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

CENTRAL ALABAMA FAIR HOUSING CENTER;

FAIR HOUSING CENTER OF NORTHERN ALABAMA;

CENTER FOR FAIR HOUSING, INC.; and

JOHN DOE #1 and JOHN DOE #2, on behalf of themselves and all others similarly situated,

*Plaintiffs*,

v.

JULIE MAGEE, in her official capacity as Alabama Revenue Commissioner, and

WILLIAM HARPER, in his official capacity as Elmore County Revenue Commissioner,

*Defendants*.

Civil Action File No.

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

## INTRODUCTION

Plaintiffs Central Alabama Fair Housing Center, Fair Housing Center of Northern Alabama, Center for Fair Housing, Inc., John Doe #1, and John Doe #2 seek a temporary restraining order and preliminary injunction immediately enjoining Defendants Magee and Harper from enforcing Section 30 of Alabama's new omnibus immigration law, Act 2011-535/H.B. 56 ("HB 56"). As shown below, Plaintiffs have a substantial likelihood of success on the merits of their claims that Defendants' conduct violates the Supremacy Clause of the U.S. Constitution and the federal Fair Housing Act, 42 U.S.C. § 3604(a) and (b). Without the requested relief, all Plaintiffs will suffer immediate and irreparable harm. For the individual Doe Plaintiffs, these harms include the loss of housing, employment, and schooling and an increased risk of arrest and detention. The organizational Plaintiffs risk continuing harm to their missions and an inability to pursue previously planned programs if they are forced to continue devoting their resources to counteracting the effects of Defendants' enforcement policy.

Section 30 forbids "[a]n alien not lawfully present in the United States" from entering into or attempting to enter into "any transaction . . . [with] the state or a political subdivision of the state," and further forbids any person from entering into or attempting to enter into such a transaction on behalf of an "alien not lawfully present in the United States." Anyone who lacks proof will be denied the requested service. Simply attempting to engage in such a transaction with the State by an individual who cannot demonstrate U.S. citizenship or lawful presence in the United States is now a Class C felony.

Defendant Magee, the State Revenue Commissioner, and Defendant Harper, the County Revenue Commissioner for Montgomery County, where Plaintiffs Doe #1 and Doe #2 live in

and keep manufactured homes, have adopted a policy of enforcing Section 30 of HB 56 by refusing to accept annual registration payments for manufactured homes and refusing to issue manufactured home identification decals to individuals who lack proof (that is acceptable to the State of Alabama) of U.S. citizenship or lawful immigration status. Under Alabama law, anyone who owns, maintains, or keeps a manufactured home must pay the annual registration fee and obtain and prominently display a current identification decal by no later than November 30. Failure to do so will subject that individual to progressive fines and criminal prosecution.

Defendants' enforcement of Section 30 of HB 56 will make it impossible for individuals like Plaintiffs Doe #1 and Doe #2 to comply with these legal requirements and will place them in immediate danger of being fined and criminally prosecuted, pursuant to the enforcement mechanisms established in the Manufactured Homes Statute. Because these Plaintiffs cannot prove U.S. citizenship or lawful immigration status under HB 56 Section 30(c), they have no way to come into compliance with the Manufactured Homes Statute. If they even attempt to make the annual registration payment, they will be guilty of a Class C felony for attempting to enter into a business transaction with the State, in violation of HB 56 Section (b).

Defendants must be immediately enjoined from enforcing HB 56 Section 30, by a date prior to November 30. Without the requested injunction, Plaintiffs Doe #1 and Doe #2, and the Class they seek to represent,[1] will face an imminent risk of losing their homes and other irreparable harms, and the organizational Plaintiffs will suffer continuing and irremediable harm to their missions.

Plaintiffs have demonstrated a likelihood of success on the merits of their claims under the Supremacy Clause of the U.S. Constitution and the Fair Housing Act. Defendants'

[1] Plaintiffs Doe #1 and Doe #2 have concurrently filed a Motion for Class Certification, to certify a Class and Subclass of similarly situated individuals.

enforcement of HB 56 Section 30 is preempted by federal law because it amounts to an impermissible state regulation of immigration by attempting to drive those Alabama perceived to be undocumented immigrants from their homes, and ultimately from the State. In addition, Defendants' enforcement of HB 56 Section 30 is preempted because it conflicts with federal law and intrudes into an area that Congress has indicated a clear intent to occupy.

Defendants' enforcement of HB 56 Section 30 also violates the Fair Housing Act, because it makes housing unavailable to Plaintiffs Doe #1 and Doe #2 and the Subclass and applies different terms and conditions for the provision of essential services related to housing because of their Latino race and national origin, in violation of 42 U.S.C. § 3604(a) and (b). Plaintiffs have presented strong evidence that HB 56 Section 30 is motivated by discriminatory animus against and has a significant disparate impact on Latinos. In order to prevent the unlawful denial of housing and housing-related services on these discriminatory grounds, Defendants must therefore be enjoined from enforcing HB 56 Section 30 against Plaintiffs Doe #1, Doe #2, and the Subclass.

In addition, the threatened injury to Plaintiffs outweighs any potential harm the requested injunction may cause Defendants, and the injunction would further the public interest by preventing Class members across the State from losing their housing, the factors for granting preliminary injunctive relief weigh heavily in Plaintiffs' favor. Plaintiffs thus respectfully request that the Court grant a temporary restraining order and preliminary injunction, as set forth in the accompanying [Proposed] Orders.

## FACTUAL BACKGROUND

### I. Enactment and Purpose of HB 56

On June 2, 2011, the Alabama legislature adopted the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act 2011-535, commonly referred to as HB 56.[2] On September 28, 2011, several provisions of HB 56 went into effect, including Section 30.[3]

Pursuant to Section 30 of HB 56, any person entering or attempting to enter into a "business transaction" with the State or a political subdivision of the State is now required to demonstrate to the person conducting the transaction on behalf of the state/political subdivision that the applicant is a United States citizen, or, if he or she is an alien, that he or she has lawful presence in the United States. HB 56 § 30(c). Section 30 defines "business transaction" as "*any* transaction between a person and the state or a political subdivision of the state," with the only exception being the purchase and issuance of marriage licenses. HB 56 § 30(a). The term "business transaction" therefore includes numerous transactions with state and local officials that relate to housing, the ability to rent or buy housing, and the provision of services and facilities in connection with housing.

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[2] A copy of HB 56 as enrolled is attached as Attachment 1 to the Complaint. HB 56 has not yet been official codified, but an unofficial codification appears electronically at Ala. Code § 31-13-1 *et seq.* (West 2011), and Ala. Code § 31-9C-1 *et seq.* (Michie / LexisNexis 2011).

[3] The majority of the law was to go into effect on September 1, 2011. *See* HB 56 § 34. However, the act was challenged facially in *Hispanic Interest Coalition of Alabama v. Bentley*, No. 11-2484 (N.D. Ala.), and *United States v. Alabama*, No. 11-2746 (N.D. Ala). That district court temporarily enjoined the entire law on August 29, 2011, until a ruling on the parties' motions for preliminary injunction, issued on September 28, 2011. *See United States v. Alabama*, 2011 WL 4469941 (N.D. Ala. Sept. 28, 2011). Section 30 was permitted to go into effect on that day. *Id.* at *58-60. However, as discussed below in Part II.A of the Legal Argument, that court's ruling does not affect the instant challenge.

Proof of citizenship status may be demonstrated under this law only by producing one of a series of enumerated documents; lack of one of these documents precludes anyone from qualifying as a U.S. citizen for purpose of Section 30. HB 56 §§ 30(c), 29(k).

"Lawful presence" may be demonstrated under this law only by the State or political subdivision's verification of the alien's lawful presence through the Systematic Alien Verification for Entitlements ("SAVE") program operated by the federal Department of Homeland Security ("DHS"), or by other verification with DHS pursuant to 8 U.S.C. § 1373(c). HB 56 § 30(c). Neither the federal SAVE system, nor any federal system for status inquiries under § 1373(c), has been authorized by the federal government to verify immigration status in order to disqualify individuals from paying registration fees for manufactured homes or for any purpose relating to housing. SAVE was established to assist States and localities to determine non-citizens' eligibility for federal, state, and local public benefits.

Section 30 of HB 56 makes it a Class C felony—punishable by up to ten years' imprisonment, *see* Ala. Code § 13A-5-6—for an "unlawfully present alien" to enter or attempt to enter into virtually any transaction with the state or local government agency. HB 56 § 30(b), (d). Section 30 of HB 56 also prohibits a third party from entering or attempting to enter into virtually any transaction on behalf of an alien not lawfully present in the United States, again at penalty of a Class C felony conviction. *Id.* § 30(b).

The legislative history of Section 30 of HB 56 reveals a plain legislative intent to drive those suspected of being undocumented immigrants, and undocumented Latinos in particular, out of Alabama by making living conditions miserable for them or by funneling them into deportation proceedings.

Representative Hammon, who introduced the bill in the House, explained: "This [bill] attacks *every aspect* of an illegal immigrant's life. They will not stay in Alabama . . . . [T]his bill is designed to make it difficult for them to live here so they will deport themselves." Ex. G to Brooke Decl. (Ex. 2) at 9:4-7.[4] He also noted, "[W]e do want to affect every aspect of someone's life and make it a little more difficult for them to live here." Ex. D to Brooke Decl. at 21:3-4. In no uncertain terms, Representative Hammon stated: "[T]he intent of this bill is to slow illegal immigration in Alabama through attrition." *Id.* at 1:42-43. He emphasized: "We are going to deter illegal immigrants from the State of Alabama." *Id.* at 13:27.

