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U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION  
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SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

ELIZABETH FERRIS, an individual,

Plaintiff,

v.

RONALD L. STIVER, in his individual  
capacity and his official capacity as  
Commissioner of the Indiana Bureau of  
Motor Vehicles,

Defendant.

CASE NO. \_\_\_\_\_

**1 : 08 - cv - 1551 SEB - DML**

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

Comes now the Plaintiff, by and through counsel, and avers the following:

**I.**

**INTRODUCTION**

1. This case arises from Defendant's refusal to approve Plaintiff's requested personalized license plate of "BE GODS." Pursuant to statute, administrative regulation, and policy, the Defendant has illegally excluded the Plaintiff's speech solely because of its religious content and viewpoint while allowing personalized messages regarding secular topics, including ethnicity and race. This is a flagrant violation of the First and Fourteenth Amendments to the United States Constitution. Plaintiff seeks declaratory relief, injunctive relief, damages, costs, and attorneys' fees.

**II.**

**JURISDICTION AND VENUE**

2. This action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and under federal law, particularly 28 U.S.C. §§ 2201 & 2202, and 42 U.S.C. §§ 1983 & 1988.

3. This Court has original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

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

5. Venue is proper in the United States District Court for the Southern District of Indiana under 28 U.S.C. § 1391(b), because the events giving rise to the claim occurred within the District and because all parties are residents of the District.

### III.

#### IDENTIFICATION OF THE PARTIES

6. Plaintiff Elizabeth Ferris is an individual who resides in Cambridge City, Indiana.

7. Defendant Ronald L. Stiver is the Indiana Commissioner of the Bureau of Motor Vehicles and is sued in his individual and official capacity.

### IV.

#### STATEMENTS OF FACT

##### **Indiana's Personalized License Plate Program**

8. Under IND. CODE ANN. § 9-18-15-1 (2004) individuals may obtain special automotive license plates from the Indiana Bureau of Motor Vehicles ("BMV").

9. To obtain the special plates, individuals must fill out a Personalized License Plate application ("application") and submit it to the BMV with a \$48 fee. On the application, individuals submit their choice of a combination of letters and numbers for their license plate. 140 IND. ADMIN CODE § 2-5-1 (2008).

##### **Denial of Elizabeth Ferris' Personalized License Plate Request**

10. Plaintiff Elizabeth Ferris is a licensed driver in the State of Indiana and eligible to apply for a personalized license plate.

11. Ms. Ferris has had the personalized Indiana license plate bearing "BE GODS" for over 8 years.

12. Ms. Ferris' personalized license plate expired in 2008, requiring her to submit a new application for the personalized license plate for 2009.

13. On or about March 4, 2008, Ms. Ferris submitted an application for a personalized license plate to the BMV for the year 2009. A true and correct copy of that application is attached as Exhibit A.

14. Ms. Ferris' completely filled out the official application provided by the BMV. *See Ex. A.*

15. On the application, Ms. Ferris requested that the personalized license plate read "BE GODS." *See Ex. A.*

16. On the application, listed the meaning of the personalized license plate as "Belonging to God." *See Ex. A.*

17. Ms. Ferris submitted the \$48 special plate fee concurrently with her application. *See BMV Transaction Receipt dated March 14, 2008, attached as Exhibit B.*

18. On or about May 13, 2008, the BMV sent Ms. Ferris a letter denying her application for a personalized plate. A true and correct copy of this letter is attached as Exhibit C.

19. The letter from the BMV denied Ms. Ferris' renewal because it was "inappropriate due to form or content." *See Ex. C.*

20. The letter notified Ms. Ferris of her right to request a hearing within 18 days of receiving the letter. *See Ex. C.*

21. On or about May 29, 2008, Ms. Ferris requested a hearing from the BMV regarding her application for the "BE GODS" personalized plate. A true and correct copy of this letter is attached as Exhibit D.

22. In the letter making the request, Ms. Ferris explained that the message "BE GODS" meant "belonging to God" and had been inspired by a Christian musician who would sign autographs with the statement "Be God's." *See* Ex. D.

