

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

SOUTHEASTERN SYNOD OF THE
EVANGELICAL LUTHERAN CHURCH
IN AMERICA *et al.*,

Plaintiffs,

v.

STEVEN R. FINNEY *et al.*,

Defendants.

Case No.: 3:25-cv-684

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs hereby move this Court to enjoin the enforcement of Section 5 of Tennessee Senate Bill 392—which creates state criminal offenses for transporting and harboring certain noncitizens—before its July 1, 2025, effective date and during the pendency of this litigation.

As detailed more fully in the accompanying memorandum and exhibits, Plaintiffs satisfy the familiar requirements for a preliminary injunction. *See Bays v. City of Fairborn*, 668 F.3d 814, 818-19 (6th Cir. 2012); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (providing that where a party “seeks a preliminary injunction on the basis of a potential constitutional violation, the likelihood of success on the merits often will be the determinative factor” (internal quotation marks omitted)).

Plaintiffs are likely to succeed on the merits. Section 5 is both field and conflict preempted and is therefore unconstitutional. It is field preempted because Congress has exercised its broad

authority, in a manner that is both “pervasive” and “dominant,” *Arizona v. United States*, 567 U.S. 387, 399 (2012), to regulate the transport and harboring of noncitizens without lawful immigration status. *See, e.g., Ga. Latino All. for Hum. Rts. v. Governor of Georgia (“GLAHR”)*, 691 F.3d 1250 (11th Cir. 2012); *United States v. Alabama*, 691 F.3d 1269 (11th Cir. 2012); *United States v. South Carolina*, 720 F.3d 518 (4th Cir. 2013); *Lozano v. City of Hazleton*, 724 F.3d 297 (3d Cir. 2013); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006 (9th Cir. 2013). And it is conflict preempted because it stands as an obstacle to the accomplishment of the purposes and objectives of the federal regime. *See Arizona*, 567 U.S. at 406. Section 5 is also unconstitutionally vague because “it fails to give ordinary people fair notice of the conduct it punishes” and is “so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015).¹

If Section 5 is not enjoined, Plaintiffs and others similarly situated will suffer immediate and irreparable harm by facing felony prosecution and a mandatory minimum prison sentence for merely providing shelter to people who are undocumented while receiving a financial benefit for doing so. *See GLAHR*, 691 F.3d at 1269. The balance of equities and public interest, which merge in a suit against the government, *Daunt v. Benson*, 956 F.3d 396, 422 (6th Cir. 2020), also weigh heavily in favor of an injunction. Defendants will suffer no substantial harm from being prohibited from enforcing an unconstitutional law. *See Deja Vu of Nashville, Inc. v. Metro. Gov’t of Nashville & Davidson Cnty.*, 274 F.3d 377, 400 (6th Cir. 2001). And the public interest will be served by enjoining the state’s “[f]rustration of federal statutes and prerogatives” through enforcement of a

¹ Section 5 also violates the Southeastern Synod’s First Amendment rights to exercise its religion and to associate for purposes of religious expression. But because a preliminary injunction on the grounds that Section 5 is preempted and void for vagueness would fully protect Plaintiffs from irreparable injury, Plaintiffs do not rely on Section 5’s other constitutional defects for the relief sought here.

preempted law. *Alabama*, 691 F.3d at 1301.

Plaintiffs therefore respectfully request that the Court issue a preliminary injunction barring Defendants from enforcing Section 5 against all members of the Southeastern Synod and everyone within the putative class. *See Warth v. Seldin*, 422 U.S. 490, 511 (1975) (providing that an injunction issued to an associational plaintiff “will inure to the benefit of those members of the association actually injured”); *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1369 (2025) (providing that “courts may issue temporary relief to a putative class” and “need not decide whether a class should be certified” before granting class-wide injunctive relief).

Plaintiffs further respectfully request that this Court exercise its jurisdiction to waive the security requirement of Rule 65(c) of the Federal Rules of Civil Procedure. *See Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (“[T]he rule in our circuit has long been that the district court possesses discretion over whether to require the posting of security.”). When determining whether to require a plaintiff seeking an injunction to provide security, courts consider factors like the strength of the movant’s case, whether a strong public interest is present, and whether the defendants are likely to be harmed by the issuance of an injunction. *See 13 Moore’s Federal Practice* § 65.52 (3d ed.); *see also, e.g., Bankers Life & Cas. Co. v. McDaniel*, No. 21-CV-0247, 2021 WL 1165974, at *6 (M.D. Tenn. Mar. 26, 2021); *FemHealth USA, Inc. v. City of Mount Juliet*, 458 F. Supp. 3d 777, 805 n.27 (M.D. Tenn. 2020). Here, Plaintiffs have a strong likelihood of success on the merits of their constitutional claim, and Defendants will suffer no financial or other harm from being enjoined from enforcing a law that has yet to go into effect.

Accordingly, and for the reasons set forth in the accompanying memorandum, Plaintiffs respectfully request that the Court grant this motion for a preliminary injunction without security.

Plaintiffs further request that the Court set an expedited hearing given the significant and irreparable harm they face should Section 5 go into effect on July 1, 2025.

Respectfully submitted this 23rd of June, 2025.

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**Motion for admission pro hac vice forthcoming.*

CERTIFICATE OF SERVICE

I hereby certify that, on June 23, 2025, I electronically filed the foregoing motion and all attachments with the Clerk of the Court via the Court's electronic case filing system. There is currently no Counsel of Record for Defendants. I certify that I will serve the foregoing and all attachments on Defendants by first class mail to:

Office of the Attorney General and Reporter
P.O. Box 20207
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s/ Michael C. Holley
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