

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RECEIVED
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DEBRA P. RACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

RICKY MARTIN, Pastor
of Triumph Church, Clanton,
Alabama,

Plaintiff,

Case No.

v.

CLAIM OF UNCONSTITUTIONALITY
OF ALA. CODE § 45-11-82

RANDALL V. HOUSTON,
in his official capacity as
District Attorney for Chilton
County, Alabama; KEVIN DAVIS,
in his official capacity as Sheriff
of Chilton County, Alabama,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action challenges the constitutionality of Alabama Code § 45-11-82, which became effective on July 1, 2014. A true and accurate copy of that section is attached as Exhibit 1. Chilton County's District Attorney Randall V. Houston indicated his intent to enforce the statute by serving Pastor Ricky Martin with formal notice of the law on June 30, 2014. This law penalizes any landlord or leaseholder who is housing more than one adult sex-offender unless the sex-offender is related to the landlord or lease-holder, or the tenants of a property are related by blood or marriage. Ala. Code § 45-11-82, Sec. 2 (a)-(b).

2. Pastor Martin believes it is his Christian duty to serve those in need. He is a volunteer chaplain in Alabama prisons and has met many sex-offenders who needed a place to live in order to be released from prison. After learning that sex-offenders are the only type of prisoner that must secure an approved address before release, he allowed recently released sex-offenders to live in trailers behind his Church for the past three years. Pastor Martin seeks to minister to these individuals and to show them the power of accepting Jesus Christ as their personal savior. He believes that sex-offenders are treated as some of the lowest members of society and that it is his religious duty to provide the support and care of his Church to help them get on their feet and become contributing members of society again.

3. Ala. Code § 45-11-82, and Defendants' enforcement of the law against Pastor Martin, violate his rights under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C § 2000cc, and his right to the free exercise of religion under the First Amendment to the U.S. Constitution. The law also constitutes a Bill of Attainder under Article 1 of the U.S. Constitution, and it violates Pastor Martin's due-process rights under the Fourteenth Amendment to the U.S. Constitution. Finally, the law violates the Alabama Religious Freedom Amendment to the Alabama Constitution, Article I, Section 3.01. Plaintiff seeks declaratory and injunctive relief.

JURISDICTION

4. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 for violation of his rights under 42 U.S.C § 2000cc, Article I of the U.S. Constitution, and the

First and Fourteenth Amendments to the U.S. Constitution. RLUIPA further provides a right of action. 42 U.S.C. § 2000cc-2(a).

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and injunctive relief is authorized pursuant to Fed. R. Civ. P. 65.

6. This Court has supplemental jurisdiction over Plaintiff's Alabama Religious Freedom Amendment claim under 28 U.S.C. § 1367.

PARTIES

7. Plaintiff Ricky Martin is the pastor of Triumph Church in Clanton, Alabama.

8. Defendant Randall V. Houston is the duly elected District Attorney for Elmore, Autauga, and Chilton Counties and has a direct responsibility for the enforcement of Ala. Code § 45-11-82, which only applies to Chilton County. § 45-11-82(a). His office caused Pastor Martin to be served with a notice of violation of the challenged statute on June 30, 2014. District Attorney Houston is sued in his official capacity for declaratory and injunctive relief only.

9. Defendant Kevin Davis is the duly elected Sheriff of Chilton County, Alabama. He is responsible for enforcing the laws of Alabama, including § 45-11-82, against Pastor Martin. His office was involved in the service of the notice of violation to Pastor Martin. Sheriff Davis is sued in his official capacity for declaratory and injunctive relief only.

FACTS

10. Pastor Ricky Martin is an Alabama native and is the pastor of Triumph Church in Clanton, Alabama. He felt compelled by God to start his church to be His servant and help others. Everyone is welcomed at Triumph Church.

11. Since 2011, Pastor Martin has been welcoming registered sex-offenders into his congregation, as well as allowing them to live in trailers on the property behind his church until they find more permanent housing. Pastor Martin considered providing such housing to be a part of his ministry.

12. Pastor Martin believes the Bible commands him, and others, to serve God by caring for “the least of these.” Matthew 25:40. He likens the plight of registered offenders to the lepers and demon-possessed that Jesus spoke to and cared for. *See* Matthew 8:1-4 and Mark 5:1-19. Martin believes it is important for followers of Christ to care for those in need. *See* Isaiah 58:7. Pastor Martin believes that Matthew 9:10-13 (King James Version) commands him to act in this way:

10 And it came to pass, as Jesus sat at meat in the house, behold, many publicans and sinners came and sat down with him and his disciples.

