

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

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| Rev. Dr. Thomas A. Summers, |) | C/A NO. 3:08-2265-CMC |
| Rev. Dr. Robert M. Knight, |) | |
| Rabbi Sanford T. Marcus, Rev. Dr. |) | ORDER GRANTING PLAINTIFFS' |
| Neal Jones, Hindu American Foundation, |) | MOTION FOR A |
| and American-Arab Anti-Discrimination |) | PRELIMINARY INJUNCTION |
| Committee, |) | |
| |) | |
| Plaintiffs, |) | |
| v. |) | |
| |) | |
| Marcia S. Adams, in her official capacity |) | |
| as the Director of Motor Vehicles; Jon |) | |
| Ozmin, in his official capacity as the |) | |
| Director of the Department of Corrections |) | |
| of South Carolina, |) | |
| |) | |
| Defendants. |) | |

Through this action, Plaintiffs, four South Carolina religious leaders and two religious-cultural organizations, challenge the constitutionality of a South Carolina statute which authorizes issuance of a special license plate containing the words "I Believe" along with a cross superimposed on a stained glass window. *See* Act No. 253 (to be codified at S.C. Code Ann. § 56-3-10110, "I Believe Act"). Plaintiffs assert that this statute, which was unanimously approved by the legislature in May 2008, violates both the Establishment and the Free Speech Clauses of the First Amendment to the United States Constitution. The matter is presently before the court on Plaintiffs' motion for a preliminary injunction barring further production and any distribution of the "I Believe" license plate pending final resolution of this matter on the merits.

Defendants deny that the statute violates either the Establishment or the Free Speech Clause of the First Amendment. They also assert that Plaintiffs lack standing to pursue their claims. Based on these and other arguments, Defendants oppose Plaintiffs' request for a preliminary injunction.

Standing. The court finds that Plaintiffs have standing to assert their Establishment Clause claim. *Suhre v. Haywood County*, 131 F.3d 1083 (4th Cir. 1997) (holding that personal contact with a public religious display satisfies the injury-in-fact requirement for standing in Establishment Clause cases).

Preliminary Injunction Requirements. In reviewing Plaintiffs' motion for a preliminary injunction, the court has considered the following four factors: (1) the likelihood of irreparable harm to Plaintiffs if the preliminary injunction is denied, (2) the likelihood of harm to Defendants if the injunction is granted; (3) the likelihood that Plaintiffs will succeed on the merits; and (4) the public interest. *See, e.g., Child Evangelism Fellowship of Maryland, Inc. v. Montgomery County Public Schs.*, 373 F.3d 589 (4th Cir. 2004) (applying preliminary injunction standard in a First Amendment case). All four factors favor granting the injunction.

Balance of Harms. As required by *Safety-Kleen, Inc. (Pinewood) v. Wyche*, 274 F.3d 846, 858-59 (4th Cir. 2001), the court has first considered the risk that Plaintiffs will suffer irreparable harm. The court finds that the alleged loss satisfies this requirement because it involves the loss of a First Amendment right. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Johnson v. Bergland*, 586 F.2d 993, 995 (4th Cir. 1978) ("Violations of [F]irst [A]mendment rights constitute per se irreparable injury."). The court has next balanced this risk of irreparable harm to Plaintiffs if the motion is denied against the risk of harm to Defendants if the motion is granted and finds only a limited risk of harm to Defendants. Those harms include delay in implementation of the statute, as well as some degree of related expense and administrative inconvenience. The balance of harms, therefore, tips decidedly in favor of Plaintiffs.

Likelihood of Success on the Merits. Because the balance tips decidedly in favor of Plaintiffs, they need only raise substantial and difficult questions of a serious nature as to the merits, sufficient to make those questions fair grounds for litigation. *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812-13 (4th Cir. 1991). Plaintiffs easily satisfy this requirement as the court finds that they have made a strong showing of likelihood of success on the merits as to their Establishment Clause claim.

The Establishment Clause of the First Amendment prohibits Congress from making any “law respecting an establishment of religion.” U.S. Const. amend. I. This prohibition is equally applicable to state governments by virtue of the Fourteenth Amendment. *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947). A law constitutes “establishment” if it has the effect of “sponsorship, financial support, and active involvement of the sovereign in religious activity.” *Walz v. Tax Comm’n of N.Y.*, 397 U.S. 664, 668 (1970). As the Supreme Court has further explained, “government may not promote or affiliate itself with any religious doctrine or organization.” *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 590 (1989). The Establishment Clause rests on the understanding that “a union of government and religion tends to destroy government and to degrade religion.” *Engel v. Vitales*, 370 U.S. 421, 431 (1962).

Courts in the Fourth Circuit apply the three-part test set out in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), to determine whether a specific law or governmental action violates the Establishment Clause. *See, e.g., Lambeth v. Bd. of Comm’rs*, 407 F.3d 266, 268 (4th Cir. 2005). The *Lemon* test requires that the law or other governmental action meet *all* of the following requirements: (1) have a secular purpose, (2) have a primary effect that neither advances nor inhibits religion, and (3) not foster an excessive government entanglement with religion. *Mellen v. Bunting*, 327 F.3d 355, 372

(4th Cir. 2003). Based on the record now before the court, the court finds it unlikely that the I Believe Act satisfies even one of these three requirements. As the Act must satisfy all three requirements to survive constitutional scrutiny, the court concludes that Plaintiffs have made a strong showing of likelihood of success on the merits as to their Establishment Clause Claim.

Public Interest. The public has a strong interest in implementation of constitutional legislation. It has an equal interest in avoiding implementation of unconstitutional legislation. The public interest, therefore, follows the likelihood of success on the merits. Because the court has found a high probability that Plaintiffs will succeed on the merits, it concludes that the public interest also weighs in favor of injunctive relief.

CONCLUSION

For the reasons set forth above, the court grants Plaintiffs' motion for preliminary injunction and directs Defendants to take all actions necessary to preserve the *status quo* pending resolution of this action on the merits. Pursuant to Rule 65(c), of the Federal Rules of Civil Procedure, the court orders that Plaintiffs post a bond of one dollar (\$1) to be paid immediately.

In furtherance of the injunction, Defendants and all others acting in concert with them or aware of this order are directed to:

(1) Immediately stop advertising the "I Believe" license plate, including, but not limited to, on the State of South Carolina Department of Motor Vehicle's ("DMV") website and at any of the DMV's physical branch locations;

(2) Cease taking orders for the "I Believe" license plate;

(3) Notify the prepaid applicants of the court's order of preliminary injunction and take whatever action is deemed necessary to provide an alternative license plate to those applicants;

- (4) Refrain from distributing the "I Believe" license plate; and
- (5) Refrain from producing the "I Believe" license plate.

IT IS SO ORDERED.



CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
December 11, 2008