

Appeal No. 11-14535

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

HISPANIC INTEREST COALITION OF ALABAMA, *et al.*,
Plaintiffs-Appellants,

v.

ROBERT BENTLEY, *et al.*,
Defendants-Appellees

On Appeal from the United States District Court
for the Northern District of Alabama
5:11-CV-02484-SLB

**Brief *Amicus Curiae* The Anti-Defamation League in
Support of Plaintiffs-Appellants**

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DISCLOSURE STATEMENT**

The undersigned attorney for *amicus curiae*, Anti-Defamation League,
hereby certifies, pursuant to 11th Cir. R. 26.1-1, that the following have an interest
in the outcome of this case:

Anti-Defamation League

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus
curiae*, the Anti-Defamation League makes the following disclosures:

1. The Anti-Defamation League is a section 501(c)(3) non-profit
corporation. It has no parent corporation.
2. No publicly-held corporation holds ten percent or more of the Anti-
Defamation League.

November 21, 2011

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I. INTEREST OF THE AMICI

The Anti-Defamation League (“ADL”) is the leading nongovernmental organization training law enforcement officers on issues of extremism and hate crimes in this country. The League provides training through our national network of regional offices to thousands of federal, state and local officers across the country to make sure they know how to recognize and identify hate crimes and investigate them properly and sensitively. Additionally, ADL has trained over 500 top law enforcement leaders at our *Advanced Training School: Course on Extremist and Terrorist Threats* (ATS) in Washington, D.C.¹

Furthermore, more than 45,000 law enforcement professionals have participated in an innovative ADL program organized in partnership with the United States Holocaust Memorial Museum called *Law Enforcement and Society: Lessons of the Holocaust*. This program, created in 1998, draws on the history of the Holocaust to provide law enforcement professionals with an increased understanding of the importance of their relationship to the people they serve and their role as protectors of the Constitution.²

¹ http://www.adl.org/learn/learn_main_training/Advanced_Training_School.asp.

² http://www.adl.org/learn/adl_law_enforcement/LEAS+3-09.htm?LEARN_Cat=Training&LEARN_SubCat=Training_News; *see also* http://www.fbi.gov/page2/mar10/leas_033010.html (“Before becoming special agents, students from the FBI Training Academy tour the United States Holocaust Memorial Museum.”)

ADL's expertise on hate crimes laws is unmatched. In 1981, the League drafted a model state hate crimes law which provides increased penalties for criminals who target their victims because of personal characteristics, such as race, religion, national origin, gender or sexual orientation.³ To date, 45 states and the District of Columbia have enacted hate crimes laws based on or similar to ADL's model. The League also advocates for laws mandating the collection of statistics about hate crimes, including the federal 1990 Hate Crimes Statistics Act. Most recently, ADL played a leadership role in the passage of the landmark federal Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act signed into law by President Obama on October 28, 2009.

³ <http://www.adl.org/99hatecrime/intro.asp>.

SOURCE OF AUTHORITY TO FILE

All parties have consented in writing to the filing of this brief.

STATEMENT OF THE ISSUES

Whether Sections 10, 12, 18, 27, 28 and 30 of Alabama House Bill 56, Beason-Hammon Alabama Taxpayer and Citizen Protection Act, will inflict irreparable harm, which warrants the enjoinder of these sections.

STATEMENT OF BRIEF AUTHORSHIP

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INTRODUCTION AND SUMMARY OF THE ARGUMENT

If well-ordered liberty means anything, it must mean that all persons should be afforded access to police protection if they become victims of hate crimes. The Beason-Hammon Alabama Taxpayer and Citizen Protection Act (“HB 56”), impedes that access for *all* Latino and Hispanic Alabama residents whether United States citizens, lawful residents or undocumented immigrants.⁴ HB 56 poses a substantial threat of deterring Latinos and Hispanics from reporting crimes or serving as witnesses in criminal investigations. More directly than laws passed in other states, HB 56 targets victims of crimes for deportation and reporting to Immigration Services, effectively eliminating police protection for undocumented persons, or those who fear for their undocumented family members or friends. This *amicus* brief provides additional context and information about a particular and devastating consequence of the rupture in police-community trust that HB 56 will inevitably cause – the creation of an underclass uniquely vulnerable to increased hate crimes and violence.

⁴While this *amicus* brief focuses on the relationship between law enforcement and the Latino and Hispanic communities, ADL understands and supports the position that there are additional immigrant communities that will be similarly affected by HB 56, including Alabama’s Asian community.

