

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT FRANKFORT

BENNIE L. HART,

Plaintiff,

v.

GREG THOMAS, in his official capacity as
Secretary of the Kentucky Transportation
Cabinet,

Defendant.

Case No. _____

Electronically Filed

VERIFIED COMPLAINT

I. Preliminary Statement

1. In this official capacity suit, Plaintiff challenges Defendant's authority to deny an application for a Kentucky-issued personalized license plate where, as here, the proposed license plate would contain Plaintiff's non-obscene and fully protected individual speech. Plaintiff seeks declaratory and prospective injunctive relief under 42 U.S.C. § 1983. Plaintiff previously sought (and will again seek) a personalized Kentucky-issued license plate with the letters "IM GOD" — the same message he had on his Ohio-issued license plate for twelve years prior to moving to Kentucky. Plaintiff intends to reapply for this personalized license plate as a means of individual expression to convey a philosophical and political message regarding his view of how faith is susceptible to individualized interpretation. Plaintiff maintains that Defendant's past (and anticipated future) refusal to issue the requested license plate constitutes an improper viewpoint and content-based restriction on his speech that neither serves a compelling governmental

interest nor is narrowly tailored to achieve any valid governmental interest. Plaintiff therefore seeks declaratory relief to the effect that KRS § 186.174(3) and § 186.164(9), as applied to his future personalized license plate application, violates his right to free speech under the First and Fourteenth Amendments; and Plaintiff further seeks prospective injunctive relief barring Defendant from enforcing those statutory provisions in the future to deny Plaintiff a personalized license plate with the letters “IM GOD.” Plaintiff also seeks declaratory relief finding that KRS § 186.174(3), on its face, constitutes an impermissible content-based restriction of speech in violation of the First and Fourteenth Amendments and injunctive relief barring its enforcement.

II. Jurisdiction and Venue

2. The Court has jurisdiction over this case under 28 U.S.C. § 1331, which provides for original district court jurisdiction over cases presenting federal questions.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b), because all parties reside in Kentucky, the Defendant (in his official capacity) resides in Franklin County, Kentucky, and a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District of Kentucky.

III. Parties

4. Plaintiff Bennie L. Hart is an adult citizen of Kentucky, residing in Kenton County, Kentucky.

5. Defendant Greg Thomas, in his official capacity, serves as Secretary of Kentucky’s Transportation Cabinet — an agency of the Commonwealth of Kentucky with its principal place of business in Franklin County, Kentucky. In his official capacity, Defendant Thomas is charged with, *inter alia*, overseeing the Kentucky Transportation

Cabinet and enforcing the statutory and regulatory requirements applicable to the Cabinet's authority to grant, or deny, personalized license plate applications in Kentucky.

IV. Factual Allegations

6. At all relevant times, Greg Thomas, in his official capacity, acted under color of state law.

7. On a standard Kentucky license plate, the plate number consists of a unique combination of three letters and three numbers generated by the Kentucky Transportation Cabinet that is not intended to convey a particularized message. KRS § 186.005(2).

8. For an additional fee, Kentucky allows vehicle owners to select their own unique letter and number configuration for their license plates. These plates are known as "personalized license plates." KRS § 186.174. And under Kentucky law, "personalized license plate" is explicitly defined to include license plates "issued with *personal letters or numbers significant to the applicant*." KRS § 186.174(1) (emphasis added).

9. Vehicle owners who participate in the personalized plate program typically select a configuration of letters and numbers that convey a meaningful expression of their personal identity, values, or sense of humor that is understandable to others who view the license plate.

10. Prior to moving to Kenton County, Kentucky, Plaintiff Hart resided in Hamilton County, Ohio. While an Ohio resident, Plaintiff requested, and obtained, a personalized Ohio-issued license plate that read "IM GOD." Plaintiff maintained that license plate for (and displayed it on) his vehicle for approximately twelve years without there being any adverse incident during that time related to the license plate.

11. Plaintiff chose “IM GOD” for his Ohio-issued personalized license plate because he wished to convey, through the license plate, a personal philosophical message concerning his views about religion. Specifically, Plaintiff, who identifies as an atheist, asserts that it is impossible to disprove, via the scientific method or otherwise, any individual’s assertion that he or she is “God”; thus, religious belief is highly susceptible to individual interpretation.

