

No. 12-0123

IN THE
SUPREME COURT OF THE UNITED STATES

GREG WEBBER,
Governor of the State of Gilead,
Petitioner,

v.

WINSTON SMITH,
Respondent.

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT*

BRIEF FOR RESPONDENT

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QUESTIONS PRESENTED

- I. Is the Gilead state special license plate program government speech?
- II. Does the program constitute viewpoint discrimination?

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OPINIONS BELOW

The opinion of the United States District Court for the District of Gilead is unreported but may be found on pages 25 to 29 of the appellate record. (R. at 25-29). The opinion of the United States Court of Appeals for the Fourteenth Circuit is also unreported but may be found on pages 32 and 33 of the appellate record (R. at 32-33).

STATEMENT OF JURISDICTION

The court of appeals entered judgment on February 1, 2012. (R. at 32-33). Petitioner filed his petition for writ of certiorari on February 7, 2012. (R. at 34-35). This Court granted the petition on March 25, 2012. (R. at 36). This Court's jurisdiction rests on 28 U.S.C. § 1254(1) (2000).

STANDARD OF REVIEW

A district court's fact findings and the reasonable inferences to be drawn from them are reviewed for clear error. Its legal conclusions are reviewed *de novo*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment of the United States Constitution, 42 Gil. Stat. Ann. § 1661, and 42 Gil. Stat. Ann. § 2050 are reproduced in an Appendix to this brief, in pertinent part.

STATEMENT OF THE CASE

Section 1661 of the Gilead Statutes provides the parameters of the State of Gilead's special license plate program. (R. at 6-8). The Gilead General Assembly subsequently passed Section 2050, which directed the Gilead Commissioner of the Department of Motor Vehicles ("Commissioner") to issue a specialty license plate designed by INtegrate Gilead's SOCiety ("INGSOC"), a pro-diversity organization. (R. at 9). INGSOC's proposed design bore INGSOC's logo and the text "Celebrate Gilead's Diversity." (R. at 3-4).

Winston Smith ("Smith") filed an application with the Gilead Commissioner of the Department of Motor Vehicles ("Commissioner") for the issuance of a new specialty license plate expressing pride in Caucasian heritage in the State of Gilead. (R. at 3). The proposed plate contained the logo of an organization of which Smith is a member and the text "White Pride Statewide." (R. at 3-4). Smith's application complied with all other aspects of Section 1661. (R. at 4). Greg Webber, the Governor of Gilead ("Governor"), rejected Smith's proposed design as contrary to state law. (R. at 4). Specifically, the Governor claimed Smith's design was contrary to Section 1984 of the Gilead Statutes ("ONESTATE Act") *Id.* The ONESTATE Act prohibits any officer, employee, or agent of the State of Gilead from knowingly discriminating on the basis of race. (R. at 9).

In an effort to protect his First Amendment right of freedom of speech, Smith filed suit against the Governor and requested that the court declare the ONESTATE Act unconstitutional and compel the Governor to authorize Smith's proposed specialty license plate design or, in the alternative, to enjoin further issuance of the "Celebrate Gilead's Diversity" specialty license plate. (R. at 2-5).

Smith and the Governor each moved for summary judgment. (R. at 14-24). The District Court for the District of Gilead granted Smith’s motion for summary judgment and enjoined the State of Gilead from issuing the “Celebrate Gilead’s Diversity” plate unless, and until, the State issues Smith’s proposed Caucasian heritage plate. (R. at 29). The trial court applied the Fourth Circuit’s four-part test to determine the type of forum involved and ruled that specialty license plates are a “limited forum for expression” subject to viewpoint neutrality. (R. at 28). The trial court further ruled the Governor’s denial of Smith’s application constituted restriction of Smith’s speech based on viewpoint, thereby impermissibly abrogating Smith’s First Amendment rights. (R. at 28).

