UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MICHAEL TANKERSLEY,
Plaintiff,

v.

JAMES W. ALMAND, in his official capacity as Trustee of the Client Protection Fund, *et al.*,
Defendants.

No. 8:14-cv-01668-PJM

Hon. Peter J. Messitte

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

HEARING REQUESTED

INTRODUCTION

This case presents a clear conflict between state rules and federal rights. Recognizing the privacy risks inherent in the widespread disclosure of individuals' Social Security Numbers (SSNs), Congress enacted Section 7 of the federal Privacy Act, which generally prohibits federal, state, and local agencies from conditioning "any right, benefit, or privilege" on the disclosure of a person's SSN. Pub. L. 93-579, 88 Stat 1896, § 7(a)(1), *at* 5 U.S.C. § 552a note. Maryland Rules of Procedure 16-811.5 and 16-811.6 violate this clear congressional command by requiring an attorney licensed to practice in Maryland to provide his or her SSN to Maryland bar authorities or face suspension. When plaintiff Michael Tankersley, an attorney who has been licensed to practice law in Maryland for 28 years, asserted his right under the Privacy Act not to provide his SSN, defendants suspended him from the practice of law in Maryland for failure to provide the SSN.

Tankersley now seeks declaratory and injunctive relief under 42 U.S.C. § 1983 and the Supremacy Clause, U.S. Const. Art. VI, for the violation of his right under Section 7 of the Privacy Act. Based on the undisputed facts, Tankersley is entitled to judgment as a matter of law on all claims.

BACKGROUND

In 1974, Congress enacted the Privacy Act, 5 U.S.C. § 552a. "[R]ecognizing the dangers of widespread use of SSNs as universal identifiers," *Greidinger v. Davis*, 988 F.2d 1344, 1353 (4th Cir. 1993), and identifying this issue as "one of the most serious manifestations of privacy concerns in the Nation," S. Rep. No. 1183, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Admin. News 6916, 6943, Congress included in the Privacy Act a provision (Section 7) stating: "It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number." Pub. L. 93-579, § 7(a)(1), *at* 5 U.S.C. § 552a note.

In November 2013, the Maryland Court of Appeals adopted Maryland Rules of Procedure 16-811.5 and 16-811.6. Under Rule 16-811.5(a)(1)(A), "each attorney admitted to practice before the Court of Appeals . . . shall provide to the treasurer of the [Client Protection] Fund the attorney's Social Security number." The Client Protection Fund of the Bar of Maryland (CPF), one of the defendants here, is a body created by the Maryland Legislature "to maintain the integrity of the legal profession by paying money to reimburse clients for losses caused by defalcation by lawyers." Md. Code, Occup. & Prof. Art. § 10-311(b). Under Rule 16-811.6(b)(1), the CPF shall notify any attorney who has failed to provide his or her SSN that he or she must do so within 30 days or be suspended from the practice of law in Maryland. Under Rule 16-811.6(d), if the attorney has not provided the SSN within 30 days of the notice of delinquency, the CPF shall propose to the Court of Appeals, and the Court of Appeals shall without further process enter, an order suspending the attorney from the practice of law.

Plaintiff Michael Tankersley has been licensed to practice law in Maryland since 1986 and in the District of Columbia since 1987. Decl. of Michael Tankersley ¶ 2. Until March 2014, Tankersley had never been subject to discipline or suspension by any bar. *Id.* ¶ 3.

Tankersley avoids sharing his SSN unnecessarily because of concerns about privacy and identity theft. *Id.* ¶ 4. Tankersley himself was a victim of identity theft in 2013 when someone else filed a tax return with the Internal Revenue Service using Tankersley's SSN. *Id.* ¶ 4. As a result, Tankersley had to take special measures to prove his identity to the IRS; his tax refund was delayed for several months; and he had to adopt special procedures to verify his identity when filing his tax return in 2014. *Id.* ¶ 4.