Senator Beason, who introduced a similar omnibus immigration bill in the Senate, and who ultimately consolidated his bill with Hammon's to form HB 56, also expressed his views that the intent of HB 56 was to drive immigrants from the State. In a speech he delivered in February, 2011, just before the legislative session commenced, he noted, "The reality is that if you allow illegal immigration to continue in your area you will destroy yourself eventually . . . . If you don't believe illegal immigration will destroy a community go and check out parts of Alabama around Arab and Albertville." Ex. D to Brooke Decl.

Section 30 of HB 56 is one of several provisions in HB 56 that were clearly designed to make it impossible for undocumented individuals to rent, buy, or sell dwellings. For example, Section 13(a)(4) of HB 56 criminalizes the entering into of a rental agreement with an undocumented individual, and Section 25 of HB 56 makes soliciting a rental agreement a crime for the undocumented individual as well.[5] Furthermore, Section 27 of HB 56 makes unenforceable in state court virtually any contract that takes more than 24 hours to complete, and

[4] The Declaration of Samuel Brooke is attached hereto as Exhibit 2.
[5] These rental provisions have been preliminarily enjoined in other litigation and are not currently in effect. *See United States v. Alabama*, 2011 WL 4469941, at *38-46 (N.D. Ala. Sept. 28, 2011).

Section 30 requires probate offices in Alabama to demand proof of U.S. citizenship or lawful immigration status before engaging in any transactions with the office, including recording a deed. *See* Ex. F to Brooke Decl. These provisions effectively prevent Plaintiffs Doe #1 and Doe #2 and the Class from purchasing property, and substantially frustrate their ability to sell their homes.

The entirety of HB 56, including Section 30, is specifically targeted at making Latinos leave Alabama. The State officials who enacted and are implementing Section 30 of HB 56 knew that Section 30, like HB 56 as a whole, would have the greatest impact on Latinos, because Latinos make up an overwhelming majority of the State's non-U.S. citizen population. Nearly 65% of Alabama's non-U.S. citizen population is Latino. Crook Decl., ¶ 5 (Ex. 1).[6] In Alabama, a high percentage of Latinos, approximately 44%, are not U.S. citizens. *Id.*, ¶ 4. Nationwide, approximately 77% of all undocumented immigrants are of Latino national origin. *Id.*, ¶ 8. Thus, Alabama's small undocumented population—only 2.5% of the total population, *see* Crook Decl., ¶ 9—is almost certainly majority Latino. Combined with widespread attitudinal stereotypes that Latinos are undocumented, it was therefore clear to the legislators who adopted HB 56 that it would have the most significant effect on Latinos, compared to any other race or ethnicity.

Statements made by legislators while debating HB 56 further support the conclusion that they intended for HB 56 to drive Latino immigrants out of Alabama. Representative Rich, who voted for the bill, remarked that although he "like[s] Hispanic people," "95 percent of the children that are in the elementary school at Crosswell Elementary School are Hispanic, 95 percent of them. 52 percent of the children that attend Albertville Elementary and Primary

[6] The Declaration of Jamie L. Crook is attached hereto as Exhibit 1.

School are Hispanic, and the biggest part of them are illegal." Ex. G to Brooke Decl. at 16:6, 16:14-17. Representative Rich's assertion has no basis in fact. In Alabama, approximately 85% of all children whose parents are not lawfully present in the United States are U.S. citizens. Ex. H to Brooke Decl.

Representative Hammon has also conflated Latinos with undocumented immigrants. For example, on June 2, 2011, the date that the House of Representatives passed the final version of HB 56, Representative Hammon explained the need for the bill by claiming that "the illegal immigration population in Alabama is the second fastest growing in the country and the people in our state need jobs back." *See* Ex. I to Brooke Decl. When asked for evidence to substantiate this claim, he pointed to a news article that observed that the State's *Latino* population had grown by 145% from 2000 to 2010, the second highest percentage of growth in the country for that ten-year period. Exs. J and K to Brooke Decl. The article did not, however, discuss any data or studies of undocumented immigrant populations. It was limited to a discussion of Alabama's Latino population. *See id.*

Senator Beason likewise singled out Latinos when he publicly asserted that the cities of Arab and Albertville have allegedly been "destroyed" by the presence of undocumented persons. Ex. D to Brooke Decl. Arab and Albertville are both located in Marshall County. Compared to the rest of the State, Marshall County has a large Latino population. Twelve percent of Marshall County residents are Latino, compared to less than 4% of the State population. Moreover, Marshall County has no other significant immigrant population. Ex. L to Brooke Decl.

Those who opposed the legislation likewise understood that it took aim at Mexicans and other Latinos. Senator Singleton observed: "[T]he fact of the matter is that we know that when we talk about illegal immigration that it is basically targeted at one ethnic group and that seems

to be the Latino Hispanic Americans . . . ." Ex. M to Brooke Decl. at 7:12-16. Representative Holmes stated: "The purpose of this bill is . . . these Mexican[s] . . . . [Y]ou all are trying to get as many in here out and trying to stop as many coming in [as you can] . . . ." Ex. G to Brooke Decl. at 55:1-4.

## II. Defendants' Enforcement of Section 30 of HB 56 Makes it Impossible for Plaintiffs Doe #1, Doe #2, and Class Members to Comply with Alabama's Manufactured Homes Statute.

Plaintiffs Doe #1 and Doe #2, and other individuals who live in manufactured homes, are required under Alabama law to pay an annual registration fee for their manufactured homes and to obtain and prominently display a current identification decal on the outside of their homes. Alabama Code Section 40-12-255(a) provides:

> Every person, firm, or corporation who owns, maintains or keeps in this state a manufactured home . . . shall pay an annual registration fee . . . and upon payment thereof such owner shall be furnished an identification decal, designed by the Department of Revenue and color coded to denote the size and year issued, which shall be immediately attached to and at all times thereafter displayed at eye level on the outside finish of the manufactured home for which the registration fee was paid, and one foot from the corner on the right side facing the street, so as to be clearly visible from the street.

Ala. Code § 40-12-255(a). The registration payment is due by October 1 and is considered delinquent if it is not paid by November 30. *Id.*

An individual who fails to pay the registration fee by November 30 will be fined a $10 delinquent fee and a $15 citation fee; an additional penalty is imposed if the owner fails to pay the delinquent fee and citation fee within 15 days of the first citation. Ala. Code § 40-12-255(b). An individual cannot obtain a current identification decal for his or her manufactured home until all outstanding fees and penalties have been satisfied. *Id.* In addition to these fines and penalties, Section 40-12-255 provides that an individual who violates any provision of this statute, including the provisions requiring the timely payment of the annual registration fee and a

current identification decal, "shall be guilty of a Class C misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than $50." *Id.*, § 40-12-255(*l*). Under Alabama law, a Class C misdemeanor is punishable with a three-month jail term, in addition to a fine of up to $500. *Id.*, §§ 13A-5-7 and 13A-5-12. These criminal provisions are enforceable by any municipal, state, or county law enforcement officer. *Id.*, § 40-12-257.

Section 40-12-255 additionally requires that a manufactured home owner obtain a moving permit in order to move his or her manufactured home on public roads in Alabama. Ala. Code § 40-12-255(j). Proof of payment of the current registration fee, as well as any outstanding fines and penalties, is required to obtain a moving permit. *Id.*, § 40-12-255(j)(1). Failure to obtain a moving permit before moving a manufactured home on public roads is also punishable as a Class C misdemeanor. *Id.*, § 40-12-255(j)(4).

Under Alabama law, the County official with responsibility for collecting taxes and other assessments has the duty to collect the annual manufactured home registration fees, to issue identification decals, and to impose fines and penalties for late payments. § 40-12-255(a). In Elmore County, where Plaintiffs Doe #1 and Doe #2 live and maintain their manufactured homes, Defendant Harper, Elmore County Revenue Commissioner, is the County official assigned these responsibilities. *See* 1990 Ala. Act 254. Until the passage and implementation of Section 30 of HB 56, Plaintiffs Doe #1 and Doe #2 and Class members were allowed annually to register their manufactured homes, pay the required fee, and display the required decal, pursuant to Alabama Code Section 40-12-255.

Since the implementation of HB 56 Section 30, however, the process of submitting a payment for the annual manufactured home registration fee and obtaining a current identification decal, as required by Alabama Code Section 40-12-255(a), is a "business transaction with the

State" subject to HB 56 Section 30(a), as is the act of applying for a moving permit pursuant to Alabama Code Section 40-12-255(j). In light of this change in law, Defendant Harper is now requiring proof of U.S. citizenship or lawful immigration status before he will accept a registration fee and issue a new manufactured home decal. *See* Ex. N to Brooke Decl. This policy is consistent with the requirements of HB 56, and guidance Defendant Magee has placed on the state Department of Revenue's website, noting that everyone must "submit documentation proving either citizenship and/or lawful presence when conducting a business transaction with the State and/or Counties of this State." *See* Exs. O and P to Brooke Decl.

Because of Defendants Magee and Harper's policy, Plaintiff Doe #1 and Plaintiff Doe #2 are caught between a quintessential "rock and a hard place." If they attempt to submit the annual registration payment to obtain a current identification decal as required by Alabama Code Section 40-12-255(a), and/or attempt to obtain a moving permit for their homes, they will be subject to the harsh penalties established in HB 56 Section 30(d), including the threat of criminal prosecution on Class C felony charges, and they will be denied the decal or permit. On the other hand, if Plaintiff Doe #1 and Plaintiff Doe #2 fail to make the annual registration payment and fail to obtain a current identification decal, they will be subject to fines, citations, and the threat of Class C misdemeanor charges, pursuant to Alabama Code Section 40-12-255(a), (j), and (*l*).

