



**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

<b>SOUTHERN POVERTY LAW CENTER,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. _____
	)	
<b>DR. THOMAS R. BICE,</b> in his official	)	
capacity as State Superintendent of the	)	
Alabama Department of Education,	)	
	)	
Defendant.	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This is an action under the Alabama Open Records Act, Ala. Code § 36-12-40, to compel the production of certain public writings held by Dr. Thomas R. Bice in his official capacity as State Superintendent of the Alabama Department of Education. The requested public writings have previously been produced by Dr. Bice to the U.S. Department of Justice.

2. In 2011, The Alabama Legislature passed Act 2011-535, which is commonly referred to by its House Bill Number, H.B. 56. This legislation created a state immigration enforcement scheme.

3. Section 28 of H.B. 56, codified as Section 31-13-27 of the Alabama Code, creates a system to collect immigration data from families when they enroll their children in public K-12 schools. Section 28 went into effect on September 29, 2011, and was subsequently preliminarily enjoined by a federal court on October 14, 2011.

4. During the two-week period when Section 28 was in effect, there were numerous press reports documenting a spike in absenteeism of immigrants in Alabama's public schools, which problems appear to have continued after Section 28 was enjoined. The Civil Rights

Division of the Department of Justice solicited and received certain data from the Alabama Department of Education related to student enrollment during this time, and based on that data, the Department of Justice stated in a letter dated May 1, 2012, that “it appears that H.B. 56 has had significant and measurable impacts on Alabama’s schoolchildren . . . .”

5. In order to better understand this educational crisis, and pursuant to the Alabama Open Records Act, Plaintiff Southern Poverty Law Center (“SPLC”) requested that Defendant Dr. Bice provide copies of the public writings sent to the Department of Justice, subject to appropriate redactions consistent with privacy laws. To date, Defendant Dr. Bice has refused to release the public records.

#### **JURISDICTION AND VENUE**

6. This is an action arising under Ala. Code § 36-12-40.

7. Venue is proper in Montgomery Circuit Court pursuant to Ala. Code § 6-3-2(b)(3).

#### **PARTIES**

8. Plaintiff SPLC is a non-profit corporation organized under the laws of the state of Alabama. SPLC is a civil rights organization that, among other things, provides free legal representation to persons whose civil rights are being violated, including in the context of obtaining an education. As part of its program of immigrant and civil rights advocacy, SPLC sought the requested records from the Defendant, to better ascertain what impact the Alabama Department of Education has seen regarding enrollment of students after the passage of Alabama’s immigration law, H.B. 56.

9. Defendant Thomas R. Bice is the State Superintendent of the Alabama Department of Education (hereinafter “ALDOE”), and in such capacity has the possession of and

control over the records that Plaintiff seeks. He resides in his official capacity in Montgomery County. The action this lawsuit seeks to compel will take place in Montgomery County.

### **STATEMENT OF FACTS**

10. Pursuant to the Open Records Act, Ala. Code. § 36-12-40, SPLC requested copies of documents held by ALDOE. Particularly, SPLC sent a request to ALDOE by letter dated June 7, 2012, requesting the following public writings:

1. All data produced to the U.S. Department of Justice, Civil Rights Division, related to its inquiries into the impact of Section 31-13-27 of the Alabama Code on K-12 school admissions. This request includes any data sent on or around April 4, 2012, as well as any data sent before or after that date which relates to the U.S. DOJ inquiry.

2. All communications received by you or your agents from the U.S. Department of Justice, Civil Rights Division, and all communications sent by you or your agents to the U.S. Department of Justice, Civil Rights Division, that relate to the data identified in the first request. This request includes any communications that requested the data that was produced on April 4, 2012, as well as any communications that were sent or received subsequent to April 4, 2012.

A true copy of the June 7, 2012, letter is attached as Exhibit A. The June 7, 2012 request will be heretofore referred to as the "ORA Request."

11. In SPLC's ORA Request, Plaintiff requested a response by June 22, 2012. SPLC received no response from ALDOE.

12. In late June and July, 2012, SPLC communicated with the General Counsel's office of ALDOE, attempting to obtain the requested public writings. The General Counsel's office expressed concerns that the requested public writings may be protected from publication by the attorney-client privilege or by the federal Freedom of Information Act, and that the fact that SPLC was acting as counsel in a separate federal lawsuit in the Northern District of Alabama, challenging the constitutionality of H.B. 56, may disqualify SPLC from requesting the

documents. SPLC responded to each of these concerns, which it believes to be baseless, and renewed its request for the requested records. ALDOE did not respond to SPLC's arguments, but continued to refuse to turn over the requested records.

