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Suite 900
Washington, D.C. 20005
202-525-5717

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Testimony from:

Caroline Melear, Resident Fellow, Finance, Insurance and Trade Policy, R Street Institute

In SUPPORT of SB-2A An act relating to property insurance; creating s. 215.5552, F.S.; creating the Florida Optional Reinsurance Assistance program (FORA), to be administered by the State Board of Administration; defining terms; authorizing eligible insurers to purchase reinsurance coverage under FORA; requiring the board to provide specified coverage layers; specifying coverage limits for each option; specifying requirements for reimbursement contracts between the board and FORA insurers; specifying the calculation of payout multiples and layer retentions; authorizing the board to inspect, examine, and verify certain records; specifying the calculation of premiums and requirements for the payment of premiums; providing construction relating to the claims-paying capacity of the Florida Hurricane Catastrophe Fund; specifying requirements and procedures if a FORA insurer becomes insolvent; providing construction relating to violations; authorizing the board to take legal actions and adopt rules, including emergency rules; providing legislative findings; specifying requirements and procedures for the appropriation of funds from the General Revenue Fund to provide reimbursements; requiring the board to submit annual reports to the Governor and the Legislature; providing for contingent expiration; amending s. 624.1551, F.S.; revising conditions that must be met for a claim for extracontractual damages in a civil remedy action against a property insurer; providing construction; amending s. 624.3161, F.S.; providing that property insurers may be subject to an additional market conduct examination by the Office of Insurance Regulation after a hurricane under certain circumstances; providing requirements for such examination; amending s. 624.418, F.S.; adding specified grounds on which the office may suspend or revoke a property insurer's certificate of authority; amending s. 624.424, F.S.; adding information required to be reported by property insurers in their quarterly supplemental reports; amending s. 626.9373, F.S.; deleting a right to attorney fees for judgments or decrees against surplus lines insurers in suits arising under residential or commercial property insurance policies; amending s. 626.9541, F.S.; revising conditions for a certain unfair claim settlement practice by a property insurer; amending s. 627.351, F.S.; authorizing Citizens Property Insurance Corporation, if certain conditions are met, to consolidate its three separate accounts into a single Citizens account for all revenues, assets, liabilities, losses, and expenses of the corporation; specifying the corporation's authority, and requirements for and prohibited acts by the corporation, under the Citizens account; providing applicability; specifying requirements and procedures with respect to a deficit in the Citizens account; defining terms; providing requirements for the Florida Surplus Lines Service Office; revising requirements for the corporation's plan of operation; revising eligibility



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requirements for renewing coverage with the corporation for personal lines residential and commercial lines residential risks; providing construction; providing requirements relating to certain excess premium and investment income in the Citizens account; authorizing specified insurers to petition the office to qualify as limited apportionment companies; providing requirements for such companies; specifying disclosure requirements to applicants for coverage from the corporation if the Citizens account is established; providing that, for certain purposes, the corporation's rates for coverage may not be competitive with approved rates charged in the admitted voluntary market; requiring the office to provide certain information to the corporation; specifying annual rate increase limits for personal lines policies written on or after a specified date which do not cover a primary residence; defining the term "primary residence"; requiring the corporation to require the securing and maintenance of flood insurance as a condition of personal lines residential coverage; specifying requirements for such flood insurance coverage; specifying deadlines by which policyholders must secure and maintain flood insurance; revising eligibility requirements for coverage with the corporation when take-out offers are received by policyholders; specifying a burden of proof for corporation policyholders making claims for water damage; making technical changes; conforming provisions to changes made by the act; amending s. 627.3511, F.S.; conforming cross-references; amending s. 627.3518, F.S.; deleting a provision construing the eligibility for coverage with the corporation for certain applicants; conforming a provision to changes made by the act; amending s. 627.410, F.S.; requiring the office to reexamine certain policy forms of a property insurer under certain circumstances; specifying actions the office may take; amending s. 627.428, F.S.; deleting a right to attorney fees for judgments or decrees against insurers in suits arising under residential or commercial property insurance policies; amending s. 627.7011, F.S.; revising disclosure requirements relating to flood insurance for insurers issuing homeowners' policies; amending s. 627.70131, F.S.; revising requirements for insurers relating to acknowledging communications regarding claims, investigating claims, sending estimates of losses to policyholders, recordkeeping, and paying or denying claims; authorizing insurers to use specified methods in investigating losses; authorizing insurers to void insurance policies under certain circumstances; defining the term "factors beyond the control of the insurer"; specifying circumstances under which certain requirements are tolled; providing construction; amending s. 627.70132, F.S.; revising 116 timeframes under which notices of claims, reopened claims, and supplemental claims under property insurance policies must be given to insurers or be barred; amending s. 627.70152, F.S.; revising applicability; deleting the definition of the term "amount obtained"; providing that certain prelitigation notices and documentation are not admissible as evidence in any proceeding; deleting provisions relating to the calculation of attorney fees; creating s. 627.70154, F.S.; specifying conditions that must be met for a



