

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

No. _____

AMERICAN CIVIL LIBERTIES)
UNION OF NORTH CAROLINA,)
DEAN DEBNAM,)
CHRISTOPHER HEANEY,)
SUSAN HOLLIDAY, CNM, MSN, and)
MARIA MAGHER,)

Plaintiffs,)

v.)

EUGENE A. CONTI, JR., in his official)
capacity as Secretary of the North Carolina)
Department of Transportation, MICHAEL)
ROBERTSON, in his official capacity as)
Commissioner of the North Carolina)
Division of Motor Vehicles, and MICHAEL)
GILCHRIST, in his official capacity as)
Colonel of the North Carolina State)
Highway Patrol,)

Defendants.)

VERIFIED COMPLAINT

Plaintiffs bring this Complaint against the above-named Defendants, their employees, agents, and successors in office in their official capacity, and in support thereof allege the following:

INTRODUCTION

1. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983, and seek declaratory and injunctive relief to vindicate rights secured to them by the First and Fourteenth Amendments to the United States Constitution.

2. In this action, Plaintiffs challenge a North Carolina state law, effective June 30, 2011, which makes available a specialty license plate with the words “Choose Life” to vehicle owners seeking to express their opposition to abortion. Session Law 2011-392 Sec. 1(b1)(39), Sec. 4 (a), Sec. 5(b), Sec. 7(b84) (House Bill 289) (*see* new N.C. Gen. Stat. §§ 20-63(b1)(39); 20-79.7(a) & (b); 20-81.12(b84) (hereinafter, “the Act”). A copy of the Act is attached hereto as “Exhibit A.”

3. Vehicle owners interested in obtaining a specialty license plate with a slogan expressing support for a woman’s right to reproductive freedom, including the right to abortion, by contrast, are unable to do so. Indeed, the State of North Carolina (the “State”) has expressly and repeatedly rejected the development of a pro-choice license plate. Thus, the State has opened a state-created forum for private speech to only one viewpoint in the public debate over abortion, in violation of Plaintiffs’ rights under the First and Fourteenth Amendments to the United States Constitution, as set forth in *Planned Parenthood of South Carolina, Inc. v. Rose*, 361 F.3d 786 (4th Cir. 2004) (striking down South Carolina’s “Choose Life” license plate as unconstitutional viewpoint discrimination under the First Amendment).

4. Plaintiffs challenge the Act both facially and as applied to each Plaintiff.

JURISDICTION AND VENUE

5. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343, in that this action arises under the First and Fourteenth Amendments to the United States Constitution. This court also has jurisdiction under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-02.

6. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202; by Rules 57 and 65 of the Federal Rules of Civil Procedure; and by the general and equitable powers of this Court.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b) because (1) the defendants reside or are found in the Eastern District of North Carolina; and (2) more than a substantial part of the events or omissions giving rise to the claims have occurred or are occurring within this district.

PARTIES

8. Plaintiff American Civil Liberties Union of North Carolina ("ACLU of North Carolina") is a private, non-profit membership organization with its principal office in Raleigh, North Carolina. It has more than 6,800 members in the State of North Carolina. The mission of the ACLU of North Carolina is to defend and advance the individual freedoms embodied in the United States and North Carolina Constitutions, including the rights of free speech and reproductive autonomy. By authorizing automobile owners opposed to abortion to express their views on a specialty license plate while barring automobile owners who believe in preserving a woman's right to reproductive freedom from expressing their views in the same manner, the Act curtails

the ACLU of North Carolina's rights and ability to build public support for protecting access to safe and legal abortion. The ACLU of North Carolina also sues on behalf of its more than 6,800 members, who include residents of North Carolina who would seek to purchase for their motor vehicles a North Carolina specialty license plate with a slogan supporting reproductive freedom for women, such as "Respect Choice" or "Trust Women. Respect Choice," as a means of expressing their views. They object to the fact that there is no pro-choice license plate available. As noted below, three of the individual plaintiffs are members of the ACLU of North Carolina. Additional members have submitted affidavits, attached hereto as composite "Exhibit B," which outline their desire to purchase license plates bearing a pro-choice message.

