UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOHN DOE and the AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF LOUISIANA,

Plaintiffs

versus

PARISH OF ST. TAMMANY, CITY OF SLIDELL, and JAMES "JIM" LAMZ, in his official capacity as City Judge, City Court of Slidell,

Defendants.

CIVIL ACTION NUMBER: 07-3574

SECTION: SECT. B MAG 4

MAGISTRATE NO.

MOTION FOR PRELIMINARY INJUNCTION

NOW INTO COURT come Plaintiffs, JOHN DOE and the AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF LOUISIANA, and for the reasons set forth fully in the **Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction**, move this Court, pursuant to Rule 65(a), Federal Rules of Civil Procedure, for a preliminary injunction, restraining, enjoining and/or prohibiting Defendants, PARISH OF ST. TAMMANY, CITY OF SLIDELL, JAMES "JIM" LAMZ, and/or any of their agents, representatives, or anyone acting on their behalf, from permitting, authorizing, encouraging, acquiescing in, and maintaining the display of an image of Jesus Christ presenting the New Testament of the Bible with the wording "To Know Peace, Obey These Laws," in the City Court of Slidell. Plaintiffs seek this Order pending disposition of Plaintiffs' claim that the display of said image violates the Establishment Clause of the First Amendment to the Constitution of the United States, made applicable to the

states through the Due Process Clause of the Fourteenth Amendment.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing pleading has been served on all parties, on this 3 day of July, 2007, by service method indicated below:

[x] U. S. MAIL [ ] FAX [ ] HAND DELIVERY [ ] OTHER

Katie M. Schwartzmann

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PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

MAY IT PLEASE THE COURT:

Plaintiffs have moved for a preliminary injunction, restraining, enjoining and/or prohibiting Defendants, PARISH OF ST. TAMMANY, CITY OF SLIDELL, JAMES "JIM" LAMZ, and/or any of their agents, representatives, or anyone acting on their behalf, from permitting, authorizing, encouraging, acquiescing in, and maintaining the display of an image of Jesus Christ presenting the New Testament of the Bible with the wording "TO KNOW PEACE, OBEY THESE LAWS," in the City Court of Slidell.

I. FACTUAL STATEMENT

Plaintiffs herein are John Doe,[1] a person of full age of majority who has visited the City Court of Slidell and will be compelled to do so again in the future,[2] and The American Civil Liberties Union Foundation of Louisiana,[3] an organization domiciled in the state of Louisiana whose members are located throughout the state of Louisiana, including the parish of St. Tammany and the city of Slidell. Some of those members have likewise visited the City Court of Slidell and will do so again in the future.

The City Court of Slidell is located at 501 Bouscaren Street, Slidell, Louisiana.[4] It is a court of limited jurisdiction, handling adoptions, child in need cases, traffic offenses, delinquency cases from shoplifting to murder, adult misdemeanors, civil suits up to $30,000, and small claims up to $3,000.[5] The cost to operate and maintain the City Court of Slidell is

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[1] Plaintiffs are challenging the policy and/or practice of Defendants of displaying an icon of Jesus Christ in the foyer of the City Court of Slidell. This challenge has generated a considerable amount of publicity, not only in the city of Slidell, but the state of Louisiana as well. Demonstrations and rallies have been held in the city of Slidell condemning and verbally assaulting Plaintiffs. The American Civil Liberties Union Foundation of Louisiana, which is providing counsel for Plaintiffs, has been referred to as a "bunch of Nazis" and members of the "Taliban." That being the case, Plaintiff, John Doe, is fearful for his safety and well-being, and that of his family. Based on said fear, he has elected, and is entitled, to proceed anonymously. *See Doe v. Stegall,* 653 F.2d 180 (5th Cir. Unit A Aug. 1981).

[2] *See* P-1, ¶ 2 [Declaration of John Doe in Support of Preliminary Injunction]

[3] Plaintiff, American Civil Liberties Union of Louisiana, is authorized to file suit on behalf of its members. *See Warth v. Seldin,* 422 U.S. 490 (1975).

