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24 UNITED STATES DISTRICT COURT  
25 DISTRICT OF SOUTH CAROLINA  
26 CHARLESTON DIVISION

27 Lowcountry Immigration Coalition, et  
28 al.,

Plaintiffs,

vs.

Haley, et al.,

Defendants.

2:11-cv-02779-RMG

**BRIEF OF AMICUS CURIAE  
THE ANTI-DEFAMATION  
LEAGUE IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Preliminary Statement

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. South Carolina Senate Bill 20, as amended ("SB 20"), enacted into law as Act No. 69 ("Act 69"), impedes that access for *all* Hispanics and Latinos – United

1 States citizens, lawful residents and undocumented immigrants alike. SB 20 poses  
2 a substantial threat of deterring Hispanics and Latinos from reporting crimes or  
3 serving as witnesses in criminal investigations by creating an environment of  
4 hostility and fear that threatens the existence of any cooperative relationship  
5 between law enforcement and the Hispanic and Latino communities. This *amicus*  
6 brief provides additional context and information about a particular and  
7 devastating consequence of the rupture in police-community trust that SB 20 will  
8 inevitably cause – the creation of an underclass uniquely vulnerable to increased  
9 hate crimes and violence.

10 As shown below, unless its enforcement is enjoined, SB 20 is substantially  
11 likely to cause irreparable harm by driving a wedge between law enforcement and  
12 communities whom they are entrusted to protect. That breach in trust will render  
13 the State’s Hispanic and Latino communities uniquely vulnerable – an outcome  
14 fundamentally at odds with strong public policies embodied in federal and state  
15 law. Granting the injunctive relief that Plaintiffs seek will avert irreparable harm  
16 that SB 20 will otherwise inflict on policing in South Carolina, and will advance  
17 the vital public interest in ensuring that federal anti-hate crimes statutes are  
18 enforced to the fullest extent of the law. *See Winter v. Natural Res. Def. Council,*  
19 *Inc.*, 129 S. Ct. 365, 376 (2008).

#### 20 Argument

#### 21 **I. Contrary to the Objectives of Federal Laws that Expressly Prohibit** 22 **Hate Crimes Motivated by Color or National Origin, SB 20 Would** 23 **Likely Result in a Decrease of Hate Crimes Reported by Hispanics and** 24 **Latinos.**

24 The Federal Hate Crimes Prevention Act of 2009 provides strong  
25 prohibitions against the commission of hate crimes, imposing harsher sentences  
26 on those who commit unlawful acts against another, where the motivation in  
27 selecting the victim is based on the person’s actual or perceived race, color or  
28 national origin. 18 U.S.C. § 249. The act gives the United States Department of

1 Justice the power to investigate and prosecute violent crimes fitting these criteria  
2 as violations of federal law in order to serve the Federal interests in eradicating  
3 bias-motivated violence, protecting the public interest, and securing substantial  
4 justice, and evincing a strong federal policy against the commission of hate  
5 crimes. 18 U.S.C. § 249.

6 The issue of hate crimes in our nation is very real. According to statistics  
7 gathered by the Federal Bureau of Investigation documenting hate crimes through  
8 2009, hate crimes were at their highest level since 2001 in 2008. In 2009 we saw a  
9 slight decrease in incidents of hate crimes reported, with 6,604 reported  
10 nationwide.<sup>1</sup> Of those, 483 were motivated by the actual or perceived Hispanic  
11 identity of the victim.<sup>2</sup> While this is a numeric decline from the 2008 number, it  
12 reflects an increase in the percentage of reported hate crimes attributed to  
13 motivation based on perceived Hispanic heritage.<sup>3</sup>

14 Last year witnessed the discriminatory impact of similar immigration  
15 legislation when SB-1070 was passed in Arizona. The effect of that bill was to  
16 drive a wedge between local law enforcement agencies and the communities they  
17 were entrusted to protect. Indeed, according to a study of Hispanic and Latino  
18 registered Arizona voters, commissioned by the national Council of La Raza, 85%  
19 expressed fear that they would be racially profiled under the law, and 47% stated  
20 that the passage of the law would make them less likely to report a crime to law  
21 enforcement officials. In April of 2011, nearly a year following the passage of SB  
22 1070, Tucson police chief Roberto Villasenor validated this study. He was quoted  
23 as saying that, even despite its subsequent invalidation, SB 1070 "damages [law  
24 enforcement's] capability to obtain information to solve the crimes," indicating

25  
26 <sup>1</sup> "Hate Crime Statistics: Incidents, Victims and Known Offenders by Bias Motivation, 2009" available at  
[http://www2.fbi.gov/ucr/hc2009/data/table\\_01.html](http://www2.fbi.gov/ucr/hc2009/data/table_01.html) (last visited October 24, 2011).

27 <sup>2</sup> Id.

