IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Walter Brian Bilbro,

Plaintiffs,

Vs.

South Carolina Department of Social Services (Director Susan Alford, Director Dorothy Addison RRP)

Office of Governor, Nikki Randhawa Haley

Lutheran Services Carolinas

World Relief Spartanburg, (Director Jason Lee)

Defendants.

Civil Action # 3:16-cv-767-JFA

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF OPPOSITION TO DEFEDENT'S MOTIONS TO DISMISS AND OPPOSITION TO DEFENDANT"S MOTION FOR SUMMARY JUDGMENT.

NOW COMES THE Plaintiff, by and through his undersigned attorney, Lauren L. Martel, respectfully move before this Honorable Court in Opposition to Motion to Dismiss and Opposition to Defendant's Motion for Summary Judgment.

FACTS

In this case we have the South Carolina Governor who has signed a contract with the Federal Agency of Refugee Resettlement involving the Department of Social Services as well as vague "contracting" with certain non-profits doing business in South Carolina. The Plaintiff seeks to enjoin the implementation of the State Refugee Resettlement Plan. The Plaintiff is a private citizen has brought this action to enjoin the further placement or use of state resources of the refugee resettlement plan as among other violations he has alleged it is in violation of his equal protection rights is an abuse of authority and that the laws of South Carolina are not being faithfully executed to protect him while making unusual exceptions in placing people throughout the state who are now free to roam without oversight. He alleges there is no meaningful standard

#155

of placement and that the potential prejudice to him and his family far outweighs the benefit of continuing with this "plan" in South Carolina. That the Defendants have filed a Motion to dismiss on the Basis that: 1. That the Plaintiff has failed to state a cause of Action and 2. Plaintiff lacks standing. Motions for Summary Judgment were filed indicating that 1. There were no material facts disputed 2. There was no legal remedy for which redress could be made.

This is an error, as the facts set forth below are similar to 1. *Exodus Refugee Immigration, Inc. v. Pence, 2016 U.S. Dist. LEXIS 24605* In that case, a suit was brought by a private party had standing to sue the governor of Indiana and the social services in Indiana. In that case the private entity, Exodus, contends that it has Article III standing because it was injured by the State's conduct, and further, that it has third-party prudential standing to bring an equal protection claim on behalf of its Syrian refugee clients who are subject to national origin discrimination by the State. The Plaintiff is informed that this case is precedent for him to seek private redress in circumstances that are similar. He also cited numerous cases in his original memorandum where the court granted standing and often conferred standing in public interest matters.

The District court held in that case that the private party Plaintiff set forth a cause of action and had standing to bring the lawsuit as a private entity as well as on behalf of third parties. The Plaintiff is informed he similarly had had set forth a cause of action and has standing. The difference in this case is that we are not seeking to stop only Syrians in this matter; we are seeking to stop the plan itself that lacks integrity and is vague on its face and unconstitutional. This private action is being brought as a direct and proximate cause of damages or irreparable harm due to the implementation of the Plan that the Governor brought with SCDSS and "contracting" with the non-profits. The Plaintiff seeks to enjoin this program and the abuses in the administration in this plan.

That on August 15, 2015 The Governor of South Carolina signed a contract with The Department of Social Services to enact a program that is set forth in the State Plan which is an exhibit filed with the Plaintiff's Complaint. That the Governor owes a duty to the South Carolina taxpayers to faithfully engage the laws of South Carolina. That the authority of the office of Governor is found in Article 4 of the South Carolina Constitution. That no meaningful notice was given to the counties that would become "refugee resettlement" communities or the legislator's tat represent those counties. Resolutions from certain counties were filed with the

Office of Governor indicating many South Carolina Communities were not prepared for "refugee resettlement" in their local communities. That many counties opted to not be refuges resettlement communities and forwarded resolutions to the office of Governor to stop the Plan so that their local communities would not be overburdened and placed at risk by this plan.