[4] *See* Verified Complaint ("Complaint"), p. 3, ¶ 10.

[5] *Id.* at ¶ 8

shared equally by the city of Slidell and parish of St. Tammany.[6] Defendant Lamz is, and was at all times relevant hereto, the presiding judge in said Court.[7]

The lobby of the courthouse, through which all visitors must pass, is virtually bare of artwork or paintings.[8] As a matter of fact, there are two objects, which are located on different walls. On one wall is a portrait of a former judge, with wording beneath the portrait identifying him.[7] The other object, which is located on a separate wall, contains a religious icon of the Eastern Orthodox sect of Christianity; it depicts an image of Jesus Christ presenting the New Testament. Below the icon, in clearly recognizable letters, is lettering saying, "TO KNOW PEACE, OBEY THESE LAWS."[8]

Prior to June 2007, Plaintiffs, John Doe and members of the ACLU-F of LA, entered the City Court of Slidell and were confronted by this icon, which they found to be offensive in many respects. It will be necessary for Plaintiffs to return to the courthouse in the future, to conduct business and/or fulfill legal obligations.[9] Plaintiffs themselves did not formally object to to courthouse officials regarding the overtly sectarian icon, for they were of fearful of retaliation.[10]

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6 *Id.* at ¶ 7

7 *Id.* at ¶ 9

7 *Id.* at p. 3, ¶¶ 10 and 11.

8 *Id.* at p. ¶11

9 *Id.* at p. 4, ¶ 14; *See* P-1, ¶¶ 3 and 4.

10 *Id.* at p. 5, ¶ 18

In an effort to avoid litigation, on June 20, 2007, Plaintiffs, through undersigned counsel, prepared and faxed a letter to Susan S. Ordoyne, with faxed copies to Ben Morris, mayor of Slidell, and the Slidell City Council, advising her of the sectarian and unconstitutional nature of the display, and requesting that it be removed.[11] It was requested that the icon be removed "to comply with the law by close of business on Wednesday, June 27, 2007 to prevent further action on our part." In a series of press conferences and interviews with the printed media, Defendants have stated unequivocally that they will not remove the offending icon. Further, they have referred to the American Civil Liberties Union as the "American Taliban" and "Nazis." Employing very confrontational and combative language, Defendants have stated that they will not "cut and run."

It is Plaintiffs' contention that Defendants, in acquiring, designing, installing, maintaining and displaying the icon of Jesus Christ in the foyer of the City Court of Slidell, did so with the express purpose of advancing, promoting or endorsing Christianity, in violation of the Establishment Clause of the First Amendment to the United States Constitution. Defendants' actions are devoid of any secular purpose whatsoever. Plaintiffs seek a preliminary injunction order from this Court restraining, enjoining and prohibiting Defendants from displaying that icon in the foyer of the City Court of Slidell, or in any public place in or around the courthouse in which members of public could or would be required to come into contact.

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[11] *See* P-1 [Letter to City Court of Slidell, Attn. Susan S. Ordoyne, dated June 20, 2007]

II. STANDING

The concept of standing is one aspect of justiciability. *See Flast v. Cohen,* 392 U.S. 83, 98 (1968). To establish standing under Article III of the United States Constitution, a plaintiff must have suffered an injury in fact; he must have sustained an actual injury which is concrete and particularized. There must be a causal connection between the injury and the conduct complained of, meaning that the injury has to be fairly traceable to the challenged action of the defendant. Finally, it must be likely, and not merely speculative, that the injury will be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992); *Murray v. City of Austin,* 947 F.2d 147 (5th Cir. 1999). The essential question for standing is whether a plaintiff has alleged "a personal stake" in a controversy, such that courts can be assured of a "concrete adverseness which sharpens the presentation of issues necessary for the illumination of difficult constitutional questions." *Baker v. Carr,* 369 U.S. 186, 204 (1962); *Saladin v. City of Milledgeville*, 812 F.2d 687, 690 (11th Cir. 1987).

