

NOT FOR PUBLICATION

CASE CLOSED

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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THE CHILDREN FIRST FOUNDATION,  
INC., a New York non-profit corporation  
duly registered in the State of New Jersey,  
and DR. ELIZABETH REX, an individual,  
  
Plaintiffs,

v.

DIANE LEGREIDE, individually and in her  
official capacity as former Chief  
Administrator of the New Jersey Motor  
Vehicle Commission; SHARON  
HARRINGTON, individually and in her  
official capacity as Acting Chief  
Administrator of the New Jersey Motor  
Vehicle Commission; DARIA GERARD,  
individually and in her official capacity as  
Director of Customer Operations for the  
Jersey Motor Vehicle Commission; STEVE  
ROBERTSON, individually and in his  
official capacity as Director of Legal and  
Regulatory Affairs for the New Jersey  
Vehicle Commission; PETER C.  
HARVEY, individually and in his official  
capacity as Attorney General fo the State of  
New Jersey; and JAMES E. McGREEVEY,  
individually and in his official capacity as  
Governor of the State of New Jersey,  
  
Defendants.

CIVIL ACTION NO. 04-2137 (JAP)

**OPINION**

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PISANO, District Judge.

Presently before the Court is Defendants' motion to dismiss Plaintiffs' claims in the

Amended Complaint based on qualified immunity grounds. Plaintiffs oppose the motion.

The Court has jurisdiction to hear this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (a)(4), 2201, and 2202. Having considered all arguments presented, the Court grants Defendants' motion to dismiss.

## **I. Factual Background**

The New Jersey Legislature ("Legislature") has authorized the issuance of special organization vehicle registration ("SOVR") plates for members of the non-profit community, alumni, or service organizations. N.J.S.A. 39:3-27.35.<sup>1</sup> In order to be issued an SOVR plate, certain statutory requirements must be met. First, an organizational representative must submit an application, with a copy of the organization's charter indicating the organization's lawful purpose and proof of its non-profit status, to the New Jersey Motor Vehicle Commission ("NJMVC"). N.J.S.A. 39:3-27.36(c). Second, the organizational representative must submit a certification of membership containing "the organization's official letterhead, the signature of the organization's representative, the names and addresses of organization members requesting [SOVR] plates, and the present registration plate numbers of the vehicles of the members." *Id.* Lastly, with the exception of service organizations, the statute stipulates that the initial order for the organizational plates must be, at a minimum, 500. N.J.S.A. 39:3-27.36(f).

Once the organization complies with N.J.S.A. 39:3-27.36, the NJMVC's Chief Administrator has the authority to make the final decision concerning whether to approve an organization's application for an SOVR plate. Additionally, "the use and arrangement of the

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<sup>1</sup> The statute was enacted in 1987 and amended in 1989.

name, initials, or logotype of the organization on the registration plates shall be in the sole discretion of the [Chief Administrator].” N.J.S.A. 39:3-27.36(d). Pursuant to these regulatory standards, the NJMVC, and its predecessor agency, the New Jersey Department of Motor Vehicles (“NJDMV”), authorized the issuance of seventeen community SOVR plates.<sup>2</sup> Def. Br., pg. 7.

On January 27, 2003, Plaintiff, Elizabeth B. Rex (“Dr. Rex”), requested approval on behalf of Plaintiff, Children First Foundation, Inc. (“Children First”) of an SOVR plate. Dr. Rex, as president of Children First, asserted in her application that Children First was a non-profit community organization, with at least 500 members in good standing, which sought to “promote and support adoption in the State of New Jersey.” Robertson Decl., Ex. A, pg. 8-9. The proposed design for Children First’s organizational plate included its official copyrighted logo, which is a small graphic of a yellow sun, two children’s faces, and the words “Choose Life,” its Internet domain name and alternate legal name “Fund-Adoption.Org,” and the vertical letters “A D,” to further promote the purpose of raising funds in support of adoption. Am. Compl. ¶ 39.

