

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

**HISPANIC INTEREST COALITION)
OF ALABAMA; *ET AL.*,)**

Plaintiffs,)

vs.)

**ROBERT BENTLEY, in his official)
capacity as Governor of the State of)
Alabama; *et al.*,)**

Defendants.)

**RT. REV. HENRY N. PARSLEY, JR., in)
his official capacity as Bishop of the)
Episcopal Church in the Diocese of)
Alabama, *et al.*,)**

Plaintiffs,)

vs.)

Case Number: 5:11-CV-2484-SLB

**ROBERT BENTLEY, in his official)
capacity as Governor of the State of)
Alabama,)**

Defendants.)

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

**STATE OF ALABAMA; GOVERNOR)
ROBERT J. BENTLEY,)**

Defendants.)

**PLAINTIFFS' AMENDED MOTION FOR PRELIMINARY
INJUNCTION AND MEMORANDUM IN SUPPORT**

Pursuant to Federal Rule of Civil Procedure 65(a), the leaders of the Episcopal, Methodist and Roman Catholic churches in Alabama (“Church Leaders”) move this Court for a preliminary injunction against Defendants Governor Robert Bentley, Attorney General Luther Strange and Madison County District Attorney Robert Br ousard (hereinafter collectively “Defendants”) enjoining them and all persons acting in active concert with them, including law enforcement officers, from enforcing Sections 13 and 27 of the Beason-Hammond Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535 of the 2011 Regular Session of the Alabama Legislature.

INTRODUCTION

In the Episcopal, Methodist and Roman Catholic religions, as well as many other faith traditions, the Word of God as communicated through the Bible mandates that followers show hospitality to strangers. The Bible offers a convincing set of arguments, compelling followers to “love[s] the alien, giving him food and clothing;” to “love the alien as yourself;” and to “treat the stranger as a native born.” *Deuteronomy* 10:18; *Leviticus* 19:34. Alabama Church Leaders and their members follow these biblical commands by providing food, housing, transportation, places to worship as

well as administering the covenants of marriage, baptism and other religious contracts to anyone in need.

While agreeing on the necessity for comprehensive immigration reform, the Church Leaders and their members ask this Court to allow them to legally continue to practice acts of ministry mandated in Scripture and incumbent on every church, Christian minister and individual Christian in Alabama. The Church Leaders and their members do not want to be forced to choose between following the Law of God or the Law of Alabama.

Targeting Sections 13 and 27 allow Church Leaders and their members to unambiguously focus on the precise areas of the Law that outlaw the Biblical mandate to welcome and care for all people without regard to immigration status. In respect to judicial economy, the Church Leaders are asking for this distinct enjoinder so they can continue to practice their faith without fear of criminal prosecution. Section 13 specifically criminalizes the mission of the Church Leaders and their members to engage in works of mercy to feed, shelter and clothe anyone in need without first having to verify immigration documents. Section 13 also criminalizes the constitutional right to freedom of assembly because those conducting and those attending Sunday worship or other services will be deterred for fear of being arrested and subject to imprisonment. Section 27

attacks Church Leaders' and their members' ability to enter into contracts, including the covenants of marriage, baptism, confirmation, the Eucharist, reconciliation, and other religious sacraments.¹

Absent an immediate court order restraining the defendants from enforcing these key sections of the Law, the Church Leaders, their members and other Alabama residents will suffer immediate and irreparable harm for which there is no adequate remedy at law. The Church Leaders have at least a reasonable chance of success on the ultimate merits of their case that the Law is unconstitutional under the First and Fourteenth Amendments.

In other states, where similar albeit less prohibitive immigration legislation has been enacted, federal courts have enjoined the enforcement of those laws. Federal courts have granted temporary injunctions against Utah and Indiana's anti-immigration laws. In Arizona and Georgia, federal judges have blocked parts of those states' anti-immigration laws.

Finally, the hardship imposed on the defendants by a preliminary injunction will not unreasonably outweigh the benefit accruing to the Church Leaders and their members, namely to be able to continue to freely exercise their requisite duty to practice the Gospel.

¹ Indeed, in the Roman Catholic faith attendance at Mass is an obligation that may not be ignored.

FACTS²

1. On June 2, 2011, the Alabama legislature passed the nation's most restrictive anti-immigrant legislation. Alabama's Anti-Immigration Law extensively regulates both immigrants and those who associate with, speak to or help them.

2. Representative Micky Hammon sponsored the anti-immigration bill in the State House of Representatives. Senator Scott Beason introduced a similar omnibus anti-immigration bill in the Senate. The Anti-Immigration Law is a combination of these two measures and became law 2011-535 after signature by Governor Robert Bentley on June 9, 2011.

