

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SHAMROCK HILLS, LLC,
d/b/a SHAMROCK ROOFING AND CONSTRUCTION,
Appellant,

v.

STATE OF IOWA, 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,
Appellees.

Appeal from the United States District Court for the Southern District of Iowa
The Honorable Rebecca Goodgame Ebinger, United States District Judge

REPLY BRIEF OF APPELLANT SHAMROCK HILLS, LLC

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ARGUMENT

I. Iowa’s attempt to uphold its public adjuster laws as ordinary economic or professional licensing regimes fails.

Iowa opens by arguing that its regulatory scheme is innocuous and serves only to “protect the public” from “unethical and abusive practices by public adjusters who present danger to the public by chasing fires and soliciting clients under duress.” Appellees’ Br. 13. In essence, Iowa claims that because it has a laudable goal in regulating this “profession,” it has unfettered discretion to regulate however it chooses, regardless of the implications on speech. Iowa is wrong. The Supreme Court was unmistakably clear in *NIFLA*: States may not exempt themselves from the structures of the First Amendment by claiming speech is part of a professional licensing requirement, even if legitimate policy reasons underly the regulatory regime. *See Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 773 (2018).

In support of its misguided attempt to defend its infringements of speech as economic regulation, Iowa cites authority for the proposition that, when faced with *due process challenges*, state licensing and regulatory regimes need only be supported by “plausible reasons” or “any reasonably conceivable state of facts that could provide a rational basis” for the laws. *See Appellees’ Br. 11-12*. Iowa claims that this “line of authority is dispositive here.” Appellees’ Br. 14. However, Shamrock’s principal challenge to Iowa’s public adjuster laws is not based upon due

process but, rather, the First Amendment. As such, the authority cited by Iowa is inapplicable.

II. Iowa’s public adjuster laws are content based and subject to strict scrutiny.

Throughout its briefing, Iowa “conflates two distinct but related limitations that the First Amendment places on government regulation of speech.” *Reed v. Town of Gilbert*, 576 U.S. 155, 168 (2015). Specifically, Iowa repeatedly defends its public adjuster laws by arguing that Shamrock has not identified any message that is being restricted, suggesting that the First Amendment is not implicated because Iowa does not discriminate against any particular viewpoint. *See, e.g.*, Appellees’ Br. 15 (“Shamrock cannot point to any particular message, idea, subject matter or content it is barred from expressing”); 20 (“The statutes . . . do not reference any specific expressive or communicative subjects targeted, nor do they discriminate against any viewpoint.”); 23 (“Shamrock cannot identify exactly what message the State seeks to prevent it from expressing. That failure is fatal to its First Amendment claims.”); 42 (“Shamrock fails to demonstrate that Iowa’s public adjuster regulations regulate or prohibit any *protected* speech, must less a substantial amount of *protected* speech.” (emphasis added)).

“Government discrimination among viewpoints—or the regulation of speech based on ‘the specific motivating ideology or the opinion or perspective of the speaker’—is a ‘more blatant’ and ‘egregious form of content discrimination.’” *Reed*,

576 U.S. at 168-69 (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)). “But it is well established that ‘[t]he First Amendment’s hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.’” *Id.* at 169 (quoting *Consol. Edison Co. of N.Y. v. Pub. Serv. Comm’n*, 447 U.S. 530, 537 (1980)). Simply put: “A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech.” *Id.* at 165 (citation omitted).

While Iowa’s public adjuster laws may be “viewpoint-neutral,” they are most certainly content based—and subject to strict scrutiny. “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” *Id.* at 163. Stated otherwise, laws are content based if they “require[] ‘enforcement authorities’ to ‘examine the content of the message that is conveyed to determine whether’ a violation has occurred.” *McCullen v. Coakley*, 573 U.S. 464, 479 (2014) (quoting *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 383 (1984)).

Iowa’s public adjuster laws restrict speech based on who is speaking (residential contractors) and the topic they are discussing (insurance coverage), which makes the law at issue content based. Shamrock’s employees are allowed to

speak to their clients and insurance companies about the weather, their kids' upcoming activities and past accomplishments, or team USA's thrilling overtime win over Canada in the 2026 Olympic hockey gold medal match without fear of being prosecuted by the government. The moment that conversation turns to homeowner's insurance, however, Shamrock and other residential contractors risk violating the law. The content of the speech is precisely what determines whether the speech is lawful. As such, Iowa's public adjuster laws regulate speech based upon its content and are subject to scrutiny under the First Amendment. The district court erred in concluding otherwise.

