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24 UNITED STATES DISTRICT COURT
25 NORTHERN DISTRICT OF GEORGIA
26 ATLANTA DIVISION

27 Georgia Latino Alliance for Human
28 Rights, et al.,

Plaintiffs,

vs.

Deal, et al.,

Defendants.

[1:11-cv-01804-TWT](#)

**BRIEF OF AMICUS CURIAE
THE ANTI-DEFAMATION
LEAGUE IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Preliminary Statement

29 If well-ordered liberty means anything, it must mean that all persons should
30 be afforded access to police protection if they become victims of hate crimes.
31 Georgia House Bill 87, as amended (“HB 87”), impedes that access for *all*
32 Latinos – United States citizens, lawful residents and undocumented immigrants

1 alike. HB 87 poses a substantial threat of deterring Latinos from reporting crimes
2 or serving as witnesses in criminal investigations by creating an environment of
3 hostility and fear that threatens the existence of any cooperative relationship
4 between law enforcement and the Latino community. This *amicus* brief provides
5 additional context and information about a particular and devastating consequence
6 of the rupture in police-community trust that HB 87 will inevitably cause – the
7 creation of an underclass uniquely vulnerable to increased hate crimes and
8 violence.

9 As shown below, unless its enforcement is enjoined, HB 87 is substantially
10 likely to cause irreparable harm by driving a wedge between law enforcement and
11 communities whom they are entrusted to protect. That breach in trust will render
12 the State’s Latino community uniquely vulnerable – an outcome fundamentally at
13 odds with strong public policies embodied in federal and state law. Granting the
14 preliminary injunctive relief that Plaintiffs seek will avert irreparable harm that
15 HB 87 will otherwise inflict on policing in Georgia, and will advance the vital
16 public interest in ensuring that federal anti-hate crimes statutes are enforced to the
17 fullest extent of the law. *See Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct.
18 365, 376 (2008).

19 Argument

20 **I. Federal Law Expressly Prohibits the Commission of Hate Crimes** 21 **Against People of Color, Including Latinos.**

22 The Federal Hate Crimes Prevention Act of 2009 provides strong
23 prohibitions against the commission of hate crimes, imposing harsher sentences
24 on those who commit unlawful acts against another, where the motivation in
25 selecting the victim was based on the person’s actual or perceived race, color or
26 national origin. 18 U.S.C. § 249. The act gives the United States Department of
27 Justice the power to investigate and prosecute violent crimes fitting these criteria
28 as violations of federal law in order to serve the Federal interest in eradicating

1 bias-motivated violence, protecting the public interest, and securing substantial
2 justice, and evinces a strong federal policy against the commission of hate crimes.
3 18 U.S.C. § 249.

4 The issue of hate crimes in our nation is very real. According to statistics
5 gathered by the Federal Bureau of Investigation documenting hate crimes through
6 2009, hate crimes were at their highest level since 2001 in 2008. In 2009 we saw a
7 slight decrease in incidents of hate crimes reported, with 6,604 reported
8 nationwide.¹ Of those, 483 were motivated by the actual or perceived Hispanic
9 Identity of the victim.² While this is a decline from the 2008 number, it is an
10 increase in the percentage of reported hate crimes attributed to motivation based
11 on perceived Hispanic heritage.³ Last year, we saw the discriminatory impact of
12 similar legislation when SB-1070 was passed in Arizona. The effect of that bill
13 was to drive a wedge between local law enforcement agencies and the
14 communities they were entrusted to protect; a study of Latino registered voters in
15 the state, commissioned by the national Council of La Raza, 85% expressed fear
16 that they would be racially profiled under the law, and 47% stated that the passage
17 of the law would make them less likely to report a crime to law enforcement
18 officials. This likely explains why the number of incidents of hate crimes reported
19 in Arizona increased based on sexual orientation, religion, and race, while the
20 number of ethnicity based crimes reported decreased.⁴ Validating such a
21 connection, in April of 2011, nearly a year following the passage of SB 1070,
22 Tucson police chief Roberto Villasenor was quoted as saying that, even despite
23 it's subsequent invalidation, SB 1070 "damages [law enforcement's] capability to

24 ¹ "Hate Crime Statistics: Incidents, Victims and Known Offenders by Bias Motivation, 2009" available at
25 http://www2.fbi.gov/ucr/hc2009/data/table_01.html (last visited June 10, 2011)

26 ² Id.

