

**SB**

**93**

<TARGET><BILL>SB 93</BILL><SUBJECT>SB  
93</SUBJECT><COMM>HSTA27</COMM></TARGET>



# Alaska State Legislature



## Chairman

State Affairs Committee

## Member

Judiciary Committee  
Energy Special Committee  
Joint Armed Services Special Committee  
Military and Veterans' Affairs Committee

## Finance Subcommittees

Administration  
Corrections  
Military and Veterans' Affairs

**Session:**  
Alaska State Capitol #108  
Juneau, AK 99801-1182

Phone: (907) 465-4931  
Fax: (907) 465-4316  
Toll Free: (800) 870-4391

**Interim:**  
716 W. 4<sup>th</sup> Ave., #650  
Anchorage, AK 99501-2133

Phone: (907) 269-0205  
Fax: (907) 269-0207

*A Communication From*

**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail:** Representative\_Bob\_Lynn@legis.state.ak.us  
**"Bob Lynn's Alaska Blog"** RepBobLynnBlog.com

April 6, 2011

To: House State Affairs Committee

Fr: Representative Bob Lynn, Chairman

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CS SB 93(STA)

In an effort to expedite the Legislature's consideration of various license plate proposals, including the new administrative process envisioned by Senator Wielechowski, the Chair is proposing a committee substitute for SB 93. CS SB 93(STA) would provide for the creation of all specialty license plates currently proposed in House legislation, and any Senate plates without a companion bill in the House. Both the description of the plates and the fees to purchase them were pulled directly from the stand-alone bills that would have created these specialty plates.

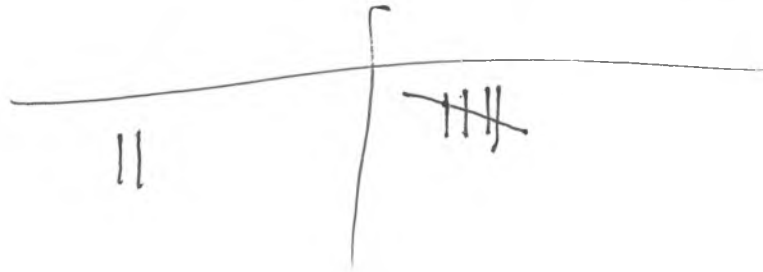
The proposed committee substitute creates five specialty request license plates, as well as adopting Sen. Wielechowski's plan to afford DMV the authority to issue specialty plates. The proposed plates that have been included in the CS are:

- "In God We Trust"
- "Choose Life"
- National Rifle Association
- Breast Cancer Awareness
- Lao Veterans

SB 93

Conceptual Amends # 1 By Sweeney

1. page 2 lines 7-12 delete all material
2. page 4 lines 7-14 delete all material



SB93

Conceptual Amendment # 2  
27-LS0515\I  
Keller

~~###~~ / III

Sec 1 subsection (gg) sunsets June 1, 2014  
page 2 line 26 to end.

Jan 12      Jan 13      January 15

Jan 12      Jan 13      January 15

SB 93

27-LS0564D.2  
Kirsch  
4/11/11

AMENDMENT

②

OFFERED IN THE HOUSE

BY REPRESENTATIVE

*Heller*

TO: CSHB 190( ), Draft Version "D"

1 Page 2, following line 5:

2 Insert a new bill section to read:

3 **\*\* Sec. 2.** AS 43.23.008 is amended by adding a new subsection to read:

4 "(e) If insufficient documentation is available to establish the nature of an  
5 absence, as required under (c)(1) and (2) of this section, the department may waive the  
6 requirement of those paragraphs."

*advent  
rep.*

7

8 Renumber the following bill section accordingly.

**HOUSE CS FOR SENATE BILL NO. 93(STA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE STATE AFFAIRS COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATE STATE AFFAIRS COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to special request registration plates; and providing for an effective**  
2 **date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 28.10.181 is amended by adding new subsections to read:

5 (bb) Special request United States flag "In God We Trust" plates. Upon  
6 application by the owner of a motor vehicle, the department may issue registration  
7 plates with a design incorporating the flag of the United States and the motto "In God  
8 We Trust" on the plate. The commissioner shall determine the design and color of the  
9 plates. The department may disapprove the issuance of registration plates under this  
10 subsection when the requested plates are a duplication of an existing registration.

11 (cc) Special request Lao veteran plates. Upon application by the owner of a  
12 motor vehicle, the department may issue registration plates commemorating the  
13 owner's service in military operations in support of the United States in the Kingdom  
14 of Laos between February 28, 1961, and May 15, 1975. The commissioner shall

1 determine the design and color of the Lao veteran plates in consultation with veterans'  
2 and Southeast Asian community organizations in the state. To be issued a registration  
3 plate under this subsection, the owner must present evidence satisfactory to the  
4 department that the owner served in military operations as required by this subsection.  
5 The department may disapprove the issuance of registration plates under this  
6 subsection when the requested plates are a duplicate of an existing registration.

7 (dd) Special request choose life plates. Upon application by the owner of a  
8 motor vehicle, the department may issue registration plates with the phrase "choose  
9 life" on the plate. The commissioner, after consulting with Alaska Choose Life, shall  
10 determine the design and color of the plates. The department may disapprove the  
11 issuance of registration plates under this subsection when the requested plates are a  
12 duplication of an existing registration.

13 (ee) Special request plates commemorating the National Rifle Association.  
14 Upon application by the owner of a motor vehicle, the department may issue  
15 registration plates commemorating the National Rifle Association. The commissioner,  
16 after consulting with representatives of the National Rifle Association in Alaska, shall  
17 determine the design and color of the plates. The department may disapprove the  
18 issuance of registration plates under this subsection when the requested plates are a  
19 duplication of an existing registration.

20 (ff) Special request breast cancer awareness plates. Upon application by the  
21 owner of a motor vehicle, the department may issue breast cancer awareness  
22 registration plates. The commissioner, after consulting with the Alaska office of the  
23 American Cancer Society, shall determine the design and color of the plates. The  
24 department may disapprove the issuance of registration plates under this subsection  
25 when the requested plates are a duplication of an existing registration.

26 (gg) Special request specialty organization plates. The department shall adopt  
27 regulations to allow for the issuance of special request specialty organization  
28 registration plates sponsored by an organization that is based in this state and is tax  
29 exempt under 26 U.S.C. 501(c), is an Alaska chapter of a national organization that is  
30 tax exempt under 26 U.S.C. 501(c), is a department of the state, or is a municipality of  
31 the state. The department shall determine a common design and color for the plates

1 and provide for the placement of the artwork of the organization and a short piece of  
2 descriptive text on the plate. The department may disapprove the issuance of  
3 registration plates under this subsection when the requested plates duplicate an  
4 existing registration. The department may not accept an application from an  
5 organization or approve or issue a new specialty registration plate sponsored by an  
6 organization under this subsection on or after June 1, 2015. The department may  
7 continue to register and renew specialty registration plates sponsored by an  
8 organization and approved by the department before June 1, 2015. The regulations

9 (1) must provide that the entity requesting the issuance of the plates

10 (A) submit an application on a form provided by the  
11 department;

12 (B) pay an application fee set by the department for issuance of  
13 the new registration plates;

14 (C) submit registration fees for at least 10 motor vehicles  
15 before specialty registration plates will be issued;

16 (D) may not be offensive in purpose, nature, activity, or name;

17 (E) may charge a fee for issuance of a specialty registration  
18 plate in addition to any registration fees set by statute or regulation;

19 (2) must provide for a minimum number of registrations and renewals  
20 of the specialty plate and for cancellation of specialty plates that do not meet that  
21 minimum; the regulations must provide that before a specialty plate may be cancelled  
22 the entity sponsoring the plate be given notice at least six months before the proposed  
23 cancellation;

24 (3) must establish procedures for owners of vehicles to purchase  
25 specialty registration plates under this subsection.

26 \* **Sec. 2.** AS 28.10.421(d)(2) is amended to read:

27 (2) special request plates for

28 (A) Alaska National Guard personnel ..... \$30;

29 (B) veterans, [OR] retired veterans, or Lao veterans ..... \$30;

30 (C) recipients of the Purple Heart ..... none;

31 (D) owners of custom collector vehicles ..... \$50;

1 (E) Iditarod race finishers ..... \$50;

2 (F) other special request plates ..... \$30;

3 plus the fee required for that vehicle under (b) of this section; the fee required by this  
4 paragraph shall be collected only on the first issuance and on the replacement of  
5 special request plates;

6 \* **Sec. 3.** AS 28.10.421(d) is amended by adding new paragraphs to read:

7 (20) special request United States flag "In God We Trust" plates.. \$30  
8 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee  
9 required by this paragraph shall be collected biennially in the same manner as the fee  
10 required under (b), (c), (h), or (i) of this section.

11 (21) special request choose life plates ..... \$30  
12 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee  
13 required by this paragraph shall be collected biennially in the same manner as the fee  
14 required under (b), (c), (h), or (i) of this section; the commissioner of administration  
15 shall separately account for the fees received under this paragraph that the department  
16 deposits in the general fund; the annual estimated balance in the account that is in  
17 excess of the cost of issuing special request choose life plates may be appropriated by  
18 the legislature to programs supporting or benefiting adoption.

19 (22) special request National Rifle Association plates ..... \$50  
20 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the \$50  
21 fee required by this paragraph shall be collected only on the first issuance and the  
22 replacement of the special request plates; a \$30 fee shall be collected biennially  
23 thereafter in the same manner as the fee required under (b), (c), (h), or (i) of this  
24 section; the commissioner shall separately account for the fees received under this  
25 paragraph that the department deposits into the general fund; notwithstanding (g) of  
26 this section, the annual estimated balance in the account that is in excess of the cost of  
27 issuing special request plates may be appropriated by the legislature to establish and  
28 maintain a scholastic clay target program and for other youth shooting programs.

29 (23) special request breast cancer awareness plates..... \$50  
30 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the \$50  
31 fee required by this paragraph shall be collected only on the first issuance and the

1 replacement of the special request plates; the commissioner shall separately account  
2 for the fees received under this paragraph that the department deposits into the general  
3 fund; notwithstanding (g) of this section, the annual estimated balance in the account  
4 that is in excess of the cost of issuing special request plates may be appropriated by  
5 the legislature to programs that provide screening for breast and cervical cancer.

6 (24) special request specialty organization plates under  
7 AS 28.10.181(gg)..... \$30  
8 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the \$30  
9 fee required by this paragraph shall be collected only on the first issuance of and the  
10 replacement of the plates; in addition, an entity sponsoring a special request specialty  
11 organization plate may charge a fee on first issuance and renewal of the plates.

12 \* **Sec. 4.** This Act takes effect January 1, 2012.

Specialty License Plates

HCS SB 93 (STA)

*Wielechowski's  
office brought  
these amendments  
to their SB 93*

Amendment

\* **Section 1.** Add a new section that reads:

Special request "Pro-Family, Pro-Choice" plates. Upon application by the owner of a motor vehicle, the department may issue registration plates with the phrase "Pro-Family, Pro-Choice" on the plate. The commissioner, after consulting with Planned Parenthood of the Great Northwest, shall determine the design and color of the plates. The department may disapprove the issuance of registration plates under this subsection when the requested plates are a duplication of an existing registration.

\* **Sec. 2.** Add a new section that reads:

special request "Pro-Family, Pro-Choice" plates.....\$30 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee required by this paragraph shall be collected biennially in the same manner as the fee required under (b), (c), (h), or (i) of this section; the commissioner shall separately account for the fees received under this paragraph that the department deposits in the general fund; the annual estimated balance in the account that is in excess of the cost of issuing special request "Pro-Family, Pro-Choice" plates may be appropriated to the Alaska Children's Trust (AS 37.14.200).

Language taken from CS SB 16 (STA)

**CS FOR SENATE BILL NO. 16(STA)**  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

**BY THE SENATE STATE AFFAIRS COMMITTEE**

**Offered: 3/7/11**  
**Referred: Finance**

**Sponsor(s): SENATORS MEYER, Dyson, Giessel**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to special request 'Choose Life' license plates and special request 'Pro-**  
2 **Family, Pro-Choice' license plates; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1.** AS 28.10.181 is amended by adding new subsections to read:

5 (bb) Special request "Choose Life" plates. Upon application by the owner of a  
6 motor vehicle, the department may issue registration plates with the phrase "Choose  
7 Life" on the plate. The commissioner, after consulting with Alaska Choose Life, shall  
8 determine the design and color of the plates. The department may disapprove the  
9 issuance of registration plates under this subsection when the requested plates are a  
10 duplication of an existing registration.

11 (cc) Special request "Pro-Family, Pro-Choice" plates. Upon application by the  
12 owner of a motor vehicle, the department may issue registration plates with the phrase  
13 "Pro-Family, Pro-Choice" on the plate. The commissioner, after consulting with  
14 Planned Parenthood of the Great Northwest, shall determine the design and color of

1 the plates. The department may disapprove the issuance of registration plates under  
2 this subsection when the requested plates are a duplication of an existing registration.

3 \* **Sec. 2.** AS 28.10.421(d) is amended by adding new paragraphs to read:

4 (20) special request "Choose Life" plates ..... \$30  
5 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee  
6 required by this paragraph shall be collected biennially in the same manner as the fee  
7 required under (b), (c), (h), or (i) of this section; the commissioner shall separately  
8 account for the fees received under this paragraph that the department deposits in the  
9 general fund; the annual estimated balance in the account that is in excess of the cost  
10 of issuing special request "Choose Life" plates may be appropriated by the legislature  
11 to programs supporting or benefiting adoption.

12 (21) special request "Pro-Family, Pro-Choice" plates ..... \$30  
13 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee  
14 required by this paragraph shall be collected biennially in the same manner as the fee  
15 required under (b), (c), (h), or (i) of this section; the commissioner shall separately  
16 account for the fees received under this paragraph that the department deposits in the  
17 general fund; the annual estimated balance in the account that is in excess of the cost  
18 of issuing special request "Pro-Family, Pro-Choice" plates may be appropriated to the  
19 Alaska Children's Trust (AS 37.14.200).

20 \* **Sec. 3.** This Act takes effect January 1, 2012.

*not to be offered  
Kellers  
old  
amendment*

27-LS0515\I.1  
Luckhaupt  
4/6/11

OFFERED IN THE HOUSE

TO: HCS SB 93(STA), Draft Version "I"

1 Page 2, line 26, through page 3, line 21:

2 Delete all material and insert:

3 **\*\* Sec. 2.** AS 28.10 is amended by adding a new section to article 1 to read:

4 **Sec. 28.10.183. Proposal process for new special request registration**  
5 **plates.** (a) The department shall adopt regulations to allow an organization to request  
6 the approval of a special request specialty organization plate. To request the approval  
7 of a special request specialty organization plate, an organization must be

8 (1) based in this state and tax exempt under 26 U.S.C. 501(c) (Internal  
9 Revenue Code);

10 (2) an Alaska chapter of a national organization that is tax exempt  
11 under 26 U.S.C. 501(c) (Internal Revenue Code);

12 (3) a department of the state; or

13 (4) a municipality of the state.

14 (b) The regulations adopted under (a) of this section must provide that the  
15 organization requesting the approval of the plate

16 (1) submit an application on a form provided by the department;

17 (2) pay an application fee set by the department;

18 (3) provide proof that at least 50 persons have expressed an interest in  
19 purchasing the proposed specialty registration plate; and

20 (4) is not offensive in purpose, nature, activity, or name.

21 (c) The department shall approve or deny a request for approval submitted  
22 under (a) of this section. Annually, the governor shall present a bill, as provided in  
23 AS 24.08.060, to authorize the special request specialty organization plates that have

1           been approved by the department during the previous calendar year. The department  
2           may not issue a special request specialty organization plate unless the legislature  
3           enacts a law authorizing the issuance of the plate.

