

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

FILED #  
U.S. DISTRICT COURT  
DISTRICT OF NEW MEXICO

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CLERK-ALBUQUERQUE

SHERRY FRANZOY and  
CARYN ARMIJO,

Plaintiffs,

v.

CIV - 06 - 0832

No. CIV \_\_\_\_\_

BARBARA TEMPLEMAN, in her official capacity  
as PRESIDENT OF THE NEW MEXICO INTERIOR  
DESIGN BOARD; C. EUGENE LAW, in his official  
capacity as VICE-PRESIDENT OF THE NEW MEXICO  
INTERIOR DESIGN BOARD; CANDACE JACOBSEN,  
in her official capacity as SECRETARY/TREASURER  
OF THE NEW MEXICO INTERIOR DESIGN BOARD;  
CAROL SHANNON, in her official capacity as PUBLIC  
MEMBER OF THE NEW MEXICO INTERIOR DESIGN  
BOARD; and ERNEST MARTINEZ, in his official capacity  
as PUBLIC MEMBER OF THE NEW MEXICO INTERIOR  
DESIGN BOARD,

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This civil rights lawsuit seeks to vindicate the right of Plaintiffs Sherry Franzoy and Caryn Armijo to earn an honest living and communicate truthfully about the interior design services they provide. In New Mexico, anyone may work as an interior designer regardless of their qualifications or credentials, and no license is required to perform such work. But only special license holders are permitted to use the specific terms "interior designer" and "interior design" to describe their work. Thus, New Mexico prohibits non-licenseholders from calling themselves "interior designers" or referring to their work as "interior design," even when those terms accurately describe the services they lawfully provide. Because censorship of truthful

commercial speech is repugnant to the Constitution, New Mexico's attempt to license use of the terms "interior design" and "interior designer" cannot stand.

### **Jurisdiction and Venue**

2. Plaintiffs Sherry Franzoy and Caryn Armijo bring this civil rights lawsuit pursuant to the First and Fourteenth Amendments to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgments Act, 28 U.S.C. §§ 2201 & 2202. Plaintiffs seek injunctive and declaratory relief against the enforcement of New Mexico's Interior Designers Act, N.M.S.A. (1978), § 61-24C-11(A)(1) and § 61-24C-13, and N.M.A.C. 16.42.3.8(A) (2002), that facially and as applied interfere with Plaintiffs' First Amendment right to communicate truthfully with potential customers regarding the services they legally provide as interior designers.

3. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b).

### **Parties**

5. Plaintiff Sherry Franzoy is an adult resident of Doña Ana County, New Mexico. Franzoy is the owner of *Interiors by Decorating Den*, an owner-operated interior design franchise. Franzoy provides interior design services in Doña Ana County and elsewhere within the State of New Mexico.

6. Plaintiff Caryn Armijo is an adult resident of Bernalillo County, New Mexico. Armijo is the owner and sole proprietor of *Caryn Armijo Interiors*, which offers interior design services throughout Bernalillo County and elsewhere within the State of New Mexico.

7. Defendant Barbara Templeman is the President of the New Mexico Interior Design Board, the State agency responsible for enforcing New Mexico's Interior Designers Act. Defendant Templeman is sued in her official capacity.

8. Defendant C. Eugene Law is the Vice President of the New Mexico Interior Design Board and is sued in his official capacity.

9. Defendant Candace Jacobsen is the Secretary/Treasurer of the New Mexico Interior Design Board and is sued in her official capacity.

10. Defendants Carol Shannon and Ernest Martinez are members of the New Mexico Interior Design Board and are sued in their official capacities.