That two cease and desist letters were served on the Governor to request she intercede and cease this plan. Copies were made exhibits in Plaintiff's case-in chief. The Governor did, after terrorist attacks in France and San Bernardino, write a letter to US Sect. Of State John Kerry to stop unvetted refugees from being placed in South Carolina. Only one month after her letter, Lutheran Services recklessly placed unvetted refugees in the Midlands of South Carolina. The point is not really whether these "refugees' are from any particular country of origin, the fact is that they can say they are from any country and not have any back up documentation to be reliable source. The point is the "plan" lacks integrity and has not been properly authorized or projected for impact on local communities. Fraud in the immigration, asylum and refugee programs is very possible and terrorist attacks on America Soil have been results of such fraud on programs that lack integrity on oversight. (See Expert Affidavit)

The Plaintiff, Walter "Brian" Bilbro is a hard working –man South Carolina Tax payer, a husband and father to two young daughters. He is very concerned for the safety and welfare of his family and him should this program continue as it is presently. He is concerned that the Governor entered into this "Plan" without authority to do so and bind South Carolina to economic and other burden that is the consequential effect of this Plan. He is concerned that his taxpayer dollars are being used for a "plan" that may incentivize criminal behavior. See Affidavit of Jessica Vaughn on Boarder Smuggling that brings the unaccompanied minor children across the boarder for money. He has an expectation of safety and that his local community will not become a community that reflects other "refugee resettlement" friendly communities, (i.e. Dearborn Michigan and other settlements in Vermont, Maine and New Hampshire where the schools are overburdened to extent that lawsuits are being brought by refugees when the translators cannot be provided.

That the Plaintiff knows we have homeless veterans and veterans locally who have served our County at home and abroad. He is aware that our returning veterans are committing suicide at high rates and need help when they return in their local communities. He would like to help our veterans in a "charitable" manner as the suicide rate is very high in returning military

and they don not have adequate services. The fact that this Plan offers more benefits and cash money and social welfare to United Nations hand picked "refugees who have been safe in United Nations camps with arguably more benefits than what our veterans are eligible for or can access as help needed with housing, etc. is appalling. He is informed this is an Equal Protection issue, among other things. Also, the fact that the "non" Profits and SCDSS being involved mandate that "NO Proselytizing" is allowed of these "refugees" presents a First Amendment issue, among other issues. The Plaintiff is informed that he has an Equal Protection argument that he would like to present on the merits and have time to further Amend his Complaint as the new causes of action arise. "Charity" government mandated or delegated. This type of "charity is blatantly unconstitutional and circumvents the Plaintiffs rights.

He is informed that the state plan does not incentivize assimilation of these "clients" as the state plan refers to them, nor does the mission of the 2 non-profit Defendants who have filed as "religious" corporations charities in the State Of South Carolina. The claim that the Plaintiff has raised is that the Program itself lacks integrity and that the Governor had no authority to enter into the Contract with the Federal government is the main issue. The Governor had a duty to first go through the proper protocol of due process and placing the South Carolina Legislature on Notice of her intentions and backs the request up with Impact Studies and Projections on how such an over-reaching plan would burden local communities, via the Budgetary and Finance Board. Also, this Plan specifically included "Unaccompanied minor children, but has addressed what happens to these Unaccompanied minor children. In fact it is silent and we have a case that presents an imminent risk of failure of oversight and protocol. The State funds are being used as Family Court Judges are claiming jurisdiction over unaccompanied minors and placing them with "sponsors" in South Carolina. See below recent case is set to be dismissed via 365 Family Court Rule and no follow up on the child or sponsor or potential chain migration in this situation—they are operating without an "order" technically yet are present in our SC State. THIS IS AN IMMEDIATE URGENT THREAT TO THE PLAINTIFF.