4           (d) The department shall adopt regulations governing procedures for issuing  
5           plates authorized by the legislature under this section. The regulations must

6                       (1) provide for a minimum number of registrations and renewals of the  
7           plate and for cancellation of specialty plates that do not meet that minimum; the  
8           regulations must provide that before a plate may be cancelled the organization  
9           sponsoring the plate be given notice at least six months before the date of the proposed  
10          cancellation;

11                      (2) establish procedures for owners of vehicles to purchase specialty  
12          registration plates under this subsection, including a requirement that, if the plate is for  
13          an organization that requires membership, the owner must verify continued  
14          membership to renew the registration for the plate."

15  
16          Renumber the following bill sections accordingly.

17  
18          Page 5, lines 2 - 7:

19                 Delete all material.

Conceptual Amendment # 2  
27-LS0515M  
Keller

Passed

Seaton objects for discussion maintains

Sec 1 subsection (gg) sunsets June 1, 2014

2015

passed Keller amendment 1 to amend 2

Pg 2 Line 26

Sen. Wielechowski

- N Peterson
- N Seaton
- N Greenberg
- X Lynn
- X Keller
- X Johansen
- X Wilson

~~Greenberg thinks repealer effective date of repealer~~

Seaton

Pg 3 Line 10  
50 down to 10

Amend # 1

Passed

Conceptual Amct # ~~1~~<sup>3</sup> By Gruenberg

1. page 2 lines 7-12 delete all material
2. page 4 lines 7-14 delete all material

Johansen objpts

Y Peterson

N Seaton

Y Gruenberg

N Lynn

N Keller

N Wilson

N Johansen

Failed

# Alaska State Legislature



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*A Communication From*

**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail:** Representative\_Bob\_Lynn@legis.state.ak.us  
**"Bob Lynn's Alaska Blog"** RepBobLynnBlog.com

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Anchorage, AK 99501-2133

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## FAX

To: Legal Services

Fax #: 465-2029

From: Nancy Manly 465-2794  
Alaska State Capitol, room 104  
Juneau, AK 99801-1182

# of Pages (including cover): 1

Phone: 907-465-4931  
Fax: 907-465-4316

Re FINAL CS for SB 93 Version I (27-LS0515\I)

4/12/2011

SB 93 moved out of the House State Affairs Committee this morning with changes to Version I. Please draft a final CS with the following amendments included:

**Amendment #1** (Seaton)  
Page 3 Line 10 *delete* "50" ***inset 10***

**Conceptual Amendment #2** (Keller)  
Page 2 Line 26 – Sec 1 subsection (gg) sunsets June 1, 2015  
(Keller's original amendment had the sunset for June 1, 2014 but because the effective date of the bill isn't until 2012, Keller made Amendment 1 to Conceptual Amendment#2 to change the sunset year to 2015)

**Conceptual Amendment #3** (Gruenberg)  
Failed

# Alaska State Legislature



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*A Communication From*

**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail:** [Representative\\_Bob\\_Lynn@legis.state.ak.us](mailto:Representative_Bob_Lynn@legis.state.ak.us)  
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April 6, 2011

To: House State Affairs Committee

Fr: Representative Bob Lynn, Chairman

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CS SB 93(STA)

In an effort to expedite the Legislature's consideration of various license plate proposals, including the new administrative process envisioned by Senator Wielechowski, the Chair is proposing a committee substitute for SB 93. CS SB 93(STA) would provide for the creation of all specialty license plates currently proposed in House legislation, and any Senate plates without a companion bill in the House. Both the description of the plates and the fees to purchase them were pulled directly from the stand-alone bills that would have created these specialty plates.

The proposed committee substitute creates five specialty request license plates, as well as adopting Sen. Wielechowski's plan to afford DMV the authority to issue specialty plates. The proposed plates that have been included in the CS are:

- "In God We Trust"
- "Choose Life"
- National Rifle Association
- Breast Cancer Awareness
- Lao Veterans

27-LS0515V  
Luckhaupt  
3/30/11

**HOUSE CS FOR SENATE BILL NO. 93(STA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE STATE AFFAIRS COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATE STATE AFFAIRS COMMITTEE**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to special request registration plates; and providing for an effective**  
2 **date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1.** AS 28.10.181 is amended by adding new subsections to read:

5 (bb) Special request United States flag "In God We Trust" plates. Upon  
6 application by the owner of a motor vehicle, the department may issue registration  
7 plates with a design incorporating the flag of the United States and the motto "In God  
8 We Trust" on the plate. The commissioner shall determine the design and color of the  
9 plates. The department may disapprove the issuance of registration plates under this  
10 subsection when the requested plates are a duplication of an existing registration.

11 (cc) Special request Lao veteran plates. Upon application by the owner of a  
12 motor vehicle, the department may issue registration plates commemorating the  
13 owner's service in military operations in support of the United States in the Kingdom  
14 of Laos between February 28, 1961, and May 15, 1975. The commissioner shall

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determine the design and color of the Lao veteran plates in consultation with veterans' and Southeast Asian community organizations in the state. To be issued a registration plate under this subsection, the owner must present evidence satisfactory to the department that the owner served in military operations as required by this subsection. The department may disapprove the issuance of registration plates under this subsection when the requested plates are a duplicate of an existing registration.

(dd) Special request choose life plates. Upon application by the owner of a motor vehicle, the department may issue registration plates with the phrase "choose life" on the plate. The commissioner, after consulting with Alaska Choose Life, shall determine the design and color of the plates. The department may disapprove the issuance of registration plates under this subsection when the requested plates are a duplication of an existing registration.

(ee) Special request plates commemorating the National Rifle Association. Upon application by the owner of a motor vehicle, the department may issue registration plates commemorating the National Rifle Association. The commissioner, after consulting with representatives of the National Rifle Association in Alaska, shall determine the design and color of the plates. The department may disapprove the issuance of registration plates under this subsection when the requested plates are a duplication of an existing registration.

(ff) Special request breast cancer awareness plates. Upon application by the owner of a motor vehicle, the department may issue breast cancer awareness registration plates. The commissioner, after consulting with the Alaska office of the American Cancer Society, shall determine the design and color of the plates. The department may disapprove the issuance of registration plates under this subsection when the requested plates are a duplication of an existing registration.

(gg) Special request specialty organization plates. The department shall adopt regulations to allow for the issuance of special request specialty organization registration plates sponsored by an organization that is based in this state and is tax exempt under 26 U.S.C. 501(c), is an Alaska chapter of a national organization that is tax exempt under 26 U.S.C. 501(c), is a department of the state, or is a municipality of the state. The department shall determine a common design and color for the plates

1 and provide for the placement of the artwork of the organization and a short piece of  
 2 descriptive text on the plate. The department may disapprove the issuance of  
 3 registration plates under this subsection when the requested plates duplicate an  
 4 existing registration. The regulations

- 5 (1) must provide that the entity requesting the issuance of the plates
  - 6 (A) submit an application on a form provided by the
  - 7 department;
  - 8 (B) pay an application fee set by the department for issuance of
  - 9 the new registration plates;
  - 10 (C) submit registration fees for at least 50 motor vehicles
  - 11 before specialty registration plates will be issued;
  - 12 (D) may not be offensive in purpose, nature, activity, or name;
  - 13 (E) may charge a fee for issuance of a specialty registration
  - 14 plate in addition to any registration fees set by statute or regulation;

15 (2) must provide for a minimum number of registrations and renewals  
 16 of the specialty plate and for cancellation of specialty plates that do not meet that  
 17 minimum; the regulations must provide that before a specialty plate may be cancelled  
 18 the entity sponsoring the plate be given notice at least six months before the proposed  
 19 cancellation;

20 (3) must establish procedures for owners of vehicles to purchase  
 21 specialty registration plates under this subsection.

22 \* **Sec. 2.** AS 28.10.421(d)(2) is amended to read:

- 23 (2) special request plates for
  - 24 (A) Alaska National Guard personnel ..... \$30;
  - 25 (B) veterans, [OR] retired veterans, or Lao veterans ..... \$30;
  - 26 (C) recipients of the Purple Heart ..... none;
  - 27 (D) owners of custom collector vehicles ..... \$50;
  - 28 (E) Iditarod race finishers ..... \$50;
  - 29 (F) other special request plates ..... \$30;

30 plus the fee required for that vehicle under (b) of this section; the fee required by this  
 31 paragraph shall be collected only on the first issuance and on the replacement of

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special request plates;

\* **Sec. 3.** AS 28.10.421(d) is amended by adding new paragraphs to read:

(20) special request United States flag "In God We Trust" plates.. \$30 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee required by this paragraph shall be collected biennially in the same manner as the fee required under (b), (c), (h), or (i) of this section.

(21) special request choose life plates ..... \$30 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee required by this paragraph shall be collected biennially in the same manner as the fee required under (b), (c), (h), or (i) of this section; the commissioner of administration shall separately account for the fees received under this paragraph that the department deposits in the general fund; the annual estimated balance in the account that is in excess of the cost of issuing special request choose life plates may be appropriated by the legislature to programs supporting or benefiting adoption.

(22) special request National Rifle Association plates ..... \$50 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the \$50 fee required by this paragraph shall be collected only on the first issuance and the replacement of the special request plates; a \$30 fee shall be collected biennially thereafter in the same manner as the fee required under (b), (c), (h), or (i) of this section; the commissioner shall separately account for the fees received under this paragraph that the department deposits into the general fund; notwithstanding (g) of this section, the annual estimated balance in the account that is in excess of the cost of issuing special request plates may be appropriated by the legislature to establish and maintain a scholastic clay target program and for other youth shooting programs.

(23) special request breast cancer awareness plates..... \$50 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the \$50 fee required by this paragraph shall be collected only on the first issuance and the replacement of the special request plates; the commissioner shall separately account for the fees received under this paragraph that the department deposits into the general fund; notwithstanding (g) of this section, the annual estimated balance in the account that is in excess of the cost of issuing special request plates may be appropriated by

1 the legislature to programs that provide screening for breast and cervical cancer.  
 2 (24) special request specialty organization plates under  
 3 AS 28.10.181(gg)..... \$30  
 4 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the \$30  
 5 fee required by this paragraph shall be collected only on the first issuance of and the  
 6 replacement of the plates; in addition, an entity sponsoring a special request specialty  
 7 organization plate may charge a fee on first issuance and renewal of the plates.

8 \* **Sec. 4.** This Act takes effect January 1, 2012.

# ALASKA STATE LEGISLATURE

## Session

State Capitol, Rm. 101  
Juneau, AK 99801  
(907) 465-2435  
Fax: (907) 465-6615

## Interim

716 W. 4<sup>th</sup> Ave, Ste. 540  
Anchorage, AK 99501  
(907) 269-0120  
Fax: (907) 269-0122



**Chair**  
State Affairs Committee

**Co-chair**  
Joint Armed Services Committee

**Vice Chair**  
Resources Committee  
Judiciary Committee

**Member**  
Administrative Regulation Review

Senator\_Bill\_Wielechowski@legis.state.ak.us

## SENATOR BILL WIELECHOWSKI

### SB 93

### Specialty License Plates

Specialty license plates are sweeping the country. By January 21, 2011, Alaska legislators had introduced bills for Choose Life, LaoVeteran, National Rifle Association, and In God We Trust specialty license plates. The 26<sup>th</sup> Legislature approved firefighter, fraternal order<sup>1</sup> and Iditarod finisher license plates and made a change in the Children's Trust specialty plate funds in a total of 15 committee meetings, entailing 9 versions of bills, and requiring one concurrent resolution.

Each license plate request takes legislative attention away from more pressing state matters and creates monetary and staff costs of drafting, duplicating, distributing, posting, scheduling, and amending. Legislatively created fundraising plates require the Division of Motor Vehicles (DMV) to track and request for re-appropriation small accounts of money. Other plates require the DMV to verify a status (such as HB 92 "the owner must present evidence satisfactory to the department that the owner served in combat as required by this subsection") to complete a transaction. Two legislatively created plates from 1998 (dog mushing and arts) have never been issued.

There is a better way. About half of the states currently allow administrative approval for license plates. The Alaska Division of Motor Vehicles supports this bill, including the effective date.

### SB 93

- Gives the Division of Motor Vehicles authority to develop a procedure for administrative review and award of specialty license plates.
- Requires DMV to develop a standard template so all specialty plates will be easily readable and recognizable for law enforcement.
- Creates standard regulations, fees and procedures that will apply to all specialty license plates.
- Will result in cost savings for the state as administrative responsibilities of confirming eligibility, collecting and accounting for funds for the non-profit, and developing the license plate artwork and design are transferred to the sponsoring organization. DMV processing of plate applications is streamlined as the applications will be submitted in batches by sponsoring organizations.
- Is revenue neutral. The \$30/vehicle specialty registration fee covers the cost of producing and issuing the specialty plates.

---

<sup>1</sup> No fraternal orders have yet applied for the plates authorized in 2010.

# ALASKA STATE LEGISLATURE

## Session

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State Affairs Committee

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Joint Armed Services Committee

**Vice Chair**  
Resources Committee  
Judiciary Committee

**Member**  
Administrative Regulation Review

## SENATOR BILL WIELECHOWSKI

### SECTIONAL ANALYSIS Senate Bill 93

#### **SECTION 1. AS 28.10.181 (bb)**

Allows the Department of Administration to develop and implement regulations to issue special request specialty license plates sponsored by Alaska organizations with IRS 501(c) tax exempt status, departments of the state and municipalities.

Directs the Department of Administration to design a standard plate design for all specialty plates.

Specifies the *regulations* must provide that the **entity requesting the license plates**:

- submit an application on a form provided by the department;
- pay a fee that is set by regulation;
- submit registration fees for at least 50 motor vehicles before the plates will be issued;
- may not be offensive in purpose, nature, activity, or name;
- may charge a fee in addition to any registration fees set by statute or regulation.

And that the *regulations*

- specify a minimum number of registrations and renewals of specialty plates;
- provide for cancellation of plates that do not meet the minimum; and
- allow a sponsoring entity at least six months notice before any proposed cancellation.
- establish procedures for vehicle owners to buy special request specialty license plates.

#### **SECTION 2. AS 28.10.421 (d)**

Sets the fee for the special request specialty license plates at \$30 upon first issuance or replacement of plates and allows a sponsoring entity to charge a fee upon first issuance and renewal of the plates.

#### **SECTION 3. AS 28.10.181 (bb)**

Establishes the effective date of January 1, 2012.

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number 1  
 Bill Version SB 93  
 (S) Publish Date 3/1/11

Identifier (file name) SB093-DOA-DMV-02-22-11 Dept. Affected Administration  
 Title Special request specialty organization plates Appropriation Division of Motor Vehicles  
 Allocation Motor Vehicles  
 Sponsor Senator Wielechowski  
 Requester Senate State Affairs OMB Component Number 2348

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES</b>							
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2011) cost \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable; initial version

Prepared by Whitney Brewster  
 Division Motor Vehicles  
 Approved by John Cramer, Deputy Commissioner  
Department of Administration

Phone 907-269-5574  
 Date/Time 2/22/11 8:00 AM  
 Date 2/22/2011

FISCAL NOTE #1

STATE OF ALASKA  
2011 LEGISLATIVE SESSION

BILL NO. SB 93

**Analysis**

This bill has no fiscal impact.

# ALASKA STATE LEGISLATURE

## Session

State Capitol, Rm. 101  
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Senator\_Bill\_Wielechowski@legis.state.ak.us



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Joint Armed Services Committee

**Vice Chair**  
Resources Committee  
Judiciary Committee

**Member**  
Administrative Regulation Review

## SENATOR BILL WIELECHOWSKI

### MEMORANDUM

**DATE:** March 22, 2011

**TO:** Representative Bob Lynn, Chair, House State Affairs Committee

**FROM:** Senator Bill Wielechowski, Chair, Senate State Affairs Committee *BW*

**SUBJ:** SB 93, Specialty License Plates, Hearing Request

I am writing to request House State Affairs consideration of SB 93, "An Act relating to special request specialty license plates" at your earliest convenience.

This legislation will provide the Division of Motor Vehicles with authority to issue regulations for the issuance of specialty license plates to standardize the process, requirements and fees, while providing for the opportunity for non-profit organizations and state and local entities to raise funds and/or awareness through specialty license plates.

