IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 11-14532-CC and No. 11-14674-CC

UNITED STATES,
Plaintiff-Appellant,
v.
STATE OF ALABAMA, ET AL.,
Defendants-Appellees.

Nos. 11-14535-CC and 11-14675-CC

HISPANIC INTEREST COALITION OF ALABAMA, ET AL.
Plaintiff-Appellant,
v.
ROBERT BENTLEY, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Alabama
Case Nos. 5:11-cv-02484-SLB & 2:11-cv-2746-SLB

REPLY IN SUPPORT OF OPPOSED MOTION TO PARTIALLY VACATE INJUNCTION PENDING APPEAL

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June 7, 2012

Certificate of Interested Persons in *HICA v. Bentley*,
Nos. 11-14535-CC & 11-14675-CC

Pursuant to 11th Cir. Rule 26.1-1, counsel for Appellees/Cross-Appellants certify that the following have an interest in the outcome of this appeal:

[no new entries]

Certificate of Interested Persons in *United States v. Alabama*,
Nos. 11-14532-CC & 11-14674-CC

Pursuant to 11th Cir. Rule 26.1-1, counsel for Appellees/Cross-Appellants certify that the following have an interest in the outcome of this appeal:

[no new entries]

REPLY IN SUPPORT OF OPPOSED MOTION TO PARTIALLY VACATE INJUNCTION PENDING APPEAL

Appellees offer the following in reply to the separate oppositions filed by the United States and the HICA Plaintiffs.

1. The United States correctly recognizes that the motion to vacate turns on whether this Court issued the injunction based on assertions, like the HICA Plaintiffs', that Alabama Code §31-13-29 "reache[d] into every aspect of everyday life for immigrants in Alabama, including, *inter alia*: water and sewage services; sanitation, garbage, and recycling services; housing and building occupancy licenses; obtaining a house number; recording a document or engaging in any activity in a probate office; obtaining an animal license; or any sort of business license or car tag, among other publicly provided services." *HICA* Blue Br. 42-43 (citations and footnotes omitted). If the Court did not base its injunction on this more expansive interpretation of §31-13-29, then the recent amendment of the statute does not provide any occasion for the Court to reconsider the injunction. But if the Court did base its injunction on the expansive interpretation, then it should vacate that portion of the injunction because Appellants no longer have a substantial likelihood of prevailing on their claim that §31-13-29 is preempted. To the extent that the United States is arguing that §31-13-29 is preempted even under

the more narrow construction, the United States is wrong for the reasons given in the parties' briefs on the merits. *See U.S.* Red Br. 43-46; *HICA* Red Br. 32-34.

Although the United States now distances itself from the more expansive interpretation, *see* U.S. Opp. 3-4, the State Defendants understood the United States to be wholeheartedly embracing that interpretation, for the first time, at oral argument. And it was only after that oral argument, rather than when the United States first sought an injunction pending appeal or when it submitted its briefs, that the Court enjoined §31-13-29.

2. Meanwhile, the HICA Plaintiffs have missed the point. In addition to the initial briefing on the Plaintiffs' motions for injunction pending appeal, this Court now has received eight merits briefs and held oral argument on these issues. Appellees' Motion cross-referenced those briefs, *see* Mot. 3 (citing *U.S.* Red Br. 43-46; *HICA* Red Br. 32-34), and Rule 27 did not require either side to burden the Court by repeating all its arguments concerning §31-13-29 at this point. Only the Court knows whether it enjoined §31-13-29 based on Plaintiffs' broad interpretation. If it did, it should vacate the injunction.

Because the matter really is that simple, there is no need to respond, jot-for-jot, to the arguments the HICA Plaintiffs repeat in their opposition. It bears noting, however, that in leading off by claiming that Appellees' argument is a "gross

misreading" of "*Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2011)," the HICA Plaintiffs are, to borrow their own phrase, engaging in a "gross misreading" of what the Appellees have said in their briefs. HICA Opp. 6. The briefs themselves set out the argument Appellees actually have made, and Appellees will rest on what those briefs say. Based on these arguments and Alabama's pressing interest in enforcing its laws, Appellees respectfully ask the Court to vacate, as soon as possible, the portion of the injunction covering §31-13-29.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2012, I electronically filed the above and foregoing with the Clerk of the Court using the PACER/CM/ECF system, and served the following attorneys by electronic mail:

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