

**IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
GENERAL DIVISION**

<b>LEAGUE OF UNITED LATIN</b>	]	<b>CASE NO. 09CVH11-17559</b>
<b>AMERICAN CITIZENS (LULAC),</b>	]	
	]	<b>JUDGE REECE</b>
<b>Plaintiff,</b>	]	
	]	<b>MAGISTRATE BROWNING</b>
<b>vs.</b>	]	
	]	
<b>TED STRICKLAND, GOVERNOR OF</b>	]	
<b>THE STATE OF OHIO, et al.,</b>	]	
	]	
<b>Defendants.</b>	]	

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**MAGISTRATE'S DECISION DENYING PLAINTIFF'S "MOTION FOR  
PRELIMINARY INJUNCTION" FILED NOVEMBER 24, 2009**

Issued this \_\_\_\_ day of December 2009.

**BROWNING, M.**

Pursuant to Civil Rule 53, Local Rule 99, and the Court's November 24, 2009 Order, the undersigned Magistrate conducted a hearing on December 1, 2009, on Plaintiff's "Motion for Preliminary Injunction" against Defendants, filed on November 24, 2009. Plaintiff presented the testimony of Neftali Roblero, Jorge Martinez, Liborio Alcauter, Jason Riveiro, Joseph Mas, and Enrique Robledo. Defendants presented the testimony of Jeffrey Rose. The Magistrate admitted Joint Exhibits 1 and 2 into evidence, and they are in the custody of Court Reporter Shirley Erwin, who recorded the proceedings.

Having weighed the credible evidence admitted at the hearing on December 1, 2009, and having applied the law to the Magistrate's factual findings, the Magistrate hereby renders the following decision denying Plaintiff's motion.

## Findings of Fact

1. Plaintiff is the League of United Latin American Citizens, known as LULAC. Plaintiff alleges that it is a not-for-profit corporation organized under the laws of the state of Texas, with a chapter located in Cincinnati, Ohio. *Complaint* ¶2. Plaintiff alleges that it is a Latino membership group with members throughout the state of Ohio, and that one of its purposes is to advocate on behalf of Latino Americans. *Complaint* ¶2.

2. Defendants are Ted Strickland, Governor of the State of Ohio; Cathy Collins-Taylor, Director of the Ohio Department of Public Safety; and Carolyn Y. Williams, Acting Registrar of the Ohio Bureau of Motor Vehicles (BMV). The BMV is a division of the Ohio Department of Public Safety.

3. Revised Code 4503.10 provides in relevant part:

§ 4503.10. Application for registration or renewal \*\*\*

(A) \*\*\* Except as provided in section 4503.103 of the Revised Code, every owner of every other motor vehicle not previously described in this section and every person mentioned as owner in the last certificate of title of a motor vehicle that is operated or driven upon the public roads or highways shall cause to be filed each year, by mail or otherwise, in the office of the registrar of motor vehicles or a deputy registrar, a written or electronic application or a preprinted registration renewal notice issued under section 4503.102 of the Revised Code, the form of which shall be prescribed by the registrar, for registration for the following registration year, which shall begin on the first day of January of every calendar year and end on the thirty-first day of December in the same year. \*\*\* Except as provided in division (J) of this section, **applications for registration shall be made on blanks** furnished by the registrar for that purpose, **containing the following information:**

\*\*\*

(7) **The owner's social security number, driver's license number, or state identification number**, or, where a motor vehicle to be registered is used for hire or principally in connection with any established business, the owner's federal taxpayer identification number. \*\*\*

(B) \*\*\* **The application shall be refused if** any of the following applies:

(1) **The application is not in proper form.**

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

(3) A certificate of title or memorandum certificate of title is required but does not accompany the application or, in the case of an electronic certificate of title, is required but is not presented in a manner prescribed by the registrar's rules.

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

(5) The owner or lessee does not have an inspection certificate for the motor vehicle as provided in section 3704.14 of the Revised Code, and rules adopted under it, if that section is applicable.

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**(E) Upon the certification of the registrar, the county sheriff or local police officials shall recover license plates erroneously or fraudulently issued.** (Emphasis added.)