"[T]he standing inquiry in Establishment Clause cases has been tailored to reflect the kind of injuries Establishment Clause plaintiffs are likely to suffer. * * *. [T]he Establishment Clause plaintiff is not likely to suffer physical injury or pecuniary loss directly affected by an alleged establishment of religion." Rather, "the spiritual, value-laden beliefs of the plaintiffs' are most often directly affected by an alleged establishment of religion. Accordingly, rules of standing recognize that noneconomic or intangible injury may suffice to make an Establishment Clause claim justiciable." *Suhre v. Haywood Cty.*, 131 F.3d 1083, 1086 (4th Cir. 1977). This case involves such an intangible injury in fact.

Plaintiff, John Doe, alleges that he has visited the City Court of Slidell and will be required to do so again in the future. He alleges that he has come into direct and unwelcome contact with the icon and that he was offended by it. As made clear in *Staley v. Harris Cty.*, 332 F.Supp.2d 1030 (S.D.Tex. 2004), dismissed and remanded, 485 F.3d 305 (5th Cir. 2007), this is sufficient to meet the "injury in fact" requirement. In *Staley,* the requirement was met by a plaintiff who

> is a resident and taxpayer of Harris County. She is also an attorney who passes by the monument going to and from the Courthouse in the course of her profession. She testified that she is offended by the Bible display in the Mosher memorial because it advances Christianity and it sends a message to her and to non-Christians that they are not full members of the Houston political community.

332 F.Supp.2d at 1034.

Thus, similar to the plaintiff in *Staley,* Plaintiff herein has come into contact with the icon bearing a portrait of Jesus Christ, the contact was unwelcome, and they were offended by icon. Further, Plaintiffs must again come into contact with the icon at a future date.

See also North Carolina Civil Liberties Union v. Constangy, 751 F.Supp. 552, 553 (W.D.N.C. 1990), aff'f. 947 F.2d 1145 (4th Cir. 1991), cert. den'd. 505 U.S. 1219, 112 S.Ct. 3027, 120 L.Ed.2d 898 (1992), wherein the court commenced each session with a prayer. The practice was challenged by individual attorneys and the North Carolina Civil Liberties Union on behalf of its members. Standing was granted to attorneys who had "been present for at least one recitation of Judge Constagny's court opening prayer." 751 F.Supp. at 553. The "injury in fact" requirement was met by the some of the individual plaintiffs even though they had appeared before Judge Constagny only once, and there was no allegation that they would be required to

appear before him again in the future. Plaintiffs' "injury in fact" is even stronger, for they will be required to make at least one more appearance at the City Court of Slidell.

Plaintiff, the American Civil Liberties Union Foundation of Louisiana, is proceeding on behalf of its members who have and/or will come into contact with the icon of Jesus Christ in the foyer of the City Court of Slidell. Provided that certain conditions are met, an association may have standing to represent its members. "The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit." *Sierra Club v. Morton,* 404 U.S. 727, 734-741 (1972). Plaintiff has made such an allegation. It has alleged that its members, who have or will be required to come into contact with the icon of Jesus Christ, find the icon to be unwelcome and offensive, and its mere presence gives an impression that the City favors religion, at least one particular religion – Christianity.

The facts of this case are more compelling than those present in *Constagny* wherein standing was conferred upon the North Carolina Civil Liberties Union. In that case, the association was allowed to file suit on behalf of "[a] number of its members [who] live in Charlotte and may be subject to being ordered to attend Judge Constangy's courtroom as witnesses or defendants in the same manner as any other citizens or group of citizens." Standing was granted even though these plaintiffs had not yet been exposed to Judge Constangy's Establishment Clause violations. 751 F.Supp. at 553.

Having established that Plaintiffs have sustained an injury, the next inquiry is whether "the injury is fairly traceable to the defendant." *Massachusetts v. E.P.A.,* 127 S.Ct. 1438, 1453 (2007). It is without dispute that this second requirement has been satisfied. The injury

sustained by Plaintiffs is a direct "but for" result of the Defendants' policy and/or practice of installing and displaying the icon of Jesus in the foyer of the City Court of Slidell. "Were it not for the [Defendants'] [policy and/or practice], there would be no constitutional injury." *Berger v. Berger v. Rensselaer Cent. Sch. Corp.*, 766 F.Supp. 696, 702 (N.D. Ind. 1991), rev'd on other grounds, 982 F.2d 1160 (7th Cir. 1993), cert denied 508 U.S. 711, 113 S.Ct. 2344, 124 L.Ed.2d 254.