28 <sup>3</sup> "Hate Crime Statistics: Incidents, Victims and Known Offenders by Bias Motivation, 2008" available at  
[http://www2.fbi.gov/ucr/hc2008/data/table\\_01.html](http://www2.fbi.gov/ucr/hc2008/data/table_01.html) (last visited October 24, 2011).

1 his belief that reporting is substantially affected by the passage of that and similar  
2 laws.<sup>4</sup>

3 South Carolina is one of the five states in the U.S. that has not enacted any  
4 hate crime legislation. Therefore, more accurate statistics reflecting the frequency  
5 of crimes motivated by racial or ethnic characteristics of the victims are not  
6 available as would be reported if South Carolina had a hate crimes law in place.<sup>5</sup>  
7 However, similar fears are being invoked by SB 20 as were in Arizona by SB  
8 1070, and it seems inevitable that the law will have a similar result on reporting of  
9 criminal activity by Latino immigrants, thus impeding the ability of law  
10 enforcement to serve their communities to the fullest extent.

11 **II. SB 20 Will Undermine the Hispanic and Latino Communities' Trust in**  
12 **Law Enforcement, Eviscerating the Police's Ability to Enforce Hate**  
13 **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.<sup>6</sup> 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.”<sup>7</sup> According to Police Foundation President Hubert  
24 Williams:

25 <sup>4</sup> “The Unhappy Anniversary of Arizona’s Immigration Law” available at  
26 <http://www.forbes.com/2011/04/26/immigration-law-anniversary.html> (last visited October 24, 2011).

27 <sup>5</sup> “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 October 24, 2011).

28 <sup>6</sup> See, e.g., Kozinets Decl. Ex. F, 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](http://www.leei.us/main/media/AACOP_STATEMENT_ON_SENATE_BILL_1070.pdf) (last visited October 24, 2011).

<sup>7</sup> Kozinets Decl. Ex. G, <http://www.policefoundation.org/pdf/strikingRelease.pdf> (last visited October 24, 2011).

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?"<sup>8</sup>

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

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

26 Immigration enforcement by local police would likely  
27 negatively effect and undermine the level of trust and  
28 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.

As was the case during the Arizona hearings regarding Senate Bill 1070,  
the fear that granting law enforcement broad discretion to investigate and report  
citizenship status of any state resident will deter criminal reporting and endanger  
the Hispanic and Latino communities is very real in South Carolina. It is  
imperative to the safety of the community that these lines of communication be  
kept open, and considered to be a measure of security, rather than risk, by those

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<sup>8</sup> Id.

<sup>9</sup> Kozinets Decl. Ex. H, Major Cities Chiefs Immigration Committee Recommendations, June 2006, available at, [http://www.houstontx.gov/police/pdfs/mcc\\_position.pdf](http://www.houstontx.gov/police/pdfs/mcc_position.pdf) (emphasis added) (last visited October 24, 2011).

1 who could provide information regarding hate or bias crimes and other criminal  
2 activity.

3 **B. SB 20 Will Prevent Effective Protection from Hate and Other**  
4 **Crimes.**

5 Unless its enforcement is enjoined, SB 20 will create an underclass of  
6 people who have no meaningful access to police services out of fear that their  
7 perceived immigration status – whether relevant or not – will subject them to  
8 heightened law enforcement scrutiny whenever they come into contact with  
9 police.

10 In its aim to deal with the issue of undocumented persons living in South  
11 Carolina, SB 20 grants local law enforcement officers the authority to investigate  
12 the immigration status of any person lawfully stopped based on “reasonable  
13 suspicion” that the person may be in the country unlawfully. Furthermore,  
14 Section 4 of SB 20 provides greater justification for unauthorized stops by making  
15 it a crime to:

16 conceal, harbor, or shelter from detection or to solicit or  
17 conspire to conceal, harbor, or shelter from detection  
18 that person in any place, including a building or means  
19 of transportation, with intent to further that person's  
20 unlawful entry into the United States or avoiding  
21 apprehension or detection of that person's unlawful  
22 immigration status by state or federal authorities.<sup>10</sup>

23 As a consequence, Hispanics and Latinos will be deterred from reporting or  
24 serving as witnesses regarding a range of criminal activities in the community,  
25 including hate crimes. ADL knows from long experience advocating for and  
26 training law enforcement on the implementation of hate crime laws that close  
27 cooperation between local law enforcement and minority communities is

28 <sup>10</sup> See Section SB20, Section 4.

1 essential.<sup>11</sup> If crime and immigration enforcement become intertwined, police  
2 may find “out of status” persons, or persons with undocumented family members  
3 or friends, hesitant to seek protection, to report crimes committed against them or  
4 to serve as witnesses in other crimes – compromising the police’s ability to keep  
5 the community safe. *See* Part II.A, *supra*.

