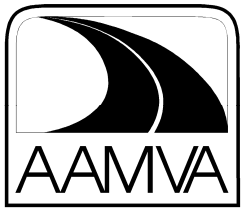

Vanity Plate Law Matrix

Compiled by the
Vanity Plate Law Matrix Working Group
September 2010

SUMMARY

In September, 2008 the AAMVA Vehicle Standing Committee created a working group to review court decisions in the United States related to vanity plates and organization plates. The working group was tasked with compiling a listing of court decisions that would be a resource for AAMVA member jurisdictions faced with legal questions regarding the issuance of these types of license plates. The specific deliverables for the working group were:

a. Identify and review all applicable court decisions related to vanity and special interest group license plates
b. Develop an easily readable document that summarizes each court decision and provides an indication of which jurisdiction(s) are affected by the court decision and how.
c. Develop a plan to update the matrix as needed to ensure the most current information is available for jurisdictions.

BACKGROUND

During the past twenty years, jurisdictions have been faced with increasing interest and pressure from citizens and organizations to expand the number of special interest group license plates (specialty plates) offered to the public. At the same time, there continues to be a growth in the popularity of vanity license plates, along with increased scrutiny of the combination of letters and numbers on vanity plates and the intended meaning of the messages on vanity plates. The growing interest in both specialty plates and vanity plates has resulted in a large amount of court decisions, often inconsistent from one court to another, that have a direct impact on the jurisdictions. The development of a comprehensive summary of these various court actions has been identified by the AAMVA membership as a useful tool to assist them in determining how best to deal with the increasing demand for more specialty and vanity plates.

MATRIX UPDATES

The Vanity Plate Law Matrix Working Group recommends using one or more of the following options for updating the document to ensure the matrix contains the most current information possible. The Government Affairs Department and the Programs Department will determine which option(s) will be used each year.

OPTION 1 – The Government Affairs Department and Programs Department will coordinate a semi-annual notice to the Legal Services (LS) and Vehicle Registration and Title (VRT) jurisdiction contacts asking them to provide information regarding any license plate-related court decisions

OPTION 2 – The Government Affairs Department and the Programs Division will work with the AAMVA Regional Directors to secure time on the regional conference agendas for discussion of license plate-related litigation and court decisions.

OPTION 3 – The Government Affairs Department will include a session on license plate-related litigation and court decisions at each AAMVA Law Institute

OPTION 4 – The Programs Department will include a session on license plate-related litigation and court decisions at each AAMVA Law Institute

OPTION 5 – The Programs Department will place periodic announcements in TWIR and other AAMVA communication tools asking jurisdictions to provide updates on license plate-related court decisions

8 A.L.R.6th 639 (Originally published in 2005)
American Law Reports
ALR6th

Validity, Construction, and Operation of State Statutes Regulating Issuance of Special or Vanity License Plates

Carolyn Kelly MacWilliam, J.D.

Many states have enacted legislation creating special or vanity motor vehicle license plates. As the letters and numbers on those license plates may be combined to form words or a message, the courts have deemed the plates to be a form of speech. Accordingly, any statutory restriction on that speech must be carefully considered to determine its constitutionality. In the case of Sons of Confederate Veterans, Inc. ex rel. Griffin v. Commission of Virginia Dept. of Motor Vehicles, 288 F.3d 610, 8 A.L.R.6th 797 (4th Cir. 2002), the court held the that speech on special license plates was private and further that a statute that prohibited the logo of the Sons of the Confederate Veterans from appearing on the plate, although other organizations were permitted to display their logos or emblems, constituted viewpoint discrimination that did not survive strict scrutiny review, and therefore was unconstitutional. Many other jurisdictions have examined the same issue within the context of special personalized license plates as well as vanity plates with varying results. Some jurisdictions have found that since the underlying purpose of any license plate is to identify the vehicle owner, speech found on a license plate should not be considered private, but should be considered governmental speech. In those instances, the government need only demonstrate a rational basis for a restriction. The following annotation will examine the constitutionality of statutes promulgated by various jurisdictions addressing the issuance and revocation of personalized and vanity license plates.

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§ 1. Scope

This annotation collects and discusses those cases addressing the validity and construction of state statutes regulating the issuance of special or vanity license plates. Generally, the constitutionality of those statutes is discussed. In addition, cases that address the review process employed by the administrative agency charged with reviewing potential special license plate applications are included to determine if they are in accord with the statute creating the license plate program.

Some opinions discussed in this annotation may be restricted by court rule as to publication and citation in briefs; readers are cautioned to check each case for restrictions. A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within the scope of this annotation. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed herein.

§ 2. Summary and comment—Generally

When registering a motor vehicle, a person is normally entitled to a set of registration plates to affix to his vehicle, bearing the numbers or numbers and letters that have been assigned by an administrative agency, as a means of identifying its owner or operator. In addition to these standard license plates, special license plates known as personalized or vanity may also be issued.[FN1] Vanity and personalized plates are issued by several states as a mechanism to raise revenue. A vanity plate is a license plate where the individual motor vehicle owner chooses a combination of letters and numbers. Special license plates are generally created by the legislature or arm of the government and include an organization's logo, emblem, or slogan on a license plate in addition to the assigned numbers and letters to identify the motor vehicle. Several states have therefore enacted legislation addressing the procedure to be followed in applying for such plates and further the process to be followed by the appropriate state agency in determining whether a particular plate should be issued. Pursuant to a number of these statutes, the

issuing agency has discretion in determining whether a particular plate should be issued.[FN2]

As both vanity and special or personalized license plates differ from the standard state issued license plate, the potential exists that a fellow citizen may be offended by words or symbols appearing on those plates. Litigation may also arise when a special license plate is revoked by the state after receiving a complaint that a particular plate was offensive, or when the legislature attempts to shield certain plates it deems offensive from the public. A preliminary question that must be addressed therefore is who is harmed by the issuance or revocation of a special license plate. The courts have carefully examined the standing issue and considered various aspects of injury in fact (§§ 4, 5). Generally, there must be a showing that the alleged injury is concrete, specific, and not hypothetical to establish proper standing to bring a constitutional challenge (§ 5). However, at least one court has determined that a threat to a citizen's First Amendment rights is sufficient to demonstrate an injury for purpose of establishing standing for a First Amendment challenge as it characterized those rights as sacred (§ 4).

Generally, cases addressing a state's right to regulate customized license plates are decided based on whether a viewpoint is being expressed through the plate. As any governmental regulation of speech must be viewpoint neutral, regardless of the forum in which the speech appears, courts must first decide whether the plates at issue constitute speech and further whether the restriction is viewpoint neutral. The courts have differed as to what constitutes viewpoint neutral (§§ 7, 8). For example, a statute prohibiting combinations of letters and numbers that were offensive to good taste and decency was upheld as the court found that the statute neither prevented the expression of an opinion, nor promoted any particular viewpoint (§ 7). Moreover, the court found that the statute was reasonably related to the state's substantial interest in protecting the license plate as a mechanical identification symbol from degradation. Generally, statutes that attempt to ban a specific view have been struck down as unconstitutional (§ 8). In particular, a statute that prohibited a particular organization from displaying its logo on a license plate was held to be viewpoint discriminatory as the court found that the state was attempting to ban that particular logo or viewpoint, but not that of any other organizations (§ 8). The appropriateness of regulations promulgated by the administrative agency charged with reviewing potential special license plate applications as well as the process employed by that agency have also been examined by the courts (§§ 9, 10). Some courts have found that it is appropriate to revoke a license plate based on public complaints received, holding that complaints are a good indication of what the public finds offensive (§ 9). Other courts have declared that the fact that a complaint was received does not necessarily mean that the general public is offended and could affect the reasonableness of the review process (§ 10).

