Nos. 11-14535-CC and 11-14677-CC

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

HISPANIC INTEREST COALITION OF ALABAMA, ET AL.
***Appellants/Cross-Appellees*,**

v.

GOVERNOR ROBERT BENTLEY, ET AL.,
***Appellees/Cross-Appellants*.**

On Cross-Appeals from the United States District Court
for the Northern District of Alabama
Case No. 5:11-cv-02484-SLB

ALABAMA DEFENDANTS' PETITION FOR REHEARING *EN BANC*

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Alabama Fair Housing Center, et al., *Amicus Curiae*

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STATEMENT OF COUNSEL

I express a belief, based on a reasoned and studied professional judgment, that this appeal involves two questions of exceptional importance that warrant *en banc* review:

(1) Does an organization have standing to sue State officials for an injunction against a law based on the mere fact that the organization has redirected some of its resources to educating and counseling the public in response to the law?

(2) Does a State violate the Equal Protection Clause when it attempts to determine the number of unlawfully present aliens who are students enrolled in the State's primary and secondary schools?

I also express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decisions of the Supreme Court of the United States and this Circuit and that consideration by the full court is necessary to secure and maintain uniformity of decisions: *Nordlinger v. Hahn*, 505 U.S. 1, 112 S. Ct. 2326 (1992); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S. Ct. 2130 (1992); *Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382 (1982); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 102 S. Ct. 1114 (1982); *Common Cause/Ga. v. Billups*, 554 F.3d 1340 (11th Cir. 2009); and *Fla. State Conference of the NAACP v. Browning*, 522 F.3d 1153 (11th Cir. 2008).

s/ John C. Neiman, Jr.

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TABLE OF CONTENTS

Certificate of Interested Persons C-1

Statement of Counsel i

Table of Contents iii

Table of Authorities iv

Preliminary Statement 1

Statement of Issues 1

Statement of the Course of Proceedings and Disposition of the Case 2

Argument and Authorities 6

I. Rehearing is warranted on standing. 7

II. The equal-protection issue warrants rehearing. 10

Conclusion 15

Certificate of Service 17

TABLE OF AUTHORITIES

Cases

Ass'n for Retarded Citizens of Dallas v. Dallas Cnty. Mental Health & Mental Retardation Ctr. Bd. of Trustees,
19 F.3d 241 (5th Cir. 1994) 10

Common Cause/Ga. v. Billups,
554 F.3d 1340 (11th Cir. 2009) .... i, 9

DeYoung v. Owens,
646 F.3d 1319 (11th Cir. 2011) 11

Doe v. Plyler,
628 F.2d 448 (5th Cir. 1980) 4

Fla. State Conference of the NAACP v. Browning,
522 F.3d 1153 (11th Cir. 2008) 8, 9

Fla. State Conference of the NAACP v. Browning,
522 F.3d 1153 (11th Cir. 2008) i

Havens Realty Corp. v. Coleman,
455 U.S. 363, 102 S. Ct. 1114 (1982).................... i, 7, 8, 9

La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest,
624 F.3d 1083 (9th Cir. 2010) 9

Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S. Ct. 2130 (1992).................... i, 7

McKissick v. Busby,
936 F.2d 520 (11th Cir. 1991) 5, 6

Morales v. Daley,
116 F. Supp. 2d 801 (S.D. Tex. 2000) 12, 15

Nat'l Taxpayers Union v. United States,
68 F.3d 1428 (D.C. Cir. 1995) 10

Nordlinger v. Hahn,
505 U.S. 1, 112 S. Ct. 2326 (1992).. i, 11, 12

Plotkin v. Ryan,
239 F.3d 882 (7th Cir. 2001) 10

Plyler v. Doe,
457 U.S. 202, 102 S.Ct. 2382 (1982)... i, 6, 13

Shapiro v. Thompson,
394 U.S. 618, 89 S. Ct. 1322 (1969)..13

United States v. State of N.H.,
539 F.2d 277 (1st Cir. 1976)..15

Wash. State Grange v. Wash. State Republican Party,
552 U.S. 442, 128 S. Ct. 1184 (2008)..13