In either scenario, Plaintiffs Doe #1 and Doe #2, and countless Class members, will be in violation of criminal laws. Because they will be visibly out of compliance with Section 40-12-255, as a result of being denied a current identification decal, they will face the real risk of being targeted by police. When police encounter them (for either attempting to engage in a business transaction, or failing to renew their decal, or both), the officer will be obligated under HB 56 Section 12 to make an inquiry into these Plaintiffs' immigration status if the officer develops

"reasonable suspicion" that they are here without current immigration status—an undefined but unquestionably low standard of proof. Thus Plaintiffs Doe #1 and Doe #2, as well as numerous members of the Class, will be at risk not only of criminal charges, but also of immigration proceedings, detention, and removal.

Furthermore, under Defendants' policy they will be unable to move their manufactured homes out of Alabama because they cannot apply for a moving permit, as required by Alabama Code Section 40-12-255(j) in order to travel on public roads. Plaintiffs Doe #1 and Doe #2 have no other way to obtain a current identification decal or moving permit because Section 30 of HB 56 makes it a crime for any other person to attempt to submit a registration payment, obtain a current identification decal, or apply for a moving permit on behalf of Plaintiffs Doe #1 and Doe #2. HB 56 § 30 (b), (d).

Section 30 of HB 56 applies statewide. Thus, the same unconscionable dilemma faced by Plaintiffs Doe #1 and Doe #2 will be and is already being faced by every member of the Class regardless of which County they live in.[7]

Representative Hammon, one of the two sponsors of HB 56, has publicly applauded efforts by local officials to deny such local services to individuals like Plaintiff Doe #1 and Plaintiff Doe #2, precisely because these acts will have the effect of driving Plaintiffs and other similarly situated people out of Alabama. According to Representative Hammon:

> Our goal [through Section 30] was to prevent any business transactions with any governments. It's just an extension of the goal of the entire bill—to prevent illegal immigrants from coming to Alabama and *to discourage those that are here from putting down roots. . . . It seems to be working. . . . We're seeing a lot of illegal immigrants self-deport.*

[7] The County Revenue Commissioners in DeKalb and Houston Counties have gone even further than envisioned by Section 30 by posting a notice requiring proof of U.S. citizenship from anyone seeking a current identification decal for his or her manufactured home. Ex. E to Brooke Decl.

Ex. Q to Brooke Decl. (emphasis added). Consistent with Representative Hammon's stated intent, local officials across Alabama are relying on Section 30 to deny other basic services to undocumented immigrants, including water, electricity, garbage removal, and a host of other essential municipal services. Exs. S & R to Brooke Decl.

## III. Harm to Plaintiffs

### B. Individual Doe Plaintiffs

In the absence of a temporary restraining order and preliminary injunction against Defendants' enforcement of Section 30 of HB 56, as of December 1, 2011, Plaintiffs Doe #1 and Doe #2 will be considered "delinquent" and will be immediately subject to Alabama Code Section 40-12-255's progressive enforcement mechanisms, which include the threat of criminal prosecution and imprisonment. Ala. Code § 40-12-255(a), (*l*). Because of Defendants' enforcement of HB 56 Section 30, Plaintiffs Doe #1 and Doe #2 risk being forced to abandon their housing and permanently forfeit their manufactured homes, because there is no way for them to come into compliance with Alabama Code Section 40-12-255(a) or (j). Under HB 56 Section 27, Plaintiffs Doe #1 and Doe #2 will not be able easily to sell their homes, and under Section 30 they cannot obtain a moving permit to move them out of state. Furthermore, as described above in Part II, under Section 12 of HB 56, any of these criminal liabilities could easily result in their being placed in immigration custody, and ultimately deportation, separating them up from their U.S. citizen children.

The harm to the Doe plaintiffs from this law will therefore be extensive. Plaintiff Doe #1 currently lives in Elmore with his partner, five-year-old son (a U.S. citizen), and sixteen-year-old nephew. Doe #1 Decl., ¶ 3 (Ex. 3).[8] Elmore has been his home for the last eight years. *Id.*, ¶ 1.

[8] Plaintiff Doe #1's Declaration is attached as Exhibit 3.

Plaintiff Doe #1 is afraid that he and his family will have to abandon their home in Elmore in order to avoid the fines, penalties, and criminal charges that are authorized under Alabama Code Section 40-12-255 for failure to display a valid identification decal. *Id.*, ¶ 8. Plaintiff Doe #1 does not have any other housing where he could move with his family. *Id.*, ¶ 9. They would have to leave behind their jobs and church, and his U.S.-citizen son would have to withdraw from school, thus jeopardizing his education and abruptly ending his friendships with his classmates. *Id.*,¶¶ 11, 13.

Plaintiff Doe #2 lives in Millbrook with his partner, his five-year-old son (a U.S. citizen), and six extended family members who are also undocumented immigrants. Doe #2 Decl., ¶ 3 (Ex. 4).[9] Millbrook has been his home since 2002. *Id.*, ¶ 1. Plaintiff Doe #2 is afraid that he will be fined, imprisoned, or deported if he cannot make the annual registration payment and obtain a current identification decal for his manufactured home. *Id.*, ¶¶ 6-7. Plaintiff Doe #2 does not know where he and his family could move if they can no longer live in their home in Millbrook. He is worried that he would not be able to find work to support his family, and he does not want to make his U.S.-citizen son leave his school and his friends. *Id.*, ¶¶ 9-10, 17. He fears that his son's education and future will suffer if they have to leave Millbrook and move back to Mexico. *Id.*, ¶ 9.

Plaintiffs Doe #1 and Doe #2 and their families are typical of a large number of Latino households in Alabama. Statewide, almost 30% of Latino households occupy mobile homes. Crook Decl., ¶ 7. This is more than double the percentage of the population as a whole that lives in mobile homes. *Id.* Compared to other race and ethnicity groups, Latinos are considerably

[9] Plaintiff Doe #2's Declaration is attached as Exhibit 4.

more likely to live in mobile homes. For example, only 14.6% of Caucasians, 10.2% of African Americans, and 3.2% of Asians live in mobile homes. *Id.*

**C. Organizational Plaintiffs**

The organizational Plaintiffs are suffering and will suffer extensive and irreparable harm from Defendants' enforcement of Section 30 of HB 56.

Among other activities, Plaintiff Central Alabama Fair Housing Center ("CAFHC") has had to spend time researching Section 30, including the enforcement policies adopted by different Alabama counties and criminal and fair housing implications of the law. CAFHC Decl. ¶¶ 13, 19(b) (Ex. 5).[10] In response to the enforcement of Section 30, Plaintiff CAFHC is realigning its programs to focus on Latino and Hispanic national origin discrimination. *Id.*, ¶ 19(a). Its personnel have also conducted extensive outreach relating to HB 56 and its impact on manufactured home residents. *Id.*, ¶¶ 13, 19(d)-(g). These counteraction activities have prevented or delayed Plaintiff CAFHC from working on other projects that it would have completed, including finalizing an Analysis of Impediments, *see* 21 C.F.R. Part 9, for the City of Montgomery, pursuant to a contract awarded by the City. *Id.*, ¶ 15(a). Because it has had to devote time and resources to counteracting the enforcement of HB 56 Section 30 against individuals who live in manufactured homes, Plaintiff CAFHC has furthermore been obstructed from pursuing several planned programs such as filing an administrative complaint and participating in a mortgage lending training session. *Id.*, ¶ 15(a).

Defendants' enforcement of HB 56 Section 30 has likewise frustrated and will continue to frustrate the mission of Plaintiff Fair Housing Center of Northern Alabama ("FHCNA") to eliminate housing discrimination, and the organization is diverting scarce resources to address

[10] The Declaration of Faith R. Cooper for CAFHC is attached hereto as Exhibit 5.

the issue. In order to counteract the discriminatory and unlawful impact of HB 56 Section 30 on the communities it serves, Plaintiff FHCNA will have to divert scarce resources away from regularly planned activities. FHCNA Decl. ¶¶ 19, 21 (Ex. 6).[11] Among other things, Plaintiff FHCNA is readjusting its client intake counseling to provide information and assess the impacts of HB 56 on manufactured home residents. *Id.*, ¶ 25(c). Personnel at FHCNA have and will continue to meet with community and civil rights groups regarding the impacts that HB 56 is having on residents of manufactured homes; are engaged in communications with HUD concerning the fair housing implications of HB 56 Section 30; and are preparing informational materials to educate the public about their rights with respect to HB 56 Section 30. *Id.*, ¶¶ 19, 25(a) & (f). Because Plaintiff FHCNA is devoting and will continue to devote its limited resources to these activities, it has been unable to engage in regularly planned programs including testing in fields that it had planned to investigate, such as sales and insurance, and engaging in normal outreach and client intake. *Id.*, ¶ 21.

Defendants' enforcement of HB 56 Section 30 has also frustrated and will continue to frustrate Plaintiff Center for Fair Housing, Inc. ("CFH") in pursuing its mission of promoting fair housing opportunities, and CFH is diverting scarce resources to address the effect of the law. In order to counteract the discriminatory and harmful impact of HB 56 Section 30 on the communities it serves, Plaintiff CFH has had to reach out to organizations that work with immigrant communities, and it has participated in meetings to discuss the applicability of HB 56 Section 30 to manufactured homes. CFH Decl. ¶ 18 (Ex. 7).[12] Plaintiff CFH has begun to do testing of discrimination against Latino and Hispanic individuals, and it will divert more resources for further testing in that area and has spent time researching HB 56 Section 30 and its

[11] The Declaration of Lila E. Hackett for Plaintiff FHCNA is attached hereto as Exhibit 6.
[12] The Declaration of Teresa F. Bettis for Plaintiff CFH is attached hereto as Exhibit 7.

impact on manufactured home residents and communicating with HUD. *Id.*, ¶¶ 18, 24(a) and (d). Plaintiff CFH has also applied to realign its funding from a focus on predatory lending to a focus on outreach and enforcement regarding national origin discrimination. *Id.*, ¶¶ 18, 24(j). These counteraction activities have prevented and delayed Plaintiff CFH from working on other planned activities such as general rental testing and routine outreach concerning other issues. *Id*., ¶¶ 20, 24(b)-(c).