23. In the letter, Ms. Ferris quoted Romans 14:7-8, a verse from the Bible, and stated that she associates this verse with the phrase "BE GODS." *See* Ex. D.

24. In the letter, Ms. Ferris also questioned why her request was considered inappropriate content, given that Indiana issues license plates bearing the phrase "In God We Trust." *See* Ex. D.

25. On or about June 18, 2008, the BMV responded in writing to Ms. Ferris' request for a hearing and scheduled a hearing for July 8, 2008 with Administrative Hearing Officer Edward Bowman. *See* BMV Letter of June 18, 2008, attached as Exhibit E.

26. On July 8, 2008, Ms. Ferris participated in the administrative hearing, accompanied by attorney Amy Jarecki. *See* Hearing Minutes attached as Exhibit F.

27. On August 7, 2008, Administrative Hearing Officer Bowman gave a Recommended Order that the BMV's decision to reject Ms. Ferris' renewal application be reversed. *See* Findings of Fact, Conclusions of Law, and Recommended Order attached as Exhibit G.

28. The Recommended Order contained a conclusion of law that the First Amendment prohibited the BMV from refusing to issue a personalized plate simply because it referenced deity. *See* Ex. G.

29. The Recommended Order also contained a conclusion of law that the statutory grant of authority to the BMV to reject plates for carrying offensive message or being misleading did not authorize the BMV to prohibit messages solely because they referred to deity or religion. *See* Ex. G.

30. On August 22, 2008, the BMV filed a Notice to Reconsider the Recommended Order. *See* Letter of August 22, 2008, and attached Notice to Reconsider Recommended Order attached as Exhibit H.

31. On October 15, 2008, the BMV issued a Final Agency Order denying Ms. Ferris' application for the specialty license plate. *See* Final Agency Order attached as Exhibit I.

### **Statutes and Regulations**

32. The BMV may refuse to allow an individual's application for a specialty license plate if it "(1) carries a connotation offensive to good taste and decency; or (2) would be misleading." IND. CODE ANN. § 9-18-15-4.

33. The BMV has interpreted this statutory language to allow the BMV to refuse acceptance of any message which "an objective, reasonable person" would find to fall within at least one of nine listed categories. 140 IND. ADMIN CODE § 2-5-2, attached as Exhibit K.

34. One of the listed categories of prohibited topics within 140 IND. ADMIN CODE § 2-5-2 is a prohibition on a specialty license plate that "refers to a race, religion, deity, ethnicity, gender, sexual orientation, or political party or affiliation. However, generally accepted references to a race or ethnic heritage are allowable." *Id.* at (3).

35. Despite the language in § 2-5-2 allowing generally accepted references to race or ethnic heritage, no similar exception is allowed for "generally accepted" religious expression. *See* Ex. K.

36. Section 2-5-2 also allows the BMV to deny an application for a personal license plate even if it does not fall within one of the nine listed categories if it "is determined to carry a connotation offensive to good taste and decency, is misleading, or is otherwise prohibited. *See* Ex. K.

37. There are no definitions in the Administrative Code of the phrases "offensive to good taste and decency," "misleading," or "otherwise prohibited." *See* Ex. K.

38. Upon information and belief, no definitions for those phrases exist in any other publicly available documents prepared by the BMV.

39. Individuals can obtain a non-personalized specialty license plate which reads "In God We Trust" on the background of the plate. IND. CODE ANN. § 9-18-15-4(b)(I).

40. Upon information and belief, Defendant follows a policy that allows personalized license plates that would be objectionable to be renewed and thus “grandfathered.”

41. Upon information and belief, Defendant’s “grandfathered” policy allows license plates to be renewed and thus remain on vehicles even though they would violate 140 IND. ADMIN CODE § 2-5-2.

**V.**

**STATEMENTS OF LAW**

42. Each and all of the acts herein alleged of the Defendant, his officers, agents, servants, employees, or persons acting at his 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 Indiana.

43. Plaintiff’s religious speech, viewpoint, and free exercise of religion are fully protected by the First Amendment to the United States Constitution.

44. Unless and until the Defendant’s enforcement of the religiously-discriminatory statutes, regulations, and policies is enjoined, the Plaintiff will suffer and continue to suffer irreparable harm to her federal constitutional rights.