The Senate unanimously passed SB 93 on Monday, March 21, 2011. The bill is sponsored by the Senate State Affairs Committee.

Thank you for your consideration of this request. Any questions you or your staff may have should be directed to me or my staff Karla Hart at 465-3723.

# Alaska State Legislature



**Chairman**  
State Affairs Committee

**Member**  
Judiciary Committee  
Energy Special Committee  
Joint Armed Services Special Committee  
Military and Veterans' Affairs Committee

**Finance Subcommittees**  
Administration  
Corrections  
Military and Veterans' Affairs

*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail:** Representative\_Bob\_Lynn@legis.state.ak.us  
**"Bob Lynn's Alaska Blog"** RepBobLynnBlog.com

**Session:**  
Alaska State Capitol #108  
Juneau, AK 99801-1182

Phone: (907) 465-4931  
Fax: (907) 465-4316  
Toll Free: (800) 870-4391

**Interim:**  
716 W. 4<sup>th</sup> Ave., #650  
Anchorage, AK 99501-2133

Phone: (907) 269-0205  
Fax: (907) 269-0207

April 6, 2011

To: House State Affairs Committee

Fr: Representative Bob Lynn, Chairman

---

## CS SB 93(STA)

In an effort to expedite the Legislature's consideration of various license plate proposals, including the new administrative process envisioned by Senator Wielechowski, the Chair is proposing a committee substitute for SB 93. CS SB 93(STA) would provide for the creation of all specialty license plates currently proposed in House legislation, and any Senate plates without a companion bill in the House. Both the description of the plates and the fees to purchase them were pulled directly from the stand-alone bills that would have created these specialty plates.

The proposed committee substitute creates five specialty request license plates, as well as adopting Sen. Wielechowski's plan to afford DMV the authority to issue specialty plates. The proposed plates that have been included in the CS are:

- "In God We Trust"
- "Choose Life"
- National Rifle Association
- Breast Cancer Awareness
- Lao Veterans

27-LS0515V  
Luckhaupt  
3/30/11

**HOUSE CS FOR SENATE BILL NO. 93(STA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE STATE AFFAIRS COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATE STATE AFFAIRS COMMITTEE**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to special request registration plates; and providing for an effective**  
2 **date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 28.10.181 is amended by adding new subsections to read:

5 (bb) Special request United States flag "In God We Trust" plates. Upon  
6 application by the owner of a motor vehicle, the department may issue registration  
7 plates with a design incorporating the flag of the United States and the motto "In God  
8 We Trust" on the plate. The commissioner shall determine the design and color of the  
9 plates. The department may disapprove the issuance of registration plates under this  
10 subsection when the requested plates are a duplication of an existing registration.

11 (cc) Special request Lao veteran plates. Upon application by the owner of a  
12 motor vehicle, the department may issue registration plates commemorating the  
13 owner's service in military operations in support of the United States in the Kingdom  
14 of Laos between February 28, 1961, and May 15, 1975. The commissioner shall

1 determine the design and color of the Lao veteran plates in consultation with veterans'  
 2 and Southeast Asian community organizations in the state. To be issued a registration  
 3 plate under this subsection, the owner must present evidence satisfactory to the  
 4 department that the owner served in military operations as required by this subsection.  
 5 The department may disapprove the issuance of registration plates under this  
 6 subsection when the requested plates are a duplicate of an existing registration.

7 (dd) Special request choose life plates. Upon application by the owner of a  
 8 motor vehicle, the department may issue registration plates with the phrase "choose  
 9 life" on the plate. The commissioner, after consulting with Alaska Choose Life, shall  
 10 determine the design and color of the plates. The department may disapprove the  
 11 issuance of registration plates under this subsection when the requested plates are a  
 12 duplication of an existing registration.

13 (ee) Special request plates commemorating the National Rifle Association.  
 14 Upon application by the owner of a motor vehicle, the department may issue  
 15 registration plates commemorating the National Rifle Association. The commissioner,  
 16 after consulting with representatives of the National Rifle Association in Alaska, shall  
 17 determine the design and color of the plates. The department may disapprove the  
 18 issuance of registration plates under this subsection when the requested plates are a  
 19 duplication of an existing registration.

20 (ff) Special request breast cancer awareness plates. Upon application by the  
 21 owner of a motor vehicle, the department may issue breast cancer awareness  
 22 registration plates. The commissioner, after consulting with the Alaska office of the  
 23 American Cancer Society, shall determine the design and color of the plates. The  
 24 department may disapprove the issuance of registration plates under this subsection  
 25 when the requested plates are a duplication of an existing registration.

26 (gg) Special request specialty organization plates. The department shall adopt  
 27 regulations to allow for the issuance of special request specialty organization  
 28 registration plates sponsored by an organization that is based in this state and is tax  
 29 exempt under 26 U.S.C. 501(c), is an Alaska chapter of a national organization that is  
 30 tax exempt under 26 U.S.C. 501(c), is a department of the state, or is a municipality of  
 31 the state. The department shall determine a common design and color for the plates

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and provide for the placement of the artwork of the organization and a short piece of descriptive text on the plate. The department may disapprove the issuance of registration plates under this subsection when the requested plates duplicate an existing registration. The regulations

- (1) must provide that the entity requesting the issuance of the plates
  - (A) submit an application on a form provided by the department;
  - (B) pay an application fee set by the department for issuance of the new registration plates;
  - (C) submit registration fees for at least 50 motor vehicles before specialty registration plates will be issued;
  - (D) may not be offensive in purpose, nature, activity, or name;
  - (E) may charge a fee for issuance of a specialty registration plate in addition to any registration fees set by statute or regulation;

(2) must provide for a minimum number of registrations and renewals of the specialty plate and for cancellation of specialty plates that do not meet that minimum; the regulations must provide that before a specialty plate may be cancelled the entity sponsoring the plate be given notice at least six months before the proposed cancellation;

(3) must establish procedures for owners of vehicles to purchase specialty registration plates under this subsection.

\* **Sec. 2.** AS 28.10.421(d)(2) is amended to read:

- (2) special request plates for
  - (A) Alaska National Guard personnel ..... \$30;
  - (B) veterans, [OR] retired veterans, or Lao veterans ..... \$30;
  - (C) recipients of the Purple Heart ..... none;
  - (D) owners of custom collector vehicles ..... \$50;
  - (E) Iditarod race finishers ..... \$50;
  - (F) other special request plates ..... \$30;

plus the fee required for that vehicle under (b) of this section; the fee required by this paragraph shall be collected only on the first issuance and on the replacement of

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special request plates;

\* **Sec. 3.** AS 28.10.421(d) is amended by adding new paragraphs to read:

(20) special request United States flag "In God We Trust" plates.. \$30 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee required by this paragraph shall be collected biennially in the same manner as the fee required under (b), (c), (h), or (i) of this section.

(21) special request choose life plates ..... \$30 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee required by this paragraph shall be collected biennially in the same manner as the fee required under (b), (c), (h), or (i) of this section; the commissioner of administration shall separately account for the fees received under this paragraph that the department deposits in the general fund; the annual estimated balance in the account that is in excess of the cost of issuing special request choose life plates may be appropriated by the legislature to programs supporting or benefiting adoption.

(22) special request National Rifle Association plates ..... \$50 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the \$50 fee required by this paragraph shall be collected only on the first issuance and the replacement of the special request plates; a \$30 fee shall be collected biennially thereafter in the same manner as the fee required under (b), (c), (h), or (i) of this section; the commissioner shall separately account for the fees received under this paragraph that the department deposits into the general fund; notwithstanding (g) of this section, the annual estimated balance in the account that is in excess of the cost of issuing special request plates may be appropriated by the legislature to establish and maintain a scholastic clay target program and for other youth shooting programs.

(23) special request breast cancer awareness plates..... \$50 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the \$50 fee required by this paragraph shall be collected only on the first issuance and the replacement of the special request plates; the commissioner shall separately account for the fees received under this paragraph that the department deposits into the general fund; notwithstanding (g) of this section, the annual estimated balance in the account that is in excess of the cost of issuing special request plates may be appropriated by

1 the legislature to programs that provide screening for breast and cervical cancer.  
 2 (24) special request specialty organization plates under  
 3 AS 28.10.181(gg)..... \$30  
 4 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the \$30  
 5 fee required by this paragraph shall be collected only on the first issuance of and the  
 6 replacement of the plates; in addition, an entity sponsoring a special request specialty  
 7 organization plate may charge a fee on first issuance and renewal of the plates.

8 \* **Sec. 4.** This Act takes effect January 1, 2012.

## Nancy Manly

---

**From:** Nancy Manly  
**Sent:** Thursday, April 07, 2011 1:18 PM  
**Subject:** FW: SB 93 - documents requested in committee  
**Attachments:** SB 93 - Supporting Document - 9th circuit court ruling.pdf; SB 93 Supporting Document - Florida U.S. District Court March 30 2011.pdf; SB 93 Supporting Document - regs and statutes for AK personalized license plates.pdf

Please show your boss. Thanks!

Nancy Manly, Chief of Staff and  
House State Affairs Committee Aide *for*  
**Representative Bob Lynn**  
**House District 31**  
907-465-2794 Fax: 907-465-4316

---

**From:** Karla Hart  
**Sent:** Thursday, April 07, 2011 11:20 AM  
**To:** Nancy Manly  
**Subject:** SB 93 - documents requested in committee

Nancy,

Attached are 3 documents regarding SB 93 discussion to forward to committee members.

- 1) A 9<sup>th</sup> Circuit Court ruling on Arizona license plates from 2005.
- 2) A Florida US District Court Ruling from a week ago – addresses issue of legislative approval of administration decision on license plates (I heard Rep. Keller might have an interest in this concept)
- 3) Alaska regulations and law regarding the Personalized License Plate Program

I will do some research on the political candidate question raised by Rep. Keller but need to first prepare for a bill before Senate Finance tomorrow morning.

Do you know if House State Affairs will have a Saturday meeting this weekend?

*Karla*

Karla Hart, Legislative Aide  
Senator Bill Wielechowski  
State Capitol, Room 413  
Juneau, Alaska 99801  
(907) 465-3723 phone  
(907) 465-6615 fax  
[karla.hart@legis.state.ak.us](mailto:karla.hart@legis.state.ak.us)

Senator Wielechowski's Main Office - Room 101  
(907) 465-2435 phone

Per Representative Gruenberg's request, below are the regulations and statutes regarding personalized plates:

Regulation:

**2 AAC 92.090. Personalized registration plates for motor vehicles.**

- (a) The department will issue personalized registration plates for motor vehicles.
- (b) The department will not issue a personalized registration plate that displays
  - (1) symbols in a combination identical to one already in use on a registration plate;
  - (2) a total of more than six or less than two symbols;
  - (3) symbols other than numbers or letters; or
  - (4) symbols in a combination that demeans an ethnic, religious, or racial group, or that is otherwise vulgar, indecent, or has sexual connotations; any combination known by the department to have a sexual connotation or to be patently offensive to a person of ordinary sensibilities will be considered vulgar or indecent; any combination known by the department to be patently offensive to an ethnic, religious, or racial group will be considered demeaning to that group.
- (c) The department will recall a personalized registration plate that the department determines is described in (b) of this section.
- (d) A registrant may not transfer a personalized registration plate to another vehicle or person, except that a registrant may transfer a plate to another vehicle registered in the registrant's name after proper application to the department.

History: Eff. 7/1/2006, Register 178

Authority: AS 28.10.021

Statutes:

**Sec. 28.10.021. Application for registration.**

- (a) The owner of a vehicle subject to registration shall apply for registration under this chapter by properly completing the form prescribed by the commissioner under AS 28.05.041. Before the issuance of a certificate of registration by the department, the owner shall
  - (1) pay all registration fees and taxes required under this chapter and federal heavy vehicle use taxes required under 26 U.S.C. 4481 (Internal Revenue Code of 1954);
  - (2) unless the owner qualifies as a self-insurer under AS 28.20.400 or is exempted from obtaining liability insurance under AS 28.22.011, certify to the department the existence of a motor vehicle liability policy that complies with AS 28.22.011 for the vehicle being registered; in this paragraph, "certify" means to indicate by check-off on the vehicle registration form prescribed by the department the existence of a policy of insurance, if a policy is required at that time, and the intention to continue the policy or obtain a policy as required by this subsection; and
  - (3) comply with other applicable statutes and regulations.

- (b) At the time of application for registration or renewal of registration, the department shall provide the applicant written information explaining the state's financial responsibility law.
- (c) An employee of the department who processes an application for registration or renewal of registration, other than an application received by mail or an application for registration under AS 28.10.152, shall ask the applicant orally whether the applicant wishes to execute an anatomical gift. The department shall make known to all applicants the procedure for executing an anatomical gift under AS 13.52 (Health Care Decisions Act) by displaying posters in the offices in which applications are taken, by providing a brochure or other written information to each person who applies in person or by mail, and, if requested, by providing oral advice. The department shall inform each applicant in writing that, if the applicant executes a gift under AS 13.52 and if the gift is made with the registration application, the department will transmit the information on the registration to a donor registry created under AS 13.50.110. The department shall also direct the applicant to notify a procurement organization or the department under AS 13.50.140 if the registration is destroyed or mutilated or the gift is revoked under AS 13.52.183. The department shall carry out the requirements of AS 13.50.100 - 13.50.190.

**Sec. 28.10.181. Registration of unique and special vehicles and vehicles used for special purposes.**

- (a) The department shall register unique and special vehicles and vehicles used for special purposes and issue registration plates as provided in this section. Notwithstanding other provisions of this chapter, registration plates issued under this section remain with the person or organization to whom they are issued when vehicle ownership is transferred or title or interest in the vehicle is assigned, except for plates issued under (b), (h) and (i) of this section. Registration plates issued under this section may not be used on, or transferred to, a vehicle other than the vehicle for which the plates are issued without the approval of the department and payment of any required fees and taxes prescribed in AS 28.10.421 (d), 28.10.431, and 28.10.441. Registration plates issued under this section to which a person is no longer entitled or the transfer of the plates to another vehicle that the department does not approve shall be returned immediately to the department by the person or organization to whom the plates were originally issued.

Please let me know if you need anything else.

Stacy

*Stacy Oates*

*DMV Administrative Officer*

*1300 W Benson Blvd Ste 400, Anchorage, AK 99503-3392*

*Ph: 907-269-3782 Fx: 907-333-8615 fax [Stacy.Oates@Alaska.gov](mailto:Stacy.Oates@Alaska.gov)*

Slip Copy, 2011 WL 1233091 (M.D.Fla.)  
(Cite as: 2011 WL 1233091 (M.D.Fla.))

Only the Westlaw citation is currently available.

United States District Court, M.D. Florida,  
Orlando Division.  
SONS OF CONFEDERATE VETERANS, FLORIDA  
DIVISION, INC., John W. Adams, Plaintiffs,  
v.  
Jeffrey H. ATWATER, Ray Sansom, Andy Gardiner,  
Richard Glorioso, Michael Davis, Electra Theodorides–Bustle, Defendants.

No. 6:09–cv–134–Orl–28KRS.  
March 30, 2011.

### ORDER

JOHN ANTOON II, District Judge.

\*1 The Sons of Confederate Veterans, Florida Division (“SCV”) and its vice president, John W. Adams (“Adams”) (collectively “Plaintiffs”), challenge the constitutionality of statutes establishing Florida’s specialty license plate program. This challenge arises as a result of the Florida Legislature’s failure to approve issuance of SCV’s proposed “Confederate Heritage” specialty plate featuring depictions of five Confederate flags and two coat buttons worn by Confederate soldiers from Florida.<sup>FN1</sup> Plaintiffs contend that Florida’s specialty license plate program constitutes a public forum for private speech. Plaintiffs further argue that the Florida Statutes grant unfettered discretion to the Florida Legislature to limit speech in violation of the rights of SCV’s members to free speech and equal protection as guaranteed by the First and Fourteenth Amendments to the United States Constitution. I agree. Florida’s specialty license plate program implicates private speech rights, and section 320.08053, Florida Statutes (2009), is unconstitutional to the extent it grants the Florida Legislature discretion to decline approval of an application for a specialty license plate based on the sponsor’s viewpoint.

