

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WINDHOVER, INC. AND)	
JACQUELINE GRAY,)	
)	
Plaintiffs,)	Cause No. 07-cv-881 ERW
)	
v.)	
)	
CITY OF VALLEY PARK, MISSOURI,)	
)	
Defendant.)	

**SECOND AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Windhover, Inc. and Jacqueline Gray, for their second amended complaint against Defendant City of Valley Park, Missouri, state as follows:

INTRODUCTION

1. This action seeks a declaration of Plaintiffs' rights with respect to Valley Park Ordinance No. 1722, as purportedly amended and restated by Valley Park Ordinance No. 1736 ("Ordinance No. 1722"). The challenged ordinance purports to regulate immigration within the City of Valley Park. Plaintiffs seek a preliminary and permanent injunction restraining enforcement the ordinance.

2. Ordinance No. 1722 is an attempt to circumvent the judgment of the Circuit Court for St. Louis County entered March 12, 2007 in *Reynolds v. City of Valley Park*, No. 06-CC-3802. In that case, the state court entered a permanent injunction restraining the enforcement of anti-immigrant Ordinance No. 1708 and Ordinance No. 1715. Like the permanently enjoined ordinances, Ordinance No. 1722 is aimed at usurping the federal government's exclusive power to regulate immigration and is aimed in particular at immigrants of Hispanic origin. Ordinance

No. 1722 purports to penalize businesses who employ “illegal aliens.” Public comments by the mayor of Valley Park strongly suggest that those ordinances are motivated by racial animus toward Mexican immigrants in particular. The ordinance and its predecessors have caused, or threaten to cause, businesses to engage in racial profiling and violate federal anti-discrimination laws. The ordinances threaten to subject the Plaintiffs to enforcement actions by the City without due process and to impose a penalty not authorized by Missouri law.

JURISDICTION AND VENUE

3. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over Plaintiffs’ cause of action arising under the Constitution of the United States, 42 U.S.C. § 1983, and pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has supplemental jurisdiction over plaintiffs’ causes of action arising under the Missouri state law pursuant to 28 U.S.C. § 1367.

4. Venue lies in the United States District Court for the Eastern District of Missouri because Defendant resides in this district. 28 U.S.C. § 1391(b)(1). Venue also lies in this district because a substantial part of the events or omissions giving rise to the claim occurred in this district. 28 U.S.C. § 1391(b)(2).

5. Divisional venue is in the Eastern Division because Defendant is a resident of St. Louis County. E.D.Mo. L.R. 2.07(A)(1), (B)(1).

PARTIES

6. Plaintiff Windhover, Inc. (“Windhover”) is a Missouri corporation with its principal place of business in Valley Park, Missouri. Windhover owns rental units in the City of Valley Park.

7. Plaintiff Jacqueline Gray is an adult citizen and resident of State of Missouri. Jacqueline Gray is the sole owner and principal of Windhover, Inc.

8. Defendant, City of Valley Park, is a City of the fourth class located in St. Louis County, Missouri.

BACKGROUND

9. Windhover owned rental units in Valley Park at the time Ordinance No. 1722 was enacted.

10. Windhover is a “business entity” as that term is defined in Ordinance No. 1722. Ordinance No. 1722 would require the Plaintiffs to investigate and determine the immigration status of any person it hires or contracts to perform work on its properties, and, because Plaintiffs do not know how to determine a person’s immigration status, would subject them to the enforcement provisions of Ordinance No. 1722. In addition, even if Plaintiffs were able to independently verify a person’s immigration status, they will nevertheless be subject to the filing complaints pursuant to Ordinance No. 1722, and thus be subject to the enforcement provisions of Ordinance No. 1722.

11. Plaintiffs have legally protected interests that are threatened or violated by the unconstitutional acts of the City of Valley Park.

12. On July 17, 2006, the City of Valley Park, Missouri passed Ordinance No. 1708 (“Ordinance 1708”), entitled “An Ordinance Relating to Illegal Immigration Within the City of Valley Park, Mo.,” which ordinance sought to regulate federal immigration matters. *See* Exhibit A. In particular, Ordinance 1708 purported to penalize any landlord or business who leased property to or employed an “illegal alien.”