Statutes

325 ILL. COMP. STAT. 55/5 14

ALA. CODE §31-13-27
(HB56 Section 28) 3, 4

ARIZ. REV. STAT. §15-828..14

ARK. CODE ANN. §6-18-208..14

CAL. EDUC. CODE §48002 14

FLA. STAT. §1003.21 14

IDAHO CODE ANN. §18-4511 14

IND. CODE §20-33-2-10 14

KAN. STAT. ANN. §72-53, 106 14

ME. REV. STAT. ANN. tit. 20-A, §6002 14

MICH. COMP. LAWS §380.1135 14

MISS. CODE ANN. §37-15-1 14

N.C. GEN. STAT. §115C-364 14

N.D. CENT. CODE §12-60-26 14

N.J. STAT. ANN. §18A:36-25.1 14

N.Y. EDUC. LAW §3218 14

NEB. REV. STAT. §43-2007 14

NEV. REV. STAT. §392.165 14

OHIO REV. CODE ANN. §3313.672 14

S.D. CODIFIED LAWS §13-27-3.1 14

TEX. EDUC. CODE ANN. §25.002 14

UTAH CODE ANN. §53A-11-503 14

VA. CODE ANN. §22.1-3.1 14

W. VA. CODE §18-2-5c 14

PRELIMINARY STATEMENT

Like the companion cases in Nos. 11-13044 & 11-14532, this appeal raises important questions about States' ability to address problems caused by illegal immigration. As Alabama has explained in its petition for *en banc* rehearing in No. 11-14532, the questions there concern whether certain provisions of an Alabama statute, commonly known as HB56, are preempted. Meanwhile, the substantive question in this case concerns whether another HB56 provision, which requires officials to estimate the number of unlawfully present students in the public schools, violates the Equal Protection Clause. But an equally important question here is one of procedure: whether the private organizations that brought this challenge had standing to do so. The District Court held that they did not. But the panel disagreed and, reaching the merits, struck the provision down. Like the two preemption issues on which Alabama has sought rehearing in No. 11-14532, the panel's rulings in this case are important in their own right and because of their impact on other areas of the law. The Court should rehear these issues along with the issues Alabama and Georgia have raised in the two companion cases.

STATEMENT OF ISSUES

I. Standing. Does an organizational plaintiff have standing to seek an injunction of the school-data provision based on the mere fact that it has redirected some of its resources to educating and counseling the public about the provision,

even though the provision did not otherwise impact the organization's ability to accomplish its goals?

II. School-data collection. Does Alabama's school-data provision violate the Equal Protection Clause merely because it requires officials to try to determine the citizenship and immigration status of students who enroll in Alabama's primary and secondary schools—even though it does not actually require students to provide information if they choose not to, and no student will be denied an education or treated differently based on the information provided?

STATEMENT OF THE COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

I. The school-data provision

Estimates from public-interest groups suggest that between 75,000 and 160,000 unlawfully present immigrants lived in Alabama in 2010. Doc 69 – Exh A – Pg 23. But the State does not know how many unlawfully present students attend publicly funded primary and secondary schools. The State also does not know whether the proportion of unlawfully present students in any given school affects overall educational outcomes or the use of resources in that school.

Section 28 of HB56, codified at §31-13-27 of the Alabama Code, was the Legislature's way of trying to determine the answers to these questions. The provision's full text is set forth in the statutory appendix to this petition, and the essentials are summarized here.

This provision requires a prospective primary or secondary school student to present a birth certificate or similar document upon enrollment—an event that happens when the student first enters the school system. If the birth certificate is not available or reveals that the student was born in another country, officials are to ask the student's guardian to notify the school of the "actual citizenship or immigration status of the student under federal law" and provide documents to that effect. ALA. CODE §31-13-27(a)(3). Regardless of whether the student's guardian notifies the school about this information, the student will be enrolled. The only effect of a guardian's failure to provide the information is that the student will be presumed to be an unlawfully present alien for the purposes of aggregate statistics the school reports to the State Board of Education.