The Exhibit attached to the Plaintiff Complaint includes a Beaufort County Family Court Case where a 10 year old (whose name was never properly redacted in the original case) appears to come over to USA via some assistance, however the Beaufort Family court makes no finding on the chain of custody that brought this child to South Carolina. The case is concerning as no guardian ad litem was appointed and the sponsor is not investigated. The affidavit would be

insufficient for any jurisdiction of the court for an emergency order on abuse as the affidavit filed by the "sponsor" fails to state a specific incident or time or place of alleged abuse of fear to go back to Honduras. Also the means of process service on the "drug dealer fathers" was questionable as proper service. Yet, this child and sponsor are entitled to everything on the state plan, welfare, etc. This is one example of state funds being used and state resources being used in complete contradiction to the representations made by the Governor, the SCDSS and the representatives of the non profits, particular Jason Lee of World Relief indicated that "only federal ta money" would be used. Also, the Expert review of similarly resettled communities indicates a rise in crime, non-investigation of the chain migration that comes with family members and an over all dilution of assimilation or oversight. See Statement Attached.

In fact, the failure of "projections" or Impact statements" as it relates to each refugee, is silent as to what happens after 8 months and the federal money per refugee is gone. The burden will quickly fall t the state taxpayer and the local communities, further taking the time, resources and diluting the ability of our law enforcement, local Public School, public health, public safety, infrastructure and collateral problems tat a lack of assimilation naturally gives rise to (i.e. traffic laws and hit and runs, rape as a culturally accepted behavior that is no a protected behavior in South Carolina). This is an imminent threat to Plaintiff.

The Restriction that because "federal taxpayer money" is given to the State and Volag's for this "plan" forces a mandate that these Refuges are never to be "proselytized" and that all other mandates attached via Federal "policy requirements" are Blatantly Unconstitutional. Ad it is a Misrepresentation and extreme offence that the Defendants, particularly the non profits try to pass this "plan" off as "evangelical charity" it is the furthest thing from "evangelical Charity" if one is restrained from sharing the Gospel. (See Asst. Sect of State Ann Richards comments from Court reported transcript.

That The Governor entered into a "contract: with the Federal Government and enjoined the state agency South Carolina Department of Social Services to the "Contract" and expanded the job and duties of the SCDSS to include overseeing a refugee resettlement program. That the Plaintiff has brought this private action to restrain the implementation of this Plan. He is informed and believes that he has standing and that he has set forth claims for which relief can be granted.

His case is similar in nature to Article III's limitation of the judicial power to resolving ' Cases' and ' Controversies', " and the separation-of-powers principles underlying that limitation, [the Supreme Court] ha[s] deduced a set of requirements that together make up the 'irreducible constitutional minimum of standing.'" *Lexmark Intern., Inc. v. Static Control Components, Inc.*, *134 S. Ct. 1377, 1386, 188 L. Ed. 2d 392 (2014)* (quoting *Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)).* This constitutional minimum, often referred to as Article III standing, is jurisdictional. *See Dunnet Bay, 799 F.3d at 688.* To establish Article[*18] IIIstanding, a plaintiff must show "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Silha v. ACT, Inc., 807 F.3d 169, 173 (7th Cir. 2015).*

The Plaintiff can show imminent threat by many examples one is contained in this recent situation in York, SC: http://www.fox46charlotte.com/news/local-news/136875588-story. The Defendant Lutheran Services has acted recklessly and placed clearly unvetted people within the states well as violating the Plaintiffs equal protection of laws.

Exodus argues that it has Article III standing because (1) it has been injured, and will continue to be injured, by failing to receive reimbursement from the State for social services it provides its Syrian refugee clients; (2) this injury was directly caused by the State's directive; and (3) the injury will be redressed by a favorable decision. More specifically, Exodus presents evidence that the State's decision to not reimburse Exodus will have significant repercussions on Exodus's ability to serve the refugee families to whom it is assigned and that, to make up for this lost money, Exodus will have to take away services it provides in other areas to both its Syrian and non-Syrian refugee clients. (See Filing No. 16-1 at 7.)