The final inquiry asks whether a favorable judicial decision is likely to redress Plaintiffs' injury. *See,* e.g., *Massachusetts v. E.P.A.*, 127 S.Ct. at 1453. To establish redressability, [Plaintiffs] must show that it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Friends of the Earth, Inc. v. Laidlaw Envtl. Serv. (TOC), Inc.*, 528 U.S. 167, 181 (2000). Plaintiff clearly meets this test, for the issuance of a decision on the merits in favor of Plaintiffs can, and in this case will, prevent Defendants from continuing the practice of maintaining and displaying an icon of Jesus Christ in the foyer of the City Court of Slidell, or any area accessible to the public. An injunction against future displays would prevent Plaintiffs from being subjected to future Establishment Clause violations.

Plaintiffs have established standing, for (1) there is an ongoing injury, (2) which is resulting from Defendants' unconstitutional policy and/or practice, and (3) which will be redressed by court injunction.

III. Plaintiffs Are Entitled to a Preliminary Injunction

A. Applicable Legal Standard

This motion is filed pursuant to Rule 65, Fed.R.Civ.P. The granting or denial of a preliminary injunction rests in the discretion of the district court. *Johnson v. Radford,* 449 F.2d

115, 117 (5th Cir. 1971); *Morgan v. Fletcher,* 518 F.2d 236, 239 (5th Cir. 1975); *Blue Bell Bio Medical v. Cin-Bad, Inc.,* 864 F.2d 1253, 1256 (5th Cir. 1989).

There are four prerequisites governing the issuance of a preliminary injunction by the district court: (1) substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disservice the public interest. *Canal Authority of State of Florida v. Callaway,* 499 F.2d 567, 572 (5th Cir. 1974); *DSC Communications Corp. v. DGI Technologies, Inc.,* 81 F.2d 597, 600 (1996) (citations omitted).

B. Applicable Legal Standard Applied to the Case At Bar

1. There is Substantial Likelihood That Plaintiff Will Prevail On The Merits

The First Amendment to the United States Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The religion clauses of the First Amendment are made applicable to the States by the Fourteenth Amendment. *See Everson v. Bd. of Educ.,* 330 U.S. 1, 8, 67 S.Ct. 504, 508, 91 L.Ed. 711 (1947) (applying the Establishment Clause to the states); *Cantwell v. Connecticut,* 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940) (applying the Free Exercise Clause to the states).

The constitutionality of the icon must be analyzed in light of the two recent Supreme Court Establishment Clause decisions: *Van Orden v. Perry,* 545 U.S. 677 (2005), (Rehnquist, plurality), and *McCreary County v. ACLU of Kentucky,* 545 U.S. 844, 860 (2005).

In *Van Orden*, the Court phrased the issue as to "whether the Establishment Clause of the First Amendment allows the display of a monument with the Ten Commandments on the Texas State Capitol grounds." 545 US 681. In concluding that it does, the Court stressed the following factors:

1. The monolith was not a stand alone monument. Focusing on the 22 acres surrounding the Texas State Capitol, the Court identified "17 monuments and 21 historical markers commemorating the 'people, ideals, and events that compose Texas identity."

2. "The bottom of the monument bears the inscription 'PRESENTED TO THE PEOPLE AND YOUTH OF TEXAS BY THE FRATERNAL ORDER OF EAGLES OF TEXAS 1961.'"

