VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

HADASSAH HUBBARD CARTER,

Plaintiff,

v. **Case No: CL19-4150**

VIRGINIA REAL ESTATE BOARD

Defendant.

PLAINTIFF'S MEMORANDUM IN SUPPORT OF HER MOTION FOR SUMMARY JUDGMENT

THE AMERICAN CENTER FOR LAW AND JUSTICE

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STATEMENT OF PROCEEDINGS

Plaintiff, Hadassah Carter, filed this complaint on Aug. 14, 2019. Defendant, Virginia Real Estate Board, filed a Plea in Bar and Demurrer on Jan. 7, 2020.

At the Sept. 27, 2021 hearing on the Motion, the Court ordered further supplemental briefing and another Hearing, which was scheduled for Nov. 30, 2021.

In the November hearing, Plaintiff made a Motion to Amend and the Court granted leave to Amend.

Plaintiff filed the Amended Complaint on filed January 7, 2021 and Defendant demurred on Jan. 27, 2022.

On Feb. 22, 2022, the Court denied the Demurrer and ordered an answer. Defendant filed an Answer on March 23, 2022.

On March 28, 2023, after propounding Interrogatories and a Request for Production, Plaintiff made a Motion for Summary Judgment.

An agreed briefing schedule was ordered on May 3rd, per that order, this Memorandum of Law in support Plaintiff's Motion for Summary Judgment is due June 1st, 2023.

Oral Argument is scheduled for December 21, 2023.

STATEMENT OF FACTS

Hadassah Carter is a licensed real estate agent in good standing at all material times. (Answer ¶ 6) At all material times, Kathleen C. Edwards ("Edwards") was a licensed real estate broker in good standing and was employed by Midlothian Partners, LLC. ("Midlothian"). (Answer ¶ 6-7). Edwards was the principal broker for Ms. Carter. (Pl. Decl. Ex. 14, 001344)

Defendant, Virginia Real Estate Board, enforces the Virginia Fair Housing law as pertains to real estate brokers and licenses. (Answer ¶ 12a).

Defendant filed a complaint against Ms. Carter for allegedly violating Virginia's Fair Housing Act. (Answer ¶ 12). Defendant believed the religious material in Ms. Carter's email and website provided it with subject matter jurisdiction to initiate a claim. (Inter. 4). Ms. Carter was served with a complaint which alleged on its cover letter that she had violated Va. Code § 36.96.3(a)(3). (Answer ¶ 12b(a)).

Defendant alleges Ms. Carter had or was going to publish material that indicated a preference, limitation, or discrimination. (Answer ¶ 12c(a)). Defendant cited Ms. Carter's email signature, personal statement on her website, and core values statement on her website as instances of allegedly unlawful speech. (Answer ¶ 13(a)-(c); see also, Pl. Decl. Ex. 14, 001345-001346). Ms. Carter's core values statement included the phrase "equal to Him [God] my Clients come first." (Answer

¶ 13(c)). Other statements in Ms. Carter's core values statement included religiously colored statements that reflect her care for her clients. (Para. 12(c)). Defendant has refused to state whether it would consider any religious symbolism in advertising acceptable and avers that the question calls for a legal conclusion and an advisory opinion. (Inter. 6).

Defendant alleged Ms. Carter's use of words associated with Christianity indicated a preference in violation of the Fair Housing Act. (Answer ¶ 14, Pl. Decl. Ex. 14, 001345-001346, Pl. Decl. Ex. 13, 001397-001403). Defendant required Ms. Carter's cooperation in the investigative process including providing records, documents, or other information in a timely manner. (Answer ¶ 12b(c) Amended Complaint A1).