3. The law is scheduled to take effect on September 1, 2011, except for Sections 22 and 23 (related to state law enforcement staffing and coordination), which went into effect immediately, and Sections 9 and 15 (related to employment verification), which will go into effect in 2012.

4. Legislators expressly stated that the intent of the law was to deport undocumented immigrants and to deter them from living in Alabama. Representative Hammon explained: "This [bill] attacks *every aspect* of an illegal immigrant's life. They will not stay in Alabama [T] his bill is

² The Church Leaders incorporate herein the Complaint for Declaratory and Injunctive Relief filed on August 1, 2011 as if fully and completely set out herein.

designed to make it difficult for them to live here so they will deport themselves.” Kim Chandler, “Alabama House passes Arizona-style immigration law,” *The Birmingham News*, April 5, 2011.

5. Senator Beason, speaking about immigration policy in February 2011, suggested that individuals “empty the clip, and do what has to be done.” Charles J. Dean, “Sen. Scott Beason catching flak over ‘empty the clip’ comment,” *The Birmingham News*, February 8, 2011

6. For decades, Episcopal, Methodist and Roman Catholic Church Leaders and their leaders have engaged in ministry activities that would directly be affected by the Law including, but not limited to:

- Feeding programs including soup kitchens and other activities to provide meals to the homeless, working poor and anyone who is hungry without regard to situation or condition.
- Educational programs including church schools, daycares, literacy programs and other activities where no validation of immigration status is required.
- Housing services including temporary and permanent housing that occur both at church facilities and at other locations.
- Charity re-sale stores where anyone can enter into contracts to purchase items.

- Health care clinics where free medical services are administered to anyone in need.
- Hispanic churches dedicated to ministering to any person of Hispanic descent.
- Camps that are geared to providing Christian education to any child in Alabama regardless of their immigration status.
- Counseling centers where church representatives provide individual, family and marital counseling to anyone in need.
- Emergency services to help victims of natural disasters and other emergencies including the tornados that devastated some Alabama communities in April 2011.
- Financial assistance to individuals in need, regardless of their immigration status, on a person-to-person basis.

7. In addition, Church Leaders and their members regularly encourage and welcome anyone in need of church services or assistance, Bible study and other church gatherings without verifying immigration status.

8. Church Leaders also engage in religious covenants regardless of immigration status including baptisms, marriages and other religious sacraments.

9. In short, the history of the Anti-Immigration Law makes clear that the Alabama legislature intended the bill to cast out undocumented persons from the state and consequently prohibit Alabama residents from freely practicing their faith, worshipping or entering into contracts without fear of criminal prosecution.

ARGUMENT

Interim injunctive relief is designed to preserve the *status quo* until a trial on the merits may be had. In this matter, preserving the *status quo* requires the Court to immediately issue an order directing the defendants to cease and desist from enforcing Sections 13 and 27 of the Law on September 1, 2011. Without such an order, the Church Leaders and their members will be subject to criminal prosecution for continuing to participate in numerous ministry services throughout the state that provide food, clothing and shelter to all residents. In addition, the Church Leaders' and their members' ability to assemble freely in worship activities as well as their ability to administer the religious covenants of marriage, baptism and other religious sacraments is in danger under the Law.

A preliminary injunction is appropriate when the movant establishes: (1) a threat of irreparable injury; (2) no adequate remedy at law; (3) a substantial likelihood of success on the merits; and, (4) that the plaintiffs'

injury outweighs any harm an injunction may cause the defendants; *See K.H. Outdoors LLC v. City of Trussville* , 458 F.3d 1261, 1268 (11th Cir. 2006); *Teper v. Miller*, 82 F.3d 989, 992 n. 3 (11th Cir. 1996). The Church Leaders request for preliminary injunctive relief satisfies each requirement.

A. Without a preliminary injunction, the Church Leaders will suffer immediate and irreparable harm.

A preliminary injunction is issued to prevent irreparable harm. “An injury is irreparable if it cannot be undone through monetary remedies” or “if damages would be difficult or impossible to calculate.” *Scott v. Roberts*, 612 F.3d 1279, 1295 (11th Cir. 2010) (internal quotation marks and citations omitted).