§ 3. Practice pointers

Generally, a vanity plate is merely an ordering of letters and/or numbers that might otherwise be used for a plate in the ordinary cause of issuance. For this reason, at least one commentator suggests that vanity plates are generally considered nonpublic forums, which may possibly be speech and viewpoint expressive. Therefore, an applicant of a vanity plate must generally meet a burden of affirmatively showing that the plate is speech and viewpoint expressive, thus overcoming the contrary presumption. If the plate

is not viewpoint expressive and not even speech per se, but merely expressive, the government can justify restrictive regulations by merely showing a sufficiently important interest.[FN3] One particular court found that the purpose of a vanity plate is to identify the owner of the vehicle, therefore if the combination of letters on the plate reflects an individual's personal or professional identity, it is purely incidental to the primary function of vehicle identification.[FN4]

At least one court has held that the individual asserting a constitutional violation concerning a vanity license plate carried the burden of showing that the classification clearly, palpably, and without doubt infringed on his constitutional rights and further that every reasonable doubt would be resolved in favor of constitutionality. The court held that the classification must be sustained unless it is patently arbitrary and bears no relationship to a legitimate government interest. The court noted that in cases such as those, which did not involve a fundamental right, the government is given broad discretion in pursuing legitimate governmental interests.[FN5] Accordingly, counsel representing a specialty license plate applicant should argue that any restriction is arbitrary and does not further any legitimate governmental interest public from offensive messages. The driver or special license plate applicant is not required to prove the absence of a constitutional basis for a statutory restriction or an administrator's actions, he or she is simply required to make the initial showing that his or her speech has been restricted. Once that showing is made, the burden shifts to the state to advance a constitutional justification for its actions.[FN6] Counsel for the state or appropriate administrative agency should always argue therefore that a restriction was the least restrictive means available to serve a compelling state interest, in order to survive a strict scrutiny review and rebut a presumption of unconstitutionality following a determination of viewpoint discrimination.[FN7]

The method employed by the appropriate state agency in reviewing personalized plates may also be subject to challenge. Plaintiff's counsel should therefore carefully consider any applicable regulations utilized by a reviewing administrative agency to determine whether they exceed the scope of the underlying enabling legislation.[FN8] Actions of administrative personnel should also be examined to determine whether they are acting in accord with legislative intent.[FN9] Public complaints may be a gauge by which an administrative office determines if a particular plate is offensive to the public.[FN10] However, another court held that public intolerance or animosity cannot be the basis for abridgement of constitutional freedoms, therefore counsel can argue that the fact that some are angered or offended by a license plate's message should not be a basis for revocation of the plate.[FN11]

§ 4. Plaintiff determined to have proper standing to bring action

The following authority found that the plaintiff successfully demonstrated the requisite elements of standing, and therefore could bring an action challenging the constitutionality of a statute enacted to create personalized license plates.

The court in Planned Parenthood Of South Carolina Inc. v. Rose, 361 F.3d 786 (4th Cir. 2004), cert. denied, 125 S. Ct. 1036, 160 L. Ed. 2d 1067 (U.S. 2005), held that an organization providing abortions and abortion referrals, and an individual owner of a registered automobile, had standing to challenge the state statute, S.C. Code Ann. § 56-3-

8910, authorizing issuance of "Choose Life" license plates as a violation of the First Amendment.

The court in Planned Parenthood of South Carolina, Inc. v. Rose, 236 F. Supp. 2d 564 (D.S.C. 2002), aff'd on other grounds, 361 F.3d 786 (4th Cir. 2004), cert. denied, 125 S. Ct. 1036, 160 L. Ed. 2d 1067 (U.S. 2005), found that the plaintiff organization had standing to challenge the constitutionality of a statute establishing a license plate program that created a license plate reading "Choose Life," where the court found that the threat of having one's sacred First Amendment rights subjected to arbitrary censorship was an adequate basis for injury for the purposes of establishing standing. The court examined other cases examining the same issue and found that enhanced standing is afforded to plaintiffs making facial First Amendment challenges to licensing or underinclusive statutes. The court noted that it was the legislature that authorized the issuance of the "Choose Life" license plate and that its decision was based on the discretion of the legislators, uncontrolled by any standards. The court added that it was equally significant that the plaintiffs alleged that the legislature had selected one viewpoint (choose life) over all others on a particular topic, thereby only permitting its expression in a public forum. Accordingly, the court concluded that the plaintiff organization had adequate standing to mount a facial challenge to the statute without having first applied for the issuance of a license plate bearing a slogan of their own choice.

The court in American Civil Liberties Union of Tennessee v. Bredesen, 354 F. Supp. 2d 770 (M.D. Tenn. 2004), held that a civil rights advocacy group and other interest groups had standing to bring an action against state officials to challenge, as a violation of the First Amendment free speech clause, a state law, Tenn. Code Ann. § 55-4-306, which makes available a specialty license plate bearing the words "Choose Life."
The court in The Women's Resource Network v. Gourley, 305 F. Supp. 2d 1145 (E.D. Cal. 2004), held that a private nonprofit organization had standing to bring a facial challenge of the constitutionality of a state statute, Cal. Veh. Code § 5060, permitting the issuance of special interest license plates if the legislature first enacted an enabling statute, where the legislature's discretion was not circumscribed as to what speech was authorizable, and the state declined to issue a plate sponsored by the organization on the ground that there was no enabling legislation.

§ 5. Plaintiff determined to not have proper standing to bring action

The courts in the following cases found that the plaintiffs failed to demonstrate the requisite elements of standing, and therefore could not bring an action challenging the constitutionality of a statute enacted to create personalized license plates.
The court in The Women's Resource Network v. Gourley, 305 F. Supp. 2d 1145 (E.D. Cal. 2004), held that automobile owners did not have standing to challenge the constitutionality of a state statute, Cal. Veh. Code § 5060, establishing a scheme for issuing special interest license plates, even if they wanted to purchase plates that the state had refused to issue, where the statute was open only to nonprofit organizations.

In Women's Emergency Network v. Bush, 323 F.3d 937 (11th Cir. 2003), affirming Women's Emergency Network v. Dickinson, 214 F. Supp. 2d 1308 (S.D. Fla. 2002), aff'd, 323 F.3d 937 (11th Cir. 2003), the court held that the specific individuals and the network organization lacked standing to challenge the constitutionality of a statute that created a "Choose Life" license plate because they were unable to

demonstrate an injury in fact. The "Choose Life" special license plate was statutorily created by Fla. Stat. Ann. § 320.08058(30). The court noted that the statute did not deny the appellant individual citizens and organization access to the specialty license plate forum and further that the individuals and organization had not applied for a specialized license plate. The court held that the First Amendment does not require states to authorize the speech of those who have expressed no interest in speaking; it only protects the rights of those who wish to speak. Accordingly, the court held that until the appellants apply for a specialized license plate, and are rejected, there is no injury in fact, therefore the appellants lack standing. The court specifically noted that the appellants were told in a lower court decision to apply for a specialty license plate before bringing a First Amendment challenge to Fla. Stat. Ann. § 320.08058(30), however they chose to appeal the claim and never applied for the special license plate. The court also held that if it were to find the statute at issue unconstitutional, the relief would be to issue an injunction against the statute's enforcement, therefore would not advance the appellants' opportunity to express its pro-choice viewpoint. As such, the court found that since there was no injury that could be redressed by the court, the appellants lacked standing, therefore upheld the lower court's order granting summary judgment to the state.

The court in Hildreth v. Dickinson, 1999 WL 33603028 (M.D. Fla. 1999), held that the plaintiffs lacked standing to challenge Fla. Stat. Ann. § 320.08058(30), which created a new specialized Florida license plate to be known as the "Choose Life" license plate The plaintiffs argued that if Florida did not permit any specialized license plate, a license plate would be a nonpublic forum for speech. However, since the state authorized the sale of specialized plates and authorized any organization to propose such a plate, the State of Florida has created a limited public forum. The plaintiffs also argued that, as a limited public forum, the state could regulate the content allowed to appear on license plates. But, once the state allowed the content of abortion issues on a license plate, the State may not discriminate against certain viewpoints about that content. Since the State has allowed one viewpoint on abortion to be placed on license plates, the plaintiffs argued that it would be viewpoint discrimination to not allow their viewpoint on a license plate. The plaintiffs asked the court to declare Fla. Stat. Ann. § 320.08058(30) facially unconstitutional as contrary to the freedom of speech clause of the First Amendment. The court held that the plaintiffs' failure to request the development of a pro-choice license plate pursuant to the applicable statutory mechanism made the plaintiffs' federal claims unripe for judicial determination. The court also held that the plaintiffs lacked standing for failure to articulate an actual or imminent injury. The court noted that the plaintiffs failed to show how the statutory enactment prevented them from speaking or punishing them for speaking; the enactment granted an opportunity for speech, but in no way does it prevent anyone's speech. The court noted that no one is forced to carry the Choose Life license plate on his car, and Florida motorists have 30 other specialty plates and two other "regular" license plates to choose from, and therefore, the Choose Life plate does not force anyone to promote a view with which he does not agree. Since the plaintiffs failed to even apply for the development of a specialty license plate that espouses their views under the Florida specialty plate statutory scheme, the court held that their claim was not ripe. Moreover, the court held that the plaintiffs, having failed to show that the statutory enactment prevented them from speech activities or punishes them for their speech, failed

to demonstrate an actual or imminent injury. Thus, the plaintiffs lacked standing, and accordingly, the plaintiffs did not present a justiciable case or controversy.

