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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PAUL OGILVIE, ANDREA CAMPANILE,
JAMES BLAIR, PAUL CRAWFORD, and
AMRIT KOHLI

Plaintiffs,

v.

STEVE GORDON, in his official capacity as
Director of the California Department of Motor
Vehicles,

Defendant.

Case No.: _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
Civil Rights - 42 U.S.C. § 1983**

INTRODUCTION

1
2 1. Each year, the California Department of Motor Vehicles (DMV or Department)
3 generates over \$60 million from its environmental license plate program. Colloquially known as
4 “personalized license plates,” the program allows Californians to request license plates that express
5 intimately personal ideas. From an expression of one’s love for a spouse or a pet to a reference to
6 one’s childhood or career, personalized license plates are universally known to express the ideas
7 of the driver.

8 2. Yet the DMV denies over 30,000 applications for environmental license plates
9 annually, because the requested configuration “may carry connotations offensive to good taste and
10 decency.” *See* Cal. Code Regs. tit. 13, § 206.00(c)(7)(D). This broad and vague regulation requires
11 four full-time DMV administrators to police license plate applications for “offensive” speech, and
12 deny those applications that are not in “good taste.”

13 3. Less than six months ago, the United States District Court for the Central District
14 of California, ruled that environmental license plates unequivocally express personal speech and
15 not government speech. *See Kotler v. Webb*, 19-cv-2682, 2019 WL 4635168 (C.D. Cal. Aug. 29,
16 2019) (order denying motion to dismiss). While the DMV ultimately settled that lawsuit by issuing
17 the plate (COYW) it had previously determined to be “offensive,” the DMV has not revised its
18 regulation. It annually denies tens of thousands of applications that it deems “offensive.” Today,
19 five Californians seek to end the discriminatory program. They facially challenge its
20 constitutionality under the First Amendment.

21 4. The Californians challenging this viewpoint-discriminatory regulation include a
22 veteran of four tours in Afghanistan and Iraq who sought to express his military nickname; an
23 electrician who wanted to honor his favorite rock band; an immigration attorney who sought to
24 express her love of Ducati motorcycles; a gay computer programmer who sought to reclaim a
25 disparaging term; and an Englishman who sought to express his business’s slogan. The DMV
26 denied each application for being “offensive.” Its rationale varies from the laughable to the
27 arbitrary, but it is plainly always based on the DMV’s viewpoint of what is “offensive.”

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JURISDICTIONAL STATEMENT

5. Plaintiffs bring this civil rights lawsuit pursuant to 42 U.S.C. § 1983, for the violation of rights secured by the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment.

JURISDICTION

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question), 1343 (civil rights), and 2201-2202 (Declaratory Judgment Act).

VENUE

7. Venue is proper under 28 U.S.C. § 1391(b)(2) on the ground that a substantial part of the acts giving rise to Plaintiffs' claims occurred in the Northern District of California.

INTRADISTRICT ASSIGNMENT

8. Intradistrict venue is proper in the San Francisco or Oakland divisions of this District Court under Civil L.R. 3-2(d), because a substantial part of the events or omissions which gives rise to Plaintiffs' claims occurred in San Mateo and Contra Costa Counties.

PARTIES

Plaintiffs

9. Paul "Chris" Ogilvie is a resident of Concord, California. The Department denied the personalized license plate application with the configuration of "OGWOOLF" for Mr. Ogilvie's vehicle.

10. James Blair is a resident of San Mateo, California. Mr. Blair applied for a personalized license plate with the configuration "SLAAYRR." The Department denied his application.

11. Andrea Campanile is a resident of Monterey, California. Ms. Campanile applied for a personalized license plate with the configuration "DUK N A." The Department denied her application.

12. Amrit Kohli is a resident of Oakland, California. Mr. Kohli applied for a personalized license plate with the configuration "QUEER." The Department denied his application.

13. Paul Crawford is a resident of San Diego, California. Mr. Crawford applied for a license plate with the configuration “BO11LUX.” The Department denied his application.

Defendant

14. Steven Gordon is Director of the California Department of Motor Vehicles. The Department is charged with administering the personalized license plate program. Mr. Gordon is sued in his official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

FACTUAL ALLEGATIONS

PLAINTIFFS' FREE SPEECH INTERESTS

15. Personalized license plates are a common way for Californians to express their views.

16. In 2018, the Department received over 249,000 personalized license plate applications, of which over 30,000 were denied. The program generated over 60 million dollars in revenue to the State of California in the 2018/2019 Fiscal Year.

17. The Department of Motor Vehicles’ website allows applicants to choose between a sequential plate, which contains a special background and a **random** license plate number, or a personalized plate, which allows applicants to “create a **custom** license plate number.”¹

18. Californians use personalized license plates for personal expression. California residents have used personalized license plates to convey information about their identity, their car, their music preferences, and so on. Personalized license plate configurations in California include: BOBS MA, LBRT4AL, PHA INC, DAD WGN, and LTL DUCK.