13. On September 22, 2006, Plaintiff Gray and others¹ filed suit in the Circuit Court for the County of St. Louis alleging that Ordinance No. 1708 violated Missouri state law as well as federal law.

14. On September 25, 2006, Circuit Court Judge Barbara W. Wallace entered a Temporary Restraining Order enjoining enforcement of Ordinance 1708.

15. On September 26, 2006, the City of Valley Park, Missouri enacted Ordinance No. 1715 ("Ordinance 1715"), entitled "An Ordinance Repealing Sections One, Two, Three and Four of Ordinance No. 1708 Relating to Illegal Immigration Within the City of Valley Park, MO, and Enacting a New Ordinance in Lieu Thereof Relating to the Employment of and Harboring of Illegal Aliens Within the City of Valley Park, MO." See Exhibit B. Among other things, Ordinance 1715 removed an "English-only" provision that was included in Ordinance 1708, but still purported to penalize any landlord or business who leased property to or employed an "illegal alien."

16. On September 27, 2006, Judge Wallace entered an Amended Temporary Restraining Order enjoining the enforcement of Ordinance 1715.

17. On February 14, 2007, during the pendency of the action before Judge Wallace, the City of Valley Park, Missouri enacted Ordinance 1721 entitled "An Ordinance Repealing Section 510.020 Subsection 103.6.1 Of The Property Maintenance Code Relating To Inspections And Occupancy Permits And Enacting A New Ordinance In Lieu Thereof Relating To The Same Subject Matter," which, like Ordinance 1715, seeks to regulate immigration matters, specifically, the rental of dwellings to aliens unlawfully in the United States. See Exhibit C. Ordinance 1721

¹ In addition to Plaintiff Gray, Stephanie Reynolds, Florence Streeter and the Metropolitan St. Louis Equal Housing Opportunity Council were named plaintiffs in the September 22, 2006 suit. The case was captioned *Reynolds, et al., v. City of Valley Park, et al.*, and docketed in this Court as Cause No. 06-CC-3802 in Division No. 13.

requires landlords to obtain from each prospective tenant information regarding the “names, ages, citizenships, and relationships for each proposed occupant, together with such identifying information that shall be required by the City.” Exhibit C, Section Two. The landlord then must apply for an occupancy permit. *Id.* The Building Commissioner shall not issue an occupancy permit if it is determined that “any alien unlawfully present in the United States is a proposed occupant[.]” *Id.* Thus, under no circumstances will an occupancy permit be issued unless and until the City either determines that no proposed occupant is an “alien unlawfully in the United States” or concludes that it is unable to make that determination. *Id.* Ordinance 1721 initially provided that it would become effective upon, among other things, “the termination of any restraining order or injunction which [was then] in force in Cause No. 06-CC-3802[.]” *Id.* at 2, Section Three.

18. On February 14, 2007, the City of Valley Park, Missouri also enacted Ordinance No. 1722, entitled “An Ordinance Repealing Ordinance No. 1715 Relating to Illegal Immigration Within the City of Valley Park, MO, and Enacting a New Ordinance in Lieu Thereof Relating to the Employment of Illegal Aliens Within the City of Valley Park, Mo.[.]” which seeks to regulate immigration matters, specifically, the employment of illegal aliens. *See* Exhibit D. Ordinance No. 1722 provides that “[i]t is unlawful for any business entity to recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker to perform work in whole or in part in the City.” *Id.* at 3, Section Four, A. It provides that an enforcement action may be initiated against a business entity by means of a complaint submitted by any resident of Valley Park alleging that the business entity is in violation of the Ordinance. *Id.* at 4. The business entity will then have 3 days in which to provide “identity information . . . regarding any persons alleged to be unlawful workers.” *Id.*

Any business entity that does not provide the information requested by the City with 3 days or who does not correct a violation of the Ordinance within 3 days of being notified of a violation, shall have its business license suspended. *Id.*

19. On February 14, 2007, the City of Valley Park, Missouri further enacted Ordinance No. 1723, entitled “An Ordinance Amending Bill 1866, Proposed Ordinance 1721, Pertaining to the Property Maintenance Code Relating to Inspections and Occupancy Permits by Clarifying Section Two and Section Three Thereof.” *See* Exhibit E. Ordinance No. 1723 amended Ordinance 1721 to expressly reference Ordinance 1722 with respect to the requirement that the Valley Park Building Commission not issue an occupancy permit if “any alien unlawfully present in the United States is a proposed occupant[.]” Ex. E, Section One.

