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No. 13-9100

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IN THE  
SUPREME COURT OF THE UNITED STATES

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GREG WEBBER, GOVERNOR OF THE STATE OF GILEAD,

Petitioner,

v.

WINSTON SMITH,

Respondent.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE FOURTEENTH CIRCUIT

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BRIEF FOR PETITIONER

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March 8, 2013

## **QUESTIONS PRESENTED**

- I. Is the Gilead state specialty license plate program government speech?
- II. Does the program constitute viewpoint discrimination?

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### **STANDARD OF REVIEW**

A district court's fact findings and the reasonable inferences to be drawn from them are reviewed for clear error. Its legal conclusions are reviewed *de novo*.

### **STATEMENT OF JURISDICTION**

The court of appeals entered judgment on February 1, 2012. (R. at 33). Petitioner filed his petition for writ of certiorari on February 1, 2012. (R. at 34). This Court granted the petition on March 25, 2012. (R. at 36). This Court's jurisdiction rests on 28 U.S.C. § 1254(1)(2000).

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OPINIONS BELOW

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The opinions of the District and Appeals Courts have not been reported.  
The opinions appear in the record. (R. 25, 32).

## STATEMENT OF THE CASE

In 2005, the Gilead General Assembly passed the Overwhelming Numbers for the Eradication of Social Tyrannies for the Advancement of Total Equality (ONESTATE) Act, intended to foster inclusion and social harmony in the State by eliminating discrimination based on race, color, ethnicity, national origin, sex, religion or sexual orientation, under the color of state authority. (R. at 4). A provision of the ONESTATE Act directed the Commissioner of the Department of Motor Vehicles to issue a specialty license plate reading “Celebrate Gilead’s Diversity.” *Id.*

The State of Gilead allows its citizens to affix specialty license plates to their vehicles. To date, the State has authorized designs and messages for 74 specialty license plates, some of which were designed by public and private organizations as diverse as the Gilead Veteran’s Alliance, the Organization to Preserve Gilead’s Wild Spaces, Gilead State College, and Integrate Gilead’s SOCIety (INGSOC), a pro-diversity group the State asked to help design its “Celebrate Gilead’s Diversity” specialty plate. (R. at 3).

Under the Gilead specialty license plate program, citizens can request new designs for state-issued specialty license plates in two ways: by petitioning the General Gilead Assembly to create the proposed specialty license plate through legislation, or by applying for the authorization of a new plate by the Governor. (R. at 6-7). A state statute, 42 Gil. Stat. Ann. § 1661, sets forth the application process and provides the Governor authority to alter, modify or refuse to authorize any specialty license plate design that is contrary to state law. *Id.*

In 2011, Respondent, Winston Smith, filed an application to create a specialty license plate bearing the message “White Pride Statewide” and prominently displaying the logo of a white supremacist organization in the center of the license plate. (R. at 3-4, 13). While Mr.

Smith’s application satisfied the minimum technical application requirements for consideration by the State, Governor Greg Webber denied the proposed design as contrary to state law. (R. at 13). In a letter to Mr. Smith, Governor Webber informed him the refusal was based on findings the design advocated discrimination, a message that if displayed on a State of Gilead license plate, would be attributed to the State – conflicting with 451 Gil. Stat. Ann. § 1984, the ONESTATE Act. *Id.* Governor Webber also advised Mr. Smith he was free to petition the General Assembly for the creation of the proposed specialty license plate or a change in the current laws. *Id.*

Mr. Smith brought an action challenging Governor Webber’s enforcement of 451 Gil. Stat. Ann. § 1984, 2050. (R. at 2). Mr. Smith claims these provisions, as applied to him, violate his rights under the First Amendment to the Constitution of the United States, as incorporated by the Fourteenth Amendment. *Id.* The District Court granted Mr. Smith’s motion for summary judgment, finding the Gilead specialty license plate program constitutes a hybrid of government-private speech under the Fourth Circuit’s four-factor test and that the State’s denial of his specialty license plate design equates to impermissible viewpoint discrimination. (R. at 26, 28). On appeal, the United States Court of Appeals for the Fourteenth Circuit affirmed the District Court decision. (R. at 33). The Supreme Court granted certiorari to decide whether the Gilead specialty license plate program is government speech, and whether the denial of Mr. Smith’s license plate design is viewpoint neutral. (R. at 36).