<sup>FN1</sup>. Defendant Electra Theodorides–Bustle has filed a Dispositive Motion to Dismiss, Dispositive Motion for Judgment on the Pleadings, and Dispositive Motion for Summary Judgment (Doc. 28). This order addresses those motions and Plaintiff’s response thereto (Doc. 29).

### Background<sup>FN2</sup>

<sup>FN2</sup>. The parties stipulated to the factual statements contained in the Background Section. (See Doc. 35–1).

In 1995, the Florida Legislature (“Legislature”) established a scheme for the creation of “specialty license plates.”<sup>FN3</sup> An organization wishing to establish a specialty license plate under this statutory scheme must submit to the Department of Highway Safety and Motor Vehicles (“the Department”): (1) a request for the specialty plate being sought, describing the proposed license plate in specific terms, including a sample plate; (2) a scientific survey indicating that at least 30,000 motor vehicle owners intend to purchase the proposed license plate; (3) an application fee, not to exceed \$60,000, to defray the costs incurred by the Department in the review of the application and development of the specialty license plate; and (4) a marketing strategy and financial analysis outlining the anticipated revenues and the planned expenditures of the revenues generated by the specialty plate.<sup>FN4</sup> § 320.08053(1), Fla. Stat. If these requirements are satisfied, the Department submits the plan to the Legislature, and a specialty plate may then be created through passage of legislation amending sections 320.08056 and 320.08058. However, the statutory scheme is not specific as to how such enactment is to occur or what criteria—if any—are to be applied in the process. In commenting on the enactment process, the Eleventh Circuit has noted that “[i]f the sponsoring organization satisfies the[ ] requirements [of section 320.08053(1) ],” the Legislature “has unfettered discretion to enact a law authorizing the specialty plate, or to reject the plan *in toto*.” Women’s Emergency Network v. Bush, 323 F.3d 937, 941 (11th Cir.2005) (citations omitted) (emphasis in original).

<sup>FN3</sup>. The statutory provisions relevant to the present action include sections 320.08053, 320.08056, and 320.08058, Florida Statutes. While section 320.08053 was amended effective September 1, 2010, the amended version of the statute does not apply to organizations that submitted a letter of intent to the Department prior to May 2, 2008 and a

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valid survey, marketing strategy, and application prior to October 1, 2008. Ch.2010–223, §§ 21–23, 49 Laws of Fla. SCV submitted the required documentation prior to May 2, 2008. (Doc. 35–1 ¶ 11). As a result, the version of section 320.08053 effective September 1, 2010, does not apply to SCV's application for the "Confederate Heritage" specialty license plate. Rather, section 320.08053, Florida Statutes (2009), is applicable because it contains the language that was in effect in 2008 when SCV submitted its application. For ease of reference, section 320.08053, Florida Statutes (2009), will be discussed in the remainder of the Order without citation to year, i.e., "section 320.08053" or "§ 320.08053, Fla. Stat."

FN4. Section 320.08053 provides:

- (1) An organization that seeks authorization to establish a new specialty license plate for which an annual use fee is to be charged must submit to the department:
  - (a) A request for the particular specialty license plate being sought, describing the proposed specialty license plate in specific terms, including a sample plate that conforms to the specifications set by the department and this chapter, and that is in substantially final form.
  - (b) The results of a scientific sample survey of Florida motor vehicle owners that indicates at least 30,000 motor vehicle owners intend to purchase the proposed specialty license plate at the increased cost....
  - (c) An application fee, not to exceed \$60,000, to defray the department's cost for reviewing the application and developing the specialty license plate, if authorized....
  - (d) A marketing strategy outlining short-term and long-term marketing plans for the requested specialty license plate and a financial analysis outlining the anticipated revenues and the planned ex-

penditures of the revenues to be derived from the sale of the requested specialty license plates.

The information required under this subsection must be submitted to the department at least 90 days before the convening of the next regular session of the Legislature.

(2) If the specialty license plate requested by the organization is approved by law, the organization must submit the proposed art design for the specialty license plate to the department, in a medium prescribed by the department, as soon as practicable, but no later than 60 days after the act approving the specialty license plate becomes a law. If the specialty license plate requested by the organization is not approved by the Legislature, the application fee shall be refunded to the requesting organization.

SCV is a Florida corporation, (Doc. 35–1 ¶ 1), and its membership is comprised of descendants of those who fought in the armed forces of the Confederate States of America during the Civil War, (*id.* ¶ 2). Adams is a member and vice president of SCV and the chairman of SCV's "Confederate Heritage Plate Program." (*Id.* ¶¶ 4, 6). Pursuant to the statutory scheme set forth in section 320.08053, SCV filed the requisite application materials with the Department for the establishment of a "Confederate Heritage" specialty license plate. (*Id.* ¶ 11). Defendants do not argue that SCV has failed to comply with the statutory requirements for submission of the "Confederate Heritage" plate.

\*2 On February 26, 2008, State Representative Donald Brown introduced House Bill 1159 to amend sections 320.08056 and 320.08058 to establish the proposed "Confederate Heritage" license plate. (*Id.* ¶ 13). The Department subsequently notified the staff directors of the House Infrastructure Committee and the Senate Transportation Committee that SCV had satisfied the statutory application requirements set forth in section 320.08053 for the creation of the proposed "Confederate Heritage" license plate. (*Id.* ¶ 12). However, no action was taken on House Bill 1159 in the 2008 legislative session, and the Legislature has taken no further action regarding House Bill 1159 to

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date. (*Id.* ¶ 14). As a result, the proposed “Confederate Heritage” license plate has not been established.<sup>FN5</sup>

<sup>FN5</sup>. On June 17, 2008, the Legislature enacted a moratorium on the issuance of new specialty license plates, effective October 1, 2008. Ch.2008–176, § 45, Laws of Fla. The moratorium does not apply to proposals submitted to the Department prior to May 2, 2008 or included in a bill filed during the 2008 Legislative Session, *id.*, and therefore does not apply to SCV's application for the establishment of a “Confederate Heritage” specialty plate.

#### Analysis

Plaintiffs challenge the constitutionality of Florida's specialty license plate program, arguing that it gives the Legislature “unfettered discretion” over the specialty license plate approval process in violation of the First Amendment, (Compl., Doc. 1, ¶ 38), and that therefore either the violative portions should be severed or sections 320.08053, 320.08056, and 320.08058 should be declared “unconstitutional *in toto*,”<sup>FN6</sup> (*id.* ¶ 39). Defendant Electra Theodorides–Bustle (“Defendant”),<sup>FN7</sup> responds that Florida's specialty license plate program does not violate the First Amendment because “specialty plates are government speech under Florida's statutory scheme, and government speech is not subject to scrutiny under the Free Speech Clause of the United States Constitution.” (Doc. 28 at 2). In the alternative, Defendant also moves for judgment on the grounds that: (1) this Court lacks subject matter jurisdiction under the Tax Injunction Act, 28 U.S.C. § 1341; (2) the present action is barred by the Eleventh Amendment to the United States Constitution; and (3) Plaintiffs fail to state a claim against the Defendant upon which relief may be granted. (*Id.* at 1–2). A hearing was held on the motion on August 18, 2010, (Doc. 46), during which the parties agreed that a trial is not necessary and that the dispositive issue in this case is whether the speech at issue is government speech or private speech.

<sup>FN6</sup>. The Complaint lists section 320.08056 twice in paragraph 39 but does not list section 320.08058. Because a number of other paragraphs in the Complaint attack the validity of section 320.08058, I will consider the repetition of section 320.08056 to be a scrivener's error and construe paragraph 39 as

attacking both sections 320.08056 and 320.08058. (*See, e.g.*, Compl. ¶¶ 8, 10, 28, 38).

<sup>FN7</sup>. Plaintiffs initially named all of the following as Defendants: Jeffrey Atwater, President of the Florida Senate; Larry Cretul, Speaker of the Florida House of Representatives; Andy Gardiner, Chairman of the Senate Transportation Committee; Richard Glorioso, Chairman of the House Committee on Infrastructure (collectively, “the Legislator–Defendants”); and Electra TheodoridesBustle, Executive Director of the Department, all of whom were sued solely in their official capacities. (Doc. 1). Legislator–Defendants and Defendant Theodorides–Bustle filed separate motions to dismiss. (Docs.10, 11). While the Legislator–Defendants were found to enjoy absolute legislative immunity and all claims against them were dismissed, Theodorides–Bustle's Motion to Dismiss was denied. (Doc. 24 at 13). Subsequently, Theodorides–Bustle filed the present Dispositive Motion to Dismiss, Dispositive Motion for Judgment on the Pleadings, and Dispositive Motion for Summary Judgment. (Doc. 28).

### I. First Amendment

#### A. Distinguishing Government Speech from Private Speech

The constitutionality of Florida's specialty license plate program does indeed turn on whether messages contained on the specialty license plates constitute private speech, to which First Amendment protections apply, or government speech, which is “exempt from First Amendment scrutiny.” Johanns v. Livestock Mktg. Ass'n, 544 U.S. 550, 553 (2005). “A government entity has the right to speak for itself. It is entitled to say what it wishes and to select the views that it wants to express.” Pleasant Grove City, Utah v. Sumnum, 129 S.Ct. 1125, 1131 (2009) (internal citations, quotations, and alteration omitted). The same is true when a government entity “receives assistance from private sources for the purpose of delivering a government-controlled message.” *Id.* (citing Johanns, 544 U.S. at 562 (where the government controls the message, “it is not precluded from relying on the

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government-speech doctrine merely because it solicits assistance from nongovernmental sources”). Thus, where the government “engag[es] in [its] own expressive conduct, ... the Free Speech Clause has no application.” *Id.*

\*3 On the other hand, “government entities are strictly limited in their ability to regulate private speech in ... ‘traditional public fora.’” *Id.* at 1132 (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985)). “Reasonable time, place, and manner restrictions are allowed, but any restriction based on the content of the speech must satisfy strict scrutiny, that is, the restriction must be narrowly tailored to serve a compelling government interest.” *Id.* (internal citations omitted). Restrictions based on viewpoint are strictly prohibited. *Id.* In addition to traditional public fora, the Supreme Court has also recognized that a “government entity may create ‘a designated public forum’ if government property that has not traditionally been regarded as a public forum is intentionally opened up for that purpose.” *Id.* (citing *Cornelius*, 473 U.S. at 802). Government speech restrictions in a designated public forum are “subject to the same strict scrutiny as restrictions in a traditional public forum.” *Id.*

A third type of public forum recognized by the Supreme Court is the “limited public forum.” *Christian Legal Soc’y v. Martinez*, 130 S.Ct. 2971, 2984 n. 11 (2010) (citing *Summum*, 129 S.Ct. at 1132). Government entities establish a limited public forum by opening government property for public speech but limiting the use of the government property to certain groups or dedicating it “solely to the discussion of certain subjects.” *Summum*, 129 S.Ct. at 1132 (citing *Perry Educ. Ass’n*, 460 U.S. at 46 n. 7). Speech restrictions imposed by the government in limited public fora, while not subject to strict scrutiny, must be reasonable and viewpoint-neutral. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106–07 (2001).

The Supreme Court has yet to set forth a specific framework for differentiating government speech from private speech, leaving some question as to the appropriate standard to apply in analyzing Florida’s specialty license plate program. However, its analyses in *Johanns* and *Summum*, along with several circuit court cases discussing government speech versus private speech in the context of specialty license plate programs, provide some guidance.

In 2005, the Supreme Court addressed the distinction between government and private speech in determining whether a federal program requiring beef producers to finance promotional messages to support the beef industry violates the First Amendment. *Johanns*, 544 U.S. at 554. The *Johanns* Court held that where “the government sets the overall message to be communicated and approves every word that is disseminated, it is not precluded from relying on the government-speech doctrine merely because it solicits assistance from nongovernmental sources in developing specific messages.” <sup>FN8</sup> *Id.* at 562. In reviewing the legislation creating the beef promotion program, the Supreme Court noted that “Congress and the Secretary [of Agriculture] ... set out the overarching message and some of its elements.” *Id.* at 561. While Congress “left the development of the remaining details to an entity whose members are answerable to the Secretary, ... the Secretary exercise[d] final approval authority over every word used in every promotional campaign.” *Id.* Under this legislative scheme, “[t]he message set out in the beef promotions [was] from beginning to end the message established by the Federal Government” and therefore government speech. *Id.* at 560.

<sup>FN8</sup>. The *Johanns* court did acknowledge that “[o]n some set of facts,” the respondents may be able to establish an as-applied compelled speech challenge if it were established “that individual beef advertisements were attributed to respondents” rather than the government. 554 U.S. at 564–65.

\*4 More recently, the Supreme Court distinguished government speech from private speech in the context of city park monuments. *Summum*, 129 S.Ct. at 1132. In *Summum*, the respondents challenged the city’s refusal to place a permanent monument donated by Summum, a religious organization, in a public park.<sup>FN9</sup> *Id.* at 1130. The 2.5-acre park already contained fifteen such permanent displays, at least eleven of which were donated by private groups or individuals. *Id.* The city rejected the respondents’ monument because it did not comport with the city’s policy of only accepting monuments that either “(1) directly relate[d] to the history of [the city], or (2) were donated by groups with longstanding ties to the ... community.” *Id.* at 1130. The *Summum* Court found that “[p]ermanent monuments displayed on public

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property typically represent government speech,” and noted two particularly relevant characteristics of permanent monuments. *Id.* at 1132. First, the government is clearly identifiable as the speaker. Regardless of whether a monument is government-commissioned and financed or privately-financed and donated, it is apparent that it is the government speaking—rather than a private party—because “[g]overnments have long used monuments to speak to the public,” and the monument is on government-owned property. *Id.* at 1133. Second, the government maintained extensive control over “the messages sent by the monuments.” *Id.* Specifically, the government “exercised selectivity” and “editorial control” over the monuments and “[took] care in accepting donated monuments.” *Id.* In light of these characteristics, city park monuments were found to communicate government speech.

**FN9.** On two separate occasions, Summum’s president wrote a letter to the city’s mayor requesting permission to erect a stone monument that would contain “the Seven Aphorisms of SUMMUM” and be similar in size and nature to the Ten Commandments monument already displayed in the park. *Summum*, 129 S.Ct. at 1129–30.

Both before and after the Supreme Court’s decisions in *Johanns* and *Summum*, several circuit courts have specifically addressed the issue of distinguishing government speech from private speech in the context of specialty license plates and developed three general approaches to doing so. Prior to the *Johanns* and *Summum* decisions, the Fourth Circuit decided *Sons of Confederate Veterans, Inc. v. Commissioner of the Virginia Department of Motor Vehicles*, 288 F.3d 610 (4th Cir.2002), where it laid out the first of these approaches: the SCV factors. The SCV factors are a nonexhaustive list of factors used to determine the nature of the messages communicated on specialty plates and include:

- (1) the central “purpose” of the program in which the speech in question occurs; (2) the degree of “editorial control” exercised by the government or private entities over the content of the speech; (3) the identity of the “literal speaker”; and (4) whether the government or the private entity bears the “ultimate responsibility” for the content of the speech
- ....

*Id.* at 618–19 (citing *Wells v. City & Cnty. of Denver*, 257 F.3d 1132, 1141 (10th Cir.2001)). The SCV factors were subsequently adopted by the Ninth Circuit in *Arizona Life Coalition Inc. v. Stanton*, 515 F.3d 956, 965 (9th Cir.2008), which was decided after *Johanns* but prior to *Summum*.

