IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

HISPANIC INTEREST COALITION OF ALABAMA, ***et al.***, Plaintiffs, v. ROBERT BENTLEY, in his official capacity as Governor of the State of Alabama, ***et al.***, Defendants.	)	Case Number: 5:11-cv-02484-SLB

EMERGENCY MOTION
TO ENJOIN PORTIONS OF HB 56 PENDING APPEAL
AND MEMORANDUM IN SUPPORT

Plaintiffs petition this Court to enjoin sections 10, 12, 27, 28, and 30 of HB 56, pending appeal, pursuant to Fed. R. Civ. P. 62(c) and Fed. R. App. P. 8(a). Alternatively, Plaintiffs seek a temporary injunction of these sections so that a motion for an injunction pending appeal can be filed with the U.S. Court of Appeals for the Eleventh Circuit. Because Plaintiffs present a substantial case on the merits and the equities favor them, the Court should preserve the status quo and enjoin Sections 10, 12, 27, 28, and 30 pending appeal.

PROCEDURAL BACKGROUND

On July 21, 2011, Plaintiffs filed a Motion for Preliminary Injunction seeking to enjoin all of HB 56, including sections 10, 12, 27, 28, a

constitutional and federal statutory grounds. (Doc. 37.) On August 1, 2011, the United States also filed a Motion for Preliminary Injunction seeking to enjoin numerous sections of HB 56. (***See*** Doc. 2 of Case No. 11-2746.) Religious leaders also filed suit challenging sections 13 and 27. (***See*** Doc. 1 of Case No. 11-2736.) On August 3, 2011, these cases were consolidated, (Doc. 59), and the Court held a hearing on August 24, 2011. On August 29, 2011, the Court temporarily enjoined HB 56 pending its ruling on the motions for prelimi

lacked standing to challenge the provision. HICA Order at 93-101. The Court also held that the HICA Plaintiffs lacked standing to challenge HB 56 in its entirety.[1]

ARGUMENT

I. LEGAL STANDARD

Although this Court found that Plaintiffs failed to satisfy the traditional preliminary injunction standard regarding their challenges to Sections 10, 12, 27,

(5th Cir. 1981); ***see also id.*** ("If a movant were required in every case to establish that the appeal would probably be successful, [Fed. R. Civ. P. 62 and Fed. R. App. P. 8] would not require as it does a prior presentation to the district judge whose order is being appealed."); ***United States v. Hamilton***, 963 F.2d 322, 323 (11th Cir. 1992); ***Garcia-Mir v. Meese***, 781 F.2d 1450, 1453 (11th Cir. 1986). Both tests are satisfied here, and Sections 10, 12, 27, 28, and 30 should be enjoined pending appeal.

II. SECTION 10 SHOULD BE ENJOINED PENDING APPEAL

The balance of the equities weighs heavily in favor of staying Section 10 pending appeal. As the Court recognized in the HICA Order, Plaintiffs such as John Doe #1 have standing to challenge Section 10, and will face "real and imminent" injury if Section 10 takes effect. HICA Order at 48. In opposing Plaintiffs' challenge to Section 10, Defendants did not contest the strong equities shown by Plaintiffs, focusing only on the merits of this claim. ***See*** Defs.' Opp. at 63-70 (Doc. 82). As Plaintiffs explain in detail in their Motion for Preliminary Injunction, Section 10 will cause irreparable injury to Jane Does #'s 1-2 and 4-6, and John Does #'s 1-4, members of DreamActivist, Service Employees Intern9(s)-4.91304( )1.66364(r)-05(i)-4.58899(t)-4.58899(sk,.58899(sk,0(e)7.26921(s)3.6(e)-1.2

Court of Appeals for the Ninth Circuit affirmed that injunction. ***United States v. Arizona***, 703 F. Supp. 2d 980, 990, 998-1000, 1008 (D. Ariz. 2010); ***aff'd***, 641 F.3d 339, 354-357, 366 (9th Cir. 2011). This Court distinguished those cases, in part, by suggesting that Arizona law "did not, as H.B. 56 § 10 does, apply only to those 'unlawfully present.'" DOJ Order at 28. This is factually incorrect—both the Arizona and Alabama laws state that anyone who "maintains authorization

imminent" injury if the law were to go into effect. HICA Order at 72. The Court also recognized that "state law enforcement officers do not have the inherent authority to stop and arrest an individual for mere unlawful presence," HICA Order at 74, and that as-applied challenges may well be appropriate. However, in the Court's view, at least some inquiries under Section 12 could be permissible, so it