The Governor appealed the trial court’s judgment. (R. at 30). The Fourteenth Circuit affirmed the district court’s judgment. (R. at 32-33). Specifically, the Fourteenth Circuit agreed with the trial court’s application of the Fourth Circuit’s four-part test to analyze the issue of private versus government speech. *Id.*

This Court granted the Governor’s petition for writ of certiorari and certified the following issues for argument: (1) Is the Gilead state special license plate program government speech; and (2) Does the program constitute viewpoint discrimination? (R. at 34-36).

SUMMARY OF THE ARGUMENT

I.

Winston Smith’s First Amendment rights were violated when Greg Webber, the Governor of Gilead, refused to authorize the issuance of Smith’s proposed specialty license plate. There is a clear split of decisions across the circuit courts. The Fourth Circuit has ruled that specialty license plates contain private speech or a hybrid mix of private and government speech. The Second, Eighth, and Ninth Circuits have joined the Fourth Circuit’s views in this

regard. Petitioner will argue that the Sixth Circuit’s ruling in *Bredesen* applies to the facts of this case, thereby finding specialty license plates are government speech and are not subject to viewpoint neutrality. However, it is important to note that *Bredesen* relies almost solely upon *Johanns*, which was completely inapposite to the issues in *Bredesen*, and is completely inapposite to the issues in this case. Further, the public policy implications that would result from the expansion of the government speech doctrine as suggested by *Bredesen* would rock the foundation our nation is built upon.

II.

In the instances where the court finds the speech is mixed government and private speech, forum analysis is performed. Courts have generally found specialty license plates are a limited public forum, which requires government restrictions be reasonable and viewpoint neutral. The State of Gilead opened a limited public forum by allowing the General Assembly or the Governor to approve the issuance of specialty license plates and any restriction of speech in this limited public forum must be reasonable and viewpoint neutral. The General Assembly authorized the issuance of the INGSOC pro-diversity plate, opening the forum for the discussion of race. Smith’s Caucasian heritage plate encompassed a racial viewpoint within the same forum and the Governor’s denial of Smith’s application constituted viewpoint discrimination. Viewpoint discrimination creates far-reaching public policy concerns, which should not be ignored.

ARGUMENT

I. THE GILEAD STATE SPECIAL LICENSE PLATE PROGRAM IS PRIVATE SPEECH WITHIN A LIMITED PUBLIC FORUM

The Free Speech Clause of the First Amendment prohibits the Government from abridging the freedom of private speech of United States citizens. U.S. CONST. amend. I.

Though purely governmental speech does not invoke the protection of the First Amendment's Free Speech Clause, private speech does. *See Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 467 (2009). The extent of permissible governmental restriction of private speech turns on the nature of the forum in which the speech occurs. *See, e.g., Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 800 (1985).

In *Sons of Confederate Veterans*, the Fourth Circuit applied a four-part test to analyze whether the message conveyed via specialty license plates is private or government speech. *Sons of Confederate Veterans, Inc. ex rel. Griffin v. Comm'n of the Va. Dep't of Motor Vehicles*, 288 F.3d 610, 618 (4th Cir. 2002). In analyzing the issue of private versus government speech, the court in *Sons of Confederate Veterans* looked to its sister courts for guidance. *Id.* at 618-19. The Eighth, Ninth, and Tenth Circuits previously applied variations of this four-part test in categorizing speech as private or government speech. *See Knights of the Ku Klux Klan v. Curators of the Univ. of Mo.*, 203 F.3d 1085, 1093-94 (8th Cir. 2000) (applied to sponsors' messages on nonprofit public broadcast radio station); *Wells v. City and County of Denver*, 257 F.3d 1132, 1141-42 (10th Cir. 2001) (applied to sign listing private sponsors of public holiday display); *Downs v. Los Angeles Unified Sch. Dist.*, 228 F.3d 1003, 1011-12 (9th Cir. 2000) (applied to contents of school bulletin boards).

