

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY _____
DEPUTY

VICKEE BYRUM; JOEL MOZERSKY; §
VERONICA KOLTUNIAK; and NANCY §
PELL, §
Plaintiffs, §

Civil Action No. **A07CA344 LY**

v. §
GORDON E. LANDRETH, in his official §
capacity as Chairman of the Texas Board of §
Architectural Examiners; ALFRED §
VIDAURRI, JR, in his official capacity as §
Vice-Chair of the Texas Board of §
Architectural Examiners; ROSEMARY A. §
GAMMON, in her official capacity as §
Treasurer of the Texas Board of §
Architectural Examiners; and ROBERT §
KYLE GARDENER, JANET PARNELL, §
PETER L. PFEIFFER, DIANE §
STEINBRUECK, PEGGY LEWENE §
VASSBERG, and JAMES S. WALKER, II, §
in their official capacities as members of the §
Texas Board of Architectural Examiners, §
Defendants. §

**PLAINTIFFS' ORIGINAL COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

This civil rights lawsuit seeks to vindicate the right of Plaintiffs Vickee Byrum, Joel Mozersky, Veronica Koltuniak, and Nancy Pell to earn an honest living and communicate truthfully about the interior design services they provide.

1. In Texas, anyone may work as an interior designer regardless of their qualifications or credentials, and no license is required to perform such work. But only people

holding special state-issued licenses are permitted to use the specific terms “interior designer” and “interior design” to describe their work. Thus, Texas prohibits non-licensees 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, Texas’ attempt to license use of the terms “interior design” and “interior designer” cannot stand.

Jurisdiction and Venue

2. Plaintiffs 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 the “titling” provisions of Texas’ Interior Designers Registration Law, Tex. Occ. Code § 1051.001(3) and § 1053.151, as well as 22 Tex. Admin. Code § 5.133(c), that facially and as-applied interfere with Plaintiffs’ First Amendment right to accurately describe to the public the services they lawfully 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 Vickee Byrum is an adult resident of Travis County, Texas. Byrum is the owner and sole proprietor of *Yellow Door Design*, through which she offers interior design services in Travis County and elsewhere within the State of Texas, and other states.

6. Plaintiff Joel Mozersky is an adult resident of Travis County, Texas. Mozersky is the owner and sole proprietor of *One Eleven Design*, through which he offers interior design services throughout Travis County and elsewhere within the State of Texas.

7. Plaintiff Veronica Koltuniak is an adult resident of Travis County, Texas. Koltuniak is the owner and sole proprietor of *Veronica Koltuniak Designs*, through which she offers interior design services throughout Travis County and elsewhere within the State of Texas and other states.

8. Plaintiff Nancy Pell is an adult resident of Galveston County, Texas. Pell and her husband, Arnold, together own *Beautiful Things*, a design center through which Pell sells accessories and offers interior design services throughout Galveston County and elsewhere within the State of Texas.

9. Defendant Gordon E. Landreth is the President of the Texas Board of Architectural Examiners (“TBAE”), the state agency responsible for enforcing Texas’ Interior Designers Registration Law. Defendant Landreth is sued in his official capacity.

10. Defendant Alfred Vidaurri, Jr. is the Vice-Chair of the TBAE and is sued in his official capacity.

11. Defendant Rosemary A. Gammon is the Treasurer of the TBAE and is sued in her official capacity.

12. Defendants Kyle Garner, Janet Parnell, Peter L. Pfeiffer, Diane Steinbrueck, Peggy Lewene Vassberg, and James S. Walker are the remaining members of the TBAE and are sued in their official capacities.

Statement of Facts

13. Chapter 1053 of the Texas Occupations Code sets forth the Interior Designers’ Registration Law (“Registration Law”). The Registration Law establishes a licensing scheme whereby anyone may *practice* interior design in Texas, but only people with a state-issued license may use the terms “interior design” and “interior designer” to describe what they do. *See*

Tex. Occ. Code § 1053.151 (providing that “A person other than an interior designer may not: (1) represent that the person is an ‘interior designer’ by using that title; or (2) represent, by using the term ‘interior design,’ a service the person offers or performs.”); Tex. Occ. Code § 1051.604 (“This article does not: (1) limit the practice of interior design . . .”).

14. The Act thus imposes a complete ban on commercial speech that is both truthful and non-misleading because it forbids people who lawfully provide “interior design” services from using the term “interior design” to describe what they do. *See* Tex. Occ. Code § 1053.151 and 22 Tex. Admin. Code § 5.133 (both provisions forbidding unlicensed persons from using the term “interior design” or “interior designer”).

15. Any person who violates Texas’ interior design title restriction is guilty of a Class C misdemeanor punishable by up to a \$500 criminal penalty, or an administrative penalty up to \$5,000. Tex. Occ. Code §§ 1053.351, 1051.451-52. As a result, Texas 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.”

16. Becoming licensed to use the term “interior designer” in Texas 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”). Tex. Occ. Code Ann. §§ 1053.154-55; 22 Tex. Admin. Code §§ 5.31, 5.51.

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

18. None of the four Plaintiffs is a registered interior designer with the State of Texas, and therefore none of them may lawfully refer to themselves as an “interior designer” or describe their services as “interior design,” even though they can and do lawfully perform “interior design” services in Texas.

19. After working for an established interior designer, and learning how to apply her natural skills through on-the-job training, Plaintiff Vickee Byrum opened her own interior design business, *Yellow Door Design*. Byrum has operated a successful business providing interior design services for more than a decade, and she has developed considerable knowledge, experience, and ability in that field.

