

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

CENTRAL ALABAMA FAIR
HOUSING CENTER, et al.,

Plaintiffs,

V.

**JULIE MAGEE, Revenue
Commissioner for the State of Alabama,
et al.,**

Defendants.

CIVIL ACTION NUMBER:
2:11-cv-00982-MHT-CSC

MOTION TO DISMISS

State Defendant, Commissioner Julie Magee, sued in her official capacity as Revenue Commissioner for the State of Alabama, moves to dismiss Plaintiffs' claims for damages under the Fair Housing Act (FHA), 42 U.S.C. §§ 3604(a) and 3604(b), pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure. Plaintiffs' claims are claims against the State of Alabama, and the damages claims are barred by the Eleventh Amendment to the U.S. Constitution. Additionally, with regard to all of Plaintiffs' claims, the Court lacks subject matter jurisdiction and Plaintiffs' claims do not state a valid claim for relief.

1. Plaintiffs sue Commissioner Magee in her official capacity as Revenue Commissioner for the State of Alabama. Doc. 31, First Amended Complaint for Declaratory and Injunctive Relief and for Damages, ¶27.

2. “As long as the [Revenue Department] receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the [Revenue Department].” *Kentucky v. Graham*, 473 U.S. 159, 166 (1985); *see also Housing Investors, Inc. v. City of Clanton*, 68 F. Supp. 2d 1287, 1296 (M.D. Ala. 1999); *Sweatt v. Bailey*, 876 F. Supp. 1571, 1584 (M.D. Ala. 1995).

3. The Revenue Department is a department of the State of Alabama. Ala. Code 1975 § 40-20-1. *See also* Ala. Code 1975 § 40-2-40 (establishing a chief executive officer of the Department, to be known as the Commissioner of Revenue, who shall exercise “all the powers, authority, and duties” vested in the Department).

4. “[A]bsent waiver by the State or valid congressional override, the Eleventh Amendment bars a damages action against a State in federal court.” *Graham*, 473 U.S. at 169; *see also Hunt v. Georgia Dep’t of Cmty. Affairs*, 2010 WL 5437214 *2 (N.D. Ga. Dec. 23, 2010).

5. “Congress may abrogate the States’ constitutionally secured immunity from suit in federal court only by making its intention unmistakably clear in the language of the statute.” *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 73 (2000); *see also Hunt*, 2010 WL 5437214 *2.

6. “The FHA does not evince an unmistakable intent on the part of Congress to abrogate a State’s Eleventh Amendment immunity.” *Hunt*, 2010 WL 5437214 *2 (citing 42 U.S.C. § 3604; *Super v. J. D’Amelia & Assocs., LLC*, 2010 WL 3926887 at *12 (D. Conn. Sept. 30, 2010); *Kalai v. Haw. Dep’t Of Human Servs.*, 2008 WL 3874616 at *2-3 (D. Haw. Aug. 20, 2008); *Kuchmas v. Towson Univ.*, 2007 WL 2694186 at *8 (D. Md. Sept. 10, 2007)). *See also Gonzalez v. Lee Cnty. Hous. Auth.*, 161 F.3d 1290, 1299-1300 (11th Cir. 1998) (holding that officials sued in their individual capacities under 42 U.S.C. § 3617 of the FHA may assert the defense of qualified immunity); *Graham*, 473 U.S. at 169, n. 17 (noting that 42 U.S.C. § 1983 “was not intended to abrogate a State’s Eleventh Amendment immunity”).

7. Therefore, Plaintiffs’ FHA claims for damages are barred by the Eleventh Amendment and are due to be dismissed for lack of subject matter jurisdiction.¹ *See McClendon v. Georgia Dep’t of Cmty. Health*, 261 F.3d 1252, 1256-57 (11th Cir. 2001) (“[U]nlike other jurisdictional bars, federal courts are required to consider whether the Eleventh Amendment strips them of jurisdiction only if the state defendant insists that it does.”).

8. Additionally, all of Plaintiffs’ claims – including all claims based on the FHA and all claims based on preemption – are due to be dismissed because the

¹ These are distinguished from Plaintiffs’ FHA claims for injunctive and declaratory relief. *See Graham*, 473 U.S. at 169, n. 18.

Court lacks subject matter jurisdiction as the admittedly unlawfully present John Doe plaintiffs lack standing to assert the claims of aliens who are known to the federal government but who do not contain certain documentation demonstrating lawful presence, and as the organizational plaintiffs have demonstrated no injury in fact. These claims are also due to be dismissed because Plaintiffs have failed to state a claim upon which relief can be granted. In support, the State Defendant relies on the arguments and authorities presented in her First Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 33), Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 38), Motion in Limine Concerning Proposed Testimony of Legislators (Doc. 40), Notice of Supplemental Evidence and Motion to Dissolve Temporary Restraining Order (Doc. 57), Proposed Findings of Fact (Doc. 64), Response to Plaintiffs' Emergency Motion to Enforce Temporary Restraining Order and Reply in Support of Notice of Supplemental Evidence and Motion to Dissolve (Doc. 73), Supplemental Evidence in Opposition to Plaintiffs' Motion for Preliminary Injunction (Doc. 79), and Supplemental Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction (Doc. 80), which filings, including all exhibits, are adopted and incorporated herein by reference.

WHEREFORE, the State Defendant requests that the Court dismiss this action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of December 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel for Plaintiffs.

I FURTHER CERTIFY that on the 9th day of December 2011, I am serving by electronic mail the following co-defendant for whom no counsel has yet appeared:

Judge Jimmy Stubbs probatejudge@elmoreco.org

s/ James W. Davis _____
Of Counsel