27 ³ "Hate Crime Statistics: Incidents, Victims and Known Offenders by Bias Motivation, 2008" available at
http://www2.fbi.gov/ucr/hc2008/data/table_01.html (last visited June 10, 2011)

28 ⁴ "Hate Crime Statistics: Incidents, Victims and Known Offenders by Bias Motivation, 2009 - Arizona" available
at http://www2.fbi.gov/ucr/hc2009/data/table_13az.html (last visited June 10, 2011)

1 obtain information to solve the crimes,” indicating his belief that reporting is
2 substantially affected by the passage of that and similar laws.⁵

3 Sadly, Georgia is one of the five states in the U.S. that has not enacted any
4 hate crime legislation, and so statistics are not available to accurately indicate the
5 frequency of crimes motivated by racial or ethnic characteristics of the victims as
6 would be reported if such laws were in place.⁶ However, similar fears are invoked
7 by HB 87 as were in Arizona by SB 1070, and it seems inevitable that the law will
8 have a similar result on reporting of criminal activity by Latino immigrants, thus
9 impeding the ability of law enforcement to serve their communities to the fullest
10 extent.

11 **II. HB 87 Will Undermine the Latino Community’s Trust in Law**
12 **Enforcement, Eviscerating the Police’s Ability to Enforce Federal and**
13 **State Anti-Hate Crimes Laws.**

14 **A. Police Cannot Enforce the Law If Victims and Witnesses Are**
15 **Unwilling to Come Forward.**

16 The Police Foundation, the International Association of Chiefs of Police
17 and the Major Chiefs Association have all expressed grave concerns that
18 deputizing local law enforcement officers to enforce immigration law undermines
19 the trust and cooperation of immigrant communities.⁷ For example, a 2009 report
20 by the Police Foundation states that “[i]mmigration enforcement by local police
21 undermines their core public safety mission, diverts scarce resources, increases
22 their exposure to liability and litigation, and exacerbates fear in communities
23 already distrustful of police.”⁸ According to Police Foundation President Hubert
24 Williams:

24 ⁵ “The Unhappy Anniversary of Arizona’s Immigration Law” available at
25 <http://www.forbes.com/2011/04/26/immigration-law-anniversary.html> (last visited June 10, 2011)

26 ⁶ “Hate Crime Report Card” available at <http://www.humanrightsfirst.org/our-work/fighting-discrimination/hate-crime-report-card/hate-crime-report-card-the-united-states/> (last visited June 10, 2011)

27 ⁷ See, e.g., Kozinets Decl. Ex. F, Arizona Association of Chiefs of Police Statement on Senate Bill 1070, available
28 at http://www.leei.us/main/media/AACOP_STATEMENT_ON_SENATE_BILL_1070.pdf (last visited June 21, 2010).

⁸ Kozinets Decl. Ex. G, <http://www.policefoundation.org/pdf/strikingRelease.pdf> (last visited June 21, 2010).

1 Police executives have felt torn between a desire to be
2 helpful and cooperative with federal immigration
3 authorities and a concern that their participation in
4 immigration enforcement efforts will undo the gains
5 they have achieved through community-oriented
6 policing practices directed at gaining the trust and
7 cooperation of immigrant communities. As one police
8 chief pointed out during the project, “How do you police
9 a community that will not talk to you?”⁹

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

8 Local agencies have worked very hard to build trust and
9 a spirit of cooperation with immigrant groups through
10 community based policing and outreach programs and
11 specialized officers who work with immigrant groups.
12 Local agencies have a clear need to foster trust and
13 cooperation with everyone in these immigrant
14 communities. Assistance and cooperation from
15 immigrant communities is especially important when an
16 immigrant, whether documented or undocumented, is
17 the victim of or witness to a crime. These persons must
18 be encouraged to file reports and come forward with
19 information. Their cooperation is needed to prevent and
20 solve crimes and maintain public order, safety, and
21 security in the whole community. . . .

22 Immigration enforcement by local police would likely
23 negatively effect and undermine the level of trust and
24 cooperation between local police and immigrant
25 communities. . . . Undoubtedly legal immigrants would
26 avoid contact with the police for fear that they
27 themselves or undocumented family members or friends
28 may become subject to immigration enforcement.¹⁰

20 As was the case during the Arizona hearings regarding Senate Bill 1070,
21 the fear that granting law enforcement broad discretion to investigate and report
22 citizenship status of any state resident will deter criminal reporting and endanger
23 the Latino community is very real in Georgia. It is imperative to the safety of the
24 community that these lines of communication be kept open, and considered to be

26 ⁹ Id.

27 ¹⁰ Kozinets Decl. Ex. H, Major Cities Chiefs Immigration Committee Recommendations, June 2006, available at
28 http://www.majorcitieschiefs.org/pdfpublic/MCC_Position_Statement_REVISED_CEF_2009.pdf (emphasis
added) (last visited June 21, 2010).

1 a measure of security, rather than risk, by those who could provide information
2 regarding hate- and other bias-based crimes.

