IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

Hispanic Interest Coalition of Alabama, et al., Plaintiffs, v. Governor Robert Bentley, et al., Defendants.	Case No.: 5:11-cv-02484-SLB

BRIEF AMICI CURIAE OF LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), THE HISPANIC COLLEGE FUND (HCF) AND MULTICULTURAL EDUCATION, TRAINING & ADVOCACY INC. (META, INC.)

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STATEMENT OF INTEREST OF THE *AMICI CURIAE*

LULAC, the League of United Latin American Citizens, is the largest and oldest Hispanic civil rights organization in the United States. With over 125,000 members LULAC's membership extends into every state in the Union and Puerto Rico with over 900 councils nationwide. LULAC's mission is to advance the economic condition, educational attainment, political influence, health and civil rights of Hispanic Americans. For more than 82 years, LULAC's members have sought to ensure the civil rights of Hispanics throughout the United States, and foster respect for the rule of law. LULAC believes in the democratic principle of individual freedom and is obligated to promote, protect and assure the constitutional and statutory rights of all Hispanics, regardless of immigration status.

Advancing the educational attainment of the Hispanic population has always been at the core of LULAC's mission. Over 1.1 million Hispanic students have benefited from a range of LULAC educational programs including: youth leadership programs, comprehensive educational programs that provide assistance to approximately 5% of all Hispanic students enrolling in college, the LULAC National Scholarship Fund, a young readers program, middle school students science corps and our parent involvement initiative.

In addition, the LULAC International Embassy has worked in conjunction with Latin American nations to provide a variety of ongoing educational and cultural opportunities for native Spanish-speakers living in the United States.

LULAC knows from long experience that the road to equal educational opportunities for Hispanic children in the face of discrimination often will mean seeking vindication of constitutional and human rights in the courts. In 1945, a California LULAC Council successfully sued to integrate the Orange County School System, which had been segregated on the grounds that Mexican children were "more poorly clothed and mentally inferior to white children."

LULAC is deeply concerned and deeply impacted as an organization by the current anti-Hispanic and anti-immigration backlash of which H.B. 56 is the most recent and pernicious example. This law threatens to deny and frustrate the education of thousands of Hispanic children in Alabama's schools. LULAC believes that the law must be enjoined to prevent that from happening and wishes to present facts and analysis to this court which it believes will assist the court in its deliberations.

Founded in 1993, the **Hispanic College Fund** ("HCF") is a national non-profit organization based in Washington, D.C., with a mission to develop the next generation of Hispanic professionals. For 18 years, the

Hispanic College Fund has provided educational, scholarship, and mentoring programs to students throughout the United States, including Puerto Rico, establishing a career pipeline of talented and career-driven Hispanics. We accomplish our mission by providing Hispanic high school and college students with the vision, resources, and mentorship needed to become community leaders and achieve successful careers in a variety of disciplines including business, science, technology, engineering and math.

META is a national public interest nonprofit legal organization which was formed in 1983 for the purpose of protecting the civil rights of immigrant and other limited English proficient students and their families. In its nearly 30 years of advocacy, META's attorneys have practiced before state courts and United States District Courts and the Courts of Appeals sitting in Massachusetts, New York, Florida, Texas, New Mexico, Colorado, California, Kansas and elsewhere.

At the present time, META represents in excess of one million limited English proficient students in federal court class action litigation in various states and school districts. Among those students are some who may be presumed to be undocumented, some who are not United States citizens but who are legally resident in the United States and many who are U.S. citizens. In its work, META has always sought to protect the rights of all of

these students to receive a free public education, to learn English, to learn content subjects and to become productive members of society.

META is deeply concerned that until the courts find H.B. 56 unconstitutional, this "toughest in the nation" law will spawn similar laws in other states and thereby directly harm thousands of additional children including those META already represents as class members. In particular, META is concerned that H.B.56 may have a harmful impact on Latino, limited English proficient and undocumented students in the neighboring state of Florida where META represents a statewide class of students, some of whom may wish to travel to Alabama and whose families might wish to relocate to Alabama.

In addition, META was recently contacted by representatives of immigrant families in the Albertville-Boaz area who sought to speak with one of our advocates about the impact of H.B. 56 on their families. On July 9, a META attorney met with approximately 60 Latino immigrant families at a church in Albertville at which time the families explained their concerns that H.B. 56 might result in their children having to withdraw from school or face harassment at school. The families requested that META help convey these concerns to the court.