On February 10, 2014, defendant James W. Almand, chair of defendant CPF, sent Tankersley a notice of delinquency informing him that he had not provided his SSN and that he had 30 days to do so or be suspended from the practice of law in Maryland. *Id.* ¶ 5 & Ex. A. On March 10, Tankersley replied to Almand with a letter in which Tankersley explained that he would not provide his SSN because of concerns about privacy and identify theft and pointed out that suspending him as a result of his refusal would violate the federal Privacy Act. *Id.* ¶ 6 & Ex. B. On March 20, defendant Maryland Court of Appeals, in an order signed by all of its Judges and its Clerk (all of whom are defendants here in their official capacities), suspended Tankersley from the practice of law for failing to provide his SSN. *Id.* ¶ 7 & Ex. C.

On May 22, 2014, Tankersley filed this lawsuit for declaratory and injunctive relief under 42 U.S.C. § 1983 and the Supremacy Clause, U.S. Const. Art. VI, for the violation of his right under Section 7 of the Privacy Act.

ARGUMENT

The undisputed actions of the defendants and the Maryland Rules of Procedure under which they were taken are unlawful under the Privacy Act. No exception to the Privacy Act applies. Both 42 U.S.C. § 1983 and the Supremacy Clause provide a remedy for the violation of Tankersley's rights.

I. The Privacy Act Forbids Suspending Tankersley For Refusing To Disclose His SSN.

The facts are clear and undisputed: Maryland Rules of Procedure 16-811.5 and 16-811.6 provide that an attorney licensed to practice in Maryland must provide his or her SSN to Maryland bar authorities or face suspension. Pursuant to these rules, defendants suspended Tankersley for refusing to provide his SSN.

The law is equally clear: these rules and Tankersley's suspension are unlawful under Section 7 of the federal Privacy Act, which forbids federal, state, and local government agencies from denying a person "any right, benefit, or privilege" because the person refused to share his or her SSN. Pub. L. 93-579, § 7(a)(1), *at* 5 U.S.C. § 552a note.[1] The CPF and Court of Appeals (and their officials) have deprived Tankersley of the privilege of practicing law in Maryland because of his refusal to provide his SSN. Therefore, they have violated the Privacy Act, and the Maryland Rules of Procedure that authorized their actions (Rules 16-811.5 and 16-811.6) are invalid because they conflict with federal law. U.S. Const. Art. VI ("[T]he Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

[1] Although Section 7 was not codified in the United States Code, it is part of the enacted statute. *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am.*, 508 U.S. 439, 448 (1993) ("Though the appearance of a provision in the current edition of the United States Code is prima facie evidence that the provision has the force of law, it is the Statutes at Large that provides the legal evidence of law[.]" (citations and internal quotation marks omitted)); *cf. United States v. Welden*, 377 U.S. 95, 98 n.4 (1964) ("[T]he Code cannot prevail over the Statutes at Large[.]" (citation and internal quotation marks omitted)).

In accordance with the plain language of the Privacy Act, cases throughout the country have held that SSN-collection requirements must yield. *See Schwier v. Cox*, 340 F.3d 1284, 1297 (11th Cir. 2003) (reinstating claim for Privacy Act violation where a state required disclosure of SSNs as a condition of voter registration); *Ingerman v. Del. River Port Auth.*, 630 F. Supp. 2d 426, 445 (D.N.J. 2009) (holding that disclosure of SSN could not be required as a condition of receiving a senior citizen discount on highway toll rates); *Szymecki v. City of Norfolk*, No. 2:08CV142, 2008 WL 4223620, *1-*2, *9 (E.D. Va. Sept. 11, 2008) (denying motion to dismiss Privacy Act claim where police ordered arrestee to provide his SSN as a condition of avoiding further detention and again as a condition of retrieving confiscated property); *Stollenwerk v. Miller*, No. Civ. A. 04-5510, 2006 WL 463393, *7 (E.D. Pa. Feb. 24, 2006) (holding that disclosure of SSN could not be required as a condition of purchasing a handgun or of obtaining a license to carry a handgun); *Kentucky Rest. Concepts, Inc. v. City of Louisville*, 209 F. Supp. 2d 672, 686-87 (W.D. Ky. 2002) (holding that disclosure of SSN could not be required as a condition of obtaining license for adult entertainment establishment); *Russell v. Bd. of Plumbing Examiners*, 74 F. Supp. 2d 339, 347-49 (S.D.N.Y. 1999) (holding that disclosure of SSN could not be required as a condition of obtaining plumber's license); *McKay v. Altobello*, No. Civ. A. 96-3458, 1997 WL 266717, *2, *5 (E.D. La. May 16, 1997) (holding that disclosure of SSN could not be required as a condition of voter registration); *Yeager v. Hackensack Water Co.*, 615 F. Supp. 1087, 1091 (D.N.J. 1985) (holding that disclosure of SSN could not be required as a condition of receiving water during drought emergency); *Wolman v. United States*, 501 F. Supp. 310, 311 (D.D.C. 1980) (holding that disclosure of SSN could not be required as a condition of valid selective service registration), *legislatively overruled*, 50 U.S.C. App. § 453(b); *State v. Vickery*, CR2-90-59545, 1991 WL 32153, *6 (Conn. Super. Ct. Feb. 15, 1991) (holding that disclosure of SSN could not be a bond condition imposed