4. On October 8, 2009, the BMV mailed a notice to approximately 47,000 Ohio residents who had not provided, in their applications for motor vehicle registration or renewal, the owner's social security number, Ohio driver's license number, or Ohio identification number, as required by R.C. 4503.10(A)(7), *supra*. The BMV's notice stated in relevant part:

This is an urgent notice regarding your Ohio vehicle registration. While reviewing our database, we found that your registration does not include your social security number (SSN), Ohio driver license (DL) or Ohio identification (ID) number. This information is required to appear on any Ohio application for vehicle registration per Ohio law (Ohio Revised Code Chapter 4503.10).

Please visit a deputy registrar within 60 days of this notice to update your information. If you already have a valid Ohio DL or Ohio ID, you may present either one to the deputy registrar. However, if you do not have a valid Ohio DL or Ohio ID, you must present a document proving your SSN (see attached list of Acceptable Documents). In addition to these documents, you must bring this letter to the deputy registrar.

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The update to your vehicle registration will cost \$3.50. You may pay with cash, money order or check. If your registration expires within the next 90 days, you may also renew your registration at that time.

If your SSN, Ohio DL or Ohio ID is not given within 60 days (on or before December 8, 2009), your vehicle registration will be canceled. It is extremely important that you take action on this requirement.

If you have question [*sic*], you may contact us through the following options:

- Call toll free 1-888-583-6032, Monday through Friday, 8 am to 5:30 pm
- E-mail us at [nossn@dps.state.oh.us](mailto:nossn@dps.state.oh.us)

For a list of deputy registrar locations and hours of operation, visit us at <http://bmv.ohio.gov/>.

If your vehicle registration is cancelled, you may request an administrative hearing.

You may have already received a similar notification letter. Please proceed to a deputy registrar to present your documents if you have not already done so. You will receive a confirmation letter once your file is updated on our database.

The accuracy of your vehicle registration and the security of your identification are important to us. We urge you to take immediate action.

Attached to the October 8, 2009 notice was a two-page list of documents that the BMV would accept as proof of the recipient's social security number, in the event the recipient did not have an Ohio driver's license number or Ohio identification number.

5. On November 19, 2009, the BMV mailed a second and final notice to the same approximately 47,000 Ohio residents, containing the same information as the October 8, 2009 notice.

6. A social security number, an Ohio driver's license number, and an Ohio identification number are identifying numbers, also known as "identifiers," that are unique to an individual person. Those three identifiers are the only means by which the BMV can verify that

an individual who registers a motor vehicle with the BMV is, in fact, the legal owner of that vehicle.

7. The State of Ohio has a compelling interest in verifying that an individual who registers a motor vehicle with the BMV is, in fact, the legal owner of that vehicle. That compelling state interest is public safety. Ohio law enforcement officers, as well as federal law enforcement officers and law enforcement officers in other states, rely on Ohio motor vehicle registration information to investigate traffic offenses and crimes. That information must be accurate. For example, if an Ohio law enforcement officer makes a traffic stop for a violation of Ohio traffic law or criminal law, that officer needs to know, without question, who is the legal owner of the stopped vehicle. For another example, if someone other than the legal owner of the vehicle is involved in an accident involving that vehicle, the legal owner of the vehicle must be notified of the accident.

8. Neftali Roblero is a member of Plaintiff. Mr. Roblero, who resides in Fairfield, Ohio, owns a grocery store and a used-car dealership, both of which cater primarily to the Latino community. Since October 8, 2009, Mr. Roblero has observed a decline in sales in both of his businesses. Mr. Roblero speculates that the BMV's October 8, 2009 notice has caused the decline, because he speculates that his Latino customers cannot comply with the BMV's directive and they have therefore ceased driving. There is, however, no clear and convincing evidence to support Mr. Roblero's speculations.

9. Jorge Martinez is a member of Plaintiff. Mr. Martinez, who resides in Cincinnati, Ohio, is an attorney who practices law primarily in Butler County, Ohio, and his practice serves primarily the Latino community. Mr. Butler is a co-founder of and serves on the board of directors of Lavos, a Latino business owners' association. Since October 8, 2009, Mr. Martinez

has observed a decline in the volume of his practice, and he has observed a decline in the volume of business of some of the members of Lavos. Mr. Martinez speculates that his law practice has declined because his Latino clients cannot comply with the BMV's directive, as set forth in the October 8, 2009 notice. There is, however, no clear and convincing evidence to support Mr. Martinez's speculation.