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property insurance policy to require mandatory binding arbitration; amending s. 627.7074, F.S.; deleting the right to attorney fees payable by insurers in the alternative procedure for resolution of disputed sinkhole insurance claims; conforming a provision to changes made by the act; amending s. 627.7142, F.S.; conforming provisions to changes made by the act; amending s. 627.7152, F.S.; prohibiting policyholders from assigning post-loss insurance benefits under residential or commercial property insurance policies issued on or after a specified date; providing construction; amending s. 627.7154, F.S.; revising duties of the office's Property Insurer Stability Unit; amending s. 631.252, F.S.; providing that a coverage continuation period for policies of an insolvent property insurer may be extended by the office under specified circumstances; amending s. 768.79, F.S.; authorizing a property insurer in a breach of contract action to make a joint offer of judgment or settlement that is conditioned on the mutual acceptance of all joint offerees; providing an appropriation; providing effective dates.



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December 12, 2022

Florida Senate Banking and Insurance Committee

Chairman Boyd and Members of the Committee:

Good afternoon. My name is Caroline Melear. I am a fellow in Finance, Insurance and Trade at the R Street Institute, a public policy research organization focused on free markets and limited, effective government.

The Florida homeowners' insurance market is in crisis. Homeowners across the state are experiencing the highest insurance rates in the country at three times the national average, coupled with an ever-lessening marketplace of insurers to choose from.¹ My family and I have experienced this personally. In April of this year, we became first-time homeowners in West Palm Beach. We purchased a modest three-bedroom home five miles from the coast. When the time came to secure homeowners' insurance, we were surprised to discover via multiple insurance agents that the only provider available to us was the state-backed Citizens Property Insurance Corporation ("Citizens"). Not only that, but our 1,400 square foot home would cost thousands a year in property insurance, despite being part of a condominium community.

Our story is one of thousands across the state experiencing out-of-control insurance costs and limited access to competitively priced policies. To be clear, it is reasonable to expect higher insurance rates in a state susceptible to severe storms. This is basic logic and a quantifiable risk for insurers, who are able to determine actuarially sound rates for insurance through historical precedence, property value, replacement cost and catastrophe modeling.

However, the issues facing Florida are unique and clear to all discerning parties. It is not the risk of hurricanes, which can be reasonably accounted for just as it is in other states across the nation with similar risk profiles. The storm that the Florida Legislature and insurance and reinsurance companies across the state need to be fearful of is the cataclysmic combination of "Hurricane Litigation" and "Tropical Storm Fed."



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Efforts to dismantle one-way attorney fees and assignment-of-benefits is absolutely crucial in quelling this storm. “Hurricane Litigation” has decimated the homeowners’ insurance industry, where homeowners hold 9 percent of the nation’s policies, yet account for 79 percent of the litigation claims in the nation.² Arguments will be made this week that this is due to greed and unfair practices of the insurance industry. But this is an impossible idea to defend when only 8 percent of litigation awards go into the pocket of homeowners, with the rest being raked in by lawyers across the state to the tune of \$51 billion over the past 10 years.³ Additionally, the state of Florida had the highest percentage of lawsuits opened compared to claims closed without payment in 2019 at 28 percent. This is nearly eight times more than the next closest state, Connecticut, at 3.4 percent.⁴ This is indicative of a legal landscape that allows for handsome attorneys’ fees in exchange for frivolous lawsuits.

