

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

HUMANISTAS SECULARES DE PUERTO RICO)	PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER
)	
Plaintiff)	
)	CASE NO.: CV-17-1298 (PJD)
)	
v.)	
)	
CAMARA DE REPRESENTANTES) DE PUERTO RICO)	
et al.,)	
)	
Defendants)	
_____)	

**PLAINTIFF’S VERIFIED MOTION FOR
TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION
AND MEMORANDUM OF LAW**

COME now the appearing plaintiff through the undersigned attorneys, and very respectfully avers and prays as follows:

On February 22, 2017, Plaintiff Humanistas Seculares, filed a complaint for a preliminary injunction in the Superior Court of San Juan, requesting that the Court declare unconstitutional the “Decree of Forty Days of Fasting and Prayer in the House of Representatives,” issued by its President, Defendant Carlos Méndez, and enjoin the Defendants from carrying out the events related to the Decree. (*See* Docket Doc. 1-3, p.1-19.) After the case was scheduled for hearing in the Superior Court, Defendant Carlos Mendez filed before this Honorable Court a Notice of Removal, on March 2, 2017. Plaintiff, Humanistas Seculares de Puerto Rico, hereby moves this Court pursuant to Rule 65 of the Federal Rules of Civil Procedure for a temporary restraining order enjoining Defendants, and all persons acting at Defendants’ direction, including their

officers, agents, servants, and employees from proselytizing the Christian faith; convening the people of Puerto Rico, including legislative cohorts and employees, in Christian rituals, prayer, and fasting as per biblical mandates; and using public funds and resources, including but not limited to, legislative resources, to promote the Christian faith, prayer, and fasting by way of the activities related to the Decree of Forty Days of Fasting and Prayer, which has been advanced coordinated and promoted by the President of the House of Representative of Puerto Rico, Carlos Méndez Núñez.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER**

This case merits expedited consideration. Plaintiffs contend that Defendants' Decree of Forty Days of Prayer and Fasting, as per the biblical book of Joel, violates the First Amendment and the "Complete Separation of Church and State" mandated by the Constitution of the Commonwealth of Puerto Rico over which this court has supplemental jurisdiction, and which should be analyzed pursuant to Puerto Rico law. Through the Forty Days of Fasting and Prayer Decree, and its associated activities, Defendants seek to proselytize the people of Puerto Rico by convening citizens to engage in explicitly Christian observance and full-blown Christian rituals and religious services, in violation of the Establishment Clause and the mandate of complete separation of State and Church contained in the Constitution of Puerto Rico.

STATEMENT OF FACTS

On February 13, 2017, Representative Carlos Méndez Núñez, as president of the House of Representatives, sent a letter to each member of the House announcing that, in the following days, he intended to issue a decree of forty days of fasting and prayer. (See Docket Doc 1-3,

p.28-36) Citing Bible passages from the Book of Joel 2:12, 18, 19,¹ the letter made clear that the sole purpose of the decree would be to promote “a period of deep reflection, introspection and prayer in order for us to have direction from above to cope with the social problems described herein.” *Id.* The letter concluded with an invitation to each member of the House to endorse the Decree, and provided the contact information of a presumptive employee of the House to coordinate their participation. *Id.*

Indeed, on February 16, 2017, Defendant Carlos Méndez, as president of the House of Representatives, issued the Decree of Forty Days of Fasting and Prayer in the House of Representatives, which was signed by 37 representatives and Pastor Jorge Lucas Escribano as Representative of the Faith Based Communities (See Docket 1-3, p. 24.) The document provides that the signing members “**have decided to decree forty days of fasting and fervent prayer for the spiritual, material and social purification of our population in the whole archipelago of Puerto Rico. It is our firm purpose to convene the People of Puerto Rico to rise in unity to intercede for our Island of the Lamb.**”² *Id.*(Our translation) The document provides for the scheduling of a series of events for a period of forty days, commencing on February 27, consisting of meetings with the public every day in each signing representative’s district in order to participate in a fasting from 5:00 a.m. to 6:00 a.m. The last event is planned to take place on April 7 at the Capitol Building of Puerto Rico, where “**all the participants will unite in humiliation and final unity before the Lord to pray and beg for a people united in**