IV. SECTION 28 SHOULD BE ENJOINED PENDING APPEAL

Plaintiffs challenge Section 28 on equal protection grounds, based on three impermissible classifications. ***See*** Pls.' Supp. Sec. 28 Br. (Doc. 116). This Court found Plaintiffs did not have standing to challenge Section 28. HICA Order at 93-101. It reached this decision by first finding that Section 28(a)(1)'s requirement to determine the immigration status of the parents of children has no actual effect, and by accepting Defendants' current reading of the provision that inquiry as to children would typically occur only once, when the child first enters the Alabama public school system. HICA Order at 97 ("Section 28 does not compel school officials to determine the immigration status of a parent of a student."), 98 ("Defendants have presented evidence that "enrollment" only occurs when a child enters the Alabama school system."). The Court next reasoned that the only Plaintiff Organizations to claim any harm by Section 28 were HICA and Greater

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undocumented students continues. ***See Harrell v. Florida Bar***, 608 F.3d 1241, 1267-68 (11th Cir. 2010); ***see also*** Pls.' Reply at 41 n.27 (Doc. 109). Second, Plaintiffs Alabama Appleseed, HICA, and Greater Birmingham Ministries have each shown that Section 28 is causing their organizations specific and articulable harm, and that the harm was directly related to enrollment. ***See*** Pls.' Reply at 41 n.27, 60; ***see also*** John Pickens Aug. 13, 2011 Decl. ¶¶ 2 (diversion of resources) 7 ("at virtually every single presentation, parents and other service providers have asked questions . . . [and] for information about how to enroll their children in school; whether to enroll their children in school; what will happen to the registration information that is collected by the school when they enroll their children; [and] whether registration information will be shared with immigration authorities . . . ."") (Doc. 109-2); Isabel Rubio Aug. 15, 2011 Decl. ¶¶ 3 (noting thirteen information sessions conducted "to give information on HB 56 and . . . specifically information on enrollment of students in Alabama public schools"), 5, 7 (harm to HICA) (Doc. 109-3); Scott Douglas Aug. 15, 2011 Decl. ¶¶ 2 (noting diversion of resources to educate people about how to "'enroll' in Alabama schools"), 3 (harm to members) (Doc. 109-4). Once this evidence is considered—which was properly before the Court given that the

staying Section 28 pending appeal. Section 28 will continue to cause immediate irreparable injury to Alabama Appleseed, HICA, and Greater Birmingham Ministries. Additionally, Plaintiffs Jane Doe #'s 1-6, John Doe #'s 1-2, as well as members of DreamActivist, SEIU, and the Joint Board remain at risk of being inappropriately chilled from accessing public elementary and secondary education Defendants' interpretation were to change. ***See*** Pls.' Mot. for Prelim. Inj. at 64-66 (Doc. 37), Pls.' Reply at 41 n.7, 60 (Doc. 109). The harm to any child of being chilled from receiving an education vastly outweighs any harm to Defendants by having Section 28 stayed, particularly because the number of undocumented children in Alabama schools comprises, at most, 0.5% of the entire Alabama school system, ***see*** Pls.' Supp. Sec. 28 Br. at 12-13 (Doc. 116), and Defendants concede that it will take a very long time for them to collect any data through Section 28, ***see*** Defs.' Opp. at 128 (Doc. 82), so a delay pending appeal will not cause Defendants significant harm.[3] For the same reason, the public interest would not be adversely affected by staying Section 28 pending appeal. ***See*** Pls.' Mot. for PI at 68-70 (Doc. 37); Pls.' Reply at 65 (Doc. 109). Thus the balance of equities tips sharply in favor of the Plaintiffs.

