

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA**

CENTRAL ALABAMA FAIR  
HOUSING CENTER, et al.,

Plaintiffs,

V.

JULIE MAGEE, in her official  
capacity as Alabama Revenue  
Commissioner, et al.,

Defendants.

CIVIL ACTION NUMBER:

2:11-cv-00982-MHT-CSC

**STATE DEFENDANT’S MOTION IN LIMINE  
CONCERNING PROPOSED TESTIMONY OF LEGISLATORS**

State Defendant, Commissioner Julie Magee, sued in her official capacity as Revenue Commissioner for the State of Alabama, moves for the exclusion of the testimony of individual members of the Alabama Legislature. Plaintiffs seek to call such persons to testify in an apparent effort to prove that the Alabama Legislature as a whole acted with certain intent. As discussed below, such testimony is not relevant to the issues before the Court, is needless and a waste of time, and is therefore excluded by Rules 402 and 403 of the Federal Rules of Evidence.

In further support of this motion, State Defendant states as follows:

## **ARGUMENT**

Plaintiffs apparently intend to use the testimony of individual legislators to argue that Alabama's immigration law is intentionally discriminatory. Such testimony is irrelevant, or is deserving of no weight, and should be disallowed.

Common sense tells us that the after-the-fact views of individual Legislators cannot tell us the collective motivation (if one exists) for 67 House members (out of 105) and 25 Senate members (out of 35) who voted for the bill. One court succinctly described the common-sense rationale for excluding such evidence as follows:

[A] post-enactment statement of an individual legislator represents the views – or, perhaps more accurately, the recollections – of a single participant in the legislative process. Even when the statements of individual legislators are offered during the enactment process, they are commonly viewed cautiously as evidence of the intentions of the entire assembly. . . . Courts are all the more loath to determine the intentions of the institution as a whole on the basis of isolated statements that are generated after enactment, without any evidence that the other members of the legislative body even were aware of them, much less that they agreed with them.

*Salem-Keizer Ass'n of Classified Employees v. Salem-Keizer School Dist.* 24J, 61 P.3d 970, 974-75 (Ore. App. 2003).

### **Circuit Precedent**

On these grounds, the former Fifth Circuit has rejected the use of such statements, noting their unreliability for the purpose at hand:

The retroactive wisdom provided by the subsequent speech of a

member of Congress stating that yesterday we meant something that we did not say is an ephemeral guide to history. Though even God cannot alter the past, historians can, and other mortals are not free from the temptation to endow yesterday with the wisdom found today. What happened after a statute was enacted may be history and it may come from members of the Congress, but it is not part of the legislative history of the original enactment.

*Rogers v. Frito-Lay, Inc.*, 611 F.2d 1074, 1080 (5th Cir. 1980).<sup>1</sup> Accord, *South Carolina Educ. Ass'n v. Campbell*, 883 F.2d 1251, 1260 (4th Cir. 1989) (“We hold that the district court erred in admitting, over the appellants' objections, the testimony of present and past members of the General Assembly as to legislative motive.”).

### **U.S. Supreme Court Precedent**

The Fifth and Fourth Circuits were on firm ground in disregarding such testimony. The United States Supreme Court has cautioned many times against making a judgment about a group's intent based on the testimony of a few members:

Inquiries into congressional motives or purposes are a hazardous matter. When the issue is simply the interpretation of legislation, the Court will look to statements by legislators for guidance as to the purpose of the legislature, because the benefit to sound decision-making in this circumstance is thought sufficient to risk the possibility of misreading Congress' purpose. It is entirely a different matter when we are asked to void a statute that is, under well-settled criteria, constitutional on its face, on the basis of what fewer than a handful of

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<sup>1</sup> In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

Congressmen said about it. What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork.

*United States v. O'Brien*, 391 U.S. 367, 383-384, 88 S.Ct. 1673, 1682-1683, 20 L.Ed.2d 672 (1968) (footnote omitted).

The Court has also noted how “intrusive” it is for courts to inquire into a legislature’s motives for passing a law:

This Court has recognized, ever since *Fletcher v. Peck*, 6 Cranch 87, 130-131, 3 L.Ed. 162 (1810), that judicial inquiries into legislative or executive motivation represent a substantial intrusion into the workings of other branches of government. ***Placing a decision-maker on the stand is therefore “usually to be avoided.”*** *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 420, 91 S.Ct. 814, 825, 28 L.Ed.2d 136 (1971).

