IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

CENTRAL ALABAMA FAIR HOUSING CENTER, et al.,	)	
Plaintiffs,	)	
v.	)	**CIVIL ACTION NO. 2:11cv982-MHT (WO)**
JULIE MAGEE, in her official capacity as Alabama Revenue Commissioner, and JIMMY STUBBS, in his official capacity as Elmore County Probate Judge,	)	
Defendants.	)	

OPINION AND ORDER

This matter is before the court on the plaintiffs' motion for a temporary restraining order against defendants Julie Magee (in her official capacity as Alabama Revenue Commissioner) and Jimmy Stubbs (in his official capacity as Elmore County Probate Judge), filed November 18, 2011, and now under submission following a

hearing held on November 23, 2011. For the reasons that follow, the motion will be granted.

To warrant temporary injunctive relief under Federal Rule of Civil Procedure 65, the plaintiffs must demonstrate: (1) a substantial likelihood of success on the merits of their underlying case, (2) that they will suffer irreparable harm in the absence of an injunction, (3) that the harm suffered by the plaintiffs in the absence of an injunction would exceed the harm suffered by the defendants, and (4) that an injunction would not disserve the public interest. Grizzle v. Kemp, 634 F.3d 1314, 1320 (11th Cir. 2011). In balancing these four factors, while the likelihood of success is generally most important, the court may employ a "sliding scale" by "balancing the hardships associated with the issuance or denial" of the injunction against "the degree of likelihood of success on the merits," Florida Medical Ass'n, Inc. v. U.S. Dep't of Health, Educ. & Welf., 601 F.2d 199, 203 n.2 (5th Cir. 1979); the greater the

potential harm, the lower the likelihood of success needs to be. Id.[1] Accordingly, where the "balance of equities weighs heavily in favor of granting the injunction, the movant[s] need only show a substantial case on the merits." Gonzalez v. Reno, 2000 WL 381901, at *1 (11th Cir. 2000) (quoting Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir. June 26, 1981)).

This lawsuit challenges the defendants' enforcement of § 30 of the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, 2011 Ala. Laws 535 ("HB 56"), as applied to Alabama's manufactured homes statute, 1975 Ala. Code § 40-12-255. Importantly, this as-applied challenge raises a host of issues not considered by the court in United States v. Alabama, 2011 WL 4469941, at *58-60 (N.D. Ala. Sept. 28, 2011) (Blackburn, J.), or Hispanic Interest Coalition of Alabama v. Bentley, 2011 WL 5516953 (N.D.

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1. In Bonner v. Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit Court of Appeals adopted as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Ala. Sept. 28, 2011) (Blackburn, J.). In those cases, which were both facial challenges, the court never ruled on, or even considered, the lawfulness of § 30 of HB 56 as applied to § 40-12-255.

Section 30 of HB 56 makes it unlawful for "[a]n alien not lawfully present in the United States" to enter into, or attempt to enter into, "a business transaction with the state or a political subdivision of the state." HB 56 § 30 (Doc. No. 31-1, at 68). Meanwhile, § 40-12-255 requires that owners of manufactured homes pay an annual registration fee to get an identification decal that must be visibly displayed on the exterior of the manufactured home. 1975 Ala. Code § 40-12-255(a). The manufactured-home registration papers and fee are due October 1 of each year and are considered delinquent if not paid by November 30, at which point a non-compliant owner of a manufactured home can be given a civil fine or face criminal charges for a class C misdemeanor, punishable up to three months in jail. 1975 Ala. Code § 13A-5-7(a)(3).

The plaintiffs present a number of theories for relief, but the court need consider only one for the purposes of granting this temporary-restraining-order request: As currently applied to § 40-12-255, § 30 conflicts with federal law and is therefore preempted.

The first consideration the court must make is whether the plaintiffs have demonstrated a substantial likelihood of success on the merits of this claim. The court finds that, quite convincingly, the plaintiffs have met their burden. When a state law conflicts with a federal statute, the state law is necessarily preempted. Crosby v. National Foreign Trade Council, 530 U.S. 363, 372 (2000). In the immigration context, States "enjoy no power with respect to the classification of aliens," Plyler v. Doe, 457 U.S. 202, 225 (1982); that power is committed exclusively "to the political branches of the Federal Government." Id. As a corollary, the "[p]ower to regulate immigration is unquestionably exclusively a federal power." DeCanas v. Bica, 424 U.S. 351, 354

(1976). Through the Immigration and Nationalization Act, Congress created "'a comprehensive federal statutory scheme for regulation of immigration and naturalization' and set 'the terms and conditions of admission to the country and subsequent treatment of aliens lawfully in the country.'" Chamber of Commerce v. Whiting, 131 S. Ct. 1968, 1973 (2011) (quoting DeCanas, 424 U.S. at 353, 359).