As shown below, unless its enforcement is enjoined, HB 56 is substantially likely to cause irreparable harm to the enforcement of Alabama and federal hate crimes statutes by driving a wedge between law enforcement and the Latino and Hispanic communities. That breach in trust will render the State's Latino and Hispanic communities uniquely vulnerable to the commission of hate crimes – an outcome fundamentally at odds with the strong public policies embodied in federal and state anti-hate crimes legislation. Granting the preliminary injunctive relief that Plaintiffs seek will avert irreparable harm that HB 56 will otherwise inflict on the policing of hate crimes in Alabama, and will advance the vital public interest in ensuring that federal and Alabama anti-hate crimes statutes are enforced to the fullest extent of the law. *See Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 376 (2008).

ARGUMENT

- I. **HB 56 Will Undermine the Latino and Hispanic Communities' Trust in Law Enforcement Eviscerating the Police's Ability to Enforce Criminal Law, Including Federal and State Hate Crime Laws.**
 - A. **Hate Crimes Targeting Latinos and Hispanics Are a Significant Issue which HB 56 will Exacerbate by Further Obstructing Enforcement of Federal and Alabama Prohibitions Against Hate Crimes Based on National Origin and Color.**

Alabama's criminal statutes include strong prohibitions against the commission of hate crimes. Code of Ala. § 13A-5-13 imposes additional penalties "where it is shown that the perpetrator committing the underlying offense was

motivated by the victim's actual or perceived race, color, religion, national origin, ethnicity, or physical or mental disability." The federal Hate Crimes Prevention Act of 2009, which gives the United States Department of Justice the power to investigate and prosecute violent crimes where the perpetrator selects the victim because, *inter alia*, of the person's actual or perceived race, color or national origin, evinces an equally strong federal policy against the commission of hate crimes. 18 U.S.C. § 249.

The issue of hate crimes in our nation and specifically bias crimes targeting Latinos or Hispanics is far from theoretical. According to statistics gathered by the Federal Bureau of Investigation documenting hate crimes through 2008, hate crimes that year reached their highest level since 2001.⁵ In 2008, 7,783 hate crimes were reported nation-wide.⁶ Of those, 561 were motivated by the actual or perceived Hispanic ethnicity of the victim.⁷ In 2010, we saw a slight decrease in incidents of hate crimes reported, with 6,628 reported nationwide.⁸ Of those, 534

⁵ See ADL table, "Ten Year Comparison of FBI Hate Crime Statistics (2008-1999), available at http://www.adl.org/combating_hate/HCSA_10year.asp (last visited November 17, 2011).

⁶ Uniform Crime Report, Hate Crime Statistics, 2008, U.S. Department of Justice Federal Bureau of Investigation, Table 1, available at <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2008> (last visited November 17, 2011).

⁷ *Id.*

⁸ Uniform Crime Report, Hate Crime Statistics, 2010, U.S. Department of Justice Federal Bureau of Investigation, Table 1, available at <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2010/tables/table-1-incidents-offenses-victims-and-known-offenders-by-bias-motivation-2010.xls> (last visited November 17, 2011).

were motivated by the actual or perceived Hispanic identity of the victim.⁹ In 2009, 483 hate crimes were motivated by the actual or perceived Hispanic ethnicity of the victim.¹⁰ While the 2010 and 2009 statistics reflect a decline from the 2008 number, they represent an increase in the percentage of reported hate crimes motivated by perceived Hispanic heritage.¹¹ In the past 11 years, between 400 and 600 hate crimes against Hispanics have been reported each year.¹²

While these figures are deeply disturbing, they do not reflect the full scope of hate crimes committed in the United States. Rather, they only represent hate crimes reported by local law enforcement agencies to the FBI, which is voluntary under the federal Hate Crimes Statistics Act (“HCSA”).¹³ Indeed, a June 2011 federal Bureau of Justice Statistics (“BJS”) report estimates that 148,400 hate

⁹ Id.

¹⁰ “

Uniform Crime Report, Hate Crime Statistics, 2009, U.S. Department of Justice Federal Bureau of Investigation, Table 1, available at http://www2.fbi.gov/ucr/hc2009/data/table_01.html (last visited November 17, 2011).

¹¹

Uniform Crime Report, Hate Crime Statistics, 2008, U.S. Department of Justice Federal Bureau of Investigation, Table 1, available at http://www2.fbi.gov/ucr/hc2008/data/table_01.html (last visited November 17, 2011).