\*5 The Seventh Circuit has found the SCV factors instructive but has opted to “simplif[y]” the inquiry. *Choose Life of Ill., Inc. v. White*, 547 F.3d 853, 863 (7th Cir.2008). In *White*, which was also decided after *Johanns* but prior to *Summum*, the Seventh Circuit adopted the “reasonable person” standard, which “focus[es] on the following inquiry: [u]nder all the circumstances, would a reasonable person consider the speaker to be the government or a private party?” **FN10** *Id.* at 863. The Eighth Circuit also adopted the “reasonable person” standard in *Roach v. Stouffer*, 560 F.3d 860 (8th Cir.2009), stating that the government speech analysis involves “one key question: whether, under all the circumstances, a reasonable and fully informed observer would consider the speaker to be the government or a private party.” *Id.* at 867. Although *Roach* was decided approximately one month after *Summum*, the *Roach* court merely mentioned *Summum* in a footnote, stating that the *Summum* decision did not require a different outcome because “[u]nlike monuments displayed in public parks, specialty license plates that advertise the name or motto of a private organization facilitate expressive conduct on the part of the organization and its supporters, not the government.” *Roach*, 560 F.3d at 868 n. 3. The *Roach* court provided no further analysis of the *Summum* decision.

**FN10.** A similar inquiry was later adopted by Justice Souter in his concurrence to *Summum*, where he opined that “the best approach that occurs to me is to ask whether a reasonable and fully informed observer would understand the expression to be government speech, as distinct from private speech the government chooses to oblige.” *Summum*, 129 S.Ct. at 1142 (Souter, J., concurring).

Finally, the Sixth Circuit has provided the third approach to distinguishing government speech from private speech: the control approach. In *American Civil Liberties Union of Tennessee v. Bredesen*, 441

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F.3d 370 (6th Cir.2006), which was decided after *Johanns* but before *Summum*, the Sixth Circuit found that the Supreme Court's decision in *Johanns* dictated that the linchpin of the government speech inquiry was the degree of control the government had over the speech. *Id.* at 375 (“[W]hen the government determines an overarching message and retains power to approve every word disseminated at its behest, the message must be attributed to the government for First Amendment purposes.”).

Informed by the Supreme Court's efforts to define the contours of the government speech doctrine in *Johanns* and *Summum*, as well as the analysis of specialty license plates set forth in other circuits, I decline to wholly adopt any of the three approaches developed in the other circuits. The SCV factors were developed prior to the Supreme Court's decision in *Summum*, and the *Summum* Court neither adopted the SCV factors in name nor addressed three of the four factors in distinguishing government and private speech. *Summum*, 129 S.Ct. at 1132–34. Furthermore, while the “reasonable person” standard was presented in Justice Souter's concurrence to *Summum*, it was not adopted by the *Summum* majority and therefore will not be adopted here. *Id.* at 1141–42. Additionally, while I agree with the Sixth Circuit that the degree of government control is a consideration in distinguishing private speech from government speech, the Supreme Court in *Summum* made clear that it is not the sole factor. Instead, I conclude that the two considerations discussed in *Summum* provide the appropriate framework for distinguishing government speech from private speech in the context of Florida's specialty license plate program. These considerations are: (1) how easily the government is identified as the speaker, and (2) how much control the government has over the message communicated. *Id.* The more easily the government is identified as the speaker and the greater the government's control over the message communicated, the more likely the message is to be government speech. *Id.*

\*6 The first consideration—the ease with which the government could be identified as the speaker—indicates that specialty license plates are private, rather than government, speech. When the *Summum* Court addressed this consideration, it noted that when permanent monuments are displayed on public property, there is “little chance that observers will fail to appreciate the identity of the speaker” as the gov-

ernment.<sup>FN11</sup> *Id.* at 1133. In contrast, when specialty license plates are placed on private vehicles, there is little chance that observers will appreciate the identity of the speaker as the government.

FN11. In his concurrence, Justice Stevens noted that it was a “near certainty that observers will associate permanent displays with the governmental property owner.” *Summum*, 129 S.Ct. at 1139 (Stevens, J. concurring) (emphasis added).

“The most obvious speakers in the specialty-plate context are the individual vehicle owners who choose to display the specialty plates and the sponsoring organizations whose logos or messages are depicted on the plates.” *White*, 547 F.3d at 863–64. Unlike permanent monuments, which “governments have long used to speak to the public,” *Summum*, 129 S.Ct. at 1132, specialty “plates serve as ‘mobile billboards’ for the [sponsoring] organizations and like-minded vehicle owners to promote their causes,” *White*, 547 F.3d at 863. With more than 110 specialty plates available to Florida vehicle owners, it is unlikely that the State of Florida would be identified as the speaker communicating each of the messages contained in the specialty plates. See *Roach*, 560 F.3d at 868 (“[T]he wide variety of available specialty plates further suggests that the messages on specialty plates communicate private speech.”). Additionally, because specialty license plates are voluntary rather than compulsory, private individuals—rather than the government—choose which message, if any, they want to communicate. Under these circumstances, observers will not appreciate the identity of the speaker to be the State of Florida. See *Bredesen*, 441 F.3d at 370 (Boyce, J., concurring in part and dissenting in part) (finding it illogical that the Tennessee government would decide to establish a specialty license plate promoting the University of Florida—the University of Tennessee's arch-rival in football—and stating that “it is a nice academic exercise to hypothesize that the license plate program is a governmental program to disseminate through private volunteers all of the state's various messages, but it seems to me to be a conclusion that only judges banished to our ivory towers and shut off from the real world could reach”).

The second consideration—the degree of government control over the message communi-

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cated—also indicates that Florida's specialty license plate program provides a venue for private speech, not government speech. Although the Department maintains final approval authority over the license plate, the substance of the message communicated originates with and is developed by the sponsoring organization. Compare *Johanns*, 544 U.S. at 561 (noting that the Secretary's role in the beef campaign extended beyond granting final approval or rejection; government officials “also attend[ed] and participat[ed] in the open meetings at which proposals [we]re developed”), with *Sons of Confederate Veterans*, 288 F.3d at 621 (noting that Virginia's license plate design criteria “do[ ] not contain guidelines regarding the substantive content of the plates or any indication of reasons, other than failure to comply with size and space restrictions, that a special plate design might be rejected”).

\*7 Under Florida's statutory scheme, the sponsoring organization submits a description of the proposed license plate, a proposed art design, and a sample plate in “substantially final form” to the Department. § 320.08053(1)(a), (2), Fla. Stat. Furthermore, although the Department is “responsible” for the development of the specialty license plates, *id.* § 320.08056(1), and there are some general guidelines regarding the design of certain specialty license plates, *see, e.g., id.* § 320.08058(3)(a) (“Collegiate license plates must bear the colors and design approved by the department as appropriate for each state and independent university.”), the relevant statutes do not contain any guidelines or criteria relating to the substantive content of specialty plates established under section 320.08053. Therefore, the substance of the messages communicated through specialty license plates created under section 320.08053 originates with the sponsoring organization, not the Legislature. Cf. *Planned Parenthood of S.C. v. Rose*, 361 F.3d 786, 793 (4th Cir.2004) (finding that South Carolina's “Choose Life” license plate communicated government speech where the plate “originated with the State, and the legislature determined that the plate will bear the message ‘Choose Life’ ”). Accordingly, the sponsoring organization—rather than the State of Florida—maintains control over the message communicated by specialty license plates.

As the previous discussion demonstrates, specialty license plates established under section 320.08053 implicate private speech rights.<sup>FN12</sup> Therefore, the statutory scheme creating Florida's

specialty license plate program must be analyzed<sup>FN13</sup> to determine if it allows the State to engage in viewpoint discrimination.<sup>FN14</sup> “The danger giving rise to [this] First Amendment inquiry is that the government is silencing or restraining a channel of speech ....” *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 763 (1988). “This danger is at its zenith when the determination of who may speak and who may not is left to the unbridled discretion of a government official.” *Id.* “[W]ithout standards governing the exercise of discretion, a government official may decide who may speak and who may not based upon the content of the speech or viewpoint of the speaker.” *Id.* at 763–64.

<sup>FN12.</sup> Based on this finding, SCV's claim that the Florida specialty plate program violates its equal protection rights under the Fourteenth Amendment need not be addressed.

<sup>FN13.</sup> The Supreme Court has expressed disfavor for facial challenges because they “often rest on speculation” and “raise the risk of ‘premature interpretation of statutes on the basis of factually barebones records.’” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008) (citing *Sabri v. United States*, 541 U.S. 600, 609 (2004)). Facial challenges may “also run contrary to the fundamental principle of judicial restraint” and may “short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution.” *Id.* Nonetheless, a facial challenge on overbreadth grounds is permissible where there exists “a realistic danger that the statute itself will significantly compromise recognized First Amendment rights of parties not before the Court.” *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 801 (1984). In the present case, the Florida specialty license plate program fails to provide any standards to channel the Legislature's discretion to amend the relevant statutes to establish specialty plates proposed under section 320.08053. Such unbridled discretion creates a realistic danger that the statute would significantly compromise the First Amendment rights of any number of parties not currently

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before the Court. While section 320.08053 was amended effective September 1, 2010, the version of the statute at issue in the present case continues to apply to organizations exempt from the moratorium under Section 45, and the Defendant does not argue or present any evidence to suggest that Section 45 applies only to SCV. Indeed, at oral argument, the parties agreed that a facial challenge was appropriate in the present action. (Doc. 46).

FN14. Normally, a forum analysis would be undertaken at this juncture to determine whether section 320.08053 creates a traditional public forum, a designated public forum, or a limited public forum. *See, e.g., White*, 547 F.3d at 864–65. However, because section 320.08053 fails to prevent viewpoint discrimination, as discussed below, the statute is unconstitutional in any public forum. Accordingly, the type of public forum created by section 320.08053 need not be determined at this juncture. *See Roach*, 560 F.3d at 868 n. 4 (“[B]ecause we find that the statute unconstitutionally failed to provide standards or guidelines to prevent viewpoint discrimination, we need not [conduct a forum analysis].”).

The Florida specialty license plate program allows the Legislature to engage in exactly this type of dangerous viewpoint discrimination. The statutory scheme provides instructions for submitting the license plate applications to the Legislature, § 320.08053(1)(d), Fla. Stat., and details the steps required if the application is approved, id. § 320.08053(2), but it omits any criteria to guide the Legislature in deciding whether to approve the application or not. Consequently, the Legislature retains unfettered discretion to decline or approve a request for a specialty license plate based solely on the sponsoring organization's viewpoint, and therefore the provisions of section 320.08053 granting this unfettered discretion are unconstitutional. <sup>FN15</sup> *See Women's Emergency Network*, 323 F.3d at 941.

FN15. The provisions of section 320.08053 granting the Legislature unfettered discretion to decline to approve a proposed specialty license plate include the last line of subsec-

tion 320.08053(1) and subsection 320.08053(2) in its entirety.

#### **B. Severability of Section 320.08053**

\*8 Plaintiffs contend that the offending provisions of section 320.08053—the last sentence of subsection 1 and subsection 2 in its entirety—should be severed from the remainder of section 320.08053 and that a mandatory injunction should be issued directing Defendant to authorize the “Confederate Heritage” license plate without legislative approval. As discussed below, however, the provisions are not severable.

State law determines the severability of a state statute. *Seay Outdoor Adver., Inc. v. City of Mary Esther*, 397 F.3d 943, 949 (11th Cir.2005) (citing *Plain Dealer Publ'g Co.*, 486 U.S. at 772). Under Florida law, when a portion of a statute is declared unconstitutional, the remainder of the statute will be permitted to stand, provided:

(1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provision can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the valid provisions are stricken.

*Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So.2d 503, 518 (Fla.2008) (quoting *Cramp v. Bd. of Pub. Instruction*, 137 So.2d 828, 820 (Fla.1962)). Plaintiffs maintain that the proposed severance is appropriate because it would remove the unconstitutional provisions of 320.08053 and leave in place an administrative route through which the Department would be required to approve any specialty license plate applications properly submitted by sponsoring organizations. I disagree.

Section 320.08053 requires a sponsoring organization to submit an application to the Department, and after the Department ensures that the application is complete, it submits the application to the Legislature. The Department has no authority under section 320.08053 to do anything else with the application until it is approved by the Legislature. Therefore, if section 320.08053 were to be severed in the manner

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proposed by Plaintiffs, the result would not be to simply remove the Legislature's discretion and make the approval of specialty license plates purely administrative; rather, severance in that manner would remove the mechanism for approving new specialty license plate applications filed under section 320.08053 altogether.

No other section of the Florida Statutes provides a mechanism for approving specialty license plate applications. Section 320.08056 states that “[t]he department is responsible for developing the specialty license plates **authorized in s. 320.08053,**” § 320.08056(1), Fla. Stat. (emphasis added). It then explains the process of issuing those license plates to the individual owners or lessees of motor vehicles including the fees and taxes required for each plate. Id. § 320.08056(2)-(5), (7), (10)-(11). Section 320.08056 also addresses the design, renewal, and discontinuance of specialty license plates that have been approved pursuant to section 320.08053. Id. § 320.08056(6), (8)-(9), (12). Nowhere, however, does section 320.08056 provide an independent process for approving specialty license plates. In other words, section 320.08056 only provides a framework for the Department to follow when issuing and regulating those specialty license plates that have already been approved by the Legislature under section 320.08053. Similarly, section 320.08058 merely lists the specialty license plates that have been approved by the Legislature pursuant to the process set out in section 320.08053 and authorizes the Department to issue them; it does not provide its own approval process.

\*9 The remaining provisions of section 320.08053, even when combined with sections 320.08056 and 320.08058, fail to create “an act complete in itself.” <sup>FN16</sup> Cramp, 137 So.2d at 830. In addition, the legislative purpose expressed in the remaining provisions of § 320.08053—establishing specialty license plates through an application process—could not be accomplished independent of the void provisions. See Lawnwood, 990 So.2d at 518 (finding the statute at issue could not be severed where the statute would not be “an act complete in itself, once the invalid portions are severed, that would accomplish what the legislature so clearly intended”). Accordingly, under Florida law, the unconstitutional provisions of section 320.08053 cannot be severed from the remainder of the section, rendering section 320.08053 void in its entirety.

<sup>FN16</sup> Plaintiffs cite *Roach v. Stouffer* in support of their contention that section 320.08053 is severable. In *Roach*, the Eighth Circuit found the unconstitutional provisions to be severable from the remainder of the specialty license plate statutory scheme where the remaining provisions provided “sufficient statutory authority [ ] for the Department of Revenue to issue specialty license plates after receiving the approval of the Joint Committee.” 560 F.3d at 871. Here, the remaining provisions of section 320.08053 would not similarly provide a mechanism for issuing specialty license plate applications filed under section 320.08053.

Plaintiffs contend that if the unconstitutional provisions of section 320.08053 cannot be severed, then the entire specialty license plate scheme—sections 320.08053, 320.08056, and 320.08058—should be declared “unconstitutional *in toto*.” (Doc. 38 at 14). Plaintiffs maintain that “[t]o do otherwise means leaving in place a system which inhibits free speech rights by conditioning that speech on obtaining a license or permit from a government official in that official's boundless discretion.” (*Id.*).

Notwithstanding Plaintiffs' characterization of the Florida specialty license plate program as a “system” encompassing sections 320.08053, 320.08056, and 320.08058, Plaintiffs fail to allege that either section 320.08056 or section 320.08058 grants the Legislature unfettered discretion to approve or deny applications for specialty license plates. In fact, as noted above, neither section 320.08056 nor section 320.08058 discusses any approval process of specialty license plates except for referencing the one set forth in section 320.08053. A finding that section 320.08053 is void in its entirety, therefore, does not necessitate a finding that sections 320.08056 and 320.08058 are also unconstitutional. Moreover, it is unclear that Plaintiffs would have standing to challenge the constitutionality of sections 320.08056 and 320.08058, as they have not alleged any specific harm, either actual or imminent, arising from these particular statutory provisions. See Women's Emergency Network, 323 F.3d at 947 (finding the appellants lacked standing to challenge Florida's “Choose Life” specialty plate statute, section 320.08058(30), because the “Choose Life statute does not in any way restrict or prohibit

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Appellants' speech. Nothing in the Choose Life statute prevents Appellants from applying for or gaining entrance to the specialty license plates forum. The First Amendment protects the right to speak; it does *not* give Appellants the right to stop others with opposing viewpoints from speaking.” (emphasis in original).