3. The cost of erecting the monument was borne by the Eagles.

4. The monument had existed in its present location for 40 years prior to it being challenged on constitutional grounds.

5. Petitioner waited until six years after initially encountering the monument to file suit.

545 US 681-82.

In his concurring opinion Justice Breyer likewise concluded that the display did not violate the Establishment Clause. *Id.* at 705. He did not dispute the fact that the text of the Ten Commandments carried a "religious message." However, he stated that "[in] certain contexts, a display of the tablets of the Ten Commandments can convey not simply a religious message but also a secular moral message (about proper standards of conduct) . . . [a]nd . . . also . . . a historical message (about a historic relation between those standards and law)." *Id.* at 702.

Focusing on the issue at hand, Justice Breyer concluded that "the tablets have been used as part of a display that communicates a religious but a secular messsage as well." *Id.* In reaching his conclusion that there was not a violation of the Establishment Clause, Justice Breyer considered numerous factors, chief among which were:

1. The circumstances surrounding the monument's placement;
2. Who donated the monument;
3. The placement on state grounds;
4. The display's physical setting; and
5. The amount of time the display stood unchallenged.

Id. at 700-704

First, Justice Breyer found "[t]he physical setting of the monument . . . suggests little or nothing of the sacred. The monument sits in a large park containing 17 monuments and 21 historical markers, all designed to illustrate the 'ideals' of those who settled in Texas and of those who have lived there since that time." *Id.* Second, the monument was donated by the Fraternal Order of Eagles, an organization which "sought to highlight the Commandments' role in shaping civic morality as part of the organization's efforts to combat juvenile delinquency." *Id.* at 701. The fact that the tablets on the monument acknowledged that the monument was donated by the Fraternal Order of Eagles "further distances the State itself from the religious aspect of the Commandment's message." *Id.* at 701-702. He placed significance on the fact that the monument was donated by an organization seeking to combat juvenile delinquency. *Id.* Third, the fact that the monument has existed and gone unchallenged for forty (40) years was

seen as evidence by Justice Breyer that few individuals were likely to have understood the monument as "a government effort to favor . . . religion [or] to 'compel' any religious practice.'" *Id.* at 702.

The factors employed by Justice Breyer are controlling in the immediate case. *See Staley,* 485 F.3d at 309 ("Justice Breyer's concurrence is the controlling opinion in *Van Orden.")* Applying those factors to the case at bar, it becomes obvious that the icon portraying Jesus Christ violates the Establishment Clause:

1. The circumstances surrounding the icon's placement: The City Court of Slidell was built in 1995 and opened in 1997. The icon found its way onto the wall in the foyer of the courthouse immediately upon its opening.

2. Who donated the icon: It was donated not by a group seeking to impart historical knowledge, but by someone desiring to impart a non-secular message: the presiding judge.

3. The placement on public property and the physical setting: The lobby contains only two paintings – one of the founding judge of the City Court of Slidell, which is not accompanied by any language, and the other, a religious icon of Christianity, located on a separate wall. It shows an image of Jesus Christ presenting the New Testament. The icon is positioned above the large gold wording: "TO KNOW PEACE, OBEY THESE LAWS."

5. The amount of time the icon went unchallenged: It had been positioned on the wall for 10 years prior to Plaintiffs' challenge. However, Plaintiff Doe, unlike the Plaintiff in *Van Orden*, who passed the monument at least 6 times prior to challenging it, challenged it immediately upon seeing it for the first time.

The facts of this case "indicate a governmental effort substantially to promote religion, not simply an effort primarily to reflect historically the secular impact of the religious inspired

document." *Van Orden,* 545 US at 703. First, it is an icon portraying a picture of Jesus Christ. Second, it is a stand alone icon, unattached to and unassociated with any historical documents. Third, it has no historical significance. In the Eastern Orthodox religion, "icons are a constant reminder of the incarnation of Christ, that is to say, they remind us that God 'sent His only begotten son' (Bible, John 3:16) to rescue us from our sin and death."[12] There is simply no historical relationship between an Eastern Orthodox icon and the principles upon which this country was established. It is an inescapable conclusion that this icon would fail even the more generous *Van Orden* test.