After the Board of Education gathers these statistics, the provision requires it to prepare a report, "aggregated by public school, regarding the numbers of United States citizens, of lawfully present aliens by immigration classification, and of aliens believed to be unlawfully present in the United States enrolled at all primary and secondary public schools in this state." *Id.* §31-13-27(d)(2). The statute instructs the Board to use this aggregate data to analyze whether unlawfully present students affect "the standard or quality of education," "fiscal costs," and "other educational impacts." *Id.* §31-13-27(d)(3).

The provision has safeguards that protect students' privacy. It requires students to present birth certificates or similar documents only once, when they "enroll[]" upon moving to the State or otherwise entering public school for the first time. *Id.* §31-13-27(a). The provision does not allow statewide authorities to collect or report individualized data, except as required by federal law and requested by federal officials. *Id.* §31-13-27(e). And the provision creates a cause of action for negligent disclosure of information. *Id.* §31-13-27(f).

II. The district-court and panel decisions

A group of 36 people and associations filed this lawsuit against various state officials, seeking to have HB56 enjoined as unconstitutional. The plaintiffs sought a preliminary injunction, and the District Court consolidated that request with the United States' similar motion, at issue before this Court in the rehearing petition Alabama has filed in No. 11-14532. Of particular importance to the petition in this case, the private plaintiffs sought to enjoin Alabama's school-data provision on Equal Protection grounds.[1]

The District Court denied the plaintiffs' request. The court found that neither the individual nor the associational plaintiffs had standing to challenge the

[1] A preemption challenge to the school-data provision is foreclosed by the former Fifth Circuit's binding decision in *Doe v. Plyler*, 628 F.2d 448, 453 (5th Cir. 1980), which the Supreme Court affirmed in non-pertinent part. The Court there held that a state law that expressly denied unlawfully present aliens a free public education was not preempted.

provision. The court reasoned that the provision did not affect the individual plaintiffs—who were school-age children and their representatives—because they were already enrolled and thus would not go through the data-collection process. Doc. 137 – Pg 98. Meanwhile, the court reasoned that although the public-interest associations had "spent time discussing Section 28 with [their] members and constituents," an association's voluntary diversion of resources to provide advice about a challenged law does not, by itself, create standing. *Id.* at 101.

The private plaintiffs then appealed. After a motions panel enjoined the school-data provision during the appeal, the same merits panel that decided the United States' case in No. 11-14532 reversed the District Court's decision declining to enjoin the school-data provision. The panel concluded that one of these public-interest groups, Alabama Appleseed Center for Law & Justice, Inc., had standing because it had provided advice to persons in light of the new provision on how "to enroll children in school, whether children should be enrolled, how schools will use the information collected, and whether parents will suffer immigration consequences as a result of a child's enrollment." Exh. A at 12.

"As a general rule," this Court "will not consider issues which the district court did not decide." *McKissick v. Busby*, 936 F.2d 520, 522 (11th Cir. 1991). But rather than "remand[ing] to give the district court an opportunity to determine" the merits in the first instance, *id.*, the panel concluded that the provision violates the

Equal Protection Clause. The panel applied a "heightened level of scrutiny." Exh. A at 15, 2320. It analogized Alabama's information-gathering provision to the Texas statute held unconstitutional in *Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382 (1982). That Texas statute required unlawfully present persons to pay tuition to attend public school. *See id.* at 205-07, 102 S. Ct. at 2389. "Compared to the tuition requirement struck down in *Plyler*," the panel concluded, "section 28 imposes similar obstacles to the ability of an undocumented child to obtain an education." Exh. A at 20. Without the benefit of fact-findings by the District Court, the panel held as a matter of law that the provision will "deter this population from enrolling in and attending school because, as unlawfully present aliens, 'these children are subject to deportation,' and removal proceedings can be instituted upon the federal government being informed of their undocumented status." *Id.* at 21. Accordingly, the panel directed that the entirety of the provision be preliminarily enjoined.