The State does not directly dispute whether Exodus **[*19]** has Article III standing, and it even acknowledges that its conduct "may harm Exodus's economic interests. " (Filing No. 41 at 54.) The State does, however, raise one argument regarding prudential standing that touches upon the Court's Article III standing.2016 U.S. Dist. LEXIS 24605, *15

LAW ON OPPOSTION TO DISMISS OR FOR SUMMARY JUDGMENT

In this case we have the SC Governor who has signed a contract with a Federal Agency of

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Refugee Resettlement to implement the State Refugee Resettlement Plan, allegedly provided for under The Act. The Plaintiff is a private citizen has brought this action to enjoin the implementation of the refugee resettlement plan in South Carolina. That the Defendants have filed a Motion to dismiss on the Basis that (1). That the Plaintiff has failed to state a cause of Action and (2) Plaintiff lacks standing.

This is an error; the facts in the case at hand are similar to Exodus Immigration Inc. v. Pence case. In that case, a suit was brought by a private party had standing to sue the governor and the social services. The District court held in that case that the Private party Plaintiff has set forth a cause of action and had standing to bring the lawsuit. The Plaintiff is informed he similarly had had set forth a cause of action standing. The difference in this case is that we are not seeking to stop only Syrians in this matter; we are seeking to stop the plan itself that lacks integrity. This private action is being brought to address the Plan that the Government brought with SCDSS and "contracting" with the non-profits. The Plaintiff seeks to enjoin this program and the abuses in the administration in this plan.

The Plaintiff has set forth judgment is proper only when it is clear that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *SCRCP, Rule 56(c).* In determining whether any triable issues of fact exist, the evidence and all inferences, which can be reasonably drawn from the evidence, must be viewed in the light most favorable to the non-moving party. Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied *Koester v. Carolina Rental Center.* 313 S.C.490;443 S.E.2d392. *Carolina Chloride, Inc. v. S.C. DOT,* 391 S.C. 429, *706 S.E.2d 501.*

In the case of Hancock Mid-South Management Co, 381 S.C. at 330-31, 673 S.E.2d at 803 (S.CT 2009). It is important to recognize that the South Carolina Supreme Court used the language of precedent - "we hold" - to begin its description of the summary judgment standard in state court. The Supreme Court considers its articulation of the standard in *Hancock* to carry the force of law. The standard is that **in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.**

Irreparable Harm

#755

As explained earlier, "in the context of an alleged violation of *First Amendment* rights, a plaintiff claimed irreparable harm is 'inseparably linked' to the likelihood of success on the merits of plaintiff's *First Amendment* claim." *WV Ass'n of Club Owners*, 553 F.3d at 298. *See also Newsom v. Albemarle County School Bd.*, 354 F.3d 249, 254-55 (4th Cir. 2003); *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976) (explaining **[**44]** that the loss of *First Amendment* freedoms, even for a short period of time, constitutes an irreparable injury); *Johnson v. Bergland*, 586 F.2d 993, 995 (4th Cir. 1978) ("Violations of [F]irst [A]mendment rights constitute per se irreparable injury."). Plaintiffs argue that they "are suffering an irreparable harm right now" as a result of the "enforcement of non-existent rules" and the threat of arbitrary and capricious action against them as a result of new rules that "may be created and enforced on the spot." Dkt. No. 1-5 at 11. The fear of inconsistent application of the policies creates a risk that Plaintiffs will be silenced in violation of the *First Amendment*. The court, therefore, finds that Plaintiffs have established an irreparable injury. This interest, protected by the *First Amendment*, can only be limited by reasonable time, place, and manner restrictions. Because there are none, the public interest in the rights of its citizens under the *First Amendment* prevails.