## II. Motion to Dismiss for Failure to State a Claim and Eleventh Amendment Immunity

\*10 Although the Defendant agrees that disposition of this case turns on whether the messages communicated by specialty license plates are private speech or government speech, she has not waived other arguments previously raised. Specifically, Defendant contends that even if the specialty license plate statute is unconstitutional, the Complaint fails to allege that Defendant did anything, or failed to do anything, that violated the Plaintiffs' rights under the First Amendment or any other provision of law and therefore, the complaint should be dismissed because the Plaintiffs can prove no set of facts that would entitle them to relief. (Doc. 28 at 10) Additionally, Defendant argues that this is a suit against the state of Florida and therefore it should be dismissed because it is barred by the Eleventh Amendment. (*Id.* at 8–10). Defendant's arguments are unpersuasive.<sup>FN17</sup>

<sup>FN17</sup> Defendant also argues that this Court lacks subject matter jurisdiction over the present action under the Tax Injunction Act, 28 U.S.C. § 1531, because “[d]eclaring sections 320.08056 and 320.08058 to be unconstitutional will prohibit the State of Florida from collecting the fees set forth in section 320.08056.” (Doc. 28 at 2–3). Defendant further maintains that the Eleventh Amendment bars the present action because a declaration that section 320.08056 is invalid would result in a monetary loss resulting from a past breach of a legal duty. (Doc. 28 at 8–9). Because I do not find sections 320.08056 and 320.08058 to be invalid, these contentions need not be addressed, as conceded by the Defendant at oral argument.

The Eleventh Amendment bars suits against a state by citizens of another state as well as suits initiated by that state's own citizens.<sup>FN18</sup> *Edelman v. Jordan*, 415 U.S. 651, 663 (1974). Thus, “[u]nless a State has waived its Eleventh Amendment immunity

or Congress has overridden it, [ ] a State cannot be sued directly in its own name regardless of the relief sought.” *Graham*, 473 U.S. at 167 n. 14 (internal citations omitted). However, there is a well-recognized exception to this rule for suits against state officers seeking prospective equitable relief to end continuing violations of federal law. *Summit Med. Assocs., P.C. v. Prvor*, 180 F.3d 1326, 1336 (11th Cir.1999) (citing *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 269 (1997)). Because “an unconstitutional statute is void, and therefore does not ‘impart to [the officer] any immunity from responsibility to the supreme authority of the United States,’ the Supreme Court has held that the officer is not entitled to protection by the state's sovereign immunity.” *Green v. Mansour*, 474 U.S. 64, 68 (1985) (quoting *Ex parte Young*, 209 U.S. 123, 160 (1908)). This exception has been described as a “legal ‘fiction’ because it creates an imaginary distinction between the state and its officers, deeming the officers to act without the state's authority, and, hence, without immunity protection, when they enforce state laws in derogation of the Constitution.” *Summit Med.*, 180 F.3d at 1336 (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 114 n. 25 (1984)).

<sup>FN18</sup> The Eleventh Amendment to the United States Constitution provides: “The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. amend. XI.

In *Ex parte Young*, the Supreme Court observed:

In making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the state, and thereby attempting to make the state a party.

... The fact that the state officer, by virtue of his office, has some connection with the enforcement of the act, is the important and material fact, and whether it arises out of the general law, or is specifically created by the act itself, is not material as long as it exists.

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\*11 209 U.S. at 157. “Therefore, unless the state officer has some responsibility to enforce the statute or provision at issue, the ‘fiction’ of *Ex parte Young* cannot operate,” and a suit against a state officer seeking to challenge the constitutionality of the statute or provision is barred by the Eleventh Amendment. *Summit Med.*, 180 F.3d at 1341. On the other hand, where a state officer has some responsibility to enforce the statute or provision at issue, that state officer is a proper defendant in an action seeking to challenge the constitutionality of the statute or provision under the “fiction” of *Ex parte Young*. *Id.*

In the present case, section 320.08056(1) provides that “[t]he [D]epartment is responsible for developing the specialty license plates authorized in s. 320.08053.” The Defendant, as Executive Director of the Department, exercises a sufficient connection to the enforcement of the challenged statute, as required by *Ex parte Young*, to be a proper defendant to the present action, which seeks prospective equitable relief to end alleged continuing violations of federal law. See *Roach v. Stouffer*, 560 F.3d 860, 871 (8th Cir.2009) (upholding a permanent injunction ordering the Director of the Missouri Department of Revenue to issue a “Choose Life” specialty plate where the relevant statutes charged the Department of Revenue with issuing specialty license plates). Accordingly, the Complaint states a claim against the Defendant upon which relief may be granted, and this suit does not violate the Eleventh Amendment.

#### Conclusion

By placing unfettered discretion in the hands of government officials to grant or deny access to a public forum, section 320.08053, Florida Statutes, “creates a threat of censorship that by its very existence chills free speech.” *Sec’y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 964 n. 12 (1984). This threat of censorship is heightened when the speech at issue is controversial, as it is in this case. Indeed, the fact that the speech is controversial strikes at the very heart of First Amendment protections, for “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

Accordingly, because section 320.08053 (2009)

implicates private speech rights and provides the Legislature with unfettered discretion to engage in viewpoint discrimination when declining to approve a specialty license plate application, it is unconstitutional under the overbreadth doctrine. Additionally, because the remaining portions of section 320.08053 do not provide a mechanism for approving applications for specialty license plates, section 320.08053 is void in its entirety. Thus, no rights can be granted to the Plaintiffs under this section, and the Defendant will not be directed to issue the proposed “Confederate Heritage” license plate. Sections 320.08056 and 320.08058 do not similarly provide the Legislature with unfettered discretion to restrain speech in violation of the First Amendment and therefore are not void as unconstitutional. It is **ORDERED** that Defendant Electra Theodorides–Bustle’s Dispositive Motion to Dismiss, Dispositive Motion for Judgment on the Pleadings, and Dispositive Motion for Summary Judgment (Doc. 28) is **DENIED**. The Clerk is directed to enter judgment in favor of Plaintiffs declaring section 320.08053, Florida Statutes (2009), unconstitutional <sup>FN19</sup> and thereafter close this file.

FN19. Although Plaintiffs did not file a cross-motion for summary judgment, all parties filed trial briefs (Docs. 38 and 40) and agreed in the Joint Advisement to the Court (Doc. 43) and subsequently at the August 18, 2010 hearing that no trial was necessary and that this case could be resolved on the parties’ filings.

\*12 **DONE** and **ORDERED**.

M.D.Fla.,2011.  
 Sons of Confederate Veterans, Florida Div., Inc. v.  
 Atwater  
 Slip Copy, 2011 WL 1233091 (M.D.Fla.)

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FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ARIZONA LIFE COALITION INC., an  
Arizona nonprofit corporation;  
GARY PAISLEY, an individual,  
*Plaintiffs-Appellants,*

v.

STACEY STANTON, Arizona License  
Plate Commission Chair, in her  
personal capacity; MICHAEL FRIAS,  
Arizona License Plate Commission  
member, in his personal capacity;  
BRIAN LANG, Arizona License  
Plate Commission member, in his  
personal capacity; JOHN SPEARMAN,  
Arizona License Plate Commission  
member, in his personal capacity;  
JACKIE ALLGOOD, Arizona Motor  
Vehicle Division legislative  
liaison, in her personal capacity;  
TERRY CONNOR, individually and in  
his capacity as an Arizona License  
Plate Commission member;  
WILLIAM A. ORDWAY, in his  
official capacity as an Arizona  
License Plate Commission  
member; LELA STEFFEY, in her  
official capacity as an Arizona  
License Plate Commission  
member,  
*Defendants-Appellees.*

No. 05-16971  
D.C. No.  
CV-03-01691-PGR  
OPINION

Appeal from the United States District Court  
for the District of Arizona  
Paul G. Rosenblatt, District Judge, Presiding

Argued and Submitted  
October 15, 2007—San Francisco, California

Filed January 28, 2008

Before: David R. Thompson and Richard C. Tallman,  
Circuit Judges, and Kevin Thomas Duffy,\*  
Senior United States District Judge.

Opinion by Judge Tallman

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\*The Honorable Kevin Thomas Duffy, Senior United States District Judge for the Southern District of New York, sitting by designation.

**COUNSEL**

Jeffrey A. Shafer (argued), Alliance Defense Fund, Washington, D.C.; Benjamin W. Bull, Alliance Defense Fund, Scottsdale, Arizona; Peter A. Gentala, The Center for Arizona Policy, Scottsdale, Arizona; Gary S. McCaleb, Alliance Defense Fund, Scottsdale, Arizona, for the plaintiffs-appellants.

Daniel P. Schaack (argued), Assistant Attorney General, Phoenix, Arizona; James R. Morrow, Assistant Attorney General, Liability Management Section, Phoenix, Arizona, for the defendants-appellees.

Denise M. Burke, Women's Choice Pregnancy Clinic, Chicago, Illinois, for the amicus curiae.

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**OPINION**

TALLMAN, Circuit Judge:

Arizona Life Coalition ("Life Coalition") appeals a summary judgment in favor of Stacey Stanton and other members of the Arizona License Plate Commission (collectively the "Commission"). Life Coalition contends that the Commission violated its First Amendment right to free speech and Fourteenth Amendment right to equal protection by arbitrarily denying its application for a special Arizona organization license plate that would portray its message "Choose Life." We agree that the Commission violated Life Coalition's First Amendment right to free speech and therefore do not reach its equal protection argument.

Messages conveyed through special organization plates—although possessing some characteristics of government speech—represent primarily private speech. Through its spe-

cial organization license plate program, Arizona has created a limited public forum for all nonprofit organizations that meet the State's statutory requirements. Because the Commission denied Life Coalition's application on grounds not specified in the statute or related to the limited purpose of the license plate forum, we reverse the district court's grant of summary judgment in favor of the Commission.

## I

The parties do not dispute the facts, and there is no material issue of fact to prevent summary judgment from being entered. Life Coalition is an Arizona nonprofit corporation that provides "compassionate care . . . to persons who are considering abortion, or who are affected by abortion." In June 2002, Life Coalition resubmitted an application for a speciality plate that would "display Life Coalition's official logo, a small graphic of two children's faces and the motto, 'Choose Life.'<sup>1</sup> The Arizona Department of Transportation ("Department") certified that Life Coalition met the requirements of Arizona Revised Statute section 28-2404(G)(2)<sup>2</sup> and submitted Life Coalition's request for its special license plate to the Commission.<sup>3</sup>

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<sup>1</sup>Life Coalition had previously submitted an application in January 2002; however, that application was either not received by the Commission or lost.

<sup>2</sup>Arizona Revised Statute section 28-2404(G)(2) defines "organization" as

an entity that is organized as a nonprofit corporation pursuant to title 10, chapters 24 through 40 and that either: (a) Certifies to the department that the organization has at least two hundred members; or] (b) If the organization has fewer than two hundred members, agrees to pay the production and program costs of the special organization plate as determined by the commission.

(Footnote omitted).

<sup>3</sup>Arizona Revised Statute section 28-2404(A) provides that if the Department "determines the organization meets the requirements of an organization as defined in [section 28-2404(G)(2)], the [D]epartment shall submit the request for a special organization plate to the license plate commission."

Upon receiving a request, section 28-2404(B) provides that

[t]he [C]ommission *shall* authorize a special organization plate if the organization meets the following requirements:

- (1) The primary activity or interest of the organization serves the community, contributes to the welfare of others and is not offensive or discriminatory in its purpose, nature, activity or name[;]
- (2) The name of the organization or any part of the organization's purpose does not promote any specific product or brand name that is provided for sale[;] and
- (3) The purpose of the organization does not promote a specific religion, faith or antireligious belief.

(Emphasis added).

The Commission first considered Life Coalition's application in August 2002. Members of the Commission raised concerns over whether the general public would believe Arizona had endorsed the message of the "Choose Life" license plate, as well as concerns over whether groups with differing viewpoints would file applications. To obtain legal advice, the Commission tabled Life Coalition's application without taking action.

To alleviate the Commission's concerns, Life Coalition filed a revised application on September 27, 2002. In this application Life Coalition proposed including its name on the plate design. The Commission considered Life Coalition's revised application in an August 2003 meeting. During the meeting, Gary Paisley, Chairman of Life Coalition, explained

how Life Coalition served the community: (1) it organized a diaper drive, after which Life Coalition donated thousands of diapers to the Arizona Diaper Bank; (2) "Life Coalition's purpose is to provide compassionate services to those people that are considering or have been affected by abortion including pregnancy tests, pregnancy counseling, and relationship counseling"; and (3) Life Coalition "established a hotline for women who are pregnant." Paisley also told the Commission that Life Coalition's membership included approximately 40 organizations and 100,000 individuals. Paisley then confirmed that a person or organization must subscribe to Life Coalition's statement of principles to become a member.<sup>4</sup>

Initially, the Commission declined to take action on Life Coalition's application. After Paisley implored the Commission to explain what statutory requirements Life Coalition failed to satisfy, a member of the Commission moved to formally deny the application, which passed by voice vote. Chairwoman Stanton replied to Paisley's request for an explanation by stating that "the action of the Commission is final" and that she did not believe "now is an opportunity for[ ] further debate, or for further info that [Life Coalition] could put on additional applications."

Life Coalition filed suit in the United States District Court for the District of Arizona on September 2, 2003. It filed its First Amended Verified Complaint on December 10, 2003. Pertinent to this appeal, Life Coalition moved for summary judgment on November 30, 2004, and the Commission cross-moved for summary judgment on January 1, 2005. The district court denied Life Coalition's motion for summary judgment, and granted the Commission's cross-motion for summary judgment. Life Coalition timely appealed. We reverse.

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<sup>4</sup>Life Coalition's members must adhere to its stated secular principles. For example, one of Life Coalition's principles is to "believe in the sanctity of every innocent human life, from conception to natural death, regardless of age, gender, disability, or degree of dependence."

## II

We review de novo a grant of summary judgment. *Balint v. Carson City*, 180 F.3d 1047, 1050 (9th Cir. 1999). The Tax Injunction Act (“TIA”), 28 U.S.C. § 1341, imposes a jurisdictional limitation on federal courts. *Hoohuli v. Ariyoshi*, 741 F.2d 1169, 1176 (9th Cir. 1984), *overruled on other grounds as recognized by Arakaki v. Lingle*, 477 F.3d 1048, 1062 (9th Cir. 2007). We are required to raise jurisdictional issues sua sponte, *id.*, and we note the TIA’s application in the special organization plate context has been raised by our sister circuits. *Compare Am. Civil Liberties Union of Tenn. v. Bredesen*, 441 F.3d 370, 373 (6th Cir. 2006) (rejecting the argument that the TIA barred suit because the extra payments for special organization plates resemble “payments for simple purchases from the government” and are not taxes), *with Henderson v. Stalder*, 407 F.3d 351, 356 (5th Cir. 2005) (concluding that the additional charges for speciality plates are taxes because they “sustain[ ] the essential flow of revenue to the government,” are “imposed by a state or municipal legislature,” and are “designed to provide a benefit for the entire community”). Therefore, although neither party questions whether the TIA precludes jurisdiction in this case, we nonetheless address it here.

[1] The TIA provides that “[t]he district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.” 28 U.S.C. § 1341. In Arizona, drivers must pay an additional twenty-five dollar fee to obtain a special organization plate. The issue is whether the money paid to obtain a special organization plate constitutes a tax to which the TIA would apply.

[2] We find persuasive the Sixth Circuit’s analysis in *Bredesen* and hold the extra fee is not a tax. The transaction between a state’s vehicle owner and the issuing authority is more akin to a contractual debt than a state imposed tax. Ari-

zona has not coerced a sale attendant to the requirement that cars bear license plates to assist in identifying their owners, but has instead induced willing purchasers to agree to pay a certain extra sum of money in return for the right to bear a special message on an organizational license plate. See *Bredesen*, 441 F.3d at 374; see also *Women's Res. Network v. Gourley*, 305 F. Supp. 2d 1145, 1154 (E.D. Cal. 2004) (“[The additional payments are] voluntarily paid by a limited group of motorists who wish to both support a [special cause], and presumably desire to display that support on their license plate.”).