Defendant questioned Ms. Carter on October 2, 2017. (Answer ¶ 18, see also, Pl. Decl. Ex. 13, 001414-001422). Ms. Carter provided letters of support from her clients or colleagues, Carroll Abdul-Malik (Pl. Decl. Ex. 5, 001032), Sharon McCauley (Pl. Decl. Ex. 6, 001022), Habakkuk Pollack (Pl. Decl. Ex. 7, 001023), Mark A. Lawrence (Pl. Decl. Ex. 8, 001024), Thuyen (Helen) Tran (Pl. Decl. Ex. 9, 001025), Kongnon Maiga (Pl. Decl. Ex. 10, 001026), Vilma Ferreira Norton (Pl. Decl. Ex. 12, 001028). In addition, the summary of Mrs. Carter's settlement statements from 12/16/16 to 6/30/17 show a multi-national clientele. (Pl. Decl. Ex. 13, 001439)

Ms. Carter was removed from the complaint on May 4, 2018. (Answer ¶ 22). Defendant admits the conciliation agreement **Exhibit B** and presumably the date of its drafting—at or around May 11. (Answer ¶ 23). The terms of the conciliation agreement require Midlothian to prohibit its employees from posting or including religious statements in any communications or ads. (Answer ¶ 24). Defendant also admits that the terms of the agreement obligate Midlothian to report any agent that resigns due to the restriction to the VREB. (Answer ¶ 25).

Defendant never determined Ms. Carter was guilty of discrimination or that cause existed for an investigation. (Inter. 3, but see Pl. Decl. Ex. 14, 001345). Defendant considered the religious text in Ms. Carter's email and statements on her website sufficient to establish subject matter jurisdiction for an investigation. (Inter. 3; see Pl. Decl. Ex. 13, 001397-001403, Pl. Decl. Ex. 14, 001326-001332). The Investigator for the VREB recommended "that the Real Estate Board find "reasonable cause" to believe the respondents made, printed or published or caused to be made, printed or published, words or statements associated with Christianity, indicating a preference or limitation based on religion." (Pl. Decl. Ex. 14, 001346).

Plaintiff Hadassah Carter, by counsel, reserves her right to make a motion for Summary Judgment on Counts I, II, III and V, but now submits this memorandum of law in support of her Motion for Summary Judgment on Counts IV (as applied

and facially) and Count VI, , and moves the Court to grant the Motion for the reasons stated below.

STANDARD OF REVIEW

"Any party may make a motion for summary judgment at any time after the parties are at issue ... If it appears from the pleadings, the orders, if any, made at a pretrial conference, the admissions, if any, in the proceedings, that the moving party is entitled to judgment, the court shall grant the motion." Va. Sup. Ct. R. 3:20.

"[A] grant of summary judgment is proper if, in consideration of the undisputed facts in the light most favorable to the nonmoving party, it appears that the moving party is entitled to judgment as a matter of law. In considering the motion, the Court considers the facts and all inferences fairly drawn therefrom, and is prohibited from drawing inferences that are 'forced, strained, or contrary to reason.' *Pack v. Ga.-Pacific LLC*, 95 Va. Cir. 351, 352 (Cir. Ct. 2017).

INTRODUCTION

STATEMENT OF VIRGINIA FAIR HOUSING LAW

Va. Code Ann. § 36.-96.3 (2023), the statute at issue here states, in relevant part:

A. It shall be an unlawful discriminatory housing practice for any person to:

……

3. Make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation, or discrimination on the basis of race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, military status, or disability. The use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima facie evidence of an illegal preference under this chapter that shall not be overcome by a general disclaimer. However, reference alone to places of worship, including churches, synagogues, temples, or mosques, in any such notice, statement, or advertisement shall not be prima facie evidence of an illegal preference;..…

There is also interpretative guidance provided by the Administrative Code of Virginia:

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under the fair housing law, the board will consider the use of these and comparable words, phrases, symbols, and forms to determine a possible violation of the law and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the law is likely to result.

. . . .

2. Words indicative of race, color, religion, sex, handicap, familial

status, elderliness or national origin, including but not limited to:

. . . .

c. Religion: Protestant, Christian, Catholic, Jewish, Muslim, Islamic.