In Barnard v. Motor Vehicle Div. of Utah State Tax Com'n, 905 P.2d 317 (Utah Ct. App. 1995), a citizen, acting pursuant to an administrative rule, was seeking the revocation of any personalized plates that contained the combination of letters reading, "REDSKIN," "REDSKN," and "RDSKIN." However, the court dismissed the case for lack of standing as the particular petitioner was unable to demonstrate a personal stake in the outcome of the matter. The court looked at other factors to establish standing and found that they were not satisfied as the petitioner was unable to show that no one else had a greater interest in the issue, that the issues were unlikely to be raised at all unless he raised them, and that the issues were sufficiently focused to allow judicial resolution. The court stated that what was presented to it was a dispute between the Motor Vehicle Division and the Utah Tax Commission about the proper interpretation and application of rules adopted by the division pursuant to appropriate statutory authority. The court held that it could not find a way to describe the dispute as a statutory or constitutional issue. Finally, the court stated that the legislature had delegated the task of reviewing specific combinations of letters and numbers suitable for license plates to the Motor Vehicle Division of the Utah Tax Commission, therefore a plate by plate review did not lie within the courts.

§ 5.2. Effect of legislative amendment that expanded licensing scheme
[Cumulative Supplement]

The following authority considered the effect of a legislative amendment that expanded the licensing scheme upon an action challenging the validity of a statutory scheme for specialty license plates.

CUMULATIVE SUPPLEMENT

Cases:
Action by motorists and abortion-rights organization seeking to enjoin, on First Amendment grounds, state's statutory scheme for specialty license plates for automobiles, which expressly included "Choose Life" and "Adoption Creates Families" plate options but no abortion-rights counterpart, was not mooted by legislative amendment that expanded scheme by permitting application for other specialty plates for any cause; arguably discriminatory burden remained as to abortion rights supporters, since issuance of non-listed plates, in contrast to listed plates, required 500 prepaid applications. U.S. Const. Amend. I; 21 Okl.St.Ann. §§ 1135.5(B)(22, 23), 1135.7(B)(4). Hill v. Kemp, 478 F.3d 1236 (10th Cir. 2007), cert. denied, 128 S. Ct. 873, 169 L. Ed. 2d 725 (U.S. 2008) and cert. denied, 128 S. Ct. 884, 169 L. Ed. 2d 725 (U.S. 2008).

§ 6. Applicability of Tax Injunction Act
[Cumulative Supplement]

The following authority considered the applicability of the Tax Injunction Act to an action challenging the validity of state statutes regulating the issuance of special or vanity license plates.

The court in Henderson v. Stalder, 407 F.3d 351 (5th Cir. 2005), held that the additional amounts that Louisiana collected for specialty license plates, above handling and ordinary vehicle registration fees, were taxes rather than regulatory fees, and thus any First Amendment challenge to a plate authorized by the program was barred by the Tax Injunction Act; though the amounts were voluntarily paid, and varied depending on the type of plate, they were set by the legislature and used to raise revenues for legislatively designated purposes.

The court in The Women's Resource Network v. Gourley, 305 F. Supp. 2d 1145 (E.D. Cal. 2004), held that fees imposed on motorists for special interest license plates were not "taxes," and thus a suit seeking to enjoin the state from issuing the plates was not barred by the Tax Injunction Act, where the fees for the plates were in addition to the regular fees for a standard license plate and were imposed only on motorists who voluntarily requested issuance of a special interest license plate.

CUMULATIVE SUPPLEMENT

Cases:

Tax Injunction Act did not bar subject matter jurisdiction over action challenging as a violation of the First Amendment Free Speech Clause, a state law which authorized the sale of a specialty license plate bearing the words "Choose Life," even assuming that challenge was directed at payments for plates, as optional payments for specialty plates were not taxes; sales constituted regular contractual payments, not taxes. 28 U.S.C.A. § 1341. American Civil Liberties Union of Tennessee v. Bredesen, 441 F.3d 370, 2006 FED App. 0099P (6th Cir. 2006), cert. denied, 126 S. Ct. 2972, 165 L. Ed. 2d 954 (U.S. 2006).

Comment: The United States Supreme Court in American Civil Liberties Union of Tennessee v. Bredesen, 126 S. Ct. 2972, 165 L. Ed. 2d 954 (U.S. 2006), denied a conditional cross-petition for certiorari raising issues as to the Sixth Circuit's jurisdiction in a free speech case in which the Court simultaneously denied the main petition for certiorari, which questioned the Sixth Circuit's decision in American Civil Liberties Union of Tennessee v. Bredesen, 441 F.3d 370, 2006 FED App. 0099P (6th Cir. 2006), cert. denied, 126 S. Ct. 2972, 165 L. Ed. 2d 954 (U.S. 2006) that a specialty license plate offered by the State of Tennessee bearing the words "Choose Life" was government speech for purposes of the Free Speech Clause, rather than "mixed" speech subject to a viewpoint-neutral requirement. The conditional cross-petition asked whether the charges for specialty license plates were taxes under the Tax Injunction Act, depriving federal courts of jurisdiction to hear challenges to their issuance. The Sixth Circuit held that, assuming that the challenge was directed at the payments for the plates, the optional payments for specialty plates were not taxes, but regular contractual payments.

Oklahoma afforded plain, speedy and efficient remedy in its courts for those seeking to challenge its taxes, as required to bar, under Tax Injunction Act (TIA), federal-court action by motorists and abortion-rights organization seeking to enjoin on First Amendment grounds state's statutory scheme for specialty license plates for automobiles;

in addition to affording general right to protest taxes before state's Tax Commission, state had specifically created right of action to afford remedy to taxpayer aggrieved by provisions of "any other state tax law." U.S. Const. Amend. I; 28 U.S.C.A. § 1341; 12 Okl.St.Ann. § 1397; 21 Okl.St.Ann. § 1135.5(B)(22, 23); 68 Okl.St.Ann. §§ 201 et seq., 226(a). Hill v. Kemp, 478 F.3d 1236 (10th Cir. 2007), cert. denied, 128 S. Ct. 873, 169 L. Ed. 2d 725 (U.S. 2008) and cert. denied, 128 S. Ct. 884, 169 L. Ed. 2d 725 (U.S. 2008).

§ 6.3. Effect of Eleventh Amendment upon First Amendment challenge
[Cumulative Supplement]

The following authority considered the effect of the Eleventh Amendment upon a First Amendment challenge to a statutory scheme for specialty license plates.

CUMULATIVE SUPPLEMENT

Cases:
Eleventh Amendment did not bar abortion-rights organization's First Amendment challenge to state statutory provisions mandating that charitable disbursements out of revenues collected for state's "Choose Life" specialty license plates could not be made to any organizations that engaged in abortion-related activities; suit did not seek money judgment for past infractions of federal law, or seek to impose constraints on state's ability to decide which specialty plates to allow or disallow, or seek to dictate which programs state could choose to fund with revenues from its specialty plate scheme. U.S. Const.Amends. I, XI; 21 Okl.St.Ann. § 1135.5(B)(22, 23); 47 Okl.St.Ann. § 1104.6(C)(4). 1135.5(B)(22-23). Hill v. Kemp, 478 F.3d 1236 (10th Cir. 2007), cert. denied, 128 S. Ct. 873, 169 L. Ed. 2d 725 (U.S. 2008) and cert. denied, 128 S. Ct. 884, 169 L. Ed. 2d 725 (U.S. 2008).

§ 6.5. Specialty license plate held to be government speech
[Cumulative Supplement]

The following authority held that a specialty license plate was government speech.

CUMULATIVE SUPPLEMENT

Cases:
Specialty license plate offered by State of Tennessee bearing the words "Choose Life" was government speech for purposes of Free Speech Clause, rather than "mixed" speech subject to viewpoint-neutral requirement, where Tennessee legislature chose plate's overarching message and approved every word on plates, notwithstanding that pro-life advocacy group, which received portion of proceeds, was delegated responsibility for design of plate, subject to veto by state. U.S.C.A. Const.Amend. 1; West's T.C.A. § 55-4-306. American Civil Liberties Union of Tennessee v. Bredesen, 441 F.3d 370, 2006 FED App. 0099P (6th Cir. 2006), cert. denied, 126 S. Ct. 2972, 165 L. Ed. 2d 954 (U.S. 2006).