Initial approval of Plaintiffs’ design was granted on June 3, 2003; however, on July 2, 2003, a representative of NJMVC called Plaintiffs and alerted them that the organization’s plate design had been rejected because the agency deemed Children First’s use of the words, “Choose Life,” too controversial for an SOVR plate. The representative suggested alternative phrases such as “Choose Adoption” or “Adopt a Baby.” Am. Compl. ¶ 43. By letter dated November 24, 2003, Defendant, Chief Administrator Diane Legreide (“Ms. Legreide”) advised Dr. Rex that

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<sup>2</sup> The SOVR plate issued to the Center for Food Action, however, was recalled on November 24, 2003, for reasons discussed *infra*.

although Children First had met the preliminary statutory conditions, the submitted design of the slogan “Choose Life” could not be approved because it was considered a “slogan” and/or “advocacy message.” Ms. Legreide also enclosed a check for \$12,500.00, which refunded Plaintiffs for the application fee the agency previously cashed on July 7, 2003.

In the November 24, 2003 letter, Ms. Legreide explained that the primary purpose of a license plate is for vehicle identification, as well as the differences between an SOVR plate and a special license plate that the Legislature has approved for a particular cause. In the latter, the Legislature has specifically provided for the inclusion of a slogan or advocacy message, in addition to an emblem or logo, whereas in the former, only an organization’s emblem or logo is permitted. Accordingly, Ms. Legreide informed Dr. Rex that she could not approve the proposed plate design dated January 27, 2003, with the slogan “Choose Life” displayed with the logo of the two children. Ms. Legreide advised Children First that her decision constituted a final agency action, which was reviewable by the Appellate Division.

Ms. Legreide sent Dr. Rex a follow-up letter dated Decemeber 4, 2003, in which she encouraged the organization to submit an alternative plate design consistent with the restrictions set forth in the November 24, 2003 letter. In response, on December 16, 2003, Dr. Rex proposed removing the slogan “Choose Life” from the side of the plate, but retaining the picture of the children, and substituting Children First’s newly registered domain name, “NJChoose-Life.Org,” in place of the previously proposed “Fund-Adoption.Org” at the bottom of the plate. On January 20, 2004, Ms. Legreide rejected Plaintiffs’ alternative plate design, highlighting that the new domain name had not been registered until after the organization’s original plate design had been rejected in the November 24, 2003 letter. As such, Ms. Legreide would not “countenance this

attempt to have [Children First's] advocacy message on the license plate design by a belated attempt to make it the identification of [the] organization." Robertson Decl., Ex. S, pg. 48. Again, Plaintiffs were advised of their right to seek appellate review of the final agency determination, which they did not exercise.

## II. Procedural History

On May 4, 2004, Plaintiffs filed a Complaint, which they amended on February 18, 2005. In their Amended Complaint, Plaintiffs alleged that Defendants abridged their First Amendment right to freedom of speech by rejecting the inclusion of Children First's slogan "Choose Life" on their SOVR plate design. Plaintiffs assert that the denials of their plate design constitutes an impermissible viewpoint discrimination with no countervailing, compelling governmental interest. Am. Compl. ¶¶ 90, 97, 103.

Additionally, Plaintiffs claim Fourteenth Amendment due process violations based on Ms. Legreide's alleged arbitrary exercise of her discretion in withholding approval of the proposed SOVR plate design as well as the vague and over broad policies she applied. *Id.* at ¶¶ 108-109. Furthermore, Plaintiffs assert federal Equal Protection violations. Plaintiffs contend that their Equal Protection guarantees were violated because other similarly situated, non-profit community organizations obtained approval to utilize "names and logo types that include slogans, mottos, symbols, advocacy messages, phrases, and other similar identifiers." *Id.* at ¶¶ 113-114. Plaintiffs seek damages as well as declaratory and injunctive relief seeking approval of their first rejected design in its entirety.

On March 31, 2005, the Court denied Defendants' motion to dismiss or stay the

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