

# FREEDOM FROM RELIGION *foundation*

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**SENT VIA EMAIL & U.S. MAIL: [jay.starling@revenue.alabama.gov](mailto:jay.starling@revenue.alabama.gov)**

Jay Starling  
Motor Vehicle Division Director  
Alabama Department of Revenue  
P.O. Box 327610  
Montgomery, AL 36132

Re: Unconstitutional Rejection of Personalized Plate

Dear Director Starling:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a violation of the First Amendment by the Alabama Department of Revenue Motor Vehicle Division. FFRF is a national nonprofit organization with more than 33,000 members across the country, including members in Alabama. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

We were contacted by an Alabama resident who sought and was approved for a personalized “S8TAN” license plate. After having a temporary plate for a couple months, our complainant received a letter from the Alabama Department of Revenue, Motor Vehicle Division, informing them that their personalized license plate is “offensive to the peace and dignity of the State of Alabama,” and will not be issued/renewed:

The Alabama Department of Revenue, Motor Vehicle Division, has determined that the above referenced license plate contains objectionable language which is considered by the Department to be offensive to the peace and dignity of the State of Alabama. Registration for this personalized license plate message will not be issued/renewed.

We request that the Motor Vehicle Division immediately issue or renew our complainant’s registration of the personalized “S8TAN” license plate. Alabama’s regulations concerning the wording of personalized plates are unconstitutional on their face, and as applied here.

Just last year, FFRF and the ACLU of Kentucky won a three year legal battle against the Secretary of the Kentucky Transportation Cabinet on behalf of a Kentucky resident who was denied a license plate saying, “IM GOD.” *Hart v. Thomas*, 422 F. Supp. 3d 1227 (E.D. Ky. 2019). Kentucky Department of Motor Vehicles officials initially claimed the license plate message was “obscene or vulgar.” Later, the state said the plate was rejected because it was “not in good taste.” The U.S. District Court for the Eastern Court of Kentucky found that the

Kentucky Transportation Cabinet's failure to apply its statutes in a viewpoint neutral manner violated motorists' rights under the Free Speech Clause. *Id.* The State of Kentucky was then ordered to pay more than \$150,000 in attorneys fees as a result of defending its unconstitutional conduct.

The Motor Vehicle 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 Matal v. Tam*, 137 S. Ct. 1744 (2017); *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 was restricted under Ala. Admin. Code 810-5-1-.234, which allows for a plate to be revoked if the letter or number combinations are "offensive to the peace and dignity of the State of Alabama." As such, the Department is explicitly censoring the plate because of its message, which is prohibited under the First Amendment.

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...").

We acknowledge that the Department may refuse to issue personalized license plates that have sexual connotations or connotations to profane language. *See, e.g., Chivers v. Ala. Dep't of Revenue*, No. MV. 10-326, 2010 WL 3733965, at \*1 (Dept. Rev. Admin. Law Div. Aug. 19, 2010) (holding that Department did not abuse its discretion when it did not issue a license plate with letters "UWISHMF" because "MF" could be construed as profane); *Belser v. Ala. Dep't of Revenue*, No. MV. 97-423, 1998 WL 1176432, at \*2 (Dept. Rev. Admin. Law Div. Jan. 23, 1998) (holding that Department did not abuse its discretion when it did not reissue a license plate with the letters "IN2DEEP" because this could be construed as a "sexual connotation"); *accord Perry v. McDonald*, 280 F.3d 159, 163 (2d Cir. 2001) (holding that a state agency's decision refusing to issue a license plate with letters "SHTHPNS" was constitutional). Yet, there is nothing profane or sexual in nature about our local complainant's personalized license tag.

A very similar “good taste and decency” restriction has been invalidated in Michigan. In *Matwyuk v. Johnson*, the state initially rejected an “INF1DL” 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 a “S8TAN” personalized plate. An individual has a protected free speech right to select that message, as they would to select another religious message or any other message.

We request a written response stating that the Division will issue or renew the “S8TAN” plate, and that the Division will no longer enforce the “offensive to the peace and dignity of the State of Alabama” restriction. Ultimately, Ala. Admin. Code 810-5-1-.234 should be amended to comport with the First Amendment. Please contact me at your earliest convenience.

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Line  
Staff Attorney  
Freedom From Religion Foundation

Cc: Vernon Barnett, Commissioner of Revenue *via* **Vernon.Barnett@revenue.alabama.gov**