UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

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

Plaintiff,

Case No. 2:14-CV-000905-WKW

v.

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

RANDALL V. HOUSTON, in his official capacity as District Attorney for Chilton County, Alabama,

Deter	idant.		

FIRST AMENDED 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, Defendant Randall V. Houston, served Pastor Ricky Martin with formal notice of the law on June 30, 2014. A true and accurate copy of the notice is attached as Exhibit 2. The law penalizes any landlord or lease-holder 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). In the notice, Houston warned Pastor Martin that if he did not comply with the law within 14 days,

Houston's office would begin judicial proceedings to declare Pastor Martin's residential property "a public nuisance."

- 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 from 2011 until Alabama Code § 45-11-82 went into effect and Defendant Houston ordered him to comply with the law within 14 days or face judicial proceedings and substantial fines. 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 Defendant's enforcement of the law against Pastor Martin, violates 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. 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.

PARTIES

- 6. Plaintiff Ricky Martin is the pastor of Triumph Church in Clanton, Alabama.
- 7. 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 both verbally and in writing threatened Pastor Martin with legal action if he did not comply with the statute. District Attorney Houston is sued in his official capacity for declaratory and injunctive relief only.

FACTS

8. 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.

- 9. 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.
- 10. 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 who 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.

11. 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.

- 12. The trailers are on a small piece of property owned by Pastor Martin. The property 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).
- 13. 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 his church.
- 14. 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.
- 15. The housing that Pastor Martin provided was transitional housing, and the men were expected to look for more permanent suitable housing. Thus, the

population in the trailers changed frequently. During the time that the housing was provided, approximately sixty men lived there in total; usually up to twelve to fourteen at a time.

- 16. 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.
- 17. Despite this local support, however, Alabama House Representative Kurt Wallace and Defendant Houston's office drafted 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).
- 18. No other residence or living accommodation in Chilton County was subject to § 45-11-82, and no other landlord or property owner was served with notice by Defendant Houston's Office that the law would be enforced against them.
- 19. Representative Wallace and the District Attorney's office made clear in their discussions with news reporters that § 45-11-82 was designed to stop Pastor Martin from providing housing to offenders. See, e.g., New law to disband sex offender camp in Chilton County, ABC, June 26, 2014 at 1-2 ("The law was written specifically to deal with one property owned by a church, just outside Clanton."; "Wallace, a Republican, says the bill was designed to make the offenders find a new place to live."; "So effectively, it causes them to disperse,' said Wallace. 'That's the gist of the bill. That's why we did it.") (copy attached as Exhibit 3); New law could force sex offenders

to move from Chilton County church facility, AL.com, April 22, 2014 at 1-2 ("Rep. Kurt Wallace, R-Maplesville, sponsored the bill because of the multiple sex offenders living behind Triumph Church, which is on a two-lane highway just outside Clanton. There are camper trailers behind the church for the men."; "The guys who are there now are going to have to find somewhere else to go," Wallace said.") (copy attached as Exhibit 4); Alabama pastor sues over closure of sex offender camp, Associated Press, August 28, 2014 at 1 ("A legislative sponsor and county prosecutor said the law was aimed at shutting down the camp.") (copy attached as Exhibit 5).

- 20. While the bill was being considered, Pastor Martin wrote Representative Wallace a letter regarding the importance of his ministry and the provision of transitional housing to offenders. Representative Wallace responded, making it clear that he opposed Pastor Martin's provision of housing as a part of his ministry. A copy of the response is attached as Exhibit 6.
- 21. Prior to the enactment of Ala. Code § 45-11-82, no law regulated Pastor Martin's provision of housing to anyone on his property.
- 22. Section § 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. Rather, it regulates through restricting the manner in which Pastor Martin may use his land as a property owner.
- 23. 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. The law states, in section (c), "A violation of subsection (b) [housing more than one sex offender] shall constitute a public nuisance." Id.(emphasis added). There is no right to a judicial determination as to whether there is, in fact, a nuisance. The action the District Attorney is authorized to bring is only "for the purpose of abatement of the nuisance." Id. Section (d) of the law states: "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." Id. (emphasis added).