¹ In its pertinent part, the cited passage of the book of Joel reads: “‘Even now,’ declares the Lord, ‘return to me with all your heart, with fasting and weeping and mourning.’ Rend your heart and not your garments. Return to the Lord your God, for he is gracious and compassionate, slow to anger and abounding in love, and he relents from sending calamity.”

² As quoted in the media and videotaped, according to the President of the House of Representatives of Puerto Rico: “as far as I know Puerto Rico’s Coat of Arms contains a Lamb which represents Jesus Christ, laying over the Bible, that’s our faith”.

peace, willing to face the hardships we have suffered as people, so we could rise a proper Puerto Rico in the spiritual, material and familiar sense.” *Id.* (Our translation)

As announced, in the Decree the first event took place Monday, February 27. It consisted of a meeting of several members of the House of Representatives, House employees and community members at the Pentecostal Church *Lucero de la Mañana* in San Juan. (See Exhibit 1 Statement Eva Quinones) The meeting turned into an ordinary Christian service with the endorsement and active participation of public officials, with President of the House of the Representatives Mendez Nunez actively leading prayers and presiding over the rituals. *Id.* Upon information and believe, similar events have since occurred in different locations on the Island, including on March 2 at the Disciples of Christ Church in Bayamon and on March 6 at the Missionary Center in Bayamón (See Exhibit 1.) Additional events are slated to take place on March 7, at *Senda Antigua* Church in Toa Lata and on March 8, at San Pedro Church and so on. (See Exhibit 1.)³ Although Defendants claim these events are open to the public, they have been planned in coordination with Christian churches and involve explicitly Christian religious rituals and service, thereby excluding people of the Jewish, Muslim, Jehovah Witness, and faiths, as well as atheists and other denominations and communities in Puerto Rico. *Id.*

To carry out these events, upon information and believe, the House of Representatives, through its President, Carlos Méndez Núñez has been diverting public funds and resources, including assigning the coordination of the events to public officials or employees, and the employment of staff and drivers, for the sole purpose of advancing and endorsing Christian beliefs, in exclusion of other denominations and points of views. *Id.* For example, during the first event on February 27, the stage of the Pentecostal Church *Lucero de la Mañana* included a

³ On March 1, 2017, the ACLU of Puerto Rico requested from Representative Carlos Mendez documents and information related to the Decree, including the calendar of events. The Representative has not responded to the request.

visible projection of the poster of the Forty Day Fasting and Prayer with Puerto Rico's Capitol building in the background, and the official logo of the House of Representatives. The religious rituals and prayer was led by Defendant Carlos Méndez Núñez. See Exhibit 1.

The House of Representatives Decree advises that the last activity of the Forty Days of Fasting and Prayer convened by the President of the House of Representatives is scheduled to take place at the Capital building on April 7, 2017. (Docket 1-3 p. 24 and Exhibit 1).

ARGUMENT

I. The Ongoing Violations to Plaintiffs' Rights Under the First Amendment and Puerto Rico Constitution Merit the Issuance of a Temporary Restraining Order

To prevail on a motion for a temporary restraining order and/or preliminary injunction, a movant must demonstrate: (1) the likelihood of success on the merits; (2) the potential for irreparable harm in the absence of an injunction; (3) the balancing of the movant's hardship if relief is denied versus the non-movant's hardship if relief is granted; and (4) the effect on the public interest. *See Narragansett Indian Tribe v. Guilbert*, 934 F.2d 4, 5 (1st Cir. 1991); *Jean v. Massachusetts State Police*, 492 F.3d 24, 26-27 (1st Cir. 2007). Likelihood of success on the merits is the touchstone of the inquiry. *See Ross-Simons of Warwick, Inc. v. Baccart, Inc.*, 102 F.3d 12, 16 (1st Cir. 1996) ("Likelihood of success is the main bearing wall of the four-factor framework.").