Other cases that conferred standing:

In numerous recent cases, this Court has found that standing is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance. *Sloan v. Dep't of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005) (finding Sloan had[642 S.E.2d 742]standing to bring actions for alleged violation of statutory bidding violations by the DOT); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005) (holding Sloan had standing to challenge legislative enactment). Additionally, both this Court and the Court of Appeals have found standing in other cases of important public interest without requiring the plaintiff to show he has an interest greater than other potential plaintiffs. *See id.*; *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004) (holding standing to challenge governor's commission as officer in Air Force reserve); *Sloan v. Greenville Cty.*, 356 S.C. 531, 548, 590 S.E.2d 338, 347 (Ct.App.2003) (holding plaintiff had standing to bring declaratory judgment action alleging county failed to comply with ordinances governing procurement). Furthermore, under the public importance exception, standing may be conferred upon a party "when an issue is of such public importance as to require its resolution for future guidance." *Baird v. Charleston Cty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999).SPAPW v. SC Dept. of Natural Resources, 345 S.C. 594, 550 S.E.2d 287 (S.C., 2001) To have standing, one must have a personal stake in the subject matter of the lawsuit. In other words, one must be a real party in interest. *Charleston County Sch. Dist. v. Charleston County Election Comm'n*, 336 S.C. 174, 519 S.E.2d 567 (1999). "A real party in interest is one who has a real, material, or substantial interest in the subject

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matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Id.* at 181, 519 S.E.2d at 571 (quoting *Anchor Point, Inc. v. Shoals Sewer Co.*, 308 S.C. 422, 428, 418 S.E.2d 546, 549 (1992)). A private person does not have standing unless he has sustained, or is in immediate danger of sustaining, prejudice from an executive or legislative action. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Such imminent prejudice must be of a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public. *Id.* (citing *Citizens for Lee County, Inc. v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992)). When an organization is involved, the organization has standing on behalf of its members if one or more of its members will suffer an individual injury by virtue of the contested act. *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972).

1. The Plaintiff responding to the Defendant's Motions to Dismiss and Defendant's Motions for Summary Judgment would show that the same should be denied for the reasons and grounds herein asserted:

2. The Gabelmon issues asserted by the Defendant (S) are: 1. Failure to state and Cause of Action under Rule 12b6 and 2. The lack of standing of the Plaintiff to bring this action. 3. The Plaintiff relies on the case of *Exodus Refugee Immigration, Inc. v. Pence* , 216 US Dist. Lexis 40733. As repository disposition on this issue. This sets precedence for private actions to be brought and remedied against The State particularly to enjoin an unconstitutional plan.

3. Plaintiff refers to his Motion to Extend Time and Affidavits to extend Time for responses as being timely filed and that he timely responded with a denial that this case should be dismissed, but should be remanded or leave to Amend the Complaint a second time.

4. As of May 18, 2016 The Beaufort County Family Court case that took in an "Unaccompanied minor child" set to be deported and relocated him to the Beaufort County Family Court is in an emergency situation that is imminent and has or will irreparably damage the Plaintiff. That case was last heard on April 2,2015 in Case No. 15-Dr-07-220. It was an "order" described as "temporary" there has been no follow up to that order, more than 365 days have gone by and no guardian was ever appointed. At this point, this child and his sponsor are somewhere in Bluffton, South Carolina with no legal reason to be here as a temporary order is automatically dismissed from the family Court docket and it is as if there is NO Order. This Family Court case has no reason not to be stricken from the docket as no conclusion to the case has been made. This is an Urgent risk for South Carolina and creates an issue of law and fact that must be addressed to protect the public interest. Last Order attached and incorporated herein indicating more than 365 days had passed since action was filed. THIS IS VERY URGENT TO

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BE ADDRESSED.

5. That the Plaintiff is informed that material issues exist on the SC Constitutional issues, including but not limited to equal protection issues, First Amendment Issues, Vague Unconstitutional policies that effect him and the public in general, SC Tort Act, failure to enforce South Carolina Law, use of Family Court in placing unaccompanied minor children, failure to use projections and impact statements as per the state plan requires, cease that the inflow of "clients" unfairly overburdens the system and the taxpayer, and other relief requested in Amended Complaint and reserved should this case include all of the Federal issues that do exist in addition to the claims the Plaintiff set forth originally as State Claims.

6. That based upon the facts in dispute and law the Plaintiff should be granted standing and an opportunity for due process of law and to be heard on the merits of this case.

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May 18, 2016