11 And when the Pharisees saw it, they said unto his disciples, Why eateth your Master with publicans and sinners?

12 But when Jesus heard that, he said unto them, They that be whole need not a physician, but they that are sick.

13 But go ye and learn what that meaneth, I will have mercy, and not sacrifice: for I am not come to call the righteous, but sinners to repentance.

For these reasons, Pastor Martin believes that as a Christian, he is compelled, if he can, to help these men straighten out their lives and to follow the teachings of Christ.

13. Pastor Martin met all or most of the registered offenders that lived in the trailers behind his Church while doing prison ministry in Alabama prisons. Many of the men he met in prison were unable to find a suitable place to live, so Pastor Martin, driven by his faith, provided a place for them to stay after their release.

14. The trailers are on a small piece of property owned by Pastor Marten which is located directly behind Triumph Church and next to Martin's personal home, where he lives with his wife. The registered offenders were living in five trailers on his property, all within 300 feet of each other. *See* Ala. Code § 45-11-82(b)(2).

15. Pastor Martin developed an application process to screen who could live in the trailers. He required all registered offenders to sign a residency agreement, which, among other things, barred tobacco, vain or cursing language, fighting, weapons, and X-rated movies or magazines. The agreement also required offenders to attend Church services and to live for Christ. He further required that the men be properly dressed when outdoors, keep the property clean and neat, and avoid trespassing onto neighboring property. He would deny any applicant who was not willing to practice the teachings of Christ, or at least be open to conversion to Christianity, and would evict anyone who would not obey the rules. Pastor Martin

has a record of all registered offenders who have lived in the trailers behind the Church.

16. Pastor Martin hoped to help the released offenders find jobs, secure housing, and learn personal responsibility. He believes that teaching these men personal responsibility and guiding them toward living a Christian life will prevent them from reoffending and keep them out of prison.

17. As each man became a resident in one of the trailers, the Chilton County Sheriff's office circulated flyers to all residents of the county publicizing that a sex-offender was living in the area at that address.

18. The local community appeared to be in support of the housing as local residents would stop by and purchase items from the Church's yard sales when Pastor Martin was raising funds to support that part of his ministry.

19. Despite this local support, however, about a year after the flyers were first circulated, Eric Price, an investigator with the Chilton County Sheriff's office, came by Pastor Martin's Church to look at the housing. He told Pastor Martin that Alabama House Representative Kurt Wallace was drafting a bill with the specific intent of shutting down Pastor Martin's provision of housing to released offenders. HB 556 was eventually enacted and codified as Ala. Code § 45-11-82 and applies only to Chilton County. § 45-11-82(a).

20. Ala. Code § 45-11-82 regulates land use in that it prohibits Pastor Martin from using his land to house more than one sex-offender. It does not punish or regulate offenders and only reaches Pastor Martin.

21. Ala. Code § 45-11-82 declares that housing more than one sex-offender is a public nuisance and penalizes Pastor Martin for the use of his property for that purpose. The law creates an irrebutable presumption that the housing of two or more offenders is a nuisance. There is no right to a judicial determination as to whether there is, in fact, a nuisance. The only issue before a court is the amount of the fine to be assessed against the landowner for housing such offenders in order to abate the nuisance. § 45-11-82(c) and (d).

22. There is no scientific evidence that housing sex-offenders on the same property poses any greater threat to the public than a single offender living alone. Ala. Code § 45-11-82 itself creates an exception for family members or spouses to live together under the same roof, even if they are all registered sex-offenders.

23. During the time that Pastor Martin provided housing on his property, there were very few problems at the trailers. Martin called the Sheriff's office approximately three times for minor matters during the entire period he provided housing; no arrests were made. If any of the men caused trouble, he would evict them.

24. In 2013, Representative Wallace introduced a bill (HB 85) that would have applied statewide. During an Alabama House Judiciary Committee hearing on February 27, 2013, much of the testimony focused on Pastor Martin's provision of housing. No evidence was introduced at the hearing regarding any danger posed by multiple sex-offenders living on the same property. Indeed, Chilton County Assistant District Attorney C.J. Robinson testified that between August 2010 and

January 2013, there had not been a single sexually related crime committed by any resident at Pastor Martin's Church. HB 85 did not get enacted.