The next test to apply is the one employed by the Court in *McCreary*. *McCreary* was also a Ten Commandments case. In this case, the American Civil Liberties Union filed suit to remove a display of the Ten Commandments featured prominently in a heavily trafficked area inside the courthouse. Realizing the fact that Ten Commandments, standing alone, posed a significant constitutional dilemma, the county decided to place other religious documents alongside it. This was to no avail, for the district court granted plaintiffs' request for an injunction, requiring the county to remove the display. In an effort to get around the ruling of the court, the county changed the display for a third time. The third display was entitled, "The Foundations of American Law and Government Display." It finally got around to including historical documents together with the Ten Commandments.

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[12] Cindy Egly, *Eastern Orthodox Christians and Iconography*, http://www.antiochian.org/icons-eastern-orthodoxy (last visited 6/25/07)

The Court, per Justice Souter, found an Establishment Cause violation present where the government acts with the "ostensible and predominant purpose of advancing religion" as judged from an objective observer's standpoint, taking into consideration the text, legislative history, and implementation of the state action." *Id.* at 860. Addressing the three different displays, Justice Souter held that they violated the Establishment Clause. With regard to *McCreary's* first Ten Commandments display, the Court held that, especially in light of the lack of any sign claiming a secular purpose, a "reasonable observer could only think that the Counties meant to emphasize and celebrate the Commandments' religious message." *Id.* at 868-869. As for the second display, the Court found that the other documents had a religious content nature and the counties posted the Commandments precisely because of their sectarian content, an impermissible purpose. *Id.* at 70. Regarding the last display, the Court held that even though the counties' actions do not "forever taint" all future displays of religious material, because "reasonable observers have reasonable memories,"no reasonable person could conclude that the counties had forgotten their original purpose." *Id.* at 866, 874. Based on those facts, the Court concluded that the displays violated the Establishment Clause. *Id.* at 879-881.

Applying *McCreary* to the facts herein, it is patently obvious that the icon of Jesus Chirst displayed in the foyer of the City of Slidell courthouse violates the Establishment Clause. There can be no dispute respective to sectarian nature of an icon. That fact, coupled with the total absence of any sign or wording setting forth a secular purpose would clearly lead the reasonable observer to think that the Defendants acted with the "ostensible and predominant purpose of advancing religion." Additional, albeit not conclusive, evidence of the Defendants' desire to advance and foster Christianity is the fact that the icon is located alone, on a wall, all

by itself. Clearly, if there were some historical significance associated with the icon, Defendants, at the time of placing it on the wall, would have displayed along with documents having some historical purpose. Finally, the wording associated with the icon, "To Know Peace, Obey These Laws,"would lead the reasonable observer to conclude that if he/she wanted justice, he had to either be a Christian or had accept Christianity. The icon is, therefore, unconstitutional.

Since the icon violates both *Van Orden* and *McCreary*, Plaintiffs have a strong likelihood of prevailing on the merits of this litigation.

2. <u>Plaintiffs Will Suffer Irreparable Harm If the Injunction Is Not Granted</u>

In a recent decision, *Entertainment Software Ass'n. v. Foti,* 451 F.Supp. 823, 835-836 (M.D.La. 2006), the court, addressing the issue of irreparable harm, stated:

> The Supreme Court has made clear that the "loss of First Amendment freedoms, for even minimal period of time, unquestionably constitutes irreparable injury. *Elrod v. Burns,* 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); *Deerfield Med. Ctr. v. City of Deerfield Beach,* 661 F.2d 328, 338 (5th Cir. 1981). In the First Amendment context, irreparable injury "stems from the intangible nature of the benefits flowing from the exercise of those rights and the fear that, if these rights are not jealously safeguarded, persons will be deterred, even if imperceptibly, from exercising those rights in the future." *United Food & Commercial Workers Union, Local 1099 v. Sw. Ohio Reg'l Transit Auth.,* 163 F.3d 341, 363 (6th Cir. 1988)(internal quotation marks omitted).