10. Liborio Alcauter, who resides in Westerville, Ohio, owns eight grocery stores in Columbus, Ohio, and one grocery store in Dayton, Ohio, all of which cater primarily to the Latino community. Since October 8, 2009, Mr. Alcauter has observed a decline in sales at his grocery stores. Some of his Latino customers have left the state of Ohio and have asked him to allow them to leave their motor vehicles in his grocery store parking lots with "for sale" signs on them.

11. Jason Riveiro is the Ohio State Director for Plaintiff. At the request of approximately one-fourth of Plaintiff's members, Plaintiff filed this action. Mr. Riveiro speculates that Plaintiff's members are leaving the state of Ohio because they cannot comply with the BMV's directive, as set forth in the October 8, 2009 notice. There is, however, no clear and convincing evidence to support Mr. Riveiro's speculation.

12. Joseph Mas, an attorney who practices law in Franklin County, Ohio, is an authority on the subject of the socio-economic conditions of the Latino community. Mr. Mas speculates that the BMV's October 8, 2009 notice will have an adverse impact on the Latino community in Ohio unless the policy set forth in that notice is enjoined. Specifically, Mr. Mas speculates that, unless the policy is enjoined, there will be a significant number of motor vehicles abandoned in the state of Ohio by Latinos leaving the state of Ohio; Latino children will withdraw from Ohio schools; and those Latino children who remain in Ohio schools will

increasingly be referred to school counselors. There is, however, no clear and convincing evidence to support Mr. Mas's speculations.

13. Mr. Mas has observed a recent decline in his law practice, and he has observed Latino businesses that have experienced a decline in their business. Mr. Mas speculates that the BMV's October 8, 2009 notice has caused the decline in his law practice and in the Latino businesses that he has observed. There is, however, no clear and convincing evidence to support Mr. Mas's speculation.

14. On November 24, 2009, Plaintiff filed a complaint with this Court, seeking the following relief: a declaratory judgment that Defendants' policy, as reflected in the BMV's October 8, 2009 notice, is not authorized by R.C. 4305.10; an injunction preventing Defendants from canceling the motor vehicle registrations of Plaintiff's members who do not comply with the directive contained in the BMV's October 8, 2009 notice; and, in the alternative to an injunction, a writ of mandamus ordering Defendants to abandon the policy reflected in the BMV's October 8, 2009 notice.

15. On November 24, 2009, Plaintiff filed a "Motion for Preliminary Injunction" against Defendants, seeking a preliminary injunction to prevent Defendants from implementing the policy reflected in the BMV's October 8, 2009 notice, by canceling, on or after December 8, 2009, while this action is pending, the motor vehicle registrations of persons who have not complied with the directive contained in the BMV's October 8, 2009 notice. Defendants have opposed Plaintiff's motion.

16. At the hearing on December 1, 2009, Plaintiff did not present the testimony of any individual who will purportedly be harmed or damaged if the Court does not enjoin Defendants from implementing the policy reflected in the BMV's October 8, 2009 notice.

### **Preliminary-Injunction Standards**

In deciding whether to grant Plaintiff's motion for a preliminary injunction against Defendants, the Court must determine:

- Whether there is a substantial likelihood that Plaintiff will prevail on the merits of its November 24, 2009 complaint against Defendants;
- Whether Plaintiff will suffer irreparable injury if the Court does not grant Plaintiff's motion for a preliminary injunction against Defendants;
- Whether third parties will be unjustifiably harmed if the Court grants Plaintiff's motion for a preliminary injunction against Defendants; and
- Whether the public interest will be served if the Court grants Plaintiff's motion for a preliminary injunction against Defendants.

*Hydrofarm, Inc. v. Orendorff*, 180 Ohio App. 3d 339, 2008-Ohio-6819, at ¶18, citing *Vanguard Transp. Systems, Inc. v. Edwards Transfer & Storage Co.* (1996), 109 Ohio App. 3d 786, 790. A party seeking a preliminary injunction must establish a right to the preliminary injunction by showing clear and convincing evidence of each element of the claim. *Id.*

Clear and convincing evidence is that measure or degree of proof that will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. *State ex rel. Husted v. Brunner*, 2009-Ohio-5327, at ¶18, citing *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. *Id.* The right to an injunction must be clear and the proof thereof clear and convincing, and the right established by the strength of the plaintiff's own case rather than by any weakness of that of its adversary. *Escape Ents., Ltd. v. Gosh Ents., Inc.*, Franklin App. Nos. 04AP-834 and 04AP-857, 2005-Ohio-2637, at ¶22, citing *White v. Long* (1967), 12 Ohio App. 2d 136, 140.