12. Plaintiff Hart moved from Ohio to Kenton County, Kentucky, in February, 2016.

13. Upon relocating to Kentucky, Plaintiff Hart registered his vehicle in Kentucky consistent with the the law of the Commonwealth. And Plaintiff specifically applied for a personalized license plate for his vehicle in order to convey the same message he had on his Ohio-issued license plate — “IM GOD.”

14. In March 2016, Plaintiff Hart received a letter dated March 11, 2016, from Ainsley W. Snyder, Administrative Branch Manager for Kentucky’s Division of Motor Vehicle Licensing — a subdivision of the Kentucky Transportation Cabinet. [*See attached Plaintiff’s Exh. 1.*] In that letter, Manager Synder communicated the Cabinet’s rejection of Plaintiff’s requested personalized license plate, stating that “[y]our 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.” [*Id.*]

15. Mr. Hart views the censorship of his message by the Kentucky Transportation Cabinet and its characterization of that message as “vulgar or obscene” to be demeaning to him and his viewpoint.

16. Upon information and belief, the Kentucky Transportation Cabinet has approved personalized license plates that include religious messages.

17. On March 28, 2016, the Freedom From Religion Foundation (FFRF) sent a letter on Plaintiff's behalf to the then-Commissioner of the Kentucky Department of Vehicle Regulation, Rodney Kuhl. [*See attached* Plaintiff's Exh. 2.] In doing so, FFRF expressed concern about Kentucky's interpretation and enforcement of KRS § 186.174 and 601 KAR 9:012. [*Id.*]

18. FFRF specifically criticized Manager Ainsley's stated basis for the Cabinet's denial of Plaintiff's personalized license plate — that it would violate the “vulgar or obscene” standard — because the proposed plate is not obscene or vulgar, and because 601 KAR 9:012 does not even contain a “vulgar or obscene” standard but rather an “offensive to good taste and decency” standard that is equally inadequate to justify the denial. [*Id.*]

19. FFRF also requested an immediate reconsideration and approval of Plaintiff's personalized license plate application. [*Id.*]

20. By letter dated April 7, 2016, Senior Counsel J. Todd Shipp with Kentucky's Office of Legal Services stated that Plaintiff's requested personalized license plate application “was not rejected because of vulgarity or obscenity,” but rather because “the use of ‘IM GOD’ is not in good taste and would create the potential of distraction to other drivers and possibly confrontations.” [*See attached* Plaintiff's Exh. 3.] In doing so, Mr. Shipp specifically relied upon 601 KAR 9:012 and its “good taste and decency” standard as the relevant basis for denying Plaintiff's personalized license plate application. [*Id.*]

21. Moreover, Mr. Shipp also explained that the Kentucky Transportation Cabinet “strongly believes the decision it made to reject [Plaintiff’s] application for a personalized license plate . . . [is] legally supported” by the Supreme Court’s decision in *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S.Ct. 2239 (2015). [*Id.*]

22. Freedom From Religion Foundation attempted, on Plaintiff’s behalf, to correct the state’s misperception about the scope and import of the *Walker* decision in an April 14, 2016, letter. [*See attached* Plaintiff’s Exh. 4.] And FFRF argued why the “good taste and decency” standard is inadequate to justify viewpoint-based restrictions on speech. [*Id.* (citing *Matwyuk v. Johnson*, 22 F. Supp. 3d 812 (W.D. Mich. 2014).)]

23. Notwithstanding that the Transportation Cabinet previously denied Plaintiff Hart’s application for personalized license plate, Plaintiff intends to again apply for the issuance of a personalized license plate in Kentucky bearing the letters “IM GOD” for his vehicle. Plaintiff’s anticipated future personalized license plate is significant to Plaintiff because it would convey a philosophical and political message to others regarding Plaintiff’s view of religion generally, and about how faith is susceptible to individual interpretation specifically.

24. Plaintiff currently owns an operable vehicle that is lawfully registered in Kentucky for which he intends to apply for, and obtain, a personalized license plate with the letters “IM GOD”, and he has sufficient financial resources to pay the proscribed fee required for personalized license plate applications.