Comment The United States Supreme Court in American Civil Liberties Union of Tennessee v. Bredesen, 126 S. Ct. 2972, 165 L. Ed. 2d 954 (U.S. 2006), denied certiorari from the Sixth Circuit holding in American Civil Liberties Union of Tennessee v. Bredesen, 441 F.3d 370, 2006 FED App. 0099P (6th Cir. 2006), cert. denied, 126 S. Ct. 2972, 165 L. Ed. 2d 954 (U.S. 2006), that a specialty license plate offered by the State of Tennessee bearing the words "Choose Life" was government speech for purposes of the Free Speech Clause, rather than "mixed" speech subject to a viewpoint-neutral requirement. The Sixth Circuit noted that the Tennessee legislature chose the plate's overarching message and approved every word on the plates, although a pro-life advocacy group, which received a portion of proceeds, was delegated responsibility for the design of the plate, subject to veto by the State. Further, the Sixth Circuit held, dissemination of a government-crafted message by private volunteers in form of drivers choosing to pay an extra fee to purchase and display the specialty license plates did not create a forum for speech requiring viewpoint neutrality. The petition for certiorari, filed by a civil rights advocacy group, argued that the Sixth Circuit erred in holding—in direct conflict with the Fourth Circuit—that the government may engage in viewpoint discrimination by allowing a "Choose Life" message, but rejecting a pro-choice message, on specialty plates.

§ 6.6. Specialty license plate held to be private speech
[Cumulative Supplement]

The following authority held that a specialty license plate was private speech.

CUMULATIVE SUPPLEMENT

Cases:
Messages on specialty license plates do not constitute government speech; thus, government-speech doctrine, that government is entitled to say what it wishes, is inapplicable, and a state's challenged approval or disapproval of proposed specialty plate must be scrutinized under First Amendment forum analysis. U.S.C.A. Const.Amend. 1. Choose Life Illinois, Inc. v. White, 547 F.3d 853 (7th Cir. 2008).
Messages on specialty license plates do not constitute government speech; thus, government-speech doctrine, that government is entitled to say what it wishes, is inapplicable, and a state's challenged approval or disapproval of proposed specialty plate must be scrutinized under First Amendment forum analysis. U.S.C.A. Const.Amend. 1. Choose Life Illinois, Inc. v. White, 547 F.3d 853 (7th Cir. 2008).
License plates were forum for private speech under First Amendment free speech clause with respect to logo depicting faces of two young children displayed on special organization license plate in support of message "Choose Life." U.S. Const. Amend. I; A.R.S. § 28–2404(B). Arizona Life Coalition Inc. v. Stanton, 515 F.3d 956 (9th Cir. 2008).
Comment Denying certiorari, the United States Supreme Court in Stanton v. Arizona Life Coalition, 129 S. Ct. 56 (U.S. 2008), let stand the Ninth Circuit decision in Arizona Life Coalition Inc. v. Stanton, 515 F.3d 956 (9th Cir. 2008), cert. denied, 129 S. Ct. 56 (U.S.

2008), that the "Choose Life" message displayed through a specialty license plate issued by the State of Arizona, while possessing some characteristics of government speech, nevertheless primarily represented private speech under the First Amendment's free speech clause. While the primary purpose of any vehicle license plate was vehicle identification and registration, the general validity of Arizona's licensing requirements was not at issue. By allowing organizations to obtain specialty plates with their logo and motto, Arizona was providing a forum in which philanthropic organizations could exercise their First Amendment rights in the hopes of raising money to support their cause. The revenue-raising purpose of the Arizona special organization plate program supported a finding of private speech. Although the Arizona License Plate Commission had de minimis editorial control over the plate design and color, this fact did not support a finding that the messages conveyed by the organization constituted government speech. Moreover, while the state was the literal speaker because it owned the special organization plates, the state did not intend to adopt the message of each special organization plate as its own state speech. Finally, the fact that a logo depicting the faces of two young children would also be displayed on the license plate supporting the "Choose Life" message weighed in favor of finding this to be primarily private speech. The question presented in the Commission's petition for a writ of certiorari asked: "Did the Ninth Circuit err in holding—in conflict with the Sixth Circuit—that specialty license plates constitute private speech, not government speech, and that the First Amendment therefore gave the Respondents the right to require Arizona to issue a license plate with a message that Arizona does not wish to convey?"

§ 6.8. Viewpoint neutrality not required
[Cumulative Supplement]

The following authority held that a specialty license plate did not create a forum for speech requiring viewpoint neutrality.

CUMULATIVE SUPPLEMENT

Cases:
Dissemination of government-crafted message by private volunteers in form of drivers choosing to pay extra fee to purchase and display specialty license plates bearing the words "Choose Life" did not create forum for speech requiring viewpoint neutrality; "Choose Life" was government message that had been approved by Tennessee, and while citizens clearly had First Amendment right to oppose message, invalidating act approving plates would have effectively invalidated all government specialty license plates that involved message that anyone might disagree with and all manner of other long-accepted practices in the form of government-crafted messages disseminated by private volunteers. U.S. Const. Amend. I; West's T.C.A. § 55-4-306. American Civil Liberties Union of Tennessee v. Bredesen, 441 F.3d 370, 2006 FED App. 0099P (6th Cir. 2006), cert. denied, 126 S. Ct. 2972, 165 L. Ed. 2d 954 (U.S. 2006).

§ 7. Statutory restriction held to be viewpoint neutral
[Cumulative Supplement]

In the following cases, the courts expressed the view that particular statutes enacted addressing the issuance or revocation of vanity or special personalized license plates were viewpoint neutral, and therefore were not unconstitutional.

In Perry v. McDonald, 280 F.3d 159 (2d Cir. 2001), a citizen brought an action against the Vermont Commissioner of the Department of Motor Vehicles alleging violation of her constitutional rights relating to her use of a special license plate bearing the letters "SHTHPNS;" however, the court concluded that she did not have a First Amendment right to use vanity plates bearing the letters "SHTHPNS" and further that the Department of Motor Vehicles did not violate her due process rights under the Fourteenth Amendment when it revoked her special license plate after learning that it was issued in error. A state statute provided that vanity plates would be issued by paying an additional fee as long as the combination of letters and numbers was not offensive or confusing to the general public. Moreover, the commissioner could revoke any special plate that was found to be offensive or confusing to the general public under Vt. Stat. Ann. tit. 23, § 304(d) (2000). The plate owner claimed that her inspiration was an asserted AA slogan that provided that, "[s]hit happens, so don't let life's problems drive you to drink." An official from the Department of Motor Vehicles acknowledged that the plates were issued in error and should have never been issued. The court examined the policy and practice of the government and the nature of the property and its compatibility with expressive activity in order to determine the type of forum and concluded that the State of Vermont did not intend to designate a public forum when it established a vanity plate regime. After concluding that the vanity plate was a nonpublic forum, the court examined whether the restriction was reasonable and viewpoint neutral. The court held that although the vehicle owner chose the combination of letters and numbers, the state had a legitimate interest in not communicating the message that it approves of the public display of offensive scatological terms on state license plates. The court noted that the statute did not prevent the plate owner from communicating her message as she could display a bumper sticker with the same message. In determining that the restriction was viewpoint neutral, the court held that it was apparent that Vermont's policy did not oppose the plate owner's philosophical views as reflected in the vanity plate. The court stated further that Vermont's policy prohibited the vanity plate not because it stood for shit happens so don't let life's problems drive you to drink, but because the motor vehicle owner chose to express that view by using a combination of letters that stood in part for the word "shit." Accordingly, the court held that neither the policy nor its application to the plate owner violated the First Amendment.

The court in Byrne v. Terrill, 2005 WL 2043011 (D. Vt. 2005), denied a preliminary injunction brought against the Vermont DMV, who had denied a vanity plate application because it referred to a deity, where the court held the statutory restriction to be viewpoint-neutral. On the plaintiff's vanity plate application, the plaintiff indicated “JOHN316,” “JN316,” and "JN36TN” as his first, second, and third choices for his vanity plate. The plaintiff indicated that all three choices represented a “Bible passage.” The DMV rejected the plaintiff's application, under Vermont's statute regulating vanity plates,

Vt. Stat. Ann. tit. 23, § 304(d)(4), indicating that the choices were rejected because they referred to a deity. The court held that the plaintiff's plates were not rejected because of his religious viewpoint; they were rejected because they referenced subject matter that the state has chosen to exclude from the vanity license plate, a nonpublic forum. The court stated that the religious exclusion in the statute excludes all references to a deity or religion in any language, regardless of the viewpoint of the speaker, and that this was a permissible content-based exclusion and did not constitute viewpoint discrimination.