18 VAC 135-50-270 (emphasis added).

Furthermore, "[t]he advertising provisions of the Virginia Fair Housing Law and the federal Fair Housing Act generally parallel one another." *Commonwealth v. Lotz Realty Co., Inc.*, 237 Va. 1, 8 (1989).

STATEMENT OF VIRGINIA FAIR HOUSING LAW PROCEDURE

Mrs. Carter is a real estate salesperson subject to Va. Code Ann. § 36.-96.20, which provides in its entirety:

> In any case in which the Board has received or initiated a complaint and conducted an investigation of any violation of this chapter and determined that there exists reasonable cause to believe that a real estate broker, real estate salesperson, real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.), or their agents or employees have engaged in discriminatory housing practices prohibited by the Virginia Fair Housing Law (§ 36-96.1 et seq.) or Chapter 5 (§ 6.2-500 et seq.) of Title 6.2, the Board shall immediately attempt to resolve the matter by conference and conciliation, and upon failure to resolve the matter in such manner, may initiate an administrative hearing to determine whether to revoke, suspend or fail to renew the license or licenses in question. Not less than 10 days prior to the initial conference hereunder, the Board shall prepare and deliver to the respondent or respondents a written report setting forth the scope, findings and conclusions of the investigation conducted under this section.

Va. Code Ann. § 36.-96.20 (emphasis added).

When the VREB proceeds under § 36.-96.20, it is the investigator and the fact finder. These are its legal powers as outlined in the statute above, and shown in *Williams v. Commonwealth, 57 Va. App. 108* (2010) below.

In *Williams*, 57 Va. App. 108, a real estate broker filed a complaint with the VREB about a real estate salesperson. The VREB's investigator held an "informal fact finding conference" about the alleged complaint. Subsequently, the investigator presented to the VREB findings of fact and a recommendation to revoke William's license. The VREB did so.

Williams appealed to the Circuit of Henrico County. The Circuit Court affirmed the Virginia Real Estate Board's decision to revoke William's real estate license, saying "this Court finds the Board acted according to law, as the facts do not support that this Court would necessarily come to a different conclusion." *Williams*, 57 Va. App. at 119–20 (internal citations omitted).

On appeal, the Court of Appeals affirmed. "As the factfinder, the [agency] is charged with the responsibility of resolving questions of credibility and of controverted facts. The [Board] must also determine whether the [regulant's] evidence sufficiently mitigates the violations." *Williams*, 57 Va. App. at 134 (Square brackets in original).

SUMMARY OF THE ARGUMENT

The presumption of Virginia Code §36-96.3(A)(3) violates the First Amendment of the Federal Constitution as applied and facially.

First, under *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011), the presumption of Virginia Code §36-96.3(A)(3) is content based. The Defendant cannot prove the presumption to be narrowly tailored and Defendant's compelling state interest – banning discrimination- does not justify the presumption.

Second, the presumption facially violates Mrs. Carter's Federal First Amendment right to free speech under *United States v. Stevens*, 559 U.S. 460 (2010). The VFHA has a plainly legitimate sweep but a substantial number of the presumption's applications are unconstitutional.

The presumption violates Ms. Carter's First and Fourteenth Amendment Rights to Due Process.

The presumption does not meet the constitutional requirements of *County Court v. Allen*, 442 U.S. 140 (1979) as there is no rational connection between the facts needing to be proved, "the use of religious words or symbols" and the fact presumed, "an illegal preference." The fact presumed –illegal preference- does not "more likely than not" follow from the facts proven –religious words or symbols.

Therefore, Plaintiff's Motion for Summary Judgment should be granted.

ARGUMENT

I. The presumption of Virginia Code §36-96.3(A)(3) violates the First Amendment of the Federal Constitution.

a. The presumption of Virginia Code §36-96.3(A)(3) violates Mrs. Carter's Federal First Amendment right to free speech as applied.