Plaintiffs have also presented a substantial case on the merits, and will continue to do so on appeal, given the U.S. Department of Education's and Department of Justice's own views, set forth in a recent federal guidance, that inquiries about immigration status at the time of enrollment would violate ***Plyler v. Doe***, 457 U.S. 202 (1982). (***See*** Doc. 37 at 53 & n.36).

Because "the balance of the equities weighs heavily in favor of" staying Section 28, and Plaintiffs have "show[n] a substantial case on the merits," enjoining Section 28 pending appeal is warranted. ***Hamilton***, 963 F.2d at 323.

V. SECTION 27 SHOULD BE ENJOINED PENDING APPEAL

The balance of the equities weighs heavily in favor of staying Section 27 pending appeal. As the Court recognized in the HICA Order, plaintiffs such as Plaintiffs Barber, Upton, and Jane Doe #5 have standing to challenge Section 27, and will face "real and imminent" injury if the law were to go into effect. HICA Order at 91. Section 27 will also cause irreparable injury to Plaintiffs Jane Does ## 1-6, John Does ## 1-4, Cummings, Beck, members of DreamActivist, SEIU, the Joint Board, HICA, and Greater Birmingham Ministries, as well as putative class members, who will be prohibited from enforcing numerous contracts. ***See*** Pls.' Mot. for Prelim. Inj. at 67 (Doc. 37). Harm to the Organizational Plaintiffs would also be irreparable and would increase if this provision went into effect. ***See id***. at 67. In their Opposition Brief, Defendants did not question any of these harms, nor

given that Section 27 would render meaningless numerous contracts that could be enforced in state courts only (because they do not involve a federal question or do not satisfy diversity requirements), including contracts as common as a lease to rent. ***Cf. Lozano v. Hazleton***, 496 F. Supp. 2d 477, 530-33 (M.D. Pa. 2007) (enjoining ordinance placing restrictions on renting to undocumented individuals); ***aff'd***, 620 F.3d 170, 219-24 (3d Cir. 2010), ***vacated and remanded on other grounds***, No.10-772, 2011 WL 2175213 (U.S. June 6, 2011); ***Villas at Parkside Partners v. City of Farmers Branch***, 701 F. Supp. 2d 835, 855 (N.D. Tex. 2010) (invalidating ordinance placing restrictions on renting to undocumented individuals), ***appeal docketed*** No. 10-10751 (5th Cir. July 28, 2010). Thus Plaintiffs have a substantial case to present on the merits of their claim.

Because "the balance of the equities weighs heavily in favor of" staying Section 27, and Plaintiffs have "show[n] a substantial case on the merits," enjoining Section 27 pending appeal is warranted. ***Hamilton***, 963 F.2d at 323.

VI. SECTION 30 SHOULD BE ENJOINED PENDING APPEAL

The balance of the equities weighs heavily in favor of staying Section 30 pending appeal. Section 30 will cause irreparable injury. It is clear that agencies throughout the state, from probate offices to water and sewer companies, are interpreting Section 30 to require them to deny services to anyone who cannot prove that they are lawfully present. ***See*** Notice of Supp. Evid. Re: Sec. 30 (Doc.

134) (detailing how water companies have prepared policies to deny water service to people who cannot prove lawful status, and how probate offices will do the

a minimum, given the evidence previously submitted on public utilities' intent and actions to implement Section 30 in a fashion to include basic water services, if the Court intended to exclude public utilities and similar services from the restrictions of Section 30, Plaintiffs respectfully request that the Court issue a clarification to that effect in order to avoid some portion of the immediate and irreparable harms from Section 30 to countless Alabamans.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court maintain the status quo by enjoining Sections 10, 12, 27, 28, and 30 of HB 56 pending appeal. Alternatively, Plaintiffs seek a temporary injunction of these sections so that a motion for an injunction pending appeal can be filed with the U.S. Court of Appeals for the Eleventh Circuit pursuant to Rule 8 of the Federal Rules of Appellate Procedure, and request that such temporary injunction extend until such time that the Eleventh Circuit rules upon Plaintiffs' Rule 8 motion.

Dated September 29, 2011

Respectfully Submitted,

s/ Samuel Brooke

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