

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

CHOOSE LIFE OF MISSOURI, INC., )  
and KEVIN M. ROACH, )  
 )  
Plaintiffs, )

v. )

Case No. 06-443-CV-W-SOW

)  
TRISH VINCENT, in her official capacity )  
as Director of the Missouri Department of )  
Revenue; JOAN BRAY, in her official )  
capacity as a member of the Joint Committee )  
on Transportation Oversight; RITA HEARD )  
DAYS, in her official capacity as a member )  
of the Joint Committee on Transportation )  
Oversight; BILL STOUFFER, in his official )  
capacity as a member of the Joint )  
Committee on Transportation Oversight; )  
JOHN GRIESHEIMER, in his official )  
capacity as a member of the Joint )  
Committee on Transportation Oversight; )  
DELBERT SCOTT, in his official capacity )  
as a member of the Joint Committee on )  
Transportation Oversight; FRANK )  
BARNITZ, in his official capacity as a )  
member of the Joint Committee on )  
Transportation Oversight; NEAL ST. )  
ONGE, in his official capacity as a member )  
of the Joint Committee on Transportation )  
Oversight; CHARLIE SCHLOTTACH, in )  
his official capacity as a member of the Joint )  
Committee on Transportation Oversight; )  
LANIE BLACK, in his official capacity as a )  
member of the Joint Committee on )  
Transportation Oversight; MIKE DAUS, in )  
his official capacity as a member of the Joint )  
Committee on Transportation Oversight; )  
WAYNE HENKE, in his official capacity )  
as a member of the Joint Committee on )  
Transportation Oversight; TERRY )  
YOUNG, in her official capacity as a )  
member of the Joint Committee on )

Transportation Oversight, MATT BARTLE, )  
in his official capacity as a member of the )  
Joint Committee on Transportation )  
Oversight and CHARLIE DENISON, in his )  
official capacity as a Member of the Joint )  
Committee on Transportation Oversight, )  
 )  
Defendants. )  
\_\_\_\_\_ )

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

COME NOW the Plaintiffs, by counsel and pursuant to the Federal Rules of Civil Procedure, and for their causes of action against Defendants allege and state the following:

**I.  
INTRODUCTION**

1. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 for violation of their civil rights. CHOOSE LIFE OF MISSOURI, INC., through its president and chairman of the board of directors, KEVIN M. ROACH, (collectively, “Choose Life”) sought authorization from the Missouri Department of Revenue (“Defendant”) for a specialty license plate that would bear the “Choose Life” slogan. The application was denied because certain members of the Joint Committee on Transportation Oversight (“Joint Committee”) objected to the viewpoint of the proposed license plate.

2. Defendants thus denied Choose Life access to the speech forum created by the specialty plate program. Choose Life therefore seeks declaratory and injunctive relief to redress irreparable harm to its civil rights and seeks damages to redress its past legal injuries.

**II.  
JURISDICTION AND VENUE**

3. This action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments; and questions of state law, particularly under

Missouri Revised Statutes 21.795, 301.2999 and 301.3150 and the Missouri Constitution Article 1, Section 8.

4. This Court has original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343 and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to hear claims under the State Constitution and Statutes.

5. This Court has authority to grant the requested injunctive relief under 28 U.S.C. § 1343(3); and attorneys' fees under 42 U.S.C. § 1988(b).

6. This Court has proper jurisdiction to issue injunctive relief against the members of the Joint Committee as they were, at all times relevant to this lawsuit, acting not in their capacity as legislators, but as administrators, administering the specialty license plate program. *See Supreme Court of Virginia v. Consumers Union of U.S., Inc.*, 462 U.S. 1137 (1983).

7. Venue is proper in this Court under 28 U.S.C. § 1391(b), because some of Defendants are residents within the District.

### **III.** **IDENTIFICATION OF PLAINTIFFS**

8. Plaintiff Choose Life of Missouri, Inc., is a non-profit charitable corporation, incorporated within the State of Missouri, and is recognized as tax-exempt pursuant to Section 501(c)3 of the 1986 Internal Revenue Code.

9. Plaintiff Kevin M. Roach is an individual who resides in the City of Ballwin, within the County of St. Louis, Missouri. Mr. Roach is the founder, president and chairman of the board of directors of Choose Life of Missouri, Inc.