**VI.**

**FIRST CAUSE OF ACTION**

**Violation of the Free Speech Clause – U.S. Constitution**

45. The allegations contained in paragraphs 1-44 are realleged and incorporated herein by reference.

46. 140 IND. ADMIN CODE § 2-5-2(b) and § 2-5-2(b)(3), IND. CODE ANN. § 9-18-15-4 (hereafter “Defendant’s Code”), and Defendant’s policy and actions, both on their face and as applied, are an unlawful viewpoint-based discrimination on speech.

47. Defendant’s Code, and Defendant’s policy and actions, both on their face and as applied, are an unconstitutional content-based discrimination on speech.

48. Defendant's Code, and Defendant's policy and actions, both on their face and as applied, are unconstitutionally overbroad.

49. Defendant's Code, and Defendant's policy and actions, both on their face and as applied vest unfettered discretion in BMV officials to either grant or deny an application for a personalized license plate.

50. Defendant's Code, and Defendant's policy and actions, both on their face and as applied, are an unconstitutional prior restraint on Plaintiff's right to free speech.

51. Defendant has no compelling government interest sufficient to justify denying Plaintiff's specialized license plate application.

52. Defendant has no compelling government interest sufficient to justify the broad restriction on speech contained in Defendant's Code, and Defendant's policy and actions.

53. Defendant's Code, and Defendant's policy and actions, both on their face and as applied, are not the least restrictive means to accomplish any permissible government purpose sought to be served by the actions.

54. Defendant's Code, and Defendant's policy and actions, both on their face and as applied, are irrational and unreasonable and impose unjustifiable restrictions on constitutionally-protected speech.

55. Defendant's Code, and Defendant's policy and actions, both on their face and as applied, unconstitutionally chill and abridge the right of Plaintiff to freely speak.

56. Defendants' violation of Plaintiff's right of free speech has caused, and will continue to cause, the Plaintiff to suffer undue and actual hardship and irreparable injury.

57. Plaintiff has no adequate remedy at law to correct the continuing deprivations of her most cherished constitutional liberties.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

**VII.**

**SECOND CAUSE OF ACTION**

**Violation of the Equal Protection Clause – U.S. Constitution**

58. The allegations contained in paragraphs 1-44 are realleged and incorporated herein by reference.

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

60. Defendant's Code, and Defendant's policy and actions are an unconstitutional abridgement of Plaintiffs' affirmative right to equal protection of the laws.

61. Defendant's Code, and Defendant's policy and actions are unconstitutional because they treat religious speech differently than other similarly situated speech.

62. Defendant's Code, and Defendant's policy and actions are not supported by a compelling governmental interest sufficient to justify their enactment or enforcement against Plaintiff.

63. Defendant's Code, and Defendant's policy and actions are not the least restrictive means to accomplish any permissible government purpose sought to be served.

64. Defendant's Code, and Defendant's policy and actions do not serve a significant government interest.

65. Defendant's Code, and Defendant's policy and actions are irrational and unreasonable, and impose irrational and unjustifiable restrictions on constitutionally protected speech.

66. Defendant, in violation of the Equal Protection Clause, has caused, and will continue to cause, Plaintiff to suffer undue and actual hardship and irreparable injury.

67. Plaintiff has no adequate remedy at law to correct the continuing deprivations of Plaintiff's most cherished constitutional liberties.



WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

**VIII.**

**THIRD CAUSE OF ACTION**

**Violation of the Due Process Clause of the Fourteenth Amendment – U.S. Constitution**

68. The allegations contained in paragraphs 1-44 are realleged and incorporated herein by reference.

69. Defendant's Code, and Defendant's policy and actions, both on their face and as applied, vest unfettered discretion in BMV officials to either grant or deny an application for a personalized license plate.

70. Defendant's Code, and Defendant's policy and actions, both on their face and as applied, are unconstitutionally vague.

71. Defendant's Code and Defendant's policy and actions do not adequately notify persons of what expression is prohibited and what is permitted on a personalized license plate.