*Village of Arlington Heights*, 429 U.S. 252, 268 n. 18 (1977) (emphasis added).

Again and again, the Court has recognized that the view of one legislator is not the same as the collective motivation of the entire legislature:

But post-passage remarks of legislators, however explicit, cannot serve to change the legislative intent of Congress expressed before the Act's passage. *See, e.g., United States v. Mine Workers of America*, 330 U.S. 258, 282, 67 S.Ct. 677, 690, 91 L.Ed. 884 (1947). Such statements “represent only the personal views of these legislators, since the statements were [made] after passage of the Act.” *National Woodwork Manufacturers Ass'n v. NLRB*, 386 U.S. 612, 639 n. 34, 87 S.Ct. 1250, 1265, 18 L.Ed.2d 357 (1967).

*Blanchette v. Connecticut General Ins. Corporations*, 419 U.S. 102, 132 (1974).<sup>2</sup>

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<sup>2</sup> *See also, Regional Rail Reorganization Act Cases*, 419 U.S. 102, 132, 95 S.Ct. 335, 42

The Supreme Court therefore recognizes how difficult it is to discern the motivations of an entire legislative body. The body is made up of individuals who voted for a variety of reasons, and many of them no doubt held multiple motives for supporting the law. As Justice Scalia has written, because a person may vote for any variety of reasons, “[t]o look for the sole purpose of even a single legislator is probably to look for something that does not exist.” *Edwards v. Aguillard*, 482 U.S. 578, 636-37, 107 S.Ct. 2573, 2605, 96 L.Ed.2d 510 (1987) (Scalia, J., dissenting).

### **Other District Courts**

It is true that statements by individual legislators, made *during* debate on the floor *before* passage of the bill, may shed light on legislative intent *if* consistent with statutory language. *E.g.*, *Cleveland v. Runyon*, 972 F.Supp. 1326, 1329 (D.Nev. 1997); *Sierra East Television, Inc. v. Weststar Cable Television, Inc.*, 776 F.Supp. 1405, 1412 (E.D.Cal. 1991); *Burlington Northern R.R. v. Fort Peck Tribal Executive Bd.*, 701 F.Supp. 1493, 1502 (D. Mont. 1988). But the language of Act

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L.Ed.2d 320 (1974) (post-enactment statements of legislators “represent only the personal views of these legislators, since the statements were [made] after the passage of the act” (internal quotation marks omitted)); *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 118 (1980), citing *Chrysler Corp. v. Brown*, 441 U.S. 281, 311 (1979) (“[O]rdinarily even the contemporaneous remarks of a single legislator who sponsors a bill are not controlling in analyzing legislative history.”); *County of Washington, Oregon v. Gunther*, 452 U.S. 161, 176 n. 16, (1981) (“We are normally hesitant to attach much weight to comments made after the passage of legislation. In view of the contradictory nature of these cited statements, we give them no weight at all.”) (citation omitted).

No. 2011-535, including Section 30, *expressly prohibits* unlawful discrimination on the basis of race, color, or national origin.<sup>3</sup>

In any event, these cases considering floor debates certainly did not hold that individual members' statements were *controlling*, and they generally dealt with the meaning of the language of the subject statutes, not the motives for passing a law. Moreover, those floor statements are a far cry from what Plaintiffs intend to rely on here: Post-enactment statements outside the deliberative process, seeking to prove why 140 people voted the way they did.