Circuit courts have continued applying the four-part test established in *Sons of Confederate Veterans* to the specialty license plate forum. Two years after issuing its opinion in *Sons of Confederate Veterans*, the Fourth Circuit again utilized the four-part test in *Rose. Planned Parenthood of S.C. Inc. v. Rose*, 361 F.3d 786, 793-94 (4th Cir. 2004) (concluding special license plates contain private and government speech). The Ninth Circuit adopted the Fourth Circuit's test in 2008, concluding speech in the forum of special license plates is

primarily private. *Arizona Life Coalition, Inc. v. Stanton*, 515 F.3d 956, 965-68 (9th Cir. 2008). Also in 2008, the Seventh Circuit adopted the Fourth Circuit’s four-part test in *Choose Life. Choose Life Ill., Inc. v. White*, 547 F.3d 853, 863-64 (7th Cir. 2008) (concluding special license plate messages are not government speech). More recently, the Eighth Circuit held that messages on Missouri specialty license plates are private speech under the four-part test. *Roach v. Stouffer*, 560 F.3d 860, 867-68 (8th Cir. 2009). Support for this test is apparent and applicable to the instant case.

A. Application of the Fourth Circuit’s Four-Part Test From *Sons of Confederate Veterans* Supports the Conclusion That Speech Contained in License Plates is Private Speech or, at a Minimum, Hybrid Private and Government Speech

The factors considered in the Fourth Circuit’s four-part test include: (1) the “central purpose”; (2) the “degree of editorial control” retained by the government; (3) the “identity of the literal speaker”; and (4) the bearer of the “ultimate responsibility” for the speech content. *Sons of Confederate Veterans*, 288 F.3d at 618.

First, the central purpose of Gilead’s special license plate program is to generate revenue for the state, while allowing the license plate’s holder to express his personal views. *See id.* at 619 (special plate program resulted in additional \$4.5 million revenue for the State of Virginia in fiscal year). Section 1661 of the Gilead Statutes requires a minimum order of one hundred (100) plates before the Commissioner may authorize the issuance of any special license plate. 42 Gil. Stat. Ann. § 1661(3)(b) (1998). If the central purpose of Gilead’s special license plate program is to allow the government to disseminate its own message, there is no justification for the government’s establishment of a minimum order restriction “before its ‘speech’ is triggered.” *See Sons of Confederate Veterans*, 288 F.3d at 620 (350 minimum order). *See also Arizona Life*, 515 F.3d at 966 (200 minimum order).

Second, the State has extremely limited editorial control over specialty license plate designs and messages. The Governor's determination of whether a proposed special license plate conforms to state law constitutes "de minimis editorial control," which does not rise to the level required for classification as government speech. *Arizona Life*, 515 F.3d at 966. Smith designed the proposed special plate of his own volition and without input from any Gilead official. (R. at 3-4). Further, Section 1661(4) grants the Governor the ability to modify a special plate *only* when a proposed plate is contrary to state law. 42 Gil. Stat. Ann. § 1661(4) (1998) (emphasis added). The Governor did not attempt to exercise this miniscule amount of editorial control granted upon him by state law. (R. at 4). Instead, he merely refused to authorize the issuance Smith's plate. *Id.*

Some courts have chosen to collapse the third (literal speaker) and fourth (ultimate responsibility) factors of the Fourth Circuit's four-part test into one inquiry. *E.g.*, *Sons of Confederate Veterans*, 288 F.3d at 621. Although license plates are state-owned and bear a state-authorized message, special license plates allow private citizens the ability to display a message of their choosing. *Planned Parenthood*, 361 F.3d at 794 (Choose Life message on specialty plate attributable to vehicle owner and not the State). This Court previously recognized that messages on license plates are at least partially attributable to the operator of a vehicle. *See Wooley v. Maynard*, 430 U.S. 705, 717 (1977) (concluding it was impermissible for the State of New Hampshire to require citizens to display the state motto on license plates).

