

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
CIVIL DIVISION

LEAGUE OF UNITED LATIN	:	CASE NO. 09CV
AMERICAN CITIZENS	:	
(LULAC)	:	JUDGE
20 West 12 th Street Suite, 402a	:	
Cincinnati, Ohio, 45202	:	
	:	
Plaintiff,	:	CASE TYPE:
	:	
vs.	:	
	:	
TED STRICKLAND	:	
Governor of the State of Ohio	:	
Riffe Center, 30th Floor	:	
77 South High Street	:	
Columbus, OH 43215-6108	:	
	:	
and	:	
	:	
CATHY COLLINS-TAYLOR,	:	
Director,	:	
Ohio Department of Public Safety	:	
Charles D. Shipley Building	:	
1970 West Broad Street	:	
P.O. Box 182081	:	
Columbus, Ohio 43218-2081	:	
	:	
and	:	
	:	
CAROLYN Y. WILLIAMS,	:	
Acting Registrar,	:	
Ohio Bureau of Motor Vehicles	:	
1970 West Broad Street	:	
P.O. Box 16520, 43216-6520	:	
Columbus, Ohio 43223-1101	:	
	:	
Defendants	:	

Plaintiffs through their counsel allege as follows:

Nature of the Action

1. This is an action brought by Plaintiffs seeking to halt the actions of the Defendants in excess of statutory authority granted to Defendants in Revised Code Chapter 4503 concerning registration and renewal of registration for motor vehicles. Plaintiffs seek declaratory and injunctive relief, or in the alternative a writ of mandamus compelling Defendants to forego the policy declared in an October 8, 2009 Mass Mailing to at least 40,000 Ohio residents who chose not to provide a social security number at the time of the registration or renewal of the registration of their motor vehicles pursuant to Section 4503.10 of the Revised Code.

The Parties Involved

2. Plaintiff LEAGUE OF UNITED LATIN AMERICAN CITIZENS (hereinafter "LULAC") is a not for profit corporation organized in 1929 under the laws of the state of Texas with a chapter in Ohio located at 20 West 12th Street Suite 402a Cincinnati, Ohio, 45202. LULAC has members through out the State of Ohio. LULAC's is the largest and oldest Hispanic membership group in the United States. LULAC's primary purpose is to advance the economic conditions, educational attainment, political influence, health, housing and civil rights of Hispanic Americans through community-based programs and to advocate on behalf of the needs of Latino Americans.

3. LULAC's Ohio membership and constituency (herein, collectively "members") includes individuals - many but not all of whom are Latino - who reside in and/or who are employed in Ohio. The membership includes persons who use English as their primary language and others who have Spanish as their native tongue with a limited

proficiency in English. LULAC does not require its members to prove their citizenship, legal residency or other immigration status as a condition of membership. Thus, some members of LULAC are U.S. citizens, others are permanent legal residents (LPR's) as that term is used in the Immigration and Nationality Act, and some do not yet have permanent legal status in the United States.

3. The interests LULAC seeks to protect through this action are germane to its organizational purpose. Many of LULAC's members are recipients of Defendants' October 8, 2009 Mass Mailing because many of its members for various reasons did not provide a social security number on their motor vehicle registration or renewal application. Those members are aggrieved and adversely affected by the October 8, 2009 Mass Mailing because they are faced with the dilemma of either submitting to the illegal \$3.50 fee imposed by the policy announced in the October 8, 2009 Mass Mailing and losing their personal time to travel to various BMV registrar offices and go through the procedures required by the Mass Mailing or face the cancellation and loss of their registration and license plates. Each LULAC members who faces this dilemma has legal standing in their own right to contest the lawfulness of the policy announced in the mass mailing. This case is brought on behalf of all members of LULAC who received the October 8, 2009 Mass Mailing but in particular those members who are aggrieved and adversely affected by the Defendants' illegal policy as reflected in the Defendants' Mass Mailing of October 8, 2009 but, due to issues relating to their immigration status, are reluctant to be listed as named plaintiffs in this action. The participation of individual LULAC members is not necessary because the issues raise by this complaint are primarily issues of law concerning Defendants' legal authority to implement the policy established by the Mass Mailing rather than the unique facts of any individual members

personal situation.