9. Plaintiff Dean Debnam ("Mr. Debnam") is a registered automobile owner in the State of North Carolina who desires to purchase a license plate bearing a pro-choice phrase such as "Respect Choice" or "Trust Women. Respect Choice."

10. Plaintiff Christopher Heaney ("Mr. Heaney") is a registered automobile owner in the State of North Carolina and a member of the ACLU of North Carolina who desires to purchase a license plate bearing a pro-choice phrase such as "Respect Choice" or "Trust Women. Respect Choice."

11. Plaintiff Susan Holliday, CNM, MSN ("Ms. Holliday") is a registered automobile owner in the State of North Carolina and a member of the ACLU of North Carolina who desires to purchase a license plate bearing a pro-choice phrase such as "Respect Choice" or "Trust Women. Respect Choice."

12. Plaintiff Maria Magher (“Ms. Magher”) is a registered automobile owner in the State of North Carolina and a member of the ACLU of North Carolina who desires to purchase a license plate bearing a pro-choice phrase, such as “Respect Choice” or “Trust Women. Respect Choice.”

13. Collectively, Plaintiffs have suffered discriminatory treatment as a result of the State’s use of the license plate forum to promote one political viewpoint (anti-choice) in the debate about abortion.

14. The Act authorizing the “Choose Life” plate causes the discriminatory treatment by allowing anti-choice supporters, but not pro-choice supporters, to express their viewpoint in a license plate forum.

15. Striking down the Act would redress the discrimination even though this remedy would not grant Plaintiffs access to the license plate forum, without further legislation.

16. Defendant Eugene A. Conti, Jr. (“Defendant Conti”) is the Secretary of the North Carolina Department of Transportation. He is responsible for supervising the North Carolina Division of Motor Vehicles (“DMV”), which administers the specialty license plate program, N.C. Gen. Stat. §§ 20-1, 20-2, 20-63 (2011), and which will distribute the proceeds of the “Choose Life” license plate to the Carolina Pregnancy Care Fellowship. Session Law 2011-392 (House Bill 289) (*see* new N.C. Gen. Stat. §20-81.12(b84)). Defendant Conti, his employees, agents and successors are sued in their official capacity.

17. Defendant Michael Robertson (“Defendant Robertson”) is the North Carolina Commissioner of Motor Vehicles. He is responsible for implementing the specialty license plate program and issuing all specialty license plates authorized by the North Carolina General Assembly, including the “Choose Life” license plate. N.C. Gen. Stat. §§ 20-2 and 20-63 (2011). Defendant Robertson, his employees, agents and successors are sued in their official capacity.

18. Defendant Colonel Michael Gilchrist (“Defendant Gilchrist”) is the Commander of the North Carolina State Highway Patrol. He is responsible for approving the design of all newly created specialty plates. N.C. Gen. Stat. § 20-63(b) (2011). Defendant Gilchrist, his employees, agents and successors are sued in their official capacity.

FACTUAL BACKGROUND

Provisions of the Act

19. On June 18, 2011, the North Carolina General Assembly passed House Bill 289, entitled: “An act to authorize the Division of Motor Vehicles to issue various special registration plates.” (2011 N.C. Sess. Laws 392). Governor Beverly Perdue signed the bill into law on June 30, 2011. The relevant provisions of the Act became effective upon its passage.

20. The Act creates scores of new specialty license plates, including one plate proclaiming the “Choose Life” message. 2011 N.C. Sess. Laws 392, Sec. 1(b1). The Act brings the total number of specialty license plates authorized by the North Carolina legislature to approximately 150. 2011 N.C. Sess. Laws 392, Sec. 7.

21. There is no statutory or administrative mechanism through which organizations or individuals can propose or obtain specialty plates not otherwise authorized by an enactment of the North Carolina General Assembly.