ARGUMENT

I. Federal Law Has Spoken Clearly with Regards to Elementary and Secondary Education and Pre-Empts Section 28

Under Section 28, every public elementary and secondary school in Alabama must determine the immigration status of every child who "was born outside of 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 A Second Language class or other remedial program." Failure of parents to provide proof of legal status to school officials leads to a presumption of unlawful presence. The names of students and parents thus identified may be sent to Federal immigration authorities and, upon a waiver granted by the state Attorney General, may be publically disclosed. Section 28(e). When Section 28 is read in conjunction with Section 13 (a)(3) of H.B. 56, Section 28 appears to make it a criminal act for a school bus driver or other school staff member involved in transporting students to transport identified undocumented students to school or their parents to school events.

The premise for these provisions, which obviously will deter immigrant students from attending public school, is apparently the unsupported legislative finding 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" (Section 2).

These provisions squarely conflict with federal immigration policies as articulated for at least the last 15 years in statute, regulation and policy guidance.

In 1982, the U.S. Supreme Court considered a Texas law that withheld state funds from local school districts for the education of undocumented school children and that authorized local school districts to deny enrollment in their schools to such children. The case raised issues of both pre-emption and Equal Protection of the laws. The Court found that the Texas statutes violated the Equal Protection rights of the schoolchildren but no decision was reached on the question of federal pre-emption. See *Plyler v. Doe*, 457 U.S. 202, 210 n. 8 (1982). In weighing the constitutionality of the Texas statute, the Court looked to see whether there was any expression of relevant federal immigration policy touching on K-12 public education. The Court could find: "no identifiable congressional policy…no national policy…" that

was "discernible in the present legislative record." Id. at 225-226. Concurring, Mr. Justice Powell also noted that there was: "no comparable federal guidance in the area of education. No federal law invites state regulation; no federal regulations identify those aliens who have a right to attend public schools." Id. at 242.

Fourteen years later Congress established just such a policy by enacting comprehensive legislation that covered the eligibility of aliens for a wide range of federal and state benefits. The legislation, codified as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, Aug. 22, 1996, 110 Stat. 2260, included *inter alia*, a definition of "State or local public benefit" and statutory provisions that authorized States and political subdivisions to verify the eligibility of aliens for such benefits according to the provisions of the new law. The definition of "State or local public benefit" does not include basic K-12 public education. See 8 U.S.C. §1621(c)(1)(B). [1] A separate provision of the law, 8 U.S.C. §1643(a)(2),did address basic K-12 public education. The section states that: "Nothing in this chapter may be construed as addressing

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1 Defining benefits, in part, to include "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or other similar benefit…" Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (referred to also as "PRWORA" or "PRA").

alien eligibility for a basic public education as determined by the Supreme Court of the United States under *Plyler v. Doe*, 457 U.S. 202(1982)". Put simply, Congress acted to limit and/or require verification for a wide range of State and local public benefits but expressly left untouched basic public education.

The same conclusion was reached by the court in *League of United Latin American Citizens v. Wilson*, 908 F.Supp. 755, 774 (C.D. Cal.,1995)("*LULAC I*"). That case concerned California's Proposition 187 which, in part, required verification of the immigration status of the parents of school children. In a first round, *LULAC I*, the court had found that the verification provision was "part of an impermissible scheme to regulate immigration and…therefore preempted under the first *DeCanas* test." In further litigation following the 1996 enactment of PRWORA the court found that the federal statute: "expressly defers to *Plyler v. Doe"* citing Section 1643 which "does specifically deal with the subject of basic public education." *League of United Latin American Citizens v. Wilson*, 997 F. Supp. 1244, 1255-56 (C.D. Cal.,1997)("*LULAC II*"). [2]

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In its recent decision in *Chamber of Commerce of U.S. v. Whiting*, 131 S.Ct. 1968,1987 (2011), the Supreme Court found that Arizona was not preempted from acting in the area of employment pursuant to its licensing laws because those laws: "fit(s) within the confines of IRCA's savings clause" . In the instant situation, Section 28 treads into an area, basic public