### **SUMMARY OF THE ARGUMENT**

The State of Gilead was restricted from issuing its “Celebrate Gilead’s Diversity” license plate after it denied a proposal for a specialty plate bearing the logo of a well-known white supremacist group and the phrase “White Pride Statewide.” This injunction directly interferes

with the State’s ability to place reasonable content restrictions on the speech it permits in the nonpublic forum of its specialty license plate program. Requiring Gilead to issue a license plate with such discriminatory connotations compels the State to disseminate a message in direct conflict with the message adopted into law by the Gilead General Assembly in furtherance of the State’s values of inclusion and equality. The court of appeals erred in concluding the speech contained in Gilead license plates is private speech and the State engaged in viewpoint discrimination by denying Mr. Smith’s plate design.

The Court should find the speech contained in Gilead license plates is the State’s own speech, and the Governor is not required to permit Smith’s design to be published. When, as here, the government chooses its own message and controls that message from beginning to end, it is not required to also permit contradictory messages in the same forum, in accordance with the government-speech doctrine.

In the event the Court finds Gilead’s license plate program is subject to forum analysis, it must recognize the State is entitled to enforce reasonable, content-based restrictions on speech. Governor Webber’s refusal of Smith’s discriminatory design was a reasonable content-based constraint grounded in Gilead’s interest in controlling the messages displayed on its state-owned and issued license plates, as well as the plate’s discriminatory content and the nature of the forum itself. In this case, Mr. Smith’s proper recourse is not in the courtroom, but at the ballot box, as he is free to petition the General Assembly for a change in the laws or the adoption of his message.

**ARGUMENT**

**I. THE GILEAD STATE SPECIALTY LICENSE PLATE PROGRAM IS GOVERNMENT SPEECH, AS PROPERLY DETERMINED BY THE *JOHANNIS* TEST.**

- a. *The Supreme Court promulgated Johanns test, as invoked in Bredesen, is the appropriate test for locating government speech for First Amendment purposes.*

Although there is currently a split among the Circuit Courts regarding the proper method for determining speech attribution for First Amendment purposes, the authoritative test for ascertaining whether the speaker is the government or a private entity is the *Johanns* test, promulgated by this Court and applied by the Sixth Circuit in *Bredesen*. See *Am. Civil Liberties Union of Tenn. v. Bredesen*, 441 F.3d 370, 375–76 (6th Cir. 2005). In *Johanns*, this Court held when the Government determines the overarching message and retains exclusive editorial control, the speech must be attributed to the Government, and the First Amendment Free Speech Clause has no application. *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 553 (2005). Government control over a message is determined using two-factors: (1) whether the government set the message and (2) whether it approved and controlled the message. *Johanns*, 544 U.S. at 560-562.

Critics of the Sixth Circuit’s application of the *Johanns* test in *Bredesen*, argue the programs examined by the two cases are not analogous. See *Bredesen*, 441 F.3d at 385 (Martin, J., dissenting) (arguing a private individual’s choice to pay the price for a particular specialty license plate was not comparable to the compelled subsidy of government speech in *Johanns*). As an alternative, some courts have adopted the Fourth Circuit’s four-factor test set out in *Sons of Confederate Veterans*, which considers: (1) the central purpose of the program where the speech occurs; (2) the degree of editorial control the government maintained over the speech; (3) the identity of the “literal speaker”; (4) and who holds the “ultimate responsibility” for the content of the speech. *Sons of Confederate Veterans v. Comm’r of the Va. Dep’t. of Motor Vehicles*, 288 F.3d 610, 618 (4th Cir. 2002); e.g., *Ariz. Life Coal., Inc. v. Stanton*, 515 F.3d 956,

960 (9th Cir. 2008); *Planned Parenthood of S.C., Inc. v. Rose*, 361 F.3d 786, 787-88 (4th Cir. 2004).