The court in Kahn v. Department of Motor Vehicles, 16 Cal. App. 4th 159, 20 Cal. Rptr. 2d 6 (2d Dist. 1993), held that a statute permitting the revocation of a license plate that the Department of Motor Vehicles deemed offensive to good taste and decency or that would be misleading was constitutional as it neither sought to prevent the expression of a specific viewpoint, nor promoted a particular opinion. Specifically, Cal. Veh. Code § 5105(b), provided that the Department of Motor Vehicles could cancel and order the return of any license plate containing any combination of letters or numbers that the department determined carried connotations offensive to good taste and decency or that would be misleading. The driver or special license plate applicant was a certified court reporter who held a personalized license plate that bore the letters "TP U BG." According to the driver applicant, the letters represented the symbols for the phrase, "if you can" in shorthand. There was evidence that more than one key of a stenographic machine can be stroked at a time and depending on the number of strokes used in striking identical keys, one could change the meaning of the final product. Hence, the combination "TPUBG" could also be translated into "FUCK." Quoting heavily from Katz v. Department of Motor Vehicles, 32 Cal. App. 3d 679, 108 Cal. Rptr. 424 (1st Dist. 1973), this section, the court agreed that the state had a substantial interest in protecting a mechanical identification symbol such as the license plate from degradation and further that the Department of Motor Vehicles was reasonably concerned with avoiding the abusive use of its vehicle identification system and preserving the legitimacy, credibility, and reliability of its official emblem. The court added that the state's interest was the same whether the subject was the standard license plates that the state issued or the more individualized vanity plates. In response to the driver applicant's argument that it was not enough that the translation of the court reporting symbols was offensive, but that there should be evidence that "TP U BG" in itself is offensive, the court held to have a connotation offensive to good taste and decency a word need not be understood in that manner by every addressee. Rather, the court stated that that the appropriate test was what people of ordinary intelligence who know the language in question would understand from the use of the word.

In Katz v. Department of Motor Vehicles, 32 Cal. App. 3d 679, 108 Cal. Rptr. 424 (1st Dist. 1973), the court held that the statute at issue was viewpoint neutral as it was not directed at the suppression of any specific idea or expression on a vehicle; rather, the statute simply excluded those configurations of letters and numbers from license plates that the administrative body deemed offensive to good taste and decency. The plaintiff driver had applied for a personalized license plate bearing the letters, "EZ LAY." The Department of Motor Vehicles refused the application based on statutory language that provided that the department may refuse to issue any combination of letters that may carry connotations offensive to good taste and decency, Cal. Veh. Code § 5105. The court held that the driver's right to express the language of his choice remained unimpaired by

the statute as he was free to put any combination of letters or words that he chose on his car or the metal frame surrounding the license plate. The court stated further that the only restriction on his conduct was the use of the governmental issued vehicle identification mechanism for the expression "EZ LAY." The court also held that while First Amendment considerations were at best minimal, the state had an additional compelling public interest in protecting a mechanical identification such as the license plate from degradation and further that its interest was not directed to the promotion of any particular point of view or the compelling of any orthodoxy. The court added that the use of letters and numbers as communication would appear to be adverse to the safety of the public on the highways since it would encourage people to read license plates instead of keeping their eyes on the road.

CUMULATIVE SUPPLEMENT

Cases:
Illinois's exclusion from its specialty license plate program of entire subject of abortion was content-based, but viewpoint-neutral restriction on access to nonpublic forum of specialty license plates, and was reasonable given perception that specialty plates were approved by state; thus, state's denial of advocacy group's application for "choose life" plate did not infringe First Amendment's free speech guarantee. U.S.C.A. Const.Amend. 1; S.H.A. 705 ILCS 5/3-600 (2008). Choose Life Illinois, Inc. v. White, 547 F.3d 853 (7th Cir. 2008).
Illinois's exclusion from its specialty license plate program of entire subject of abortion was content-based, but viewpoint-neutral restriction on access to nonpublic forum of specialty license plates, and was reasonable given perception that specialty plates were approved by state; thus, state's denial of advocacy group's application for "Choose Life" plate did not infringe First Amendment's free speech guarantee. U.S.C.A. Const.Amend. 1;S.H.A. 625 ILCS 5/3-600. Choose Life Illinois, Inc. v. White, 547 F.3d 853 (7th Cir. 2008).

§ 8. Statutory restriction held to not be viewpoint neutral

In the following cases, the courts expressed the view that particular statutes enacted addressing the issuance or revocation of vanity or special personalized license plates were not viewpoint neutral, and therefore were struck down as unconstitutional.

The court in Planned Parenthood Of South Carolina Inc. v. Rose, 361 F.3d 786 (4th Cir. 2004), cert. denied, 125 S. Ct. 1036, 160 L. Ed. 2d 1067 (U.S. 2005), held that the state engaged in viewpoint discrimination, in violation of the First Amendment, in authorizing the issuance of "Choose Life" license plates without offering a pro-choice alternative.

In Sons of Confederate Veterans, Inc. ex rel. Griffin v. Commission of Virginia Dept. of Motor Vehicles, 288 F.3d 610, 8 A.L.R.6th 797 (4th Cir. 2002), the court held that speech on special license plates was private and further that a statute that prohibited the logo of the Sons of the Confederate Veterans from appearing on the plate constituted viewpoint discrimination that did not survive strict scrutiny review, therefore was unconstitutional. The statute creating special license plates for the Sons of the

Confederate Veterans differed from other statutes authorizing special license plates in Virginia in that it specified that no logo or emblem of any description shall be displayed or incorporated into the design of license plates issued under the section, Va. Code Ann. § 46.2-746.22. Recognizing that no clear standard had been established for determining when the government is speaking and when it is regulating private speech, the court held that the speech on the license plate was private speech. While analyzing the intent of the statute, the court noted that if the General Assembly had intended to speak through the special license plate program, it was curious that it required the guaranteed collection of a designated amount of money from private persons before its speech could be triggered. The court held that since the speech on the authorized license plates was that of the Sons of Confederate Veterans and not the Commonwealth of Virginia, the Sons of the Confederate Veterans' First Amendment rights were implicated by the logo restriction, therefore the impact of that restriction must be considered. Although the statutory language did not make a direct reference to the Confederate flag, the Commissioner of the Virginia Department of Motor Vehicles testified that it was the inclusion of the Confederate flag in the logo that led to the statutory prohibition of the use of the logo on the Sons of Confederate Veterans special license plate. The court held that rather than prohibiting the Confederate flag as subject matter, the logo restriction by its terms prohibited the Sons of Confederate Veterans' use of the flag, therefore burdening the speech of only a single speaker. The court concluded that this fact alone suggested that the Sons of the Confederate Veterans' viewpoint was the subject of the restriction and not the Confederate flag as content, as suggested by the Commissioner. Accordingly, the court held that the Sons of the Confederate Veterans' speech was being discriminated against because of the views it would express. Finally, the court noted that the Commissioner did not rebut the presumption of unconstitutionality following a determination of viewpoint discrimination by demonstrating that the viewpoint discrimination restriction was the least restrictive means available to serve a compelling state interest, therefore the restriction could not withstand a strict scrutiny review. The court also stated that since it concluded that the logo restriction was not viewpoint neutral, the restriction was presumptively unconstitutional in any forum, therefore a forum analysis was unnecessary.

In Planned Parenthood of South Carolina, Inc. v. Rose, 236 F. Supp. 2d 564 (D.S.C. 2002), aff'd on other grounds, 361 F.3d 786 (4th Cir. 2004), cert. denied, 125 S. Ct. 1036, 160 L. Ed. 2d 1067 (U.S. 2005), the court found that a South Carolina statute enacted to establish a special license plate program issuing motor vehicle plates displaying the words "Choose Life" was unconstitutional as viewpoint discrimination as the court held that the statute was a clear manifestation of preference of a motto or slogan. The "Choose Life" special license plate program was statutorily created, S.C. Code Ann. § 56-3-8910(A). A separate South Carolina statute existed that permitted nonprofit organizations to apply for a special license plate through the Department of Public Safety promoting their organization, S.C. Code Ann. § 56-3-8000. Examining relevant precedent, the court held that the specialty license plate was private speech rather than governmental expression. The court noted that while the government's ability to regulate private speech depends in part on the type of forum involved, viewpoint discrimination is presumed impermissible in any forum under any analysis. As such, the type of forum is relevant only if the restriction is viewpoint neutral. The court noted that

the appropriate state officials failed to argue that the statute was viewpoint neutral and in fact even affirmatively stated that the "Choose Life" license plate was the most recent and apparently most visible manifestation of the state's clear preference for childbirth over abortion. Holding that there were inherent problems with the state legislature issuing special plates on an ad hoc basis, the court agreed with a commentator who observed that the legislature cannot constitutionally run a private speech forum. Accordingly, the court concluded that the state was attempting to promote a particular viewpoint or slogan over whatever motto or slogan the plaintiff organization might employ to promote their point of view, thus held that S.C. Code Ann. § 56-3-8910(A) was unconstitutional and granted summary judgment for the plaintiff organization. The court added that the decision did not deny the right to life advocates the opportunity to have a special license plate, as they remained free to use the alternate licensing program that vested the decision to issue a plate in an administrative agency acting pursuant to specific standards.