II. Plaintiffs Are Likely To Succeed On The Merits

"In the First Amendment context, the likelihood of success on the merits is the linchpin of the preliminary injunction analysis." *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 10 (1st Cir. 2012). Plaintiff in this case is highly likely to prevail on its First Amendment and Puerto Rico Constitution claims against the above-captioned Defendants

because their actions have the impermissible purpose and effect of endorsing religion in violation of the Establishment Clause.

In analyzing whether a governmental action constitutes a violation of the Establishment Clause, federal courts typically apply the three-prong test elaborated in *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971): The statute must have a secular legislative purpose; its principal or primary effect must be one that neither advances nor inhibits religion; and finally, the statute must not foster an excessive government entanglement with religion. *Id.* Defendants' Decree and the related events violate this test.

Applying the first prong of the *Lemon* test in the case at bar, it is clear that the so called Fasting and Prayer Decree is not supported by any secular legislative purpose. On the contrary, as the documents attached as exhibits show, it is intended to promote "a period of deep reflection, introspection and prayer in order for us to have direction from above to cope with the social problems described herein" based on exclusively Christian principles, and making direct reference to Bible texts and to the Lamb. The Decree calls for fervent prayer for the spiritual purification of the population in Puerto Rico by way of Christian rituals. The final events will take place at the Capitol, where "all the participants will unite in humiliation and final unity before the Lord to beg and claim for a people united in peace, willing to face the hardships we have suffered as people, so we could rise a proper Puerto Rico in the spiritual, material and familiar sense." (*See* Decree, Docket 1-3, p. 24).

"When the government acts with the ostensible and predominant purpose of advancing religion, it violates that central Establishment Clause value of official religious neutrality, there being no neutrality when the government's ostensible object is to take sides [in matters of faith]." *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 860 (2005). The Decree and related events have a plainly religious purpose and the Court's Establishment Clause analysis could end with

the first prong of *Lemon*, as the *Lemon* test is disjunctive: The failure to satisfy any one prong constitutes an Establishment Clause violation. *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 343 (5th Cir. 1999).⁴

But the Decree and its related events also violate the second prong of *Lemon*, as well as its sister inquiry, the endorsement test.⁵ These inquiries ask whether an objective observer, “acquainted with the text, legislative history, and implementation of the [Decree],” would perceive it as a state endorsement of religion. *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290, 308 (2000). Here, an objective and informed reasonable observer—aware of the context in which the Decree was issued and has been carried out—would easily perceive it as conveying a message of endorsement for Christianity. Defendant Carlos Méndez Núñez invoked specific Bible verses in issuing his letter to his colleagues; the Decree itself refers to explicitly religious practices; and the events that have taken place pursuant to the Decree have been overwhelmingly Christian in nature, turning, in effect, into worship services. As one federal court of appeals has explained, “[a] religious service under governmental auspices necessarily conveys the message of approval or endorsement,” and the Establishment Clause “condemns such endorsement, even when no private party is taxed or coerced in any way.” *Doe v. Vill. of Crestwood*, 917 F.2d 1476, 1478 (7th Cir. 1990). *Accord Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 668 (1970) (“Primary among those evils” the Establishment Clause protects against are “sponsorship, financial support, and active involvement of the sovereign in religious activity.”); *Newman v. City of East Point*, 181 F.Supp.2d 1374, 1380-81 (N.D. Ga. 2002)

⁴ Indeed, even if Defendants could articulate a purportedly secular purpose for the Decree and related events, it has the government may not use religious means to promote secular goals. *See, e.g., Sch. Dist. Of Abington Twp. v. Schempp*, 374 U.S. 203, 294 (1963) (Brennan, J., concurring) (“States may not employ religious means to reach a secular goal unless secular means are wholly unavailing.”); *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1286, 1288 (11th Cir. 2004), 370 F.3d at 1285-86 (“While promoting compassion may be a valid secular purpose, teaching students that praying is necessary or helpful to promoting compassion is not.”).