V. Statutory Framework

25. Under Kentucky law, individuals may apply for “personalized license plates” for their vehicles, and Kentucky defines “personalized license plate” to mean “a

license plate issued with *personal letters or numbers significant to the applicant . . .*”

KRS § 186.174(1) (Emphasis added).

26. Individuals applying for a personalized license plate must apply for the personalized license plate with the office of the county clerk and pay a proscribed fee. KRS § 186.174(2). Initial applications for personalized license plates must be made in person, but subsequent renewals of personalized license plates may be made by mail. *Id.* Upon receipt of the personalized license plate application and fee, the county clerk must forward them to the Transportation Cabinet for review. *Id.*

27. Kentucky’s Transportation Cabinet approves, or denies, personalized license plate applications and renewals under different standards.

28. Specifically, personalized license plates *that have already been issued* but were issued “through oversight or any other reason” may be recalled by the Transportation Cabinet if, in the Cabinet’s determination, the personalized license plate is “offensive to good taste and decency.” 601 KAR 9:012 sec. 5(1).

29. By contrast, pursuant to Kentucky law, a personalized license plate application for the issuance of a *new* personalized license plate must be evaluated under different standards. Specifically, a “personalized plate shall not be issued if the cabinet determines the request fails to comply with the conditions specified in KRS § 186.164(9)(c) to (g).” KRS § 186.174(3).

30. KRS § 186.164(9) sets forth the requirements for groups wishing to create a “special license plate”, *i.e.* one that bears the color and design submitted by a group or organization. KRS § 186.164(2).

31. Thus, the statutory provisions relating to “special license plates” that are incorporated by reference into approving initial “personalized license plate” applications are that the proposed personalized license plate *shall not*:

- a) “discriminate against any race, color, religion, sex, or national origin, and shall not be construed, as determined by the cabinet, as an attempt to victimize or intimidate any person due to the person’s race, color, religion, sex, or national origin” KRS § 186.164(9)(c);
- b) “have been created primarily to promote a specific political belief” KRS § 186.164(9)(d);
- c) “have as its primary purpose the promotion of any specific faith, religion, or antireligion” KRS § 186.164(9)(e);
- d) “be construed, as determined by the cabinet, as promoting a product or brand name” KRS § 186.164(9)(f); and
- e) “be obscene, as determined by the cabinet.” KRS § 186.164(9)(g).

32. Even though the statutory framework for evaluating requests for the issuance of *new* personalized license plates incorporates by reference the standards contained in KRS § 186.164(c)-(g), Plaintiff’s prior application for the issuance of a new personalized license plate “IM GOD” was denied by reference to the administrative regulation that contains the standard for recalling already issued personalized license plates. [*Compare* Plaintiff’s Exh. 1 (denying application under “obscene or vulgar” standard but citing 601 KAR 9:012(5)) *with* Plaintiff’s Exh. 3 (stating that application not

denied because of “vulgarity or obscenity” but under the “offensive to good taste and decency” standard under 601 KAR 9:012(5).]

33. Despite Plaintiff’s strong desire to again apply for the personalized license plate “IM GOD” — a personalized license plate he maintained for more than a decade in Ohio before moving to Kentucky — he has refrained from doing so because of the Cabinet’s earlier denial of his request as being either “obscene or vulgar” or “offensive to good taste and decency.”

34. Plaintiff nonetheless intends to reapply for the personalized license plate “IM GOD” in Kentucky as a means of engaging in individual expression that is protected by the First Amendment to the United States Constitution, as applied to the states by operation of the Fourteenth Amendment. Plaintiff’s future license plate application consists solely of non-obscene, constitutionally protected expression.

35. The Defendant’s future enforcement of either 601 KAR 9:012(5) or KRS § 186.164(9)(d)-(g), as applied, to deny Plaintiff’s future personalized license plate application constitutes an improper, viewpoint or content-based restriction on Plaintiff’s protected speech for which there is no adequate remedy at law.

VI. CLAIMS FOR RELIEF

First Cause of Action - First Amendment (As-Applied)

36. The Defendant's acts, practices and policies constitute an impermissible infringement of Plaintiff's right to free speech, as-applied to Plaintiff's intended future speech in the form of a personalized license plate stating "IM GOD."