Regardless of the factual differences between *Johanns* and *Bredesen*, both cases involve programs in which both the government and private entities seem to be speaking simultaneously. This Court adopted the *Johanns* test to determine in these situations what, if any, First Amendment speech protection is appropriate. The elements examined by *Johanns* and the Fourth Circuit are fundamentally the same. *See Stanton*, 515 F. 3d 956, 965 (9th Cir. 2008). In application, both tests consider who controls the speech, the purpose of the program where the speech occurs, and to whom the speech is most readily attributed. *See id.* (adopting the Fourth Circuit’s four-factor test – supported by the Supreme Court’s decision in *Johanns* – to determine whether messages in Arizona’s special organization license plate program were government or private speech). However, the open-ended elements of the four-factor test lead to inconsistent outcomes and findings of mixed government-private speech – a vague category this Court has not recognized. *See generally* Lilia Lim, Four-Factor Disaster: Courts Should Abandon the Circuit Test for Distinguishing Government Speech from Private Speech, 83 WASH. L. REV. 569, 593 (2008). The distinguishing benefit of the *Johanns* test is its ability to be applied as a bright-line rule, returning clear, consistent determinations of whether speech should be attributed to the government or a private entity. Therefore, the *Johanns* test should be invoked in this case to determine the proper attribution of the speech on Gilead specialty license plates.

***b.*** *Results under the Fourth Circuit four-factor test are indeterminate, inconsistent and ill suited for distinguishing categories of speech for First Amendment purposes.*

Courts employing the Fourth Circuit four-factor test have reached divergent conclusions in classifying speech for First Amendment purposes, finding everything from government to private, and even “mixed” speech. *See, e.g., Pleasant Grove City, Utah v. Sumnum*, 555 U.S.

460, 472 (2009) (holding the city's permitting placement of privately donated monuments in a public park was government speech); *Stanton*, 515 F.3d at 965-68 (deciding specialty license plate was private speech); *Rose*, 361 F.3d at 793-94 (message on specialty plate constituted hybrid of government and private speech); *Ariz. Life Coal., Inc. v. Stanton*, No. 2:03-CV-01691, 2005 WL 2412811, at \*3-6 (D. Ariz. Sept. 26, 2005) (holding specialty plates were government speech). The elements comprising the four-factor test are too ambiguous and broad to be applied consistently or produce any sort of predictable outcome. *See Lim, Four-Factor Disaster, supra*, at 593.

Even in applying the four-factor test to the exact same set of facts, courts have reached inconsistent and, in fact, opposite conclusions. In *Arizona Life Coalition v. Stanton*, the Ninth Circuit employed the four-factor test to find all four factors indicated private speech, a complete reversal of the district court's finding that all four factors indicated government speech. *Stanton*, 515 F. 3d 956, 968. In its analysis, the district court determined since the purpose of the license plates was to identify drivers and Arizona executed the specialty license plate program, the program's primary purpose was government speech. *Stanton*, 2005 WL 2412811, at \*3-4. The second factor, editorial control, also weighed heavily in the government's favor, as the state exercised control by limiting participation in the program to only those organizations meeting certain requirements. *Id.* Finally, the district court combined the literal-speaker and ultimate-responsibility factors, finding Arizona's control over the type of organizations and substance permitted by the license plate program to indicate government speech. *Id.*

When the Ninth Circuit considered the same facts, it found the central purpose of the program was to allow citizens to identify themselves with personalized messages, indicating private speech; editorial control over the message rested with the private group, Life Coalition,

since it proposed the message; the literal-speaker factor implicated private speech interests because the private organization's logo was to be displayed on the plate; and the private entity also bore ultimate responsibility for the message because it had initiated the production of the plate by submitting an application to the state. *Stanton*, 515 F.3d at 965-68. Not only did the two courts define the elements behind the four factors completely differently, they reached entirely opposite results in their application.

Until the elements of the four-factor test are more fully defined as to render them reliable criteria capable of consistent application, this Court should not adopt the test as an acceptable approach for determining speech attribution for First Amendment purposes.

*c. Regardless of the test applied by the court, the messages displayed on specialty license plates issued by the State of Gilead are most properly classified as government speech.*

Applying the authoritative *Johanns* test to this case demonstrates the true nature of the Gilead license plate program is government speech. The State of Gilead controlled all aspects the messages appearing on its specialty license plates. (R. at 6-7); *see also Bredesen* 441 F. 3d at 376. The Gilead General Assembly's decision to partner with the private group INGSOC to develop the final design of the license plate does not negate the State's control over the specific message. *See Johanns*, 544 U.S. at 562 (finding government speech despite the Secretary of Agriculture allowing the members to determine the final details). Private entities can apply for the government issuance of new specialty license plate designs two ways: by petitioning the legislature to adopt their message, or by submitting an application for approval by the Governor. (R. at 6-7). Both scenarios require the State to exercise its exclusive editorial powers to authorize and control the messages, as well as their distribution on the state-owned license plates. *Id.* Therefore, the issuance of a private entity's specialty plate represents the Gilead's adoption of the message as its own speech. *Cf. Summum*, 555 U.S. 460, 472-473 (2009) ("It is clear that

the monuments in Pleasant Grove's Pioneer Park represent government speech. Although many of the monuments were not designed or built by the City and were donated in completed form by private entities, the City decided to accept those donations and to display them in the Park”).