"[A] State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights." *NAACP v. Button*, 371 U.S. 415, 439 (1963).

"Content-based regulations "target speech based on its communicative content. … As a general matter, such laws "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371 (2018).

Content-based restrictions on speech are presumptively invalid even in a commercial context. *Sorrell v. IMS Health Inc*., 564 U.S. 552, 565 (2011).

VREB alleged that Ms. Carter's use of words associated with Christianity indicated an illegal preference in violation of the Fair Housing Act. (Answer. ¶ 14). Furthermore, ". . . . the Fair Housing Office recommends that the Real Estate Board find **"reasonable cause"** to believe the respondents made, printed or published or caused to be made, printed or published, words or statements associated with

Christianity, indicating a preference or limitation based on religion." *See*, Defs.' Resp. to Pl.'s Req. Produc. Pl. Decl. Ex. 14, 001346.

i. The presumption of Virginia Code §36-96.3(A)(3) is content based.

"Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (Citations omitted) (Town's Sign Code regulating signs based on their specific subject matter for differential treatment is content based.)

The presumption is content based on its face. It applies only when there are "words or symbols associated with a particular religion." A sign with words or symbols associated with the United States Marines Corp. does not give rise to the presumption, but a cross, a crescent or the Star of David all would. The presumption thus depends entirely on the communicative content of the "words or symbol." Therefore, it is content based.

ii. The Defendant cannot prove the presumption of Virginia Code §36-96.3(A)(3) to be narrowly tailored.

First, the literal meaning of the presumption is applicable in detrimental ways to the purposes of the VFHA and minorities.

So, while no one may advertise for tenants who speak a particular language, *Holmgren v. Little Vill. Cmty. Reporter*, 342 F. Supp. 512 (N.D. Ill. 1971) (Violation of FHA prohibition on discrimination by national origin to advertise for Spanish speaking tenants), under the presumption, the agent cannot advertise that he or she speaks Spanish. The words "S*e habla espanol*," are associated with Hispanic national origin, thus, a real estate agent is presumed to have indicated a preference for Spanish speakers even though all the agent has done is announce that he or she speaks Spanish and provides a service that some consumers want.

Second, the presumption cannot help but punish those who do not discriminate. "[A]pplication of a per se rule should be reserved for those instances where there can be no doubt that a discriminatory preference is indicated, else there is danger of prohibiting nondiscriminatory as well as discriminatory advertisements. *Commonwealth v. Lotz Realty* Co., 237 Va. 1, 8 (1989) (Refusing to adopt a *per se* rule that Christian religious symbols violated the VFHA.)

Here, Hadassah Carter has served Jewish and Black ethnicities, Buddhist and Muslim adherents in their search for homes. (Pl. Decl. Ex.s 5, 6, 7, 8, 9, 10, 11, 12). In short, she took seriously the phrase "For God so loved the world. . ." that she loved the world too and helped all people in her chosen profession. Her clients did not take her email signature as proof that she did not prefer them. They have written in support of her professional services. She did not discriminate. The

concern of *Lotz*, prohibiting a nondiscriminatory ad with religious symbols because of its religious symbols, has been realized.

Third, the presumption discriminates against religious speech. It makes no distinction between an email signature that says "Realtor for Buddhists Only" and another email signature with the mantra:

> With a wish to free all beings,
> I shall always go for refuge
> To the Buddha, Dharma and Sangha,
> Until I reach full enlightenment.

The first is clearly indicative of a preference. It is also not a prayer. The second is a prayer. The idea that the prayer must be indicative of a preference because of its religious words qua religious words, regardless of their literal meaning, is discriminatory.

Fourth, it hides information from the consumer. A "consumer's concern for the free flow of commercial speech often may be far keener than his concern for urgent political dialogue." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011) (Citations omitted). But a consumer may have a great need or desire for a Spanish speaking (or any other language) realtor, or a Buddhist realtor, or a Jewish realtor to aid in the search for a kosher house, for whatever reasons the consumer has.

