a party may circumvent 17A and pursue a declaratory action challenging the facial constitutionality of a statute, but only when there is "no matter [] pending before an agency." *Tindal v. Norman*, 427 N.W.2d 871, 874 (Iowa 1988). But when the claims arise from agency action, 17A cannot be avoided. *Shell Oil*, 417 N.W.2d at 429-30. Given the facts underlying Shamrock's claims, the rationale underlying the *Shell Oil* and *Tindal* cases is striking:

> [P]ermitting the administrative process to first run its course may eliminate the need for reaching potential constitutional claims. Even facial constitutional issues are more effectively presented for adjudication based upon a specific factual record. Moreover, it can be expected that facial constitutional challenges will be coupled with claims that the legislation is unconstitutional as applied to the litigant. Efficient and effective judicial administration is therefore better served by having the entire proceeding first determined by the agency.

Shell Oil, 417 N.W.2d at 430.

This Court need not decide whether the Division's July 2 letter constitutes final agency action. As this Court recently decided in *Climbing Kites*, "any challenge to an action by a state agency under Iowa law must be brought in state court," even when "there are . . . issues regarding whether Plaintiff[has] exhausted [its] remedies and whether the [agency's] 'intended action' would constitute final agency action." 2024 WL 3437598 * 14.

Simply put, Shamrock's suit in this Court is premature, and it should be dismissed for failure to exhaust remedies under 17A.

C. Shamrock Fails to State a Cognizable Claim that Iowa's Statutes Violate Free Speech Protected by the First Amendment

Shamrock alleges Iowa Code sections 103A.71(3) and 522C.2(7) are unconstitutional under the First Amendment, both on their face and as-applied to Shamrock, because they are content- and speaker-based restrictions on free speech. Complaint at ¶¶ 40–48. But Plaintiff's First Amendment claims fail because the challenged statutes regulate conduct rather than speech, and under rational basis review, they pass constitutional muster.

The Fourteenth Amendment incorporates the free speech protections of the First Amendment against state governments. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Because of this, a state cannot engage in content-based or speaker-based restrictions of speech unless its restrictions survive a heightened standard of judicial scrutiny. *Sorrell v. IMS Health, Inc.* 564 U.S. 552, 563–65 (2011); *see also Citizens United v. Federal Election Com'n*, 558 U.S. 310, 364–65 (2010) (establishing that speaker-based discrimination violates the First Amendment in the same way as content-based restrictions). When a law burdens free speech rights under the First Amendment, heightened scrutiny applies whether a plaintiff claims the law is facially invalid, *see, e.g., N.Y. State Club Ass'n Inc. v. City of New York*, 487 U.S. 1, 11 (1988), or invalid as applied to the plaintiff, *see, e.g., U.S. v. O'Brien*, 391 U.S. 367, 376 (1968).

But merely asserting a First Amendment challenge does not automatically lead to heightened scrutiny. Indeed, heightened scrutiny applies only when the law "implicates First Amendment protections." *Planned Parenthood of Minn., N. Dakota, S. Dakota v. Rounds*, 530 F.3d 724, 733 (8th Cir. 2008) (citing *Wooley v. Maynard*, 430 U.S. 705, 715 (1977)). For example, the First Amendment protects "symbolic or expressive conduct as well as . . . actual speech." *Virginia v. Black*, 538 U.S. 343, 358 (2003). By contrast, "the First Amendment does not prevent restrictions directed at commerce or conduct from imposing *incidental* burdens on speech." *Sorrell*, 564 U.S. at 566–67 (emphasis added). When a state law regulates commercial conduct rather than speech or expressive conduct, heightened

scrutiny will only apply if the law's burden on speech is "more than incidental." *Id.* at 567; *see also Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 769 (2018) (observing "this Court has upheld regulations of professional conduct that incidentally burden speech") (hereinafter "*NIFLA*").

If a commercial regulation challenged under the First Amendment only has incidental effects on free speech, then the law is subject to only rational basis review. *United States v. Carolene Products Co.*, 304 U.S. 144, 152 (1938) ("regulatory legislation affecting ordinary commercial transactions is not to be pronounced unconstitutional" if it rests "upon some rational basis within the knowledge and experience of the legislators"); *see Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 359 (2009) ("[g]iven that the State has not infringed the unions' First Amendment rights, the State need only demonstrate a rational basis to justify the ban on political payroll deductions"); *see also Regan v. Taxation without Representation of Washington*, 461 U.S. 540, 546–551 (1983) (discussing how rational basis review applies when a constitutional challenge fails to show the law burdens a fundamental right or a suspect class). A law survives rational basis review so long as it bears "a rational relation to a legitimate governmental purpose." *Regan*, 461 U.S. at 547; *see also Garrison v. New Fashion Pork LLP*, 977 N.W.2d 67, 86 (Iowa 2022) (rational basis requires a "reasonable fit between the means used to advance the government interest and the interest itself" and that unconstitutionality under rational basis requires a law to "clearly, palpably, and without doubt infringe a constitutional right").

The Supreme Court has also articulated a separate doctrine which provides moderate First Amendment protections if a law burdens "commercial speech" in certain circumstances. Under *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, "commercial speech" is "expression related solely to the economic interests of the speaker and its audience." 447 U.S. 557, 561 (1980). "The First Amendment's concern for commercial speech is based on the informational function of *advertising*." *Id.* at 563 (emphasis added). If commercial speech "is neither misleading nor related to unlawful activity," then the courts employ a four-part test to determine whether the law

survives intermediate scrutiny. *Id.* at 564. But a regulation banning commercial speech is immune from First Amendment scrutiny when the ban covers "forms of communication more likely to deceive the public than to inform it, or commercial speech related to illegal activity." *Id.* at 563-64 (citations omitted).

