



February 16, 2011

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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: House Bill 111 – “Choose Life” License Plates**  
**Constitutional Issues**

Chair Lynn, Vice-Chair Keller:

Thank you for the opportunity to submit written testimony regarding House Bill 111, regarding Special Request “Choose Life” 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 alert the Committee to potential constitutional issues which could arise with respect to this proposed legislation.

**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.

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 (8<sup>th</sup> 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 (4<sup>th</sup> Cir. 2004).

### **Conclusion**

We hope that the State Affairs Committee will note the constitutional issues that can arise when “message” plates are approved, and we presume that the State of Alaska would follow constitutional mandates in establishing a process for approval of additional messages.

Please feel free to contact the undersigned should you require any additional information. We are happy to reply to any questions that may arise either through written or verbal testimony, or to answer informally any questions which Members of the Committee may have.

Thank you again for the opportunity to share our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. 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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