

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

April 14, 2016

SENT VIA EMAIL & U.S. MAIL: Todd.shipp@ky.gov

Mr. J. Todd Shipp
Office of Legal Services
200 Metro Street
Frankfort, KY 40622

Re: Unconstitutional personalized license plate message censorship

Dear Mr. Shipp:

I am writing in response to your letter dated April 7 concerning the rejection of the “IM GOD” personalized license plate by the Division of Motor Vehicle Licensing.

You said that the Kentucky Transportation Cabinet “strongly believes” the decision to reject the plate “to be legally supported explicitly in the United States Supreme Court case of Walker v. Texas Div., Sons of Confederate Veterans, Inc.” It is absolutely incorrect to state that the *Walker* case approved censorship of personalized license plates. In fact, the Supreme Court **explicitly** said that it was not making a determination on personalized license plates. The Court said, “Here we are concerned only with the second category of plates, namely specialty license plates, **not with the personalization program.**” 135 S. Ct. 2239, 2244 (2015).

It is apparent that designs approved by the state for specialty license plates are different than the thousands of personalized messages selected by vehicle owners. Since *Walker*, the only court to have addressed the personalize plate issue has held that personalized plates are private speech. In *Mitchell v. Maryland Motor Vehicle Admin.*, the Maryland Court of Special Appeals ruled that *Walker* was not applicable to Maryland personalized plates, which are private speech. 225 Md. App. 529 (2015). The court said, “When a vanity plate message appears on a base plate or commemorative plate, the unique, personalized message about the vehicle’s owner (“BOB”) is distinct, and obviously so, from the government message (‘*Our Farms, Our Future,*’ or ‘*Treasure the Chesapeake*’).” *Id.* at 567.

Your letter also cites “a standard of good taste and decency” as a reason to reject the personalized plate. This standard confers unbridled discretion on government decision makers and allows for viewpoint discrimination, which is exactly what occurred when the undefined rule was applied to the “IM GOD” personalized plate. This “good taste and decency” restriction is plainly unconstitutional. *See Matwyuk v. Johnson*, 22 F. Supp. 3d 812, 815 (W.D. Mich. 2014); Consent Judgment, (No. 2:13-cv-284, W.D. Mich., Sept. 3, 2014).

You also asserted that the personalized plate “would create the potential of distractions to other drivers and possibly confrontations.” The state may not institute a heckler’s veto against speech

with which some may disagree. *See, e.g., Bible Believers v. Wayne Cty., Mich.*, 805 F.3d 228, 255 (6th Cir. 2015) (“Notably, a heckler’s veto effectuated by the police will nearly always be susceptible to being reimagined and repackaged as a means for protecting the public, or the speaker himself, from actual or impending harm.”). As the Supreme Court has said, “from the standpoint of freedom of speech and the press, it is enough to point out that the state has no legitimate interest in protecting any or all religions from views distasteful to them which is sufficient to justify prior restraints upon the expression of those views. It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine...” *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 505 (1952).

We reiterate that the Division of Motor Vehicle Licensing must approve the “IM GOD” plate. To do otherwise, violates the constitutional rights of citizens and subjects the Division to unnecessary liability in what would surely be a losing case for the state. Please contact me to let me know if the state will reverse this unconstitutional censorship.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Elliott", with a stylized flourish at the end.

Patrick Elliott
Staff Attorney