Here, rational basis is the appropriate level of scrutiny for Iowa Code sections 103A.71(3) and 522C.2(7). The challenged statutes regulate commercial and professional conduct rather than speech or expressive conduct, and any burden they have on speech is merely incidental. Also, because the challenged law bans residential contractors from advertising activities otherwise illegal for them to perform, intermediate scrutiny under the commercial speech doctrine is inappropriate. Therefore, the Court need not analyze Shamrock's facial or as-applied challenges under the First Amendment because the challenged laws are merely subject to rational basis review. And under rational basis review, both statutes must be upheld because they are reasonably related to Iowa's legitimate interest in preventing consumer fraud.

1. Iowa Code Sections 103A.71(3) and 522C.2(7) Regulate Commercial and Professional Conduct Rather than Speech

Shamrock asserts Iowa Code sections 103A.71(3) and 522C.2(7) "restrict and regulate a broad range of speech on the basis of both its content and its speaker." Complaint at ¶ 40. Apparently, Shamrock contends that the State cannot regulate companies in a manner to stop them from advertising illegal activities. Or, in the alternative, believes that the State may not preclude contractors from engaging in unlicensed insurance adjusting. The plain language of both statutes shows the Iowa Legislature has enacted a regulatory scheme which (1) prescribes conduct requiring licensure as a public adjuster and (2) forbids residential contractors from acting like public adjusters by engaging in conduct requiring a public adjuster's license. This is a core police power that does not implicate, much less offend, the First Amendment.

First, Iowa Code section 522C.2(7) defines "public adjuster" as used in Iowa Code chapter 522C. Public adjuster:

> means any person who for compensation or any other thing of value acts on behalf of an insured by doing any of the following:
>
> *a.* Acting for or aiding an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured.
>
> *b.* Advertising for employment as a public adjuster of first-party insurance claims or otherwise soliciting business or representing to the public that the person is a public adjuster of first-party insurance claims for loss or damage to real or personal property of an insured.
>
> *c.* Directly or indirectly soliciting business investigating or adjusting losses, or advising an insured about first-party claims for loss or damage to real or personal property of the insured.

The other challenged statute, Iowa Code section 103A.71(3), separately explains that:

> A residential contractor shall not represent or negotiate on behalf of, or offer or advertise to represent or negotiate on behalf of, an owner or possessor of residential real estate on any insurance claim in connection with the repair or replacement of roof systems, or the performance of any other exterior repair, exterior replacement, or exterior reconstruction work on the residential real estate.

The Iowa Supreme Court has held that Iowa Code section 103A.71(3) forbids residential contractors from acting like public adjusters. *See Carpenters Constr., Inc. v. State Farm Life and Health Co.*, 939 N.W.2d 69, 79-81 (Iowa 2020). That is, residential contractors are forbidden under Iowa Code section 103A.71(3) from engaging in the various forms of conduct described in Iowa Code section 522C.2(7). *33 Carpenters*, 939 N.W.2d at 79–81. Residential contractors are forbidden, for example, from advertising that they provide public adjuster services. But because the latter statute informs the proscriptions of the former statute, the Court should read both challenged statutes together while reviewing Shamrock's First Amendment claim.

The Supreme Court "has upheld regulations of professional conduct that incidentally burden speech. 'The First Amendment does not prevent restrictions directed at commerce or conduct from imposing incidental burdens on speech,' and professionals are no exceptions to this rule." *NIFLA.*,

585 U.S. at 769 (quoting *Sorrell*, 564 U.S. at 567). "Longstanding torts for professional malpractice, for example, fall within the traditional purview of state regulation of professional conduct. While drawing the line between speech and conduct may be difficult, th[e Supreme] Court's precedents have long drawn it." *Id.* (citations and quotations omitted).

The following guidance helps illustrate how a state law regulating professional conduct could potentially stray into an unconstitutional burden on free speech:

> [R]egulating the content of professionals' speech poses the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information. Take medicine, for example . . . Throughout history, governments have manipulated the content of doctor-patient discourse to increase state power and suppress minorities . . . Further, when the government polices the content of professional speech, it can fail to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.
>
> Professionals might have a host of good-faith disagreements, both with each other and with the government, on many topics in their respective fields. Doctors and nurses might disagree about the ethics of assisted suicide or the benefits of medical marijuana; lawyers and marriage counselors might disagree about the prudence of prenuptial agreements or the wisdom of divorce; bankers and accountants might disagree about the amount of money that should be devoted to savings or the benefits of tax reform. The best test of truth is the power of the thought to get itself accepted in the competition of the market, and the people lose when the government is the one deciding which ideas should prevail.

Id. at 771 (citations and quotations omitted).

Iowa's regulatory scheme does not raise any of those red flags. The scheme authorizes licensed public adjusters to aid, advise, and represent owners of residential real property in their residential insurance claims, while also forbidding residential contractors from doing the same. The State is not suppressing "unpopular ideas or information" or "deciding which ideas should prevail" by enforcing these statutes. *Id.* Even if the marketplace of ideas contains a small corner where professionals debate how best to fill out paperwork for a homeowner's insurance claim, Iowa's regulatory scheme does not take a side in that debate.

Nor does Iowa's regulatory scheme restrict expressive conduct. It is true that "[f]orms of conduct that express ideas without significantly interfering with legitimate state interests are privileged under the First Amendment." *Turchick v. U.S.*, 561 F.2d 719, 724 (8th Cir. 1977). But "[s]ince all conduct cannot be labeled speech even when 'the actor intends thereby to express an idea,' certainly conduct *not* intended to express an idea cannot be afforded protection as speech." *Bishop v. Colaw*, 450 F.2d 1069, 1074 (8th Cir. 1971) (quoting *O'Brien*, 391 U.S. at 376) (emphasis added).