### **IV.** **IDENTIFICATION OF DEFENDANTS**

10. Defendant Trish Vincent is the Director of the Missouri Department of Revenue,

and is being sued in her official capacity.

11. Defendant Joan Bray is a member of the Joint Committee, and the state senator for the 24<sup>th</sup> District of Missouri.

12. Defendant Rita Heard Days is a member of the Joint Committee, and the state senator for the 14<sup>th</sup> District of Missouri.

13. Defendant Bill Stouffer is a member of the Joint Committee, and is the state senator for the 21<sup>st</sup> District of Missouri. Defendant Stouffer is not being sued because he opposes the Choose Life license plate. Rather, he is only being sued in his official capacity as a member of the Joint Committee because as a voting member of such committee, he, along with the other thirteen voting members, can provide the relief sought in this Complaint.

14. Defendant John Griesheimer is a member of the Joint Committee, and is the state senator for the 26<sup>th</sup> District of Missouri. Defendant Griesheimer is not being sued because he opposes the Choose Life license plate. Rather, he is only being sued in his official capacity as a member of the Joint Committee because as a voting member of such committee, he, along with the other thirteen voting members, can provide the relief sought in this Complaint.

15. Defendant Delbert Scott is a member of the Joint Committee, and the state senator for the 28<sup>th</sup> District of Missouri. Defendant Scott is not being sued because he opposes the Choose Life license plate. Rather, he is only being sued in his official capacity as a member of the Joint Committee because as a voting member of such committee, he, along with the other thirteen voting members, can provide the relief sought in this Complaint.

16. Defendant Frank Barnitz is a member of the Joint Committee, and the state senator for the 16<sup>th</sup> District of Missouri. Defendant Barnitz is not being sued because he

opposes the Choose Life license plate. Rather, he is only being sued in his official capacity as a member of the Joint Committee because as a voting member of such committee, he, along with the other thirteen voting members, can provide the relief sought in this Complaint.

17. Defendant Neal St. Onge is a member of the Joint Committee, and the state representative for the 88<sup>th</sup> District of Missouri. Defendant St. Onge is not being sued because he opposes the Choose Life license plate. Rather, he is only being sued in his official capacity as a member of the Joint Committee because as a voting member of such committee, he, along with the other thirteen voting members, can provide the relief sought in this Complaint.

18. Defendant Charlie Denison is a member of the Joint Committee, and the state representative for the 135<sup>th</sup> District of Missouri. Defendant Denison is not being sued because he opposes the Choose Life license plate. Rather, he is only being sued in his official capacity as a member of the Joint Committee because as a voting member of such committee, he, along with the other thirteen voting members, can provide the relief sought in this Complaint.

19. Defendant Lanie Black is a member of the Joint Committee, and the state representative for the 161<sup>st</sup> District of Missouri. Defendant Black is not being sued because he opposes the Choose Life license plate. Rather, he is only being sued in his official capacity as a member of the Joint Committee because as a voting member of such committee, he, along with the other thirteen voting members, can provide the relief sought in this Complaint.

20. Defendant Charlie Schlottach is a member of the Joint Committee, and the state representative for the 111<sup>th</sup> District of Missouri. Defendant Schlottach is not being sued

because he opposes the Choose Life license plate. Rather, he is only being sued in his official capacity as a member of the Joint Committee because as a voting member of such committee, he, along with the other thirteen voting members, can provide the relief sought in this Complaint.

21. Defendant Mike Daus is a member of the Joint Committee, and the state representative for the 67<sup>th</sup> District of Missouri.

22. Defendant Wayne Henke is a member of the Joint Committee, and the state representative for the 11<sup>th</sup> District of Missouri. Defendant Henke is not being sued because he opposes the Choose Life license plate. Rather, he is only being sued in his official capacity as a member of the Joint Committee because as a voting member of such committee, he, along with the other thirteen voting members, can provide the relief sought in this Complaint.

23. Defendant Matt Bartle is a member of the Joint Committee, and is the state senator for the 8<sup>th</sup> District of Missouri. Defendant Bartle is not being sued because he opposes the Choose Life license plate. Rather, he is only being sued in his official capacity as a member of the Joint Committee because as a voting member of such committee, he, along with the other thirteen voting members, can provide the relief sought in this Complaint.

24. Defendant Terry Young is a member of the Joint Committee, and the state representative for the 49<sup>th</sup> District of Missouri.