6 Moreover, when a bias-motivated crime is committed, the victim’s entire  
7 community may be left feeling victimized, vulnerable, fearful, isolated and  
8 unprotected by the law. The impact of the crime spreads far beyond the already  
9 terrible consequences for the individual victim. Yet hate crimes will go  
10 unreported or under-reported if SB 20 is permitted take effect, because victims  
11 and witnesses will hesitate to contact law enforcement if doing so will subject  
12 them heightened law enforcement scrutiny and possible detention, arrest or  
13 deportation. SB 20 will endanger the Hispanic and Latino communities in South  
14 Carolina by creating an atmosphere of fear and distrust, and will serve to cause  
15 more harm than it will prevent.

16 **III. The Public Interest Strongly Supports Enjoinment of SB 20 as**  
17 **Implementation of This Law Will Irreparably Harm Hispanic and**  
18 **Latino Crime Victims, Their Communities and the Public.**

19 ADL has monitored and exposed the increasingly hateful anti-immigrant,  
20 anti-Hispanic and Latino and anti-Mexican rhetoric that has surrounded the  
21 national debate on immigration reform.<sup>12</sup> SB 20 was passed against this backdrop  
22 of anger and frustration in South Carolina. For instance, the bill’s sponsor,  
23 Senator Larry Grooms, said in February 2011:

24 “South Carolina is being overrun by illegal immigrants.  
25 And if they want to go to Vermont and live that’s fine.”

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

28 <sup>12</sup> Kozinets Decl. Ex. N, ADL Report: “Immigrants Targeted: Extremist Rhetoric Moves into the Mainstream,”  
available at [http://www.adl.org/civil\\_rights/anti\\_immigrant/](http://www.adl.org/civil_rights/anti_immigrant/) (last visited October 24, 2011).

1 fine. Because I want to make South Carolina a very  
2 unpleasant place for those that are here illegally . . . We  
3 have got some illegal immigrants in South Carolina that's  
4 destroying our way of life, that's destroying our culture  
5 and if the federal government is not going to stand up and  
6 do what they're supposed to do, by golly, let the General  
7 Assembly in South Carolina pass legislation and enable  
8 our law enforcement officers throughout our state to  
9 enforce illegal immigration policies."<sup>13</sup>

10 In this climate, it is critically important that law enforcement be fully able  
11 to police the laws against the commission of hate crimes directed at the Hispanic  
12 and Latino communities. Yet, as discussed *supra*, SB 20 will likely cause  
13 significant fear of law enforcement among South Carolina's Hispanic and Latino  
14 communities, as the law provides officers considerable discretion to stop and  
15 investigate the immigration status of any person. This fear of law enforcement  
16 will not be limited to undocumented persons. Many legal Hispanic and Latino  
17 residents may also fear that they will be stopped by law enforcement for  
18 appearing to be "illegal aliens" and that any undocumented relatives or friends in  
19 their company will be in danger of being taken into custody. This fear of law  
20 enforcement among both documented and undocumented Hispanics and Latinos  
21 can only serve to deter reporting of crime victimization or other crime-related  
22 information to the police. By putting law enforcement and large segments of the  
23 community potentially at odds with one another, SB 20 is likely to create a large  
24 population that lacks access to the type of basic police services that the rest of the  
25 community takes for granted. This lack of protection – combined with the  
26 atmosphere of hateful rhetoric that has marked much of the immigration debate –  
27 will create a law enforcement underclass that is vulnerable to the commission of  
28 bias-motivated violence and crime. Such a result risks institutionalizing precisely  
the kinds of harms that the hate crimes laws were designed to prevent. It is

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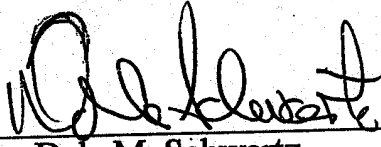
<sup>13</sup> See [http://www.youtube.com/watch?v=RZ\\_YCpRfs-w&feature=player\\_embedded](http://www.youtube.com/watch?v=RZ_YCpRfs-w&feature=player_embedded).

1 contrary to the strong public policies against hate crime embodied in federal law,  
2 and is inimical to the public's interest in advancing public safety and security.

3 Conclusion

4 For the foregoing reasons, SB 20 will inflict irreparable harm if its  
5 enforcement is not enjoined, and the public interest strongly supports entry of a  
6 preliminary injunction.

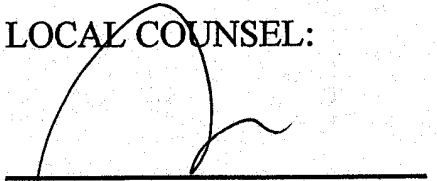
7 RESPECTFULLY SUBMITTED this 24 day of November, 2011.

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I hereby certify that on December 1, 2011 I caused the attached document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all of the CM/ECF Registrants in this action.

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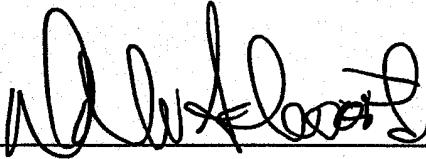
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