on defendants in state court); *Florida Div'n of Workers' Comp. v. Cagnoli*, 914 So. 2d 950, 950-51 (Fla. 2005) (holding that disclosure of SSN could not be required as a condition of obtaining workers' compensation).

Two decades ago, the Fourth Circuit explained the rationale behind the Privacy Act's protection of SSNs against unnecessary disclosure: "[A]rmed with one's SSN, an unscrupulous individual could obtain a person's welfare benefits or Social Security benefits, order new checks at a new address on that person's checking account, obtain credit cards, or even obtain the person's paycheck. . . . Succinctly stated, the harm that can be inflicted from the disclosure of a SSN to an unscrupulous individual is alarming and potentially financially ruinous." *Greidinger v. Davis*, 988 F.2d 1344, 1354 (4th Cir. 1993) (citations and footnote omitted); *see also Ostergren v. Cuccinelli*, 615 F.3d 263, 279 (4th Cir. 2010) ("On average, victims of identity theft lose about $17,000 and must spend over $1,000 and 600 hours of personal time cleaning up their credit reports."). The danger of identity theft continues to loom large. *See, e.g.*, Mike Denison, *Maryland state agencies hit by cyberattacks, records show*, Maryland Daily Record (Apr. 18, 2014), *at* http://thedailyrecord.com/2014/04/18/maryland-state-agencies-hit-by-cyberattacks-records-show; Colin Campbell, *More than 309,000 identities exposed in University of Maryland cyberattack*, Balt. Sun (Feb. 20, 2014), *at* http://www.baltimoresun.com/news/maryland/bs-md-university-of-maryland-data-breach-20140219,0,2321285.story. The Social Security Administration has advised the public of the danger, explaining in a recent publication that "[i]dentity theft is one of the fastest growing crimes in America. A dishonest person who has your Social Security number can use it to get other personal information about you," then "apply for more credit in your name, . . . use the credit cards and [] not pay the bills." Soc. Sec. Admin., *Identity Theft And Your Social Security Number* 1, SSA Publication No. 05-10064 (Dec. 2013), *available at* http://www.ssa.gov/pubs/EN-05-10064.pdf.

Accordingly, the Social Security Administration advises that SSNs are "confidential" and "[y]ou should be careful about sharing your number, even when you are asked for it." *Id.* Thus, the plain text of the Privacy Act is supported by a powerful policy rationale.

Although the Privacy Act contains an exception for "any disclosure which is required by federal statute," Pub. L. 93-579, § 7(a)(2)(A), *at* 5 U.S.C. § 552a note, that exception does not apply here, because no federal law requires the disclosure of Tankersley's SSN. The Reporter's Note to Rule 16-811.5 suggests that Maryland's requirement derives from a federal law governing federal-state cooperation in collecting child support. *See* Standing Comm. on Rules of Practice and Proc., Notice of Proposed Rules Changes 57 (Sept. 23, 2013) (discussing 42 U.S.C. § 666, which sets forth the obligations of state licensing authorities, including the Maryland Court of Appeals, to collect certain SSNs in order to facilitate the enforcement of child support obligations, and discussing Maryland Code, Family Law, § 10-119.3, which implements 42 U.S.C. § 666). But the Rules Committee misunderstood the scope of the federal law. The statutory language requires that States have "[p]rocedures requiring that the social security number of *any applicant* for a professional license, . . . [or] occupational license . . . be recorded on the application," 42 U.S.C. § 666(a)(13) (emphasis added). Tankersley, having been admitted to practice law in Maryland in 1986, is many years removed from being an "applicant" for a professional license, so § 666 by its own terms does not apply.