Moreover, had Congress meant to allow limitations or immigration verification for K-12 basic education it would have done so because just such a limitation was before the Congress. H.R. 4134, an act "Authorizing States To Disqualify Certain Aliens Not Lawfully Present in the United States From Public Education Benefits", also known as the Gallegly Amendment (after its principal sponsor, Rep. Elton Gallegly of California) was introduced in 1996. Section 601(a) of the Gallegly Amendment included findings similar, indeed nearly identical, to the language of H.B. 56, Section 2 about alien children whose education "depletes States' limited educational resources" and specified procedures for screening such children.[3]

The Gallegly Amendment passed the U.S. House of Representatives but failed in the U.S. Senate and did not become law. Its failure, taken together with the passage of 8 U.S.C. § 1643(a)(2), defines the "identifiable congressional policy" and legislative record that was lacking in 1982. There is now Congressional policy. Immigrant students, including undocumented immigrant students, are entitled to basic K-12 public education. A state

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education for immigrant children, that Congress has exempted from requirements that govern public benefit determinations and immigration status verifications.

3 Sections 601 (a) and 602 (c) of H.R. 4134.

provision requiring that students be screened and identified on the basis of immigration status has been pre-empted by congressional action. [4]

In a parallel, and additional, Federal policy statement on K-12 education and student immigration status verification a "Dear Colleague" letter was sent to State Departments of Education on May 1, 1997 from the U.S. Department of Education. The letter focused on section 625 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, PL 104-208m (1996) concerning verification of foreign students F-1 status. The letter indicates that the U.S. Department of Education, Department of State and the Immigration and Naturalization Service consulted in determining the attached advice. The letter states: "Moreover, it should be emphasized, Section 625 does not affect immigrant students who are residing in a school district in the United States (citing *Plyler v. Doe*)… Section 625 does not constitute a basis for requiring students to verify alien or citizenship status." (Emphasis in original). (Exhibit A, "Dear Colleague" letter, May 1, 1997).

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4 Commentators have written about the history of the Gallegly Amendment and some have noted a nexus between the ultimate defeat of the Amendment and President Clinton's concerns of its impact on foreign policy governing relations with Mexico. See, Marc R. Rosenblum, "Moving beyond the policy of no policy: emigration from Mexico and Central America." 46 *Latin American Politics and Society* 91, 109 (2004). See also, James Gimpel and James Edwards, *The Congressional Politics of Immigration Reform*. Boston (1998).

More recently the U.S. Department of Justice and U.S. Department of Education issued a Dear Colleague letter (May 6, 2011). The letter expresses concern over "student enrollment practices that may chill or discourage the participation, or lead to the exclusion of students based on their or their parents' or guardians' actual or perceived citizenship or immigration status. These practices contravene Federal law." Specifically enumerated as an example of what school districts may not do in reviewing student residency is the immigration status questioning of the type required by Section 28. The two federal agencies state: " While a district may restrict attendance to district residents, inquiring into students' citizenship or immigration status or that of their parents or guardians would not be relevant to establishing residency within the district." Id. [5] [6]

The federal government has spoken clearly and repeatedly. The Supreme Court of the United States in the *Plyler* decision, the Congress in Title 8 of the U.S. Code, the federal agencies charged with enforcing the

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5 http://www.justice.gov/crt/about/edu/documents/plylerletter.pdf

6 The May 6, 2011 letter was premised in part on the prohibition of national origin discrimination by recipients of Federal financial assistance. In 2010, Alabama received approximately $ 685,341,362 in Federal public elementary and secondary education assistance for its students, including its immigrant students. U.S. Department of Education, *Funds for State Formula-Allocated and Selected Student Aid Programs, U.S. Department of Education Funding, Alabama available at* www2.ed.gov/about/overview/budget/statetables/11stbystate.pdf.

immigration laws and the civil rights enforcement agencies of the Justice and Education Departments have made it clear that undocumented school children have the right to attend elementary and secondary school and to do so unimpeded by immigration status verifications. Section 28 has been preempted and is therefore an unconstitutional state law that treads impermissibly into the authority of the United States.

II. Section 28 Violates the Rights of Undocumented Schoolchildren and their U.S. Citizen Siblings Under the Equal Protection Clause of the Fourteenth Amendment

Section 28 is preempted by fifteen years of federal immigration policies which require granting the injunctive relief sought by the plaintiffs. Such relief is also required under the *Plyler* decision itself to prevent curtailment of the Fourteenth Amendment Equal Protection rights of schoolchildren in Alabama for this school year.

