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

LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC)	:	CASE NO. 09CV
	:	JUDGE
20 West 12th 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 et al.	:	
Defendants	:	

MOTION FOR PRELIMINARY INJUNCTION
AND MEMORANDUM IN SUPPORT

Plaintiff LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) hereby moves for a preliminary injunction to prevent Defendants from implementing their policy as reflected in the Mass Mailing of October 8, 2009, by canceling on or after December 8, 2009 while this litigation is still ongoing the motor vehicle registration of persons who have not complied with Defendants' unlawful policy declared in the Mass Mailing. It is now well established that preliminary injunction may be based upon a likelihood of success on the merits and the potential for irreparable injury. Both of those factors are present in this case. Thus, the issuance of a preliminary injunction is appropriate.

A. BECAUSE REVISED CODE SECTION 4503.10(B) CLEARLY INDICATES

THAT LACK OF A SOCIAL SECURITY NUMBER IS NOT A GROUNDS FOR DENIAL OF A MOTOR VEHICLE REGISTRATION APPLICATION, PLAINTIFF HAS ESTABLISHED A LIKELIHOOD OF SUCCESS ON THE MERITS OF ITS COMPLAINT.

Long ago in State, ex rel, Bentley v. Pierce(1917), 96 Ohio St. 44, 47, the Ohio Supreme Court delineated the fundamental rule for assessing the extent of a grant of authority by the General Assembly:

> In construing such grant of power, particularly administrative power through and by a legislative body, the rules are well settled that the intention of the grant of power, as well as the extent of the grant, must be clear; that in case of doubt that doubt is to be resolved not in favor of the grant but against it. It is one of the reserved powers that the legislative body no doubt had, but failed to delegate to the administrative board or body in question. (Emphasis supplied).

Similarly, in its landmark decision concerning the proper method of interpreting legislation, the Supreme Court in Wachendorf v. Shaver(1948), 149 Ohio St. 231, 236-237, held that:

> [I]t is the duty of the courts to give a statute the interpretation its language calls for where this can reasonably be done, and the general rule is that no intent may be imputed to the Legislature in the enactment of a law, other than such as is supported by the language of the law itself. The courts may not speculate, apart from the words, as to the probable intent of the Legislature. As a reason for these rules, it has been declared that the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute; that nothing may be read into a statute which is not within the manifest intention of the Legislature as gathered from the act itself . . . .
>
> It is a cardinal rule of statutory construction that significance and effect should if possible be accorded every word, phrase, sentence and part of an act. (Emphasis supplied).

As a result, the law is now well-established in Ohio that the courts should

not legislate through interpretation to grant to administrative agencies power that the General Assembly has withheld.

In this case, the General Assembly in Revised Code Section 4503.10(A) did direct the Registrar of Motor Vehicles to prepare forms for the registration of motor vehicles that provided for the listing of the social security number of the vehicle owner. In Subsection(B) of Section 4503.10, the General Assembly listed very specific grounds upon which the Registrar was authorized to deny an application for registration of a motor vehicle:

(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.

None of these provisions, however, when interpreted pursuant to their express language, are directed at persons who fail to provide their social security numbers. This lack of authority to deny registration due to the

failure to include a social security number becomes particularly important in light of the provisions of Revised code Section 4303.10(E) which authorizes recovery of license plates upon certification by the Registrar only where the plates were "erroneously or fraudulently" issued. As noted above, since a registration cannot be denied pursuant to Revised Code Section 4503.10(B) due to the failure to provide a social security number, there exists no authority under Revised Code Chapter 4503 for the new policy announced in the October 8, 2009 Mass mailing to institute the cancellation program against persons who did not provide social security numbers on their motor vehicle registration application.

Indeed, the current matter is similar to the situation placed before the Franklin County Court of Appeals in State, ex rel. Ten Residents of Franklin county Fearful of Disclosing Their Names v. Belskis(Franklin App. 2001), 142 Ohio App. 3d 296. In that case the Court was presented with a complaint for a writ of mandamus seeking to compel Probate Judge Belskis to issue marriage licenses after Judge Belskis had refused to issue marriage licenses to persons who did not place social security numbers on their marriage license applications. At the time of the court's decision, the marriage statue was much like Revised Code Section 4503.10 in that the statute did contain language directing that the social security number of the applicant be placed on the application. See Revised Code Section 3101.05. Also, much like Section 4503.10(A)(7), the marriage statue provided that the social security number should not be placed on the marriage certificate that was issued. In addition, as with Section 4503.10, the marriage statute did not state that the failure to provide the social security number was grounds for denial of the license. See, Revised Code Sections 3101.01 and 3101.06. As a result, the Franklin County Court of Appeals ordered Judge Belsksi to issue marriage licenses because the failure to provide a social security number was not a

lawful basis to deny a marriage license.

That the Franklin County Court of Appeals was correct in its reasoning was confirmed by the Supreme Court's decision in Vasquez v. Kutscher(2002), 95 Ohio St. 3d 280, where the Court affirmed that social security numbers are not required for the issuance of a marriage license.

As a result, there is precedent from both the Franklin County Court of Appeals and the Supreme Court that statues, such as Ohio Revised Code Section 4503.10, which require the listing of social security numbers on applications do not turn the absence of the social security number into a lawful basis for denial of the benefit for which the application is filed. Thus, the actual language of the various sections of Section 4503.10 confirm what the Franklin County court of Appeals and the Supreme Court have held concerning the legal affect of the absence of a social security number on an application form.

Indeed, on information and belief, LULAC states that prior to Ms. Williams assuming the position of Acting Registrar her predecessor had a policy that was consistent with the decisions of the Franklin County Court of Appeals and the Supreme Court and did not treat the absence of social security numbers as a matter which invalidated the registration. Thus, the policy announced in the Defendants' October 8, 2009 Mass Mailing may well be a product of administrative whimsy from a change of the bureaucrat in charge rather than the result of a policy decision made by the General Assembly. Obviously the members of LULAC have a legal right to protection from such administrative caprice. Therefore, LULAC has established a substantial likelihood of success on the merits.

<u>B. PLAINTIFFS WILL BE IRREPARABLY INJURED IF DEFENDANTS ARE ALLOWED TO PROCEED TO ENFORCE THEIR UNLAWFUL POLICY ON DECEMBER 8, 2009 BY CANCELING THE MOTOR VEHICLE REGISTATION OF</u>

ALL LULAC MEMBERS WHO REFUSED TO COMPLY WITH DEFENDANTS UNLAWFUL POLICY EXPRESSED IN THE MASS MAILING.

As set forth in the affidavit of Ohio LULAC Director Jason Riveiro, many of LULAC's members are basic, hardworking people who rely on their cars to get to their places of employment. If they lose their registration while this case is pending, they may suffer other losses, such as their employment if they cannot get to work due to the absence of a car with valid registration. As a result, this Court should issue a preliminary injunction preserving the status quo while this case is pending and preventing the Defendants from canceling the automobile registration of those who refuse to comply with the Mass Mailing policy until after its legality has been tested in a court of law.

Respectfully submitted,

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