**V.**  
**STATEMENT OF FACTS**

***Statutory Process for Specialty License Plate Applications***

25. Missouri Revised Statutes<sup>1</sup> § 301.3150, 301.2999, 21.795(6), and 301.3152 set forth the procedures (sometimes referred to as “specialty plate program” or Defendants “policies”) for the State of Missouri to issue specialty license plates to non-profit organizations.

26. Under § 301.3150, a nonprofit organization requesting a specialty license plate must submit the following:

a. a completed application describing the proposed specialty license plate in general terms while listing at least one current member of the general assembly as an application sponsor,

b. a list of at least two hundred potential applicants,

c. an application fee of \$5,000.

d. documentation establishing the organization as a registered non-profit entity with the Internal Revenue Services.

27. Once the application has been submitted, the Department of Revenue then must forward the application to the Joint Committee for approval. *See* § 301.3150(7).

28. The Joint Committee processes the application for approval or denial.

29. The Joint Committee is made up of seven senators, seven representatives, and three non-voting ex-officio members (the state auditor, the director of the oversight division of the committee on legislative research, and the Committee of the office of administration, or the designee of such auditor, director, or Committee).

30. The Joint Committee “shall approve the application by unanimous vote.” *See* § 21.795.

31. Any member of the Joint Committee can vote against an application for a

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<sup>1</sup> All statutory citations as to the Missouri Revised Statutes, unless otherwise denoted.

specialty license plate for any reason.

32. The Joint Committee shall not approve an application if the committee receives a signed petition from five house members or two senators, regardless of their membership on the committee, indicating that they are opposed to the approval of the license plate.

33. Any house or senate member who wants to submit a petition opposing an application can base the opposition on any reason, or without a stated reason.

34. Once the specialty license plate is approved by the Joint Committee, the organization must then submit the proposed art design for the specialty plate within sixty days. *See* § 301.3150(8).

35. The specialty license plates “shall bear a design approved by the organization submitting the original application....” The design shall be within the plate area prescribed by the director of revenue, and the designated organization’s name or slogan shall be in place of the words “SHOW ME STATE.” *See* § 301.3150(16).

36. All monies received by an organization authorizing the use of its emblem or insignia for a specialized license plate shall only be used by such organization to carry out the organization’s charitable mission. *See* § 301.2999(3).

37. Once the Joint Committee approves the application, the matter does not then go before the general assembly for approval.

38. Once the Joint Committee approves the original application, the matter does not then come back to the Joint Committee for vote.

39. In the event that an application is denied, the organization is given the opportunity to file an appeal. The Joint Committee hears the appeal. *See* § 301.3152.

40. The laws establishing this framework were enacted on January 1, 2005.



*Choose Life's Application for a Specialty License Plate*

41. Choose Life submitted an application to the Missouri Department of Revenue for the issuance of a "Choose Life" license plate. (The application is attached to the Complaint as Exhibit A).

42. The money generated from the Choose Life plates will go to support Missouri pro-life pregnancy resource centers, maternity homes and adoption agencies.

43. Missouri state senators Joan Bray and Rita Heard Days, who both support abortion rights and who are members of the Joint Committee, submitted a letter to the Chair of the Joint Committee opposing the Choose Life license plate application. (A copy of their letter is attached to the Complaint as Exhibit B).

44. The senators opposed the Choose Life plate because they are opposed to the pro-life viewpoint.

45. Sen. Bray said in an August 19, 2005, article in the St. Louis Review that "The subject matter of the Choose Life ([plate]) is a very divisive, controversial subject, and I think totally inappropriate for a license plate."

46. However, Sen. Bray sponsored a bill in the Senate in 2005 to create a pro-choice license plate. (A copy of Senate Bill 1445S.011 is attached to the Complaint as Exhibit C).

47. A hearing was held on Choose Life's application before the Joint Committee on February 21, 2006, along with four other applications by the following private organizations: Ethan and Friends for Autism (slogan "Understand Autism"), Missouri Cattlemen Foundation (slogan "Show Me Beef"), Missouri Caves and Karst Conservancy (slogan "The Cave State"), and Missouri Support our Troops, Inc. (slogan "Support Our Troops"). (A copy of the applications by the four other private organizations is attached to the Complaint as Exhibit D).