III. Iowa's public adjuster laws have more than incidental burdens on speech.

Shamrock does not contend that the Supreme Court has abrogated the incidental-burden doctrine. Rather, Shamrock contends that Iowa's public adjuster laws do more than just incidentally burden speech. This strawman presented by Iowa serves as nothing more than a distraction from the fundamental problem with its public adjuster laws: how Iowa determines if one is acting as a public adjuster. Indeed, the nub of this dispute is a determination of the "conduct triggering coverage." *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010).

The district court properly recognized that Iowa defines a public adjuster by an "enumerating list of actions." *See App. 33; R. Doc. 41, at 13; Add. 19.* As previously outlined by Shamrock, these "enumerating list of actions" plainly consist

of “actions” which are speech. *See* Appellant’s Br. 13-16.¹ For example, according to Iowa, “advocat[ing]” for homeowners evidences a violation of the law. *See* App. 16; R. Doc. 13-1; Add. 2. So too does a homeowner authorization enabling Shamrock to speak with an insurer. *See id.* These are not incidental burdens on speech. Instead, speech is the “conduct triggering coverage.” *See Holder*, 561 U.S. at 28. Iowa does not seriously contend otherwise.

In a remarkable shift in position, Iowa baldly claims that the laws “do not proscribe providing all aid and advice to an insured individual” or “prohibit[] providing generic advice or assistance to insured individuals” and instead restrict only an agency relationship. Appellees’ Br. 29. In truth, Iowa’s laws do contain these broad prohibitions, both facially and as applied, and Iowa’s laws do not depend on the existence of an agency relationship. Iowa does not show how anyone would be acting as a public adjuster other than through speech. If anything, by removing the phrase “on behalf of an insured” from its public adjuster laws after initiation of this litigation, *see supra*, n.1, Iowa has only reinforced that it is not seeking to regulate agency relationships like the Texas public adjuster laws at issue in *Stonewater Roofing* but, instead, is directly regulating speech.

¹ During the pendency of this action, Iowa amended its public adjuster laws. *See* Iowa 2025 Acts, ch 28, §52. The “enumerating list of actions” remains. *See* Iowa Code 522C.2(18). The only substantive revision impacting these proceedings was removal of “on behalf of an insured” from the definition of public adjuster. *See id.*

Further scrambling to defend its unconstitutional regulatory regime, Iowa protests that if speech is recognized as speech, states would be unable to regulate lawyers, medical professionals, and the like. This is nonsense. States retain wide latitude to regulate professional conduct. The question is, and always has been, how a state defines something like the practice of law. Again, as the Supreme Court recognized in *Holder*, the question turns on an evaluation of the “conduct triggering coverage.” 561 U.S. at 28. “While drawing the line between speech and conduct can be difficult, this Court’s precedents have long drawn it.” *NIFLA*, 585 U.S. at 769.

If, for example, a state regulates the practice of law based upon a person’s representation of another person or entity, appearance before a tribunal, or the preparation of legal documents on someone’s behalf, such regulation would be of conduct with only incidental burdens on speech. If, however, a state defines the practice of law by what someone can or cannot say, the First Amendment is implicated and the law must survive the appropriate level of scrutiny. *See, e.g., Upsolve, Inc. v. James*, 155 F.4th 133, 141 (2d Cir. 2025), petition for cert. filed (U.S. Feb. 6, 2026) (No. 25-948); *Brokamp v. District of Columbia*, No. 20-3574 (TJK), 2022 WL 681205 (D.D.C. Mar. 7, 2022).

Iowa claims that “every court that has passed on the validity of statutes regulating such professions has concluded that such regulations are not restrictions on speech subject to heightened scrutiny under the First Amendment.” Appellees’

Br. 17 (emphasis added). The Supreme Court disagrees: “[T]his Court has applied strict scrutiny to content-based laws that regulate the noncommercial speech of lawyers.” *NIFLA*, 585 U.S. at 771 (citing *Reed*, 576 U. S., at 167 and *In re Primus*, 436 U. S. 412, 432 (1978)); *see also Holder*, 561 U.S. at 27–28, 40 (applying strict scrutiny to laws banning the provision of legal advice to designated terrorist organizations).