Each of the organizational plaintiffs will have to continue diverting resources to these counteraction efforts if Defendants' enforcement of Section 30 is not enjoined. CAFHC Decl. ¶ 12; FHCNA Decl. ¶ 18; CFH Decl. ¶ 17.

**LEGAL STANDARD**

Plaintiffs seeking a temporary restraining order or preliminary injunction must show:

> (1) a substantial likelihood of prevailing on the merits; (2) that they will suffer irreparable injury unless the injunction issues; (3) that the threatened injury outweighs whatever damage the proposed injunction may cause the opposing party; and (4) that the injunction would not be adverse to the public interest.

*Rogers v. Windmill Pointe Vill. Club Ass'n, Inc.*, 967 F.2d 525, 526 (11th Cir. 1992) (citing *Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984)); *see also Louis v. Meissner*, 530 F. Supp. 924, 925 (S.D. Fla. 1981).

Courts apply a "balancing-type approach in reviewing a preliminary injunction or temporary restraining order application." *Louis*, 530 F. Supp. at 925. Thus, "none of the four prerequisites has a fixed quantitative value. Rather, a sliding scale is utilized, which takes into account the intensity of each in a given calculus." *Texas v. Seatrain Int'l, S.A.*, 518 F.2d 175,

180 (5th Cir. 1975).[13] For example, a showing of severe prejudice to the party seeking the temporary injunction "lessens the standard likelihood of success that must be met." *Louis*, 530 F. Supp. at 925 (citing *Canal Auth. v. Callaway*, 489 F.2d 567, 572-73 (5th Cir. 1974)).

The fundamental purpose of a temporary restraining order or preliminary injunction is to maintain the *status quo* until a final decision on the matter can be reached, and to ensure that the relevant circumstances are not so changed such that the ultimate decision on the merits would be rendered meaningless. *See, e.g.*, *United States v. DBB, Inc.*, 180 F.3d 1277, 1282 (11th Cir. 1999); *Georgia Latino Alliance for Human Rights v. Deal*, 1:11-CV-1804-TWT, 2011 WL 2520752, *18 (N.D. Ga. June 27, 2011) (hereinafter "*GLAHR*").

## ARGUMENT

### I. Plaintiffs Will Suffer Immediate and Irreparable Injury Unless a Temporary Restraining Order and Preliminary Injunction Issue.

Defendants' enforcement of HB 56 Section 30 will result in the loss of housing, the enforcement of an unconstitutional law, and the threat of criminal prosecutions. These are clearly immediate and irreparable injuries that justify a temporary restraining order and preliminary injunction.

Courts in this Circuit and other Circuits presume that irreparable harm flows from a violation of an anti-discrimination statute such as the Fair Housing Act. *See Gresham*, 730 F.2d at 1423 ("[T]he strong national policy against race discrimination in housing leads the court to conclude that once a plaintiff has demonstrated the likelihood of success on the merits of a claim of housing discrimination, irreparable injury must be presumed." (quoting underlying district court's order with approval)); *Badri v. Mobile Hous. Bd.*, CIV.A. 11-0328-WS-M, 2011 WL

[13] Cases that were decided by the Fifth Circuit prior to the close of business on September 30, 1981, are binding precedent in this Circuit under *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

3665340, at *3 (S.D. Ala. Aug. 22, 2011) ("Under the Fair Housing Act, irreparable injury is rebuttably presumed from the fact of a violation."); *Hous. Rights Ctr. v. Donald Sterling Corp.*, 274 F. Supp. 2d 1129, 1140 (C.D. Cal. 2003) ("Irreparable injury is presumed from the fact of discrimination in violation of the Fair Housing Act."); *Cousins v. Bray*, 297 F. Supp. 2d 1027, 1041 (S.D. Ohio 2003) (similar).

The Eleventh Circuit has recognized that "a litany of irreparable harm . . . occurs whenever housing discrimination occurs." *Gresham*, 730 F.2d at 1423. In *Gresham* the court explained that these irreparable harms "include the loss of safe, sanitary, decent and integrated housing; . . . the loss of housing which is accessible to jobs; and the loss of being unable to escape the never-ending and seemingly unbreakable cycle of poverty." *Id.* (internal citation omitted). Thus, the denial of housing resulting from enforcement of a discriminatory local law is presumed to cause irreparable harm that monetary relief cannot cure. *Rogers*, 967 F.2d at 528-29; *see also Johnson v. U.S. Dep't of Agric.*, 734 F.2d 774, 788 (11th Cir. 1984) ("[I]rreparable injury is suffered when one is wrongfully ejected from his home. Real property and especially a home is unique."). In *Villas at Parkside Partners v. City of Farmers Branch*, 496 F. Supp. 2d 757 (N.D. Tex. 2007) (hereinafter "*Farmers Branch I*"), the district court held that the threat of eviction and criminal prosecution resulting from a local law that, like Section 30 of HB 56, restricted housing based on immigration status, were "harms that may not be remedied by monetary damages." *Id.* at 776 (and granting preliminary injunction).

The harm resulting from a loss of housing is "particularly acute where," as here, the victims of the discrimination include children, *see Bronson v. Crestwood Lake Section 1 Holding Corp.*, 724 F. Supp. 148, 153 (S.D.N.Y. 1989), and where the people at risk of losing housing are low-income, *see Johnson*, 734 F.2d at 788); *Badri*, 2011 WL 3665340, at *3. *See* Doe #1 Decl.,

¶¶ 11, 13, 20-21 (explaining that losing his home would harm his U.S. citizen son by forcing him to withdraw from school, leave his friends, and move to an unfamiliar place); Doe #2 Decl., ¶¶ 9-10, 17 (describing similar anxiety over the impact of abandoning their home on his young U.S.-citizen son). Losing their homes would also cause both individual Plaintiffs to lose their jobs, causing immediate harm to the well-being of themselves and their families. *See, e.g., Ramos v. Thornburgh*, 732 F. Supp. 696, 699 (E.D. Tex. 1989) (denial of work authorization to non-citizen constituted irreparable harm because "[m]onetary damages at some future time can never adequately compensate aliens living at or below the poverty line"); *Callicotte v. Carlucci*, 698 F. Supp. 944, 950-51 (D.D.C. 1988) (irreparable harm caused by employment discharge where, *inter alia*, plaintiff had no source of alternative income and no unemployment insurance).

The Supreme Court has furthermore emphasized that discriminatory housing practices irreparably harm the community by denying to the public the benefits of residential integration. "There can be no question about the importance to a community of 'promoting stable, racially integrated housing," and being prevented from living in a racially integrated neighborhood constitutes a cognizable harm. *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 111, 115 (1979); *see also Jackson v. Okaloosa County, Fla.*, 21 F.3d 1531, 1542 (11th Cir. 1994) ("The Fair Housing Act is concerned with both the furtherance of equal housing opportunity and the elimination of segregated housing."); *Gresham*, 730 F.2d at 1424 (holding that loss of "the benefits of living in an integrated community" is an irreparable harm).

The enforcement of an unconstitutional state law may also create a presumption of irreparable injury. *See, e.g.*, *United States v. Arizona*, 641 F.3d 339, 366 (9th Cir. 2011) ("[A]n alleged constitutional infringement will often alone constitute irreparable harm." (internal quotation marks omitted)); *KH Outdoor, LLC v. Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006)

(similar). Courts have presumed that irreparable harm results from the enforcement of a state or local law that violates the Supremacy Clause. *See, e.g.*, *Morales v. Trans World Airlines*, 504 U.S. 374, 381 (1992); *Arizona*, 641 F. 3d at 366; *GLAHR*, 2011 WL 2520752 at *18.

The threat of criminal prosecutions that Plaintiff Doe #1, Plaintiff Doe #2, and the proposed Class will face if Defendants are allowed to continue enforcing HB 56 Section 30 also constitutes irreparable harm. *See Boyajian v. City of Atlanta*, CIVA1:09-CV-3006-RWS, 2009 WL 4797206, at *2 (N.D. Ga. Dec. 9, 2009) (holding that plaintiff established risk of irreparable harm where enforcement of challenged ordinance would force plaintiff "to relocate or be subject to criminal prosecution"); *ABC Charters, Inc. v. Bronson*, 591 F. Supp. 2d 1272, 1309 (S.D. Fla. 2008) (same); *Doe v. Miller,* 216 F.R.D. 462, 471 (S.D. Iowa 2003) (same, in a class action).

## II. There Is a Substantial Likelihood that Plaintiffs Will Prevail on the Merits of Their Preemption and Fair Housing Act Claims.

### A. Plaintiffs Are Likely to Prevail on their Claim that the Enforcement of HB 56 Section 30 Is Preempted by Federal Law.

Plaintiffs are substantially likely to succeed on the merits of their claim that the application of HB 56 Section 30 to their attempts to pay the state-required registration fees on their manufactured homes is preempted. This claim is brought by all named Plaintiffs and by Plaintiffs Doe #1 and Doe #2 on behalf of the proposed Class.

The notion of a locality attempting to regulate immigration by limiting access to housing for individuals who cannot prove citizenship or lawful immigration status is nothing new, and has been enjoined by courts in every instance where it has occurred. *See Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 530-32 (M. D. Pa. 2007) (rental ordinance preempted); *aff'd*, 620

F.3d 170, 220 (3d Cir. 2010), *vacated and remanded on other grounds*, 131 S. Ct. 2958 (2011);[14] *Villas at Parkside Partners v. City of Farmers Branch*, 701 F. Supp. 2d 835, 855 (N.D. Tex. 2010) (hereinafter "*Farmers Branch II*") (same), *appeal pending*, No. 10- 10751 (5th Cir. July 28, 2010); *Garrett v. City of Escondido*, 465 F. Supp. 2d 1043, 1056-57 (S.D. Cal. 2006); *see also United States v. Alabama*, 2011 WL 4469941, *43-45 (N.D. Ala. Sept. 28, 2011) (enjoining rental restriction of HB56—Section 13(a)(4)).