ARGUMENT AND AUTHORITIES

The panel's rulings on standing and equal protection put this Circuit's jurisprudence on a collision course with the law of the Supreme Court and other Circuits. If the panel is right about standing, then any public-interest organization can sue state officials in this Circuit to invalidate laws just because the organization decides to educate the public about them. If the panel is right about

the Equal Protection Clause, then those same organizations can challenge all manner of state and federal laws that do nothing more than attempt to gather data to inform public policy. This Circuit should reject these conclusions. But at the very least, if these conclusions are going to be the law of the Circuit, they should be the judgment of the entire Court.

I. Rehearing is warranted on standing.

The panel's decision on organizational standing was important and wrong. To establish standing, a plaintiff must show "an invasion of a legally protected interest which is . . . concrete and particularized" and "a causal connection between the injury and the conduct complained of." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 2136 (1992). All the identified organizational plaintiff alleged here was that it had "received inquiries" about the school-data provision and had "hosted presentations to convey information about the consequences of the law, including its education provision." Exh. A at 12. To be sure, Appleseed "divert[ed]" resources it could have used in other activities when it decided to conduct this educational campaign. *Id.* But deciding to educate the public about a law in this way is not in and of itself an Article III injury.

The panel's contrary decision misapplies the Supreme Court's decision in *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 102 S. Ct. 1114 (1982). In *Havens*, the Supreme Court held that an organization has standing to sue if the

defendant's acts impair the organization's ability to engage in its core mission and force the organization to divert resources to counter the defendant's acts. In *Havens*, the defendant engaged in "racial steering," a practice by which "real estate brokers and agents encourage patterns of racial segregation in available housing by steering members of racial and ethnic groups to buildings occupied primarily by members of such racial and ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups." *Id.* at 366 n.1, 102 S. Ct. at 1118 n.1. In contrast, the mission of the organizational plaintiff in *Havens* was the opposite of racial steering; it was to "assist equal access to housing through counseling and other referral services" regardless of race. *Id.* at 379, 102 S. Ct. at 1124. Defendant's racial steering made it harder for that organizational plaintiff to meet its goals. The Supreme Court held that the plaintiff had not "simply [suffered] a setback to the organization's abstract social interests," but had itself been injured by defendant's conduct. *Id.*

The *Havens* rule is sound, but the panel expanded it far beyond its proper scope. This Circuit has recognized that *Havens* confers standing on a group to challenge state laws that directly interfere with the group's activities by "*forcing* the organization to divert resources to counteract" the law. *Fla. State Conference of the NAACP v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008) (emphasis added). Organizations that register voters, for example, have standing to challenge

laws that make it more difficult for voters to register because those laws force organizations to educate their volunteers about the law if they are to carry out their preexisting campaigns. *See Common Cause/Ga. v. Billups*, 554 F.3d 1340 (11th Cir. 2009); *Browning*, 522 F.3d 1153. But this Court used the word "forcing" in these cases for a reason. Neither this Circuit nor any other Circuit had held, before the panel did here, that an organization can create standing simply by deciding to educate the public about a law's effects when the campaign is not necessary to maintain the organization's preexisting activities. In these circumstances, the organization's decision to educate and campaign about the law would simply serve, as the Supreme Court put it in *Havens*, "the organization's abstract social interests." 455 U.S. at 379, 102 S. Ct. at 1124.

Every Circuit to have addressed this question has come out the other way. The Ninth Circuit succinctly states the consensus view: an organization "cannot manufacture the injury by incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would not affect the organization at all." *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010). "It must instead show that it would have suffered some other injury if it had not diverted resources to counteracting the problem." *Id*. This is also the rule in the Fifth Circuit, the D.C. Circuit, and the Seventh Circuit. *See Ass'n for Retarded Citizens of Dallas v. Dallas Cnty. Mental Health & Mental*

Retardation Ctr. Bd. of Trustees, 19 F.3d 241, 244 (5th Cir. 1994) ("The mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization."); *Nat'l Taxpayers Union v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995) (same); *Plotkin v. Ryan*, 239 F.3d 882, 886 (7th Cir. 2001) ("[O]rdinary expenditures as part of an organization's purpose do not constitute the necessary injury-in-fact required for standing.").