#### **Statement of Facts**

11. New Mexico's Interior Designers Act (referred to hereafter as "the Act"), found at N.M.S.A. (1978), § 61-24C-2, *et seq.*, sets up a licensing scheme whereby anyone may *practice* interior design in New Mexico, but only people with a state-issued license may use the terms "interior design" and "interior designer" to describe what they do. *See* N.M.S.A. (1978), § 61-24C-11(A)(1) (providing that no person shall knowingly "use the name or title of interior designer or interior design when the person is not the holder of a current, valid license issued pursuant to the Interior Designers Act") and § 61-24C-13 (providing that "[n]othing in the Interior Designers Act shall prevent any person from rendering or offering to render any of the services which constitute the practice of interior design, provided that such person shall not be permitted to use or be identified by the title 'interior designer' or 'interior design' unless licensed" under the Act).

12. The Interior Designers Act thus imposes a complete ban on commercial speech that is both truthful and non-misleading because it forbids people who lawfully provide

statutorily-defined “interior design” services from using the term “interior design” to describe what they do. See N.M.S.A. (1978), § 61-24C-3(B) (defining “interior design” services) and § 61-24C-13 (providing that anyone—with or without a license—may provide interior design services but forbidding unlicensed persons from using the term “interior design”).

13. Any person who violates New Mexico’s restriction on the use of the terms “interior design” or “interior designer” is guilty of a misdemeanor punishable by up to one year in prison, up to a \$1,000 fine, or both. N.M.S.A. (1978), § 61-24C-11(B). As a result, New Mexico criminalizes the communication of truthful, non-misleading speech regarding the lawful provision of interior design services by persons who are not licensed by the State to use the terms “interior design” or “interior designer.”

14. Becoming licensed to use the term “interior designer” in New Mexico requires substantial time, effort, and expense. State law provides that people must obtain certain prescribed levels of education and/or experience and that they must pass a private licensing examination administered by the National Council for Interior Design Qualification (“NCIDQ”). N.M.S.A. (1978), § 61-24C-8; N.M.A.C. § 16.42.3.9.

15. The NCIDQ exam takes two days and costs approximately \$1000 to complete all three of its sections, which are mandatory for licensure in New Mexico.

16. In 2000, Plaintiff Sherry Franzoy decided she would like to have her own interior design business and looked into the possibility of opening an “Interiors by Decorating Den” franchise. The franchise approval process required her to master various aspects of interior design and pass rigorous examinations in five separate skill areas that the company deems crucial to the successful operation of its franchises: people skills, interior design, financial information, entrepreneurial spirit, and mathematics.

17. Having successfully completed those private study and testing requirements, Franzoy obtained an "Interiors by Decorating Den" franchise and began working as an interior designer in the Las Cruces, New Mexico area in 2000. She has successfully operated and grown that business since then.

18. Because she does not have at least two years of college-level interior design education, Franzoy cannot obtain a license from the State to call herself an interior designer and is not even eligible to take the NCIDQ examination, which NCIDQ will only administer to applicants who meet certain minimum requirements regarding work experience and formal (i.e., college-level) education.

19. Franzoy has advertised accurately that she is an "interior designer" who offers "interior design" services.

20. Plaintiff Caryn Armijo opened "Caryn Armijo Interiors" in 2000. To improve her business and her skills, in 2001, Armijo began studying interior design through the Sheffield School of Interior Design, a distance-learning center based in New York City. Over a three-year period, Armijo completed the Sheffield program of study, an extensive, step-by-step course in interior design.

21. Like Franzoy, Armijo's unaccredited academic study renders her ineligible to obtain a license to use the term "interior design" in New Mexico or even to take the State-mandated NCIDQ licensing exam.

22. Absent New Mexico's speech-licensing law, Armijo could and would advertise her business accurately as providing "interior design" services. But she does not do so because she fears the criminal penalties associated with violations of New Mexico's interior design title restriction. N.M.S.A. (1978), § 61-24C-11(B).