48. While the four other applications were approved, Choose Life's application was denied.

49. On March 10, 2006, Choose Life appealed the denial of its application.

50. By statute, the appeal was to be heard by the exact same entity that had originally denied the application – the Joint Committee—under the same rules and procedures as originally applied.

51. Choose Life's appeal was denied on May 9, 2006, again, after the same two pro-choice senators submitted a letter opposing the application.

52. There are no objective standards or written criteria to govern the Joint Committee's decision regarding whether an eligible organization's plate design is approved.

53. There are no objective standards or written prohibitions against the use of a slogan or advocacy message on an organization's plate.

54. Choose Life has fully complied with all statutory requirements for the issuance of a specialty license plate.

#### *Accepted Specialty Plates*

55. Upon information and belief, specialty plates have been approved to the following organizations through application to the Missouri Department of Revenue: Ethan and Friends for Autism (slogan "Understand Autism"), Missouri's Cattlemen Foundation (slogan "Show Me Beef"), Missouri Caves and Karst Conservancy (slogan "The Cave State"), and Missouri Support our Troops, Inc. (slogan "Support Our Troops").

56. Upon information and belief, the following specialty license plates with

corresponding slogans have been approved and issued through legislative enactment:<sup>2</sup> See § 301.071 through 301.4000:

a. Organizational Membership Required for Plate Issuance

i. Fraternal/Religious/Spiritual Entities

1. “KNIGHTS OF COLUMBUS” - Knights of Columbus
2. “HARMONY - GRAND EASTERN STAR” - Grand Chapter of the Missouri Order of the Eastern Star
3. “PRINCE HALL - MISSOURI & JURISDICTION - FREE & ACCEPTED MASONS” - Grand Lodge Ancient, Free & Accepted Masons of the State of Missouri
4. “SHRINERS HELP KIDS” - Shrine Temple of the Ancient Arabic Order or Nobles of the Mystic Shrine
5. “ELKS USA – MISSOURI ELKS” - Missouri Elks Association

ii. Greek Societies

1. “ALPHA KAPPA ALPHA” - Alpha Kappa Alpha Sorority, Inc.
2. “ALPHA PHI OMEGA” - Alpha Phi Omega National Service Fraternity
3. “ALPHA PHI ALPHA” - Alpha Phi Alpha Fraternity, Inc.
4. “DELTA SIGMA THETA SORORITY, INC.” - Delta

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<sup>2</sup> These specialty license plates have been categorized by those plates requiring membership in the sponsoring organization, and those that do not require any membership.

- Sigma Theta Sorority, Inc.
5. "DELTA TAU DELTA" - Delta Tau Delta International Fraternity
  6. "IOTA PHI THETA" - Iota Phi Theta Fraternity Inc.
  7. "KAPPA ALPHA PSI" - Kappa Alpha Psi Fraternity Inc.
  8. "OMEGA PSI PHI FRATERNITY, INC." - Omega Psi Phi Fraternity, Inc.
  9. "PHI BETA SIGMA" - Phi Beta Sigma Fraternity, Inc.
  10. "SIGMA GAMMA RHO" - Sigma Gamma Rho Sorority, Inc.
  11. "ZETA PHI BETA" - Zeta Phi Beta Sorority, Inc.
  12. "THETA CHI FRATERNITY" - Foundation Chapter of Theta Chi Fraternity, Inc.

iii. Professional Organizations

1. "CIVIL AIR PATROL" - Civil Air Patrol
2. "CORONER'S OFFICE" - Missouri Coroners' and Medical Examiners' Association
3. "FRATERNAL ORDER OF POLICE" - Fraternal Order of Police
4. "MISSOURI SOCIETY OF PROFESSIONAL ENGINEERS"- Missouri Society of Professional Engineers
5. "TEAMSTERS" - Missouri-Kansas-Nebraska Conference of Teamsters