The court in American Civil Liberties Union of Tennessee v. Bredesen, 354 F. Supp. 2d 770 (M.D. Tenn. 2004), held that the State of Tennessee engaged in viewpoint discrimination in violation of the First Amendment free speech clause when it enacted a statute, Tenn. Code Ann. § 55-4-306, authorizing a specialty license plate bearing the words "Choose Life" and available to automobile owners for an additional fee; the alleged speech was not purely government speech, in that both the State and the individual vehicle owner were speaking, and the statute engaged in viewpoint discrimination by promoting one viewpoint above others.

Caution: The court in American Civil Liberties Union of Tennessee v. Bredesen, 441 F.3d 370, 2006 FED App. 0099P (6th Cir. 2006), cert. denied, 126 S. Ct. 2972, 165 L. Ed. 2d 954 (U.S. 2006), § 6, 6.5, 6.8, reversed American Civil Liberties Union of Tennessee v. Bredesen, 354 F. Supp. 2d 770 (M.D. Tenn. 2004), judgment rev'd, 441 F.3d 370, 2006 FED App. 0099P (6th Cir. 2006), cert. denied, 126 S. Ct. 2972, 165 L. Ed. 2d 954 (U.S. 2006), holding that the dissemination of a government-crafted message by private volunteers in the form of drivers choosing to pay an extra fee to purchase and display specialty license plates bearing the words "Choose Life" did not create a forum for speech requiring viewpoint neutrality.

The court in The Women's Resource Network v. Gourley, 305 F. Supp. 2d 1145 (E.D. Cal. 2004), held that the statutory scheme under Cal. Veh. Code § 5060 authorizing the issuance of special interest license plates was facially unconstitutional under the First Amendment due to the fact that it gave state legislators unfettered discretion to deny a private nonprofit organization's request for an enabling statute authorizing the issuance of a special interest license plate, and thus the state was permanently enjoined from approving any new special interest license plate under the scheme.

§ 9. Administrative review process deemed proper

The courts in the following cases found that the review process employed by administrative personnel in reviewing potential special license plate applications was proper pursuant to applicable statutory or regulatory authority.

In Perry v. McDonald, 280 F.3d 159 (2d Cir. 2001), a citizen brought an action against the Vermont Commissioner of the Department of Motor Vehicles alleging violation of her constitutional rights relating to her use of a special license plate; however, the court concluded that she did not have a First Amendment right to use vanity

plates bearing the letters "SHTHPNS" and further that the Department of Motor Vehicles did not violate her due process rights under the Fourteenth Amendment when it revoked her special license plate. The plate owner argued that the Department of Motor Vehicles had inconsistently applied its scatological policy, since it issued motor vehicle license plates with scatological terms it considered cute. The court held that the difference was not that the other terms, such as "pooper" were cute, but that they did not use readily recognizable profanities, such as "shit." A restriction on expression that would otherwise be deemed a prior restraint if it had been applied in a public forum is valid in a nonpublic forum as long as it is reasonable and viewpoint neutral. The court held that the State of Vermont did not prevent the plate owner's expression in advance of its display; rather she received her plates and was able to display them, until the Department Motor Vehicles initiated revocation proceedings. The court concluded that the Department of Motor Vehicle's policy of refusing to grant applications for vanity plates bearing scatological terms that may be deemed offensive by the general public reasonably served a legitimate government interest and did not discriminate on the basis of viewpoint.

In Katz v. Department of Motor Vehicles, 32 Cal. App. 3d 679, 108 Cal. Rptr. 424 (1st Dist. 1973), the court held that the fact that a number of plates were issued with combinations of letters and numbers that may have been deemed offensive to good taste and decency in contravention to the statute creating the special license plate program did not mean that the standards employed to review applications was inadequate or that the review process was void. The plaintiff driver had applied for a personalized license plate bearing the letters "EZ LAY" and was denied that request as the Department of Motor Vehicles held that the plate was offensive to good taste and decency, Cal. Veh. Code § 5105. In response to the driver applicant's argument that the review process lacked an objective standard since the Department of Motor Vehicles had issued other personalized plates that may be deemed offensive, the court held that the fact that a small percentage of the 102,000 plates that were issued did not satisfy the statutory standard was not an indication of the inadequacy of the standard, but rather, may indicate the need for objective administrative guidelines.

The court in McMahon v. Iowa Dept. of Transp., Motor Vehicle Div., 522 N.W.2d 51 (Iowa 1994), reversed the lower court's ruling that the Iowa Department of Transportation's procedure for determining a revocation of personalized license plates when they carry a sexual connotation was arbitrary and capricious. The Department of Transportation had issued personalized license plates to a driver that read "3MTA3." The Department of Transportation received two complaints, that when viewed in a mirror, the plates read "EATME." Iowa Code Ann. § 321.34(5) provided statutory authority of issuance of special plates and by regulation, the Department of Transportation provided that no combination of characters shall be issued that is sexual in connotation; defined in dictionaries as a term of vulgarity. When revoking the license plate, the Department of Transportation sent the driver a notice quoting from a slang dictionary defining the phrase in explicit and offensive sexual terms. The court examined the procedure utilized by the Office of Vehicle Registration for reviewing applications for personalized plates and found that it included initial staff reviews, references to a dictionary of contemporary slang (as an aid in determining whether a message is sexual in connotation or otherwise offensive), and an additional review if the office received a complaint from the public. In cases in which the identification was not obviously offensive, the office engaged in a

weighing process of the public interest to be protected from offensive messages versus the private interest of the bearer of the plates in having the particular configuration displayed. A finding that the bearer of the plates had a legitimate reason for the message weighed strongly in favor of allowing the individual to keep the particular identification. In questionable cases, the office may have issued the plate, informing the applicant that it would undergo a new review if it received any complaints. Public complaints were therefore a gauge by which the office determined how offensive a particular plate was to the public. The court concluded that the Department of Transportation's procedure for reviewing plates was reasonable and rational. The court held further that it was reasonable for the Department of Transportation to weigh a public complaint heavily in favor of revocation of particular plates. The court further concluded that since the Department of Transportation received two public complaints about the sexual connotation of the plates and failed to receive a counterbalancing explanation that outweighed the offensiveness to the public, it did not abuse its discretion in revoking the driver's personalized plate. Finally, the court concluded that the Department of Transportation had not overstepped the broad discretion that the equal protection clause granted it in carrying out its legitimate objectives. The court noted that in cases such as these, which do not involve a fundamental right, the government is given broad discretion in pursuing legitimate governmental interests. The court noted that the state's purposes were twofold: (1) promoting individual's desire to choose their own license plate identification; and (2) protecting the public from offensive messages. The court concluded that the Department of Transportation's method for determining whether a particular plate's message should be allowed was a rational way of promoting those two legitimate objectives. Further, the distinction between an acceptable symbol configuration that also may be offensive and a message that is only meant to offend was not patently arbitrary.

In Higgins v. Driver and Motor Vehicle Services Branch, 335 Or. 481, 72 P.3d 628 (2003), the court held that an administrative rule which prohibited custom license plates that referred to alcoholic beverages or controlled substances did not improperly limit free speech. The court noted that the act of displaying a license plate did not constitute self-expression where the function of the license plate was vehicle identification and not government advocacy. The court also stated that, while a driver was legally compelled to have a license plate if he or she desired to drive on public roadways, the state had always controlled the manufacture, assignment, requirements, and parameters for issuing a license plate and a custom license plate.

§ 10. Administrative review process deemed not proper

The courts in the following cases found that the review process employed by administrative personnel in reviewing potential special license plate applications was not proper pursuant to applicable statutory and regulatory authority.

The court in Sons of Confederate Veterans, Inc. v. Glendening, 954 F. Supp. 1099 (D. Md. 1997), found that the actions of the Maryland Motor Vehicle Administration in recalling currently issued organizational logo registration plates bearing the logo of the Sons of the Confederate Veterans pursuant to a regulation permitting the revocation of a special license plate if it could be considered objectionable or offensive were unconstitutionally viewpoint based. A Maryland statute provided that the Motor Vehicle

Administration may issue special registration plates for qualifying nonprofit organizations, Md. Code Ann., Transp. II § 13-619 (1992 and 1996 Supp.). State statute further provided that the organization plates may be either a nonlogo or logo plate that included an emblem or logo that symbolizes the organization, Md. Code Ann., Transp. II § 13-619(g)(i)(ii). Pursuant to regulation, the administrator had the discretion to refuse or recall a plate if, among other things, it could be considered objectionable or offensive as a term of bigotry, a term of hostility, an insulting or derogatory term, or a racially degrading term. After the plates were issued, the administrator received numerous complaints, therefore withdrew his approval of the plates as they were currently designed. While recognizing that the extent to which the government can lawfully regulate speech depends on the nature of the forum, the court held that it need not decide whether the plate was a nonpublic or public forum as the actions in recalling the plates were viewpoint based. The court acknowledged that the Confederate battle flag does not represent the same thing to everyone and presumably those that complained found the flag to be a symbol of racial oppression and hostility. In recalling those plates, however, the court found that the administrator advanced the viewpoint of those offended by the flag and discouraged the viewpoint of those proud of it. The court further noted that the Motor Vehicle Administration approved the plates and did not voice any opposition to the plates until it received complaints. Quoting another case, the court held that public intolerance or animosity cannot be the basis for abridgement of constitutional freedoms. Accordingly, the court enjoined the Motor Vehicle Administration from recalling or failing to issue the registration plates provided the applicant is otherwise qualified under current statute.