As described above, Section 28(a)(1) requires every public elementary and secondary school to inquire into the immigration status of enrolling children and identify children who were born outside the United States or are the children of an alien not lawfully present. School officials must also determine whether enrolling students: "qualify for assignment to an English as Second Language class or other remedial program." If parents do not present immigration status documentation that the schools consider to be

satisfactory, school officials: "shall presume for the purposes of reporting…that the student is an alien unlawfully present in the United States." Section 28(a)(5). The names of students and parents thus identified may be sent to federal immigration agencies and, upon obtaining a waiver from the state Attorney General, publically disclosed. Section 28(e). A companion section of H.B. 56 makes it a crime for a person to transport an alien: "…in reckless disregard of the fact, that the alien has come to, entered, or remained in the United States in violation of federal law." Section 13(a)(3). The provision does not exempt school employees who normally transport school children to and from school and/or their parents to school functions.

The sole explanation for these provisions are found in two sentences in Section 2 of H.B. 56. The first sentence seeks directly to control immigration through requiring verifying of immigration status: " 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." The second sentence seeks to link the immigration status of some immigrant school children with the theoretical cost impact on public education of their instruction: " 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 provisions of Section 28 are intended to and will deter immigrant parents from registering their children for school. Indeed, the determination of immigration status at the schoolhouse door is precisely the type of practice that the U.S. Departments of Justice and Education have recently warned against as violative of *Plyler*, practices that: "may chill or discourage the participation, or lead to the exclusion, of students based on their or their parents' or guardians' actual or perceived citizenship or immigration status." *available at* http://www.justice.gov/crt/about/edu/documents/plylerletter.pdf. Indeed, the website of the Alabama Department of Education posted the *State EL Policy & Procedures Manual*, which "is an outgrowth of the Alabama Department of Education's voluntary agreement with the U.S. Department of Education, Office for Civil Rights (Compliance Review #04-98-5023), for providing services to students who are English language learners (ELLs)" and then recognized that, *Plyler v. Doe* bars "public schools (from) require(ing) students or parents to disclose or document their immigration status" or "mak(ing) inquiries of students or parents that may

expose their undocumented status." Id. *available at* http://alex.state.al.us/ell/?q=node/27 and http://alex.state.al.us/ell/node/58. (last visited July 21, 2011).

It is obvious that a currently undocumented parent or the parent of a child currently undocumented would realize that setting foot into a schoolhouse and approaching the registration desk could well be the first step, not towards an education and better future for their child, but for deportation. Nor, does the normal Federal judicial deference to state legislative findings require the Court to blinker itself from the unmistakable purposes of H.B. 56's authors, quite simply to drive those believed to be unlawful immigrants out of Alabama. (See Compl. ¶¶ 179-192.)

The parents of undocumented school children and the undocumented parents of U.S. citizen school children affected by Section 28 have movingly described in their declarations the fears they now have about enrolling in school this fall. [7] As one parent put it: "My 9 year old daughter is traumatized by what she hears at school...She started coming home from school and telling me that other children said that her parents will be arrested by immigration officials or stopped at police checkpoints…I am deeply

7 Complaint, Ex. 25, Jane Doe #1, Decl. ¶¶1,8; Ex. 26, Jane Doe #2, Decl. ¶9; Ex. 27, Jane Doe#3 Decl.¶¶2,8; Ex. 28, Jane Doe#4, Decl. ¶¶2,5; Ex. 29, Jane Doe#5, Decl. ¶6; Ex. 32, John Doe#2, Decl. ¶¶2, 5-7. Exhibit B, Declaration of Miguel Perez Vargas. ¶¶3-4.

worried about the toll this is taking on my daughter" [8] Another student, an 11th grader with a 3.6 GPA who is active in ROTC, now fears that his school: "would know I was undocumented and they would have me marked…they might try to retaliate against me. I would be in a constant state of worry and fear." [9] U.S. Education Secretary Arne Duncan has observed: "Students simply cannot learn if they feel threatened or harassed or in fear." [10] The Secretary's comment aptly describes the fear of the children described in the instant case.

Because Sections 28 and Section 13 so obviously deter undocumented school children and the U.S. citizen children of undocumented parents from risking school enrollment, these provisions violate the rights of those children to receive elementary and secondary education as set forth in *Plyler*. Of course there will be factual differences that can be drawn between Texas at the time of the *Plyler* decision in 1982 and Alabama today.

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8 Complaint, Ex. 25, Jane Doe #1, Decl. ¶8.

