



April 4, 2011

**AMERICAN CIVIL
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The Honorable Bob Lynn, Chair
The Honorable Wes Keller, Vice-Chair
House State Affairs Committee
Alaska State House of Representatives
State Capitol, Room 106
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via email: [Representative Bob Lynn@legis.state.ak.us](mailto:Representative_Bob_Lynn@legis.state.ak.us);
[Representative Wes Keller@legis.state.ak.us](mailto:Representative_Wes_Keller@legis.state.ak.us)

**Re: Senate Bill 93 – Specialty License Plates
Constitutional Issues**

Chair Lynn, Vice-Chair Keller:

Thank you for the opportunity to submit written testimony regarding Senate Bill 93, concerning Specialty License Plates.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. From that perspective, we wish to share with the Committee constitutional issues which could arise with respect to legislation and amendments concerning special request or message license plates.

Government Viewpoint Neutrality Required

If a State chooses to introduce a system for creation of optional license plates, the State must have a viewpoint neutral process for determining how applications for optional license plate formats would be adopted. **This viewpoint neutrality must apply in all respects, both in the messages**

approved and rejected, and in the processes which must be followed in obtaining approval.

For instance, a Missouri agency that regulated specialty license plates could not refuse to create a “Choose Life” license plate simply because such license plates made members of the committee uncomfortable. *Roach v. Stouffer*, 560 F.3d 860 (8th Cir. 2009).

While the license plates are theoretically “owned” by the state, these “message” plates consist of mixed government and individual speech. The plates constitute government speech, insofar as the government imposes general editorial control over the license plate content. They are individual speech insofar as a non-state group may propose a specialized plate format and the individual driver chooses to espouse the message.

Given the personal speech interests at stake, the government may not pick and choose among causes and messages it supports in adopting such optional license plates.

In a case directly on point, South Carolina adopted a “Choose Life” license plate by statute. Refusal of the state to authorize a pro-choice themed license plate constituted direct viewpoint discrimination and violated the First Amendment. *Planned Parenthood of South Carolina Inc. v. Rose*, 361 F.3d 786 (4th Cir. 2004).

Application Process Viewpoint Discrimination

Again, if a State chooses to introduce a system for creation of optional license plates, the State must have a viewpoint neutral **process** in all respects – not only in which messages are approved and rejected, but in the application procedures for obtaining special licenses.

For instance, if a message plate *favoring* government action to reduce global warming were approved by the legislature, either through legislation or amendment, but a message plate *against* government action to reduce global warming had to follow a more onerous procedure, such legislation would be facially unconstitutional and subject to litigation and injunction. In this regard, it is important to note that a court would look to the legislative history of a bill’s passage in determining whether viewpoint neutrality were compromised.

Conclusion

We hope that the House State Affairs Committee will note the constitutional issues that can arise when “message” plates are approved. **In light of the First Amendment rights implicated, and existing case law, Senate Bill 93, with any amendments, must propose a process for review and approval of specialty license plate requests which does not favor any political viewpoint, either in content or in process.**

In order to avoid costly and needless litigation, we presume the Legislature and the State of Alaska would ensure a viewpoint-neutral process, consistent with constitutional mandates, both for requesting and approving specialty “message” plates.

Thank you again for the opportunity to share our concerns. Please feel free to contact the undersigned should you require any additional information. We are happy to reply to any questions which Members of the Committee may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. A. Mittman', with a long horizontal flourish extending to the right.

Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Representative Paul Seaton, [Representative Paul Seaton@legis.state.ak.us](mailto:Representative_Paul_Seaton@legis.state.ak.us)
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