Shamrock makes no showing that residential contractors are engaged in any form of protected expressive conduct when they aid, advise, or represent a homeowner in an insurance claim, or solicit themselves to the public as offering such services. That comes as no surprise. No reasonable person could believe, for example, that advocating for a homeowner in their insurance claim is a form of expression. The work of a public adjuster does not encapsulate any "idea" amenable for performative expression.

Shamrock's First Amendment claims rests on its assertion the challenged statutes "dictate what every person or entity engaged in the business of residential contracting can say, print, disseminate, publish, and post. In doing so, the Code sections prohibit general discussions of topics that are legal, such as negotiating, advertising, soliciting, and advising." Complaint at ¶¶ 41-42. But that fails to grapple with *NIFLA*. The laws of every state are replete with regulatory schemes which exclusively assign certain practices to one profession or another while also forbidding certain other persons from engaging in those practices.[1] Any profession that requires licensing necessarily excludes unlicensed individuals from advertising services in that practice. If banning certain unlicensed persons from engaging in conduct requiring licensure immediately raised the specter of a First Amendment violation, then a state's police power to regulate professional occupations would be nullified. More to the point,

[1] *E.g., see generally* Iowa Code chapters 147 – 157 and 272C (laws regulating the licensure of various professional and health-related professions, such as doctors, nurses, plumbers, engineers, barbers and cosmetologists, etc., and providing penalties for unlicensed practice).

Iowa's regulatory scheme for public adjusters and residential contractors mirrors restrictions implemented by 44 other states, at least one of which has prevailed against First (and Fourteenth) Amendment scrutiny. *See Texas Dept' of Insurance v. Stonewater Roofing, Ltd. Co.*, 696 S.W.3d 646 (Tex. 2024) (upholding Texas's laws banning residential contractors from acting as public adjusters against free speech and vagueness challenges under the First and Fourteenth Amendments respectively).

2. The Commercial Speech Banned by Iowa Code Sections 103A.71(3) and 522C.2(7) Does Not Trigger Intermediate Scrutiny

While the challenged statutes include a ban on certain commercial speech, rational basis still applies to the entirety of Shamrock's First Amendment claims.

Advertising is commercial speech. *Central Hudson*, 447 U.S. at 563. Iowa Code section 103A.71(3) bans residential contractors from advertising themselves as providing public adjuster services. Ordinarily, a government ban on commercial speech triggers intermediate scrutiny. But "[t]he government may ban . . . commercial speech related to illegal activity" without implicating the First Amendment because such commercial speech has no First Amendment protections. *Central Hudson*, 447 U.S. at 563–64 (citing *Pittsburgh Press Co. v. Human Relations Comm'n*, 413 U.S. 376, 388 (1973) (upholding a ban on commercial advertisements for services otherwise made illegal)).

Intermediate scrutiny does not apply to Shamrock's First Amendment claims because it is illegal for *any person* to act as public adjuster without a license. Iowa Code section 522C.2(7) prescribes the conduct which can only be performed by a public adjuster, which includes aiding, advising, and representing property owners in their residential insurance claims, and soliciting and advertising such services to the public. Iowa Code sections 522C.4 and 522C.6, however, separately provide that *no person* is allowed to act or advertise themselves as a public adjuster unless they have a public adjuster license, and that any person who acts as a public adjuster without a license commits a serious misdemeanor and may be assessed civil penalties under Iowa Code chapter 507A.

By banning residential contractors from advertising themselves as public adjusters, Iowa Code section 103A.71(3) is simply banning speech relating to conduct that is already illegal. This means the ban does not trigger intermediate scrutiny. *See Central Hudson*, 447 U.S. at 563–64. This also undercuts the redressability of Shamrock's Complaint. Even if this Court entered an injunction enjoining Iowa from enforcing its regulatory scheme against Shamrock, there would be no relief. If Plaintiff continued to advertise itself as a public adjuster, Plaintiff would still be in violation of Iowa Code sections 522C.4 and 522C.6 whether or not the Division was enjoined from enforcing Iowa Code section 103A.71(3). And without relief, no injunction can issue.

3. Iowa Code Sections 103A.71(3) and 522C.2(7) are Lawful under Rational Basis Review

Because the challenged statutes do not burden speech or expressive conduct, and because they do not ban commercial speech protected by the First Amendment, the Court reviews both laws for a rational basis. Rational basis review only asks whether the challenged law "bear[s] a rational relation to a legitimate governmental purpose." *Regan*, 461 U.S. at 547.

Iowa Code sections 103A.71(3) and 522C.2(7) both pass muster under that generous test. In *33 Carpenters*, the Iowa Supreme Court determined that Iowa's regulatory scheme mirrors the schemes adopted by 44 other states, and it effectuates a legitimate government interest in "curtail[ing] unethical and abusive practices," such as collusion, price gouging, high-pressure sales tactics, and other forms of exploitation. 939 N.W.2d at 77. A scenario ripe for abuse would include, for example, a residential contractor who provides repair services to a homeowner after a natural disaster while also representing the homeowner in negotiations with his insurance company; the contractor could easily exploit the dual relationship by artificially inflating repair efforts and expenses, bilking either the homeowner or insurance company.

D. Shamrock Fails to State a Cognizable Claim for Unconstitutional Vagueness under the Fourteenth Amendment

Shamrock alleges Iowa Code sections 103A.71(3) and 522C.2(7) are unconstitutionally vague under the due process clause of the Fourteenth Amendment, both on their face and as applied to Shamrock. Complaint at ¶¶ 50–59. Both of Shamrock's claims fail because an ordinary person using common sense would understand what the statutes forbid and that Shamrock's conduct is prohibited.