¹² ADL table, “Ten Year Comparison of FBI Hate Crime Statistics (2008-1999), available at http://www.adl.org/combating_hate/HCSA_10year.asp (last visited June 21, 2010); Uniform Crime Report, Hate Crime Statistics, 2010. U.S. Department of Justice Federal Bureau of Investigation, table 1, available at <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2010/tables/table-1-incidents-offenses-victims-and-known-offenders-by-bias-motivation-2010.xls> (last visited November 17, 2011).

¹³ Hate Crime Data Collection Guidelines, Uniform Crime Reporting; see U.S. Department of Justice, Federal Bureau of Investigation (Revised October 1999) at <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/hcguidelinesdc99.pdf>.

crimes actually occurred in 2009 – 87% of which involved bias-motivated violent acts.¹⁴ Of these crimes, 17%, or approximately 25,200, targeted persons who identify as Latino or Hispanic.¹⁵ Furthermore, 64% of those crimes, approximately 16,100, were reported as being based on the ethnicity of the victim.¹⁶

The BJS report reflects the significant gaps in systematic and comprehensive national collection of hate crimes data.¹⁷ One of the causes of these gaps is victims underreporting hate crimes to law enforcement.¹⁸ Victims fail to report for multiple reasons, including immigrant communities' fear of deportation.¹⁹

Underreporting of hate crimes is a serious issue in Alabama. For example, in 2010, law enforcement only reported a total of twenty-four hate crimes offenses to the FBI.²⁰ Even for HCSA purposes this number appears to be quite low as the comparably populated states of Colorado and South Carolina reported 196 and 129

¹⁴ Special Report: Hate Crime, 2003-2009, U.S. Department of Justice Bureau of Justice Statistics (June 2011), <http://www.bjs.gov/content/pub/pdf/hc0309.pdf>.

¹⁵ Id.

¹⁶ Id.

¹⁷ See Hate Crimes in America: The Nature and Magnitude of the Problem, The Leadership Conference <http://www.civilrights.org/publications/hatecrimes/nature-and-magnitude.html> (Last visited July 7, 2011).

¹⁸ Id.

¹⁹ Id.

²⁰ Uniform Crime Report, Hate Crime Statistics, 2010, U.S. Department of Justice Federal Bureau of Investigation, Table 11, available at <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2010/tables/table-11-offenses-offense-type-by-participating-state-2010.xls> (last visited November 17, 2011).

hate crimes offenses, respectively, for the same year.²¹ Moreover, while in 2010 a total of 331 Alabama law enforcement agencies participated in the HCSA program, a mere 12 Alabama agencies reported hate crimes incidents to the FBI.²²

The very purpose and protections of hate crimes laws are undermined when victims fail to report. Undoubtedly, fear of immigration-violation detention or deportation among Latino or Hispanic immigrants residing in Alabama already undermines the enforcement of Alabama and federal hate crimes laws. HB 56 will only serve to exacerbate this problem. Its enactment will greatly increase this fear among Alabama's Latino and Hispanic communities. Consequently, HB 56 inevitably will further undermine enforcement of Alabama and federal hate crimes laws by increasing the underreporting of bias crimes targeting Latinos or Hispanics.

B. Police Cannot Enforce the Law If Victims and Witnesses Are Unwilling to Come Forward.

The Police Foundation, the International Association of Chiefs of Police, and the Major Chiefs Association have all expressed grave concerns that deputizing local law enforcement officers to enforce immigration law undermines

²¹ Id.

²² Uniform Crime Report, Hate Crime Statistics, 2010, U.S. Department of Justice Federal Bureau of Investigation, Table 12, available at <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2010/tables/table-12-agency-hate-crime-reporting-by-state-2010.xls> (last visited November 17, 2011).

the trust and cooperation of immigrant communities.²³ For example, a 2009 report by the Police Foundation states that “[i]mmigration enforcement by local police undermines their core public safety mission, diverts scarce resources, increases their exposure to liability and litigation, and exacerbates fear in communities already distrustful of police.”²⁴ According to Police Foundation President Hubert Williams:

Police executives have felt torn between a desire to be helpful and cooperative with federal immigration authorities and a concern that their participation in immigration enforcement efforts will undo the gains they have achieved through community-oriented policing practices directed at gaining the trust and cooperation of immigrant communities. As one police chief pointed out during the project, “How do you police a community that will not talk to you?”²⁵

The Major Cities Chiefs Association agrees. According to its 2006 Position Statement:

Local agencies have worked very hard to build trust and a spirit of cooperation with immigrant groups through community based policing and outreach programs and specialized officers who work with immigrant groups. Local agencies have a clear need to foster trust and cooperation with everyone in these immigrant communities. Assistance and cooperation from immigrant communities is especially important when an immigrant, whether documented or undocumented, is the

²³ See Arizona Association of Chiefs of Police Statement on Senate Bill 1070, available at http://www.leei.us/main/media/AACOP_STATEMENT_ON_SENATE_BILL_1070.pdf (last visited November 17, 2011).