The panel's decision creates a uniquely sweeping rule for this Circuit. Appleseed has chosen to spend its resources on lobbying against, or "educating" about, the school-data provision. But it cannot, by virtue of this choice, confer Article III standing on itself. As the District Court noted, none of the organizational plaintiffs here actually assists children with enrollment in school, which is the only activity that could conceivably be hindered by the provision. Doc. 137 – Pg 101. The panel's decision effectively grants standing to any advocacy organization that decides to educate the public about a new law it does not like. That ruling will have detrimental effects on standing doctrine in any number of contexts, and it deserves rehearing by the panel or *en banc*.

II. The equal-protection issue warrants rehearing.

The panel's equal-protection analysis is equally unsound. The panel ruled that this law was facially discriminatory even though "by its terms" it applies to all

students. Exh. A at 16. The panel concluded that the law "significantly interferes" with the exercise of a constitutional "right" to receive a free education, but it cited no actual evidence of interference, and the chief Supreme Court precedent it cited expressly disclaims the existence of such a right. That flawed analysis cannot be the basis for striking down a State's good-faith effort to assess the costs of illegal immigration, and it is another reason for panel or *en banc* rehearing.

Alabama's school-data provision is consistent with equal protection because it does not mandate disparate treatment. "The Equal Protection Clause does not forbid classifications." *Nordlinger v. Hahn*, 505 U.S. 1, 10, 112 S. Ct. 2326, 2331 (1992). "It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike." *Id.* Accordingly, the *sine qua non* of an equal-protection claim is a plaintiff's showing "that the State will treat him disparately from other similarly situated persons." *DeYoung v. Owens*, 646 F.3d 1319, 1327 (11th Cir. 2011). Here, the panel conceded that the school-data provision "by its terms" treats every student the same. Exh. A at 16. Every prospective student is required to provide documentation about his or her citizenship or immigration status. There is no disparate treatment based on the documents provided. If a student fails to provide the documentation, nothing happens to the student. If a student says that he is an unlawfully present alien,

nothing happens to the student. Without disparate treatment, there is no equal-protection problem.

A State's attempts to gather data about participants in its programs do not violate the Equal Protection Clause. At the federal government's urging, other courts have held in other contexts that informational questions about race, ethnicity, and medical condition are constitutional: "The government's position is that case law is clear that it is differential treatment, not classification, that implicates equal protection, and cites the opinion *Nordlinger v. Hahn*, 505 U.S. 1, 10, 112 S. Ct. 2326, 120 L.Ed.2d 1 (1992)." *Morales v. Daley*, 116 F. Supp. 2d 801, 813 (S.D. Tex. 2000). The district court in *Morales* agreed with DOJ. "[R]equiring a person to self-classify racially or ethnically, [even] knowing to what use such classifications have been put in the past," does not violate the Constitution. *Morales*, 116 F. Supp. 2d at 814-815.

The panel did not contest this proposition. Instead, although conceding that "by its terms" the school-data provision applies equally to all prospective students, the panel erroneously concluded that, in practice, the provision "substantially interferes" with "the right to an elementary public education as guaranteed by *Plyler*." Exh. A at 16-17. There are two big problems with that analysis.

First, the panel misread the Supreme Court's decision in *Plyler v. Doe*, finding the derogation of a constitutional right where *Plyler* itself says no right

exists. The school-data provision cannot possibly "interfere" with, in the panel's words, a "right to an elementary public education as guaranteed by *Plyler*." Exh. A at 18. The Supreme Court in *Plyler* was explicit that "[p]ublic education is not a 'right' granted to individuals by the Constitution" and that "[u]ndocumented aliens cannot be treated as a suspect class." *Plyler*, 457 U.S. at 221, 223, 102 S. Ct. at 2396, 2398. Instead, *Plyler* held only that a State may not "'reduce expenditures for education by barring [some arbitrarily chosen class of] children from its schools.'" *Id.* at 229, 102 S. Ct. at 2401 (quoting *Shapiro v. Thompson*, 394 U.S. 618, 633, 89 S. Ct. 1322, 1330 (1969)) (alteration in *Plyler*). The school-data provision does not, on its face, bar anyone from the schools.