Fourteenth Amendment due process requires statutes to provide fair notice or warning to the public. *Smith v. Goguen*, 415 U.S. 566, 572 (1974). Statutes offend due process when they are written "in terms so vague that [people] of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926); *see also Horn v. Burns and Roe*, 526 F.2d 251, 254 (8th Cir. 1976) (holding a statute must "convey sufficiently definite warning as to the proscribed conduct when measured by common understanding or practice"). A statute is not unconstitutionally vague, however:

> where its terms are such that the ordinary person exercising common sense can sufficiently understand and fulfill its proscriptions . . . A finding of vagueness will thus result only where the extraction of obedience to a rule or standard was so vague and indefinite as really to be no rule or standard at all.

Horn, 526 F.2d at 254. (citations and quotations omitted).

Statutes which provide "[e]conomic regulation [are] subject to a less strict vagueness test because its subject matter is often more narrow, and because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982). Similarly, when a statute does not impose criminal sanctions, there is "greater tolerance . . . because the consequences of imprecision are qualitatively less severe." *Id*, 455 U.S. at 498–99; *see also Horn*, 526 F.2d at 254 (holding a statute enforceable by civil penalties "requires less literal exactitude in order to comport with due process").

The analysis also shifts when a federal court reviews a *state* statute for vagueness. "The judgment of federal courts as to the vagueness or not of a state statute must be made in the light of

prior state constructions of the statute." *Wainwright v. Stone*, 414 U.S. 21, 22 (1973). If a state's highest court has already interpreted a state statute, then a federal court "must take the statute as though it read precisely as the highest court of the State has interpreted it." *Id.* at 22–23 (citations and quotations omitted); *see also Horn*, 536 F.2d at n. 7 ("[F]ederal courts are without authority to provide limiting interpretations of state statutes").

Finally, when a plaintiff alleges a statute is both unconstitutionally vague as-applied to the plaintiff and on its face, federal courts are required to examine the as-applied challenge first. *Hoffman Estates*, 455 U.S. at 494–95 (1982). Because facial challenges require a plaintiff to show "the enactment is impermissibly vague in *all* of its applications," *Hoffman Estates*, 455 U.S. at 494, then a plaintiff's failure to prevail in an as-applied challenge means the facial challenge fails *ipso facto*. *See Smith*, 415 U.S. at 578.

1. Iowa Code Sections 103A.71(3) and 522C.2(7) are not Unconstitutionally Vague as Applied to Shamrock Because Shamrock's Conduct is Proscribed

Shamrock alleges Iowa Code sections 103A.71(3) and 522C.2(7), as-applied and on their faces, are unconstitutionally vague. But because the Division served notice on Shamrock that its conduct violated both statutes, *see* Exhibit A, the Court must first analyze Shamrock's as-applied challenge. *See Hoffman Estates*, 455 U.S. at 495. The first inquiry in the as-applied analysis is whether Shamrock's conduct was "clearly proscribed" by the statutes. *See id.* If so, then Shamrock's void-for-vagueness claim must be dismissed, and no analysis is needed for Shamrock's facial challenge to the statutes. *See id.*

The proscriptions of Iowa Code section 103A.71(3) are clear and unambiguous. Residential contractors are forbidden from representing or negotiating on behalf of an insured party, or advertising to do so, for insurance claims arising from residential repairs. Residential contractors who engage in these practices are guilty of consumer fraud under Iowa Code section 714.16 and may be

subject to civil penalties. Under *33 Carpenters*, Iowa Code section 103A.71(3) forbids residential contractors from acting as public adjusters as defined in Iowa Code section 522C.2(7).

Iowa Code section 103A.71(3) is only enforced through civil penalties, *see* Iowa Code §§ 103A.6(b) and 714.16(7), so it is scrutinized for vagueness with "less literal exactitude in order to comport with due process." *Horn*, 526 F.2d at 254. (citations omitted). Iowa Code section 103A.71(3) is also an economic statute, which gives it wording even further leeway. *See Hoffman Estates*, 455 U.S. at 498.

Supporting the statute's legality, the Iowa Supreme Court in *33 Carpenters* has interpreted and applied Iowa Code section 103A.71(3), which means this Court is bound by its interpretation. *See Wainwright*, 414 U.S. at 22–23. In *33 Carpenters*, the Iowa Supreme Court affirmed a trial court's decision granting summary judgment against a contractor that violated Iowa Code section 103A.71(3). 939 N.W.2d at 72. The Iowa Supreme Court determined Iowa Code sections 103A.71(3) and 522C.2(7) "regulate the same conduct," with the latter statute providing the list of conduct residential contractors are forbidden from doing under the former statute. 939 N.W.2d at 79–81. Shamrock's void-for-vagueness challenge cannot be sustained unless both statutes, when read together, are "so vague and indefinite as really to be no rule or standard at all." *See Horn*, 526 F.2d at 254.

33 Contractors provides a robust analysis of both statutes, which must guide the Court's review of Shamrock's claims. *See* 939 N.W.2d at 80-81. The Iowa Supreme Court had no difficulty understanding and applying the Iowa Code to a residential contractor's conduct, which resulted in the finding that the contractor violated Iowa Code section 103A.71(3). *See id.* Iowa Code section 522C.2(7) provides three different categories of conduct which can only be performed by a public adjuster, and a residential contractor who performs them without a public adjuster license violates Iowa Code section 103A.71(3). *Id.* The analysis in *33 Carpenters* shows that Iowa Code section 522C.2(7) is self-evident in its meaning and application:

> Section 522C.2(7)(*a*) states a person is a public adjuster when "[a]cting for or aiding an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured." Iowa Code section 522C.2(7)(*a*). 33 Carpenters representative Shepherd directed the Clausens to file a claim with State Farm, which they promptly did that same day, and Shepherd attended the inspection of the Clausen property with the State Farm representatives in place of the Clausens. Shepherd's conduct aligned with 33 Carpenters' representations on its website, which advertised to homeowners that it would "meet personally with your insurance adjuster, as an ADVOCATE on YOUR behalf, and discuss the work that needs to be completed to repair your home to its original beauty and value." Additionally, 33 Carpenters submitted the first estimate to State Farm before the Clausens assigned their claim. 33 Carpenters thereby acted on behalf of the Clausens in negotiating their claim. Altogether, these activities demonstrate that 33 Carpenters was acting for and aiding the insureds.
>
> . . .
>
> Section 522C.2(7)(*c*) states a person is a public adjuster when acting on behalf of an insured for a thing of value by "[d]irectly or indirectly soliciting business investigating or adjusting losses, or advising an insured about first-party claims for loss or damage to real or personal property of the insured." Shepherd, as 33 Carpenters' representative, undisputedly approached the Clausens uninvited and offered to inspect their home for hail damage, and he directly solicited business for 33 Carpenters after finding damage on the roof and siding. The same day, Shepherd advised the Clausens to file a claim for that damage and had them sign documents agreeing to pay 33 Carpenters with their insurance proceeds in exchange for the company agreeing to repair the storm damage. This constitutes advising an insured about first-party claims for damage to the insured's real property. 33 Carpenters' six-step process on its website additionally exemplifies solicitation of business investigating losses and advising insureds regarding claims with promises to "ADVOCATE on YOUR behalf" and work directly with the insurance company to ensure all damaged areas are included in the report, among other things. Such conduct directly aligns with that of a public adjuster within the meaning of sections 522C.2(7)(*b*) and (*c*).

33 Carpenters, 939 N.W.2d at 80-81 (brackets and emphases original).

Here, given the plain language and meaning of both statutes, and given the Iowa Supreme Court's interpretation, Shamrock's alleged misconduct "is clearly proscribed" by the statutes. *See Hoffman Estates*, 455 U.S. at 495. Plaintiff's Complaint cites two notices it received from the Division on July 2 and September 5, 2024, respectively, which accuse Shamrock of acting as a public adjuster in violation of Iowa Code sections 103A.71(3) and 522C.2(7). Complaint at ¶¶ 18–24; *see also* Exhibits A–B. As part of its claim the two statutes were unconstitutionally vague as-applied, Shamrock alleges

the Division's letter of July 2, 2024, "did not identify, with any specificity, the actions Shamrock was being accused of engaging in. Further, the Notice demanded Shamrock take immediate action to cure the unidentified potential violations." Complaint at ¶¶ 21–22.

Shamrock mischaracterizes the July 2, 2024, letter. First, the letter provides a complete citation to the black letter law of Iowa Code section 522C.2(7). Exhibit A. The letter then informed Shamrock "[s]pecifically, your company states, offers, presents, or advertises that your company will become involved with the consumer's insurance company negotiating for or effecting the consumer's insurance claim." *Id.* The letter then provided a non-exhaustive list of exemplar solicitations or advertising statements which violate Iowa Code sections 103A.71(3) and 522C.2(7). *Id.* The Division also supplied Shamrock with a courtesy copy of the Findings of Fact, Conclusions of Law and Final Orders in the matter of 33 Carpenters Construction, Inc., the administrative action which led to *33 Carpenters*. *Id.* Finally, the July 2, 2024, letter closed out with a list of four required actions for Shamrock to cure its violations, including the removal of any wording in Shamrock's advertising, website, social media, etc., "that infers or represents your company will perform the actions/duties of a public adjuster." *Id.*

In its second letter of September 5, 2024, the Division cited multiple instances where customers of Shamrock publicly endorsed the company on its social media webpages for the company's assistance with insurance claims, such as

- "Helped me start the claims process with my insurance company. After being denied coverage,"
- "Promised me that they would go to bat and see if our insurance company would help out,"
- "Helped us navigate the insurance requirements,"
- "He dealt with our insurance company,"
- "He was very helpful assisting us with navigating thru [sic] the insurance claim process. He was an effective representative and advocate, and thankfully encouraged used not to give up the claim effort," and
- "Shamrock walked me through everything with insurance reimbursement."

Exhibit B. The Division's September 5, 2024, letter also explained that the personal website of Shamrock's executive director advertised "Free Roofing Inspections and Insurance Advocacy" in association with Shamrock the company. *Id.*

There is no doubt Shamrock's conduct alleged in the Division's letters of July 2 and September 5, 2024, would be proscribed by Iowa Code sections 103A.71(3) and 552C.2(7). Shamrock advertised itself as offering public adjuster services to its customers by allowing public endorsements from its prior customers to remain on its social media webpage which commended the company for its aid and advocacy with insurance claims. Iowa Code sections 103A.71(3) and 552C.2(7) forbid residential contractors from "advertising . . . or otherwise soliciting business or representing to the public" that they are public adjusters for insurance claims relating to real property. More importantly, the conduct underlying these advertisements and accolades, if sustained, would be illegal under Iowa Code sections 103A.71(3) and 552C.2(7). *See also 33 Carpenters*, 939 N.W.2d at 80–81.