An injunction is an extraordinary remedy in equity where there is no adequate remedy at law. *Cementech, Inc. v. Fairlawn*, 109 Ohio St. 3d 475, 2006-Ohio-2991, at ¶10, citing *Garano v. State* (1988), 37 Ohio St. 3d 171, 173. The grant or denial of an injunction depends largely on the character of the case, the particular facts involved, and factors relating to public policy and convenience. *Cementech*, citing *Perkins v. Quaker City* (1956), 165 Ohio St. 120, 125. Further, the granting of an injunction should be done with caution, especially in cases affecting a public interest where the court is asked to interfere with or suspend the operation of important works or control the action of another department of government. *Cementech*, citing *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Mgt. Dist.*, 73 Ohio St.3d 590, 604, and *Leaseway Distrib. Ctrs., Inc. v. Dept. of Adm. Servs.* (1988), 49 Ohio App.3d 99, 106.

Irreparable harm exists when there is a substantial threat of a material injury that cannot be adequately compensated through monetary damages. *Restivo v. Fifth Third Bank of Northwestern Ohio* (1996), 113 Ohio App. 3d 516, 521. An irreparable injury is one for the redress of which, after its occurrence, there could be no plain, adequate, and complete remedy at law, and for which restitution in money would be impossible, difficult, or incomplete. *Ohio Turnpike Comm. v. Texaco, Inc.* (1973), 35 Ohio Misc. 99, 105.

#### **Substantial Likelihood of Plaintiff Prevailing on Merits of Complaint**

In its November 24, 2009 complaint, Plaintiff has alleged two claims: (1) that Defendants' policy, as set forth in the BMV's October 8, 2009 notice, is unlawful because the policy attempts to cancel motor vehicle registrations that were not "erroneously or fraudulently issued," as that phrase is used in R.C. 4503.10(E); and (2) that Defendants' policy, as set forth in the BMV's October 8, 2009 notice, is preempted by federal law. Plaintiff has demanded (1) a declaratory judgment that the policy set forth in the BMV's October 8, 2009 notice is unlawful

and not authorized by R.C. 4305.10; (2) an injunction preventing Defendants from cancelling the motor vehicle registrations of Plaintiff's members who do not comply with the directive contained in the BMV's October 8, 2009 notice; and (3) in the alternative to an injunction, a writ of mandamus compelling Defendants to perform their duties in compliance with R.C. 4503.10 and ordering them to abandon the policy reflected in the BMV's October 8, 2009 notice. For the following reasons, the Magistrate concludes that Plaintiff has not demonstrated that there is a substantial likelihood that it will prevail on the merits of its November 24, 2009 complaint against Defendants.

### **Plaintiff's Standing to Bring Action**

Defendants assert that Plaintiff lacks standing to bring this action. The Magistrate concludes that Plaintiff does not, in fact, have standing to bring this action.

Plaintiff seeks legal redress in this action in its capacity as an organization representing Latino Americans. An organization has standing to bring suit on behalf of its members when (1) the organization's members would otherwise have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to its purpose; and (3) neither the claims asserted nor the relief requested require the participation of individual members of the organization in the lawsuit. *Ohio Academy of Nursing Homes, Inc. v. Barry* (1987), 37 Ohio App. 3d 46, paragraph one of the syllabus.

In order for individual litigants to have standing to bring a claim, they must "allege and prove damage to themselves different in character from that sustained by the public generally." *State ex rel. Masterson v. Ohio State Racing Comm.* (1954), 162 Ohio St. 366, 368. Accord, *Gildner v. Accenture, L.L.P.*, Franklin App. No. 09AP-167, 2009-Ohio-5335, at ¶10; *Brown v. Columbus City Schools Bd. of Edn.*, Franklin App. No. 08AP-1067, 2009-Ohio-3230, at ¶10.