4. All LULAC members regardless of their citizenship or immigration status who have not provided a social security number on their motor vehicle registration form face the same dilemma and injury from the Defendants' actions in that they are forced to pay \$3.50 of their money to Defendants and to spend their own private time to drive to various registrar offices, and stand in lines for unknown amounts of time in order to comply with the demands of the October 8, 2009 Mass Mailing or face cancellation of their motor vehicle registration and confiscation of their license plates.

5. DEFENDANT TED STRICKLAND is the Governor of the State of Ohio with executive authority over the Department of Public Safety and Registrar of Motor Vehicles and is the person who can give the order directing DEFENDANTS COLLINS-TAYLOR AND WILLIAMS to abate their implementation of the unlawful policy announced in the October 8, 2009 Mass Mailing.

6. DEFENDANT CATHY COLLINS-TAYLOR is the Director of the Ohio Department of Public Safety and in that capacity has executive authority and rights of supervision over all matters related to travel on the roads of Ohio and the motor vehicles which travel on those roads. Specifically, DEFENDANT COLLINS-TAYLOR has supervisory authority over the Registrar of Motor Vehicles.

7. DEFENDANT CAROLYN Y. WILLIAMS is the Acting Registrar of the Department of Motor Vehicles whose duties include establishing the standards and procedures for the registration and renewal of registration of motor vehicles in the State of Ohio. She is the author of the October 8, 2009 Mass Mailing which created the policy that is the basis of the current controversy.

VENUE

8. Venue is proper in Franklin County because it is the location of the business offices of all three DEFENDANTS and the address of the DEFENDANTS as listed on the October 8, 2009 Mass Mailing is Franklin County.

DISPUTED ACTION OF THE DEFENDANTS

9. On October 8, 2009, DEFENDANT CAROLYN Y. WILLIAMS, on behalf of herself and the other Defendants sent a form letter, (referenced through out this complaint as the “Mass Mailing”) to at least 40,000 Ohioans, including members of LULAC, informing them of the potential cancellation of their motor vehicle registration because of their failure to provide their social security numbers in the appropriate space on the motor vehicle registration form developed by the Registrar. DEFENDANT WILLIAMS’ assertion that the social security number is required by law ignores previous BMV practice that regularly approved motor vehicle registration applications that did not contain social security numbers. A copy of the form letter and the attached “Acceptable Documents” is attached as Exhibit A.

10. In the Mass Mailing DEFENDANT WILLIAMS instructs recipients of the Mass Mailing, including members of LULAC, that they must pay a \$3.50 fee to “update” their motor vehicle registration and the recipient must report to a local BMV office with a copy of their Ohio drivers’ license or Ohio Identification Number, or proof of their social security number based upon a list of “Acceptable Documents” that is attached to the Mass Mailing.

11. The Mass Mailing further informs recipients, including members of LULAC, that if they do not pay the fee and report to a local BMV office by with the required documentation by December 8, 2009, their motor

vehicle registration will be cancelled.

12. The terms of the Mass Mailing create a legal dilemma for recipients of the Mass Mailing, including members of LULAC, since it forces recipients to either pay a \$3.50 fee which is not authorized by law and to use their personal time to travel to a BMV office to complete the unnecessary registration process or face the cancellation of their motor vehicle registration.

13. As a result, there is a live case or controversy between PLAINTIFF LULAC and the three DEFENDANTS which is capable of judicial resolution concerning whether the policy reflected in the Mass Mailing is in excess of DEFENDANTS' statutory authority and is intended to advance interests which are not reflected in the Ohio Revised Code.

14. Paragraphs One (1) through Fourteen (14) of this Complaint are hereby incorporated into each count set forth below.

COUNT ONE

15. Revised Code Section 4503.10(E) states that a motor vehicle registration may be cancelled and the license plates recovered only where "erroneously or fraudulently issued".

16. The criteria for determining whether a registration is properly issued are set forth in Revised Code Section 4503.10(B) which states that an application for motor vehicle registration or renewal may be denied if any of the following applies:

(1) The application is not in proper form.

(2) The application is prohibited from being accepted by division (D) of Section 2935.27, division (A) of Section 2937.221, division (A) of Section 4503.13, division (B) of Section 4510.22, or division (B)(1) of Section 4521.10 of the Revised Code.