[3] The Sixth Circuit’s reasoning is supported by our decision in *Bidart Brothers v. California Apple Commission*, 73 F.3d 925 (9th Cir. 1996). There, we recognized that the additional charge does not have to be characterized as a “tax” or a regulatory “fee.” *Id.* at 933. In determining whether the TIA applies, the “ultimate question remains whether an assessment is a ‘State tax.’” *Id.* Because the additional charges for a special organization plate are more akin to a contractual payment than a tax, we hold that the TIA does not apply to Life Coalition’s suit. We therefore retain jurisdiction to hear its federal constitutional claim.

### III

#### A

##### 1

[4] We must decide whether, by authorizing a specialty license plate sought by a nonprofit organization to display its message and the message of the organization’s members, the State of Arizona has adopted that speech as its own. It is undeniable that “when the government speaks for itself, it ‘may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted.’” *Planned Parenthood of S.C. Inc. v. Rose*, 361 F.3d 786, 792 (4th Cir. 2004)

(plurality) (quoting *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 833 (1995)); see also *Sons of Confederate Veterans, Inc. v. Comm'r of Va. Dep't of Motor Vehicles*, 288 F.3d 610, 616 (4th Cir.), *reh'g en banc denied*, 305 F.3d 241 (4th Cir. 2002) (“It is well established that ‘the government can speak for itself.’” (quoting *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000))). However, when the government regulates private speech, we must conduct a traditional First Amendment analysis. *Rose*, 361 F.3d at 792; see also *PMG Int'l Div., L.L.C., v. Rumsfeld*, 303 F.3d 1163, 1169 (9th Cir. 2002).

There is some question as to what standard we should apply in differentiating between private and government speech. In *Johanns v. Livestock Marketing Ass'n*, 544 U.S. 550 (2005), the Court addressed whether a federal program that requires beef producers to finance promotional messages to support the beef industry—“Beef. It’s What’s for Dinner”—violated the First Amendment. *Id.* at 554. The Court held that “[w]hen . . . the government sets the overall message to be communicated and approves every word that is disseminated,” it is government speech. *Id.* at 561-62. And, because “[t]he message set out in the beef promotions is from beginning to end the message established by the Federal Government,” “Congress . . . directed the implementation of a ‘coordinated program’ of promotion, ‘including paid advertising, to advance the image and desirability of beef and beef products,’” and the Secretary of Agriculture “exercise[d] final approval authority over every word used in every promotional campaign,” the beef promotional messages represented government speech. *Id.* at 560-61.

In *Bredesen*, 441 F.3d 370, the Sixth Circuit relied on *Johanns* to hold that the Tennessee statute authorizing a specialty license plate with a “Choose Life” logotype did not violate the First Amendment, despite the fact that the legislature refused to make available license plates with a “pro-choice” or “pro-abortion” message. *Id.* at 372. In doing so, the Sixth

Circuit rejected—on nearly identical facts—the Fourth Circuit’s reasoning in *Rose*, 361 F.3d 786, in part because the Fourth Circuit had relied on the “pre-*Johanns* four-factor test.” See *Bredesen*, 441 F.3d at 380.

[5] Prior to *Johanns*, the Fourth, Eighth, and Tenth circuits had adopted a nonexhaustive list of four factors to differentiate between the two types of speech. Those factors are:

- (1) the central “purpose” of the program in which the speech in question occurs;
- (2) the degree of “editorial control” exercised by the government or private entities over the content of the speech;
- (3) the identity of the “literal speaker”; and
- (4) whether the government or the private entity bears the “ultimate responsibility” for the content of the speech, in analyzing circumstances where both government and a private entity are claimed to be speaking.

*Sons of Confederate Veterans, Inc.*, 288 F.3d at 618-19 (citing *Wells v. City and County of Denver*, 257 F.3d 1132, 1141 (10th Cir. 2001); *Knights of the Ku Klux Klan v. Curators of the Univ. of Mo.*, 203 F.3d 1085, 1093-94 (8th Cir. 2000)).<sup>5</sup>

<sup>5</sup>Although we have not yet expressly adopted the four-factor test, we relied on similar factors in *Downs v. Los Angeles Unified School District*, 228 F.3d 1003 (9th Cir. 2000). There, we addressed whether messages conveyed through school bulletin boards constituted government speech. *Id.* at 1011. We discussed various factors, including: (1) “who actually was responsible for the speech”; (2) who had access to the school bulletin boards; (3) who maintained editorial control over the bulletin boards; and (4) the purpose of the school bulletin boards. *Id.* at 1011-12. While recognizing that *Downs* cites similar factors, other circuits have declined to rely on its reasoning because of the special circumstances related to the school setting. See *Wells*, 288 F.3d at 1141 (stating that, “[d]ue to the ‘special characteristics of the school environment,’ [the court will] rely primarily on the four factors articulated in *Knights of the [Ku Klux Klan]*” (citation omitted)); *Sons of Confederate Veterans, Inc.*, 288 F.3d at 619 n.7 (same).

As noted by Judge Martin in his dissenting opinion in *Bredesen*, *Johanns* is factually distinguishable from these specialty license plate cases. 441 F.3d at 385 (Martin, J., dissenting). *Johanns* involved a government-compelled subsidy of government speech. *Johanns*, 544 U.S. at 557. Specialty license plate programs do not raise issues regarding “compelled-speech” or a “compelled-subsidy.” See *id.* (discussing the difference between “compelled-speech” cases and “compelled-subsidy” cases); see generally *Paramount Land Co. v. Cal. Pistachio Comm’n*, 491 F.3d 1003 (9th Cir. 2007) (applying *Johanns* in a compelled-speech case). In *Johanns*, the individual harm was “being forced to give the government money to pay for someone else’s message.” *Bredesen*, 441 F.3d at 385 (Martin, J., dissenting). In specialty license plate cases, private individuals choose to pay the price for obtaining a particular specialty license plate. The First Amendment harm “is being denied the opportunity to speak on the same terms as other private citizens within a government sponsored forum.” *Id.* at 386. Moreover, “specialty plate programs are not part of a larger governmental scheme to encourage some private activity, like beef consumption.” Andy G. Olree, *Specialty License Plates: Look Who’s Talking in the Sixth Circuit*, 68 Ala. Law. 213, 214 (May 2007). In light of these differences, Judge Martin believed that “[t]he government speech doctrine, as it is used in *Johanns*” is inapplicable to specialty license plate cases such as this. *Bredesen*, 441 F.3d at 385.

[6] Although we agree with Judge Martin in that *Johanns* is factually distinguishable, we believe that *Johanns* is instructive when determining whether the message constitutes government or private speech. In concluding that the beef program represented government speech, the Court relied on factors similar to those set forth in the four-factor test. It considered who controlled the speech, 544 U.S. at 560-61, the purpose of the program, *id.* at 561, and the fact that the Secretary of Agriculture exercised final editorial control over the promotional campaign, *id.* We therefore adopt the Fourth Cir-

cuit's four-factor test—supported by the Supreme Court's decision in *Johanns*—to determine whether messages conveyed through Arizona's special organization plate program constitute government or private speech.

2

i

The Commission argues that the “primary function of Arizona license plates—including special plates—is the State's need to identify a vehicle and its owner.” It cites *Kahn v. Department of Motor Vehicles*, 16 Cal. App. 4th 159 (Cal. Ct. App. 1993), where the California Court of Appeal stated:

A vehicle license plate is a state-imposed display of registered vehicle identification. That the state permits license holders, for an additional fee, to vary minimally their vehicle identification from the prescribed form by selecting letter and/or number combinations which may reflect an individual's personal or professional identity, or possibly express a thought or idea, is purely incidental to the primary function of vehicle identification.

*Id.* at 166. Life Coalition argues that the speciality license plates offer something more: “the opportunity to identify themselves with individualized messages via these specialized plates” as well as “the opportunity to benefit worthy organizations financially.”

We agree with Life Coalition. While the primary purpose of any vehicle license plate is vehicle identification and registration, we are not concerned with the general validity of Arizona's licensing requirements. *Cf. Rose*, 361 F.3d at 793 (stating that the primary purpose of a South Carolina statute authorizing a specialty license plate with the words “Choose Life” was “to promote the State's preference for the pro-life

position”); *Sons of Confederate Veterans, Inc.*, 288 F.3d at 619-20 (stating that the primary purpose of Virginia’s special plate program is to collect revenue); *Choose Life Illinois, Inc. v. White*, 2007 WL 178455, \*5 (N.D. Ill. Jan. 19, 2007) (concluding that the purpose of the Illinois specialty plate program is to “raise revenue for the state as well as to allow for some private expression”). Rather, we must address Arizona’s *speciality license plate* program as a whole. See *Sons of Confederate Veterans, Inc.*, 288 F.3d at 619.

[7] By allowing organizations to obtain speciality license plates with their logo and motto, Arizona is providing a forum in which philanthropic organizations, see Ariz. Rev. Code § 28-2404(B), can exercise their First Amendment rights in the hopes of raising money to support their cause. See Ariz. Rev. Code § 28-2402(1) (setting the fee for specialty license plates at twenty-five dollars); *id.* § 28-2404(F) (stating that eight dollars of the fee is a specialty plate administration fee and seventeen dollars is an annual donation to the organization). As in *Sons of Confederate Veterans, Inc.*, the fee structure for Arizona speciality plates suggests the program’s revenue-producing aim. See 288 F.3d at 619. Before obtaining approval from the Department, the organization must certify that it either has 200 members or that it will agree to pay the production and program costs for the special organization plate. Ariz. Rev. Code § 28-2404(G)(2); cf. *Sons of Confederate Veterans, Inc.*, 288 F.3d at 620 (“The very structure of the program [—requiring 350 prepaid applicants—] ensures that only special plate messages popular enough among private individuals to produce a certain amount of revenue will be expressed.”).

[8] The revenue raising purpose of the Arizona special organization plate program supports a finding of private speech.

ii

[9] The Commission’s de minimis editorial control over the plate design and color does not support a finding that the mes-

sages conveyed by the organization constitute government speech. The Arizona legislature has chosen to limit the license plate forum to only those organizations that “serve[ ] the community, contribute[ ] to the welfare of others and [are] not offensive or discriminatory in [their] purpose, nature, activity or name.” Ariz. Rev. Stat. § 28-2404(B). In addition, the organizations cannot “promote a specific religion, faith or antireligious belief.” *Id.*

However, as Life Coalition notes in its brief, the statutory requirements address who may speak, not what they may say. For instance, in *Rose*, the “Choose Life” license plate “originated with the State, and the legislature determined that the plate will bear the message ‘Choose Life.’ ” 361 F.3d at 793. Therefore, the state exercised control over the substantive content of the speech. *Cf. Sons of Confederate Veterans, Inc.*, 288 F.3d at 621 (noting that Virginia’s license plate design criteria “do[ ] not contain guidelines regarding the substantive content of the plates or any indication of reasons, other than failure to comply with size and space restrictions”); *see also Johanns*, 544 U.S. at 561 (noting that the Secretary’s role in the beef campaign extended beyond granting final approval or rejection; government officials “also attend[ed] and participat[ed] in the open meetings at which *proposals [we]re developed*” (emphasis added)).

[10] In this case, the idea of a “Choose Life” license plate originated with Life Coalition. While the Commission determined whether Life Coalition met the statutory guidelines for gaining access to the license plate forum, Life Coalition determined the substantive content of their message. *Cf. Wells*, 257 F.3d at 1142 (concluding that this factor weighed in favor of government speech because “there [wa]s no indication that any of the [private speakers] even knew about the Happy Holidays sign, much less exercised any editorial control over its design or content”); *Choose Life Illinois*, 2007 WL 178455, at \*6 (stating that this factor weighed in favor of private speech because “the idea and message of the Choose Life

plate originated with a private organization, Choose Life Illinois, not the legislature”).

[11] Therefore, this factor weighs in favor of private speech.

iii

[112] “[O]wnership of the means of communication [i]s a valid consideration in determining whether [the license plate] contained government speech.” *Sons of Confederate Veterans, Inc.*, 288 F.3d at 621; *Wells*, 257 F.3d at 1142. Therefore, the fact that Arizona owns the special organization plates supports a finding that the State is the literal speaker. However, in *Wooley v. Maynard*, 430 U.S. 705 (1997), the Supreme Court indicated that messages conveyed through license plates “implicate private speech interests because of the connection of any message on the plate to the driver or owner of the vehicle.” *Sons of Confederate Veterans, Inc.*, 288 F.3d at 621 (discussing *Wooley*, 430 U.S. at 714-15); see also *Johanns*, 544 U.S. at 557 (“[In *Wooley*,] we held that requiring a New Hampshire couple to bear the State’s motto, ‘Live Free or Die,’ on their cars’ license plates was an impermissible compulsion of expression.”).<sup>6</sup> Relying on *Wooley*, most

<sup>6</sup>In a letter of supplemental authority filed after oral argument, the Commission directs us to the following statement from *Pacific Gas & Electric Co. v. Public Utilities Commission of Cal.*, 475 U.S. 1 (1986):

In *Wooley v. Maynard*, we held that New Hampshire could not require two citizens to display a slogan on their license plates and thereby “use their private property as a ‘mobile billboard’ for the State’s ideological message.” The “private property” that was used to spread the unwelcome message was the automobile, not the license plate.

*Id.* at 17 (citation omitted). That statement does not undermine the sentiment, taken from *Wooley*, that license plate messages implicate private speech. See *Johanns*, 544 U.S. at 557. We have no doubt that New Hampshire’s motto, “Live Free or Die,” constitutes government speech. Nevertheless, it *still* implicated private speech interests because private individuals were being compelled to spread that message through the use of their vehicle. Here, however, the question is whether the message displayed on the license plate is itself private speech.

courts that have addressed vanity plates have concluded the messages are private speech. *Sons of Confederate Veterans, Inc.*, 288 F.3d at 621 & n.9; *see also Rose*, 361 F.3d at 794 (“The literal speaker of the Choose Life message on the specialty plate therefore appears to be the vehicle owner, not the State, just as the literal speaker of the bumper sticker message is the vehicle owner, not the producer of the bumper sticker.”); *Perry v. McDonald*, 280 F.3d 159, 166 (2d Cir. 2001) (stating that a restriction on vanity plates “concern[ed] private individuals’ speech on government-owned property”); *Lewis v. Wilson*, 253 F.3d 1077, 1079 (8th Cir. 2001) (characterizing a restriction on vanity plates as a restriction on private speech); *Choose Life Illinois*, 2007 WL 178455, \*6 (concluding that a private individual is the literal speaker with specialty plates because they pay an extra fee to express a certain message).

[13] This factor has characteristics of both private and government speech. Nevertheless, in this situation, where Life Coalition’s logo depicting the faces of two young children will also be displayed on the license plate supporting the message “Choose Life,” we conclude that it weighs in favor of finding this to be primarily private speech.

iv

[14] The question of who bears “ultimate responsibility” for the “Choose Life” license plate is very similar to the question of who is the literal speaker. *See Rose*, 361 F.3d at 794; *Sons of Confederate Veterans, Inc.*, 288 F.3d at 621. “[P]rivate individual[s] choose[ ] to spend additional money to obtain the plate and to display its pro-life message[s] on [their] vehicle.” *Rose*, 361 F.3d at 794. Here, Life Coalition submitted its motto to be placed on a speciality license plate that would also identify the organization by name. Life Coalition controlled the message of its special organization plate, and the individual members who choose to purchase the plate voluntarily choose to disperse that message. *Cf. Johanns*, 544

U.S. at 561 (noting that Congress directed implementation of the promotional plan and that Congress and the Secretary determined what the promotional campaigns shall contain); *Rose*, 361 F.3d at 794 (finding that the drivers bore ultimate responsibility for the “Choose Life” license plate authorized by the State legislature).

It is true that, like the Secretary in *Johanns*, Arizona developed the program that allows nonprofit organizations such as Life Coalition to obtain specialty license plates. However, in *Johanns* the beef producers had no choice but to support the beef ad. In comparison, there is nothing in the record to even suggest that Arizona intended to adopt the message of each special organization plate as its own state speech. Instead, the burden is on the nonprofit organization. If it wants to convey a certain message through the Arizona specialty plate program, it must take the affirmative step of submitting an application. This suggests that it is Life Coalition, rather than the State of Arizona, that bears ultimate responsibility for the content of the speech.