In the instant case, Plaintiff alleges that its members will be harmed or damaged by the BMV's directive, as set forth in its October 8, 2009 notice, that any individual who obtained a motor vehicle registration without providing one of the three identifiers (social security number, Ohio driver's license number, or Ohio identification number) now provide such a number to the BMV and pay a \$3.50 processing fee. *Complaint* ¶¶4, 13. Specifically, Plaintiff alleges that its members will be harmed or damaged by the BMV's directive because they will be "forced to pay \$3.50 of their money to Defendants and to spend their own private time to drive to various registrar offices and stand in lines for unknown amounts of time complying with the demands of the October 8, 2009 Mass Mailing or face cancellation of their motor vehicle registration and confiscation of their license plates." *Complaint* ¶5.

However, the BMV's directive applies to everyone who obtained a motor vehicle registration without providing one of the three identifiers, and not only to Plaintiff's members. Plaintiff's members are no different from any other member of the public who received the BMV's October 8, 2009 notice and will be compelled to pay the \$3.50 processing fee and stand in line in order to provide the identifying information to a deputy registrar, or face cancellation of their motor vehicle registration and confiscation of their license plates. Therefore, the damage that Plaintiff's members allegedly will sustain as a result of the BMV's directive is not different in character from the damage that the public, in general, may sustain as a result of the BMV's directive. Accordingly, Plaintiff's members do not have standing to bring this action in their own right. Inasmuch as Plaintiff's members do not have standing, Plaintiff does not have standing. For this reason alone, Plaintiff cannot demonstrate that there is a substantial likelihood that it will prevail on the merits of its November 24, 2009 complaint against Defendants, and Plaintiff's motion for a preliminary injunction against Defendants must be denied.

### Legality of BMV's Action

Assuming, for the sake of argument, that Plaintiff has standing to bring this action against Defendants, nevertheless Plaintiff cannot demonstrate that there is a substantial likelihood that it will prevail on the merits of the substantive claims that it has alleged in its November 24, 2009 complaint.

In Count One of the complaint, Plaintiff alleges that Defendants' policy, as set forth in the BMV's October 8, 2009 notice, is unlawful because the policy attempts to cancel motor vehicle registrations that were not "erroneously or fraudulently issued" as that phrase is used in R.C. 4503.10(E). Plaintiff claims that R.C. 4503.10(B) provides the exclusive bases upon which the BMV may revoke a registration and that, because R.C. 4503.10(B) does not specifically list missing identifiers as a basis for revocation, then the BMV may not revoke registrations for lack of an identifier. Plaintiff's argument is without merit, however.

Revised Code 4503.10(A)(7) provides:

(A) \*\*\* [A]pplications for registration **shall be made** on blanks furnished by the registrar for that purpose, **containing the following information**:

\*\*\*

(7) The owner's **social security number, driver's license number, or state identification number**, or, where a motor vehicle to be registered is used for hire or principally in connection with any established business, the owner's federal taxpayer identification number. \*\*\* (Emphasis added.)

Revised Code 4503.10(B)(1) provides that "[t]he application **shall be refused if** any of the following applies: \*\*\* **[t]he application is not in proper form**. (Emphasis added.)" Revised Code 4503.10(E) provides, "Upon the certification of the registrar, the county sheriff or local police officials **shall recover license plates erroneously or fraudulently issued**. (Emphasis added.)"

In enacting a statute, it is presumed that compliance with the constitutions of Ohio and of the United States is intended; the entire statute is intended to be effective; a just and reasonable result is intended; and a result feasible of execution is intended. R.C. 1.47. Statutes are to be construed to give effect to all the enacted language. *Church of God in Northern Ohio, Inc. v. Levin* (2009), 2009-Ohio-5939, at ¶36. Moreover, the principle of *in pari materia* means that all aspects of a statutory scheme must be interpreted harmoniously and given complete application. *Hughes v. Registrar, Ohio Bur. of Motor Vehicles* (1997), 79 Ohio St. 3d 305, 308.

When sections (A)(7), (B)(1), and (E) of R.C. 4503.10, quoted above, are read *in pari materia*, as they must be read, it is clear that (1) an application to register a motor vehicle in the state of Ohio must contain the owner's social security number, or Ohio driver's license number, or Ohio identification number, (2) an application is not in the proper form when it does not contain such information, (3) the application will be refused if it does not contain such information, and (4) license plates that are erroneously issued when an application does not contain such information shall be recovered by the county sheriff or local police officials upon the certification of the Registrar.

