



BECAUSE FREEDOM CAN'T PROTECT ITSELF

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Choose Life License Plates Are Unconstitutional

Five cases involving “Choose Life” license plates have been decided. Four of these cases were decided on the merits. **ALL of the courts that reached the merits of the issue, held that the license plates are unconstitutional.**¹

A. License Plates are “Private Speech” with First Amendment Implications.

Courts have held that messages on license plates—even though the plates are owned by the government—are not government speech. Instead, they are **private speech** because of the connection of any message on the plate to the driver in the vehicle. The Supreme Court reached this conclusion in Wooley v. Maynard, 430 US 705 (1977). Some lower courts have held that the specialty license plates contain “mixed speech.” Whether described as private or “mixed speech,” the speech is protected by the First Amendment of the United States Constitution.²

B. The License Plate Bill Constitutes Impermissible Viewpoint Discrimination.

When the government creates a forum for free speech, such as a specialty license plate, it may not engage in “viewpoint discrimination” in that forum. In other words, the government may not make a person’s access to the forum contingent on which side of an issue a person supports—it may not adopt a “regulation of speech because of agreement or disagreement with the message it conveys.”³

But under this bill, the government would be doing just that. **The government would be providing the anti-choice drivers with an opportunity to express their message on their license plates, but it would not allow the pro-choice drivers the same opportunity.** As explained by the Fourth Circuit Court of Appeals “In the license plate forum, [the State] has authorized the expression of only one position in the abortion debate, thereby promoting expression of one viewpoint (pro-life) while preventing the expression of the other viewpoint (pro-choice).”⁴ This is unconstitutional.

C. The Legislature Impermissibly Picks and Rejects Speech Without Any Defined Standards.

The license plates are also unconstitutional because they fail the “licensing analysis.” This doctrine holds that the exercise of free speech cannot be subject to the unlimited discretion of government officials. Instead, the government must use narrow, objective and definitive standards.⁵ Such requirements protect against the censorship of certain messages.

But the Georgia State legislature is not following any narrow, objective or definitive standards for determining access to the license plates. The Georgia legislature has uncontrolled discretion to choose and reject license plates. **This is UNCONSTITUTIONAL.**

1. Planned Parenthood of South Carolina v. Rose, 361 F.3d 786 (4th Cir. 2004); ACLU of Tenn. V. Bresden, No. 3:03-1046 (M.D. Tenn., Sept. 24, 2004); Henderson v. Stalder, 265 F. Supp. 2d 699 (E.D. La. 2003); Women’s Resource Network v. Gourley, 2004 WL 383384 (Feb. 20, 2004 E.D. Cal); see also Women’s Emergency Network v. Bush, 323 F.3d 937 (11th Cir. 2003) (dismissing the case because the Plaintiffs lacked standing).

2. Rose, 361 F.3d at 793-4, 780; Henderson, 265 F. Supp. 2d at 717; Bresden, No. 3:03-1046 at *5.

3. Bresden, No. 3:03-1046 at *5.

4. Rose, 361 F.3d at 794; Henderson, 265 F. Supp. 2d at 717; Bresden, No. 3:03-1046 at *5.

5. Women’s Emergency Network v. Bush, 323 F.3d 937.