²⁴ <http://www.policefoundation.org/pdf/strikingRelease.pdf> (last visited June 21, 2010).

²⁵ Id.

victim of or witness to a crime. These persons must be encouraged to file reports and come forward with information. Their cooperation is needed to prevent and solve crimes and maintain public order, safety, and security in the whole community. . . .

Immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities. . . . Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. **Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.**²⁶
[Emphasis added]

Indeed, members of Alabama law enforcement similarly expressed significant concerns about the potential detrimental impact of HB 56 on Latinos and Hispanics reporting criminal activity. According to an April 2011 news report:

If the law passes the Senate as it is now written and is signed into law, it also could have a chilling effect on a populace that is already afraid of law enforcement, officials said.

Northport Police Chief Robert W. Green said he suspects the Hispanic community of Northport

²⁶ Major Cities Chiefs Immigration Committee Recommendations, June 2006, available at http://www.majorcitieschiefs.org/pdfpublic/MCC_Position_Statement_REVISIED_CEF_2009.pdf (emphasis added) (last visited June 21, 2010).

already reports far fewer crimes than actually occur, out of fear of being deported.

'I think ... (that) would probably increase significantly with the passage of this bill,' Green said.

[Tuscaloosa County Sheriff Ted] Sexton, [Tuscaloosa County Sheriff Ted] Anderson and Green said the number of Hispanic or Latino suspects whom they already encounter is relatively low.

In fact, Sexton said it was too low, compared to arrests of other races, despite the growing number of Hispanic and Latin American residents that were reflected in the 2010 Census. The recent census data counted 5,949 Hispanics in the county, nearly triple the 2,130 Hispanics counted 10 years prior.²⁷ [Emphasis added]

C. HB 56 Will Prevent Police From Effectively Enforcing the Laws Prohibiting Hate Crimes.

Unless its enforcement is enjoined, HB 56 will create an underclass of people who have no meaningful access to police services out of fear that their perceived immigration status will subject them to heightened law enforcement scrutiny whenever they come into contact with police, or will result in their incarceration or deportation for reporting a crime whether as a victim or witness.

In its aim to deal with the issue of undocumented persons living in Alabama, HB 56 grants local law enforcement officers the authority to investigate the

²⁷ See Jason Morton, *Top local law officials uneasy over proposed immigration law*, TuscaloosaNews.com (April 7, 2011), <http://www.tuscaloosaneews.com/article/20110407/NEWS/110409726?p=2&tc=pg>

immigration status of any person lawfully stopped based on “reasonable suspicion” that they may be in the country unlawfully. Furthermore, Section 13 of HB 56 provides greater justification for unauthorized stops by making it a crime to “conceal, harbor, transport, house, or induce or encourage entrance into the state by any alien person.”²⁸

Indeed, the provisions of HB 56 not only remove assurances that contact with law enforcement will not result in civil immigration enforcement, they seem to guarantee it. The law will essentially deputize a sector of local law enforcement to act as immigration agents. Specifically, HB 56, in part, authorizes Alabama Homeland Security to designate a specialized sector of the police force to enforce the provisions of HB 56, to work with national immigration officials in reporting and prosecuting violators of the law, and to “promulgate rules for the enforcement of this act.”²⁹

Furthermore, HB 56 essentially provides no protection from immigration enforcement for victims of or “critical witnesses” to hate-based or other crimes, or their children. In relevant part HB 56 states:

“If a person is an alien who is unlawfully present in the United States and is a victim of a criminal act, is the child of a victim of a criminal act, is a critical witness in any

²⁸ HB 56, Section 13.

²⁹ HB 56, Sections 22-24.

prosecution, or is the child of a critical witness in any prosecution of a state or federal crime, all provisions of this act shall be stayed until all of the related legal proceedings are concluded. However, the relevant state, county, or local law enforcement agency shall comply with any request by federal immigration officers to take custody of the person.”³⁰

Thus, application of HB 56 is merely stayed pending final resolution of a criminal complaint or complaint. Moreover, this stay provision does not apply where federal immigration authorities seek to take a victim of crime, a witness or their children into custody.

As a result of these provisions, Latinos and Hispanics – whether documented or undocumented – likely will be deterred from reporting or serving as witnesses to criminal activities in the community, including hate crimes. The most severe consequences of HB 56 will likely fall upon Latinos and Hispanics who are undocumented or have undocumented family members. For all practical purposes, the law will preclude such individuals from reporting hate crimes and other criminal activities to law enforcement.