20. On February 14, 2007, the City of Valley Park, Missouri further enacted Ordinance No. 1724, entitled “An Ordinance Amending Bill 1867, Proposed Ordinance 1722, Pertaining to the Employment of Illegal Aliens by Adding Language to Section Seven Thereof Clarifying the Effective Date,” which Ordinance amended Ordinance 1722 so that it would not become effective until “the termination of any restraining orders or injunctions which [were then] in force in Cause No. 06-CC-3802[.]” *See* Exhibit F.

21. On February 27, 2007, the City of Valley Park, Missouri enacted ordinance No. 1725, entitled “An Ordinance Amending Ordinance 1723 Pertaining to the Effective Dates of the Property Maintenance Code Providing that the Enforcement of Ordinance 1721 Shall Become Effective Immediately,” which ordinance amended Ordinance 1723, which in turn had amended Ordinance 1721, to make Ordinance 1721 effective and enforceable immediately. *See* Exhibit G.

22. On March 12, 2007, Circuit Court Judge Barbara W. Wallace ordered that the temporary restraining orders enjoining enforcement of Ordinance No. 1708 and Ordinance No. 1715 be made permanent. *See* Exhibit H.

23. On March 14, 2007, Plaintiff Gray initiated this action by filing a Petition for Declaratory and Injunctive Relief seeking an order enjoining the enforcement of the newly enacted Ordinance 1721 and Ordinance 1722 in the Circuit Court for St. Louis County.² On April 12, 2007, Plaintiffs filed in the state court an Amended Petition to join Windhover as a Plaintiff and add additional causes of action.

24. On May 1, 2007, Defendant removed this case to this Court. Plaintiffs' motion for remand was denied.

25. On May 31, 2007, Defendant submitted to Plaintiffs a modified version of Ordinance No. 1722 that purports to have been signed by the Mayor and attested to by the City Clerk on February 14, 2007, the same date upon which the version of Ordinance No. 1722 attached hereto as Exhibit D purports to have been signed by the Mayor and attested to by the City Clerk. *See* Exhibit 1.

26. On June 4, 2007, Defendant submitted to the Court (Docket No. 32-2) yet a third version of Ordinance No. 1722 that purported to have been signed by the Mayor and attested to by the City Clerk. *See* Exhibit J. That version of Ordinance No. 1722 purported to have been passed by the Board of Aldermen on the same date the versions of Ordinance No. 1722 attached

² As noted above, Ordinance No. 1722 did not become effective under its own terms until "the termination of any restraining orders or injunctions now in force [as of February 14, 2007] in Cause No. 06-CC-3802[.]" Plaintiffs originally challenged Ordinance No. 1722 in this case to the extent that: (1) Ordinance 1724 was construed as making 1722 effective upon the termination of the preliminary injunction in Cause No. 06-CC-3802; and/or (2) the permanent injunction in Cause No. 06-CC-3802 is vacated on appeal or on remand. Defendants have now purported to make Ordinance No. 1722 effective immediately.

hereto as Exhibits D and I were purportedly passed, namely, February 5, 2007, but the date it was signed by the Mayor is unclear. The face of the Ordinance attached hereto as Exhibit J states only: "Approved this /[^] Monday of February 20." *Id.*

27. On June 20, 2007, Defendant filed an Amended Answer to Plaintiffs' Amended Petition (Docket No. 43), with which it filed yet a fourth version of Ordinance No. 1722 that purported to have been passed by the Board of Aldermen on February 5, 2007 and signed by the Mayor and attested to by the City Clerk on February 14, 2007. *See* Exhibit K. Accordingly, there are at least four different versions of Ordinance No. 1722 that purport to have been passed by the Board of Aldermen on February 5, 2007, three of which purport to have been signed by the Mayor and attested to by the City Clerk on February 14, 2007, and for one of which the execution and attestation dates are unclear.

28. On July 16, 2007, Defendant enacted Ordinance No. 1735, which repealed certain disputed provisions from Ordinance No. 1721. *See* Exhibit L. On August 9, 2007, this Court granted the parties' stipulation for voluntary dismissal of Plaintiffs' claims related to Ordinance No. 1721. (Docket No. 58.)