Similarly, in *Bredesen*, the Tennessee legislature delegated partial responsibility for the design of its “Choose Life” license plate to a private organization. *Bredesen*, 441 F. 3d at 376. Despite this entrustment of its message to a private organization, the Sixth Circuit found Tennessee reserved the power to veto the final design and therefore held the requisite control under *Johanns* to find the license plate was government speech. *Id.* Likewise, the determinative factor in finding the Gilead license plate program is government speech is the State’s retention of the authority to revise or veto INGSOC’s design. (R. at 22).

Further, if this Court finds the four-factor test influential in determining the source of the speech in Gilead’s license plate program, it should still find in favor of Governor Webb as all four factors strongly indicate government speech. The first factor, the purpose of the specialty license plate program, indicates government speech because the intent of the program is to generate revenue and promote State messages. *See Stanton*, 515 F. 3d at 966 (finding the primary purpose of the license plate program to be revenue generation).

The second factor, degree of editorial control, also indicates government speech, as the processes for the issuance of a new license plate reserves to the State exclusive editorial control over the substance of the plate. *See* 42 Gil. Stat. Ann. § 1661. If an individual petitions the legislature to issue the plate, the General Assembly must adopt the message by law, leaving exclusive approval and editorial authority to the State. *Id.* Alternatively, application for new specialty plates through the Gilead Department of Motor Vehicles requires the Governor to approve the plate design, reserving to him the right to alter or modify the content, or to refuse to

authorize any specialty license plate that is contrary to state law. *See Bredesen*, 441 F. 3d at 376 (holding a group’s ability to secure a specialty plate amounts to state approval of the message).

In identifying the literal speaker, different courts have conflicting opinions about whether the “literal speaker” is the person with whom the message originated, the entity that owns the medium where the speech occurs, or the person conveying or displaying the speech. *See, e.g., Rose*, 361 F.3d at 794 (the vehicle owner is the literal speaker); *SCV*, 288 F. 3d at 621 (license plate itself is the literal speaker). Here, the messages displayed on Gilead specialty license plates originate both with private individuals and the State, but the State owns the license plates where the message are displayed even after an individual selects the plate and attaches it to his car. (R. at 6). Thus, the Gilead is literal speaker. Similarly, Gilead’s issuance of the plates, continued ownership after the plates are attached to private vehicles, and the presence of the State’s name on the plate leaves ultimate responsibility for the speech with the State. *Cf. Bredesen*, 441 F. 3d at 377 (finding reasonable persons know license plates to be government-issued, *a fortiori* the messages on the plates are understood to be government messages).

With all four factors indicating government speech, in addition to the *Johanns* test demonstrating the same conclusion, the Court must find Gilead’s license plate program is not subject to forum analysis under the First Amendment. However, in the event the Court adopts the Fourteenth Circuit court’s finding of mixed government-public speech in this case, the program should still be considered government speech for First Amendment purposes. Submitting the specialty license plate program to the strict scrutiny associated with private speech under the First Amendment threatens the legitimate purposes of the State program and fails to recognize the State’s interest in controlling the content on state-owned license plates. *See Caroline Mala Corbin, Mixed Speech: When Speech Is Both Private and Governmental*, 83

N.Y.U. L. REV. 605, 656 (2008) (arguing applying strict scrutiny under the First Amendment to speech that is not entirely private deprives the government of its ability to control its own messages).

