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FLORIDA'S BAN ON CHINESE LAND OWNERSHIP BLOCKED BY APPEALS COURT

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On February 1, 2023, a federal appeals court granted a preliminary injunction blocking enforcement of a new Florida law that prohibits Chinese citizens from owning land in the State of Florida against plaintiffs in the action who are parties to a real estate transaction, reversing a Florida federal judge who declined to block enforcement of the law. The preliminary injunction does not block enforcement of the new law entirely, but only blocks enforcement against two of the plaintiffs in the pending legal action challenging the new law.

During the last legislative session, the Florida legislature passed SB 264 which limits and regulates the sale, purchase and ownership of certain properties in Florida by foreign principals from the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, and the Syrian Arab Republic each of which are referred to in the law as Foreign Country of Concern. "Foreign Principals" include (i) government and party officials from such Countries of Concern, (ii) a company formed in such country or having a principal place of business in such country, and its subsidiaries, (iii) any person domiciled in such country that is not a United State citizen or lawful permanent resident of the United States and (iv) any of the foregoing Foreign Principals that has a controlling interest in a corporate entity formed for the purpose of owning real property in the State of Florida.

In entering an order blocking the enforcement of the law against the plaintiffs in the action challenging the law, the court stated that the plaintiffs established a substantial likelihood of success on their claim that the Florida law is preempted by a federal law known as the Foreign Investment Risk Review Modernization Act of 2018. Although the Florida law affects people from all Foreign Countries of Concern, the focus of the lawsuit is on the restrictions imposed on people from China who are not U.S. citizens or permanent residents of the U.S. The law prohibits such persons from directly or indirectly owning, having a controlling interest in, or acquire any interest, other than a "de minimus" indirect interest in real property in the State of Florida other than one residential property up to two acres if such property is not within five miles of a military base and the person has a non-tourist visa.

The court's decision states that without the court's intervention, the plaintiffs face imminent risk of irreparable harm and that the individual plaintiffs are likely to prevail on their claims that the Florida law violates federal law governing the purchase of real estate by foreign nationals. A concurring opinion states that the Florida law blatantly violates the Fourteenth Amendment's protection against discrimination, which the concurring opinion states applies to both citizens and non-citizens alike.

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