⁵ The endorsement test is the same, or very similar to, *Lemon*’s effects prong. *See, e.g., Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 282 (3d Cir. 2011), cert. denied, 132 S. Ct. 1097 (2012) (“The endorsement test and the second *Lemon* prong are essentially the same.”).

(holding that “an objective observer would most certainly conclude that the City of East Point has endorsed religion, specifically Christianity, by its actions” promoting and funding a prayer breakfast). This official endorsement of Christianity sends a message to non-adherents, such as Plaintiffs, “that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.” *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290, 309–310.

Defendants cannot rely on *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), or *Marsh v. Chambers*, 463 U.S. 783 (1983), to justify their actions. Pointing to the unique history of legislative prayer dating back to the founding of the country and the very first Congress, the Supreme Court authorized governmental prayer in those cases for a limited purpose: to open and solemnize legislative sessions. *See Marsh*, 463 U.S. at 791; *see also Marrero–Méndez v. Calixto–Rodríguez*, 830 F.3d 38, 48 (1st Cir. 2016) (noting that *Town of Greece* and *Marsh* were “legislative prayer cases, in which the Court has relied on a tradition of ceremonial prayers that has long co-existed with the Establishment Clause”). The federal courts have since agreed that *Marsh* is limited to legislative prayer alone; it is not a blank check for the government to sponsor prayer or religious worship and practices in other contexts. *See, e.g., Lee v. Weisman*, 505 U.S. 577, 596 (1992) (rejecting argument that *Marsh* allows public schools to sponsor prayer); *Mellen v. Bunting*, 327 F.3d 355, 369 (rejecting argument that “prayer during military ceremonies and before meals is part of the fabric of our society” and should be permitted at a military academy under *Marsh*); *N.C. Civil Liberties Union Found. v. Constangy*, 947 F.2d 1145, 1149 (4th Cir. 1991) (declining to extend *Marsh* to protect courtroom prayers led by judge and enjoining such prayers as unconstitutional); *Kurtz v. Baker*, 829 F.2d 1133, 1147 (D.C. Cir. 1987) (“[L]egislative prayer practice . . . fits into a special nook – a narrow space tightly sealed off from otherwise applicable first amendment doctrine.”);

These cases do not “remotely resemble what we have here” and thus cannot be used to support Defendants’ conduct. *See Marrero-Mendez*, 830 F.3d at 48 (denying qualified immunity to Puerto Police Department officers who attempted to coerce colleague into official prayer). The Decree of Fasting and Prayer and the related events sponsored by Defendants do not involve prayer used to open and solemnize legislative sessions. Nor are they supported by a deep-rooted historical tradition, as was the case in *Marsh* and *Town of Greece*. Instead, the Decree and related events are focused on promoting Christian ideology to the general public, i.e., the People of Puerto Rico. The Decree constitutes a resounding official proclamation directed to the people of Puerto Rico, as a whole, to embrace Christian values and rituals, in order to resolve their spiritual and material hardships. (See Docket 1-3, p. 24). And the official events scheduled pursuant to the Decree seek to effectuate those goals through expressly religious means: They are held at Christian churches, and they involve Christian prayer and rituals. Under the Establishment Clause, these activities are plainly unconstitutional.

III. Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief

“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). With respect to preliminary injunctive relief, “irreparable injury is presumed upon a determination that the movants are likely to prevail on their First Amendment claim.” *Sindicato Puertorriqueño*, 699 F.3d at 10-11, 15 (“Because . . . plaintiffs have made a strong showing of likelihood of success on the merits of their First Amendment claim, it follows that the irreparable injury component of the preliminary injunction analysis is satisfied as well.”); *Am. Freedom Def. Initiative v. Mass. Bay Transp. Auth.*, 989 F.Supp.2d 182, 186 (D. Mass. 2013), *aff’d*, 781 F.3d 571 (1st Cir. 2015) (“Irreparable harm is presumed if the court finds it likely that the moving party’s First Amendment rights were violated”).