Shamrock offers little in the way of explaining how it believes the statutes were too vague for them to understand, especially given the clarifying interpretation from the Iowa Supreme Court's straightforward application of the statutes in *33 Carpenters* and the actual notice Shamrock received in the Division's letters of July 2 and September 5, 2024. *See* Exhibits A–B. Shamrock contends the Division's letters failed to provide them notice of how their conduct violated the statutes. Complaint at ¶ 18–22. But this is not enough to sustain a void-for-vagueness challenge; the Fourteenth Amendment asks whether *statutes* provide fair notice of proscribed conduct. *See Smith*, 415 U.S. at 572. Shamrock also bases its void-for-vagueness claim on the assertion that "[a]s exhibited by Defendants' initial notice and subsequent list of violations, not even they could produce an exhaustive list of conduct punishable under the [Iowa] Code." Complaint at ¶ 53. But the test for unconstitutional vagueness does not ask whether a statute exhaustively identifies every form of conduct which would violate the statute. Nor does the test ask whether an executive agency with

power to enforce the law can, on request, supply such a list. Rather, the test is whether an "ordinary person exercising common sense can sufficiently understand and fulfill [the statute's] prescriptions." *Horn*, 536 F.3d 251, 254. Nor does reasonable certainty "preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding." *Id.* at 255.

As evidenced in *33 Carpenters*, there is nothing vague about the statutes challenged by Shamrock. *See* 939 N.W.2d at 80–81. The statutes are clear, direct, and understandable. Since Shamrock's as-applied challenge to Iowa Code sections 103A.71(3) and 552C.2(7) fail to state a claim for which relief can be granted, Shamrock's claims of unconstitutional vagueness must be dismissed.

2. Iowa Code Sections 103A.71(3) and 522C.2(7) are Not Facially Vague.

The Court need not analyze whether Iowa Code sections 103A.71(3) and 522C.2(7) are unconstitutionally vague on their faces if Shamrock cannot maintain its as-applied challenge. Indeed, any non-vague application of a law precludes a facial injunction. *See Hoffman Estates*, 455 U.S. at 495. But even if the Court reaches this issue, there is no question Shamrock's facial challenges must be dismissed.

A court can "uphold the challenge only if the enactment is impermissibly vague in *all* of its applications." *Hoffman Estates*, 455 U.S. at 494 (emphasis added). Nowhere in the Complaint does Shamrock attempt to make this showing. Moreover, the above analysis of Shamrock's as-applied challenge provides sufficient support to show that, on their face, the challenged statutes are not unconstitutionally vague. While the Iowa Supreme Court was not asked in *33 Carpenters* to analyze a vagueness challenge to either statute, it nonetheless readily applied the plain language of both statutes to the defendant's conduct. *See* 939 N.W.2d at 80-81. This is proof-positive the statutes *do* prescribe an enforceable standard of conduct, which means Shamrock's facial vagueness claims must fail. *See Smith*, 415 U.S. at 578.

E. The Court Should Decline to Interfere with An Ongoing State Enforcement Proceeding Under *Younger v. Harris* and Its Progeny

Shamrock asks the Court to enjoin two state officials from enforcing state law, which would contravene decades of precedent holding that the federal courts should not interfere with pending state administrative enforcement proceedings that implicate important state interests. *See Younger v. Harris*, 401 U.S. 37 (1971) (holding federal courts should not enjoin pending state court criminal proceedings unless necessary to prevent a great and immediate irreparable injury); *Middlesex Cnty. Ethics Comm'n v. Garden State Bar Ass'n,* 457 U.S. 423, 437 (1982) (applying *Younger* to state administrative case before New Jersey attorney disciplinary review board). *Younger* abstention is grounded in principles of comity, federalism, and the vital consideration of the proper respect for the fundamental role of the States in our federal system of government. *Ohio Civ. Rts. Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986).

Younger abstention first requires one of three "exceptional circumstances" to be found. *Sprint Comm'ns, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013); *Wassef v. Tibbens*, 68 F.4th 1083, 1087 (8th Cir. 2023). If a case meets one of the three *Younger* categories, abstention should follow. Where *Younger* applies, there is no discretion to grant injunctive relief. *Plouffe v. Ligon*, 606 F.3d 890, 894 (8th Cir. 2010) (Colloton, J., concurring). If *Younger* abstention applies, it requires the outright dismissal of the federal suit and the presentation of all claims, both state and federal, to the state courts. *Wassef*, 68 F.4th at 1091.

The Court should abstain from intervening in the ongoing state enforcement action against Shamrock because the Division's enforcement action against Shamrock falls squarely within one of the *Younger* categories, it satisfies the *Middlesex* factors, and no exception or extraordinary circumstances counsel against *Younger* abstention.

1. The Division's Enforcement Action Against Shamrock Fits the *Younger* Category of a State Civil Enforcement Proceeding

Younger abstention applies in three categories of "exceptional circumstances": (1) ongoing state criminal prosecutions; (2) certain civil enforcement proceedings; and (3) pending civil proceedings

involving the state courts' ability to perform their judicial functions. *Sprint Comm'ns*, 571 U.S. at 78; *Wassef*, 68 F.4th at 1087. The Iowa Insurance Division's action against Shamrock falls squarely into the second *Younger* category. That category includes actions "akin to a criminal prosecution in important respects." *Wassef,* 68 F.4th at 1088. In determining whether a state action fits into this category, the Court should ask: (1) was the action started by the State in its sovereign capacity? (2) Was the proceeding initiated to sanction the federal plaintiff for some wrongful act? (3) Are there other similarities to criminal actions, such as a preliminary investigation culminating in the filing of formal charges? *Id.*

Here, the Division's enforcement action against Shamrock is a civil enforcement action brought by the State in its sovereign capacity to sanction an unlicensed public adjuster for wrongful acts. The Division commenced the proceeding against Shamrock as part of its state law responsibility to govern the business of insurance in Iowa and to protect consumers. The Division engaged in a preliminary investigation before sending the warning letter. This enforcement action is similar to other cases in which the United States Supreme Court has recognized that *Younger* abstention is appropriate. *See Sprint Comm'ns*, 571 U.S. at 79–80 (discussing state proceedings which are akin to criminal prosecution).