- 24. Ala. Code § 45-11-82 improperly designates Pastor Martin's provision of housing to unrelated offenders as a nuisance per se. The same act, if done in other parts of the state, does not constitute a nuisance. Housing multiple registered offenders on the same property is not prohibited statewide in Alabama. "A nuisance at law or a nuisance per se is defined to be 'an act, occupation, or structure which is a nuisance at all times and under any circumstances, regardless of location or surroundings." Wheeler v. River Falls Power Co., 111 So. 907, 910 (Ala. 1926) (citation omitted). Use of Pastor Martin's property to house offenders is not a nuisance per se.
- 25. 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. On the contrary, one study has shown that "[h]igh-risk sex offenders living in Shared Living Arrangements had significantly fewer violations than those living in other living arrangements." See "Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community," prepared for the Colorado State

Judiciary Committees, Senate and House of Representatives, March 15, 2004, at p. 3, available at http://csom.org/pubs/CO%20Residence%20Restrictions%201.pdf (last visited November 14, 2014). See also Richard Tewksbury, Evidence of Ineffectiveness: Advancing the Argument against Sex Offender Residence Restrictions, Criminology & Public Policy, Vol. 13:1, 135-138 (2014) (Sex offender recidivism is widely recognized as among the lowest of all forms of offenses. Because of this residency restrictions discernable have effect offender recidivism), available on sex http://onlinelibrary.wiley.com/doi/10.1111/1745-9133.12075/pdf (last visited November 14, 2014). Thus, the Legislature may have created more harm to public safety by shutting down Pastor Martin's transitional housing and causing the offenders to disperse and live elsewhere.

26. Ala. Code § 45-11-82 also leaves unabated appreciable harm that its drafters claim they intend to prevent. The statute expressly provides an exception for family members or spouses to live together under the same roof, even if they are all registered sex-offenders. This exception is much more likely to lead to recidivism and endangering of children because most child victims are introduced to sex offenders by friends or family. See Elizabeth E. Mustaine, Sex Offender Residency Restrictions: Successful Integration or Exclusion? Criminology & Public Policy, Vol. 13:1, 169-177 (2014), available at http://onlinelibrary.wiley.com/doi/10.1111/1745-9133.12076/pdf (last visited November 14, 2014); see also Lawrence A. Greenfeld, Sex Offenses and Offenders – An Analysis of Data on Rape and Sexual Assault, U.S. Department of Justice, Bureau of Justice Statistics, February 1997 at iii ("Victim and offender are

likely to have had a prior relationship as family members, intimates, or acquaintances. Victims of rape and sexual assault report that in nearly 3 out of 4 incidents, the offender was not a stranger. Based on police-recorded incident data, in 90% of the rapes of children younger than 12, the child knew the offender; two-thirds of the victims 18 to 29 years old had a prior relationship with the rapist."), available at http://www.bjs.gov/content/pub/pdf/SOO.PDF (last visited November 14, 2014); Hollida Wakefield, The Vilification of Sex Offenders: Do Laws Targeting Sex Offenders Increase Recidivism and Sexual Violence? Journal of Sexual Offender Civil Commitment: Science and the Law, 1, 141-149 (2006) ("[N]otification laws assume most sexual offenses are committed by strangers. But in reality, more than 75% are committed by family members and by people known to the victim.") (internal citation omitted), available at http://www.ipt-forensics.com/library/jsocc sl01.htm (last visited November 14, 2014).; cf. Kelly M. Socia, Residence Restrictions are Ineffective, Inefficient, and Inadequate: So Now What? Criminology & Public Policy, Vol. 13:1, 179-188 (2014) (noting that residency restrictions do not protect children from sex evidence crimes because they based), available are not at http://onlinelibrary.wiley.com/doi/10.1111/1745-9133.12071/pdf visited (last November 14, 2014).

27. The Sheriff did not have any concern about the men living in close proximity to each other and found it easier to keep track of registered offenders because they were in one place. Nor did the men living there cause problems that had to be dealt with by law enforcement. See, e.g., Exhibit 4 at 2 ("Chilton County Sheriff")

Kevin Davis said last week there were 10 offenders living at the address and one had filed his paperwork to move. Davis said he's not aware of any problems caused by the men.").