22. The legislature has previously authorized specialty plates of astonishing variety: “Stock Car Racing Theme,” N.C. Gen. Stat. § 20-63(b)(7), “National Wild Turkey Federation,” § 20-63(b)(10), “Autism Society of North Carolina,” § 20-79.4(b)(14), “Shag Dancing,” § 20-79.4(b)(121), “Buddy Pelletier Surfing Foundation,” § 20-79.4(b)(23), and many others.

23. The “Choose Life” plate costs \$25.00 annually in addition to the regular yearly registration fees. 2011 N.C. Sess. Laws 392, Sec. 4(a). From this price, \$15.00 of every plate sold will go to the Carolina Pregnancy Care Fellowship,¹ 2011 N.C. Sess. Laws 392, Secs. 5(b) and 7(b84), a private organization which funds and supports crisis pregnancy centers in North Carolina. The funds collected from the “Choose Life” plate are expressly prohibited from “be[ing] distributed to any agency, organization, business, or other entity that provides, promotes, counsels, or refers for abortion.” 2011 N.C. Sess. Laws 392, Sec. 7(b84).

24. The Act provides that once the DMV has received 300 applications, it is authorized to “develop” the plate. *Id.*

¹ According to its website, “the Carolina Pregnancy Care Fellowship (CPCF) is a statewide, 501(c)3 nonprofit, pro-life organization committed to offering help and encouragement to those God calls into pregnancy care ministry, especially those located in North Carolina. The Carolina Pregnancy Care Fellowship is the official state contact for Choose Life, Inc., the national organization devoted to getting the Choose Life license plates on the road in all fifty states.” See <http://www.cpcfinc.org/home.html>.

25. In practice, the applications are received through the Carolina Pregnancy Care Fellowship, the sole recipient of a portion of funds from the “Choose Life” plate. *See* Website of Choose Life – North Carolina, owned by the Carolina Pregnancy Care Fellowship, *available at* www.ncchoose-life.org (permitting vehicle owners to download the application for the plate and noting that “[w]e must collect 300 applications and submit them to the state before plates will be manufactured. After that, applications can be downloaded directly from the DMV website.”).

26. Upon information and belief, the Carolina Pregnancy Care Fellowship, as agent of the DMV, has received or will soon receive the requisite 300 applications for the “Choose Life” plate.

27. Once the DMV issues the “Choose Life” plate, it will be available to any interested vehicle owner in the State of North Carolina. *Special/Personalized Plate Portal*, North Carolina DMV, <https://edmv-sp.dot.state.nc.us/sp/SpecialPlatesPortal.html> (follow “Special Plate Viewers” hyperlink; then follow “Special Interest” hyperlink) (last visited September 6, 2011) (noting that the plates are “[i]ssued to anyone upon request”). The DMV invites automobile owners to “[s]how off *your* special interest with one of our plates.” *Id.*

Legislative History

28. In the North Carolina House of Representatives Transportation Committee meeting held on May 10, 2011, North Carolina House Representative Diane Parfitt

introduced an amendment simply to add one more plate to the slew of authorizations: “Trust Women. Respect Choice.” That amendment failed.²

29. In the House Finance Committee meeting held on June 2, 2011, House Representative Kelly M. Alexander, Jr., introduced an amendment to authorize a plate stating simply, “Respect Choice.” That amendment also failed. *See* Exhibit C.

30. During debate on the House floor on June 7-8, 2011, two more amendments to add a plate stating “Respect Choice” were proposed, again by House Representative Kelly M. Alexander, Jr., on June 7, 2011, and then by House Representative Bill Faison, on June 8, 2011. Both amendments failed.³ Copies of amendments introduced on the House and Senate floors are attached hereto as composite “Exhibit D.”

31. During debate on the Senate floor on June 16, 2011, Senator Floyd B. McKissick, Jr. introduced another amendment to add a “Respect Choice” plate. That amendment was also rejected. *See* Exhibit D. The same amendment to include a “Respect Choice” plate was earlier introduced on June 15, 2011, in the Senate Finance Committee by Senator Linda Garrou. That amendment was rejected as well. *See* Exhibit C.