In analyzing the literal speaker, the court in *Planned Parenthood* analogized special license plates to bumper stickers, concluding that the vehicle owner is the literal speaker of both. *Planned Parenthood*, 361 F.3d at 794. Additionally, the court recognized that the availability of a plethora of special license plate themes makes it more likely that a citizen would associate the

speech with the individual. *Planned Parenthood*, 361 F.3d at 798-799. As of September 1, 2006, the State of Gilead authorized seventy four (74) specialty license plates. (R. at 3).

By choosing and affixing a special plate to his vehicle, a private person bears ultimate responsibility for the message displayed. *Sons of Confederate Veterans*, 288 F.3d at 621. For these reasons, the literal speaker and bearer of ultimate responsibility for the message contained in a special license plate is the vehicle owner and the message is private speech. *Planned Parenthood*, 361 F.3d at 794.

Viewed as a whole, the four parts of the *Sons of Confederate Veterans* test strongly favor a finding that the speech contained in the State of Gilead's special license plate program is purely private speech. Should this Court find that any one of the four prongs of this test indicate a finding of private speech, following the logic of the Fourth, Seventh, Eighth, Ninth, and Tenth Circuits, the Gilead special license plate program is, at a minimum, a hybrid mix of private and government speech. *See Planned Parenthood*, 361 F.3d at 794 (holding South Carolina specialty license plates are neither purely private nor purely government speech).

B. The Sixth Circuit's Decision in *Bredesen* is Erroneous and Should Not Be Adopted

In *Bredesen*, the Sixth Circuit applied this Court's ruling in *Johanns* to the special license plate forum. *See ACLU v. Bredesen*, 441 F.3d 370, 375 (6th Cir. 2006) (Choose Life plate authorized by state statute expressed a government message and was not subject to strict scrutiny). Judge Martin disagreed with the *Bredesen* majority because it relied "almost exclusively on *Johanns*" in reaching its opinion and he believed *Johanns* was not controlling. *Bredesen*, 441 F.3d at 385 (Martin, J., dissenting). First, *Johanns* involved the dissemination of a government message funded by a compelled subsidy. *Bredesen*, 441 F.3d at 385 (Martin, J., dissenting). A special license plate program involves a citizen paying a premium to display a

message of his own choosing and participation in the program is not compelled. *Arizona Life*, 515 F.3d at 964. Further, the facts in both *Johanns* and *Bredesen* establish that the government determined the “overarching message” of the speech and retained the power to approve every word in the message. See *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 561 (2005) (persons responsible for development of beef advertising campaign were appointed by government official); *Bredesen*, 441 F.3d at 376 (statute set overarching message of Choose Life plate and the state retained the right to approve every word contained therein). Judge Martin believed the *Bredesen* majority’s opinion inappropriately expanded the government speech doctrine to apply to all First Amendment cases. *Bredesen*, 441 F.3d at 386 (Martin, J., dissenting).

Judge Martin criticized the majority for overlooking an important point before concluding that messages contained on Tennessee specialty plates are purely government speech. *Id.* at 382 n.4. As an example, he raised the fact that the State of Tennessee authorized the issuance of a specialty license plate supporting the University of Florida, which is widely known as the University of Tennessee’s archrival. *Id.* Judge Martin astutely theorizes that the majority’s analysis of the government speech doctrine, if applied to past cases, would change the outcome of many decisions handed down by this Court, including *Wooley*. *Id.* at 386.

In addition to its reliance on disputable logic, *Bredesen* is inapposite to the instant case. The plaintiffs in *Bredesen* challenged the constitutionality of a statute-authorized “Choose Life” specialty license plate. *Id.* at 376 (majority opinion). The government set the overarching message and merely consulted with a representative of the organization New Life Resources in designing the *Bredesen* license plate. *Id.* at 372. Additionally, the government retained the power to approve the final message of the “Choose Life” license plate. *Id.* The Sixth Circuit concluded that when the government “determines the overarching message” and retains final

approval power the speech is attributable to the government. *Bredesen*, 441 F.3d at 375. The facts at hand show Smith retained full control over the design of his proposed plate, not the State, and he received no input from the State regarding the plate’s design. For these reasons alone, *Bredesen* is distinguishable from the instant case and should not be applied in this case.

