

FREEDOM FROM RELIGION *foundation*

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March 28, 2016

SENT VIA MAIL & EMAIL: rodney.kuhl@ky.gov

Commissioner Rodney Kuhl
Kentucky Department of Vehicle Regulation
200 Metro Street
Frankfort, KY 40622

Re: Unconstitutional Rejection of Personalized Plate

Dear Mr. Kuhl:

I am writing on behalf of the Freedom From Religion Foundation (“FFRF”) regarding a violation of the First Amendment by the Division of Motor Vehicle Licensing (“Division”). FFRF is a nationwide nonprofit organization with more than 23,000 members across the country, including members in Kentucky. We work to protect the constitutional principle of separation between state and church.

We were contacted by an FFRF member who sought a personalized “IM GOD” license plate. He received a rejection letter dated March 11, 2016. The letter said, “Your application for the personalized plate IM GOD has been rejected because it does not meet the requirements of KRS 186.174 and 601 KAR 9:012. Section 5. These laws dictate that a personalized plate may not be vulgar or obscene.”

We request that the Division of Motor Vehicle Licensing immediately approve the personalized plate. The Kentucky regulations concerning the wording of personalized plates are unconstitutional on their face, and as applied here.

The Division’s restriction of the message because of the viewpoint being expressed violates the free speech clause of the First Amendment. The Supreme Court has continually struck down viewpoint discrimination by the government. *See Lamb’s Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993); *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995); and *Good News Club v. Milford Central School*, 533 U.S. 98 (2001). Restrictions on speech may not be imposed as part of “an effort to suppress expression merely because public officials oppose the speaker’s view,” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46 (1983), and “the government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction,” *Rosenberger*, 515 U.S. at 829.

The proposed plate cannot be considered obscene under any interpretation of the First Amendment jurisprudence concerning obscenity. As such, the plate was restricted under 601

KAR 9:012, which allows for a plate to be recalled if the letter or number combinations are “offensive to good taste and decency.” 601 KAR 9:012.

This same overbroad language (and unbridled discretion granted to government actors) has been challenged in a number of other states, with the ultimate result being approval of the license plates. *See Byrne v. Rutledge*, 623 F.3d 46 (2d Cir. 2010) (Striking down Vermont personalized plate restriction on plates referring to religion or a deity); *Lewis v. Wilson*, 253 F.3d 1077 (8th Cir. 2001) (Striking down Missouri restriction on plates that are “obscene...inflammatory or contrary to public policy.”); *Morgan v. Martinez*, No. CIV. 3:14-02468 FLW, 2015 WL 2233214 (D.N.J. May 12, 2015) (The state initially rejected an “8THEIST” plate. The court allowed the case to proceed and found “that the Plaintiff has alleged sufficient facts to state a claim that the Rule is facially overbroad, because Plaintiff has alleged that the Rule delegates “unbridled discretion” to the MVC that “invites viewpoint discrimination,” and has provided numerous factual assertions in support of this allegation...”).

The same “good taste and decency” restriction in place in Kentucky has been invalidated in Michigan. In *Matwyuk v. Johnson*, the state initially rejected an “INFIDL” plate under a regulation that prohibited combinations “that might carry a connotation offensive to good taste and decency.” 22 F. Supp. 3d 812, 815 (W.D. Mich. 2014), The court said, “The ‘offensive to good taste and decency’ language impermissibly permits the Department of State to deny a license plate application based on viewpoint because the statute lacks objective criteria, and thus confers unbounded discretion on the decisionmaker.” *Id.* at 824. The state ultimately was enjoined from enforcing the “offensive to good taste and decency” restriction. Consent Judgment, *Matwyuk v. Johnson*, (No. 2:13-cv-284, W.D. Mich., Sept. 3, 2014), available as document no. 50.

It should be plain to see that a state government may not restrict an “IM GOD” personalized plate. An individual has a protected free speech right to select that message, as they would to select a religious message or any other message.

We request a written response stating that the Division will approve the “IM GOD” plate and will no longer enforce the “offensive to good taste and decency” restriction. Ultimately, 601 KAR 9:012 should be amended to comport with the First Amendment. Please contact me at your earliest convenience.

Sincerely,



Patrick C. Elliott
Staff Attorney

CC: Mr. Paul Mauer
Director, Division of Motor Vehicle Licensing
paul.mauer@ky.gov