29. On August 9, 2007, Defendant purportedly enacted Ordinance No. 1736, which purported to amend Ordinance No. 1722 to make it effective immediately. *See* Exhibit M. Ordinance No. 1736 was ostensibly enacted in a special meeting of the Board of Aldermen for which there was less than 24-hours notice. The August 9, 2007 minutes of the special meeting stated that the meeting was called "to change the effective date of Ordinance 1722 which was called into question through a motion filed in Federal Court on Thursday, August 9, 2007 by attorneys representing Jacqueline Gray. Due to a pending hearing on Friday, August 10, 2007 it

was the suggestion of Counsel for the City to consider amending Section 7 or [sic] Ordinance 1722 to clarify the effective date for the pending litigation.” Exhibit N.

30. Defendant had been aware that Plaintiffs called into question the effective date of Ordinance No. 1722 since at least July 24, 2007. The hearing that this Court had scheduled for August 10, 2007 was a scheduling conference and was not for the purpose of oral argument on Plaintiffs’ August 9, 2007 motion. The putative Ordinance No. 1736, though purporting to make Ordinance No. 1722 immediately effective, does not purport to become enforceable until December 1, 2007. Ex. M. Therefore, there was no apparent reason for calling a special meeting on less than 24-hours notice to enact Ordinance No. 1736.

31. On August 20, 2007, Defendant purportedly re-enacted Ordinance No. 1736 to make Ordinance No. 1722 effective immediately.

FEDERAL REGULATION OF IMMIGRATION

32. The power to regulate immigration is an exclusively Federal power that derives from the Constitution’s grant to the Federal government of the power to “establish a uniform Rule of Naturalization,” U.S. Const. art. I, § 8, cl. 4., and to “regulate Commerce with foreign Nations.” *Id.*, cl. 3.

33. Pursuant to its exclusive power over matters of immigration, the Federal government has established a comprehensive system of laws, regulations, procedures, and administrative agencies that determine, subject to judicial review, whether and under what conditions a given individual may enter, stay in, and work in the United States.

34. In addition to provisions that directly regulate immigrants’ entry and conduct, the Federal immigration laws also include provisions directed at other classes of individuals, such as those who employ or assist immigrants. Thus, the comprehensive Federal immigration scheme includes sanctions, documentation, and anti-discrimination provisions directly applicable to

employers, as well as a criminal and civil scheme applicable to those who assist individuals who are not lawfully in the United States.

35. The laws, procedures, and policies created by the Federal government regulate immigration and confer rights in a careful balance reflecting the national interest.

COUNT I

Violation of Supremacy Clause – Preemption

36. Plaintiffs re-allege and incorporate by reference ¶¶ 1-35.

37. Ordinance No. 1722 violates the Supremacy Clause of the Constitution of the United States, U.S. Const. art. VI, cl. 2, and conflicts with, violates, and is preempted by the Immigration Reform and Control Act of 1986. The power to regulate immigration vests exclusively in the federal government. Ordinance No. 1722 encroaches on the federal government's exclusive power to regulate immigration, legislates in a field that is completely occupied by the federal government, and conflicts with federal laws, regulations, policies, and objectives.

COUNT II

Violation of Fourteenth Amendment – Due Process Clause

38. Plaintiffs re-allege and incorporate by reference ¶¶ 1-35.

39. Ordinance No. 1722 violates Plaintiffs' due process rights under the Fourteenth Amendment to the Constitution of the United States, in that it subjects the Plaintiffs to being deprived of their business or otherwise punished without providing any standards or guidance for compliance. Plaintiffs have no way of determining the immigration status of a prospective employee or contractor, and are at risk of violating other laws by attempting to do so.

40. Ordinance No. 1722 provides for no pre-sanction hearing, as is required under state law, and no meaningful process or procedure by which Plaintiffs might challenge Defendant's determination that Plaintiffs have violated the ordinance.