In conjunction with this scheme and to assist with immigration enforcement, Congress created certain mechanisms, such as the Department of Homeland Security's Systematic Alien Verification for Entitlements program (SAVE) and 8 U.S.C. § 1373(c), that permit States and localities to obtain an immigrant's lawful status. But these programs only allow state agents to verify immigration status, which means these agents perform ministerial functions and "no independent determinations are made and no state-created criteria are applied." League of United Latin American Citizens v. Wilson, 908 F. Supp. 755, 770 (C.D. Cal. 1995) (emphasis added). Section

30 of HB 56 purports to rely upon the two above federal enforcement mechanisms: SAVE and § 1373(c). See HB 56 § 30(c) (Doc. No. 31-1, at 68-69). But, as was made dramatically clear by the testimony of both defendants in the hearing held on November 23, 2011, the defendants use neither SAVE nor § 1373(c) when determining whether to allow the owner of a manufactured home to obtain his or her annual registration decal. Instead, the evidence reflects that the Alabama Revenue Department and the Elmore County Probate Office initially proposed to use their own, state-created alternative for determining whether, under § 30, an individual has adequately demonstrated his or her lawful citizenship status, but are now in the process of developing a new system that will comply with HB 56.[2] Not only is it unclear what this new process will be but it is also unclear whether that new process will be in operation any time in the near future.

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2. It appears that the defendants propose to use a list of documents included in § 12(d) and § 29(k) of HB 56 to determine citizenship and lawful status. They are not verifying lawful status with the federal government.

What is clear is, first, that the defendants do not now have in place a definite process that will be in sync with federal immigration law and, second, that they will not have a process in place any time soon. The conclusion that the defendants' current process (or, perhaps to be more accurate, lack of a definite process) conflicts with federal law is inescapable. The plaintiffs, therefore, have shown a substantial likelihood on the success of the merits of their claim.

Combining the second and third factors, the court finds that the plaintiffs are likely to face irreparable harm if application of § 30 of HR 56, as applied to § 40-12-255, is not enjoined: they face both civil and criminal liability after November 30, 2011, because they are being prohibited from paying their registration fees. The court finds that any harm to the defendants is slight, especially given the short-term nature of this order and given the uncertainty that the defendants will have in

place any time soon a process for determining citizenship status.

Fourth and finally, the court finds that the public interest will be served by granting a temporary restraining order, which will be used to preserve the status-quo and prevent the plaintiffs from facing potential civil and criminal liability, as the court considers the plaintiffs' still-pending motion for a preliminary injunction.

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Accordingly, it is ORDERED:

(1) The plaintiffs' motion for a temporary restraining order (Doc. No. 13) is granted.

(2) Defendants Julie Magee and Jimmy Stubbs, and all those acting in concert with them, are hereby ENJOINED from requiring any person who attempts to pay the annual registration fee, required by 1975 Ala. Code § 40-12-255, to prove his or her U.S. citizenship or lawful immigration status.

(3) Defendants Magee and Stubbs, and all those acting in concert with them, are ENJOINED from refusing to issue the manufactured home decal required by 1975 Ala. Code § 40-12-255 to any person because that person cannot prove his or her U.S. citizenship or lawful immigration status.

(4) Defendant Magee is hereby ORDERED to immediately notify all county officials who are responsible for enforcing the manufactured home registration requirements of 1975 Ala. Code § 40-12-255 of this temporary restraining order.

(5) This injunction shall expire on December 7, 2011, at 4:30 p.m.

DONE, this the 23rd day of November, 2011, at 4:30 p.m.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE

A copy of this checklist is available at the website for the USCA, 11th Circuit at www.ca11.uscourts.gov
Effective on April 9, 2006, the new fee to file an appeal will increase from $255.00 to $455.00.

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:

(a) **Appeals from final orders pursuant to 28 U.S.C. § 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C.§ 158, generally are appealable. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. v. Mestre, 701 F.2d 1 365, 1 368 (11th Ci r. 1 983). A magistrate judge's report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. § 636(c).

(b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b). Williams v. Bishop, 732 F.2d 885, 885- 86 (11th Cir. 1984). A judg ment which resolves all issues except matters, such as attorneys' fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S.196, 201, 108 S.Ct. 1717, 1721-22, 100 L .Ed.2d 178 (1988); LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).

(c) **Appeals pursuant to 28 U.S.C. § 1292(a):** Appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions . . ." and from "[i]nterlocutory decrees . . . determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed." Interlocutory appeals from orders denying temporary restraining orders are not permitted.

(d) **Appeals pursuant to 28 U.S.C. § 1292(b) and Fed.R.App.P. 5**: The certification specified in 28 U.S.C. § 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court's denial of a motion for certification is not itself appealable.

(e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 69S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass'n v. Blythe Eastman Paine Webber, Inc., 890 F.2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S.Ct. 308, 312, 13 L.Ed.2d 199 (1964).

2. **Time for Filing**: The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P. 4(a) and (c) set the following time limits:

   (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD – no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.

   (b) **Fed.R.App.P. 4(a)(3):** "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later."

   (c) **Fed.R.App.P. 4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.

   (d) **Fed.R.App.P. 4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.

   (e) **Fed.R.App.P. 4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.

4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).