Second, in asserting that the school-data provision will nonetheless have that practical effect, the panel overlooked the well-established standard for testing a law's facial constitutionality before it is enforced. The panel said the provision would have this effect because the panel was "of the mind that" the provision would subject unlawfully present persons to "increased likelihood of deportation or harassment." Exh. A at 21. But in a pre-enforcement facial challenge, the court must confine its analysis to "the statute's facial requirements," without any "speculat[ion] about 'hypothetical' or 'imaginary' cases." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450, 128 S. Ct. 1184, 1190 (2008). And the record refutes the panel's speculation in any event. Alabama officials have

announced that they intend for schools to remain open to all children regardless of their immigration status and that they do not understand the provision to require them to report a student's status to federal authorities. *See* Doc 82-3 – Pg 2-3. Meanwhile, the panel's assertion that the law will stop children from enrolling is based solely on a combination of intuition and DOJ's announcement that it is investigating whether the provision *might* have that effect. *See* Exh. A at 22 n.9. The results of that investigation are unknown, but it is difficult to imagine how Alabama's law "increase[s] the likelihood of deportation or harassment" any more than other States' laws that similarly require a prospective student to submit a birth certificate or other document at the time of enrollment.[2] Exh. A at 22. If the panel is right about the school-data provision, then groups like Appleseed ought to be suing other States to enjoin those other laws.

Appleseed's concern that the United States might compel Alabama to turn over its data so federal officials can deport unlawfully present students is farfetched and irrelevant. *See* Exh. A at 22-23. There will always be groups that

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[2] *See, e.g.*, ARK. CODE ANN. §6-18-208(b)(1); ARIZ. REV. STAT. §15-828; CAL. EDUC. CODE §48002; FLA. STAT. §1003.21; IDAHO CODE ANN. §18-4511(2); 325 ILL. COMP. STAT. 55/5; IND. CODE §20-33-2-10; KAN. STAT. ANN. §72-53, 106; ME. REV. STAT. ANN. tit. 20-A, §6002; MICH. COMP. LAWS §380.1135; MISS. CODE ANN. §37-15-1; NEB. REV. STAT. §43-2007; NEV. REV. STAT. §392.165; N.J. STAT. ANN. §18A:36-25.1; N.Y. EDUC. LAW §3218; N.C. GEN. STAT. §115C-364(c); N.D. CENT. CODE §12-60-26; OHIO REV. CODE ANN. §3313.672; S.D. CODIFIED LAWS §13-27-3.1; TEX. EDUC. CODE ANN. §25.002; UTAH CODE ANN. §53A-11-503; VA. CODE ANN. §22.1-3.1; W. VA. CODE §18-2-5c.

believe, rightly or wrongly, that the federal government will misuse data. *See, e.g.*, *Morales*, 116 F. Supp. 2d at 811 (plaintiff feared that census data would be used to place him in an internment camp). But the appropriate way for the courts to relieve any such fears in this case would be to enjoin the federal government's potential misuse of the information, not the State's collection of the data itself. As the First Circuit explained under similar circumstances, the federal government's "possible and purely hypothetical misuse of data does not require the banning of reasonable procedures to acquire such data." *United States v. State of N.H.*, 539 F.2d 277, 280 (1st Cir. 1976).

At the end of the day, Appleseed's unfounded fears about state or federal officials' good faith cannot transform Alabama's attempts to increase public information about the costs of illegal immigration into an equal-protection violation. Alongside the preemption issues raised by Alabama and Georgia in their petitions in Nos. 11-13044 & 11-14532, this question is worthy of rehearing by the entire Court.

