FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AARGON AGENCY, INC., Nevada corporation; ALLIED COLLECTION SERVICES, INC., a Nevada corporation; ASSETCARE, LLC, a Texas limited liability company; CAPIO PARTNERS, LLC, a Texas limited liability company; CF MEDICAL, LLC, a Nevada limited liability company; CLARK COUNTY COLLECTION SERVICE, LLC, a Nevada limited-liability company; COLLECTION SERVICE OF NEVADA, a Nevada corporation; NEVADA COLLECTORS ASSOCIATION, a Nevada non-profit corporation; PLUSFOUR, INC., a Nevada corporation; RM GALICIA, INC., doing business as Progressive Management, LLC; THE LAW OFFICES OF MITCHELL D. BLUHM & ASSOCIATES, LLC, a Georgia limited liability company, *Plaintiffs-Appellants,* v.	No. 22-15352 D.C. No. 2:21-cv-01202-RFB-BNW OPINION

SANDY O'LAUGHLIN, in her capacity as Commissioner of State Of Nevada Department Of Business And Industry Financial Institutions Division,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Nevada
Richard F. Boulware II, District Judge, Presiding

Argued and Submitted September 2, 2022
San Francisco, California

Filed June 15, 2023

Before: William A. Fletcher, Jay S. Bybee, and Lawrence VanDyke, Circuit Judges.

Opinion by Judge W. Fletcher;
Dissent by Judge VanDyke

SUMMARY[**]

Consumer Rights

The panel affirmed the district court's order denying preliminary injunctive relief to entities engaged in consumer debt collection in their action asserting a facial challenge to Nevada Senate Bill 248 ("S.B. 248"), which requires debt collectors to provide written notification to debtors 60 days before taking any action to collect a medical debt.

Plaintiffs alleged that S.B. 248 is unconstitutionally vague, constitutes a prior restraint in violation of the First Amendment, and is preempted by the Fair Credit Reporting Act ("FCRA") and the Fair Debt Collection Practices Act ("FDCPA").

The panel affirmed the district court on the grounds that plaintiffs failed to show a likelihood of success on the merits of their claims. The panel first rejected plaintiffs' claim that the term "action to collect a medical debt" in S.B. 248 was unconstitutionally vague, noting that the implementing regulations set forth examples of actions that do, and do not, constitute actions to collect a medical debt.

Addressing the First Amendment claim that S.B. 248 impermissibly burdens plaintiffs' speech, the panel held that: S.B. 248 regulates commercial speech and therefore is not subject to strict scrutiny; communications to collect a medical debt "concerned lawful activity" and were not "inherently misleading;" Nevada's asserted interest in

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

protecting medical debtors in Nevada from financial ruin in the wake of the Covid-19 pandemic was substantial; S.B. 248 directly advanced the government interest asserted; and S.B. 248 was not a more extensive regulation than necessary to serve the State's interest.

The panel next rejected plaintiffs' argument that the FCRA, which regulates the creation and the use of consumer reports by consumer reporting agencies for certain specific purposes, expressly preempts S.B. 248 under 15 U.S.C. § 1681t(b)(1)(F) because that provision broadly preempts any state law "relating" to the duties of persons or debt collection agencies who furnish information to credit reporting agencies. The panel declined to read § 1681t(b)(1)(F) this broadly, determining rather that its presumptive effect was limited by the specific reporting requirements imposed by 15 U.S.C. § 1681s-2. The panel concluded that S.B. 248's 60-day notification period in no way interferes with the reporting obligations as spelled out in § 1681s-2. The panel further held that S.B. 248 was not impliedly preempted by the FCRA because it does not interfere with debt collectors' responsibilities to furnish fair and accurate information to credit reporting agencies.

The panel also rejected plaintiffs' contention that the FDCPA, whose purpose is to "protect vulnerable and unsophisticated debtors from abuse, harassment, and deceptive collection practices" impliedly preempts S.B. 248 because S.B. 248 prohibits debt collectors from sending debtors required notifications pertaining to debt collection, as set forth in 15 U.S.C. §§ 1692e and 1692g. The panel stated that the notification contemplated in § 7 of S.B. 248 is not an attempt to collect a debt. Instead, S.B. 248 provides consumers with the protection of a 60-day notification period before any action is taken to collect a medical debt,

while the requirements of FDCPA's § 1692e and § 1692g apply once debt collectors attempt to collect a debt. The panel determined that S.B. 248 removes no protection under the FDCPA, but rather, protects consumers for an additional period of 60 days. The state law provides more protection than the FDCPA provides standing alone. For that reason, it is not inconsistent with the FDCPA.

Dissenting, Judge VanDyke disagreed with the majority's conclusion that plaintiffs were unlikely to succeed on the merits of their preemption claims. Addressing the FDCPA, Judge VanDyke stated that two provisions in S.B. 248 were inconsistent with the FDCPA and as such were preempted. First, a debt collector cannot both comply with timely providing the FDCPA's required notices in its initial communication with a debtor while also complying with S.B. 248's 60-day prohibition against debt collectors taking any action to collect a debt. Second, because S.B. 248 obligates debt collectors to include confusing information in communications to a debtor, it requires debt collectors to violate the FDCPA's prohibition against using confusing or misleading representations in their communications with debtors.

Addressing the FCRA preemption claim, Judge VanDyke stated that the FCRA expressly preempts the entirety of S.B. 248 because the text of the FCRA explicitly manifests Congress's intent to displace state laws regulating how debt collectors report credit information to reporting agencies. S.B. 248 further undermines Congress's purposes in enacting the FCRA by decreasing the accuracy of credit reporting and thus is impliedly preempted.

Finally, with respect to the remaining factors for a preliminary injunction, Judge VanDyke would have

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