Also, if "there is a right to advertise, there is a reciprocal right to receive the advertising, and it may be asserted by these appellees." *Va. State Bd. of Pharmacy*

v. Va. Citizens Consumer Council, 425 U.S. 748, 757, (1976) (Discussing standing and striking down blanket ban on price advertising by pharmacists). The presumption hides information about the realtor that the consumer wants to know, needs to know and has a right to know, thus the free flow of commercial speech is hindered.

Fifth, the presumption invites arbitrary enforcement because the meanings of words and symbols depend on context. A flag is a symbol indicative of national origin but a display of the Ukrainian flag would not be taken to mean a preference for serving Ukrainians. This sign:

on a card, literally religious symbolism all, is not a religious statement. Why then should a cross or John 3:16 be subject to investigation?

Finally, the presumption is not necessary to the statute. The Virginia Fair Housing Law was first passed in 1972. *Va. Code Ann*. § 36-96.1 *et seq.* The Supreme Court interpreted it, without the presumption at issue here, twice in *Hudler v. Cole*, 236 Va. 389 (1988) (the Fair Housing Act applies to the rental of Mobile Homes) and *Lotz*, 237 Va. 1 (adopting ordinary reader standard for interpretation of advertisements).

The Legislature added the presumption in 1991. 1991 Va. ALS 557, 1991 Va. Ch. 557, 1991 Va. HB 1153. Thus, from 1972 to 1991, Virginia had a Fair

Housing Law without the presumption. Therefore, a loss of the presumption will not hurt the Fair Housing Law.

The presumption is not narrowly tailored and must be struck down.

iii. The Defendant's Compelling state interest –banning discrimination- does not justify the presumption of Virginia Code §36-96.3(A)(3).

The compelling state interest –banning discrimination- cannot justify the presumption. *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 94 (1977). In *Linmark*, the Town of Willingboro banned all real estate for sale signs in order to protect "racially integrated housing." "This case presents the question whether the First Amendment permits a municipality to prohibit the posting of "For Sale" or "Sold" signs when the municipality acts to stem what it perceives as the flight of white homeowners from a racially integrated community." *Linmark*, 431 U.S. at 86.

The Court found that the applicable ordinance did not leave open alternate ample means of communication, *Id.* at 93, nor was it a time and place restriction because it did not restrict all signs in front yards. *Id.*

"If the ordinance is to be sustained, it must be on the basis of the township's interest in regulating the content of the communication, and not on any interest in regulating the form." *Id.* at 94.

Recognizing the importance of the "vital goal" of "racially, integrated

housing," the Court found the applicable ordinance unconstitutional, saying in part:

> The constitutional defect in this ordinance, however, is far more basic. The Township Council here, like the Virginia Assembly in Virginia Pharmacy Bd., acted to prevent its residents from obtaining certain information. . . . . .
>
> "There is… an alternative to this highly paternalistic approach. That alternative is to assume that this information is not in itself harmful, that people will perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication rather than to close them…. But the choice among these alternative approaches is not ours to make or the Virginia General Assembly's. It is precisely this kind of choice, between the dangers of suppressing information, and the dangers of its misuse if it is freely available, that the First Amendment makes for us." *Id*, at 97 (Citations omitted).

In conclusion, if the goal of racially integrated housing will not justify a blanket ban on commercial real estate signs, it cannot justify a blanket ban on religious speech in commercial advertising.

b. The presumption of Virginia Code §36-96.3(A)(3) facially violates Mrs. Carter's Federal First Amendment right to free speech.

"In the First Amendment context, however, this Court recognizes "a second type of facial challenge," whereby a law may be invalidated as overbroad if "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 473 (2010).

i. The VFHA has a plainly legitimate sweep.