The court in Pruitt v. Wilder, 840 F. Supp. 414 (E.D. Va. 1994), held that a policy issued by the Department of Motor Vehicles banning references to deities on motor vehicle license plates was not viewpoint neutral, therefore issued a permanent injunction preventing the Department of Motor Vehicles from continuing that policy. Noting at the outset that the Department of Motor Vehicles voluntarily altered its policy to remove the ban on references to deities, the court held that the case was not moot, since without a court determination of the policy's validity, the Department of Motor Vehicles remained free to reinstate its no deity provision. Specifically, the policy provided that motor vehicle license plates were not to be issued with any reference to drug culture, lewd and obscene words, deities or combinations that might be considered offensive. Pursuant to this policy, the Department of Motor Vehicles denied a driver's application for a plate displaying the letters "GODZGUD." Officials from the Department of Motor Vehicles testified that the reason behind the policy was that they wanted to avoid having Virginia license plates being identified with any particular religion or deity. The court noted that it was clear that the Department of Motor Vehicles policy permitted references to religion in general, but not to deities. The court held that the fact that the policy purported to treat all references to deities the same did not mean that the policy was viewpoint neutral. Rather, the court held, the policy permitted a subset of religious speech (that not directly referring to a deity) to be placed on a license plate, while denying another subset of religious speech (that referring to deities). The court added that it was particularly evident when it is considered that some religions, such as Buddhism, do not make reference to a deity, while others, such as Christianity, center on a deity. After holding that the policy was invalid as viewpoint discrimination, the court added that it was clear that the

Department of Motor Vehicles could not now use the ban for offensive combinations language from the policy to ban future references to deities.

In Lewis v. Wilson, 253 F.3d 1077 (8th Cir. 2001), the court found that a provision within a statute that prohibited the issuance of personalized license plates that were contrary to public policy was an unreasonably vague regulation of a nonpublic forum, which in effect created a standardless discretion in a governmental official, therefore remanded the case to the district court for the issuance of an injunction ordering the Missouri Department of Revenue to issue a license plate with the letters "ARYAN-1."[FN12] State statute permitted an applicant for a personalized license plate to choose any configuration of letters and numbers within a six character limit, Mo. Rev. Stat. § 301.144. After the decision in Carr v. Director of Revenue, 799 S.W.2d 124 (Mo. Ct. App. W.D. 1990), this section, the legislature amended the applicable statute to provide that no personalized license plate shall be issued containing a combination of letters and numbers that were obscene, profane, inflammatory, or contrary to public policy, Mo. Rev. Stat. § 301.144.2. The court agreed with the lower court's holding that a governmental entity may not avoid a claim of viewpoint discrimination simply by drafting legislation so broad or vague as to apply to anything convenient. Noting that the lower court found that the license plate involved speech, a nonpublic forum, the court concluded that there was no need to determine the precise forum since the statute at issue was unconstitutional in whatever forum a license plate might be. The court also held that the driver need only show that there was nothing in the statute to prevent the Department of Revenue from denying the plate because of her viewpoint. The court concluded that the language "contrary to public policy" gave the Department of Revenue nearly unfettered discretion in choosing what license plates should be rejected. The court concluded that the statutory provision constituted an unreasonable restriction on free speech as it was designed to target particular viewpoints; in particular, those contrary to public policy. The court held that the First Amendment does not allow the state legislatures to imbue certain officials with the authority to make subjective determinations on which viewpoints comport with public policy and those that do not. The court noted that initially the state maintained that the plate was contrary to public policy since the word Aryan implied a racial superiority. The state later maintained, however, that the reason for rejecting the license plate was based on promoting highway safety as the plate could incite road rage. The court concluded that without evidence that the driver had intentionally sought to provoke a violent reaction or directed abusive epithets at a particular individual, the mere possibility of a violent reaction to her speech was not a constitutional basis on which to restrict her right to speak. The court also held that a public official with even marginal creative ability could frequently invent a public policy basis for rejecting a plate containing a message with which he or she disagreed. The court thus concluded that the Department of Revenue could not censor a license plate because its message might make people angry, therefore held that the statute was unconstitutional. The court also held that the district court abused its discretion in refusing to issue an injunction requiring the Department of Revenue to issue the "ARYAN-1" license plate, therefore remanded the case with orders to issue such an injunction.

The court in Carr v. Director of Revenue, 799 S.W.2d 124 (Mo. Ct. App. W.D. 1990), reh'g and/or transfer denied, (Oct. 30, 1990), held that the Missouri Director of

Revenue (Director) went beyond the scope of a personalized license plate statute when he issued regulations purported to prohibit inflammatory words or phrases that conflicted with an overriding public interest, thus reversed his decision ordering the surrender of a personalized plate with the word "ARYAN" appearing on the plate. The act that governed the authorization of personalized license plates permitted the Director to issue rules and regulations establishing the procedure for application for and issuance of the license plates. The statute provided further that no plates shall be issued containing any profane or obscene word or phrase. In response the Director issued a regulation that provided in part that no plates shall be issued containing or suggesting any profane, obscene, inflammatory, or patently offensive words or phrases. The court held that the statute referenced profane and obscene words or phrases, but did not contain any other restrictions on the words, numbers, or letters that may appear on the plate, nor did it permit the Director to issue regulations concerning what may appear on the plate. The court added that the case did not turn on whether the word "ARYAN" boasts of a superior race or offends the public, but the simple question of whether the regulation adopted by the Director exceeded the scope of the statute granting the Director certain specific authority.

In North Carolina Div. of Sons of Confederate Veterans v. Faulkner, 131 N.C. App. 775, 509 S.E.2d 207 (1998), the court held that the evidence was sufficient to demonstrate that the Sons of Confederate Veterans organization was of a similar character as organizations enumerated within a statute as qualifying for special registration plates, therefore upheld the trial court's decision that the Department of Motor Vehicles improperly denied special registration plates to the Sons of Confederate Veterans. Specifically, N.C. Gen. Stat. § 20-79(b) provided that registration plates may be issued to a member of a nationally recognized civic organization whose member clubs in North Carolina were exempt from state corporate income tax. The court noted that although neither nationally recognized nor civic club were defined, the statute included examples of organizations such as the Jaycees, Kiwanis, Rotary, and Shriners. Thus, the court examined the definitions of the statutorily enumerated organizations within an encyclopedia of associations and found that each, regardless of their membership, had their primary purpose or focus as the sponsorship of charitable activities within the community. The encyclopedia of associations further provided that the Sons of Confederate Veterans is made up of lineal and collateral descendants of Confederate War veterans and engages in benevolent and historical activities and further that it sponsors charitable activities within the community and membership in several states and foreign countries. Accordingly, the court concluded that the Sons of Confederate Veterans organization was a qualifying organization as statutorily defined, thus, should be awarded special registration plates on its presentation of at least 300 applications. The court added that although it was aware of the sensitivity of many citizens and their reaction to the Confederate flag on specialized license plates, the issue before it was not whether the display of the Confederate flag on state issued license plates was sound public policy, but whether the organization (whose logo includes the Confederate flag) met the statutory criteria to receive plates. The court also reversed the lower court's decision awarding attorney's fees, noting that a reasonable person could find the Department of Motor Vehicles' decision reasonable in light of the fact that the Sons of Confederate Veterans is

an exclusive organization, limiting membership to male descendants of Confederate soldiers.