In this case, the irreparable harm prong is satisfied as Plaintiffs have made a showing that they are highly likely to prevail on their First Amendment claims as they have shown that all the relevant criteria elaborated by the Supreme Court to sustain Establishment Clause violations are met. Also, the ongoing nature of the activity for the following weeks represents uninterrupted violations of the Establishment Clause for the next forty days starting on February 27th, 2017. (See Exhibit 1)

IV. The Public Interest is served by a TRO, and the Balance of the Equities favors Plaintiffs

The issuance of a temporary restraining order will serve the public interest. Protecting the rights under the First Amendment is *ipso facto* in the interest of the general public. *Westfield High Sch. L.I.F.E. Club v. City of Westfield*, 249 F.Supp.2d 98, 128 (D. Mass. 2003); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.”). Indeed, “[t]he Establishment Clause was intended not only to protect the integrity of individual conscience in religious matters, but to guard against the civic divisiveness that follows when the Government weighs in on one side of religious debate. *McCreary*, 545 U.S. at 876 (internal citation omitted). This case is about enforcing the principles the Framers of the First Amendment thought vital to religious freedom. *Id.* Here, Plaintiffs have demonstrated that Defendants’ conduct violates those fundamental founding principles.

The balance of the equities also weighs in favor of TRO and injunctive relief. Plaintiffs have no other remedies at law. As set forth above, absent the court’s intervention, Plaintiffs’ core Establishment Clause claim will be silenced. There are no countervailing State interests. As already discussed, the only interest sought by the Decree is the unlawful advancement of religious Christian principles and rituals to the People of Puerto Rico.

Waiver of Bond

Since this case is intended to enforce and protect important and compelling constitutional principles, Plaintiffs respectfully request that any bond or security requirement be waived. *See Crowley v. Local No. 82, Furniture & Piano Moving*, 679 F.2d 978, 1000 (1st Cir. 1982), *rev'd on other grounds*, 467 U.S. 526 (1984) (First Circuit recognition that district court has discretion to waive security bond requirement in “suits to enforce important federal rights or ‘public interests.’”); *accord Westfield*, 249 F.Supp.2d at 128-129 (waiving security bond requirement for students seeking preliminary injunction to preserve their right to free expression and free exercise of religion). Also, it was Defendant Carlos Méndez Núñez in the first place who requested the removal of this action to Federal Court. (See Docket Doc. 1)

Notice

Plaintiff certifies that all Defendants were notified of Plaintiff’s legal action and of this motion through their e-mail and/or attorney of record. *See* Certificate of Service.

Finally, pursuant to Local Rule 65, Plaintiffs submit the attached proposed court order for the Court’s consideration. *See* Exhibit 2.

WHEREFORE, Plaintiff respectfully requests that this Court to issue an order retraining and enjoining Defendants, and all persons acting at the Defendants’ direction, including their officers, agents, servants, and employees, from promoting, advancing and implementing the Forty Days Fasting and Prayer Decree, including the activities programmed and scheduled thru April 7 2017.

In San Juan, Puerto Rico, this 6th day of March, 2016.

/S/ Josue Gonzalez-Ortiz,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

I hereby certify that on March 6, 2016, I electronically filed the foregoing Plaintiffs' Verified Motion with the Clerk of the Court using the CM/ECF system, which will send notifications to the Defendant Carlos Mendez Núñez's attorney, Arturo V. Bauermeister.

In addition, Plaintiffs certify that this motion is being notified to: all Defendants at the following e mail addresses :

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At San Juan, Puerto Rico, March 6, 2016.

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/S/ Josue Gonzalez-Ortiz,

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