6. "PARAMEDIC - EMERGENCY MEDICAL  
TECHNICIAN" - Emergency Medical Services Association
7. "FIREFIGHTER" - Missouri Firefighters
8. "SEARCH & RESCUE" - Search & Rescue Council of  
Missouri
9. "THE MASTERS" - Missouri Association of State Troopers  
Emergency Relief Society
10. "MISSOURI TASK FORCE ONE" - Missouri Task Force  
One

iv. Civil Rights Organizations

1. "NAACP" - National Association for the Advancement of  
Colored People

v. Interest Affiliations

1. "FOX TROTTER - STATE HORSE" - Missouri Fox  
Trotting Horse Breed Association
2. "KINGDOM OF CALONTIR" - Kingdom of Calontir
3. "GATEWAY TO THE WEST" - Jefferson National Parks  
Association
4. "SQUARE DANCER" - Missouri Federation of Square and  
Round Dance Clubs
5. "FRIENDS OF ARROW ROCK" - Friends of Arrow Rock

vi. Service/Charitable/Educational Organizations

1. "FRIEND OF YOUTH" - Optimist International

2. "THE AMERICAN LEGION" - American Legion
3. "SERVICE ABOVE SELF" - Rotary International
4. "MISSOURI STATE SOCIETY – DAUGHTERS OF THE AMERICAN REVOLUTION" - Missouri State Society – Daughters of the American Revolution

vii. Youth/Personal Development Organizations

1. "MISSOURI 4-H" - The Missouri 4-H
2. "TRIBE OF MIC-O-SAY" - Tribe of Mic-O-Say
3. "ORDER OF THE ARROW - BOY SCOUTS OF AMERICA" - Boy Scouts of America
4. "EAGLE SCOUT" - Boy Scouts of America
5. "MISSOURI JAYCESS" - Missouri Jaycees

viii. Civic Institutions

1. "MISSOURI BOTANICAL GARDENS" - Missouri Botanical Gardens
2. "ST. LOUIS ZOO" - St. Louis Zoo
3. "KANSAS CITY ZOO" - Kansas City Zoo
4. "SPRINGFIELD ZOO" - Springfield Zoo

ix. Military Honors

1. AIR FORCE, AIR MEDAL, ARMY, BRONZE STAR, COAST GUARD, COMBAT ACTION RIBBON, COMBAT INFANTRYMAN, COMBAT MEDIC, CONGRESSIONAL MEDAL OF HONOR, DISABLED

VETERAN, DISTINGUISHED FLYING CROSS, FORMER POW, GULF WAR VETERAN, KOREAN WAR VETERAN, MARINE, MARINE CORP LEAGUE, MERCHANT MARINE, NATIONAL GUARD, NAVY, OPERATION ENDURING FREEDOM, OPERATION IRAQI FREEDOM VETERAN, OPERATION NOBLE EAGLE, PEARL HARBOR SURVIVOR, PURPLE HEART, RETIRED AIR FORCE, RETIRED ARMY, RETIRED MARINE, RETIRED MARINE CORP LEAGUE, RETIRED NAVY, RETIRED AIR NATIONAL GUARD, SILVER STAR, UNITED STATES VETERAN, VETERAN OF FOREIGN WARS, VIETNAM VETERAN, WORLD WAR II VETERAN.

b. Organizational Membership Not Required for Plate Issuance

i. Professional Organizations

1. "AGRIBUSINESS" - MO-AG Businesses
2. "AGRICULTURE IN THE CLASSROOM" - Missouri Farm Bureau

ii. Interest Affiliations

1. "WOMEN'S COUNCIL" - Friends of the Missouri Women's Council
2. "DUCKS UNLIMITED" - Ducks Unlimited
3. "FIGHT TERRORISM" - Missouri Office of Homeland

Security

4. "GOD BLESS AMERICA" - World War II Memorial Fund
5. "CONSERVE WILDLIFE – PROTECT OUR HERITAGE"  
- Safari Club International
6. "I'M PET FRIENDLY" - Missouri State Humane  
Association
7. "CONSERVATION" - Missouri Conservation Heritage  
Foundation

iii. Service/Charitable/Educational Organizations

1. "PREVENT DISASTERS IN MISSOURI" - American Red  
Cross Disaster Relief Fund
2. "SPECIAL OLYMPICS MISSOURI" - Special Olympics  
Missouri
3. "WILSON'S CREEK" - Wilson's Creek National  
Battlefield Foundation
4. "LIONS CLUB" - Lions Club
5. "VISIT MISSOURI" - Missouri Travel Council
6. "LEWIS & CLARK EXPEDITION" - Missouri Travel  
Council
7. "FRIENDS OF KIDS WITH CANCER" - Friends of Kids  
with Cancer
8. "MARCH OF DIMES" - Missouri chapter of March of  
Dimes



9. "BE AN ORGAN DONOR" - Organ Donor Program Fund

10. "WINNING WOMEN" - American Heart Association

11. "CHILDREN'S TRUST FUND" - Children's Trust Fund

12. "KIDS HELPING KIDS" - Hearing Impaired Kids  
Endowment Fund, Inc.