**II. THE GILEAD SPECIALTY LICENSE PLATE PROGRAM IS A MEDIUM FOR GOVERNMENT ADVOCACY AND NOT SUBJECT TO THE FIRST AMENDMENT REQUIREMENT OF VIEWPOINT NEUTRALITY.**

It is well understood that when the Government speaks for itself, it is entitled to choose its message and take appropriate steps to ensure its position is not distorted. *Rosenberger v. Rector of the Univ. of Va.*, 515 U.S. 819, 833 (2005). This discretion includes the authority to select and promote one message while declining to endorse conflicting viewpoints on the same topic. *Id.*; *Cf. Rust v. Sullivan*, 500 U.S. 173, 193 (1991) (holding the Government can, without violating the Constitution, elect to fund a program encouraging certain activities without simultaneously funding alternative programs that deal with the problem in a different way). Exercise of this discretion is not subject to strict scrutiny since the Government's decision not to disseminate certain messages does not infringe on individuals' First Amendment rights to free speech as incorporated by the Fourteenth Amendment. *Summum*, 555 U.S. 460, 467 (2009) ("The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech."); *see also Johanns*, 544 U.S. at 553 ("[T]he Government's own speech ... is exempt from First Amendment scrutiny"); *Rosenberger*, 515 U.S. at 833; *Rust*, 500 U.S. at 194.

Further, the State is entitled to exercise this autonomy in its speech even when it receives assistance from private entities to fund or distribute its message. *Summum* 555 U.S. at 467-468; *see also Johanns*, 544 U.S. at 572 (when government controls the message, "it is not precluded from relying on the government-speech doctrine merely because it solicits assistance from nongovernmental sources"); *Rosenberger*, 515 U.S. at 833 (government may regulate content of

its speech when it enlists private entities to distribute its message); *Bredesen*, 441 F. 3d at 377 (reliance on citizens who voluntarily paid to display specialty license plates on their vehicles did not preclude reliance on government-speech doctrine).

Accordingly, the government speech contained in the State of Gilead's specialty license plate program is not subject to strict scrutiny of forum analysis for First Amendment purposes.

### **III. EVEN IF FOUND TO BE SUBJECT TO VIEWPOINT NEUTRALITY, GOVERNOR WEBBER'S ACTIONS ARE A REASONABLE, CONTENT-BASED RESTRICTION.**

*a.* *The license plate program has not been fully opened for public dialogue and therefore is best classified as a nonpublic forum.*

The Supreme Court has identified three types of speech fora: traditional public, designated public, and nonpublic. *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). Speech in traditional and designated public fora is subject to strict scrutiny by the state, and speakers can only be excluded in narrow circumstances as required to serve a compelling state interest. *Id.* at 45-46 (state may enforce content-based exclusions where regulation is necessary to serve a compelling state interest); *see also Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1995). Any public property traditionally devoted to public assembly or debate is considered a traditional public forum, such as a public street or town square. *Perry Educ. Ass'n*, 460 U.S. at 45. Alternatively, a designated public forum is created when the government intentionally opens a nontraditional forum for public dialogue. *Cornelius*, 473 U.S. at 800.

All other government property that is not a public forum by tradition or design is considered a nonpublic forum. *Id.* at 806. Restrictions placed on speech in a nonpublic forum must be reasonable in light of the forum's purpose and content-based, rather than prohibitive of a specific viewpoint. *Id.* Notably, the Government is not required to allow all forms of speech on

property it owns and controls, nor does it create a public forum by enabling limited discourse in a particular location. *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992); *Cornelius*, 473 U.S. at 802.

To determine whether government property is a public or nonpublic forum, courts must ascertain whether the government intended to open a nontraditional forum for public discourse. *Cornelius*, 473 U.S. at 802. Factors for consideration in this analysis include: the government's policies and practices with regard to speech in the forum, the nature of the property where the speech occurs, and the forum's suitability for the expression of ideas. *Cornelius*, 473 U.S. at 802. Here, Gilead license plates are neither a public forum by tradition, nor has the State of Gilead designed or intended for its plates to be a public forum for the free exchange of ideas. Gilead license plates are primarily intended to identify drivers and facilitate limited expression of state-controlled and approved messages. *See Choose Life*, 547 F. 3d 853, 865-866 (7th Cir. 2008) (finding Illinois license plates constitute a nonpublic forum based on the heavily regulated nature of the medium and extremely limited exchange of ideas therein). Thus, the Gilead specialty license plate program is a nonpublic forum. It follows that Governor Webber is permitted to deny Mr. Smith's license plate based on the fact that it violates state law and is in direct conflict with the Government's chosen message.