Virginia Code §36-96.3(A)(3) has a plainly legitimate sweep, *see generally*, *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964) (upholding the constitutionality of the Civil Rights Act of 1964), but its presumption does not.

ii. A substantial number of the presumption's applications are unconstitutional.

A substantial number of the presumption's applications are unconstitutional. In *Stevens*, 559 U.S. at 473, the Court held a ban on "crush videos" of animal cruelty as "overly broad" because it also applied to hunting videos. Here, the presumption applies to all religious speech –but John 3:16 on a billboard advertising Sunday services is permitted while the same on a real estate sign or card is penalized.

Thus, the entirely legitimate and non-discriminatory reasons to have or to put religious words and symbols in an advertisement are penalized. *Va. Code Ann*. § 36-96.3 even concedes the existence of legitimate and non-discriminatory reasons to use religious words and symbols in advertisements with the words:

> . . . reference alone to places of worship including, but not limited to, churches, synagogues, temples, or mosques in any such notice, statement or advertisement shall not be prima facie evidence of an illegal preference…"

Yet no sincere religious expression is permitted, a verse like Acts 8:26-40 (quoted below in II a.), is penalized while a statement of a place of worship geography is not. Religious expression, not religious geography, is the constitutional right.

The Supreme Court has recognized the danger of burdening religious expression. In *Lotz*, 237 Va. 1, the real estate agent had used the Christian fish and other Christian statements on letterhead and print advertisements, some of which were accompanied by a disclaimer. The Court rejected a *per se* rule proposed by the VREB because "there is danger of prohibiting "nondiscriminatory as well as discriminatory advertisements." The prohibition of nondiscriminatory advertisements is exactly what has happened here, Hadassah Carter has helped people of multiple races and different religions in their search for homes. (Pl. Decl. Ex. 14, 001326-001332.) She did so because of her religious beliefs. (Pl. Decl. Ex. 13, 001417.) For her expression, she has been investigated and penalized.

iii. Conclusion

The presumption is not constitutional. As applied, it is content based, not narrowly tailored and unjustified. Facially, it is substantially overbroad in its plainly legitimate sweep. Therefore, it should be struck down.

II. The presumption violates Ms. Carter's First and Fourteenth Amendment Rights to Due Process.

The presumption at issue here reads, in relevant part:

> The use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima facie evidence of an illegal preference under this chapter which shall not be overcome by a general disclaimer. … Va. Code Ann. § 36-96.3

"*Prima facie* evidence is evidence which on its first appearance is sufficient to

raise a presumption of fact or establish the fact in question unless rebutted. It imports that the evidence produces for the time being a certain result, but that the result may be repelled." *Babbitt v. Miller*, 192 Va. 372, 379-80 (1951).

"Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty or property. . . it is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime." *Manley v. Georgia*, 279 U.S. 1, 6 (1929) (Citations omitted).

For a presumption to be Constitutional, there must be a "rational connection" between the facts needing to be proved, the fact presumed and that the fact presumed is more likely than not to flow from the facts proven. *County Court v. Allen*, 442 U.S. 140, (1979). "Like all rules of evidence that permit the inference of an ultimate fact from a predicate one, . . . presumptions rest on a judgment that the relationship between the ultimate and the predicate facts has a basis in the logic of common understanding. *Mullins Coal Co. v. Dir., Office of Workers' Comp. Programs, United States Dep't of Labor*, 484 U.S. 135, 157 n.30, (1987)

a. There is no rational connection between the facts needing to be proved, "the use of religious words or symbols" and the fact presumed, "an illegal preference."

In *Manley*, 279 U.S. 1, the Court rejected a presumption that bank insolvency was proof of management fraud. The *Manley* Court found the

presumption too broad because the "proof" that made the prima facie case pointed to "no specific transaction, matter or thing as the cause of the fraudulent insolvency" and the accused was "to be convicted unless he negatives every fact." But "[i]nference of crime and guilt may not reasonably be drawn from mere inability to pay demand deposits and other debts as they mature." *Manley*, 279 U.S. at 7. "Unforeseen demands" and other conditions may lead to insolvency. The connection between the fact proven and the fact presumed is not sufficient.