Plaintiff, nevertheless, contends that R.C. 4503.10(B)(1) does not authorize the BMV to cancel the motor vehicle registrations of individuals who have not provided such information in their applications, based upon the case of *State ex rel. Ten Residents of Franklin County Who Are Fearful of Disclosing Their Names v. Belskis* (2001), 142 Ohio App. 3d 296. Plaintiff's reliance on that particular case, however, is misplaced.

In *Ten Residents*, ten residents of Franklin County, Ohio, filed an action in mandamus, seeking to compel the Franklin County Probate Judge to issue marriage licenses to them. The Franklin County Probate Judge had refused to issue marriage licenses to any Franklin County

residents who did not or could not provide a social security number at the time they applied for their marriage licenses. At the time, R.C. 3101.01 set forth the fundamental requirements for persons who wished to be married, such as minimum age, that they not be nearer in kinship than second cousins, and that minors obtain parental consent. Revised Code 3101.01 did not, on its face, require that any citizen of Ohio or any citizen of another state who wished to be married in Ohio have a social security number.

The Franklin County Probate Judge, however, had interpreted another statute, R.C. 3101.05(A), to require both parties to be married in Ohio to have a social security number. That statute provided:

\*\*\* The parties to a marriage shall make an application for a marriage license. Each of the persons seeking a marriage license shall personally appear in the probate court within the county where either resides, or, if neither is a resident of this state, where the marriage is expected to be solemnized. If neither party is a resident of this state, the marriage may be solemnized only in the county where the license is obtained. Each party shall make application and shall state upon oath, the party's name, age, residence, place of birth, occupation, father's name, and mother's maiden name, if known, and the name of the person who is expected to solemnize the marriage. \*\*\* Except as otherwise provided in this division, the application also shall include each party's social security number.

The Franklin County Court of Appeals concluded that the Ohio Legislature did not intend to make the information requested in R.C. 3101.05 for the license application into legal requirements for a marriage license being issued under R.C. 3101.01. The Franklin County Court of Appeals reasoned:

\*\*\* If the information requested in R.C. 3101.05 were all legal requirements for the issuing of a marriage license, then no Ohio citizen could marry a citizen of another country and have the marriage performed in Ohio because the foreign citizen would have no SSN. No homeless person could be married because that person had no residence. No person without an occupation could be married. No person who did not know his or her own age could be married. No one who did not know her or his father's name could be married. No person who was unaware of the place of his or her birth could be married. *Ten Residents*, at 299.

The Franklin County Court of Appeals therefore concluded that the Franklin County Probate Judge was under a clear legal duty to issue marriage licenses to the ten residents of Franklin County who initiated the mandamus action and to other persons similarly situated. *Ten Residents*, at 300. Accordingly, the Franklin County Court of Appeals granted the requested writ of mandamus. *Id.*

The Magistrate concludes that the *Ten Residents* case does not support Plaintiff's contention that R.C. 4503.10(B)(1) does not authorize the BMV to cancel the motor vehicle registrations of individuals who have not provided one of the three identifiers in their applications. In the *Ten Residents* case, R.C. 3101.01 set forth the "fundamental requirements" for a person who wished to be married in Ohio. *Ten Residents*, at 298. The Ohio Legislature, through that statute, had not made it a "fundamental requirement" that a person who wished to be married in Ohio have a social security number. The Franklin County Probate Judge, however, had imposed that additional "fundamental requirement" on persons who wished to be married in Franklin County, based upon the application criteria set forth in a separate statute, R.C. 3101.05(A).

This case is different. In the instant case, the Ohio Legislature enacted a single statute, R.C. 4503.10, which sets forth the fundamental requirements for a person to register a motor vehicle in Ohio. One of those fundamental requirements is that a person who wishes to register a motor vehicle in Ohio must provide the vehicle owner's social security number, Ohio driver's license number, or Ohio identification number. The Ohio Legislature, through R.C. 4503.10(A)(7), has made it a fundamental requirement that a person who wishes to register a motor vehicle in Ohio provide one of the three identifiers, unlike the situation in *Ten Residents*, where the Ohio Legislature had not made providing a social security number a fundamental

requirement of being married in Ohio. The *Ten Residents* case is inapplicable to the case *sub judice*.