State immigration laws are preempted if they: (1) regulate immigration; (2) intrude in a field the federal government has shown an intent to occupy; or (3) conflict with federal law. *See Lozano*, 620 F.3d at 203. Section 30's application to manufactured homes violates all three of these preemption principles.

**1. Section 30's application to manufactured home registration is preempted as an impermissible state regulation of immigration**

In *DeCanas v. Bica*, 424 U.S. 351 (1976), the Supreme Court held that because "[p]ower to regulate immigration is unquestionably exclusively a federal power," a state "regulation of immigration" is "per se preempted by this constitutional power." *Id.* at 354-55. A "regulation of immigration" is a law that is "essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." *Id*. at

[14] The Third Circuit's *Lozano* decision was vacated and remanded after the Supreme Court ruled in *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2011). *Lozano* involved a challenge to a local employer sanctions ordinance and a housing ordinance. *Whiting* dealt only with a state employer sanctions scheme, the Legal Arizona Workers Act, that was enacted pursuant to *explicit authorization* in federal law for state "licensing" laws relating to unauthorized workers. *Id.* at 1981 (citing 8 U.S.C. § 1324a(h)(2)). *Whiting* has no applicability to Section 30 of HB 56. *See GLAHR*, 2011 WL 2520752 at *14 ("whereas the Arizona statute in *Whiting* imposed licensing laws specifically authorized by a statutory savings clause, HB 87 imposes additional criminal laws on top of a comprehensive federal scheme that includes no such carve out for state regulation"). Likewise, the Third Circuit's analysis of the housing ordinance in *Lozano* is similarly unaffected by *Whiting*.

355. The exclusive federal power to regulate immigration is preemptive of state law regardless of whether or not it has been exercised by the federal government. *Id*. at 355-56.

The combination of Section 30 of HB 56 and Section 40-12-255 of the Alabama Code makes it virtually impossible for the named Plaintiffs and class members to continue living in the homes they have legally purchased in Alabama. Plaintiffs and class members are subject to criminal prosecution for simply attempting to renew their decals, as well as for failing to renew their decals. The reality is that this regulation is designed to accomplish the ouster of individuals from the state, based strictly on immigration status—a point that becomes even clearer when other provisions in HB 56 like Section 13(a)(4) prohibiting renting, and Section 27 prohibiting certain contracts makes clear. *See supra* at 7. While the State enjoys the prerogative to regulate housing concerns, such as health and safety concerns, there is no colorable argument that Section 30's application to the pre-existing state manufactured home registration scheme focuses on habitability or concerns going to housing conditions. This is a regulation of residence of immigrants pure and simple, and an attempt by the state to determine who should or should not be permitted to remain in Alabama.[15] *DeCanas*, 424 U.S. at 355; *Hazleton*, 620 F.3d at 220 ("we cannot bury our heads in the sand ostrich-like ignoring the reality of what these ordinances accomplish. Through its housing provisions, Hazleton attempts to regulate residence based solely on immigration status."). But "deciding which aliens may live in the United States has always been the prerogative of the federal government." *Id.* Because it intrudes on an "area of 'significant federal presence,'" it is preempted as an impermissible regulation of immigration.

[15] The district court for the Northern District of Alabama did not reach the question of whether Section 30 is facially preempted as an impermissible state regulation of immigration in the cases raising facial preemption challenges to HB 56. Instead, the court held that Congress has not "expressly or implicitly" "preempted the power of the states to refuse to license an unlawfully-present alien." *Alabama*, 2011 WL 4469941, at *59-60. Nor was the issue of manufactured home decals, or other housing analogies, ever presented to that court in that facial challenge.

*Id.* (quoting *United States v. Locke*, 529 U.S. 89, 108 (2000), citing *DeCanas*, 424 U.S. 355); *Farmers Branch II*, 701 F. Supp. 2d at 855 enjoining local ordinance as an "invalid regulation of immigration"); *cf. Graham v. Richardson*, 403 U.S. 365, 380 (1971) (state welfare laws denying benefits to certain non-citizens were constitutionally impermissible because they effectively imposed restrictions on the "entrance and abode" of non-citizens).

Like these enjoined laws, Section 30 attempts to condition residence on, and classify, non-citizens and in the process imposes burdens on lawful immigrants. In doing so, it also regulates the "conditions under which a legal entrant may remain" and is therefore preempted. *See DeCanas*, 424 U.S. at 355. In addition, Section 30 criminalizes undocumented immigrants who merely attempt to undertake the annual state requirements for registration fees on their manufactured homes, imposing a severe penalty based solely on their immigration status and presence in the United States—an area of law committed exclusively to the federal government.

In addition, the application of Section 30 to the manufactured homes registration process is preempted as a regulation of immigration because state and municipal officials are making their own, independent determinations of immigration status in applying this provision.[16] *See League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755, 771-72 (C.D. Cal. 1995) (finding provisions in California's Prop 187 to be impermissible regulations of immigration because they required local officials to make their own, independent determinations of individual's immigration status). Because state and municipal officials in Alabama do not have access to the SAVE system or another federal verification system to ascertain the immigration

[16] Even if Section 30(c) was being applied properly and state and local officials were relying solely upon the federal government to confirm immigration status that would not save the provision. A state law that "uses those [federal] classifications for purposes not authorized or contemplated by federal law" is an impermissible regulation of immigration. *Farmers Branch II,* 701 F. Supp. 2d at 855.

status of individuals attempting to register their manufactured homes, these officials are attempting to make these complex status determinations on their own—amounting to an impermissible regulation of immigration. State and local officials will inevitably make mistakes in determining whether an individual is lawfully present in the United States or even a non-citizen in the first place.[17] This, in turn, will lead to discriminatory burdens on "the entrance or residence" of non-citizens in Alabama, in direct contravention of Supreme Court precedent. *DeCanas*, 424 U.S. at 358 (finding preempted "[s]tate laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States"). In addition, this implementation of Section 30 violates the statute's own terms, which require determinations of immigration status to be made solely by verification of the alien's lawful presence through the SAVE program, or by other verification with DHS pursuant to 8 U.S.C. § 1373(c). HB 56 § 30(c).

**2. Section 30's application to manufactured home registration is preempted under field and conflict preemption principles**

Even when a state law cannot be characterized as a "regulation of immigration," and even when it is found to be "harmonious with federal regulation," it may nevertheless be preempted under more general preemption standards of field and conflict preemption. *DeCanas*, 424 U.S. at 356. Such "field preemption" occurs where Congress has not expressly prohibited states from regulating, but "'the nature of the regulated subject matter permits no other conclusion'" than that federal regulation should be "'deemed preemptive of state regulatory power,'" *id.* (quoting

[17] Attached to the Madison County memoranda, attached as Exhibit R to the Brooke Declaration, is a county-generated list of documents purporting to establish lawful presence. There are various categories of lawfully present immigrants who would not possess one of these described documents. For example, a person granted Temporary Protected Status under federal law because of environmental damage in her native country would not possess any of the listed documents.

*Fla. Lime & Avocado Growers v. Paul*, 373 U.S. 132, 142 (1963)), or where the complete ouster of state power to regulate was Congress's clear and manifest purpose, *id*. at 356-57. Whether Congress intended to occupy a field may be inferred from a pervasive federal regulatory scheme or when there is a dominant federal interest. *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990).

Second, state regulation is preempted when it conflicts with federal law. A state law conflicts with federal law when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *DeCanas*, 424 U.S. at 363 (internal quotation marks and citations omitted). "What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000). The touchstone for preemption is congressional intent. *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98, (1992); *see Hines v. Davidowitz,* 312 U.S. 52, 70 (1941).

The concepts of field and conflict preemption are not "rigidly distinct" and, indeed, the analysis of the two tends to merge. *See English*. 496 U.S. at 79 n.5 ("Indeed, field pre-emption may be understood as a species of conflict pre-emption: a state law that falls within a pre-empted field conflicts with Congress' intent (either express or plainly implied) to exclude state regulation."). Section 30's application to manufactured homes is preempted under both field and conflict principles. The central question under both standards is whether Congress has expressed an intent to exclude state legislation that regulates residence in this country, including access to housing, based on immigration status. It has.

The INA is a detailed federal statutory scheme regulating the terms of entry of noncitizens into the country as well as their subsequent treatment in the United States. *See Plyler v. Doe*, 457 U.S. 202, 225 (1981) ("Congress has developed a complex scheme governing

admission to our Nation and status within our borders."). Although Section 30, as applied to manufactured homes, neither prohibits egress/ingress into the state, nor prohibits the very presence of undocumented individuals in the country, "'[i]t is difficult to conceive of a more effective method' of ensuring that persons do not enter or remain in a locality than by precluding their ability to live in it." *Hazleton*, 620 F.3d at 220-21 (quoting *Bonito Boats v. Thunder Craft Boats*, 489 U.S. 141, 160 (1989)). When applied to manufactured home registration, this is precisely what Section 30 does. Indeed, this result is exactly what the authors of the bill intended. *See supra* at 13 (quoting Representative Hammon that Section 30, which was designed "to prevent illegal immigrants from coming to Alabama and to discourage those who are here from putting down roots," "seems to be working" because individuals are "self-deport[ing]").