ADL knows from long experience advocating for and training law enforcement on the implementation of hate crime laws that close cooperation between local law enforcement and minority communities is essential. If crime

³⁰ HB 56, Section 21.

and immigration enforcement become intertwined, police may find out-of-status persons and their family members hesitant to seek protection, to report crimes committed against them or to serve as witnesses in other crimes – compromising the police’s ability to keep the community safe. *See Part II.A, supra.*

Moreover, when a bias-motivated crime is committed, the victim’s entire community may be left feeling victimized, vulnerable, fearful, isolated and unprotected by the law. The impact of the crime spreads far beyond the already terrible consequences for the individual victim. Yet hate crimes will go unreported or underreported even more so than they currently are if HB 56 is permitted take effect, because victims and witnesses will hesitate to contact law enforcement if doing so will subject them heightened law enforcement scrutiny and possible detention, arrest or deportation. Rather than protecting the Latino, Hispanic and other minority citizens of Alabama, the “Taxpayers and Citizens Protection Act” – as the bill’s sponsors titled the statute – will have exactly the opposite effect.

II. Victims, Their Communities and the Public Will Be Irreparably Harmed by the Underreporting of Hate Crimes That Will Inevitably Result from HB 56, and the Public Interest Strongly Supports Enjoining the Statute’s Enforcement.

ADL has monitored and exposed the increasingly hateful anti-immigrant, anti-Latino and anti-Hispanic rhetoric that has surrounded the national debate on

immigration reform.³¹ HB 56 was passed against this backdrop of anger and frustration in Alabama. Indeed, the sponsor of HB 56, Representative Micky Hammon, explained that the bill developed from a report produced by the Joint Interim Patriotic Immigration Commission, which was created by the Alabama legislature to address the “unprecedented influx of non-English speaking immigrants.”³² The sponsor of the Senate version of the bill, Senator Scott Beason, has reportedly made such statements as, “The reality is that if you allow illegal immigration to continue in your area you will destroy yourself eventually.”³³

In this climate, it is critically important that law enforcement be fully able to police the laws against the commission of hate crimes directed at the Hispanic or Latino communities. Yet, as discussed, *supra*, HB 56 effectively requires local law enforcement to investigate the immigration status of persons with whom they come into contact if “reasonable suspicion” exists – setting up an inherent conflict that threatens to result in the loss of access to police protection for hundreds of thousands of persons in Alabama. Many legal residents have relatives or friends who are undocumented, or fear that they will be subject to “reasonable suspicion” merely because they “look” or “sound” like “illegal aliens.” By putting police and

³¹ ADL Report: “Immigrants Targeted: Extremist Rhetoric Moves into the Mainstream,” available at http://www.adl.org/civil_rights/anti_immigrant/ (last visited June 21, 2010).

³² SPLC Complaint.

³³ <http://www.cullmantimes.com/local/x2072622472/Beason-Dems-don-t-want-to-solve-illegal-immigration-problem>.

large segments of the community potentially at odds with one another, HB 56 is likely to create a large population that lacks access to the type of basic police services that the rest of the community takes for granted. This lack of protection – combined with the atmosphere of hateful rhetoric that has marked much of the immigration debate – will create a law enforcement underclass that is vulnerable to the commission of bias-motivated violence and crime. Such a result risks institutionalizing precisely the kinds of harms that the anti-hate crimes laws were designed to prevent. It is contrary to the strong public policies against hate crime embodied in Alabama and federal law, and is inimical to the public’s interest in advancing public safety and security.

CONCLUSION

For the foregoing reasons, HB 56 will inflict irreparable harm if its enforcement is not enjoined. The public interest strongly supports reversal of the district court’s order denying Plaintiffs’ motion for a preliminary injunction against sections 10, 12, 18, 27, 28 and 30 of HB 56, and a preliminary injunction should issue.

RESPECTFULLY SUBMITTED this 21st day of November, 2011.

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I certify, pursuant to Federal Rules of Appellate Procedure 32(a)(7)(B), that this brief contains 3,586 words in 14-point proportional font, according to the word processing system used by undersigned counsel. This brief also complies with FRAP 32(A)(5)&(6).

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The original, signed brief and six additional copies were also hand-delivered to the Clerk's Office for the United States Court of Appeals for the Eleventh Circuit. An electronic copy of this Brief was also uploaded to the Court website using the EDF Electronic Brief Uploading system.

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/S/_____
Dale M. Schwartz