On these facts, a business card with KKK emblems and regalia does not fall under the presumption while a cross or Bible verse does. Even if the Bible verse is this:

> Now an angel of the Lord said to Philip, "Rise and go toward the south[a] to the road that goes down from Jerusalem to Gaza." This is a desert place. 27 And he rose and went. And there was an Ethiopian, a eunuch, a court official of Candace, queen of the Ethiopians, who was in charge of all her treasure. He had come to Jerusalem to worship 28 and was returning, seated in his chariot, and he was reading the prophet Isaiah. . . .
>
> 34 And the eunuch said to Philip, "About whom, I ask you, does the prophet say this, about himself or about someone else?" 35 Then Philip opened his mouth, and beginning with this Scripture he told him the good news about Jesus. 36 And as they were going along the road they came to some water, and the eunuch said, "See, here is water! What prevents me from being baptized?"[b] 38 And he commanded the chariot to stop, and they both went down into the water, Philip and the eunuch, and he baptized him. 39 Acts 8:26-40 (ESV) (Some verses omitted for brevity)

That the verse above gives rise to a presumption of an illegal preference, but not the KKK card, is absurd.

The underlying logic of the presumption –that to say A excludes B—is false. "[T]he same words are often capable of different meanings according to their collocation and connections." *Senger v. Senger's Ex'r*, 81 Va. 687, 698 (1886). Thus, an email with the tagline: Jane Doe, Attorney at Law, does not mean that Jane Doe will only serve attorneys. If anything, it implies that she will provide legal services to non-lawyers.

The same holds true with a real estate agent. The signature; Hadassah Carter, Real Estate Agent, does not mean that she will only provide services to other real estate agents, nor does, Hadassah Carter, Real Estate Agent, John 3:16; imply that she will provide service only to people named John.

Further, religious words and symbols can be used in a sacrilegious or political way to make a secular point. This picture:

on anybody's card would not be taken to mean the person only serves Christians or even likes them. The finding of an illegal preference or cause to investigate for an illegal preference on the basis of religious words or symbols alone, forces the religious speaker to "negative" every fact alleged, but like a bank

insolvency can have multiple causes so can a religious word or symbol have multiple meanings (some not even religious), thus, there is no rational connection between the facts proven and the facts presumed.

b. The fact presumed –illegal preference- does not "more likely than not" follow from the facts proven –religious words or symbols.

The "ultimate fact presumed" must be "more likely than not to flow from" the facts proven. *Allen*, 442 U.S. at 165. Answering Plaintiff's Interrogatory No. 2, Defendant stated: ". . . Defendant objects to this interrogatory as it has not affirmatively alleged that religion is more likely than not to cause discrimination. . . ."

In addition to this, Hadassah Carter has served Jewish and Black ethnicities, Buddhist and Muslim adherents in their search for homes. (Pl. Decl. Ex. 14, 001326-001332.) They have written in support of her professional services. Her clients did not take her email signature or cards as proof that she would not serve them.

Thus, a religious word or symbol cannot indicate "more likely than not" that an illegal preference is being made.

c. Conclusion

The presumption is not constitutional. There is neither a rational connection nor does the "ultimate fact presumed" flow from the facts proven. The presumption must be struck down.

CONCLUSION

Therefore, Hadassah Carter moves that her Motion for Summary Judgment be granted.

HADASSAH HUBBARD CARTER,

By: John A Monaghan
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum in Support of her Motion for Summary Judgment and the attached Declaration was sent by email this 1 day of June 2023, to:

Erin R. McNeill (VA Bar No. 78816)
Assistant Attorney General
Office of the Attorney General
[redacted]

By: John A Monaghan
John A. Monaghan
Senior Litigation Counsel