This Court has acknowledged that a sanction under a licensing scheme for acting without a requisite license, such as the Division's action against Shamrock, may resemble a criminal prosecution such that *Younger* abstention is warranted. *Birchansky v. Clabaugh*, 421 F. Supp.3d 658, 670 (S.D. Iowa 2018). The Court should hold that this case fits the second *Younger* category and proceed to analyze the *Middlesex* factors.

2. The Division's Enforcement Action Against Shamrock Satisfies the *Middlesex* Factors

The Division's ongoing enforcement action also satisfies the three *Middlesex* factors. In *Middlesex*, the Supreme Court employed a three-part inquiry to determine whether *Younger* abstention

is appropriate in the case of state administrative action. *Middlesex*, 457 U.S. at 432. First, there must be an ongoing state proceeding that is judicial in nature; second, the proceeding must implicate important state interests; and third, there must be adequate opportunity in the state proceeding to raise constitutional challenges. *Id.*

a. The Division's Ongoing Enforcement Action is Judicial in Nature

Under the first *Middlesex* prong, the Division's enforcement proceedings are judicial in nature. The Commissioner is empowered to "enforce all the laws of the state related to federal and state insurance business transacted in the state" and to "conduct public or private investigations within or outside of this state which the commissioner deems necessary or appropriate" to determine whether any person has violated Iowa law. Iowa Code §§ 505.8(1), 505.8(11)(a). Iowa's contested case and judicial review process, which is necessary to impose sanctions against any party, is like a court process. *See* Iowa Code §§ 17A.11–17 (describing the contested case process), 17A.19 (describing the judicial review process from final agency action); 191 Iowa Administrative Code ch. 3 (Division's contested case rules). Iowa's Administrative Procedure Act defines a contested case as "a proceeding including but not restricted to ratemaking, price fixing, and licensing in which the legal rights, duties, or privileges of any party are required by the Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing." Iowa Code § 17A.2(5). Under the Division's rules, Shamrock may request a contested case, be represented by counsel, conduct discovery and motion practice, and present evidence at hearing. Iowa Code §§ 17A.11-17; 191 Iowa Administrative Code ch. 3.

State administrative enforcement actions are judicial in nature. *See Gillette v. North Dakota Disciplinary Bd. Counsel,* 610 F.3d 1045, 1048–49 (8th Cir. 2010) (affirming *Younger* abstention in pending attorney discipline case); *Birchansky v. Clabaugh*, 421 F. Supp.3d 658, 670 (S.D. Iowa 2018) (state licensure enforcement is judicial in nature). *Younger* abstention requires an ongoing civil proceeding.

Wassef, 68 F.4th at 1083. But where an investigation is ongoing, and formal charges may be filed, that requirement is satisfied and *Younger* abstention is appropriate. *See Dickten Masch Plastics, LLC v. Williams*, 199 F.Supp.3d 1207, n. 11 (S.D. Iowa 2016) (*Younger* abstention appropriate after initiation of Iowa Civil Rights Commission investigation but unnecessary since case dismissed on other grounds); *see also Mason v. Dept. Disciplinary Committee of the Appellate Div. of the Supreme Court of N. Y., First Judicial Dept*, 894 F.2d 512, 516 (2d Cir. 1990) (abstaining under *Younger* when plaintiff sought to enjoin a bar disciplinary investigation).

Here, the investigation into Shamrock is ongoing, and the Division has warned Shamrock it may seek sanctions. Exhibit A. The Division has offered Shamrock a chance to resolve the dispute by voluntarily ceasing its misconduct and removing the improper statements about working with insurance companies, and that "further instances of misconduct will result in administrative violation(s) and a referral to law enforcement officials for consideration of criminal prosecution." *Id.* And the letter requires Shamrock to remove public statements from its websites, which goes beyond a mere warning. *See Irland*, 939 N.W.2d at 90–91 (finding a letter of warning goes beyond warnings but requires action, it is discipline).

b. The Division's Enforcement Action Serves Important State Interests

Insurance regulation is an important state interest for purposes of *Younger* abstention. *Alleghany Corp. v. Pomeroy*, 898 F.2d 1314, 1318 (8th Cir. 1990). Regulation of public adjusters and contractors is adjacent to that duty and necessary for ensuring access to affordable coverage for consumers. The Division's supervision of the insurance business and its enforcement action against Shamrock serve important state interests and therefore the Court should abstain from intervention in them.

The Iowa Supreme Court has recognized that the contractor and public adjuster statutes serve the public interest. The Court stated, "The goal of the licensing statutes is to curtail unethical and

abusive practices by public adjusters who present danger to the public by chasing fires and soliciting clients under conditions of duress." *33 Carpenters* 939 N.W.2d at 77. The unethical practices alleged to have been presented by public adjusters include "price gouging, collusion, high-pressure sales tactics, fraud, and incompetence." *Id.* Homeowners and their insurers are especially vulnerable to exploitation "in the wake of earthquakes, fires, floods, and similar catastrophes." *Id.*

A recent report by the Insurance Information Institute concluded,

> In Florida, abuse of [assignment of benefits contracts (AOBs)] has fueled an insurance crisis. The state's legal environment has encouraged vendors and their attorneys to solicit unwarranted AOBs from tens of thousands of Floridians, conduct unnecessary or unnecessarily expensive work, then file tens of thousands of lawsuits against insurance companies that deny or dispute the claims. This mini-industry has cost consumers billions of dollars as they are forced to pay higher premiums to cover needless repairs and excessive legal fees. And consumers often do not even know that their claims are driving these cost increases. The abuse therefore acts somewhat like a hidden tax on consumers, helping to increase what are already some of the highest insurance premiums in the country.

James Lynch & Lucian McMahon, Ins. Info. Inst., *Florida's Assignment of Benefits Crisis: Runaway Litigation Is Spreading, and Consumers Are Paying the Price* 2 (March 2019).