CALIFORNIA REGULATIONS ON PERSONALIZED LICENSE PLATES

19. California allows “special interest” license plates for automobiles, commercial vehicles, trailers, and motorcycles. Special interest plates may be ordered in sequential (standard numbering) or personalized (custom numbers/letters) configurations.

20. California offers just 14 special interest plate designs, each having been requested in at least 7,500 license plate applications. *See* Cal. Veh. Code § 5004.3(g)(1). Specialty plate

¹ <https://www.dmv.ca.gov/portal/dmv/detail/portal/ipp2/welcome>.

1 designs “publicize[] or promote[] a state agency,” Cal. Veh. Code § 5154. These include designs
2 by the California Art Council, California Tahoe Conservancy, and the Department of Health Care
3 Services.

4 21. Unlike “special interest plates,” “Environmental License Plates” are California
5 plates that are personalized by the owner of the vehicle. Environmental plates can have two to
6 seven characters, which may be numbers, letters, or a combination of both as chosen by the vehicle
7 owner.

8 22. Individuals applying for Environmental License Plates must pay a registration fee,
9 as well as annual renewal fees. The fees collected are used to support environmental programs.

10 23. In addition to the fee, an applicant for an Environmental License Plate must
11 provide, along with other information, her “true full name,” the “name of the recipient, if the plates
12 are a gift,” and “the applicant’s first, second, and third choices of the configuration of letters and
13 numbers to appear on the license plates and the meaning of each.” *See* Cal. Code Regs. tit. 13,
14 § 206.00(c).

15 24. The California Vehicle Code states that “the department may refuse to issue any
16 combination of letters or numbers, or both, that may carry connotations offensive to good taste and
17 decency.” Cal. Veh. Code § 5105. The implementing regulations instruct the Department to “refuse
18 any configuration that may carry connotations offensive to good taste and decency” based on
19 “criteria which includes, but is not limited to” several factors. Cal. Code Regs. tit. 13,
20 § 206.00(c)(7)(D).

21 25. Those criteria include any configuration containing “an insulting or degrading
22 term,” any configuration with a term considered “repulsive,” or any configuration with “a negative
23 connotation to a specific group.” *Id.*

24 26. The Department is required to “cancel and order the return of any Environmental
25 License Plate previously issued which contains any configuration of letters and/or numbers which
26 the department later determines may carry connotations offensive to good taste and decency.” *Id.*
27 § 206.12(a).

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1 27. The regulations do not specify who determines whether a configuration “may carry
2 connotations offensive to good taste and decency.” *Id.*

3 28. The regulations do not set out specific guidelines used to determine whether a
4 license plate configuration “may carry connotations offensive to good taste and decency.” *Id.*

5 **THE DEPARTMENT DENIES PLAINTIFFS’ REQUESTS**
6 **FOR PERSONALIZED LICENSE PLATES**

7 *Paul Ogilvie*

8 29. Paul “Chris” Ogilvie is a disabled army veteran who has served four tours overseas,
9 including Afghanistan and Iraq.

10 30. After being honorably discharged, Mr. Ogilvie bought a 2014 Hyundai Sonata. His
11 now-fiancée offered Mr. Ogilvie a personalized license plate as a gift, and the two thought about
12 the plate configuration for about a week.

13 31. Mr. Ogilvie decided on “OGWOOLF.” His military nickname is “OG,” which he
14 picked up because commanding officers and fellow soldiers found “Ogilvie” too hard to
15 pronounce. “WOOLF,” another one of Ogilvie’s nicknames, stems from his long-time interest in
16 wolves. The nickname “WOOLF” dates back to 1999, when Ogilvie picked it as part of a screen
17 name when “WOLF” was already taken.

18 32. The Department rejected the personalized license plate configuration because the
19 Department thought that the configuration “contain[ed] a reference to gang affiliation,” and was
20 thus “offensive to good taste and decency.”

21 *James Blair*

22 33. James Blair is a long-time fan of the rock band “Slayer.” Mr. Blair has attended
23 several concerts by the music group, including the band’s final performance in Oakland in
24 November 2019.

25 34. As a tribute to his favorite band, Mr. Blair, applied for a personalized license plate
26 with the configuration “SLAAYRR.”

27 35. The Department rejected the proposed personalized license plate on the ground that
28 it was “threatening, aggressive, or hostile.”

1 *Amrit Kohli*

2 36. Amrit Kohli is a computer engineer, musician, and record producer. Mr. Kohli is
3 gay, and established Queer Folks Records in an effort to reclaim the word “Queer.” Mr. Kohli’s
4 music label, Queer Folk, is trademarked by the United States Patent and Trademark Office
5 (USPTO).

6 37. Mr. Kohli applied for a personalized license plate with the configuration “QUEER.”
7 The Department rejected the application on the basis that the configuration may be considered
8 “insulting, degrading, or expressing contempt for a specific group or person,” and thus “offensive
9 to good taste and decency.”