Courts have uniformly found that the federal immigration scheme "plainly precludes state efforts, whether harmonious or conflicting, to regulate residence in this country based on immigration status." *Lozano*, 620 F.3d at 220; *Farmers Branch II*, 701 F. Supp. 2d at 857-858 (finding same) ("While the Ordinance does not purport to remove aliens from the United States, it regulates local residence based on federal classifications in a manner that directly affects the uniform enforcement of immigration laws."). Because the application of Section 30 to Alabama's mobile home registration unquestionably limits Plaintiffs' and class members' ability to continue to reside in their homes, and ultimately within the state of Alabama, it is impliedly preempted as a state law encroaching in a field occupied exclusively by the federal government and in a manner that conflicts with federal law.

In addition, the purpose of Section 30, particularly as applied to manufactured homes, "is to attempt to effectively 'remove' persons [from Alabama] based on a snapshot of their current immigration status, rather than based on a federal order of removal. This is fundamentally

inconsistent with the INA." *Lozano*, 620 F.3d at 221. As Justice Blackburn observed in *Plyler*, immigration status is not static—"the structure of the immigration statutes makes it impossible for the state to determine which aliens are entitled to residence, and which eventually will be deported." 457 U.S. at 236 (Blackburn, J., concurring). Furthermore, the decision of whether to initiate removal proceedings, and even whether to remove someone who has a final order, is discretionary and not absolute. *See Lozano*, 620 F.3d at 222. Certain removable aliens, such as victims of domestic violence or victims of crime, are eligible for a path to lawful status, *see* 8 U.S.C. § 1101(a)(15)(U), but are nevertheless ineligible to obtain a manufactured home decal in Alabama. This state scheme is in direct conflict with the federal immigration adjudication and removal process. *See Lozano*, 620 F.3d at 222.

* * * * *

For all of these reasons, Plaintiffs are substantially likely to prevail on their claim that Section 30 as applied to deny them and the Class the ability to pay registration fees on their manufactured homes is preempted.

### B. Plaintiffs Are Likely to Prevail on their Claim that Defendants' Enforcement of HB 56 Section 30 Violates the Fair Housing Act.

Plaintiffs are also substantially likely to prevail on the merits of their claim that Defendants' enforcement of Section 30 of HB 56 in this context—*i.e.*, by refusing annual manufactured home registration payments from and denying identification decals and moving permits to individuals who cannot prove U.S. citizenship or cannot demonstrate lawful immigration status—violates Sections 804(a) and (b) of the Fair Housing Act, 42 U.S.C. § 3604(a) and (b). These claims are brought by all named Plaintiffs and by Plaintiffs Doe #1 and Doe #2 on behalf of the Latino Subclass.

### 1. The Fair Housing Act Prohibits Discrimination Against Latinos.

The Fair Housing Act was enacted to promote a broad national policy "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. The Supreme Court has repeatedly held that Congress "considered [this policy] to be of the highest priority." *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 211 (1972); *see also City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995); *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982); *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1216 (11th Cir. 2008). In furtherance of these goals, the Fair Housing Act prohibits housing practices that discriminate based on race, color, religion, sex, familial status, or national origin. 42 U.S.C. § 3604(a) through (f).

As Latinos, Plaintiffs Doe #1 and Doe #2 and the Subclass are members of race and national origin groups that are protected under the Fair Housing Act and other civil rights laws that prohibit race and national origin discrimination.[18] *See, e.g.*, *Salas v. Wisconsin Dept. of Corr.*, 493 F.3d 913, 923 (7th Cir. 2007) (citing 29 C.F.R. § 1606.1);[19] *Sherman Ave. Tenants' Ass'n. v. District of Columbia*, 444 F.3d 673, 687 (D.C. Circ. 2006) (addressing claims of national origin housing discrimination by Latino residents); *Booth v. Pasco County, Fla.*, 8:09-CV-02621-T-30, 2010 WL 2757209, at *10 (M.D. Fla. July 13, 2010) ("The term "Hispanic background" encompasses both race and national origin discrimination claims."); *Hispanics United of DuPage County v. Village of Addison*, 988 F. Supp. 1130, 1144 (N.D. Ill. 1997)

[18] The classification "Latino" or "Hispanic" defines a national origin group. The U.S. Census Bureau and the case law typically use these terms together and interchangeably.

[19] 29 C.F.R. 1606.1 defines national origin discrimination "broadly as including, but not limited to, the denial of equal employment because of an individual's, or his or her ancestor's, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group." The U.S. Department of Housing and Urban Development likewise recognizes the category "Hispanic or Latino" as a protected minority classification. 24 C.F.R. § 81.2.

(holding that discrimination against "Hispanics" as a group constitutes discrimination on the basis of national origin for purposes of the Fair Housing Act); *Ortiz v. Bank of Am.,* 547 F. Supp. 550, 560-62 (E.D. Cal. 1982) (recognizing that the line between racial and national origin discrimination is difficult to draw and adding that "the notion of 'race' as contrasted with national origin is highly dubious").

**2. The Fair Housing Act's Protections Are Not Limited by a Plaintiff's Citizenship or Immigration Status.**

The Fair Housing Act protects against race and national origin discrimination regardless of one's citizenship or immigration status. The Act protects "any person" from housing discrimination, without limitation on the basis of alienage or immigration status. *See* 42 U.S.C. § 3602(d), (*i*). As the Supreme Court made clear in *Plyler v. Doe*, 457 U.S. 202 (1982), an individual's right to equal protection of the law does not depend on citizenship or immigration status: "Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term." *Id.* at 210. Thus, although the FHA does not explicitly create protected classes for alienage and citizenship, it protects all individuals, regardless of their immigration status, from discrimination on the basis of race, national origin, and the other classifications enumerated in the Act. *See, e.g.*, *Espinoza v. Hillwood Square Mut. Ass'n*, 522 F. Supp. 559, 568 (E.D. Va. 1981) (holding that the FHA prohibits citizenship policies that have the effect of discriminating on the basis of national origin (citing *Espinoza v. Farah Mfg. Co., Inc.*, 414 U.S. 86, 92 (1973))).

**3. Defendants' Enforcement of Section 30 of HB 56 Makes Housing Unavailable and Discriminates in the Provision of Housing-Related Services and Facilities.**

Section 804(a) of the Fair Housing Act makes it unlawful "[t]o refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race . . . or national

origin." 42 U.S.C. § 3604(a). Housing is made "unavailable" within the meaning of § 3604(a) when the plaintiff can no longer use and enjoy her dwelling. *See, e.g.*, 24 C.F.R. § 100.70(d)(4) (stating that housing is made "unavailable" by refusals to provide municipal services or by providing such services differently because of race or national origin); *Evans v. Tubbe*, 657 F.2d 661, 662 & n.3 (5th Cir. Sept. 15, 1981) (conduct preventing plaintiff from entering his property constitutes cognizable claim under § 3604(a)); *Greater New Orleans Fair Hous. Action Ctr. v. U.S. Dep't of Hous. & Urban Dev.*, 723 F. Supp. 2d 14, 22-23 (D.D.C. 2010) (challenge to discriminatory formula used to distribute government disaster relief was cognizable under § 3604(a) because plaintiffs might receive insufficient funds to make their homes habitable); *Hous. Rights Ctr. v. Sterling*, 404 F. Supp. 2d 1179, 1190-92 (C.D. Cal. 2004) (holding that the creation of a hostile housing environment or other actions that make housing "effectively unavailable" violate § 3604(a)); *Miller v. Towne Oaks East Apts.*, 797 F. Supp. 557, 561 (E.D. Tex. 1992) (racially motivated eviction violated § 3604(a)).

Here, Defendants' challenged conduct will plainly make housing unavailable to Plaintiff Doe #1, Plaintiff Doe #2, and the Latino Subclass. By enforcing HB 56 Section 30, Defendants are preventing these Plaintiffs from complying with Alabama Code Section 40-12-255. This will make their housing unavailable, as Plaintiffs and Subclass members will be forced to abandon their homes if they are prevented from coming into compliance with Section 40-12-255. As shown next in Part II.B.4, this conduct is based on Plaintiffs' race and national origin, in violation of § 3604(a).

Defendants' enforcement of Section 30 of HB 56 also violates Section 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(b). This section prohibits discrimination "in the provision of services or facilities in connection" with the use of a dwelling, and extends to a state or local

government's provision of housing-related municipal services and facilities. *See, e.g.*, *Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690, 711-13 (9th Cir. 2009) (holding that § 3604(b) protects against discrimination in the provision of a wide range of municipal services); *Southend Neighborhood Imp. Ass'n v. St. Clair County*, 743 F.2d 1207, 1209 (7th Cir. 1984) (holding that § 3604(b) "applies to services generally provided by governmental units"). Thus, housing-related transactions between an individual and the State of Alabama or a political subdivision are subject to § 3604(b).

A local government's issuance of permits or licenses constitutes a housing-related service. *See Kennedy Park Homes Ass'n v. City of Lackawanna, N. Y.*, 436 F.2d 108, 111 (2d Cir. 1970) (local government's refusal to issue sewer permit constituted discrimination in municipal services); *Middlebrook v. City of Bartlett*, 341 F. Supp. 2d 950, 959-60 (W.D. Tenn. 2003) (holding that plaintiff established a prima facie case of race discrimination under 42 U.S.C. § 3604(b) where municipality refused to issue building permit or provide water service); *United States v. Schuylkill Twp., PA.*, CIV. A. 90-2165, 1990 WL 82089, at *2 (E.D. Pa. June 13, 1990) (holding that plaintiff stated a valid § 3604(b) claim by alleging that municipality denied her request for a permit to operate a group home because of future residents' disability); *cf. Harris v. Itzhaki*, 183 F.3d 1043, 1052 (9th Cir. 1999) (discriminatory refusal to accept payment from African-American resident violated § 3604(b)). Here, Defendants' refusal to accept registration payments from or to issue identification decals or moving permits to Plaintiff Doe #1, Plaintiff Doe #2, and the Subclass constitutes discrimination in the provision of housing-related services because of their Latino race and national origin.