Accordingly, the Magistrate concludes that Defendants' policy, as set forth in the BMV's October 8, 2009 notice, is not unlawful. Revised Code 4503.10(E) authorizes a county sheriff or local police officials to recover license plates that were erroneously issued. Revised Code 4503.10(B)(1) provides that an application for motor vehicle registration shall be refused if it is not in proper form. Pursuant to R.C. 4503.10(A)(7), an application that does not contain the vehicle owner's social security number, or Ohio driver's license number, or Ohio identification number is not in proper form, and the registration is therefore subject to cancellation.

Plaintiff has failed to demonstrate that there is a substantial likelihood that it will prevail on the merits of its claim that Defendants' policy, as set forth in the BMV's October 8, 2009 notice, is unlawful.

### **Federal Preemption**

In Count Two of its November 24, 2009 complaint, Plaintiff alleges that Defendants' policy, as set forth in the BMV's October 8, 2009 notice, is preempted by federal law because, Plaintiff asserts, the REAL ID Act of 2005 "make[s] the process for issuance of driver's licenses, not vehicle registration, the exclusive procedure for confirming the lawful identify of non-citizens[,]" and thus preempts the State's requirement in R.C. 4503.10(A)(7) that applicants for motor vehicle registration provide the owner's social security number, or Ohio driver's license number, or Ohio identification number. The Magistrate concludes that Defendants' policy is not, in fact, preempted by federal law.

The federal REAL ID Act of 2005, codified at Section 30301, Title 49, U.S. Code, provides that, "[b]eginning 3 years after the date of the enactment of this division, a Federal

agency may not accept for any official purpose, a driver's license or identification card issued by a state to any person unless the State is meeting the requirements of this section." Section 30301(a)(1), Title 49, U.S. Code. The federal REAL ID Act provides that a state must require "at a minimum, presentation and verification of the following information before issuing a driver's license or identification card to a person," and then lists various requirements, including "proof of the person's social security account number or verification that the person is not eligible for a social security account number." Section 30301(c)(1)(C), Title 49, U.S. Code.

Although the foregoing federal requirements may be burdensome for some of Plaintiff's members, the federal requirements apply only to driver's licenses, and not to vehicle registrations, and the requirements do not in any way restrict the State of Ohio's ability to establish its requirements for an individual to obtain a motor vehicle registration. The requirement in R.C. 4503.10(A)(7) that applicants for motor vehicle registration provide the vehicle owner's social security number, or Ohio driver's license number, or Ohio identification number does not stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," as stated in the REAL ID Act of 2005. Moreover, because the Act regulates only what the federal government will accept for official purposes, in terms of the requirements for a driver's license, the Act does not occupy the field of regulation of vehicle registration. Accordingly, the State of Ohio may choose to deviate from the requirements of the Act, the consequence of which is not that the State of Ohio's driver's licenses or vehicle registrations are invalid, but rather that the State of Ohio's driver's licenses will not be accepted for official purposes by federal agencies.

The interest of the federal government, as expressed in the REAL ID Act of 2005, is federal immigration control. The interest of the State, as expressed in R.C. 4305.10(A)(7), is in

ensuring that a registered motor vehicle is identified with a unique and verifiable individual. These interests are not at odds. Accordingly, Plaintiff has failed to demonstrate that there is a substantial likelihood that it will prevail on the merits of its claim that Defendants' policy, as set forth in the BMV's October 8, 2009 notice, is preempted by federal law.

### **Mandamus**

In its November 24, 2009 complaint, Plaintiff has demanded, in the alternative to an injunction, that the Court issue a writ of mandamus ordering Defendants to abandon the policy set forth in the BMV's October 8, 2009 notice. In that regard, R.C. 2731.04 provides, "[a]pplication for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit." Plaintiff's complaint is not brought in the name of the State, and there is no affidavit attached to the complaint verifying the allegations of the complaint. For these reasons alone, Plaintiff's demand for a writ of mandamus must be denied.

Furthermore, in order to be entitled to a writ of mandamus, a party must establish a clear legal right to the requested relief, a clear legal duty on the part of the public entity to provide the requested relief, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Gen. Motors Corp. v. Indus. Comm.*, 117 Ohio St. 3d 480, 2008-Ohio-1593, at ¶9. A mandamus action is appropriate where there is a legal basis to compel a public entity to perform its duties under the law. *Id.* Where the relief a relator has requested in a mandamus action involves a discretionary decision, courts have refused to overturn the administrative decisions of public officials. See, *State ex rel. Bd. of Edn. v. State Dept. of Edn.* (1981), 67 Ohio St. 2d 126, 128. The only exception recognized by the courts is upon a showing of an abuse of discretion. *Id.*

Based upon the Magistrate's findings of fact and discussion of law, above, Plaintiff has failed to demonstrate that there is a substantial likelihood that it is entitled to a writ of mandamus.