Because the Privacy Act forbids what Maryland Rules 16-811.5 and 16-811.6 require and what the defendants here have carried out — the suspension of an attorney for refusing to provide his SSN — these Maryland rules are invalid on their face and the suspension of Tankersley was unlawful.

II. Tankersley's Rights Under The Privacy Act Are Enforceable Under 42 U.S.C. § 1983 And The Federal Supremacy Clause.

Two independent sources of law provide Tankersley with a remedy for the violation of his Privacy Act right. Either is sufficient to justify relief.

A. Section 7 of the Privacy Act is enforceable under 42 U.S.C. § 1983.

Under 42 U.S.C. § 1983, "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in . . . [a] suit in equity." Under *Blessing v. Freestone*, 520 U.S. 329 (1997), as elaborated upon in *Gonzaga University v. Doe*, 536 U.S. 273 (2002), the enforceability of a federal statutory right via § 1983 depends on two inquiries: first, whether Congress created an enforceable right, and second, whether Congress foreclosed the use of § 1983 as a remedy. *See Gonzaga*, 536 U.S. at 284-85; *Blessing*, 520 U.S. at 340. Once a plaintiff shows the former, the right in question is presumptively enforceable unless the defendant establishes the latter. *See Gonzaga*, 536 U.S. at 284 & n.4.

Regarding the first question — whether a statute creates a right enforceable under § 1983 — the Fourth Circuit has summarized the inquiry in these terms:

> A statute creates an enforceable right if: (1) Congress intended that the provision in question benefit the plaintiff; (2) the right ostensibly protected by the statute "is not so vague and amorphous that its enforcement would strain judicial competence"; and (3) the statute unambiguously imposes a binding obligation on the states. In analyzing these requirements, a court must be careful to ensure that the statute at issue contains "rights-creating language" and that the language is phrased in terms of the persons benefited, not in terms of a general "policy or practice."

Pee Dee Health Care, P.A. v. Sanford, 509 F.3d 204, 210 (4th Cir. 2007) (quoting *Blessing*, 520 U.S. at 340-41 (internal quotations omitted), and *Gonzaga*, 536 U.S. at 284, 287, respectively). Illustrating what

constitutes "rights-creating language," the Court in *Gonzaga* contrasted the language of the Family Educational Rights and Privacy Act ("FERPA") provision at issue in that case, 20 U.S.C. § 1232g, with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Whereas the language common to Titles VI and IX focuses on individuals ("No person . . . shall . . . be subjected to discrimination") and thereby demonstrates congressional intent to create enforceable rights, the FERPA language (providing that "[n]o funds shall be made available" to any "educational agency or institution" that has a prohibited "policy or practice") reflects an "aggregate" focus rather than a concern about "whether the needs of any particular person have been satisfied." *Gonzaga*, 536 U.S. at 288 (citation and internal quotation marks omitted).

To answer the second question — whether Congress foreclosed the use of § 1983 as a remedy — the Fourth Circuit looks to whether Congress has either explicitly forbidden recourse to § 1983 or has implicitly forbidden it by enacting a "*comprehensive* enforcement scheme that is *incompatible* with individual enforcement under § 1983." *Doe v. Kidd*, 501 F.3d 348, 356 (4th Cir. 2007) (quoting *Blessing*, 520 U.S. at 341, with emphases added by the court of appeals); *accord Gonzaga*, 536 U.S. at 284 n.4.

Applying the *Blessing*/*Gonzaga* two-step analysis, the Eleventh Circuit held in *Schwier v. Cox*, 340 F.3d 1284 (11th Cir. 2003), that Section 7 of the Privacy Act creates a right that may be enforced via § 1983. *Id.* at 1290-92. *Schweier* concerned whether Georgia could require individuals to disclose their SSNs in order to register to vote. *Id.* at 1285-86. Regarding the first *Blessing*/*Gonzaga* inquiry (whether the statute creates an enforceable right), the Eleventh Circuit considered whether the language of Section 7(a)(1) — which forbids the "den[ial] *to any individual* any right, benefit, or privilege provided by law because of *such individual's* refusal to disclose his social security account number,"