13. "HELPING SCHOOLS" - any school or nonprofit  
organization affiliated with a school

iv. Youth/Personal Development Organizations

1. "CAMP QUALITY – FUN FOR KIDS WITH CANCER" -  
Camp Quality of Missouri

v. Public & Private, Institutions of Higher Education

1. BIBLE BAPTIST COLLEGE, CENTRAL METHODIST  
COLLEGE, COLUMBIA COLLEGE, DRURY  
UNIVERSITY, FONTBONNE UNIVERSITY,  
MARYVILLE UNIVERSITY, PARK UNIVERSITY,  
ROCKHURST UNIVERSITY, ST. LOUIS UNIVERSITY,  
ST. LOUIS COLLEGE OF PHARMACY, WASHINGTON  
UNIVERSITY, WESTMINSTER COLLEGE, WEBSTER  
UNIVERSITY, CENTRAL MISSOURI STATE  
UNIVERSITY, CULVER-STOCKTON STATE  
COLLEGE. LINCOLN UNIVERSITY, LINDENWOOD  
UNIVERSITY, MISSOURI SOUTHERN UNIVERSITY,  
MISSOURI STATE UNIVERSITY, MISSOURI VALLEY

COLLEGE, MISSOURI WESTERN, NORTHWEST  
MISSOURI STATE UNIVERSITY, SOUTHEAST  
MISSOURI STATE UNIVERSITY, TRUMAN STATE  
UNIVERSITY, UNIVERSITY OF MISSOURI –  
COLUMBIA, UNIVERSITY OF MISSOURI – ST. LOUIS,  
UNIVERSITY OF MISSOURI – KANSAS CITY,  
UNIVERSITY OF MISSOURI – ROLLA, WILLIAM  
JEWELL UNIVERSITY, WILLIAM WOODS  
UNIVERSITY

(A copy of the Application for Missouri Personalized and Special License Plates, DOR Form 1716, listing the various specialty plates is attached to the Complaint as Exhibit E).

***Joint Committee on Transportation Oversight***

57. The Joint Committee has not and does not now consider, debate, develop, author, manipulate, or otherwise preside over the conception of any past, pending or future legislation.

58. The Joint Committee does not report on bills, nor are bills referred to the committee.

59. The Joint Committee does appoint and employ an executive director, the transportation inspector general, to perform specific investigations, reviews, audits, and other studies of the state department of transportation.

60. The executive director employed by the Joint Committee is to report to and under the general supervision of the Joint Committee, and is vested to:

- a. Receive and process citizen complaints
- b. Investigate complaints from current & former employees

- c. Maintain records.
61. The Joint Committee has three required meetings per year.
62. The Joint Committee meeting agendas include:
- a. Receipt and examination of a comprehensive financial report as it pertains to state department of transportation
  - b. Presentation of a prioritized plan for all modes of transportation
  - c. Discussion of department efficiencies and expenditure of cost-savings within the department
  - d. Presentation of a status report on department of transportation revenues and expenditures,
  - e. Review of any report from the joint committee inspector general
  - f. Implementation of any actions as may be deemed necessary by the committee as authorized by law
  - g. The committee shall also review for approval or denial all applications for the development of specialty plates submitted to it by the department of revenue.

**VI.**  
**STATEMENT OF LAW**

63. Each and all of the acts herein alleged of the Defendants, their officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color of state law, including the statutes, regulations, customs, policies, and usages of the State of Missouri.

64. Defendants have an affirmative duty to authorize a specialty plate that complies

with §301.3150.

65. As a matter of law, Missouri has a legitimate interest in assisting and protecting pregnant women and their unborn infants, and in promoting childbirth and adoption as positive choices for unwanted pregnancies and newborn infants.

**VII.**  
**FIRST CAUSE OF ACTION:**  
**VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH & ASSEMBLY**  
**UNDER THE UNITED STATES CONSTITUTION**

66. Choose Life re-alleges and incorporates herein, as though fully set forth herein, all previous paragraphs of this Verified Complaint and does further allege as follows:

67. The specialty plate program intentionally allows eligible non-profit organizations to be issued a specialty license plate with their name and or slogan on the plate.