25. HB 556 was passed by the Alabama House of Representatives on March 5, 2014, and by the Alabama Senate on March 18, 2014. Subsequently, Assistant District Attorney C.J. Robinson told Pastor Martin to get rid of the offenders who resided in the trailers. Robinson explained to Martin that he would be brought into court and fined no less than \$500 and no more than \$5,000 for violating the new law.

26. Pastor Martin was formally served with notice by the District Attorney's office (through the Sheriff's office) on June 30, 2014. Martin quickly evicted the residents to comply with the law in order to avoid the penalties. A true and accurate copy of the notice is attached as Exhibit 2. To the extent the District Attorney's letter suggests that a nuisance action is necessary, § 45-11-82 unequivocally provides otherwise. Section 45-11-82(c) expressly states that "[a] violation ... shall constitute a public nuisance." (emphasis added). The action the District Attorney is authorized to bring is only "for the purpose of abatement of the nuisance." *Id.* The remedy is "a civil fine of not more than five thousand dollars (\$5,000) nor less than five hundred dollars (\$500) against the defendant for each separate civil action." § 45-11-82(d). As a result, unless he shut down his housing, Pastor Martin would have been subject to a fine of up to \$5,000, and he would have been liable for costs of the civil action.

27. But for Ala. Code § 45-11-82 and the clear indication that it would be enforced against him, Pastor Martin would have continued to make housing available as a part of his ministry and the exercise of his religious beliefs.

28. Ala. Code § 45-11-82, and its enforcement by Defendants, substantially burden Pastor Martin's religious exercise by prohibiting him from engaging in an activity, on his own property and within his Church, that he believes God compels him to do. The law is not in furtherance of a compelling governmental interest and, even were any compelling interest identified, the law is not the least restrictive means of furthering it. This law, therefore, violates RLUIPA.

29. Moreover, Ala. Code § 45-11-82 was drafted and enacted in order to shut down Pastor Martin's housing. The law singles out Pastor Martin and his church, violating his free-exercise rights under the First Amendment and his constitutional right to be free from a Bill of Attainder.

30. Ala. Code § 45-11-82 also penalizes Pastor Martin while providing no opportunity to challenge whether housing offenders on his property constitutes a nuisance. The law creates an irrebutable presumption and violates the Due Process Clause of the Fourteenth Amendment.

31. Ala. Code § 45-11-82 further violates Pastor Martin's rights under Alabama's Religious Freedom Amendment.

32. Unless the enforcement of Ala. Code § 45-11-82 is enjoined by this Court, Pastor Martin's religious exercise will continue to be substantially burdened. He has been irreparably harmed by the forced closure of the housing. Martin has no

adequate remedy of law. He desires to resume providing housing for released offenders in housing on his property. Should the Court grant declaratory and injunctive relief, Pastor Martin would immediately resume housing offenders on his property behind his Church.

FIRST CAUSE OF ACTION - RLUIPA

33. Pastor Martin has a sincerely held religious belief that is substantially burdened by § 45-11-82. RLUIPA protects “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5(7)(A).

34. Under RLUIPA, when the government places a substantial burden on religious exercise, it must prove the existence of a compelling governmental interest and that it is using the least restrictive means to further that interest. 42 U.S.C. § 2000cc(a)(1).

35. Ala. Code § 45-11-82 violates RLUIPA because there is not a compelling State interest nor is the means chosen the least restrictive means of furthering any compelling State interest. The violation of RLUIPA may be redressed pursuant to 42 U.S.C. § 2000cc-2 and 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION - First Amendment

36. Although § 45-11-82 may appear neutral on its face, it was “religiously gerrymandered” to specifically target Pastor Martin’s unpopular religious activity. *See Church of Lukumi Babalou Aye v. City of Hialeah*, 508 U.S. 520, 535 (1993). The law must, therefore, meet strict scrutiny. *Id.*

37. As a direct result of Pastor Martin being notified that Ala. Code § 45-11-82 would be enforced against him, he closed the housing and evicted its residents. Yet, through its exemption for family members and spouses, the law allows similar, non-religiously motivated conduct to continue unabated. "Where government restricts only conduct protected by the First Amendment and fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the interest given in justification of the restriction is not compelling. It is established in our strict scrutiny jurisprudence that a law cannot be regarded as protecting an interest of the highest order ... when it leaves appreciable damage to that supposedly vital interest unprohibited." *Lukumi*, 508 U.S. at 546-7 (internal quotation marks and citations omitted).