### **Irreparable Injury**

Irreparable harm exists when there is a substantial threat of a material injury that cannot be adequately compensated through monetary damages. *Restivo v. Fifth Third Bank of Northwestern Ohio, supra*. An irreparable injury is one for the redress of which, after its occurrence, there could be no plain, adequate, and complete remedy at law, and for which restitution in money would be impossible, difficult, or incomplete. *Ohio Turnpike Comm. v. Texaco, Inc., supra*. An injunction is an extraordinary remedy in equity that will not issue where there is an adequate remedy at law. *Mid-America Tire, Inc. v. PTZ Trading Ltd.*, 95 Ohio St. 3d 367, 2002-Ohio-2427, at ¶74; *Garano v. State, supra*. An injunction is not available as a right but may be granted by a court if it is necessary to prevent a future wrong that the law cannot. *Garano v. State, supra*.

Plaintiff has failed to prove, by clear and convincing evidence, the critical element of irreparable harm. The only harm that Plaintiff has proved is that, if the Court does not enjoin Defendants' policy, as set forth in the BMV's October 8, 2009 notice, Plaintiff's members may be compelled to report to deputy registrar locations to update their identifying information, and pay a \$3.50 processing fee, or lose their vehicle registrations and therefore their license plates. Plaintiff has not proved that such injury, if any, would not be compensable by money damages. To the contrary, at the hearing on December 1, 2009, Plaintiff did not present the testimony of even one individual who will purportedly be harmed if the Court does not enjoin Defendants from implementing the policy reflected in the BMV's October 8, 2009 notice.

In addition, Plaintiff's members have an adequate remedy at law. In the BMV's October 8, 2009 notice, the BMV notified the recipients, "If your vehicle registration is cancelled, you may request an administrative hearing." Plaintiff's members, by way of a Revised Code Chapter 119 administrative hearing, have an adequate remedy at law, and therefore injunctive relief is not available. *Columbus Southern Power Co. v. Ohio Dept. of Transp.* (1989), 63 Ohio App. 3d 612, 619, motion to certify record overruled (1989), 47 Ohio St. 3d 706.

### **Unjustifiable Harm to Third Parties**

At the hearing on December 1, 2009, Plaintiff presented no evidence that third parties would not be unjustifiably harmed if the Court were to grant a preliminary injunction against Defendants.

### **Public Interest**

At the hearing on December 1, 2009, Plaintiff presented no evidence that the public interest would be served if the Court were to grant a preliminary injunction against Defendants. To the contrary, Defendants established that the State has a compelling interest in public safety, which would not be served if the Court were to enjoin the policy set forth in the BMV's October 8, 2009 notice. *See Finding of Fact No. 7, above.*

### **Decision**

As stated above, it is well settled that an injunction is an extraordinary remedy in equity where there is no adequate remedy at law, and the grant or denial of an injunction depends largely on the character of the case, the particular facts involved, and factors relating to public policy and convenience. Further, in a case such as this, where the Court has been asked to interfere with or control the action of another department of government, the granting of an injunction should be done with caution.

The Magistrate has carefully considered and weighed the credible evidence in this case, has rendered factual findings, and has applied the law to those factual findings. Having done so, it is the Magistrate's decision that Plaintiff, the League of United Latin American Citizens, known as LULAC, has not established that it is entitled to a preliminary injunction against Defendants, Ted Strickland, Governor of the State of Ohio; Cathy Collins-Taylor, Director of the Ohio Department of Public Safety; and Carolyn Y. Williams, Acting Registrar of the Ohio Bureau of Motor Vehicles. Accordingly, Plaintiff's "Motion for Preliminary Injunction" against Defendants, filed on November 24, 2009, is hereby **DENIED**.

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**MAGISTRATE PAMELA BROER BROWNING**

**A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION IN THE FOREGOING MAGISTRATE'S DECISION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53(D)(3)(a)(ii), UNLESS THAT PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b).**

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