C. Policy Considerations Support a Finding of Private Speech

In his dissenting opinion in *Johanns*, Justice Souter voiced his concern regarding the negative consequences of an overly broad government speech doctrine. *See Johanns*, 544 U.S. at 571-72 (Souter, J., dissenting) (compelled subsidy for beef advertising campaign only proper if the speech is presented as the government’s own speech). The government should always be held accountable for its speech. *Id.* at 575. When relying on the government speech doctrine, the government must make certain that any message it puts forth is clearly attributed to the government itself. *Id.* at 571-72. This self-attribution in the realm of democracy holds the government politically accountable for its speech; the electorate will support or reject the government’s chosen messages with its ballots. *Id.* at 575. In order for our democratic system to survive, “continuing transparency is essential.” *Planned Parenthood*, 361 F.3d at 798. In the specialty license plate forum, as discussed above, speech contained on license plates is generally attributed to the operator of the vehicle. *Id.* at 794. If the average citizen correlates the message of a special license plate with the operator of the vehicle rather than the government, the government is no longer held accountable for the message, thereby circumventing the purpose of our nation’s democratic system.

II. THE GILEAD STATE SPECIAL LICENSE PLATE PROGRAM CONSTITUTES VIEWPOINT DISCRIMINATION WITHIN A LIMITED PUBLIC FORUM THEREBY IMPERMISSIBLY ABROGATING SMITH’S FIRST AMENDMENT RIGHTS

The government may create a limited public forum for “certain speakers” or “certain subjects.” *Arizona Life*, 515 F.3d at 968. However, once a limited public forum is created, the government may not exclude a speaker based upon his viewpoint and may only reasonably restrict the content of private speech within the forum to sustain the purpose for which the forum was created. *See id.* at 969 (concluding Arizona created a limited public forum by passing special license plate program legislation).

A. Presence of Private Speech Requires Forum Analysis

Once the presence of private speech is established, forum analysis is performed to evaluate any government restrictions placed on such speech. *Sons of Confederate Veterans*, 288 F.3d at 622-23. Three main speech fora exist: (1) public fora; (2) nonpublic fora; and (3) designated public fora. *Arizona Life*, 515 F.3d at 968-69. Public fora are those that have traditionally remained open to the public for the exercise of expressive activity (i.e. streets and parks). *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983). Conversely, nonpublic fora are closed to the public regarding the exercise of expressive activity. *See Cornelius*, 473 U.S. at 811 (concluding charity drive aimed at federal employees is a nonpublic forum and the government may limit participation to minimize workplace disruption). The government creates a designated public forum when it chooses to open a nonpublic forum to the public for “expressive activity.” *Perry Educ. Ass’n*, 460 U.S. at 45. In addition, a state may create a “limited” public forum by intentionally opening a nonpublic forum to “certain groups” or “certain topics.” *Arizona Life*, 515 F.3d at 968 (applied to Arizona specialty license plate program).

Strong support exists for classifying special license plate programs as limited public fora. *See Id.* at 971 (holding Arizona special license plate program is limited public forum); *Planned*

Parenthood, 361 F.3d at 798 (classifying South Carolina special license plate program as a limited public forum). Government restriction of private speech in any forum requires that the restriction be viewpoint neutral and reasonable in light of the forum. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (as to limited public fora); *Cornelius*, 473 U.S. at 53 (as to nonpublic fora).

In passing Section 1661, the Gilead General Assembly intentionally opened the State of Gilead’s specialty license plate program as a forum for “expressive conduct.” *Arizona Life*, 515 F.3d at 969. The lower courts in the instant case concluded that the Gilead specialty license plate program is a limited public forum and speech in such forum should receive First Amendment protection from viewpoint discrimination. (R. at 27, 33). Regardless of whether this Court classifies the State of Gilead’s special license plate program as a limited public forum or a nonpublic forum, viewpoint neutrality is required to satisfy the Free Speech Clause of the First Amendment. *Perry Educ. Ass’n*, 460 U.S. at 61 (Brennan, J., dissenting).