Pub. L. 93-579, § 7(a)(1), *at* 5 U.S.C. § 552a note (emphasis added) — contains the "rights-creating language" required by *Gonzaga*. The court held that this language "clearly confers a *legal right on individuals*: the right to refuse to disclose his or her SSN without suffering the loss of any right, benefit, or privilege provided by law." *Schweier*, 340 F.3d at 1292 (emphasis in original). Furthermore, "the language of section 7 is clearly intended to benefit individuals . . . ; is specific rather than amorphous; and is clearly mandatory"; thus, "[t]o read the statute is to see that it easily meets the three criteria of *Blessing*." *Id.* The court held that the second *Blessing*/*Gonzaga* inquiry was satisfied as well: because "Section 7 contains no enforcement scheme at all," it does not foreclose enforcement via § 1983. *Id.*

Although the Fourth Circuit has not considered whether Section 7 of the Privacy Act is enforceable via § 1983, the Eleventh Circuit's analysis of the language of Section 7 is consistent with the Fourth Circuit's applications of the *Blessing*/*Gonzaga* test. For instance, in *Pee Dee Health Care, P.A. v. Sanford*, 509 F.3d 204, the Fourth Circuit held that a rural health clinic could invoke § 1983 to enforce a Medicaid Act provision under which a "state plan shall provide for payment for services . . . furnished by a rural health clinic." 42 U.S.C. § 1396a(bb)(1). As the court explained, "as required by *Gonzaga* . . . § 1396a(bb) contains rights-creating language because it specifically designates the beneficiaries — the [clinics] — and it mandates action[.]" 509 F.3d at 212. In *Doe v. Kidd*, 501 F.3d 348, the Fourth Circuit likewise held that another Medicaid Act provision was enforceable for similar reasons. The provision at issue required that a "State plan for medical assistance must provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals," 42 U.S.C. § 1396a(a)(8). The court held the provision enforceable via § 1983 because the requirement was intended to benefit "all individuals," was not vague or amorphous, and was mandatory. 501 F.3d at

356. And in *Hensley v. Koller*, 722 F.3d 177 (4th Cir. 2013), the Fourth Circuit concluded that a provision of the Adoption Assistance and Child Welfare Act was enforceable as well. The provision required that adoption assistance payments "shall be determined through agreement between the adoptive parents and the State . . . , which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents . . . , depending upon changes in such circumstances." 42 U.S.C. § 673(a)(3). Again, the obligation was not amorphous, was mandatory, and was phrased in terms of the rights of individuals (e.g., "the concurrence of the adopting parents"). *Hensley*, 722 F.3d at 182-83.

Like these statutes that the Fourth Circuit has held enforceable, Section 7 of the Privacy Act uses mandatory language ("It shall be unlawful…"), its requirements are clear and not amorphous (states may not "deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number"), and the provision uses language that focuses on individuals ("deny to any individual . . . because of such individual's refusal"). As to the second step of the *Blessing*/*Gonzaga* inquiry, the fact that Section 7 lacks a private enforcement mechanism shows that Congress has neither explicitly nor implicitly (via a "comprehensive" remedial scheme "incompatible" with private enforcement, *Doe*, 501 F.3d at 356) foreclosed reliance on § 1983.

The one court of appeals decision other than *Schweier* to address whether Section 7 of the Privacy Act is enforceable under § 1983 is *Dittman v. California*, 191 F.3d 1020 (9th Cir. 1999). Like *Schweier*, *Dittman* held that section 7 creates an enforceable right. *See id.* at 1027-28. But *Dittman* concluded that Congress had foreclosed § 1983 as a remedy. *See id.* at 1029. This aspect of the Ninth Circuit's decision was erroneous, because the court relied on a right of action, 5 U.S.C. § 552a(g), that pertains exclusively to violations of 5 U.S.C. § 552a, which codifies Section 3 but not Section 7 of the