These are unfair, out-of-control, fraudulent awards that ultimately harm homeowners more than any other party involved by artificially raising rates statewide and causing insurers to flee the state due to inability to price appropriately or operate profitably. We at the R Street Institute intend to support legislation which broadens the private market, increases access to insurance for homeowners and allows the state of Florida to continue to flourish. This is an impossible task without a strong, resilient insurance market, which will not be achieved without tackling the fiercest storm affecting the state: Hurricane Litigation.

At the R Street Institute, we believe in limited, effective government. However, there are times where government becomes the last resort to stabilize markets and prevent catastrophe. This is the case with the reinsurance marketplace in Florida and “Tropical Storm Fed.” With rising interest rates, the mark-to-market losses for reinsurance companies will come in at 8.4 percent in 2022, a situation significantly more severe in Florida given the litigation landscape.⁵ Even financially healthy insurers are fearful of their ability to secure reinsurance. For this reason, we support the implementation of the Florida Optional Reinsurance Assistance program out of necessity for the situation at hand. It is my sincere hope that the proposed legislation will quell the headwinds to such a degree to increase the appetite for reinsurance and negate the necessity of additional state-backed solutions.

We support actuarially sound rates for Citizens, which has shifted from “insurer of last resort” to “cheapest and therefore most desirable option.”⁶ Similarly, we support efforts to require flood insurance in tandem with Citizens policies, as both an incentive to protect against flooding in a vastly under-penetrated market and disincentivize enrollment in Citizens. However, we encourage all efforts to



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broaden the private market for flood insurance lest we find ourselves in a state even more reliant on state-backed solutions for insurance, which are always the least efficient, most burdensome option. Further, efforts to disincentivize enrollment in Citizens will be in vain without creating a landscape which allows consumers a broad range of private market options.

Our primary concern at the R Street Institute is lowering, or at the very least stabilizing, costs of homeowners' insurance and empowering citizens to select from a broad marketplace of competitively priced insurers. These goals are impossible without ridding the insurance industry of frivolous lawsuits and out-of-control awards which only line the pockets of attorneys at the expense of the homeowner. This is the primary storm to take on, followed closely by the necessity to secure reinsurance. The challenges at hand require bold solutions, and the Florida Legislature would be remiss to miss this opportunity to enact broad changes and begin the road to recovery for homeowners and insurance companies alike. We applaud your efforts to take on serious reforms for your constituency and urge the Legislature to pass SB-2A and keep Florida the freest, most prosperous state in the nation.

Thank you and I welcome any questions.

Caroline Melear
Resident Fellow
Finance, Insurance and Trade Policy
R Street Institute
cmelear@rstreet.org

¹ Thomas Frank, "Fla. insurance crisis deepens as rates soar, companies fall," *E&E News*, Sept. 19, 2022. <https://www.eenews.net/articles/fla-insurance-crisis-deepens-as-rates-soar-companies-fall>.

² Insurance Information Institute, "Triple-I: Extreme Fraud and Litigation Causing Florida's Homeowners Insurance Market's Demise," Cision PR Newswire, June 23, 2022. <https://www.prnewswire.com/news-releases/triple-i-extreme-fraud-and-litigation-causing-floridas-homeowners-insurance-markets-demise-301574265.html>.

³ Sara Clements et al., "Florida Lawmakers to Reconvene May 23 to Address Property Insurance Crisis," JD Supra, May 2, 2022. <https://www.jdsupra.com/legalnews/florida-lawmakers-to-reconvene-may-23-4203530>.

⁴ Amy O'Connor, "NAIC Data: Florida Property Lawsuits Total 76% of Insurer Litigation in U.S.," *Insurance Journal*, April 14, 2021. <https://www.insurancejournal.com/news/southeast/2021/04/14/609721.htm>.

⁵ Tasha Williams, "Report: Traditional Reinsurance Capital Declining," The Triple-I Blog, Sept. 8, 2022. <https://www.iii.org/insuranceindustryblog/report-traditional-reinsurance-capital-declining>.



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⁶ “Programs,” Citizens Property Insurance Corporation, last accessed Dec. 12, 2022.
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