[15] We therefore hold that the “Choose Life” message displayed through a speciality license plate if issued by Arizona would constitute private speech.

## **B**

### **1**

Having determined that the “Choose Life” message would represent private speech, we must now determine whether the Commission has acted appropriately under the First Amendment. The first step in assessing a First Amendment claim relating to private speech on government property is to “identify the nature of the forum, because the extent to which the Government may limit access depends on whether the forum is public or nonpublic.” *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 965 (9th Cir. 2002) (quoting *Cornelius*

v. *NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 797 (1985)). In defining the forum, we must focus “on the access sought by the speaker. When speakers seek general access to public property, the forum encompasses that property. In cases in which limited access is sought, [the Supreme Court’s] cases have taken a more tailored approach to ascertain[ ] the perimeters of a forum within the confines of the government property.” *Cornelius*, 473 U.S. at 801 (citation omitted). Here, the forum is Arizona license plates. Cf. *Lehman v. City of Shaker Heights*, 418 U.S. 298, 300 (1974) (treating the advertising spaces on city owned buses as the forum).

[16] “[A] public forum may be created by government designation of a place or channel of communication for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects.” *Cornelius*, 473 U.S. at 802. In a designated public forum, speakers cannot be excluded unless it is “necessary to serve a compelling state interest” and the exclusion is “narrowly drawn to achieve that interest.” *Sammartano*, 303 F.3d at 965 (internal quotation marks omitted). We have further refined the concept of “designated” public forum by carving out a sub-category we call a “limited” public forum. See *Hopper v. City of Pasco*, 241 F.3d 1067, 1074 (9th Cir. 2001) (“[A] limited public forum is a sub-category of a designated public forum that ‘refer[s] to a type of nonpublic forum that the government has intentionally opened to certain groups or to certain topics.’” (alteration in original) (quoting *DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958, 965 (9th Cir. 1999))). The government may restrict speech in limited public fora so long as the restrictions are “viewpoint neutral and reasonable in light of the purpose served by the forum.” *Id.* at 1075 (internal quotation marks omitted).

The designated and limited public forum classifications “ha[ve] been the source of much confusion.” *Id.* at 1074. A limited public forum exists when the government intentionally opens a nonpublic forum to expressive activity by a cer-

tain class of speakers to address a particular class of topics. *Cogswell v. City of Seattle*, 347 F.3d 809, 814 (9th Cir. 2003) (citing *Kaplan v. County of Los Angeles*, 894 F.2d 1076, 1080 (9th Cir. 1990) (finding a limited public forum when “California created the [voters’] pamphlets for the specific purpose of allowing a limited class of speakers, the candidates, to address a particular class of topics, statements concerning the personal background qualifications of each candidate”)).

[17] We have no trouble concluding that Arizona’s purpose was to open up its license plate forum to a certain class of organizations for expressive activity. *Cf. Faith Ctr. Church Evangelistic Ministries v. Glover*, 480 F.3d 891, 908 (9th Cir. 2007) (stating that the County intended to open its library meeting room to expressive activity when it allowed all “[n]on-profit and civic organizations, for-profit organizations, schools and governmental organizations” to use the meeting room for “meetings, programs, or activities of educational, cultural or community interest”) (internal quotation marks omitted). As the Commission correctly notes in its brief, “[h]istorically, Arizona’s license plates have served the purely governmental function of vehicle and vehicle owner identification and have been a nonpublic forum.” However, Arizona took the affirmative step by passing its special license plate legislation of allowing limited access to license plates publicly displayed for expressive conduct as vehicles are driven throughout the state. *See Sons of Confederate Veterans, Inc. v. Holcomb*, 129 F. Supp. 2d 941, 948 (W.D. Va. 2001) (stating, in dicta, that “allowing groups to place various slogans and designs on license plates represents the Commonwealth’s intentional action to open up a nontraditional forum for public discourse”).

Arizona’s speciality plate program encompasses a wide range of philanthropic organizations with community based programs/ideals. Section 28-2404(B) states that the Commission *shall* authorize a speciality license plate to all nonprofit organizations that (1) “serve[ ] the community, contribute[ ]

to the welfare of others and [are] not offensive or discriminatory in [their] purpose, nature, activity or name"; (2) has an organizational name or purpose that "does not promote any specific product or brand name . . . provided for sale"; and (3) the organizations do not "promote a specific religion, faith, or antireligious belief."

Applying this statutory mandate, the Commission has authorized, and the Department has issued, the following special organization plates: (1) The University of Phoenix Alumni Network (bearing the University's identifier, "Univ. of Phoenix"); (2) Associated Fire Fighters of Arizona (bearing the Union's motto, "Professional Fire Fighters"); (3) Fraternal Order of Police (bearing the Order's identifier, "Fraternal Order of Police"); (4) Legion of Valor (bearing the Legion's identifier, "Legion of Valor"); and (5) Wildlife Conservation Council (bearing the Council's motto, "Conserving Wildlife").<sup>7</sup> In addition, the Commission has authorized six additional license plates, but at the time of briefing this appeal we were told the Department had yet to issue them because of factors unrelated to this appeal: (1) Civil Air Patrol; (2) Arizona Association of Future Farmers of America; (3) Rotary International; (4) Arizona Hospice Palliative Care Organizations; (5) Red Means Stop Coalition; and (6) Arizona Historical Society.

Nevertheless, "[a] policy with a broad purpose . . . is not dispositive of an intent to create a public forum by designation." *Faith Ctr. Church Evangelistic Ministries*, 480 F.3d at 909. We must therefore look closely at the Commission's policy and practice to determine whether Arizona intended the speciality plate forum to be "open for indiscriminate use." *Id.* In other words, if Arizona intended only to open the forum to "certain groups or to certain topics," it has created only a lim-

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<sup>7</sup>The parties stipulated to this fact in filings before the district court. We do not know whether, since the inception of this appeal, the Commission has authorized the making of any other speciality license plates.

ited public forum. *Cogswell*, 347 F.3d at 814 (internal quotation marks omitted). For instance, despite Contra Costa County's broad purpose in opening its library meeting room to public use, we held in *Faith Center Church Evangelistic Ministries* that the County created a limited public forum because the "County's policy excludes schools from using the meeting room 'for instructional purposes as a regular part of the curriculum' and organizations who wish to engage in 'religious services.'" 480 F.3d at 909. In addition, "the policy requires a potential user to submit an application describing the intended use and identifying the applicant," and the "application must be reviewed and approved in advance by the County." *Id.*

[18] Similarly, Arizona by statute restricts its speciality license plate program to only nonprofit organizations with community driven purposes that do not promote a specific religion, faith or antireligious belief. Ariz. Rev. Stat. § 28-2404(B). To gain access, the nonprofit organization must have its application reviewed and approved by the Commission. *Cf. Cornelius*, 473 U.S. at 803; *Perry*, 280 F.3d at 168 (citing the fact that Vermont vehicle owners must obtain permission to receive vanity plates to support its finding of a nonpublic forum). These are not abstract policy statements, but are definite and unambiguous restrictions on gaining access to the forum. *See Hopper*, 241 F.3d at 1077 (citing *Christ's Bride Ministries, Inc. v. Se. Pa. Transp. Auth.*, 148 F.3d 242 (3d Cir. 1998)).

[19] From the record before us, it is also clear that the Commission has consistently applied the access restrictions when reviewing pending applications. *See Faith Ctr. Church Evangelistic Ministries*, 480 F.3d at 909 (citing *Hopper*, 241 F.3d at 1076 ("[C]onsistency in application is the hallmark of any policy designed to preserve the non-public status of a forum.")). In addition to Life Coalition's application, the Commission has denied two other applications for speciality license plates. The Commission unanimously denied Interna-

tional Dark Sky Society's application because its suggested "dark blue sky" motif would replace the standard Arizona license plate motif in violation of other statutory requirements. *See* Ariz. Rev. Stat. § 28-2403(a)(2). The Commission also denied an application submitted by Embry-Riddle Aeronautical University, explaining that Arizona universities had to obtain legislative plates, whereas only alumni associations may obtain the special organization license plates. In comparison to the city in *Hopper*, through the License Plate Commission, Arizona has retained some substantive control over the content of its speciality license plate program. *See* 241 F.3d at 1078 (stating that the city failed to consistently enforce its "non-controversy" policy as it "neither pre-screened submitted works, nor exercised its asserted right to exclude works").

[20] Finally, we note that the nature of the forum also supports a conclusion that Arizona intended only to create a limited public forum. *See Faith Center Church Evangelical Ministries*, 480 F.3d at 910. As the Second Circuit noted in *Perry*, the primary purpose in issuing license plates in general is to aid in vehicle identification. 280 F.3d at 167. However, one of the primary purposes in issuing vanity license plates (and, in turn, special organization plates) is to raise revenue. *Id.* Nevertheless, given the general overarching purpose of aiding in vehicle identification, expression through vanity plates (and, in turn, special organization plates) is subject to numerous restrictions with the general public having only limited access. *Id.* We therefore conclude that Arizona's speciality license plate program is a limited public forum, and that any access restriction must be viewpoint neutral and reasonable in light of the purpose served by the forum. *See Faith Center Church Evangelical Ministries*, 480 F.3d at 910 (citing *Cornelius*, 473 U.S. at 806).

2

i

The distinction between viewpoint discrimination and content-based discrimination is not precise. *Rosenberger*, 515

U.S. at 831. The Commission contends that it did not engage in viewpoint discrimination because it “did not grant a special organization plate to a group with a viewpoint in opposition to Life Coalition’s” and therefore, “[n]either side of the ‘Choose Life’ issue is represented by a special organization plate.” The Supreme Court rejected a similar argument in *Rosenberger*, where it found a First Amendment violation when a public university withheld funding to a student publication because its paper “primarily promote[d] or manifest[ed] a particular belie[f] in or about a deity or an ultimate reality.” 515 U.S. at 823 (internal citations omitted; alterations in original). The dissent argued that the University did not engage in viewpoint discrimination because it limited all religious speech, both theistic and atheistic. *Id.* at 831. The majority rejected this argument, stating

The dissent’s assertion that no viewpoint discrimination occurs because the Guidelines discriminate against an entire class of viewpoints reflects an insupportable assumption that all debate is bipolar and that antireligious speech is the only response to religious speech. Our understanding of the complex and multifaceted nature of public discourse has not embraced such a contrived description of the marketplace of ideas. If the topic of debate is, for example, racism, then exclusion of several views on that problem is just as offensive to the First Amendment as exclusion of only one. It is as objectionable to exclude both a theistic and an atheistic perspective on the debate as it is to exclude one, the other, or yet another political, economic or social viewpoint.

*Id.*

[21] Unlike the University system in *Rosenberger*, the Arizona statutes do not expressly prohibit abortion-related speech in the license plate forum. *Cf. id.* (stating that the Guidelines prohibit religious activity). Rather, the State has opened this

forum to all organizations that serve the community and contribute to the welfare of others in a nondiscriminatory way. Ariz. Rev. Stat. § 28-2404(B)(1). The Commission does not argue that Life Coalition failed to meet this statutory requirement. Instead, the only justification the Commission can give for denying Life Coalition's application is that it chose not to enter the Choose Life/Pro-Choice debate. And "where the government is plainly motivated by the nature of the message rather than the limitations of the forum or a specific risk within that forum, it is regulating a viewpoint rather than a subject matter." *Sammartano*, 303 F.3d at 971; *see also Choose Life Illinois, Inc.*, 2007 WL 178455, \*8 (stating in dicta that the denial of an application for a "Choose Life" license plate because it is "controversial" amounts to viewpoint discrimination).

Moreover, during the August 2002 hearing, the Commissioners expressed concerns that, if they granted Life Coalition's application, groups with opposing viewpoints would file applications for their own special organization plate. Preventing Life Coalition from expressing its viewpoint out of a fear that other groups would express opposing views seems to be a clear form of viewpoint discrimination. As we previously stated in *Hopper*, "[a] ban on 'controversial [speech]' may all too easily lend itself to viewpoint discrimination." 241 F.3d at 1079. Restrictions based on community standards of decency must be based on "objective criteria set out in advance." *Id.* at 1080.

Admittedly, this is a difficult issue. "The line between an acceptable subject matter limitation and unconstitutional viewpoint discrimination is not a bright one." *Cogswell*, 347 F.3d at 815. One thing is clear, "once the government has chosen to permit discussion of certain subject matters, it may not then silence speakers who address those subject matters from a particular perspective." *Id.*

[22] Arizona has created a limited public forum for non-profit organizations. The only substantive restriction is that

the license plate cannot promote a specific product for sale, or a specific religion, faith, or antireligious belief. Nowhere does the statute create objective criteria for limiting “controversial” material, and nowhere does the statute prohibit speech related to abortion. *Cf. Cogswell*, 347 F.3d at 815 (finding restriction prohibiting candidates from discussing their opponents’ views viewpoint neutral because the limited public forum was limited to candidate self-discussion and the submitted material included subject matter not included in the limited public forum). Consequently, because abortion-related speech falls within the boundaries of Arizona’s limited public forum, and because the Commission clearly denied the application based on the nature of the message, we conclude the Commission’s actions were viewpoint discriminatory.

ii

We also hold that the Commission acted unreasonably by denying Life Coalition’s application for reasons not statutorily based or related to the purpose of the limited public forum. “The reasonableness of a governmental restriction limiting access to a nonpublic forum must be assessed ‘in light of the purpose of the forum and all of the surrounding circumstances.’” *Id.* at 817 (quoting *Cornelius*, 473 U.S. at 789). “The reasonableness analysis emphasizes the consistency of the limitation in the context of the forum’s intended purpose.” *Id.*

[23] The Commission, in fulfilling the legislature’s intent to allow nonprofit organizations a means to promote their community-based cause to the public in the hopes of raising awareness and revenue, regulates access to the forum to preserve its community-based function and protect the primary function of license plates: to aid in vehicle identification. The Commission does not dispute that Life Coalition has met each of the statutory requirements. It is an organization that benefits the community without promoting the sale of a product or any religious, faith, or antireligious belief. Nor does the Com-

mission contend that Life Coalition's special organization plate will interfere with vehicle identification. In other words, it fits within the program's purpose. When an organization meets the requirements, the statute provides that "[t]he [C]ommission *shall* authorize a special organization plate." Ariz. Rev. Stat. § 28-2404(B) (emphasis added). By denying Life Coalition's application, although the organization and its message complied with the limited public forum's purpose as it is currently defined under Arizona law, the Commission ignored its statutory mandate and acted unreasonably in violation of the First Amendment to the United States Constitution.<sup>8</sup>

#### IV

We recognize that Arizona has a legitimate interest in regulating controversial material displayed publicly on government property. Nevertheless, we are mindful of potential constitutional problems when government officials are given unbridled discretion in regulating speech, even in limited public fora. Arizona has defined the outer limits of its speciality license plate program, and Life Coalition fits within those statutory boundaries. Because the Commission denied Life Coalition's application on a ground not expressly related to the forum's purpose by discriminating on the basis of the viewpoint contained in its proposed message, we conclude that the Commission acted in violation of the First Amendment. We therefore reverse the district court's grant of summary judgment in favor of the Commission. The cause is remanded for entry of judgment in favor of Arizona Life Coalition on its First Amendment claim and such further proceedings as are necessary to ensure that its specialty license

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<sup>8</sup>Given our holding, we will not address Life Coalition's claim that the Commission also violated its equal protection rights under the Fourteenth Amendment, or that section 28-2404 is unconstitutionally vague. *ACLU of Nev. v. City of Las Vegas*, 466 F.3d 784, 797 n.15 (9th Cir. 2006) (declining to address equal protection arguments after finding the ordinance violated the First Amendment); *Cinevision Corp. v. City of Burbank*, 745 F.2d 560, 571 n.11 (9th Cir. 1984) (same).

plate application is approved by the Arizona License Plate Commission.

**REVERSED and REMANDED.**