B. Issuance of INGSOC Plate and Denial of Smith’s Proposed Plate Constitutes Viewpoint Discrimination in a Limited Public Forum

This Court has long held that the “principal inquiry” into viewpoint discrimination claims is whether speech was restricted due to “disagreement with the message...convey[ed].” *Planned Parenthood*, 361 F.3d at 795 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). It is inappropriate for the government to favor the private speech of “one speaker over another.” *Rosenberger*, 515 U.S. at 828. This Court also noted in *Rosenberger* that when a speaker’s views on a subject are targeted, rather than the subject matter of the speech itself, the First Amendment violation “is all the more blatant.” *Rosenberger*, 515 U.S. at 829. This type of viewpoint discrimination is an “egregious form of content discrimination.” *Rosenberger*, 515 U.S. at 829. In *Perry Education Association*, this Court noted that government regulation of

private speech on the basis of viewpoint is “censorship in its purest form.” *Perry Educ. Ass’n*, 460 U.S. at 62. Government restriction of speech is not permitted if the reason for the restriction is the speaker’s “opinion or perspective.” *Rosenberger*, 515 U.S. at 829.

This Court has recognized that viewpoint discrimination is a subset of content discrimination and there is no bright line test distinguishing the two. *Rosenberger*, 515 U.S. at 830-31. It has also recognized that all debate is not “bipolar” and once the government opens a limited public forum on an issue, the government cannot restrict access to that forum on the basis of viewpoint. *Rosenberger*, 515 U.S. at 829, 831. Under this reasoning, in passing Section 2050, the State of Gilead opened a limited public forum on the issue of race. 42 Gil. Stat. Ann. § 2050 (2005). Any assertion by Petitioner that pride in one particular race is not a viewpoint encompassed within the racial parameters set by Section 2050 is unpersuasive.

In *Planned Parenthood*, the court held that once South Carolina allowed the abortion debate to enter the license plate forum, the State could not restrict forum access to additional viewpoints on that issue. *Planned Parenthood*, 361 F.3d at 798. Similarly, the Gilead General Assembly authorized the issuance of a specialty license plate designed in conjunction with a representative of INGSOC, which was to include the phrase “Celebrate Gilead’s Diversity.” 42 Gil. Stat. Ann. § 2050. By taking the affirmative step of passing legislation that allows private citizens to express their views and opinions regarding race on state-issued license plates, the State of Gilead created a limited public forum. In issuing the INGSOC pro-diversity plate and refusing issuance of Smith’s Caucasian heritage plate, the State of Gilead has promoted itself to the status of a “privileged speaker” within that forum. *Planned Parenthood*, 361 F.3d at 798.

The State of Gilead created the specialty license plate program, “defined the outer limits” of the program, and Smith’s proposed plate “fits within those statutory boundaries.” *Arizona*

Life, 515 F.3d at 973. Although the State of Gilead retains a certain amount of control as it relates to speech in limited public forums it has created, the State does not have “unbridled discretion in regulating speech.” *Id.* For these reasons, a finding that the Governor impermissibly restricted Smith’s speech on the basis of viewpoint is appropriate. *Id.*

C. Policy Considerations Support Viewpoint Neutrality Requirement

In *Planned Parenthood*, the court recognized that viewpoint discrimination in the license plate forum would “mislead the public” regarding the status of the predominant view on abortion in South Carolina. *Planned Parenthood*, 361 F.3d at 798. As discussed above, the message contained on license plates is most attributable to the operator of the vehicle. If the government is permitted to hand pick which viewpoints within an issue of debate are publicly expressed, an ordinary citizen is denied the knowledge of the popular choice of the citizens of South Carolina. *Id.* Such unbridled power on the part of the government allows the bureaucracy to impose its chosen point of view without the accountability our forefathers intended to impose upon the government. *Id.*

Regulation of the content of private speech creates the “impermissible risk” of suppression of merely “unpopular ideas.” *Roach*, 560 F.3d at 864. Any such regulation opens the door for possibility of manipulation of the marketplace of ideas “through coercion rather than persuasion.” *Sons of Confederate Veterans*, 288 F.3d at 624.