38. By targeting Pastor Martin's religious activity and exempting similar conduct, the law violates Pastor Martin's rights under the Free Exercise Clause of the First Amendment, applicable to Defendants through the Fourteenth Amendment. This deprivation may be redressed pursuant to 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION - Bill of Attainder

39. Pastor Martin is the only property owner in Chilton County who is affected by § 45-11-82, and the law was drafted and passed specifically to apply to him. The law is thus a prohibited Bill of Attainder under art. I, § 9, cl. 3 of the U.S. Constitution. The deprivation of Pastor Martin's rights may be redressed pursuant to 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION - Due Process

40. Ala. Code § 45-11-82 deprives Pastor Martin of the use of his property for legal purposes without due process of law. The law creates an irrebutable presumption that housing more than one offender constitutes a nuisance, and there is no requirement that the state prove that a nuisance exists. The only issue before a court in enforcing the law is the amount of fine to be assessed in order to abate the declared nuisance. The statute thus violates Martin's right to due process of law guaranteed by the Fourteenth Amendment. The deprivation of this right may be redressed pursuant to 42 U.S.C. § 1983.

FIFTH CAUSE OF ACTION - Alabama's Religious Freedom Amendment

41. The Alabama Religious Freedom Amendment protects religious exercise by creating a cause of action for anyone whose freedom of religion has been burdened by the government. Ala. Const. art. I, § 3.01 Sec. III. As discussed above, Pastor Martin's religious exercise has been substantially burdened by § 45-11-82.

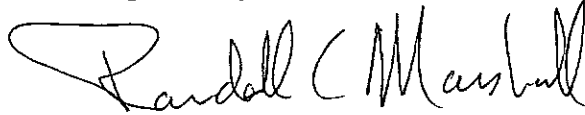
42. The State must (1) have a compelling reason for imposing this substantial burden on Pastor Martin, and (2) use the least restrictive means of furthering that compelling interest. Ala. Const. art. I, § 3.01 Sec. V(b)(1), (b)(2). Ala. Code § 45-11-82 does not further a compelling State interest or use the least restrictive for the same reasons stated above.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court to:

1. Enter a declaratory judgment that Ala. Code § 45-11-82 violates the Religious Land Use and Institutionalized Persons Act, 42 U.S.C.A. § 2000cc;
2. Enter a declaratory judgment that Ala. Code § 45-11-82 violates the Free Exercise Clause of the First Amendment to the U.S. Constitution, as applied to the Defendants through the Fourteenth Amendment;
3. Enter a declaratory judgment that Ala. Code § 45-11-82 violates the Bill of Attainder clause under Article I, § 9, cl. 3 of the U.S. Constitution;
4. Enter a declaratory judgment that Ala. Code § 45-11-82 violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;
5. Enter a declaratory judgment that Ala. Code § 45-11-82 violates Alabama's Religious Freedom Amendment under the Alabama Constitution, Article I, Section 3.01;
6. Enter a permanent injunction prohibiting Defendants from enforcing Ala. Code § 45-11-82 against Pastor Martin;
7. Award costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and
8. Enter all further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

A handwritten signature in black ink, reading "Randall C. Marshall". The signature is fluid and cursive, with the first name "Randall" being more prominent than the last name "Marshall".

Randall C. Marshall

(ASB-3023-A56M)

Avery C. Livingston*

(ASB-3780-G22R)

ACLU of Alabama Foundation

P.O. Box 6179

Montgomery, AL 36106-0179

334-265-2754

rmarshall@aclualabama.org

alivingston@aclualabama.org

Daniel Mach **

Heather L. Weaver **

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION

915 15th Street, NW

Washington, DC 20005

202-675-2330

Counsel for Plaintiff

* Application for admission pending

** Application for admission *pro hac vice* to
be filed

PLAINTIFF'S
EXHIBIT 1

Code of Alabama Currentness

Title 45. Local Laws.

Chapter 11. Chilton County. (Refs & Annos)

Article 8. . Courts. (Refs & Annos)

Part 3. . District Attorney. (Refs & Annos)

→ → § 45-11-82. Residential limitations on adult sex offenders.

