

EXHIBIT 5



WILLIAM A. BELL, SR.
MAYOR



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A. C. ROPER
CHIEF OF POLICE

DECLARATION OF A. C. ROPER
CHIEF OF POLICE OF THE BIRMINGHAM POLICE DEPARTMENT

I, A. C. Roper, declare and state as follows:

1. I was born in Birmingham, Alabama, and I have over twenty six years of law enforcement experience. I began my career with the Montgomery Police Department in 1985 where I was promoted to Corporal and served as a Patrol Officer, Academy Instructor and Recruiter. After more than three years, I returned to the Birmingham area and served in the Hoover Police Department. In Hoover, I was promoted through the ranks, culminating with my promotion to Assistant Chief of Police. In 2007 I was appointed Birmingham's Chief of the Police.

2. As the Chief, I am responsible for protecting and ensuring the public safety of all people living and traveling in my jurisdiction, regardless of their immigration status. I am also bound by my oath of this office to uphold the Federal and Alabama Constitutions, as well as any laws enacted by the Legislature.

3. Birmingham is Alabama's largest city, located in central Alabama at the foothills of the Appalachian Mountains. Birmingham hosts more than 212,000 residents, with over 658,000 residents living in Jefferson County and with over 1,212,000 residents living in the Birmingham-Hoover Metropolitan Area, approximately one-quarter of Alabama's population. Birmingham is a very diverse community, both demographically and economically. According to the 2010 census figures, over seventy percent of Birmingham's residents identify as African American, almost four percent identify as Latino, ten percent identify as Asian, and two percent identify as belonging to another non-majority race. Birmingham was once the primary industrial center of the southern United States, and today, the city has become a medical research, banking and service-based economy.

4. I have reviewed HB 56, which was recently adopted by the Alabama Legislature. This law mandates that local police officers determine the immigration status of any person they lawfully stop, detain or arrest in every

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case in which there is reasonable suspicion that the person is in the country unlawfully regardless of the severity of the suspected or actual offense at issue. In such cases, my officers will be required to detain the target of the stop pending confirmation of the individual's immigration status. If my Department does not enforce this immigration law without exception, we risk being sued by private parties for not fully enforcing the law. The threat and real possibility of litigation will require that my officers determine the immigration status of every person they stop, detain or arrest if they have any reason to suspect that the person is in the country unlawfully.

5. I have several concerns about enforcing this State immigration law because of how it will affect my ability to set law enforcement priorities for my Department, because of the lack of training my officers have on enforcing immigration laws, because of the risk of litigation that my Department could be subject to, because of the cost this law will impose on my Department, and because of the harm this law will have for our community policing efforts and ultimately for Birmingham's public safety.

6. First, HB 56 undermines my ability to set law enforcement priorities for my Department. As the Chief, I am responsible for setting my agency's law enforcement priorities. Due to the economy and other factors such as overcrowding in jails and the release of many non-violent detainees, burglaries and thefts have risen. My officers have been tasked with suppressing crime by establishing better community policing, being highly visible and partnering with other local, state and federal law enforcement agencies to combat Part 1 Offenses. Above anything else, it is essential for my officers to be present and visible on the street, so that people are aware that we are close by to help, and to deter crime.

7. HB 56 will undermine our ability to fulfill these priorities, for my officers will be required to expend scarce resources on immigration matters at the expense of combating our own municipal priorities. Sections 5 and 6 of the law make clear that my officers must prioritize immigration enforcement over everything else. This will cause a direct interference with my Department's general work, and especially when we have to respond to an emergency such as we did, and are still doing, after the tornado.

8. We have over 500 officers working on any given day. My officers must prioritize their policing capacity, which is why they have substantial discretion in how to respond to suspected unlawful activity. Often when my officers encounter a suspected criminal violation that does not pose an ongoing threat to public safety, they will issue a citation, and then promptly return to patrolling the streets. If in the discretion of the officer a suspect poses a continuing threat to public safety, then the suspect will be detained and arrested. However, when an arrest occurs, it takes the officer approximately 1 to 2 hours to book that person into the city or county jail, which includes

documenting the arrest, processing any evidence seized that supports the charge and/or which needs to be secured and/or the volume of defendants being processed. During that time, the officer is unavailable for any other law enforcement need that may exist in Birmingham. Thus, for example, in 2009 we issued 75,870 citations, and arrested 25,683 individuals. The careful balancing of detaining when necessary, but issuing a citation where possible, is fundamental to ensure we are able to respond to the most pressing needs that arise in our city.