37. As-applied to Plaintiff's future personalized license plate application requesting "IM GOD," the threat of repeated enforcement by Defendant (under either 601 KAR 9:012(5) or any of the subsections of KRS § 186.164(9)) to deny Plaintiff's future application impermissibly discriminates against Plaintiff's speech on the basis of content and/or viewpoint, and has chilled and continues to chill Plaintiff's protected speech, thereby depriving him of rights secured by the First and Fourteenth Amendments to the United States Constitution.

Second Cause of Action - First Amendment (601 KAR 9:012(5) - Facial)

38. On its face, 601 KAR 9:012(5) is an overbroad restriction on speech in violation of the First and Fourteenth Amendments because the "offensive to good taste and decency" standard by which Defendant decides whether to recall already-issued personalized licenses plates (or deny new license plates as with Plaintiff's earlier application) creates an impermissible risk of the suppression of ideas and of content and viewpoint discrimination.

39. On its face, 601 KAR 9:012(5) is unconstitutionally vague in violation of the Fourteenth Amendment's Due Process Clause because a person of ordinary intelligence would not know that Plaintiff's intended speech is prohibited by the regulation, and because the regulation lacks clear standards and objective criteria thus

allowing Defendant to bar Plaintiff's intended speech based on ambiguous, subjective, arbitrary or discriminatory reasons.

Third Cause of Action - First Amendment (KRS § 186.174(3) - Facial)

40. On its face, KRS § 186.174(3) is an unlawful restriction on speech of those individuals applying for new personalized license plates because it incorporates, by reference, impermissible content-based restrictions on those license applications that neither serve a compelling governmental interest nor are narrowly tailored: KRS § 186.164(9)(d) (barring the promotion of specific political beliefs); and *id.* at § (9)(e) (barring the promotion of any specific faith, religion, or antireligion)..

WHEREFORE, the Plaintiff requests that this Court:

1. Declare 601 KAR 9:012(5) unconstitutional, as applied to Plaintiff's future speech in the form of a personalized license plate application containing "IM GOD";
2. Declare KRS § 186.164(9)(d) and (e), as incorporated by KRS § 186.174(3) and as-applied to Plaintiff's future speech in the form of a personalized license plate application containing "IM GOD", unconstitutional;
3. Declare 601 KAR 9:012(5) facially unconstitutional;
4. Declare KRS § 186.164(9)(d)-(e), as incorporated by KRS § 186.174(3) to approve new personalized license plate applications, facially invalid;
5. Issue a permanent injunction barring Defendant from enforcing 601 KAR 9:012(5) and/or KRS § 186.174(3) to deny Plaintiff's future personalized license plate application for a plate containing "IM GOD".

6. Issue a permanent injunction barring Defendant from enforcing KRS § 186.164(9)(d) and (9)(e), as incorporated by reference into KRS § 186.174(3), to deny new personalized license plate applications.
7. Award Plaintiff his costs, including reasonable attorney fees, pursuant to 42 U.S.C. § 1988; and
8. Grant any additional relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ William E. Sharp
William E. Sharp, Legal Director
American Civil Liberties Union of Kentucky
315 Guthrie Street, Suite 300
Louisville, Kentucky 40202
(502) 581-9746
(502) 589-9687 (fax)
sharp@aclu-ky.org

- and -

Patrick C. Elliott*
Rebecca S. Markert*
Freedom From Religion Foundation
10 N. Henry St.
Madison, WI 53703
(608) 256-8900
(608) 204-0422 (fax)
patrick@ffrf.org
rmarkert@ffrf.org

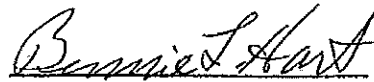
Attorneys for Plaintiff

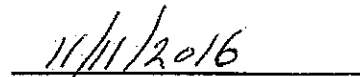
* Motions for admission *pro hac vice* filed with this Complaint.

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I make the following declaration under penalties of perjury:

I verify that I have read the complaint in this case and that the facts alleged in it are true, to the best of my knowledge, information and belief.


Bennie L. Hart


Date