### **Alabama State Law**

Alabama law does not support the Plaintiffs. Alabama courts do not permit inquiry into legislative intent where an Act does not contain an express statement of legislative intent. *See 1568 Montgomery Highway v. City of Hoover*, 45 So.3d 319, 345 (Ala., 2010), citing *Eagerton v. Terra Resources, Inc.*, 426 So.2d 807, 809 (Ala. 1982) (“[t]he motives or reasons of an individual legislator are not

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<sup>3</sup> *See* Act No. 2011-535 §§ 7(d) (state and local entities “may not consider race, color, or national origin”); 10(c) (law enforcement officials “may not consider race, color, or national origin”); 11(c) (law enforcement officials “may not consider race, color, or national origin”); 12(c) (law enforcement officials must defer to federal government’s determination of suspect’s immigration status, and “may not consider race, color, or national origin”); 15(i) (businesses who terminate an employee to comply with E-Verify are not liable for claims made against them by the terminated employee, “provided that such termination is made without regard to the race, ethnicity or national origin of the employee and that such termination is consistent with the anti-discrimination laws of this state and of the United States”) 15(k)(2) (A petition alleging that an employer has not complied with E-Verify that alleges a violation “on the basis of national origin, ethnicity, or race” rather than on the basis of the employee’s immigration status “shall not be acted upon.”) 28(h) (“This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.”); 30(e) (state or local entities “may not consider race, color, or national origin”).

relevant to the intent of the full legislature in passing the bill.”); *James v. Todd*, 267 Ala. 495, 506, 103 So.2d 19, 28 (Ala. 1958) (“the judiciary will not inquire into the motives or reasons of the legislature or the members thereof...”). And the Fourth Circuit held that a District Court erred by admitting testimony of this sort when applicable state law made it irrelevant to the intent of the state legislature: *South Carolina Educ. Ass’n v. Campbell*, 883 F.2d at 1260 (“The district court also failed to give due deference to state rules regarding competent evidence of legislative intent.”).

### **Other States’ Laws**

Other state courts that have addressed the matter are in agreement: Statements of individual legislators are due little if any weight when it comes to discerning legislative intent. *See, e.g., Edwards v. State*, 64 S.W.3d 706, 707 (Ark. 2002) (“We have specifically held that the testimony of legislators with respect to their intent in introducing legislation is clearly inadmissible.”).<sup>4</sup>

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<sup>4</sup> *See also, e.g., General Chemical Corp. v. De La Lastra*, 852 S.W.2d 916, 923 (Tex.1993) (holding that the intent of an individual legislator, even a statute's principal author, is at most persuasive authority, resembling the comments of a learned scholar); *Haynes v. Caporal*, 571 P.2d 430, 434 (Okla.1977) (“Testimony of individual legislators or others as to happenings in the Legislature is incompetent, since that body speaks solely through its concerted action as shown by its vote.”); *U.S. Brewers Ass’n, Inc. v. Director of the New Mexico Dept. of Alcoholic Beverage Control*, 668 P.2d 1093, 1095-96 (N.M. 1983) (“Statements of legislators, *after* the passage of the legislation, however, are generally not considered competent evidence to determine the intent of the legislative body enacting a measure.”); *City of Los Angeles v. Superior Court*, 170 Cal.App.3d 744, 752 (1985) (“By attempting to delve into the mind of the [ordinance's] principal drafter, Friedman is trying to discover what the individual members of the City Council interpreted the [ordinance] to mean at the time they passed [it]. This violates one of the long-established rules of statutory construction: that the testimony of an individual legislator

### **The Language of the Statute is Evidence of Legislative Intent**

Thus, if Plaintiffs intend to build their intentional discrimination case on the testimony of a few individual legislators, they are building on quicksand. There is, however, evidence of Legislative intent, and it is the same evidence courts are always supposed to use: The language of the statute. The statute does not apply only to Hispanics, or to illegal aliens from any one country, but to all illegal aliens. And the Legislature told us why they passed the law: Not because of a person's race, but to address the costs of illegal immigration.