- 28. 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, 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 was not enacted.
- 29. Instead, HB 556 was passed by the Alabama House of Representatives on March 5, 2014, and by the Alabama Senate on March 18, 2014.
- 30. After HB 556 was passed, an investigator from the Chilton County Sheriff's office visited Pastor Martin to inform him that the law would become effective on July 1, 2014. The investigator told Pastor Martin that he should go to the District Attorney's office to talk to them about what effect the law would have on him.
- 31. Pastor Martin went to the District Attorney's office and met with Defendant Houston and Assistant District Attorney C.J. Robinson. Pastor Martin was ordered to evict the offenders who resided in the trailers. Robinson explained to Martin that if he failed to do so, the law would be enforced and he would be brought into court and fined no less than \$500 and no more than \$5,000 for violating the new

law. Robinson made it clear to Pastor Martin that the men currently living in the trailers had to move out or legal action would be taken against Martin.

- 32. On June 30, 2014, the District Attorney's office followed up on Assistant District Attorney Robinson's verbal threat with a formal written notice. *See* Exhibit 2. Pastor Martin was given 14 days to comply with the law. He quickly evicted the residents in order to avoid the penalties threatened by the law. Because the law provided that his use of his property "shall constitute a public nuisance," and requires that a court impose a fine of "no less than \$500 and no more than \$5,000," had he refused to shut down his housing, Pastor Martin could have been fined between \$500 and \$60,000 for the twelve men who were living at his church when he was served with notice (the fine is "for each separate civil action" the District Attorney could have brought one action or twelve actions).
- 33. But for Ala. Code § 45-11-82 and Defendant's clear order that he comply with the law or face immediate enforcement, Pastor Martin would have continued to make housing available as a part of his ministry and the exercise of his religious beliefs.
- 34. Ala. Code § 45-11-82, and its enforcement by Defendant, 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.

- 35. 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.
- 36. Ala. Code § 45-11-82 also penalizes Pastor Martin while providing no opportunity to challenge whether housing offenders on his property constitutes a nuisance. Under the statute, any violation "shall constitute a public nuisance." The law provides no exceptions and creates an irrebutable presumption, thus violating the Due Process Clause of the Fourteenth Amendment. Housing multiple offenders on the same property is not a nuisance per se under Alabama law.
- 37. 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

38. Ala. Code § 45-11-82 is a land use regulation within the meaning of RLUIPA. 42 U.S.C. § 2000cc-5(5).

- 39. 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).
- 40. Under RLUIPA, when the government places a substantial burden on religious exercise, it must demonstrate that the imposition of the burden is in furtherance of a compelling governmental interest and that it is the least restrictive means of furthering that interest. 42 U.S.C. § 2000cc(a)(1).
- 41. Ala. Code § 45-11-82 violates RLUIPA because it does not further a compelling State interest and, even if it did, it is not the least restrictive means of doing so. 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

- 42. 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.
- 43. As a direct result of Pastor Martin being ordered by Defendant Houston to disperse those living on his property or face an enforcement action under Ala. Code § 45-11-82, Pastor Martin 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).

44. 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

45. Pastor Martin is the only property owner in Chilton County who is affected by § 45-11-82. The law was drafted and passed specifically to apply to Pastor Martin. The law is thus a Bill of Attainder prohibited 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

46. Ala. Code § 45-11-82 deprives Pastor Martin of the use of his property for legal purposes without due process of law. Housing multiple offenders on the same property is not a nuisance per se under Alabama law, yet § 45-11-82 purports to deem it one by creating an irrebutable presumption that housing more than one offender

in Chilton County constitutes a nuisance. There is no requirement that the state prove that a nuisance exists. The only issue before a court in enforcing the law is the abatement of the declared nuisance and the amount of fine to be assessed. 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.

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. § 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 Defendant 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 permanent injunction prohibiting Defendant from enforcing Ala. Code § 45-11-82 against Pastor Martin;
- 6. Award costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and
 - 7. Enter all further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

/s Randall C. Marshall

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Rule 15 Certification

I certify that pursuant to Fed.R.Civ.P. 15(a)(2), Defendant Houston has consented, in writing, to Plaintiff's filing of this First Amended Complaint.

/s Randall C. Marshall

CERTIFICATE OF SERVICE

I hereby certify that on this the 14th day of November, 2014, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will provide notice to the following CM/ECF participants:

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s/ Randall C. Marshall