72. Defendant's Code and Defendant's policy and actions have been enforced in an ad hoc and arbitrary manner.

73. Defendant, in violation of the Due Process Clause, has caused, and will continue to cause, Plaintiff to suffer undue and actual hardship and irreparable injury.

74. Plaintiff has no adequate remedy at law to correct the continuing deprivations of Plaintiff's most cherished constitutional liberties.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

**IX.**

**FOURTH CAUSE OF ACTION**

**Violation of the Free Exercise Clause of the First Amendment – U.S. Constitution**

75. The allegations contained in paragraphs 1-44 are realleged and incorporated herein by reference.

76. Defendant's Code, and Defendant's policy and actions, both on their face and as applied, violate Plaintiff's right to free exercise of religion, as guaranteed by the First Amendment to the United States Constitution.

77. Defendant's Code, and Defendant's policy and actions, both on their face and as applied, are neither a neutral nor general law of applicability and they specifically and discriminatorily target religion.

78. Defendant's Code, and Defendant's policy and actions, both on their face and as applied set up a system of individualized and categorical exemptions without providing a corresponding exemption for religion in violation of the Free Exercise Clause.

79. Defendant's Code, and Defendant's policy and actions are not supported by a compelling governmental interest sufficient to justify their enactment or enforcement against Plaintiff.

80. Defendant's Code, and Defendant's policy and actions are not the least restrictive means to accomplish any permissible government purpose sought to be served.

81. Defendant's Code, and Defendant's policy and actions do not serve a significant government interest.

82. Defendant, in violation of the Free Exercise Clause, has caused, and will continue to cause, Plaintiff to suffer undue and actual hardship and irreparable injury.

83. Plaintiff has no adequate remedy at law to correct the continuing deprivations of Plaintiff's most cherished constitutional liberties.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests the following relief:

A. That this Court immediately issue a Preliminary Injunction enjoining IND. CODE ANN. § 9-18-15-4(b), 140 IND. ADMIN CODE § 2-5-2(b) and § 2-5-2(b)(3), and Defendant's policies and practice thereto, and enjoining Defendant, Defendant's agents, employees, and all

persons in active concert or participation with them, from violating Plaintiff's constitutional and statutory rights so that:

- a. Defendant shall immediately issue a personalized license plate to Plaintiff pursuant to Plaintiff's application.
- b. IND. CODE ANN. § 9-18-15-4(b), 140 IND. ADMIN CODE § 2-5-2(b) and § 2-5-2(b)(3), and Defendant's policies and practice thereto shall not be used in any manner to infringe upon Plaintiff's Constitutional rights.

B. That this Court issue a Permanent Injunction enjoining IND. CODE ANN. § 9-18-15-4(b), 140 IND. ADMIN CODE § 2-5-2(b) and § 2-5-2(b)(3), and Defendant's policies and practice thereto, and enjoining Defendant, Defendant's agents, employees, and all persons in active concert or participation with them, from violating Plaintiff's constitutional and statutory rights so that:

- a. Defendant shall immediately issue a personalized license plate to Plaintiff pursuant to Plaintiff's application.
- b. IND. CODE ANN. § 9-18-15-4(b), 140 IND. ADMIN CODE § 2-5-2(b) and § 2-5-2(b)(3), and Defendant's policies and practice thereto shall not be used in any manner to infringe upon Plaintiff's Constitutional rights.

C. That this Court enter a declaratory judgment declaring 140 IND. ADMIN CODE § 2-5-2(b) and § 2-5-2(b)(3) (2008), IND. CODE ANN. § 9-18-15-4(b) (2004), and Defendant's policies and practice thereto unconstitutional both on their face and as applied as violations of the Plaintiff's rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution;

D. That this Court award Plaintiff compensatory and nominal damages arising from the acts of the Defendant as an important vindication of the constitutional rights at stake;

E. That this Court award Plaintiff her costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988 and other applicable law;

F. That this Court grant such other and further relief as the Court deems equitable,

just, and proper;

G. That this Court 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. That this Court retain jurisdiction of this matter for the purpose of enforcing the Court's orders.

Respectfully submitted on this 17th day of November, 2008.



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