3 **B. HB 87 Will Prevent Effective Protection from Hate Crimes**

4 Unless its enforcement is enjoined, HB 87 will create an underclass of
5 people who have no meaningful access to police services out of fear that their
6 perceived immigration status – whether relevant or not – will subject them to
7 heightened law enforcement scrutiny whenever they come into contact with
8 police. In its aim to deal with the issue of undocumented person living in
9 Georgia, HB 87 grants broad discretion to law enforcement officers, authorizing
10 them to investigate the immigration status of any individual who they have
11 “probable cause” to suspect to have committed any criminal violation. Such
12 discretion serves to create a fear of racial profiling and detention without just
13 cause by Latinos, whether they are legal or illegal immigrants or U.S. citizens. As
14 a consequence, Latinos will be deterred from reporting or serving as witnesses
15 regarding a range of criminal activities in the community, including hate crimes.

16
17 ADL knows from long experience advocating for and training law
18 enforcement on the implementation of hate crime laws that close cooperation
19 between local law enforcement and minority communities is essential.¹¹ If crime
20 and immigration enforcement become intertwined, police may find “out of status”
21 persons, or persons with non-citizen family members, hesitant to seek protection,
22 to report crimes committed against them or to serve as witnesses in other crimes –
23 compromising the police’s ability to keep the community safe. *See* Part II.A,
24 *supra*.

25 Moreover, when a bias-motivated crime is committed, the victim’s entire
26 community may be left feeling victimized, vulnerable, fearful, isolated and

27 _____
28 ¹¹ *See* Motion for Leave to File Brief of Amicus Curiae Anti-Defamation League in Support of Plaintiffs’ Motion
for Preliminary Injunction, at 1-3; Kozinets Decl. Exs. K-M.

1 unprotected by the law. The impact of the crime spreads far beyond the already
2 terrible consequences for the individual victim. Yet hate crimes will go
3 unreported or under-reported if HB 87 is permitted take effect, because victims
4 and witnesses will hesitate to contact law enforcement if doing so will subject
5 them heightened law enforcement scrutiny and possible detention, arrest or
6 deportation. The “Illegal Immigration Reform and Enforcement Act of 2011”
7 will endanger the Latino community in Georgia by creating an atmosphere of fear
8 and distrust, and will serve to cause more harm than it will prevent.

9 **III. Victims, Their Communities and the Public Will Be Irreparably**
10 **Harmed by the Under-Reporting of Hate Crimes that Will Inevitably**
11 **Result from HB 87, and the Public Interest Strongly Supports**
12 **Enjoining the Statute’s Enforcement**

13 ADL has monitored and exposed the increasingly hateful anti-immigrant,
14 anti-Latino and anti-Mexican rhetoric that has surrounded the national debate on
15 immigration reform.¹² HB 87 was passed against this backdrop of anger and
16 frustration in Georgia. The bill’s principal proponent, Governor Nathan Deal, has
17 voted to strengthen restrictive measures on immigrants in every issue up for
18 decision during his term, including voting against a measure that would have
19 allowed immigrants an additional four months to pursue legal residency.¹³ This
20 bill would further the restrictive, anti-immigrant sentiment felt by the Latino
21 community, and place greater stress on their relationship with local government.

22 In this climate, it is critically important that law enforcement be fully able
23 to police the laws against the commission of hate crimes directed at the Latino
24 community. Yet, HB 87 grants law enforcement officers considerable discretion
25 to pull over any person for “probable cause” and investigate the citizenship status
26 of them and all accompanying persons, and makes it a crime to be found

27 ¹² Kozinets Decl. Ex. N, 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).

28 ¹³ “Nathan Deal on Immigration” available at
http://www.ontheissues.org/Governor/Nathan_Deal_Immigration.htm (last visited June 10, 2011).

1 transporting any undocumented immigrant. Many legal residents have relatives or
2 friends who are undocumented, and fear that they will be in danger of being taken
3 into custody by officers because they themselves appear to be “illegal aliens.”
4 This can only act to deter those who fear such interactions from reporting crime
5 related information, or victimization by another member of the community. By
6 putting police and large segments of the community potentially at odds with one
7 another, HB 87 is likely to create a large population that lacks access to the type
8 of basic police services that the rest of the community takes for granted. This lack
9 of protection – combined with the atmosphere of hateful rhetoric that has marked
10 much of the immigration debate – will create a law enforcement underclass that is
11 vulnerable to the commission of bias-motivated violence and crime. Such a result
12 risks institutionalizing precisely the kinds of harms that the anti-hate crimes laws
13 were designed to prevent. It is contrary to the strong public policies against hate
14 crime embodied in federal law, and is inimical to the public’s interest in
15 advancing public safety and security.

16 Conclusion

17 For the foregoing reasons, HB 87 will inflict irreparable harm if its
18 enforcement is not enjoined, and the public interest strongly supports entry of a
19 preliminary injunction.

20 RESPECTFULLY SUBMITTED this 14th day of June 2011.

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1 CERTIFICATE OF SERVICE

2
3 I hereby certify that on June 14, 2011, I caused the attached document to be
4 electronically transmitted to the Clerk's Office using the CM/ECF System for
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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that the foregoing has been prepared in compliance with Local Rule 5.1(B) in 14-point New Times Roman typeface.

This the 14th day of June, 2011.

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