Given precedent and the important public interests plainly at stake, the second *Middlesex* factor is satisfied here.

c. Shamrock has an Adequate Opportunity to Raise Constitutional Issues in State Court

Finally, Shamrock has an adequate opportunity in the state proceeding to raise its constitutional challenges. Even though the Division has stated it will take further action if Shamrock does not comply, Shamrock need not simply wait for the Division to act to continue the administrative process and raise its constitutional claims. Under the Division's rules, Shamrock can request a contested case to challenge the warning letter and its accusations before the agency and then seek judicial review. 191 Iowa Admin. Code chapter 3; Iowa Code § 17A.19. Constitutional issues can be raised before an agency and preserved for judicial review before the Iowa district court. *Soo Line R.R.*

v. Iowa Dep't of Transp., 521 N.W.2d 685, 688 (Iowa 1994). Iowa courts are empowered to hear and determine claims brought under the United States Constitution. *See, e.g., State v. Tyler*, 830 N.W.2d 288, 291–92 (Iowa 2013). Rather than pursue these available remedies, Shamrock sought this Court's intervention. The Court should decline Shamrock's invitation to intervene in an ongoing state judicial process.

3. No Extraordinary Circumstances Counsel Against *Younger* Abstention

Even if the *Middlesex* requirements are met, a federal court should not abstain under *Younger* if there is a showing of "bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate." *Middlesex,* 457 U.S. at 432. The Supreme Court has suggested that an exception making abstention inappropriate might exist where a state statute is "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." *Trainor v. Hernandez,* 431 U.S. 434, 447 (1977) (quoting *Younger,* 401 U.S. at 53–54); *Plouffe v. Ligon,* 606 F.3d 890, 892–93 (8th Cir. 2010).

Shamrock does not allege that the Division has engaged in any bad-faith conduct or harassment (nor could it). And the statutes about which Shamrock complains are constitutional. Recently, a similar licensing scheme for public adjusters and contractors was upheld against similar constitutional challenges in Texas. *See Texas Dept. of Ins. v. Stonewater Roofing, Ltd.*, 696 S.W.3d 646 (Texas 2024).

F. The Court Should Apply the *Pullman* Abstention Doctrine

Beyond *Younger v. Harris,* the Court should abstain under the *Pullman* abstention doctrine. *See R.R. Comm'n v. Pullman Co.*, 312 U.S. 496 (1941). *Pullman* abstention is appropriate because Iowa state courts could rule on state statutory grounds and avoid the constitutional questions altogether. *See Beavers v. Ark. State Bd. of Dental Exam'rs*, 151 F.3d 838, 841 (8th Cir. 1998). Here, the state courts on

judicial review could determine that Shamrock's conduct does not violate Iowa Code sections 103A.71 or 522C.2.

Pullman abstention requires considering (1) the effect abstention would have on the rights to be protected by considering the nature of both the right and necessary remedy; (2) available state remedies; (3) whether the challenged state law is unclear; (4) whether the challenged state law is fairly susceptible to an interpretation that would avoid any federal constitutional question; and (5) whether abstention will avoid unnecessary federal interference in state operations. *George v. Parratt,* 602 F.2d 818, 820–22 (8th Cir.1979).

In *Lake Carriers' Association v. MacMullan,* the Supreme Court defined the proper context for *Pullman* abstention:

> The paradigm case for abstention arises when the challenged state statute is susceptible of a construction by the state courts that would avoid or modify the [federal] constitutional question . . . Where resolution of the federal constitutional question is dependent upon, or may be materially altered by, the determination of an uncertain issue of state law, abstention may be proper in order to avoid unnecessary friction in federal-state relations, interference with important state functions, tentative decisions on questions of state law, and premature constitutional adjudication . . . The doctrine . . . contemplates that deference to state court adjudication only be made where the issue of state law is uncertain.

406 U.S. 498, 510–11 (1972) (quotations omitted). While *Pullman* abstention has generally been disfavored in the context of First Amendment claims where state statutes have been facially challenged under the federal constitution, it has nonetheless been upheld in some cases in the interest of comity and federalism. *See, e.g., Babbitt v. United Farm Workers Nat'l Union,* 442 U.S. 289, 307–12 (1979); *Harrison v. NAACP,* 360 U.S. 167, 176–78 (1959).

Considering the factors set forth in *George* and *Beavers*, the Court should abstain under *Pullman.* Shamrock has a readily available state remedy before the agency and the Iowa courts on judicial review, meaning that abstention would not deprive Shamrock of its opportunity to be heard. The challenged state laws are not unclear. If the Iowa courts determine that either 1) Shamrock is not liable under

the challenged statutes or 2) the statutes are unconstitutional, there will be no need for this Court to act. Therefore, abstention will avoid unnecessary federal interference in state operations.

CONCLUSION

For these reasons, the State respectfully requests that this Court dismiss Plaintiffs' complaint.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

/s/ Lindsey L. Browning
LINDSEY L. BROWNING AT0011959
Assistant Attorney General
Agency Counsel Division
1305 E. Walnut St., Second Fl.
Des Moines, IA 50319
Ph: (515) 281-3441
Fax: (515) 281-4209
Email: lindsey.browning@ag.iowa.gov

*/s/ Kevin Protzmann**
KEVIN PROTZMANN AT0013818
Assistant Attorney General
Agency Counsel Division
1305 E. Walnut St., Second Fl.
Des Moines, IA 50319
Ph: (515) 281-6690
Fax: (515) 281-4209
Email: kevin.protzmann@ag.iowa.gov

ATTORNEYS FOR DEFENDANTS
* Pending Admission

Counsel of record served electronically on
January 13, 2025.