10 *Andrea Campanile*

11 38. Andrea Campanile is an attorney for the U.S. Army. A motorcycle enthusiast,
12 Ms. Campanile owns four motorcycles, including two Ducati motorcycles.

13 39. Ms. Campanile’s fiancé, Scott Gohman, is also an avid motorcyclist and also
14 primarily rides Ducati Motorcycles. He applied for and was granted the license plate “DUKN GO”
15 which stood for “Ducati and Gohman.”

16 40. Ms. Campanile applied for a personalized license plate with the configuration
17 “DUK N A.” Ms. Campanile intended the license plate to mean “Ducati and Andrea.”

18 41. The Department rejected the proposed plate configuration because it believed it
19 “profane or obscene,” and thus “offensive to good taste and decency.”

20 *Paul Crawford*

21 42. Paul Crawford, an Englishman who emigrated 30 years ago, owns Shakespeare Pub
22 in San Diego.

23 43. Shakespeare Pub’s slogan is “Real beer, proper food, no bollocks.” Mr. Crawford
24 applied for a personalized license plate with the configuration “BO11LUX.”

25 44. The Department denied the configuration because the Department thought it had “a
26 discernable sexual connotation or may be construed to be of a sexual nature,” and was thus
27 “offensive to good taste and decency.”

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1 **CLAIM FOR RELIEF**

2 **CLAIM I**

3 **CAL. CODE REGS. TIT. 13, § 206.00(c)(7)(D)**
 4 **VIOLATES THE FIRST AMENDMENT ON ITS FACE**

5 45. Plaintiffs incorporate the allegations in the preceding paragraphs.

6 46. Personalized license plate configurations on Environmental License Plates reflect
 7 the applicant's personal expression. Thus, Cal. Code Regs. tit. 13, § 206(c)(7)(D) restricts an
 8 individual's First Amendment free speech rights. *See Kotler v. Webb*, 19-cv-2682,
 9 2019 WL 4635168 (C.D. Cal. Aug. 29, 2019) (order denying motion to dismiss).

10 47. California's regulation on personalized license plate configurations that "may carry
 11 connotations offensive to good taste and decency" imposes content-based and viewpoint-based
 12 restrictions on speech. *See* Cal. Code Regs. tit. 13, § 206.00(c)(7)(D). Because personalized license
 13 plates exist as a forum of expression for the plate's holder, the regulation is subject to strict
 14 scrutiny.

15 48. California's regulation on personalized license plate configurations that "may carry
 16 connotations offensive to good taste and decency" is not narrowly tailored to any compelling
 17 governmental interest. *Id.*

18 49. Even if reasonableness review applies, California's regulation on personalized
 19 license plate configurations that "may carry connotations offensive to good taste and decency" is
 20 invalid under the First Amendment. *Id.*

21 50. Department officials enforcing Cal. Code Regs. tit. 13, § 206(c)(7)(D) determine
 22 the meaning of configurations based on the subjective meaning supplied by the applicant and the
 23 officials' own subjective judgments about the meaning.

24 51. California's regulation on personalized license plate configurations forces the
 25 Department to make inconsistent, subjective, and often arbitrary decisions about which license
 26 plate configurations are prohibited under Cal. Code Regs. tit. 13, § 206(c)(7)(D).

27 52. Because Cal. Code Regs. tit. 13, § 206(c)(7)(D) imposes a vague ban on
 28 "connotations offensive to good taste and decency," the regulation allows Department officials to

discriminate on the basis of viewpoint.

53. Because it imposes a categorical ban on personalized license plate configurations that “may carry connotations offensive to good taste and decency,” Cal. Code Regs. tit. 13, § 206(c)(7)(D) is facially overbroad.

54. The Department currently maintains and actively enforces a set of laws, practices, policies, and procedures under color of state law that deprive Plaintiffs their right to freedom of speech, in violation of the First Amendment to the United States Constitution, as incorporated against the states by the Fourteenth Amendment, and 42 U.S.C. § 1983.

55. Plaintiffs have no adequate remedy at law to compensate for the loss of these fundamental freedoms and will suffer irreparable injury absent an injunction restraining the Department’s enforcement of the regulation complained of in this action. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against the continued enforcement and maintenance of the Department’s unconstitutional laws, practices, and policies. *See* 28 U.S.C. §§ 2201, 2202.

REQUESTED RELIEF

WHEREFORE, Plaintiffs pray for judgment from this Court as follows:

1. Declare Cal. Code Regs. tit. 13, § 206.00(c)(7)(D) facially unconstitutional under the First Amendment;

2. Enjoin Defendant, his employees, agents, successors, assigns, and all persons acting in concert with him, from continuing to enforce the ban on personalized license plate configurations that “may carry connotations offensive to good taste and decency” contained in Cal. Code Regs. tit. 13, § 206.00(c)(7)(D), as well as any and all implementing administrative rules and regulations, and practices and policies by which Defendant enforces the provision against Plaintiffs or any other person;

3. Award Plaintiffs their costs and reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988; and

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DATED: March 10, 2020.

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