#### 4. Defendants' Challenged Actions Are Based on Plaintiffs' Race and National Origin.

A plaintiff claiming discrimination pursuant to § 3604 may prevail by showing that the defendant's challenged conduct is intentionally discriminatory, has a disproportionate adverse effect on members of a protected group, or perpetuates residential segregation. *See, e.g.*, *Jackson*, 21 F.3d at 1543 (recognizing disparate treatment and disparate impact claims); *Roy v. Bd. of County Comm'rs Walton County, Fla.*, 306CV95/MCR/EMT, 2007 WL 3345352, at *11 (N.D. Fla. Nov. 9, 2007) (recognizing perpetuation of segregation claim under the Fair Housing Act) (citations omitted). In this case, there is strong evidence of both intentional discrimination against Latinos and a significant disparate effect on Latinos who live in manufactured homes.

##### a. The Enforcement of Section 30 of HB 56 Is Motivated by Intentional Discrimination Against Latinos.

To show that the enforcement of Section 30 of HB 56 is based on intentional discrimination, Plaintiffs must establish that race or national origin "played some role" in the decision. *See Sofarelli v. Pinellas County*, 931 F.2d 718, 722 (11th Cir. 1991); *United States v. Pelzer Realty Co.*, 484 F.2d 438, 443 (5th Cir. 1973) (holding that plaintiff must show that race was *a* motivating factor, not the sole motivating factor, to prove discriminatory intent).

Courts have recognized that because explicit statements of discriminatory motivation are decreasing, circumstantial evidence often establishes the requisite intent:

> Among the factors that are instructive in determining whether racially discriminatory intent is present are: discriminatory or segregative effect, historical background, the sequence of events leading up to the challenged actions, and whether there were any departures from normal or substantive criteria.

*United States v. Hous. Authority of the City of Chickasaw*, 504 F. Supp. 716, 727 (S.D. Ala. 1980) (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977)

(hereinafter "*Arlington I*")); *see also United States v. City of Birmingham, Mich.*, 727 F.2d 560, 566 (6th Cir. 1984) (articulating same test). Courts consider these factors as a whole in determining whether discrimination was a motivating factor for the complained-of conduct, and it is not necessary to establish each factor to prevail on a disparate treatment claim. *See, e.g.*, *Tsombanidis v. West Haven Fire Dep't*, 352 F.3d 565, 580 (2d Cir. 2003) (observing that the *Arlington* factors are not "exclusive or mandatory but merely a framework within which a court conducts its analysis").

Plaintiffs have strong evidence supporting at least three of the four *City of Chickasaw* factors: discriminatory effect, legislative history, and substantive departures.

**i. The Enforcement of Section 30 of HB 56 Has a Discriminatory Effect on Latinos.**

The enforcement of Section 30 has a greater effect on Latinos than on any other group, because Latinos make up an overwhelming majority the State's non-U.S. citizen population. Approximately 65% of the State's non-U.S. citizen population is Latino. Crook Decl., ¶ 5. A high number of Latinos in Alabama, approximately 44%, are not U.S. citizens. *Id.*, ¶ 4. While only a minority of these foreign-born Latinos is undocumented, Alabama's small undocumented population is nonetheless primarily Latino. *Id.*, ¶ 8.

In Alabama Latinos are also considerably more likely than any other race or ethnicity group to live in mobile homes. Almost 30% of all Latino households in Alabama occupy mobile homes. *Id.*, ¶ 7. This is more than double the percentage of the population as a whole that lives in mobile homes, at just 13.5%. *Id.* In contrast to Latinos, a mere 14.6% of Caucasian households, 10.2% of African American households, and 3.2% of Asian households live in mobile homes. *Id.*

These unambiguous statistics show that Defendants' enforcement of HB 56 Section 30 has a clear disparate effect on Latinos, one that cannot be plausibly explained on grounds other than race and national origin. *See Arlington I*, 429 U.S. at 266 ("Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action" and supports a finding of discriminatory intent.); *cf. McIntosh County Branch of the NAACP v. City of Darien*, 605 F.2d 753, 759 n.5 (5th Cir. 1979) (holding that effect of voting law on minority voting strength, in light of history of past discrimination, provided evidence of discriminatory intent). Thus, Plaintiffs' evidence of significant discriminatory effect on Latino immigrants supports a finding of intentional discrimination against Latinos.

**ii. The Historical Background of the Decision to Adopt Section 30 of HB 56 Reveals Discriminatory Animus Against Latinos.**

The legislative history of Section 30 of HB 56 reveals a plain legislative intent to drive those suspected of being undocumented immigrants, and undocumented Latinos in particular, out of Alabama by making it impossible for them to occupy housing anywhere in the State.[20] HB 56's sponsor Representative Hammon expressed his unambiguous intent when he stated that the bill "is designed to make it difficult for them to live here so they will deport themselves . . . ." Ex. G to Brooke Decl. at 9:6-7. He further stated that "the intent of this bill is to slow illegal immigration in Alabama through attrition." *Id.* at 1:42-43. Though Representative Hammon spoke of "illegal immigration," it can be clearly inferred that he meant Latinos particularly, given his later conflation of these two groups when he was justifying the bill at its passage. The

[20] As noted above in Part I of the Factual Background and Part II.A of the Argument, HB 56 contains additional housing restrictions. While Plaintiffs' challenge is limited to Defendants' enforcement of Section 30, HB 56 was intended to make all housing unavailable to people who cannot prove U.S. citizenship or lawful immigration status, who in Alabama are widely perceived to be primarily Latino immigrants.

sponsor of a similar bill in the Alabama Senate, Senator Beason, expressed a similar intention to drive immigrants from the State, stating just before the legislative session commenced in February 2011 that two communities with a high concentration of Latinos, and no other significant immigrant population, had been "destroy[ed]" by "illegal immigration." Ex. D to Brooke Decl.

Representative Rich likewise expressed clear animus against Latinos as a factor that motivated his decision to vote in favor of HB 56. In public statements during the House debate, he stated that he "like[s] Hispanic people" but thinks they are overburdening Alabama's public schools and that the "biggest part of them are illegal." Ex. G to Brooke Decl. at 16:6, 7.

Statements from legislators who opposed HB 56 provide further evidence that the law was intended to target Mexicans and other Latinos. Senator Singleton observed: "[T]he fact of the matter is that we know that when we talk about illegal immigration that it is basically targeted at one ethnic group and that seems to be the Latino Hispanic Americans . . . ." Ex. M to Brooke Decl. at 7:12-16. Representative Holmes stated: "The purpose of this bill is . . . these Mexican[s] . . . . [Y]ou all are trying to get as many in here out and trying to stop as many coming in [as you can] . . . ." Ex. G to Brooke Decl. at 55:1-4.

The fact that Section 30 instructs that state agencies and other political subdivisions of Alabama "may not consider race, color, or national origin in the enforcement of this section except to the extent permitted by the United States Constitution and the Constitution of Alabama of 1901," *see* HB 56, § 30(c), does not undermine this evidence of discriminatory intent. As courts across the country have recognized, discriminatory intent can been implemented through facially neutral laws. *See 2922 Sherman Ave. Tenants' Ass'n*, 444 F.3d at 682 (affirming finding that city's facially neutral policy was intentionally discriminatory); *Jackson*, 21 F.3d at 1542

(holding that plaintiffs stated cognizable claim of intentional housing discrimination by alleging that city's enforcement of facially neutral housing policy targeted African Americans); *see also, e.g.*, *Ramirez v. Sloss*, 615 F.2d 163, 168 (5th Cir. 1980) (cautioning courts to not allow rigid conceptions of discrimination to "blind them to the real issue of whether the defendant illegally discriminated against the plaintiff").

### iii. The Adoption and Enforcement of Section 30 of HB 56 to Deny Identification Decals and Moving Permits Is a Departure from Substantive Criteria.

"Substantive departures' are usually indicated when 'factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached.'" *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish*, 641 F. Supp. 2d 563, 574 (E.D. La. 2009) (quoting *Arlington I*, 429 U.S. at 267). Defendants' enforcement of Section 30 of HB 56 constitutes a substantive departure from factors that government would usually prioritize, including the collection of revenues and fostering compliance with state licensing laws, and preventing homelessness.

By prohibiting individuals who lack proof of U.S. citizenship or lawful immigration status from registering their manufactured homes, the State and Counties lose revenue that they otherwise would have collected from the payment of Class members' annual registration fees. This is certainly counter-intuitive to the purposes of Alabama Code Section 40-12-255, which is to generate revenue (in replacement of the previous valorem tax) and to keep track by registration of manufactured homes being used for living quarters. The application of Section 30 departs from these criteria.

The enforcement of Section 30 of HB 56 will furthermore discourage—and in the case of Plaintiffs Doe #1 and Doe #2 and the Subclass completely prevent—Alabama residents from

complying with the comprehensive registration scheme established in Alabama Code Section 40-12-255, leading to widespread violations and creating unnecessary burdens on enforcement agencies. Defendants' conduct will furthermore lead to an increase in homelessness and abandoned property as households are forced to leave their manufactured homes in order to avoid becoming status criminals in the eyes of the law. These burdens will fall especially heavily on children of undocumented immigrants, the overwhelming majority of whom are U.S. citizens, *see* Ex. H to Brooke Decl., and who will suffer homelessness and interruption of education if they are no longer able to demonstrate or maintain residency within their school district. Doe #1 Decl., ¶¶ 9, 11; Doe #2 Decl., ¶¶ 9, 17.