9. HB 56 will dramatically alter this delicate formula. HB 56 will require my officers to verify the immigration status of those whom we stop or arrest if we have reason to suspect they are in the country unlawfully. The law makes clear that the only way to make such a verification is to place an inquiry with the Federal authorities, but we have no guarantee of how quickly such a verification will occur, and as the requests to Federal authorities increase, I expect it will take longer and longer to get a response. My officers will be forced to either detain the target of the stop on the side of the road while awaiting verification, or book them into our jail's holding cell until verification is received. If the suspect is determined to possibly be without current immigration status, then we must arrest that person. This procedure strips my officers of any discretion in the field, meaning that valuable patrolling time will be compromised and our Department's priorities will become much more difficult to achieve.

10. Second, I am very concerned about how to train my officers to enforce this law. My officers are comfortable establishing the existence of reasonable suspicion as to criminal conduct generally, but they are not familiar with reasonable suspicion as to immigration status. My officers have never received training on Federal immigration law, and I am concerned that any training provided by the State regarding the meaning of the Federal immigration laws, or the new State immigration law, will not equip my officers with the necessary knowledge and expertise that would allow them to reasonably suspect when someone is in the country unlawfully.

11. I am unaware of how to instruct my officers on enforcing HB 56 without taking into consideration factors such as the person's appearance and manner of speaking. Sections 3 (10) and 12 of HB 56 contain a list of documents which imply lawful presence, but this list establishes presumptions only, it is not dispositive. Furthermore, the list is ambiguous. One item on the list is any valid United States federal, state, or local government issued identification document bearing a photographic or biometric identifier if issued by an entity that requires proof of lawful presence in the United States before issuance. I do not know how to instruct my officers on which government entities require proof of lawful presence before issuance.

12. Third, I am very concerned that my Department, and other Departments across the State, will become embroiled in costly litigation. HB 56 creates an impossible Catch-22 for my officers. On the one hand, the law requires us to fully enforce the State immigration system as well as the Federal immigration system, and if we fail to do so, sections five and six of the law impose penalties of between \$1,000 and \$5,000 per day from the date that the lawsuit was filed for each day the policy or practice is followed. This fine will come out of my Department's budget, and because it is to be assessed from the date of filing and not of service, the Department may be assessing a legal fine for days even before we are notified of the lawsuit. On the other hand, I am concerned that if my officers stop and detain a person with lawful status who nevertheless was not carrying the correct identification document or had other indicators of unlawful presence my officers could be sued for illegally detaining that person as the officers await immigration verification. Any close case where the status of a person is not obvious to the officer will pose this risk to my Department.

13. Fourth, I am concerned about the cost that will be imposed on the Department by HB 56. When people are held in the Birmingham City Jail, it cost approximately \$282.88 per day to house them.

14. Fifth, I am concerned about the effect HB 56 will have on my Department's ability to engage immigrant and minority communities in Birmingham, which is essential to keeping Birmingham safe and to solve crimes that occur here. Also we are in communication with the citizens of the Latino community. We do so by having regular telephone calls, visits and email. We are regularly kept abreast of issues within the Latino community by other activists as well. There are many supporters of our Department in the community. We have gained respect and trust for each other. They are aware of how to reach our Department and we know who to contact in order to get the word out pertaining to services offered and other programs as needed. We have also established "Block Watch" Captains. Due to some Latinos experiencing language barriers, we have partnered with other organizations and agencies such as, Interpreters and Translators Association of Alabama, HICA and "The Burned" Community to help with the interpretation process. We also have a wonderful relationship with Latino radio, newspaper and other media.

15. HB 56 will deeply undermine our Department's efforts to police all of Birmingham in a fair and equal manner because we will be viewed as State immigration officers, not law enforcement officers trying to protect everyone in Birmingham.

I declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 31st day of July, 2011, in Birmingham, Alabama



Chief A.C. Roper