9 Complaint, Ex. 31, John Doe #1 Decl.¶¶3-4,13.

10 U.S. Department of Education, U.S. Secretary of Education Arne Duncan, Press Conference Call On Bullying and Harassment Guidance, Tuesday, October 26, 2010 at p. 3 *available at*: http://www.sprigeo.com/pdfs/DuncanPressConferenceTranscript.pdf.

That said, salient essential facts are important to understanding how weak are the fig leaf "findings" of Section 2.

To the extent that H.B. 56 is motivated by concerns over ESL instruction to undocumented children, those concerns are unfounded. As an initial matter, the population of Limited English Proficient (LEP) children in Alabama is comparatively small. Reports of the United States Department of Education show that as of 2010, there were approximately 19,500 Limited English Proficient children in Alabama elementary and secondary schools, or 2.6% of the total student enrollment of 745,668. [11] Moreover, analysis of U.S. Census data indicates that a majority of the LEP students in K-12 public schools in Alabama as of 2009 were United States citizens and 83% of children of immigrants in Alabama who are under the age of 18 are United States citizens. Declaration of expert Michael Fix (Attached as Exhibit C). Other researchers have found that nationwide for families in which the head of household is undocumented, two-thirds of the children are US citizens, one-third are undocumented. [12] The Census analysis is

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11 U.S. Department of Education. Summer 2010 ED *Facts* STATE PROFILE –ALABAMA available at http: //www2.ed.gov/about/inits/ed/edfacts/state-profiles/alabama.pdf.

12 Jeffrey Passel, *Unauthorized Migrants: Numbers and Characteristics*, 18. Pew Hispanic Research Center (June 14, 2005) *available at* http://pewhispanic.org/files/reports/46.pdf.

buttressed by record evidence in this case from parents who have described the composition of their families with some children who are U.S. citizens and with brothers and sisters who are currently undocumented. [13] The target of Section 28 is, therefore, at the most, limited to 1% of the total student population. They are, in all likelihood, the siblings of U.S. citizen children. But even that overstates the legislature's quarry because many undocumented students and their parents will eventually have their statuses adjusted. [14]

More importantly, these undocumented children are, as found by the Court in *Plyler*, "basically indistinguishable" from legally resident alien children in terms of educational cost and need. Id. at 229. There is no legislative finding to the contrary and, as made clear from the expert declaration of Dr. Castro Feinberg (attached as Exhibit D), the *Plyler* finding remains accurate. Based on some 40 years of experience with the education of ELL students in Florida, Dr. Castro Feinberg states that: "At the heart of

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13 See Complaint Ex. 25, Jane Doe #1 Decl. ¶1; Ex. 28, Jane Doe #4 Decl. ¶¶1-2; Ex. 32, Jane Doe #2 Decl. ¶2.

14 David A. Martin, *Twilight Statuses: A Closer Examination of the Unauthorized Population*. MPI Policy Brief, June 2005, No. 2. *available at* http://www.migrationpolicy.org/pubs/MPI_PB_6.05.pdf.

any ELL program are trained teachers and staff, appropriate curricular materials, and well designed assessment and support services." However, these needs, and the resources which they require, describe "what is needed for all ELLs including…those who are United States citizens." She concludes: "Educational need and addressing educational need among ELLs is simply not correlated to immigration status." (Exhibit D, Decl. of Dr. Rosa Castro Feinberg at ¶¶9-14).

Moreover, any implication in H.B. 56 that parents brought their undocumented children to Alabama to avail themselves of ESL instruction and public education is a myth. Leading scholars of immigration patterns have found that access to government benefits not a motive for undocumented migration and that only 10 percent of Mexican immigrants say they have ever sent a child to U.S. public schools. [15]

Furthermore, Alabama has consistently benefited from federal funding for ESL programming. In 2010 Alabama received approximately $ 3.8m from the United States Department of Education through the Title III, No

15 Douglas S. Massey, *Five Myths about Immigration: Common Misconceptions Underlying U.S. Border-Enforcement Policy*, Immigr. Daily, Dec. 7, 2005, *available at* http://www.ilw.com/articles/2005,1207-massey, cited in Jorge Chapa, *A Demographic and Sociological Perspective on Plyler's Children, 1980-2005*, Northwestern Journal of Law and Social Policy (2008).