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as to his intention, motive or opinion with regard to a particular piece of legislation is inadmissible.”); *Levy v. State Bd. of Examiners for Speech Pathology and Audiology*, 553 S.W.2d 909, 912 (Tenn. 1977) (“[T]he letters, testimony or other evidence rendered by a legislator retrospectively is not admissible” to prove legislative motive.); *Dumont Lowden, Inc. v. Hansen*, 183 A.2d 16, 20 (N.J. 1962) (“While reports and comparable documents evidencing legislative purpose have been freely considered by this court, it has not at any time suggested that it would approve the extraordinary course of taking testimony of individual legislators as to their actual intent or understanding when they voted upon the legislation.”); *Bowaters Carolina Corporation v. Smith*, 186 S.E.2d 761, 764 (S.C. 1972) (“It is a settled principle in the interpretation of statutes that even where there is some ambiguity or some uncertainty in the language used, resort cannot be had to the opinions of legislators or of others concerned in the enactment of the law, for the purpose of ascertaining the intent of the legislature.”); *Cartwright v. Sharpe*, 162 N.W.2d 5, 12 (Wis. 1968) (“Members of the legislature have no more right to construe one of its enactments retrospectively than has any other private person.”); *United Telephone Employees PAC v. Secretary of State*, 906 P.2d 306 (Or. App. 1995) (“Subsequent statements by legislators are not probative of the intent of statutes already in effect.”); *Louisiana Electorate of Gays and Lesbians, Inc. v. State*, 833 So.2d 1016, 1024 (La. App. 2002) (“[O]ne member of the legislature cannot testify as to the legislative intent of the whole lawmaking body.”); *Board of Educ. of Detroit Public Schools v. Board of Educ. of Romulus Community Schools*, 575 N.W.2d 90, n.4 (Mich. App. 1997) (“[W]e do not consider statements made by any individual legislator as proper evidence of general legislative intent.”); *Keane v. City Auditor of Boston*, 380 Mass. 201, 207 n. 5, 402 N.E.2d 495 (1980) (stating that the court is not aware of any cases permitting legislator to testify after the fact about legislative intent); *Morel v. Coronet Ins. Co.*, 509 N.E.2d 996, 999 (Ill. 1987) (“‘Legislative intent’ speaks to the will of the legislature as a collective body, rather than the will of individual legislators. . . . Affidavits of individual legislators as to the meaning of specific legislation, therefore, do not constitute meaningful evidence of legislative intent.”).



Section 2 of Act No. 2011-535, provides these legislative findings:

The State of Alabama finds that illegal immigration is causing economic hardship and lawlessness in this state and that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status.

Because the costs incurred by school districts for the public elementary and secondary education of children who are aliens not lawfully present in the United States can adversely affect the availability of public education resources to students who are United States citizens or are aliens lawfully present in the United States, the State of Alabama determines that there is a compelling need for the State Board of Education to accurately measure and assess the population of students who are aliens not lawfully present in the United States, in order to forecast and plan for any impact that the presence such population may have on publicly funded education in this state.

The State of Alabama further finds that certain practices currently allowed in this state impede and obstruct the enforcement of federal immigration law, undermine the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Alabama.

Therefore, the people of the State of Alabama declare that it is a compelling public interest to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration laws.

The State of Alabama also finds that other measures are necessary to ensure the integrity of various governmental programs and services.

Act No. 2011-535, § 2.

These statements from the Act itself are reliable evidence of Legislative intent. The testimony of individual Legislators will tell us nothing more than their present recollections of their individual intent.

We are not aware of any authority for the proposition that the testimony of a bill's sponsor is good, reliable evidence on what everyone else was thinking when they voted for the bill. Plaintiffs certainly have not provided any such authority. The Court therefore should not permit Plaintiffs to call individual Legislators to testify about the collective intent of the Alabama Legislature.<sup>5</sup>

WHEREFORE, State Defendant moves that this Court exclude the testimony of individual members of the Alabama Legislature that Plaintiffs intend to offer to prove the intent of the entire Legislature.

Respectfully submitted,

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<sup>5</sup> State Defendant relies further on her opposition to the Plaintiffs' Motion for Temporary Restraining Order or Preliminary Injunction. *See* Docs. 33 and 38.

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**Attorneys for the State Defendant, Commissioner Julie Magee**

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22<sup>nd</sup> day of November 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel for Plaintiffs who are registered for electronic service in this case.

I FURTHER CERTIFY that on the 22<sup>nd</sup> day of November 2011, I am serving by electronic mail the following co-defendant for whom no counsel has yet appeared:

Judge Jimmy Stubbs      [probatejudge@elmoreco.org](mailto:probatejudge@elmoreco.org)

I FURTHER CERTIFY that on the 22<sup>nd</sup> day of November 2011, I am serving by electronic email the following counsel for Plaintiffs who are not yet registered for service using the CM/ECF system:

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