CONCLUSION

The Court should grant panel rehearing or rehearing *en banc.*

Respectfully submitted,

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Statutory Appendix

ALA. CODE §31-13-27 - Verification of citizenship and immigration status of students enrolling in public schools; annual reports; disclosure of information.

(a)(1) Every public elementary and secondary school in this state, at the time of enrollment in kindergarten or any grade in such school, shall determine whether the student enrolling in public school was born outside the jurisdiction of the United States or is the child of an alien not lawfully present in the United States and qualifies for assignment to an English as Second Language class or other remedial program.

(2) The public school, when making the determination required by subdivision (1), shall rely upon presentation of the student's original birth certificate, or a certified copy thereof.

(3) If, upon review of the student's birth certificate, it is determined that the student was born outside the jurisdiction of the United States or is the child of an alien not lawfully present in the United States, or where such certificate is not available for any reason, the parent, guardian, or legal custodian of the student shall notify the school within 30 days of the date of the student's enrollment of the actual citizenship or immigration status of the student under federal law.

(4) Notification shall consist of both of the following:

a. The presentation for inspection, to a school official designated for such purpose by the school district in which the child is enrolled, of official documentation establishing the citizenship and, in the case of an alien, the immigration status of the student, or alternatively by submission of a notarized copy of such documentation to such official.

b. Attestation by the parent, guardian, or legal custodian, under penalty of perjury, that the document states the true identity of the child. If the student or his or her parent, guardian, or legal representative possesses no such documentation but nevertheless maintains that the student is either a United States citizen or an alien lawfully present in the United States, the parent, guardian, or legal representative of the student may sign a declaration so stating, under penalty of perjury.

(5) If no such documentation or declaration is presented, the school official shall presume for the purposes of reporting under this section that the student is an alien unlawfully present in the United States.

(b) Each school district in this state shall collect and compile data as required by this section.

(c) Each school district shall submit to the State Board of Education an annual report listing all data obtained pursuant to this section.

(d)(1) The State Board of Education shall compile and submit an annual public report to the Legislature.

(2) The report shall provide data, aggregated by public school, regarding the numbers of United States citizens, of lawfully present aliens by immigration classification, and of aliens believed to be unlawfully present in the United States enrolled at all primary and secondary public schools in this state. The report shall also provide the number of students in each category participating in English as a Second Language Programs enrolled at such schools.

(3) The report shall analyze and identify the effects upon the standard or quality of education provided to students who are citizens of the United States residing in Alabama that may have occurred, or are expected to occur in the future, as a consequence of the enrollment of students who are aliens not lawfully present in the United States.

(4) The report shall analyze and itemize the fiscal costs to the state and political subdivisions thereof of providing educational instruction, computers, textbooks and other supplies, free or discounted school meals, and extracurricular activities to students who are aliens not lawfully present in the United States.

(5) The State Board of Education shall prepare and issue objective baseline criteria for identifying and assessing the other educational impacts on the quality of education provided to students who are citizens of the United States, due to the enrollment of aliens who are not lawfully present in the United States, in addition to the statistical data on citizenship and immigration status and English as a Second Language enrollment required by this chapter. The State Board of Education may contract with reputable scholars and research institutions to identify and validate such criteria. The State Board of Education shall assess such educational impacts and include such assessments in its reports to the Legislature.

(e) Public disclosure by any person of information obtained pursuant to this section which personally identifies any student shall be unlawful, except for purposes permitted pursuant to 8 U.S.C. §§1373 and 1644. Any person intending to make a public disclosure of information that is classified as confidential under this section, on the ground that such disclosure constitutes a use permitted by

federal law, shall first apply to the Attorney General and receive a waiver of confidentiality from the requirements of this subsection.

(f) A student whose personal identity has been negligently or intentionally disclosed in violation of this section shall be deemed to have suffered an invasion of the student's right to privacy. The student shall have a civil remedy for such violation against the agency or person that has made the unauthorized disclosure.

(g) The State Board of Education shall construe all provisions of this section in conformity with federal law.

(h) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.