COUNT III

Violation of Fourteenth Amendment – Equal Protection Clause

41. Plaintiffs re-allege and incorporate by reference ¶¶ 1-35.

42. Ordinance No. 1722 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. On information and belief, its enactment was motivated by racial animus toward persons of Hispanic heritage and with the purpose of deterring persons of Hispanic heritage from working or living in Valley Park. It has or will have a discriminatory impact on persons of Hispanic heritage by inducing employers to refrain from employing persons who are, or are perceived to be, of Hispanic heritage, and by inducing City officials, Valley Park business entities or Valley Park residents to file complaints against business entities based on those business entities' employment of persons of Hispanic heritage. Further, Ordinance No. 1722 embodies an impermissible alienage classification that bears no rational relationship to the stated purposes of the ordinance.

COUNT IV

Preclusion – Enforcement Barred by Full Faith and Credit Clause

43. Plaintiffs re-allege and incorporate by reference ¶¶ 1-35.

44. The Full Faith and Credit Act, 28 U.S.C. § 1738, requires this Court to give the same preclusive effect to a state-court judgment as another court of that state would give.

45. Defendant is precluded from asserting the validity of Ordinance No. 1722 by principles of claim preclusion and/or issue preclusion as a result of the March 12, 2007 judgment of the Missouri state court in *Reynolds v. City of Valley Park*, Cause No. 06 CC 3802. There was

a final judgment on the merits in *Reynolds*, there is an identity of the cause of action under Mo.R.Stat. § 79.470 in both the *Reynolds* suit and this suit; and there is an identity of parties in the two suits.

COUNT V

Supplemental Jurisdiction – Violation of Mo.R.Stat. § 79.470

46. Plaintiffs re-allege and incorporate by reference ¶¶ 1-35.

47. Ordinance No. 1722 is void and unenforceable because its penalty provision exceeds that authorized by Mo.R.Stat. § 79.470.

COUNT VI

Supplemental Jurisdiction – Violation of Missouri Sunshine Law

48. Plaintiffs re-allege and incorporate by reference ¶¶ 1-35.

49. On August 9, 2007 Defendant purportedly enacted Ordinance No. 1736, which purported to amend Ordinance No. 1722 to make it immediately effective, rather than it becoming effective only upon the termination of the injunction in *Reynolds v. City of Valley Park*, Cause No. 06 CC 3802.

50. Defendant's actions in purportedly enacting Ordinance No. 1736 on August 9, 2007 were taken in violation of, and served to defeat the purposes of, the Missouri Sunshine Law, Mo. R. Stat. § 610.010 *et seq.* The action was taken at a "special" Board of Aldermen's meeting for which there was less than the 24-hours advance notice required under Mo. R. Stat. § 610.020(2). There was no good cause justifying that departure from the normal requirements under Mo. R. Stat. § 610.020(2). The Court is authorized under Mo. R. Stat. § 610.027(5) to "void any action taken in violation of sections 610.010 to 610.026," which includes section 610.020(2). Accordingly, this Court is authorized to void the action taken by the Valley Park Board of Aldermen on August 9, 2007.

51. Defendant knowingly and purposely violated Mo. R. Stat. § 610.020(2). Section 610.027(3) authorizes the imposition of a civil penalty of up to one thousand dollars, plus costs and reasonable attorneys fees, for a knowing violation of section 610.020(2). Section 610.027(4) authorizes the imposition of a civil penalty of up to five thousand dollars, plus costs and reasonable attorneys fees, for a purposeful violation of section 610.020(2). Accordingly, this Court is authorized to impose on Defendant a civil penalty of up to \$5,000, plus costs and reasonable attorneys fees.

COUNT VII

Declaratory Judgment Act

52. Plaintiffs re-allege and incorporate by reference ¶¶ 1-51.

53. Because Defendants' actions are unconstitutional and violate state law, plaintiffs are entitled to a declaratory judgment to that effect pursuant to 28 U.S.C. § 2201.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court:

- A. Enter judgment in favor of Plaintiffs and against Defendant;
- B. Enter an order declaring Ordinance No. 1722 to be invalid, void, and unenforceable;
- C. Award Plaintiffs' counsel reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law;
- D. Assess against Defendant and award to Plaintiffs any civil penalties and costs and reasonable attorney fees as permitted by the Missouri Sunshine Law; and

E. Grant to Plaintiffs such other and further relief as may be just and proper under the circumstances, including but not limited to appropriate injunctive relief.

Dated: August 27, 2007

Respectfully submitted,

/s/ Daniel J. Hurtado

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