In McBride v. Motor Vehicle Div. of Utah State Tax Com'n, 1999 UT 9, 977 P.2d 467 (Utah 1999), the court denied a petition brought by a group of Native Americans appealing the State Tax Commissioner's denial of their request for revocation of personalized license plates using letter combinations for the term "redskin," ruling that the Commission applied the wrong test in determining whether a license plate contained a prohibited connotation or expression, therefore remanded for further proceedings consistent with the opinion so that the Commission could fulfill its statutory duty according to the rules and regulations. Utah Code Ann. § 41-1a-411(s) provides that the Division of Motor Vehicles could refuse to issue any combination of letters, numbers, or both that may carry connotations offensive to good taste, decency or that would be misleading. The Commission had also issued regulations that provided that the combination of letters, words, or numbers that express contempt, ridicule, or superiority of a race, religion, deity, ethnic heritage, gender, or political affiliation could not appear on a license plate. Petitioners testified as to their personal experiences with the term "redskin" and argued that the term was offensive and derogatory to them and their families. Plate owners also testified that they were fans of the Washington Redskins, a football team within the National Football League, and that they only requested the plates to show their support for the team. They testified further that they never intended to offend anyone or to convey a negative message. There was also a survey admitted into evidence that of 425 Native American tribal leaders interviewed, 72.24% of them did not find the term Washington Redskin offensive. In denying the petitioner's request, the Commission stated that the term redskin is used pervasively throughout our society in reference to sports teams, therefore does not express contempt, ridicule, or superiority. The court noted that the legislature conferred the Commission with discretion so that they could refuse a combination of letters and/or numbers. The court held that the Commission's actions had to be reviewed under a reasonableness standard. The court further held that the statute failed to provide an appropriate test to determine whether the general public would find a plate offensive. The court held that relying on the opinion of any one person or group in determining whether a term carried a prohibited connotation was not a reasonable application of either the governing statute or applicable regulation. Similarly, the court held that it would not be reasonable to rely on the public's perception of a certain term because the general public may be wholly ignorant of a term's connotation. Accordingly, the court concluded that the only reasonable standard that may be applied is that of the objective reasonable person. The court noted that in issuing its ruling, the Commission held that the term "redskin" was not offensive either to individual commissioners or to the general public, therefore did not violate the underlying statute and regulation. Accordingly, the court concluded that the Commission applied the wrong test in determining whether a license plate contained a prohibited connotation or expression.

The court in Martin v. State, Agency of Transp. Dept. of Motor Vehicles, 175 Vt. 80, 819 A.2d 742 (2003), held that the administrative regulation on which the Department of Motor Vehicles based its ruling denying the issuance of a license plate bearing the phrase "IRISH" as referring to a particular ethnic heritage was inconsistent with and unauthorized by the governing statute. The vanity license plate program was governed by

statute (Vt. Stat. Ann. tit. 23, § 304(d)) and essentially provided that the Commissioner of the Department of Motor Vehicles could refuse to honor any request that might be offensive or confusing to the general public. By regulation, the Department of Motor Vehicles set forth seven categories of combinations that could not be issued on a license plate, including combination of numbers or letters that refer, in any language to a race, religion, color, deity, ethnic heritage, gender, sexual orientation, disability status, or political affiliation. The court examined the relevant statutory language and noted that the Commissioner was only given the discretion to refuse to honor a request when he found the request confusing or offensive. (It was noted that neither the Department of Motor Vehicles nor the State of Vermont alleged that the "IRISH" plate was either offensive or confusing). The court held that the regulation established by the Department of Motor Vehicles permitted the Commissioner to exclude requests that were in an of themselves inoffensive, but belonged within a designated category that may include words with the potential to offend. The court held that essentially, the Department of Motor Vehicles cut the statutorily required nexus between the denial of the plate and the potential to offend. The court noted that where citizens' constitutional rights were concerned, it must be vigilant in assuring that elected officials and not appointed administrators were making policy. The court then concluded that since there was no evidence that the Department of Motor Vehicles could not carry out its statutory mandate without imposing the overbroad categorical exclusions that severed the statutory nexus between the denial and offensiveness of the requested plate, the regulations were found to exceed the scope of the statute. The court held that the Department of Motor Vehicles could promulgate regulations consistent with the statute and may even establish a list of combinations of letters and numbers that might be offensive.

§ 11. Recall of issued plates

The following authority considered whether a recall of special or vanity license plates was required.

The court in The Women's Resource Network v. Gourley, 305 F. Supp. 2d 1145 (E.D. Cal. 2004), held that since the enabling statutes authorizing the issuance of special interest license plates commemorating a national park, highway patrol, the coastal environment, veterans, child health and safety, arts, and a lake involved both government and private speech, the First Amendment did not require the state to recall all previously issued plates, even though the statutory scheme permitting the issuance of special interest license plates if the legislature passed an enabling statute violated the First Amendment, where the fees generated by the plate sales were used by the state to fund programs supporting the specific special interests commemorated by the plates.

§ 12. Administrative fee

[Cumulative Supplement]

The following authority considered the propriety of administrative fees on special or vanity license plates.

CUMULATIVE SUPPLEMENT

Cases:
The unequal burden of paying an administrative fee to motor vehicle bureau for special group recognition license plates, as opposed to other special or standard plates, was equally applicable to all "Chapter 25" special license plates, as required for compliance with privileges and immunities clause of state constitution; motorist's "Environment" license plate required payment of administrative fee as did all other "Chapter 25" license plates unless specifically exempted by the legislature. West's A.I.C. Const. Art. 1, § 23. Studler v. Indiana Bureau of Motor Vehicles, 2008 WL 4916650 (Ind. Ct. App. 2008)

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Validity, Under State Constitutions, of Private Shopping Center's Prohibition or Regulation of Political, Social, or Religious Expression or Activity, 52 A.L.R.5th 195

Validity, construction, and effect of statutes or ordinances forbidding automotive "cruising"—practice of driving repeatedly through loop of public roads through city, 87 A.L.R.4th 1110

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors, 20 A.L.R.4th 600

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway, 81 A.L.R.3d 564

Validity and construction of statute making it a criminal offense to "tamper" with motor vehicle or contents, or to obscure registration plates, 57 A.L.R.3d 606

Automobiles: construction and operation of statutes or regulations restricting the weight of motor vehicles or their loads, 45 A.L.R.3d 503

Improper use of automobile license plates as affecting liability or right to recover for injuries, death, or damages in consequence of automobile accident, 99 A.L.R.2d 904

Legal Encyclopedias
Am. Jur. 2d, Automobiles and Highway Traffic § 58

C.J.S., Motor Vehicles § 106

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Law Reviews and Other Periodicals
Guggenehim and Silversmith, Confederate License Plates at the Constitutional Crossroads: Vanity Plates, Bumper Stickers, Viewpoints, Vulgarity, and the First Amendment, 54 U. Miami L. Rev. 563 (2000)

Herald, Licensed to Speak: The Case of Vanity Plates, 72 U. Colo. L. Rev. 595 (2001)

Additional References
Appellate Materials, Brief of Appellant, 2001 WL 34384377

Section 2 Footnotes:
[FN1] C.J.S., Motor Vehicles § 106.
[FN2] Am. Jur. 2d, Automobiles and Highway Traffic § 58
Section 3 Footnotes:
[FN3] Guggenehim and Silversmith, Confederate License Plates at the Constitutional Crossroads: Vanity Plates, Bumper Stickers, Viewpoints, Vulgarity, and the First Amendment, 54 U. Miami L. Rev. 563 (2000).
[FN4] Kahn v. Department of Motor Vehicles, 16 Cal. App. 4th 159, 20 Cal. Rptr. 2d 6 (2d Dist. 1993)
[FN5] McMahon v. Iowa Dept. of Transp., Motor Vehicle Div., 522 N.W.2d 51 (Iowa 1994)
[FN6] Lewis v. Wilson, 253 F.3d 1077 (8th Cir. 2001), reh'g and reh'g en banc denied, (July 30, 2001) and cert. denied, 535 U.S. 986, 122 S. Ct. 1536, 152 L. Ed. 2d 464 (2002).
[FN7] Sons of Confederate Veterans, Inc. ex rel. Griffin v. Commission of Virginia Dept. of Motor Vehicles, 288 F.3d 610, 8 A.L.R.6th 797 (4th Cir. 2002).

[FN8] Carr v. Director of Revenue, 799 S.W.2d 124 (Mo. Ct. App. W.D. 1990), reh'g and/or transfer denied, (Oct. 30, 1990).
[FN9] McBride v. Motor Vehicle Div. of Utah State Tax Com'n, 1999 UT 9, 977 P.2d 467 (Utah 1999)
[FN10] McMahon v. Iowa Dept. of Transp., Motor Vehicle Div., 522 N.W.2d 51 (Iowa 1994).
[FN11] Sons of Confederate Veterans, Inc. v. Glendening, 954 F. Supp. 1099 (D. Md. 1997)
Section 10 Footnotes:
[FN12] Although the lower court in Lewis v. Wilson, 89 F. Supp. 2d 1082 (E.D. Mo. 2000), aff'd in part, rev'd in part on other grounds, 253 F.3d 1077 (8th Cir. 2001), reh'g and reh'g en banc denied, (July 30, 2001) and cert. denied, 535 U.S. 986, 122 S. Ct. 1536, 152 L. Ed. 2d 464 (2002), also held that the Missouri statute was unconstitutional, the court did not issue an injunction ordering the issuance of the "ARYAN-1" plate as the court held that the director may still have constitutional grounds to refuse to issue the license.

8 A.L.R.6th 639