(3) A certificate of title or memorandum certificate of title is required but does not accompany the application or, in the case of an electronic certificate of

title, is required but is not presented in a manner prescribed by the registrar's rules.

(4) All registration and transfer fees for the motor vehicle, for the preceding year or the preceding period of the current registration year, have not been paid.

(5) The owner or lessee does not have an inspection certificate for the motor vehicle as provided in HYPERLINK "<http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000279&DocName=OHSTS3704.14&FindType=Y>" [section 3704.14 of the Revised Code](#), and rules adopted under it, if that section is applicable.

17. The failure to provide a social security number is not a lawful criterion for denying a vehicle registration or renewal pursuant to Revised Code Section 4503.10(B).

18. Because Section 4503.10(B) does not authorize the denial of a motor vehicle registration due to a lack of a social security number, that registration cannot be cancelled and the license plates cannot be recovered because such a registration approved without a social security number was not "erroneously or fraudulently issued".

19. The DEFENDANTS' policy as set forth in the Registrar's Mass Mailing of October 8, 2009 is unlawful and in excess of the DEFENDANT WILLIAMS' statutory authority under Chapter 4503 because it attempts to cancel motor vehicle registrations that were not "erroneously or fraudulently issued" as that phrase is used in Revised Code Section 4503.10(E).

COUNT TWO

20. Article VI, Section 2, of the United States Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all

Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

21. The Supremacy Clause mandates that Federal law preempts any state regulation of any area over which Congress has expressly or impliedly exercised exclusive authority or which is constitutionally reserved to the Federal government.

22. The power to regulate immigration is a power exclusive to the Federal government.

23. In the Immigration and Nationality Act (“INA”), 8 U.S.C. Section 1101 et seq., including the various regulatory requirements adopted pursuant to the authorizations contained within the INA, the United States Congress has adopted a comprehensive statutory and regulatory scheme governing immigration which pre-empts the field of immigration policy from state regulation.

24. In the 2005 “REAL ID” Act Amendments to the Immigration and Nationality Act, the United States, Congress established the means for authenticating the identity of non-citizens through the use of the state driver’s license process rather than the motor vehicle registration process.

26. The DEFENDANTS’ policy as declared in the October 8, 2009 Mass Mailing sent to persons who declined to provide their social security numbers at the time they registered a motor vehicle is an attempt to enforce and impose a new procedure for confirming the identity of non-citizens that is preempted by the procedures for confirmation of alien identity contained in the 2005 REAL ID Act Amendments to the Immigration and Nationality Act which make the process for issuance of driver’s licenses, not vehicle registration, the exclusive procedure for

confirming the lawful identity of non-citizens.

27. The DEFENDANTS' policy as reflected in the Mass Mailing is preempted because it attempts to enforce identity requirements for non-citizens, a field that is occupied by the Federal government pursuant to the requirements of the INA and amendments thereto. The Supremacy Clause of the U.S. Constitution requires that any state or local law regulating the conduct of non-citizens must be invalidated if it (1) amounts to an attempt to regulate immigration; or (2) operates in the field of immigration that is occupied by the Federal government.

28. Both the intent and the effect of the October 8, 2009 Mass Mailing policy is to regulate the process of identity confirmation of non-citizens independently of procedures established by the Federal government pursuant to the Federal government.

WHEREFORE, Plaintiff demands judgment and relief as follows:

A. That a declaratory judgment be entered declaring that the DEFENDANTS' policy reflected in October 8, 2009 Mass Mailing is in excess of statutory authority and is not authorized by Revised Code Section 4305.10;

B. That an injunction be issued against the DEFENDANTS preventing them from canceling the automobile registration of LULAC members who do not comply with the directive contained in the October 8, 2009 Mass Mailing;

C. In the alternative if injunctive relief is not available, that a writ of mandamus be issued compelling DEFENDANTS to perform their duties in compliance with Revised Code Section 4503,10 and ordering them to abandon the policy reflected in the October 8, 2009 Mass Mailing.

D. That Plaintiffs be awarded such other relief as may be just including costs and attorneys' fees.

Respectfully submitted,

E. Dennis Muchnicki
(0024734)
5650 Blazer Parkway
Dublin, Ohio 43017
(614)761-9775
FAX 734-8502
Counsel for PLAINTIFF

LULAC