68. As evidenced by previously approved plates, other organizations have been allowed to express their chosen messages via slogans, advocacy phrases, commonly used phrases names, and/or other identifiers.

69. Within the plate program, the government may not exclude protected speech on the basis of its content, absent a compelling governmental interest.

70. Regardless of the type of speech forum that the plate program constitutes (fora are typically identified as traditional, designated or limited, or nonpublic), the government may not discriminate based upon the viewpoint expressed by the speaker.

71. The plate program is a prior restraint on private speech.

72. Defendants denied Choose Life's plate application because of Choose Life's viewpoint.

73. Defendants denied Choose Life's plate application based upon their disagreement

with life-affirming viewpoint expressed by the plate.

74. There is nothing in Missouri Statutes 301.3150, 301.2999 or 21.795 that prohibits a member of the Joint Committee or a Missouri state senator or representative from rejecting an application based on viewpoint.

75. Defendants exercised unbridled discretion by refusing to approve Choose Life's license plate application.

76. Defendants either engaged in, or facilitated, content-based and viewpoint-based discrimination and the exercise of unbridled discretion during the course of their review and ultimate denial of the requested plate.

77. Choose Life has suffered irreparable harm to its constitutional rights as a result of the Committee's failure to approve its requested plate.

78. Unless and until Defendants are enjoined from discriminating against the Choose Life's speech, as manifest in the requested organizational plate, Choose Life will continue to suffer irreparable harm to its constitutional rights.

79. Unless and until Defendants cease their unlawful discrimination against Choose Life's speech, Choose Life will suffer the loss of income it would otherwise have obtained from the sale of Choose Life plates.

80. Defendants' denial of access to Choose Life chills the exercise of First Amendment rights by other organizations.

81. Defendants have no compelling government interest to justify excluding Choose Life from the plate program.

82. Therefore, Defendants' failure to approve Choose Life's requested specialty license plate violates the Free Speech Clause of the First Amendment to the United States

Constitution.

WHEREFORE, Choose Life respectfully prays that the Court grant the relief set forth in the prayer for relief.

**VIII.**  
**SECOND CAUSE OF ACTION:**  
**VIOLATION OF THE RIGHT TO DUE PROCESS**  
**UNDER THE UNITED STATES CONSTITUTION**

83. Choose Life re-alleges and incorporates herein, as though fully set forth herein, all previous paragraphs of this Verified Complaint and does further allege as follows:

84. Defendants exercised unfettered discretion when they refused to approve Choose Life's requested plate.

85. Defendants' refusal to approve Choose Life's requested plate relied upon vague and overbroad policies.

86. Defendants' policies do not adequately notify persons of what expression is prohibited and what is permitted on a specialty plate.

87. Defendants have enforced their policies in an *ad hoc* and arbitrary manner.

88. Choose Life has suffered irreparable harm as a result of Defendants' refusal to approve its requested plate.

89. Unless and until Defendants are enjoined from discriminating against Choose Life's speech, as manifest in the requested specialty license plate, Choose Life will continue to suffer irreparable harm to its federal constitutional rights.

90. Unless and until Defendants cease its unlawful discrimination against Choose Life's speech, Choose Life will suffer the loss of income it would otherwise have obtained from the sale of Choose Life organizational plates.

91. Therefore, Defendants' failure to approve Choose Life's requested plate violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Choose Life respectfully prays that the Court grant the relief set forth in the prayer for relief.

**IX.**  
**THIRD CAUSE OF ACTION:**  
**VIOLATION OF THE RIGHT TO EQUAL PROTECTION**  
**UNDER THE UNITED STATES CONSTITUTION**

92. Choose Life re-alleges and incorporates herein, as though fully set forth herein, all previous paragraphs of this Verified Complaint and does further allege as follows:

93. Defendants have allowed other similarly-situated, non-profit community organizations to participate in the Missouri specialty plate program using names and logotypes that include slogans, mottos, symbols, advocacy messages, phrases, and other similar identifiers.

94. The Equal Protection Clause requires that the government treat equally all persons similarly situated.

95. Defendants denied Choose Life similar access to the plate program because of the content and viewpoint of its speech, which violates the Equal Protection Clause of the Fourteenth Amendment.

96. Defendants either engaged in, or facilitated, content-based and viewpoint-based discrimination.

97. Defendants have no compelling governmental interest to justify such disparate treatment of the Choose Life.

WHEREFORE, Choose Life respectfully prays that the Court grant the relief set forth in the prayer for relief.