CONCLUSION

Freedom of speech is one of the most fundamental rights of the American people. The State of Gilead and its Governor should not have the ability to abrogate that right. The State of Gilead restricted Smith’s speech based solely upon its disagreement with his ideology of

promoting his Caucasian heritage. For the foregoing reasons, Smith respectfully requests that this Court affirm the Fourteenth Circuit's decision in its entirety.

Respectfully submitted,

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APPENDIX

U.S. CONST. amend. I – First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

42 Gil. Stat. Ann. § 1661 (1998)– Special License Plates

- (1) All specialty motor vehicle registration plates issued or renewed after January 1, 1998 shall be issued and renewed pursuant to the provisions of this section. The Commissioner of Motor Vehicles shall issue only those specialty license plate designs that are provided for by statute, or which have been authorized by the Governor pursuant to this section. All license plates issued by the Department are property of the State of Gilead.
- (2) No specialty license plates shall be considered for authorization by the Governor unless and until the individual, group, entity, or organization seeking the authorization of such specialty license plates shall have demonstrated to the satisfaction of the Commissioner that they meet the issuance requirements set forth in paragraph (3) of this section. Upon satisfaction of the requirements of this section, or within thirty (30) days of the receipt of the application for the creation of a new license plate, whichever is sooner, the Commissioner shall communicate, in writing, to the Governor recommending that the proposed specialty plate be either authorized or rejected.
- (3) The Commissioner shall not recommend that the Governor authorize any proposed specialty license plate design:
 - (a) For which the Commissioner has not received a prepaid application on a form prescribed by the Department; this application must include the emblem, seal, symbol, or other design to be imprinted on the plate; this application shall also include, if applicable, a proposal for the establishment of a Specialty License Plate Revenue Sharing Fund designating organization(s) to be recipients of proceeds from such fund;
 - (b) For which the Commissioner has not received a minimum order of one hundred (100) plates;

* * *

- (4) The Governor may alter, modify, or refuse to authorize any special license plate that is contrary to the laws of this state.

- (5) The fee for specialty license plates shall be forty dollars (\$40.00) in addition to all other registration fees provided by the Gilead Vehicle License and Registration Act. The fee shall be apportioned as follows:
 - (a) Sixteen dollars (\$16.00) shall be apportioned to the State Treasury;
 - (b) Seven dollars (\$7.00) shall be apportioned to the Gilead Youth Motor Safety Fund provided for in § 2316 of Title 42 of the Gilead Statutes;
 - (c) Three dollars (\$3.00) shall be apportioned to the Department of Motor Vehicles for the administration of the specialty license plate program;
 - (d) Fourteen dollars (\$14.00) shall be apportioned to the Specialty License Plate Revenue Sharing Fund established for the organization for which the specialty license plate was issued, unless no such fund is established, in which case the money shall be apportioned to the State Treasury...

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42 Gil. Stat. Ann. § 2050 (2005)– Specialty License Plates; Celebrate Gilead’s Diversity

- (1) An owner or leasee of a motor vehicle who is a resident of this state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and upon paying the regular fee applicable to the motor vehicle, as well as the fee provide for in 42 Gil. Stat. Ann. § 1661(5), shall be issued a “Celebrate Gilead’s Diversity” specialty license plate.
- (2) The specialty plate provided for in this section shall contain an appropriate logo and design. Such plates shall be designed in consultation with a representative of “Integrate Gilead’s SOCiety” (“INGSOC”).
- (3) The funds produced from the sale of the Celebrate Gilead’s Diversity specialty plate shall be allocated to INGSOC in accordance with the provisions of the Specialty License Plate Revenue Sharing Fund sections of 42 Gil. Stat. Ann. § 1661.

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