23. Neither Franzoy nor Armijo hold an interior design license in New Mexico.

24. Because Plaintiffs do not hold state-issued licenses, they are subject to the speech restrictions set forth in N.M.S.A. (1978), §§61-24C-11(A)(1) and 61-24C-13 and § N.M.A.C. 16.42.3.8(A), and are subject to prosecution under the criminal penalties in N.M.S.A. (1978), §61-24C-11(B) for using the accurate—but forbidden—terms “interior design” or “interior designer” to refer to themselves or their services.

25. New Mexico’s Board of Interior Design vigorously enforces the speech restrictions described above. Since January 1, 2000, the Board has sent at least 60 letters to unlicensed persons, stating that is unlawful for them to use or be identified by the terms “interior designer” or “interior design” because they do not have a license from the Board to use those terms.

#### **Injury to Plaintiffs**

26. New Mexico’s censorship of Plaintiffs’ truthful speech about themselves and their businesses injures Plaintiffs in a variety of ways.

27. Because Plaintiff Armijo cannot advertise her services accurately she is instead associated with interior decorators and must charge lower prices for her services accordingly.

28. While Plaintiff Franzoy has advertised in contravention of New Mexico’s speech ban, she has been forced to operate her business under the threat of prosecution and even imprisonment should Defendants enforce New Mexico’s speech-licensing provisions against her.

29. Both Armijo and Franzoy would like to engage in truthful advertising of their services without fear of criminal prosecution; New Mexico’s interior design laws prevent them from doing so.

30. Both Plaintiffs are marginalized and degraded by New Mexico's interior design laws, which allow them to provide "interior design" services but not to use that term in describing what they do, reserving that privilege instead for those who have been licensed by the State to use it.

31. New Mexico's speech ban, both on its face and as applied to Plaintiffs, has caused and will continue to cause irreparable harm to Plaintiffs by forbidding them from truthfully describing themselves and the services they provide.

**Count One**

**(First Amendment—Freedom of Speech)**

32. Plaintiffs incorporate and reallege each and every allegation contained in paragraphs 1 through 31 above as though fully set forth herein.

33. The First Amendment to the United States Constitution guarantees to Plaintiffs *the right to free speech and specifically to speak truthfully about their businesses and the services they provide.*

34. Sections 61-24C-11(A)(1) and 61-24C-13 of New Mexico state law and section 16.42.3.8(A) of the New Mexico Administrative Code prohibiting the use of the words "interior design" or "interior designer" by unlicensed persons violate the First Amendment to the United States Constitution.

35. By prohibiting Plaintiffs from accurately and truthfully advertising their services through the use of the words "interior design" and "interior designer," Defendants, their agents and employees, acting under color of state law, violate Plaintiffs' right to free speech as guaranteed by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

36. As a direct and proximate result of sections 61-24C-11(A)(1) and 61-24C-13 of New Mexico state law, and section 16.42.3.8(A) of the New Mexico Administrative Code, and the enforcement of those provisions by the Interior Design Board, Plaintiffs have no adequate legal, administrative or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

37. Unless Defendants are permanently enjoined from committing the above-described constitutional violations of the First Amendment to the United States Constitution, Plaintiffs will continue to suffer great and irreparable harm.

**Request for Relief**

Wherefore, Plaintiffs respectfully request the following relief:

A. A declaratory judgment by the Court that, facially and as applied to Plaintiffs, sections 61-24C-11(A)(1) and 61-24C-13 of New Mexico state law, and section 16.42.3.8(A) of the New Mexico Administrative Code violate the First Amendment to the United States Constitution;

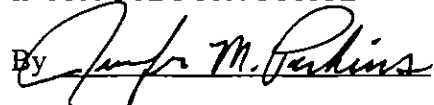
B. A permanent injunction prohibiting Defendants or their agents from enforcing sections 61-24C-11(A)(1) and 61-24C-13 of New Mexico state law, and section 16.42.3.8(A) of the New Mexico Administrative Code;

C. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

D. Any other legal and equitable relief as this Court may deem appropriate and just.

DATED this \_\_\_\_ day of September, 2006

INSTITUTE FOR JUSTICE

By 



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