"It has been repeatedly recognized by the federal courts that violation of constitutional rights constitutes irreparable injury as a matter of law." *Springtree Apartments, ALPIC v. Livingston Parish Council*, 207 F. Supp. 2d 507, 515 (M.D. La. 2001). *See also, Killebrew v. City of Greenwood*, 988 F. Supp. 1014, 1016 (N.D. Miss. 1997) ("Plaintiffs' claims are primarily

based upon violation of their constitutional rights under the Equal Protection Clause of the Fourteenth Amendment, and thus, the threat of irreparable injury is present as a matter of law."); *Murillo v. Musegades*, 809 F. Supp. 487, 497 (W.D. Tex. 1992) ("Irreparable injury is established upon movants showing constitutionally protected rights have been violated."); *Wiggins v. Stone*, 570 F. Supp. 1451, 1453 (M.D. La. 1983) ("[I]t is well established that deprivation of a constitutionally protected right constitutes irreparable injury[.]"); 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (2d ed.1995) ("When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). This reasoning essentially collapses the "likelihood of success on the merits" and "irreparable harm" prongs of the injunctive inquiry where constitutional rights are at stake. *Forum for Academic & Inst. Rights v. Rumsfeld*, 390 F.3d 219, 246 (3rd Cir. 2004).

The presumption of irreparable harm entitling a movant to injunctive relief arises in these circumstances because where constitutional rights are at stake, monetary compensation is not an adequate remedy. Due to the fact that display of the icon of Jesus Christ in the foyer of the City Court of Slidell "unjustly infringes upon First Amendment freedoms, there is a substantial likelihood that irreparable harm will result if the [preliminary injunction] is not granted." *Wexler v. City of New Orleans,* 267 F. 2d 559, 568 (E.D.La. 2003).

Indeed, if the preliminary injunction is not granted, Plaintiffs will be placed in an untenable position. They will have to choose between missing required court appearances, and incurring the wrath of the court, and appearing in court and being confronted by the unconstitutional icon of Jesus Christ. It is well-established that a person need not forego a venue

which they otherwise have a right to be to avoid contact with an unconstitutional practice. This "compliance or forfeiture" requirement was expressly rejected in *Lee v. Weisman,* 505 U.S. 577, 596 (1992).

3. The Threatened Harm to Plaintiff Will Outweigh the Threatened Harm to Defendant If the Injunction is Not Granted

If the icon is allowed to remain on the wall in the foyer of the City Court of Slidell "Plaintiffs will be denied First Amendment Freedoms . . . whereas Defendant[s] do not appear to be at any risk of suffering harm. Thus in balancing the equities, the scale tips in favor of the [P]laintiffs." *Wexler, id.,* at 568-569

4. Granting the Injunction Will Not Disserve the Public Interest

The public does not have an interest in perpetuating a violation of the Establishment Clause. Indeed, the public interest would be harmed if the icon were allowed to remain on the wall of the City Court of Slidell. It is well-settled law that the public interest is always served by ensuring compliance with the Constitution and civil rights law. *See, e.g., Valley v. Rapides Parish School Board*, 118 F.3d 1047, 1056 (5th Cir. 1997) (finding that public interest would be undermined if unconstitutional actions of a school board were permitted to stand); *G&V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (holding that it is always in the public interest to prevent violation of constitutional rights). "The public interest is best served by enjoining a statute that unconstitutionally impair First Amendment rights." *Forum for Acad. & Inst. Rights v. Rumsfeld*, 390 F.3d 219, 246 (3rd Cir. 2004). Further, the public has a substantial interest in promoting the well-being of the community and maintaining the historic constitutionally mandated neutrality of government toward religion.

An injunction would eliminate Defendants' unmistakable and destructive message that Christianity is the favored religion in the Slidell courthouse. The public interest is best served by enjoining the Defendants from maintaining the icon in an area accessible to the public "until it can be conclusively determined that the [icon] withstands constitutional scrutiny." *Wexler, id.; Entertainment Software Ass'n, id.*

IV. CONCLUSION

There is a strong likelihood of success on the merits by Plaintiffs. Plaintiffs will sustain irreparable injury if a preliminary injunction is not issued; the balancing of the equities is in Plaintiffs' favor; and, no disservice to the public will result in the granting of the preliminary injunction.

Respectfully submitted:

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