13. In August and September, 2012, SPLC reached out again to the General Counsel's office. The General Counsel's office responded that it was now concerned that disclosure of the requested records might violate the Family Educational Rights and Privacy Act ("FERPA"), and that they may be obligated to not disclose the records because of the ongoing Department of Justice investigation. SPLC again addressed each of these concerns, noting that the Department of Justice investigation did not exempt ALDOE from complying with Alabama's Open Records Act. SPLC also asserted that, while FERPA protections might be a relevant consideration, SPLC had no objection to appropriate redactions of protected information, and that FERPA did not authorize a refusal to disclose the public writings altogether. SPLC offered to meet with ALDOE to discuss the categories of public writings so as to make recommendations for how to appropriately redact the information in compliance with FERPA, but ALDOE did not respond to this invitation.

14. SPLC has a statutory right to the public writings it seeks, and there is no legal basis for ALDOE's refusal to disclose such records. It is in the public interest of the people of Alabama that these public writings be made available to the public.

**WHEREFORE**, Plaintiff prays that this Honorable Court grant the following relief:

- (A) Declare that the data produced by the Defendant for the inquiries made by the U.S. Department of Justice, Civil Rights Division, related to the impact of Section 31-13-27 of the Alabama Code on K-12 school admissions, and communications

between Defendant and the U.S. Department of Justice related to this data, are public writings under Alabama's Open Records Act;

- (B) Declare that the Defendant's withholding of the requested public writings is unlawful;
- (C) Order Defendant to make the requested records promptly available to Plaintiff, subject to appropriate redactions as authorized by federal and state privacy laws;
- (D) Declare that Alabama citizens will benefit from the disclosure of the requested public records;
- (E) Award Plaintiff its costs and reasonable attorney's fees; and
- (F) Grant Plaintiff such other relief as the Court deems necessary and just.

Respectfully submitted,

/s/ Mary Bauer

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Mary Bauer, ASB-1181-R76B  
Samuel Brooke, ASB-1172-L60B  
Immigrant Justice Project  
Southern Poverty Law Center  
400 Washington Avenue  
Montgomery, Alabama 36104  
334-956-8200  
334-956-8481(fax)  
Attorneys for Plaintiff

June 7, 2012

Dr. Thomas R. Bice  
State Superintendent of Education  
50 North Ripley Street  
P.O. Box 302101  
Montgomery, Alabama 36104

**RE: Open Records Request**

Dear Dr. Bice:

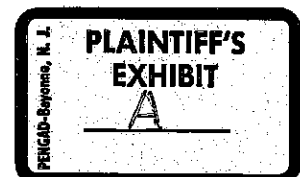
I write on behalf of myself and the Southern Poverty Law Center to submit an open records act request pursuant to Ala. Code § 36-12-40. This request is directed to you in your role as the State Superintendent of Education. Please produce within fifteen calendar days any public writings related to the following:

1. All data produced to the U.S. Department of Justice, Civil Rights Division, related to its inquiries into the impact of Section 31-13-27 of the Alabama Code on K-12 school admissions. This request includes any data sent on or around April 4, 2012, as well as any data sent before or after that date which relates to the U.S. DOJ inquiry.
2. All communications received by you or your agents from the U.S. Department of Justice, Civil Rights Division, and all communications sent by you or your agents to the U.S. Department of Justice, Civil Rights Division, that relate to the data identified in the first request. This request includes any communications that requested the data that was produced on April 4, 2012, as well as any communications that were sent or received subsequent to April 4, 2012.

Please produce the requested materials in their native format, such as in an excel spreadsheet or relational database, to the extent the materials exist in that format. To the extent that portions of any of the requested material are not subject to disclosure, please redact such records and produce the remaining material. If you deny all or part of this request, please state the legal basis for why the records are exempted from disclosure.

We are prepared to pay the reasonable costs necessary to prepare this data. If the cost will be greater than \$100, please confirm the cost with us prior to production.

Thank you for your prompt attention to this matter. Should you have any questions or



Dr. Bice, State Superintendent of Education  
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concerns, please contact me by phone at 334-956-8200, or by email at  
sam.brooke@splcenter.org.

Sincerely,



Sam Brooke  
Staff Attorney

cc: Margaret Flemming (via email)