32. Six times a vote was held on whether to include a pro-choice plate, and six times such a plate was roundly rejected by the North Carolina General Assembly.

² Official copies of compact discs containing audio of the various relevant House and Senate committee meetings have been submitted to the Court for filing under separate cover, as composite “Exhibit C.”

³ Audio recordings of the House floor debates can be found online at: <http://www.ncga.state.nc.us/gascripts/DocumentSites/browseDocSite.asp?nID=9&sFolderName=\2011-2012%20Session\Audio%20Archives>.

33. Legislators themselves have acknowledged that the speech at issue in this Act constitutes private speech. For example, in the North Carolina House Finance Committee meeting on June 2, 2011, Representative Tim Moore stated that the language on the “Choose Life” plate represented “voluntary speech that people are making by purchasing the license plate,” and the “free speech of members of this State.” *See* Exhibit C. In response to the suggestion that a forum had been created for private, voluntary speech, Representative Deborah Ross said: “I would caution members who don’t like this amendment [adding the “Respect Choice” plate] that if you choose one point of view and don’t choose the other point of view you’re not neutral...when you open the forum you cannot pick one point of view over another point of view.” *See* Exhibit C.

34. Representative Jennifer Weiss warned that “the state will be sued,” and the bill’s sponsor, Representative Mitch Gillespie, said that litigation over the bill is “fine with” him. *See* Exhibit C.

CAUSE OF ACTION

VIOLATION OF PLAINTIFFS’ FREE SPEECH RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

35. The allegations set forth in paragraphs 1 through 34 are incorporated by reference as if fully set forth herein.

36. The provisions of the Act creating a “Choose Life” license plate are unconstitutional under the First and Fourteen Amendments to the United States Constitution, both on their face and as applied.

37. The Act authorizes one set of speakers to express its view in the state-created license plate forum, but excludes the opposing perspective. The Act thereby discriminates against Plaintiffs on the basis of viewpoint in contravention of Plaintiffs' free speech rights. No matter what type of forum is created by the specialty license plate program, the state may not engage in viewpoint discrimination consistent with the demands of the First and Fourteenth Amendments.

38. Plaintiffs are entitled to a declaratory judgment under 28 U.S.C. §§ 2201-02 that the legislative authorization of the "Choose Life" plate is unconstitutional under the United States Constitution.

39. Plaintiffs are also entitled to permanent injunctive relief, enjoining Defendants from implementing the Act as set forth more particularly in Plaintiffs' prayer for relief below.

WHEREFORE, Plaintiffs pray that the Court award:

- (a) Declaratory relief that the provisions of the Act authorizing the "Choose Life" license plate constitute a violation of Plaintiffs' free speech rights under the First and Fourteenth Amendments to the United States Constitution;
- (b) Injunctive relief preliminarily and permanently enjoining the Defendants, their agents, employees and successors from implementing, enforcing, or otherwise carrying out the program of administration provided by Session Law 2011-392 Sec. 1(b1)(39), Sec. 4 (a), Sec. 5(b), Sec. 7(b84) (House Bill 289), or developing or issuing the "Choose Life" license plate;

- (c) Damages to be determined; and
- (d) Attorney's fees and costs pursuant to 42 U.S.C. § 1988.

Respectfully submitted this 8th day of September, 2011.

/s Katherine Lewis Parker
Katherine Lewis Parker
NC Bar No. 36263
Legal Director, American Civil Liberties Union
of North Carolina Legal Foundation
Post Office Box 28004
Raleigh, North Carolina 27611
Telephone: (919) 834-3466
Facsimile: (866) 511-1344
Email: acluncklp@nc.rr.com

Counsel for Plaintiffs

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American Civil Liberties Union of
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Plaintiff,

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VERIFICATION

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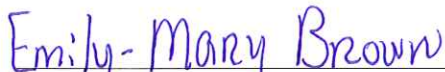
I, Jennifer Rudinger, Executive Director of the American Civil Liberties Union of North Carolina, verify, under penalty of perjury under the laws of the United States of America that the foregoing Complaint is true to the best of my knowledge, information, and belief; is based upon my personal knowledge; and is true and correct.