***b.*** *Gilead's denial of Mr. Smith's plate design constitutes a reasonable, content-based restriction.*

The Supreme Court recognizes a distinction between reasonable content-based discrimination, permissible to preserve the purpose of the forum, and viewpoint discrimination directed at speech otherwise within the forum's limitations. *Rosenberger*, 515 U.S. at 829-830. Some courts have found the government has impermissibly prohibited speech based on viewpoint in cases where the state opened dialogue on a topic and subsequently favored one

viewpoint on the subject over another. *Compare Rose*, 361 F.3d at 799 (finding impermissible viewpoint discrimination where South Carolina authorized a “Choose Life” specialty late without allowing a pro-choice plate), *with Choose Life*, 547 F. 3d at 865 (finding a reasonable content-based restriction where Illinois prohibited all abortion-related messages on specialty plates). This case does not involve viewpoint discrimination.

Governor Webber’s denial of Mr. Smith’s license plate is a reasonable content-based restriction, in accordance with state law and keeping with the purpose of the forum. By adopting 451 Gil. Stat. Ann. § 1984, 2050, the State of Gilead seeks to advance total equality within its borders. (R. at 2). The State’s message, “Celebrate Gilead’s Diversity”, as displayed on the specialty license plate issued in accordance with the ONESTATE Act, is an inclusive message promoting harmony among the wide variety of backgrounds, including race, color, ethnicity, national origin, sex, religion, or sexual orientation. The State chose this message as a means of promoting its legitimate purpose of eradicating social tyranny. *Id.*

The Respondent asserts the State opened public discourse on the topic of racial heritage when it issued the “Celebrate Gilead’s Diversity” license plate and by denying Smith’s plate, the State impermissibly prohibited expression of his viewpoint. This contention is incorrect. Mr. Smith’s license plate design consists of the phrase “White Pride Statewide” and a logo of a fist, commonly associated with a well-known white supremacist group. (R. at 11). The unavoidable connotation of Mr. Smith’s license plate is blatant discrimination against minority races and ethnicities. This not only conflicts with the State’s message of celebrating diversity among all races and heritages equally, but by promoting an exclusive message of race as superior to all others, it directly violates the ONESTATE Act (prohibiting discrimination under color of state authority) and therefore conflicts with the policies set forth by the Gilead specialty license plate

program. (R. at 10, 13). As such, the Governor was entitled to deny the issuance of Smith's license plate in light of the nature of the forum, as well as the plate's discriminatory character and inference of State approval for messages appearing on its license plates. *Cf. Sumnum*, 555 U.S. 460, 472-473 (2009) (finding monuments on government property are routinely and reasonably interpreted as conveying a message on the government's behalf and the city was entitled to refuse to place a privately donated monument in a public park).

### **CONCLUSION**

When as here, the inference of government-speech is unavoidable, the State will be viewed as having approved, endorsed, or at minimum, tolerated, any message printed next to its name. The promotion of an exclusive, discriminatory message and logo associated with violence against people of minority backgrounds is unacceptable under color of Gilead's state authority. Compelling the State to permit such derogatory content that conflicts with its own messages and laws would undermine the government's legitimate interests in controlling the substance of its own programs.

The Gilead General Assembly did not open its license plates for the promotion of exclusive, prejudicial messages when it adopted a diversity message, nor did the State arbitrarily deny Smith from expressing his viewpoint. Rather, Gilead chose one message of inclusion and harmony, as it was empowered to do by the voters of the State of Gilead. Governor Webber refused to authorize Smith's license plate design based on the discriminatory content on the plate and its conflict with state law – a reasonable constraint in light of the nature of the forum and the unavoidable inference that the State endorses the messages displayed on its license plates. If Mr. Smith would like to see his exclusive message endorsed by the State, or a change in the State's stance on diversity, his appropriate recourse would be through political process.

**PRAYER**

For the foregoing reasons, Petitioner prays the Court reverse the decisions of the courts below and find the Gilead specialty license plate program constitutes government speech in a nonpublic forum, under which denial of Mr. Smith’s plate was a reasonable content-based restriction.

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Meagan McKeown  
Counselor for Petitioner

**CERTIFICATE OF SERVICE**

Counsel for Petitioner certifies this brief has been prepared and served on all opposing counsel in compliance with the Rules of the Freshman Moot Court Competition.

\_\_\_\_\_  
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