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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case Number: 2:11-CV-2746-SLB**
	)	
STATE OF ALABAMA and	)	
GOVERNOR ROBERT J. BENTLEY,	)	
	)	
Defendants.	)	
	)	

ORDER

This case is presently pending before the court on the United States's Motion for an Injunction Pending Appeal or, Alternatively, a Temporary Injunction Pending Adjudication of an Emergency Motion to the Court of Appeals for an Injunction Pending Appeal. (Doc. 96.)[1] Specifically, the United States moves the court to enjoin the enforcement of Sections 10, 12(a), 18, 27, 28 and 30 of Act No. 2011-535 (also referred to as H.B. 56). For the reasons set forth below, the court is of the opinion that the United States's Motion for an Injunction Pending Appeal is due to be and hereby is **DENIED**; its Motion for a Temporary Injunction Pending Adjudication of an Emergency Motion to the Court of Appeals for an Injunction Pending Appeal is also **DENIED**.

> In relevant part, Rule 62(c) provides that, "[w]hile an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies

[1] Reference to a document number, ["Doc. ___"], refers to the number assigned to each document as it is filed in the court's record.

> an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." Fed. R. Civ. P. 62(c). An injunction pending an appeal is considered an "extraordinary remedy," *Touchston v. McDermott*, 234 F.3d 1130, 1132 (11th Cir. 2000), "for which the moving party bears a 'heavy burden.'" *Gay Lesbian Bisexual Alliance v. Sessions*, 917 F. Supp. 1558, 1561 (M.D. Ala. 1996) (Thompson, J.)(citation omitted). In deciding whether to issue an injunction pending an appeal, the Eleventh Circuit requires movants to show "(1) a substantial likelihood that they will prevail on the merits of the appeal; (2) a substantial risk of irreparable injury to the [movants] unless the injunction is granted; (3) no substantial harm to other interested persons; and (4) no harm to the public interest." *Touchston*, 234 F.3d at 1132; *see also Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)(explaining that, while different procedural rules govern the authority of district courts and courts of appeals to stay an order pending appeal, the factors for consideration generally are the same)(citing Fed. R. Civ. P. 62(c) & Fed. R. App. P. 8(a)).

Reed v. Riley, No. 2:07-cv-0190-WKW [wo], 2008 WL 3931612, *1 (M.D. Ala. Aug. 25, 2008)(parallel citations omitted); *see also Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986). "[W]here the balance of the equities weighs heavily in favor of granting the [injunction], the movant need only show a substantial case on the merits." *Gonzalez ex rel. Gonzalez v. Reno*, No. 00-11424-D, 2000 WL 381901, *1 (11th Cir. Apr. 19, 2000)(quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. Unit A June 1981))(internal quotations and other citations omitted)(unpublished).[2]

For the reasons set forth in the court's Memorandum Opinion, the court finds that the United States has not shown that it is "likely to prevail" nor that it has a "substantial case"

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[2]"In *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981), this Court adopted as binding precedent decisions of the Fifth Circuit, including Unit A panel decisions of that circuit, handed down prior to October 1, 1981." *W.R. Huff Asset Management Co., L.L.C. v. Kohlberg, Kravis, Roberts & Co., L.P.*, 566 F.3d 979, 985 n.6 (11th Cir. 2009)(citing *United States v. Todd*, 108 F.3d 1329, 1333 (11th Cir. 1997)).

on the merits. The court carefully and thoroughly reviewed all issues raised by the parties and its lengthy Memorandum Opinion represents the product of its time and effort. It does not foresee a "substantial" case for reversal.

"It is unnecessary to engage in a protracted analysis of the balancing of the equities in this case because the Court finds that under either standard discussed above, [the United States] has not demonstrated a question for appeal sufficient to warrant the issuance of a stay pending appeal." *United States v. Engelhard Corp.*, No. 6–95–CV–45 (WLS), 1997 WL 834205, *2 (M.D. Ga. Apr. 7, 1997); *see also MacBride v. Askew*, 541 F.2d 465, 467 (5th Cir. 1976). Nevertheless, even if the court accepted the assertion that the United States has a substantial case on the merits, the court finds that the balance of the equities does not weigh heavily in favor of the United States. The State Defendants argue that the United States will not suffer irreparable harm if an injunction is not issued. The court agrees. As pointed out in the Defendants' Opposition to the instant Motion, the previous findings of the court in its Memorandum Opinion on the Motion for Preliminary Injunction reflect the court's view that the United States will not be irreparably harmed if Sections 10, 12(a), 18, 27, 28, and 30 are enforced pending an appeal. In addition, the United States has not established that there will be "substantial harm" to other interested persons or to the public interest absent an injunction. Alabama has an interest in enforcing laws properly enacted by its Legislature and not likely to be found unconstitutional. Moreover, the public has an interest in having properly enacted valid laws enforced. The United States has not shown

that the equities "weigh heavily" in favor of an injunction pending appeal. Therefore, the United States's Motion for an Injunction Pending Appeal, (doc. 96), is **DENIED**.

As an alternative, the United States asks this court to "issue a temporary injunction that would permit the Eleventh Circuit to consider the government's motion for an injunction pending appeal." (Doc. 96 at 7.) This Motion is also **DENIED**.

DONE, this 5th day of October, 2011.

Sharon Lovelace Blackburn

SHARON LOVELACE BLACKBURN
CHIEF UNITED STATES DISTRICT JUDGE