(a) This section shall only apply in Chilton County.

(b)(1) No adult sex offender shall establish a residence in a home or other living accommodation where another adult sex offender whose name appears on the Alabama Bureau of Investigation sex offender registry resides unless the offenders are married or the offenders are related as ancestors or descendants by blood or adoption, as brothers or sisters of the whole or half-blood or by adoption, as stepchildren or stepparents while the marriage creating the relationship exists, or as aunts, uncles, nephews, or nieces of the whole or half-blood.

(2) No adult sex offender shall establish a residence in a home or other living accommodation that is located on the same lot or piece of property as another adult sex offender whose name appears on the Alabama Bureau of Investigation sex offender registry, unless there is at least 300 feet between the residences or the offenders are married or the offenders are related by blood or adoption, as brothers or sisters, as stepchildren or stepparents while the marriage creating the relationship exists, or as aunts, uncles, nephews, or nieces of the whole or half-blood.

(c) A violation of subsection (b) shall constitute a public nuisance. The district attorney may institute a civil action in the Circuit Court of Chilton County before the resident Circuit Judge for the Nineteenth Judicial Circuit against the owner or lessor of the property on which the nuisance exists for the purpose of abatement of the nuisance. The district attorney shall have the right to reimbursement of all costs associated with the litigation of the action, to be paid by the defendant.

(d) The court, at its discretion, may assess a civil fine of not more than five thousand dollars (\$5,000) nor less than five hundred dollars (\$500) against the defendant for each separate civil action. The civil penalties shall be payable directly to the Office of the Circuit Clerk of Chilton County and disbursed evenly among the district attorney's office and the office of the circuit clerk.

(e) The county commission may develop and implement forms and procedures for the issuing of citations for civil violations and payment of civil penalties to implement this section.

CREDIT(S)

(Act 2014-214, §§ 1-5.)

HISTORY

Effective date:

The act from which this section is derived became effective July 1, 2014.

Ala. Code 1975 § 45-11-82, AL ST § 45-11-82

Current through Act 2014-457 of the 2014 Regular Session.

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END OF DOCUMENT

PLAINTIFF'S
EXHIBIT 2

OFFICE OF THE DISTRICT ATTORNEY

RANDALL V. HOUSTON

Elmore, Autauga and Chilton Counties

Wetumpka Office
P.O. Box 700
Wetumpka, AL 36092
Phone: (334) 567-2237
FAX: (334) 567-8381

<http://da.19.alada.gov>



19th Judicial Circuit

Prattville Office
134 N. Court St., Rm. 210
Prattville, AL 36067
Phone: (334) 365-5715
FAX: (334) 365-7284

Clanton Office
P.O. Box 1053
Clanton, AL 36045
Phone: (205) 755-4242
FAX: (205) 755-2484

June 30, 2014

To Whom It May Concern:

Governor Robert Bentley signed Act 2014-214 into law on April 2, 2014. The codified version of Act 2014-214 can be found in § 45-11-82 of the Alabama Code. This local legislation becomes effective on July 1, 2014. The District Attorney's Office wishes to give notice to those individuals who are directly affected by the passage of this new law. The major provision of § 45-11-82 is listed below:

No adult sex offender shall establish a residence in a home or other living accommodation that is located on the same lot or piece of property as another adult sex offender whose name appears on the Alabama Bureau of Investigation sex offender registry, unless there is at least 300 feet between the residences or the offenders are married, or the offenders are related by blood or adoption, as brothers or sisters, as stepchildren or stepparents while the marriage creating the relationship exists, or as aunts, uncles, nephews, or nieces of the whole or half-blood.

A violation of the provision above shall constitute a public nuisance. The District Attorney has the power to institute a civil action in the Circuit Court of Chilton County against the owner or lessor of the property on which the nuisance exists for the purpose of abatement of the nuisance.

By accepting service of this letter I understand that I have been put on official notice that I have 14 days to comply with § 45-11-82 of the Alabama Code or the District Attorney's Office will begin civil proceedings to declare my residential arrangement a public nuisance. I further acknowledge that if said nuisance action is successful, possible penalties could range from \$500 to \$5,000 per violation in addition to other costs associated with the case.

Billy W. Fulmer

Signature of Serving Agent

Signature of Recipient

District Attorney's Office

Name of Agency of Serving Agent

Date of Receipt of Notice