Beyond the Supreme Court’s direct and explicit rejection of Iowa’s position, the authority cited by Iowa on this issue is also inapposite. The two Supreme Court decisions cited by Iowa involved solicitations by lawyers (i.e., commercial speech). *See Ohralik v. Ohio State Bar Ass’n*, 436 U.S. 447, 456 (1978); *Fla. Bar v. Went for It, Inc.*, 515 U.S. 618, 625 (1995). All agree that, save for the advertising ban imposed against residential contractors in § 103A.71(3), this matter does not involve commercial speech. *See generally City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 422 (1993) (defining commercial speech as speech which does no more than propose a commercial transaction); *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 563 (1980) (“The First Amendment’s concern for commercial speech is based on the informational function of advertising.”).²

² Of note, many of the public interests that Iowa purports to protect through its public adjuster laws—such as unsavory adjusters that are “chasing fires and soliciting clients under conditions of duress”—could be addressed if Iowa had a regulatory regime focused on commercial speech. Those issues, however, can be

Moreover, in *Southern Christian Leadership Conference v. Supreme Court of Louisiana*, 252 F.3d 781, 789 (5th Cir. 2001), the Fifth Circuit upheld a law that banned law students from representing clients as attorneys, which only incidentally involved speech. Additionally, both that decision and the state court decisions cited by Iowa were decided prior to the Supreme Court’s recent opinions on the interplay between the First Amendment and professional licensing.

Regardless, this is not a dispute about the regulation of lawyers, who maintain a unique historical position in this nation as officers of the court. While Iowa tries desperately to present a world where chaos would result if the First Amendment truly applied to professional speech, as explained in Shamrock’s opening brief—and unrefuted by Iowa—the opposite is actually true: If a state is allowed to categorize speech as professional conduct to evade the First Amendment, states would have “unfettered power to reduce a group’s First Amendment rights by simply imposing a licensing requirement.” *NIFLA*, 585 U.S. at 773; *see also* Appellant’s Br. 21.

IV. Iowa fails to defend against the vagueness of its laws.

On the issue of vagueness, Iowa fails to articulate the scope of its public adjuster laws in a manner that would “provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.” *Hill v. Colorado*,

addressed on remand to determine if the current laws are narrowly tailored to achieve a compelling purpose.

530 U.S. 703, 732 (2000). Iowa does not even try to explain how its laws do not “authorize[] or . . . encourage[] arbitrary and discriminatory enforcement.” *Id.*

It remains anyone’s guess what constitutes “aid[ing]” an insured in negotiating or affecting the settlement of a first-party claim for loss or damage to property or “advising” an insured about the same.³ As applied to Shamrock, Iowa has taken the position that “help[ing]” a homeowner with their insurance claim is a violation of the law. App. 15; R. Doc. 13-1, at 2; Add. 2. Iowa provides no explanation for what kind of “help” it is regulating—and criminalizing—or how the statute provides notice that “help” violates the law.

Instead, Iowa’s defense of the statute rests almost completely on the Iowa Supreme Court’s decision in *33 Carpenters Construction, Inc. v. State Farm Life & Health Co.*, 939 N.W.2d 69, 77 (Iowa 2020). As noted in Shamrock’s initial brief, in *33 Carpenters*, the Iowa Supreme Court did not interpret the language that Shamrock principally challenges. *See* Appellant’s Br. 31 n.4.

Finally, Iowa does not dispute that this Court’s decision in *United States v. Turner* requires, at the very least, reversal so that Shamrock’s as-applied vagueness

³ Iowa accuses Shamrock of trying to manipulate the statute by quoting isolated words out of statutory context. *See* Appellees’ Br. 29, 39. These accusations are misguided. Shamrock clearly articulated the full scope of the laws in its briefing and highlighted the problematic aspects of the laws at other points in its briefing. *See* Appellant’s Br. i, 9, 14, 29.

challenge can develop and proceed to summary judgment or trial. *See* 842 F.3d 602, 605 (8th Cir. 2016).

CONCLUSION

For the foregoing reasons, and those articulated in Shamrock's opening brief, Shamrock respectfully requests that the Court reverse the district court's order and remand for further proceedings consistent with the Court's opinion.

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Certificate of Compliance

Pursuant to Federal Rules of Appellate Procedure 32(a)(7), I hereby certify that this brief complies with the applicable type-volume limitation. Specifically, this brief contains 2,952 words using proportional spacing and 14-point type (Times New Roman font for Microsoft Word). The brief has been prepared using Microsoft Word 2013 and Adobe Acrobat XI.

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/s/ Brandon R. Underwood

CERTIFICATE OF SERVICE

I hereby certify that, on February 25, 2026, I electronically filed the Reply Brief of Appellant with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Brandon R. Underwood