Whereas one of the stated legislative goals of HB 56 is to preserve State resources by discouraging unlawful immigration, *see* HB 56 § 2, there is no evidence that spaces for manufactured homes or manufactured homes themselves are scarce resources, and thus no reasonable basis for a claim that allowing individuals who lack proof of U.S. citizenship or lawful immigration status to register their manufactured homes would have any detrimental effect on U.S. citizens or legal permanent residents who live or want to live in manufactured homes in Alabama.

Plaintiffs' evidence of HB 56 Section 30's significant discriminatory effect on Latinos, the legislative history of anti-Latino animus, and departures from substantive criteria lead to the undeniable conclusion that Defendants' challenged actions are intentionally discriminatory.

**b. Defendants' Enforcement of Section 30 of HB 56 Has a Disproportionate Adverse Impact on Latinos.**

In determining whether challenged conduct has an unlawful adverse impact on members of a protected group, courts in this Circuit apply the factors articulated in *Metropolitan Housing Development Corporation v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977)

("*Arlington II*"). The relevant factors are: (1) the strength of the showing of discriminatory effect; (2) any evidence of discriminatory intent (the least important factor that need not rise to the level required to prove a discriminatory intent case); (3) the interest of the defendant in taking the action with the discriminatory impact; and (4) whether the plaintiff seeks to compel the affirmative provision of housing by defendants. *See, e.g.*, *Reese v. Miami-Dade County*, 242 F. Supp. 2d 1292, 1304 (S.D. Fla. 2002) (citing *Arlington II*, 558 F.2d at 1290-93). Here, all four factors weigh in favor of a finding of discriminatory impact.

**i. Plaintiffs Have Made a Strong Showing of Discriminatory Effect.**

"[T]he Fair Housing Act prohibits 'not only direct discrimination but practices with racially discouraging effects . . .'; thus, a showing of a significant discriminatory effect suffices to demonstrate a violation of the Fair Housing Act." *Jackson*, 21 F.3d at 1543 (quoting *United States v. Mitchell*, 580 F.2d 789, 791 (5th Cir. 1978) and citing *United States v. Marengo County Comm'n*, 731 F.2d 1546, 1558, n.20 (11th Cir. 1984)).

As shown above in Part II.A.4.a.i., Defendants' challenged conduct disproportionately harms Latinos because in Alabama Latinos (1) are significantly more likely than any other group to live in manufactured homes, (2) make up a disproportionate share of the State's foreign-born population, and (3) make up a majority of the population that lacks lawful status.

These data support a finding of disparate impact under the typical analysis applied by courts considering disparate impact claims under the Fair Housing Act, which compares the percentage of persons in the protected class affected by the policy to the percentage of persons not within the protected class affected by the policy. *See*, *e.g.*, *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 938 (2d Cir. 1988); *Charleston Hous. Auth. v. U.S. Dep't of Agric.*, 419 F.3d 729, 740-41 (8th Cir. 2005); *Jackson*, 21 F.3d at 1543 (finding disparate impact

where majority of persons affected by challenged policy were African-American); *Arlington II*, 558 F.2d at 1288 (similar); *Smith v. Town of Clarkton*, 682 F.2d 1055, 1060-61 (4th Cir. 1982) (disparate impact shown where 69.2% of black families would be affected by challenged policy, compared to 26% of whites).

**ii. Plaintiffs Have Shown Evidence of Discriminatory Intent.**

This factor of the disparate impact analysis considers whether there is "some evidence" intentional discrimination, even if that evidence would not by itself support a finding of discriminatory intent. *Arlington II*, 558 F.2d at 1292. As shown above in Part II.B.4.a.ii of the Argument, this case provides substantial evidence of legislative intent to discriminate against Latinos—indeed, more than sufficient to establish discriminatory intent—by purposefully making it impossible for them to occupy housing anywhere in Alabama. Thus, this factor weighs heavily in favor of finding discriminatory impact.

**iii. Defendants Lack a Legitimate Justification for their Enforcing Section 30 of HB 56.**

Defendants lack a legitimate justification for their enforcement of Section 30 of HB 56 that could outweigh the significant discriminatory effect on Plaintiffs Doe #1 and Doe #2 and the Subclass. As shown above in Part II.B.4.a.iii, Defendants' decision to enforce of Section 30 by refusing to accept registration payments from and denying manufactured home identification decals and moving permits to undocumented immigrants will deprive the State and its Counties of revenue and result in an increased inventory of unregistered manufactured homes, without achieving any countervailing goal of preserving scares State resources. At the same time, Defendants' conduct will promote violations of Alabama Code Section 40-12-255 by chilling a

large class of low-income persons who live in manufactured homes from registering them and is likely to increase homelessness in the midst of an economic downturn.

#### iv. Plaintiffs Do Not Seek to Compel Defendants to Provide Housing.

The final factor in the disparate impact analysis also favors Plaintiffs. Plaintiffs are not seeking to compel Defendants or the State affirmatively to provide housing. To the contrary, Plaintiffs are seeking to remain lawfully in private housing that they already rent or own.

* * * * *

For the foregoing reasons, Plaintiffs have shown a substantial likelihood of success on the merits of their claims under 42 U.S.C. § 3604(a) and (b) that Defendants' challenged conduct makes housing unavailable to and discriminates in the provision of housing-related services against Plaintiff Doe #1, Plaintiff Doe #2, and the Latino Subclass because of their race and national origin.

## III. The Threatened Injury to Plaintiffs and the Class Outweighs Any Potential Harm the Restraining Order Might Cause to Defendants.

The threat of injury to Plaintiffs considerably outweighs any threat of harm to Defendants. Without immediate injunctive relief, Plaintiffs Doe #1, Doe #2, and Class members face a very real risk of being fined repeatedly, criminally prosecuted, and forced to leave their homes so as to avoid continuing to be status criminals. They and their families also suffer the risk of homelessness, interruption of their children's schooling, and other severe disruption of their everyday lives. *See supra* Part III.A of the Factual Background. The organizational Plaintiffs will suffer continuing frustration of their missions and will be unable to pursue their core activities and organizational goals because they will be forced to continue diverting resources to counteract the unlawful effects of Defendants' enforcement of Section 30. *See* Exs. 5-7 and

*supra* Part III.B of the Factual Background.

Defendants, on the other hand, face no risk of harm whatsoever if they are temporarily enjoined from enforcing Section 30 by refusing to accept registration payments from or issuing identification decals and moving permits to Plaintiff Doe #1, Plaintiff Doe #2, and the Class. Defendants have been accepting such payments and issuing identification decals for years prior to the enactment of Section 30, without adverse consequence to the State or its county governments. Allowing these Plaintiffs and the Class to submit registration payments and obtain current identification decals for their manufactured homes will not pose a financial burden on the State; to the contrary, it will provide additional revenue. Moreover, Defendants have no valid interest in enforcing a federally preempted and discriminatory State law, *see Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010); *KH Outdoor*, 458 F.3d at 1272; *Chamber of Commerce v. Edmonson*, 594 F.3d 742, 771 (10th Cir. 2010), and no legal rights of Defendants are being, or could possibly be, infringed by maintaining the *status quo* pending a full determination on the merits of Plaintiffs' claims.

## IV. The Restraining Order Is in the Public Interest.

The last factor in the Court's analysis—whether the requested injunction would be adverse to the public interest—also weighs strongly in favor of Plaintiffs. Indeed, in this case the interests of Plaintiffs and the general public are aligned in favor of a temporary restraining order.

An injunction against the enforcement of a state law that is preempted by federal law serves the public interest. *See Edmonson*, 594 F.3d at 771; *GLAHR*, 2011 WL 2520752 at *18; *Farmers Branch II*, 701 F. Supp. 2d at 859 (holding that "the balance of hardships and the public interest favor preserving the uniform application of federal immigration standards," and granting request for permanent injunction of preempted local ordinance); *cf. KH Outdoor*, 458 F.3d at

1272 (holding that the public interest is not served by allowing an unconstitutional law that hinders the exercise of individual rights to be enforced).

Courts have likewise recognized that where civil rights are at stake, an injunction serves the public interest "by protecting those rights to which [the public] too is entitled." *Nat'l Abortion Fed'n v. Metro. Atlanta Rapid Transit Auth.*, 112 F. Supp. 2d 1320, 1328 (N.D. Ga. 2000). This is particularly true where the public's interest in residentially integrated communities is at stake. *See, e.g.*, *Gresham*, 730 F.2d at 1424 (holding that loss of "the benefits of living in an integrated community" is an irreparable harm to the public and granting preliminary injunction).

## CONCLUSION

For the foregoing reasons, the balance of equities tips sharply in favor of issuing a temporary restraining order that will maintain the *status quo* while the Court fully considers the merits of Plaintiffs' challenges to Defendants' enforcement of Section 30 of HB 56.

Dated: November 18, 2011

Respectfully submitted,

s/ Samuel Brooke
Samuel Brooke
*On Behalf of Counsel for Plaintiffs*

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## CERTIFICATE OF SERVICE

I hereby certify that arrangements have been made to, on this date, deliver a true and correct copy of the foregoing by hand delivery to the following parties, at the below addresses:

Julie P. Magee
State Revenue Commissioner
50 North Ripley Street
Montgomery, Alabama 36132

William M. "Mike" Harper
Elmore County Revenue Commissioner
100 E. Commerce Street, Room 107
P.O. Box 1147
Wetumpka, Alabama 36092

I further certify that arrangements have been made to, on this date, deliver a true and correct courtesy copy of the foregoing by hand delivery to the State Attorney General, at the below addresses:

Attorney General Luther Strange
Office of the Attorney General, State of Alabama
501 Washington Ave.
Montgomery, AL 36104

I so certify this 18th day of November, 2011.

s/ Samuel Brooke
Samuel Brooke