This 7th day of September, 2011.


Jennifer Rudinger

Sworn to and subscribed to before me,
this 7th day of September, 2011.


Notary Public (Signature)


Notary Public (Print)

My Commission Expires:

December 5, 2012



**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

American Civil Liberties Union of)
North Carolina, et al)

Plaintiffs,)

v.)

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GILCHRIST, in his official capacity as)
Colonel of the North Carolina State)
Highway Patrol,)

Defendants.)

VERIFICATION

I, Dean Debnam, verify, under penalty of perjury under the laws of the United States of America that the foregoing Complaint is true to the best of my knowledge, information, and belief; is based upon my personal knowledge; and is true and correct.

This 7 day of September, 2011.

Dean Debnam

Sworn to and subscribed to before me,
this 7th day of September, 2011.

Emily-Mary Brown

Notary Public (Signature)

Emily-Mary Brown

Notary Public (Print)

My Commission Expires:

December 5, 2012



IN THE UNITED STATES DISTRICT COURT
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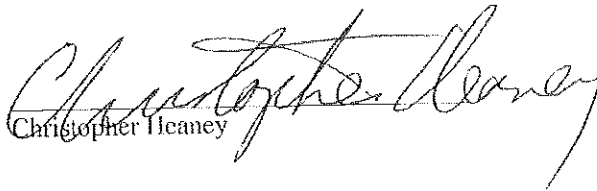
Highway Patrol,)

Defendants.)

VERIFICATION

I, Christopher Heaney, verify, under penalty of perjury under the laws of the United States of America that the foregoing Complaint is true to the best of my knowledge, information, and belief; is based upon my personal knowledge; and is true and correct.

This 7th day of September, 2011.


Christopher Heaney

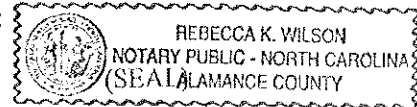
Sworn to and subscribed to before me,
this 7 day of September, 2011.


Notary Public (Signature)

REBECCA K. WILSON
Notary Public (Print)

My Commission Expires:

1-26-2016



**IN THE UNITED STATES DISTRICT COURT
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WESTERN DIVISION**

American Civil Liberties Union of
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Plaintiffs,

v.

VERIFICATION

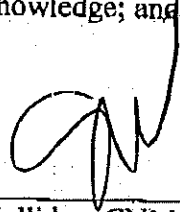
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GILCHRIST, in his official capacity as
Colonel of the North Carolina State
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Defendants.

VERIFICATION

I, Susan Holliday, CNM, MSN, verify, under penalty of perjury under the laws of the United States of America that the foregoing Complaint is true to the best of my knowledge, information, and belief; is based upon my personal knowledge; and is true and correct.

This 7 day of September, 2011.



Susan Holliday, CNM, MSN

Sworn to and subscribed to before me,
this 7 day of September, 2011.

Notary Public (Signature)

Notary Public (Print)

My Commission Expires:

10-4-15

Shawn Kendall
NOTARY PUBLIC
(S) 10/4/15
Durham County, NC

Shawn Kendall
NOTARY PUBLIC
Durham County, NC

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Highway Patrol,)

Defendants.)

VERIFICATION

I, Maria Magher, verify, under penalty of perjury under the laws of the United States of America that the foregoing Complaint is true to the best of my knowledge, information, and belief; is based upon my personal knowledge; and is true and correct.

This 7 day of September, 2011.

Maria Magher
Maria Magher

Sworn to and subscribed to before me,
this 7 day of September, 2011.

Sandra W. Haithcock My Commission Expires:
Notary Public (Signature)

SONDRA W. HAITHCOCK
Notary Public (Print)

04-14-2014 (SEAL)