**X.**  
**FOURTH CAUSE OF ACTION:**  
**VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH**  
**UNDER THE MISSOURI CONSTITUTION ARTICLE 1, SECTION 8.**

98. Choose Life re-alleges and incorporates herein, as though fully set forth herein, all previous paragraphs of this Amended Verified Complaint and does further allege as follows:

99. The plate program intentionally allows non-profit organizations and their individual members to identify themselves via their own, official corporate identifiers (*e.g.*, logos and legal names).

100. Within such a forum, the government may not discriminate against protected speech on the basis of its content, absent a compelling governmental interest.

101. Regardless of the type of forum (typically designated as traditional, designated or limited, or nonpublic fora), the government may not discriminate based upon the viewpoint expressed by the speaker.

102. The specialty plate program scheme is a prior restraint on private speech.

103. The specialty license plate scheme allows for unbridled discretion on the part of the Joint Committee.

104. Upon information and belief, Defendants refused to approve the Choose Life's requested plate because they deemed Choose Life's requested plate to be "controversial."

105. Upon information and belief, Defendants refused to approve the Choose Life's requested plate because Choose Life's requested plate may be perceived as controversial by some members of the public.

106. Upon information and belief, Defendants refused to approve the Choose Life's requested plate based upon their disagreement with the life-affirming viewpoint expressed by the



proposed plate.

107. Defendants exercised unbridled discretion when they refused to approve the Choose Life's requested plate.

108. Defendants' restrictions on Choose Life's desired speech are not narrowly specific.

109. Defendants either participated in, or facilitated, content-based and viewpoint-based discrimination and the exercise of unbridled discretion.

110. Defendants have no compelling government interest to justify excluding Choose Life from the specialty license plate program.

111. Therefore, Defendants' failure to approve Choose Life's requested plate violates the Missouri Constitution.

112. Unless and until Defendants are enjoined from censoring of Choose Life's speech, Choose Life will continue to suffer irreparable harm to its state constitutional rights.

WHEREFORE, Choose Life respectfully prays that the Court grant the relief set forth in the prayer for relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Honorable Court:

A. Enter a Declaratory Judgment stating that Defendants' failure to approve Choose Life's requested specialty license plate violates the First and Fourteenth Amendments to the United States Constitution, and the Missouri Constitution;

B. Enter a permanent injunction enjoining the Defendants, their agents, servants, employees, officials or any other person acting in concert with them or on their behalf, from discriminating against a license plate applicant based upon the content or viewpoint expressed by

the corporate identifiers of the applicant;

C. Enter a permanent injunction enjoining the Defendants, their agents, servants, employees, officials and any other person acting in concert with them or on their behalf, from violating Choose Life's Constitutional rights, and direct them to approve Choose Life application.

D. Declare that §301.3150(4) and §21.795(6) are facially unconstitutional under the First and Fourteenth Amendments to the United States Constitution because they are vague, overbroad, and vest unfettered discretion in Defendants or, in the alternative, construe the statutes to be constitutional by striking the offending provisions;

E. Award Choose Life's costs and expenses of this action, including a reasonable attorneys' fee award, in accordance with 42 U.S.C. § 1988, and other applicable state and federal law;

F. Grant such other and further relief as the Court deems equitable, just, and proper;

G. Adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment; and

H. Retain jurisdiction of this matter for the purpose of enforcing the Court's orders.

Respectfully submitted this 1st day of June, 2006.

/s/ Joel Oster

Kevin Theriot

Missouri Bar # 55733

Joel Oster

Missouri Bar # 50513

David LaPlante

Missouri Bar #56583

Jim Jenkins

Missouri Bar # 17106

**Alliance Defense Fund**

15192 Rosewood

Leawood, Kansas 66224

(913) 685-8000

Benjamin Bull\**Of counsel, not admitted*

Arizona Bar # 009940

**Alliance Defense Fund**

15333 E. Pima Rd., Ste. 165

Scottsdale, Arizona 85260

(480) 444-0028

ATTORNEYS FOR PLAINTIFFS

## VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein are true and correct.

Executed this 30th day of May, 2006 in St. Louis County, Missouri.

/s/ Kevin M. Roach  
Kevin M. Roach  
President & Chairman  
Choose Life of Missouri, Inc.