

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

THE STATE OF ALABAMA, et al.,
Defendants-Appellees.

On appeal from the United States District Court for the
Northern District of Alabama, Case No. 2:11-CV-2746-SLB

**ALABAMA AND GOVERNOR BENTLEY'S *PRELIMINARY* RESPONSE
TO THE UNITED STATES' REQUEST FOR A TEMPORARY INJUNCTION**

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Certificate of Interested Parties

Pursuant to 11th Cir. Rule 26.1-1, counsel for defendants-appellees the State of Alabama and Governor Robert Bentley certify that they believe that the Certificate of Interested Persons and Corporate Disclosure Statement contained in the United States' Time Sensitive Motion For Injunction Pending Appeal And Temporary Injunction Pending Full Consideration And For Expedited Briefing And Argument is correct, but for the following additional interested parties:

Blackburn, Sharon L, United States District Judge

Strange, Luther, Alabama Attorney General

s/ James W. Davis
Of Counsel

A handwritten signature in black ink, appearing to read 'James W. Davis', is written over a horizontal line. The signature is stylized with a large loop at the end.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Appeal Number:
)	11-14532-CC
)	
STATE OF ALABAMA; GOVERNOR)	
ROBERT J. BENTLEY,)	
)	
Defendants.)	

**ALABAMA AND GOVERNOR BENTLEY’S *PRELIMINARY* RESPONSE
TO THE UNITED STATES’ REQUEST FOR A TEMPORARY INJUNCTION**

As part of its “time sensitive” motion for an injunction pending appeal, the United States asks for a temporary injunction pending consideration of the motion. The United States therefore requests one injunction that would be in place while the Court considers a request for another injunction, which in turn would be in place while the Court considers the appeal concerning a request for a preliminary injunction.

It is all the same relief – a preliminary injunction barring enforcement of State legislation – requested in three different ways.

The Appellees (Defendants in the District Court, referred to herein as the “State Defendants”) will respond in greater detail to the substance of United States’ Motion in the time permitted by this Court’s rules, or such other time as

ordered by the Court. For now, the State Defendants respond simply to stress that there is no reason this Court should give the United States its ultimate relief without even full consideration of the present motion.

First of all, Rule 8 of the Federal Rules of Appellate Procedure provides for an injunction pending appeal, but the State Defendants are not aware of a rule permitting this Court to enter a “temporary restraining order” pending consideration of such a motion. The United States has pointed to none.

Second, the United States has not shown that its motion is, indeed, “time sensitive.” Eleventh Circuit Rule 27-1(b) sets out the two conditions of “emergency” motions – which the United States does not seek to meet – and provides that “[m]otions that do not meet these two conditions but in which a ruling is required by a date certain may be treated as ‘time sensitive’ motions.” The United States has not shown—or even suggested—that action is necessary by a date certain.

Third, the issues involved require more than a matter of days to consider fully. The District Court spent weeks considering hundreds of pages of briefing and issued a thoughtful 115-page opinion. While the State Defendants do not agree with all of the District Court’s findings, the District Court held in relevant part that the United States does not meet the standard for preliminary injunctive relief and it did so in a thorough, meticulous way (and then separately denied a

motion for injunction pending appeal). The issues are complex, and the informed determinations of the District Court should remain in place while this Court considers a motion for injunction pending appeal.

Fourth, the equities weigh against temporary or emergency relief. After the District Court's ruling, the State began implementation of the portions of the Act in question, and it would create hardship, and disserve the public interest, for enforcement to be stopped on a temporary basis. On-again / off-again enforcement will only confuse law enforcement and the public. "[T]he public interests imperatively demand that legislative enactments should be recognized and enforced by the courts as embodying the will of the people, unless they are plainly and palpably, beyond all question, in violation of the fundamental law of the Constitution." *Atkin v. State of Kansas*, 191 U.S. 207, 223 (1903).

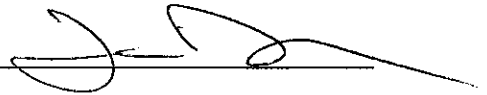
The State Defendants likely will have no objection to expediting the appeal, but they strongly oppose the request for temporary and preliminary injunctive relief. The State Defendants will respond to the merits of the United States' motion more fully in such time as the Court allows, but for now oppose any temporary relief pending consideration of the motion for an injunction pending appeal.

This Court should deny the United States' motion for a temporary injunction.

Respectfully submitted,
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s/ James W. Davis



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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2011, I served the following by electronic mail and by Federal Express overnight delivery:

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