If enforced, Sections 13 and 27 of Alabama’s Anti-Immigration Law will cause irreparable harm to the Church Leaders and their members by violating their rights to freely exercise their religion, to speak freely, and to assemble as guaranteed by the First and Fourteenth Amendments to the United States Constitution.³ The Church Leaders and their members will suffer irreparable harm because they will no longer be able to live their faith by operating soup kitchens, providing transportation, and providing

³ To the extent that an infringement of First Amendment rights is shown, federal courts have held that irreparable injury justifying preliminary injunctive relief is presumed. *Cate v. Oldham*, 707 F.2d 1176, 1189 (11th Cir. 1983), citing *Community Communications Co., Inc. v. City of Boulder, Colo.*, 660 F.2d 1370 (10th Cir.1981), cert. dismissed, 456 U.S. 1001, 102 S.Ct. 2287 (1982).

temporary and permanent housing facilities to all persons without first verifying their immigration status. In addition, the Church Leaders and their members will suffer irreparable harm because members will be deterred from assembling to worship for fear of being arrested. Finally, the Church Leaders and their members will suffer irreparable harm because they will not be able to freely contract without first verifying immigration status. Church Leaders will be unable to perform contracts, including marrying residents and baptizing them, as well as being able to run day cares, thrift stores or other enterprises involving contractual relations with residents who may be undocumented.

B. The Church Leaders have no adequate remedy at law.

Money cannot compensate the Church Leaders and their members for the irreparable harm they will suffer at the hands of the defendants if Sections 13 and 27 of the Law are enforced. The Church Leaders and their members ask to be able to freely practice their faith to welcome and help any person in Alabama, as mandated by God's Word in the Bible, without fear of prosecution because they failed to verify immigration status. No dollar amount can compensate the Church Leaders and their members from being denied their constitutional rights to practice their faith, speak freely, freely assemble, and freely contract.

C. The Church Leaders have a reasonable chance of success on the merits of its case.

The Free Exercise Clause provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” U.S. Const. amend. I. The First Amendment protects not only against state interference with religious beliefs, but also against state interference with religious activity. *See Employment Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872 (1990) (“[T]he exercise of religion often involves not only belief and profession but the performance of ... physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing....”) (internal quotations omitted); *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (“[T]he right to the free exercise of religion unquestionably encompasses the right to preach, proselyte, and perform other similar religious functions”).

Sections 13 and 27 of Alabama’s Anti-Immigration Law not only directly violate Church Leaders and their members ability to freely practice their faith, but the sections also infringe on the right to freely assemble and freely contract as guaranteed by the U.S. Constitution.

Section 13 of Alabama’s Anti-Immigration Law violates the ability of the Church Leaders and their members to freely practice their faith because the section criminalizes church ministry activities when a Church Leader or

member provides food, shelter, or transportation or otherwise encourages an undocumented person to come to or reside in this state. Section 13(a)(4) specifically attacks Church Leaders' freedom to exercise their faith by making it a state crime to "[h]arbor an alien unlawfully present in the United States by entering into a rental agreement, as defined by Section 35-9A-141 of the Code of Alabama 1975, with an undocumented person to provide accommodations, if the person knows or recklessly disregards the fact that the undocumented person is unlawfully present in the United States."

Section 27 prohibits the ability of Church Leaders to freely contract. Section 27 prevents Alabama state courts from enforcing the terms or conditions of any contract to which an unlawfully present undocumented person is a party if the other party had direct or constructive knowledge that the undocumented person was unlawfully present at the time the parties entered into the contract.

D. The hardship imposed on the defendants by the injunction does not unreasonably outweigh the benefits accrued by the Church Leaders.

The hardship imposed by a preliminary injunction does not impose any undue hardship on the defendants because it merely preserves the *status quo*. The law is new legislation, so there is nothing the defendants would "lose" were the Court to grant a preliminary injunction. The defendants

merely would incur a delay, which does not unreasonably outweigh the benefits accrued by the Church Leaders and their members to be able to continue performing their essential ministry services throughout Alabama.

CONCLUSION

As demonstrated, *supra*, the Church Leaders are entitled to the preliminary injunction of Sections 13 and 27 requested in this motion. The Church Leaders have met their burden of demonstrating that, without the preliminary injunction, the Church Leaders and the ministry services in which their church members engage throughout Alabama will suffer immediate and irreparable injury. In addition, the Church Leaders, their members and other Alabama residents have reason to fear that their rights to speak freely and freely assemble will be violated because persons will be prohibited from attending worship service for fear of criminal prosecution. The Church Leaders will also be prohibited from freely contracting through their ministry services as well as when they administer the sacraments of Baptism and Marriage, which are essentially contracts as they are covenants between the church and its members. Accordingly, this Court should grant the requested preliminary injunction and thereby preserve the *status quo* to prevent irreparable injury and harm to the Church Leaders, their members, and Alabama residents.

RELIEF REQUESTED

The Church Leaders seek an immediate preliminary injunction directed to the defendants enjoining, restraining, and ordering the defendants and all persons acting in active concert with them, including law enforcement officers, from enforcing sections 13 and 27 of the Beaumont-Hammond Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535, until this matter may be tried upon the merits.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

s/

Augusta S. Dowd

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