Child Left Behind grant program, a program designed specifically for Limited English Proficient students. [16] According to the state's Consolidated State Performance Report, SY 2009-2010, the state passed on federal Title III funds to 52 school districts which enabled the training of LEP classroom teachers, regular content classroom teachers and other staff. Nearly all of the teachers receiving federally funded training were regular classroom teachers. Of LEP children tested, 80.5% were reported as making progress in learning English and 48% had attained proficiency in English. Alabama estimated that it would need only 267 more certified/licensed teachers for its ELL students in the next 5 years. [17] Title III funds were only a part of the nearly $ 700m in federal funding for elementary and secondary education programs in Alabama, programs in which LEP students participate. [18]

Furthermore, immigrant families themselves support public education in Alabama. The largest sources of the state's Education Trust Fund are the

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16 U.S. Department of Education. *Funds for State Formula-Allocated and Selected Student Aid Programs, Alabama*. available at http://www2.ed.gov/about/ overview/budget /statetables/11stbystate.pdf.

17 U.S. Department of Education, *Consolidated State Performance Report: Parts I and II, School Year 2009-10, Alabama. available at* http://www2.ed.gov/admins/lead/account/consolidated/sy09-10part1/al.pdf.

18 See U.S. Department of Education federal funds for Alabama, data at footnote 6.

income tax, sales tax and utility tax which account for in excess of 90% of its revenues. [19] Of course, immigrants, including undocumented immigrants pay these same taxes as do other Alabamans. The Supreme Court found in *Plyler* that undocumented aliens: "underutilize public services, while contributing their labor to the local economy and tax money to the state fisc." Id. at 228. At the state level, a recent detailed analysis of the impact of immigrants in Arkansas likewise found that the costs of services for immigrants, taking into account the costs of education, health services and corrections: "were more than balanced by direct and indirect tax contributions" resulting in a net surplus. [20] A similar analysis in Arizona, taking into account the fiscal costs attributable to immigrants, both naturalized citizens and non-citizens, and their contribution as tax payers and consumers, came to the same conclusion, finding a net fiscal contribution generated by immigrants in that state. [21]

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19 Alabama Department of Finance, *Education Trust Fund Net Receipts Fiscal Years 2006-2007 Through 2011-2012, p. xii, available at: http://budget.alabama.gov/pdf/fundrec/ETF_Receipts.pdf*

20 Randolph Capps, Everett Henderson, John D. Kasarda, James H. Johnson, Stephen J. Appold, Derrek L. Croney, Donald J. Hernandez and Michael E. Fix, *A Profile of Immigrants in Arkansas*, The Winthrop Rockefeller Foundation (2007) at 5. *Available at* http:// www.urban.org/ publications /411441.html.

21 Judith Gans, *Immigrants in Arizona: Fiscal and Economic Impacts*, Udall Center for Studies in Public Policy, University of Arizona (2008). *Available at* http://udallcenter.arizona.edu/

In 1982 the United States Supreme Court could not find a sufficient rational basis for a state to effectively exclude undocumented immigrant school children from K-12 education particularly given the catastrophic consequences of such exclusions to the immigrant children and our society as a whole. The Court held that the Fourteenth Amendment's requirement of Equal Protection of the Laws would be violated. The *Plyler* decision governs current consideration of Section 28. The intrusive sorting of students according to their assumed immigration status will effectively intimidate and exclude not only undocumented children, protected by the *Plyler* decision, but their own U.S. citizen and legally resident siblings who are the children of currently undocumented parents. No sufficient reason exists for that to happen this school year in Alabama.

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully requests that this Court preliminarily enjoin HB 56, and declare it unconstitutional.

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immigration/publications/impactofimmigrants08.pdf. Yet another recent study of immigrants in the Washington, D.C. Metropolitan area found that all immigrants pay substantial shares of their incomes in taxes and in most cases those shares are close to those paid by natives. Randy Capps, Everett Henderson, Jeffrey S. Passel and Michael Fix, *Civic Contributions: Taxes Paid by Immigrants in the Washington, D.C. Metropolitan Area*. Migration Policy Institute (May, 2006) *available at*: http://www.urban.org/UploadedPDF/411338_civic_contributions.pdf.

Respectfully submitted this 3rd day of August 2011 by counsel for *Amici Curiae.*

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CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing document was filed through the Court's CM/ECF system, and served electronically on all parties registered through that system. Parties may also access this filing through the court's CM/ECF System.

/s/ Roger L. Rice