20. Despite her talent and experience as an interior designer, Byrum does not hold (nor does she wish to hold) a degree in interior design. Accordingly, she is ineligible to sit for the state-mandated licensing exam. Tex. Occ. Code Ann. §§ 1053.155(b)(1); 22 Tex. Admin. Code § 5.31. Thus, Byrum cannot obtain a license from the state to call herself an interior designer, even though that is an accurate description of what she does.

21. Plaintiff Joel Mozersky first began working as an interior designer in 1998 and has been working full-time since 2000. Mozersky has since opened his own interior design firm, *One Eleven Design*, and he has become one of Austin’s most prominent interior designers. He designed the interior of the home for MTV’s “Real World: Austin” television show as well as Austin’s restaurant Uchi and other notable spaces. Citysearch named Mozersky the best interior designer in Austin in both 2006 and 2007, and he has received accolades for his work in such publications such as *Newsweek*, *USA Today*, *New York Times*, *American Salon*, *Austin-American Statesman*, and *Austin Monthly*.

22. While Mozersky has a degree in Art History and an MBA, he neither possesses nor wishes to possess a degree in interior design from an accredited institution, as required for licensure under state law. Despite his many accomplishments and accolades, and despite having been named Austin's top interior designer by Citysearch website, it is illegal for Mozersky to refer to himself as an "interior designer" in Texas due to the challenged restrictions.

23. Like Byrum and Mozersky, Plaintiff Veronica Koltuniak is an accomplished interior designer whose knowledge and skills come from experience rather than formal interior design education. Koltuniak first worked in set decoration and design for television shows in Los Angeles before beginning work as a full time interior designer there in 1990. She initially spent four years working with an architect and then continued to work on her own as an interior designer, developing a client list that included celebrities such as Madonna, Courtney Cox, and David Arquette.

24. After moving her family to Austin, Texas, in 2000, Koltuniak continued providing interior design services through *Veronica Koltuniak Designs*. When her design work with Courtney Cox on the television show "Mix it Up" received local media attention—and the media referred accurately to Koltuniak as an interior designer—Koltuniak received a letter from the Texas Board of Architectural Examiners in 2004 threatening to take legal action against her because she is not registered as an interior designer in Texas.

25. Koltuniak made attempts to register as an interior designer, but her applications were rejected because, like Plaintiffs Byrum and Mozersky, she neither possesses nor wishes to possess a degree in interior design from an accredited institution and is therefore not eligible for licensure in Texas.

26. Plaintiff Nancy Pell has spent more than thirty years working in the interior design field in a variety of capacities. In 1994, Pell and her husband Arnold jointly opened *Beautiful Things*, a design center in League City, Texas offering accessories and providing clientele the opportunity to arrange for Nancy Pell's interior design services. When Pell's husband placed an advertisement accurately describing his wife's services as "interior design" services, the TBAE sent her a letter in 2004 threatening legal action if the Pells did not immediately cease and desist their truthful advertising.

27. Pell earned an associates degree in interior design from San Jacinto College in Houston, Texas, in 1998. Despite this degree and her more than thirty years of experience, Pell is still not eligible for licensure in Texas because she has not fulfilled (and does not wish to fulfill) the necessary educational prerequisites to sit for the state-mandated licensing exam.

28. Absent Texas' interior design "title" law, all four Plaintiffs could and would advertise their businesses accurately as providing "interior design" services. The reason they do not do so today is because they fear criminal and administrative penalties should they accurately refer to themselves as "interior designers" or accurately describe their work as "interior design."

29. Because Plaintiffs are not registered as interior designers in Texas, they are subject to the speech restrictions set forth in Tex. Occ. Code § 1053.151 and 22 Tex. Admin. Code § 5.133, and they are subject to criminal prosecution for using the accurate—but forbidden—terms "interior design" or "interior designer" to describe themselves or their services.

30. The TBAE vigorously enforces those speech restrictions. Since July 1, 2004, the TBAE has sent more than 70 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 have not registered with the TBAE to use those terms.

Injury to Plaintiffs

31. Texas’ censorship of Plaintiffs’ truthful speech about themselves and their businesses injures Plaintiffs in a number of ways.

32. Because Plaintiffs cannot advertise their services accurately they are instead required to use terms like “decorator” or “consultant,” which signal to competitors and potential customers a lower level of skill and ability than they actually possess.

33. All four Plaintiffs are marginalized and degraded by Texas’ 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.

34. Texas’ 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)

35. Plaintiffs incorporate and reallege each and every allegation contained in paragraphs 1 through 34 above as though fully set forth herein.

36. The First Amendment to the U.S. Constitution guarantees Plaintiffs the right to free speech and specifically to speak truthfully about their businesses and the services they provide.

37. Sections 1051.001(3) and 1053.151 of the Texas Occupations Code, and Title 22, § 5.133 of the of the Texas Administrative Code prohibit the use of the words “interior design” or “interior designer” by unlicensed persons even when those persons can and do lawfully perform interior design services.

38. By prohibiting Plaintiffs from accurately and truthfully advertising their services through the use of the words “interior design” and “interior designer,” Defendants and 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.

39. As a direct and proximate result of the speech restrictions set forth in section 1053.151 of the Texas Occupations Code and Title 22, § 5.133 of the of the Texas Administrative Code and the enforcement of those provisions by the Texas Board of Architectural Examiners, Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

40. 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, section 1053.151 of the Texas Occupations Code and Title 22, § 5.133 of the of the Texas Administrative Code, which relate to the regulation of interior designers, violate the First Amendment to the United States Constitution;

B. A permanent injunction prohibiting Defendants or their agents from enforcing section 1053.151 of the Texas Occupations Code and Title 22, § 5.133 of the of the Texas Administrative Code, which relate to the regulation of interior designers;

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 to which the Plaintiffs may show themselves to be justly entitled.

DATED this 9th day of May, 2007


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*Motion for Admission *Pro Hac Vice*
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