AlaFile E-Notice

03-CV-2011-000882.00

Judge: HON. JOHNNY HARDWICK

To: JOSHUA KERRY PAYNE
jpayne@ago.state.al.us

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JANE DOE ET AL VS ROBERT BENTLEY ET AL
03-CV-2011-000882.00

The following matter was FILED on 10/26/2011 3:34:03 PM

D001 BENTLEY ROBERT GOVERNOR OF STATE OF ALABAMA

D002 STRANGE LUTHER ATTORNEY GENERAL

MOTION TO DISMISS PURSUANT TO RULE 12(B)

[Filer: PAYNE JOSHUA KERRY]

Notice Date: 10/26/2011 3:34:03 PM

FLORENCE CAUTHEN
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL 36104

334-832-4950

ELECTRONICALLY FILED
10/26/2011 3:34 PM
CV-2011-000882.00
CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
FLORENCE CAUTHEN, CLERK

STATE OF ALABAMA
Unified Judicial System

Revised 3/5/08

03-MONTGOMERY

☐ **District Court** ☑ **Circuit Court**

Case

CV20

JANE DOE ET AL VS ROBERT BENTLEY ET AL

CIVIL MOTION COVER SHEET

Name of Filing Party: D002 - STRANGE LUTHER ATTORNEY GENERAL

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

JOSHUA KERRY PAYNE
501 Washington Avenue
Montgomery, AL 36130

Attorney Bar No.: PAY024

☐ Oral Arguments Requested

TYPE OF MOTION

Motions Requiring Fee

- ☐ Default Judgment ($50.00)
- ☐ Joinder in Other Party's Dispositive Motion (i.e. Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) ($50.00)
- ☐ Judgment on the Pleadings ($50.00)
- ☐ Motion to Dismiss, or in the Alternative Summary Judgment($50.00)
- ☐ Renewed Dispositive Motion(Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) ($50.00)
- ☐ Summary Judgment pursuant to Rule 56($50.00)
- ☐ Motion to Intervene ($297.00)
- ☐ Other _____

pursuant to Rule ($50.00)

_____

*Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.

☐ Local Court Costs $ _____

Motions Not Requiring Fee

- ☐ Add Party
- ☐ Amend
- ☐ Change of Venue/Transfer
- ☐ Compel
- ☐ Consolidation
- ☐ Continue
- ☐ Deposition
- ☐ Designate a Mediator
- ☐ Judgment as a Matter of Law (during Trial)
- ☐ Disburse Funds
- ☐ Extension of Time
- ☐ In Limine
- ☐ Joinder
- ☐ More Definite Statement
- ☑ Motion to Dismiss pursuant to Rule 12(b)
- ☐ New Trial
- ☐ Objection of Exemptions Claimed
- ☐ Pendente Lite
- ☐ Plaintiff's Motion to Dismiss
- ☐ Preliminary Injunction
- ☐ Protective Order
- ☐ Quash
- ☐ Release from Stay of Execution
- ☐ Sanctions
- ☐ Sever
- ☐ Special Practice in Alabama
- ☐ Stay
- ☐ Strike
- ☐ Supplement to Pending Motion
- ☐ Vacate or Modify
- ☐ Withdraw
- ☐ Other _____

pursuant to Rule (Subject to Filing Fee)

Check here if you have filed or are filing contemoraneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees) ☐	Date: 10/26/2011 3:33:29 PM	Signature of Attorney or Party: /s/ JOSHUA KERRY PAYNE

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.

ELECTRONICALLY FILED
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CV-2011-000882.00
CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
FLORENCE CAUTHEN, CLERK

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JANE DOE, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	**Civil Action No.**
	)	
vs.	)	**CV-2011-882**
	)	
ROBERT BENTLEY, *et al.*,	)	
	)	
Defendants.	)	

MOTION TO DISMISS

Governor Robert Bentley and Attorney General Luther Strange, sued in their official capacities ("Defendants"), move for dismissal of this action pursuant to Rule 12(b)(1) and (6) of the Alabama Rules of Civil Procedure, on the following grounds:

1. The Court lacks jurisdiction over the subject matter of the Plaintiffs' complaint, as last amended.

2. Plaintiffs' complaint, as last amended, fails to state a claim upon which relief can be granted.

3. Plaintiffs' claims, including their request for attorney's fees and court costs, are barred by the doctrine of sovereign immunity. Art. I, § 14 of the Alabama Constitution of 1901 mandates: "That the State of Alabama shall never be made a defendant in any court of law or equity." The Alabama Supreme Court has explained:

> This section affords the State and its agencies an "absolute" immunity from suit in any court. *Ex parte Mobile County Dep't of Human Res.*, 815 So. 2d 527, 530 (Ala. 2001) (stating that Ala. Const. 1901, [Art. I,] § 14, confers on the State of Alabama and its agencies absolute immunity from suit in any court); *Ex parte Tuscaloosa County*, 796 So. 2d 1100, 1103 (Ala. 2000) ("Under Ala. Const. of 1901, [Art. I,] § 14, the State of Alabama has

> absolute immunity from lawsuits. This absolute immunity extends to arms or agencies of the state…."). Indeed, this Court has described § 14 as an "almost invincible" "wall" of immunity. *Alabama State Docks, v. Saxon*, 631 So. 2d 943, 946 (Ala. 1994). This "wall of immunity" is "nearly impregnable," *Patterson v. Gladwin Corp*., 835 So. 2d 137, 142 (Ala. 2002), and bars "almost every conceivable type of suit." *Hutchinson v. Board of Trustees of Univ. of Ala*., 288 Ala. 20, 23, 356 So. 2d 281, 283 (1971).

Haley v. Barbour County, 885 So. 2d 783, 788 (Ala. 2004). "Moreover, if an action is an action against the State within the meaning of [Art. I,] § 14, such a case 'presents a question of subject-matter jurisdiction, which cannot be waived or conferred by consent.' *Patterson*, 835 So. 2d at 142-43." *Id.*

4. To determine whether an action is barred by sovereign immunity, "the Court considers the *nature of the suit or the relief demanded*, not the character of the office of the person against whom the suit is brought." *Patterson*, 835 So. 2d at 143 (quoting *Ex parte Carter*, 395 So. 2d 654, 667-68 (Ala. 1980), and adding emphasis thereto). When the relief sought "would '*affect the financial status of the state treasury*,'" the action is absolutely prohibited. *Patterson*, 835 So. 2d at 143 (quoting *State Docks Comm'n v. Barnes*, 225 Ala. 403, 405, 143 So. 581, 582 (1932), and adding emphasis thereto).

5. Plaintiffs lack standing to assert claims for declaratory and injunctive relief, in that they have not sustained an injury in fact that would be redressed by a favorable declaratory or injunctive ruling by this Court.

6. A favorable declaratory or injunctive ruling by this Court would be advisory only, and would not redress an injury in fact sustained by the Plaintiff. Thus,

Plaintiff lacks standing to bring those claims.

7. Plaintiffs' claims based on Article I, §§ 1, 30, and 34 of the Alabama Constitution of 1901 are due to be dismissed for the additional reason that, in light of the Supremacy Clause of the U.S. Constitution, these provisions cannot be read to restrict Alabama's ability to pass laws that support the federal government's enforcement of federal immigration law. Moreover, "it is the duty of the courts to adopt the construction of a statute to bring it into harmony with the constitution." *State v. Lupo*, 984 So. 2d 395, 403 (Ala. 2007).

8. Plaintiffs' challenges to the specific sections of Act No. 2011-535 are due to be dismissed for the additional reasons that these provisions are not unconstitutionally vague, are not preempted by federal law, and are not otherwise in violation of the U.S. Constitution or the Alabama Constitution of 1901.

9. Plaintiffs' claims are due to be dismissed because Plaintiffs bring a facial challenge to Act No. 2011-535, and not an as-applied challenge. Thus, a finding that some legitimate application of the statute is constitutional ends the court's inquiry. *See United States v. Stevens*, 130 S. Ct. 1577, 1587 (2010); *United States v. Salerno*, 481 U.S. 739, 745 (1987).

10. Plaintiffs' claims are due to be dismissed because Act No. 2011-535 expressly forbids race, color, or national origin to be considered in enforcement of the Act in violation of the U.S. Constitution or the Alabama Constitution of 1901.

11. Plaintiffs' claims are due to be dismissed because Act No. 2011-535 in relevant part is nearly identical to, and modeled after, federal law.

Respectfully submitted,

LUTHER STRANGE (ASB-0036-G42L)
Attorney General

BY:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of October, 2011, I filed the foregoing document using the AlaFile system which will send electronic notification of such filing to the following counsel of record:

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