Privacy Act. *Compare* Pub. L. 93-579, § 3 (directing that provisions of Section 3 would be added as a new code section), *and* § 4 (designating new code section as 5 U.S.C. § 552a), *with* § 7 (no codification instructions). According to the Ninth Circuit, the fact that Congress provided a remedy for some aspects of the Privacy Act and not others shows that Congress meant to deny a remedy to individuals whose Section 7 rights are violated. *See Dittman*, 191 F.3d at 1029. This logic is inconsistent with the standard that the Supreme Court and this Court have prescribed for the second part of the *Blessing*/*Gonzaga* inquiry, which is whether Congress enacted a "*comprehensive* enforcement scheme that is *incompatible* with individual enforcement under § 1983." *Doe*, 501 F.3d at 356 (quoting *Blessing*, 520 U.S. at 341); *accord Gonzaga*, 536 U.S. at 284 n.4. A remedial scheme covering only a portion of the statute is plainly not "comprehensive," and enforcing Section 3 via the Privacy Act's own cause of action is plainly not incompatible with enforcing Section 7 through 42 U.S.C. § 1983. That the Ninth Circuit erred in conflating distinct sections of the Privacy Act is underscored by *Blessing*, in which the Supreme Court made clear that statutory provisions must be considered individually for purposes of the § 1983 enforceability inquiry. *See Blessing*, 520 U.S. at 333 (rejecting the Ninth Circuit's blanket approach in deciding that an entire title of the Social Security Act was enforceable under § 1983, and admonishing that a "statutory scheme can[not] be analyzed so generally"); *see also Doe*, 501 F.3d at 355 ("[W]e analyze *the provision Doe invokes* . . . to determine whether that provision creates a . . . right enforceable under § 1983." (citing *Blessing*) (emphasis added)). As the Eleventh Circuit explained, "*Dittman* failed to recognize that the remedial scheme of section 3 applies only to section 3 and has no bearing on section 7. Thus, the remedial scheme of section 3 provides no basis for concluding that Congress intended to preclude private remedies under § 1983 for violations of section 7." *Schwier*, 340 F.3d at 1289.

Understandably, recent decisions considering the question of Section 7's enforceability have followed the Eleventh Circuit's decision in *Schweier*, as it is more consistent with Supreme Court jurisprudence. *See Szymecki*, 2008 WL 4223620, at *8-*9; *Stollenwerk*, 2006 WL 463393, at *4. This Court should do likewise and hold that Section 7 of the Privacy Act is enforceable under § 1983.

B. The Supremacy Clause provides an independent basis for enforcement of the Privacy Act.

The Supremacy Clause is fundamental to the design of the Constitution, for if the laws of the United States "were not to be supreme," then "they would amount to nothing." *The Federalist*, No. 33 (Hamilton). A necessarily corollary to the supremacy of federal law is that its supremacy must be enforceable through a private right of action. Were it otherwise, federal law would sometimes be "supreme" in name only, because contrary state law would stand unless and until a case brought under some other cause of action provided appropriate circumstances for a court to address the conflict between state and federal law.

Accordingly, as the Fourth Circuit has recently summarized, "[a] long line of cases confirms [a] right of action" for "private parties to seek injunctive relief from state statutes allegedly preempted by federal law." *United States v. South Carolina*, 720 F.3d 518, 525-26 (4th Cir. 2013) (citing as examples, among others, *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n.14 (1983); *Norfolk Southern Railway Co. v. City of Alexandria*, 608 F.3d 150, 160 (4th Cir. 2010); *AES Sparrows Point LNG, LLC v. Smith*, 527 F.3d 120, 127 (4th Cir. 2008); and *Loyal Tire & Auto Center, Inc. v. Town of Woodbury*, 445 F.3d 136, 149 (2d Cir. 2006) (Sotomayor, J., for the panel)). In accordance with these cases, the Fourth Circuit reaffirmed in *United States v. South Carolina* that the Supremacy Clause conferred a right of action on private plaintiffs to challenge a set of laws and regulations regarding immigration that the plaintiffs alleged to be preempted by federal law. *Id.* at 522, 526.

Tankersley asserts the same right of action and seeks the same type of relief (equitable) as the plaintiffs whose Supremacy Clause action the Fourth Circuit recognized in *South Carolina*. Therefore, the Supremacy Clause, independently from and in addition to § 1983, provides a remedy for the violation of Tankersley's Privacy Act right.

CONCLUSION

For the foregoing reasons, summary judgment should be granted to Tankersley on all claims.

Dated: May 27, 2014

Respectfully submitted,

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